

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

W. P. No. of 2021

1. The Indic Collective Trust,
5E, Bharat Ganga Apartments,
Mahalakshmi Nagar, 4th Cross Street,
Adambakkam, Chennai - 600088
Rep. by its President, Mr. T.R.Ramesh

2. Mr. T. R. Ramesh
S/o Late Dr. T.N. Ramachandran
Flat 3B, Nataraj Apartments
17 D'Silva Road
Mylapore
Chennai 600 004

...Petitioners

Versus

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
Hindu Religious & Charitable
Endowments Department
119 Mahatma Gandhi Road,
Nungambakkam
Chennai - 600 039

...Respondents

AFFIDAVIT FILED ON BEHALF OF THE PETITIONERS

I, T. R. Ramesh, Hindu, aged about 59 years, son of Dr. T.N. Ramachandran, residing at Flat 3B, Nataraj Apartments, 17 D'Silva Road, Mylapore, Chennai, 600004, do hereby solemnly affirm and sincerely state as follows:

1. I respectfully submit that I am the 2nd petitioner herein and also the President of the Indic Collective Trust, the 1st Petitioner herein and well acquainted with the facts and circumstances of the case. I respectfully submit that I am swearing this Affidavit on behalf of the 1st Petitioner also and that I am competent to do so.
2. I respectfully submit that the petitioners are filing these writ petitions as Public Interest Litigations relating to and for
 - a. a Writ of Certiorari calling for the records in Proc. R.C. 58398/2020-1/B1, dated 09.09.2021, issued by the 2nd Respondent herein and quash the same;
 - b. a Writ of Certiorarified Mandamus calling for the records in G.O. (Ms.) No. 101, Tourism, Culture and Charitable Endowments (CE 1-2) Department, dated 09.09.2021 issued by the 1st Respondent, quash the same and consequently forbear the respondents from carrying out any melting of gold items that are held by Temples under the Control of the Respondents herein.
 - c. a Writ of Certiorarified Mandamus calling for the records in Circular R.C. No: 25132/2016/I-2/ Dated 22.09.2021 issued by the 2nd Respondent, and quash the same and consequently forbear the respondents from carrying

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out any melting of gold items that are held by Temples under the Control of the Respondents herein;

in the facts and circumstances stated hereunder.

Preliminary

3. I respectfully submit that the 1st petitioner Trust is constituted for the purpose of espousing the Indian Traditions, Temples and Heritage, through social and legal actions. The Trust Deed of the Indic Collective Trust and the PAN Card are enclosed as part of the typed set of papers.
4. I respectfully submit that I am an income tax assessee and my Permanent Account Number is AEPPR4560K and my AADHAAR number is 2585 0452 9082. I state that my annual income is about Rs. 4,00,000/- (Rupees four lakhs only). I am a permanent resident of Chennai. I respectfully submit that I am a post graduate in Commerce and was formerly in the management of a multi-national bank.
5. I respectfully submit that the petitions are filed from the funds of the 1st Petitioner Trust. I respectfully submit that the PAN Number of the Trust is AABTI4756Q. The PAN Cards are enclosed as part of the typed set of papers.
6. I respectfully submit that I have no personal interest in the case and I understand that in the event that this Hon'ble Court finds that if this PIL has been filed for any personal gains or oblique motive, this PIL may be dismissed with exemplary costs. I undertake to pay such costs if imposed by this Hon'ble Court. I respectfully submit that I learnt from news reports that another Public Interest

Litigation touching upon similar issues have been filed before this Hon'ble Court in W.P. No. 22333 of 2021 and W.P. No. 22334 of 2021 was filed in the vacation Court and is being listed on 21/10/2021 for the State's response.

7. I respectfully submit that I am also the President of the Temple Worshippers Society. These two organisations and myself, in my individual capacity also have been (a) espousing the cause of Hindu temples and their heritage structures, (b) striving to ensure their clean and efficient administration by creating public awareness, (c) carrying out research and filing of Writ Petitions including Public Interest Litigations for the cause of protecting and maintaining Hindu temples of yore, among other public causes concerning Indic Civilization values. The organisations also carry out social activities helping communities around temples. For example, during the recent pandemic, the organisations provided financial assistance to poor priests and flower sellers, in many parts of the state, whose income was affected due to the pandemic.
8. I respectfully submit that I have filed a number of Public Interest Litigations on Issues of Heritage, Culture and Temple protection and proper Administration, in some of which representing the 1st Petitioner including as follows:
 - a. W.P. No. 14256 of 2020: Praying for a Writ of Mandamus directing the Government and the Hindu Religious Endowments Department to conduct only external audit as required under law for the Hindu Religious Institutions under the administrative control of the Hindu Religious and Charitable Endowments Department. The matter is pending before this Hon'ble Court.

- b. W.P. No 13502 of 2020, challenging the Presence of Executive Officers in about 70 Temples without any legally sustainable orders of appointment ever made for such temples for more than 50 Years. The matter is pending before this Hon'ble Court.
- c. W.P. Nos. 9869, 9872 and 9878 of 2020: Filed as President of the Indic Collective Trust challenging the illegal transfer of funds from Hindu Temples by the 2nd Respondent herein.
- d. W.P. Nos. 32698 of 2019: Challenging, G.O. No.318 of 2019, the taking over lands belonging to Hindu Temples and Endowments and giving them to encroachers in such lands. This Hon'ble court was pleased to grant an interim stay order against the Government Order in respect of Hindu Temple and Endowment Lands.
- e. W.P. No. 2290 of 2017: Challenging Conditions for appointment of Executive Officers. Case Dismissed.
- f. W.P. No. 17468 of 2016: Challenging Preservation and Maintenance of Religious Institution Rules. Case dismissed.
- g. W.P. Nos. 25429 to 25433 of 2015: Challenging the presence of Executive Officers in five temples. Disposed of as Rules were framed with retrospective effect.
- h. W.P. Nos. 11412 and 11413 of 2015, as Secretary-General of the Temple Worshipers Society: Challenging the appointment of servants of HR&CE

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Department as "Fit Persons" (Super Trustees) of Hindu Temples. These Writ Petitions are pending adjudication before this Hon'ble Court.

- i. As President of the Temple Worshippers Society, I am challenging the vires of the T.N. Hindu Religious and Charitable Endowments Employees (Conditions of Service) Rule 2020, the Writ Petition is numbered at the time of filing of the writ petition as W.P. No. 21906/2021.
 - j. The 1st petitioner represented by other trustees have filed various public interest litigations on various issues before the Hon'ble Supreme Court of India as well as other forums on similar issues including has intervened in the issues of Revocation of Jammu and Kashmir's special status, Constitutional validity of the T.N. Hindu Religious & Charitable Endowments Act 1959 and Rules framed thereunder, issues relating to administration of Puri Jagannath temple, Firecracker Ban and Deportation of Rohingyas before the Hon'ble Supreme Court.
9. I respectfully submit that the 1st respondent herein is the Hindu Religious and Charitable Endowments Department (hereinafter "the HR&CE Department") and the 2nd respondent is its Commissioner, who is its highest authority and a corporation sole. The website of the Department claims that 44286 temples are directly under its administrative control. The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter "the 1959 Act") came into force from 01.01.1960 and it was passed "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".

Factual circumstances giving rise to the writ petitions

10. I respectfully submit that during the Budget session of the Tamil Nadu Assembly held in September 2021, the Hon'ble Minister for the Hindu Religious and Charitable Endowments Department made a slew of announcements regarding projects concerning various Tamil Nadu Temples estimated to be carried out at cost of more than Rs. 1500 Crore (Rupees one thousand five hundred crores). These announcements are condensed into a document called the "Demand Note No. 47" released by the Tourism, Culture and Religious Endowments Department, Government of Tamil Nadu the 1st Respondent herein.
11. I respectfully submit that the Government through the said Demand Note 47 of 2021-2022 made 112 individual announcements. On a closer examination of these 112 announcements, Announcement Nos. 11, 18, 20, 21, 23, 24, 95 and 108 alone pertain to the HR & CE Department and many of them traverse outside the decision making domain of the State Government.
12. I respectfully submit that the nature of various announcements made include making arrangements to open Colleges, social schemes, construction of centers including wedding halls, facilities for devotees in specific temples, renovation of temples, etc. Regarding these announcements too it is not clear from which source, the funds for these projects are to be obtained. It is pertinent to note that the Respondents herein are infamous for appropriating and expending Temple funds for the purposes of the Government and the HR & CE Department including utilising funds, vehicles and personnel of Hindu Temples for purposes not permitted under the Act, the issues being subject matter of writ petitions in

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W.P. Nos. 9869, 9872 and 9878 of 2020 mentioned above. I respectfully submit that for some temples such as the Tiruchendur Sri Subramania Swamy Temple, Tiruchendur, Sri Ekambareswarar Temple, Kanchipuram and Sri Srinivasa Perumal Temple, Egmore, Chennai projects concerning civil works of whopping amounts of Rs. 150 Crores, Rs. 100 Crores and Rs.50 Crores respectively were announced.

13. I respectfully submit that at the outset it is necessary to state that the Respondents herein or the Hon'ble Minister for the Hindu Religious and Charitable Endowments Department cannot announce any projects for the individual temples or for temples en masse since they have no such authority under any of the provisions of the TN HR & CE Act, 1959 and only the Trustees of such individual temples are empowered to carry out such activities.

14. I respectfully submit that it has been a practice that post such assembly announcements made by the Hon'ble Chief Minister or Hon'ble Minister concerned before the Legislative Assembly, the respondents herein thereafter issue Orders forcing the administrators of temples (legal, such as the hereditary trustees or illegal, such as the non-est Executive Officers and Government "Fit Persons") of Hindu Temples and endowments to carry out such announcements in respect of their institutions and at the cost of their institution.

15. I respectfully submit that in pursuance of the present announcements, the Government issued a G.O. and the Commissioner, HR&CE Department issued two circulars/directives the details of which are as follows:

- a. G.O. (Ms.) No. 101, Tourism, Culture and Charitable Endowments (CE 1-2) Department, dated 09.09.2021 issued by the 1st Respondent, wherein the

Government issued instructions to the 2nd Respondent Commissioner regarding the constitution of Committees and the commencement of the melting process of gold in all Temples across Tamil Nadu.

b. Proc. R.C. 58398/2020-1/B1, dated 09.09.2021, issued by the Commissioner, HR & CE Department, the 2nd Respondent herein, regarding the announcements made in the Tamil Nadu Legislative Assembly during the budget session on 04.09.2021. These orders were addressed to all officials and superintendents in the HR & CE Department's headquarters. The 2nd Respondent herein assigned the responsibilities to his subordinates in the HR & CE Department of taking into completion, the 112 announcements made by the Hon'ble Minister for Hindu Religious and Charitable Endowments Department in the Tamil Nadu Legislative Assembly during the Budget Demand for his Department.

c. R.C. No.: 25132/2016/I-2, dated 22.09.2021, wherein the 2nd Respondent Commissioner has issued directions to be followed towards the Melting of Jewels in Temple and the need for taking "speedy actions". This Order is being challenged separately as it does not make any reference to the G.O. (Ms.) No. 101, Tourism, Culture and Charitable Endowments (CE 1-2) Department, dated 09.09.2021.

16. I respectfully submit that the scheme of the 1959 Act and its accompanying Rules do not empower the Government or the Commissioner, HR&CE Department to take or initiate decisions related to the administration of Temples particularly regarding fees for services, utilisation of funds including utilisation

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of surplus funds, appointment of staff and officers to the temples, maintenance of their structures, statuary and murals and alienation of its immovable properties. I respectfully submit that it is only the trustees who are specifically empowered under the 1959 Act to make decisions with respect to the administrative matters of any Religious Institution.

17. I respectfully submit that it has become a chronic and illegal practice of the Government to announce various projects concerning Hindu Temples during every Budget Session of the Tamil Nadu Legislative Assembly as if such Hindu Temples belong to the State Government. However elsewhere, in Affidavits before the Hon'ble Supreme Court, this Hon'ble Court and in the Government's own policy note, it is the admitted stand of the Government that each Hindu Temple is a separate legal entity. These separate legal entities are only to be administered by the true trustees of the respective temple without any interference or trespass by the State Government or its instrumentalities.

Legal Position of Hindu Religious Institutions - Relevant provisions and Aspects

18. I respectfully submit that the provisions contained in Part III of the Constitution, specifically Articles 25 and 26, protect and preserve religious rights including those pertaining to administration of Temples, permit only regulation of secular aspects associated with the same by the state. Religious institutions and religious endowments come under Entry 28 of List III of Sch. VII and subject to the provisions of the Constitution both the Parliament and the State Legislatures can enact laws to regulate secular aspects. I respectfully submit that the field in the state of Tamil Nadu is held by the Tamil Nadu Hindu Religious and Charitable

Endowments Act, 1959 covering various aspects of the administration of the religious institutions. Therein several officers including the second respondent have been conferred specific powers and further several rules have been framed under the Act specifically determining the manner in which the administration of the properties of religious institutions are to be undertaken. I am advised to state that to this extent the Executive powers of the state are curtailed, and can be exercised only in accordance with the provisions of the 1959 Act and the rules made thereunder.

19. I respectfully submit that the Hindu Religious Institutions viz., Temples, Mutts or Charitable Endowments are individual institutions that do not belong to a Secular Government. A bare reading of the 1959 Act also shows that the scheme of administration of Hindu Religious Institutions is left only with the Trustees under the said Act and the Government, in a limited manner, can only *regulate* the secular aspects of the Temple Administration.
20. I respectfully submit that it has been held by a catena of Judgments of the Hon'ble Supreme Court of India that the Temple and its properties belong to the Deity therein and the temple is managed through the trustees duly present or appointed.
21. I respectfully submit that in fact even the 1st Respondent itself in Paragraph 15 of its Policy Note for the HR&CE Department for the year 2018-2019 states as follows:

"TEMPLE ADMINISTRATION:

30. Each Religious Institution and Charitable Endowment is a separate legal entity and is empowered to appoint its own employees. However, the

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Commissioner is authorized to appoint Executive Officers under Section 45(1) of the Act and Rules framed thereunder."

I respectfully submit that under the 1959 Act, the following are mentioned as primary or mandatory duties and responsibilities of Trustees/Board of Trustees of Hindu temples:

<i>Provision in the 1959 Act</i>	<i>Provision in brief</i>	<i>Brief Description of duty/responsibility of the Trustee</i>
Sec. 6(22)	Trustee means any person or body by whatever designation known in whom or in which the administration of a religious institution is vested	Trustee is a person in whom the administration of the religious institution is vested.
Sec.25-A	Qualifications of Trustee	Trustee to have faith in God. Trustee to possess good conduct and reputation in the locality of the temple. Trustee to have sufficient time and interest to attend to the affairs of religious institution.
Sec. 28	Care required of trustee and his powers	Trustee is bound to administer affairs of religious institution and apply its funds in accordance with the terms of the trust, the usage of the institution. Trustee entitled to exercise all powers incident to beneficial administration of the institution.

Sec. 29	Preparation of register for all institutions	It is Trustee's duty to prepare and maintain a register in prescribed form
Sec. 30	Annual verification of register	Trustee's duty to scrutinize the register including alterations, omissions or additions required and submit them to Commissioner
Sec. 31	Submission of Register once in ten years	It is the trustee's duty to consolidate the annual alterations, omissions and additions and submit them as register to the Commissioner.
Sec. 32	Trustee to furnish accounts, returns, etc	The Trustee of religious institutions alone can file budgets, deposits, accounts, returns or other information.
Sec. 34	Alienation of Immovable Trust Property	Trustee alone can initiate and apply for alienation of the immovable properties of the Religious Institution if it is necessary or beneficial for the religious institution concerned.
Sec. 35	Authority of trustee to incur expenditure for securing health, etc., of pilgrims and worshippers	The trustee of a religious institution may incur expenditure on securing the health, safety or convenience of devotees, training of archakas, etc.
Sec. 36, 36-A and 36-B	Utilisation of Surplus Funds	Trustee of a religious institution to utilise surplus funds subject to conditions and restrictions as may be prescribed.

Sec. 38	Enforcement of service or charity in certain cases	Trustee concerned may require the person in possession of the property on which the endowment is a charge, to pay the expenses incurred or likely to be incurred
Sec. 39	Power of trustee of math or temple over trustees of specific endowments	The trustee of specific endowment made for the performance of any service or charity connected with a math or temple shall perform such service or charity subject to the general superintendence of the trustee of the math or temple and shall obey all lawful orders issued by him
Sec. 47(3)	Office term of non-hereditary trustees	Every Trustee appointed under Sec. 47(1) shall hold office for a term of two years
Sec. 51 (b)	Claims of certain persons to be Trustees	The Appointing Authorities under the Act shall have due regard to the claims of the persons belonging to the religious denominations for whose benefit the institution concerned is chiefly intended or maintained
Sec. 55	Appointment of Office-holders and Servants in religious institutions	Permanent or temporary vacancies among office-holders and servants in religious institutions shall be filled up trustees in all cases
Sec. 56	Punishment of office-holders and servants in religious institutions	All office-holders and servants attached to a religious institution shall be controlled by the Trustee and the Trustee may fine, suspend, remove or dismiss any of them for sufficient cause.

Sec. 57	Power to fix fees for services etc.,	Trustee of a religious institution shall fix fees for the performance of ritual or ceremony
Sec. 58	Fixing of standard scales of expenditure	Trustee to provide to the appropriate authority the proposals for fixing the <i>dittam</i> or scale of expenditure
Sec. 86	Budgets of Religious Institutions	Trustees of every religious institution shall submit in such prescribed form a budget showing the probable receipts and disbursements of the institution during the following fasali year
Sec. 87	Accounts and Audit	The Trustee of every religious institution shall keep regular accounts in such form as may be prescribed. It is the duty of the Trustee and all officers and servants working under him to produce before auditors all accounts, records, etc.
Sec. 90(1)	Rectification of defects disclosed in audit and surcharge against Trustees	Audit reports of religious institutions to be submitted to the Trustees and it shall be the duty of the Trustees to remedy any defects or irregularities

22. I respectfully submit that the above chart would indubitably show that the 1959 Act intended only the Trustees to have administrative control of the affairs of the temple. The Trustees besides donning the above secular functions also have religious duties and responsibilities, which Secular Authorities under the 1959 Act cannot interfere or control or worse, indulge in.

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23. I respectfully submit that the affairs of a Hindu temple can be broadly divided into three parts namely:

- a. religious affairs.
- b. secular aspects of its administration, and
- c. structural maintenance of the temple according to *agama sastras* and heritage/archaeological principles.

24. I respectfully submit that only the regulation of secular aspects of the management of the properties belonging to the Hindu Religious Institutions and Charities, can come within the ambit of the Secular Authorities under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. No religious matters or even other secular matters recognized by the 1959 Act to be the duties and responsibilities of the Trustees can be usurped by the Respondents herein or their subordinates in the HR & CE Department.

25. I respectfully submit I am advised to state that a further perusal of the provisions of the 1959 Act will show that the 1st respondent Government has very limited role under the Act. They may be either in the form of power to appoint the commissioner and certain officers, trustees or fit persons, provide sanction in case of alienation of properties etc. Even in all such cases, the Government only acts on the recommendation of the Commissioner and does not exercise any power on its accord. To put it in another way, if the Government is to take any decision on religious institutions, the same would extinguish the separation between the temple and the State. It is keeping in mind the above said provisions

as well as the role of the Government under the Constitution, as well as under the 1959 Act in respect of religious institution, are in the actions pursuant to the assembly announcements being challenged.

26. I further respectfully submit that the 2nd respondent in several instances performs an adjudicatory or sanctioning authority's role, these include scenarios such as renting or alienation of immovable properties of temples under Section 34, utilisation of surplus funds of religious institutions under S. 66 as well as the rules governing the same and also rules relating to management of jewels of temples.
27. I respectfully submit that I am advised to state that it is a settled principle of law more specifically that the Commissioner of the HR&CE, being the sanctioning authority, cannot sit in judgement of the proposals that he is to sanction as confirmed by the Hon'ble Supreme Court in Govinda Menon vs. Union of India, reported in AIR 1967 SC 1274.

Projects Announced in the Assembly are beyond the Powers of Government and the Commissioner

28. I respectfully submit that out of the 112 projects announced in the Legislative Assembly and regarding which the 2nd Respondent has issued the impugned proceedings, 8 projects pertain to the HR & CE Department. The Government is well within its powers in announcing these 8 projects, as long as the temple monies or the funds from the Hindu Religious and Charitable Endowments Common Good Fund are not taken for these projects. On the other hand, the Government or the 2nd Respondent herein cannot announce, initiate, carry out or

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complete any of the 104 projects that pertain to Hindu Temples, Endowments or institutions attached to them. They are not statutorily vested with any such powers under any of the provisions of or Rules framed under the TN HR & CE Act, 1959.

29. I respectfully submit that only the true trustees of the temples who are the hereditary trustees or non-hereditary trustees appointed under Sections 47 or 49 of 1959 Act could decide how the funds and jewels of the temples or the temple lands are to be utilised subject to the provisions of the 1959 Act and the Rules framed thereunder. More importantly they cannot violate the traditional practices of the temple while making such decisions. The aforesaid sections 47 and 49 are to be read with Section 25-A (Qualifications of Trustees), Section 26 (Disqualifications of Trustees) and Section 51 (Claim to be appointed as Trustees by persons belonging to the Denomination of the temples) of the said 1959 Act. No Government authority including the Respondents herein can initiate or carry out projects and plans using temple monies, jewels, and lands.

Usurpation of the entire administration of Hindu Temples from the trustess by the respondents contrary to the 1959 Act and the Constitution

30. I respectfully submit that the HR & CE Department has over the years deviated from its primary duty of ensuring that the properties of the Hindu Religious Institutions under their administrative control are properly protected and income due therefrom are realised and utilised only for the purposes for which such properties were endowed or exist.

31. I respectfully submit that instead, the 1st and 2nd Respondent and the officials functioning under them have only contrived to consolidate their powers in controlling all aspects of the Hindu Temples, Mutts and Endowments. The provisions of the Act are being violated by the Respondents herein with chronic regularity, temerity and by being intransigent to the dicta of this Hon'ble Court and the Hon'ble Supreme Court of India. I respectfully submit that the Impugned Orders that are the subject matter of this PIL are yet another example of the innumerable violations and are elaborately discussed hereunder.
32. I respectfully submit that the respondents herein have, deliberately, over the past 11 years refrained from their mandatory duties of appointing Trustees to Hindu Temples having non-hereditary trustees in this State. Instead, they have appointed servants of the HR & CE Department as "Fit Persons" of such Hindu temples for an unspecified period which is now in its eleventh year.
33. I respectfully submit that the Respondents herein have "appointed" the servants of the HR & CE Department as the "Fit Persons" of 1000s of temples only to make such temples devoid of qualified Hindu Citizens as trustees of such temples so that such temples can be extensions of the HR & CE Department i.e. the fiefdom of the Government. The Places of Worship of Hindus in Tamil Nadu have thus been appropriated by the Government of Tamil Nadu and are sought to be converted to Government properties.
34. I respectfully submit that the 1959 Act envisages that, in the absence of hereditary trustees and pending the constitution of a Board of Trustees as per Section 47 of the Act, "Fit Persons" may be appointed. However, while the Act

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does not define a "Fit Person" and its role, it is abundantly clear that the appointment is contemplated only as an interim arrangement. However in many Temples, such appointments have been continuing for almost 10 years. In the case of C. Andiappan and others vs. the Joint Commissioner, Tamil Nadu HR & CE reported in 2016-1 L.W 340, a Division Bench of this Hon'ble Court held that the appointment of a Fit Person is always contemplated only as a temporary measure. In any case, the full term of a validly constituted Board of Trustees of a temple is only 2 years under the Act, and a Fit Person should only have a term lesser than that. Despite this being the position, 100s if not 1000s of temples have Fit Persons who continue to hold the post for more than 10 years.

35. I respectfully submit that being only an interim appointment, the powers of a Fit Person cannot carry the same extent of powers of that of a Board of Trustees/Hereditary Trustees. Therefore, a Fit Person can only over-see only the day to day functioning of the Temples or Religious Institutions and cannot take any financial or significant decisions. However, "Fit Persons" in various Temples have taken decisions having serious financial consequences such as calling for tenders for Crores of Rupees. Some instances are tabulated below:

S No	Name of the Temple	Details of Tender	Amount Rs.
1.	Sri Karumariamman Temple, Tiruverkadu	Major Renovation of Temple and its surroundings	3,50,00,000
2.	Sri Vataranyeswarar Temple, Tiruvalangadu	Wedding Hall	2,25,00,000
3.	Sri Patteeswara Swamy Temple, Perur	Tharppana Mandapam	2,95,00,000

4.	Sri Vaazhai Totathu Aiyyan Temple, Samalapuram	Civil works in school run by temple	74,83,830
5.	Madurai Sri Meenakshi Sundareswarar Temple	Reconstruction of the ancient Veera Vasantharayar Mandapam	10,00,00,000

36. I respectfully submit that in the above five temples, mentioned only as a few examples, none of the Temples have had trustees for more than 10 years, nor do these temples have an order for the appointment of an Executive Officer.

37. I respectfully submit that in fact, Executive Officers of many Temples have been appointed as "Fit Persons" of the same Temple or of another Temple. It is another matter that the appointment of the Executive Officers is itself non est in law and the matter challenging the appointment of Executive Officers of various Temples is pending before this Hon'ble Court in W.P. No. 13502/2020.

38. I am advised to state that the Hon'ble Supreme Court in the case of Ratilal Panachand Gandhi vs. the State of Bombay reported in AIR 1954 SC 282 held that a secular authority of the Government cannot be appointed as the Trustee of a math of Temple. However, in clear contravention to the dicta of the Hon'ble Supreme Court, the Government has appointed its own servants as "Fit Persons" in Religious Institutions.

39. I respectfully submit that as stated previously, I have challenged the appointment of Fit Persons to Temples in W.P. Nos. 11412 and 11413 of 2015 before this Hon'ble Court, challenging the appointment of Government Servants as "Fit Persons" in Religious Institutions. I respectfully submit that in fact a

Single Bench of this Hon'ble Court in Writ Petition (MD) No. 10903 of 2020 filed by this Petitioner, this Hon'ble Court had held that "...the Fit Person can only act as a stopgap arrangement. He should attend to the day to day necessities set out in G.O (Ms) No.223 dated 10.06.2011. But policy decisions and those having serious financial implications can only be taken by a duly constituted board of trustees..." and this finding has not been interfered with by the Division Bench in W.A.(MD) No. 294 of 2021 filed by the State.

40. I respectfully submit that these Fit Persons appointed by the Respondents have been carrying out various illegal activities such as illegal alienation of Temple properties, transfer of temple funds for non-temple purposes including purposes of the HR & CE Department and the Government, utilising temple funds to buy vehicles for the Minister for HR & CE Department and his Personal Assistant and for the officers of the HR & CE Department, hiring vehicle drivers through temples and but employing them in the Office of the 2nd Respondent Commissioner, hiring typists through Temples and get the temples to pay their monthly salaries and emoluments but employ such typists in the office of the 2nd Respondent Commissioner and in the Office of the 1st Respondent, making the Hindu Temples pay for the meals and food bills incurred for the review meetings in the office of the 2nd Respondent Commissioner and carrying out civil works and repairs in the office of the 2nd Respondent using temple funds.
41. I respectfully submit that these "Fit Persons" act as an extension of the arm of the state and have invaded Hindu Religious Institutions and have been exercising control of all activities in a Temple, otherwise meant only for the Hereditary Trustees/Trustees of the Temple. The respondents have attempted to

control Hindu Religious Institutions and their properties as the arms of the State. I respectfully submit that the 1st Respondent herein issued G.O. No. 223 Tamil Development, Religious Endowments, and Information (R.E. 3.1) Department dated 10.06.2011 and G.O. No. 264 Tamil Development, Religious Endowments, and Information (R.E. 3.1.) Department dated 11.07.2011 appointing Fit Persons for 26 temples and for 7 temples respectively. wherein it was clearly stated that these appointments are made for an interim period and that the Fit Persons appointed can undertake only essential expenses like salaries, pooja and festival expenses and Annadhanam expenses. However, the Servants of the HR & CE Department appointed as "Fit Persons" go beyond these essential expenses and they undertake all activities of the temples including consecration of temples, issuing major contracts, undertaking civil works on massive scale, etc. It is submitted that the Fit Person can only attend day to day necessities and cannot take any decisions involving major financial impact has now become final.

42. I respectfully submit that the illegal "Fit Persons" currently administering major Hindu Temples in Tamil Nadu are taking major policy decisions and decisions that have serious financial impact for such Hindu Temples. They call for tenders that are for Crores of Rupees violating afore-cited G.O. Nos. 223 and 264. These are decisions and activities that can be carried out only by the Trustees of the temples.

43. I respectfully submit that according to Rule 14 of the "Functioning of Board of Trustees Rules"

"All matters relating to the administration of the religious institution shall be decided at the meetings of the Board of Trustees. The Executive Officer or the Chairman of the Board of Trustees, as the case may be, shall carry into effect the decisions of the Board of Trustees after obtaining the orders of the competent authority on individual subject"

I further humbly submit that as per Rule 11 of the Collection of Income and Incurring of Expenditure Rules -

"No expenditure shall be incurred without the written order of the Trustee"

44. I respectfully submit that this situation is alarming and dangerous since the State which is responsible for upholding the fundamental rights of its citizens is itself violating them chronically and brazenly and with impunity. In Madurai Sri Meenakshi Sundareswarar Temple, Sri Subramania Swamy Temple, Tiruchendur and in Sri Kapaliswarar Temple, Chennai alone non-government persons are functioning as the Fit Persons. But they have been there as Fit Persons for more than 10 years and this is a fraud on the Statute since the interim period of appointment of a "Fit Person" cannot be more than 5 times the full term of 2 years prescribed for a validly constituted Board of Trustees under Section 47 of the 1959 Act.

45. I respectfully submit that as stated earlier, the administration of the Hindu Temples vests with the true trustees of such temples. The Respondents herein can only regulate the secular aspects of such administration through the TN HR & CE Act, 1959 and the Rules framed under the said Act. They cannot take over the administration of the temples per se and vest it with themselves.

46. I respectfully submit that non-appointment of trustees for the past 11 years, "appointment" of HR&CE Servants as Fit Persons of the temples for unspecified period, chronic violation of the "Functioning of Board of Trustees Rules", the Respondents initiating alienation of Temple lands, transfer of temple funds, projects in the name of the temples all point out that the Respondents treat Temples and the properties of the State Government or worse still as the properties of the HR & CE Department.

Misuse of Temple properties, funds and personnel by the respondents through the "Fit Persons" & "Executive Officers"

47. I respectfully submit that with their subordinates of the HR & CE Department "appointed" as Fit Persons of Hindu Temples i.e. as the Sole Trustee of each of such Hindu Temple, it has become extremely easy for the Respondents herein to indulge in various illegal activities concerning Hindu Temples such as:

- i. illegal alienation of Temple properties
- ii. transfer of temple funds for non-temple purposes including purposes of the HR & CE Department and the Government
- iii. utilising temple funds to buy vehicles for the Minister for HR & CE Department and his Personal Assistant and for the officers of the HR & CE Department.
- iv. Hiring vehicle drivers through temples and but employing them in the Office of the 2nd Respondent Commissioner

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- v. Hiring typists through Temples and get the temples to pay their monthly salaries and emoluments but employ such typists in the office of the 2nd Respondent Commissioner and in the Office of the 1st Respondent.
 - vi. Making the Hindu Temples pay for the meals and food bills incurred for the review meetings in the office of the 2nd Respondent Commissioner
 - vii. Buying photo copying machine for the office of the Commissioner using Temple funds
 - viii. Carrying out civil works and repairs in the office of the 2nd Respondent using temple funds.

48. I respectfully submit that Section 36 of the TN HR & CE Act, 1959 deals with utilisation of surplus funds of a religious institution. Section 36 of the said 1959 Act reads as follows:

Section 36 - Utilisation of surplus funds

With the previous sanction of the Commissioner, and subject to such conditions and restrictions as may be prescribed, the trustee of a religious institutions may appropriate for any of the purposes specified in sub-section (1) of section 66—

(i) any portion of the accumulated surplus of such institution, and

(ii) if, after making adequate provision for the purposes referred to in sub-section (2) of section 86 and also for the arrangements and the training referred to in sub-section (1) of section 35, there is a surplus in the income of the institution for any year or any portion of such surplus :

Provided that the trustee shall, in appropriating the surplus under this section, give preference to the purposes specified in items (a) to (g) of sub-section (1) of section 66:

Provided further that, before according the sanction under this section, the Commissioner shall publish the particulars relating to the proposal of the trustee in such manner as may be prescribed, invite objections and suggestions with respect thereto and consider all objections and suggestions received from persons having interest:

Provided also that, the sanction aforesaid shall be published in such manner as may be prescribed:

Provided also that, nothing in this section shall prevent the trustee of a math or of a specific endowment attached to a math from utilizing the surplus referred to in this section in such manner as he deems fit.

49. I respectfully submit that Section 36 of the 1959 Act read with other provisions of the Act, provides for certain procedures and criteria for calculating, ascertaining, and utilising the surplus funds of a Hindu religious institution. What Section 36 mandates regarding Utilisation of Surplus Funds of a Hindu Religious Institution are as follows:

- a. Section 36 read with Section 66 of the Act specifies that the funds of a Hindu Religious Institution can be appropriated only by the Trustee(s), upon the sanction given by the 2nd respondent. The surplus funds can be utilised only for certain specific dharmic purposes
- b. The sanction by the 2nd respondent is to be granted after the procedure prescribed by the Utilization of Surplus Funds Rules, which came into force vide G.O.Ms. No. 4524, Revenue, dated 05.11.1960, is duly carried out. That process includes publication of a notice giving particulars of the

provisional decision of the Trustee to utilise such surplus funds in a leading Tamil Daily calling for objections from persons interested in the Religious Institution.

- c. Reference to the connected provisions postulate that the trustees have to make adequate provisions for certain mandatory expenses and have to ensure that the preference in funds appropriation is adhered to as per Sections 66(1)(a) to (g) of the Act and mainly for purposes of the denominations to which the religious institutions belong. I respectfully further submit, that Sections 36-A and 36-B are provisions of similar nature, for utilization towards specific purposes of free weddings for Hindu couples and for Annadhanam respectively.

50. I respectfully submit that the 2nd respondent has a duty to ensure that adequate provisions towards budgeting are made by the Trustees of Hindu Religious Institutions as contemplated under Section 86(2) of the Act and also for the arrangements and the training referred under Section 35(1) of the Act, before calculating the 'Surplus Funds'. I further submit that before according sanction under Section 36 of the 1959 Act, the 2nd respondent herein shall conduct an enquiry after publishing the proposal of the trustee in such manner as may be prescribed and inviting objections or suggestions with respect thereto from persons interested within not less than 30 days of publication of such notice and consider all of them before sanctioning the proposal. The 2nd respondent, upon passing an order granting sanction for appropriation of surplus funds ought to publish the same in the manner prescribed.

51. I respectfully submit that the 1959 Act mandates that only the Trustees of a Hindu Religious Institution can decide on how to spend the Surplus Funds of a Religious Institution after following the due procedures laid down therefor under Section 36 and the Rules framed thereunder can be utilised. However, such surplus funds can be utilised only for any of the following purposes laid down in Section 66(1) of the 1959 Act:

- (a) *the grant of aid to any other religious institution which is poor or in needy circumstances;*
- (b) *the grant of aid to any religious purpose connected with the Hindu religion;*
- (c) *the propagation of the religious tenets of the institution ;*
- (d) *the recitation of Divya Prabhandam and Thevaram and the like;*
- (e) *the establishment and maintenance of schools for the training of archakas, adyapakas, vedaparayanikas and othuvars and for the study of Divya Prabandhams, Thevarams and the like, including the study of Indian languages for that purposes;*
- (f) *the establishment and maintenance of a University or college or other institution in which the main features shall be the provision for the study of Hindu religion, philosophy or sastras or for imparting instructions in Hindu temple architecture;*
- (g) *the establishment and maintenance of educational institution where instruction in the Hindu religion is also provided;*
- (h) *promotion of fine arts and architecture;*
- (i) *the establishment and maintenance of orphanages for Hindu children;*

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- (j) *the establishment and maintenance of asylums for persons suffering from leprosy;*
- (k) *the establishment and maintenance of poor homes for destitute, helpless and physically disabled persons ; and*
- (l) *the establishment and maintenance of hospitals and dispensaries for the benefit of pilgrims :*

Provided that in the case of a religious institutions founded and maintained by a religious denomination or any section thereof, the endowment shall, as far as possible, be utilized for the benefit of the denomination or section concerned for the purposes mentioned above.

52. I respectfully submit that in the above limited list of 12 specific purposes for which the surplus funds of the Religious Institutions can be utilised by the true Trustees of the Religious institution. The following proposals found in the Impugned Proceedings are not permitted under Section 36 read with Section 66(1) of the 1959 Act:

Proposal No	Few among the Proposals Made by Government regarding Hindu Temples in Legislative Assembly during the Budget Session
19	Starting a Management Training Centre for Temple Employees in land belonging to Tiruttani Temple at a cost of Rs. 5.00 Crores
22	Infrastructure set-up in 8 temples for supplying Holy Ash and Kumkum for various temples at a cost of Rs. 3.00 Crores
25	Prasadam to be given to all Devotees in 10 important temples as a first step
26	Integrated Commercial Complex in the land belonging to Sri Srinivasa Perumal Temple at a cost of Rs. 50.00 Crores

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30	Senior Citizen Homes with all facilities at Chennai, Pazhani and Tirunelveli at a cost of Rs. 5.00 Crores
31	Twenty two wedding halls with all facilities would be constructed on behalf of temples at a cost of Rs.53.50 Crores to benefit devotees
33	Masterplan for popular temples at a cost of Rs. 200.00 Crores
42	A commercial complex shall be built at cost of Rs. 100.00 Crores at the land situate at Poonamallee High Road, Chennai and belonging to Sri Ekambareswarar Temple, Kanchipuram which was retrieved from encroachment

53. I respectfully submit that there are many proposals concerning individual Hindu Temples and many Temples clubbed together, which the 2nd Respondent herein vide the impugned proceedings have assigned to various officials in the HR & CE Department. It is reiterated that even the true Trustees of Hindu Temples cannot carry out these proposals in violation of Section 36 read with Section 66(1) of the 1959 Act. While so, the Respondents herein have no authority under law to carry out the proposals announced in the Tamil Nadu Legislative Assembly during the Budget Session in September 2021.

The Commissioner is only an Approving Authority and he cannot initiate Projects

54. I respectfully submit that it is reiterated that under Rule 14 of the "Functioning of Board of Trustees Rules" all matters relating to the administration of the religious institution shall be decided by the Board of Trustees. Some of the decisions may require the approval of a competent authority like the Government, Commissioner or Joint Commissioner depending on the nature of decision and the sums involved.

55. I respectfully submit that it is again reiterated that as per Rule 11 of the "Collection of Income and Incurring of Expenditure Rules" no expenditure shall be incurred without the written order of the Trustee. Thus, it can be seen that the power to decide any project or initiative for the temples or endowments are vested only with the true Trustees of such temples or endowments under the TN HR & CE Act, 1959 and not with the Respondents herein.

56. I respectfully submit that the Hon'ble Supreme Court of India in *Govinda Menon vs. Union of India* (1967) 2 SCR 566) had an occasion to discuss the powers (if any) of the 2nd Respondent Commissioner to initiate proposals in light of Sections 20 and 29 of the Madras Hindu Religious and Charitable Endowments Act, 1951. The equivalent Sections of the above Sections in the TN HR & CE Act, 1959 are Sections 23 and 34 of the said 1959 Act.

57. I respectfully submit that Hon'ble Supreme Court of India in the said order in *Govinda Menon vs. Union of India* held (inter-alia) as follows:

".....The question for consideration is whether the commissioner could initiate a proposal for lease in favour of a specified individual with all the terms and conditions. It is not disputed by the appellant that the trustee is the proper person to initiate a proposal for lease of the trust properties, but it is argued that under Section 20 of the Act the commissioner can make specific proposals for leases and that he can himself sanction them under Section 29.

...

In our opinion, the language of this section does not suggest that the commissioner himself is vested with the power to make specific proposals for leases of trust properties. Under Section 29 of the Act the commissioner is given a specific power to accord sanction for any alienation and for leases for a term exceeding 5 years. That section implies that the proposals or leases

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must originate from the trustees and not from the commissioner himself and that the only function of the commissioner is to accord sanction to such proposals. If the language of Section 20 is understood as suggesting that the commissioner has power to initiate proposals it would mean that the commissioner himself may sit in judgment over the proposals initiated by him. It cannot be supposed that the legislature contemplated such a consequence. In this context it is necessary to remember that under the general law the trustee is the person competent to make alienation or grant lease of Devaswom properties.

58. I respectfully submit that under the TN HR & CE Act, 1959 the administration of Hindu Temples and Endowments is vested only with the Trustees of such Temples and Endowments. Only the Trustees can initiate and decide both the religious and secular decisions regarding the administration of such temples and endowments
59. I humbly submit that in May 2021, the 2nd Respondent issued a communication to all his subordinate officers in the HR & CE Department vide Proceedings in Proc. R.C. No. 42786/2021/H1 dated 21.05.2021. In the said proceedings which reads more as an advisory and direction to his subordinate officers in the HR & CE Department the 2nd Respondent herein clearly brings out how the administration of religious institutions vests only with the Trustees of such temples. The said proceedings also elucidate as to how Trustees are persons to submit the budgets of the religious institutions and to whom the Audit Reports should be submitted. In paragraph 11 of the said proceedings the 2nd Respondent herein, i.e. the Commissioner has unambiguously stated that the Trustees are answerable, accountable regarding administration of Temples. The said paragraph 11 from the above-cited communication is reproduced hereunder:

“11. Trustees are holding the public office in the religious institutions and they are the decisions makers in the affairs of the Religious Institution in accordance with the established custom and usage of the Religious Institutions concerned and the provision of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Trustees are answerable, accountable for the General public in the matter of administration of affairs, funds and properties of the temple. But a common man/devotee shall not be pushed from pillar to post to know even the basic information about any religious institutions. All the information related to the religious institution shall be made easily available to a common man/devotee, which will ensure more transparency in the administration of the religious institution.”

60. I respectfully submit that without prejudice to the above submissions, it is also necessary to state that the Hindi version of the Constitution adopted by Parliament in the year 1986 by Article 394-A of the Constitution uses the term Dharmic Sampradaya, which provides an objective understanding of the term “religious denomination” found in Article 26 of the Constitution. I respectfully submit that in this context, every temple is a denominational temple and is therefore protected under Article 26 of the constitution.

Melting of Gold Ornaments

61. I respectfully submit that among the various announcements the announcement which has already been put into action is the one relating to melting of gold available with the temples. It is submitted that the melting of gold is one of the aspects dealt with under the Religious Institutions custody of jewels, valuables and documents and disposal Rules issued by the 1st respondent on 23.02.1961 and amended subsequently. Rule 11 to 13 are extracted as follows:

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"11. Trustee shall not repair, alter, etc., any jewel or valuable - A trustee shall not repair, alter, replace, sell, gift away, pledge or destroy any jewels, vahanams, or other valuables in the temple, without the prior permission of the Commissioner.

12. The Commissioner to issue instructions for the preservation of articles. - The Commissioner shall issue such instructions to the trustee as may be necessary for the preservation or otherwise of the articles mentioned in the previous rule and the trustee shall be bound to carry out such instructions.

13. Trustee shall not melt any jewel or valuable. - A trustee shall not, without obtaining the previous sanction of the competent authority, melt, any jewels or valuables in the temple including kanikkai articles in gold and silver and the competent authority may issue such instructions as may be necessary for the melting and the trustee shall be bound to carry them out."

62. I respectfully submit that the responsibility of managing the jewels in accordance with the customs and the rules laid down is that of the trustee and the rules clearly contemplate that the altering or melting is only an exception and not the norm. If at all a melting has to be done then a proposal has to be sent to the Commissioner by the Trustee and sanction has to be accorded. It is submitted that no one else has the right to recommend melting or pre-decide the issue. As already submitted above the Commissioner who is the sanctioning authority cannot be a person who oversees or initiates proposals and the same would amount to putting the cart before the horse and a fraud on due process. As much as the Government has no power to recommend such proposals, this being the case, the 1st respondent has passed a Government Order dated 09.09.2021 appointing committees headed by retired Judges. The Government

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has in the aforesaid G.O. has directed the Committees to consolidate the jewelry not required for the religious institutions and after removing the precious stones and after the permission of the Commissioner to take it to the Central Government's Gold mints and after converting it to 24 carat gold bars to hand it over to the concerned temples to be deposited in nationalised banks for interest. It is submitted that on the face of it there may be benefits of a religious institution doing so, on a deeper examination, it becomes apparent that the temple or the trustee ceases to have any say in the matter of the management of the temple property and the Government is directly handling the property of the temple while it is only to regulate the administration.

63. I respectfully submit that the Government directly handling the property of the temple in the case the jewelry is in clear contravention of the Constitution as well as the 1959 Act. It cannot be forgotten that allowing the Government to directly participate and interfere with the properties of religious institutions permits politicisation of Religious Institutions, utilisation of funds of religious institutions to further state projects and gives a firm foothold to the state in the temples giving scope for further incursions.

64. I respectfully submit as submitted above in the case of appointment of trustees, fit persons, executive officers etc. it has been the habit of the Government that the Government through its servants continue to administer the religious institutions and there has been no case where the temple has been returned to the trustees of religious institutions for administration. Further a uniform policy of melting without specific mention to the needs of religious institutions, its practices etc. is clearly contrary to the rights of the deity. Further in absence of

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appointment of independent devotees as trustees or the presence of hereditary trustees, there is no person to represent the interests of the religious institutions, against the state. In the circumstances the melting of gold in the absence of trustees of a given religious institution is a clear subversion of law and fairness and the actions of the respondents 1 and 2 in the issuance of the Government order as well as the subsequent issue of instruction in Circular dated 22.09.2021 is in clear contravention of the provisions of the 1959 Act and the constitution.

65. I respectfully submit that as most of the religious institutions do not have their trustees appointed, and in cases where trustees are present in most of the temples the property is being administered by Executive Officer, apart from being in the mercy of the state, there is no fair opportunity to voice their causes and that of the devotees. In the circumstances it is necessary that a public interest litigation is preferred by organisations such as the first petitioner and activist such as myself. Further by the actions of the state all the Hindu Devotees are aggrieved as a community and hence the Public Interest Litigation is maintainable.

66. In the circumstances, having no other alternative or efficacious remedy, the present writ petitions are filed.

COMMON GROUNDS

A. The Impugned Orders and the actions of the respondents are without jurisdiction, contrary to the provisions of the Constitution as well as the HR&CE Act, 1959 and the Rules made thereunder.

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- B. Part III of the Constitution preserves the right to religion and to administer the religious institutions in Articles 25, 26 and 29(1) and it cannot be abrogated and vested in the State from the Citizen devotees.
 - C. Article 25(2) of the Constitution permits only regulation of the secular activities associated with religious practice and does not envisage the Government running religious institutions through its officials even in case of economic and secular aspects of it.
 - D. The provisions of the Hindu Religious and Charitable Endowments Act, 1959 and the Rules made thereunder clearly demarcate the roles of the Government, Commissioner, Trustees etc. and being a field occupied by a legislation, the State cannot exercise its executive power in contravention of, or beyond the legislation.
 - E. Hindu Religious Institutions are independent entities of their own with the deity of such institutions vested with rights. The State (1st Respondent Government) has no jurisdiction, much less being conferred under the Act to make decisions for any individual Religious Institutions or collectively, and as per the 1959 Act the same shall vest with the trustees to be exercised in accordance with law and the customs of the Religious Institution.
 - F. The 2nd respondent commissioner is a corporation sole and is a creation of the statute and he ought to exercise powers purely in the manner prescribed in the 1959 Act. The Commissioner is liable to obtain sanction of the State Government only if so provided under the Act. He does not occupy the office to

implement decisions of the Government in derogation of the scheme of the Act and the powers and rights of Trustees of Hindu Religious Institutions.

- G. Keeping with the principle of the separation of Religion and State, the Government cannot interfere in matters of religion nor can it be considered to be conferred with any decision making power in regard to religious institutions. Only sanctioning power in regard to administrative affairs and power to appoint officers or trustees has been conferred upon the 1st respondent by the 1959 Act.
- H. The TN HR & CE Act, 1959 a regulating Act can only regulate the secular aspects of the administration of a Hindu Religious Institution. It does not bestow any authority on the Respondents to interfere with the Rights of the Trustees of the Temples to administer their religious institutions.
- I. When the intention of the regulating law is to leave the administration in the hands of the Trustees, vesting the administration in the hands of the Government instrumentalities and taking decisions is a fraud on the provisions of the Act and the Constitution.
- J. Regulation does not mean destruction or annihilation of the right. It is a question of degree to which in each case the impugned proceedings merely regulates or substantially takes away the right leaving to the Trustees of the temple, a mere vestige of the right. It need not be a total deprivation of the right. It would be enough if there was a substantial deprivation of the right to administer the property. The impugned proceedings completely take away the administration from the True Trustees and it is therefore liable to be struck down.

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- K. The Government while making these 112 announcements did not specify under which provision of the TN HR & CE Act, 1959 these decisions were made and announced. More so, the Commissioner being a creation of a statute cannot like any other Government servant mechanically seek to implement the announcements of the State Government when neither the 2nd Respondent Commissioner nor the 1st Respondent State Government had jurisdiction to do so in the first place.
- L. As per Rule 14 of the "Functioning of the Board of Trustees Rules" only the Board of Trustees can decide all matters relating to the administration of the Religious Institution. While so, the Government or the Commissioner cannot decide any aspect of the administration in violation of this specific provision.
- M. Under Collection of Income and the Incurring of Expenditure Rules there shall be no Expenditure without budget sanction. Under Section 86 of the 1959 Act it is the Trustee who shall prepare the annual budget. While so, the Government or Commissioner cannot announce projects that are not budgeted by the Trustees.
- N. Even the Trustees cannot prepare budgets with expenses that are not per terms of the trust and the usage of the religious institution as per Section 28 of the 1959 Act. Any direction in this regard by Secular Authorities including the 2nd Respondent if made in violation of the terms of the trust and the usage of the religious institution would become an unlawful direction.
- O. The 2nd Respondent Commissioner and the 1st Respondent - Secretary to Government are approving authorities under certain provisions and Rules of the

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1959 Act. They cannot be the initiators of the actions and projects of the temple administration and that are only in the realm of the Trustees of such temples. The Hon'ble Supreme Court of India in *Govinda Menon vs. Union of India* held that it is the Trustee who can initiate proposals and the Commissioner who is the approving authority for such proposals cannot himself initiate such proposals.

- P. The projects announced have serious financial impact for many of the temples concerned. In 3 temples decisions involving sums of more than Rs.50 Crores have been announced for each of them. These decisions cannot be decided by the Government for the temples concerned.
- Q. Ten Arts and Science colleges have been announced to be started using temple lands and funds. The starting of a college on behalf of a Hindu Temple and the curriculum of each of them can be only decided by the Trustees of such temples. Any inroads in these rights are violative of fundamental rights guaranteed to each Sect or Denomination under Article 26 of the Constitution.
- R. Projects have been mooted to melt the jewels received in temples in the past ten years which are not "required" and make them into gold bars and deposit them with banks to earn interest. Rule 13 of the *Religious Institutions Custody of Jewels, Valuables and Documents and Disposal Rules* framed under the 1959 Act says that the "Trustee shall not melt any jewel or valuable without approval of competent authority. The authority, viz, the 2nd Respondent himself cannot initiate melting of jewels.

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- S. Rule 12 of the *Religious Institutions Custody of Jewels, Valuables and Documents and Disposal Rules* makes it abundantly clear that the 2nd Respondent Commissioner can give instructions to the Trustee regarding preservation of jewels and valuables. He cannot direct the melting of such jewels suo Motu or on instructions of the Government.
- T. Having not conducted an External Audit as required under the statute for decades, the present scheme of Melting of Gold, is an unhealthy step, and will be in contravention of law as well as Orders of this Hon'ble Court in W.P. No. 574/2015.
- U. The Utilisation of Surplus funds must be done in accordance with Section 36 and 66 of the 1959 Act and the rules framed in connection with the same. The Provisions stipulate a regime of Publication of Notice, Invitation of objections and suggestions from persons interested, Conducting a hearing and sanction of proposals by reasoned consideration of such objections, apart from prescribing clearly to what purpose the funds can be employed apart from accounting rigours.
- V. For nearly 20000 Temples having non-hereditary Trustees, no Trustees have been appointed for the past 11 years. Servants of the HR & CE Department are illegally functioning as "Fit Persons" of such Hindu Temples. This Hon'ble Court has held that these "Fit Persons" cannot take policy decisions or decisions involving major financial impact.
- W. The Respondents have deliberately abstained from their mandatory duties of appointing Trustees under Section 47 of the 1959 Act for 11 years. Using the

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vacuum in the Temples they have appointed servants of the HR&CE Department as "Fit Persons" or sole trustees and they are carrying out their nefarious plans that are not sanctioned by law.

- X. The Constitutional Bench of the Hon'ble Supreme Court of India has held in Ratilal Panachand Gandhi Case that a Secular Authority cannot be appointed as the sole trustee of a Hindu Temple. Thus, all positions of Fit Persons who are servants of the HR & CE Department are non-est in the eyes of law and they cannot take decisions involving major financial impact.
- Y. Government Orders Nos. 223 and 264 dated 10.06.2011 and 11.07.2011 issued by the 1st Respondent, respectively prohibit "Fit Persons" from undertaking any activity in the temple other than payment of salaries, pooja and festival expenses and Annadhanam expenses. Therefore, such Fit Persons cannot carry out major projects, melt gold or construct malls using temple funds.
- Z. Every appointment of a Fit Person must disclose the period of operation of such appointment. Any order in which such period is not disclosed is ex-facie arbitrary, illegal and unjust and thus are not legally sustainable. None of the orders appointing HR & CE servants as Fit Persons mention a period of operation and all such appointments are illegal.
- AA. The Impugned G.O. and Circulars of the 1st respondent and 2nd respondent respectively in regard to melting of gold does not leave any discretion to the Trustees and pre-decides the outcome. The Government cannot enforce any decision upon the Trustees in matters of administration of religious institutions.

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BB. The 2nd Respondent Commissioner is to act in accordance with the provisions of the Act and the Rules made thereunder and cannot seek instructions from the Government in matters where Government is not empowered to decide. The 2nd respondent can issue directions only in accordance with the Statute and the Rules and cannot seek to implement Government decisions.

CC. The gold ornaments are matters of sentiments of the devotees who have donated the same. Such move cannot be taken without public consultation as to the sentiments of the Devotees, even assuming the state wants to have a policy with regard to the same and in such case, such policy can only implemented by way of framing of rules and amending the existing rules and cannot be done by way of executive directions.

DD. Considering the Hindi version of the Constitution which came into force from 1987, every Sampradaya is entitled to protection under Article 26 of the Constitution. The Temples in Tamil Nadu belong to Dharmic Sampradayas and the action of the Respondents in arbitrarily announcing and carrying out various projects makes a serious inroad into the fundamental rights of such Sampradayas.

67. I respectfully submit that owing to the limited availability of documents available at this stage, the petitioners seek to reserve their right to file further documents and raise appropriate grounds if necessary and seek the permission of the Court for the same.

68. I respectfully submit that the petitioners have not filed any other writ petition challenging the impugned orders herein and the details of the writ petitions filed

by the writ petitioners having similar legal issues are stated above. The petitioners have not received any notice of caveat and we are advised to state that the same is not applicable for a public interest litigation.

69. I respectfully submit, the matter relates to the rights of the devotees and administration of temples in the State of Tamil Nadu and in respect of the decisions taken by the respondents having office in the city of Chennai. In the circumstances it is submitted that this Hon'ble Court has territorial jurisdiction to hear this matter as the cause of action also has entirely arisen within the State.

70. I respectfully submit that the petition is filed from the various details collected under the RTI Act over the last decade by me, personal research in the archives of the state, newspaper reports on the recent steps taken by the Respondents, and the impugned orders themselves. In respect of allegations made in the affidavit in regard to misuse of temple funds, the documents in connection with the same are the records of this Hon'ble Court in W.P. Nos. 9869, 9872 and 9878 of 2020, a copy of the affidavit filed along with the counter affidavit filed by the respondents therein is enclosed in the typed set of papers. Bonafide translations of the documents in Tamil, especially the impugned orders are enclosed along with their copies in Tamil having the original text.

71. I respectfully submit that as both the petitioners are commonly espousing the cause, it is prayed that they may be permitted to file a single writ petition together for each prayer sought. It is submitted that the petitioners have paid separate court fee along with the writ petitions.

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72. In the circumstances it is prayed that this Hon'ble Court may be pleased to permit the petitioners to file a single writ petition and thus render justice.

73. I respectfully submit that as we do not have the originals of the impugned orders and have only copies of the same, it is just and necessary that the production of the Original Impugned Orders are dispensed with.

74. In the circumstances it is prayed that this Hon'ble Court may be pleased to dispense with the production of the original of G.O. (Ms.) No. 101, Tourism, Culture and Charitable Endowments (CE 1-2) Department, dated 09.09.2021 issued by the 1st Respondent and thus render justice.

75. In the circumstances it is prayed that this Hon'ble Court may be pleased to dispense with the production of the original of Proc. R.C. 58398/2020-1/B1, dated 09.09.2021, issued by the 2nd Respondent herein and thus render justice.

76. In the circumstances it is prayed that this Hon'ble Court may be pleased to dispense with the production of the original of R.C. No: 25132/2016/I-2/ Dated 22.09.2021 issued by the 1st Respondent herein and thus render justice.

77. I respectfully submit that I believe that the petitioners have a fair chance of success in this Public Interest Litigation and in the circumstances, if the respondents proceed to implement the proposal, serious prejudice will be cause, especially in the matter of melting gold ornaments. It is just and necessary that an order of interim stay is granted pending the disposal of the writ petition.

78. In the circumstances it is prayed that this Hon'ble Court may be pleased to issue an order of interim stay on the operation of G.O. (Ms.) No. 101, Tourism, Culture

and Charitable Endowments (CE 1-2) Department, dated 09.09.2021 by the 1st Respondent, pending disposal of the petitions and thus render justice.

79. In the circumstances it is prayed that this Hon'ble Court may be pleased to issue an order of interim stay on the operation of Proc. R.C. 58398/2020-1/B1, dated 09.09.2021, issued by the Commissioner, HR & CE Department, the 2nd Respondent herein, pending disposal of the petitions and thus render justice.

80. In the circumstances it is prayed that this Hon'ble Court may be pleased to issue an order of interim stay on the operation of R.C. No: 25132/2016/I-2/ dated 22.09.2021 issued by the 1st Respondent, pending disposal of the petitions and thus render justice.

81. In the circumstances it is prayed that this Hon'ble Court may be pleased to issue a Writ of Certiorari or any other appropriate writ order or directions calling for the records relating to Proc. R.C. 58398/2020-1/B1, dated 09.09.2021, issued by the Commissioner, HR & CE Department, the 2nd Respondent herein and to quash the same and pass any such further or other orders that this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and thus render justice.

82. In the circumstances it is prayed that this Hon'ble Court may be pleased to issue a Writ of Certiorarified Mandamus or any other appropriate writ order or directions, calling for the records relating to G.O. (Ms.) No. 101, Tourism, Culture and Charitable Endowments (CE 1-2) Department, dated 09.09.2021 issued by the 1st Respondent, quash the same and consequently forbear the respondents from carrying out any melting of gold items that are held by Temples

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under the Control of the Respondents herein and pass any such further or other orders that this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and thus render justice.

83. In the circumstances it is prayed that this Hon'ble Court may be pleased to issue a Writ of Certiorarified Mandamus or any other appropriate writ order or directions calling for the records relating to Circular R.C. No: 25132/2016/1-2/ dated 22.09.2021 issued by the 1st Respondent, quash the same and consequently forbear the respondents from carrying out any melting of gold items that are held by Temples under the Control of the Respondents herein and pass any such further or other orders that this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and thus render justice.

The contents of this affidavit have been truly and audibly read over to the deponent in English who appeared perfectly have understood the same and signed his name in my presence

BEFORE ME,

Advocate, Chennai.