

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

W.P. No. of 2022

T.R. Ramesh,
aged about 59 years,
S/o. Dr. T.N. Ramachandran
Flat 3B, Nataraj Apartments,
17, D'Silva Road,
Mylapore, Chennai - 600004

...Petitioner

Vs

1. The State of Tamil Nadu
Represented by its Secretary,
Tourism, Culture and Religious
Endowments Department,
Secretariat, Fort St. George,
Chennai – 600 009.

2. The Commissioner,
Hindu Religious and Charitable Endowments
Department, Nungambakkam High Road,
Chennai – 600 034.

...Respondents.

AFFIDAVIT FILED BY THE PETITIONER

I, T.R. Ramesh, son of Dr. T.N. Ramachandran, Hindu, aged about 59 years, residing at Flat 3B, Nataraj Apartments, 17, D'Silva Road, Mylapore, Chennai – 600 004, do hereby solemnly affirm and sincerely state as follows:

1. I am the petitioner herein and as such am well acquainted with the facts and circumstances of the case, and am competent to swear to this Affidavit.

2. I respectfully submit that this writ petition has been filed praying for a writ of certiorari calling for the records relating to G.O. (Ms.) No. 13, Tourism, Culture and Religious Endowments (R.E. 5-1) Department, dated 12.01.2022 issued by the 1st Respondent Department. (the “impugned order”) and to consequently quash the same.
3. I respectfully submit that the instant writ petition has been filed as a Public Interest Litigation and the same has been filed using my own funds. I submit that I have no personal interest in the case. I undertake to pay the costs imposed by the Hon’ble Court in the event this writ petition is found to be frivolous or vexatious. I also state that to the best of my knowledge, no other PIL has been filed praying for similar relief(s) before any Court or legal forum, and further, to the best of my knowledge, there are no similar Petitions pending before this Hon’ble Court.
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 postgraduate in Commerce and was formerly in the management of a multi-national bank.
5. I respectfully submit that I am the President of two organisations, namely, the Indic Collective Trust and the Temple Worshippers Society. I state that the said organisations 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; and (c) carrying out research and filing of Writ Petitions including Public Interest Litigations for the cause of protecting and maintaining Hindu temples of yore, amongst other public causes concerning Indic Civilization values.

6. I respectfully submit that I have filed a number of writ petitions, including PILs before this Hon'ble Court in my individual capacity and also as the President of the Indic Collective Trust and the Temple Worshippers Society, all relating to issues of heritage, culture and / or proper administration of Temples. For the sake of brevity and convenience of this Hon'ble Court, the details of the said Writ Petitions have been enumerated hereunder:

- a. **W.P. No. 14256 of 2020:** Filed as President of Indic Collective Trust 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. This Hon'ble Court was pleased to grant an order of stay of such transfer of funds in the aforesaid Petitions.
- d. **W.P. No. 32698 of 2019:** Challenging, G.O. No.318 of 2019, pertaining to the take-over of lands belonging to Hindu Temples and Endowments and handing them over 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. This Hon'ble Court was pleased to dismiss the said petition. These Rules are now subject to challenge before Hon'ble Supreme Court of India by Indic Collective Trust in Writ Petition 1432 of 2019 along with other provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.
- f. **W.P. No. 17468 of 2016:** Challenging the Preservation and Maintenance of Religious Institution Rules. This Hon'ble Court was pleased to dismiss the Writ Petition with suggestions / directions to the Tamil Nadu Government to amend the said Rules keeping with the times.

- g. **W.P. Nos. 25429 to 25433 of 2015:** Challenging the presence of Executive Officers in five temples. The said Petitioners were disposed of by this Hon'ble Court vide an order dated 08.08.2016 as Rules were framed albeit with retrospective effect. The Hon'ble Supreme Court was pleased to observe in the Special Leave Petition filed against the said common order that -

“...it appears to us that the High Court has not considered it on merits, whether the Rules are retrospective or not, as there is no consideration on merits of the submissions in the impugned order...” [emphasis supplied]

The Hon'ble Supreme Court was pleased to permit this Petitioner to file review petitions before the Hon'ble Division Bench of Madras High Court. The said review petitions are pending before this Hon'ble Court.

- 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 Department as “Fit Persons” (Super Trustees) of Hindu Temples. The said Writ Petitions are pending adjudication before this Hon'ble Court.
- i. **W.P. No. 21906 of 2021:** As President of the Temple Worshippers Society, challenging the vires of the T.N. Hindu Religious and Charitable Endowments Employees (Conditions of Service) Rule 2020. The Hon'ble First Bench of this Hon'ble Court was pleased to order notice and pass an interim order dated 20.10.2021 in the said matter.

- j. I have also filed a PIL - **W.P. 23070 of 2021** challenging the Foreign Service Deployment of members of the HR&CE Department in various temples, which is in clear violation of the HR&CE Act, 1959 and this Hon'ble Court was pleased to dismiss the said Writ Petition on 21.02.2022. While dismissing the said Petition, this Hon'ble Court was pleased to record in the said order that Government Servants placed on foreign service would revert to their parent departments or the departments concerned would pass appropriate orders for them, but, in any case, they will not be continued in the same manner indefinitely.
- k. **W.P. Nos. 22916, 22921 and 22926 of 2021**: filed as President of the Indic Collective Trust and also as the 2nd petitioner, I have filed a PIL challenging the announcements made concerning Hindu Temple, their funds and properties by the Hon'ble Minister of Hindu Religious and Charitable Endowments Department in the Legislative Assembly including melting of gold in Temples by the Respondents herein, as being devoid of any legal authority and in violation of fundamental rights guaranteed under Articles 25, 26 and 29(1) of the Constitution of India. The Hon'ble Court was pleased to stay the melting of Temple Gold and has further granted liberty to this Petitioner to approach this Hon'ble Court if there arises any exigencies by its interim order dated 28.10.2021.

1. **W.P. Nos. 24156 of 2021:** in my individual capacity challenging the opening of colleges using the funds of Religious Institutions without following the provisions of the Hindu Religious and Charitable Endowments Act, 1959. This Hon'ble Court was pleased to issue an order of interim stay forbearing the Respondents herein from opening 6 Colleges using temple funds by its order dated 15.11.2021.

 - m. **W.P. No. 3371 of 2022:** in my capacity as the President of the Indic Collective Trust had filed a PIL praying for a writ of mandamus directing the respondents to recall the executive officers appointed under Section 45 of the TN HR&CE Act, 1959 in about 18 temples where appointments were made between the year 1966 and 2008, as the said Executive Officers were functioning beyond a period of five years. This Hon'ble Court had dismissed the said writ petition on the ground that it was hit by laches and was filed by a delay of 10-12 years.

 - n. I have also filed a fresh PIL challenging the continuance of Executive Officers in certain Temples where no order of appointment has been found.
7. I respectfully submit, I am advised to state that the matters relating to administration of temples are covered under the provisions of the Constitution under Part III and regulated by the State legislation of the Tamil Nadu Hindu Religious and Charitable Endowments Act 1959 and the rules made thereunder. The aforesaid Act functions under the scheme of limited role of

Government, superintendence of the Commissioner, a creature of the Act, and administration by Trustees who are hereditary or otherwise, but in all cases private persons. The ineligibility of the Secular State in temple administration is a well settled position of law, as laid down by the Hon'ble Supreme Court while interpreting the scope of Art 25 and 26 in several Judgments. Another breach of such Constitutional propriety by the respondents, is the subject matter of the present writ petition.

8. I respectfully submit that during the Budget Session of the Tamil Nadu Assembly in 2021-2022, the Hon'ble Minister for the HR&CE Department had made a slew of announcements regarding the HR&CE Department. The said announcements made by the Hon'ble Minister were condensed into writing in Demand Note No. 47 for 2021-2022, and contains 112 announcements. Of all the announcements therein, Announcement Nos. 11, 18, 20, 21, 23, 24, 95 and 108 alone pertain to the HR & CE Department. The rest pertain to individual Hindu temples or group Hindu temples.
9. I respectfully submit that following the said announcements, the 2nd Respondent Commissioner herein had issued Proceedings in R.C. No. 58398/2020-1/B1 dated 09.09.2021 to the officers and superintendents of the Department, assigning responsibilities in pursuance of the announcements made in the Tamil Nadu Assembly. The said order has been challenged as part of a batch of writ petitions filed by me in my capacity as the President of the Indic Collective Trust in W.P. No. 22916, 22921 and 22926 of 2021 and the same is pending before this Hon'ble Court. The said batch writ petitions also

challenged the melting of gold of various temples, which scheme was also announced as part of the Assembly Announcements. The Hon'ble Division Bench of this Hon'ble Court vide its order dated 28.10.2021, was pleased to issue an order restraining the melting of gold pending disposal of the said batch writ petitions.

10. I respectfully submit that though the Hon'ble Madras High Court had given me liberty to approach the Hon'ble Court in case of any exigency in that case itself, however, since the impugned order herein had multiple factual circumstances and suffered from other serious infirmities, the same has been challenged separately by way of this writ petition.

11. I respectfully submit that thereafter in pursuance of the afore-said Budget Announcements referred to *supra*, the 1st Respondent herein issued the impugned order, namely G.O. (Ms.) No. 13, Tourism, Culture and Religious Endowments (R.E. 5-1) Department, dated 12.01.2022 pursuant to announcement no. 30 in the Demand Note No. 47. The said announcement is extracted as follows:

“30. In Chennai, Pazhani and Tirunelveli, senior citizens homes with all amenities will be commenced at an expenditure of Rs 5 Crores.”

12. I respectfully submit that the impugned order purports to give sanction for the construction of Senior Citizen's homes on Temple property of three temples namely:

- a. Sri Dhandayuthapani Swamy Temple, Palani at a cost of Rs. 15,20,00,000/- (Rupees fifteen crores twenty lakhs only), utilising the funds of the Temple;
- b. Sri Kanitmati Sameta Sri Nellaiappar Temple, Tirunelveli at a cost of Rs. 13,50,00,000/- (Rupees thirteen crores fifty lakhs only), utilising “Commissioner’s” Common Good Fund and Donor Funds and
- c. Sri Devi Balamman and Sri Ilangiamman Temple, Villivakkam, Chennai at a cost of Rs. 16,30,00,000/- (Rupees sixteen crores thirty lakhs only), utilising “Commissioner’s” Common Good Fund and Donor Funds.

13. I respectfully submit that it is germane that the Executive Officer of Sri Devi Balamman Temple has acted upon the impugned order and issued a Tender notification bearing Reference No. TR and CE Order No. 13 dated 12.01.2022 for a value of Rs. 11,10,65,000/- (Rupees eleven crores ten lakhs and sixty five thousand only) calling for tenders for construction of a Senior citizens home on the land belonging to the said Temple. The Tender, as per the notification on the website, was opened on 28.04.2022.

14. I respectfully submit that the Tender Notification is issued pursuant to the impugned order and if the impugned order is quashed, the tender shall have no legs to stand on. However, I reserve my right to challenge the tender if required to do so.

15. I respectfully submit that with regard to Sri Balamman Temple, I had filed an RTI Application dated 25.03.2022 requesting for information pertaining to the appointment of Executive Officers in the Temple as well as a list of immovable properties, collections and other information pertaining to the said Temple. However, until date I have not received any reply to my application.

16. I am advised to state that the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter the "1959 Act"), contemplates only the Trustees to take decisions pertaining to administration of Religious Institutions and their properties. I respectfully submit that however, none of the above Temples have a Board of Trustees constituted in accordance with the provisions of the 1959 Act and have been functioning for many years with only Government Fit Persons and Executive Officers who have been illegally holding the said posts.

17. I am advised to state that the Hon'ble Supreme Court and this Hon'ble Court have held in a catena of decisions that Fit Persons, who are interim appointees, cannot take major decisions with regard to the Temples, and in the absence of any validly constituted Board of Trustees, no major policy decisions can be taken. The Hon'ble Supreme Court in the case of *Ratilal Panachand Gandhi* reported in **AIR 1954 SC 388** has held that Government Servants cannot be appointed as the Sole Trustees of Temples and Mutts; a Fit Person is the sole trustee of a temple or endowment.

18. I respectfully submit that in the above background, no decisions can be taken with regard to Temples that do not have a Board of Trustees, but are instead continuing only with the presence of Government Fit Persons.

19. I respectfully submit that in fact, with regard to the Sri Dhandayuthapani Swamy Temple, Palani, the Hon'ble Madurai Bench of the Madras High Court in Cont. P. (MD). 677 of 2022 in W.P. (MD) 10903 of 2020 vide its order dated 27.02.2022 had stated that no major policy decision could be taken without the appointment of a Board of Trustees. Undoubtedly, utilising Rs. 15,20,00,000/- (Rupees fifteen crores twenty lakhs only) from the funds of the Temple would amount to a major policy decision, and therefore ought to be halted.

20. At this juncture, it is pertinent to state that the Respondent Department had issued G.O. Ms. No. 223 Tamil Development, Religious Endowments and Information (R.E.3.1) Department dated 10.06.2011. The said GO 223 restricts the Government Fit Person to carry out only pooja and festival expenses, Annadhanam and salary expenses. Therefore, such decisions which can potentially have large implications in the overall administration and functioning of said Temples, cannot be taken by a Fit Person of the said Temples. Furthermore, it is pertinent to note that the said G.O. No. 223 has been issued with regard to Sri Nellaiappar and Sri Kantimati Temple, Tirunelveli

21. I respectfully submit that in this background, the impugned order seeks to take major decisions pertaining to the construction of Senior Citizen Homes upon lands belonging to the said Temples.

22. I respectfully submit that the impugned order is liable to be quashed since major decisions pertaining to the Temples and their properties are purported to be taken in the absence of a Board of Trustees, and instead by illegally present appointed Fit Persons who are Government Servants in the HR&CE Department, and who act at the behest of the Respondents herein. I state that this is completely contrary to settled law and is *prima facie* illegal.

23. I respectfully submit that apart from the above illegality, it is important to note that with regard to the Sri Devi Balamman and Sri Ilangalamman Temple, Villivakkam and Sri Kanitmati Sameta Sri Nellaiappar Temple, Tirunelveli, the impugned order seeks to construct senior citizen's homes on lands of the said Temples utilising supposed surplus funds voluntarily given to the "Commissioner's" common good fund under Section 97 of the 1959 Act.

24. I respectfully submit that Section 36, 36-A and 36-B of the 1959 Act, specifically deals with the utilisation of Surplus Funds. The provision reads as follows:

"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 subsection

(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 subsection (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.”

25. I am advised to state that afore-said provisions for utilisation of surplus funds and also the Utilisation of surplus funds Rules contemplate that a proposal be made by a Trustee; a public notice of such proposal be caused inviting suggestions and objections from persons interested, within a period of 30 days; and thereafter the Commissioner may approve such utilisation of surplus funds for purposes set out in the provisions. The said provisions make it clear that a proposal for utilisation of such funds ought to be made only by a Trustee and moreover, the proposal is to be considered only in the manner prescribed therein.

26. I state that in the instant case, a pre-determined expense has been seemingly approved by the 2nd Respondent Commissioner and more so, without any public notice. The said action of the Respondent Department is in clear contravention of the provisions of the 1959 Act and the Rules framed thereunder, and therefore void in the eyes of law.

27. I am advised to state that the utilisation of surplus funds can only be for the purposes specified in Section 66(1) of the 1959 Act. The construction of senior citizen's home(s) does not find any mention under the said provision which lists the purposes in Section 66(1) (a) to (g) for which surplus funds of a temple can be utilised.

28. It is also pertinent to note that originally the Announcement No. 30 in Demand Note No. 47, mentioned projects worth Rupees five crores only. However, the impugned order, while citing the said announcement, proposes more than Rupees forty three crores. This is sufficient to show that the entire announcement and proposal is nothing more than an arbitrary exercise carried out by the Respondent Department, without any application of mind.

29. I respectfully submit that an Hon'ble Division Bench of this Hon'ble Court had issued a detailed order in the Suo Motu Writ Petition W.P. No. 574 of 2015 for the proper administration of Hindu Temples under the 1959 Act including the proper collection of the due income, utilisation thereof and conservation and preservation of the ancient structures and heritage aspects of

the temple. The Hon'ble Division Bench was pleased to give 75 specific directions to the Respondents herein and the stakeholders.

30. I respectfully submit that in the said Judgment in WP No. 574 of 2015 direction No. 24 is as follows:

“TEMPLE FUNDS

(24) The funds of the temples shall first be utilized for the maintenance of temples, conducting temple festivals, payment to its staff including the archakas, oduvars, musicians, folklore and drama artiste. In case of surplus funds, the same shall be utilized for attending the repair and maintenance of other temples in the state as specified under the HR&CE Act and the Rules framed there under and for propaganda of the tenets of all or any of the religious institutions under the HR&CE Act.” (Emphasis supplied).

31. I respectfully submit that as per the aforesaid direction of the Hon'ble Division Bench cited supra, surplus funds cannot be utilised for other purposes including the construction senior citizens residences mooted by the Respondents and sought to be given “administrative approval” through the impugned G.O.

32. I respectfully submit that in the above background, it is clear that the impugned order ought to be quashed on the following amongst other grounds.

GROUND

A. In the absence of a Board of Trustees constituted in accordance with the provisions of the 1959 Act, no major decisions involving the funds and properties of the Temples can be taken.

- B. The Hon'ble Supreme Court in the case of ***Govinda Menon*** reported in **1967 SC 1274** has held that under general law, the Trustee is the person competent to make alienation or grant of lease of Devaswom properties and the Commissioner who is the approving authority in certain cases himself cannot initiate proposals.
- C. 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 Mutt of the Temple. However, in direct and complete contravention of the same, the Respondents have appointed Government servants as "Fit Persons" in Religious Institutions. The said action of the Respondents also goes to show the flippant attitude towards decisions of / law laid down by the Apex Court.
- D. A Division Bench of this Hon'ble Court vide its interim order dated 15.11.2021 in W.P. No. 24156 of 2021 has held as follows:

*"... 11. More importantly, as indicated earlier herein, a fit person temporarily discharges the duties of administration and the transfer of funds would be a much larger policy decision that a fit person ought not to take. **The mere fact that a fit person may have continued for years and even a decade in the absence of government endeavour to install rightful administration by the appointment of trustees, will not confer any greater right on a fit person than a mere caretaker discharging the administrative duties in the absence of the real administrator....**" (emphasis supplied)*

- E. The Hon'ble Madurai Bench in Contempt Petition (MD) 677 Of 2020 in W.P. (MD) No. 10903 of 2020 has by an interim order dated 27.04.2022 restrained the temple administration from taking any major policy decision, pending the appointment of a Board of Trustees.
- F. The decisions being taken by any body apart from the Trustees of the Temple is in contravention of Rule 14 of the "Functioning of Board of Trustees Rules", which clearly states that all matters relating to the administration of the religious institutions shall be decided at the meetings of the Board of Trustees.
- G. Rule 11 of the Collection of Income and Incurring of Expenditure Rules provides that no expenditure shall be incurred without the written order of the Trustee.
- H. G.O. Ms. No. 223 Tamil Development, Religious Endowments and Information (R.E.3.1) Department dated 10.06.2011 issued by the 1st Respondent restricts the Government Fit Person to carry out only pooja and festival expenses, Annadhanam and salary expenses. The G.O. has been issued with regard to Sri Nellaiappar and Sri Kantimati Temple, Tirunelveli as well. Therefore, such a large expense and utilisation of Temple property is in direct contravention of the Government's own order.
- I. The Fit Persons in the Temples mentioned in the impugned order are all Government Servants and their very presence is in contravention to the dictat of the Hon'ble Supreme Court in the case of *Ratilal Panachand*

Gandhi reported in AIR 1954 SC 388, wherein it has been held that a Government servant cannot be appointed as a “Fit Person” of a Hindu Temple of Endowment.

- J. In any event, the Government cannot provide “Administrative Approval” for the utilisation of funds and properties. The Government has no authority to do so and such activity is in clear contravention of Articles 25, 26 and 300A of the Constitution of India and also the provisions of the 1959 Act.
- K. The impugned order runs afoul of Sections 23, 36 and 66(1) of the 1959 Act and principle of ‘*Cy Pres*’ as laid down in the case of *Ratilal Panachand Gandhi* cited supra, wherein the Hon’ble Supreme Court held that the

“To divert the trust property or funds for purposes which the Charity Commissioner or the court considers expedient or proper, although the original objects of the founder can still be carried out, is to our minds an unwarrantable encroachment on the freedom of religious institution in regard to the management of their religious affairs. ... The State can step in only when the trust fails or is incapable of being carried out either in whole or in part.”

- L. The impugned order, admittedly, is pursuant to the Announcements made by the Hon’ble Minister on the floor of the Legislative Assembly and seeks to execute his announcements. The Government has no authority or power in deciding the usage of funds and properties pertaining to Religious

Institutions, and such an action is arbitrary, unreasonable and illegal and is hit by Article 14 of the Constitution, and therefore untenable in law.

M. The utilisation of surplus funds is in complete contravention of the provisions of Sections 36, 36-A and 36-B of the 1959 Act. The Respondents cannot pre-decide / predict the expenses to be incurred from the surplus funds, and any such proposal ought to be initiated by the Trustee of the Temple alone.

N. Sections 36, 36-A and 36-B of the 1959 Act and also the Utilisation of Surplus Funds Rules, prescribe the issuance of public notice calling for objections and suggestions within 30 days from the persons interested therein. Admittedly, the said procedure has not been followed by the Respondents in the instant case. By having failed to comply with the said statutory requirement, the Respondents' actions in the Impugned Order are not only illegal, void and contrary to law, but the same are also in violation of principles of natural justice, more specifically, the principle of *audi alteram partem*.

O. Admittedly, the RTI reply dated 27.04.2022, from the officer of the Commissioner HR&CE states that no request has been made from any of the Temples in the impugned order and that the procedure contemplated under Section 97 has been followed.

- P. Section 66(1) of the 1959 Act enumerates the purposes for which surplus funds may be utilised, and the term “Senior Citizen” does not find any mention in the said provision.
- Q. The impugned order purports the utilisation of surplus funds from the “Commissioner’s Common Good Fund”. The Act does not provide for the establishment of any such Fund, and is therefore void and non-est in law. Any claim of such funds is a fraud on the statute and also a blatant misuse of Temple resources.
- R. Even otherwise, any contribution to the “Common Good Fund” contemplated in Section 97 of the 1959 Act ought to be only a voluntary donation, and even such contributions must be made only from the surplus funds made in accordance with Section 36 of the 1959 Act and the Utilisation of Surplus Funds Rules. The Respondents have no authority to decide that surplus funds are to be contributed to the Common Good Fund. This exercise of the Respondents also lacks any authority, basis, reeks of mala fides, and is an egregious fraud on the statute.
- S. The entire conduct of the Respondents demonstrates that they have attempted to do indirectly what they cannot do directly and are therefore in clear violation of the dictat of the Hon’ble Supreme Court in *D.C. Wadhwa and Ors. vs. State of Bihar* reported in (1987) 1 SCC 378.
- T. The 1st Respondent cannot exercise its executive power in contravention of the statutory provisions, namely the T.N. H.R., & C.E Act 1959 & the

rules made thereunder. The Government's role is defined in the Act to limited matters and the actions of the Government in the present case is ultra vires.

33. I respectfully submit that I have already mentioned the writ petitions filed by me, where the similar legal issues are pending before the Principal Bench of this Hon'ble Court, as well as a contempt petition related to Pazhani Murugan pending before the Madurai Bench of this Hon'ble Court. I further respectfully submit that there is no other petition to my knowledge challenging the impugned Order in the present writ petition. I further submit that I don't have the copy of the Tender document for the Sri Balamman Temple, Villivakkam and in the process of acquiring the same. I respectfully submit that considering the urgency I am challenging the Government Order at this juncture, reserving my right to challenge all consequential proceedings if necessary. In any event, it is submitted that the consequence of allowing the present writ petition, would nullify all the subsequent proceedings and any tenders issued. I respectfully submit that I have also enclosed the pleadings of the connected cases, as stated above in the typed set of papers and the same may be referred to as part and parcel of this affidavit.

34. I respectfully submit that the respondents office being in the city of Chennai is within the territorial jurisdiction of this Hon'ble Court. I respectfully submit that owing to the urgency involved in the matter, as explained in the body of the affidavit, it is necessary to move the Vacation Bench of this Hon'ble Court.

35. I respectfully submit that the petitioner is not against provision of amenities to senior citizens and other devotees in temples, and is only seeking to enforce the rule of law, and clean temple administration, by persons authorised under law. The misuse and abuse of the powers contra to the provisions of the 1959 Act and rules made thereunder has been a routine matter by the respondents which requires to be arrested in the interest of all concerned, hence requiring the interference of this Hon'ble Court. I respectfully submit that the present instance of abuse is despite legal proceedings being specifically initiated in this regard and pending before this Hon'ble Court and hence requires urgent intervention of this Hon'ble Court.

36. I respectfully submit that I am in possession of only the web copy of the impugned order and given the urgency in filing this writ petition, it is respectfully submitted that the production of the certified copy be dispensed with.

37. In these 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. 13, Tourism, Culture and Religious Endowments (R.E. 5-1) Department, dated 12.01.2022, issued by the 1st Respondent herein, and thus render justice.

38. I respectfully submit that I have a fair chance of success in the above writ petition and pending disposal of the same, the continuance of the operation of the impugned order or further proceedings thereon, will result in large expenses and other actions that are in conflict with the provisions of the 1959

Act and also the Fundamental Rights guaranteed by Articles 25 and 26 of the Constitution of India and therefore cause grave and irreparable damage to the Rights and Interests of the Deities, the Devotees and the Religious Institutions, and therefore it is just and necessary that an order of interim stay be granted. The Petitioner has made-out a prima facie case for the grant of emergent orders hereinabove. The Respondents, by virtue of the Impugned Order, are in clear and blatant contravention of the law. This be so, the balance of convenience also rests in favour of the Petitioner.

39. In these circumstances, it is prayed that this Hon'ble Court may be pleased to stay all further proceedings pursuant to G.O. (Ms.) No. 13, Tourism, Culture and Religious Endowments (R.E. 5-1) Department, dated 12.01.2022, issued by the 1st Respondent herein, pending disposal of the writ petition, and thus render justice.

For the aforementioned reasons, it is prayed that this Hon'ble Court may be pleased to issue a writ of certiorari, or any other appropriate writ, order or direction calling for the records relating to G.O. (Ms.) No. 13, Tourism, Culture and Religious Endowments (R.E. 5-1) Department, dated 12.01.2022, issued by the 1st Respondent, 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.

Solemnly affirmed at Chennai

BEFORE ME

on this the 9th day of May, 2022

and signed his name in my presence

Advocate:: Chennai

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No of Corrections:

Initial: