

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2021

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE P.D.AUDIKEVALU

Suo Motu W.P.No.574 of 2015 and WP(MD)No.24178 of 2018
and
W.M.P.Nos.30869 of 2017, 19652 of 2018, 20421 of 2020 and
1810, 1814, 1816, 1818, 1819, 1821 and 1822 of 2021

Suo Motu W.P.No.574 of 2015

- 1.The Director,
Archaeological Survey of India,
Janpat, New Delhi-110 004.
- 2.The Superintending Archaeologist,
Chennai Circle,
Archaeological Survey of India,
Chennai -9.
- 3.The Chief Secretary,
Government of Tamil Nadu,
Secretariat,
Fort St. George,
Chennai-600 009.

सत्यमेव जयते
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4.The Secretary,
Government of Tamil Nadu,
Tourism, Culture and Religious Endowment Department,
Secretariat, Chennai – 600 009.

5.Heritage Conservation Society,
represented by Secretary,
Mr.Srikumar
No.102/x, Kurunji Street,
Polepettai, Tuticorin.
(R5 implied as per the order of this Court dated 10.02.2015)

6.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Chennai -34.
(R6 implied as per the order of this Court dated 09.04.2015)
... Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Mandamus, directing the respondents to
take speedy steps to constitute the 17 Member Heritage Commission
and also to set up the Mamallapuram World Heritage Area
Management Authority to safeguard the archaeological monuments in
the State of Tamil Nadu.

For R1 & R2 : Mr.G.Karthikeyan, Asst. Solicitor General
For R3 & R4 : Mr.S.R.Rajagopal,
Additional Advocate General
assisted by Mr.J.Ramesh, AGP
For R5 : Dr.S.Padma

For R6 : Mr.M.Karthikeyan, SGP (HR&CE)
: Mr.P.S.Raman, Amicus Curiae

Petitioner in WMP.Nos.
19652 of 2018 and 1810, 1814, 1816,
1818, 1819, 1821 and 1822 of 2021 : Mr.Rangarajan Narasimhan
Party in person

Petitioner in WMP.No.20421 of 2020 : Mr.R.Venkataraman,
Party in person
W.P.(MD)No.24178 of 2018

Periyambadi Narasimha Gopalan ... Petitioner

Vs.

1. Secretary to Government,
Tourism, Culture and Religious Endowments Department,
Government of Tamil Nadu,
Secretariat, Chennai – 600 009.

2. The Commissioner,
Hindu Religious & Charitable Endowment Department,
119, Uthamar Gandhi Salai,
Nungambakkam, Chennai-600 034. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Mandamus, directing the first respondent to
appoint all the members, as informed by the second respondent vide
its letter Na.Ka.No.25639/2018/Y2 dated 12.06.2018 to the State
Level Heritage Screening Committee.

For Petitioner : Mr.K.Gokul

For R1 : Mr.P.H.Aravind Pandian, AAG
assisted by Mr.J.Ramesh, AGP

For R2 : Mr.M.Karthikeyan, SGP(HR&CE)

COMMON ORDER

R.MAHADEVAN, J.

"Without culture, and the relative freedom it implies, society, even when perfect, is but a jungle. This is why any authentic creation is a gift to the future."

- Albert Camus

"We repeat, these hybrid constructions are not the least interesting for the artist, the antiquary and the historian. They make us aware to what extent architecture is a primitive thing, demonstrating as they do, like the cyclopean remains, the pyramids of Egypt, or the gigantic Hindu pagodas, that architecture's greatest products are less individual than social creations; the offspring of nations in labor rather than the outpouring of men of genius; the deposit let behind by a nation; the accumulation of the centuries; the residue from the successive evaporations of human society; in short, a kind of formation. Each wave of time lays down its alluvium, each race deposits its own stratum on the monument each individual contributes his stone. Thus do the beavers, and the bees; and thus does man."

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- Victor

Hugo

While considering the importance of issues involved in the present cases, the aforesaid quotes of the renowned literary masters have been reminiscent in the mind of this Court.

1.1 India has extraordinary, vast and diverse pool of cultural heritage and ancient monuments in the form of buildings, temples and other archaeological sites and remains. Its southern State Tamil Nadu's ancient culture is one of the most glorious ones to have existed in the world's history, dating back more than 2,000 years. Its immortal creations of resplendent architecture, design and construction of forts to temples, murals to paintings, sculptures to scriptures, made of lime mortar to clay bricks, from stones to rocks, from herbs to fruits in an era of might is right, have stood bent on to unite this glorious land. Tamil Nadu is famous for all over the world its magnificent and ancient temples. The monuments here are the

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remembrances of the living witnesses about the golden historic era of over thousand years. They exemplify the valor of this land and are the symbols of cultural expressions. More particularly, the temples, many of which are more than 2000 years old, are repositories of knowledge and treasure houses of arts & architecture. They are continuing legacy, which connect the present with the past and *vice versa* and are living symbols of unique culture; and the festivities connected there to make them vibrant and colorful. Our people are also deep rooted in heritage. However, these heritage and cultural assets are going into oblivion now-a-days. The upcoming generation does not know about the value of the same. That apart, the custodians of grand and antique temples and ancient monuments are least bothered and the conservation of our valuable heritage is deteriorating not due to any natural calamity or catastrophe, but due to reckless administration and maintenance under the guise of renovation.

1.2 In ancient times, there have been cultural invasions, which though have damaged certain places with historical and

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archaeological importance to thrust deep rooted dispel into the minds of our people with hyperbole, there is much more in this land to pass on. It would not be enough if a monument or a heritage site is just handed over to future generations it is equally exigent that its history is also passed on. The younger generation hyping upon science and technological development needs to understand that many things claimed to be discovered and equated with scientific objective were said and laid down here before centuries in spiritual sphere. The intelligence, knowledge and skill of the people of this land have been far superior and precocious even in fields that science is yet to find answers. In proof, not only have the primogenitors of this land left behind theories beyond human comprehension, but also astonishing and illuminating monuments and scriptures. The object of such creation was not just a personal achievement, but a conscious effort to leave a historical imprint for future generations. Just as good memories create nostalgia, knowledge about history brings in a sign of pride, belonging and motivation to recreate history. To fulfil its informative and educative functions, a monument or a place of

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historical importance with heritage value, in addition to its preservation needs to be opened to the public, which means that its spatial dimension as well as its content can be experienced by the public and be sustainable. Thus, it is needless to emphasize that these have to be preserved and protected at all costs and for posterity. With this prelude, this Court is inclined to proceed with this *Suo motu* Public Interest Litigation.

2.1 On 06.01.2015, the First Bench headed by the Hon'ble The Chief Justice Sanjay Kishan Kaul, as he then was, initiated a *suo motu* proceedings, based on the newspaper report published in "The Hindu" on Sunday, 4th January, 2015 titled "Silent Burial", relating to the inaction on the part of the Government in establishing the statutory authority, framing Rules and constituting a 17-member Heritage Commission to advise them on heritage issues. It was pointed out that in April 2012, the Government announced its decision to enact a law on Heritage Commission, which move was welcomed by activists and conservationists and the State Legislature passed a bill in this regard and it had received the assent of the

Governor, however, there was no progress ever since. The newspaper report further indicated about another initiative of the Government viz., the Mamallapuram World Heritage Area Management Authority, inspired from the model of Hampi World Heritage Area Management Authority, meant for conservation of cultural heritage of area declared as a World Heritage Site in 1984, which has also not been set up.

2.2 Our constitution, understanding the importance of long standing history and civilization, has thrust upon the state, a duty to protect, safeguard and nourish the rich culture, tradition and heritage of this land. The devout inhabitants of indigenous faiths of this land have left behind numerous symbols reflecting their adroit and arduous work, which by efflux of time have garnered great veneration to the faiths now known as religions. The right to profess, practice and propagate religion shall also include within its domain the right to protection of the symbols of such religion. When the state obligated under the Constitution to protect the symbols of heritage, tradition and culture, fails in its duty, the courts have to step in. Since the same was a matter of vital importance, it has been taken up as Public

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Interest Litigation and registered as *suo motu* W.P.No.574 of 2015 to issue a mandamus, directing the respondents to take speedy steps to constitute the 17-Member Heritage Commission and also set up the Mamallapuram World Heritage Area Management Authority for the purpose of safeguarding the archaeological monuments in the state of Tamil Nadu. During the pendency of the same, various writ petitions touching upon the protection, maintenance and sustenance of the ancient temples, idols, murals, temple lands and other places /articles which all are also of archaeological and historical importance, came to be filed before this Court. In view of the commonality, interconnectivity and interdependence of the issues involved, all the writ petitions have been clubbed together and taken up for hearing along with this Public Interest Litigation. However, for the sake of convenience and easy understanding, separate orders are being passed by this Court and the present order is with respect to *suo motu* WP.No.574 of 2015 and WP(MD)No.24178 of 2018.

3. At the outset, it would be apropos to brief about the heritage and cultural assets possessed by the state of Tamil Nadu and

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its role in improving local economy by way of tourism, preservation of cultural and traditional values and practices, serving educational resources, increasing community value and social inclusion and above all, bringing pride to our Nation. The entire state is strewn with great example of ancient Tamil architecture that goes as far back as two thousand years. Apart from the temples, the state is also home to several historical forts and other modern architectural marvels from its medieval heritage to colonial history. It comprises of the oldest inhabitants of the world, as it is the motherland to the world's oldest language, Tamil, in usage. The state has remained a cultural hub for various activities like debates, art, innovations, architecture, music and commerce from time immemorial. The culture, tradition and practices were connected with religious beliefs. The record of valorous and historical events, found in many places like temples and forts, monuments and heritage sites, exemplify the indomitable claim towards the ancientness of the language, belief, tradition and culture of the people. Czech Professor [Dr. Kamil.V. Zvelebil](#) in 'Tamil Culture' under chapter "The Tamil Contribution to World's Civilization"

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narrated as "There is no doubt that the culture of the Tamils belongs to the great and immortal treasures of the world's civilization". This will stand testimony to the pride of Tamil culture.

3.1 In social and cultural parlance, "Heritage" is often related to tradition, folklore, arts, monuments, places or things of special importance, architectural excellence or historical value. Such value is accredited by recognition from the society based on its uniqueness, artistic and historical importance. Amongst ancient rulers, the pandiya, chozha and pallava kings gave importance to art and architecture, people and governance, language and culture, temple and faith, until the renaissance when much resurrection was done by the Vijayanagara Empire. The monuments act as authentic records of history. Especially, in civilizations that lack written records, they are the only means that throw light on the past. Apart from being a historical record, the monuments bear witness to the artistic, cultural, technological and economic development of the people who created them.

3.2 Monuments, which have been created for thousands of

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years, are the most durable and famous symbols of ancient civilizations. The evolution of the human race, from primitive to middle age, from renaissance to current age is transition of human thought and execution. Such transitions are ostensible from the artefacts that stand tall and strong, effervescent and illuminating. They symbolise the growth and development of the place and people and are frequently used to enhance the appearance of a city or location. Structures created for other purposes that have been made notable by their age, size or historical significance may be regarded as monuments. They are also designed to convey historical or political information and the same can be used to reinforce the primacy of contemporary political power and educate the populace about important events or figures from the past. Such monuments, which stand as testimony to cultural, artistic, traditional and natural heritage of this land, have to be preserved and such heritage has to be passed on to the future generations.

3.3 Apart from that, the land of Tamil Nadu has multitudinous and ancient, large and exhilarating, intriguing and mystical temples

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with astounding and unique style and art, which are all of archaeological importance. These temples played multiple roles in the development of Society. They are not only the places for worship, but also the places that exhibited extraordinary art in the form of sculptures, idols, paintings, murals and music, which also formed part of its heritage. Temples that have withstood the test of time are also to be treated as places of archaeological or historical importance as they are not only built with extraordinary skill, but also they reflect historical events termed as "legend" in common parlance and they are instrumental in the survival of the language of this land. Therefore, this Court feels it necessary to describe the activities associated with the temples exhaustively, but objectively.

3.4 Every ancient temple was structured in such a way that specific places were allocated for the activities associated with the traditional method of worship that included recital of hymns in praise of deity, recital of Thirumuraigal, vedic hymns, dance, drama or folklore, debates, conduct of festivals, etc. During festivals, folklore programmes and dramas were conducted not only depicting the

historical events, but also about the legends of the temple, where the events take place. Bharathanatyam, one of the ancient dance forms in the world, which has its origin in Tamil Nadu, attributable to lord Nataraja, along with other dance forms, were rendered in traditional folklore. The activities held in the mandapams have gone a long way in the preservation, promotion and survival of the temples and also of various types of arts and literature and contributed to research work on our language, tradition and culture. The mandapams in temples had pillars, different in numbers and size, form and technique, art and design. The artistic exuberance of ancient Tamils reflected in the paintings and murals in the temples and religious places. The paintings also conveyed various stories including the legend of the temples. Any art, be it music or painting, can continue to survive only if it is practiced. The existence of the temple is interwoven with the co-existence of the various activities mentioned above. The waning of one activity will not only affect the rituals, but also result in waning of other activities and eventually the temples itself. Hence, not only the preservation and redemption of temples alone, but also the activities

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associated with the regular and traditional functioning of the temples, are of paramount consideration.

3.5 From time immemorial, music and art are closely associated with the culture and tradition of temples. Music, in this land is mixed with every tradition and ritual. It is still a matter of pride for an artist to perform or give discourse in a temple. Legends speak about the Tamil Sangams conducted, wherein the talents in music, art and debates were displayed. The temple artistes / musicians have dedicated their services to play musical instruments in an eminent manner, whenever poojas for the deities are performed and during festivals arranged by the authorities of the temples as per the rituals and customs. Some see it as a spiritual opportunity to unify and experience the bliss of the supreme. The classical "Tamil literature" of our land was set to music. The ancient musical tradition has been referred to in the Sangam literature such as Puranaanooru, Kalithogai, Ettuthokai and other works. Silappathikaram, which belongs to post-sangam period has made various references to different forms of music performed by the Tamil musicians. It is

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believed that recitations in a particular Ragaa or Pann yielded specific results. Appar, Thirugnanasambanthar, Sundarar, Manikkavasagar and Alwars, the Saiva and Vainava saints, composed music linked with the hymns, Devaram and Divyaprabhandam compositions between the sixth and tenth centuries CE. Legends recorded in the temple fortify that the saints and their hymns performed many miracles to the extent of even bringing back the dead to life. They not only paved way for the upliftment of the Tamil language, but also in revival of the old temples and emergence of new structures in the existing temples throughout the state. Prof.Kudavayil Balasubramanian in his book 'RAJARAJECHARAM' refers to a stone inscription, which describes that 50 musicians were appointed 1000 years back by King Rajarajan in a sivan temple to perform Devara hymns. "Oduvars" were trained and appointed in all the temples along with set of musicians well versed in various forms of musical instruments like Mridangam, percussion instruments, flute, Muraliyam, Vangiyam, Paadaviyam, Udukkai, Conch, Uvachupparai, Sagadai and Karadigai. After RajaRaja made it mandatory that hymns

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from "Thirumurai" was to be recited every day in the temple, dedicated Oduvars for each temple were appointed. Also, people well versed in Mrudangam, Nadaswaram and other musical instruments were appointed for each temple. However, such appointments are now unfortunately, restricted only to few cities and temples. Therefore, it can be safely concluded that it is the duty of the temple administration to ensure that the recitations of the divine hymns with musical instruments are taken place in every temple, which would be significant in the survival and flourish of the art, besides aiding in preservation of the ancient temples and its values.

3.6 Temples were used as office of records, wherein records relating to allocation of lands, historical events, poems and literary works written in Palm leaves were stored. They were accepted to be authentic places for record keeping. The recovery of "Thirumurai" from Thillai Chidambaram Temple by RajaRajaCholan would stand as testimony to the same. Two early 13th century inscriptions mention about re-organization of old temple library. That apart, the inscriptions in Thiruvothur, Tirumalperu, Koogoor, Tiruverumbur and

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Thiruppanandhal record that temples were not only places of worship, but also acted as places for justice. It is relevant to mention here about the synonymous place in Asia viz., Thiruvarur, which is a chariot house and known for its culture and the great king of this soil Manu NeedhiCholan has dispensed fair justice as per the advice of his Council of Ministers, whose statue finds place in this Chartered High Court of Madras.

3.7 Temples were the epicentres for philanthropic services ensuring to conduct various social welfare activities. Huge extent of lands, jewels, properties and even animals were donated to temples. Such donations were made not only of the love for the deity, but also considering the fact that the income derived from the lands would help the temples in the performance of every ritual perpetually. The stone inscriptions record that there were many charitable endowments, which provided both food and accommodation for students studying Tamil literature and grammar. Though the land was administered by the Kings, the intervention of the Kings in spiritual and charitable matters was less. In those days, people were

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conscious enough not to encroach or usurp temple lands. With changing times, culture and belief, the lands and other properties of the temples have been coveted warranting interference by this Court.

3.8 Temples have also been medical centres for physical treatment. The holy ash given in Saivite temples was believed to cure many diseases. Even today, the sacred sand (Puthuman) taken by people from Sankaran Koil is believed to have curing effect. Further, its premises were used by people to enter into commercial transactions and the officials were appointed in each temple to take care of the economical activities and safe keeping of the temple properties and documents.

3.9 The mutts, where Tamil literature, hymns, music and scriptures associated with the religion and beliefs of this land are taught, also remained as platform for national leaders, poets, scholars and ascetic hermits. They were the pillars to instil discipline and faith. Even today, the traditional mutts run educational institutions. The mutts owned huge extent of lands, donated by the devotees to enable the same to sustain and propagate the religious

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beliefs by conducting regular poojas, festivals, rituals and religious courses.

3.10 The ancient temples, which we adore upon, were all constructed with a specific design and stability that they were also capable of acting as fortress during the times of war. KotchengatChozan, a chola king and one of the 63 Nayanmars, built many adorable madakoils(Temples). Our history reveals that the temples have not only acted as fortresses during invasions, but also used as shelters during natural calamities.

3.11 The stone inscriptions found in the temples are great sources of historical data. Numerous stone inscriptions left by Pallava, Chozha and Pandiya dynasties visible in Temples reveal not only about the history of our ancestors, their culture, traditions, welfare activities, thought process, scientific skills and forethought, but also their administrative excellence. They act as great sources of evidence and link us to the past. The stone inscriptions in Uthiramerur Vaikundaperumal temple record the prevalence of democratic elections to local bodies before 1100 years. There are many such

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numerous and rare stone inscriptions and epigraphy found in the temples of Tamil Nadu.

3.12 The Temples here have been centres for tourist attraction mainly because of its ancientness, some of which have legends dating it to before 2000 years. Despite many storms in various forms, they stood tall reflecting not only the structural stability, but also the universal truth. Therefore, in order to save and safeguard the ancient heritage of this land, it is not only necessary to protect and resurrect the temples and its properties, but also to restore the age old Tamil traditions and cultures followed in the temples and bring it to the knowledge of the public.

4. Our Kings adopted the ideology using scientific methods in constructing the temples for its future preservation. A monument, sculpture or scripture is not just a record of historical fact, but is a testimony to the knowledge, culture, tradition and lifestyle of the people. It exhibits in brief, the happenings of the yesteryears that is, to be imbibed, followed and carried forward by the present and future generations. It is now an accepted fact that the temples were not

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constructed as a mere place of worship, but also have some scientific significance based on its locations. The murals and paintings in the temples and caves demonstrate the knowledge of our people in chemistry and the prevalence of the same in many places of Tamil Nadu speaks volumes on the natural intelligence of the people of this land.

5. Many such monuments and sites of historical importance came to be revealed because of expeditions. The Big Temple built by the King RajarajaCholan, which is unique in its style and architecture, has been declared as the World Heritage Site by the UNESCO. During the British Regime, efforts were made by British Archaeologists to unearth the history and architectural treasure of this country, which paved way for the establishment of Archaeological Survey of India.

6. Archeology is the study of the human past using material remains. These remains can be any objects that naturally formed, people created, modified or used. The word "Archeology" derived from the Greek word "*arkhaios*," which means "ancient." Although some archaeologists study living cultures, most archaeologists

concern themselves with the distant past. The remains that are mobile are called artifacts. Artifacts include tools, clothing and decorations. The immobile remains, such as pyramids or post-holes, are called features. The quest to acquire knowledge is an ardent quality of zealous mind. History of human evolution, of places, of culture, of faith, of language, of practices, of traditions has baffled the human brains for long without conclusive answer. But the search for the same has never stopped.

7. The subject of archaeology and the preservation of ancient monuments are considered as important sovereign functions by many countries. The attempt to claim to be one among the oldest of the aborigines of the world has pushed the countries to considerably invest time and money to know the past. The presence of such monuments is not only a matter of national pride, but also contributes significantly to the economy of the country through tourism and business opportunities. Not only the Government departments, but also many independent bodies have been continuously working by forming organisations towards protection and preservation of the

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heritage sites, monuments, temples etc., a few of which, are UNESCO, IUAES, RCHME, NPS, NRHP, AHC, MCRF and CCGAS. Its functions and activities are detailed in nutshell as below:

- ◆ According to the UNESCO's World Heritage Convention, landscapes and sites of outstanding universal value can be designated as World Heritage Sites; and Monuments, groups of buildings and sites, which are of outstanding universal value from the point of view of history, art or science, are to be designated as cultural heritage, for which the designating nation has appropriate legal, scientific, technical, administrative and financial measures in place to identify, protect, conserve, present and rehabilitate world heritage sites. However, the sovereignty of the State where the site is located is not to be compromised. The World Heritage Committee is the body responsible for the practical implementation of the Convention as well as managing and deciding how to use the World Heritage Fund. It also determines whether a property will be included in the World Heritage List.

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- ◆ The International Union of Anthropological and Ethnological Sciences (IUAES) situated at Paris is most concerned with anthropological interests; and its purposes are (a) to promote international cooperation in the domain of the sciences of man and notably by way of the International Congress, the work of study commissions, expeditions, subsidies to scholars, publications and all other scientific activities; (b) to organize researches on an international basis; (c) to promote scientific cooperation among national societies of anthropology and ethnology; (d) to promote cooperation with other Unions.
- ◆ The Royal Commission on the Historical Monuments of England (RCHME) is responsible for documenting buildings and monuments of archaeological, architectural and historical importance in England.
- ◆ The National Park Service (NPS) is an agency of the Federal Government of United States that manages all national parks, many national monuments and other conservation and historical properties. It is charged with a dual role of preserving

the ecological and historical integrity of the places entrusted to its management, besides making them available and accessible for public use and enjoyment.

- ◆ The National Register of Historic Places (NRHP) is the United States federal Government's official list of Districts, sites, buildings, structures and objects deemed worthy of preservation for their historical significance. A property listed in the National Register or located within a National Register Historic District, may qualify for tax incentives derived from the total value of expenses incurred in preserving the property.
- ◆ The Australian Heritage Council (AHC) is the principal adviser to the Australian Government on heritage matters. Its role includes the assessment of the places for the Heritage list and common wealth list and nomination of places for inclusion in the list.
- ◆ The Ministry of Culture of the Russian Federation (MCRF) deals with culture and art issues and its main function is to implement

the Strategy of State Cultural Policy; and the Ministry of Culture is authorized to issue legal regulations, to develop and propose draft regulations in the areas of culture, arts, cinematography, copyright and associated rights, cultural and historical heritage and tourism as well as international cultural and information-related cooperation.

- ◆ The Central Committee of the Greek Archaeological Service (CCGAS) which renamed as Archaeological Committee deals with the preservation and restoration of cultural monuments, management of archaeological sites, establishment and management of museums and supervision of research and excavation activities both by the local as well as by the foreign archaeological institutes active in Greece.

8.1 In India, the places of historical importance also linked to belief, culture, tradition and arts. Though the culture, tradition, style and design of various places of archaeological importance in the world

are different, it was a poet from Tamil Nadu by name Kaniyanpoongundranar, who not only called upon the people to unite for the cause of love and affection by labelling all as one race, but also laid down the world to be for all by using the phrase “யாதும் ஊரே, யாவரும் கேளிர்” (**Yaadum Oore Yavarum Kelir**), which is at present, depicted in the United Nations Organisation. Our country has a Central Government Organisation at the centre and each state has its own Archaeological department. Considering the provisions of the constitution, whenever a place is declared to be a place of national importance, the Central Act will govern the subject and the monument would come under the control of the Archaeological Survey of India (ASI). ASI was founded in 1861 by Alexander Cunningham. After Independence, it is attached to the office of the Ministry of Culture. It administers more than 3650 ancient monuments, archaeological sites and remains of national importance, which include everything from temples, mosques, churches, tombs and cemeteries to palaces, forts, step-wells and rock-cut caves. The ASI also maintains ancient mounds and other similar sites, which

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represent the remains of ancient habitation.

8.2 The Tamil Nadu State Archaeology Department was founded in 1961. It has separate wings for excavations, chemical laboratory wing, monuments, epigraphy and manuscripts. So far, this Department has conducted excavation works at 40 different sites, which include on shore and off shore excavations and has 93 monuments within its ambit. That apart, the Hindu Religious and Charitable Endowments Department (in short, HR&CE Department) custodian of ancient temples, its money, articles and land, is also duty bound to protect and maintain the various temples under its control, which are of archaeological and historical importance.

9. Before proceeding further, it would be worthwhile to have a look at the architectural excellence found in Mamallapuram and some of the temples in Tamil Nadu.

9.1 Mamallapuram is an important place in the history of art and its temples and sculptures are not only earliest in this region, but also significant in variety and elegance. It is situated nearby a coastal

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village, which is a great tourist spot and heritage attraction. Earlier, in the reign of Pallava rulers, it was a major port. The formation of Mamallapuram is the result of artistic works from 580 A.D. to 730A.D. It is a unique site and is the only place in India, where all the three stages of temple architecture, namely, cave temples, single stone temples and structural temples can be seen. Open air base reliefs are not found anywhere else in the country, except Mamallapuram. It is a museum of temple architecture. There are many sculptures of historical importance, besides many live natural scenes enshrined in the rocks. The place known for its tourist attraction, has surprised physicists and has been a subject matter for research scholars.

9.2 Meenakshi Amman Temple, a historic one located at Madurai is an important pilgrimage place with Saiva tradition attracting thousands of devotees. With huge gopurams, thousands of sculptures, numerous sculpted pillared halls, which were built over the centuries, stand even today as the masterpiece of Dravidian architecture. Thiruparankundram Subramanya Swamy Temple is one among six temples of Lord Muruga, built in rock-cut architecture and

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the statues are carved on the wall of the Thiruparankundram rock with antiquity traces in the Sangam Literature.

9.3 Ramanathaswamy Temple, Rameshwaram, dedicated to Lord Siva, is one of the twelve Jyotirlinga temples. Appar, Sambandar and Sundarar have glorified the temple with their songs. The temple has the longest and magnificent corridor with the advanced architectural designs of the Tamil Kings. Thanjavur is the center of architecture, art and religion of South India having the grand Brihadeeswarar Temple, which is also called as Big Temple, the largest one of the country with the world tallest tower and a huge statue of *Nandi* as its marvel.

9.4 Srirangam Ranganathar Swamy Temple, dedicated to Lord Vishnu, was constructed in the Tamil style of architecture glorified in the Thiviya Pirabandham, the early medieval Tamil literature of the Alvars. The temple is surrounded by seven rectangular enclosures, one within the other and there are 21 gopurams, leading into these various enclosures. The architectural

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portion of the temple begins with the fourth court, the outer wall of which is massive height. Within the courtyard, there are two interesting structures one is the Hall of a thousand carved granite pillars, arranged in rows and another is 'Horse Court' which contains rows of pillars carved as furiously rearing horses. Such significant and monstrous architecture made in those early days, portray the ability of the sculptors. Srirangam is an outstanding model, which has reached the stage of a temple-town and that is why, it is about to be enlisted as World Heritage Site.

9.5 Thiruvattaru Adikesava Perumal Temple, situated at Kanyakumari District, is a notable temple, which was built with granite stones and provided with a copper sheeted roof. The history of the temple has been written by Professor A.K.Perumal as a research book titled 'Adikesava Perumal Temple' which depicts the various paintings enshrined in the temple. With more than 50 inscriptions in Tamil and number of stunning sculptures it has a note in Purananooru, one of the oldest literatures in Tamil dating back to 2000 years, by the Poet Mangudi Maruthanar. The temple complex is

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enormous and spans 150 acres, magnificent towers in all prakaras, wooden carvings, wall paintings, sculptures relating to epics it is declared as an ancient temple with high traditions.

9.6 Arunachaleswarar Temple, Tiruvannamalai is an ancient one with the thousand pillared hall and the massive shrine of Unnamalai Amman. Thirucourtalanatha Swamy Temple, Tenkasi was constructed by Cholas with one of the 64 Shakti Peethams and the Chitra Sabhai, the hall of pictures exemplifies the artistic talents of the Tamils. Srivilliputhur Temple, dedicated to Lord Vishnu and Andal, is the marvel of the Dravidian style of architecture with the inscriptions from Chola, Pandya and Nayak rulers. Bhagavathi Amman Temple, Kanyakumari located on the confluence of the Bay of Bengal, the Arabian Sea and the Indian Ocean is said to be constructed over 3000 years ago.

9.7 As regards Temple Architecture, naturally our minds will be attracted to the architectural designs and beauty of many kinds, namely, Kara Kovil, KokudiKovil, AalaKovil and Perungovil, each with

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different characteristics. All these types of temples have been constructed with sense of devotion and hard work, taking note of the necessity to record the history and to pass on the culture to the future generations. Thus, our Kings have taken much care and caution to see that the temples are built with an astounding skill with a great sense of intelligence.

9.8 Cave temples are very good example for temple architecture. The entire Thirukazhukundram temple was constructed by digging a single massive rock, which is termed as "Otraikal Mandapam" in Tamil. It is not just as temple that alone has been constructed out of a single rock many temples have been constructed like this. Similarly, Thirumurthi cave temple, Magisashura Mandapam and Varaagaperuman cave temple have been constructed in Mamallapuram and two notable cave temples in Tiruchirappalli Hill. These cave temples have been constructed without vimanam (upper most structure). The Thirukokarnam (Gokarneshwarar) temple in Pudukkottai is another cave temple constructed out of a rock with a monolithic sivalinga. The manner of construction shows the skill, care

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and caution adopted by the sculptors, to not only make it last long for many hundreds of years, but also ensure that the basic features that are required for a temple with its traditions and cultures, are not compromised. But these rock temples are solid with its old traditions, beauty, elegance and the pillars, reflecting the history of our land as well the supreme architectural knowledge and skill.

9.9 The temples underwent spectacular and rapid expansion with the construction of majestic gopuras, vimanas, mantapas with exquisite sculptures and shrines during the 15th and 16th centuries. The rulers paid lavish attention to the temple by gold-plating its vimanas, gifting it with thousands of pearls, necklaces with diamonds, gold ornaments, revenue from prosperous villages and hundreds of cows. The construction of a temple itself is a very difficult endeavour. Efforts were also taken to preserve and gradually improve the temple by adding many sub-temples, shrines, structures, tanks, mantapas with incredibly beautiful sculptures and also maintaining them with utmost care. The succeeding kings, even if with different lineage, were magnanimous, tolerant and pious enough not to destroy or alter

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the earlier sculptures to bring it to their style, rather they only put up new structures which were huge and beautiful, portraying with great elegance, the skill and history of this land.

9.10 There are extraordinary bronze images of the Gods in our land. Most temples in Tamil Nadu have a moolavar, an idol of the main deity made of stone and Urchavar, Bronze idol, which is mostly used during festivals. The age of the Cholas constitutes the most creative phase of south Indian history and is the one during which Tamil culture reached a peak. The world renowned sculptor Rodin considered the Nataraja image to be the most perfect representation in the world of rhythmic movement. For an artistic appreciation of south Indian bronzes, one is forced to turn to those few museums and art galleries that have been able to acquire collections.

9.11 Temple bronzes are treasures of our land as they have been made with utmost faith to religion, culture and related aspects, depicting the tremendous talent of the sculptors in making the vigrahas in whatever form or whatever pose, they wished to see

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them. Every idol symbolises the character of the deity and conveys a message. The perfection in creation is a tribute to the creator himself. The bronze and panchaloka idols are lively enough to reflect the nine different emotions of human perception. The bronze idols though were recognized in ancient scriptures, were put into practice in the new millennium by the cholas and pallavas. Such idols were often part of the temple festivals held annually.

9.12 Thus, the prevalence of strong atmosphere of devotion and reverence in the Tamil Nadu temples are evident from the architectural excellence. In this connection, it has to be seen that the culture of the people, their various religious activities, the manner of worshipping the God, their way of life, devotion to God and hard work which were all webbed together, have all been embodied in the sculptures.

10. Having noted the richness of cultural heritage in the state of Tamil Nadu as referred to above, which needs to be nurtured, preserved and retained for future generations, the Government

passed a bill in the legislature on Heritage Commission consisting of experts and representatives from various departments and Mamallapuram World Heritage Area Management Authority, however nothing moved, which led to initiation of this '*pro bono publico*' litigation. After entertaining this case, taking note of the admitted fact that our land is fortunate to have an ancient civilization and much heritage value, the temple architecture being highly developed science, a large number of monuments and temples are stated to be unprotected by the Archaeological Survey of India and / or Government, this Court issued several directions to the respondent authorities periodically, due to which, various developments took place. The details of the same in chronological order are narrated as under:

- ◆ On 09.04.2015, keeping in mind the nature of the issue involved herein and being *suo motu* proceedings, Mr.P.S.Raman was appointed as Amicus Curiae to assist this Court, who furnished details by way of report pointing out the lapses on the part of the respondents.

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- ◆ On 12.10.2015, denying the allegation leveled by the fifth respondent viz., Heritage Conservation Society, commenting upon the ongoing renovation works carried on in some temples, the Commissioner, HR&CE Department, Chennai, sixth respondent in W.P.No.574 of 2015, filed a rejoinder stating that some persons like the fifth respondent are filing petitions before this Court with an intention to stall and prevent the various renovation works under the guise of conservation of heritage. It is the duty of the Government to oversee the proposals for carrying out all kinds of repair and restoration works and to give a face lift to the important temples situated in the town of Kumbakonam. It is further stated that cleaning works are carried out with abundant caution and they are using smooth brushes for application of suitable chemicals to rub the stone surface, in order to avoid more physical and water pressure on the structures. It is also stated that the damages caused to the temples were not due to any act of negligence, but only due to the ravage of time beyond the control of the HR&CE

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Department.

- ◆ On 14.10.2015, this Court passed an order observing that the heritage is of all the people – all citizens of the Tamil Nadu, of this country and of the world, keeping in mind the importance of it; that everything is not hunky dory, which is quite apparent from the fact that even the list of more than 100 years old temples with Archaeological significance has not been drawn up and a study has begun only when the Court intervened in the matter. It was further observed that the objective of the Court is clear that the heritage temples with archaeological and religious significance should be identified, maintained and renovation be carried out in a manner to ensure that no damage is caused. It was also observed that the staff of the Public Works Department (on deputation to the HR&CE Department), may not have the expertise to carry out the task; that even in the renovation of this High Court, this Court had to take recourse to other agencies to ensure that the renovation work is carried out in a manner as to maintain the original

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glory. It was further observed that the Archaeological Survey of India has an important role to play in all these in terms of the input of technology, and the grievance made in the other proceedings is that they are not even consulted most of the times, taking note of the submission made by the learned counsel for the Archaeological Survey of India that they have expertise in conservation matters. It was also observed that instead of trying to seclude and exclude others, the objective should be to have a discussion with those stakeholders, so that a better future plan is chalked out; if one may say so, there will be no dearth of financial assistance from different sections of the society if the Government finds itself short of funds. Observing so, this Court called upon the HR&CE Department to hold a discussion with the stakeholders in the Committee represented before the Court. It was also ordered that the details can be worked out in these proceedings and a final picture arrived, which should be placed before this Court as to how the Government proposes to proceed in the matter.

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- ◆ A report has been filed by Dr.R.Nagaswamy, former Director of Archeology, Government of Tamil Nadu, who worked with the Committee. The Amicus Curiae also submitted his second report, making certain suggestions. Paragraph-9 of the said report reads as under:

"a. There should be no more cementing or whitewashing undertaken on the walls and ceilings thereby affecting the beautiful Murals and Frescos which are in extremely delicate and deteriorating state. The temples trust/administration could even consider availing services of some Fresco restorers so that these can be at least preserved in their present state without any further deterioration.

b. The artistic antique doors which have been replaced by modern doors should be attempted to be made reusable instead of being discarded.

c. The several ancient sculptures and artefacts were seen strewn around the 1000 pillar mandapam area without any protection. They need to be immediately catalogued and kept in safe custody.

d. Wherever flooring has been sought to be repaired, replacement with new granite slabs should be the last option.

e. The new ramp constructed in the Horseman mandapam should preferably be removed and instead a small wooden ramp for use of the disabled may be made. This will prevent unauthorised vehicular movement to the mandapam.

f. Construction of Stucco sculptures on top of the mandapams and use of enamel/distemper paint should be avoided. In the guise of restoration/restoration, nothing new should be added to the original heritage structure.

g. The temple complex, in several places is being used as a shed/go down for keeping debris including huge quantities of wood. Apart from being aesthetically not in keeping with the environment, the same are potential fire hazard. Steps should be taken to remove all of them immediately.

h. The outer 3 prahars of the temple is now full of commercial and residential buildings. The authorities should ensure that no further construction is put up there and also stop the existing constructions from adding floors so as to affect the view of the gopurams.

i. Lastly, some disputes were raised about the processes involved in the giving of tenders for the renovations. As it is perceived to be not within the scope of this committee, no comments are offered other than to state that possibly the fact that it is almost entirely funded privately, the normal tender process may or may not have been followed.

The second aspect over which considerable dispute has arisen is relating to the removal of the Hanuman idol from its pre-existing location to its present location and the present status of the main deity (Ranganatha Swamy) which Balalayam is being undertaken. As both these matters are relating to agama shastras, this committee is not commenting about the same. However, if this Hon'ble Court so directs with the assistance of experts a report on the above can be given. Nonetheless, it may be added here that when the writ petitioner objected to the procedure apprehending some structural changes to the sanctum sanctorum, the temple authorities including the Joint Commissioner gave an unconditional oral undertaking to the committee that no structural changes would be made to the sanctum sanctorum or the deity himself and that proper agama practices have been followed for the balalayam.

j.The last general recommendation is that in undertaking exercises of the present nature, the authorities try to follow not only the guidelines by UNESCO in respect of this Srirangam temple itself but also the general principles given in the Burra Charter referred to by me in my first report."

- ◆ On 30.11.2015, this Court, taking into consideration the aforesaid report, was of the view that the better arrangement even as per the minutes of the meeting held on 02.11.2015 by

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the Commissioner, HR&CE Department, envisages a preparation of the manual to be formulated by the Expert Committee appointed by the Government and that there was also an issue of lack of expertise in respect of the people to carry out the task. Dr.Nagaswamy's report also referred to the incalculable harm being done in the process of renovation of inscriptions on walls and pillars. Finally, this Court observed that necessary meetings for achieving the objects should be called by the Commissioner, HR&CE Department, along with the Amicus Curiae and the team, which will proceed with drawing up of the future plans of action to be placed before the Court, including the possible participation of representatives of UNESCO. But, the said observations have not been given effect to.

- ◆ On 25.01.2016, this Court in its order, observed that on one aspect, there is an agreement that persons who are members of the Committee, may individually give their suggestions for computation of a Manual; the suggestions were to be given within a period of one month; on the suggestions being

received, the Department will do the computation of a Draft Manual within a period of one month thereafter; and this Draft Manual will then be placed for discussion before the Committee, whose meeting will be called by giving a minimum five days notice in advance. This Court has also observed that the learned Amicus Curiae and the Department are at free to obtain suggestions from persons other than the Committee members; the exercise of how best experts could be involved to carry out the work should also go on simultaneously; and necessary assistance can also be provided by the Central Government / Archaeological Survey of India, on both the issues.

- ◆ On 16.04.2016, the sixth respondent viz., HR&CE Department filed an affidavit pursuant to the order dated 25.01.2016, stating that a draft manual has been prepared, after having consultation and discussions with various Agama Experts and Archaeologists stated therein; since the Experts from UNESCO are not available in India, Experts in India who have contributed largely on the structural conservation, have been consulted and

their suggestions have been taken in the preparation of draft manual; the draft manual has been circulated to all the stakeholders in the Committee represented before this Court to express their views and suggestions on 31.03.2016; and a meeting was attended by them wherein they have expressed their views. A copy of the minutes of the meeting held on 07.04.2016 and the draft manual has been enclosed along with the affidavit. The manual recommends that a comprehensive conservation management plan has to be prepared in consultation with Experts for temples of high value. The manual has banned sand blasting and also emphasises water wash to be done only with approval and supervision.

- ◆ On 05.07.2016, the Amicus curiae filed a report stating that a Working Draft Conservation and Maintenance Manual for HR&CE Temples has now been made ready and circulated and the same has also been placed before this Court. In the report, the Amicus curiae placed certain recommendations as regards the draft manual, periodic feedback on the recommendations of the

manual, safeguards that must be put in place before any work is undertaken, listing / enumeration of all the temples in Tamil Nadu under the purview of HR&CE Department, the need for trained stapathis and the need to ensure enlistment of trained cryptographers to undertake recording and explanations of the various ancient inscriptions in the ancient temples. Taking note of the same, this Court has passed the following order:

"We have heard different parties at length.

2.The learned Amicus has given certain suggestions and the learned Advocate General requests for some time to examine the same for their implementation.

3.There has been some interesting exchange of communication with the United Nations Educational, Scientific and Cultural Organization (UNESCO). In fact, Mr.Rangarajan Narasimhan, who is one of the petitioners had approached the UNESCO in view of the stand taken earlier before us on 16.04.2016 in W.P.No.574 of 2015 to the effect that experts from UNESCO are not available in India. The UNESCO has unequivocally stated that one of their oldest field offices is actually in New Delhi since 1948. Not only that, they claim to have been in touch with the Government of Tamilnadu particularly between 2008 and 2010 qua the study on Chettinad heritage. Insofar as to whether the particular person has some credentials with the UNESCO, the position has been explained. But we need not get into

that issue. Suffice to say that thereafter, the HR & CE Department addressed a response to the UNESCO's letter on 21.06.2016 and in response thereto on 04.07.2016, the UNESCO has raised such a question qua the conservation manual. It is the view of UNESCO that there may be a need to widen the scope/improve the means of the consultation process. It is their view that the manual cannot be validated unless it is tested on the ground and informed by practical experience and they suggested to take up a small conservation project as a pilot case. In view of the Department itself expressing its difficulties due to the lack of staff under the Department, it is opined that the modalities of monitoring the status of conservation of temples needs to be visited and there should be reviewing the whole institutional mechanism of temple conservation. The important part is that UNESCO has expressed its willingness to assist the Department in undertaking reviewing of institutional mechanism for conservation of temples and work out the strategy for improvement.

4. We can thus see no reason why the benefit of the expertise of UNESCO should not be available, especially in view of their willingness. In fact, Mr. Rangarajan Narasimhan states that if a request is made to UNESCO to participate in the proceedings on the next date, they would be more than willing to do so.

5. We would thus request the representative of the UNESCO, who can make us more informed on the issue, to be in Court on the next date of hearing, for which arrangement may be made by the State Government.

6. Mr. Rangarajan Narasimhan seeks to draw our attention to the

order dated 30.11.2015 in W.P.No.574 of 2015 more specifically to paragraph 12, where we had observed that the HR & CE Department must go slow in the matter of renovations for the time being till a proper path is laid ahead since the heritage ought not to be destroyed in that process. In that context, we had directed stoppage of any demolition, but observed that the essential works may be carried out. The petitioner's contention is that the expression "essential works" is being mis-interpreted, which needs elucidation.

7. In our view, there can be no doubt about what is meant by the expression "essential works". This is a reference to works which cannot brook any delay, as the structure may itself collapse in the meantime.

8. The learned counsel for the Archaeological Survey of India states that there are number of encroachments and movement of unauthorised vehicles in front of Mahabalipuram Monument area and the Archaeological Survey of India is taking steps. Certain suggestions have been made by the learned Amicus in this behalf. The Archaeological Survey of India is to inform the local administration as to what steps have to be taken as a precaution, which shall be duly implemented by the local administration and the police authorities.

9. Copy of this order be issued to the State Government as well as Mr. Rangarajan Narasimhan, so that it can be communicated to the representative of the UNESCO. Copy of this order be also issued to the learned Amicus."

- ◆ On 23.08.2016, this Court passed a detailed order, which for better appreciation of the issue involved, is extracted hereunder:

"I.Conservation Manual in UNESCO

The Court is in receipt of a copy of a letter dated 15.07.2016 addressed by the Director and UNESCO Representative to Bhutan, India, Sri Lanka and Maldives, to the Commissioner, Hindu Religious and Charitable Endowment Department. The opinion of the UNESCO as reflected in the letter is that it may be difficult to consider the manual prepared as a conservation manual as per the common professional understanding, since it fails to address the basic principles of such a manual, i.e. the typical conservation manual should provide who does what, when and how regarding routine maintenance, time-bound conservation projects and emergency situation. There are certain other basic questions which have been raised in an annexure styled as "Questions related to the Draft Manual". An important aspect emphasized is that the service manual does not solve the problem unless there is adequate institutional mechanism to ensure the quality of conservation work, something with which we have been deeply concerned. The UNESCO has advised to review the current procedures of the department including those related to decision making for choice of the temples for conservation work, extent of work, selection of a contractor and monitoring of its work, etc., as well as the human resource basis of the department. Simultaneously, the letter also opines that the draft manual nonetheless contains some useful observations /

recommendations to follow-up, as set out hereunder:

- *Reconcile the principle of Agama Shastra and international conservation standards, thereby develop a clear guideline for conservation practitioners;*
- *Graded-Inventory of temples on the basis of heritage values;*
- *Comprehensive conservation and management plan (for key heritage temples);*
 - *The first step to be taken have also been set out as hereunder:*
- *Set up of a conservation experts and stakeholders for a **fact-finding mission** to identify the issues in conservation practice through the cases studies of 5 – 6 temples where the conservation projects are going-on or were recently undertaken;*
- *Expert workshop on Agama Shastra and conservation in Agama Shastra;*
- *Review of the inventory of temples under the responsibility of your department and its grading methodology.*

The UNESCO has expressed its willingness to work with the department and coordinate such activities provided that expenses for work and fee for experts are met by the Government.

2.The letter also refers to another aspect, i.e. that two properties proposed by the Government of Tamil Nadu for a future World Heritage status and included in the tentative list in April 2014 are Sri Ranganathaswamy Temple, Srirangam and Chettinad Village Clusters of the Tamil Merchants. In this context, it has been observed that this successful inscription of a site on the World Heritage list

relies not only on its outstanding universal value, but increasingly on the "availability of institutional and legal framework to ensure the conservation of the site as per the international norm". Thus, the future inclusion in the final list of the World Heritage list itself requires some necessary action. In that context, it has been observed that review of the current standards and procedure for the conservation not only of temples but also heritage in general will, therefore, be the first step. We have penned down these details only to once again emphasize the importance of the subject matter being dealt with and the significance of the same for protection and recognition of the heritage and culture of Tamil Nadu.

3. There is also a subsequent letter of 18.08.2016 in furtherance of the earlier letter requesting the following first steps to be taken:

- *Set up a team of conservation experts and stakeholders for a **fact-finding mission** to identify the issues in current conservation practices through the case studies of 5 - 6 temples where the conservation projects are going-on or were recently undertaken;*
- *Expert workshop on conservation in Agama Shastra;*
- *Review of the inventory of temples under the responsibility of HR & CE Department and its grading methodology*

These activities will be important to undertake, and as a next phase, as in depth review of the management system of HR&CE to set a baseline, is suggested. UNESCO will be happy to coordinate these activities provided that the costs are met by the Government of Tamil Nadu. The request is for these to be examined in the hearing of the Court scheduled for today.

4.We are of the view that the HR & CE Department should proceed in terms of the suggestions of the UNESCO as contained in the letter of 15thJuly, 2016 with the annexure and the letter of 18thAugust, 2016 and hold further discussions and thereafter, file a status report before this Court as to the progress made and what is the time schedule within which the remaining aspects has to be addressed, in a chart form.

II.Mahabalipuram Monument Areas.

5.Learned counsel for the Archaeological Survey of India (ASI) submits that a letter dated 29.07.2016 was addressed to the District Collector, Kancheepuram, recommending what action should be taken followed by a reminder of 11.08.2016. However, nothing is stated to have been happened despite the direction contained in para 8 of our last order dated 05.07.2016 that on the ASI informing the local administration as to what steps have to be taken, the same should be duly implemented by the local administration and the police authorities.

6.We may note that the ASI has filed photographs before us which show the extent of the problem where large areas have been encroached upon even blocking the view of the monuments.

7.A map has also been placed before us showing what the position is of the area under ASI, the bus stand and the bunk shops in the prohibited area which are required to be removed.

8.Learned Amicus Curiae has referred to his report dated 25.08.2015 where near the sea, the Mahishasuramardhini monument

and the broken lion rock exist, which are not even enclosed. The recommendation was to widen the area to enclose these also in the protected area, with steps being taken to prevent the vehicular traffic near the monuments. There are certain other photographs also of broken sculptures in the VarahaMantapam, the damages found on the Deity and on the Mantapam and a pay and use toilet complex constructed inside the reserved area.

9.The latter aspect pointed out by the learned Amicus would have to be addressed by the ASI, which can file a status report in respect of the same.

10.As far as the first aspect mentioned on the basis of the report of the ASI is concerned, the District Collector, Kancheepuram, to take steps and file a status / compliance report.

11.The aforesaid actions be taken within a period of six (6) weeks.

12.We make it clear that if any litigation is initiated qua the same, it shall be listed only before this Bench.

13.As a last aspect which we may note is that an affidavit has been filed by the Executive Officer of the ArulmighuPadalathri Narasimha Perumal Temple, Singaperumalkoil, Chengalput Taluk, Kancheepuram District, claiming the necessity of certain work to be carried out qua the Gopuram. We would like the learned Amicus to look into this issue and give his opinion to us on the next date of hearing.

14.A copy of the order be issued to the State Government, to

the learned Amicus, to Mr.Rangarajan Narasimhan and also to the UNESCO.”

- ◆ On 24.10.2016, the second respondent filed a compliance affidavit pursuant to the order dated 23.08.2016 passed by this court, in which it is stated that the second respondent – Assistant Superintendent Archaeological Engineer, Archaeological Survey of India, Chennai Circle, Chennai had visited the monumental site at Mamallapuram on 20.09.2016 along with other supporting staff to assess the status of particular sculptures which were pointed out by the learned Amicus Curiae and prepared the status report. As far as the removal of encroachments and movement of unauthorized vehicles in front of Mamallapuram Monument, forming part of parallel road and shifting of bus stand are concerned, so far no action has been taken by the district administration in spite of the direction of this Court dated 23.08.2016.
- ◆ An affidavit has also been filed on behalf of the sixth respondent in W.P.No.574 of 2015, stating that in response to

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the suggestion of UNESCO, a letter was sent to them on 16.08.2016 with a proposal to conduct workshop in Chennai with the participation of UNESCO. After deliberations and discussions, it was agreed to have a pre-workshop meeting. Agenda for the meeting was also fixed and the meeting was conducted on 21.10.2016. In the said meeting, the Commissioner and Additional Commissioner (Tiruppani), HR&CE Department have participated. Keeping in mind the cases pending before this Court, the Commissioner, State Archaeological Department, Egmore and Archaeological Survey of India, Chennai Circle have been addressed on 09.03.2016 to send a list of names to form an expanded Committee / Panel to individually visit and offer expert opinion on the proposals of renovations from heritage temples under the control of HR&CE Department of Tamil Nadu. A Screening Committee has been suggested in the State and Regional levels to study and approve proposals submitted for any renovation of temple of heritage value. The sixth respondent stated that after the

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meeting, they felt it appropriate to coordinate with UNESCO on the points suggested by this Court. The affidavit also pointed out to various improvements undergone and also the steps to be taken in respect of Arulmigu Mariamman Temple, Samayapuram, Arulmigu Adikesavaperumal Temple, Sriperumbudur, Arulmigu Kamachiamman Temple, Mangadu, Arulmigu Kamakshi Amman Temple, Kanchipuram, Arulmigu Kottaimariamman Temple, Salem and Arulmigu Arunachaleswarar Temple, Tiruvannamalai.

- ◆ On 24.10.2016, an Inspection Report on a group of monuments in Mamallapuram, was filed stating the conditions prevailing in the Kotaikal Mandapa, Toilet Block, Rock-cut sculpture representing a group of elephants, monkeys and peacock, Ganesh Ratha, Rock-cut Varaha temple containing Varaha and Vama incarnations of Vishnu (Varaha Mandapa), Mahishasuramardhini rock standing in the sea to the north of the shore temple and two small carved rocks to the south of shore temple. Suggestions were also given in the said report to

protect those sculptures.

- ◆ On 25.10.2016, this Court passed an order in the miscellaneous petitions filed in W.P.No.574 of 2015, directing the Amicus Curiae to look into the issue and make suggestions to this Court keeping in mind the requirement of essential works both from the perspective of architecture as well as Agamas. It has also been observed in the said order that appropriate course would be to appoint a Committee of Experts who would consider the individual applications of the temples to decide what would be the essential work so as to avoid unnecessary delay in this aspect as well as multiplicity of proceedings.
- ◆ On 03.11.2016, an affidavit has been filed by the Commissioner, HR&CE Department, Chennai referring to the order passed by this Court on 25.10.2016, stating that the State Government had identified Thiru.K.T.Narasimhan, Superintending Archaeologist (Retired), Archaeological Survey of India and nominated him as Consultant for Srirangam Temple Rampart walls restoration in G.O.Ms.No.93 dated

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17.05.2013; thereafter the Government designated him as Consultant Archaeologist/ Conservationist in G.O.Ms.No.171 dated 29.06.2013, which is under challenge in W.P.No.37619 of 2015. It is also stated that the State Government, vide G.O.Ms.No.199 dated 08.08.2013, constituted an Expert Committee consisting of four members with expertise in the field of conservation to protect the Conservation / Restoration / Renovation of Ancient Heritage Temples/ Monuments. For restoration and preservation of murals, the Government constituted an Advisory-cum-Supervisory Committee (Expert Committee) and Working Committee in G.O.Ms.No.237 dated 11.10.2013 considering the need to restore and preserve the murals. Many retired personnel have been identified for giving their recommendations / reports to carry out works for renovation / repairs. It is also stated that all these works are being carried out in the temples in accordance with the Agamas, since those are living temples where devotees worship everyday in thousands. It is further submitted that for

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preparation of a conservation manual, a Committee has also been formed consisting of experts in different fields. An order in G.O.Ms.No.264, Tourism, Culture and Religious Endowments Department dated 01.11.2016 has also been passed forming the State Level Committee and Regional Level Committee for carrying out these tasks. Stating so, it has been prayed to modify the order dated 25.10.2016 insofar as it relates to the formation of a new Committee overlooking the Committee already in place.

- ◆ On 04.11.2016, this Court, after hearing the parties at length, passed an order to the effect that all the miscellaneous petitions filed by the individual temples be referred to a Committee consisting of the following specializations:

- (1)Structural Engineering Expert
- (2)Archaeological Expert
- (3)Conservation Expert
- (4)Traditional Stapathy
- (5)Two Agama Experts

It was further ordered that the Departmental

Representative will act as the Secretary of the Committee for facilitating its working and for furnishing records and that the Committee will look into the issue of repairs and renovations to be carried out in terms of what the Court observed in its order dated 25.10.2016. It was also ordered that the Committee would have to give priority depending on the urgency, as some religious ceremonies have to be performed for which there are designated days.

- ◆ On 07.11.2016, this Court constituted the Expert Committee to carry out the essential works in the temples.
- ◆ On 19.12.2016, the sixth respondent filed an affidavit stating that a letter dated 26.11.2016 was issued to UNESCO requesting to send the proposal and in response to the same, a letter was received from UNESCO stating that UNESCO experts are going to intervene in the renovation of temples including Moolavar Deity for 10 temples which has been objected by several devotees. Since the issues relating to Agamas are totally religious, intervention by an organisation like UNESCO in

conducting an Agama Workshop would likely to cause lot of resentment among various sections. It is finally stated that a letter was issued to UNESCO in this regard and they are awaiting reply for the same.

- ◆ On 22.12.2016, this Court has placed on record the assurance given by the learned Advocate General that UNESCO would be assured that they are going to be welcomed to perform their task which they propose to do. This Court also recorded the affidavit filed by the Commissioner, HR&CE Department, specifically in para-5, "*a clear unwelcome indication to UNESCO*" and observed that such stand taken in para-5 has to be rejected in toto and accordingly issued a direction to file a proper affidavit by the Commissioner of the HR&CE Department.

- ◆ On 10.01.2017, the sixth respondent filed another affidavit stating that a letter dated 28.12.2016 was issued to UNESCO to the effect that the earlier letter dated 19.12.2016 sent by the Department to them shall be treated as withdrawn and that the

Department takes pleasure in welcoming UNESCO and assures to provide all the necessary support for carrying forward the fact finding mission and for the conduct of Agama workshop.

- ◆ On 12.01.2017, this Court perused the affidavit filed by the Commissioner, HR&CE Department and observed that progress would be made in the matter, with collaboration of UNESCO experts.
- ◆ While so, the Executive Officer of Arulmighu Meenakshi Sundareswarar Thirukoil, filed WMP.No.30869 of 2017 in WP.No.37619 of 2015 (which was by order dated 11.01.2021, delinked from the said writ petition and tagged along with this *suo motu* WP.No.574 of 2015) seeking impleadment and permission to continue the ongoing renovation works in the said temple.
- ◆ Similarly, Mr.Rangarajan Narasimhan, party-in-person, filed WMP.No.19652 of 2018 in WP.No.574 of 2015, to issue necessary directions to the HR&CE Department and the

Executive officer of Sri Ranganatha Swamy Temple, Srirangam, to furnish certain information relating to the said temple as requested in his RTI application.

- ◆ On 22.06.2018, in W.M.P.No.16006 of 2018 in W.P.No.574 of 2015, filed by the HR&CE Department, praying to restructure the Expert Committee, this Court held that if any person, who is working in the Government College of Architecture and Sculpture, Mamallapuram, is appointed once again, the element of bias is likely to be put forth or that he will support the Government. Observing so, this Court felt that Mr.K.Dakshinamoorthy can be the replacement for MuthaiahStapathi and accordingly, directed him to take charge of the traditional Stapathi of the Expert Committee. It was also held that though the two Agama Experts are not cooperating with the other members of the Committee, their views have to be elicited before replacement and accordingly, ordered notices to the two Agama Experts, viz., Sri.StalaShayanaBhattacharyar and Dr.S.Arunasundaram, through Court as well as privately

returnable by 09.08.2018.

11. On 30.11.2018, as per the administrative order of the Hon'ble Chief Justice, the other writ petitions touching upon the protection, maintenance and sustenance of the ancient temples, idols, temple lands, murals and other places / articles, which are also of archaeological and historical importance, were also listed along with this *suo motu* Public Interest Litigation before this Bench under the caption "specially ordered cases".

12. Thereafter, pursuant to the order dated 08.01.2019 passed by a Division Bench of Madurai High Court, WP(MD)No.24178 of 2018 was tagged with this *suo motu* writ petition batch. The prayer made in the said writ petition is to issue a mandamus directing the Secretary to Government, Tourism, Culture and Religious Endowments Department, Chennai, to appoint all the members as informed by the Commissioner, Hindu Religious and Charitable Endowments Department, Chennai, vide his letter bearing Na.Ka.No.25639/2018/Y2 dated 12.06.2018 to the State Level Heritage Screening Committee. According to the petitioner therein,

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the said Committee is not functioning for want of appointment of members and the hundreds of temples have been waiting in queue for years together to get approval of the same for renovation / repair works. Referring to Damodara Narayanaperumal Koil at Thirukkannangudi and Mari Mutharamman Thirukoil at Aralwaimozhi, Kanyakumari District, he stated that in these temples, Balalayam ceremonies were conducted before five years, but renovation works are yet to be started for want of approval from the said Committee. Through the information received from the RTI, he stated that the said Committee consists of 9 members, viz., (i)Additional Commissioner (Tiruppani) (ii)Sthapathi (iii)Structural Engineer (iv)Conservation Architect (v)SE/EE of the Department (vi)Expert from State Archaeology (vii)Expert from ASI (viii)Agama Expert as required for the temple and (ix)Expert from history, epigraphy, iconography and fine arts, out of which, 7 posts are lying vacant. Therefore, all the vacancies in the Committee need to be filled up immediately by the Government.

13. On 04.12.2020, this Bench, taking note of the object

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behind the constitution of the Expert Committee that the heritage temples with Archaeological and religious significance should be identified and maintained; and restoration be carried out in a manner to ensure that no damage is caused and also considering the fact that more number of cases are pending for want of opinion of the Agama Experts, passed an order in WMP.Nos.16006 of 2018 and 13991 of 2020 in WP.No.574 of 2015, thereby reconstituting the Expert Committee and issuing certain directions to it, the relevant portion of which is reproduced hereunder:

"16.That apart, this Court is inclined to issue the following directions to the Expert Committee:-

- (i) The HR&CE Department shall formulate procedure for convening the meetings of the Expert Committee, with the convenience of its members and circulate the required papers with Agenda, well in advance.
- (ii) The members of the Committee shall start functioning immediately and decide the pending cases at the earliest possible time and communicate the same to the concerned parties.
- (iii) The Committee shall consider all the required details of Agama, Samitha structural stability, historical aspects and archaeological nature for approving the works proposed.
- (iv) All the members shall co-operate and co-ordinate among themselves and with the HR&CE Department, for smooth and

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effective functioning of the Committee.

(v) The Committee meetings shall not be postponed unnecessarily and the cases shall be taken up on the basis of their nature and urgency.

(vi) In the unavoidable circumstances, the opinion of two Agama Experts out of four (one from Saiva Agama Expert and another from Vaishnava Agama Expert) is sufficient for disposal of the cases, where the opinion of the Agama Experts is essential.

(vii) The members shall have necessary consultation/cross check with the religious scriptures before expressing any opinion in respect of every temple along with the details relating to the petitioning temples.

(viii) A detailed questionnaire, to be filled up by the petitioning temples, shall be placed before the Expert Committee well in advance before the day fixed for meetings for deliberations, so that the 'Agama perspective' can be considered.

(ix) The participation of the stakeholders / representative of the petitioning temples, if required, shall be decided by the Committee.

(x) The HR&CE Department shall take care of the transport facilities to the members of the Committee.

(xi) While taking decision, the Committee shall ensure the protection and preservation of the monuments and ancient temples and their heritage and make proper deliberation in this regard.

(xii) The decision of the Committee shall be final and binding on the parties.

(xiii) If there is any grievance, it is always open to the members of the Committee / HR&CE Department to approach this Court with necessary petition/memo for appropriate orders.

However, this order is subject to the final order to be passed in the

main writ petition in W.P. No. 574 of 2015.”

14. After reconstituting the Expert Committee by this Court, Mr.Rangarajan Narasimhan, pointing out certain lapses and shortcomings in the effective functioning of the said Committee and raising allegations against some of its members, has taken out as many as 7 miscellaneous petitions viz., WMP.Nos.1810, 1814, 1816, 1818, 1819, 1821 an 1822 of 2021 seeking appropriate directions to the HR&CE Department.

15. With the above backdrop, we have heard all the parties at length and perused the affidavits, counter affidavits, rejoinders and reports along with supportive documents filed in the form of typed set of papers before this Court. Though this Court has issued many directions, the respondent authorities, more particularly the HR&CE department, have not come up with a mechanism to protect the monuments, temples, temple lands and properties, idols, etc., which necessitates this Court to ponder for a solution to ensure that a proper working system is to be formulated, in the interest of the

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monuments, temples and public at large.

16. As mentioned earlier, the issues revolved around the present cases are relating to the protection of historical monuments, heritage sites, temples and its properties. At the cost of repetition, there is dire need to manage and conserve our ancient cultural heritage and monuments employing better advanced technology in protecting, preserving and nourishing the same.

17. To recapitulate, India is a land united with abundant diversity in the form of language, culture, tradition, arts, folklore, music, knowledge, natural resources, etc. Pre-Moghul and Pre-English history would reveal that the country was ruled by various kings who though were diverse in their language and culture, were united by their love for arts in its different forms. The temple culture originated from this land has spread to many countries. The comparative study of various ancient religions has brought out several commonalities. The legends of this land are recognized and accepted throughout the world. The religious faiths and beliefs and the value of hymns are now accepted by the people of other countries despite there being an

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outcry against the same in our own country for political appeasement. The knowledge of the ancient people in science and technology was far superior and advanced. In the entire country, the State of Tamil Nadu has the highest number of monuments and temples with heritage value, which 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. Even during the rule of the British, steps were taken to harness, preserve, develop and utilize the talent and knowledge of the artisans in the state and as a result, in 1850, the Madras School of Art was established by Dr.Alexander Hunter with a view to preserve the ancient craft of sculpture in this state and to provide trained workers needed for renovation of temples and other works of art.

18. After the Independence, though the temples were brought under the control of state, the autonomy of other religious institutions was preferred. The state of Tamil Nadu is blessed to have the most ancient temples in the country. It is home to more than 42,000 temples, out of which, more than 38,000 temples come under

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the control of the HR&CE Department. The age of some temples go back to at least 2,000 years. The temples consist of deities in the form of idols, besides sculptures in the form of idols with marvellous architecture. The location of the temples, pillars and deities at a particular place are not without a cause. Similarly, the traditions and practices have significances of their own. They are as a result of a spiritual or miraculous event recognised in the legends and agamas. The sculptors with sound knowledge in the history, legends, etc were called as Stapathis. The assistance of the Stapathis is required for construction / renovation / restoration work in the temples. The in-house mechanism as suggested by UNESCO would require every temple to have a Stapathi.

19. It is not to be forgotten that even before several centuries, the sculptors from this land had travelled throughout the world and built temples with great architectural design and precision. The temples in Indonesia, Srilanka and Cambodia stand testimony to the same. They were well versed not only in the art of sculpting, but also in the customs and were knowledgeable to bring to life, every

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deity with precision. Many temples of this state have now been declared as places of Archaeological importance. Even then, there are many other temples, yet to be declared and displayed all the characteristics of uniqueness and ancientness warranting such declaration and protection. The state is now facing an indifferent situation, where it is riddled with idol thefts on one hand and need to preserve/repair/resurrect the existing temples including the deities on the other.

20. The HR&CE Department is the custodian of most of the temples and the properties including the idols belonging to them. It is their primary duty to protect, maintain and safeguard the temples and its valuable idols/antiques, which, this Court with great anguish, expresses that the department has failed to do. The protection of the temples would, without saying, go on to imply protection of the temple lands as well as all the activities associated with the temple and its tradition. It is startling to find that the HR&CE department with all its income from major temples has not been able to maintain historical temples and safeguard the Idols, which in market, have

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antique value based on their age. Some temples in the state have also been recognised by the UNESCO as heritage sites. Many temples constructed at least 2000 years ago or much before, recognised by UNESCO, are in ruins. Neither the Archaeology Department nor the HR&CE Department has shown interest to identify and protect them. This has also come to the advantage of the miscreants, who have laid their hands on the Idols. Some of the officials are only interested in reaping the benefits of their position in the department, without adhering to the task entrusted to them with devotion.

21. The Tamil Nadu Hindu Religious and Charitable Endowments Act, XXII of 1959 came into force with effect from 28th April, 1960. It has been 61 years and yet, the HR&CE department has not even taken inventory of the idols, properties, jewels and other Articles gifted to and owned by the temples. Further, the department has not computerised the details of idols, jewels and properties of the temples and provided adequate ICON Centres with surveillance to keep safe custody of the valuable idols in the centre and in the temples. This has led to the advantage of the culprits, who have

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aided in smuggling the Idols out of the country. As the theft of Panchaloka idols worth crores kept on increasing, the Idol Wing, CID, vide G.O.Ms.No.2098, Home (Police IV) Department, dated 07.10.1983, a first of its kind, was created to investigate and recover the Idols, but, the steps taken by the department to arrest the theft, are unsatisfactory. Now, the wing is also effectively ineffective.

22. It is also the duty of the state to protect the monuments including Idols and antiques of historical value. That is why Article 49 was incorporated in the Directive Principles of State Policy (Part IV of the Constitution), which for the sake of reference, is extracted below:

"49. Protection of monuments and places and objects of national importance. - It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be."

According to Article 51A(f), it shall be duty of every citizen of India to value and preserve the rich heritage of our composite culture. The Constitution thus, not only brings an obligation on the state, but also

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a duty on every citizen of this country to value and preserve the rich heritage of the culture of this country, which goes without saying that it includes temples, arts, sculptures and scriptures. However, it is the sorry state of affairs that the Government has miserably failed in its duty not only to protect the places of national importance, but also the properties of temples, such as idols, lands etc. Therefore, the Directive Principles of State Policy must be directed towards protection of the ancient monuments and Idols and thwart all attempts to damage and/or smuggle them.

23. It is the primary responsibility of the HR&CE Department to ensure that the properties of all the religious endowments are under protection. The definition of "religious endowment" under Section 6(17) and "religious institution" under Section 6(18) include the Mutts. For better understanding, the statement of objects and reasons to the enactment of Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1991 (Tamil Nadu Act 46 of 1991), are reproduced hereunder:

"A large part of small, ancient and dilapidated temples

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which form part of our rich heritage are lying uncared for: Many of these temples are in ruins: Lack of adequate finance has led to this situation of neglect. It is, therefore proposed to reorganize the Hindu Religious and Charitable Endowments Administration Department by the establishment of Temple Administration Board so as to ensure proper maintenance and administration of the temples besides observance of worship and rituals in the temples.

The Endeavour is to have a two tier system of administration, namely Temple Administration Board at the apex level and a District committee at a District level. The Chief Minister will be the Chairman ex-officio, of the Temple Administration Board. The overall superintendence and governance of temples including appointment of trustees of temples having an annual income of Rs.1,00,000/- and above are to be vested with the Temple Administration Board and the power to appoint trustees for temples having an annual income of less than Rs.1,00,000/- is to be vested with the District Committees. It is also proposed to entrust the powers of the Commissioner, Deputy Commissioner and Assistant commissioner under the Act, except certain powers of judicial nature, etc. with temple administration Board and District Committees, suitably."

Thus, it is clear from the aforesaid statement of objects and reasons to the Amendment Act, 46 of 1991 that a Board was created with the Chief Minister of the State at the helm of affairs to take necessary action to protect the ancient temples.

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24. Section 23 of the HR&CE Act, 1959 deals with the power and duties of the Commissioner in respect of temples and religious endowments, which reads as follows:

...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."

As per the above section, it is the duty of the Commissioner to ensure the object of the HR&CE Act, namely the effective administration of the temples, which includes the proper maintenance of the temples, idols, paintings and the properties of the temples.

25. The Commissioner and the officials are duty bound to observe the forms and ceremonies of the institution administered,

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implying that all the day to day traditional procedures are adhered to. It would also include that the essential works including the resurrection of damaged idols, pillars, paintings, etc. are to be carried out. It is a proven with scientific result that periodical resurrection/renovation decreases the possibility of damage.

26. Section 97 enables the Commissioner to create a common fund through which maintenance of old and needy temples and their buildings and paintings can be carried out. The said provision is usefully extracted below:

"Section 97. Creation of Hindu Religious and Charitable Endowments Common Good Fund.—(1) It shall be lawful for the Commissioner to create a Fund to be called the Hindu Religious and Charitable Endowments Common Good Fund [hereinafter in this section referred to as the said Fund], out of the contributions voluntarily made by the religious institutions from their surplus funds or by any person for the renovation and preservation of needy temples and their building and paintings, for the promotion and propagation of tenets common to all or any class of religious institutions and for any of the purposes specified in sub-section (1) of section 66.

1-A. The Commissioner may, on a direction from the Government, transfer to the said Fund, any surplus or such portion thereof, as may be specified in the direction, remaining

in the Tamil Nadu Hindu Religious and Charitable Endowments Administration Fund after the repayment of the amounts specified in sub-section (2) of section 12 and sub-section (2) of section 96.

(2)The said Fund shall be vested in and such administered by the Commissioner in such manner as may be prescribed."

It is to be noted here that the word 'temple' would include with it 'the deity' and 'the structures' in the temple. It is also worthwhile to point out that the funds earned by the temple can be used only for the fulfilment of the objects of this Act spelled in Section 66, including maintenance of the same temple and/or other temples and for propagation of tenets common to all or any class of religious institution. It cannot be diverted or transferred to even other departments or to the state exchequer for any other use. There are many temples in the state which are ruined and unattended; there are many temples, which though ancient and are of spiritual and historical value, do not earn any income; and there are many temples, which have surplus income. It is therefore, the duty of the department to identify those temples, which require adequate and immediate attention including allocation of funds for repair/renovation

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and for ensuring that the daily rituals are promptly performed.

27. Emphasizing the importance of maintenance of the temples, images and paintings, architectures and sculptures, which cannot be achieved, except by periodical inspection and supervision, the Government has been empowered to frame rules as per Section 116, which runs thus:

“116.Power to make rules.—

(1) The Government may, by notification, make rules to carry out the purposes of this Act.

(2) Without prejudice to the generality of the forgoing power, such rules may provide for—

(i) all matters expressly required or allowed by this Act to be prescribed;

.....

(xii) the custody of jewels and other valuables and documents of religious institutions and the conditions and restrictions subject to which the jewels and other valuables of religious institutions may be disposed of;

.....

(xvii) the preservation, maintenance, management and improvement of the properties and buildings of religious institutions including architectural, sculptural and epigraphic features;

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- (xviii) the inspection and supervision of the properties and buildings of religious institutions, the reports to be submitted by persons making such inspection and supervision and the fees leviable for such inspection, supervision and report;
- (xix) the preservation of the images in temples;
- (xxii) the preparation and sanction of the estimates and acceptance of tenders, in respect of public works and for supplies in religious institutions ;
- (xxiii) the qualifications to be possessed by the officers and servants for appointment to offices in religious institutions and the conditions of service of all such officers and servants;
-”

28. Accordingly, the rules on different subjects as enumerated in Section 116 have been framed by the Government, which are addressed below:

Advisory Committee Rules, 1997

G.O.Ms.No.275, C.T. & R.E. Department, dated 16th July 1997 - SRO No. A-102(a) 1987.- In exercise of the powers conferred by sub-section (4) of section 7 read with sub-section (1) of section 116 of the Tamil Nadu Hindu Religious and Charitable Endowments Act 1959 (Tamil Nadu Act 22 of 1959), the Governor of Tamil Nadu hereby makes the following rules, namely:-

.....

- 4.The Advisory Committee shall meet at least once in six months and more often if need be as decided by the Chairman.

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.....

12.The Advisory Committee may make recommendations in respect of the following matters:-

.....

3. Establishment and maintenance of University or colleges or other institutions with special provisions for the study of Hindu Religion, Philosophy or Sastras or for imparting instructions in temple architecture;

4.....

5. Renovation of temples in need of repairs by enlisting the co-operation of the public;

6. General suggestions in accordance with terms of the Trust and usage in regard to the better administration of religious institutions;

7. The preservation of architectural beauty of temples;

.....”

29. Section 7 of the HR&CE Act and the Advisory Committee Rules, when read cumulatively, would make it clear that the Advisory Committee should meet at least once in every six months to take steps for protection of the temples and images. The Committee is also empowered to recommend for establishment and maintenance of University or Colleges or other institutions with special provisions for the study of Hindu Religion, Philosophy or culture or for imparting instructions in temple literature. However, no such meetings are

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being conducted and as a result of the same, many temples have been left at lurch. Further, the demolition of ancient temples and reconstruction of new temples by the officers of HR&CE Department, without considering their responsibilities to preserve and protect the same, pave way for loss of heritage and also deny the opportunity for the generations to come to appreciate the values of these ancient temples.

30. At this juncture, it is needless to state that the properties of the temples/religious institutions belonging to them have to be maintained properly in order to derive more income so as to spend it for the betterment of the temples. The custodians of the temple properties are the trustees, HR&CE department and mutts, who must keep in mind the object and the reason behind such donations made to the temples. The endowments are created and the lands are donated in love, in faith and in satisfaction towards the one's contribution to the religion they profess, for the temples to be self-sufficient to perform all every day rituals, to ensure that people who profess and practice the same ideology and belief, are uplifted

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economically and spiritually and for the subsistence of their religion. A duty is cast on the Commissioner under Section 23, 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 and therefore, whenever any order is passed, the object of the endowment is not to be forgotten. Section 29 of the Act lays down the preparation of register for all institutions by the Commissioner. That apart, the Joint Commissioners are clothed with the power to retrieve the temple lands from the encroachers by exercising the powers under Sections 78, 79 and 80. But, the officials have not properly exercised the power conferred on them and they are in dereliction of duties and responsibilities assigned to them. At least from now, the HR&CE Department should act diligently to retrieve all the properties under the encroachments.

31.1 With regard to sites of archaeological importance, the legal provisions by which a duty is cast on the central and state Governments are very clear. 'Heritage site' is an official location where pieces of political, military, cultural or social history have been

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preserved due to their cultural heritage value, whereas a 'historic site' may be any building, landscape, site or structure that is of local, regional or national significance.

31.2 In the year 1904, an Act came to be enacted called as 'the Ancient Monuments Preservation Act', for preservation of ancient monuments, archaeological, historical and artistic interests. That effort has been continued after the independence. In the year 1951, the Parliament enacted a new legislation called as 'the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951'. Under the said Act, various monuments were declared as monuments of national importance. Subsequently, another Act was enacted by the Parliament called as 'the Ancient Monuments and Archaeological Sites and Remains Act, 1958' on 28th August 1958 for the preservation of ancient and historical monuments and archaeological sites and remains of national importance, for the regulation of archaeological excavations and for the protection of sculptures, carvings and other

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like objects.

31.3 Section 2 of the aforesaid Act defines the term 'Ancient Monument' which reads as follows:

In this Act, unless the context otherwise requires,—

(a) "Ancient Monument" means any structure, erection or monument, or any tumulus or place of interment, or any cave, rock-sculpture, inscription or monolith which is of historical, archaeological or artistic interest and which has been in existence for not less than 100 years and includes—

- (i) remains of an ancient monument,
- (ii) site of an ancient monument,
- (iii) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument, and
- (iv) the means of access to, and convenient inspection of, an ancient monument;

(b) "antiquity" includes.—

- (i) any coin, sculpture, manuscript, epigraph, or other work of art of craftsmanship,
- (ii) any article, object or thing detached from a building or cave,
- (iii) any article, object or thing illustrative of science, art, crafts, literature, religion, customs, morals or politics in bygone ages,
- (iv) any article, object or thing of historical interest, and

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(v) any article, object or thing declared by the Central Government, by notification in the Official Gazette to be an antiquity for the purposes of this Act, which has been in existence for not less than one hundred years;

(d) "archaeological site and remains" means any area which contains or is reasonably believed to contain ruins or relics of historical or archaeological importance which have been in existence for not less than one hundred years, and includes—

(i) such portion of land adjoining the area as may be required for fencing or covering in or otherwise preserving it, and

(ii) the means of access to, and convenient inspection of the area;

(f) "maintain", with its grammatical variations and cognate expressions, includes the fencing, covering in, repairing, restoring and cleansing of a protected monument, and the doing of any act which may be necessary for the purpose of preserving a protected monument or of securing convenient access thereto;

(i) "protected area" means any archaeological site and remains which is declared to be of national importance by or under this Act;

(j) "protected monument" means an ancient monument which is declared to be of national importance by or under this Act.

31.4 Section 19 deals with 'Restrictions on enjoyment of property rights in protected areas', which runs as under:

"(1) No person, including the owner or occupier of a protected

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area, shall construct any building within the protected area or carry on any mining, quarrying, excavating, blasting or any operation of a like nature in such area, or utilise such area or any part thereof in any other manner without the permission of the Central Government:

Provided that nothing in this sub-section shall be deemed to prohibit the use of any such area or part thereof for purposes of cultivation if such cultivation does not involve the digging of not more than one foot of soil from the surface.

(2) The Central Government may, by order, direct that any building constructed by any person within a protected area in contravention of the provisions of sub-section (1) shall be removed within a specified period and, if the person refuses or fails to comply with the order, the Collector may cause the building to be removed and the person shall be liable to pay the cost of such removal.

31.5 Consequently, 'the Antiquities and Art Treasures Act, 1972 (Act No. 52 OF 1972)' was enacted on 9th September, 1972 with its objects as under:

"An Act to regulate the export trade in antiquities and art treasures, to provide for the prevention of smuggling of, and fraudulent dealings in, antiquities, to provide for the compulsory acquisition of antiquities and art treasures for preservation in public places and to provide for certain other matters connected therewith or incidental or ancillary thereto."

31.6 Section 2 of the aforesaid Act deals with 'Definitions',

which reads as under:

“(1) In this Act, unless the context otherwise requires,—

(a) “antiquity” includes—

(1) (i) any coin, sculpture, painting, epigraph or other work of art or craftsmanship;

(ii) any article, object or thing detached from a building or cave;

(iii) any article, object or thing illustrative of science, art, crafts, literature, religion, customs, morals or politics in bygone ages;

(iv) any article, object or thing of historical interest;

(v) any article, object or thing declared by the Central Government, by notification in the Official Gazette, to be an antiquity for the purposes of this Act, which has been in existence for not less than one hundred years; and

(II) any manuscript, record or other document which is of scientific, historical, literary or aesthetic value and which has been in existence for not less than seventy-five years;

(b) “art treasure” means any human work of art, not being an antiquity, declared by the Central Government by notification in the Official Gazette, to be an art treasure for the purposes of this Act having regard to its artistic or aesthetic value:

Provided that no declaration under this clause shall be made in respect of any such work of art so long as the author thereof is alive;”

31.7 A conjoint reading of the provisions as extracted above would illustrate that for a monument to be considered as ‘Ancient

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Monument' or for an article to be declared as 'Antique', they must be in existence for more than 100 years. As per the provisions of the Ancient Monuments and Archaeological Sites and Remains Act, 1958, the mere existence of a historical structure for more than 100 years is sufficient to come within the purview of this Act which is done by declaration of the monument as that of national importance, whereas, the Antiquities and Treasuries Act deals only with the storage and trade of antiquities. The Ancient Monuments and Archaeological Sites and Remains Act, 1958 is wider in its scope. It gives the ASI the right to maintain any site which is of historical importance. The Hon'ble Apex Court in **Sakku Bai v. State of Karnataka [2020 Online SC 167]**, while dealing with the necessity of existence of a monument to treat the site as of historical or archaeological importance, held as follows:

"25. In our opinion, the 1961 Act makes two distinct categories for protected monuments (see Sections 3 to 18) and protected areas (see Section 19 onwards). While the former relates to "ancient monuments", the latter relates to "archaeological site and remains". Upon a close reading of the 1961 Act, we find that there is nothing in the definitions under Sections 2(1) and 2(3) or otherwise under the

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scheme of the 1961 Act, that indicates a link between the existence of "archaeological site and remains" and "ancient monuments". It cannot be said that the protection ascribed to archaeological site and remains must necessarily depend on the existence of a monument. It is possible for certain areas to be protected independent of the existence of *monuments*, if there is a reasonable belief that they contain ruins or relics of historical or archaeological importance [see Section 2(3) supra]."

31.8 The Ancient Monuments and Archaeological Sites and Remains Act, 1958, gives the right to the ASI to declare any site as a protected area and remove all unauthorised constructions and alterations within the protected area. Similar rights under the State Act are granted to the state. The Act also makes it clear that if the monument is a shrine or a place of worship, then it shall not be used for any purpose inconsistent with its character. Therefore, despite being brought under the ASI, the right of public to worship is protected. The Big Temple in Tanjore, though declared as a world heritage site and coming within the protected zone of ASI, still, is a prominent place of worship under the Control of HR&CE Department of the state.

31.9 The Supreme Court, in **Archaeological Survey of India**

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v. State of M.P. [(2014) 12 SCC 34 : 2014 SCC OnLine SC 1042], while dealing with the powers of ASI to deny permission to carry out repairs, held as follows:

"56. Since we are concerned with the construction that has taken place in Bade Baba Temple, it would be necessary to narrate the condition of this temple that existed from time to time. As per the Jain Temple Trust, since the structure dates back to 6th-7th century, there has been natural wear and tear of this temple over a period of time. The version of the Trust, which is not specifically refuted, is that the temple which housed Bade Baba idol was in fact earlier demolished and rebuilt way back in the year 1940. Again in the year 1976, the dome fell and a new dome had to be constructed. Extensive repairs were carried out again in the year 1992. However, there was a recurring damage to the main temple building from time to time. Significantly, the idol of Bade Baba has remained intact.

57. There is no quarrel up to this, which means that the main temple building which houses the Bade Baba idol needed repairs. It is at this juncture that the parties have joined issue as to who is to carry out the repairs and in what manner. As per ASI, it is ASI under whose supervision the aforesaid task is to be accomplished whereas the Jain Temple Trust claims its prerogative to undertake this job. That is an aspect which we have already dealt with, negating the claim of ASI in this behalf. Now, we would deal with other aspects, namely, whether removal of the idol was justified and whether the repairs/construction carried out by the Jain Temple Trust amounts to vandalising the said temple or was it permissible to make the construction by the Trust in

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the present form.

58. As per the Trust, on account of the repeated cracks which were occurring in the temple and having regard to the fear that deity itself was endangered, it was decided that a new temple must be built. A deity cannot be in a dilapidated structure nor should an idol be subject to danger. An idol to which energisation rites are imparted becomes a live deity which has to be worshipped on a continued and regular basis thereby attracting devotees who come and offer prayers. Therefore, in order to follow the Agamas and keeping in view the height of this deity, it was decided that a temple be constructed in accordance with the "Nagara" style of architecture. According to the Trust, the said design is completely in conformity with the Agamas and has been approved by the Acharyas of the Digamber Jain Sect. In fact, in order to ensure that the idol was correctly removed after proper ceremonies and was installed at a new place it is stated that the said installation of the deity was also undertaken in the presence of the Acharyas and proper ceremonies were performed. In fact, it became imperative to shift the idol so that outer structure wherein the idol is housed could be reconstructed. That step was necessary to protect the idol."

From the above judgment, it is clear that even in cases where the monument/temple is under the ambit of ASI, the state or the HR&CE department is empowered to carry out necessary repairs.

31.10 The Tamil Nadu Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1966 *pari materia* to the

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Central Act deals with the Constitution, role and functioning of the state department. Section 18 of the State Act is *pari materia* to Section 19 of the Central Act which is extracted above. In exercise of the powers conferred by Section 38 of the Tamil Nadu Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1966 (Tamil Nadu Act 25 of 1966), the Tamil Nadu Ancient and Historical Monuments and Archaeological Sites and Remains Rules were framed in 1971.

31.11 Rule 9 deals with prohibition of certain acts within protected monuments, which reads as follows:

"9. Prohibition of certain acts within protected monuments. - No person shall, within a protected monument,-

(a) do any act which causes or is likely to cause damage or injury to any part of such monument; or

(b) discharge any fire-arms; or

(c) cook or consume food except in areas, if any, permitted to be used for that purpose; or

(d) hawk or sell any goods or wares or canvass any customer for such goods or wares or display advertisement in any form or a show a visitor round such monument for monetary consideration, except under

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the authority of, or under and in accordance with conditions of, a licence granted by the Director; or

(e) beg for alms; or

(f) violate any practice, usage or custom applicable to, or observed in, the monument; or

(g) bring for any purpose other than the maintenance of the monument-

(i) any animal, or

(ii) any vehicle except in areas reserved for the parking thereof.

31.12 The Ancient Monuments and the Archaeological Sites and Remains Act, was amended in 2010 and the following provisions were introduced.

"30A. Punishment for construction, etc., in prohibited area.—Whoever raises, on and after the date on which the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Bill, 2010, receives the assent of the President (Assent was accorded on 29.03.2010), any construction in the prohibited area, shall be punishable with imprisonment not exceeding two years or with fine which may extend to one lakh rupees or with both."

"30B. Punishment for construction, etc., in regulated area.—Whoever raises, on and after the date on which the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Bill, 2010, receives the assent of the President(Assent was accorded on

29.03.2010), any construction in the regulated area without the previous permission of the competent authority or in contravention of the permission granted by the competent authority, shall be punishable with imprisonment not exceeding two years or with fine which may extend to one lakh rupees or with both.”

“30C. Offences by officers of Government.—If any officer of the Central Government enters into or acquiesces in any agreement to do, abstains from doing, permits, conceals or connives at any act or thing whereby any construction or re-construction takes place in a prohibited area or regulated area, he shall be punishable with imprisonment for a term which may extend three years, or with fine, or with both.”

31.13 A reading of the above provisions would clearly demonstrate that the role of the state department is to protect the monuments by carrying out appropriate repair works without damaging the original structures. It is also the duty of the state to ensure that all illegal encroachments and constructions are removed. Similarly, it is the duty of the officers of the central Government to ensure that appropriate action is taken to protect the monument or sites. Section 30C of the Ancient Monuments and the Archaeological Sites and Remains Act is an exhaustive provision and when read together with Sections 30A and 30B, it not only empowers action against any officer of the central department, who has failed in his

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duty, but also indirectly enables the officer of the central department to take action against any person, be it even an officer under the state who has acted in detrimental to the interest of the monument or site in collusion with the perpetrator and any officer of the central Government. However, the report filed by the UNESCO team referred to above would clearly indicate that both the central and state departments have failed in its efforts to safeguard the sites and remove the encroachments and illegal constructions in and around many temples and sites of archaeological importance including Mamallapuram and hence, they are liable to be prosecuted under Section 30C.

31.14 That apart, Rules 10, 30, 31, 38 and 49 of the Management and Preservation of Properties of Religious Institutions Rules, 1964 specifically deal with renovation and repairs of antiquities and buildings having heritage value and archaeological importance and the same are profitably extracted herein below:

“Rule 10 provides that proposals in regard to works that are not purely secular shall be framed with due regard to the principles and practice

for traditional architecture and to the need for preserving architectural, sculptural and archaeological features.

Rule 30 provides that the construction and repairs of any gopuram, etc., shall, with the sanction of the appropriate authority, be entrusted to any able stapathi selected from the panel of stapathis approved by the Government, from time to time.

Rule 31 provides that repairs, alterations etc., shall be carried out by the board of trustees only with the prior permission of the commissioner and such permission shall be granted only on obtaining competent advise thereon.

Rule 38 provides that whenever the Commissioner finds it desirable or necessary, the Archaeological department shall be consulted regarding any building work.

Rule 49 says that the Board of Trustees shall maintain the paraphernalia such as car, vahanams, palanquins, chapparams, in good condition and proposals for their repairs, etc., should be made to the appropriate authority wherever necessary for sanction at the time of submission of budget after obtaining the advice of an expert stapathi from out of the panel approved by the Government.”

Thus, there exists a comprehensive statutory framework for carrying out repairs and renovation works in temples in the state of Tamil Nadu while preserving and conserving their Archaeological and historical heritage.

31.15 There are Rules for custody of jewels and valuables

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belonging to the religious institutions called as 'the Religious Institutions Custody of Jewels, Valuables and Documents and Disposal Rules', Rule 2 of which, provides for maintenance of register, etc., and is for better appreciation, extracted as under:

"The trustee of every religious institution shall maintain a register in such form as shall be specified by the Commissioner. It shall contain lists of the jewels, the gold vessels, the silver vessels and other valuables. The lists shall give a correct description and full particulars of the jewels and other valuables and also the gems, if any, in the jewels. The estimated value of jewels and the weight of the jewels and valuables other than the vahanams, shall be stated in the respective lists. Where new jewels or valuables are purchased or otherwise acquired, entries shall be made in the said register then and there. When any jewel or valuable is sold, lost, exchanged or altered, an entry shall be made about it in the register and any new jewel or valuable that is substituted shall be entered as a fresh item."

31.16 Rule 8 of the aforesaid Rules deals with the procedure to be followed when jewels and valuables are to be entrusted to an office-holder for use during festival, which is reproduced hereunder:

"Jewels and valuables which are not used daily, but are used only during festivals on any special occasion may, when they are required for use, be entrusted to an office-holder after obtaining his

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written acknowledgement in a register specially kept for the purpose. A written undertaking shall also be taken from the office-holder that he will indemnify the institution against loss or damage of the jewel or valuable. The acknowledgement and the written undertaking shall be in the forms contained in the annexure to these rules. The particulars regarding the jewels and valuable taken out and their serial number in the register maintained under rule 2 and the duration of the period for which the custody is entrusted to the office-holder, shall also be entered in the said register. If the jewel or valuable so entrusted is required for more than one day, the trustee shall provide facilities to the office-holder to keep the jewel or valuable in safety. As soon as the festival or special occasion or the period for which the jewel or valuable is taken whichever is earlier is over, the office-holder shall return the jewel or valuable to the person or persons entitled to possession thereof. Simultaneously with return, a record as to such return shall be made in the register maintained under rule 2."

31.17 As per Rule 21(1) of the aforesaid Rules, all the jewels and valuables of religious institutions shall be appraised by a team of officers consisting of a Verification Officer in the cadre of Deputy Commissioner, a Gold-cum-Gem specialist and a Technical Assistant and they shall have the responsibility of appraisal work in all the temples in their respective jurisdiction.

31.18 Though the Rules relating to custody of jewels and

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valuables are in vogue, proper inventory is not maintained. There is no central registry, wherein the details of all the valuables, jewels and documents are maintained, so as to make cross verification and put culpability on individuals handling them.

32.1 Coming to the case at hand, pursuant to the order of this Court for setting up of conservation experts and stakeholders for a fact-finding mission to identify the issues in conservation practice through the case studies of 5 – 6 temples where the conservation projects are going-on or were recently undertaken, UNESCO Fact Finding Mission for Tamil Nadu Temples, 2017, has been set up to work within the framework of its technical support to the Government for defining appropriate conservation approach.

32.2 The objective of the mission was to review the nature and quality of physical interventions recently made to the historic temples and the process being followed towards that end. The work started by end of March 2017. The temples included -

(a) Meenakshi Amman Temple, Madurai.

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(b)Nellaiyappar Temple, Tirunelveli.

(c)Vanamamalai Perumal Temple, Nanguneri.

(d)Marudhakali Amman Temple, Kumbakonam.

(e)Nageswara Swami Temple, Kumbakonam.

(f)Nagnanadha Swami Temple, Manambadi.

(g)Shri Adhi Narayana Perumal Temple, Pazhaverkadu,
Chennai.

(h)Shri Arunachaleswarar Temple, Tiruvannamalai.

(i)Shri Ranganatha Swamy Temple, Srirangam, Trichy.

(j)Shri Kamakshi Amman Temple, Kancheepuram.

32.3 Some other temples that were visited to understand the
ritualistic norms and conservation processes are as under:

(a)Subramaniya Swami Temple, Tiruchendur.

(b)Uchista Ganapathi Temple, Manimoorthipuram,
Tirunelveli.

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(c)Shri Adhi Narayana Azhwar Temple, AzharThirunagari.

(d)Shri Kalatheeswarar Temple, NangaiMozhi, Tuticorin.

(e)Shri Veeraraghava Perumal Temple, Palayakayal,
Tuticorin.

(f)Shri Narasimha Perumal Temple, Namakkal.

(g)Shri Kailasanathar Temple, Kambarasampettai.

(h)Shri Pundarikatcha Perumal, Thiruvellarai.

(i)Shri Jambukeswarar Akilandeswari Temple,
Thiruvanaikaval.

(j)Shri Vishnu Temple, Malayadipatti, Pudukottai.

32.4 The mission primarily focussed on the order of this Court assigning UNESCO to provide a factual report on the conservation approach and processes followed in the above temples.

32.5 Based on documentary resources and physical inspection of the temples, the mission has provided a detailed assessment report for each of the 10 listed temples. The major issues observed in

conservation of temples as stated by UNESCO in its report, are extracted hereunder:

"1.HR & CE neither has the capacity nor the qualified experts to carry out conservation works at such large scale and number.

2.There is no appropriate system or process being followed as per conservation norms for documenting, assessing, reporting, tendering etc. of heritage works. There is no empanelment of experts at various levels or qualified heritage work contractors for such specialised works.

3.The quality of most of the current regional and local sthaphathy's is questionable as most of them were found incompetent on site. And this point was also accepted by the Chief Sthaphathy of HR & CE.

4.Some of the HR & CE staff members (few JCs and juniors) seem sensitive to heritage and show potential for being trained as Heritage Managers for future. However, majority of them lack essential qualification and expertise and seem totally misfit for such a responsibility. It needs to be recognised that the HR & CE officials are primarily in place to manage the day to day affairs of the temple and do not hold any qualification to oversee technical works like conservation. This is part of the TN HR & CE Act as per the Commissioner, HR&CE. However, at times they go beyond their mandate to take decisions regarding works in the temples, in some cases even overruling their own expert committee members' opinion.

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5.The quality of conservation works at the temples assessed during the mission varied to a large extent with some good examples, some mediocre works and some truly shocking scenes of demolition and massacre of historic temples. Details of each temple assessment and visuals are included in Section 3 of this report.

6.Despite involvement of experts such as ASI, Ex-ASI archaeologists, Chief Sthapathy, Structural experts; it was found that HR & CE is not following the reports of their own experts at ground level. A detail of expert reports for each temple and deviations made are recorded in the individual assessment for each temple under Chapter 3 in this report.

7.Inputs from Agama Shastras are not to be seen in any of the conservation projects. Consultation with Agama Experts and justification from religious perspective for the intervention, be it demolition, conservation, new construction is missing in all temples inspected. In fact, from HR & CE perspective there seems to be a disjunction between Agama Shastras and Shilpa Shastras failing to realise that Shilpa is just an extended arm of the Agama Shastra. Hence, all that is observed is a very limited attempt to adhere to the Shilpa Shastras.

8.Maintenance of record of existing, proposed drawings, historic research and historic layering of temples is completely missing in most cases. It is the most essential part and forms the base for any future conservation works.

9.A Comprehensive Conservation Plan and / or a Detailed Project Report for the temples are missing, which is essential in any

conservation works. Many decisions for interventions seem to be taken at the site by few individuals without any holistic process to assess the urgency, necessity, severity and justification for the intervention.”

32.6 Quoting Agama Shastras, reference to Shilpa Shastras, Alignment with Conservation Guidelines as per ASI Policy / ICOMOS Charter (Venice/Athens/Burra/Nara Document of Authenticity etc.), adherence to National and State Acts, Scientific Procedures such as Structural Analysis, Surveys and Detailed Reports for each action and a completion report after works and also the need for communicating the Conservation Approach, the mission made final recommendations, as per which, the temples being handled by the HR&CE Department are unimaginable and unless a very coherent operational structure along with an army of experts, skilled stapathis and craft persons are available on hand, the task of simultaneously conserving / managing / repairing temples is not feasible.

32.7 It is further recommended that since the number of temples handled is high, the HR&CE Department should supervise and administer the immovable properties as per the Tamil Nadu

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Hindu Religious and Charitable Endowments Act, 1959, while the conservation works be assigned to a specialised Department like Archaeology. Further, a multi-disciplinary approach is required for conservation of the Tamil Nadu temples. Hence, there is a need for involving Agama Expert, Sthapathi, Archaeologist, Historian, Conservation Architect, Landscapist, Services Expert, Visitor Management Expert, as per the temple requirements, in the preparation of a conservation master plan for the temples. Such Experts should preferably be inducted in the HR&CE organisational structure to ensure in-house technical expertise, considering the fact that some of the Joint Commissioners manage anywhere between 500-1000 temples. General conservation guidelines to be followed and the need for capacity building of staff and officials of the HR&CE Department have been mentioned in the report. Recommendations have been made separately for each of the temples mentioned therein.

32.8 The report also quotes the HR&CE Department and its functioning and the Act prescribing the rights and duties conferred on

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various authorities and the various components involved in Tiruppani works, Funds Management, Government Grant, various funds involved in temple renovation / development and also the various schemes framed by the Government for conducting Tiruppani in the temples, most particularly in the habitations of Adi Dravida and Tribal Communities, and also the importance of the conservation, renovation and restoration works in the temples of heritage value as observed by the Archaeological Expert Committee, importance of restoration and maintenance of murals, approval of Stapathis for prescribing standards in Agama and Silpa Shastras for temple renovation / restoration.

32.9 Finally, the mission formulated the conservation guidelines to be followed. The essential components to be covered under conservation works for any temple, according to the report, are as under:

(a) Documentation including all plans, elevations, sections, architectural details through advanced techniques such as LiDAR/ AutoCAD.

(b) All surveys – GPR, Total station to understand ground level situation,

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geology and drainage systems in the complied. Detailed Condition Assessment of all building structures and art work is required.

(c)Historic layering and evolution of the temple including application of Shilpa Shastras, architectural styles, patronage, religious events, rituals and changes with time.

(d)Comprehensive Conservation Management Plan including Physical conservation of each area as per Agama Shastras / Shilpa Shastras, landscape, drainage, services, lighting, visitor management, reuse of spaces, risk management and association / linkage of the temple with its surroundings / city plan etc.

(e)Phased implementation of the comprehensive conservation management plan on a yearly basis and periodic monitoring for each aspect to ensure effective work.

(f)Involvement of experts including traditional Sthapathys of highest calibre, Engineers, Archaeologists, Art Conservators and Conservation Architects and ensuring that their recommendations are observed at ground level by all officials and staff.

(g)Complete recording of all works carried within the temple complex including record of dismantled / removed portions and specifications for new works, before, during and after photographs.

32.10 It has also been emphasised in the report that

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considering the fact that major problems in the temples were found to be effective on-site implementation, it is important to recognise the need for capacity building of staff and officials of the HR&CE Department for conservation works.

33. Thereafter, the Director of UNESCO Representative for India, Bhutan, Maldives and Sri Lanka, addressed a letter dated 14.06.2017 to the Hon'ble Chief Justice, in which it is stated that the field visit by the UNESCO Expert Team confirmed multiple gaps in the rationale and quality of the physical interventions made to the heritage temples, which their report would detail out, with recommendations. It is also emphasised in the letter that if there is no will or adequate human resources on the part of the HR&CE Department to improve the current scenario, the report will be of no use. The letter also pointed out that the UNESCO team met with certain incidents wherein aggressive behaviour and unprofessional attitude of some of the officers of the HR&CE Department, especially at Srirangam, have been observed.

34.1 Dr.R.Nagaswamy, former Director of Archaeology, who

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was appointed by this Court to assist the amicus curiae, filed a memo stating that neither the HR&CE Department nor the State Archaeological Department appears to have done anything to preserve and /or restore ancient temples of Tamil Nadu. According to him, the temples are built and worshiped by hundreds of millions of faithful believers and they are the institutions of long standing faith and hence, if a part of temple or vigraham is damaged, it must be repaired and not replaced. It is also stated that the UNESCO charter lays emphasis on highest academic standards for conservators and interdisciplinary experts; Stapathi alone is not qualified to alter ancient structures, because when the same are repaired, they must be of the same form as in the original one; and therefore, the ancient temples are in need of experts not only in modern traditional architecture, but also in the history of architecture.

34.2 It is further seen from the communication sent by Dr.R.Nagaswamy that conservation, preservation and restoration of temples are highly scientific in nature and can be carried out only by specially trained scientists; the Executive Officers, who are now

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mostly carrying out these works, are not experts in the field and hence, they are unable to speak about specialization. It is also stated that there is no strong unit for conservation and restoration in the whole country. Thus, according to him, a number of Engineering candidates should be trained, for which a special institute may be set up by the state Government with the assistance of UNESCO with international teachers; and till such time, all structural work in temples should be prohibited.

35.1 The conservation, renovation and maintenance of the temples are carried on as per the traditional heritage protection system in practice among the core community. The rules for conservation are laid down in the traditional texts. The HR&CE Act and Rules prescribe the modalities for sanctioning and allocating funds for proposals whenever a need for conservation occurs due to religious motivation or due to structural distresses. In the Government order dated 08.08.2013, the Archaeological Survey of India has been invited to be actively involved in the conservation of temples of historic significance. Since 2013, all the conservation

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activities are carried on with the participation of the Expert committee from the ASI, as per the ASI Conservation Manual. However, the ASIs expertise is limited to the conservation of monuments and ruins and has limited understanding towards the workings of a living heritage temple. It is, in this background, pursuant to the order of this Court dated 25.01.2016, the HR&CE Department, after having consultation and discussions with various Experts and Archaeologists and Conservationists, prepared a draft manual for conservation and maintenance of temples. The suggestions of the stakeholders were also called for, vide communication dated 04.02.2016. Consequently, a meeting was conducted on 07.04.2016, in which, objections/views raised by the stakeholders were taken into consideration. The said manual provides various aspects of the south Indian temple construction and the concepts of conservation and the different practices involved in the maintenance and diagnosis of structural defects in temples.

35.2 The manual proposes the classification of temples based on their heritage values. It includes (i) to understand and highlight the

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traditional repair and renewal practice, in order to give an insight into the religion and heritage protection; (ii) to identify the threats to the heritage structures; and (iii) to disseminate awareness of maintenance and structural conservation since damage due to vegetation, weathering and defects in foundation were the key problems faced in the conservation of several temples. It also concerns about the maintenance and preservation of murals and inscriptions within the temple complexes. The manual is aimed at disseminating awareness to the Executive officers, PWD Engineers and trustees on the issues pertaining to heritage conservation and maintenance of the temples. The manual highlights key issues in conservation of living temples and aims at initiating a dialogue between the various stakeholders, for this reason the manual is made available in the public domain in the department website. The said manual is pending consideration by the Government, according to the HR&CE Department, whereas it is dormant, in the opinion of this Court.

36. While giving importance to the issues under consideration, extensive submissions were made by the respective

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parties, the germane of which is stated hereunder:

36.1.1 Mr.R.Venkataraman, petitioner in WMP.No.20421 of 2020 seeking to implead himself as party to the proceedings in *suo motu* WP.No.574 of 2015, stated that despite the order of this Court in Crl.OP.Nos.8690 and 12060 of 2017, no proper care has been taken by the HR&CE officials to preserve the heritage and other salient features of the temples, monuments etc. He further stated that the HR&CE Department has failed to overcome the malpractices prevailed in all levels, which resulted in a huge loss to the temples and Government; and even the top officials are arrayed as accused in idol theft cases, but they are still administering the management, thereby allowing them to continue to do the mismanagement. It is also averred that the HR&CE Department has failed to collect the huge amount of lease and rental arrears from the properties belonging to the temples; there is no proper auditing with respect to the administration of the temples; and referring to various temples, he made representation to the Commissioner, HR&CE Department, Chennai, to take action with respect to theft of idols, missing registers

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etc, but the same was not considered, till date. With these averments, he prayed for diversification of the powers vested with the HR&CE Department. Pointing out various historical significance in Sri Pasupatheeswarar Temple at Pandanallur, he also sought a direction to ASI to conduct inspection and file a report so as to find out the possibilities of declaring the said temple as protected monument.

36.2.1 Mr.R.Singaravelan, learned Senior Counsel, who in the larger public interest, came forward to assist this Court, submitted that this *suo motu* Public Interest Litigation has taken a different dimension when it comes to deal with the protection of ancient temples as it touches the fundamental freedom of conscience and free profession, practice and propagation of religion including the freedom to manage the religious affairs as enshrined under Articles 25 and 26 of the Constitution of India. He further submitted that though the procedure under the HR&CE Act, for fixation of compensation amount to the tenants, who put up super structure or improved the leased properties in vogue, it is, in public interest, the

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Tribunal has to be constituted with the Judicial Officer with a power to decide all the disputes related to the Religious Institutions, as in almost, all the sensitive matters, only the Officials under the HR&CE Act are conferred with the power to decide the same. It is also submitted that the jurisdiction of the civil Court is barred under Section 34D of the HR&CE Act, 1959 in important complicated matters and it is placed in the hands of the officials of the Department as if they can deal with all the complicated and sensitive disputes touching the public interest matters like alienation, lease, exchange and mortgage of the properties of Religious Institutions and in some matters, the suit remedy is provided under section 70 which would cause inordinate delay in deciding the right of the temples and the worshipers and the protection of the temple properties.

36.2.2 According to the learned Senior Counsel, Mr.R.Singaravelan, Section 63 confers wide powers on the Joint Commissioner and Deputy Commissioner to inquire and decide the disputes and matters relating to religious institutions, even the status of the religious institutions, its affairs and the worshippers, which is

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not only against the fundamental rights as guaranteed under Articles 25 and 26 of the Constitution of India, but also against the principles of natural justice i.e. "*nemo debet esse judex in propria causa*" that means 'no one should be the judge of their own cause', though the decision taken is subject to appeal and revision before the Commissioner and then suit to the civil Court. Thus, according to the learned Senior Counsel, the role of the Government officials and the Government in the matter of the religious institutions is very limited in scope. In support of the said contention, he placed reliance on the decision of the Supreme Court in **B.P.Mittal v. Union of India [(1983) 1 SCC 51]**, wherein, while dealing with the validity of Aurovillee (Emergency Provisions) Act, 1960 taking over the management of Aurovillee for a limited period, it was held that the said Act has taken away the right of management of the property alone, which is of secular nature and not taking away the right of management in the matter of religion of a religious denomination under Article 26(b) of the Constitution. Also, drawing the attention of this Court to the decision in **M.Siddiq (Ram Janmabhumi Temple)**

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v. Suresh Das [(2020) 1 SCC 1], the learned Senior Counsel submitted that the places of worship are given both constitutional and statutory protection and the Government while dealing with the same, have to keep in mind the basic and fundamental right of worship available to the worshippers.

36.2.3 Adding further, the learned Senior Counsel Singaravelan strenuously contended that the decision of the disputes related to the encroachment and taking possession of the properties is given to the Joint Commissioners and then to the Commissioners as revisional authority and thereafter to the Tribunal and considering the need of the hour, a Tribunal in each and every District has to be constituted to decide the matters dealing with religious institutions; and any further appeal can be provided to the Division Bench of the High Court as Special Appellate Tribunal to avoid delay and conferment of power on the HR&CE officials to deal with their own actions against the religious institutions. In this regard, he referred to the decision of the Supreme Court in **Rathinasamy v. State of Tamil Nadu [(2009) 5 SCC 625]**.

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36.2.4 It is also contended by the learned Senior Counsel that the appointment of Archakas has to be made without following the hereditary order, however in accordance with the Agamas and any deviation of the said age old custom and usage would be an infringement of a freedom of religion and the right of religious denominations to manage its own affairs as guaranteed by Articles 25 and 26 of the Constitution. To substantiate the same, he relied upon the judgments of the Supreme Court in **Adi Saiva Sivachariyargal Nala Sangam [(2016) 2 SCC 725]** and **Seshammal v. State of Tamil Nadu [(1972) 2 SCC 11]**. The learned Senior Counsel further contended that there is a Scheme decree for the administration of temple, as per which, the period for the Committee of trustees is 3 years, which was followed by the Government in G.O(D)No.173, HR&CE Department, dated 03.07.2012, however the Government started appointing the trustees only for a period of two years, pursuant to G.O(D)No.48 dated 04.03.2016 and the latest Government order in G.O.(D)No.103 dated 23.09.2020, which cannot be sustainable in law, as the Scheme decree temples cannot be

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brought by the HR&CE Department under Section 47 of the HR&CE Act. He further submitted that in many temples, there are lots of misuse of Undiyal funds; the temple properties are misused and the same are let out for lease to other community people and the rent from those properties is also not properly accounted; and in most of the cases, the said persons are not even paying the rent properly to the temple.

36.2.5 Relying on Rule 14 of the Tamil Nadu Government Servant Conduct Rules, 1973, it is submitted by the learned Senior Counsel that no person with political background shall be appointed as a Trustee or an employee of the temple in any cadre. He further submitted that Section 34 of the HR&CE Act conferring power to grant lease of the properties of the Religious Institutions beyond 5 years with the sanction of the Commissioner, have to be read down to mean inconsonance with the tender period of other Government properties for only 3 years subject to renewal with 25% increase in case of no complaint or default. He also stressed for periodical inspection of the administration of the temples by the higher rank

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officials viz., Commissioner or Joint Commissioner of HR&CE Department.

36.3.1 Dr.S.Padma, learned counsel for the fifth respondent submitted that the mismanagement in administering the temples, financial crimes, theft, procedural violation and corruption are the root causes and the ignorance / incompetence of the HR&CE Department is the secondary reason for the heritage destruction. According to her, the main function of the HR&CE Department is to properly administer the movable and immovable properties of the temples and it has no *locus standi* to carry out any construction activities under the guise of renovation. She further submitted that despite the several orders of the Supreme Court as well this Court to desist from destructing the heritage of the temples, many of them have been demolished due to non-declaration of 100 years ancient temples as monuments. In respect of Meenakshi Amman Temple, this Court specifically directed the HR&CE Department to perform the conservation work with the assistance of the ASI Department. Citing an instance taken place in Sri Moovendhar Easwaran Temple,

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Nasiyanur, Erode District, wherein, the entire sixteen pillar mandapam was removed, stolen and sold away, for which, no action was taken, the learned counsel pointed out the lapses and irregularities in the administration of temples by the HR&CE department. It is submitted by the learned counsel that to prevent destruction of the temples, water bodies etc., scientific approach has to be adopted by constituting a committee consisting of local ASI officer and CPWD officer.

36.3.2 The learned counsel also added that due to lack of diligence and competence in keeping the records of the temples and its properties, more than 100 years old temples were missing in the list, due to which, the police department though recovered many idols, are unable to locate the temple to which those idols belong. It is pointed out that apart from temple structure, temple tanks, mutts, temple chariots, jewels, arts, artifacts and sacred groves etc. are also forming part of the heritage and the same have to be taken into consideration by proper documentation and grading by the ASI and Census of India; all the conservation plan and its related documents

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should be published in the official website before starting the work and all the Government orders, circulars, schemes, notices issued etc. should also be published in the website, to bring transparency in the HR&CE department; annual archaeological inspection should be done for all the monuments / temples and surprise visits are to be conducted; and CAG auditing is absolutely necessary to assess the damage structurally and evaluate the value of the antique destroyed. Referring to Sri Narasimha Swamy Temple, Namakkal, the learned counsel stressed that the ASI Department may be directed to declare all the temples, which are more than 100 years old, even if a single idol in a temple, as monument as required under the Directive Principles of State Policy. According to the learned counsel, the heritage of the temples should be preserved as it is the responsibility of the present generation to safeguard and hand it over to future generation and hence, central idol and antiques wing with ASI Experts should be constituted to handle the destruction, smuggling and theft cases; and to document the history, agama and rituals, an Expert Committee may also be constituted and a representative from

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UNESCO shall be considered as part of the said Committee to be formed. She ultimately submitted that the HR&CE Department should eradicate all the lapses which are root causes for all the problems and hence, other Government organizations, such as, ASI, CAG, Census of India, etc. should be consulted / engaged to protect the heritage of the temples and its properties; and the practice of leasing out the temple lands to the private individuals should be stopped. That apart, the learned counsel prayed that all the employees belonging to the internal department, such as, hereditary priests, trustees and employees of various castes/ denominations, who are collectively called as living heritage, are repositories of vedas, thirumurai, agamas, music, ayurveda-siddha-local medical streams, arts, dance, etc., are to be provided with monetary and service benefits as granted by the Telegana Government recently.

36.4.1 Mr.Rangarajan Narasimhan, petitioner in the miscellaneous petitions, as party-in-person, submitted that the Government cannot interfere in matters of religious affairs of a religious denomination and deny the right to manage the religious

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affairs and administer the properties of the religious institution of the religious denomination, subject to public order, morality and health; the Commissioner, HR&CE Department, Chennai, who is having supervisory control over the temples, has to regulate and supervise the administration of the religious institutions; according to section 47 of the HR&CE Act, the trustees are permitted to continue to manage the affairs of the temple and the appropriate authority has power to appoint non-hereditary trustees / 'fit persons' to perform the functions of the Board of Trustees, pending constitution of Board of Trustees, but according to the petitioner, most of the religious institutions are without trustees and the non-appointment of trustees to the religious institutions is the fundamental reason or the gross neglect to the physical structure of the temples as well its wealth. It is further submitted that 1000s of temples are now managed by the fit persons, belonging to the HR&CE Department and that the Executive Officers are given the responsibility to act as Fit persons as well, for more number of temples, which becomes physically, mentally and morally impossible for such Executive officers to

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discharge the duties truthful to their conscience and the same has resulted in the loss of several temples, which are ancient, historic and heritage of the nation. Therefore, he requested this Court to issue appropriate directions in this regard.

36.4.2 The petitioner Mr.Rangarajan Narasimhan also submitted that Thiruppani is fundamentally a religious affair as it is governed by Agama Shastras ably supported by Shilpa Shastras, which are required to be protected as per Article 26 of the Constitution of India; the art of constructing temples is several millennia old and this art and science is completely ignored by the Executive Officers, who are unqualified for such a role; not only the lapses in Thiruppani of temples, but also the administrative affairs of the temples, directly affect the interest of the temples; and therefore, steps have to be taken to reduce the burden of the HR&CE Department. The petitioner further stated that the powers can be given to appropriate authorities under the HR&CE Act only for the preservation, maintenance, management and improvement of the structures of the religious institutions; the fit persons who are

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functioning in temples in lieu of the Board of Trustees have been appointed only for an interim period; and the temple buildings and premises shall not be used for purposes not connected with or arising from the worship, usages and observations of such temples. Adding further, the petitioner submitted that stringent rules on the conduct, character, interest and knowledge on both religious affairs and administrative abilities must be enacted to ensure that the right person is placed to manage the religious affairs of the temples and the Commissioner can pass such rules in consultation with a committee to be appointed by this Court; and qualified persons to be appointed as per the rules framed. It is also submitted that the audit of the religious institutions shall be done by external agency; the trustees of the temples be awarded with fixed salary; the HR&CE Act must be suitably amended by incorporation of penal provisions and the provisions of the Act, be reviewed by a committee to be formed to improve its efficacy.

36.5 That apart, various other contentions and grievances / allegations were raised by the learned Senior Counsel / counsel /

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party in person. To substantiate the same, several voluminous typed set of papers were also filed by them. In order to avoid prolixity, this Court deems it appropriate to give in a capsule the relevant averments culled out from the same, which run thus:

(i) It is stated that the ancient temples in Tamil Nadu are proudly standing as historical monuments having tall towers, beautiful dome, large corridors and huge walls. It is the state's bounden duty to preserve and protect them. The vegetation growing on the old constructions are heavily damaging them. During 2012-13, the traditional method of cleansing the temple premises called Uzhavarapani once launched by saint Appar Adigal one of the four leading exponents of the Saiva school, was relaunched with a view to introduce the spirit of service. Through this programme, eradication of weeds and vegetation was carried out in 640 temples. Special attention needs to be given to temples because they are visited daily with continuous human interface through performance of poojas, cultural performances and the like. The temple tanks will have to be

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protected as per the scheme 'renovation of temple tanks and rain water harvesting', by the following measures:

- .Clearing the encroachments in and around the temple tanks
- .Putting up the compound wall around the tanks.
- .Deepening and desilting the temple tanks.
- .Re-laying the steps of the temple tanks.
- .Providing facility for the inflow of rainwater into temple tanks and overflow channel for surplus water.

Revival of Kaala Poojas in ancient temples was evolved with a view to set right the setbacks in their performance that are glorified by the hymns of Alvars and Nayanmars and this scheme provides means for performing Kaala Poojas at temples utilizing the surplus funds of the affluent temples. Thus, the temple repair works have to be carried out with holistic approach and not as separate part of works.

(ii)According to Section 36 of the HR&CE Act, the temple requiring financial assistance for renovation receives funds from the surplus funds of the affluent temples by way of diversion. Every year,

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the Government granted Rs.3 crores for temple renovation. Out of voluntary donations given by the individuals and the contributions made by the Hindu Religious Institutions, a separate fund was created viz. Common Good Fund in the name of the Commissioner. A corpus fund of Rs.8 crores was created from the surplus funds of affluent temples for development. From the interest accruing from this corpus, financial assistance is rendered for the renovation of temples of ancient historical significance. Small village temples under the control of the department are provided with financial assistance for temple renovations under the Village Temple Renovation Scheme created for this purpose. In respect of Palani Arulmigu Dandayuthapani swamy temple, a corpus of Rs.2 crores was created by diversion from the surplus funds. All such allocations must be timely utilized for the temple.

(iii) It is pointed out that a high powered committee should be constituted with representatives from the Government (HR&CE/PWD/Tourism) conservation specialists, archaeologists (including ASI), persons well versed in religious affairs and some

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prominent leaders of the community already involved in voluntary restoration activities. Its members shall be qualified to offer technical support, including in the fields of chemical and diamond analysis. This high level team shall engage necessary personnel to draft a comprehensive conservation manual for the temples of Tamil Nadu taking note of all world practices in this regard. The manual shall prescribe the qualification required for each member of the committee.

(iv) It is further stated that the administrative officials shall not be involved in the ecclesial activities of the temples, which are 100 or more years old. No activities shall be done directly through donors. All the activities shall be done only through a committee of trustees / members / officials created for this purpose. Without the approval of trustees and the temple committee, no temple preservation / conservation activity shall be sanctioned. The Engineers of the Tamil Nadu Government construction department and PWD should never be involved in temple preservation activities. If they are to be involved, then they must get at least 1 year training in an internationally

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accredited institute for the preservation of heritage, conservation and archaeology before being assigned to the maintenance activities.

(v) It is submitted that the HR&CE Department is reluctantly attempting a sub standard compliance of the specific direction of this Court and the draft conservation manual prepared by them contains very little discussions on conservation of heritage temples, which may be looked as negative part of the manual. Whereas, according to the learned counsel, the manual should be indeed with classifying all the temples in the State as per their age i.e., 100 years old, 500 years old and 1000 years old etc. The manual shall also specify the punitive actions as per the law (Criminal Procedure Code, Public Property Protection Act & Ancient Monuments and Archaeological Sites and Remains Act) against the erring officials. It should contain as to how damages in the temple are going to be rectified. As there are 8500 temples of more than 100 years old, the conservation manual should be prepared scientifically. Further, the quality of materials used in the renovation works should be contained in the manual and the ISI

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standard materials should be used while renovation. The bricks, lime mortars, etc., used are to be incorporated in the manual.

(vi) It is alleged that several ancient temples were neglected in a dilapidated condition. A study of the various charters and conventions and recommendations referred therein would indicate the need for the following to be done as the initial step towards the protection of the temples: (a) A comprehensive census and a collection of database has to be instituted in respect of all temples in the State of Tamilnadu, which at least a hundreds old, are documented; (b) They should all be declared 'Historically important temples'; and (c) The temples will thereafter, have to be classified into various categories based on antiquity, archaeological importance, special features of statues, idols and murals etc. and susceptibility to damage both natural causes as well as human interference.

(vii) It is stated that each and every preservation / conservation activity shall be done as per the plan designed by the central archaeological department after their inspection and in a manner that

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will qualify their certification for operation. Conservation should not immediately involve renovation/civil works, unless they are required for the stability of the structures. The need for any civil work should be considered after checking with the experts who are well versed in the agamas applicable to that particular temple. Stapathis are to only execute the clear directions of the experts concerning any repairs or alterations. No new structures are to be built in Heritage temples. The Department should send a proposal regarding the civil works planned to be executed to archaeological survey of India and after obtaining their guidance and approval only civil works inside and adjacent to a heritage temple can be taken up. Such works to be monitored by Conservation Experts who are currently in service in ASI or by expert deputed by ASI. There are so many cases indicating damages to ancient structure and hence, basic safety of the works has to be followed, while doing conservation work. It is pointed out by Heritage Conservation Society that the demolition work is happening even without removing the idols and the works are done just above the

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idols, which amounts to criminal negligence and lack of common sense.

(viii) Referring to the report submitted by the conservationist of ASI, it is also stated that proper preservation and conservation of the ancient temple as per the norms prescribed in our ancient architectural texts and using power tools by adopting modern advanced technique is a *sine quo non* to achieve the results acceptable for a world heritage monument. All stone pillars / pilasters as well as pada (wall) portion need a thorough cleaning to remove the accumulated dirt and to expose the iconographical features. For most of the pada (wall) portion, the pointing was made with cement and hence, it should be removed and apply the ancient lime mortar to properly maintain it. All polished marbles, tiles, modern inscriptions etc. laid in the Heritage temples should be removed carefully. Further, the scientific analysis of the ancient painting composition may be carried out taking a little sample from the paintings left bottom, where damage has already occurred and base and pigment section is exposed. In respect of Thiruvotriyur Adhipureeswarar

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Devasthanam, the same has been renovated using modern techniques without paying heed to any of the conservation norms that have been set out. Further, a list of ancient temples was produced, whose renovation / repair works are pending for want of necessary orders by the respective committee.

(ix) It is further stated that the temple renovation works are not just like building a structure and hence, should be done with more care without changing the heritage values of the old structures that they meant for. While renovating the temples, the Sthapathi has to specify the type of materials used and the methods to be carried out, which should be followed by all the Engineers and Builders. For any reason, modern construction materials such as cement, refined oil or chemical added materials shall not be used in any of the constructions, which is more than 100 years old and is surviving the tests of time and nature. Maintenance activities shall be done only using the traditional materials such as lime, wood, hand made bricks. If there is a mandatory need to use modern construction materials and no traditional alternate is found, then it can be allowed only after

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a detailed scientific study. The construction can be done without changing the heritage values and no construction should be permitted within a notified distance of all historically important temples.

(x) It is submitted that every year, as per the archaeological rules and regulations, the State archaeological department official shall conduct inspection in and around the temples of 100 years or more and submit a report to the central archaeological department as well as the department commissioner for further action and advices. Before inspection, all those places that must be inspected shall be listed, documented and shall be used during the future inspections. Details of the inspection and its reports shall be made available on the website. Therefore, this department may be directed to inspect all the important temples irrespective of age, for which, the HR&CE department may be directed to render necessary assistance.

(xi) It is stated that though the HR&CE Department issued a circular directing all the officers to take photographs of metal and stone idols belonging to temples under the control of HR&CE and

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register them in the department's website as well as in the website of the Archaeology department along with details of weight / measurement etc., the officials are yet to comply with the said direction.

(xii) It is stated that the Government of India sanctioned a grant of Rs.90 crores through 13th Finance Commission towards expenditure in connection with the renovation, repair and maintenance of ancient temples and artifact monuments & sculptures in Tamil Nadu; accordingly, the state Government released the said amount to the identified 228 ancient temples vide G.O.295 Tamil Development Religious Endowments and Information (RE1-1) Department dated 10.11.2011 in four installments. However, on scrutiny of the various documents produced would reveal a lot of lacunae and lapses in respect of the financial propriety, compliance and control over the expenditure, viz., the temples which are the recipient of grant for the year 2011-12, have not commenced the work till date and the grant has been kept idle in the bank account of the temples and no action was taken by the department in this regard

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and hence, the unutilized amount requires to be recovered as per the conditions of the grant and credited back to the Government account; and sanctioning and releasing the grant based on the approximate estimates without obtaining a technical opinion and the estimate from the department Stapathi / technical people caused additional expenditure and also delay in execution. For example, in respect of Adhinarayana Temple at Pazhaverkadu, the temple authorities submitted a revised estimate for the rework to be carried out with lime stone leading to additional expenditure and the expenditure already incurred becoming unfruitful. It is further submitted that approving and sanctioning the grant to the temples, without ascertaining the age/authorized by the Archaeology Department is against the provisions of the said G.O and the expenditure incurred by the temples not listed as ancient by the Archaeology Department is improper; and the portion of the grant was utilized without sanction for the works of construction and reconstruction of mandapams and walls and dismantling the existing structure and reconstruction, instead of renovation and repairs. Poor implementation of Oru Kaala

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Pooja Scheme, resulted in non-reaching of intended funds (interest amount) to the beneficiary temples across the State and hence, steps be taken to send all the interest payments to the temples through ECS by getting the bank accounts of the remaining temples; and allowing the temples to retain the grants without incurring expenditure for the intended purpose for more than a year and non production of records to verify the correctness of expenditure is against the provisions of financial propriety.

(xiii) It is alleged that various representations were received by the HR&CE department seeking details regarding stolen materials belonging to the temple etc, property details, revenue records relating particulars, lease hold details, recovery of arrears for lease hold properties, maintenance of animal and cattle in the temple, for maintenance, invariable temple funds spent and details regarding the theft of jewellery. It is further submitted that a detailed enquiry is to be conducted for missing of records, theft of idols and other alienation of immovable properties of the temples.

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(xiv) It is stated that no internal audit was conducted. As per the extract from the CAG audit of the HR&CE Department, enclosed at page 89 of the typed set in WP.No.574 of 2015, it is seen that as per the DCB statement for collection of revenue due to religious institutions for the Falsi Year 1419 (as on March 2010) an amount of Rs.33651.99 lakhs was due from persons, who had taken temple land on lease and the said amount was increased to five times now. In accordance with Section 79C of the HR&CE Act, any money due to religious institutions may be recovered and for the purpose of such recovery, the Commissioner of HR&CE Department shall have the powers of a Collector under the Tamil Nadu Revenue Recovery Act and hence, he may be directed to take appropriate action in this regard.

(xv) It is pointed out that every religious institution shall pay to the Commissioner annual contribution as prescribed and cost of auditing its accounts as determined by him, according to sections 92(i) and 92(ii) respectively of the HR&CE Act. The Government in G.O.No.485 CT&RE Department dated 02.12.1991 prescribed centage

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charges at the rate of 1% for preparation of estimate and another 1% for scrutiny of estimate be collected for the work done by the Engineering wing of the HR&CE Department and therefore, effective action be taken to collect the centage charges pending collection and the fact be intimated to audit.

(xvi) It is alleged that the main deities in the temples have been altered, without following any procedure, which resulted in missing of lots of jewels, shalagrams and other precious stones found inside the same. There are communications relating to demolition of the temple, change of deity in AmirthavalliNayagiSanadhi and Sowmya Damodhara Perumal Koil, etc. It is further alleged that despite the order of this Court dated 30.11.2015, the temple authorities of Sri Jambugheshwar Akilandeswari temple, Thiruvanaikoil, Trichy, have demolished portions of ancient structures of the temple. Similarly, a specification report has been produced, for the work of dismantling the damaged sannathi relating to Arulmigu Cellandiamman Thirukoil, Karur District, which is an ancient temple, but the said temple was stated to have been completely demolished

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on 04.11.2020, despite the order of this Court. The parties produced various photographs and alleged that the moolavar deity was changed and in some temples, toilet / septic tanks were constructed inside the temple premises, which is against the norms.

(xvii) There are certain documents relating to the estimates for works undertaken in the Srirangam temple between 2014-16 at Rs.5,66,90,801/-. But the total amount of funds spent by the temple during this period according to Board Resolution, is Rs.20,90,98,368/-. Apart from this, the temple has spent more than Rs.25 crores for conservation work of Rampart walls on the 5th, 6th and 7th prakaras and hence, the temple has spent in excess of Rs.50 crores during 2014-16. There are documents depicting the fact that the Board of trustees of the said temple, have resolved to spend temple funds for non essential works, which show the depth of corruption by the trustees appointed.

(xviii) It is brought to the notice of this Court that the HR&CE Department officials failed to coordinate with UNESCO team during

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the visit to Thiruchendur temple, where they went about doing sand/water blasting by claiming that UNESCO has approved the work. The UNESCO has expressed its willingness to assist the department in undertaking reviewing of institutional mechanism for conservation of temples and work out the strategy for improvement and hence, the benefit of the expertise may be utilized by the department.

(xix) It is emphasized that as the conservation of ancient temple is absolutely a science, a conservation wing is essentially required and has to be established with the help of Anna University, IIT, Madras, etc., to monitor complete documentation and authenticity for the work done apart from carrying out new construction works with adaptation of modern scientific methods. According to the learned counsel, to preserve the historical structures is a very big science. It should not do any new modifications to heritage structures and it should be preserved as it originally existing wherever possible. If the renovation work has to be carried out in a temple, the same materials what were originally used, be used in old structures. Science and technology should be used to conserve the

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structures and scientific laboratories will help in this regard. That apart, security measures such as, installing CCTV camera, etc., have to be taken.

(xx) It is stated that the temples in Tamil Nadu are the major tourist attractions. For the welfare of the devotees and tourists visiting the temples, the temple administration and the tourism department jointly provide basic amenities such as toilets, bath rooms, drinking water, dormitories, information centers, approach roads, high mast lamps, cloak rooms, provision of lawns and parking facilities.

(xxi) When documenting, protecting and maintaining the old temples and water bodies, trees, parks (temple garden) and other structures, the manual shall clearly quote these rules. For every one of the rules, its source of documentations shall be referenced and recorded. In addition, Environmental Regulatory compliance (EIA Notification & coastal regulation Zone) & compliance of all safety rules shall be properly documented in the manual and they shall be

implemented for the sacred duties of the temples. The employees, their qualifications, rights and duties shall be clearly expressed for the associated maintenance of the temples, its surroundings and protection. Various temples existing all over the State should be properly documented covering all the details pertaining to the temple including the nature of works carried out.

(xxii) It is asserted that the HR&CE Department have a total extent of 478462.46 acres of land. However, the land records were not produced to audit and the correctness of the figures and the custody of the land in possession of temples could not be ensured. Hence, it is necessary to furnish the information relating to the extent of land to which pattas are to be transferred to temples from private persons, the extent of land pattas to be restored in the name of temples in computerized chitta from private persons, the extent of lands to be cleared from encroachment and to be restored in the name of temples, etc. Further, the ancient temples and the lands surrounding them shall be declared and documented as protected

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area, as per the archaeological laws and those lands must be maintained.

(xxiii) It is alleged that the gold obtained through change of gold bond was not sold, but kept in the locker as idle, which caused monetary loss to the temple. Therefore, it is necessary to update the register regarding maintenance of jewels, icons, valuables, articles, antiques, stolen or lost from the temples, besides maintaining register for theft, missing of valuable gold, silver ornamental items, etc.

(xxiv) The HR&CE Department should not split the total cost of renovation/civil works expenses concerning heritage temples into smaller denominations. The HR&CE Department should also take immediate steps to remove the toilets built inside the temples. Further, no shops shall be present or set within the premises of ancient temples. If shops selling the items for worship and latrines need to be built, then they must be built outside of the temple as per the archaeological department advice. That apart, the vehicles belonging to Government and Government related organizations must

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receive an evaluation certificate from Central vehicle and maintenance organization and to be sold only by public auction. The validly appointed trustees by the department and the officials have to strictly follow the Management and Preservation of Properties of Religious Institutions Rules, 1964 (as amended) and the Circular dated 10.06.1979 vide Na.Ka.No.42271/78.

(xxv) It is pressed into service that maintenance / preservation activities done for each year, complaints received, scientific related studies and yearly inspection details etc., shall be made publicly available. In addition, every 2 years, the regulatory guidelines shall be reviewed by a group of international archaeological experts and improved. All the records associated to this review, shall be publicly available on the website. All the expenses related to the maintenance / preservation / conservation activities shall be recorded as per the Government Accounting Rules, 1990 and shall be subjected to auditing. The auditing official shall inspect the maintenance activity, whose costs exceed Rs.1 crore and should audit the associated expenses and records, at required intervals. All the

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associated details have to be made available on the website at once. The department should make an assessment of damages made to begin within the last 10 years to heritage temples in Tamil Nadu and do its best to restore the structures very carefully.

36.6.1 Reiterating the averments made in the latest affidavit filed on 11.01.2021, Mr.M.Karthikeyan, learned Special Government Pleader (HR&CE) submitted that there are about 44,121 religious institutions under the control of the HR&CE Department, out of which, 1966 are Mutts, Charities and Endowments, 42155 are temples in which nearly 8450 temples are ancient one, which are built before 100 years; and it was found that nearly 21000 temples need to be renovated and Kumbabhishegam to be performed in the upcoming years. It is further stated that the Department has decided to restore the Heritage Temples in a phased manner with priority to structures that are degrading due to natural phenomenon; and they are at present creating a database regarding the present condition of all the Temples under its supervisory control; and the subordinate officers of the department are directed to inspect the temples and

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upload the present conditions, age of the temple, approximate cost for restoration, along with the photographs; and till now, the particulars relating to 40695 temples have been uploaded in the department website, based on which, the temples will be classified as Heritage and Non-Heritage and a list will be prepared for the purpose of preparation of conservation and renovation of temples.

36.6.2 Adding further, the learned Special Government Pleader (HR&CE) stated that from the database so far collected for 40695 temples, 32935 are stated to be in good condition, while 6414 temples are considered to be having damages that are needed to be repaired; 530 temples have been identified as partially dilapidated; and 716 temples have been identified as severely dilapidated; and steps have been initiated to restore/renovate all the 1246 dilapidated temples in a phased manner and a unique ID for all the dilapidated temples has been created in the Tiruppani module of Department website to give priority for the restoration process. It is submitted that the proposal for renovation are initiated only after consulting the experts and the proposal is vetted by an Expert present in the

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respective Regional level Heritage Temple Screening Committee formed as per G.O.No.256 TC&RE Department, dated 01.11.2016; and hence, there is no violation in whatsoever manner on the part of this department.

36.6.3 Stoutly refuting the allegations made against the HR&CE Department, Mr.Karthikeyan, learned Special Government Pleader (HR&CE) submitted that this Department is very much cautious in preserving the ancient temples and undertaking the renovation works in accordance with the Archaeological norms; they are engaging service of Experts in various fields and various committees have been constituted, including Archaeologist, Conservationist, Archaeological Chemist, etc.; and the Government has also constituted a separate renovation and conservation wing for Tamil Nadu HR&CE Department vide G.O.(Ms)No.108, TC&RE Department, dated 09.08.2019. He further detailed that to scrutinize the renovation proposal and streamline the work process regarding the temple renovation the following committees have been formed:

(a)The Hon'ble High Court appointed Expert Committee;

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(b)Two State Level Heritage Temple screening Committee;

(c)11 numbers of Regional Level Heritage Temple Screening Committees;

(d)Drawing Approval Committee; and

(e)Advisory and Expert committee for preservation of Murals

Apart from that, the department has considered to form an Expert committee at Head office to scrutinize the work estimates regarding heritage temples. The said committee consists of Conservation Architect and a Stapathi and it will also supervise the ongoing works and ensure that the works are done as per the estimates. It is also submitted that a special mechanism has been adopted to preserve the heritage temples, such as, identification of temples through grading process, making condition assessment of the damaged temple structures and preparing a detailed project report to restore the temple complex, approval of relevant committees, execution of the works, training to workers, monitoring mechanism during execution of the work, creating public awareness for preservation of

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heritage temples, etc. He further reiterated the averment made in the counter affidavit and submitted that the Chief Minister has announced on the floor of Assembly to create new offices viz., 9 Joint Commissioner's office, 8 Assistant Commissioner's office, 10 verification wing for appraisalment of jewels and valuables, creation of 117 posts of Inspector's in the grassroots level of administration and creation of 91 Executive Officers post and in the newly announced offices, post of Engineers, Regional Staphis and Staphis will be created and if necessary, Archaeologist / Conservationist will also be outsourced; and the craft persons are also included in the conservation process.

36.6.4 It is also submitted by the learned Special Government Pleader (HR&CE) that since the Rules are not sufficient to conserve and safeguard the heritage temples, it is considered to amend the existing rule by incorporating various provisions on the line of National Conservation Policy and various International Charters regarding conservation of monuments; and the Conservation of policy of the Department is under preparation and the same will be finalized

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with the approval of the Government and a detailed Conservation Manual containing elaborate procedures for renovation of heritage temples, non-heritage temples and village temples is under preparation and it will be finalized soon. With regard to the safety measures taken by the HR&CE Department to protect the heritage structures, idols, icons and valuables belonging to the religious institutions, it is submitted that to protect the valuable jewels and idols, strong rooms have been provided in 11512 temples; burglar alarms have been installed in 5773 temples and this department has financed 817 needy temples to install burglar alarms from the corpus fund sanctioned by G.O.Ms.No.17, Tourism, Culture and Religious Endowments Department, dated 11.02.2014; tell tale clocks have also been installed in major religious institutions; CCTVs are also installed in 3602 temples; 34 Icon centers have been built in temples and police protection has also been provided; night watchmen are deployed to guard the temple and its strong room etc.; 1000 Grade II Police constables and 3000 Ex-servicemen are deployed in the Districts; and safety electronic gadgets like metal detector, digital

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video recorder and CCTV within the temple premises, apart from the strong rooms are also available. He also pointed that the construction of idol strong rooms for more than 3000 temples will be completed without further delay. With these submissions, the learned counsel pleaded that the Expert Committee appointed by this Court may be made as permanent.

36.6.5 As regards the relief sought in WP(MD)No.24178 of 2018, Mr.Karthikeyan, learned Special Government Pleader (HR&CE) referred to the statements made in the counter affidavit filed by the department dated 17.11.2020 and submitted that subsequent to the filing of this writ petition, two Heritage Screening Committees are formed, one for the southern region and another for the northern region, vide the proceedings of the Commissioner in RC.No.57789/2015/Y2 dated 27.11.2018 with the following terms:

- (i)Preparation and approval of conservation manual
- (ii)Selection and empanelment of Experts in different categories
- (iii)Training of officials nominated in the District level committee

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(iv)carry out field inspection and monitoring the implementation of works approved by the committee

(v)preparation of format and templates for inspection.

It is further submitted that all the members have been nominated as prayed by the petitioner and the tenure of the said committees is two years from 08.11.2018. Hence, he ultimately, submitted that the allegations pointed out against the department are ill founded and the department, being the custodian of the temples and its properties whatsoever, is conscious enough and also taking all the required steps to bring back the originality and heritage glory of the temples. Stating so, he prayed for appropriate orders in the writ petitions.

36.6.6 Regarding the prayer made in WMP.No.30869/2017, the learned Special Government Pleader (HR&CE) submitted that the suggestions put forth by the Executive Officer of Arulmigu Meenakshmi Sundareshwarar Thirukoil, Madurai were considered and the renovation works are almost over and hence, no order needs to be passed in this petition.

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37. From the pleadings and submissions as referred to above, it is ascertained that most of the old ancient temples have been damaged because of time, age and absence of proper maintenance and supervision. Even after the Pallava period, some of the temples constructed during the Chola period after the 10th Century (A.D.) have also been damaged. While renovating the old temples, the authorities have to take note of the old sculptural works and the renovating works have to be carried out without causing any damage to its originality. However, the same are not taken note of while renovation of the temples even as per the above referred reports of the amicus curiae, UNESCO and Mr.Rangarajan Narasimhan. The fact remains that in most of the temples, the repair works have damaged the original structure and the cultural heritage. This is, as pointed out in the report of the UNESCO, due to insufficient staff with technical skills on sculpting, agamas and shastras. Further, it has to be noted that the old rock inscriptions have to be protected and restored to its originality, while making renovation of the temples. The original rock inscriptions reflect the period, time and age of the sculptural work

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along with the details as to who has done the same, etc. The renovation/restoration must be done only by experts so as to ensure that not only the sanctum is protected but also the architecture value. Therefore, the need of the hour is to undo the wrong and lapses and to carry out proper repair works by the HR&CE Department so as to possibly restore the originality.

38. Similarly, many temples have been constructed by many Kings with distinct and different features/ characteristics. The value of the temple/monument is unknown to a layman. It was either the Government or an expert who would be able to assess the value of the monument or the period of the temple. Likewise, historians, by looking at the temples, will be able to identify the period during which a particular temple was constructed and in whose reign it has been constructed. Now, with the advent and development of technology, the information and knowledge can reach the public in few seconds. Therefore, it will not be out of place to mention here that the officials of the HR & CE department, to be fully equipped to handle the temples, require an organisational restructure by including experts

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like qualified staphis in their ranks who are also trained in Agama and Shilpa Sastras as suggested by the UNESCO team, Engineers, system operators, etc. It is observed so, only to emphasise that all these temples are valuable treasures of this land and they have to be properly maintained without changing or altering the ancientness or its original value.

39. This Court has exhaustively discussed in the preceding paragraphs about the role played by the temples in the development of the society. The temples of Tamil Nadu have embodied the continuing traditions and living heritage of the Country. It was as early as from 7th century during the Pandya period, thereafter Chola period to the Vijayanagara and Nayaka periods, because of their architectural, artistic, archaeological, socio-religious and economic value, the temples were restructured and constructed, which are now of great cultural significance and historical value. Since the temples belong to either of the two main sects, i.e., Saivites and Vaishnavites, they are visited by the local devotees and Hindu pilgrims and they are immensely valued by historians, researchers, archaeologists etc., as

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benchmark of architecture. The shore temple of Mamallapuram and the Big temple of Brihadeeswarar in Thanjavur, have already been listed in the World Heritage List. Shri Ranganatha Swamy Temple at Srirangam is also placed in the tentative list for future nomination as World Heritage Site. Since it is not just the physical structures of the temples but also the traditional principles, it is indeed a great challenge to define a singular conservation approach for the temples of Tamil Nadu. It is only if the daily rituals are performed and the temples are preserved, the religion itself could survive. By sheer numbers and considering the age of the monuments, our country would be the country with maximum monuments and in India, Tamil Nadu would be premier state having the number of temples and other places of historical significance. The secularism and protection as embodied in the constitutional framework are available to all the religions and faiths. So, it is the duty of the state to protect, preserve and maintain all places of archaeological and historical importance. Miniscule developments have been shown because of the intervention of this court in the last few years.

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40. History reveals that many temples have been built by the Kings with great vision. However, the authorities have not endeavored to protect the same. As a result, many idols have been stolen and smuggled out of the country and the temples with architectural excellence and historical importance have also been left to become dilapidated. If proper system is adopted to screen the objects, the smuggling of the Idols out of the country cannot take place. The Idols cannot be smuggled, unless there is a mis-declaration, which will warrant action by the DRI and Customs authorities against the Exporter, CHA, etc. This Court has not come across with details related to a single case, where the person involved in smuggling the Idols out of the country, has been independently prosecuted under the Customs Act, 1962 and the Finance Act, 1994 as the act would be *per se* constitute an independent offence under these Acts. Hence, this Court, in **R.Venkataraman v. Director General of Police and others [order dated 21.07.2017 rendered in Cri.OP.Nos.8690 and 12060 of 2017, reported in 2018-2-LW.65]**, issued a specific direction to the respondent

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authorities that the details of the cases, wherein, the Idols have been smuggled out of the country, must be sent to the Superintendent of Police, Idol Theft Wing, so as to enable him to issue appropriate directions for initiation of cases under the [Customs Act, 1962](#). However, it is reported that the said direction has not been properly complied with by the respondent authorities.

41. In **Department of Customs v. Sharad Gandhi [2019 SCC Online 286]**, while hearing an appeal on the point as to whether prosecution under the Customs Act is maintainable, when there is also a violation of the Antiquities and Treasures Act, it was held by the Supreme Court as follows:

"92. While it may be true that the Antiquities Act is a comprehensive law, it cannot be treated as a complete or exhaustive code. Of course, the principles relating to repugnancy have been expounded in the context of conflicting claims to legislative power between two legislatures. In this case both the Customs Act 1962 and Antiquities Act have been made by Parliament.

93. We have expounded the ingredients of Sections 132 and 135(1)(a) of the Customs Act. The view we are taking would give full play to the Customs Act to the extent that it is not inconsistent with

the Act as contemplated under Section 4. The view which we are declaring does not do violence to the provisions of Section 25 of the Act. The contrary view which has gained acceptance at the hands of the High Court, in our view, fails to give meaning and full play as intended to the Customs Act as provided in Section 4 of the Act. Furthermore, the principle that a transaction or the same set of facts can give rise to more than one distinct offence provided the legislative intention in this regard is clear from the provisions which creates such offences cannot be lost sight of.

94. The upshot of the above discussion is as follows:—

Prosecution under Sections 132 and 135(1)(a) of the Customs Act, 1962, is not barred in regard to the antiquities or art treasures. Accordingly, we allow the appeal and set aside the impugned order. The complaint filed may be proceeded with as per law. However, we make it very clear that pronouncement of this order shall not come in the way of the Court deciding the matter on its merits. The Court will proceed to consider the matter on its own and shall not be influenced by any observation which may have been made in this order regarding merits.”

Therefore, the respondent authorities have to necessarily initiate prosecution under the provisions of the customs Act, whenever an antique is smuggled, stored or moved without proper licence.

42. The noble object behind the donation of the properties/lands in favour of the temples is only to protect the

temples and to enable it to survive for several long years along with the heritage and culture of our land to the future generation. Throwing to winds, the temple properties/lands are being encroached, misappropriated and mishandled. Though several directions were issued by this Court, the process of identification of encroached lands and retrieval have not been undertaken swiftly and the officials are determined to do away with the lands for political or appeasement reasons contrary to the object of grant and in detrimental to the interest of the temples, which can only be termed as a step to slowly diminish the religious belief, tradition, culture and practices. At this juncture, it is relevant to quote the lines of the great Tamil poet Thirumoolar in his book 'Thirumandiram', which reads as follows:

"கட்டுவித் தார்மதிற் கல்லொன்றுவாங்கிடில்
வெட்டுவிக் கும்அபிடேகத் தரசரை
முட்டுவிக் கும்முனிவேதியர் ஆயினும்
வெட்டுவித் தேவிடும் விண்ணவன் ஆணையே"

- திருமந்திரம்

It means, 'none should cause any damage or usurp the properties of the temple'. But, the statistical record reveals that out of 5.25 lakh

acres of land, only 4.78 lakh acres are available as of now and the balance acres of land are in the hands of encroachers. It is significant to mention here that the HR & CE department is the custodian and administrator of the temples and its properties. But this department, to the knowledge of this Court, has not purchased even a small portion of land for the benefit of any temple. As administrator, the role of this department is much more responsible and the officials are culpable and liable to be punished in case of breach of their responsibility. The administrative right to deal with the temple properties is only to preserve and augment more revenue, implying that the temple lands ought not be alienated or given away. It is to be noted that the Government cannot claim right over the temple lands and the same cannot be a part of any Government scheme, otherwise, the very object of the creation of the HR & CE department would get defeated. Considering the need of the same, this Court in **V.Muthusamy v. Superintendent of Police [2018-1-WLR.530 : 2018-2-LW.623]**, directed the Commissioner, HR&CE Department, Chennai to act under Section 34A of the Act and to fix the market

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rents for all the properties and take further action. Similarly, in **P.Lakshmanan v. Superintendent of Police and others [2018 (3) CTC 493 : (2018) 3 MLJ 202]**, the Commissioner, HR&CE Department, Chennai was directed to conduct enquiry under Section 78 of the Act and take steps to recover the temple lands. However, no fruitful efforts were stated to have been made on the part of the department.

43. As per the statistics, there are about 413 monuments in Tamil Nadu under the control of ASI, out of which 403 fall under Chennai circle and 10 under the Thrissur Circle. The excavations at various sites have thrown a light on the unanswered questions on the origin and evolution of humanity. The state department has conducted excavation at 40 sites. The excavation at Keeladi has brought a new dimension to the claim of the people of this land regarding the ancientness of the language and origin. Though the State has done commendable work in certain areas like manuscripts, it has fallen short in the maintenance of heritage sites and temples as pointed out in the report of the UNESCO team. In this context, it is

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relevant to recollect the observation of the Supreme Court in **Rajeev Mankotiav. Secy. to the President of India, [(1997) 10 SCC 441]**, while dealing with the need to protect the monuments of national importance, which reads as under:

"19.It is needless to mention that as soon as the Indian Institute of Advanced Studies vacates the building and hands it over to the Archaeological Department, the Government should provide the necessary budget for effecting repairs and restoring to the building its natural beauty and grandeur. It is also necessary that its proper maintenance and preservation is undertaken as an on going process to protect the historical heritage and needed repairs are effected from time to time. We avail this opportunity to direct the Government of India to maintain all national monuments under the respective Acts referred to above and to ensure that all of them are properly maintained so that the cultural and historical heritage of India and the beauty and grandeur of the monuments, sculptures secured through breathless and passionate labour workmanship, craftsmanship and the skills of the Indian architects, artists and masons is continued to be preserved. They are the pride of Indians and places of public visit. The tourist visitors should be properly regulated and collection of funds by way of admission/entrance fee should be conscientiously accounted for and utilised for their upkeep and maintenance under the respective regulations/rules. Adequate annual budgetary provisions should be provided. In this behalf, it may not be out of place to mention that if one goes to Williamsburg in United States of America, the first

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settlement of the British therein is preserved as a tourist resort and though it is one in the row, its originality is maintained and busying (sic bustling) business activity goes on in and around the area attracting daily hundreds of tourists from all over the world. Similar places of interest, though of recent origin, need to be preserved and maintained as manifestation of our cultural heritage or historical evidence. Similar efforts should also be made by the Government of India, in particular the Tourism Department, to attract foreign tourists and to give them a good account of our past and glory of the people of India as message to the other countries and territories. Equally all the State Governments would do well vis-à-vis monuments of State importance, though given power under Schedule VII List II Entry 12 to the Constitution. From this perspective, the petitioner has served a great cause of national importance and we place on record his effort to have the Viceregal Lodge preserved and maintained; but for his painstaking efforts, it would have been desecrated into a five star hotel and in no time 'We, the people of India' would have lost our ancient historical heritage."

44. On earlier occasion, by order dated 13.01.2020 in W.P.No.26896 of 2018, this Court directed that the HR&CE department should utilize the stapathis qualified from the Government college of Architecture and Sculpture at Mamallapuram by providing them employment in the department and not to utilise the services of staff deputed from other department. But the said

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direction has not yet been fully complied with. At this juncture, the reports submitted by the UNESCO and the Amicus curiae pointing out the deficiencies to handle the issues relating to repair and renovation work and the requirement of complete restructuring of the administrative set up by including stapathis, architectural Engineers, agama and shilpa experts in the department, cannot be lost sight. The compliance of the same would go a long way in addressing the grievances raised in the report filed by the UNESCO team. Only the appointment of qualified stapathis in the department with traditional knowledge could fill up the lacunae in addressing the shortfall.

45. Be it noted, the monumental sites and places of historical importance are also to be identified, photographed, listed and preserved. Though the HR&CE department has categorically denied that the renovation work carried out at their behest is not the cause for erosion or damage, this Court is of the opinion that the department should be more sensitive to the concept of archaeology and historical value of the temples. The department should devise a permanent mechanism by including experts of all fields for

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consultation before carrying out renovation works, but they are taking decisions with just a Chief stapathi and senior officials. This Court is conscious of the controversies surrounding the appointment and function of the Chief stapathi in collusion with the officials. Contracts for restoration of idols, pillars, gopuram and other structures are made as if they are pure civil contracts. Therefore, with the growing need to protect the temples and its properties, it is ripe time to crack the whip and issue necessary directions, the compliance of which alone shall enable the department to carry out the renovation/repair works in the temples with its originality and ancientness.

46. In **Seshammal v. State of T.N., [(1972) 2 SCC 11]**, the Supreme Court, while dealing with the validity of the Tamil Nadu Hindu Religious and Charitable Endowment Act, laid down the importance of the Agamas, the relevant portion of which is extracted hereunder:

“12. The Agamas have also rules with regard to the Archakas. In Saivite temples only a devotee of Siva, and there too, one belonging to a particular denomination or group or sub-group is entitled to be the Archaka. If he is a Saivite, he cannot possibly be an Archaka in a

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Vaishnavite Agama temple to whatever caste he may belong and however learned he may be. Similarly, a Vaishnavite Archaka has no place as an Archaka in a Saivite temple. Indeed there is no bar to a Saivite worshipping in a Vaishnavite temple as a lay worshipper or vice versa. What the Agamas prohibit is his appointment as an Archaka in a temple of a different denomination. Dr.Kane has quoted the Brahmapurana on the topic of Punah-pratistha (*Re-consecration of images in temples*) at p.904 of his History of Dharmasastra referred to above. The Brahmapurana says that "when an image is broken into two or is reduced to particles, is burnt, is removed from its pedestal, is insulted, has ceased to be worshipped, is touched by beasts like donkeys or falls on impure ground or is worshipped with mantras of other deities or is rendered impure by the touch of outcastes and the like — in these ten contingencies, God ceases to indwell therein". The Agamas appear to be more severe in this respect. Shri R.Parthasarathy Bhattacharya, whose authority on Agama literature is unquestioned, has filed his affidavit in Writ Petition No. 442 of 1971 and stated in his affidavit, with special reference to the Vaikhanasa Sutra to which he belongs, that according to the texts of the Vaikhanasa Shastra (Agama), persons who are the followers of the four Rishi traditions of Bhrigu, Atri, Marichi and Kasyapa and born of Vaikhanasa parents are alone competent to do puja in Vaikhanasa temples of Vaishnavites. They only can touch the idols and perform the ceremonies and rituals. None others, however, high placed in society as pontiffs or Acharyas, or even other Brahmins could touch the idol, do puja or even enter the GarbhaGriha. Not even a person belonging to another Agama is competent to do puja in Vaikhanasa temples. That is the general rule with regard to all these sectarian denominational temples. It is, therefore, manifest that the Archaka of such a temple besides being

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proficient in the rituals appropriate to the worship of the particular deity, must also belong, according to the Agamas, to a particular denomination. An Archaka of a different denomination is supposed to defile the image by his touch and since it is of the essence of the religious faith of all worshippers that there should be no pollution or defilement of the image under any circumstance, the Archaka undoubtedly occupies an important place in the matter of temple worship. Any State action which permits the defilement or pollution of the image by the touch of an Archaka not authorised by the Agamas would violently interfere with the religious faith and practices of the Hindu worshipper in a vital respect, and would, therefore, be prima facie invalid under Article 25(1) of the Constitution.”

47. In **Adhi Saiva Sivachariyargal Nala Sangam v. State of Tamil Nadu [2016 (2) SCC 725]**, the Supreme Court further clarified the legal position with respect to the appointment of Archakas, which reads as follows:

“It is the considered view of the court that the validity or otherwise of the impugned G.O. would depend on the facts of each case of appointment. What is found and held to be prescribed by one particular or a set of Agamas for a solitary or a group of temples, as may be, would be determinative of the issue. In this regard it will be necessary to re-emphasise what has been already stated with regard to the purport and effect of [Article 16\(5\)](#) of the Constitution, namely, that the exclusion of some and inclusion of a particular segment or

denomination for appointment as Archakas would not violate [Article 14](#) so long such inclusion/exclusion is not based on the criteria of caste, birth or any other constitutionally unacceptable parameter. So long as the prescription(s) under a particular Agama or Agamas is not contrary to any constitutional mandate as discussed above, the impugned G.O. dated 23.05.2006 by its blanket fiat to the effect that, "Any person who is a Hindu and possessing the requisite qualification and training can be appointed as a Archaka in Hindu temples" has the potential of falling foul of the dictum laid down in Seshammal (supra). A determination of the contours of a claimed custom or usage would be imperative and it is in that light that the validity of the impugned G.O. dated 23.05.2006 will have to be decided in each case of appointment of Archakas whenever and wherever the issue is raised."

48. In the aforesaid decisions, the Apex Court has clearly laid down the importance of a qualified archaka and knowledge in agama shastras. The knowledge in agamas is an essential qualification to decide on the repair/renovation or preservation of the temples. It is not in dispute that for the 42,155 temples under the control of the HR&CE department, they do not have enough qualified stapathis. This Court already in the order passed in W.P.No.26896 of 2018 and also in the preceding paragraph, recorded the necessity to have qualified stapathis on the Board. Having qualified stapathis in the role of the

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department has manifold advantages viz., (i)availability of knowledgeable expert (ii) timely decisions can be taken (iii) nature of work required can be easily identified (iv)damage to the idol/sculpture can be avoided (v) will help in cutting down the costs and will facilitate routine surveillance and preservation and (vi)create employment opportunity to people of the religion with knowledge in agamas, tradition, culture and art. The HR&CE Department's administrative set up has to be revamped and boarded with stapathis, in-house qualified architectural engineers, agama experts, chemical analyst, jewel valuer and experts in epigraphy. The preservation of the temples includes not only the structures but also the idols, sculptures, scriptures, paintings and murals. A holistic and combined effort is required from the experts of various fields. All the renovation/repair works must be carried out only with the consent of the experts and stapathis. The renowned experts in Agamas can also be considered as consultants. Hence, in view of the fact that many temples in Tamil Nadu are ancient and requires regular visit and maintenance to avoid deterioration of the structure, idols, murals and

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paintings, it is very much essential that at least one qualified stapathi must be appointed at every District level depending upon the division of blocks and number of temples in each District.

49. Similarly, the courses offered in the Government College of Architecture and Sculpture at Mamallapuram must be upgraded with new scientific skills and computer technology brought in the syllabus. Post graduate courses must also be offered so as to harness the skill of interested and qualified personnel. This would ensure that the age old profession of sculpture is kept alive for generations to come. This Court opined earlier that an independent stapathi can be appointed as a traditional stapathi to avoid any bias with the opinion of the Government in the Expert Committee. However, taking into account the various directions issued earlier, considering the overall scheme and scope of the Act and the necessity to have adequate qualified stapathis in the department itself and only qualified persons must be permitted to occupy the post of Stapathi in the department and to avoid any backdoor recruitment, it will only be appropriate that such traditional stapathi is also a stapathi having necessary

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educational qualification and it is necessary that all posts must be filled up in a transparent manner as per the procedure laid down under the law.

50. Another important contention that is often raised is non appointment of a "Trustee" and managing the temples with department staff appointed as "Fit Person". As per the provisions of the HR & CE Act, the Commissioner is empowered to appoint a fit person to administer the temple in the absence of a Trustee and the same cannot be resorted to as a matter of routine exercise. The word "Fit" is synonymous to "Appropriate". The intention of the legislature is to appoint a person not only with impeccable integrity, devotion, sincerity, honesty and belief, but also a person with some basic knowledge in agamas, tradition and administration. The appointment cannot be mechanical, but it has to be made with application of mind in a transparent manner. Similarly, only a theist can be permitted to occupy any post in the temple or in the department as the occupation of any post not only requires sincerity, but also an interest and belief to augment the object of the Act. It is needless to state that the

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trustees so appointed must also be worthy to such appointments. Mere political recommendation or a person capable of making huge donations cannot be a criteria for being appointed as a Trustee. A true donor would be a person, who makes such donations in pursuance of his philanthropic or spiritual ideology but not for a *quid pro quo* appointment as a Trustee. Therefore, the trustees must also satisfy the requirements as mentioned above.

51. As discussed earlier, the redemption cannot be achieved by merely safeguarding the temples and its properties in its physical form. The object can be achieved only if the temple activities are restored to its traditional days. It is not out of sight to mention here that temples are the place, where people receive positive vibes and peace of mind when traditional music is played. Tamil Nadu is one of the prominent States where one can see Music is being performed by artistes during festivities and other important functions in the temples and its glory and sanctity have to be preserved. The artistes playing musical instruments such as Taval, Nathaswaram, Sruthi, Talam, Miruthangam deserve recognition so as to revive the already sinking

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tradition of music. The historic significance of the services of musicians in the temples of our State has to be preserved without leaving it to be diminished. The age old and extinguishing arts must be revived. For the said purposes, the HR&CE department must take appropriate steps for creation of certain posts, besides making appointments in accordance with law. Similarly, a person would seek employment from the Government mainly because it is a matter of job security during the service and also for retirement benefits.

52. As envisaged by the reports filed earlier before this Court and the articles in the newspaper, the heritage sites and the places of archaeological importance have to be properly maintained. That apart, the state is to constitute the "Heritage Commission" and "Mamallapuram World Heritage Area Management Authority" and to have a mechanism including a manual for the process of conservation, preservation and maintenance of heritage sites and monuments, the mode of collection and preservation of data, number and nature of members of Commission/Authority/Committee, their qualification and term of office, specific powers, duties and

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procedures to be followed, etc., which impelled this Court to pass orders, in the light of the materials available on record and the discussion extensively made in the above paragraphs, to the effect that all places of historical importance, whether religious or not have to be taken stock, recovered, maintained and celebrated. To fulfil the above, different wings of the central and state Governments have to act in tandem to protect the ancient monuments of this land, which is one of the treasures that have for long been left in lurch. It is also necessary that representatives from various departments with experts have to be brought together to ensure that not only the monuments are preserved, but also to ensure that appropriate repair works by qualified professionals are carried out to increase the longevity of the places of archaeological or historical importance, temples and monuments.

53. As regards the issues involved herein, the Supreme Court as well this Court rendered various decisions, a few of which are reproduced hereunder:

(i) In **Rajeev Mankotia vs. Secretary to the President of India,**

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[(1997) 10 S.C.C. 441], the Supreme Court had referred to the preservation of heritage buildings as a manifestation of our cultural heritage and the protection of monuments of State importance by the State Governments as well. Paragraphs 4, 5 and 6 of the said judgment read as under:-

"4. Before considering whether the Viceregal Lodge should be declared as historical heritage (monuments), let us have a look at the legal setting in that behalf. The Ancient Monuments and Archaeological Sites and Remains Act, 1958 (for short, the 'Ancient Monuments Act') provides for the preservation of ancient and historical monuments and archaeological sites and remains of national importance. The Act was enacted to clarify the legal position that the Central Government regulates exclusively ancient monuments etc. of national importance, leaving the field open to the State legislatures to enact the law on the subject, i.e., ancient monuments of State importance. Section 2(a) defines "ancient monument" to mean "any structure, erection or monument, or any tumulus or place of interment, or any cave, rock-sculpture, inscription or monolith, which is of historical, archaeological or artistic interest and which has been in existence for not less than one hundred years, and includes (emphasis supplied): (i) the remains or an ancient monument; (ii) the site of an ancient monument; (iii) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument ; and (iv) the means of access to, and convenient inspection of an ancient monument."

5. Section 3 of the Act declares that all ancient and historical monuments and archaeological sites and remains which have been declared by the Ancient and Historical Monuments and Archaeological

Sites and Remains (Declaration of National Importance) Act 1951, or by Section 126 of the States Reorganisation Act, 1956, to be of national importance shall be deemed to be ancient and historical monuments or archaeological sites and remains declared to be of national importance for the purpose of this Act. Section 4 empowers the Central Government to declare any ancient monuments or archaeological site and remains not included in Section 3 to be of national importance by giving two months notice of its so declaring. The Ancient Monuments Preservation Act, 1904 provides for the preservation of ancient monuments and objects of archaeological, historical or artistic interest. Section 2(1) defines "ancient monument" in the same language as Section 2(a) of the Ancient Monuments Act. Section 2 (4) defines 'maintain' and 'maintenance' to include the fencing, covering in, repairing, restoring and cleaning of protected monument and the doing of any act which may be necessary for the purpose of maintaining a protected monument or of securing convenient access thereto. Section 3 deals with 'protected monuments' and empowers the Central Government, by a notification in the official Gazette, to declare an ancient monument to be a protected monument under the said Act. Section 11 enjoins that the Commissioner shall maintain every monument in respect of which the Government has acquired any of the rights mentioned in Section 4 or which the Government has acquired under Section 10 etc.

6. It would, therefore, be manifest that all ancient and historical monuments and all archaeological sites and remains or any structure, erection or monument of any tumulus or place of interment shall be deemed to be ancient and historical monument or archaeological sites and remains of national importance and shall be so declared for the

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purpose of Ancient Monuments Act if they have existed for a century; and in the case of a State monument, of State importance covered by the appropriate State Act. The point of reference to these provisions is that an ancient monument is of historical, cultural or archaeological or sculptural or monolithic or artistic interest existing for a century and is of national importance or of State importance. In other words, either of them are required and shall be protected, preserved and maintained as national monuments or State monuments for the basis which not only gives pride to the people but also gives us insight into the past glory of our structure, culture, sculptural, artistic or archaeological significance, artistic skills and the vision and wisdom of our ancestors, which should be preserved and perpetuated so that our succeeding generations learn the Skills of our ancestors and our traditions, culture and civilization. They would have the advantage to learn our art, architecture, aesthetic tastes imbibed by the authors of the past and to continue the same tradition for the posterity. Preservation and protection of ancient monuments, is thus the duty of the Union of India and the State Governments concerned in respect of ancient monuments of national importance or those of State importance respectively to protect, preserve and maintain them by preserving or restoring them to their original conditions."

(ii) In **A.A.Gopalakrishnan v Cochin Devaswom Board and others, [(2007) 7 SCC 482]**, the Supreme Court held that it is the duty of the Court to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation.

The relevant portion of the said decision is extracted hereunder:-

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“The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their trustees/archakas/shebaita/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the authorities concerned. Such acts of fences eating the crops should be dealt with sternly. The Government, members or trustees of boards/trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation.”

(iii) In **K.Guruprasad Rao v. State of Karnataka and others [(2013) 8 SCC 418]**, it was observed by the Supreme Court as under:

“15. It was decided that the States should be burdened with the responsibility of protecting the ancient and historical monuments within their territories.” सत्यमेव जयते

“91. The protection of ancient monuments has necessarily to be kept in mind while carrying out development activities. The need for ensuring protection and preservation of the ancient monuments for the benefit of future generations has to be balanced with the benefits which may accrue from mining and other development related activities.

The immense cultural and historic wealth, not to mention the wealth of information which the temple provides cannot be ignored and every effort has to be made to protect the temple.

The Court emphasized the need for preservation and protection of ancient and historical Monuments, more so for it to be a matter of concern for the Government and private individuals alike. It reiterated the jurisprudence and the endeavour of the Courts in zealously protecting and Preserving the National rich cultural heritage including the monuments, i.e., Taj Mahal; National Parks; Sanctuaries; water bodies etc.”

(iv) In **Archaeological Survey of India v. State of M.P.** [(2014) 12 SCC 34], it was observed as under:

“The temple cannot be regarded as a 'Monument' under the aforesaid enactments and consequently, the archaeological department has no jurisdiction over it. Therefore, the temple, its administration and properties have to be governed and guided by the provisions of the HR&CE Act, which are in line with Article 26 of the Constitution of India.”

(v) In **Sarika Vs. Administrator, Shri Mahakaleshwar Mandir Committee, Ujjain (Madhya Pradesh) and others,** [(2018) 17 SCC 112], it was held by the Supreme Court as follows:

“8. Mahakaleshwar Jyotirlingam has so much importance for spiritual and other Gains, there is a constitutional duty to protect it as envisaged in Article 25, Article 26 Read with Article 49, at the same

time there is a fundamental duty under Article 51-A of the Constitution to promote harmony and the spirit of common brotherhood as Provided in Article 51-A and to value and preserve the rich heritage of our composite Culture. It is also the duty to strive towards excellence in all spheres of individual and Collective activity as provided in Article 51-A(a) to (j)."

(vi) In **the Indian National Trust for Architectural and Cultural Heritage (INTACH) v. The Chennai Metropolitan Development Authority, [2010 Writ L.R. 836]**, in respect of a writ petition filed in public interest to protect and conserve Bharat Insurance Building from being demolished without applying provisions of Rule 22 of the Development Control Rules for Chennai Metropolitan Area, 2004, it was observed by a Division Bench of this Court as under:

"19. Sometimes, in an enthusiastic effort "to clean up" a temple or a heritage building, we have seen that the persons who undertake this effort do sand blasting which actually damages the quality of the pillars or the structures as such. Therefore, the Government shall issue rules to prevent persons from undertaking any repair even under the name of renovation of heritage buildings without seeking the necessary approval of the Heritage Conservation Committee whenever an ancient monument, whether it is a structure or erection of historic, archaeological or artistic value as described in the Tamil Nadu (25 of 1966). The CMDA must take the

recommendation of the Committee for conserving the heritage buildings in the Chennai Metropolitan Area. The Government shall also enact rules so that such heritage buildings, wherever in the State, shall not be demolished except after obtaining the conditions similar to the ones provided for under the Development Control Rules."

From the aforesaid extract, it could be seen that the Government was directed to enact rules so that such heritage buildings are not demolished except after obtaining the permissions similar to the ones provided for under the Development Control Rules.

(Vii) A Division Bench of this Court in **K.S.Kuppusamy v. Commissioner, HR&CE Department, Chennai and others, by order dated 29.02.2016 in WP.No.1972 of 2015**, while dealing with the issue relating to fixation of rent for the shops and other establishments in the lands belonging to Temple, observed as under:

"19.To sum up, the Tamil Nadu Hindu Religious and Charitable Endowments Department is to safeguard the temples and uphold the glory at the same time, to respect and satisfy the sentiments of the people.

(i) Temples and Mutts in Tamil Nadu own more than 5 lakhs of acres of agricultural and other lands. The tenancy laws in Tamil Nadu and the non-functioning of Revenue Courts make it

almost impossible for land owner / temple to realize any rent or revenue from the lands leased. It cannot be denied that the Hindu Religious and Charitable Endowments Department takes no credible steps to realize the rents and arrears of rents. Many of the temples in Tamil Nadu though capable of earning huge income, are facing tremendous loss running to several Crores of Rupees and the magnitude of the loss is so huge that reflects the failure of existing mechanism. In such circumstance, to safeguard and protect the value and valuables of the temples, a Special Court could be formed to deal with cases relating to Hindu Religious and Charitable Endowments exclusively so that the cases would be cleared in a speedy manner within the time frame.

(ii) Though Hindu Religious and Charitable Endowments Department claims to have been administering only the secular aspects of temple administration and ensuring that the moneys due to the institutions are realized and used for the purposes for which the endowments were made, it sounds lofty but in reality, should say, no.

(iii) There is no external audit for many years which makes it impossible to gauge how much money is recovered and utilized. Therefore, in the considered opinion of this Court, to have a proper scrutinization of accounts and for effective control of management, External Auditors could be appointed. The money recovered thus should only be used for maintenance of temples and should not be used for any other purpose. Several small temples which go without everyday upkeep can be taken care of by the bigger temples of the area having sufficient and surplus income.

(viii)In **N.Dhanasekaran v the Tamil Nadu Government [2018-2-L.W.216]**, it was observed by a Division Bench of this Court as follows:

“60. As observed by us at the inception, the temples of Tamil Nadu are the living heritage of India. The temples have immense cultural significance, because of their historical, architectural, artistic, archaeological, socio-religious and economic values. The temples of Tamil Nadu find a place in World Heritage List. Construction of new temples in various countries by the Tamil communities itself is a classic example to the temple architecture tradition of Tamil Nadu.

61. It is a great challenge to define a singular conservation approach for the temples of Tamil Nadu, considering the complexity as a living heritage. Unfortunately and admittedly, the HR & CE Department neither has the capacity nor the qualified experts to carry out the conservation works at large scale and number. The multiple stakeholders involved in the functioning of the temple makes it difficult to have a defined approach. The sentiments of the people, the faith, historic architectural values and many more are the factors to be considered in the conservation process. The conservation of the temples should be in adherence to the Agamasastras, State and Central Statutes, scientific approach to the structural analysis. To put it simple, it is a herculean task to involve all the devotees in the process and sensitize them regarding history and significance of the temple and explain to them about their contribution in this process.

62. In fact, considering all these aspects, this Court had asked the United Nations Educational, Scientific and Cultural Organization

("UNESCO") to provide a factual report on the conservation, approach and processes followed in some these temples. After making field inspection in so many temples and assessing the ground reality, the final recommendations of the UNESCO qua the role of HR & CE Department would run thus:

"The sheer number of temples being handled by HR & CE is unimaginable and unless a very coherent operational structure along with an army of experts from various fields, skilled sthaphys and crafts persons is available at hand, the task of simultaneously conserving/maintaining/ repairing temples is not feasible. Either HR&CE should limit itself to the simple supervision and administration of immovable properties as per the Tamil Nadu HR&CE Act while the conservation works are assigned to a specialised department such as Archaeology or it should re-organise its structure including Technical experts at various levels and, ensure the empanelment of only qualified Sthapathis and contractors for such specialised works."

(ix)In **S.Sridhar v. State of Tamil Nadu and others reported in (2020)**

8 MLJ 438 : LNINDORD 2020 MAD 150, this Court held as under:

"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 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.

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.

....”

54. Lastly, a reference may be made to the decision of the Supreme Court in **Mrinalini Padhi v. Union of India [(2018) 7 SCC 785]**, wherein, it was categorically held that ‘the pilgrimage centres are of religious, social, historical and architectural importance, representing cultural heritage of our country and hence, not only Government, whether state or centre, but also the courts may examine such matter treating it as PIL on the judicial side and issue appropriate direction considering the factual situation of the case’. For brevity, the relevant passage of the said decision is reproduced below:-

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"7. There is no doubt that proper management of pilgrimage centres of great importance is a matter of public interest. These centres are of undoubted religious, social, historical and architectural importance, representing cultural heritage of our country. Millions of people visit these centres not only for tourism but also for seeking inspiration for the righteous values and for their well-being. They also make huge offerings and donations for advancement of such values."

"20. The issue of difficulties faced by the visitors, exploitative practices, deficiencies in the management, maintenance of hygiene, proper utilization of offerings and protection of assets may require consideration with regard to all Shrines throughout the India, irrespective of religion practiced in such shrines. It cannot be disputed that this aspect is covered by List III Item 28 of the Seventh Schedule to the Constitution of India and there is need to look into this aspect by the Central Government, apart from State Governments."

"30.9 Difficulties faced by the visitors, deficiencies in management, maintenance of hygiene, appropriate utilization of offerings and protections of assets with regard to shrines, irrespective of religion is a matter for consideration not only for the State Government, Central Government but also for Courts. Every District Judge throughout India may examine such matters himself or through any court under his jurisdiction and send a report to the concerned High Court so that such report can be treated as PIL on the judicial side and such direction may be issued as may be considered necessary having regard to individual fact situation."

55. In the ultimate analysis, this Court is of the firm view

that the cultural and heritage value as well as the Archaeological importance of the historical monuments, sites and temples and its properties, have to be conserved, preserved and maintained. As already stated above, this Court has time and again directed the HR&CE Department to take a list of all the temples, maintain the same, retrieval of the temple lands and properties from the encroachers, extent of lands owned by them, occupiers of the same and the arrears of rent/ lease amount to be recovered, make inventory of all idols, jewellery and valuables, create strong rooms and computerise and exhibit the same in the website and appoint qualified stapathis from the Government college at Mamallapuram for each District and also other staff and if necessary, get approval for creation of certain posts, like Oduvars, temple artistes, archakas etc. however, the department has not fully complied with the same in true spirit. Further, during the pendency of this *suo motu* writ petition, despite the order of this Court, the temple structures have been demolished and works have been carried on under the guise of renovation, thereby taking away the originality of the structure. It is

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also reported to us that the encroachment in Mamallapuram has not been removed. Though there are provisions under the Ancient Monuments and the Archaeological Sites and Remains Act and in the HR & CE Act to take action against the errant officials, the authorities concerned have not endeavoured to do so. Such allegations and complaints would vanish and the demand would subside, if the state and HR&CE Department are diligent, conscious and sensitive to protect the heritage of this land. Thus, having regard to the reports of the UNESCO team and the amicus curiae and also considering the role of this Court in acting as the capacity of *parens patriae* to protect the historical monuments including temples, idols, antiques, manuscripts, murals, etc., which is the root cause for initiation of this public interest litigation, the following directions are hereby issued to the respondent authorities for strict compliance:

COMMISSION ON HERITAGE

(1) The respondents shall establish Mamallapuram World Heritage Area Management Authority to manage and safeguard all the monuments and the same shall be notified within a period of eight (8)

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weeks from today.

(2) The respondents shall constitute the Heritage Commission consisting of 17 members within a period of eight (8) weeks from today, which shall act as an advisory body to the Mamallapuram World Heritage Area Management Authority and the Government as well.

(3) The Heritage Commission shall consist of 17 members including the representatives from Archaeological Survey of India, representatives from the State Archaeological Department, one renowned historian or anthropologist, two representatives of PWD department i.e., one from Building Structural and Conservation Wing and another from Architectural Wing, one representative from the HR&CE Department not below the rank of Joint Commissioner, one Stapati qualified from the Government College of Architecture and Sculpture, Mamallapuram or any other college in the state with similar objectives, two experts in Agamas and Shilpa Shastras and one chemical analyst. The inclusion of a representative from the UNESCO shall also be taken into consideration.

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(4) The Heritage Commission shall identify all the structures, monuments, temples, antiques with historical/archaeological importance within the State of Tamil Nadu, formulate a list with age of such monuments by categorising them within their period group, issue appropriate notification, render periodical advices to the State, supervise the restoration, repair works etc. and maintain the same.

(5) No structural alteration or repair of any monument / temple / idol / sculpture / murals of which are notified either under the Central Act or the State Act, shall take place without the sanction of the Heritage Commission.

EXPERT COMMITTEE

(6) The State shall reconstitute the State Level Expert Committee, consisting of a Structural Expert, Archaeological Expert, Conservation Expert, a qualified Traditional Stapathi preferably from the Government College of Architecture and Sculpture, Mamallapuram, an Expert from history, epigraphy, iconography and Fine arts and Two Agama Experts, besides a representative from HR&CE and PWD

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Departments. The State Level Expert Committee shall be responsible for carrying out and according sanctions for the repairs/renovations of the temples and archaeological sites, on the recommendation of the District Level Committees.

(7) The State shall constitute District Level Committees, which will consist of historical expert, qualified stapathis, Architectural Expert, Mural Expert, conservative expert, a representative from HR&CE Department, within a period of eight weeks.

(8) The Committee shall visit all the temples in their respective District, identify the temples and sculptures which are required to be brought under the State Act and which require immediate attention for repairing and prepare a report that is to be forwarded to the Government for appropriate action under the supervision of the Heritage Commission or the State Level Expert Committee as the case may be.

(9) The Committee shall meet at least once in every month and conduct periodical inspection of the monuments and temples in line

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with the objects of the HR&CE Act, Ancient Monuments and Archaeological Sites and Remains Act (Central as well as State Acts) and the Rules framed there under.

MANUAL

(10) The Government shall finalise the conservation manual containing the regulations for the functions of the Heritage Commission as well the Mamallapuram World Heritage Area Management Authority and the procedures for conservation, preservation and renovation of heritage and non-heritage temples, monuments and historical sites with the assistance of the officials attached to the State and Central ASI Departments and HR & CE Department, within a period of twelve (12) weeks.

MONUMENTS

(11) The ASI shall conduct state wide field survey of antique temples of more than 100 years old and estimate the damage and restore the structure according to its conservation rules to its former glory within a period of six (6) to twelve (12) months. The assessment document

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shall be kept in the official website of the Chennai ASI Circle, after having scanned and photographed, for the public scrutiny. It is open to the ASI to create a public portal, enabling the public to pass on information about historic monuments and temples of their area so as to enable the respondents to take immediate steps to preserve them.

(12) The conservation plan and its related documents shall be published in the official website of ASI before starting the conservation activity, so as to enable the worshippers to provide the feedback on the same.

(13) The HR&CE Department with the assistance of ASI, shall grade the temples, such as listed and non-listed, based on architectural values, historic importance, year of existence, etc.

(14) Architectural marvels, mural paintings, stone & wall inscriptions, wooden carving, copper plates, old antique utensils of the temples, etc, shall be protected, preserved and maintained properly by the respondents.

(15) The CAG audit shall be done with ASI expertise to assess the

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damage structurally and evaluate the value of the antique destroyed. Further, the compliance audit, financial audit and performance audit shall also be done every year for managing huge wealthy resources of the temples.

INSPECTION

(16) Periodical inspections shall be made by the higher officials in the cadre of the Additional Commissioner or Joint Commissioner of HR&CE Department, to look into the temple related issues and its properties.

(17) The ASI shall inspect and declare all the temples which are more than 100 years old, even if a single idol in a temple, as a monument according to the Directive Principles of State Policy.

(18) Annual Archaeological inspection should be done for all the temples and supervisory visits shall also be made.

REPAIRS, ALTERATION, RENOVATION WORKS ETC.

(19) No structural alteration or repair of any monument, temple or idol or sculpture or murals or paintings which come within the

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purview and control of the HR&CE Department, shall take place without the sanction of the State Level or District Level Committee and all pending works shall forthwith be proceeded further, only after obtaining sanction from the said Committee.

(20) The District Level Committees must identify the temples in which repair/renovation works have been carried out, wherein cement and white washing has been done detrimental to the original structure, inform the same to the State Level committee or the Commission as the case may be, so as to enable the appropriate authority to redo the work by restoring the originality. Every restoration without altering the form or material must be done after a detailed report in writing supported by adequate photograph and measured by drawing records.

(21) The Renovation and Conservation Wing for the HR&CE department constituted by the Government, by G.O.(Ms).No.108, TC&RE Department, dated 09.08.2019, should ensure that the members of the committee are trained with scientific / technical knowledge to undertake the works of conservation and should act

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strictly for the purpose to which it was constituted.

(22) The HR&CE department shall adopt the scientific technology in the process of documentation, preservation and conservation of heritage temples and its properties and valuables.

(23) To maintain the quality of ornamental works, the usage of sand blasting for cleaning the buildings, must be avoided and the shortfalls in the repair works done in the temples in violation of Agama and Shilpa shastras as pointed out in the report of the UNESCO team, must be attended to and the original position must be attempted to be restored.

TEMPLE FUNDS

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

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for propaganda of the tenets of all or any of the religious institutions under the HR&CE Act.

(25) The State Government shall allocate funds for protection and preservation of the ancient monuments declared under the State Act and for the functioning of the Commission as well the State and the District Level Committees. The State Government shall also make proper access / roads leading to the monuments. Such exercises shall be done within a period of six (6) to twelve (12) months from date of receipt of this order.

AUDIT

(26) The HR&CE Department shall frame standards and procedures for auditing the fixed and current assets of the temples and its properties.

(27) The HR&CE Department may permit the stakeholders of the various religious denominations to participate in the meetings conducted by the Committees as and when required.

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(28) The audit of the religious institutions shall be conducted periodically by an independent audit wing as required under Section 87 of the HR&CE Act and the same must be ensured by the HR&CE Department.

(29) The funds received from the donors shall be accounted and registered in the records maintained by the HR&CE Department.

(30) The respondent authorities shall ensure that the officials are updating the registers for maintenance of jewels, icons, valuables, articles, antiques, stolen or lost from the temples and also the cases relating to theft, missing of valuable gold, silver ornamental items, etc. and necessary action be taken to retrieval of the lost / theft items.

LAND REVENUE, RENT, ARREARS, ENCHROACHMENTS ETC

(31) The District Committees must take stock of the lands of all the temples within their respective District, list out the total extent with survey number and door number, vacant or leased, nature of land i.e agricultural or otherwise, current rent, date of fixation of rent, current

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market rent, name of lessee/tenant, duration of lease, whether authorised by the Commissioner, if the period of lease is beyond 5 years, nature of the lessee whether individual, firm or company and in case, lessee is an individual, then the religion of such individual, arrears if any of each lessee with period of default, list of cases pending before any forum or Court regarding the rent or entitlement to lease, list of encroachers including sub-tenant and sub-lessees and status of action taken to remove the encroachers, list of temple lands conveyed and action taken to retrieve them and status of the criminal complaint lodged against illegal sale of temple land, if any and document the same properly. A detailed report also be filed before this Court within a period of twelve (12) weeks.

(32) The agricultural lands fit for cultivation must preferably be let out to poor farmers rather than persons already holding with large extent of lands and for that purpose, a Scheme is to be devised and only after verification of extent of the land held by the lessee and obtaining an undertaking, the lands must be leased out in consonance with the provisions of the HR&CE Act.

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(33) The state Government or the Commissioner of the HR&CE department, who are the Trustee/administrator of the temple lands, shall not alienate or give away the lands contrary to the wish of the donor. The lands shall always remain with the temples. The public purpose theory shall not be invoked in cases of temple lands over which the interest of the community people of the religious denomination generally rests.

(34) Insofar as Service inams as per the customary practice is concerned, only one property shall be given to an individual during his/her tenure of service and after his/her retirement or disassociation with the temple, the same shall be recovered. Wherever more than one property has been given as inam, the same shall be recovered and given to some other deserving service providers. In case, the land/property is under the occupation of any third party, steps must be taken to evict them forthwith.

(35) The encroachment and illegal constructions in the protected area, archaeological sites, temple lands, etc., must immediately be removed. The extent of lands owned by the temples must be

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identified with the help of the revenue Department by the District Level Committee. The District Collector of the appropriate District, on the request of the Heritage Commission or State Committee or District Level Committees or by any officer of the HR&CE Department, shall forthwith take steps for the removal of any such illegal construction or encroachment or unauthorised occupants. Appropriate action must be taken against the errant Government officials of the central as well as state department and officers under the HR&CE department for not removing the encroachments in the protected and regulated area, within a period of eight (8) weeks on expiry of the time given.

(36) A list of defaulters with the arrears due from them must be prepared within a period of six (6) weeks and the same must be published in the website. Appropriate steps must be taken to evict them and recover the arrears as per the provisions of the HR&CE Act and the rules there under.

(37) The respondent authorities shall regulate the period of lease pertaining to the properties of the religious institutions and renewal of

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the same.

(38) The HR&CE Department shall allocate the agricultural lands belonging to the temples for organic farming and temple animal husbandry.

IDOL, STRONG ROOM ETC

(39) The District Level Committees shall take stock of all the idols in temples which fall within the definition of "Ancient Monument" or "Antique", prepare a list of such monuments, take photographs and computerize the same.

(40) The HR&CE Department and the Archaeological Survey Department of the Central and the State Governments shall display in their website about the details relating to number of idols or monuments or any article of historical importance that have been stolen from any temple or places of archaeological or historical importance, whether retrieved, whether FIR launched or not and the status of the cases.

(41) The HR&CE Department shall recover the missing moolavar

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idols and master property registers, for the purpose of conservation and heritage of temples.

(42) The HR&CE Department must ensure that all the temples have strong rooms, which are efficiently secured with latest scientific technology and must be under 24x7 video surveillance with alarm. All the existing ICON Centres must be brought under 24x7 video surveillance with alarm.

(43) The stock of idols in the temples must be computerised and the same must be maintained in the manual books, if not done earlier.

(44) The respondent authorities shall launch prosecution under the provisions of the Customs Act against any person who has involved himself in the theft, storage and movement of antiques / idols without valid licence.

(45) Central Idol and Antique Wing with ASI experts shall be constituted under the model of the CBI to handle the destruction, smuggling and theft cases.

(46) The HR&CE Department shall submit a report to this Court with

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a list of idols per ICON centre and about the requirement of the additional ICON centres, within a period of eight (8) weeks.

OTHUVAR, MUSICIAN, ARCHAGAR AND TEMPLE STAFF

(47) The HR&CE Department must appoint adequate number of Oduvars well trained in Thirumurai and Battargal in Divyaprabandams for each temple and musicians accustomed the temple tradition and ensure that Thevara paadasalai and Prabhandha paadasalai are established in each saiva and vainava temples to impart education regularly.

(48) The HR&CE Department shall appoint enough number of qualified and eligible archakas for each temple subject to the prevailing rules and regulations and ensure that the daily rituals are duly performed.

(49) The HR&CE Department shall engage poets, folklore and drama artists, who must exhibit traditional and legendary stories associated with the temple during festivals. The State Government must also endeavour to publicise the rich heritage, history and culture of this

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land; and for that purpose, organise seminars, tours, competitions, etc.

STAPATHI

(50) The HR&CE Department shall appoint qualified stapathis in temples taking note of the number of temples in each Block and District; if the sanctioned post is not sufficient, they shall take steps to get necessary orders from the Government in this regard.

STAFF SALARY, BENEFITS, TRANSFER ETC

(51) The salary and other service and retirement benefits of all the staff of the temple including that of the archakas and oduvars must be fixed as per the provisions of the Minimum Wages Act and on par with the Government servant.

(52) The terminal benefits of the retired staff in the temples under the HR&CE Act must be settled within 30 days from the date of their retirement. A list of cases where terminal benefits have not been settled must be filed before this court within a period of eight (8)

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weeks.

(53) A fixed salary be awarded to the trustees of the temple, which can be arrived at based on the income of the religious institution to ensure participation on a full time basis by the selected trustee, subject to penal and disciplinary provisions of the Act. In a routine manner, periodical transfer for the staff of the temples must be made.

TRUSTEE

(54) The HR&CE Department shall file a report before this Court within a period of eight (8) weeks listing out the number of temples without Trustees, the duration of such vacancy, the particulars of the persons appointed as "Fit Person" and the steps taken by the Department to appoint trustees.

(55) If no hereditary trustees stake claim, then steps must be taken to appoint non-hereditary trustees. The non-hereditary trustees must be from the religious denomination, to which the temple belongs to,

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without the political background.

(56) Stringent rules on the conduct, character, interest and knowledge on both religious affairs as well as administrative abilities of the trustees, must be enacted to ensure that the right person is appointed to manage the religious affairs of the temples.

(57) Keeping in mind that the overall administration shall be with the HR&CE Department, the authorities shall supervise the affairs of the religious institutions ensuring that the HR&CE Act is strictly complying with by the trustees and taking necessary remedial steps for which they are paid an annual contribution as specified under Section 92.

LEGAL ACTION

(58) The disciplinary action shall be taken against the officials, who are responsible for demolition and reconstruction of the ancient temples, without necessary approval/ permission from the required authority.

(59) The respondent authorities shall look into it as to whether appropriate departmental action is taken against the erring officials of

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the HR&CE Department and trustees of the temples under Sections 53 and 66 of the Act against whom, the allegations with regard to the loss and theft of idols, illegal transfers of the properties / lands owned by the public religious institutions / temples are made, after conducting proper enquiry in this regard.

EDUCATION

(60) The State Government shall take steps to upgrade the courses offered in Government College of Architecture and Sculpture, Mamallapuram and also offer post graduate courses on par with other colleges so as to excel in the profession, strengthen the in-house skill and management of the temples with the help of qualified persons as pointed out by the UNESCO.

FORMATION OF TRIBUNAL, ETC.

(61) A Special Tribunal shall be formed to exclusively deal with the matters relating to the religious institutions come under the provisions of the HR&CE Act, such as, disputes on religious affairs, culture, tradition, heritage, inams and recovery of pending rent,

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validity of lease, illegal encroachment and other temple and mutts land issues.

(62) Such Tribunal shall be constituted under the Head of the Working or Retired District Judge as Chairman with two or more Members from the rank of the retired Subordinate Judicial Officers with the jurisdiction to decide all the matters related to the nature and status of the Religious Institutions, privileges and performances of rituals and poojas in all the religious institutions and their properties and the right of the worshippers by conducting the cases like a Civil Court of summary nature within the maximum period of six (6) months.

RULES

(63) All the employees and trustees concerned with the temples are made to be governed by the Tamil Nadu Government Servants Conduct Rules. There shall be a prohibition for the person with political background to be appointed as a Trustee or employee of the temple in any cadre, in view of Rule 14 of the Tamil Nadu

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Government Servant Conduct Rules.

(64) The Central Government shall implement the Ancient Monuments Act in letter and spirit, by declaring all religious structures more than 100 years old including temples, temples' tanks, mutts, temple chariots, jewels, art, artefacts, and sacred groves etc., including private denomination temples, as 'national monuments' with immediate effect.

(65) A High level committee has to be formed to review the HR&CE Act once in three years to make necessary amendments, however, subject to judicial review.

(66) The HR&CE Act must be suitably amended by strict incorporation of penal provisions as per IPC and the procedures laid down under the Cr.P.C to cover all the illegal acts done in respect of the temples for proper action.

(67) Steps be taken to amend the HR&CE Rules by incorporating various provisions on the line of National Conservation Policy and

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International Charters regarding conservation of monuments.

(68) A District wise committee headed by District Ayurvedic head doctor and Siddha head doctor, trustees, food and safety officer and devotees shall be constituted for procurement of genuine, traditional and scientifically declared safer prasadam and abishegam items.

GENERAL

(69) Daily maintenance to upkeep the animals, which are considered as customs, shall be accorded to scientific and responsible local Government Veterinary Officers and Forest Department Officials.

(70) Water bodies must be handed over to a scientific committee consisting of Local ASI Officer and local CPWD officer, for preservation and maintenance.

(71) All the expenses incurred for maintenance by the ASI officers etc., shall be borne by the HR&CE Department.

(72) The respondent authorities shall maintain transparency in all the matters.

(73) The HR&CE Department shall display the history of the temple

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in the granite board in front of the temples and also fix direction board guiding route to the temples.

(74) The Government shall provide necessary assistance in all aspects, to the HR&CE department to comply with the directions of this Court within the time stipulated.

(75) No litigation in respect of the subject matter of the present petition shall be entertained by subordinate courts. In case any suit or other legal proceedings are filed, the subordinate courts shall refer the same to this court in view of the decision rendered by the Honble apex court in **Mrinalini Padhi case** (cited supra). For clarification, if any, the party interested / affected is at liberty to approach this Bench in the present proceeding itself, as directed by the Hon'ble Chief Justice, by order dated 23.08.2016.

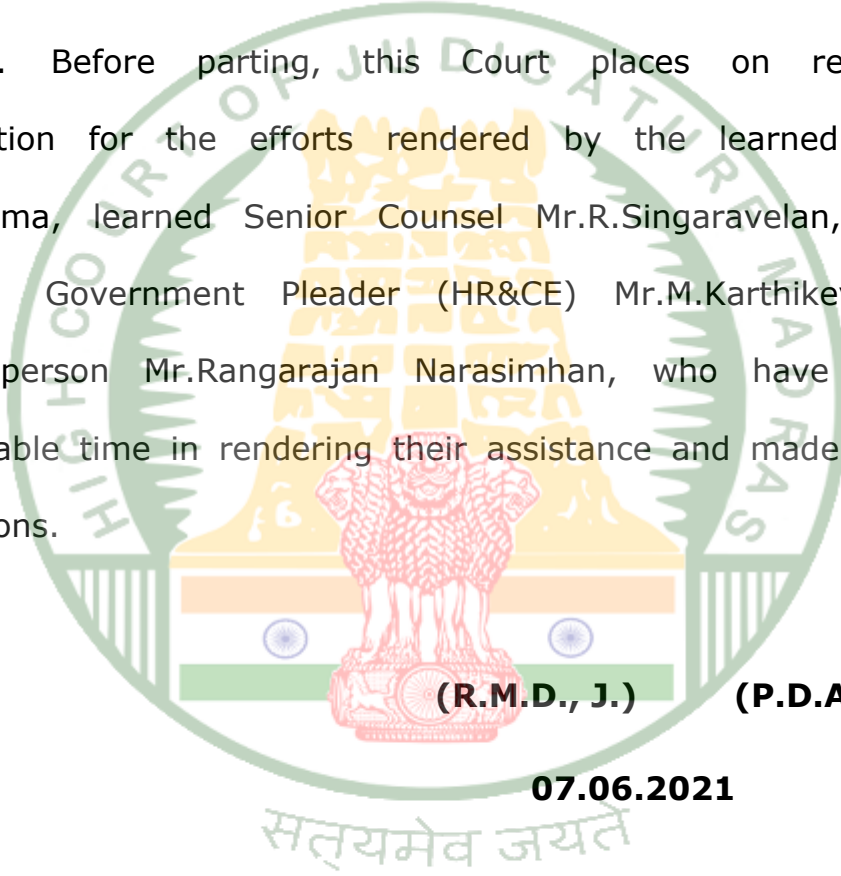
56. With the aforesaid directions, this *Suo Motu* W.P No. 574 of 2015 and W.P.(MD) No.24178 of 2018 are disposed of. Since this Court has elaborately discussed the issues involved and issued very many directions touching every aspect, the Miscellaneous Petitions

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are liable to be closed and are accordingly, closed. No costs.

57. Post the matter for reporting compliance after twelve (12) weeks.

58. Before parting, this Court places on record its appreciation for the efforts rendered by the learned counsel Dr.S.Padma, learned Senior Counsel Mr.R.Singaravelan, learned Special Government Pleader (HR&CE) Mr.M.Karthikeyan and party-in-person Mr.Rangarajan Narasimhan, who have devoted considerable time in rendering their assistance and made valuable suggestions.



(R.M.D., J.)

(P.D.A., J.)

07.06.2021

सत्यमेव जयते

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Internet: Yes.No

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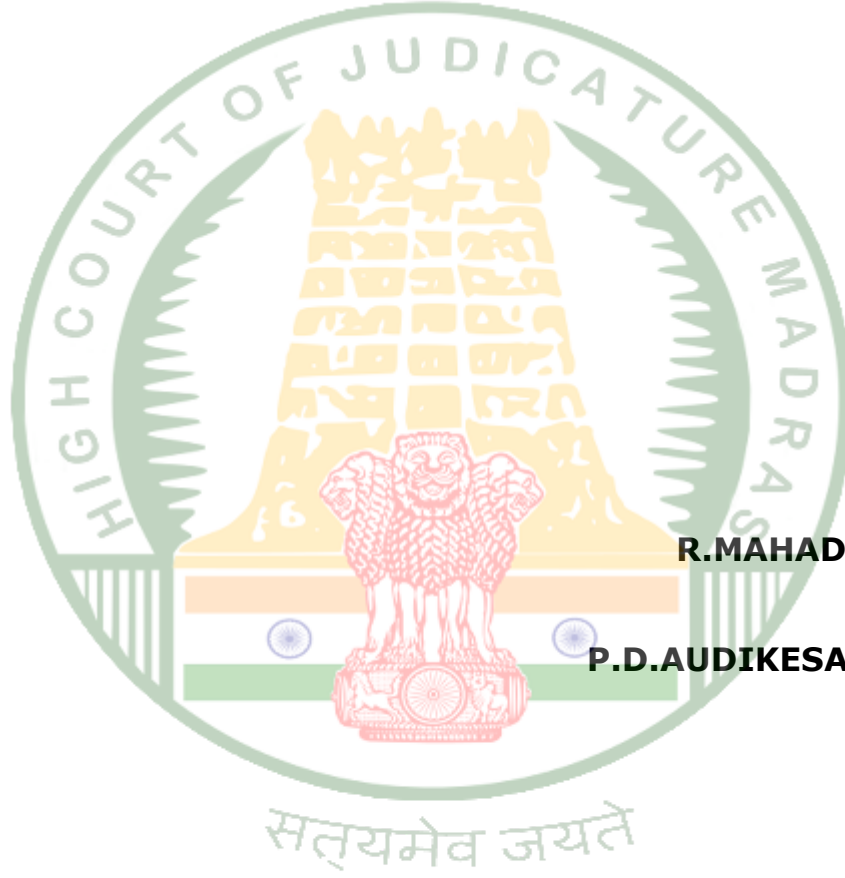
To

- 1.The Director,
Archaeological Survey of India,
Janpat, New Delhi-110 004.
- 2.The Superintending Archaeologist,
Chennai Circle,
Archaeological Survey of India,
Chennai -9.
- 3.The Chief Secretary,
Government of Tamil Nadu,
Secretariat,
Fort St. George, Chennai-600 009.
- 4.The Secretary,
Government of Tamil Nadu,
Tourism, Culture and Religious Endowment Department,
Secretariat,
Chennai – 600 009.
- 5.Secretary, Heritage Conservation Society,
No.102/x, Kurunji Street,
Polepettai, Tuticorin.
- 6.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Chennai -34.

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Suo Motu W.P.No.574 of 2015 and
WP(MD).No.24178 of 2018



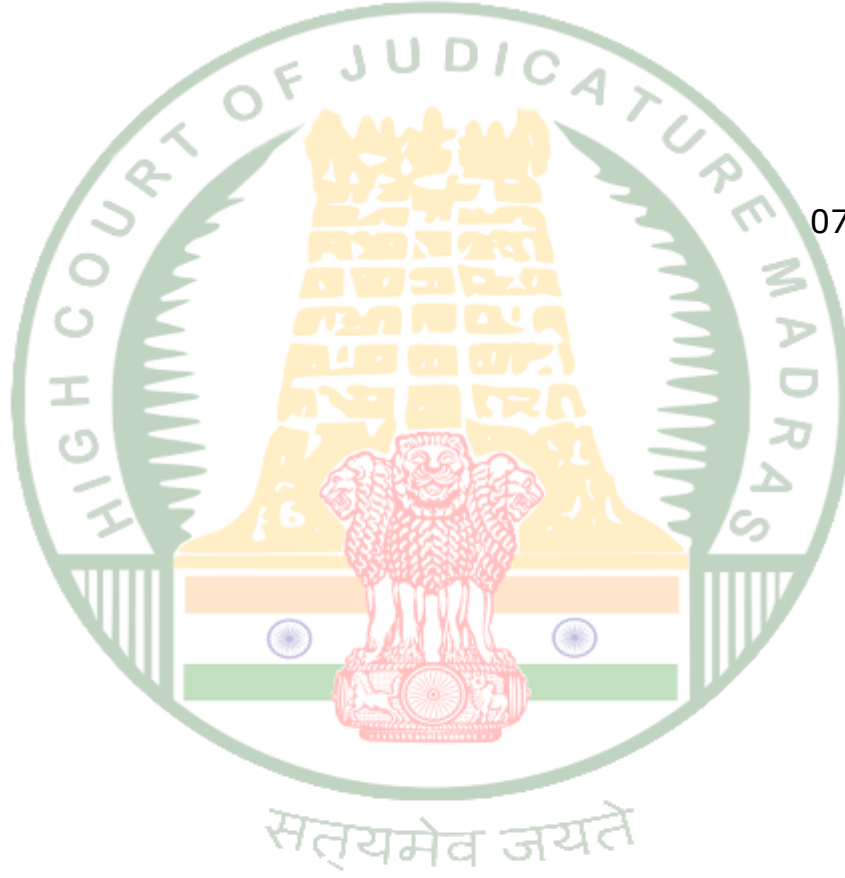
R.MAHADEVAN, J.
and
P.D.AUDIKEVALU, J.

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Suo Motu W.P.No.574 of 2015 and
W.P.(MD)No.24178 of 2018

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