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Order QR

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-11-2026

CORAM

THE HON'BLE MR.JUSTICE K.SURENDER

WP.No.35458 of 2026

CNR:{HCMA012066062026}

Case QR

Roopalakshmi Padmanabhan,
W/o.Late.General S.Padmanabhan,
(Retd. Chief of Army Staff)
A3, Basera Apartments, 46, Besant Avenue,
Adyar, Chennai-600 020.

..Petitioner(s)

1. The Commissioner, H.R and C.E.,
   Uthamar Gandhi Road,
   Nungambakkam,
   Chennai-600 034.

2. The Inspector General of Registration,
   Santhome, Chenna-600 0004.

3. The Sub Registrar Adayar,
   C73, Lattice Bridge Road,
   Kamaraj Nagar,
   Chennai-600 041.

4. Arulmighu Arunachaleswarar Temple,
   Rep. by the Joint Commissioner / Executive Officer,
   Thiruvannamalai-606601.

..Respondent(s)

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the 1st respondent to issue forthwith a No

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objection certificate to the third respondent to enable the petitioner's family members to deal with their property measuring 2,700 sq.ft in Old Door No.12D, New No.40, Besant Avenue, Adyar, Chennai-600020 in Old S.No.41, within the registration district of Adyar, Madras, forming part of Arunachalapuram, in Urur Village No.116, Saidapet Taluk.

[Prayer Amended as per order of this Court dated 04.11.2026 in W.M.P.No.49225 of 2026 in W.P.No.35458 of 2026.]

For Petitioner(s): Ms.Hema Sampath, Senior Counsel for Ms.R.Meenal

For Respondent(s): Mr.S.Surya
Government Advocate (H.R.&C.E.)
For R1, R2 & R4

ORDER

The relief sought in this Writ Petition is to direct the 1st respondent to issue forthwith a No Objection Certificate to the 3rd respondent to enable the petitioner's family members to deal with their property measuring an extent of 2,700 sq.ft., situated at Old Door No.12D, New Door No.40, Besant Avenue, Adyar, Chennai-600 020, comprised in Old S.No.41, T.S.No.40/6, forming part of Arunachalapuram, Urur Village, Saidapet Taluk, Chennai.

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2.The case of the petitioner is that the subject property originally belonged to the 4th respondent Temple. The petitioner's mother-in-law, S.Kannammal, wife of S.Sundararajan, purchased the leasehold right in respect of the property from Devasthanam under a registered Lease Deed dated 06.12.1956. Thereafter, the Commissioner, HR & CE Department, vide Order dated 31.01.1962 in Application No.91/61, passed under Section 34 of the then Madras Hindu Religious and Charitable Endowments Act, 1959 (Act XXII of 1959), granted permission for sale of the leased property to S.Kannammal. Pursuant to the said order, the Executive Officer of the 4th respondent Temple sold the subject property to S.Kannammal vide Sale Deed dated 26.06.1963 for a valuable consideration of Rs.30,150.31 Np. @ Rs.1,750/-/ground. Thereafter, by a registered Release Deed dated 22.08.1964, S.Kannammal distributed the property among her children and released an extent of 2,700 sq.ft. in favour of her daughter, V.Vedavalli, who took possession and put up construction thereon. Thereafter, V.Vedavalli executed her last Will and Testament dated 23.07.1992, which was subsequently probated by this Court on 25.06.2018 in O.P.No.968 of 2017. As per the said Will, the subject property devolved upon the beneficiaries therein.

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3.The learned Senior Counsel for the petitioner further submits that one of the legal heirs, Daya Kannan, filed O.S.No.8127 of 2022 before the learned XXIII Assistant City Civil Court, Chennai, seeking partition of her 1/54th share in the subject property. A preliminary decree for partition was passed on 27.02.2024. Thereafter, I.A.No.5 of 2024 was filed seeking passing of a final decree. Since the property measuring 2,700 sq.ft., along with a dilapidated house, could not be divided among the numerous sharers, the Civil Court permitted the sale of the property and distribution of the sale proceeds among the legal heirs. The sale price offered by the purchaser was also approved by the Civil Court and an Advocate Commissioner was appointed to supervise the sale. The Court also approved the draft sale deed and authorised the Court Officer to act on behalf of the exparte defendants and deposit their respective shares into the credit of the suit. Thus, the sale of the property alone remained to be completed.

4.She would further submit that when the draft sale deed was presented before the 3rd respondent for registration, the 3rd respondent raised an objection stating that the HR & CE Department had instructed the Registration Department that the entire S.No.41 belongs to the 4th respondent Temple and

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that the sale deed could not be registered without obtaining a No Objection Certificate from the HR & CE Department.

5.It is further submitted that the Commissioner, HR & CE Department, had already granted sanction for the sale of the subject property on 31.01.1962, pursuant to which the 4th respondent Temple executed the Sale Deed dated 26.06.1963 in favour of S.Kannammal. From the date of the said sale, the Temple ceased to have any right, title or interest over the property.

6.The learned Senior Counsel further submitted that the petitioner and her family members have been in uninterrupted possession and enjoyment of the property for more than six decades and that the revenue records and other documents stand in their respective names. The Civil Court, after considering the title and the rights of the parties, has also passed orders for partition and sale of the subject property. Therefore, insisting upon a No Objection Certificate from the HR & CE Department for registration of the sale deed is not sustainable in law.

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7.The learned Government Advocate appearing for the respondents 1 & 4 would submit that the subject property originally belonged to the 4th respondent Temple and that the property was sold in favour of S.Kannammal, mother-in-law of the petitioner, pursuant to the order dated 31.01.1962 passed by the Commissioner, HR & CE Department, in Application No.91/61. It is further submitted that the petitioner seeks a No Objection Certificate from the HR & CE Department to enable the registration of the sale deed in respect of the subject property, which is presently objected to by the Registration Department on the ground that the property is recorded as belonging to the 4th respondent Temple.

8.The learned Government Advocate drew the attention of this Court to the ***Common Order dated 07.06.2021 in Suo Motu W.P.No.574 of 2015 & W.P(MD) No.24178 of 2018***, wherein, the Division Bench of this Court has issued 75 directions to the Respondent Authorities therein for the purpose of protecting the historical monuments including temples, idols, antiques, manuscripts, murals, etc. Out of the 75 directions issued by the Division Bench of this Court, Direction No.33 is the Trustee or Administrator cannot sell a temple property against the wish of the donor. For better appreciation, Direction

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No.33 issued by the Division Bench of this Court in the said common order is extracted hereunder:

> *"(33) The State Government or the Commissioner of the HR & CE Department, who are the Trustee/Administrator of the temple lands, shall not alienate or give away the lands contrary to the wish of the donor. The lands shall always remain with the temples. The public purpose theory shall not be invoked in cases of temple lands over which the interest of the community people of the religious denomination generally rests."*

9.It is further submitted by the learned Government Advocate that the 1st respondent had filed two Review Applications in Rev.Appl.(W) Nos.169 & 170 of 2021 before the Division Bench of this Court seeking to review the Common Order dated 07.06.2021 passed in Suo Motu W.P.No.574 of 2015 & W.P(MD) No.24178 of 2018. During the pendency of said Review Applications, three persons had filed a Writ Petition in W.P.No.12697 of 2022 before this Court praying for issuance of a writ of declaration, declaring that

(i) Mylai Sri Kapaleeswarar Temple

(ii) Vadpalani Murugan Temple

(iii) Vadapalani Sri Vengeeswarar Temple

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(iv) Vadapalani Sri Alagar Perumal Temple

(v) Virugambakkam Sri Sundaravardharaja Perumal Temple

(vi) Valasaravakkam Sri Velveeswarar Temple

(vii) Poonamallee Sri Thirukachi Nambigal and Sri Varadaraja Perumal Temple

(viii) Poonamallee Sri Thirukachi Nambigal and Sri Varadaraja Perumal Temple Tank which are impacted under the Corridor 4 of the Phase II of the Chennai Metro Rail Project, as ancient monuments and Heritage Structures under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 read with Article 26 of the Constitution of India. The First Bench of this Court vide Order dated 20.06.2022, closed W.P.No.12697 of 2022 with the following observation:

> *"11. ……..... It is settled law that any judgment of the Court running counter to any statutory provision would be per incuriam, as has been held by the Apex Court in the case of Dr. Shah Faesal and others v. Union of India and another, (2020) 4 SCC 1.*
>
> *12. If a Court issued direction going contrary to the statutory provision, then such direction is to be treated as per incuriam. It is more so when the Court has power to declare any provision as ultra vires, if it is hit by the provisions of the*

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Constitution of India or other statutory provisions. But unless it is so declared as ultra vires, it cannot be nullified by a direction and such direction given is to be treated as per incuriam. In the light of the aforesaid, what will prevail is the provision of law, that is Section 34 of the Act of 1959 and Section 3 of the Act of 1997. Thus, the provisions having not been declared as ultra vires, the competent authorities are empowered to exercise the said provisions. Therefore, it needs to be clarified that if the direction quoted in paragraph 33 of the judgment in the suo motu writ petition cited supra runs counter to any of the statutory provision, it may be treated as per incuriam.

13. In view of the finding recorded above, we hold that if the lands belonging to the temples, like vacant lands, or used lands for commercial purposes are required, it can be acquired for public purposes by applying the provisions of law. In doing so, it has already been admitted that no heritage structures or ancient monuments of the temples would be affected."

10.Thereafter, the Division Bench of this Court has disposed of the aforesaid Rev.Appl.(W) Nos.169 & 170 of 2021 vide Common Order dated 02.06.2023. In Paragraph No.16 of the ***Common Order dated 02.06.2023 passed in Rev.Appl.(W) Nos.169 & 170 of 2021***, the Division Bench of this Court has held that a donor's will and intention are paramount, prohibiting the

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State or HR & CE Department from alienating temple properties against the original charitable intent and the Authorities cannot bypass this intent through executive actions or by invoking public purpose to divert property from its designated use. For better appreciation, the relevant portion of the said common order is extracted hereinbelow:

> *"16. With regard to direction no.33, it will be necessary to look into the relevant provision of the HR&CE Act, which reads as follows:*
>
> > *"34. Alienation of immovable Trust property:- (a) Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to or given or endowed for the purpose of, any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution. Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published, in such manner as may be prescribed, inviting objections and suggestions with respect thereto, and all objections and suggestions received from the trustee or other persons having interest shall be duly considered by the Commissioner. Provided further that the Commissioner shall not accord such sanction without the previous approval of the Government.*
>
> > *Explanation:- (4-A) The Government may issue such directions to the Commissioner as in their opinion are necessary, in respect of any exchange, sale, mortgage or lease of any immovable*

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property, belonging to or given or endowed for the purpose of any religious institution and the Commissioner shall give effect to all such directions."

From the above provision, it is clear that the exchange, sale or mortgage and any lease for a term exceeding five years of any immoveable property is generally null and void. The exception being the prior sanction of the Commissioner for the necessity or beneficial to the institution. It is pertinent to mention that the word 'necessity' used therein would have to be related to the necessity of the temple or institution and not for the necessity of third parties. Necessity and beneficial intent being a pre-requisite condition, must be satisfied before the decision to even lease out the property for more than five years. Such a decision must be taken for the rational consideration. Therefore, this court is of the opinion that for alienation of the immovable properties belonging to the religious institutions, all the conditions stipulated in the proviso like publication, calling for objections and previous sanction from the Government and explanation to Section 34 of the HR&CE Act have to be scrupulously followed and it has to be established that such alienation is beneficial to the interest of the temple or institution and that, the alienation is the only option to ensure that the activities of temples including performance of rituals will be disturbed, if the property is not sold. It must also be for necessity or beneficial for the temple or the religious institution. Before the

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properties are alienated, the other provisions regarding common good fund, funds of other temples to be used for the preservation and other activities of the other temples, contribution from the public, will have to be taken into consideration. Even thereafter, if there is a requirement, a decision on sale of property can be taken, that too, after following due procedure as contemplated under the HR&CE Act. The government lands are to be first utilized for public purpose before the lands belonging to the temples are touched. The directions to be issued by the Government under the explanation should also be inconformity with the above principles. It is significant to mention here that a Division Bench of this Court in the judgment in W.A No. 2831 of 2002 has already held that temple properties cannot be acquired. There are Government orders in G.O.MS.No.1266 (Rev.) dated 30.05.1981 and G.O.Ms.No.1630 dated 26.09.1984 on the subject. As such, the temple properties cannot be gifted away against the interest of the institution. The intention with which the charities given by the donor cannot be shun away at the pleasure of the government or the Commissioner. The Will of the donor is of paramount importance, which cannot be surpassed at executive pleasure against the interest of the temples. At this juncture, it is necessary to place on record the importance of maintenance of accounts regarding the contribution by the donors, hundi collection, expenditure and importance of independent audit performed by an authority not forming part of state functionary. Therefore, the alienation by the government can only be in

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consonance with the provisions and object of the HR&CE Act; and that, the actions taken by the HR&CE Department shall always be subject to judicial review as this Court being one of the guardians of the rights guaranteed by the constitution, is vested with such power."

11.The learned Government Advocate would further submit that pursuant to the ***Common Order dated 07.06.2021 in Suo Motu W.P.No.574 of 2015 & W.P(MD) No.24178 of 2018 and Common Order dated 02.06.2023 in Rev.Appl.(W) Nos.169 & 170 of 2021*** passed by the Division Bench of this Court, 3rd Respondent had issued a circular directing the Temple Authorities not to register any document belonging to the temple.

12.In reply, the learned counsel for the petitioner submitted that, in the present case, the Executive Officer of the 4th respondent Temple sold the subject property to S.Kannammal only after obtaining sanction from the Commissioner, HR & CE Department, under Section 34 of the HR & CE Act. Therefore, there is no violation of the provisions of Section 34(1) of the HR & CE Act. Further, the subsequent transactions and the rights of the legal heirs have also been recognised by the competent Civil Court, which has passed orders permitting

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the sale of the subject property.

13.Heard the learned counsel for the petitioner and the learned Government Counsel appearing for the respondents and also perused the materials available on record.

14.In the present case, the subject property originally belonged to the 4th respondent Temple. The Commissioner, HR & CE Department, vide Order dated 31.01.1962 in Application No.91/61, granted permission for sale of the subject property in favour of S.Kannammal. Pursuant to the said order, the Executive Officer of the 4th respondent Temple sold the subject property to S.Kannammal vide Sale Deed dated 26.06.1963. Thereafter, S.Kannammal distributed the property among her children by way of registered documents, including the Release Deed dated 22.08.1964, under which an extent of 2,700 sq.ft. was released in favour of V.Vedavalli. Subsequently, the rights of the legal heirs in respect of the subject property were considered by the competent Civil Court in O.S.No.8127 of 2022. Taking note of the fact that the property could not be divided among the numerous sharers, the Civil Court permitted the sale of the property and distribution of the sale proceeds among the legal heirs.

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The sale price was approved and an Advocate Commissioner was appointed to supervise the sale. However, when the draft sale deed was presented before the 3rd respondent for registration, the same was not proceeded with on the ground that a No Objection Certificate from the HR & CE Department was required.

15.At this juncture, it is pertinent to state that in the ***Order dated 20.06.2022 passed in W.P.No.12697 of 2022***, the First Bench of this Court has clarified that if the direction quoted in paragraph 33 of the ***Common Order dated 07.06.2021 passed in Suo Motu W.P.No.574 of 2015 and W.P.(MD) No.24178 of 2018*** runs counter to any statutory provision, the same may be treated as per incuriam.

16.As per the provisions of Section 34(1) of the HR & CE Act, any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property belonging to a religious institution requires the prior sanction of the Commissioner, HR & CE Department. For the sake of clarity, Section 34(1) of the HR & CE Act is extracted herein below:

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*"**34. Alienation of immovable trust property.***

(1) Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purposes, of any religious institution shall be null and void unless it is sanctioned by [the Commissioner] [Substituted by Tamil Nadu Act 39 of l996.] as being necessary or beneficial to the institution:

Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in such manner as may be prescribed, inviting objections and suggestions with respect thereto; and all objections and suggestions received from the trustee or other persons having interest shall be duly considered by [the Commissioner] [Substituted by Tamil Nadu Act 39 of l996.]:

[Provided further that the Commissioner shall not accord such sanction without the previous approval of the Government.] [Inserted by section 2(1) of the Tamil Nadu Hindu Religious and Charitable Endowments (Second Amendment) Act, 1998 (Tamil Nadu Act 38 of 1998).]

Explanation. - Any lease of the property above mentioned though for a term not exceeding five years shall, if it contains a provision for renewal for a further term (so as to exceed five years in the aggregate), whether subject to any condition or not, be deemed to be a lease for a period exceeding five years."

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17.As far as this case is concerned, the Commissioner, HR & CE Department, exercising the power under Section 34(1) of the HR & CE Act, had passed the Order dated 31.01.1962 in Application No.91/61 granting permission for the sale of the subject property in favour of S.Kannammal. Pursuant to the said order, the Executive Officer of the 4th respondent Temple sold the subject property to S.Kannammal vide Sale Deed dated 26.06.1963. Hence, there is no violation of the rule contemplated under Section 34(1) of the HR & CE Act.

18.When the 4th respondent Temple sold the subject property to S.Kannammal vide Sale Deed dated 26.06.1963, the 4th respondent Temple transferred all its rights, title and interest over the subject property to S.Kannammal. Thereafter, the property was dealt with by the purchaser and her legal heirs through registered documents. Therefore, unless and until the Order dated 31.01.1962 passed by the 1st respondent and the Sale Deed dated 26.06.1963 executed by the 4th respondent Temple are set aside by a competent Court, the respondents 1 and 4 have no right to make any objection for registration of the sale deed in respect of the subject property.

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19.Considering the above facts and circumstances of the case, this Court is inclined to allow this Writ Petition. Accordingly, this Writ Petition is allowed. The petitioner and the other legal heirs are directed to re-present the sale deed approved by the Civil Court before the 3rd respondent for registration. Upon such re-presentation of the sale deed by the petitioner and the other legal heirs, the 3rd respondent shall register the same, if it is otherwise in order, forthwith. However, there shall be no order as to costs.

04-11-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To

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K.SURENDER, J.

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