

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

W.P.Nos.9869, 9872 & 9878 of 2020


1. Indic Collective Trust
5E, Bharat Ganga Apartments,
Mahalakshmi Nagar 4th Cross Street,
Adambakkam, Chennai-600088
Represented by its President Mr.T.R.Ramesh.
 2. T.R.Ramesh
Flat 31, Nataraj Apartments
17 D'Silva Raod, Mylapore,
Chennai-600 004.
- ... Petitioners


-Vs-

1. The State of Tamil Nadu
Rep. by its Secretary,
Department of Tourism, Culture and Religious
Endowments Department,
Secretariat, Fort St. George,
Chennai-600 009.
 2. The Commissioner,
Tamil Nadu Hindu Religious and
Charitable Endowments Department,
119, Uthamar Gandhi Salai,
Nungambakkam, Chennai-600 034
- ... Respondents

COUNTER AFFIDAVIT FILED ON BEHALF OF
THE SECOND RESPONDENT

I, S.Sivakumar, S/o. Sambantham, Hindu, aged about 53 years, working as the Joint Commissioner (Legal) in the office of the Commissioner, Hindu Religious and Charitable Endowments Administration Department, having Office at No.119, Uthamar Gandhi Salai, Chennai-600034, do hereby solemnly affirm and sincerely state as follows:-


Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.


Joint Commissioner (Legal),
HR & CE Admn., Department,
Chennai-600 034.

1. I am holding the post of Joint Commissioner (Legal) in the office of the 2nd Respondent herein and I have been authorized by the 2nd Respondent herein to file the Counter Affidavit on behalf of him. I am well acquainted with the facts of the case from the records. I have read the affidavit filed by the Petitioner in support of the above Writ Petition and I deny all the averments and allegations contained therein as false and frivolous, except those that are specifically admitted herein and the Petitioner is put to strict proof of the same.

2. It is submitted that the petitioner has filed the above Writ Petitions praying to issue a Writ of Mandamus

“(a) forbearing the the Respondents from transferring of funds or utilization of funds of Hindu Religious Institutions in the absence of Hereditary Trustees or Trustees duly appointed and having due qualifications under Section 25-A of the T.N.H.R.&.C.E Act, 1959 and unless after complying with the due process therefore, laid down in Section 36 of T.N.H.R.&.C.E Act, 1959 and prescribed in the Utilisation of Surplus Funds Rules, 1960 framed under the said 1959 Act.

(b) forbearing the Respondents from transferring or utilization of the funds of Hindu Religious Institutions to the Common Good fund Constituted under Section 97 of the Hindu Religious and Charitable Endowments Act, 1959 in the absence of Hereditary Trustees or Trustees duly appointed and having due qualifications under Section 25-A of the T.N.H.R.&.C.E Act, 1959, and unless after complying with The Hindu Religious and Charitable Endowments Good Fund Rules, 1962 framed under the said 1959 Act.

Page No.:

No. of Cords.:

[Signature]
Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.

[Signature]
Joint Commissioner (Legal),
HR & CE Admn., Department,
Chennai-600 034.

(c) directing the respondents to initiate enquiry into the various instances of misappropriation of funds of religious institutions under the control of the 2nd Respondent Department and take appropriate legal action against the erring officials and recompense the religious institutions, the amounts misappropriated."

3. It is submitted that the petitioner has filed the above Writ Petitions seeking to restrain/forbear alleged illegal practices in respect of handling of funds of religious institutions and for issuance of guidelines and/or directions alleging that there prevail a pattern of illegal transfer of funds of religious institutions that are under the control of the Hindu Religious and Charitable Endowments Department. It is also submitted that the Petitioners are only keenly interested in blowing over the functioning of and to tarnish the image of the Hindu Religious and Charitable Endowments Department as a whole with a malafide intention and ulterior motive to relieve the Hindu Religious Institutions from the supervisory control of the Government Department. It is submitted that the intention and modus operandi of the petitioners is to stop the progress of developmental activities carried out in Hindu Public Temples under the supervision of the HR&CE Department and curtail and disrupt the effective functioning of the 2nd Respondent Department by propagating adverse, defamatory information / messages, to create a degraded opinion about the functioning of the Department in the minds of the public. It is submitted that the 2nd Petitioner has ascribed/described about the Department as a ROGUE Department of the Government of Tamil Nadu in various websites. It is also submitted that the petitioners with the able

Page No.:

No. of Cords.:


Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.

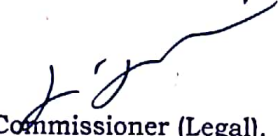
Joint Commissioner (Legal),
HR & CE Admn., Department,
Chennai-600 034.

assistance of name lenders formed as a network filed various Public Interest Litigation Writ Petitions before this Hon'ble Court against the Department and in order to defame are able to supply twisted false information to the Medias and News Papers in a unruly manner as against the decisions / observations made by the Hon'ble Court on the date of hearing of the petitions. It is specifically submitted here that the 2nd Petitioner herein has uploaded in his own website rameshtr@outlook.com that “அறிந்து கொள்வோம் அறம் நிலையாத்துறையை”.

4. With reference to the averments contained under Paragraphs 3 and 4 of the affidavit, speaks only about the 1st Petitioner Trust, its objects and activities. It is learnt that the 1st Petitioner Trust, as 2nd Petitioner and some others have filed W.P.(Civil)No.1432 of 2019 on the file of the Hon'ble Supreme Court of India against the orders passed by the Division Bench of the Hon'ble High Court Madras-Madurai Bench in W.P.(MD)No.11817 of 2018.

It is relevant to submit here that the Constitutional validity of the various provisions of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1951, (Tamil Nadu Act XIX of 1951) except sections 21, 30(2), 31, 55, 56 and 63 to 69 and 76(1) of the Act, the rest of the Act is to be regarded as valid and upheld by the Hon'ble Supreme Court of India in the famous case “*The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*” reported in 1954 S.C.R 1005.


Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.


Joint Commissioner (Legal),
HR & CE Admn., Department,
Chennai-600 034.

Page No.:
No. of Coms.:

In *H.H.Sudhundra Thirtha Swamiar Vs The Commissioner, for Hindu Religious & Charitable Endowments, Mysore*, reported in 1963 SCR Suppl.(2) 302 the Hon'ble Supreme Court of India has declared Sections 52(1)(f), 55,76(1) & (2), 80, 81 and 82 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1951, (Tamil Nadu Act XIX of 1951), as amended by Act XXVII of 1953 as intra vires to the Constitution of India. The Hon'ble Apex Court has also held that "*The State Legislature has power to levy a fee under the Seventh Schedule, List III, item 28 read with item 47. The Legislature was, therefore, competent to levy a fee for rendering services in connection with the maintenance, supervision and control over the religious institutions and it was competent to levy the fee retrospectively. If the amounts received by the State have been expressly regarded as fee collected by the Commissioner under the provisions as amended and accounts has to be made on that footing between the Government and the Commissioner, challenge to the vires of Section 82(2) must fail.*"

It is also humbly submitted that the Constitutional Validity of Sections 3(1), 3(4), 23, 24, 26, 32, 35, 36, 36-A, 36-B, 43A, 45, 47, 49, 49B, 50, 53, 54(1), 57, 58, 61, 63, 71 to 76, 92, 97, 108 & 111 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act XXII of 1959 as amended from time to time) (herein after referred to as 'the Act') and the Religious Endowments Act of other States viz., Andhra Pradesh, and Pondicherry is under challenge in Writ Petition(Civil)No.476 of 2012 before the Hon'ble Supreme Court of India, filed by Shri Dhayananda Saraswati Swamiji and others as being ultra

Page No.:

No. of Coms.:

Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.

Joint Commissioner (Legal),
HR & CE Admn., Department,
Chennai-600 034.

virus to Articles 14,15(1), 19(1)(g), 21, 25, 26, 31(1)(a)(b) of the Constitution of India and the said case is pending for adjudication.

5. With reference to the averments contained under Paragraphs 5 to 11 of the affidavit, it speaks about the 2nd Petitioner and his activities against the Tamil Nadu Hindu Religious and Charitable Endowments Administration Department in particular and the various Writ Petitions filed by him.

6. With reference to the averments contained under Paragraphs 12 of the affidavit, it is submitted that India is a Union of States. There is no doubt in the Preamble of our Constitution declares "WE THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST, SECULAR DEMOCRATIC REPUBLIC and to secure all its citizen JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation; IN OUR CONSTITUENT ASSEMBLY this twenty sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION." It is submitted that Articles 25, 26, 27 and 28 deals with right to freedom of religion.

7. As regards the averments contained under Paragraph 13 of the affidavit, the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 has been enacted to amend and consolidate the Law relating to the administration and governance of Hindu Religious and Charitable Institutions and Endowments in the State of Tamil Nadu which received the assent of the President

Page No.:
No. of Cords.:

Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.

Joint Commissioner (Legal),
HR & CE Admin., Department,
Chennai-600 034.

of India on the 19th Day of November, 1959. The said Act contains several provisions relating to definitions, the authorities under the Act and their powers and duties, religious institutions in general and religious institutions other than Maths or specific endowments attached thereto, enquiries, notified institutions, encroachments, budget, accounts and audit, finance, endowment administration fund, Devaswom fund, miscellaneous and transitional under Chapter I-XII. It is submitted that as stated in Paragraph 4 above, the Constitutional validity of the Tamil Nadu Hindu Religious and Charitable Endowments Act was upheld as intra vires by the Hon'ble Supreme Court of India. To aid the implementation of the provisions of the Act, Rules have been framed by the Government under Section 116(2) of the Act with the concurrence / approval of the Legislative Assembly.

8. With reference to the averments contained under Paragraphs 14 of the affidavit, it is true that in respect of temples and other religious institutions especially in the State of Tamil Nadu have been endowed with substantial properties for its support and maintenance by the Kings who ruled in the days of yore. In Tamil Nadu, most of the earliest temples are constructed and established by the then Government i.e. by the then Rulers such as Kings and Feudal Kings and they endowed properties to the temple for their maintenance. The Kings administered and supervised the due performance by appointing officials for this purpose which is now continued by this Government. Hence, now administrations of the public religious institutions are under the Government by way of enactment of the Laws. After surveying the

Page No.:


No. of Coms.:


Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.

Joint Commissioner (Legal),
HR & CE Admin., Department,
Chennai-600 034.

history of the shrines from the pre-mughal to the contemporary period, the Hon'ble Courts concluded that the administration of the shrines had always been in the hands of the officials appointed by the State. It is submitted that Devotees and Worshippers voluntarily endowed and donated both movable and immovable properties to the Deities of the temple besides contributing in the hundials installed in the temples. The allegations that after the enlargement of control by the Hindu Religious and Charitable Endowments Department over Hindu Temples there have been collection of funds in the name of special darshan, abishegam, archanai, urchavam etc., is denied as absurd. It is submitted that the Department never collects any special darshan fee or any sort of tickets for the services rendered in the temples. On the other hand the respective temple Executive authorities considering the fiscal position of the respective temple, in order to augment income fix fee for the services and the amount so collected goes to the chest of the religious institutions concerned and not either to the Commissioner, H.R.&C.E Admn. Department or to the Government. It is also submitted that the Executive authorities of the temple are having regulatory power to control the various services rendered in the temple and the sources of income derived in the name of the Deity of the temple. It is also submitted that even though there are special darshan tickets available, the Worshippers and Devotees are not compelled to purchase special entrance tickets but the Worshippers and Devotees for their convenience purchase the said tickets in order to save their time, especially the pilgrims and tourists coming from a very long

Page No.:
No. of Cords.:


Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34,


Joint Commissioner (Legal),
HR & CE Admn., Department,
Chennai-600 034.

distance. However, there is also free darshan available in all the temples having right of Worship equally and there is no discrimination of any Devotees. It is noteworthy to submit that the Division Bench of the Hon'ble High Court of Judicature at Madras-Madurai Bench in W.P.(MD)No.12834 of 2013 has dismissed the Writ Petition filed in this respect by order dated.27.09.2016. Similarly in Writ Petition in W.P.No.28882 of 2017 filed by the 1st Petitioner herein, the First Division Bench by order dated.13.11.2017 disposed the Writ Petition holding that

"15.The learned Special Government Pleader has drawn our attention to a judgment dated 27.09.2016 of this Court of a Bench of Co-ordinate strength in W.P.(MD)No.12834 of 2013 (between C.Arun @ Arunachalam Vs The Chief Secretary, Tamil Nadu Government and others), for a direction to abolish the paid dharshans except special dharshan for senior citizens. The Division Bench held that "But in the case on hand, it is not as though no dharshan is provided to the devotees, if only fee is paid. As pointed out by the learned Special Government Pleader for H.R.&C.E, special dharshan fee is collected only from the devotees, who want quick dharshan. The other devotees are not at all prevented from having dharshan. Thus, there is no discrimination at all. In view of the said

[Signature]
Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.

[Signature]
Joint Commissioner (Legal),
HR & CE Admn., Department,
Chennai-600 034.

Page No.:
No. of Coms.:

factual position, we find no merit in the writ petition". The writ petition was dismissed.

16. In view of the judgment of the Division Bench referred to above, the reliefs prayed for in this writ petition cannot be granted by us, since judicial propriety demands that we follow the dictum of a Bench of co-ordinate strength. In temples which attract huge crowds, which are sometimes unmanageable, particularly on festive occasions, some regulation of dharshan may be necessary. It may be open to impose charges and/or a fee for quicker entry, shorter queues and special dharshan of longer duration and also to have special enclosures for such devotees. We, however, make it clear that the respondent authorities shall provide for dharshan of the deity from the entry point of "Artha Mandapam" for all devotees, irrespective of whether they pay or opt for free dharshan, as per their turn in the ordinary queue for free entry".

And the direction of the Hon'ble Court is scrupulously followed in all the religious institutions.

In respect of Arulmigu Mariamman Temple, Samayapuram, Tiruchippalli District, the Hon'ble Division Bench of the Madurai Bench of Madras High Court as passed orders in W.P.(MD).No.6978 of 2018, dated 28.03.2018 and observed that

Page No.:
No. of Cords.:

[Signature]
Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.

[Signature]
Joint Commissioner (Legal),
HR & CE Admin., Department,
Chennai-600 034.

"Temples are maintained inter alia from donations made by devotees and the practice of charging some entry fee for priority darshan from those who can afford to make such payments, is neither arbitrary nor discriminatory. In temples, such as, Samayapuram Mariyamman Temple, which attracts a large number of devotees, some regulation of darsan may be necessary. It may be open to impose charges and/or fee for quicker entry, shorter queues and special darshan of longer duration and also to have special entrance for such devotees. However, the respondent authorities are to provide dharsan of the deity from the entry point of Arthamandapam from where the Deity is clearly visible for all devotees, irrespective of whether they pay or they opt for free dharshan as per the turn in the ordinary queue for the free entry. No person standing in the queue shall be denied dharshan from the Arthamandapam".

Following the above said orders passed in W.P.(MD)No.6978 of 2018, dated 28.03.2018, the writ petition in W.P.(MD)No.20815 of 2018 was closed by order dated 24.10.2018, holding that in view of the above, no further order is required. Therefore, the Petitioners are estopped to raise the above contention which was already considered and decided by the Division Bench of this Hon'ble Court, in view of the Rule of

Page No.:

No. of Cords.:

Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.

Joint Commissioner (Legal),
HR & CE Admn., Department,
Chennai-600 034.


Res-Judicata. The further averments that under the scheme of the 1959 Act admittedly all aspect of administration and management of Hindu Religious Institutions are to be carried out by the trustees/fit persons of such institutions as the case may be. But it is stoutly denied as false to allege that there are provisions dealing with the manner in which the funds are to be utilized as inadequate and in certain parts unconstitutional, without pointing out the rules specifically. The petitioners cannot make such a bald allegation.

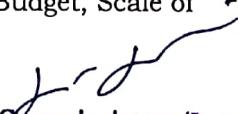
9. With reference to the averments contained under Paragraph 15, the same has been suitably answered in paragraph 4 of this counter affidavit and the same does not require any repetition.

10. With reference to the averments contained under paragraphs 16 and 17, it is totally incorrect to allege that several provision of the Act have the effect of restricting the financial autonomy and independence of Religious Institutions, blur and in some cases extinguish the distinction between temple and the State. It is submitted that the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 controls only the secular aspect of the administration of the Religious Institutions and its properties and in such cases it is expedient to have control over the expenditure over the income of the Religious Institution considering its financial position of each and every religious institutions, depending upon the usage that have been followed in the religious institutions in vogue and to have a check and balance. It is carried out by way of approval of the Budget, Scale of

Page No.:

No. of Cords.:


Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.



Joint Commissioner (Legal),
HR & CE Admn., Department,
Chennai-600 034.


Expenditure (Dittam) prepared and submitted by the trustees of the Religious Institutions. So, it cannot be termed as unreasonable restriction over the financial autonomy and independence of the religious Institutions. The further allegation that the Respondent Department has been following the provision of the Act and has been appropriating and misusing the funds of the temple in an indiscriminate and unlawful manner is denied as totally false and baseless. It is submitted that at no point of time, the Respondent Department has appropriated and misused the funds of any temple in an indiscriminate and unlawful manner and the petitioner is put to strict proof of the said bald allegation.

11. With reference to the allegations contained under paragraph 18, the core issue of misappropriation of funds of temples is due to non appointment of trustees in various religious institutions is stoutly denied as utter false. It is submitted that among the total religious institutions 38,449 (Temples, Maths and Specific Endowments) 56 Nos. are Maths, 57 Nos. are temples attached to Maths, 1721 Nos. are Specific Endowments and 3,479 Nos. of temples are having Hereditary Trustees for which no non-hereditary trustees can be appointed by the authorities under the Act. It is also submitted that only 4553 Nos. of religious institutions (temples, Maths and Specific Endowments) have been included in the list published under Section 46 of the Act, and more than 33,000 temples having an annual assessable income below Rs.10,000/- are managed, administered by the local people as de-facto/de-jure trustees/persons in management. It is relevant to submit here that the submissions made by this Respondent

Page No.:


No. of Cords.:

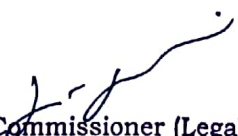

Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.


Joint Commissioner (Legal),
HR & CE Admin., Department,
Chennai-600 034.

before the First Division Bench of this Hon'ble Court, in W.P.Nos.11412 and 11413 of 2015 that in the absence of trustees appointed, the Fit Person appointed as a stop gap arrangement in the interim have been functioning effectively and efficiently was considered by this Hon'ble Court and observed that however through administratively superseding the Board, a legislative exercise cannot be carried out on a permanent basis for taking over the temples.

However, in respect of religious institutions included in the list published under Section 46(iii) of the Act, the Government has been appointing Non-Hereditary Trustees to the temples then and there. In respect of religious institutions included in the list published under Section 46(ii) and (i) of the Act and for religious institutions not included in the said list under Section 46 of the Act, for appointment of Non-Hereditary Trustees to religious institutions, other than temples published and included in the list under Section 46(iii) of the Act; temples declared as hereditary; temples governed by scheme of administration settled under Section 64 of the Act and decrees of Civil Courts under Section 92 & 93 of Code of Civil Procedure, 1908 prior to the enactment of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959; and temples declared as Religious Denomination under the decree, judgment of the Courts, the Government has now so far constituted District Committees under Section 7-A of the Act for the following Districts.


Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34,


Joint Commissioner (Legal),
HR & CE Admn., Department,
Chennai-600 034.

Page No.:
No. of Cords.:

S.No.	G.O.(D).No./Date	District
1	154/06.11.2019	Salem
2	155/06.11.2019	Dharmapuri
3	156/06.11.2019	Namakkal
4	157/06.11.2019	Thanjavur
5	158/07.11.2019	Perambalur
6	159/07.11.2019	Virudhunagar
7	160/07.11.2019	Coimbatore
8	161/07.11.2019	Erode
9	162/07.11.2019	Thiruvannamalai
10	163/07.11.2019	Dindigul
11	164/07.11.2019	Tiruchirappalli
12	169/14.11.2019	Vellore
13	171/19.11.2019	Nagapattinam
14	172/19.11.2019	Theni
15	173/19.11.2019	Thoothukudi
16	174/21.11.2019	Villupuram
17	175/21.11.2019	Pudukkottai
18	177/23.11.2019	Thiruvarur
19	178/23.11.2019	Tirunelveli
20	179/23.11.2019	Ariyalur
21	180/23.11.2019	Kancheepuram
22	15/03.02.2020	Sivagangai
23	1/07.01.2020	The Nilgiris

It is also note worthy to point out here that the Government for the temples published under section 46(iii) of the Act, and the other authorities under the Act viz., the Commissioner, the Joint Commissioners and the Assistant Commissioners have been appointing Non-Hereditary Trustees to the temples governed by schemes settled under section 64 of the Act and deemed to have been settled under the Act. It is also submitted that only 16783 Nos. of Official Fit Persons have been appointed to the temple who will cease to function on constitution of regular Board of Non-Hereditary Trustees appointed by the authorities under the Act on the recommendation made by the District Committees.

12. With reference to the allegations contained under paragraph 19, it is submitted that even though no time limit has

Page No.:
No. of Corns.:
Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.

Joint Commissioner (Legal),
HR & CE Admn., Department,
Chennai-600 034.

been prescribed in the Act and the Rules framed there under for the functioning of Fit Person, the petitioners cannot presume and prescribe any time limit of their own and dictate terms against the Respondents.

13. Regarding the averments contained under paragraph 20, it is true that the Fit Person appointed under the Act shall discharge the duties and perform the functions of the trustee in the administration of the temple. Accordingly, the Fit Person shall perform the routine functions of the trustee for the day to day administration of the temple. There is no express prohibition or restriction in the Act that the Fit Person cannot transfer surplus funds of the temple, make contribution to the Common Good Fund as per the provisions of the Act. However, the Fit Person cannot take any policy decision without the prior approval of the authorities under the Act as regard alienation of properties of the religious institution, affecting the interest of the religious institution.

14. Regarding the averments contained under paragraph 21, it is incorrect to allege that the Office of Trusteeship of the religious institutions has been kept empty for many years and instead ostensibly empowering the H.R.&C.E Department and the State instrumentality as the decision makers, is an arbitrary exercise of power and a fraud on the scheme of the Act and on Articles 25 and 26 of the Constitution. More specially are the arrogation of powers relating to utilization of surplus power which is a permeating issue and an explicit factor in all the instances of violations. As stated under Paragraphs 11 supra, it is submitted that the appropriate

Page No.:

No. of Cords.:

Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34,

Joint Commissioner (Legal),
HR & CE Admin., Department,
Chennai-600 034.

authorities (the Government/ Commissioner/Joint Commissioner /Assistant Commissioner) under the Act have been appointing Non-Hereditary Trustees to temples and hence the above allegation is misleading. It is submitted that even though the Trustees/ Fit Persons of the religious institutions as the decision maker takes decision in the administration of the religious institutions and its properties, are being approved by the authorities under the Act as per the provisions of the Act subject to certain checks and balances. Therefore there makes no difference between a Trustee and Fit Person, except nomenclature and the Fit Person appointed in lieu of the Trustee discharges the duties and performs the functions of the Trustee are appointed under Section 47/49 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

15. Regarding the averments contained under Paragraphs 22, 23, 24 and 25 states the application of funds of temples, Utilization of Surplus Funds and its Rules. It is submitted that even though there are more than lakh of temples and other religious institutions situated within the State of Tamil Nadu, only for about 38446 temples, maths and specific endowments, the provisions of the Act and the Rules framed there under have been applied. It is also submitted that not all the temples and religious institutions are having surplus income over and above their requirement. To put in short, more specifically only about 300 temples and religious institutions which has been included in the list published under Section 46(iii) of the Act, alone has surplus income and their surplus is being utilized for other needy temples.

Page No.:
No. of Cords.:

Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.

Joint Commissioner (Legal),
HR & CE Admin., Department,
Chennai-600 034.

It is also submitted that the monetary limit fixed under Section 46 of the Act (as Rs.10,001/- to Rs.2,00,000/-; Rs.2,00,001/- to Rs.10,00,000/-; Rs.10,00,000/- and above) was substituted by the Act 39 of 1996, and now considering the escalation of price index, inflation and standard of living of the people and other relevant factors, proposal has been submitted to the Government to amend the provision of Section 46 of the Act, raising the monetary limit for inclusion in the list published under section 46 of the Act (as Rs.30,000/- to Rs.6,00,000/-; Rs.6,00,001/- to Rs.30,00,000/-; Rs.30,00,000/- and above) and the same is pending consideration before the Government.

16. Regarding the averments contained under Paragraph 26, the allegation that in many temples no such Trustees have been appointed and in various instances the moneys of the Temples are sought to be utilized by the H.R.&C.E Department by issuing circular and predetermining proposal without following a due process laid down under the Act and Rules is denied as incorrect.

17. Regarding the averments contained under Paragraph 27, it is submitted that as stated in Paragraph 4 above, the Constitutional validity of the repealed Tamil Nadu Hindu Religious and Charitable Endowments Act, 1951 (Tamil Nadu Act XIX of 1951) except certain provisions, was upheld in the famous Sirur Mutt case by the Hon'ble Supreme Court of India. It is mischievous to state that the Hon'ble Supreme Court in the above case have held that vesting of administration of Hindu Religious Endowments in the hands of secular or other other authorities is unconstitutional and thereby the appointment of servants of the "

Page No.:

No. of Cords.:

Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.

Joint Commissioner (Legal),
HR & CE Admn., Department,
Chennai-600 034.

2nd Respondent or anyone else as Fit Person is also ultra vires to proviso to Rule 2(1) of the functioning of Board of Trustees Rules. Nowhere in the said citations such an observation has been made by the Hon'ble Court and the Petitioner is put to strict proof the said averments. The further allegation that hence in temples where there are no Hereditary Trustees or Non-Hereditary Trustees, no funds ought to have been appropriated under Section 36 of the Act even by stating to follow the due process prescribed under Section 36 of the 1959 Act is erroneous and misleading. It is submitted that the above version highlights the intention of the Petitioner to paralyze the functioning of Hindu Religious Institutions to a standstill which cannot be allowed. It is submitted that under Section 11 of the Act, the Commissioner shall be a Corporation sole and shall have perpetual succession and a Common Seal and may sue and be sued in his Corporate Name. Therefore, the 2nd Respondent herein being a Corporation sole has been empowered to sanction the expenditure for administrative expenditure with the concurrence of the Executive authorities of the temple. The only course for the purpose of securing the due discharge of the function of the office and management and preservation of the endowments and its income into provide suitable agency for the purpose. It is necessary for the better management of the temple.

18. Regarding the averments contained under Paragraph 28, it is submitted that the need for computerization/documentation has been stressed-emphasized by this Hon'ble Court. This Hon'ble Court vide common order dated.21.07.2017 in CrI.O.P.Nos.8690 &

Page No.:
No. of Coms.:
Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.

Joint Commissioner (Legal),
HR & CE Admin., Department,
Chennai-600 034.

12060 of 2017 has issued 20 directions. Among that directions (xv) "The stock of idols maintained in the manual book in the State, must be computerized within a period of four weeks, if not already computerized. (xvi) Similarly, a list of stock of idols in the temple must be computerized and the same must be reported to this Court". Similarly in W.P.(MD)No.14428 of 2017 dated.12.02.2018 this Hon'ble Court has directed that *"the details particulars regarding the properties / lands owned by the said public religious institutions / temples have to be collected as contemplated under Section 29 of the HR&CE Act and must be published in the Official Website of the HR&CE Department, forthwith and a report to that effect shall be filed before this Court not later than four weeks"*. In many number of cases, the Hon'ble Court has observed that the records pertaining to the temple lands had not been properly maintained and therefore encroachers had been grabbing the temple lands, without any difficulty. Strict maintenance of records would always help in preventing such illegal encroachment. The effect of non-maintenance of records has not only resulted in alienation of service Inam, but has also resulted in sub-leasing of the leased property and extended tenure of the lessees. In another case in W.P.(MD)No.1057 of 2018, this Hon'ble Court on 01.02.2018 has issued direction *"Each Mutt and Adhinam should give the list of properties including the extent and the persons who are in occupation and the monthly or yearly lease or license amount paid by them. Similarly the Commissioner of HR&CE shall also give details of property owned by each of the Mutt and Adhinam."*

Page No.:
No. of Coms.:

[Signature]
Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.

[Signature]
Joint Commissioner (Legal),
HR & CE Admn., Department,
Chennai-600 034.

However forecasting the seriousness, importance and urgency involved in documentation, computerization of the details of properties owned by the Hindu Religious institutions, the Hon'ble Chief Minister of Tamil Nadu issued an announcement dated.19.09.2016 which runs as follows:

“தமிழ்நாட்டில் உள்ள தொன்மையான திருக்கோயில்களில் பல நூற்றாண்டுகளுக்கு முன்பு வடிவமைக்கப்பட்ட விலை மதிப்பற்ற உலோக விக்ரகங்கள், கற்சிலைகள் மற்றும் நிலம், கட்டடம் போன்ற அசையா சொத்துக்களும் உள்ளன. இவை பற்றிய தகவல் தொகுப்பு ஒன்றினை உருவாக்க நான் உத்தரவிட்டுள்ளேன். அனைத்து விவரங்களும் கணினியமைக்கப்பட்டு திருக்கோயில்களுக்கான தகவல் தொகுப்பு உருவாக்கப்படும். திருக்கோயில் சொத்துக்களின் அமைவிடங்கள் புவியியல் தகவல் முறைமை (GIS) மூலம் எளிதாக அறியும் வகையில் வரைபடங்களில் குறிப்பிடப்பெறும். புவியிடங்காட்டி (GPS) மூலம் திருக்கோயில் சொத்துகள் முறையாக அளவை செய்து ஆவணப்படுத்தப்படும். திருக்கோயில்களில் இணையதள சேவை மூலம் அறை ஒதுக்கீடு, தங்கத்தேர், அன்னதான நன்கொடை போன்ற சேவைகளோடு, கூடுதல் சேவைகளைப் பெறுவதற்கு நடவடிக்கை மேற்கொள்ளப்படும். மேலும், கைபேசி குறுஞ்செயலி மூலமாக இத்தகைய வசதிகளைப் பெறுவதற்கும், திருக்கோயில்கள் பற்றிய முழுமையான தகவல்களைப் பெற படிப்படியாக அவற்றிற்கு வலைதளங்களை உருவாக்குவதற்கும் நடவடிக்கை மேற்கொள்ளப்படும். நிறுவன வளம் திட்டமிடல் (Enterprise Resource Planning) மூலம் திருக்கோயில்களின் நிர்வாகத்தை மேம்படுத்த தனி மென்பொருள் தயாரிக்கப்படும். இவை 1 கோடி ரூபாய் செலவில் செயல்படுத்தப்படும்.

தமிழகத் திருக்கோயில் நிகழ்வுகளை ஆவணப்படுத்தி படங்கள், காணொலிகள், பின்னணி இசை கொண்ட பல்லுடக (Multimedia) வசதியுடனான ஒரு நவீன இணையதளம் வடிவமைக்கப்படும். இப்பணி 25 லட்சம் ரூபாய் மதிப்பீட்டில் மேற்கொள்ளப்படும்”.

Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.

Joint Commissioner (Legal),
HR & CE Admin., Department,
Chennai-600 034.

Page No.:

No. of Cords.:

As the Government is secular in nature, it cannot incur expenditure for the above purpose from out of the consolidated funds of the State. Moreover, the religious institutions are benefitted by computerizations, documentations and uploading the details in a separate website, the expenditure incurred in this connection is being met out from the surplus funds of the religious institutions. Moreover this specialized work of Integrated Temple Management System (ITMS) is undertaken through the National Informatics Centre, an undertaking of the Central Government and there is no chance of allegation for any misappropriation of funds through any private agency. It is submitted that by computerization/documentation of details of the Land and Buildings, Idols/Icons and Statues, Jewels and Valuables, documentation of Standard Operating Programs relating to conduction of yearly festivals, Kumbabishegam and other functions of mass gatherings, the mechanism in handling crowd control management etc., the details of Court case and other particulars relating to all the Temples and details of sevas/services rendered in each and every temple etc., and creating website for each temple, uploading the same in a Web site will not only facilitate the public in general but also the temples concerned. As regards the further allegation, it is submitted that as a security measure C.C.TV Cameras have been installed in 17 temples during the Mahamaham festival, 2016 for which amount was also incurred considering the safety and security of the worshipping pilgrims, public and the religious institutions only. Similarly to

Page No.:
No. of Cords.:

Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.

Joint Commissioner (Legal),
HR & CE Admn., Department,
Chennai-600 034.

increase the corpus of Departmental pension scheme paid to the retired office holders and servants of the religious institutions, amount was diverted from the surplus funds of Arulmigu Dhandayuthapaniswamy Temple, Palani, Dindigul District after inviting objections for such transfer proposals and since no objection was received orders were passed. Therefore, it is submitted that in no case order have been passed without publication of any transfer proposals calling for objection as prescribed in the Utilization of Surplus Fund Rules framed under Section 116 read with Section 36 of the Act.

19. Regarding the averments contained under Paragraph 29, it is submitted that with a noble object and in order to feed the poor suffering during pandemic in the wake of COVID-19 outbreak, the Department issued a circular advisory in R.C.No.18104/2020/G.2 dated.22.04.2020 to the Executive Authorities of the temples to consider transferring surplus funds that they can afford to pay any amount as much as possible they can, to the Hon'ble Chief Minister's Public Relief Fund which was challenged in W.P.Nos.7566, 7567 and 7568 of 2020. Subsequently due to administrative reasons, the above said proposal has been dropped and to that effect, a circular instruction in Rc.No.18104/2020/G2, dated.04.05.2020 has been issued withdrawing the impugned proceedings. However the above said case was disposed by this Hon'ble Court.

20. With regard to the averments contained under Paragraph 30, it is submitted that the proposals to initiate a TV Channel covering all important festivals, celebrations, rituals etc., that are

Page No.:

No. of Cords.:

Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34,

Joint Commissioner (Legal),
HR & CE Admin., Department,
Chennai-600 034.

celebrated in all the Hindu Temples under the control of the Department is under consideration of the Government. It is also submitted that the proposals to start a TV Channel in the name of "Thirukkoil" proposed to telecast all special poojas, important festivals and Theological preaching conducted in all Hindu Temples comes under the caption propagation of Hindu Religion, religious tenets of the religious institutions, promotion of fine arts etc., which are all the objects of Section 66 of the Act. Therefore the proposal cannot be termed as impermissible under the provisions of the 1959 Act by any stretch of imagination. To establish a TV Channel is one of the incidental activity which was functionally integral to the main activity of the religious institutions and to propagate the Hindu Religious tenets. It is further submitted that the petitioner in his manifesto has proposed to propagate and spread Hindu Religion and its value through TV Channel, starting Radio Station, Magazines, Periodicals and Websites at the cost of Rs.100 Crores. It is submitted that being a Government Department this Respondent Department is following all norms procedures etc., of the Government and the Petitioner cannot blame these Respondents for initiating idea of starting TV Channel as unethical. Whereas the petitioners himself is conceived with idea of starting TV Channel.

21. With regard to the averments contained under Paragraph 31, it is submitted that admittedly under Section 97 of the Act, it shall be lawful for the Commissioner to create a Fund to be called the Hindu Religious and Charitable Endowments Common Good Fund out of the contribution voluntarily made by the,

Page No.:

No. of Coms.:

Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.

Joint Commissioner (Legal),
HR & CE Admn., Department,
Chennai-600 034.

religious institutions from their surplus funds or by any person for the renovation and preservation of needy temples and their buildings and paintings, for the promotion and propagation of tenets common to all or any class of religious institution and for any other purposes specified in sub-section (1) of Section 66. Therefore, for the purpose of the renovation and preservation of needy temples and their buildings and paintings, for the promotion and propagation of tenets common to all or any class of religious institution and for any other purposes specified in sub-section (1) of Section 66, funds are necessary and indispensable. In case if any religious institutions having surplus funds fails to contribute to the said fund voluntarily and in this regard issuing of any communication to religious institutions requesting to contribute to the said fund cannot be termed as arbitrary and betrays the intend of the provisions of the Act. It is also submitted that the Common Good Fund under Section 97 is utilized for renovation and preservation of needy temples and for the purposes as mentioned under Section 66 of the Act. The other allegation that the Common Good Fund is used for unsanctioned purposes including expenses of the Department is denied as untrue and utter false. As per Section 12 of the Act, for carrying out the purpose of the Act, the expenses towards the functioning of the Department is being paid in the first instance out of the consolidated fund of the State. The Commissioner shall, out of the Tamil Nadu Hindu Religious and Charitable Endowments Administration Fund under Section 96 repay to the Government, sums paid by the Government under Section 12 of the Act.

Page No.:
No. of Cords.:

Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.

Joint Commissioner (Legal),
HR & CE Admin., Department,
Chennai-600 034.

22. With regard to the averments contained under Paragraph 32, the allegation that a document of the Respondent Department titled as "Podhu Nala Nidhi Ketpu" (Common Good Fund Demand) is not a genuine one issued by this Respondent Department but created for the purpose of this case. However it is submitted that to monitor the Common Good Fund, the 2nd Respondent has to maintain proper accounts for receipt of voluntary contribution made from the Surplus Funds of the religious institutions. That would not mean that the Respondent Department, in a coordinated and systematic manner has been appropriating funds from various temples/religious institutions as an amount "fixed and demanded" and not as a voluntary contribution. The allegation that with the appointment or placement of Executive Officers in various crucial temples the Respondent Department can take any money at will and appropriate towards it, from all such temples is denied as spurious, untrue purely theoretical and the petitioner is put to strict proof of the same.

23. With regard to the averments contained under Paragraph 33, it is submitted that the petitioner has misconstrued the word 'received' from temples as obtained from temples.

24. With regard to the averments contained under Paragraph 34 & 35, it is submitted that while according sanction under Section 97 of the Act, the Rules namely "The Administration of the Hindu Religious and Charitable Endowments Common good Fund Rules, 1962" is being scrupulously followed by this 2nd Respondent Department and the allegation that the Rules and Procedures are being thrown to the wind is made for the purpose of this case.

Page No.:
No. of Cords.:
Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.

Joint Commissioner (Legal),
HR & CE Admin., Department,
Chennai-600 034.

It is also submitted that the proposals to start a TV Channel in the name of "Thirukkoil" proposed to telecast all special poojas, important festivals and Theological preaching conducted in all Hindu Temples comes under the caption propagation of Hindu Religion, religious tenets of the religious institutions, promotion of fine arts etc., which are all the objects of Section 66 of the Act. Therefore the proposal cannot be termed as impermissible under the provisions of the 1959 Act. It is further submitted that the petitioner in his manifesto has proposed to propagate and spread Hindu Religion and its value through TV Channel, starting Radio Station, Magazines, Periodicals and Websites at the cost of Rs.100 Crores. It is not known whose cause the petitioner is espousing by opposing the proposed TV Channel.

25. With regard to the averments contained under Paragraph 36, the facts submitted under Paragraph 11 & 24 are considered sufficient and need no repetition.

26. With regard to the averments contained under Paragraph 37 that the Commissioner is the authority who approves the application from religious or charitable institutions seeking aid or financial assistance from the Common Good Fund cannot himself propose granting aid or financial assistance from the said fund is misconceived by the petitioner. In this connection, Rule 3 of the "The Administration of the Hindu Religious and Charitable Endowments Common Good Fund Rules, 1962" is very clear wherein *"on receipt of application for the purpose mentioned in sub-section 1 of section 97, the Commissioner may, after due consideration, provisionally decides the purpose for which the*

Page No.:
No. of Cords.:

Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.

Joint Commissioner (Legal),
HR & CE Admin., Department,
Chennai-600 034.

amounts requested or part thereof may be utilized." Without any requests and after following the procedures prescribed in the said Rules, no amount shall be paid from out of the Common Good Fund. But no such instance has arisen as alleged by the petitioner. Therefore the allegation is purely based on assumption and presumptions and not on facts.

27. With regard to the averments contained under Paragraph 38, it is submitted that the petitioner is trying to convex Section 36 precede with Section 97 of the Act, alleging that the amount is transferred from the surplus funds of the religious institutions concerned. It is submitted that Section 36 empowers the Trustee with the previous sanction of the Commissioner to appropriate the surplus funds for the purposes specified in Section 66 of the Act. But Section 97 empowers the Commissioner to create a fund out of the contributions voluntarily made by the religious institutions from their surplus funds. Therefore, the above said sections under 36 and 97 are different in nature and exercised by different authorities. Therefore, the said contention cannot be conceded and liable to be rejected.

28. With regard to the averments contained under Paragraph 39 alleging that no transfer of money or funds can be made from the said Common Good Fund to any other institution including the H.R.&C.E Department or any entity started by it or belongs to it. It is submitted that Section 97(1) postulates that for preservation of needy temples and their building and painting, for the promotion and propagation of tenets common to all any class of religious institutions and for any of the purposes specified in

Page No.:

No. of Coms.:


[Signature]
Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.

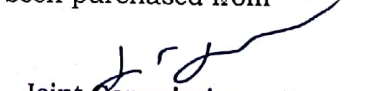
[Signature]
Joint Commissioner (Legal),
HR & CE Admn., Department,
Chennai-600 034.

sub-section (1) of Section 66. Section 66(1)(b)(c)(d)(h) of the Act does not specify any particular institution which will avail the benefit.

29. With regard to the averments contained under Paragraphs 41 and 42, the allegation that the funds of the religious institutions are utilized alien to the benefit of the temples and endowments and the purposes that could not be sanctioned under the Act and its Rules without following due process under Section 36 of the Act. The petitioner has alleged that supply of food and beverages and other miscellaneous purchases have been made from the temple funds for the meeting conducted in the office of the 2nd Respondent. It is submitted that review meeting about the functioning of the Department is being conducted by the Hon'ble Minister, the Secretary to Government and the Commissioner. At the time of meeting, the officials and temple officials who attend such meeting may be absent if allowed to take refreshment, food outside the meeting place and it will not serve any purpose in conducting review meeting about the performance of the officials. Moreover, the subordinate officials are coming from various Districts throughout the State will be put to inconvenience and starvation in search of food at the time of meeting if not provided. The negligible amount spent at the time of meeting is being looked by the petitioner with a magnifier and the facts are exaggerated. It may be true that religious institutions, according to their need, necessity procure vehicles for their use after getting financial sanction. The particular allegation that for the use of Hon'ble Minister and his Assistant an Innova Car has been purchased from

Page No.:
No. of Cords.:


Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.


Joint Commissioner (Legal),
HR & CE Admn., Department,
Chennai-600 034.

the funds of Sri Devi Karumariamman Temple, Thiruverkadu and the petitioners are estopped to make any such accusation/allegation against the persons who are not made party to this writ petition, in their absence. The further allegation that there are about 10 vehicle drivers who are employees of various temples are being exploited by the 2nd Respondent Officials and made to work in the Head Quarters of the Department and their Regional Offices even as drivers for the Hon'ble Minister. It is submitted that in order to assist the Commissioner in the activities such as general superintendence, administration, establishment, management of movable and immovable properties of religious institutions, Thiruppani, Court cases, Audit, etc., there are officers in the Cadre of 3-Additional Commissioners (General) (Enquiry) and (Thiruppani), 4-Joint Commissioners, (Head Quarters) (Legal) (Educational Institutions) and (Verification), 2-Assistant Commissioners (Legal) (Poosari Welfare Board), 2-Special Officers (Temple Lands) in the Cadre of District Revenue Officers of the Revenue Department, 1-Superintending Engineer, 1-Executive Engineer, 1-Assistant Divisional Engineer from Public Works / Highways Department, 3-Assistant Engineers (Civil/Electrical-from Energy Department), 1-Senior Accounts Officer and 1-Assistant Accounts Officer from the Treasuries and Accounts Department, 1-Chief Audit Officer in the Cadre of Deputy Secretary (Finance Department of the Government) and 1-Joint Director/Public Information Officer from Information and Public Relation Department are also functioning in the Head Quarters. As there is dearth of post of drivers to the vehicles available, the office holders

Page No.:
No. of Cords.:

**Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.**

**Joint Commissioner (Legal),
HR & CE Admin., Department,
Chennai-600 034.**

and servants of the religious institutions who are holding license to drive the vehicle are temporarily deployed by the respective temples to utilize their services. There is no exploitation or anything as alleged. It is also submitted that not all the above said officials are utilizing the vehicles and services of the office holders and servants of the religious institutions who are holding license to drive the vehicle. It is submitted that the District Level Assistant Commissioners and Regional Level Joint Commissioners have been provided with Government vehicle for due discharge of their official duty effectively on par with officials of other Government Departments. But in the case of officers at Head Quarters they have not been provided with sufficient vehicles. Therefore, for due discharge of their official public duty, they have to utilize the vehicles of the religious institutions due to urgency and for public official purposes such as inspection (theft, fire accident, unforeseen natural calamities that occurs in the religious institutions) and in hours of need. The vehicles of temples are not utilized for any private purposes.

30. With regard to the allegations contained under Paragraph 43 that as on date 14 persons who were "recruited" as typists by 13 temples across Tamil Nadu, are working as "Typists" in the office of the 2nd Respondent. It is submitted that as against the cadre strength of 24 typists 20 of them are working in the office of the 2nd Respondent and thereby the office routine work of the 2nd Respondent is cope up with regard to administrations of the religious institutions and other important works. However, in view of important nature of works and urgency, without affecting the

Page No.:

No. of Coms.:

Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.


Joint Commissioner (Legal),
HR & CE Admin., Department,
Chennai-600 034.


routine functioning of the Office of Executive Officers of the respective temples, the typists working in temples are temporarily utilized.

31. With regard to the allegations made under Paragraph 44 that under the administrative control of the respondents herein, there are numerous instances where temple money is used with impunity to meet out the expenses of the Office of the Commissioner, the Regional Joint Commissioners and the Hindu Religious and Charitable Endowment Minister, alleged under Paragraph 44 is denied as totally false and incorrect without any factual materials. The petitioners based on one or two stray incidents, cannot accuse, as a whole, the entire functioning of the Respondent-Department is based on the funds of the religious institutions. It may be true that under Section 12 of the Act, the Government at the first instance, pays the expenses and cost of administration for the services rendered from out of the Consolidated Funds of the State, which will be repaid to the Government from the funds created under Section 96 of the Act by collecting contribution and audit fees under Section 92 of the Act.

32. With regard to the allegations contained under Paragraph 45, it is submitted that the amount incurred by the Religious Institutions towards purchase of stationary articles, equipment and other materials for office use, shall also comes under Section 36 of the Act and which is not covered by the purposes enumerated under Section 66 of the Act. The articles, equipments and materials purchased from out of the temple funds shall be the property of the temple and is not purchased out of

Page No.:
No. of Cords.:


Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.


Joint Commissioner (Legal),
HR & CE Admin., Department,
Chennai-600 034.

surplus funds of the temple sanctioned under Section 36 of the Act. Therefore, the petitioners cannot allege that all purchases made by the temple shall be covered under Section 36 of the Act and for the purposes envisaged under Section 66 of the Act.

33. With regard to the allegations contained under Paragraph 46 that the vehicles of the temples are being utilized by the officials of the 2nd Respondent Department. It is submitted that already provided by the Government to the officers working at the Head Quarters have become subject to wear and tear and doomed due to non-roadworthy condition. In this connection, the Government has been requested to accord sanction for purchase of new vehicles and after procuring the vehicles from the Government Funds, the utilization of the vehicles of the temple will be given up. It is also submitted that at times there is delay in replacement of vehicles and the vehicles provided are not sufficient to cope up with urgent/additional work. It is submitted that using of vehicles for the purpose of the Act is incidental to temple works. The further allegation that the other officials of the 2nd Respondent are also found using the resources of the temples for their personal purposes is stoutly denied as false, baseless and not based on any facts.

34. With regard to the averments made under Paragraph 47, it is true that as per Section 87(2) of the Act, the accounts of every religious institution shall be audited by auditors appointed in the prescribed manner. As per G.O.Ms.No.187, Commercial Taxes and Religious Endowments Department, dated.18.02.1976, audit of the accounts of all Religious Institutions and Charitable Endowments

Page No.:
No. of Coms.:
Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.

Joint Commissioner (Legal),
HR & CE Admin., Department,
Chennai-600 034.

under the control of the 2nd Respondent Department shall be done by independent audit-wing created in the Department under the immediate control of the Chief Audit Officer and under the ultimate control of the Commissioner of the 2nd Respondent-Department for which fee is levied under Section 92(2) of the Act. According to Section 87(4) of the Act, the accounts of any other religious institution, the annual income of which is less than one thousand rupees shall be audited departmentally and no fee shall be levied therefore.

35. The allegations leveled under Paragraph 48 that this a very convenient arrangement crafted by the Respondents herein which facilitates, pushing under the carpet, the financial illegalities like the transfer or utilization of Hindu Temple funds for purposes not sanctioned by law and/or without following the due process therefore which are continuously carried out, committed by the respondents and their subordinates working in the Department, is denied as untrue, incorrect and fallacious. It is submitted that in the audit reports of temples audited by the Audit Wing authorities of this 2nd Respondent Department, any transfer or utilization of temple funds without any sanction will be held under objection. The audit report also points out the objections raised for initiating surcharge proceedings against the erring Executive authorities of the temple. The averments that the illegal transfers of monies of Hindu Temples would never be corrected if it is merely left to the Respondents herein and requires intervention correction and monitoring by the Courts is impracticable and misleading as such there is no illegal transfer of monies of Temples. Moreover, funds of

Page No.:
No. of Cords.:

Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admn. Department,
Chennai - 34.

Joint Commissioner (Legal),
HR & CE Admn., Department,
Chennai-600 034.

the Temples are funds of the Idol - a juristic person; and private property and not public property. It is submitted that the petitioners are trying to shift the burden upon the Courts, rather than from the machinery created, functioning under the Statute.

36. Regarding the averments made under Paragraph 49, it is submitted that Writ Petition No.37623 of 2015 seeking for independent audit of all accounts maintained in temples managed by the Hindu Religious and Charitable Endowments Department, by the Comptroller and Audit General of India (C.A.G) is pending adjudication before this Hon'ble Court. Moreover, I.A.No.2 of 2015 in W.P.(C)No.476 of 2012 seeking direction for conduct of independent audit of all temple properties situated in the Respondent States, their management, revenues and utilization of funds etc., over the past 10 years and direction for external audit to be conducted by Chartered Accountants selected from a panel suggested by the Institute of Chartered Accounts, is also pending adjudication before the Hon'ble Supreme Court of India.

37. With Reference to the averments made under Paragraph 50, it is submitted that as stated in Paragraph 18 above, Fit Persons have been appointed to 16783 Nos. of temples, and 482 Nos. of Executive Officers have been functioning in 581 Nos. of Temples only. There are 38,449 Nos. of Hindu Religious Institutions all over the State. Therefore, the allegation that the Hindu Religious Institutions are acting as mere extensions of the 2nd Respondent Department is proved to be a false and incorrect statement. The further allegation that the Respondents have abused their position by appointing the Department servants as

Page No.:
No. of Cords:

Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34,

Joint Commissioner (Legal),
HR & CE Admin., Department,
Chennai-600 034.

"Fit Person" and have directly led to misappropriation of Temple Funds and properties is also a concocted story invented for the purpose of the case. It is submitted that Fit Persons are being appointed as per the provisions of the Act. However, if any misappropriation of temple funds and properties is found or unearthed, it would not absolve their position from their liability to indemnify such loss or from recovery.


38. Regarding the averments made under Paragraph 51, it is submitted that no such alleged situation requiring comprehensive direction to rectify the situation and not restricted to question independent instances alone, has arisen as alleged by the petitioners and the allegations of the petitioners is only imaginary, surmise and invented for the purpose of the case and not on any actual facts and the petitioners are put to strict proof of the said allegation.


39. Regarding the averments made under Paragraph 53, as already stated in Paragraph 19 above, the circular instruction issued in R.C.No.18104/2020/G2, dated.22.04.2020 was withdrawn on 04.05.2020 and hence the writ petitions filed in W.P.Nos.7566, 7567 and 7568 of 2020 has been disposed of by this Hon'ble Court.

40. Regarding the averments made under Paragraph 54, as stated in Paragraphs 20 and 24 above, to start a TV Channel is only in the stage of proposal to the Government and is under consideration of the Government and not matured into any order or decision for which the petitioners has no locus standi to object the same.

Page No.:

No. of Coms.:


Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.


Joint Commissioner (Legal),
HR & CE Admn., Department,
Chennai-600 034.

41. Regarding the averments made under Paragraph 55, it is submitted that one Thiru.Rangarajan Narasimhan has filed W.P.No.9701 of 2020 challenging the communication issued by the 2nd Respondent herein in Rc.No.42275/2019/Q.1 dated 26.06.2020 and the same is under adjudication before this Hon'ble Court.

42. Regarding the averments made under Ground 'A', it is submitted that under Article 25(2) of the Constitution, it is stated that

"Nothing in this Article shall affect the operation of any existing law or prevent the State from making any law -

(a) Regulating or restricting any economic, financial, political or other secular activities which may be associated with religious practice;

(b) Providing for social welfare and reform or the throwing open of Hindu Religious institutions of a public character to all Clauses and Section of Hindu."

Under no circumstances, "the State" being secular in character never dealt with or appropriate the funds of Hindu Religious institutions as alleged. Moreover, the State Government never directly dealt with and controls the funds of the Hindu Religious institutions at any point of time.

43. Regarding the averments made under Grounds 'B' & 'C', it is submitted that it is true that the funds and properties of the temple shall vest in the respective Deities and utilized for its beneficial interest and for the purposes as envisaged under Section 35, 36, 36-A, 36-B and 66(1)(a) to (l) of the Act. It is reiterated that there is no case of unauthorised and illegal transfers and


Page No.:
No. of Cords.:
Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.


Joint Commissioner (Legal),
HR & CE Admin., Department,
Chennai-600 034.

misappropriation of funds for the purposes other than the one authorised under the Act as well as for the benefit of the deity or the religious institution as alleged and there is no case of contradiction of fundamental principles in dealing with the finances of religious institutions. It is relevant to submit here that the Government in order to conserve, restore and renovate the historical, ancient temple including those which have been glorified in the hymns of the Alvars and Nayanmars, those temples attracting Devotees in large numbers with vows, Village temples and temples located in the habitation of Adi Dravida and Tribal communities have been patronaging through Government grants, Finance Commission grants, Tourism Fund, Asian Development Bank External Fund. The Government grant of Rs.6 Crores is being sanctioned every year by the Government for meeting out renovation, restoration works of needy temples. From 2011-2020, Rs.24 Crores have been sanctioned for 228 needy temples. Similarly under Finance Commission Grant from 2011-2020 the Government have sanctioned Rs.90 Crores for taking up works in 250 temples for providing basic amenities to the Devotees, under the Tourism Fund, the Government have so far in the past 8 years granted Rs.10.22 Crores to 19 temples. Under the External Funding from Asian Development Bank for providing financial assistance for construction of Yatri Nivas, Tourism Information Centre, Tourism Reception Centre and Infra Structure Development of the temples, Rs.51.06 Crores have been granted for 11 temples. Under 'Oru Kaala Pooja Scheme', the Government by allotment of a onetime Government grant of Rs.59.48 Crores

Page No.:


No. of Coms.:

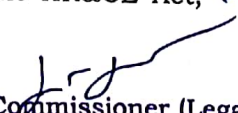

 Assistant Commissioner (Legal Cell),
 Office of the Commissioner,
 HR & CE Admin. Department,
 Chennai - 34,


 Joint Commissioner (Legal),
 HR & CE Admn., Department,
 Chennai-600 034.

and so far 12,745 temples has been benefitted by this scheme. Therefore, there is no necessity for the Government to use the funds of any religious institutions. It is also submitted that, in case if the petitioners feels that there is violation of provision under Section 36, yet there is provision for appeal as provided under Section 37 of the Act before the Government. Without exhausting the alternative remedy as provided for under the Act, the petitioners cannot unilaterally conclude/decide themselves there is unauthorized, illegal transfers and misappropriation of funds for purposes alien to the provisions under the Act.

44. As regards the averments made under Grounds 'D' & 'E', it is submitted that the powers under Section 36, 36-A, or 36-B can be invoked by the Trustees / Fit Persons acting in lieu of Trustees of the temple. Admittedly Fit Persons are appointed till the Constitution of the Board of Trustees and they ceased to hold office when Trustees have been appointed. Therefore, the appointment of Fit Persons cannot be construed as contrary to the scheme and intension of the HR&CE Act and violative of Article 14. Even assuming but without admitting that no one else other than the Trustee is permitted to perform the functions and discharge the duties, shall cause stalemate in the administration on expiry of his tenure. Therefore, the post of Fit Person, as an interim arrangement has been brought out as the Office of Trusteeship should not be kept vacant. Therefore, the Fit Person exercising the functions of Trustees in regard to Utilization of Surplus Funds cannot be alleged as fraud on the provisions of the HR&CE Act, 1959.


Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34,


Joint Commissioner (Legal),
HR&CE Admn., Department,
Chennai-600 034.

Page No.:
No. of Cords.:

45. As regards the averments made under Ground 'F', it is submitted that if the petitioners are really aggrieved against the functioning of any of the Fit Person as ultra vires their appointment order, they are at liberty to challenge the same in the manner known to Law.


46. As regards the averments made under Ground 'G', it is submitted that as stated under Paragraph 11 above, the Government have now Constituted District Committees under Section 7-A of the Act and accordingly Non-Hereditary Trustees will be appointed by the appropriate authorities under the Act.

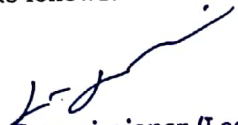
47. Regarding the allegations made under Ground 'H', it is submitted that the ignorance of the petitioners about the following of the due process of Law and Rules under Section 36 of the Act i.e. in relation to Utilization of Surplus Funds, does not make it that no procedure is being followed, which is alleged as arbitrary and contrary to the provisions of the Act and the Rules.

48. Regarding the averments made under Ground 'I', it is submitted that the proposal for Utilization of Surplus Funds shall always be from the Trustee of the religious institution and accordingly the error committed by inadvertence through the circular issued in R.C.No.42275/2019/Q1, dated.26.06.2020 challenged in W.P.No.9701 of 2020 has been rectified by issuance of revised circular issued in R.C.No.42275/2019/Q1, dated.15.07.2020.

49. Regarding the averments made under Grounds 'J' & 'K', it is submitted that Section 97(1) of the Act reads as follows:

Page No.:
No. of Cords.:


Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.


Joint Commissioner (Legal),
HR & CE Admn., Department,
Chennai-600 034.

"It shall be lawful for ³[the Commissioner] to create a Fund to be called the Hindu Religious and Charitable Endowments Common Good Fund ⁴[hereinafter in this section referred to as the said Fund], out of the contributions voluntarily made by the religious institutions from their surplus funds or by any person for the renovation and preservation of needy temples and their ¹[building and paintings, for the promotion and propagation of tenets common to all or any class of religious institutions and for any of the purposes specified in sub-section (1) of section 66.]".

But the petitioners are finding fault with the communication issued by the 2nd Respondent soliciting the religious institutions to contribute to the Common Good Fund which is meant to be utilized for renovation and preservation of needy temples which are not having sufficient fund which is one of the purposes stipulated under Section 66(1) of the Act. There is nothing illegal or immoral in canvassing the religious institutions to contribute voluntarily to the said fund from their surplus. Even under Section 36 of the Act, proviso has been made that in appropriating the surplus under the Section, the trustee shall give preference to the purposes specified in items (a) to (g) of sub-section(1) of Section 66. Therefore, it is submitted that the Common Good Fund is not utilized alien to the purposes mentioned in Section 66 of the Act. The allegations that the manner in which funds have been collected goes to show that

Page No.:
No. of Cords.:

Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.

Joint Commissioner (Legal),
HR & CE Admin., Department,
Chennai-600 034.

religious institutions have been made to contribute sums contrary to the provisions of the Act is not true.

50. As regard the bald allegation made under Ground 'L', alleging that the entire process / exercise is in contravention of the administration of Hindu Religious and Charitable Endowments Common Good Fund Rules, 1962 without specifying any irregularity in the proceeding is denied as false and incorrect. In practice, the Rules envisaged have been invariably followed before according any sanction by the Commissioner.

51. Regarding the averments made under Ground 'M', it is incorrect to state that the religious institutions are not in a position to take an independent decision as to how its funds to be utilized. When the Fit Persons acting in lieu of Trustees prepare budgets, scale of expenditure (Dittam) etc., involving financial commitments so also contribute to the Common Good Fund which is utilized only for the purposes mentioned in Section 66 of the Act and not otherwise.

52. The allegations made under Ground 'N' that the Fit Persons are employees of the Respondent Department are not independent authorities and the checks and balances that are contemplated under the Act becomes obliterated and every action is arbitrary and violation of Article 14 is not true. Even though the Official Fit Persons happens to be the Departmental Officials, yet while performing the functions and discharging the duties of the trustee of the religious institutions they are independent like that of a trustee and there is no obliteration of checks and balance.

Page No.:

No. of Cords.:

Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.

Joint Commissioner (Legal),
HR & CE Admn., Department,
Chennai-600 034.

53. The allegations made under Ground 'O' that the sanctioning authority himself initiates proposals or not following the mandatory requirements of hearing is denied as false and incorrect. Nothing in contravention of the Rules framed under the administration of the Hindu Religious and Charitable Endowments Common Good Fund Rules, 1962 is being followed by the 2nd Respondent. Further the proposals for renovation of temples are received from the temples, they are not produced by the 2nd respondent.

54. Regarding Grounds 'P' to 'U', it is submitted that the petitioners cannot construe that any action which does not sub serve the purpose of such fund, amounts to misappropriation and the instances narrated in Paragraphs 42 to 46 go to show multiple instances of misappropriation and no actions under Law has been taken by the officials is denied as false. The submissions made under Paragraph 29 to 33 will answer the said allegation as untrue.

55. It is submitted that the Government even though secular in nature is providing funds in the name of Government Grant in Aid / Finance Commission Grant / Tourism Fund / External Funding From Asian Development Bank / HR&CE Administrative Fund / Tamil Development Fund / Village Temple Renovation Fund / Temple Renovation and Charitable Fund and other welfare schemes, patronage, conserve, renovate and restore the heritage value of ancient temples and restoration and maintenance of Murals, Paintings in the temples and also provide salary arrears, pension and other welfare schemes for the upliftment of poorly

Page No.:

No. of Corns.:

Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.

Joint Commissioner (Legal),
HR & CE Admin., Department,
Chennai-600 034.

paid temple employees, retired temple employees and other artisans etc. As a social measure, some of the temples also run Karunai Illangal, Home for Mentally Challenged, Oldage Homes, Siddha Hospitals, Allopathi Hospitals, Educational Institutions like Primary / Middle / Higher Secondary / Matriculation / Central Board of Secondary Education Schools / Polytechnic / Arts, Culture and Science Colleges / Nathaswaram and Thavil Music Training Schools / Veda Agama Patasalas / Othuvar Training Schools / Thevaram Training Schools / School for Hearing Impaired and Dumb for which the Government also makes necessary financial assistance, grant in aid etc. Without considering any of the numerous works carried out by the Government in relation to Hindu Public Religious Institutions, the petitioner vaguely makes allegations as if the Government and its instrumentalities are appropriating the funds of the religious institutions which is proved to be false. Further, it is submitted that surplus funds of the religious institutions are utilized only for other needy religious institutions which have no funds for such renovation, restoration and conservation works. The petitioner has chosen to do disservice to the very same cause he has espoused by challenging the action of the 2nd Respondent in arranging financial assistance for the restoration of poor temples. Therefore, the Writ Petition deserves no merit consideration and is liable to be dismissed as bereft of merits.

56. It is submitted that there is no public interest in filing this Writ Petition. The petitioner to vindicate his personal animosity and to gain popularity among his fellow colloques, and

Page No.:
No. of Cords.:

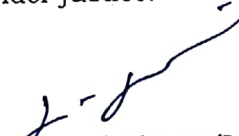
Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.

Joint Commissioner (Legal),
HR & CE Admin., Department,
Chennai-600 034.

in the political party in which he is interested, has filed this vexatious Writ Petitions on frivolous grounds. Moreover, he has no locus standi to file this Writ Petitions as no legal right of his is infringed. The allegations leveled by the Petitioner is not constructive but of destructive in nature.

57. This respondent reserves his right to file additional counter as and when necessary.


For the reasons stated supra, it is prayed that this Hon'ble High Court may be pleased to dismiss the above Writ Petition with exemplary cost and thus render justice.



Joint Commissioner (Legal),
HR & CE Admn., Department,
Chennai-600 034.

Solemnly affirmed at Chennai on this
the 25th day of August, 2020 and
signed his name in my presence.

Before Me



Assistant Commissioner (Legal Cell),
Office of the Commissioner,
HR & CE Admin. Department,
Chennai - 34.

IN THE HIGH COURT OF JUDICATURE
AT MADRAS
(Special Original Jurisdiction)
**W.P.Nos.9869, 9872 &
9878 of 2020**

**COUNTER AFFIDAVIT FILED ON
BEHALF OF THE SECOND
RESPONDENT**

**SPECIAL GOVERNMENT PLEADER
(HR & CE)**