

W.P.Nos.17248, 19258, 32091 & 33667 of 2013
5159, 21654 and 21712 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2020

CORAM

THE HON'BLE MR. JUSTICE R.MAHADEVAN

Writ Petition Nos.17248, 19258, 32091 & 33667 of 2013
5159, 21654 and 21712 of 2018,
& WMP Nos.6334, 10073 and 25481 of 2018

S.Sridhar ... Petitioner in W.P.Nos.17248 and
19258 of 2013
C.Maran ... Petitioner in W.P.No.32091 of 2013
S.Guhan ... Petitioner in W.P.No.33667 of 2013
Arulmighu Kottaimariamman Thirukoil,
Rep. by its Hereditary Trustee, R.Ramakrishnan,
Omalur Village and Taluk,
Salem District ... Petitioner in W.P.Nos.5159 and
21712 of 2018
A.Radhakrishnan ... Petitioner in W.P.No.21654 of 2018

...VS..

1.The State of Tamil Nadu
represented by Secretary,
Animal Husbandry & Fisheries Department,
Fort St. George, Chennai-600 009.

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2.The Director of Fisheries,
DMS Complex, Teynampet,
Chennai – 600 006.

3.The Assistant Director of Fisheries (Marine)
Kancheepuram District,
No.2/601A East Coast Road,
Neelangarai, Chennai – 600 041.

4.The District Collector,
Kancheepuram District,
Collectorate, Kancheepuram – 631 501.

5.The Tahsildar,
Sholinganallur, Chennai – 600 119.

6.The Special Commissioner and
Commissioner of Land Administration
Chepauk, Chennai-600 005.

7.The Deputy Commissioner of Police,
Adyar, Chennai – 600 020.

8.The Commissioner,
Hindu Religious and Charitable Endowments,
No.119, Uthamar Gandhi Salai,
Nungambakkam, Chennai – 600 034.

(R8 impleaded as per the order of this
Court dated 22.11.2013 in MP.No.2/2013)

... Respondents in
WP.No.17248 of 2013

1.The Secretary to Government of Tamil Nadu,
Revenue Department,
Fort St. George, Chennai – 600 009.

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2.The Secretary to Government of Tamil Nadu,
Animal Husbandry & Fisheries Department,
Fort St. George, Chennai-600 009.

3.The Special Commissioner and
Commissioner of Land Administration,
Chepauk, Chennai – 600 005.

4.The District Collector,
Kancheepuram District,
Collectorate, Kancheepuram – 631 501.

5.The Assistant Director of Fisheries (Marine)
Kancheepuram District,
No.2/601A, East Coast Road,
Neelangarai, Chennai 600 041.

6.The Commissioner,
Hindu Religious and Charitable Endowments,
No.119, Uthamar Gandhi Salai,
Nungambakkam, Chennai – 600 034.

(R6 impleaded as per the order of this Court dated 22.11.2013 in MP.No.3/2013) ... Respondents in
WP.No.19258 of 2013

1.The State of Tamil Nadu
represented by the Secretary,
Revenue Department,
Fort St. George, Chennai – 600 009.

2.The Secretary to Government of Tamil Nadu,
Animal Husbandry & Fisheries Department,
Fort St. George, Chennai-600 009.

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3.The Commissioner,
Hindu Religious and Charitable Endowments Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam, Chennai – 600 034.

4.The District Collector,
Collectorate, Kancheepuram – 631 501.

5.The Revenue Divisional Officer,
Taluk Office Building,
GST Road, Tambaram,
Chennai – 600 045.

6.The Tahsildar,
Taluk Office Complex,
Sholinganallur, Chennai – 600 119.

7.The Assistant Director of Fisheries (Marine)
Kancheepuram District,
No.2/601A, East Coast Road,
Neelangarai, Chennai 600 041.

8.The Assistant Commissioner of Police,
Neelangarai, Chennai- 600 041.

... Respondents in
WP.No.32091 of 2013

1.The District Collector,
Collectorate, Kancheepuram – 631 501.

2.The Joint Commissioner,
HR & CE Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam, Chennai – 600 034.

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3.The Revenue Divisional Officer,
Taluk Office Complex,
GST Road, Tambaram,
Chennai – 600 045.

4.The Tahsildar,
Taluk Office Building,
Sholinganallur, Chennai – 600 119.

5.The Assistant Director of Fisheries (Marine)
Kancheepuram District,
No.2/601A, East Coast Road,
Neelangarai, Chennai 600 041.

6.The Assistant Commissioner of Police,
Neelangarai, Chennai- 600 041.

... Respondents in
WP.No.33667 of 2013

1.The District Collector,
Salem District,
First Agraharam, Salem – 636 001.

2.The Sub Collector,
Bhavani Road, Mettur Dam,
Salem District – 636 401.

3.The Tahsildar, Omalur Taluk,
No.5, Omalur Main Road, Omalur, Salem – 636 455.

4.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department
Near Old Bus Stand,
Salem -636 001.

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

6.The Commissioner of Land Administration,
Land Administration Department,
Ezhilagam, Chepauk, Chennai – 600 005.

7.The Secretary to Government of Tamil Nadu,
Revenue Department,
Fort St. George, Secretariat
Chennai- 600 009.

... Respondents in
WP.No.5159 of 2018

1.The Secretary to Government,
Revenue Department,
Secretariat, Chennai 600 009.

2.The Secretary to Government,
Highways & Minor Ports Department,
Secretariat, Chennai – 600 009.

3.The Secretary to Government,
Tourism, Culture & Endowments Department,
Secretariat, Chennai – 600 009.

4.The Commissioner of Land Administration,
Chepauk, Chennai – 600 005.

5.The Director General, Highways Department,
76, Sardarpatel Road,
Guindy, Chennai – 600 025.

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6.The Chief Engineer (Project)
Highways Department,
Saidapet, Chennai 600 015.

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

8.The District Collector,
Salem District, Salem.

9.The District Revenue Officer, Salem.

10.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Arulmigu Kottai Mariamman Temple Campus,
Salem 636 001.

11.The Hereditary Trustee,
Arulmigu Kottai Mariamman Temple,
Omalur Town & Taluk, Salem District.

12.The Executive Officer,
Arulmigu Kottai Mariamman Temple,
Omalur Town & Taluk, Salem District. ... Respondents in
WP.No.21654 of 2018

1.The District Collector,
Salem District,
Fort, Salem – 636 001.

2.The Revenue Divisional Officer (in-charge)
Bhavani Road, Mettur Dam, Mettur – 636 401.

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3.The Tahsildar,
Omalur Taluk,
Mettur Main Road,
Omalur, Salem – 636 455.

4.The Commissioner of Land Administration,
Land Administration Department,
Ezhilagam, Chepauk, Chennai – 600 005.

5.The Secretary to Government of Tamil Nadu,
Revenue Department,
Fort St. George, Secretariat
Chennai- 600 009.

6.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department
Near Old Bus Stand,
Salem -636 001.

7.Regional Transport Officer,
VOC Nagar, Pachanampatti Post,
Omalur, Salem – 636 455.

... Respondents in
WP.No.21712 of 2018

W.P.No.17248 of 2013:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents 1 to 6 to correct the wrong entries in the revenue records pertaining to Survey No.82/1 of Neelangarai Village, Kancheepuram District inasmuch it includes the Fisheries Department and consequently forbear the respondents 1 to 5 from continuing the

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occupation and enjoyment of the Temple lands in Survey No.82/1 of Neelangarai Village, Kancheepuram District. (second part of the prayer was given up, vide order of this Court dated 26.11.2019).

W.P.No.19258 of 2013:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the 1st respondent in impugned G.O.Ms.No.2871 dated 27.09.1963 and to quash the same.

W.P.No.32091 of 2013:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the 6th respondent in impugned notice in Na.Ka.No. 9618/ 2013/Aa2, dated 22.11.2013 and quash the same and consequently forbear the respondents from carrying on any construction activities on the Temple lands in Survey No.82/1 of Neelangarai Village, Kancheepuram District including construction of compound wall, modern fish market, fish eatery and office building.

W.P.No.33667 of 2013:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus forbearing the respondents from interfering with the rights of worship including conducting of religious festivals on the temple lands in S.No.82/1 of Neelangarai Village, Kancheepuram District, consequently

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preventing the construction of compound wall, modern fish market, fish eatery and office building.

W.P.No.5159 of 2018:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the order No.O.Mu.1500/2018/K2 dated 31.01.2018 issued by the 1st respondent and the Letter No.(D)79, Revenue, dated 16.02.1996 issued by the 7th respondent and quash the same and consequently direct the respondents 1 to 3 to issue Patta within a prescribed time limit for 2.57.5 hectares of temple Poromboke lands in S.No.143/1 of Omalur Village and Taluk, Salem District in the name of Arulmighu Kottaimariamman Thirukoil, Omalur.

W.P.No.21654 of 2018:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the 6th respondent to pay the land cost for S.F.No.143/1 to an extent of 1250 sq.meter out of 2.57.5 hectare situated at Omalur Village & Taluk, Salem District to and in favour of 11th respondent temple by considering the petitioner's representation dated 13.11.2017.

W.P.No.21712 of 2018:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the order in Na.Ka. 8449/2018/K2

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dated 28.03.2018 issued by the 1st respondent and quash the same and consequently direct the respondents 1 to 5 to annual the Sub-Division of 2.57.50 Hectares of lands in original S.No.143/1 of Omalur village and Taluk Salem District into 3 parts in S.Nos.143/1, 3 and 4 and further restrain the respondents 1 to 5 and 7 from acting in any manner to dispose / alienate/ lease/ assign/ utilize any part of the 2.57.50 Hectares of Temple poramboke lands in original S.No.143/1 of Omalur Village and Taluk Salem District in violation to Rule No.13 of Revenue Standing Order No.26.

For Petitioner in W.P.Nos.17248 &
19258/2013 : Mrs. T.Kokilavane

For Petitioner in W.P.No.32091/2013 : Mrs. T.Kokilavane &
Mr. V.B.R.Menon

For Petitioner in W.P.No.33667/2013 : Mr. B.Harikrishnan.

For Petitioner in W.P.Nos.5159
& 21712/2018 : Mr. V.B.R.Menon

For Petitioner in W.P.No.21654/2018 : Mr. A.Radhakrishnan,
Party-in-person.

For Respondents in all W.Ps.: Mr.S.R.Rajagopal, AAG, assisted
by Mr. J.Ramesh, AGP &
Mr.M.Maharaja, Spl.G.P.(HR&CE)

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COMMON ORDER

WP.Nos.17248, 19258, 32091 and 33667 of 2013 are concerning Sri Sakthi Muthamman Temple, Neelankarai, whereas WP.Nos.5159, 21654 and 21712 of 2018 are pertaining to Arulmighu Kottai Mariamman Thirukoil, Omalur, Salem District. Though technically different prayers have been sought in these two batches of writ petitions, yet, the issues involved herein being intertwined, they are considered and decided by this common order. At the threshold, it is pertinent to note that as far as WP.No.17248 of 2013 is concerned, the second limb of the prayer viz., **“forbearing the respondents 1 to 5 from continuing the occupation and enjoyment of the Temple lands in Survey No.82/1 of Neelangarai Village, Kancheepuram District”** was given up by the learned counsel for the petitioner on 26.11.2019 and an endorsement was also made in the writ petition to that effect.

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2.For the sake of convenience and to appreciate the events leading to the filing of the respective writ petitions, the brief facts are narrated hereunder:

2.1.1 Sri Sakthi Muthamman Temple is situated in Survey No.82/1 of Neelankarai Village, Sholinganallur Taluk and the same is managed and administered by the residents of Chinna Neelankarai Kuppam through a Temple Management Committee constituted by the villagers. The said Temple employs Poojari and Sweeper, who are paid out of the receipts of donations from the public and also from the rent received from a portion of the Temple land, which is leased out to the fishermen of the village, for running a fish market, located 300 feet away from the said Temple. The vacant land around the said temple is being used by the villagers of Chinna Neelankarai for conducting the temple festivals at regular intervals and for providing temporary shelters to the village fishermen during the times of rains, high tides and natural calamities like cyclone, tsunami etc.

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2.1.2 According to the petitioner in WP.Nos.17248 and 19258 of 2013, the entire extent of 2.03 acres of land in S.No.82/1 of Neelankarai Village has been under possession and enjoyment of the said temple for more than 70 years, as evident from the extract of 1951 'A' Register and F.M sketch.

2.1.3 While so, the Fisheries Department started an ice-factory in an area of approximately 5 cents of the said temple land, for the use and benefit of the local fishermen, without paying rent or extending any benefit to the said temple. Subsequently, the said ice factory was closed due to loss, but the said Department continues to hold possession of the building, till date, as a result of which, the name of the Tamil Nadu Fisheries Department was entered as a joint occupier of the said land in Survey No.82/1 in 'A' register and in all the revenue records in the year 1985.

2.1.4 In the year 2007, the Fisheries Department commenced demolition, alteration and expansion of the ice-factory shed into two administrative blocks, besides putting up a HP Diesel Petrol bunk,

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without obtaining consent or permission from the Temple management, whereas the devotees and the public of the Chinna Neelankarai Kuppam, planned to construct a permanent hall on the vacant temple land for the purpose of conducting marriages and providing permanent shelter during natural calamities.

2.1.5 To preempt the said construction plan, the Fisheries Department attempted to construct a compound wall, thereby taking possession of the entire vacant land to set up a fish market and fish eatery house. Having failed in the said attempt, they issued a notice dated 13.06.2013, calling upon the panchayattars to attend the meeting scheduled to be held on 18.06.2013, on which date, the members of the Temple Management Committee and some villagers, participated and raised their objections in writing to the proposed plan of setting up a modernized fish market and fish eatery house in the temple land.

2.1.6 However, the Fisheries Department was proceeding to execute the said plan, based on G.O.Ms.No.2871, Revenue Department, dated 27.09.1963 (in short, 'the impugned G.O.'), by which sanction was

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accorded for transfer of land measuring to an extent of 2.03 acres in S.No.82/1 in Neelankarai village to the Fisheries Department for construction of a building for installation of ice plant- cum -cold storage, with certain conditions.

2.1.7 Feeling aggrieved, the petitioner, claiming himself to be a devotee of the subject temple, preferred two writ petitions viz., WP.No.17248 of 2013 for mandamus directing the respondent officials to correct the wrong entries in the revenue records pertaining to Survey No.82/1, inasmuch as it includes the Fisheries Department and consequential relief; and WP.No.19258 of 2013 to quash the impugned G.O.

2.1.8 During the pendency of the aforesaid two writ petitions, the Fisheries Department approached the Revenue officials to take over the said land from the possession and enjoyment of the subject temple. Due to the same, the Tahsildar, Sholinganallur, issued a notice in Na.Ka.No.9618/2013/Aa2 dated 22.11.2013 calling upon the devotees and villagers for discussion scheduled to be held on 23.11.2013, to sort

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out the issues. Accordingly, they attended the meeting and filed their objections. Despite the same, the Fisheries department with the help of the police officials, tried to take over the possession of the temple land, which caused the filing of another two writ petitions viz., WP.No.32091 of 2013 to quash the said notice dated 22.11.2013 and consequently, forbear the respondents therein from carrying on any construction activities in the lands in S.No.82/1 of Neelangarai Village, Kancheepuram District including construction of compound wall, modern fish market, fish eatery and office building; and WP.No.33667 of 2013 for mandamus, forbearing the respondent authorities from interfering with the rights of worship including conducting religious festivals in the said land and for consequential relief.

2.2.1 Arulmighu Kottai Mariamman Thirukoil is an old and well known temple being worshiped by people from in and around eighteen neighbouring villages. The said temple is being managed by the Hereditary Trustee, appointed under Section 63 (b) of the Tamil Nadu

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Hindu Religious and Charitable Endowments Act, 1959 (in short “the HR&CE Act”) and is functioning under the administrative control of the Executive Officer appointed under Section 45(1) of the HR&CE Act.

2.2.2 The said temple is situated in the land measuring to an extent of 2.57.5 hectares in Survey No.143/1 of Omalur Village and Taluk, Salem District, which has been under possession and enjoyment of the said temple for more than 80 years. The said land has been classified as 'temple poramboke land' as evident from the extracts of 1937 'A' Register, Adangal and F.M.Sketch. The vacant land surrounding the said temple is being used by the devotees for conducting various temple festivals.

2.2.3 While so, the Joint Commissioner, Hindu Religious and Charitable Endowments Department (in short, 'HR&CE Dept.'), Salem, sent a proposal dated 06.10.2017 to the District Revenue Officer, Salem, seeking issuance of patta for the land in S.No.143/1 to an extent of 2.57.5 Hectares in favour of Arulmighu Kottai Mariamman Thirukoil. The petitioner, claiming himself to be the Hereditary Trustee of the said

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temple, also made a representation on 19.12.2017 to the respondent authorities, requesting to issue patta in favour of the temple. However, by proceedings in O.Mu.No.1500/2018/K2 dated 31.01.2018 issued by the District Collector, Salem, placing reliance on the letter No.(D) 79, Revenue, dated 16.02.1996 sent by the Secretary to Government, Revenue Department, Chennai to the Special Commissioner and Commissioner for Land Administration, Chennai-5, the said representation was rejected. Challenging the said proceedings and the communication, WP.No.5159 of 2018 came to be filed. A mandamus was also sought to the revenue officials to issue patta in favour of the temple.

2.2.4 In the mean while, the petitioner came to know through RTI that by proceedings in Na.Ka.No.8449/2018/K2 dated 28.03.2018, the District Collector, Salem, transferred 1.15 acres of land in favour of the Regional Transport Officer, Salem, after making sub division of the land in S.No.143/1 into three parts viz., S.Nos.143/1, 3 and 4, without the knowledge of the petitioner or the HR&CE Dept. Aggrieved over the same, WP.No.21712 of 2018 came to be filed by the temple represented

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by its Hereditary Trustee to quash the said proceedings dated 28.03.2018 and consequently, direct the respondents 1 to 5 therein to annul the sub-division of the said land and restrain them as well the seventh respondent therein, from acting in any manner to dispose/ alienate / lease/ assign/ utilise any part of the land, in violation of Rule 13 of the Revenue Standing Order No.26.

2.2.5 During the pendency of the aforesaid two writ petitions, yet another petitioner, claiming himself to be an ardent devotee of the said temple, filed WP.No.21654 of 2018, seeking a direction to the Chief Engineer (Project), Highways Department, Saidapet, Chennai, to pay the appropriate land cost to the said temple by considering his representation dated 13.11.2017, alleging that without following due process of law, the Highways Department had taken over 1250 sq.mt. out of 2.57.5 Hectares of land in S.F.No.143/1 belonging to the temple, for the purpose of construction of bridge.

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3.1 On receipt of notice, some of the respondents filed separate counter affidavits in the first set of writ petitions relating to Sri Sakthi Muthamman Temple, the brief contents of which are as follows:

3.1.1 (a) According to the Fisheries Department, which is the third respondent in WP.No.17248 of 2013 and fifth respondent in WP.No.19258 of 2013, the SLR copy of the Neelankarai village and 'A' register show that S.No.82/1 is completely belonging to the Government (sarkar poramboke) and Column No.12 of the 'A' register indicates only the existence of the temple; (b) as per G.O.Ms.No.2871 Revenue Department dated 27.09.1963, the land comprised in S.No.82/1 measuring 2.03 acres in Neelankarai village was entirely transferred to the Fisheries Department for construction of building for the installation of Ice plant-cum-cold storage on free land value, but subject to collection of Rs.22.50 being the value of 3 palmyra trees on the land and also subject to the condition that Amman Temple on the land should be preserved with the rights to the public to worship Amman, whenever they like without any obstruction; and the said land was not in joint

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possession and enjoyment of the temple and the Fisheries Department, as alleged by the petitioner and hence, the people of Neelankarai and the petitioner has no right to claim ownership over the said land and seek rent or compensation; (c) During the year 2003, as per the policy decision of the Government, a fish market for general public was constructed so as to enable the fishermen to sell their catches on the southern side of the said land and the said land was never leased out to fishermen at any point of time; (d) Since 1963, pursuant to the policy decision of the Government, the entire land was transferred to the Fisheries Department, it becomes imperative to create infrastructure facility to the Fisheries Department in order to implement various development and welfare schemes for the fishermen community and therefore, there is no question of discussion or getting prior permission from the temple or people of Neelankarai, for the construction of compound wall; (e) it is the specific case of the Fisheries department that they started construction of a compound wall only to protect the land from unauthorised parking of vehicle and public trespass in the premises and there is no motive or

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dubious plans to hurt the religious feelings and spoil the environment; and the Fish Food Stall proposed to be opened in the said premises by the TAFCOFED is for providing fishery products at affordable price in consonance with the objective and policy of the Government; and (f) the Fisheries Department or any Government authorities never prevented the villagers from conducting worship in the temple and interfered with the right of the public to worship Amman, whenever they like. Thus, this respondent prayed to dismiss the writ petitions.

3.1.2 Denying the averments made by the petitioners in the affidavits filed in support of the respective writ petitions, the District Collector, Kancheepuram, who is the fourth respondent in WP.Nos.17248, 19258 and 32091 of 2013 and the first respondent in WP.No.33667 of 2013, stated that as per 'A' register of Neelankarai village and other revenue records, the entire land in S.No.82/1 measuring 2.03 acres is a Government poramboke and not a temple property, but the temple is situated in the said land; the said land was transferred to the Fisheries department by G.O.Ms.No.2871 Revenue Department dated

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27.09.1963 and after that, it was the Fisheries department property; further, any demolition or construction in the Government property is a decision of the Government and hence, there is no question of issuing notice or getting consent / permission from the temple or people of Neelankarai as it is not their own land. Hence, this respondent submitted that all the writ petitions are not maintainable and are liable to be dismissed.

3.1.3 In the common counter affidavit filed by the Commissioner, HR&CE Dept, Chennai, it was stated that Sri Sakthi Muthamman Temple is situated in the Government poramboke land an extent of about 2 cents covered in S.No.82/1 admeasuring to 2.03 acres in Neelankarai village, Sholinganallur Taluk, Kancheepuram District; the said temple is a Hindu Public Religious Institution more fully a 'temple' as defined under Section 6(20) of the HR&CE Act and the provisions of the said Act shall apply to the said temple as per Section 1(3) of the Act; the Assistant Commissioner, HR&CE Admn. Dept, Chennai invoking the power

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vested under Section 49(1) of the HR&CE Act, appointed the Executive Officer of Arulmigu Maruntheeswarar Temple, Thiruvannamiyur as the Fit Person of the said temple, vide order dated 11.03.2014, who in turn, took over the management of the said temple; as per the entries found in the settlement register of 145 Neelangarai Village, Survey No.82/1 was noted as Government poramboke admeasuring 2.03 acres as 'Kovil'; no consent was obtained from this department by the alleged Temple Management Committee for applying the assignment of the poramboke land found in excess of the requirements of the temple and worship for augmenting revenue of the temple by leasing out the poramboke land for running a fish market as averred; and since the temple itself is situated in poramboke land, the conditions as stipulated in the Board of Revenue Standing Orders regarding land encroachment and unauthorised occupation for assignment of poramboke land and consent of this department, have to be strictly followed and obtained. Thus, according to this respondent, appropriate orders may be passed in these writ petitions.

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3.2 Similarly, the gist of the counter affidavits filed by the respondents in the second set of writ petitions pertaining to Arulmighu Kottai Mariamman Thirukoil, is as under:

3.2.1 The Tahsildar, Omalur, Salem District, 3rd respondent in WP.No.5159/2018 stated that an extent of 2.57.5 hectares of land in S.No.143/1 of Omalur Village and Taluk was classified as Government poramboke in Village accounts and not 'temple poramboke' as alleged by the petitioner; even from the revenue records of pre-updating register (pre UDR) of the year 1937, S.No.143/1 had been classified as Government poramboke in Column Nos.3 & 4, but in Column No.12 of the 'A' register, it was marked as 'temple', which does not mean that the land belongs to the temple; just because there is a mention about the temple in Column No.12 of the 'A' register, it cannot be claimed that patta should be issued in the name of the temple; the temple located in S.F.No.143/1 of Omalur Village and Taluk, has already got patta lands to an extent of 3.02.0 Hectares in Pachannampatty Village of Omalur Taluk and hence, the claim for issuance of patta in favour of the temple over the

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Government poramboke land in question cannot be considered. It is further averred therein that since the disputed land is Government poramboke, Rule 13 of the Revenue Standing Order No.26 is not applicable and the Joint Commissioner, HR&CE Dept., Salem cannot make a request to issue patta in the name of the temple and hence, the petitioner has no right to seek patta in the name of the temple in respect of the land in S.No.143/1 of Omalur Village and therefore, the writ petition is liable to be dismissed.

3.2.2 The Tahsildar, Omalur Taluk, Salem District, third respondent, in his counter affidavit filed in WP.No.21712/2018, also stated that the Revenue department is the custodian of the entire poramboke lands and they have taken steps to evict the encroachers from the poramboke lands in accordance with law; and the petitioner claiming himself to be the Managing Trustee of the temple, with an ulterior motive, was attempting to possess the land. It is further stated therein that the Hereditary Trustee of the said temple, by name, R.Ramakrishnan himself came to Taluk Office, Omalur with local public and submitted no

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objection letter on 13.03.2018 for transferring the land in S.No.143/1; accordingly, an extent of 0.46.5 Hectares, out of 2.57.5 Hectares of land in S.No.143/1 was transferred to the Transport Department for the construction of Regional Transport Office, by the proceedings of the District Collector, Salem dated 28.03.2018 and the same was also incorporated in the Village accounts on 24.04.2018; and hence, the petitioner cannot question the said transfer.

3.2.3 The Joint Commissioner, HR&CE Dept., Salem, fourth respondent in WP.No.5159 of 2018 averred in his counter affidavit that the said temple is situated in S.No.143/1 of Omalur Taluk and the land around the temple also belongs to the temple, as evident from the lease deed dated 31.08.1942; the said fact was further proved by the documents for the fasli 1354 (English Calender year 1944) and fasli 1358 (English calender year 1948) and adangal; the village account of 'A' register indicates the said land as 'Kovil'; before the appointment of Executive Officer under Section 45(i) of the HR&CE Act, the said land was leased out through private negotiation by the hereditary trustee and

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after the appointment of Executive Officer, the said land was leased out through public auction, for which proper register was maintained in the temple; as per the direction of this Court, the encroachment was removed on 11.12.2017 with the help of all the officials including revenue department, however, the possession was not handed over to the temple authority. Ultimately, it is stated therein that as the prayer of the petitioner is only in the interest of the temple and to safeguard the land, which is exclusively belonging to the deity of the said temple, the same may be allowed.

3.2.4 The Regional Transport Officer, Salem, 7th respondent in WP.No.21712 of 2018 asserted that the land measuring 2.57.5 Hectares in S.No.143/1 was classified as Government poramboke and the said temple stands on the south of the field in an area of 15 m x 15m = 225 sq.meter equivalent to 2500 sq.ft.; the procedure prescribed in Rule 13 of the Revenue Standing Order No.26 is applicable only if the disputed land is temple land and not to the transfer of Government land to other Department; the transfer of 1.15 acres of land to Transport Department is

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necessary as there was no other suitable Government land available in this village and to avoid the acquisition of private lands involving huge cost and litigation; the Government already approved and sanctioned fund for construction of building at Rs.153.30 lakhs in the allotted land, by G.O.Ms.No.12 Home (Transport VII) Department, Dated 04.01.2019 and hence, this Court may be pleased to vacate the order of *status quo* granted on 03.08.2018 in WMP.No.25481 of 2018 in WP.No.21712 of 2018 and dismiss this writ petition as devoid of merits and substance.

3.2.5 Supporting the claim of the petitioner, the Hereditary Trustee of Arulmighu Kottai Mariamman Thirukoil, who is the 11th respondent in WP.No.21654 of 2018 submitted that the vacant land around the said temple in S.No.143/1 of Omalur village is necessary to regularly conduct the various annual temple festivals and to accommodate the large number of devotees from over 18 villages, who converge at the temple during such occasions. He further submitted that 'A' register, adangal, F.M.Sketch and other revenue records from the year 1937 onwards indicate the entire extent of 2.57.5 Hectares of land as

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temple poramboke, thereby confirming the propriety right of the temple over the same, subject to Rule 13 of the Revenue Standing Order No.26; and the issue regarding the exclusive right of possession and enjoyment of temple poramboke land by the temple is no longer res integra. Thus, according to this respondent, the temple is entitled to receive lawful compensation at market value from the Highways Department towards the transfer of 1250 sq.m of temple poramboke land situated in S.No.143/1 of Omalur Village and Taluk.

4.1 A common rejoinder was filed by the petitioner in WP.No.19258 of 2013 to the counter affidavits filed by the respective respondents, relating to Sri Sakthi Muthamman Temple, wherein, it is *inter alia*, stated as follows:

(i) Though the impugned order has been titled as Government Order, it is only an inter office memo addressed to (1) the Board of Revenue (LR), Madras (2) The Director of Fisheries, Madras (3) The District Revenue Officer, Chinglepet and (4) The Land Agriculture

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Department, with no copies marked to the temple or to the local authority and the said G.O. was never published in the official Gazette as evident from the reply received from RTI; and no document was produced by the respondents to substantiate the actual transfer of title/ possession of the temple poramboke land and hence, it is crystal clear that the sanction has not been acted upon, even after 50 years from the date of the said G.O.

(ii) The Commissioner, HR&CE Dept., who is the competent authority under Section 23 of the HR&CE Act, and having the general power of superintendence and control over all the temple related matters, had neither been consulted nor involved during the decision making process of the transfer of temple poramboke land in favour of the Fisheries department. Further, under Rule 13(2) of the Revenue Standing order No.26 as well as Sections 23, 34 and 77 of the HR&CE Act, approval of HR&CE Dept. is mandatory before ordering the disposal of temple poramboke lands for any other purpose and the said statutory requirement had not been complied with in the present case.

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(iii)The impugned G.O.Ms.No.2871 dated 27.09.1963 confirms about the prior existence of temple in the land in question and the ongoing worship therein by the devotees and also confirms the status of the entire premises as temple poramboke land, at the time of issuance of the same.

(iv)Under Rule 13(2) of the Revenue Standing Order No.26, temple poramboke land can be utilised only for the benefit of the temple, even if such land is in excess of the requirements of the temple and the temple is also entitled to obtain patta of such land in its name, whereas in the present case, the purpose for which the temple poramboke land was transferred to the Fisheries Department through the impugned GO, was for setting up a Ice factory -cum - cold storage, which was closed within a few years after the impugned GO was issued and hence, the object and purpose for which the transfer of land was effected, had ceased to exist very long ago. In view of the same, the continuous occupation of the premises by the Fisheries Department, shall be treated as unauthorised and illegal.

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(v)The respondents do not possess any right of alienation of the land in favour of M/s.TAFCOFED Ltd as what was proposed to be conveyed through the impugned GO, was only the right of usage of the land for a specific purpose along with the temple by retaining the title of the land with the Government.

(vi)The new proposal to set up a modern fish market and fish eatery in the remaining temple poramboke land and adjacent to the deity will seriously hurt the religious sentiments and feelings of the devotees and hence, the same will be prevented. Further, the proposed constructions, if allowed, shall cause serious restrictions on the rights of worship through curtailment of area available to the devotees for conducting their regular annual festivals and other religious functions related to the temple, which amounts to violative of the religious and cultural freedoms as guaranteed under Article 26 of the Constitution of India.

(vii)It is settled legal position that under Section 40 of the Transfer of Property Act, 1882, the negative covenants attached to immovable

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properties shall continue to bind the transferees with notice of such properties. Hence, the transfer of ownership of the land shall not affect the existing enjoyment rights of the temple in respect of the land.

(viii) Since the temple is enjoying the right of adverse possession in respect of the land, the claim of the respondents is in violation of the various provisions of the Indian Easements Act, 1882 as well as Sections 25 to 27 of the Limitation Act, 1963 as applicable to Easementary rights. Under section 109 of the HR&CE Act, there is no limitation period prescribed for resumption of such land in favour of the temple, after eviction of illegal occupations. As per the settled position of law, the deity is a perpetual minor and hence, the law of limitation shall not apply to the present case.

(ix) Now, the temple is under the management of HR&CE Dept., after the villagers had handed over the same in the year 2014. The villagers are interested in the proper maintenance of the temple and not interested to use the premises for any other purposes.

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Thus, according to the petitioner, the impugned order is contrary to the principles of natural justice and the relevant provisions of the HR&CE Act as well as the Revenue Standing Orders and hence, the same is liable to be set aside.

4.2 The petitioner in WP.5159/2018 filed a common rejoinder to the respective counter affidavits filed by the respondents, relating to Arulmighu Kottai Mariamman Thirukoil, wherein, it is *inter alia* stated as under:

(i)The entry of 'Government' in Column No.3 means a land under the control of Government. Similarly, the entry of 'poramboke' in Column No.4 indicates that no land tax is leviable on the said land. The entry in Column No.12 as 'temple' alone shows that for what purpose the said land has been set apart/acquired by the Government. Thus, the averment made by the third respondent that the disputed land is only Government poramboke as mentioned in Column Nos.3 and 4 and not temple poramboke as mentioned in Column No.12, is mischievous and is

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liable to be outrightly rejected.

(ii) Under the public trust doctrine, the Government is the custodian / trustee of all Government lands, which shall be utilised for the purposes for which such properties have been set apart, as recorded in Column No.12 of the 'A' register. As such, the respondents have no right to alienate / transfer / lease the temple poramboke land in S.No.143/1 of Omalur Village and Taluk, except with the consent of the temple management and HR&CE Dept and for the beneficial interest of the deity. However, the first respondent issued the proceedings dated 28.03.2018 for the transfer of 1.15 acres out of the total extent of 2.57.5 Hectares of the disputed land for the construction of a Regional Transport Office, which is in gross violation of the statutory provisions of law.

(iii) The petitioner applied for patta in respect of the said land only with the consent and on the basis of the directions issued by the HR&CE Dept. However, the said request was rejected, relying on the letter No.(D)79 Revenue Department dated 16.02.1996, which is contrary to

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Rule 13 of the Revenue Standing Order No.26 and hence, the same is liable to be set aside.

5.1 At the outset, it is submitted on the side of the petitioners in all the writ petitions that the petitioners never sought title of the disputed lands and they sought only the possessory and enjoyment rights over the same in favour of the deities, on the basis of the revenue records as well as in accordance with Rule 13 of the Revenue Standing Order No.26. To strengthen the said submission, a reliance was made on the decision of the Supreme Court in ***Subramanya Swamy Temple, Ratnagiri v. V.Kanna Gounder [(2009) 3 SCC 306]***. It is further submitted that the ownership of entire extent of the lands in question by the Government is not disputed, but what was disputed is the rights of the Government to utilize/ alienate / assign / transfer of such lands and construct permanent structures therein for any purpose other than the beneficial interest of the temples. It is also submitted that the role of the Revenue Department is only to protect and preserve the temple poramboke lands from illegal

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encroachments and prevent construction of permanent structures therein by third parties, in terms of Rule 13 of the Revenue Standing Order No.26.

5.2.1 With respect to Sri Sakthi Muthamman Temple, Mr.V.B.R.Menon, learned counsel for the petitioners submitted that this Temple has been in continuous possession and enjoyment of the land in S.No.82/1 of Neelankarai Village measuring to an extent of 2.03 acres; the said land was classified as temple poramboke land in the Revenue Records, viz., 'A' Register and F.M.Sketch of the year 1951; and G.O.Ms.No.2871 dated 27.09.1963 which is impugned in WP.No.19258 of 2013, also confirms about the prior existence of the said temple in the disputed land and the ongoing worship therein by the devotees. However, by the impugned G.O., the Government effected transfer of the entire extent of 2.03 acres of land including the temple, in favour of the Fisheries Department, without issuing any notice / communication to the temple Management / HR&CE Dept., which is contrary to the provisions as contained in Rule 13(2) of the Revenue Standing Order No.26 as well

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as Sections 23, 34 and 77 of the HR&CE Act and in violation of the principles of natural justice.

5.2.2 The learned counsel further submitted that the impugned G.O. was never gazetted nor published and it is only an Executive Order, by which the sanction for the transfer of land was communicated by the Government to the respondents and it is not an order of conveyance of the land by which possession / title was transferred. Further, no document evidencing the actual transfer of title/possession of the temple poramboke land has been produced by the respondents, which clearly shows that the sanction has not been acted upon, even after 50 years from the date of the impugned G.O. Referring to the decision of the Constitution Bench of the Supreme Court in ***Bishan Das and others v. State of Punjab and others [AIR 1961 SC 1570]***, he submitted that any transfer of possession through Executive Order without following due process of law is illegal. It is also submitted that under Section 3(19-a) and 21 of the Tamil Nadu General Clauses Act, 1891, a notification in official gazette is mandatory for any Government order or giving effect

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to the same and hence, the impugned G.O. which remains unpublished in the official gazette till today, is not valid. A reliance has also been placed on the decision of the Full Bench of this Court in ***K.Nagarathnammal v. Ibrahim Saheb and another [(1955) 2 MLJ 49]***, wherein it was held that Revenue Standing Order shall have statutory binding force and the same cannot be bye-passed through executive actions.

5.2.3 It is also submitted that by the impugned G.O., the Government had divested the temple land of Neelankarai Taluk around 1.63 acres in the year 1963 and converted the title; the petitioners require unrestricted freedom to assemble and conduct festivals in the said extent of land and the rest of the areas of land is to be leased out through HR&CE Dept. for agricultural or other purposes, so as to augment revenue for the benefit of the temple, as per the provisions of the Revenue Standing Order No.26. It is further stated that similarly, there are 200 temples having lands and the parameters required to be adopted are different for each temples.

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5.3.1 Relating to Arulmighu Kottai Mariamman Thirukoil, Mr.V.B.R.Menon, learned counsel for the petitioners contended that the entire extent of 2.57.5 hectares of land in S.No.143/1 of Omalur Village, Salem District is a temple poramboke land, as evident from the 'A' Register extracts and other revenue records. Entry of 'Government' in Column no.3 means that it is a land under the Government. Similarly, entry of 'poramboke' in Column no.4 shows that no land tax is leviable on the said land. Entry of 'kovil' in Column No.12 alone shows that for what purpose the said land has been set apart by the Government. He further submitted that Rule 13 of the Revenue Standing Order No.26 and the decisions of the Supreme Court in **Subramanya Swamy Temple case** (supra) as well as the Division Bench of this Court in ***M.Perumal v. the District Collector, Kancheepuram and others* [2017 (4) CTC 443]** shall conclusively prove the right of the temple over the entire extent of 2.57.5 Hectares of the land, subject to the consent of HR&CE Dept. It is also to be pointed out that the HR&CE Dept had already given consent for the issuance of patta in respect of the said land in favour of the

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temple. As such, the order dated 31.01.2018 passed by the District Collector, Salem, rejecting the application seeking patta in favour of the temple, is patently illegal and in violation of the aforesaid Rule as well as the judicial decisions.

5.3.2 The learned counsel further submitted that the impugned proceedings dated 28.03.2018 issued by the first respondent, transferring 1.15 acres out of 2.57.5 hectares of the land in S.No.143/1 of Omalur Village for the construction of a Regional Transport Office, after effecting sub-division, without the knowledge of the petitioner Management and the HR&CE Dept., that too during the pendency of WP.No.5159 of 2018, is arbitrary, illegal and against the principles of natural justice.

5.3.3 Concluding his argument, the learned counsel submitted that the new constructions, if allowed, shall cause serious restrictions/repercussions on the rights of worship through curtailment of area available to the devotees for conducting the regular annual festivals and other religious functions related to the temple and the same is contrary to

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the religious and cultural freedoms as guaranteed under Article 26 of the Constitution of India. Hence, he prayed for appropriate orders in these writ petitions.

5.4 Adopting the aforesaid submissions, Mr.A.Radhakrishnan, petitioner in WP.No.21654 of 2018 as party-in-person, submitted that as an ardent devotee of the said temple, he has every right to secure and safeguard the temple properties and hence, made representation dated 13.11.2017 requesting to return back the land taken by the respondents or pay compensation to the temple and the said request was not considered. He also submitted that his claims relating to non-audit of accounts, missing of various files etc. were not considered by the respondents.

6.1 On the other hand, Mr.S.R.Rajagopal, learned Additional Advocate General assisted by Mr.J.Ramesh, learned Additional Government Pleader appearing for the respondents raised preliminary objections with regard to maintainability of the writ petitions relating to

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Sri Sakthi Muthamman Temple, Neelankarai and limitation for filing the same, contending that the petitioners being devotees, cannot question the affairs of the temple; and the impugned G.O was passed in the year 1963, which remains alive and the same came to be challenged after a lapse of five decades, which is hit by delay and laches. To substantiate the same, he relied on the following decisions:

(i) In *State of Maharashtra v. Digambar* [(1995) 4 SCC 683], the Supreme Court at para 14, held as under:

“14.....Thus, in our view, persons seeking relief against the State under Article 226 of the Constitution, be they citizens or otherwise, cannot get discretionary relief obtainable thereunder, unless they fully satisfy the High Court that the facts and circumstances of the case clearly justified the laches or undue delay on their part in approaching the Court for grant of such discretionary relief. Therefore, where a High Court grants relief to a citizen or any other person under Article 226 of the Constitution against any person including the State without considering his blame worthy conduct, such as

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laches or undue delay, acquiescence or waiver, the relief so granted becomes unsustainable even if the relief was granted in respect of alleged deprivation of his legal right by the State.”

(ii) In yet another decision of the Supreme Court in ***Karnataka Power Corporation Ltd through its Chairman & Managing Director and another v. K.Thangappan and another*** [(2006) 4 SCC 322], it was held as follows:-

“6.Delay or laches is one of the factors, which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution of India. In an appropriate case, the High Court may refuse to invoke its extraordinary powers, if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved, the matter is still within the discretion of the Court as pointed out in *Durga Prashad v. Chief Controller of Imports and Exports* [(1969) 1 SCC 185]. Of course, the discretion has to be exercised judicially and reasonably.”

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“10.It has been pointed out by this Court in a number of cases that representations would not be adequate explanation to take care of delay. This was first stated in K.V.Rajalakshmiah Setty v. State of Mysore [AIR 1967 SC 993]. This was reiterated in Rabindranath Bose v. Union of India [(1970) 1 SCC 84] by stating that there is a limit to the time, which can be considered reasonable for making representations and if the Government had turned down one representation the making of another representation on similar lines will not explain the delay. In State of Orissa v. Pyarimohan Samantaray [(1977) 3 SCC 396] making of repeated representations was not regarded as satisfactory explanation of the delay. In that case, the petition had been dismissed for delay alone. (See. State of Orissa v. Arun Kumar Patnaik [(1976) 3 SCC 579] also).”

6.2 Even otherwise, the learned Additional Advocate General submitted that the pleadings and documents produced by the petitioners herein would go to show that they sought the reliefs of declaration of title and permanent injunction through the medium of writ petitions invoking Article 226 of the Constitution of India. As such, the remedy available to

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the petitioners is before the Civil forum. To strengthen the said submission, he referred to the following decisions of the Supreme Court:

(i) In ***Ghan Shyam Das Gupta and another v. Anant Kumar***

Sinha and others [(1991) 4 SCC 379], it was observed as under:

“7....the decision on the disputed issue was dependent on the consideration of the evidence to be led by the parties and while exercising the High Court was not expected to go into that question. In the circumstances, the Court ought to have refused to dispose of the writ petition on merits leaving the writ petitioners to avail of the remedy before the Civil Court. The error in the judgment as pointed out earlier was the consequence of the initial mistake in entertaining the petition.

8. The principle as to when the High Court should exercise its special jurisdiction under Article 226 and when to refuse to do so on the ground of availability of an alternative remedy has been settled by a long line of cases. The remedy provided under Article 226 is not intended to supersede the modes of obtaining relief before a civil court or to deny defences legitimately open in such actions....”

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(ii) In ***Genpact India Private Limited v. Deputy Commissioner of Income Tax and another***, [Civil Appeal No.8945 of 2019 rendered on 22.11.2019], the Supreme Court dismissed the appeal and thereby confirmed the order passed by the High Court, refusing to entertain the writ petition, because of availability of adequate appellate remedy.

6.3 Adding further, Mr.J.Ramesh, learned Additional Government Pleader appearing for the respondents submitted that the petitioner has no *locus standi* to file Writ Petition No.21654 of 2018, which is in the nature of Public Interest Litigation and the same cannot be gone into by this Court.

6.4 According to the learned Additional Advocate General appearing for the respondents, the disputed lands are classified as 'Government poramboke' and only in Column No.12, which indicates remarks and details, they are mentioned as 'temples'. Mere entry in Column No.12 does not accrue any right to the temples in question to

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claim title over the disputed lands. In support of the said contention, he referred to the decision of this Court in ***M.S.Krishnan and 26 others v. Government of Tamil Nadu and others [2001-2-L.W. 723]***, wherein it was observed as follows:

“10.I am inclined to agree with the contention of the learned Government Pleader that the nature of the land being temple poramboke, it cannot be treated as equal to temple site. The word 'temple site' has to be assigned only the restricted meaning, which is also the natural meaning viz., the site on which the temple or its appurtenances are situated and the actual premises of the temple. It will not include other properties belonging to the temple. If the legislature had intended to give a wider meaning and application and intended to include the lands or properties belonging to the temple, then the legislature could have as well used the expression temple lands or temple properties. The expression 'Temple poramboke can only signify one of the species of poramboke lands. Such a land does not cease to be a poramboke property over which the Government will have control subject only to the rights of the temple. It is certainly a property which is under the control of the Government and

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amenable to the provisions of the Land Encroachment Act....”

6.5 The learned Additional Advocate General also drew the attention of this Court to Rule 13 of the Revenue Standing Order No.26 and submitted that the ownership of the lands vests with the Government and hence, the submission made by the learned counsel for the petitioners with regard to Column No.12 of the 'A' register, pertaining to "remarks", at best, can only be treated as possession and it will not confer title or ownership to any party and that the continued possession of the lands by the temples cannot go beyond the scope, as claimed by the petitioners.

6.6 Regarding the petitioners' contention about non-compliance of Rule 13 of the Revenue Standing Order No.26, the learned Additional Advocate General referred to the judgment of the Supreme Court in ***State of Andhra Pradesh v. N.Venugopal and others, [(1964) 3 SCR 742 : AIR 1964 SC 33]***, and submitted that the Revenue Standing Order is nothing but administrative instructions by the Government and has no

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force of law and hence, the orders passed by the respondent authorities, transferring the disputed lands entirely or partly to other departments are valid in law. In this regard, he also relied upon the decision of the Supreme Court in ***G.J.Fernandez v. State of Mysore and others [(1967) 3 SCR 636 : AIR 1967 SC 1753]***, wherein, it was observed that “Article 162 does not confer any power on the State Government to frame rules and it only indicates the scope of the executive power of the State; of course, under such executive power, the State can give administrative instructions to its servants how to act in certain circumstances; but that will not make such instructions statutory rules which are justiciable in certain circumstances”.

6.7 The learned Additional Advocate General further submitted that the notice dated 22.11.2013 which is impugned in WP.No.32091 of 2013, pertaining to the land in Survey No.82/1 of Neelankarai Village, is in no way aid the petitioners' case, as it is nothing but a communication calling upon the villagers and devotees to participate in the discussion

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about the proposed construction. Reiterating the avements made in the separate counter affidavits filed by the respondent authorities, he clarified the actual position and asserted the purpose for which the transfer of lands was effected. He further submitted that since the property belongs to the Fisheries Department, the department started construction of a compound wall to protect the Government land from unauthorised parking of vehicle and public trespass in the premises and encroachment and that, the sanctum and sanctorum of the said temple were not included inside the compounded area and hence, there is no motive or dubious plans to hurt the religious feelings and spoil the environment by proposing fish food stall at the premises.

6.8 The learned Additional Advocate General ultimately contended that the petitioners sought for title of the poramboke lands in favour of the deities. In fact, the petitioners are unauthorised occupants of the same. According to him, the entry in Column No.12 of the 'A' register as 'Kovil' does not confer any right to them, as it is not a title document, but only a record of particulars, which are necessary to

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determine the land revenue dues from such lands. He also submitted that there were large scale encroachments in S.No.143/1 of Omalur Village and Taluk and hence, G.O.Ms.No.318 Revenue and Disaster Management Department, dated 30.08.2019 came to be issued for regularisation of those encroachments. He stoutly refuted the submission of the learned counsel for the petitioners that the disputed lands are temple poramboke lands, contending that the same are classified as Government poramboke lands in the revenue records and hence, the respondent authorities have power to deal with the same in whatsoever manner.

6.9 It is also submitted that there is self-imposed restriction on the temples and as such, they cannot claim any right over the disputed lands. To substantiate the same, the learned Additional Advocate General referred to the latest decision rendered by the Supreme Court in ***Indian Young Lawyers Association and Others (Sabarimala Temple, in Re) v. The State of Kerala & Ors. Reported in (2019) 11 SCC 1 (dated***

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28.09.2018), wherein, it was observed as follows:-

“21. The petitioners have also cited the judgment in Durgah Committee, Ajmer v. Hussain Ali (1962) 1 SCR 383 : AIR 1961 SC 1402 wherein Gajendragadkar, J clarified that clauses (c) and (d) do not create any new right in favour of religious denominations but only safeguard their rights. Similarly, in matters of religious affairs, it is observed that the same is also not sacrosanct as there may be many ill-practices like superstitions which may, in due course of time, become mere accretions to the basic theme of that religious denomination. After so citing, the petitioners have submitted that even if any accretion added for any historical reason has become an essence of the said religious denomination, the same shall not be protected under Article 26 (b) if it is so abhorring and is against the basic concept of our Constitution.”

Even if the lands in question are Inam lands, as claimed by the petitioners, then the Act contemplates to approach the Settlement Officer, but they have not done so. Adding further, he contended that the lands are classified as temple poramboke lands and the same have to be read under Section 6(20) of the HR&CE Act. It is also submitted that the

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lands do not cease to be poramboke lands over which the Government will have control subject to the rights of the temples. Thus, according to the learned Additional Advocate General, the petitioners are not entitled for any relief in these writ petitions.

6.10 Apart from that, Mr.J.Ramesh, learned Additional Government Pleader, on instructions, submitted that pursuant to the impugned G.O., the Fisheries Department developed infrastructure to a total extent of 2395.75 sq.m., in the disputed land in S.No.82/1 of Neelankarai Village, for the office of the Assistant Director measuring to an extent of 240 sq.m and for the office of the Tamil Nadu Fishermen Welfare Board and Executive Engineer (Fishing Harbour Division) measuring to an extent of 655.75 sq.m, besides erecting Diesel bunk to an extent of 600 sq.m and constructing Fish market to an extent of 900 sq.m. However, the establishment of TAFCOFED administrative block with proposed plinth area of 470 sq.m. is yet to be done.

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6.11.1 Mr.M.Maharaja, learned Special Government Pleader appearing for the HR&CE Dept. submitted that Sri Sakthi Muthamman Temple situated in S.No.82/1 is a Hindu Public Religious Institution more fully a 'temple' as defined under Section 6(20) of the HR&CE Act and the provisions of the said Act shall apply to the temple as per Section 1(3) of the Act; and the Executive Officer of Arulmigu Maruntheeswarar Temple, Thiruvannamiyur was appointed as Fit Person of the said temple, vide proceedings in Rc.No.31/2014/A1 dated 11.03.2014. He further submitted that as per the entries found in the Settlement Register of 145 Neelankarai Village, S.No.82/1 was noted as Government poramboke admeasuring acre 2.03 cents as 'kovil'. It is also submitted that as the temple is situated in poramboke land, the conditions as stipulated by the Board Standing Orders regarding land encroachment and unauthorised occupation relating to assignment of poramboke land and consent of this department have to be strictly followed and obtained.

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6.11.2 With respect to Arulmighu Kottai Mariamman Thirukoil, it is submitted that this temple is a Hindu Public Religious Institution which is coming under the purview of the HR&CE Act and has been included in the list published under Section 46(i) of the Act and is now managed by the Hereditary Trustee under the administrative and supervisory control of this respondent. It is fairly conceded that due to the difficulties experienced in evicting the encroachers and protecting the temple poramboke lands, this respondent submitted a proposal on 06.10.2017 to the District Revenue Officer, Salem seeking issuance of patta for the land in S.No.143/1 to the extent of 2.57.5 Hectares of Omalur Village and Taluk, Salem District in favour of Arulmighu Kottai Mariamman Thirukoil. As per the order of this Court in WP.No.7 of 2017 dated 23.01.2017, the encroachment was removed on 11.12.2017 with the help of the Government officials and the entire extent of 2.57.5 Hectares of the temple poramboke lands in S.No.143/1 is free from encroachment at present, but the possession of the same had not been handed over to the temple.

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6.11.3 It is also submitted by the learned Special Government Pleader (HR&CE) that the disputed lands are under the control of the respective temples and the same are being utilized for conducting the regular temple festivals and therefore, the apprehension of the petitioners is baseless. He further submitted that the Joint Commissioner by exercising power under Sections 45(1) and 63(b) of the HR&CE Act, appointed Executive Officer / hereditary trustee for the respective temples.

7.1 With respect to the preliminary objections raised by the learned Additional Advocate General appearing for the respondents, Mr.V.B.R.Menon, learned counsel for the petitioners by way of reply, submitted that in respect of Sri Sakthi Muthamman Temple, there was no Trustee and it was administered and managed by the Villagers; and the petitioners, being devotees of the temple, are not individuals and they are the “persons having interest” as provided under Section 6(15) of the HR&CE Act and hence, they can very well maintain these writ petitions.

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In support of the said contention, he relied upon the decision of the Supreme Court in *Bishwanath and another v. Sri. Thakur Radha Ballabhji and others* [(1967) 2 SCR 618]. He further submitted that the impugned G.O has not been published or notified in the official gazette and even if it is notified, the petitioners being perpetual minors, there is no limitation period to approach the Court in the interest of the deities.

7.2 Admitting the fact that the Government vests with the title of the disputed lands, the learned counsel for the petitioners reiterated the stand taken by the petitioners that they sought only possessory and enjoyment rights in favour of the temples over the disputed lands and appurtenance thereto. He also submitted that with respect to Arulmighu Kottai Mariamman Thirukoil, the petitioner claimed patta in respect of the disputed land in favour of the temple based on the lease agreement.

7.3 The learned counsel for the petitioners further contended that the long uninterrupted possession of the disputed lands by the temples

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give rise to possessory rights. To substantiate the same, he relied upon the decision of this Court in ***A.K.Thillaivanam and another v. The District Collector, Chengai Anna District at Kancheepuram and others*** [1998-3-L.W.603].

7.4 According to the learned counsel for the petitioners, the petitioners, exercising jurisdiction under Article 226 of the Constitution of India, sought protection in respect of the disputed lands in terms of the Revenue Standing Order No.26, which is the Rule by which the Land Encroachment Act is implemented. He also submitted that the Government only framed the special rules and hence, it has statutory value. Even assuming that the Special Rules are not applicable, yet, the petitioners are entitled for the possessory and enjoyment rights, in view of the dictum laid down by the Supreme Court in ***Subramanya Swamy Temple case (supra)***, which is the 'law of land' under Article 141 of the Constitution, as held by the Supreme Court in ***Director of Settlements, A.P. And Ors v. M.R.Appa Rao and another*** [2002 (4) SCC 638].

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7.5 The learned counsel for the petitioners drew the attention of this Court to Column Nos.1 to 12 of the 'A' Register extract and submitted that Column No.12 is meant for earmarking the Government land, which does not come under the Ryotwari land, whereas in this case, against the survey number of the temples' lands, no such marking was done. The entry in the remarks Column no.12 of the 'A' Register shows the purpose for which the lands are set apart during the Survey Settlement Operations by the Government. Thus, the contention of the learned Additional Advocate General appearing for the respondents that there was illegal occupation of poramboke lands by the petitioners' temples, is incorrect.

7.6 In response to the arguments advanced on the side of the respondents, the learned counsel for the petitioners submitted that no doubt, the impugned GO was passed in the year 1963, but till 2003, only 7000 sq.ft., of land was under the possession of the Fisheries Department and the rest of the land was available to the temple; however, when the

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petitioners approached the police authorities seeking police protection for conducting annual festivals of the temple, it was denied; 1988 Extract shows that the temple situated in the land was with the Fisheries Department and in regard to the change in the Revenue Records, no notice or communication was issued to the management of the temple / devotees.

7.7 Referring to the Full Bench decision of this Court in ***K.Nagarathnammal case (supra)***, the learned counsel for the petitioners submitted that the Revenue Standing Orders consist of three categories of rules: (i) Statutory; (ii) Executive Orders (which gets legislative sanction); and (iii) Administrative directions; and it cannot be treated as mere executive instructions, devoid of statutory force. He also relied upon the judgement of this Court in ***M.S.Krishnan case (supra)*** and submitted that the temple poramboke land is certainly a property which is under the control of the Government and amenable to the provisions of the Land Encroachment Act and hence, the building constructed by the

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Fisheries Department in the disputed land is illegal structure, as per Rule 13 of the Revenue Standing Order No.26. He also drew the attention of this Court to various documents filed by the petitioners in the typed set of papers and submitted that the sketch pertaining to the land between the Fisheries Department and the temple, is wrong and the entire land should be declared as temple land.

7.8 The learned counsel for the petitioners further submitted that the Government lands cannot be disposed through arbitrary actions, without complying with the requirement of the Revenue Standing Orders. In support of the said contention, he relied upon the decision of this Court in *M.G.Chakravarthi Naicker and another v. K.M.Thillaimoorthy and Others [(1970) 1 MLJ 476]*. Referring to the decision of this Court in *I.Easwara Pillai and others v. the State of Tamil Nadu rep. by the Secretary to the Revenue Department for Harijan Welfare and another [(1972) 1 MLJ 92]*, he also submitted that the respondent authorities, while making assignment of lands, should

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follow the rules framed in the Revenue Standing Orders as well as the principles of natural justice.

7.9 The learned counsel for the petitioners further submitted that the ***Sabarimala case (supra)*** relied upon by the learned Additional Advocate General, is not applicable to the case on hand, since the right and inequality between the genders are not questioned herein. According to him, the more appropriate case applicable herein is ***Ayodhya Judgment, viz. Civil Appeal Nos 10866-10867 of 2010 (M Siddiq (D) Thr Lrs Versus Mahant Suresh Das & Ors) dated 09.11.2019*** and the issue involved therein is with respect to enjoyment of property and not just the worshiping right of the temple. Thus, the learned counsel prayed for appropriate orders in these writ petitions.

8. This Court has given its thoughtful consideration to the submissions made by all the parties and also perused the materials available on record, carefully and meticulously.

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9. The reliefs sought for in all these writ petitions are pertaining to two temples viz., (i)Sri Sakthi Muthamman Temple, Neelankarai and (ii)Arulmighu Kottai Mariamman Thirukoil, Omalur Taluk, Salem District. It is not in dispute that these temples are Hindu Religious Institutions coming under the control and supervision of HR&CE Dept. and within the purview of HR&CE Act.

10. According to the petitioners, Sri Sakthi Muthamman Temple is situated in the land admeasuring 2.03 acres in S.No.82/1 of Neelankarai Village which land has been in continuous possession and enjoyment of the temple for more than 70 years. An extract of the 1951 'A' Register and a copy of F.M.Sketch would show the entire extent of 2.03 acres of land as 'temple' and 'a village pond'. The vacant land around the temple is being used by the villagers of Chinna Neelankarai for conducting the temple festivals and temporary shelters to the villagers during the times of natural calamities. Similarly, Arulmighu Kottai Mariamman Thirukoil, is situated in the land admeasuring 2.57.5

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Hectares in S.No.143/1 of Omalur Village and Taluk and the said land has been in continuous possession and enjoyment of the said temple for more than 80 years. The said land was classified as 'temple poramboke land' in the revenue records, such as, Extract of 1937 'A' register, Adangal and F.M.Sketch. Such being the position of lands, the respondent authorities transferred the entire extent of 2.03 acres of land in S.No.82/1 of Neelankarai Village to the Fisheries Department. Similarly, the District Collector, Salem, effected sub-division of the land in S.No.143/1 of Omalur Village and Taluk and transferred 1.15 acres of the same, to the Regional Transport Officer, besides handing over 1250sq.mt. to the Highways Department for construction of bridge. While doing so, they did not send prior notice / communication to the management of temples or HR&CE Dept. in respect of both the lands. Further, the application seeking patta in favour of the second temple was rejected. These are the root causes for preferring the present writ petitions. Thus, the core issue having arisen herein is relating to the possessory and enjoyment rights of the temples over the disputed lands.

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11. As already stated in the opening paragraph of this order, the second limb of the prayer made in W.P.No.17248 of 2013 was given up by the learned counsel for the petitioner by making necessary endorsement in the writ petition and the same was also recorded vide order dated 26.11.2019. Hence, insofar as the relief sought for in the said writ petition, it is suffice to consider the first limb of the prayer alone viz., directing the respondents 1 to 6 to correct the wrong entries in the revenue records pertaining to Survey No.82/1 of Neelangarai Village, Kancheepuram District inasmuch as it includes the Fisheries Department.

12. At the outset, this Court is inclined to go into the preliminary objections raised by the learned Additional Advocate General appearing for the respondents, with regard to the maintainability of the writ petitions, pertaining to the first temple, Sri Sakthi Muthamman Temple, on two aspects viz., (i) *locus standi* of the petitioners; and (ii) limitation.

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(i)(a) Regarding the first aspect, the petitioners being devotees of the temple, have a right to represent the deity and they are entitled to approach the Court for the purpose of protecting the temple properties and its interests. It is to be noted that the treatment of deities as juristic persons started under the British. Temples owned huge land and resources and British administrators held that the legal owner of the wealth was the deity, with a shebait or manager acting as trustee. In 1887, the Bombay High Court, in the **Dakor Temple case**, held that “Hindu idol is a juridical subject and the pious idea that it embodies is given the status of a legal person.” This was reinforced in the 1921 order in **Vidya Varuthi Thirtha v. Balusami Ayyar**, where the Court said, “under the Hindu law, the image of a deity is a ‘juristic entity’, vested with the capacity of receiving gifts and holding property”. This idea is now established in Indian law even.

(b) With regard to the rights, deities have, apart from owning property, paying taxes, suing, and being sued, as ‘legal persons’, in 2010, Allahabad High Court's judgment in the **Ayodhya title suit**, Justice

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D.V.Sharma said, “As in the case of minor, a guardian is appointed, so in the case of idol, a Shebait or manager is appointed to act on its behalf.”

(c)In the decision in ***Bishwanath and another v. Sri Thakur Radha Ballabhji and Others [(1967) 2 SCR 618 : AIR 1967 SC 1044]***, cited on the side of the petitioners, the Supreme Court ultimately held that the suit filed by the idol represented by a worshiper as well as a person who had been assisting in the management of the temple, for declaration, is maintainable. While doing so, it was observed as under:

“10.The question is, can such a person represent the idol when the Shebait acts adversely to its interest and fails to take action to safeguard its interest. On principle we do not see any justification for denying such a right to the worshiper. An idol is in the position of a minor; when the person representing it leaves it in the lurch, a person interested in the worship of the idol can certainly be clothed with an ad hoc power of representation to protect its interest. It is a pragmatic, yet a legal solution to a difficult situation. Should it be held that a Shebait, who transferred the property, can only bring a suit for recovery, in most of the cases it will be an indirect approval of the dereliction of

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the Shebait's duty, for more often than not he will not admit his default and take steps to recover the property, apart from other technical pleas that may be open to the transferee in a suit. Should it be held that a worshiper can file only a suit for the removal of a Shebait and for the appointment of another in order to enable him to take steps to recover the property, such a procedure will be rather a prolonged and a complicated one and the interest of the idol may irreparably suffer. That is why decisions have permitted a worshiper in such circumstances to represent the idol and to recover the Property for the idol. It has been held in a number of decisions that worshipers may file a suit praying for possession of a property on behalf of an endowment..."

(d)Further, under Articles 25 and 26 of the Constitution of India, all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion subject to public order, morality and health; and all denominations can manage their own affairs in the matters of religion. In this connection, it is relevant to refer to Section 6(15) of the HR&CE Act, which reads as under:

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“S.6(15) *“person having interest”* means-

(a) in the case of a math, a disciple of the math or a person of the religious persuasion to which the math belongs;

(b) in the case of a temple, a person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple, or who is entitled to partake or is in the habit of partaking in the benefit of the distribution of gifts thereat;

(c) in the case of a specific endowment, a person who is entitled to attend at or is in the habit of attending the performance of the service or charity, or who is entitled to partake or is in the habit of partaking in the benefit of the charity;

[(d) in the case of a samadhi, brindhavan or any other institution established or maintained for a religious purpose, a person who is entitled to attend at or is in the habit of attending the performance of worship or service in such religious institution, or who is entitled to partake or is in the habit of partaking in the benefit of the distribution of gifts thereat;]”

The case of the petitioners herein would fall under sub-clauses (b) and

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(c) of clause 15 of Section 6. Hence, this Court is of the view that the petitioners, being devotees of the temple, are not mere individuals and are the “persons having interest” as provided under Section 6(15) of the HR&CE Act and they can very well maintain the writ petitions in safeguarding the interests of the deity and temple. Accordingly, the objection raised by the learned Additional Advocate General appearing for the respondents, with regard to *locus standi* of the petitioners to file the writ petitions, is rejected.

(ii) Regarding the second aspect, though the impugned G.O. relating to transfer of land, was passed in 1963 i.e., fifty years before and was challenged only in the year 2013, the same has not been notified or published in the official Gazette. In such circumstances, the right of the Fisheries department to the land cannot be held to be determined to set the clock ticking. It is also not in dispute that even today, the temple in the premises is being visited by the villagers regularly and the usual festivals are conducted. Therefore, the right to protect the interest of the

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temple continues even today. Further, as per Section 109 of the HR&CE Act, there is no limitation period prescribed for resumption of temple lands after evicting the illegal occupants / encroachments who had come into possession after 1951. The very object of Section 109 is to ensure that the encroachments under the temple lands have to be removed and the deities being perpetual minors, their interest ought to be safeguarded. In **Ganesan v. T.N. Hindu Religious & Charitable Endowments Board**, (2019) 7 SCC 108 : (2019) 3 SCC (Civ) 482 : 2019 SCC OnLine SC 651 at page 139, the Supreme Court has held as follows:

“61.A special or local law can very well provide for applicability of any provision of the Limitation Act or exclude applicability of any provision of the Limitation Act.”

Though this Court has no quarrel with regard to the principles laid down by the Supreme Court in **State of Maharastra v. Digambar; and Karnataka Power Corporation Ltd through its Chairman & Managing Director and another v. K.Thangappan and another**, referred to above, the same are not applicable to the facts of the present case. Admittedly,

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the disputed land was alleged to have been transferred, only after 1951. Therefore, the preliminary objection raised on the side of the respondents relating to limitation is also rejected by this Court.

13.1 Coming to the claim of the petitioners in both sets of writ petitions, they sought only the possessory and enjoyment rights of the disputed lands in favour of the temples, based on the entry made in the revenue records and they never disputed the title over the same by the Government. Whereas, the learned Additional Advocate General appearing for the respondents contended that the petitioners invoking Article 226 of the Constitution of India, sought the reliefs of declaration of title and permanent injunction in favour of the temples over the poramboke lands, for which, they have to approach the Civil Court. Referring to the decisions rendered by the Supreme Court in **Ghan Shyam Gupta case and Genpact India Private Limited case** (supra), he submitted that the present writ petitions are liable to be dismissed, in view of availability of alternative remedy before the Civil forum. This

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Court is not in agreement with the said contention raised on the side of the respondents, because there is no dispute with regard to the title of the lands as the petitioners accept that the lands vest with the Government. What is in “lis” is the disturbance to the possessory and enjoyment rights over the same. Though the facts are not disputed by any of the parties, the authority of the Government to transfer the lands dedicated to the temples is questioned in the present writ petitions. Thus, the dispute raised herein would not fall within the ambit of a Civil Court. Hence, this Court holds that the writ petitions are maintainable.

13.2 Before proceeding further, it is apropos to have a peep about the source of temple poramboke lands. They were inam lands dedicated in favour of deities by the earlier rulers / Zamindars and hence, the lands in question are not the lands given free for charitable purposes by the Government and those had come to the Government, only pursuant to the enactments of Land Encroachment Act, 1905 (Section 2), Zamindari Abolition Act, 1956 and Tamil Nadu Minor Inam Abolishing Act, 1963.

13.3 India has three types of properties such as (1) Agricultural;

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(2)Non-Agricultural; and (3)Common properties. By social practice, one can see a set of new unrecorded conventions and power structure with reference to private properties. However, private property was never documented in ancient Indian literatures. It is relevant to point out at this juncture that the Indian Land Administration derives its genesis from “Land Revenue Administration” where every land record created aimed at tapping the Revenue to the Government.

13.4 The whole area of a Tamil village dating to ancient Chola period and thereafter, was divided into various classifications, one among which, as Poramboke lands. The poramboke lands are incapable of cultivation or set apart for public or communal purposes. Though there are various types of poramboke lands, in common parlance, any land that does not yield revenue, is known as poramboke land, but it is liable to tax, however the right to levy assessment on it, is given up by the Government for certain reasons. The four main classifications of waste lands under Ryotwari System that exist today, are (a) assessed (b)unassessed (c) poramboke and (d) reserved. The poramboke denotes

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lands set apart for public or communal purposes. They are also unassessed. The free-hold in these four classes of lands is in Government. Nattam or Gramanattam is the site on which village habitations are situated and is held free of assessment. Except the nattam poramboke, which is permitted for inhabitation, all other poramboke such as lake, river, hill, grazing ground, cattle pond, forest and similar classification of poramboke of public use or common use are completely protected from any kind of people's enjoyment.

13.5 It is the case of the respective petitioners that the entire extent of 2.03 acres of land in S.No.82/1 of Neelankarai Village has been in possession and enjoyment of Sri Sakthi Muthamman Temple, as evident from the extract of 1951 'A' Register and F.M.sketch. Similarly, Arulmighu Kottai Mariamman Thirukoil is situated in the land measuring to an extent of 2.57.5 hectares in Survey No.143/1 of Omalur Village and Taluk, Salem District and the said land has been classified as 'temple land' as per the extracts of 1937 'A' Register, Adangal and F.M.Sketch. It

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is their further case that Column No.12 of the 'A' register, which indicates the lawful and specific purpose for which such lands have been set apart by the Government, referred to the disputed lands as 'temple/Kovil'. Thus, according to the petitioners, the disputed lands have been in continuous possession and enjoyment of the respective temples for more than 70 years. Since the possessory right of the temples over such lands is superior to the right of title claimed by the Government, the temples are entitled to get possession and enjoyment rights over the disputed lands in their favour. It is also submitted that the original source of the disputed lands was inam lands dedicated in favour of the deities by the earlier rulers / Zamindars and hence, these are not lands given free for charitable purposes by the State and the same had come to the State only pursuant to the enactments of the Land Encroachment Act, 1905, Zamindari Abolition Act, 1956, Tamil Nadu Minor Inam Abolishing Act, 1963, etc. To strengthen the same, the learned counsel for the petitioners placed reliance on the following decisions:

(i)The Supreme Court in ***Subramanya Swamy Temple case***

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(supra), held as follows:

“3.The classification of 32 acres of land of Survey No.370/1 was made as “Sri Subramanya Swamy Temple, poramboke”. The said classification of temple “poramboke” in the revenue record-of-rights indicates the reason for which it has been set apart as also its occupation and use. Temple poramboke consists of unassessed wasteland by the Temple. It may also include common passage, water ponds, thrashing floor, etc. etc.

5.By reason of such classification, the appellant-temple obtained full right to possession and exercise right to transfer of the lands assigned in its favour. The right of the appellant to hold and possess the said land was noticed by a Bench of the Madras High Court in 2001 (2) Law Weekly 723 in the following terms :

“10.....Such a land does not cease to be a poramboke property over which the Government will have control subject only to the rights of the temple.”

10.The High Court, in its impugned judgment proceeded on the basis that there had been no assignment in favour of the temple by the State. It committed an error in relation thereto. The paramount title of the State is not

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disputed. It remains vested in the State. The State, however, having regard to the possession of the appellant over 32 acres of land classified the same as 'temple poramboke'. It, by reason of the said classification, not only permitted the appellant to continue to possess the land, but also granted a superior right, namely, to make constructions as also to grant lease thereof subject of course to the conditions laid down as noticed hereinbefore. The principle of possessory title was, thus, completely overlooked by the High Court.”

(ii) In yet another order dated 15.02.2011 passed by the Division Bench of this Court in W.P.(MD)No.4850 of 2008 in the case of T.K.Saminathan v. the Special Commissioner and Commissioner of Land Administration, Chennai and others, in paragraphs 9 and 11, it was held as follows:-

“9. The contention of the District Collector and the first respondent that the temple is not in need of the land cannot be accepted. The temple lands and the land appurtenant thereto are to be enjoyed by the devotees/worshippers of the temple and it cannot be used

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by any encroacher, that too, for constructing toilet near the temple which will hamper the sanctity of the temple, which will cause nuisance to the worshipers in general. When public interest and private interest are pitted against each other, it is the well settled proposition of law that the public interest will have to be prevailed over private interest and the Courts have to lean to uphold the public interest in preference to the private interest. The said principle is reiterated by the Supreme Court in the case of [State of Uttra Pradesh and others vs. Bhupendra Nath Tripathi and others](#) reported in 2010 (8) Supreme 690 ; 2010 (11) Scale 521. In the said Judgment, the Supreme Court held as follows:-

.... In cases like these, interest of individuals cannot be placed above or preferred to larger public interest. [see [L.Muthukumar Vs. State of Tamil Nadu](#) reported in 2000 (7) SCC 618 : 2000 (6) Scale 536].....”

“11. In fine, the impugned order is set aside and the writ petition is allowed. The 4th respondent is directed to hand over vacant possession of the temple poramboke land to the second respondent within eight weeks from

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the date of receipt of copy of this order, and in turn the second respondent is directed to hand over possession to the temple within two weeks therefrom. There is no order as to costs. Connected M.P.No.1 of 2008 is closed.”

13.6 The aforesaid stand of the petitioners was seriously refuted on the side of the respondents in the counter affidavits stating that according to 'A' register of Neelankarai village and other revenue records, the entire land in S.No.82/1 measuring 2.03 acres is a Government poramboke and not a temple property, but Sri Sakthi Muthamman Temple is situated in the said land. As far as Arulmighu Kottai Mariamman Thirukoil is concerned, the land admeasuring 2.57.5 hectares in S.No.143/1 of Omalur Village and Taluk was classified as Government poramboke in Village accounts; and even from the revenue records viz., pre-updating Register (pre UDR) of the year 1937, S.No.143/1 had been classified as Government poramboke in Column Nos.3 & 4, but in Column No.12 of the 'A' register, it was marked as 'temple'; which does not mean that the land belongs to the temple.

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Reiterating the same, the learned Additional Advocate General further submitted that the disputed lands are classified as 'Government poramboke' and only in Column No.12, which indicates remarks and details, they are mentioned as 'temples'; mere entry in Column No.12 does not accrue any right to the subject matter of the temples to claim title over the disputed lands. In support of the said contention, he placed reliance upon the decision of this Court in **M.S.Krishnan case** (supra).

13.7 To answer this issue, it is necessary to set out briefly the Columns found in the 'A' Register Extract. There cannot be any dispute that the entries in 'A' Register do not confer title to anybody as it is not a title document and it is only a record of those particulars which are relevant to determine the land revenue due from those lands. Each one of the 12 columns of the 'A' Register signifies the extent and quantum of land revenue payable by the owners of those lands to the State.

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13.8 Column Nos.1 and 2 denote the old and new survey numbers of the property; Column No.3 indicates whether the title of the property is with the Government or with Ryotwari Patta Holder; Column No.4 denotes whether it is a nanja (wet) or punja (dry) land on which land tax shall be payable or poramboke land on which no land tax is payable; Column No.5 indicates whether two-time crops are taken or not; Column Nos.6 and 7 indicate the quality and grade of the earth of the land; Column Nos.8, 9 and 10 indicate the area, rate of land tax and total land tax payable with reference to the entries in Column Nos.4 to 7; Column No.11 indicates the name of the Ryotwari Patta Holder with reference to the entry in Column No.3; Column No.12 indicates the purpose for which the land has been set apart, for the purpose of waiving land revenue with reference to the entry in Column Nos.3 and 4, as Government lands and those lands that come under the category of poramboke in Column No.4, are exempted from the payment of land revenue and consequently give the reason for exemption from Land Revenue.

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13.9 As no land revenue is payable on poramboke lands, there will be no entries in respect of those lands in Column Nos.5 to 8, 10 and 11 of 'A' Register, whereas in the case of Ryotwari patta lands, all the columns except Column No.12, shall have entries for the purpose of computation of appropriate land tax.

13.10 In the present case, concededly, Column No.12 of the 'A' Register indicating the purpose for which the lands have been set apart, denotes the nature of the disputed lands as 'temple / kovil'. Further, the existence of temples in the disputed lands, has been found in the other revenue records, such as Adangal, F.M.Sketch etc. The said fact is also admitted on the side of the respondents. But, they have stated that the title of the disputed lands vests with the Government. As already stated, the petitioners claimed only the rights of possession and enjoyment of the disputed lands in favour of the temples and they never sought title over the same. In such circumstances, it can be safely concluded that the temples shall have the rights of possession and enjoyment in respect of the lands in question.

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13.11 That apart, the decisions relied on the side of the petitioners buttress their case. In **Subramanya Swamy Temple case** (supra), the Supreme Court pointed out that 'the settled possession or effective possession of a person without title, would entitle him to protect his possession even as against the true owner' and ultimately, held that 'having regard to the possession of the appellant over 32 acres of land classified as temple poramboke, the State, not only permitted the appellant to continue to possess the land, but also granted a superior right, namely, to make constructions as also to grant lease thereof, subject of course, to certain conditions'. Further, the Madurai Bench of this Court in ***T.K.Saminathan v. The Special Commissioner and Others, in W.P.(MD) No.4850 of 2008 vide order dated 15.02.2011,*** observed that the temple lands shall be for the exclusive use of the temples. The term "temple lands" would, not only mean lands owned by the temples, but also lands earmarked or endowed for the usage of the temples and its devotees. On the other hand, the decision rendered by this Court in ***M.S.Krishnan case, (supra)*** is of no help to the case of the

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respondents, inasmuch as it dealt with the applicability of the Land Encroachment Act to the temple poramboke lands.

13.12 Thus, having regard to the admitted fact that the entry made in Column No.12 of the 'A' Register indicates the nature of the disputed lands as 'temple' and the same are in continuous possession and enjoyment of the respective temples and also taking note of the specific stand of the petitioners that they sought only possessory and enjoyment rights over the disputed lands in favour of the temples and they never disputed the title of the same vesting with the Government, this Court holds that the temples are entitled to the rights of possession and enjoyment in respect of the disputed lands. Needless to say that no trustee/ private individual shall claim right over the disputed lands possessed and enjoyed by the temples in any manner whatsoever.

14.1 In **WP.No.19258 of 2013**, the petitioner challenges G.O.Ms.No.2871 Revenue Department, dated 27.09.1963, by which, sanction was accorded for transfer of the entire extent of 2.03 acres of

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land in S.No.82/1 of Neelankarai Village in favour of the Fisheries Department. According to them, (i)the impugned G.O. is only an inter-office memo between two units/heads and it was never notified or published in the Official Gazette. To prove the same, reply dated 12.09.2013 received from the Fisheries Department through RTI was produced by the petitioner, a copy of which is enclosed at page 42 of the common typed set of papers dated 17.06.2019 filed in the first batch of writ petitions; (ii)Contrary to Rule 13 of the Revenue Standing Order No.26, the said transfer was effected by the Government; (iii)the Commissioner, HR&CE Dept., who is the competent authority under Section 23 of the HR&CE Act and who is having general power of superintendence and control over all temple related matters, had neither been consulted nor involved during the decision making process of the transfer of the temple land in favour of the Fisheries Department; and (iv)without issuing any notice /communication to the temple management and HR&CE Dept., the impugned G.O came to be issued and hence, the same is violative of the principles of natural justice.

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14.2 Per contra, the learned Additional Advocate General appearing for the respondents submitted that based on the title of the disputed land vesting with the Government, the entire extent was transferred in favour of the Fisheries Department by the impugned G.O. and due to the same, the said land has been under the possession of the Fisheries Department till now. Regarding the petitioner's contention about non-compliance of Rule 13 of the Revenue Standing Order No.26, he submitted that the Revenue Standing Order is nothing but administrative instructions by the Government and has no force of law and hence, the order passed by the respondent authorities, transferring the disputed land to other department is valid in law. To substantiate the same, he referred to the judgments of the Supreme Court in *State of Andhra Pradesh v. N.Venugopal and others*, [(1964) 3 SCR 742 : AIR 1964 SC 33]; and *G.J.Fernandez v. State of Mysore and others*, [(1967) 3 SCR 636 : AIR 1967 SC 1753].

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14.3 Before considering the rival submissions, it is relevant to note down the contents of the impugned G.O., as well as the reply dated 12.09.2013 received through RTI on the basis of the information furnished by the Fisheries Department, which read as follows:

Impugned G.O:

Abstract

Transfer – Land – (Chingleput) – Saidapet Taluk – Neelankarai village – S.No.82/1 – Transfer to Fisheries Department for installation of Ice Plant -cum-Cold storage – Sanctioned.

Revenue Department

G.O.Ms.No.2871

Dated 27th September 1963

Govt.Memo No.15244-A3/63-2, Revenue, dated 23.3.63.
From the District Revenue Officer, Chingleput
Ref.No.41308/61-B1 dated 22.9.62.

From the Board of Revenue (L.R.)No. B.P. Ms. No. 1982(R) dt. 22.10.62.

From the District Revenue Officer, Chingleput,
D.Dis.899/63, dated 5.6.63.

From the Board of Revenue D.Dis.(B)59/63 dated 29.6.63.

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ORDER:

“Sanction is accorded for the transfer of land measuring 2.03 acres in S.No.82/1 in Neelankarai Village, Saidapet Taluk, Chingleput District to the Fisheries Department for construction of a building for the installation of Ice Plant -cum – cold storage, free of land value, but subject to the collection of Rs.22.50 (Rupees Twenty two and naya paise fifty only) being the value of the three palmyra trees on the land and subject to the condition that the Amman Temple on the land should be preserved with the right to the public to worship the Amman whenever they like without any obstruction.

The palmyrah trees may be cut and removed, if they are detrimental to the construction of the building by the Fisheries Department.”

(By Order of the Governor)

G.N.Dias

Deputy Secretary to Government

To

The Board of Revenue (L.R), Madras-5. (with enclosure)

The Director of Fisheries, Madras.

The District Revenue Officer, Chingleput.

The Food and Agriculture Department (NTT Section)

WEB COPY

Superintendent

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Reply received through RTI:

அனுப்புநர்

பெறுநர்

பொது தகவல் அலுவலர்/
உதவி ஆணையர்
தமிழ்நாடு ஆவணக்காப்பகம்
மற்றும் வரலாற்று ஆராய்ச்சி
தமிழ்நாடு ஆவணக்காப்பகம்,
எழும்பூர், சென்னை-600 008.

T.Karunadas,
No.12A, Kuppusamy
Road,
Poothapedu,
Ramapuram,
Chennai -600 089.

கடித எண்.4902/எஸ்-1/2013 நாள் 12.09.2013

ஐயா,

பொருள் : தகவல் அறியும் உரிமை சட்டம்
மூலம் - அரசிதழ் நகல் கேட்டல் -
தொடர்பாக.

பார்வை : தங்கள் 17.7.2013 நாளிட்ட
விண்ணப்பம்.

பார்வையில் காணும் தங்களது விண்ணப்பத்தில்
வ.எண்.6 கேட்டுள்ள அரசிதழ் இடம் பெறவில்லை
யாதலால் நகல் வழங்க இயலவில்லை என
தெரிவித்துக் கொள்கிறேன்.

தங்கள் நம்பிக்கையுள்ள

பொது தகவல் அலுவலர்
உதவி ஆணையருக்காக
12.09.2013

14.4 The combined reading of the aforesaid two extracts would

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make it clear that the impugned G.O. was not notified or published in the official Gazette and the same was also not known to either HR&CE Department or general public. As per Section 3(19-a), 5 and 21 of the Tamil Nadu General Clauses Act, 1891, a notification or publication in official Gazette is mandatory for any order giving effect to the same, whereas the impugned G.O. remains unpublished in the official gazette till today, as mandated under law. Further, no document evidencing the actual transfer of title/possession of the disputed land was filed by the respondents and that, they have not disputed the contention of the learned counsel for the petitioner that only 7000 sq.ft. of land is under the possession of the Fisheries Department and the rest of the land is under the possession of the temple for being utilised for religious functions, which would prove that the impugned G.O. has not been acted upon even after a period of 50 years. On the other hand, the impugned G.O. confirms the prior existence of the subject temple in the disputed land and also the ongoing worship therein by the devotees, at that time. Such being the actual state of affairs, the impugned G.O., by which the

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sanction for transfer of the land was communicated by the Government to the addressees therein, is just an Executive order and not an order as mandated by law by which possession/title is transferred to give any semblance of rights to the Fisheries Department. Any administrative or executive order must be in conformity with the law and emanates under the provisions of a statute.

14.5 The power of State to deal with the lands can be traced to Entry 18 of List II of the Seventh Schedule to the Constitution and Entry 6 of List III of the Seventh Schedule to the Constitution, which are usefully extracted hereunder:

Entry 18 of List II:

“land that is to say, rights in or over land, land tenures including the relation of Landlord and tenant and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans, colonization”.

Entry 6 of List III:

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“transfer of property other than agricultural land, registration of the deeds and documents”.

14.6 While the transfer of property other than agricultural land is in concurrent list, the transfer and alienation of agricultural land and the right in or over such land are in the State List. The State is empowered to enact any law to regulate the transfer of agricultural land and non-agricultural land in terms of Entry 18 of List II of the Seventh Schedule and Entry 6 of List III of the Seventh Schedule to the Constitution.

14.7 At this Juncture, it is appropriate to refer to Article 13 of the Constitution, which runs thus:

“Article 13. Laws inconsistent with or in derogation of the fundamental rights:

(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void;

(2) The State shall not make any law which takes away or

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abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void;

(3) In this article, unless the context otherwise requires

(a) “law” includes any Ordinance, order, bye law, rule, regulation, notification, custom or usages having in the territory of India the force of law;

(b) “laws in force includes “laws passed or made by Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas;

(4) Nothing in this article shall apply to any amendment of this Constitution made under Article 368.”

It is clear from Article 13 that the term “Law” is wide enough to include a Government order and as per clause 3 (b) of the Constitution, laws passed or made by legislature or other competent authority shall be deemed to be in force unless repealed.

14.8 It is now imperative to refer to Article 162 of the

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Constitution of India, which reads as follows:

“Article 162. Extent of executive power of State.

Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws.

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authorities thereof Council of Ministers.”

A conjoint reading of the Articles referred to above, would illustrate that the executive power of the State is co-extensive with the legislative power and the State is competent to issue Government orders over which the legislature of the State has power to make laws and the executive orders cannot be contrary to the Constitution or enactments of the Central Government or that of the legislature itself or of competent authorities enacted either after the independence or before, if not repealed.

14.9 It is now relevant to refer to certain provisions of the Tamil

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Nadu General Clauses Act, which run thus:

“Section 3 (19 A):

'notification' shall mean a notification published in the Official Gazette”.

“Section 5. Commencement of future Acts.–

(1) Where any Act to which this Chapter applies is not expressed to come into operation, on a particular day, then, it shall come into operation, on the day on which the assent thereto of the Governor, the Governor-General or the President, as the case may require, is first published in the Official Gazette.

(2) In every such Act, the date of such publication as aforesaid shall be printed either above or below the title of the Act and shall form part of the Act.”

“Section 21. Publication of orders and notifications in the Official Gazette. - Where in any Act, or in any rule passed under any Act, it is directed that any order, notification or other matter shall be notified or published, such notification or publication shall, unless the Act otherwise provides, be deemed to be duly made if it is published in the *Official Gazette*.”

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14.10 A conjoint reading of above Sections and the Constitutional provisions would make it clear that any executive order of the State will come into effect only if it is notified or published in the official Gazette. If not done, it is non-est in law; and any act done in furtherance of such order is also illegal and arbitrary. In the present case, it is admitted by the Government that the impugned G.O was not published in the official Gazette and hence, the same cannot have any force of law. Therefore, the impugned G.O. is non-est in law and would not confer any right to the Fisheries Department.

14.11 The impugned G.O, even otherwise is not sustainable. In the case on hand, the references stated in the impugned G.O point out to the communications from the District Revenue Officer and the Board of Revenue as it stood then. Therefore, it can be inferred that the impugned G.O has been issued under the strength of the Standing Orders of the Board of Revenue. The contention of the learned Additional Advocate

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General that the Standing Orders have no force, is unsustainable, because the very G.O itself has been issued by referring to the proceedings of the Board of Revenue and a copy of the same has also been marked to the Board. Even if the contention that the Standing Orders have no force of law, is accepted, the impugned G.O issued under the Standing Orders would have to automatically go. Thus, the impugned G.O must be in conformity with the Standing Orders of the Board to be valid, which is not so, in the case on hand.

14.12 Regarding the grounds (ii) and (iii) raised by the petitioner, it is but significant to see Rule 13 of the Revenue Standing Order No.26, which prescribes the procedure for proper utilization of temple poramboke lands and the same is reproduced hereunder:

“13.Temple poramboke – (1)In order to safeguard the ownership of the State in temple porambokes, all such porambokes should be azmoished every year. Purely temporary occupations connected with festivals or religious ceremonies are allowed and all other occupations should be

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treated as encroachments.

(2) Occupations of the temple porambokes found to be in excess of the requirements of the temple may be permitted to be utilised not only for purpose of cultivation, but also for purposes such as construction of houses, business premises, etc which will augment the revenues of the temple. The temple porambokes so permitted will be sub divided and transferred to Assessed Waste and assigned to the temple free of cost with a patta in its name and the temple (i.e. Whoever manages the temple) might then lease out such lands for cultivation of other purposes and utilise the Income for the temple purposes.

The above concession is granted subject to the following conditions:-

(i) The temple authorities before applying for the assignment of the porambokes found in excess of the requirements of the temple and worship, should obtain the consent of the Hindu Religious and Charitable Endowment (Administration) Department.

(ii) Such lands should be granted for cultivation only if they are cultivable lands and if they are not cultivable, they should be put to other uses for the benefit of the temple.

(iii) The land should be used only for the purpose for

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which it is assigned.

(iv) A separate list of encroachments detected in the course of the fasli should be put up at Jamabandi before the Jamabandi officer. The action taken to remove such encroachments other than those purely temporary ones, connected with festival or religious ceremonies should be reviewed by the Collectors at the end of every falsi.

14.13 Sections 23, 34, 77 and 78 of the HR&CE Act deal with the power and duties of the Commissioner in respect of temples, alienation of the immovable properties, transfer of lands appurtenance thereto and eviction of encroachers on the lands belonging to the religious institution. According to these provisions, it is the duty of the Commissioner to ensure the effective administration of the temples and its properties; and all such transfers, without the approval / sanction from the Commissioner, shall be null and void. For easy understanding, the said provisions are extracted hereunder:-

“23. Power and duties of the Commissioner in respect

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of temples and religions endowments.—Subject to the provisions of this Act, the administration of all temples (including specific endowments attached thereto) and all religious endowments shall be subject to the general superintendence and control of the Commissioner and such superintendence and control shall include the power to pass any orders which may be deemed necessary to ensure that such temples and endowments are properly administered and that their income is duly appropriated for the purposes for which they were founded or exist :

Provided that the Commissioner shall not pass any order prejudicial to any temple or endowment unless the trustees concerned had a reasonable opportunity of making their representations.”

“34. Alienation of immovable trust property. - (1)

Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purposes, of any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary

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or beneficial to the institution:

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

77. Transfer of lands appurtenant to or adjoining religious institutions prohibited except in special cases. - (1) Notwithstanding anything contained in section 34, no trustee of a religious institution shall lease or mortgage with possession or grant a licence for the occupation of -

(a) any land belonging to the religious institution which is appurtenant to or adjoins the religious institution, or any sacred tank, well, spring or watercourse, appurtenant to the religious institution whether situated within or outside the precincts thereof, or

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(b) any space within or outside the prakarams, mantapams, courtyards or corridors of the religious institution:

Provided that nothing contained in this sub-section shall apply to the leasing or licensing of any such land or space for the purpose of providing amenities to pilgrims or of vending flowers or other articles used for worship or of holding for specified periods, fairs or exhibitions during festivals connected with the religious institution.

(2) Any lease or mortgage with possession or licence in contravention of the provisions of sub-section (1) shall be null and void.

(3) Notwithstanding anything contained in sub-section (1) or (2), [the Commissioner] may sanction the lease or mortgage with possession or granting of a licence for the occupation of any such land or space as is mentioned in sub-section (1) and situated outside the precincts of a religious institution for any purpose other than a purpose mentioned in the proviso to sub-section (1).

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78. Encroachment by persons on land or building belonging to charitable or religious institution or endowment and the eviction of encroachers. - (1)

Where the Assistant Commissioner having jurisdiction either *suo motu* or upon a complaint made by the trustee has reason to believe that any person has encroached upon (hereinafter in this section referred to as "encroacher") any land, building, tank, well, spring or water-course or any space wherever situated belonging to the religious institution or endowment (hereinafter referred to as the "property"), he shall report the fact together with relevant particulars to the Joint Commissioner having jurisdiction over the division in which the religious institution or endowment is situated.

Explanation. - For the purpose of this section, the expression "encroacher" shall mean any person who unauthorisedly occupies any tank, well, spring or water-course or any property and to include -

(a) any person who is in occupation of property without the approval of the competent authority (sanctioning lease or mortgage or licence); and

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(b) any person who continues to remain in the property after the expiry of termination or cancellation of the lease, mortgage or licence granted to him.

(2) Where on a perusal of the report received by him under sub-section (1), the Joint Commissioner finds that there is a *prima facie* case of encroachment, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling on him to show cause before a certain date why an order requiring him to remove the encroachment before the date specified on the notice should not be made. A copy of the notice shall also be sent to the trustees of the religious institution or endowment concerned.

(3) The notice referred to in sub-section (2) shall be served in such manner as may be prescribed.

(4) Where, after considering the objections if any, of the encroacher received during the period specified in the notice referred to in sub-section (2) and after conducting such inquiry as may be prescribed, the Joint Commissioner is satisfied that there has been an encroachment, he may by order and for reasons to be recorded require the encroacher to remove the

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encroachment and deliver possession of the property (land or building or space) encroached upon to the trustee before the date specified in such order.

(5) During the pendency of the proceeding, the Joint Commissioner shall order the encroacher to deposit such amount as may be specified by him in consideration of the use and occupation of the properties in question in the manner prescribed.]

Going by the aforesaid Rule 13 of the Revenue Standing Order No.26 as well as the relevant provisions of HR&CE Act, it is manifest that the temple poramboke lands are meant only for occupations connected with festivals or religious ceremonies and the same can be utilised only for the beneficial purposes of the temple, even if such lands are in excess of the requirements of the temple and all other occupations should be treated as encroachment; such lands can be handed over for any other use including cultivation only temporarily to augment the revenue for the temple and after granting patta in favour of the temple and obtaining the approval of the HR&CE Dept; and the lands earmarked as Temple Poramboke cannot be perpetually transferred.

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14.14 In the case on hand, the impugned G.O was passed by the respondent authorities, transferring the entire extent of the land in S.No.82/1 of Neelankarai village to the Fisheries Department, not for the beneficial interest of the subject temple, but for the purpose of installation of Ice factory-cum-cold storage inside the temple premises. That apart, as per the averment made in the common counter affidavit filed by the HR&CE Dept., dated 26.12.2014, the Commissioner, HR&CE Dept., who is the competent authority under the HR&CE Act and who is having general power of superintendence and control over all temple related matters, had neither been consulted nor involved during the decision making process of such transfer. Therefore, the impugned G.O. came to be passed in violation of Rule 13 of the Revenue Standing Order No.26 as well as the provisions of the HR&CE Act.

14.15 Though the learned Additional Advocate General appearing for the respondents attempted to justify the impugned G.O., reiterating the averments made in the counter affidavits filed by the respondent

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authorities and stating the purpose for which the transfer of land was effected, contending that the proposed construction is for the purpose of protecting the Government land from unauthorised parking of vehicle and public trespass in the premises and encroachment; the sanctum and sanctorum of the said temple were not included in the compounded area; and there is no motive or dubious plans to hurt the religious feelings and spoil the environment by proposing fish food stall at the premises, such contention cannot be countenanced by this Court, in view of the fact that without following due procedure as prescribed under Rule 13 of the Revenue Standing Order No.26, the sanction was accorded by the impugned G.O., for alienation / transfer of the temple land to other Government Department. Further, a noble cause cannot justify violation of law and the arbitrary action of the Government.

14.16 Further, the Division Bench of this Court in the order passed in **M.Perumal v. The District Collector, Kancheepuram, [2017 (4) CTC 443]**, after extracting Rule 13 of the Revenue Standing Order No.26, emphasised as under:

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“8. In the course of examining as to what is the temple poramboke land, it emerges that the land is earmarked for the temple to carry out various functions and temple festivals. As to how a temple poramboke land can be utilized is part of Rule 13 of the Revenue Standing Orders 26. In respect of the same, the relevant Government Orders are G.O.Ms.No.3333, Revenue, dated 25.08.1960 and G.O.Ms.No.3069, Revenue, dated 22.07.1961 and the Board Proceedings being B.P.Ms.No.135, dated 02.02.1961.

9. Rule 13 of the Revenue Standing Orders 26, reads as under:-

XXX XXX XXX

10. Reading of the aforesaid shows that the temporary occupations connected with festivals or religious ceremonies are allowed and all other occupations should be treated as an encroachment. Not only that sub-clause (2) specifies that if there is an excess temple poramboke land, it may be permitted to be utilised not only for the purposes of cultivation, but also for purposes such as construction of houses, business premises etc., which will augment the revenues of the temple. Thus, the occupation by any other third party is only for the augmentation of revenues of the

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temple and thus, we are of the view that issuance of 'B' memo in any case would have no effect in respect of the land in question, but only implies that penalty has been recovered by the Government.

11.Mr.V.B.R.Menon, Advocate present in Court, also pointed out the judgment of the Hon'ble Supreme Court in Subramaniaswamy Temple, Ratnagiri v. V.Kanna Gounder (Dead) by LR's, reported in 2008 (3) Supreme 741 = (2009) 3 SCC 306, wherein G.O.Ms.No.3333, Revenue dated 25.08.1960 has been referred to in the context of classification of the temple poramboke land in the revenue records. The judgment recognizes that such a land consists of unassessed waste land by the temple and it may also include common passage, water ponds, thrashing floor etc. By such classification, the temple obtained full right to possession and exercise right to transfer of the lands and such a land does not cease to be a poramboke property, over which the Government will have control subject only to the rights of the temple."

14.17 That apart, another Division Bench of this Court in **WMP**

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The Secretary to Government and three others), vide order dated 22.11.2019, observed that any attempt to regularise encroachers and sanctifying encroachment is more likely to denude the temples of their properties and any act that involves loss of properties of the temple for purposes other than those intended for the benefit or necessity of the temple, may well contravene the spirit behind Section 34 of the Act and the same would also more likely to render Section 78 of the HR&CE Act, otiose.

14.18 Yet another contention raised by the learned Additional Advocate General appearing for the respondents is that the Revenue Standing Order No.26 is only an administrative instruction and it has no force of law. In support of the same, he referred to the decisions rendered by the Supreme Court in **State of Andhra Pradesh v. N.Venugopal and G.J.Fernandez v. State of Mysore case** (supra). This Court finds no merits in the contention so made on the side of the respondents. Firstly, the decisions are not related to the Revenue Standing Orders and

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secondly, the facts are completely different. The **State of Andhra Pradesh v. N.Venugopal** is a case relating to custodial torture and the applicability of Madras Police Standing Orders and **G.J.Fernandez's case** is relating to tender. At this juncture, it is also necessary to look into the history of the Board of Revenue and the Standing Orders. The Board of Revenue for the Madras Presidency was established in 1786. Thereafter, the Madras Board of Regulation, 1803 was promulgated in 1803 by the Governor in Council to determine the duties of the Board of Revenue and the powers vested in the Board. Thereafter, various regulations were promulgated relating to revenue and functioning of the Collectors and Assistant Collectors in various Districts. Subsequently, the Madras City Land Revenue Act, 1851 was enacted. Thereafter, the Madras Conduct of Business by the Board of Revenue, Revenue Act, 1894 was promulgated. To this Act, short title, The Madras Board of Revenue Act, 1894 was given by the Repealing and Amending Act, 1901 (Central Act XI of 1901). The word 'Madras' was substituted with the word 'Tamil Nadu' by the Tamil Nadu Adaptation of Laws order, 1969.

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As per Section 3 of the Tamil Nadu Board of Revenue Act, 1894, “All orders made and decisions passed by one or more members of the Board in accordance with a declaration made under the last preceding section or with its proviso shall be held to be the orders and decisions of the Board of Revenue, and the same shall not be deemed invalid by reason that subsequent thereto the said declaration was disapproved by the Government concerned. Thereafter, the Board of Revenue was abolished by The Tamil Nadu Board of Revenue Abolition Act, 1980 and the powers of the Board were vested with the Government or appropriate authority by section 4 of Act. As per section 10(2), “ The standing orders of the Board of Revenue” as in force on the date of the commencement of this Act shall, on and from the said date, be called “ Revenue Standing Orders” and continue in force until altered, amended or rescinded by the commissioner or the Government, as the case may be. The Revenue Standing Orders are not rescinded and there are references to it in the policy note of the Government from time to time. Therefore, it is clear that the Standing Orders emanated from the powers granted to the

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members of the Board or the Board collectively by various regulations and enactments will have statutory force as indicated in Act 36 of 1980.

14.19 Apart from that, in a catena of decisions, the Supreme Court as well as this Court held that the Board Standing Orders shall have the statutory power and that the Government is bound by the same. Some of the decisions are detailed below:

14.20 It is settled law that in India, nobody can take possession of an immovable property except in accordance with law. The maxim, what is annexed to the soil goes with the soil, has not been accepted as an absolute rule of law of this country. The Constitution Bench of the Supreme Court in ***Bishan Das and others v. State of Punjab and others*** [AIR 1961 SC 1570] held that any dispossession through Executive orders without following due process of law, shall be illegal. The relevant portion of the said decision is reproduced hereunder:

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“14. Before we part with this case, we feel it our duty to say that the executive action taken in this case by the State and its officers is destructive of the basic principle of the rule of law. The facts and the position in law thus clearly are (1) that the buildings constructed on this piece of Government land did not belong to Government, (2) that the petitioners were in possession and occupation of the buildings and (3) that by virtue of enactments binding on the Government, the petitioners could be dispossessed, if at all, only in pursuance of a decree of a Civil Court obtained in proceedings properly initiated. In these circumstances the action of the Government in taking the law into their hands and dispossessing the petitioners by the display of force, exhibits a callous disregard of the normal requirements of the rule of law apart from what might legitimately and reasonably be expected from a Government functioning in a society governed by a Constitution which guarantees to its citizens against arbitrary invasion by the executive of peaceful possession of property. As pointed out by this Court in [Wazir Chand v. The State of Himachal Pradesh](#) [AIR 1954 SC 415], the State or its executive officers cannot interfere with the rights of others unless they can point to some specific rule of law which authorises their acts. In [Ram Prasad Narayan Sahi v. The](#)

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State of Bihar [AIR 1953 SC 215] this Court said that nothing is more likely to drain the vitality from the rule of law than legislation which singles out a particular individual from his fellow subjects and visits him with a disability which is not imposed upon the others. We have here a highly discriminatory and autocratic act which deprives a person of the possession of property without reference to any law or legal authority. Even if the property was trust property it is difficult to see how the Municipal Committee, Barnala, can step in as trustee on an executive determination only...”

14.21 The Full Bench of this Court in ***K.Nagarathinammal v. S.Ibrahim Saheb and another***, [(1955) 2 MLJ 49], held that Revenue Standing Order shall have statutory binding force and the same cannot be bye-passed through executive actions.

14.22 Also, in another decision of this Court in ***M.G.Chakravarthi Naicker and another v. K.M.Thillaimoorthy and Others*** [(1970) 1 MLJ 476], it was observed in paras 11 and 16, as follows:

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“11. It is patently clear that even the powers of the Government are not unlimited. On the contrary they are constricted to the vitiating factors found in the extract to justify the interference on the part of the Government. The powers of the Government are severely delimited. The Government cannot traverse beyond this field. The learned Government Pleader relied on paragraph 3 (5) of Board's Standing Orders 15 and argued logically that in matters of disposing of land the Government are not barred from using their discretion and the discretion of the Government is unbounded and untrammelled and even arbitrary. We are inclined to think that Rule 18 may not be applicable in cases of original orders passed by Government. Assuming the content of power is located in Rule 3 (5) of the Board's Standing Orders 15, that power is only co-extensive with the power contained in Rule 18. It is exhaustive but not illustrative. To justify or warrant the interference of Government under Rule 3 (5) the power of the Government in exercising " discretion " cannot outreach or extend beyond the limitations found in

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Rule 18 of the Board's Standing Orders 15.”

“16. In our considered opinion, sub-paragraph 5 of Board's Standing Order 15 is not helpful to the Government. The Government cannot step outside or exceed the powers vested in them as enumerated in the relevant extract of paragraph 18, of Board's Standing Order 15. In our view the discretion vested in the Government under paragraph 5 is severely delimited by the strict limitations enumerated in paragraph 18, which fetter, trammel and control the discretion of the Government in the matter of disposing of lands.”

14.23 The aforesaid two decisions were followed by this Court in the subsequent decision in ***I.Easwara Pillai and others v. the State of Tamil Nadu rep. by the Secretary to the Revenue Department for Harijan Welfare and another*** [(1972) 1 MLJ 92], with respect to binding nature of Revenue Standing Order in assignment of lands and it was held in paragraphs 6 to 8 and 10, as follows:-

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“6. In *Nagarathnammal v. Ibrahim Sahib* I.L.R. (1955) Mad. 460 : (1955) 2 M.L.J. 49, the question arose before a Full Bench of three Judges of this Court as to the nature and scope of the legal effect of Board's Standing Orders. Balakrishna Ayyar, J., speaking for the Court, observed at page 60:

The Standing Orders of the Board of Revenue, consist of at least three categories of rules:

(1) Rules framed either by the Government or by the Board itself in pursuance of a statutory power. Thus, for instance, Section 20 (Madras Act III of 1895), confers on the Board powers to make rules on various matters with the approval of the Government after previous publication. Such rules are incorporated in the Board's Standing Orders. We have mentioned Madras Act (III of 1895) only by way of illustration. There are several other statutory provisions incorporated in the Board's Standing Orders. (2) The Board's Standing Orders next consist of a large number of orders issued by the Government. (3) The third category consists of orders issued by the Board itself with approval and very often with the previous sanction of the Government. All these have been arranged in the Board's Standing Orders in a manner that should make reference to them easy. It is not

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therefore entirely correct to say that the orders of the Board are all merely executive instructions devoid of statutory force.

7. In [Chakravarthi v. Thillaimoorthy](#) (1970) 1 M.L.J. 476, the scope of certain Board's Standing Orders dealing with assignment of land arose for consideration. The question was whether violation of such an order, even if it is executive in nature, would give rise to legal rights. Sadasivam, J., observed at page 482:

“Though the Rules in Board's Standing Orders may be only administrative instructions, the actual orders passed by the concerned revenue officials, Board of Revenue and Government will give rise to legal rights and disregard or violation of the rules will be relevant in dealing with those rights in Writ jurisdiction.”

8. Even if it is assumed for the sake of arguments in the instant case that the instructions of the Government to the Acquisition Officers in the matter of issue of notice under [Section 5-A](#) are merely executive, would the violation of those instructions give rise to a cause of action to any person?”

“10. Explaining the scope of the application of the principles of natural justice, the Supreme Court in [A.K.Kraipak v. Union of India](#) , observed at page 156:

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“The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years.. . . . If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Oftentimes it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far-reaching effect than a decision in a quasi-judicial enquiry”.

If the instructions were to be held to be non-statutory as contended for on behalf of the Government, then the above observation of the Supreme Court would squarely apply. If these instructions are not to be taken as law, rules of natural justice would have to be complied with in the absence of a statutory provision. Violation of these instructions would result in denial of natural justice and would give rise to a cause of action to a person aggrieved by such denial. The contention urged on behalf of the respondents is that mere

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violation of such instructions would not lead to interference by this Court, as such non-compliance does not necessarily involve error of jurisdiction. In support of this argument, reliance was placed upon the decision of this Court in D.I.G. of Police v. Amalanathan. In that case, the effect of certain amendments made to the Madras Police Standing Order was considered. The amendment required the official holding a departmental enquiry himself to write the minutes throughout. It was held that the rule was non-statutory but merely administrative. The Court further observed that even if the rule was statutory under Article 309 of the Constitution, it was only directory but not mandatory and that non-compliance would not involve an error of jurisdiction. This decision is not applicable to the facts of the instant case. We are not concerned with the procedure in a departmental enquiry. Here we are concerned with the case of deprivation of a citizen's property by compulsory acquisition. The non-compliance with the instructions, even if they are executive, has the effect of denying reasonable opportunity to the persons interested, and this Court has jurisdiction to interfere under Article 226 of the Constitution to rectify the error.”

14.24 Such being the legal position, it can safely be discerned

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that though the right and title over the disputed land vest with the Government, the Government shall not utilise / alienate / assign / transfer the same and construct permanent structures therein for the purposes other than the beneficial interests of the temple, that too, without the consent of HR&CE Dept, as required under Rule 13 of the Revenue Standing Order No.26. Also, taking note of the fact that no consideration for the land has been collected from the Fisheries Department and having regard to the language employed in the impugned G.O, it is evident that there is no transfer of title. Hence, the impugned G.O. granting sanction for transfer of the entire extent of land in S.No.82/1 to the Fisheries Department, without following Rule 13 of the Revenue Standing Order No.26 as well as the relevant provisions of the HR&CE Act, is *per se* illegal and arbitrary.

14.25 With respect to the last ground raised by the petitioner, admittedly, no notice / communication had been sent to the temple management and HR&CE Dept. before or after the issuance of the

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impugned G.O. It is stated to have been communicated only to the concerned Government departments, without giving information to the temple management and HR&CE Dept, who are the interested parties with respect to the issue involved therein. Though it was argued on the side of the respondents that the title of the disputed land vests with the Government and hence, the temple management or the HR&CE Dept, has no say in this regard, the same does not inspire the confidence of this Court, as the respondent authorities vide communication/notice dated 22.11.2013, which is impugned in WP.No.32091 of 2013, has called upon the temple management and panchayathars to participate in the meeting proposed to be conducted on 23.11.2013 with respect to the proposal for construction of office building and other facilities in the disputed land, which is contrary to the stand so taken on the side of the respondents. That apart, a notification in the official Gazette is not only a legal requirement, but also to put the general public on notice. The power to transfer the land is an executive function derived from the Standing Orders having statutory force and it is not a mere executive function

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performed on discretion as claimed by the Government. Therefore, it is mandatory for the State to follow the procedures as contemplated under the Standing Orders and in the provisions of the HR&CE Act. In the present case, the failure of the Government to publish the impugned GO in the official Gazette, has also deprived the temple and its devotees to challenge the arbitrary and illegal action of the Government.

14.26 The Supreme Court, in **A.K.Kraipak v. Union of India** [AIR 1970 SC 150], explaining the scope of the application of the principles of natural justice, observed as follows:

“The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely (1) no one shall be a judge in his own case (Nemo debet esse judex propria causa) and (2) no decision shall be given against a party without affording

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him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry...”

Applying the aforesaid observation to the case on hand, it is evident that

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when Rule 13 of the Revenue Standing Order No.26 and the provisions of the HR&CE Act as stated above, mandate the consent of the HR&CE Dept, for dealing with the temple land for any purpose other than the beneficial interests of the temple, the principle of *audi alteram partem* has to be followed by the respondent authorities and the failure to do so vitiates the impugned G.O., as unsustainable in law.

14.27 That apart, Revenue Manual, Land Encroachment Act, 1905 and Rule 13 of the Revenue Standing Order No.26 contain elaborate procedure for recording and removal of encroachments on the Government poramboke lands. There are separate registers to be maintained by the Revenue Officials for dealing with encroachments and to take necessary follow up actions, such as, issuing Form 5-B Notice, etc. As such, the defence raised on the side of the respondents relying on the entry made in Column No.12 of the 'A' Register indicating the details of encroachments observed during the periodical land surveys and their further stand that the said entry is subject to changes whenever the

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encroachments are removed or new encroachments come, cannot be accepted. Any change of entry in Column No.12 shall be preceded by an order of re-classification and assignment of such lands for other purposes by the Government, as had happened in S.No.82/1 of Neelankarai Village, pursuant to the impugned G.O. Further, if the entry made in Column No.12 is only an indication of various objects present therein without specifying any area occupied by those objects, then Sakthi Muthamman Temple Pond shown in the F.M. Sketch pertaining to S.No.82/1 of Neelankarai Village ought to have been found in the 'A' Register. Whereas the entry of Sakthi Muthamman Temple alone shown in the 'A' Register without making any separate entry of the Temple pond, would prove the stand so taken by the respondents, as incorrect.

14.28 Thus, the overall appreciation of the aforesaid factual and legal aspects, makes this Court hold without any incertitude that the title over the disputed land vests with the Government only subject to the relevant statutory provisions as prescribed under the Revenue Standing

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Order as well as the HR&CE Act. Therefore, the attempt of the respondent authorities by issuing the impugned G.O., transferring the entire extent of the disputed land to the Fisheries Department is arbitrary, illegal and in violation of the said mandatory provisions and hence, the same is declared as non-est in law. Accordingly, this writ petition stands allowed.

15. As regards the first limb of the prayer made in **WP.No.17248 of 2013**, viz. to correct the wrong entries made in the revenue records pertaining to the disputed land, since the G.O. which is impugned in WP.No.19258 of 2013, thereby according sanction to transfer the entire extent of land in S.No.82/1 of Neelankarai Village, in favour of the Fisheries Department, is held to be non-est in law, the entry made in the revenue records including the Fisheries Department against the survey number pertaining to the disputed land, has to be corrected incorporating the name of the temple. Accordingly, the respondent authorities are directed to make necessary correction in the revenue records pertaining

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to the disputed land. With the said direction, WP.No.17248 of 2013 stands disposed of, as far as the first limb of the prayer is concerned.

16.1 As far as **WP.No.32091 of 2013** is concerned, the first limb of the prayer is to quash the notice dated 22.11.2013 issued by the Tahsildar, Sholinganallur Taluk. What was challenged herein is only the notice, thereby calling upon the villagers and devotees to participate in the discussion scheduled to be held on 23.11.2013 about the proposed construction made in the land in Survey No.82/1 of Neelankarai Village. Since the transfer of the disputed land by the so called G.O., itself has been held as non-est in law in the foregoing paragraphs and the prayer made herein is to quash only the notice, as the said notice does not survive, no order needs to be passed herein. Accordingly, this writ petition stands closed, as far as the first limb of the prayer is concerned.

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16.2 The second limb of the prayer made in **WP.No.32091 of**

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2013 is to forbear the respondents from carrying on any construction activities in the temple land in S.No.82/1 of Neelankarai Village, Kancheepuram District, including construction of compound wall, modern fish market, fish eatery and office building and the same is the second limb of the prayer in WP.No.33667 of 2013 as well. Hence, the second limb of the prayer in these two writ petitions is answered in the following paragraphs.

17.1 In **WP.No.33667 of 2013** also, the petitioner sought two reliefs viz., (i) forbearing the respondents from interfering with the right of worship including conducting the religious festivals in the land in S.No.82/1 of Neelankarai Village, Kancheepuram District; and (ii) preventing the respondents from construction of compound wall, modern fish market, fish eatery and office building. It is relevant to recap the submission made by the learned Additional Advocate General appearing for the respondents that there was a construction put up by the Fisheries Department for installation of Ice factory -cum- cold storage for

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the benefit of the local villagers and the same was subsequently closed, due to loss and thereafter, it was handed over to M/s.TAFCOFED Ltd, which is a Registered Co-operative society.

17.2 In reply to the aforesaid submission made by the learned Additional Advocate General appearing for the respondents, the learned counsel for the petitioner submitted that the purpose for which the temple poramboke land was transferred to them through the impugned G.O., was for setting up a Ice Factory -cum - Cold storage, which was closed within a few years after the G.O. was issued; the object and purpose for which the transfer of lands were sought and ordered by the respondents, had ceased to exist very long ago; and hence, the continued occupation of the premises for the object and purpose different from those for which sanction was obtained, shall be treated as unauthorised and illegal. Adding further, he submitted that subsequent to closure of Ice Factory -cum - Cold storage, the land in dispute even today, is being used by the devotees for religious activities. He also submitted that the permission

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granted for construction at the temple premises is contrary to Rule 13(1) of the Revenue Standing Order No.26 as the structure proposed to be constructed is going to be of permanent in nature; and that the usage of temple poramboke land that restricts or denies ongoing religious worship, shall be violative of the religious and cultural freedoms as guaranteed under Article 26 of the Constitution of India. Hence, according to the learned counsel, the proposed construction, if any, is liable to be dropped and permanent structure, if any made already, is liable to be demolished.

17.3 This Court is of the view that the new proposal to set up a modern fish market and fish eatery in the remaining temple land and adjacent to the deity would definitely hurt the religious sentiments and feelings of the devotees; and the new construction if any, would impose restrictions on the right of worship through curtailment of area available to the devotees for conducting their regular annual festivals and other religious functions related to the temple, which amounts to violation of

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Article 26 of the Constitution of India. Further, in terms of Rule 13 of the Revenue Standing Order No.26, any permanent construction in the disputed land for the purposes other than the beneficial interests of the temple, shall be treated as encroachment. It is also to be pointed out that the impugned G.O. was issued subject to the condition that unrestricted freedom of worship by the devotees of Sri Sakthi Muthamman Temple, whenever they like without any obstruction, shall be preserved. Now, the HR&CE Dept. appointed a fit person for the management of the subject temple with effect from 11.03.2014.

17.4 At this juncture, it may not be out of place to refer to the observation of this Court in the order dated 29.11.2013 in WP.Nos.20147 and 23750 of 2013, A/m.Dharmaraja Drowpathy Amman Temple rep. by its Dharmakartha/Trustee v. District Collector, Kanchipuram and others, which runs thus:

“17. The only question that arises for consideration

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is as to whether the District Collector was justified in granting permission to conduct weekly shandy in the land in spite of its possession by the temple. There are string of materials before this Court to arrive at a conclusion that the land is in the possession of the temple. The Commissioner, HR & CE Department appears to have given an application to the District Collector requesting to issue patta to the temple. It is open to the Commissioner to pursue the said application with the District Collector. The District Collector should consider the application taking into account the continuous possession of the land by the temple.

18. The panchayat, being the local Central Government, must work in furtherance of public interest. There is no dispute that the panchayat should conduct weekly shandy in the interest of public. Similarly, the panchayat should safeguard the religious places and respect the sentiments of devotees. The panchayat should find out an alternative site for conducting weekly shandy. The location of shops should not cause disturbance to the temple.

19. The impugned order is liable to be quashed for more than one reason. The temple was not given due opportunity to submit its version before passing the impugned order. Similarly, the objections of the HR&CE Department was also not considered. The impugned order does not contain any indication that the long and continuous possession of land by the temple was taken note of by the District Collector before permitting the panchayat to establish the weekly shandy. Therefore, I am of the view that the impugned order is liable to the quashed.”

17.5 At this stage, it is significant to refer to certain other

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provisions of the HR&CE Act and the Revenue Standing Orders. The term “specific endowment” is defined under Section 6(19), which reads as follows:

“(19) “specific endowment” means any property or money endowed for the performance of any specific service or charity in a math or temple, or for the performance of any other religious charity, but does not include an inam of the nature described in Explanation (1) to clause (17).

Explanation (1). — Two or more endowments of the nature specified in this clause, the administration of which is vested in a common trustee, or which are managed under a common scheme settled or deemed to have been settled under this Act, shall be construed as a single specific endowment for the purposes of this Act.

Explanation (2). — Where a specific endowment attached to a math or temple is situated partly within the State and partly outside the State, control shall be exercised in accordance with the provisions of this Act over the part of the specific endowment situated within the State.”

The expressions “religious charity” and “religious endowment” are

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defined in clauses (16) and (17) of Section 6 in the following terms:

“(16) “religious charity” means a public charity associated with a Hindu festival or observance of a religious character, whether it be connected with a math or temple or not;

(17)“religious endowment” or “endowment” means all property belonging to or given or endowed for the support of maths or temples, or given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity; and includes the institution concerned and also the premises thereof, but does not include gifts of property made as personal gifts to the archaka, service-holder or other employee of a religious institution;

Explanation (1).— Any inam granted to an archaka, service-holder or other employee of a religious institution for the performance of any service or charity in or connected with a religious institution shall not be deemed to be a personal gift to the archaka, service-holder or employee, but shall be deemed to be a religious endowment.

Explanation (2).— All property which belonged to, or was given or endowed for the support of a religious institution, or which was given or endowed for the performance of any

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service or charity of a public nature connected therewith or of any other religious charity shall be deemed to be a “religious endowment” or endowment” within the meaning of this definition, notwithstanding that, before or after the date of the commencement of this Act, the religious institution has ceased to exist or ceased to be used as a place of religious worship or instruction or the service or charity has ceased to be performed:

Provided that this Explanation shall not be deemed to apply in respect of any property which vested in any person before the 30th September 1951, by the operation of the law of limitation.”

17.6 As per Rule 2 of the Revenue Standing Order No.15, lands are classified thus:

(1) Land Prima Facie available for assignment-

(a) Assessed which is not reserved.

(b) Unassessed which is not reserved.

(2) Land Prima facie not available for assignment.

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(a) Poramboke

(b) Reserved Land (“assessed” and unassessed”)

“Unassessed” land is land to which no classification and assessment have been assigned.

In the instant case, according to the respondents, the land is classified as “poramboke”, of-course with a remark in Column No.12 of ‘A’ register as “Temple/kovil”. Even going by Rule 2 of the Revenue Standing Order, poramboke and reserved lands are generally not available for assignment. As per para 2 of Rule 2, which deals with Land reserved for special purposes, the Land is said to be “reserved” when it is earmarked as being required or likely to be required for special purposes, an entry being made in the settlement register and village adangal and also in the prohibitive order book. In the present cases, there is an entry as 'temple/kovil' in the ‘A’ register as discussed above. It is needless to point out that Adangal is nothing but an extract of ‘A’ register. Further as per para 5 of Rule 2 of Standing order No.15, the lands close to village sites which are required for communal purposes, should not be assigned.

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Rule 38 falling under Section III of Standing Order No.15 deals with assignment of poramboke and reserved lands. As per the said Rule, the grant of such land is prima facie objectionable and a detailed procedure is given for assignment of land. The first step before an assignment is the submission of the application. If the assignment is forbidden under the ensuing rules or contrary to the provisions of the rules in Section II or undesirable, then the application must be turned down. Before such assignment, the land must first be reclassified, then assessed, then publication proposing the assignment must be made and only then, a decision can be taken. As mentioned earlier, in the present case, there is a bar under Rule 13 of the Revenue Standing Order No.26 and in the provisions of the HR&CE Act. Further, even in the impugned G.O, there is no reference as regards an application by the Fisheries Department, no prior assessment of land or calling for objections. As already held above, the temple poramboke land cannot be permanently transferred, but only rights to occupy the excess land can be granted to others to augment the revenue for the temple. Before the lands are let out, the same must be

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sub-divided, transferred to assessed waste and assigned to the temple on free of cost and patta must be granted in its name so as to enable it to collect rents. Before such assignment is sought, the consent from the HR&CE Dept. must be obtained.

17.7 It is apropos to refer to a decision of the Supreme Court in **Joint Commissioner, HR&CE Admn. Dept. v. Jayaraman, [(2006) 1 SCC 257 at page 264]**, wherein, while dealing with the Government lands dedicated for temples, it was held as follows:

“8.The grant was of Government land. The grant was, even going by the case of the claimants, in favour of persons who were acting as poojaris of the temple, for the purpose of utilising its income for poojas and maintenance of the temple. Even in the extract of the fasli register, it is shown that the registered name of the inamdar is poojaris of Mariamman and Bhagavathiamman Temples and the enjoyers as Veerana Pandaram and Arunachalam Chetty. The relation between the inamdar and the enjoyer is shown as “devadayam” and in the column regarding details of inam, it is shown as for poojas to God (Sasvatham) and in the column

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relating to details of endowment, it is shown that the income of the land is used by the poojaris for pooja and maintenance of the temples. Prima facie, Government land had been dedicated to the temples by way of grants by the Government. Even if the income therefrom had alone been dedicated to the temples, it would still be a religious trust or endowment and certainly not a private trust to which the Trusts Act, 1882 would apply. Section 1 of the Trusts Act, 1882 itself provides that nothing contained therein applies to public or private religious or charitable endowments. The endowment here was certainly not a private endowment since there is no case that the temples are private. The endowment was for a religious purpose, the conducting of poojas in the temples and the maintenance of the temples. Therefore, endowment was of public property for the benefit of public temples and the poojaris constituted the trustees. They were trustees imposed with the obligation of spending the income from the properties, for the poojas and maintenance of the temple. It was clearly a case of a public religious endowment and by virtue of Section 1 of the Act, the Trusts Act, 1882 would have no application. Learned counsel for the respondents tried to argue that the application under Section 34 of the Trusts Act, 1882 was maintainable but could not

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argue that these were private trusts by reference to any relevant material. The lands were government lands and the Government had dedicated the properties or the income therefrom for the upkeep of public temples. By no stretch of imagination, can it be held that it was a private trust coming within the purview of the Trusts Act, 1882. The District Judge has, therefore, clearly acted without jurisdiction in entertaining the application under Section 34 of the Trusts Act, 1882. On this short ground, it has to be held that the order passed by the District Judge in the application filed under Section 34 of the Act granting permission to the claimants to sell the properties is one without jurisdiction. The High Court was completely in error in brushing aside this vital aspect while considering whether the District Judge had acted within jurisdiction in entertaining the application under Section 34 of the Trusts Act, 1882.”

17.8 The provisions of the HR&CE Act read in conjuncture with the Revenue Standing Orders and the above judgment would lucidly demonstrate that if a property is dedicated for a temple, it has to be treated as an endowment. The entry in ‘A’ Register as admitted by both

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the parties indicates that it is written as “Temple/Kovil” in Column No.12 even before 70 years on the date of filing of the writ petitions regarding Sri Sakthi Muthamman Temple. There is a temple located in the land with a pond, which is also reflected in the revenue records implying that it has been allocated or endowed for the use of the temple and its related festivals by the devotees. Concededly, the land has been used by the devotees for temple festivals and religious functions related to the temple. Therefore, such endorsement in the revenue records would make it as a “Specific Endowment” within the meaning of the Act and the temple would be entitled to mutation of revenue records in its name.

17.9 That apart, the transfer though invalid, has taken place after 1951, which is not only hit by proviso to explanation (2) of clause (17) of Section 6, but also by Section 109 of the HR&CE Act, which makes the provisions of Limitation Act inapplicable. Also, neither the HR&CE Dept. nor the temple administration was put on notice before such transfer. Therefore, the contention raised on the side of the respondents

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that the writ petition is hit by laches, is also rejected.

17.10 Further, it may not be out of place to refer to the decision of the Supreme Court in ***Ravinder Kaur Grewal v. Manjit Kaur***, [(2019) 8 SCC 729], wherein, while laying down the law regarding adverse possession viz-a-viz lands dedicated for public use, it was observed as follows:

“63. When we consider the law of adverse possession as has developed vis-à-vis to property dedicated to public use, Courts have been loath to confer the right by adverse possession. There are instances when such properties are encroached upon and then a plea of adverse possession is raised. In such cases, on the land reserved for public utility, it is desirable that rights should not accrue. The law of adverse possession may cause harsh consequences, hence, we are constrained to observe that it would be advisable that concerning such properties dedicated to public cause, it is made clear in the statute of limitation that no rights can accrue by adverse possession.”

From the aforesaid observation, it is obvious that the plea of adverse

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possession cannot be raised with regard to the properties coming within the net of HR&CE Act.

17.11 Thus, for the discussions held above and also having regard to the finding arrived at, declaring the impugned G.O. as non-est in law, this Court holds that the transfer of the disputed land to the Fisheries Department is improper. As a sequel, the building constructed in the disputed land and any construction proposed to be made in the disputed land, is, certainly in violation of Rule 13 of the Revenue Standing Order No.26 as well as the relevant provisions of the HR&CE Act. *Ex consequenti*, the proposed construction if any, is liable to be dropped with immediate effect and the buildings constructed if any, consequent to the impugned G.O., is also improper.

17.12 In view of the above findings, the natural corollary would be to hand over the possession to the HR&CE Dept., as the Fisheries Department is not entitled to continue with the possession of land and

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Buildings. However, the Fisheries Department being another wing of the State, had put up its administrative office and is functioning in the said place to implement various development and welfare schemes for the fishermen community. Also enormous money, manpower and time were involved in the process of construction, *albeit* without sanctity of law. Therefore, taking note of the said facts and also having regard to the admitted fact that both the HR&CE Department and the Fisheries Department are the wings of the Government and are functioning for the betterment of two different sectors of the general public, this Court is inclined to grant an opportunity to the Fisheries Department to regularize the transaction in line with Rule 13 of the Revenue Standing Order No.26 and the provisions of the HR&CE Act by entering into an agreement for rent/lease as per law, with HR&CE Dept., for the buildings presently occupied by them, within a period of three months from today. The fair rent shall be fixed by the appropriate authority under the HR&CE Act. The Fisheries Department shall continue to function as such by paying rent to the temple/HR&CE Dept. in consonance with Rule 13 as the

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utilization of the land for any other purpose shall be only to augment the revenue of the temple. The HR&CE Dept. shall take possession of the remaining vacant land and secure the same by constructing a compound wall at their own cost within a period of six months and utilise it only for the betterment of the subject temple in terms of Rule 13 of the Revenue Standing Order No.26. If any portion of the property is occupied by any other person, the HR&CE Dept. shall evict such encroacher in the manner known to law. If the Fisheries Department is not inclined or fails to enter into such agreement, then it shall hand over the vacant possession of the buildings to the HR&CE Dept., within a period of three months from the expiry of the period as indicated above. Accordingly, the second limb of the prayer made in WP.No.32091 of 2013 as well the reliefs sought in WP.No.33667 of 2013 are answered.

18. The reliefs sought for in the second batch of writ petitions, relating to Arulmighu Kottai Mariamman Thirukoil, are as under:

(i)WP.No.5159 of 2018 is filed to quash the order dated

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31.01.2018 passed by the first respondent and the letter dated 16.02.1996 issued by the seventh respondent and consequently, direct the revenue authorities to grant patta in respect of the disputed land in S.No.143/1 of Omalur Village and Taluk, admeasuring 2.57.5 Hectares, in favour of the said temple;

(ii)The challenge made in WP.No.21712 of 2018 is to the proceedings dated 28.03.2018 issued by the first respondent, transferring a part of land in S.No.143/1 of Omalur Village and Taluk, to the Regional Transport Office, after making sub division of the said land and consequential relief; and

(iii)WP.No.21654 of 2018 is for mandamus, directing the sixth respondent therein to consider the representation dated 13.11.2017 and pay the land cost to the temple in respect of the land acquired for the purpose of construction of bridge.

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19.1 With respect to **WP.No.5159 of 2018**, the subject temple is

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an old and well known temple, managed by the Hereditary Trustee and is functioning under the administrative control of the Executive Officer appointed under the HR&CE Act. According to the petitioner, it is situated in the land measuring to an extent of 2.57.5 Hectares in S.No.143/1 of Omalur Village and Taluk, Salem District. The said land has been classified as 'temple poramboke land', as evident from the extracts of 1937 'A' Register, Adangal and F.M.Sketch and the vacant land surrounding the temple is being used by the devotees for conducting temple festivals regularly. It is the further case of the petitioner that due to the difficulties experienced in evicting the encroachers and protecting the temple poramboke lands, the Joint Commissioner, HR&CE Dept., Salem, sent a proposal dated 06.10.2017 to the District Revenue Officer, Salem, recommending to issue patta for the land in S.No.143/1 to an extent of 2.57.5 Hectares in favour of Arulmighu Kottai Mariamman Thirukoil. In the mean while, the Commissioner, HR&CE Dept., Chennai, issued a circular dated 22.11.2017 directing the various officers under him, to apply patta in favour of the respective temples to achieve

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the better management and protection of temple properties in Tamil Nadu. Pursuant to the same, the petitioner also made a representation on 19.12.2017 to the respondent authorities, requesting to issue patta in favour of the temple. However, the said representation was rejected, placing reliance on the letter No.(D) 79, Revenue, dated 16.02.1996 sent by the Secretary to Government, Revenue Department, Chennai to the Special Commissioner and Commissioner for Land Administration, Chennai-5. Hence, this writ petition.

19.2 It is the submission of the learned counsel for the petitioner that by virtue of the entry in the Column No.12 of the 'A' Register, the temple has acquired the right of perpetual possession and enjoyment of the said land subject to the provisions of Rule 13 of the Revenue Standing Order No.26 and it cannot be taken away by the respondents by issuing circulars/ orders / letters arbitrarily and without due process of law. He further submitted that though the petitioner applied for patta in respect of the said land with the consent and on the basis of the proposal

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sent by the HR&CE Dept., the said application was rejected, which is contrary to Rule 13 of the Revenue Standing Order No.26 and the decision of the Supreme Court in **Subramanya Swamy Temple case** (supra) and hence, the same is liable to be set aside.

19.3 The averments made in the writ petition as well as the submissions made by the learned counsel for the petitioner, are strenuously resisted by the learned Additional Advocate General appearing for the respondents contending that just because there is a mention about the temple in Column No.12 of the 'A' register, it cannot be claimed that patta should be issued in the name of the temple; and the revenue records indicate the subject land as Government poramboke land and not a temple poramboke land. He further contended that based on letter No.(D)79 Revenue Department dated 16.02.2017, the impugned order came to be passed, which is perfectly right and hence, the same warrants no interference at the hands of this Court.

19.4 It is not in dispute that the land in S.No.143/1 is Government

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poramboke land as per the entries in Column Nos.3 and 4 of the 'A' Register. However, in Column No.12 of the said Register, the nature of the said land is mentioned as 'kovil'. As mentioned earlier, the petitioner claimed only the rights of possession and enjoyment of the disputed land and they never disputed the title over the same vesting with the Government.

19.5 Taking note of the admitted facts and after having analysed in detail all the other factual aspects and the legal proposition in the preceding paragraphs, this Court holds that the temple is entitled for the possessory and enjoyment rights over the disputed land, subject to the control and administration of the HR&CE Dept. In view of the same, this Court directs the respondent authorities to enter the name of the temple by making necessary corrections in the revenue records pertaining to the disputed land in S.No.143/1 of Omalur Village and Taluk. Such direction would meet the ends of justice insofar as the relief sought herein. Accordingly, this writ petition stands disposed of.

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20.1 As regards the relief sought in **WP.No.21712 of 2018**, it is the submission of the learned counsel for the petitioner that 'A' register, adangal, F.M.Sketch and other revenue records from the year 1937 onwards indicate the entire extent of 2.57.5 Hectares of land as temple poramboke; and the vacant land around the subject temple in S.No.143/1 of Omalur village is necessary to regularly conduct the various temple festivals and to accommodate the large number of devotees from over 18 villages, who converge at the temple during such occasions. He also produced the photographs taken during the annual temple festivals to show the number of devotees attended and the utilization of the space for such festivals. The learned counsel further submitted that pursuant to the various orders passed by this Court, all the encroachments have now been removed and the entire extent of land in S.No.143/1 is free from encroachment at present. However, the Revenue authorities have not handed over the disputed land to the temple and they were attempting to convert a portion of the same, after making sub-division, for construction of Regional Transport Office, which is contrary to Rule 13 of the

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Revenue Standing Order No.26. The learned counsel also submitted that the respondents have not even sent a proposal and got approval from the Commissioner of Land Administration as prescribed under the law for re-classification of all prohibited categories of poramboke lands; and they, during the pendency of WP.No.5159 of 2018 challenging the order dated 31.01.2018 rejecting the application for patta in respect of the disputed land in favour of the subject temple, have effected sub-division, alienation and transfer of the part of the disputed land without following due process of law and hence, the same is in violation of principle of *lis pendens* under Section 52 of the Transfer of Property Act, 1882. Thus, according to the learned counsel, the order dated 28.03.2018 passed by the first respondent is liable to be set aside.

20.2 On the other hand, the learned Additional Advocate General appearing for the respondents submitted that the Revenue Department is the custodian of the entire poramboke lands and they have taken steps to evict the encroachers from the poramboke lands in accordance with law;

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and the petitioner claiming himself to be the Managing Trustee of the temple, with an ulterior motive, was attempting to possess the land. Reiterating the averment made in the counter affidavit, he further contended that the petitioner R.Ramakrishnan himself came to Taluk Office, Omalur with local public and submitted no objection letter on 13.03.2018 for transferring the land in S.No.143/1; accordingly, an extent of 0.46.5 Hectares, out of 2.57.5 Hectares of land, was transferred to the Transport Department for the construction of Regional Transport Office by the impugned proceedings dated 28.03.2018 and the same was also incorporated in the Village accounts on 24.04.2018; however, in view of the order of *status quo* granted by this Court on 03.08.2018 in WMP.No.25481 of 2018 in WP.No.21712 of 2018, though the Government approved and sanctioned fund to the tune of Rs.153.30 lakhs by G.O.Ms.No.12 Home (Transport VII) Department, Dated 04.01.2019, the construction of the building has not yet started; and hence, such transfer cannot be questioned by the petitioner. During the course of argument, he submitted that since there was large scale

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encroachment on temple lands, the Government issued G.O.Ms.No.318 Revenue and Disaster Management Department, dated 30.08.2019 for regularisation of those encroachments.

20.3 This Court finds no substance in the said submission made on the side of the respondents. As stated earlier, the temple lands are to be used only for the beneficial interests of the Temple, since it has acquired the right of perpetual possession and enjoyment of the same, subject to the provision of Rule 13 of the Revenue Standing Order No.26 and with the consent of HR&CE Dept. Even assuming that the petitioner came to know about the transfer of a part of land to other department, there is no specific document produced on the side of the respondents that the effecting sub division of the disputed land and transferring an extent of 1.15 acres out of 2.57.5 Hectares of the same, were done, with the consent of HR&CE Dept and hence, the same is contrary to Rule 13 of the Revenue Standing Order No.26. The Revenue Department cannot arbitrarily decide the areas required for the temples without the consent

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of the HR&CE Dept., which has the power and control to deal with the temple related matters. It is pertinent to note here that though the Government issued G.O.Ms.No.318 Revenue and Disaster Management Department, dated 30.08.2019 for regularisation of large scale encroachments, the same is under challenge in a subsequent batch of writ petitions viz., WP.Nos.27728, 32387 and 32053 of 2019 [A.Radhakrishnan v. Secretary to Government and others], which are pending. This Court in the preceding paragraphs extensively discussed the issue relating to transfer of land which has been in possession and enjoyment of the temple, in the first batch of writ petitions and ultimately held such transfer as arbitrary and illegal. Applying the same analogy herein, the order dated 28.03.2018 passed by the first respondent is liable to be quashed and the same is accordingly, quashed. Resultantly, the possession of the disputed land shall be handed over within a period of eight weeks from the date of receipt of a copy of this order, to the HR&CE Dept., which shall take over the same and utilise it for betterment of the subject temple. As a sequel, the respondent authorities

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shall carry out necessary correction in the revenue records in respect of the disputed land. It is made clear that the petitioner as an individual capacity or trustee or any other person, cannot claim any right over the said land, except the HR&CE Dept. Accordingly, this writ petition stands allowed.

21.1 Regarding the prayer made in **WP.No.21654 of 2018**, according to the petitioner, the temple is entitled to receive the appropriate land cost from the Highways Department towards the transfer of 1250 sq.m of temple poramboke land situated in S.No.143/1 of Omalur Village and Taluk, whereas the same was denied by the respondents stating that the said land vests with the Government as it is a Government poramboke land and hence, there is no need to pay compensation to the temple.

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21.2 This Court, taking note of the rival submissions and having due regard to the fact that the temple is entitled for the rights of

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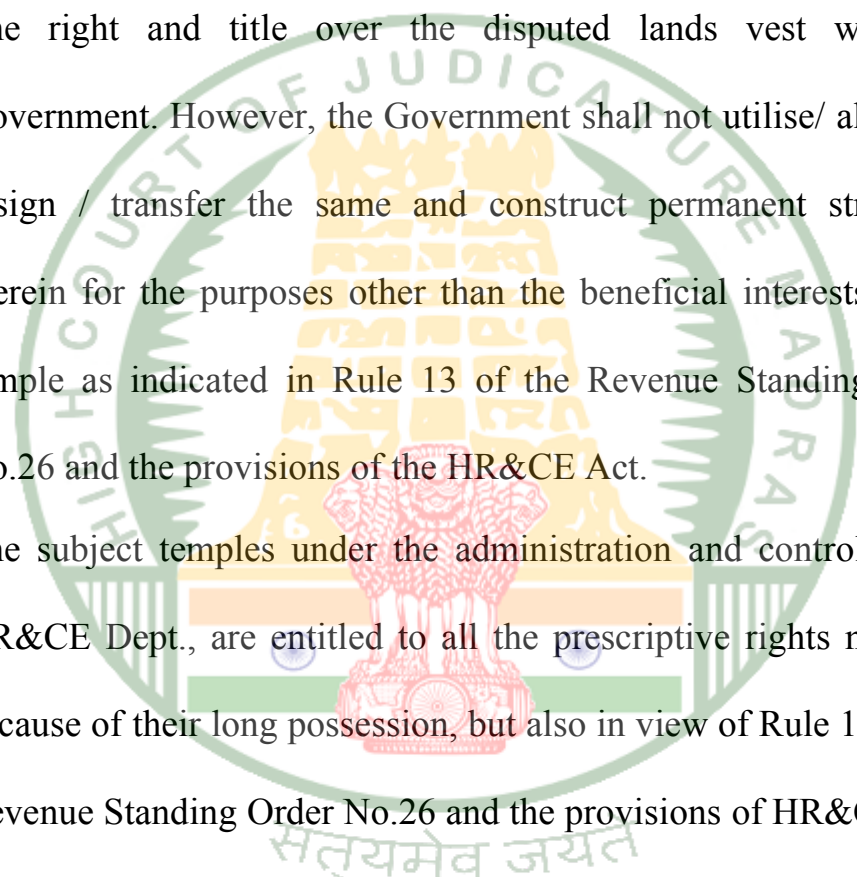
possession and enjoyment over the disputed land and the entire extent of land is required for conducting the temple festivals and religious functions related to the temple regularly, and to accommodate the large number of devotees from 18 villages, who converge at the temple during such occasions, is of the opinion that there is no need to pay any amount to the temple in respect of the land taken by the Highways Department. However, the respondent authorities shall allot some other Government land nearby the temple equivalent to the extent acquired, for the interest of the temple to have temple festivals and religious ceremonies. Such allotment be granted in favour of the subject temple, under the control of HR&CE Dept., within a period of six months. Accordingly, this writ petition stands disposed of.

22. In view of the foregoing discussions, the emerging conclusions are summed up *in seriatim* as follows:

- i. The temples are entitled to the rights of possession and enjoyment in respect of the respective disputed lands, subject to the control

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and administration of the HR&CE Dept. Needless to say that no trustee / private individual shall claim right over the disputed lands possessed and enjoyed by the temples in any manner whatsoever.

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- ii. The right and title over the disputed lands vest with the Government. However, the Government shall not utilise/ alienate / assign / transfer the same and construct permanent structures therein for the purposes other than the beneficial interests of the temple as indicated in Rule 13 of the Revenue Standing Order No.26 and the provisions of the HR&CE Act.
- iii. The subject temples under the administration and control of the HR&CE Dept., are entitled to all the prescriptive rights not only because of their long possession, but also in view of Rule 13 of the Revenue Standing Order No.26 and the provisions of HR&CE Act.
- iv. W.P.No.19258 of 2013 stands allowed, declaring the impugned G.O.Ms.No.2871 dated 27.09.1963 as non-est in law.
- v. Insofar as the first limb of the prayer in WP.No.17248 of 2013, relating to correct the wrong entries made in the revenue records,

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the writ petition stands disposed of, directing the respondent authorities to carry out necessary correction in the revenue records entering the name of the temple pertaining to S.No.82/1 of Neelangarai Village, Kancheepuram District and pass appropriate orders in this regard. As regards the second limb of the prayer, viz., forbearing the respondents 1 to 5 from continuing the occupation and enjoyment of the temple land in S.No.82/1 of Neelankarai Vllage, Kancheepuram District, as the same was given up by the learned counsel for the petitioner, after making necessary endorsement in the writ petition and the same was recorded by this Court vide order dated 26.11.2019, this writ petition stands closed.

vi. WP.No.32091 of 2013 stands closed, as no orders are required to be passed, insofar as the first limb of the prayer viz., to quash the notice dated 22.11.2013 issued by the Tahsildar, Taluk Office, Sholinganallur, Chennai.

vii.Regarding the second limb of the prayer in WP.No.32091 of 2013 as well the reliefs sought in WP.No.33667 of 2013, viz.,

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preventing the respondents from interfering with the rights of worship and construction of compound wall, modern fish market, fish eatery and office building, these writ petitions stand disposed of, in the following terms:

(a)The Fisheries Department shall approach the Commissioner of HR&CE Dept. and enter into an agreement for rent/lease of the land under its occupation, where the buildings are located, within a period of three months from today. The appropriate/fair rent shall be fixed by the Commissioner as per the provisions of the HR&CE Act;

(b)If the Fisheries Department is not inclined or fails to enter into such agreement, it shall deliver vacant possession of the buildings to the HR&CE Dept. within a period of three months from the expiry of three months period, as indicated in clause vii(a) of paragraph No.22 of this order;

(c)The HR&CE Dept. shall take possession of the remaining vacant land and secure it by constructing a compound wall at their

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own cost within a period of six months and utilise it only for the betterment of the subject temple in terms of Rule 13 of the Revenue Standing Order No.26;

(d) If any portion of the property is occupied by any other person, the HR&CE Dept. shall evict such encroacher in the manner known to law; and

(e) The HR&CE Dept. shall also take possession of the temple pond and maintain the same, for the usage of the temple and its activities.

viii. WP.No.21712 of 2018 stands allowed by quashing the proceedings dated 28.03.2018 issued by the first respondent. Consequently, the respondent authorities shall carry out the necessary correction in the revenue records pertaining to the land in S.No.143/1 of Omalur Village and Taluk. The vacant possession of the disputed land shall be handed over, within a period of eight weeks from the date of receipt of a copy of this order, to the HR&CE Dept., which shall take possession of the same and utilise

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it for betterment of the subject temple.

- ix. WP.No.5159 of 2018 stands disposed of, directing the respondent authorities to have entries in 'A' register pertaining to S.No.143/1 of Omalur Village and Taluk, in favour of the subject temple, as issued in WP.No.21712 of 2018.
- x. WP.No.21654/2018 stands disposed of, directing the respondent authorities to provide alternate site, within a period of six months, in lieu of the land acquired, to the HR&CE Dept., which shall utilise the same for the purpose of conducting temple festivals and religious ceremonies.
- xi. However, there is no order as to costs. Consequently, all the connected Miscellaneous Petitions are closed.

23.1 Before parting, this Court feels it appropriate to recollect the observation of the Supreme Court in **A.A.Gopalakrishnan v. Cochin Devaswom Board and others** [2007 (7) SCC 482] that “the Government, members or trustees of boards/trusts, and devotees should

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be vigilant to prevent any such usurpation or encroachment. It is also the duty of the Courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation.”

23.2 In the case on hand, the disputed lands, which have been in continuous possession and enjoyment of the respective temples, were transferred to other Departments entirely / partially. However, the HR&CE Dept., which is the custodians of the temple properties, has not taken any steps to protect the interest of the temples, though the subject temples fall within the purview of the HR&CE Dept. Such callous attitude on their part cannot be countenanced. This Court, time and again observed that Temples in Tamil Nadu are not only a source of identification of the ancient culture, but also a testimony of pride and knowledge of the talent in the field of arts, science and sculpture and a conduit for spiritual activities as well; and that, the properties of the religious institutions, more particularly, the temples have to be maintained properly in order to derive more income to spend for its

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betterment. Therefore, this Court, in the interests of the subject temples, deems it fit and appropriate to issue the following directions:

(i)The Commissioner, HR&CE Dept., Chennai, shall initiate appropriate action to retrieve the subject lands, remove all the encroachments, if any, and maintain the same with utmost care and for beneficial interests of the subject temples.

(ii)It is made clear that the lands belonging to the subject temples shall not be alienated or leased or encumbered illegally and against the interests of such temples.

(iii)The HR&CE Dept. shall have the administration and entire control over the subject lands and shall deal with the same in accordance with law.

(iv)The HR&CE Dept. shall take steps to start construction by putting compound wall to secure and safety of the subject lands. Except temple related purposes, the lands shall not be used for any other purposes.

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(v) Except the HR&CE Dept., no other private individuals / trustees shall claim any right over the lands possessed and enjoyed by the subject temples.

(vi) The Officer in-charge shall not permit any unauthorised shop / construction inside the temples' premises.

(vii) The Officer in-charge shall ensure the unrestricted freedom of worship by the devotees to the subject temples.

(viii) The Officer authorised by the Commissioner, HR&CE Dept., shall maintain proper register with respect to the financial aspects of the subject temples and its properties and file the same before the authority concerned in regular intervals. If he/she fails to discharge his/her duties assigned, he/she is personally liable for such lapses and appropriate departmental action be taken against him/her.

(ix) The Commissioner, HR&CE Dept., shall order appropriate enquiry forthwith related to the missing documents and files connected to the respective temples and its properties and initiate action against erring officials responsible for the same.

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(x)The Government shall provide necessary assistance to the HR&CE Dept., for proper maintenance and protection of the subject temples and its properties.

Post these matters after six months for reporting compliance.

04.11.2020

Index : Yes / No

Web : Yes / No

Speaking order / Non-speaking order

srk/rk

To

1. The District Collector, Salem District,
First Agraharam, Salem 636 001
2. The Sub-Collector, Bhavani Road,
Mettur Dam, Salem District 636 401
3. The Tahsildar, Omalur Taluk,
No.5 Omalur Main Road,
Omalur, Salem 636 455
4. The Joint Commissioner, Hindu Religious and Charitable

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Endowments Department, Near Old Bus Stand,
Salem 636 001

5. The Commissioner, Hindu Religious and Charitable
Endowments Department, 119 Nungambakkam High Road,
Chennai 600 034
6. The Commissioner of Land Administration,
Land Administration Department,
Ezhilagam, Chepauk, Chennai 600 005
7. The Secretary to Government of Tamil Nadu,
Revenue Department, Fort St. George,
Secretariat, Chennai 600 009
8. The Secretary to Government,
Highways & Minor Ports Department,
Secretariat, Chennai 600 009
9. The Secretary to Government,
Tourism, Culture & Endowments Department,
Secretariat, Chennai 600 009
10. The Director General, Highways Department,
76 Sardarpatel Road, Guindy,
Chennai 600 025
11. The Chief Engineer (Project),
Highways Department, Saidapet,
Chennai 600 015
12. The District Revenue Officer,
Salem

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13. The Joint Commissioner, Hindu Religious & Charitable Endowments Department,
Arulmighu Kottai Mariamman Temple Campus,
Salem 636 001
14. The Executive Officer, Arulmighu Kottai
Mariamman Temple, Omalur Town & Taluk,
Salem District
15. The Secretary to Government,
Animal Husbandry & Fisheries Department
Fort St. George, Chennai-9.
16. The Director Of Fisheries
DMS Complex Teynampet
Chennai-6
17. The Assistant Director Of Fisheries (Marine)
Kancheepuram District, No.2/601a East Coast Road Neelangarai
Chennai-41
18. The District Collector
Kancheepuram District Collectorate
Kancheepuram-631501
19. The Tahsildar, Taluk Office Building,
Sholinganallur Chennai-119.
20. The Deputy Commissioner Of Police

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Adyar Chennai-20.

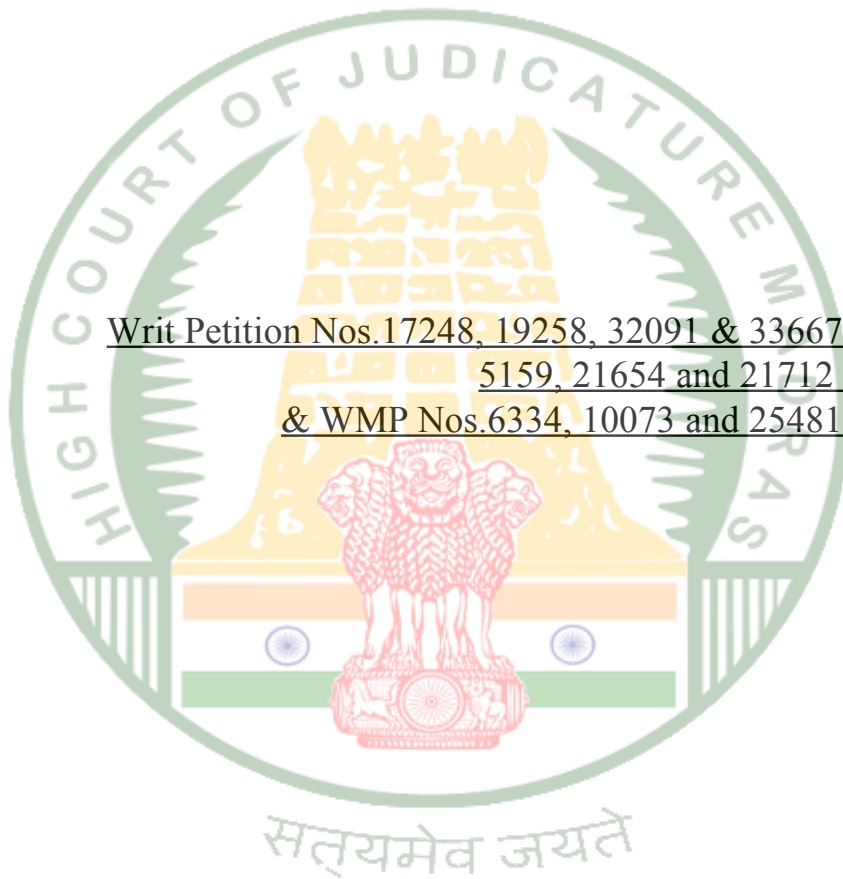
21. The Assistant Director of Fisheries (Marine),
Kancheepuram District, No.2/601A East Coast Road,
Neelangarai, Chennai 600 041
22. The Revenue Divisional Officer,
Taluk Office Complex, GST Road,
Tambaram, Chennai 600 045
23. The Assistant Commissioner of Police,
Neelangarai, Chennai 600 041
24. The Revenue Divisional Officer (In-charge)
Bhavani Road Mettur Dam
Mettur -636 401.
25. The Regional Transport Officer,
VOC Nagar Pachanampatti Post Omalur
Salem- 636 455.

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R.MAHADEVAN, J.

srk/rk



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& WMP Nos.6334, 10073 and 25481 of 2018

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