

Sri-La-Sri Sathya Gnana Mahadeva ... vs The Commissioner on 22 May, 2025

Author: D.Bharatha Chakravarthy

Bench: D.Bharatha Chakravarthy

2025:MHC:1197

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 07.04.2025

Orders pronounced on : 22.05.2025

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.34716 of 2002

Sri-la-Sri Sathya Gnana Mahadeva Desika
Paramachariya Swamigal,
for the Guru Maha Sannithanam,
Adheenakarthar of Velakuruchi Mutt
and Sole Hereditary trustee of Abishehakattalai
and Annadhana Kattalai, Sri Thiyagarajassamy temple,
Thiruvvarur, residing at Thirupugalur,
Nagapattinam District. .. Petitioner

Versus

1. The Commissioner,
Hindu Religious and Charitable Endowment
Department, 119 Uthamar Gandhi Salai,
Chennai - 34.
2. The Executive Officer,
Arulmigu Thiyagarajaswami Temple,
Thiruvvarur.

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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari calling for the records relating to the notice in R.C.No.48212/2002/D1, dated 12.01.2010 issued by the 1st respondent and quash the same.

For Petitioner	: Mr.V.R.Shanmuganatham, for Mr.A.R.Nixon
For Respondent	: Mr.N.R.R.Arun Natarajan, Special Government Pleader for R1
	: Mr.A.K.Sriram, Senior Counsel for M/s.A.S.Kailasam Associates

ORDER

This Writ Petition is filed to call for the records relating to the notice in R.C.No.48212/2002/D1, dated 11.07.2002. Subsequently, the said show- cause notice was amended by another show-cause notice, dated 12.01.2010, and accordingly, the prayer in the Writ Petition has also been amended to challenge the show-cause notice as amended on 12.01.2010. <https://www.mhc.tn.gov.in/judis> (Uploaded on: 22/05/2025 04:23:55 pm)

2. The factual background from which the Writ Petition arises is that Arulmighu Thiyaagaraaja Swami Thirukoil is an ancient temple. The presiding deity of the temple is Sri Thiyaagaraaja Swamy. The Aazhi Ther (temple chariot) is the largest in South India and is widely renowned. A peculiar feature of the temple is that there are no properties directly registered in the temple's name. Thirteen kattalais oversee all the activities of the temple. Each of the kattalais manages several hectares landed properties and provides for the temple's needs. Among the 13 kattalais, Abisheka kattalai, Annadhana kattalai, and Rajan kattalai are the most significant. For both the Abhisheka kattalai and Annadhana kattalai, the Aadheena karthars of the Velakurichi Mutt serve as the hereditary trustees. At the time of filing the present Writ Petition, the petitioner's father, Sri-la- Sri Ajappa Nateswara Pandara Sannathi, was the hereditary trustee, and now, Sri-la-Sri Sathya Gnana Mahadeva Desika Paramacharya Swamigal, the Aadheena karthar, is the current hereditary trustee. <https://www.mhc.tn.gov.in/judis> (Uploaded on: 22/05/2025 04:23:55 pm)

3. It is the case of the petitioner that between the years 1817 and 1842, the property management of these kattalais was taken over by the British Government and was subsequently returned. In the year 1910, a scheme was framed for the administration of these two kattalais, and it is stated that the

same was upheld. While so, in the year 1927, the Madras Hindu Religious and Charitable Endowments Act, 1927 was enacted. In the said Act, Chapter VI-A was introduced by an amendment via Act IX of 1937, enabling the then Hindu Religious and Charitable Endowments Board to notify the temples and specific endowments governed by a scheme in cases of mismanagement. On 25.05.1937, by a notification via G.O.No.638, the Government appointed Executive Officers for the aforesaid two kattalais on 12.07.1937. When a similar exercise was conducted concerning yet another kattalai, namely, Rajan kattalai, the hereditary trustee therein, being the Dharmapuram Aadheenam, challenged the notification by way of a suit in C.S.No.20 of 1938, which ultimately ended in a compromise whereby the property management was promised to be returned to the Mutt, and the Mutt <https://www.mhc.tn.gov.in/judis> (Uploaded on: 22/05/2025 04:23:55 pm) then became liable to submit all accounts to the supervision of the board. The Act of 1927 was repealed by the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1956. The very same Chapter VI-A in Act of 1927 found its place in Chapter VI of the Act of 1951. It also provided that the notifications issued under the erstwhile Act would be deemed to be notifications under the current Act as well.

4. The Government issued G.O.No.3069, dated 04.08.1956, extending the notifications that were earlier issued in 1937 under the previous Act. This Government Order was subsequently challenged by Rajan Kattalai, and the challenge was ultimately upheld by the Hon'ble Supreme Court of India, which quashed the notification in the case of Sri-la-Sri Subramana Desika Gnanasambanda Pandarasannadhi Vs. State of Madras and Anr. . Thereafter, the present Act, namely the Hindu Religious and Charitable Endowments Act, 1959, was enacted with the same provisions contained in Chapter VI. Since the earlier notifications were quashed by the Hon'ble 1 AIR 1965 SC 1578 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 22/05/2025 04:23:55 pm) Supreme Court of India, the Government amended the Hindu Religious and Charitable Endowments Act, 1959, by introducing Sections 75-A to 75-C to validate the very same notifications. On 17.05.1966, the Commissioner of the HR & CE Department issued notices under the amended Section 75-B of the Act to all hereditary trustees, requesting them to show cause why the earlier notifications should not be continued indefinitely.

5. In spite of the objections submitted by the hereditary trustees, G.O.No.2347, dated 13.07.1966, was issued extending the erstwhile notifications. The present petitioner challenged the said Government Order by filing O.S.No.12 of 1968 on the file of the learned Subordinate Judge, Nagapattinam. However, the suit was dismissed by the judgment and decree dated 17.05.1980 on the ground that constitutional validity can be decided only by the Constitutional Courts. Aggrieved thereby, the then hereditary trustee of the kattalai preferred A.S.No.176 of 1984, and the Division Bench of this Court allowed the appeal by the judgment and decree dated <https://www.mhc.tn.gov.in/judis> (Uploaded on: 22/05/2025 04:23:55 pm) 22.12.1993, thereby setting aside G.O.No.2347, dated 13.07.1966. In the said judgment, it has been categorically held that Sections 75-A to 75-C are unconstitutional vis-à-vis the kattalai. Aggrieved thereby, Civil Appeal Nos.2562 - 2564 of 1994 were filed by the department. However, these were withdrawn with the liberty to proceed under the Act. It is noteworthy that the management of the kattalai, which has been conducted by the Executive Officer of the temple since 1937, was never handed back to the petitioner trustee. Under these circumstances, the original show-cause notice impugned in the Writ

Petition, dated 11.07.2002, which was issued under Section 75-B of the Act, 1959, was directed to the then hereditary trustee. The then hereditary trustee was directed to show cause why the notifications issued originally should not be continued. Challenging this, the present Writ Petition has been filed.

6. Pending the Writ Petition, the original writ petitioner, namely Sri- la-Sri Ajappa Nateswara Pandara Sannathi, died on 02.05.2006, and the <https://www.mhc.tn.gov.in/judis> (Uploaded on: 22/05/2025 04:23:55 pm) present writ petitioner, namely Sri-la-Sri Sathya Gnana Mahadeva Desika Paramachariya Swamigal, succeeded him as the hereditary trustee. During this time, the proceedings dated 12.01.2010 were also issued amending the original show-cause notice. Therefore, the prayer in the Writ Petition was also sought to be amended, which was allowed by the order dated 12.04.2012, and the present petitioner was substituted in place of the original petitioner.

7. The Writ Petition is opposed by the respondents, who have filed a detailed counter-affidavit. A reply affidavit has also been filed in response to the counter-affidavit.

8. Heard Mr.V.R.Shanmuganatham, for Mr.A.R. Nixon, learned Counsel for the petitioner; Mr.N.R.R. Arun Natarajan, learned Special Government Pleader (HR & CE) for the first respondent; Mr.A.K.Sriram, learned Senior Counsel for M/s. A.S.Kailasam Associates for the second <https://www.mhc.tn.gov.in/judis> (Uploaded on: 22/05/2025 04:23:55 pm) respondent.

9. Mr.V.R.Shanmuganatham, the learned Counsel for the petitioner, submits that the original show-cause notice seeks once again to continue the same notification issued under the Act 2/1927, which is expressly held to be illegal. Even though, pending the Writ Petition, an amendment was issued on 12.01.2010 and seems to be a show-cause notice under Sections 71 and 72 of the Act, absolutely no fresh allegations whatsoever were made in the show-cause notice. As a matter of fact, Section 71 of the Act enables them to take over the management only if there is any mismanagement. These kattalais have been managed solely by the Executive Officer since 1937. Therefore, no allegations can possibly be made against the hereditary trustees. Consequently, the original notice, when read with the amendment, leads the respondents nowhere. In any event, this is a case in which the petitioner has a beneficial interest in the kattalai. The petitioner receives a monthly allowance, is also entitled to reimbursement of Gurupooja <https://www.mhc.tn.gov.in/judis> (Uploaded on: 22/05/2025 04:23:55 pm) expenditure, and is paid varisai. These have been periodically fixed by the Commissioner himself, and the order dated 11.01.1985, revising the monthly allowance, is relied upon by the learned Counsel. Therefore, it can be seen that the petitioner has a beneficial interest in the kattalai.

10. The original writ petitioner, i.e., the father of the present petitioner, also filed O.S.No.13 of 1962 before the learned Subordinate Judge, Nagapattinam, after the earlier perquisites were disallowed in Appeal No.56 of 1961 by the authorities. By the judgment and decree dated 18.10.1963, these beneficial interests in favour of the hereditary trustees were held to be protected under Section 105 of the present Act, and the Court passed a decree restoring the perquisites. Therefore, the petitioner holds a beneficial interest in the kattalai, and if the hereditary trustees possess a beneficial interest in the kattalai by virtue of Section 76 of the Act of 1959, then the entire Chapter VI is not applicable,

and thus the impugned show-cause notice, as amended, is without jurisdiction. The learned <https://www.mhc.tn.gov.in/judis> (Uploaded on: 22/05/2025 04:23:55 pm) Counsel for the petitioner would further submit that if the entire petitioner is completely divested of the management, such an action cannot withstand scrutiny under Article 26 of the Constitution of India.

11. Mr.N.R.R.Arun Natarajan, learned Special Government Pleader (HR & CE) for the first respondent, would submit that the impugned orders are in the nature of a show-cause notice and therefore, no Writ Petition challenging the same can be entertained. Even when the Writ Petition was originally filed by the father of the present petitioner, he never submitted any affidavit, and without any Power of Attorney or right whatsoever, the affidavit is filed only by the present petitioner. Therefore, on that score also, the Writ Petition should not be entertained by this Court. The show-cause notice, originally given, would also stand in view of the fact that the kattalais have to be properly maintained to augment revenue for the temple. In any event, the Hon'ble Supreme Court of India had given liberty for the authorities to proceed under Sections 71 and 72 of the Act. The reasons are <https://www.mhc.tn.gov.in/judis> (Uploaded on: 22/05/2025 04:23:55 pm) stated in the amended notice as to why it was further proposed to take over the management. Therefore, the petitioner can only submit his explanation and cannot approach this Court by way of the present Writ Petition.

12. It cannot be said that the petitioner has a beneficial interest in the kattalais. It is only the Deity that is the beneficiary of the kattalai. The payment of remuneration or reimbursement of expenses cannot be termed a beneficial interest. The learned Special Government Pleader will take this Court in detail concerning the various findings made in O.S.No.20 of 1938 filed by the Rajan kattalai and the terms of compromise entered thereunder. The learned Special Government Pleader will submit that in this case, even though it is stated that a scheme was framed before the year 1927, no such scheme has been produced before this Court. Therefore, in the absence of the scheme, the claim of the petitioner that he has a beneficial interest cannot be acknowledged. The learned Special Government Pleader will submit that a beneficial interest is one where the trustees have income. He <https://www.mhc.tn.gov.in/judis> (Uploaded on: 22/05/2025 04:23:55 pm) will cite the example of Pandi Kovil in Madurai, whereby the trustees have a right to 50% of the hundial income, whereas, in the instant case, it is merely the honorarium or reimbursement of the expenditure.

13. Mr.A.K.Sriram, learned Senior Counsel for the second respondent, submits that the kattalai possesses large tracts of land, which are for the sole benefit of the temple. The petitioner cannot hold a beneficial interest in the kattalai. Therefore, the arguments based on Section 76 of the Act are unsustainable. The petitioner, being an ascetic, will not be in a position to manage the extensive properties lying in various locations, which itself would be a reason for issuing a notification. In fact, it is alleged that the petitioner cannot manage the properties of the Vellakurichi Aadheenam, by himself and they are being managed with the help of managers. Therefore, in view of the specific liberty granted by the Hon'ble Supreme Court of India, this Court should permit the authorities to conclude the inquiry pursuant to the show-cause notice, and the petitioner has statutory remedies <https://www.mhc.tn.gov.in/judis> (Uploaded on: 22/05/2025 04:23:55 pm) as well as the option to file a suit against any final orders that may be passed.

14. The learned Senior Counsel would rely on the judgment of the Constitutional Bench of the Hon'ble Supreme Court of India in Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt for the proposition that the authorities would be entitled to settle a scheme for the kattalais, as in the instant case. The learned Senior Counsel would also rely on the judgment of this Court in Sri La Sri Subramania Desika Gnanasambanda Pandara Sannathi, Hereditary trustee of the Rajan Kattalai Sri Thyagarajaswami Koil, Tiruvarur Vs. The State of Madras, represented by Secretary, Revenue Department to highlight the nature of the kattalais and the nature of the offices, asserting that it cannot be claimed that there is a beneficial interest in the instant case. Therefore, he would pray that the Writ Petition 2 AIR 1954 SC 282 3 1962 75 LW 546 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 22/05/2025 04:23:55 pm) be dismissed and the authorities be permitted to proceed further.

15. Upon considering the rival submissions made and reviewing the material records of the case, the following questions arise for consideration in this case:

(i) Whether the Writ Petition should be entertained, as it challenges the show-cause notice?

(ii) Can the first respondent extend the notification under the Act of 1927 by exercising power under Section 75-B of the Hindu Religious and Charitable Endowments Act of 1959?

(iii) Can the authorities proceed under Sections 71 and 72 of the Hindu Religious and Charitable Endowments Act, 1959?

Question No.(i):-

16. Firstly, it can be seen that the Writ Petition was filed in 2002, challenging the show-cause notice dated 11.07.2002 in its original form, and <https://www.mhc.tn.gov.in/judis> (Uploaded on: 22/05/2025 04:23:55 pm) an interim order was granted. When the show-cause notice was amended by a further notice dated 12.01.2010, the amendment in the prayer was also ordered, and interim orders were granted. The Writ Petition, having been entertained, has been pending on the file of this Court for these years. Secondly, the arguments made pertain to the question of the jurisdiction of the respondent authorities to proceed further. The jurisdiction is questioned based on the provisions contained in the Act as well as the previous rounds of litigation that were carried up to the Hon'ble Supreme Court of India. Therefore, since the Writ Petition is primarily filed with reference to the jurisdiction of the respondent authorities, it cannot be dismissed in limini by holding that it is solely against the show-cause notice. It becomes essential to decide whether the respondents had the power to issue the show-cause notice. Only if it comes to the consideration of the merits of the explanation, can the petitioner be asked to submit his explanation. In light of this, I answer the question in favour of the petitioner and reject the contentions of the learned Counsel for the respondents, holding that, in the <https://www.mhc.tn.gov.in/judis> (Uploaded on: 22/05/2025 04:23:55 pm) facts and circumstances of the case, this Writ Petition is maintainable and entertainable.

Question No. (ii):-

17. Originally, when the show-cause notice was issued on 11.07.2002, it sought to establish why the notification made under Chapter VI-A of the Act 2/1927, which was in effect until 15.07.1966, should not be continued further. The operative portion of the show-cause notice is extracted hereunder:-

"Whereas the Commissioner is satisfied that in the interests of proper administration of Arulmigu Thigarajaswamy temple, Thiruvarur and its kattalais belonging thereto, the notification already made under Chapter VI-A of the Act 2/1927 and continued till 15.7.66, is necessary to continue further, the Hereditary trustees of endowments, the fit person and the Executive Officer of Arulmigu Thiagarajaswamy temple and all other persons having interest in the said temple and its endowments are hereby required to showcause in writing on or before 19.8.2002 as to why such Notification should not be continued. The objection or objections if any received in response to this notice will be considered by the Commissioner at his Office in Chennai at 2.30 p.m. on 19.8.2002, when all the persons having interest may appear either in person or by Counsel and made <https://www.mhc.tn.gov.in/judis> (Uploaded on: 22/05/2025 04:23:55 pm) representations if any. The objectors shall submit two additional copies of the objection they intend to file, in writing. The persons have interest and the parties in the above matter are required to appear either in person or by a duly authorized Counsel and represent their case at the time and place aforesaid."

18. Regarding the extension of the notification, when the respondents sought to engage in a similar exercise and issued G.O.Ms.No.2347 (Revenue), dated 13.07.1966, the petitioner filed O.S.No.12 of 1968, which was ultimately decreed by the Division Bench of this Court on 22.12.1993. It is essential to extract the operative portion of the decree, which reads as follows:-

"1. That the decree of the Lower Court be and hereby is set aside.

2. That the notification of Sri Thyagarajaswami Temple (and the Kattalais attached thereto) Tiruvaruru and made in G.O.Ms No.2347 (Revenue) dated 13.7.1966 be and hereby is cancelled and set aside and

3. that the parties directed to bear their respective cost through out."

19. As a matter of fact, the judgment of the Division Bench in Sri-la- Sri Kailai Subramania Desiga Gnanasambanda Pandarasannadhi Vs. <https://www.mhc.tn.gov.in/judis> (Uploaded on: 22/05/2025 04:23:55 pm) The State of Madras, rep. by the Collector of Thanjavur at Thanjavur and Ors. is relied upon. Essentially, the Division Bench considered that when the original notification was sought to be issued under the Act 2/1927 and when the said notification, under Chapter VI-A of the said Act, was sought to be continued after the passing of the Madras Hindu Religious and Charitable Endowments, 1951 (Act 19/1951), it was challenged in respect of the very same temple by the trustees of the Rajan kattalai. The matter went up to the Hon'ble Supreme Court of India in

Sri-la-Sri Subramana Desika Gnanasambanda Pandarasannadhi Vs. State of Madras and Anr. (cited supra), and the Hon'ble Supreme Court of India quashed the notification. The Division Bench held that the amendment under Section 75-A, in extending the notifications, would effectively amount to disobeying and disregarding the said decision of the Court. The object itself makes this clear. Therefore, the Division Bench held that Section 75-A makes a direct inroad into the judicial powers of the State and, as such, it must necessarily be struck down concerning the notification impugned in the suit. Thereafter, 4 1994-1-L.W.245 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 22/05/2025 04:23:55 pm) it further held that once Section 75-A becomes invalid, the provision under Section 75-B to extend the validity of a rule that is non-est cannot also be made, and therefore, it held that the said Government Order, passed under Section 75-B of the Act, is not valid. Paragraph Nos.26 and 27 of the said judgment are extracted for ready reference:-

"26. On the ratio laid down in the decisions referred to above, the enactment of S. 75-A cannot stand the test of judicial scrutiny. In the present case by introducing S. 75-A the Legislature has simply directed the Commissioner of Hindu Religious and Charitable Endowments and Executive Officer of Sri Thiagarajaswami temple to disobey or disregard the decision of the highest court of the land in 1965(2) M.L.J.

167. The obvious purpose of S. 75-A in extending the impugned Notification is to nullify the effect of this decision of the Supreme Court. The object in the explanatory note Ex. B33 makes no secret of the said fact and in fact the written statements filed on behalf of the Department and the Government aver that the Court's scheme was not conducive to the proper administration of the Kattalais or the supervision thereof. The steps were taken to notify the temple and the various Kattalais attached thereto. After the judgment of the Supreme Court in 1965(2) M.L.J. 167 the Government felt that the existing state of affairs cannot be allowed to continue and so in the interests of proper administration of all the religious institutions including that of Sri Thiagarajaswami temple it was imperative to continue the earlier Notifications beyond 15.7.1966. No doubt the Legislatures under the Constitution have, within the <https://www.mhc.tn.gov.in/judis> (Uploaded on: 22/05/2025 04:23:55 pm) prescribed limits, power to make laws prospectively as well as retrospectively. By exercise of those powers a legislature can remove the basis of the decision rendered by a competent court thereby rendering the decision ineffective, but no legislature in the country has power to set aside an individual decision Inter parties and often their rights and liabilities alone. In the words of Their Lordships of the Supreme Court in Cauvery Water Disputes Tribunal case, such an act on the part of the Legislature amounts to exercising the judicial power of the State and to functioning as an Appellate Court or Tribunal. Since Notification in G.O. No. 3069 dated 4.8.1956 is singly declared to be valid under S. 75-A, this Section makes a direct inroad into the judicial powers of the State, and so it has necessarily to be struck down so far as this Notification is concerned.

27. S.75-B of the Act enables the Commissioner to continue any Notification which was validated by virtue of S. 75-A beyond 16th July 1966 after calling upon the trustee

concerned to show cause why it should not be so continued. Notification No. 638 dated 25.8.1937 is statutorily extended till 16.7.1965 and for a period of one year later in view of S. 75-A of the Act read with G.O. No. 3069 (Revenue) dated 4.8.1966. Notification No. 2347 (Revenue) dated 13.7.1966 was issued declaring that the Notification No. 638 would continue beyond 15.7.1966. We have already seen that there could be no valid extension of the Notification under S. 75-A. Learned counsel for the appellants next contends that where a Notification is quashed its existence ceases. There can be no order continuing that which does not exist. In other words, there can be no law which seeks to extend the provisions of a rule which is *nun est*. By the time G.O. No. 2347 (Revenue) dated 13.7.1966 was published, Notification No. 638 dated 25.5.1937 was no longer in existence by virtue of the decision of the Supreme Court.

<https://www.mhc.tn.gov.in/judis> (Uploaded on: 22/05/2025 04:23:55 pm) So there is substance in the claim of learned counsel for the appellants that this G.O. No. 2347 passed under S. 75- B of the Act is not valid."

20. Against the aforementioned judgment, appeals were filed before the Hon'ble Supreme Court of India. However, the respondents hereby withdrew the appeals on 27.02.2022, with the liberty to proceed afresh under Sections 71 and 72 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1951. The entire order passed by the Hon'ble Supreme Court of India is extracted below for easy reference:-

"It is not disputed before us that under Sections 71 and 72 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as 'the Ac'), it is open to the authorities, namely, the Commissioner as well as the State Government to supersede the management and take possession of the property after giving an opportunity of show cause to the respondents. If such recourse is taken by the authorities, then it shall decide the same irrespective of any finding recorded in the suit or proceedings under Section 75(C) of the Act. In view of the said proposition of law, Shri K. Rama Moorthy, learned senior counsel, states that the appellant be permitted to withdraw these appeals.

The appeals are, accordingly, dismissed as withdrawn."

Therefore, it is clear that the question regarding the validity of Section <https://www.mhc.tn.gov.in/judis> (Uploaded on: 22/05/2025 04:23:55 pm) 75-A vis-à-vis the parties herein, and the finding that a non-est rule or notification cannot be extended under Section 75-B, has become final inter se between the parties herein.

21. The operative portion of the show-cause notice, originally proposed in 2002, was extracted above and specifically stated to continue the notification under Act 2/1927. The fact that it was issued under Section 75-B(i) was also expressly proclaimed at the beginning of the show-cause itself, which is also extracted hereunder for ready reference:-

"Notice under section 75(B)(1) of the Tamil Nadu HR & CE Act 1959 as amended by Section 4 of the Tamil Nadu HR & CE (Amendment) Act 1965 (Tamil Nadu Act 16 of 1965) and further amended by Act 39/96."

Thus, the original attempt by the respondents to extend the notification through the show-cause notice originally issued is illegal. Accordingly, the question is answered.

Question No.(iii):-

<https://www.mhc.tn.gov.in/judis> (Uploaded on: 22/05/2025 04:23:55 pm)

22. While the original show-cause notice sought to extend the notification under Section 75-B, and as it remained a challenge before this Court, the proceedings dated 12.01.2010 sought to amend the show-cause notice. Firstly, instead of Section 75-B(i), it was proposed to be read under Sections 71 and 72. Other amendments were also sought to be included. Rather than continuing the old notification, it proposed to issue a fresh notification. The entire amendments that were proposed are extracted hereunder for ready reference:-

"...Hence, the following amendment is issued to the notice dated 11.07.2002, to be in strict compliance with the order passed by the Supreme Court.

(1) under the Head note in the place of "75B(i)", already mentioned, "Section 71 and 72" shall be substituted.

(2) the words starting from "Section 4 of the Tamil Nadu H.R.&C.E. (Amendment) Act 1965 (Tamil Nadu Act 16 of 1965) and further amended by" shall be deleted;

(3) Para 5 shall be read as follows:

"It is therefore imperative to issue a fresh notification in order to maintain the administration of the temple and its Kattalais in a state of efficiency and orderliness".

(4) in para 8 starting from the words "whereas the Commissioner", the expressions "the notification already made under Chapter VIA of the Act 2/1927 and continued till 15.7.1966 is necessary continued further" shall be <https://www.mhc.tn.gov.in/judis> (Uploaded on: 22/05/2025 04:23:55 pm) deleted and substituted by "to notify the said institution under Section 71 & 72 of the Tamil Nadu H.R.&C.E. Act 22 of 1959".

(ii) in the 8th line in the same para after the word notification, the following expressions "should not be continued" shall be deleted and substituted by "should not be issued".

The enquiry in the above matter will be held on 8.2.2010 at 11.00 A.M. before the Commissioner at his office in Chennai.

The persons having interest and the parties in the above matter are required to appear either in persons or by a duly authorised Counsel and represent their case at the time and the place aforesaid.

In default of appearance as aforesaid, the decision will be made exparte."

Thus, it can be seen that now, due to the amendment, the original show-cause notice has been altered to propose the issuance of a fresh notification under Sections 71 and 72 of the Act.

23. Firstly, it can be seen that such a course was expressly permitted by the Hon'ble Supreme Court of India, and the entire order of the Hon'ble Supreme Court of India was extracted supra. The first argument made by the learned Counsel for the petitioner is that while the provisions and the purpose stand amended, no further reasons are stated. Therefore, when the <https://www.mhc.tn.gov.in/judis> (Uploaded on: 22/05/2025 04:23:55 pm) management has been conducted solely by the Executive Officers since 1937, and there are no allegations made against the petitioner, the show- cause notice is bound to fail. In this regard, among other reasons originally proposed in the show-cause notice dated 11.07.2002, it is essential to refer to reason nos. 6 and 7, which are extracted hereunder for ready reference:-

"6. The affairs of the several kattalais are in a bad condition due to mismanagement and non-co-operation between the several kattalaidarars.

7. Several properties of the kattalais are still in unauthorized occupation of the third parties and steps have to be taken to recover them."

Therefore, non-cooperation and unauthorized occupation are also mentioned as reasons. Thus, I cannot agree with the learned Counsel for the petitioner that a combined reading of the show-cause notices indicates there is no allegation made or that can be made against the petitioner.

24. It is evident that Arulmighu Thiyaagaraaja Swami Thirukoil in Thiruvavur is one of the famous temples where poojas and other functions are conducted continuously throughout the day, along with several festivals <https://www.mhc.tn.gov.in/judis> (Uploaded on: 22/05/2025 04:23:55 pm) that attract lakhs and lakhs of devotees. According to the petitioner, as of 1937, the two kattalais, namely, Abhisheka kattalai and Annadhana kattalai, had 3,900 acres of land, of which 2,600 acres have been lost, leaving only 1,300 acres under administration. Considering the significant amount of property involved, even though the Executive Officer is stated to be in physical administration, it is alleged that there is a lack of cooperation from the petitioner trustee. Whether this allegation is factually correct or not is a separate question that cannot be addressed at the show-cause notice stage. However, I believe that given the nature of the trust involved and the fact that such a large and important temple relies entirely on its kattalais for its functions, I cannot accept the petitioner's claim that no reasons are provided in the show-cause notice.

25. The second contention is based on Section 76 of the Act. The petitioner argues that the entire Chapter VI of the Act is not applicable, as the hereditary trustees have a beneficial interest in the institution's income. <https://www.mhc.tn.gov.in/judis> (Uploaded on: 22/05/2025 04:23:55 pm)

Section 76 is extracted hereunder for ready reference:-

"76. Saving.—Nothing in this Chapter shall apply to maths or other religious institutions having hereditary trustees who have a beneficial interest in the income of the institution."

26. In this regard, the board's order No. 2701 of 11.05.1940 is relied upon, and the entire order is extracted hereunder:-

"The Athinakarthar of Velakurichi Mutt the hereditary trustee of the Annadana and Abisheka Katlias of the above devastanam is sanctioned Rupees FIVE HUNDRED for each of the faslis 1347 and 1348 towards arrears of GURU POOJA. He may also be given 100 kalams of paddy as varisai from fasli 1347. His future allowance from fasli 1350 is fixed at Rs.125 per mensem."

27. When the same were sought to be disallowed by the order dated 20.10.1961 in Appeal No. 56 of 1961, it was challenged before the learned Subordinate Judge, Nagapattinam, by way of O.S.No.14 of 1962. In the said judgment, the decision not to discontinue the said perquisites was set aside, and in paragraph No.20, these perquisites are specifically referred to as <https://www.mhc.tn.gov.in/judis> (Uploaded on: 22/05/2025 04:23:55 pm) beneficial interest. The relevant portion in paragraph No.20 of the judgment is extracted hereunder:

"... The allowances and perquisites claimed are as honours attached to the office and relating to the customary expenditure of the temple and this also is quite legal under Sec.79 of Madras Act II of 1927 which was as follows:-

"Save as otherwise expressly provided in or under this Act nothing herein contained shall affect any established usage of a math or temple or the rights, honours, emoluments and perquisites to which any person may by custom or otherwise be entitled in such math or temple."

These beneficial interest in favour of the hereditary trustees is protected under Sec. 105 of the present Act (XXII of 1959)."

28. Apart from this, the further orders, including the order dated 11.01.1985, are also relied upon; in the year 1985, the following perquisites were paid to the trustees:

"The allowances payable to the Hereditary Trustee of the temple with effect from 1.7.1983 are fixed as follows:-

1. Monthly allowance Rs.200/- (Rupees Two hundred only)

2. Gurupooja expenditure Rs.750 (Rupees seven hundred and fifty only) (Annual) payable per fasli.

3. Varisai (Paddy) 100 Kalams (One hundred Kalams) (Annual) payable per Fasli.

The Executive Officer is requested to pay off the arrears due to Hereditary Trustee."

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29. By virtue of these perquisites, it is now contended that the petitioner trustee has a beneficial interest in the trust. The learned Special Government Pleader for the first respondent and the learned Senior Counsel for the second respondent will contest this position. The term 'beneficial interest' is not defined under the Hindu Religious and Charitable Endowments Act, 1959. Under the General Law of Trust, the question was considered by the Hon'ble Supreme Court of India in Official Trustee of West Bengal Vs. Stephen Court Ltd. and it is essential to extract paragraphs 32 to 35 of the judgment, which read as follows for ready reference:-

"32. In the 1913 Act two different expressions, namely, "beneficiary under a trust" and "person beneficially interested in any trust property" have been used. A distinction has, thus, been made in the statute itself between a "beneficiary" and a "person beneficially interested".

33. In Advanced Law Lexicon, 3rd Edn., 2005, by P. Ramanatha Aiyar, the two expressions have been defined in the following terms:

"Beneficiary.—Beneficiaries are persons for whose benefit 5 (2006) 13 SCC 401 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 22/05/2025 04:23:55 pm) property is held by trustees, executors, etc.; persons named in insurance policies to whom the insurance is payable upon the happening of the event insured against. (Bouvier) Beneficiary is one who is beneficially entitled to, or interested in property; that is, entitled to it for his own benefit, and not merely as trustee or executor holding it for others. The word is nearly equivalent to the term cestui que trust. Where property is dedicated to an idol, it would be a 'beneficiary'. (Ranjit Singh v. Jagannath Prosad Gupta [(1886) ILR 12 Cal 375 : 16 CWN 798] . But see 16 CWN 798.) 'Beneficiary' defined. Indian Trusts Act (2 of 1882), Section 3 as 'the person for whose benefit the confidence of the author of the trust is accepted by the trustee'." "Beneficial interest" has been defined to mean:

"The 'beneficial interest' of the beneficiary is his right against the trustee as owner of the trust property [Indian Trusts Act (2 of 1882), Section 3.] Interest of a beneficial owner or a beneficiary the interest in an unadministered estate, of a person who dies before taking possession or applying for a grant of administration, is not a 'beneficial interest' within the meaning of Section 4 of the Succession and Probate Duties Act, 1892 to 1955 (Queensland) [Commr. of Stamp Duties (Queensland) v. Livingston [1965 AC 694 : (1964) 3 WLR 963 : (1964) 3 All ER 692 (PC)]]."

34. In Bouvier's Law Dictionary and Concise Encyclopædia, 3rd Revision by John Bouvier, the expressions "beneficiary" and "beneficial interest" have been defined as under:

" 'Beneficiary'.—A term suggested by Judge Story as a substitute for cestui que trust, and adopted to some extent. I Story, Eq. Jur. § 321.

The person named in a policy of insurance to whom the insurance is payable upon the happening of the event insured against.

The beneficiary of a contract is not a cestui que trust; 12 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 22/05/2025 04:23:55 pm) Harv. L. Rev. 564.

'Beneficial interest'.—Profit, benefit, or advantage resulting from a contract, or the ownership of an estate as distinct from the legal ownership or control. A cestui que trust has the beneficial interest in trust estate while the trustee has the legal estate. If A makes as contract with B to pay C a sum of money, C has the beneficial interest in the contract."

35. In Stroud's Judicial Dictionary, 4th Edn., the terms "beneficiary" and "beneficially interested" have been defined in the following terms:

"Beneficiary.—(1) A beneficiary is 'one who is beneficially entitled to, or interested in, property; i.e. entitled to it for his own benefit, and not merely as trustee, or executor, holding it for others. The word is nearly equivalent to "cestui que trust", which, on account of its cumbersomeness and inexpressiveness, "beneficiary" has begun to supersede in modern law' (2 Encyc. 58). (2) 'Beneficiary entitled in possession' is one who is entitled to the actual receipt of the income under the terms of a trust (Doody v. Commr. of Taxes [(1941) NZLR 452])." "Beneficially interested.—A person having a contingent interest in real estate (Sheppard Trusts, Re [(1862) 4 De GF & J 423]) is a person 'beneficially interested' within Trustee Act, 1850 (13 & 14 Vict., c. 60), Section 37; and so is a creditor who has obtained a decree for the administration and sale of real estate (Wragg, Re [1 De GJ & S 356]); and also, it seems, a purchaser under a decree who has paid his purchase money into court (Ayles v. Cox [(1853) 17 Beav 584 : 51 ER 1161]). The committee of lunatic cestui que trust is not a person 'beneficially interested' within this section (Bourke, Re [(1864) 2 De GJ & Sm 426 : 46 ER 440]); Dan. Ch. Pr.

1787.""

Thus, it can be seen that a person with a beneficial interest refers to <https://www.mhc.tn.gov.in/judis> (Uploaded on: 22/05/2025 04:23:55 pm) someone who has an interest in the estate, being entitled to a contingent interest or a

portion of the income from the estate, etc.

30. Regarding the law concerning specific endowments under the Act, these are no longer res integra, as clearly established by the Hon'ble Supreme Court of India concerning the other kattalai, namely, Rajan kattalai of the same Thirukoil, in Sri La Sri Subramania Desika Gnanasambanda Pandara Sannathi, Hereditary trustee of the Rajan Kattalai Sri Thyagarajaswami Koil, Tiruvarur Vs. The State of Madras, represented by Secretary, Revenue Department (cited supra). The meaning of kattalai, in general, was explained as follows:-

"Ordinarily speaking a Kattalai is a special or specific endowment for certain specific services or a religious charity to be performed. For example Uchikala Kattalai in a temple would refer to an endowment for the purposes connected with the midday worship in the temple. Thus Kattalais being in the nature of specific endowments the founder of such kattalais would be entitled to prescribe the line of trustees to manage such Kattalais. The trustees so appointed, will, however, occupy a subordinate position in relation to the general trustee of a temple. It has been held that the general trustee has a right and duty to see that the <https://www.mhc.tn.gov.in/judis> (Uploaded on: 22/05/2025 04:23:55 pm) funds in the hands of the trustees of the specific endowments or Kattalais are duly appropriated for the purposes for which they were endowed.

Although a Kattalai is a specific endowment in respect of which it would be competent for the founder to prescribe the line of trustees for its management, the property endowed for the performance of the Kattalai cannot be held to be transferred in trust to the trustee vesting the legal estate therein in him; it vests in the deity itself. The position of a Kattalai trustee therefore would be nothing more than that of a manager of a Hindu Religious Endowment."

31. However, it was further held that the position regarding Sri Thiyaagaraaja Swami Thirukoil is slightly different, as explained in an earlier judgment of this Court in Vythilinga Pandara Sannadhi Vs. Somasundara Mudaliar. This was clarified by the Division Bench of this Court in Sri-la-Sri Kailai Subramania Desiga Gnanasambanda Pandarasannadhi Vs. The State of Madras, rep. by the Collector of Thanjavur at Thanjavur and Ors. (extracted supra), and it is essential to extract the portion of paragraph No.4 which reads as follows:

"4. ... In the words of Muttuswamy Aiyer, J. in Vythilinga Pandara Sannadhi v. Somasundara Mudaliar (I.L.R.17 Mad.199) relating to this very temple, it is a distinct endowment under a separate trustee to which specific <https://www.mhc.tn.gov.in/judis> (Uploaded on: 22/05/2025 04:23:55 pm) items of expenditure are assigned as legitimate charges to be paid therefrom. The eminent Judge was of the view that the Kattalais merely formed a classification of the sources of income rather than separate endowments designed for specific services."

32. Furthermore, the nature of the office of the trustee of these kattalais was defined as follows:

"... No emoluments are attached to the office; it is a bare right to manage the endowment. The right is analogous to that of a dharmakartha of a temple. In *Srinivasachariar v. Evalappa Mudaliar*, the Privy Council observed:

"The term Dharmakarta is in truth the legal equipollent to trustee. The position of Dharmakarta is not that of a shebait of a religious institution or of the head of the Mutt. These functionaries have a much higher right with larger power of disposal and administration and they have a personal interest of a beneficial character. In the very learned judgment delivered in *Vidyapurna Thirthaswami v. Vidhyanidhi Thirthaswami*, the distinction between those functionaries is explained; but a Dharmakarta is literally and no more than a manager of a charity and his rights apart, it may in certain circumstances from the question of personal support, are never in a higher legal category than that of a mere trustee." In *Vidyapurna Thirthaswami v. Vidhyanidhi Thirthaswami*, Subramania Iyer O.C.J, advertng to the legal position of a Dharmakartha of a temple observed that he would be no more than a mere manager occupying a <https://www.mhc.tn.gov.in/judis> (Uploaded on: 22/05/2025 04:23:55 pm) fiduciary position as the natural custodian of the endowed property with no beneficial interest therein, as the idol itself, the ideal person, would be the owner. Bashyam Aiyangar J, stated at p. 454:

"In the case of temples endowments whether in the shape of landed property or tasdik allowances have to be devoted to the carrying out of the specific purposes connected with the temple, i.e., the daily worship and the periodical ceremonies and festival purposes defined and settled by usage and custom and generally recorded in what is known as dittam and the Dharmakartas are mere trustees for the carrying out or executing of such trusts." Whether it be the case of Dharmakarta of a temple or trustee or a Kattalai established for the purpose of performance of a vital part of a ritual in a temple, the property covered by the endowment (in the absence of the terms of the foundation to the contrary effect) can be regarded as vesting only in the deity. The trustee has a mere right to manage. He is, however, in the position of a trustee as it is his duty to see to the proper application of the funds to the objects of the trust; he will further be accountable as such. The office of a trustee of a temple or endowment though it carries with it no material benefit to the incumbent is highly prized by reason of the prestige it carries and the deeply rooted belief in the Hindu that performance of such duties without a monetary or like benefit would secure a spiritual benefit."

33. In fact, the following passage sheds light on the topic:

"...That was also the view held by the Privy Council in *Maharana Fatesh Sangji Jeswant Singhji v. Desai Kallian Rajiji Hekoomant*. In *Manaitunainatha* <https://www.mhc.tn.gov.in/judis> (Uploaded on: 22/05/2025 04:23:55 pm) Desikar v. Gopala Chettiar, Krishnaswami Iyengar, J. referring to a bare trusteeship observed that a hereditary office being something which was capable of being inherited

necessarily involved the idea of property. Narayana Nambudiripad v. State of Madras recognised that the hereditary trusteeship of a temple (there being no question of any beneficial interest) was property within the meaning of Art. 19(1)(f) of the Constitution. This was followed by Balakrishna Iyer, J. in Sankaran Nair v. Govindan Nambiar. Therefore irrespective of the question of any beneficial interest in or emoluments attached to the office, a trustee or manager of a temple or endowment who obtains the right to the office by hereditary right would be entitled to it as his property."

Thus, it can be seen that the emoluments are typically those attached to the office, such as honorarium and varisai. Reimbursement of expenditures is generally permitted for everyone, so long as it serves the purposes of the trust. Therefore, even though the term 'beneficial interest' is used in the judgment in O.S.No.13 of 1962, it was not under consideration in that judgment and cannot be interpreted as a question decided in the suit. Under the present Act, the emoluments are protected under Section 105. Therefore, I hold that the payment of honorarium or varisai is a matter of prestige and honour attached to the office and cannot be regarded as a beneficial interest in the trust.

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34. The kattalai, which is now said to consist of 1,300 acres, is solely for the purposes of the mentioned kattalai in connection with the temple. The title of the lands vests in the deity. The petitioner's right is akin to that of the Dharmakartha in administering the property alone. Therefore, if any mismanagement is alleged, it is the petitioner's responsibility to provide an explanation regarding the same, and orders must be issued by considering any evidence produced by the petitioner concerning the allegation made. Thus, I conclude that the respondent authorities possess the jurisdiction and a basis to issue the impugned show-cause notice under Sections 71 and 72 of the Hindu Religious and Charitable Endowments Act, 1959.

35. As a result, this Writ Petition is dismissed. The petitioner's request to quash the show-cause notice in R.C.No.48212/2002/D1, dated 11.07.2002, as amended on 12.01.2010, is denied. The petitioner must raise all objections and defenses regarding the merits of the alleged mismanagement, non-cooperation, and occupation of the kattalais property by third parties by submitting a fresh explanation within four weeks from the date of receiving a web copy of this order. If the petitioner submits an explanation, along with any previous explanations, those will be considered by the respondents in accordance with the law, and the petitioner will also be given due opportunity, including the chance for a personal hearing and the matter be decided in accordance with the law. There shall be no order as to costs.

22.05.2025 Neutral Citation : yes grs To

1. The Commissioner, Hindu Religious and Charitable Endowment Department, 119 Uthamar Gandhi Salai, Chennai - 34.

2. The Executive Officer, Arulmigu Thiyagarajaswami Temple, Thiruvarur.

<https://www.mhc.tn.gov.in/judis> (Uploaded on: 22/05/2025 04:23:55 pm) D.BHARATHA CHAKRAVARTHY, J.

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