

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
S. L. P. (CIVIL) Nos. 12443-12447 OF 2001

IN THE MATTER OF:

Commissioner:  
Thiruvannamalai Municipality                      Petitioner

Versus

Arunachala Giri Pradakshana  
Samithi and others                                      Respondents

AFFIDAVIT ON BEHALF OF THE PETITIONER IN RESPONSE TO THE  
AFFIDAVIT OF THE ARCHAEOLOGICAL SURVEY OF INDIA –  
GOVERNMENT OF INDIA DEPOSED TO BY Dr. K.P. PUNACHA  
PURSUANT TO THE ORDERS DATED 20.01.2005 OF THIS HON'BLE  
COURT

I, V. Akbar, aged about 56 years, son of Shri Abdul Sahib, Commissioner of Thiruvannamalai Municipality, Tamil Nadu, presently at New Delhi, do hereby solemnly affirm and state as follows:

1. I state that I am the Commissioner of the Thiruvannamalai Municipality, the petitioner herein and am conversant with the facts of the case as borne out from the records, and as such, I am competent to swear this affidavit. I

state that I have read a copy of the aforesaid affidavit and in response thereto, I am instructed to state as under:

2. Before advertng to the proposals made and positions adopted by the Government of India in the aforesaid affidavit, I seek to place certain preliminary and essential facts on record. These are:

(i) That Thiruvannamalai is a popular temple town in Tamil Nadu. It is connected to other towns by nine entry roads which converge on its main street called 'Car Street' that travels along the 'girivalam' or 'giri pradakshina path' for about 4 kms., through the centre of the town. Thiruvannamalai is a Municipality established under the Tamil Nadu District Municipalities Act, 1920 (hereinafter 'Municipal Act'). The Municipal Act as amended from time to time makes extensive provisions in Chapter IX for Streets and in Chapter X for the regulation and construction of buildings. The Tamil Nadu District Municipalities' Building Rules 1972 have been framed under the Municipal Act aforesaid and apply to the entire area, which has been declared to be a Municipality under the Act. In addition G.O. Ms. No.22 (MAWS) issued by the Government of Tamil Nadu on 30.01.1997 restricts the height of all buildings to be constructed within one kilometre of the temple wall to a height of 9 metres. I crave leave of this Hon'ble Court to refer to and rely upon the said Act, Rules and notification at the hearing:

(ii) In addition to the provisions of the Municipal Act and Rules, which apply to building activities within the area of the Municipality, the

Tamil Nadu Town & Country Planning Act, 1971 (hereinafter 'Planning Act') has been extended to the entire State and specifies Regional Planning Areas, New Town Areas and areas for detailed planning. It envisages the appointment of Planning Authorities in respective territorial extent and empowers the local Planning Authorities to prepare a Master Plan for the area. The Planning Act applies to Thiruvannamalai. The district of Thiruvannamalai was created in 1989. The Thiruvannamalai Municipality was notified as a single local planning area under section 10(4) of the Town & Country Planning Act.

- (iii) As per sub-section (3) of Section 11 of the Tamil Nadu Town & Country Planning Act, 1971, the Government of Tamil Nadu has notified the Thiruvannamalai Composite Local Planning Authority under the District Collector with other officials to regulate all land use zones including all the Panchayats falling within the 'girivalam' path outside the areas of the Thiruvannamalai Municipality.
- (iv) The Master Plan for this town was originally approved on 20.09.1984 vide G.O.Ms. No.802 Housing & Urban Development Department. The Master Plan was reviewed in 1995 and thereafter has been modified from time to time. I state that all developments in and around the town of Thiruvannamalai are regulated and controlled under the Acts aforesaid.
- (v) I state that the area under the jurisdiction of the Thiruvannamalai Municipality is approximately 13.5 sq. kms., covering a population of

approx. 1,50,000 people with about 30% being the non-Hindu population. The main connecting road in the town called the Bangalore Road travels 4 kms., on the 'girivalam'. The local people reside on both side of this 'girivalam'. Presently there exist about 10,000 residences/houses in the area between the girivalam and hillside constituting the residences for approximately 1/3<sup>rd</sup> of the town.

(vi) The buildings on the girivalam also consist of mosques, temples, schools and residences of the officials of the Government. These buildings have been there for many years – several for hundreds of years. The lands in Thiruvannamalai are either 'patta' lands (lands vesting absolute title in the owner) or 'Poramboke lands' (lands owned by the Government). I state that the Government exercises absolute control over the Poramboke lands while in respect of the patta lands falling within the Municipal/Panchayat areas, land owners only obtain permissions for the purposes of erecting buildings or for carrying out repairs/renovations thereof. Many of these structures need urgent repairs. The Government cannot deny landowners the privilege of erecting their own houses or structures on the patta lands provided the said constructions conform to the applicable regulations or the Master Plan and the applicable building laws.

(vii) I state that between 4-5 lakh pilgrims/devotees visit this town on each full moon night i.e. 'purnima'. During the annual Kartik festival about 25 lakh devotees/pilgrims visit the Arunachaleshwarar temple which

is dedicated to Lord Shiva. These pilgrims/devotees do not stay in the town but come during the day and largely leave by night hours.

(viii) I state that the hub of the town is the Annamalai hill with a height of 2,472 ft., which is regarded as Lord Shiva himself, the path along the hill called the 'girivalam' is a stretch of road 14 kms., which circumambulates the hill and the Arunachaleswarar temple situate on the eastern side of the hill in an area of approx., 24.32 acres. About 4 kms., of the 'girivalam' falls within the Municipal limits, while the remaining 11 kms, falls within the control of five different panchayats. The life of the town's people centres on these deities and structures. I state that the temple in itself, which as aforementioned is situated in 24.32 acres of land, has four main entrances called 'gopurams' built in the 16<sup>th</sup> century, the highest being 217 ft. Within the temple precincts, there are water tanks, an orphanage, cow sheds to look after the temple cows and temple elephant, notified areas for collecting used flowers and other offerings made by the devotees. There are only two shops run inside the temple compound for selling prasadam, offerings, pictures and temple memorabilia which have been in existence for decades now. No other shops exist within the temple precincts. There are no encroachments on the outer walls of the temple, all having been removed by the Municipality acting in tandem with the Collector appointed under the Tamil Nadu Hindu Religious & Charitable Endowments Act, 1959, under which the temple is administered. The Arunachaleswarar temple is administered, controlled and regulated under the provisions of the Tamil Nadu Hindu Charitable & Endowment Act, 1959.

(ix) The hill, path and temple are places of worship where devotees and pilgrims circumambulate the girivalam on full moon nights (Purnimas) and during the 'Kartik Deepams'. On full moon nights, as many as 5 lakh pilgrims do their pradakshana on this 'girivalam' – 4 kms., of which falls within the Municipal area while 11 kms., falls within the control of the Panchayats. I state that this 4 kms., stretch which is the main street of the town is also the main trunk road.

3. I state that the aforesaid public interest litigation was commenced before the Hon'ble High Court of Judicature at Madras seeking various directions for preserving the 13.5 kms., long 'girivalam' or 'giri pradakshana path' (hereinafter 'Path') and the 'Arunachalaleshwarar Temple' (hereinafter 'temple').
4. During the course of proceedings before the Hon'ble High Court and subsequent proceedings before this Hon'ble Court, various authorities and private institutions, mooted proposals for the purported maintenance of this town and the protection of the temple and the 'girivalam', have filed affidavits. I state that most of the suggestions given for the purpose of preservation of this temple town are based on assumptions and inferences without there being a proper verification of facts and ground realities. Projections and suggestions have been made in affidavits in the absence of material and relevant information giving an impression which is totally contrary to ground realities. These affidavits give unilateral views without the deponents thereof consulting the local populace or discussing issues with the authorities. Many a suggestion seek to impinge on the powers and

authority of the State Government, the Municipality and the Planning authorities which suggestions if given effect to would render statutory provisions otiose and of no effect. I object to these suggestions and proposals.

5. I state that it is in the circumstances, necessary to bring relevant facts to the notice of this Hon'ble Court as to the steps taken by the Municipality and the concerned authorities of the district for the due preservation of the town and for the upkeep and maintenance of the temple. These measures are in two parts – the long-term and short-term.

LONG-TERM MEASURES:

(1) BUILDINGS:

- (a) Under the existing framework the District Collector exercises total and complete control over all the lands in Thiruvannamalai with the Municipality being obliged to ensure that all development works take place in accordance with law. The Collector also exercises control over the Panchayats. There Panchayats have land holdings within and outside the path circumambulates the base of the hill on a circumference of approx., 14 kms., of which approximately 4 kms., on the main road is under the direct control of the Municipality, the rest being with the different Panchayats.
- (b) I state that the Panchayats and the Municipality have taken all effective steps to remove encroachments from the poramboke lands within Thiruvannamalai which include the lands on both sides of the

girivalam. The poramboke/forest lands cover over 60% of the land holdings in the 4 kms., stretch of the 'girivalam'. All encroachments have been removed from the path. The other encroachments inside the path are being removed in a phased manner with the occupiers/owners having been put on notice. In the long term approach to protect the path, the authorities have decided not to permit any encroachments/construction on the path. On the poramboke the authorities may permit lands along the path constructions necessary in the public interest.

- (c) People hold lands as 'pattedars' or on poramboke lands of these Panchayats. Under directions of the Collector, the Panchayats have taken steps to ensure that there are no encroachments that take place on the path and also to remove all encroachments. The Panchayats have since initiated action against encroachments and continue to ensure that the sanctity of the 'path' is not desecrated by unauthorised or other encroachments. The Panchayats have given this information to the concerned authorities who upon verification have been satisfied of the removal of encroachments.
- (d) With regard to unauthorised/irregular or illegal constructions on patta lands, notices have been issued to the respective landowners. To discourage unauthorised and illegal constructions on patta lands, the Municipal and the Panchayats are presently not sanctioning electricity and water connections to such properties.
- (e) I state that the provisions of the Municipal Act and the Building byelaws are strictly adhered to in the matter of granting permissions to

repair/renovate existing structures, especially those falling inside the 'giri pradakshina path'. In the last few years, large number of unauthorised constructions within the path have been demolished, especially those on Poramboke lands. With regard to constructions on patta lands inside the 'giri pradakshana path', the Municipality is taking steps to ensure that no unauthorised or illegal buildings are constructed. The Municipality is obliged to grant permissions to owners to repair their buildings, more so when most of the buildings inside the path have been in existence since times immemorial. In any event, these constructions came up before Thiruvannamalai became popular as a temple town in the early 1990s. Keeping in view the diversity of the population whose secular strings keep the town people together, all attempts are made to ensure that buildings belonging to all communities are kept in good repair. It is mentioned that the entire records of the Municipality have been computerised and are available on touch screens to all members of the general public. This Municipality is amongst the first in India to offer this facility to the local residents.

(11) WATER TANKS:

- (f) By understanding development works within the town, all existing water tanks – artificial and natural have been restored. It is mentioned that many of these tanks are as old as the temple itself and are interconnected through underground channels. The tanks were in disuse and in bad repair. Some had been encroached upon and not traceable. A serious drive was undertaken to remove the

encroachments and thereafter extensive repairs and renovations were carried out. Most of these tanks have been restored to their original status and the connecting underground links have been restored. Rainwater harvesting has been actively invoked and as at present, many water tanks, which were dry, have become a source of perennial water supply to the local population. In addition, check dams have been proposed for being developed and built on the hill to ensure that the rainwater is collected and stored for use during the dry season. It is stated that a large tank the Thamarai Kulam which was in disuse has since been restored and is being developed as an open leisure park offering boating and other facilities.

(111)ASTHALINGAMS:

- (g) The ‘Asthalingams’ (eight lingams) located on the ‘Girivalam’ have been restored, improved and made more commodious by the voluntary efforts of the local people working in coordination with the Municipality, the Temple and the Town Planning Authority. I submit that about 15 years back the Asthalingams were housed in dilapidated shrines and mantaps. The works of renovation and upkeep were entrusted by the Temple administration to an ardent devotee Sr. S.V. Arunachala Moopnar. He did a splendid work of renovation of all the Lingams. He had duly constituted a registered body called “Asthalinga Paripalana Trust” consisting of the elites of the Town as the Trustees. Last year Kumbabishekam was grandly performed to the Asthalingams. The total expenditure for the renovation and Kumbabishekam was Rs.50.00 Lakhs. The Municipality and other

authorities working in due coordination with private bodies are ensuring that the ashtalingams are well kept and the areas around them are green.

(IV) RING ROAD AND OTHER ROADS

- (h) Thiruvannamalai town has nine entry roads connecting it to other towns. The main road of the town travels through the heart of the town and along the 'giri pradakshana path'. On full moon days and during the Kartik Pooja for the convenience of the devotees doing the 'pradakshana' all these roads are sealed preventing traffic movement. This causes serious inconvenience to the traffic on the outer roads. Heavy vehicular traffic on this road has been a matter of concern to the Municipality and the Town Planning Development. The heavy traffic through the town also encourages vendors and hawkers to set up temporary sheds/push carts along the road to serve the needs of commuters during the 'purnima' and 'kartik' festivals. A by-pass Ring Road was envisaged. Approvals for its construction received in 2001 and extensive work has been undertaken. Lands have been acquired and work has started. The construction for this road has commenced which should be completed by the end of 2006. On the completion of the by-pass (also called the Ring Road), the pressure of traffic inside the town will ease thereby – (a) discouraging people from making any encroachments on any of the portions of the road which abut or touch the 'girivalam'; (b) substantially reduce pollution within the town.

(i) RAILWAY STATION:

Suggestions have been given to improve the facilities at the railway station and to provide additional trains. The railway authorities were addressed and the matter is under consideration of the Railways. The State Government has been in touch with the Central Government. The Indian Railways propose to increase the frequency of trains and improve the quality of services rendered at the Thiruvannamalai railway station.

SHORT TERM MEASURES

- (j) The main streets of the town have also since been strengthened and widened to ensure that the traffic is regulated in a manner to prevent usage of the 'girivalam' or in any manner from creating pollution in the immediate environment of the Arunachaleshwarar temple. Large number of trees have been planted along the nine approach roads and wherever possible along the giri pradakshana path. Steps are being taken to widen the main arterial roads. All unauthorised constructions standing in on the girivalam have been demolished and removed. Further steps are being taken to remove such structures which offend the Master Plan or have been erected without sanction/permission in the town areas.

(V) GARBAGE:

- (l) For the purposes of disposal of garbage the volumes of which had become a matter of some concern, the Municipality has contracted out

the disposal of solid waste to M/S Annamalai Environmental Protection Trust – a non-government organisation, which has rendered excellent service to other Municipalities and whose functioning has been approved and commended by this Hon’ble Court in Almitra Patel vs. Union of India. The work of his NGO is being monitored by the Municipality as also by the District Collectorate.

(VI) GREEN COVER:

- (m) Over 1.5 lakh trees of different varieties and species have been planted on the ‘Giri’ (hill) and along the ‘girivalam’. The planting of these trees has been undertaken by the local authorities and residents under the guidance of the Municipality and in consultation with the Town Planning authorities. A ‘Greening Society’ has been formed under the authority and control of the District Collector. The State Forest Department is actively involved in this afforestation programme.
- (n) The local people, the Municipality and the District Collector have expended over Rs.5 crores on these projects during the course of the past 3 years. It is envisaged that a further expenditure for the development works in these areas in the vicinity of Rs.20 crores would be made by the State Government, Municipality, the Department of Tourism – Government of India and other private bodies.

(VIII) ACCOMMODATION:

- (o) Adequate accommodation is available within the town area for a day's stay to the pilgrims who come to Thiruvannamalai for the 'purnima' and 'Kartik' festivals. Apart from private accommodation the temple also has its own lodgings for the devotees. The construction of yatri niwas has been approved and sanctioned by the Ministry of Tourism. Work on this structure will commence shortly.
- (p) It is relevant to state that the number of visitors to the town increases only during the night of the full moon (Purnima) and for the 10-day Kartik festival. I submit that thus for barely 21 days in a year, pilgrims visit the town in large numbers. Elaborate arrangements are made throughout the year to cater their needs by the Local Body, District Administration and the Temple authorities. On the Purnima an average of about 5 lakh people walk on the path, while during the Kartik festival period about 25 lakh people visit the temple and the town. These devotees/pilgrims are transitory and are in the town for several hours only. Before and after these festivals, it is only the local population which lives in the town. To provide for these transitory pilgrims all steps have been taken by the Municipality to ensure that adequate amenities are constantly available. Water points have been provided at different places along the path, medical facilities are available with qualified Doctors, medical-men, volunteers and ambulances; extensive Police bandobast is made during the Purnima and the Kartik festivals to ensure that there is no breach of law and order and in the past 100 years, there have been no recorded incidents of violence in the town during the Purnima or Kartik festivals.

(q) With regard to the main temple of Arunachaleshwarar which as aforementioned, is controlled under the Tamil Nadu Hindu Charitable & Endowments Act (hereinafter 'Endowment Act'), has been subject to regular cleanliness drives. The temple is situated in an area of 25 acres with four main entrance gates. The Deities are recorded to be thousands of years old. Notwithstanding the fact that lakhs of pilgrims visit the temple during the Purnima or the Kartik festivals, the temple is kept very clean. The temple maintains its own Gaushala (cow sheds), one temple elephant while other elephants come during the festivals for processions, five chariots – one of which is made of silver; water tanks inside the temple, the Deities and their adornments. The flowers and other offerings of the devotees are removed from the temple twice a day. Many of the structures in the temple have since been repaired, refurbished and re-conditioned, restoring the temple to its special glory.

(r) I state that the District Collectorate, the local residents, the Municipality and the temple authorities have carried out all these works. Every step has been taken to prevent any deterioration of the conditions in the town, the path and the temple.

6. I state that the suggestions made in the said affidavit to acquire private lands, between the hill and the 'girivalam' would entail enormous avoidable expenditure and the shifting of more than 30% of the residences in the town, many of which have been in existence for hundreds of years. The residences, mosques, temples, Government buildings set up in this areas have enormous historical importance, public utility and serve important functions. The ethos

of the town is reflected in these historical buildings that are both privately and publicly owned. Any Master Scheme prepared for this town must consider all these circumstances and cannot be prepared without considering the ground realities.

7. I further state that the said affidavit does not take into consideration the ground realities where most of the encroachments have been removed; extensive tree planting and afforestation has taken place in the entire town, especially on the girivalam and on the hill side, no reference has been made to the construction of the chuck dams and the enormous increase in the availability of water in the entire town, the prevention of unauthorised constructions and the steps taken by the Temple authorities to control the movement of devotees and pilgrims at all times. In reply to the said suggestions, I further state that the development plans and the Master Plans that have been drawn up for this town also include future projections. All the authorities of the Government of Tamil Nadu, Municipality, the Panchayats have been working in coordination and obtaining the assistance of the local population for maintaining this town. I state that the suggestions given in the said affidavit are based on assumptions and contrary to the ground realities.
8. I state that the suggestions made by the Government of India in the affidavit tendered on behalf of the Archaeological Survey of India envisages certain situations which on the face of the record are contrary to ground realities and have been made without ascertaining the actual developments. Some of the suggestions would entail serious consequences which would cause irreparable harm to the historic buildings of the town of Thiruvannamalai which is dotted by temples, mosques, churches and ashrams where people

come to attain their pious faiths. It would lead to serious consequences for the local population.

9. I state that I have dealt with and denied the issues and contentions raised in the affidavit of Mr. Poonacha above and am not repeating the contentions raised by the petitioner and dealt with in detail by me hereinabove or in the earlier affidavits.
  
10. I state that the union of India, Department of Culture and Archaeological Survey of India be directed to denotify its G.O.No.1024 (E) Department of Culture and Archaeological Survey of India dated 20.9.2002, I state that the Arunachaleswarar Temple is being administered by the HR & CE Department, The Tiruvannamalai town is administered by the petitioner and the District Administration, Girivalam path and the Hill is administered by the District Administration, the Local Body, the temple authorities involving NGO's. I submit that the Composite Local Planning Authority and the proposed Heritage Town Act would be sufficient for further development of the town. I submit that the present authorities are competent to look after the affairs and well being of the area and for better development of the Holy town. I state that the town and temple authorities are willing to abide by all directions which may be issued from time to time by this Hon'ble Court, save and except those which are based on improper and incorrect assessments made by the Government of India in its affidavits. I submit that no interference by any outside agency or authority is uncalled for and would put the authorities in much hardship. I reiterate the averments made in the affidavits filed earlier on behalf of the Municipality of Thiruvannamalai and the Government of Tamil Nadu in the present proceedings. I crave leave of

the Hon'ble Court to refer to and rely upon the records and pleadings in this Hon'ble Court.

11. In the facts and circumstances aforesaid, I most respectfully submit that this Hon'ble Court will be pleased to allow the present appeal and dismiss the writ petition filed by the contesting respondents.

DEPONENT

VERIFICATION:

So, verified at New Delhi on this the 30<sup>th</sup> day of June 2005 that the contents of para 1 are true and correct to my knowledge, while the contents of paras 2 to 11 and their sub-paras are correct upon information derived from the records made available by the Municipality and believed to be correct.

DEPONENT