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VERDICTUM.IN



W.P.No.19084 of 2024
and Cont.P.No.3306 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2025

CORAM :

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.19084 of 2024
and W.M.P.Nos.20937, 36218 and 20941 of 2024
and
Contempt Petition No.3306 of 2024

W.P.No.19084 of 2024:

P.Bhaskar

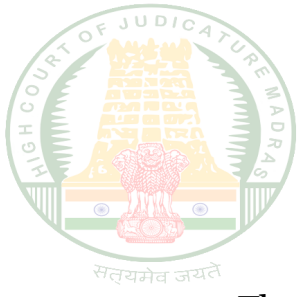
.. Petitioner

Vs

1.The District Collector,
Chengalpattu.

2.The Commissioner,
Hindu Religious & Charitable Endowments
Department (hR & CE),
No.119, Nungambakkam,
Chennai-600 034.

3.The Assistant Commissioner,
Hindu Religious & Charitable Endowments
Department (hR & CE),
Chengalpattu Division,
JCK Nagar, Paranur,
Chengalpattu.



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- 4.The Executive Officer,
Arulmighu Nandheeswarar Thirukoil,
Nanthivaram, Vandallur Taluk,
Chengalpattu District.
- 5.The District Revenue Officer (DRO),
Chengalpattu District – 603 001.
- 6.The Revenue Divisional Officer,
Tambaram,
Chengalpattu District – 603 001.
- 7.The Tahsildar,
Vandalur Taluk, Vandalur,
Chengalpattu District.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari to call for the records made by the fourth respondent namely the Executive Officer, Arulmighu Nandeeswaram Thirukoil, Vandalur Taluk, Chengalpet District, vide impugned order made in DIPR/6587/Tender/2023, dated 11.12.2023 vide tender notification No.1 (published in the New Indian Express English Newspaper) and quash the same.

For Petitioner : Mr.B.Jagannath

For Respondents : Mr.Habeeb Rahman
Government Advocate
for respondent Nos.1, 5 to 7



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W.P.No.19084 of 2024
and Cont.P.No.3306 of 2024

: Mr.N.R.R.Arun Natarajan
Spl. Govt. Pleader (HR & CE)
for respondent Nos.2 to 4

Contempt Petition No.3306 of 2024:

P.Bhaskar

.. Petitioner

Vs

1.R.Karthikeyan,
The Assistant Commissioner,
HR & CE Department,
Chengalpattu Division,
JCK Nagar,
Paranur, Chengalpattu District.

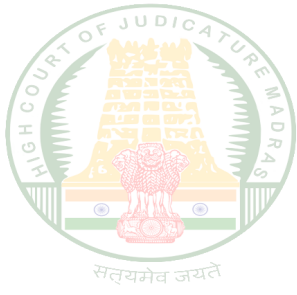
2.K.Venkatesan,
The Executive Officer,
Arulmighu Nandeeswarar Thirukoil,
Nanthivaram Thirukoil,
Nanthivaram, Vandallur Taluk,
Chengalpattu District.

.. Respondents

Prayer : Petition filed under Section 11 of the Contempt of Courts Act to punish the respondents for wilful disobedience of the interim order passed by this Court dated 24.9.2024 in W.M.P.No.20941 of 2024 in W.P.No.19084 of 2024.

For Petitioner

: Mr.B.Jagannath



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For Respondents : Mr.N.R.R.Arun Natarajan
Spl. Govt. Pleader (HR & CE)

COMMON ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

W.P.No.19084 of 2024:

This public interest litigation came to be filed pursuant to a Tender Notification No.1, published in a newspaper “*New Indian Express*” on 11.12.2023.

2. Petitioner, who is a devotee of Nandhivaram Shivan Temple, situated at Guduvancherry, Chennai, states he is a person with interest as defined in Section 6(15)(b) of the Tami Nadu Hindu Religious and Charitable Endowments Act, 1959 [HR & CE Act]. The fact that the petitioner is a person with interest is not disputed. Petitioner claims that he is an ardent saivaite and performs utsavams as upayadarar as a matter of faith and devotion towards Lord Shiva.

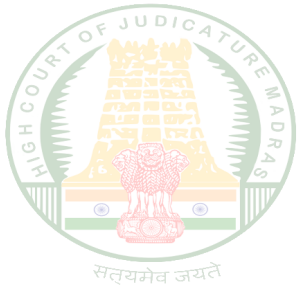


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3. The Arulmighu Nandeeswarar Shivan temple situated at Nandhivaram, Guduvancherry, falls under the jurisdiction and administrative control of the HR & CE Department. The temple is dedicated to Lord Shiva and thousands of devotees visit the temple every day. The area is called Nandhivaram after Nandeeswarar Shivan temple.

4. Admittedly, the temple has lands endowed by the devotees for dedicated specific religious charitable purpose. Petitioner states that the judgment in the case of Topulan Chettiar of Srigangam Temple would squarely apply to this case as well. We have not gone into those details while disposing of this petition.

5. The lands belonging to the temple are situated right across the gopuram main street entrance leading to Arulmighu Shri Pudu Palayathu Amman temple at Nandhivaram Village. Shri Pudu Palayathu Amman temple is not under the control of the HR & CE Department and is situated near the Shivan temple. The said Amman temple is run by a religious trust

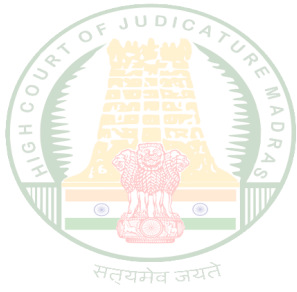


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unconnected with the HR & CE Department and petitioner is the Secretary of the said Amman temple. It is stated that there is a plot of land belonging to Shivan temple, which is adjacent to the said Amman temple. In the present case, the said vacant land is sought to be utilized by the HR & CE Department for construction of a commercial shopping complex. Of course, it is the case of the Department that the shopping complex was proposed to be constructed using the surplus funds of the Shivan temple so that more funds are generated and those funds are utilized for further development of the Shivan temple.

6. Petitioner's case is that the surplus funds also could be utilised only for such purposes as provided under the HR & CE Act. Shri Jagannath submitted that the endowments can be also appropriated only as per the provisions of the HR & CE Act.

7. Another ground, which is also taken, is that there are no trustees appointed to Shivan temple and it is run as a kingdom of the Joint Commissioner.



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8. Shri Natarajan submitted that process to appoint trustees has already commenced and in the next 15 days, the trustees will be appointed. Therefore, we are not going into the issue of appointment of such trustees at this stage and we leave it to petitioner to move the Court again in a separate petition, if he is unhappy or dissatisfied with the trustees appointed or the method of appointment of the trustees.

9. We are, in this order, only considering whether the HR & CE Department could use the surplus funds for constructing a shopping complex in the land belonging to the temple.

10. Sections 36, 36-A, 36-B and Section 66 of the HR & CE Act, read as under:

“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 institution 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



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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 utilising the surplus referred to in this section in such manner as he deems fit.

36-A. Utilisation of surplus funds for Hindu marriages.-
Notwithstanding anything contained in Section 36 and subject to such conditions and restrictions as may be prescribed, the trustee of a religious institution may in addition to the purposes mentioned in that section appropriate any portion of the surplus fund referred to in Section 36 for the performance of Hindu marriages among Hindus who are poor or in needy circumstances.

36-B. Utilisation of surplus funds for making contribution towards any funds for the purposes of feeding the poor, etc.-
Notwithstanding anything contained in Sections 36, 36-A and in any other provision of this Act and subject to such conditions and restrictions as may be prescribed, the trustee of a religious institution may, in addition to the purposes mentioned in Section 36 and 36-A, appropriate any portion to the surplus fund referred to in Section 36 for making any contribution towards any fund constituted for the purpose of-

- (i) feeding the poor; or*
- (ii) construction any building, shed or centre for feeding the*



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poor.

66. Appropriation of endowments.- (1) *The Joint Commissioner or the Deputy Commissioner, as the case may be, may, on being satisfied that the purpose of a religious institution has from the beginning been, or has been subsequently become, impossible of realisation, by order direct that the endowments of the institution be appropriated to all or any of the following purposes, namely:-*

- (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 purposes 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 othuvams 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 institutions 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;*
- (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 religious institutions founded and maintained by a religious denomination or any section thereof, the endowment shall, as far as possible, be utilized for the benefits of the denomination or section concerned for the purposes



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mentioned above.

(2) The Joint Commissioner or Deputy Commissioner, as the case may be, may at any time by order, modify or cancel any order passed under sub-section (1).

(3) The order of the Joint Commissioner or the Deputy Commissioner, as the case may be, under the section shall be published in the prescribed manner and on such publication shall, subject to the provisions of Section 69, be binding on the trustee, the executive officer and all persons having interest.”

11. Shri Natarajan submitted that endowments are not being utilised for construction of the shopping complex and what is utilised is only the surplus funds belonging to the temple.

12. Section 36 of the HR & CE Act says the trustees of a religious institution may appropriate the surplus funds with the previous sanction of the Commissioner for any of the purposes specified in sub-section (1) of Section 66. Sub-section (1) of Section 66 provides the following purposes:

(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 purposes 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



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training of archakas, adyapakas, vedaparayanikas and othuvans 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 institutions where instruction in the Hindu religion is also provided;

(h) promotion of fine arts and architecture;

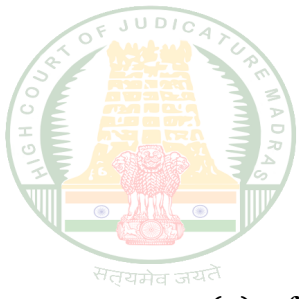
(i) the establishment and maintenance of orphanages for Hindu children;

(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.

13. Shri Natarajan, in fairness, accepts that shopping complex is not included in items (a) to (l) quoted above. He, however, submits that the first proviso of Section 36 says in appropriating the surplus under this Section, the trustees shall give preference to the purposes specified in items (a) to (g) of sub-section (1) of Section 66 and, therefore, the trustees can use the surplus funds for any purpose, as they deem fit, including constructing a shopping complex. But before doing that, they should utilise the surplus funds for the purposes given in items (a) to (g) of sub-section



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(1) of Section 66.

14. We disagree with this submission of Shri Natarajan because (a) there are no trustees; (b) it is not made out anywhere that the surplus funds have been preferably used for items (a) to (g) of sub-section (1) of Section 66; and (c) the purpose of the entire provision is for propagation of religious tenets of the institution. Constructing the shopping complex using the funds of the temple certainly does not indicate any propagation of the religious tenets of the institution, i.e., the temple.

15. Further, the proviso only means that while deciding for what the surplus funds could be utilized among items (a) to (l) of sub-section (1) of Section 66, preference will be given for items at (a) to (g). This is because the Section itself starts with the words, "... may appropriate for any of the purposes specified in sub-section (1) of Section 66".

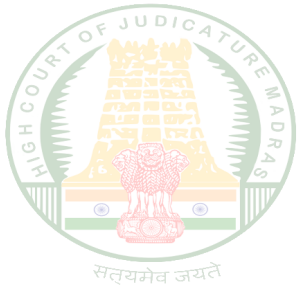
16. Even if we go along with Shri Natarajan for a moment (though we disagree with him) that the shopping complex would generate more



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funds by way of rental income to the temple and, of course, Shri Natarajan also gave undertaking that shops will be given only to those belonging to Hindu faith and believing in Hinduism and the shops will be allowed to be used only for selling pooja items or utensils or fancy stores or for eateries selling exclusively vegetarian food, still there is no indication that even a project study has been made. By way of illustration, let us assume Rs.1.00 Crore is spent in constructing the shopping complex. What would be the annual return on the investment has not been studied. If the amount is put in a fixed deposit in a bank, at the current rate of return, it would fetch about 7.25%. Perhaps the temple may not be assessed to tax and that would be a net return. There is nothing to indicate that the returns will be in excess of 7.25%. Even if we take that the decision was taken when the rate of interest was only 6%, still there has to be a project study report which says that the temple funds could be better utilized for earning more returns than 6% fixed deposit return.

17. Moreover, if such commercial complexes are constructed, it would add further complications inasmuch as:



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- (i) return of investment will be much less than what returns should be if the amount had been deposited in a fixed deposit;
- (ii) how to evict the licensees or tenants who are occupying the premises;
- (iii) how to recover in case of non-payment of rent or utility charges;
- (iv) how to prevent further encroachments by the licensees or tenants.

Certainly, temples should be kept out of litigations as far as possible.

18. Therefore, we make it clear that surplus funds of temple, which is a religious institution defined under the HR & CE Act, can be used only for the purposes specified in sub-section (1) of Section 66 or provided under Section 36-A or Section 36-B and for no other purpose.

19. Since the shopping complex does not fall within the category of items (a) to (l) of sub-section (1) of Section 66 or Sections 36-A and 36-B, the decision to construct a shopping complex has to be quashed and set aside.



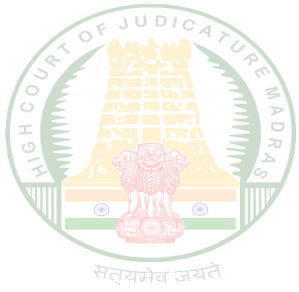
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Cont.P.No.3306 of 2024:

20. Since the interim stay that was granted by this Court on 24th September, 2024 was breached by respondents, a contempt petition was filed. When the contempt petition came up for admission, a statement was made expressing apologies to the Court and an assurance was given that no further construction will be continued.

21. Mr.Natarajan submitted that there are surplus lands and what could be done then.

22. Though we are not entirely competent to advice the HR & CE Department, certainly, the first thing that comes to our mind is the environment challenges that the world faces – deforestation. HR & CE Department could consider planting native trees so that it improves the environment.



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23. Shri Natarajan states that a part of the structure has already been put up using surplus funds and that will be a waste.

24. Section 36-A provides that notwithstanding anything contained in Section 36, the religious institution may, in addition to the purposes mentioned in Section 36, appropriate any portion of the surplus funds referred to in Section 36 for the performance of Hindu marriages among Hindus, who are poor and in needy circumstances.

25. Section 36-B provides that notwithstanding anything contained in Sections 36, 36-A and in any other provision of the Act, the trustee of the religious institution may, in addition to the purposes mentioned in Section 36 and 36-A, appropriate any portion of the surplus fund referred to in Section 36 for any contribution towards any fund constituted for the purpose of feeding the poor or construction of any building, shed or centre for feeding the poor.

26. Therefore, the HR & CE Department may complete the



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construction of the building in such a way that the building shall be used as a centre for feeding the poor.

27. Since Section 36-A also provides for performance of Hindu marriages among Hindus, which means, both parties shall be Hindus, who are poor or in needy circumstances, in the facts and circumstances of this case, since the building has partly been constructed, the building can also be utilized for conducting Hindu marriages among Hindus who are poor or in needy circumstances. We clarify this does not mean that in every case the surplus funds can be utilized for constructing marriage halls.

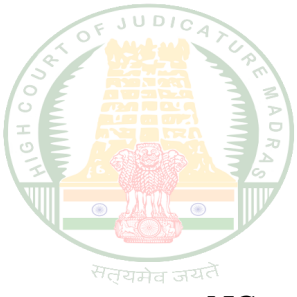
28. Writ petition is, accordingly, disposed of. Consequently, Contempt Petition No.3306 of 2024 also stands disposed of. No order as to costs. All interim applications are closed.

(K.R.SHRIRAM, C.J.)

(SENTHILKUMAR RAMAMOORTHY, J.)

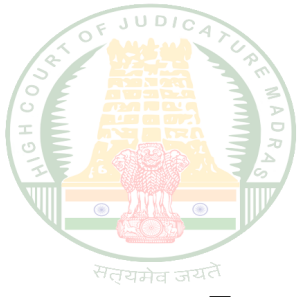
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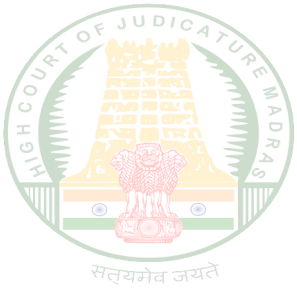
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Chengalpattu.
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Hindu Religious & Charitable Endowments
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No.119, Nungambakkam,
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THE HON'BLE CHIEF JUSTICE
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