

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :15.09.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.17570 of 2021

and

W.M.P.No.18682 of 2021

N.C.Sridhar

...Petitioner

Vs.

1.The Secretary to Government,
Tourism, Culture, Religious Endowments
Department,
Fort St.George, Chennai – 600 009.

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

3.The Director General of Police,
Mylapore, Chennai – 600 004.

(R3 – *Suo-motu* impleaded as third respondent
as per order dated 15.09.2021 in W.P.No.17570
of 2021)

... Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, to call for the records connected with the Government order issued in G.O.Ms.No.107 Tourism, Culture, Religious Endowments Department, dated 06.08.2021 and the Letter No.15033/A.Ni.3-1/2016-1 dated 06.08.2021 on the file of the 1st respondent and quash the same as illegal, unconstitutional, arbitrary and thereby render justice.

For Petitioner : Mr.V.Ragavachari

For Respondents : Mr.R.Shanmugasundaram
Advocate General
Assisted by
Mr.N.R.R.Arun Natarajan
Government Advocate

ORDER

The writ on hand has been instituted, questioning the Government Order issued in G.O.Ms.No.107 Tourism, Culture, Religious Endowments Department, dated 06.08.2021 and the Letter No.15033/A.Ni.3-1/2016-1 dated 06.08.2021 on the file of the 1st respondent.

2. Mr.R.Shanmugasundaram, learned Advocate General, Assisted by Mr.N.R.R.Arun Natarajan, learned Government Advocate, made a submission that the Department is ready to argue the matter finally with the report filed and the learned counsel for the petitioner is also ready for final hearing. Thus, the parties argued the case for final hearing.

3. The petitioner states that he was duly elected as one of the Trustees of Sri Audikesava Perumal Peyalwar Devasthanam Temple by Co-option. By the order's of the Hon'ble High Court rendered in CS.No.593/1922, a scheme decree has been framed. By rotation, every five years, Election will be conducted to choose the trustees. The total numbers of trustees are five. The petitioner states that Sri Audikesava Perumal Peyalwar Devasthanam Temple at Mylapore, being denomination temple only Iyengars alone will be nominated to the Post of Trustees and there is no dispute among the members and other office bearers, but some of the disputes aroused will be settled amicably by convening meeting. The petitioner was nominated and Co-opted as trustee for a period of five years from 01.02.2017 to 10.02.2022.

4. The petitioner states that by the proceedings of the Joint Commissioner of Hindu Religious and Charitable Endowments Department [hereinafter referred to as “HR & CE Department”] issued in proceedings dated 26.09.2011, a notice was issued under Section 46 (1) (1) of Hindu Religious and Charitable Endowments Act, 1959 [hereinafter referred to as “HR & CE Act”] and certain irregularities are pointed out and the petitioner was asked to appear before the competent authorities on 14.10.2011. On that occasion, five Trustees were elected by way of Co-option method.

5. The petitioner further states that himself, C.Rangachari, Tmt.I.B.Ananthakumari and Umudi Sudhakar and Nathaleela Narayana Gupta were the Trustees. The petitioner is the Head of the Trustees. The proceedings of the Joint Commissioner of HR & CE Department was challenged before this Hon'ble Court in W.P.No.24113 of 2011 and the said Show Cause Notice issued was set aside by this Court. The Writ Appeal in W.A.No.142 of 2014 was filed, challenging the order passed in the writ petition and the said writ appeal is pending.

6. The petitioner states that he hold the Post of Trustee only to do service to the God and to the devotees and he took it as an opportunity for him to serve the society at large. To his surprise, the Secretary to Government, Tourism, Culture, Religious Endowments Department, issued the impugned order in G.O.Ms.No.107, Tourism, Culture, Religious Endowments Department dated 06.08.2021 and letter dated 06.08.2021, placing all the five Trustees under Suspension. The orders impugned are not in consonance with the provisions of the HR & CE Act and Rules. Thus, the petitioner is constrained to move the present writ petition.

ARGUMENTS ON BEHALF OF THE PETITIONER:

7. The learned counsel appearing on behalf of the petitioner, on narration of facts, contended that the impugned order of Suspension is uncalled for and at the first instance, it is brought to the notice of this Court that five Trustees were placed under Suspension in G.O.Ms.No.107, dated 06.08.2021. However, the petitioner alone is continuing as Head of the Trustees and the other erstwhile trustees namely Thiru.C.Rangachari died on

26.12.2012, Tmt.I.B.Ananthakumari and Thiru.Umudi Sudhakar were resigned from the Post of Trustees on 29.01.2021 and Thiru.Nathaleela Narayana Gupta died on 15.03.2013. In the place of the said trustees, other four trustees were co-opted and they are K.S.Ramanujam, K.Krishnan, P.B.Sampathkumar, Shanthi Rao. Thus, the writ petition is filed by the petitioner, who is the Head of the Trustee.

8. The learned counsel for the petitioner relied on the judgment delivered in C.S.No.593 of 1922 on the file of the High Court of Judicature on 20.11.1925 and the suit was between N.K.Sadagopachariar and another -Plaintiffs and Nattu Kesava Mudaliar – Defendant. The suit relates to the temple dedicated to Sri Audikesava Perumal Peyalwar Devasthanam Temple and situate in Mylapore and has been instituted by two worshipers of Thengala vaishnavite community of Mylapore under the provisions of Section 92 C.P.C., with the sanction of the Advocate General. It is a temple of Thengalai Persuasion and comparatively old Devasthanam. Nattu Kesava Mudaliar, the defendant was the trustee at the time of institution of suit or Dharmakartha of the Temple and had been in office only for a little over two

years at the time of institution of the suit.

9. The suit like most other suits of the kind is for a two-fold purpose for the removal of the defendant from the office of Dharmakarthaship on the ground of misconduct and for the framing of a new scheme and the appointment of new trustees. The scheme was formulated in the said suit. As per the scheme, the Management of the temple and all its affairs and properties shall vest in three trustees as per the appeal judgment subject to the control of the Board of Supervision. Board of Supervision shall consists of five members. The Trustees or the Members of the Board or Supervision must be a person following Thengalai Persuasion. The first set of trustees were appointed by the Court in the said suit and Mr.S.Raghavachariar and Kurapadi Jaganatham Chettiar were the first two trustees of the temple and five members of Board of Supervisions were also appointed.

10. The Madras Hindu Religious Endowments, presently the Commissioner of HR & CE Department preferred O.S.A.No.43 of 1952 and originally the said appeal was dismissed by the Hon'ble Division Bench

consists of Honourable Mr.Justice.P.V.Rajamannar and Honourable Mr.Justice.Rajagopala Iyengar on 26.08.1954. Subsequently, a Notification issued, calling for application for appointment of trustees for the temple was questioned in a writ petition and the said writ petition was allowed and the writ appeal filed by the temple was dismissed. Thus, as per the scheme, the trustees are being Co-opted. Sri Audikesava Perumal Peyalwar Devasthanam Temple, Mylapore, Represented by its Board of Trustees, wherein the petitioner was the Chairman, who filed W.P.No.24113 of 2011, questioning the Show Cause Notice dated 26.09.2011. Even at that point of time, the allegations were raised against the petitioner in the Show Cause Notice and this Court elaborately considered the provisions of the HR & CE Act and made a finding in Paragraphs 10, 20 & 23 are as follows:

“10. The contention of the learned counsel for the petitioner, by referring to Section 53 of the Act, is that the Temple, though notified under Section 46(2), but on account of enhanced income, it will fall under Section 46(3), and under Section 53(1) of the Act, the jurisdiction to take action against the Trustees can be by the State Government, and Joint Commissioner / Commissioner has no jurisdiction.

20. *As regards the contention of the respondents, that under Section 53, notice could be issued by the Joint Commissioner, cannot be accepted, as admittedly the income of the Temple brings it within the jurisdiction of the State Government under Section 53(1) and the Joint Commissioner does not have the delegated powers of the State Government either to issue show cause or hold enquiry into the allegations, therefore, the show cause notice is without jurisdiction.*

23. *However, this decision shall not bar the State Government to take action against the Trustees, if so advised, in accordance with law.”*

11. The contention of the petitioners are that even the petitioner assumed charges as Head trustee / Chairman, there were certain irregularities in dealing with the temple properties. Certain encroachments were made prior to the appointment of the petitioner as trustee. The petitioner has initiated action to evict the encroachers from the temple properties. The application filed under Section 78 by the petitioner, representing the temple was not considered by the Joint Commissioner of HR & CE Department and therefore, the present charges framed against the

petitioner is absolutely untenable and the petitioner cannot be faulted in respect of the illegalities crept in prior to his assumption as Head trustee of the temple. It is contended that the petitioner is maintaining the accounts and the documents properly and in respect of encroachments of temple properties and collection of rent from the lessees, consistent actions were initiated and due to non co-operation of the HR & CE Department, the petitioner is unable to succeed in all his efforts and thus, the present suspension order and the charges framed are baseless and the petitioner is unconnected in respect of the allegations, wherein there is no involvement by the petitioner.

12. The learned counsel for the petitioner raised a ground by stating that the temple is a denomination temple and therefore, under Section 107 of the HR & CE Act, the respondents have no authority to interfere with the administration of the temple. The rights conferred under Section 26 of the Constitution is protected under Section 107 of the HR & CE Act. The temple being a religious denomination temple, the respondents have no jurisdiction to interfere with the affairs of the temple administration and on that ground

also, the writ petition is to be considered.

13. a) In support of the said contentions, the learned counsel for the petitioner relied on the judgment in the case of ***Commissioner Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirta Swamiar of Sri Shirur Mutt***, reported in ***AIR 1954 SC 282***, wherein the Apex Court held as follows:

“15. As regards Article 26, the first question is, what is the precise meaning or connotation of the expression “religious denomination” and whether a Math could come within this expression. The word “denomination” has been defined in the Oxford Dictionary to mean “a collection of individuals classed together under the same name: a religious sect or body having a common faith and organisation and designated by a distinctive name”. It is well known that the practice of setting up Maths as centres of theological teaching was started by Shri Sankaracharya and was followed by various teachers since then. After Sankara, came a galaxy of religious teachers and philosophers who founded the different sects and sub-sects of the Hindu religion that we find in India at the present day. Each one of such sects or sub-sects can certainly be called a religious denomination, as it is designated by a distinctive name, — in many cases it is the name of the founder, —

and has a common faith and common spiritual organisation. The followers of Ramanuja, who are known by the name of Shri Vaishnabas, undoubtedly constitute a religious denomination; and so do the followers of Madhwacharya and other religious teachers. It is a fact well established by tradition that the eight Udipi Maths were founded by Madhwacharya himself and the trustees and the beneficiaries of these Maths profess to be followers of that teacher. The High Court has found that the Math in question is in charge of the Sivalli Brahmins who constitute a section of the followers of Madhwacharya. As Article 26 contemplates not merely a religious denomination but also a section thereof, the Math or the spiritual fraternity represented by it can legitimately come within the purview of this article.”

(b) In the case of ***RatilalPanachand Gandhi Vs. State of Bombay***, reported in ***AIR 1954 SC 388***, wherein the Hon'ble Supreme Court of India held as follows:

“19.....A religious sect or denomination has the undoubted right guaranteed by the Constitution to manage its own affairs in matters of religion and this includes the right to spend the trust property or its income for the religious purposes and objects indicated by the founder of the trust or established by usage obtaining in a particular institution. To divert the trust property or funds for purposes which the

Charity Commissioner or the court considers expedient or proper, although the original objects of the founder can still be carried out, is to our minds an unwarrantable encroachment on the freedom of religious institutions in regard to the management of their religious affairs. It is perfectly true, as has been stated by the learned counsel for the appellants, that it is an established maxim of the Jain religion that Divadravya or religious property cannot be diverted to purposes other than those which are considered sacred in the Jain scriptures. But apart from the tenets of the Jain religion, we consider it to be a violation of the freedom of religion and of the right which a religious denomination has under our Constitution to manage its own affairs in matters of religion, to allow any secular authority to divert the trust money for purposes other than those for which the trust was created. The State can step in only when the trust fails or is incapable of being carried out either in whole or in part. We hold, therefore, that clause (3) of Section 55, which contains the offending provision and the corresponding provision relating to the powers of the court occurring in the latter part of Section 56(1), must be held to be void.”

(c) In the case of ***M.R.Subramaniam Vs. State of Tamil Nadu,***

reported in [1997] 2 L.W.8, wherein the Hon'ble High Court of Madras held as follows:

“51. The impugned Ordinance and the Act 23 of 1996 are liable to be declared as unconstitutional in view of the fact that it virtually seeks to treat the unequals as equals and has not made a valid distinction between religious institution and trusts, to which any member of the public could be appointed as non-hereditary trustees, whereas to religious institutions only members of a particular religious denomination could be appointed as non-hereditary trustees. The impugned Act 23 of 1996 and the Ordinance, in our opinion, completely fail to take into account the rights of religious denomination and also the schemes which have been framed in respect of the administration of the religious institutions. The Government without resorting to the provisions of the Act have, therefore, resorted to remove the non-hereditary trustees in an unceremonious manner. There are sufficient safeguards for removal of trustees under the Act. As already seen, Sec. 53 of the Act, takes care of every such institution and confers powers on the concerned authority to take action against the erring trustees. Merely because there is discontent in the minds of the general public in the matter of appointment, that would

not be a ground for removal of the trustees and to this extent the very reasoning given in the Ordinance is arbitrary and unconstitutional and therefore liable to be declared as such.”

(d) In the case of **R.Sukumar Vs. State of Tamil Nadu, reported in [2010] Scc online Mad 4061**, wherein the Hon'ble High Court of Madras held as follows:

“15. However, a perusal of the orders impugned passed by the first respondent would show that the objections and the grounds raised in the appeal have not been considered properly. The 1st respondent has merely stated that there were some objections from the general public. The said order has been passed without considering the nature of objections and whether they are true or not. Apart from that the allegations raised in the writ petitions for the first time by the learned counsel for the 5th respondent Mr. M. Sundar even though they have not been raised before the authorities below are quite serious in nature. However this Court can go into the said allegations since they have not raised before the authorities and the petitioners have not been put on notice regarding the same.”

(e) In the case of **Dr.Subramaniam Swamy Vs. State of Tamil Nadu**

& Ors, reported in [2014] 5 SCC 75, wherein the Hon'ble Supreme Court of India held as follows:

“68. Even otherwise it is not permissible for the State/statutory authorities to supersede the administration by adopting any oblique/circuitous method. In Sant Lal Gupta v. Modern Coop. Group Housing Society Ltd. [(2010) 13 SCC 336 : (2010) 4 SCC (Civ) 904] , this Court held: (SCC p. 344, para 21)

“21. It is a settled proposition of law that what cannot be done directly, is not permissible to be done obliquely, meaning thereby, whatever is prohibited by law to be done, cannot legally be effected by an indirect and circuitous contrivance on the principle of quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud. An authority cannot be permitted to evade a law by ‘shift or contrivance’.”

(See also Jagir Singh v. Ranbir Singh [(1979) 1 SCC 560 : 1979 SCC (Cri) 348 : AIR 1979 SC 381] , A.P. Dairy Development Corpn. Federation v. B. Narasimha Reddy [(2011) 9 SCC 286 : AIR 2011 SC 3298] and State of T.N. v. K. Shyam Sunder [(2011) 8 SCC 737 : AIR 2011 SC 3470] .)

69. *We would also like to bring on record that various*

instances whereby acts of mismanagement/maladministration/misappropriation alleged to have been committed by Podhu Dikshitaras have been brought to our notice. We have not gone into those issues since we have come to the conclusion that the power under the 1959 Act for appointment of an Executive Officer could not have been exercised in the absence of any prescription of circumstances/conditions in which such an appointment may be made. More so, the order of appointment of the Executive Officer does not disclose as for what reasons and under what circumstances his appointment was necessitated. Even otherwise, the order in which no period of its operation is prescribed, is not sustainable being ex facie arbitrary, illegal and unjust.”

(f) In the case of ***C.Aндиappan and Ors. Vs. The Joint Commissioner, Tamil Nadu HR & CE and Ors., reported in [2016] 1 LW 340***, wherein the Madurai Bench of Madras High Court held as follows:

“53. In the case of specific endowments such as ‘kattalais’, an obligation is imposed by the founder of the endowment upon the trustees, to continue to perform specific services perpetually. A property is endowed for the purpose, with a stipulation that the

income arising there from should be utilised for the performance of the kattalai. As a consequence, the ownership of the property is not passed on to the idol, but a charge is created on the property for the performance of the services for which the specific endowment is created.

57. But, that is not the case with a fit person. A fit person cannot be expected to spend money out of his pocket to perform the kattalai. Therefore, if the wishes of the founder of a specific endowment are to be honoured, it is necessary that the rule of next in the line of succession statutorily recognised, has to be followed. This is perhaps the reason why this Court has consistently taken the view that even in cases where the parents were guilty of some wrong doing, the children were not disqualified from being appointed as trustees.

*60. Therefore, the writ appeals are allowed and the common order of the learned Judge is set aside. The writ petitions filed by the appellants would stand **partly allowed to the following effect:***

(i) The order placing the trustees under suspension and framing charges against them is upheld. The competent authority is directed to proceed with the enquiry into the charges and pass final orders within a period of three months from the date of receipt of a copy of this order.

(ii) The order of appointment of fit person is set aside. The appropriate authority shall appoint the next in the line of succession in the family of the founder as the trustee/trustees,

within a period of one week from the date of receipt of a copy of this order.

(iii) No order as to costs. Connected miscellaneous petitions are closed.”

(g) In the case of ***AdiSaiveSivachariyargalNala Sangam & Ors Vs. The Government of Tamil Nadu & Anr, reported in [2016] 2 SCC 725,*** wherein the Hon'ble Apex Court of India held as follows:

“48. Seshammal [Seshammal v. State of T.N., (1972) 2 SCC 11] is not an authority for any proposition as to what an Agama or a set of Agamas governing a particular or group of temples lay down with regard to the question that confronts the court, namely, whether any particular denomination of worshippers or believers have an exclusive right to be appointed as Archakas to perform the poojas. Much less, has the judgment taken note of the particular class or caste to which the Archakas of a temple must belong as prescribed by the Agamas. All that it does and says is that some of the Agamas do incorporate a fundamental religious belief of the necessity of performance of the poojas by Archakas belonging to a particular and distinct sect/group/denomination, failing which, there will be defilement of deity requiring purification

ceremonies. Surely, if the Agamas in question do not proscribe any group of citizens from being appointed as Archakas on the basis of caste or class the sanctity of Article 17 or any other provision of Part III of the Constitution or even the Protection of Civil Rights Act, 1955 will not be violated. What has been said in Seshammal [Seshammal v. State of T.N., (1972) 2 SCC 11] (supra) is that if any prescription with regard to appointment of Archakas is made by the Agamas, Section 28 of the Tamil Nadu Act mandates the trustee to conduct the temple affairs in accordance with such custom or usage. The requirement of constitutional conformity is inbuilt and if a custom or usage is outside the protective umbrella afforded and envisaged by Articles 25 and 26, the law would certainly take its own course. The constitutional legitimacy, naturally, must supersede all religious beliefs or practices.”

(h) In the case of ***Bir Bajrang Kumar Vs. State of Bihar***, reported in ***AIR [1987] SC 1345***, wherein it is held as follows:

“1. Special leave is granted. Heard the counsel for the parties. After going through the record of the case it appears that one of the cases involving an identical point has already been admitted by the High Court but another identical petition

was dismissed by the same High Court. This, therefore, creates a very anomalous position and there is a clear possibility of two contradictory judgments being rendered in the same case by the High Court. In these circumstances, we allow this appeal and set aside the order dismissing CWJC No. 183 of 1985. This appeal is remanded to the High Court to be heard along with CWJC No. 5728 of 1984 which is pending hearing.

2. Status quo as on today in both the cases shall be maintained. The respondents are at liberty to move the High Court for any other relief, if so advised.”

(i) In the case of ***RajeAnandrao Vs. Shamroa and Ors, reported in AIR [1961] SC 1206***, wherein it is held as follows:

“6. The main question that arises in this appeal is how far it is open to a court to amend a scheme once framed under Section 92 of the Code of Civil Procedure, where a power to amend the scheme is reserved in the scheme itself. It is not seriously disputed in this case that the power to amend the scheme has been reserved in view of the judgment of the Additional Judicial Commissioners already set out above and para 17 of the scheme dated October 16, 1935. The High Court has held that as the pujaris were not parties to the suit

under Section 92, the scheme could not be amended so as to affect their rights, for even where a power is reserved in the scheme to modify it, it could only be invoked for a purpose analogous to execution of a decree. It is the correctness of this view which has been challenged before us.”

(j) In the case of ***Srinivasa Institute of Engineering and Technology, rep by its Principal, Dr.D.Padmanabhan Vs. All India Council for Technical Education (AICTE)***, reported in 2010 (4) CTC 225, wherein it is held as follows:

“87. The Council did not file any counter denying these averments specifically made in the Affidavit. Therefore, the averments contained in paragraphs 9 to 12 are deemed to have been admitted by the Council to be true. When such is the position, the Council issued the impugned Regulations and published the same on 06.02.2010. The Council insisted that even the existing Institutions should apply as per the new norms and standards prescribed under the Approval Process Hand Book. Some of the drastic changes introduced under the new norms and standards are as follows:

(a) Qualification of the faculty insisting upon post-graduation as pre-requisite qualification;

(b) Post of Lecturer has been abolished resulting in the Lecturers facing threat of losing their employment; and

© Penal provision in Regulation 11.1.”

(k) In the case of ***R.Murali and others Vs. Kanyaka P.Devasthanam and Charities and others, reported in (2005) 6 SCC 166***, wherein the Hon'ble Supreme Court of India held as follows:

“18. The Division Bench of the High Court also went wrong in holding that the decree granted by the City Civil Court in the year 1976 in favour of the respondents is contrary to Section 64 of the Tamil Nadu Act. We have examined the relevant provisions of the Tamil Nadu Act. The Institution under consideration is carrying on multifarious activities of religious and charitable nature. It is not purely a “Hindu religious institution or endowment”. It is also a “charitable endowment” as defined in clause (5) and “religious charity” under the definition in clause (16) of Section 6 of the Tamil Nadu Act.

19. As a result of the decree of declaration that the Institution is a religious denomination of the Arya Vysya community, it had protection under Article 26 of the Constitution from interference in its administration by the

Authorities under the Tamil Nadu Act. This right guaranteed under Article 26 of the Constitution has been expressly protected under Section 107 of the Tamil Nadu Act by making inapplicable the other provisions of the Act including Section 64 to institutions of religious and charitable nature of religious denominations.

20. Our conclusion is that on grounds both of existence of a decree of declaration and injunction granted by the City Civil Court in the year 1976 in the suit instituted by the respondents themselves and the mixed character of the Institution of “religious denomination” as religious and charitable with protection of Article 26 and Section 107 of the Tamil Nadu Act, it is not open to the present appellants to approach the Authorities under Section 64 of the Tamil Nadu Act for modification or reframing the scheme of the administration of the Trust. As the decree of declaration and injunction is operative against the Authorities under the Tamil Nadu Act, the civil court alone could have been approached by obtaining leave under Section 92 CPC for seeking modification or reframing of scheme of administration of the Trust.”

14. Relying on the said judgments, the learned counsel for the

petitioner reiterated that the respondents have no power to place the trustee of Sri Audikesava Perumal Peyalwar Devasthanam Temple and further, they have no jurisdiction to continue the disciplinary proceedings against the trustees in view of Section 107, wherein protection is extended for denomination temple.

ARGUMENTS ON BEHALF OF THE RESPONDENTS:

15. The learned Advocate General appearing on behalf of the respondents objected the contentions raised on behalf of the petitioner in entirety. It is contended that in respect of the other four trustees stated in the impugned G.O.Ms.No.107, separate orders were issued in G.O.(P).No.118 dated 24.08.2021. Though the petitioner has made a submission before this Court and got adjournment of the present writ petition on the ground that the 4 other trustees are filing separate writ petitions, challenging the G.O.(P).No.118 dated 24.08.2021. Now those four trustees in a calculated manner, adopted the other legal course through another counsel, filed C.M.A.No.2558 of 2021 and an interim stay of the Government Order is granted in the said C.M.A.No.2558 of 2021. Irrespective of the conduct of the petitioner / Head Trustee in collusion with the other trustees, involved in

large scale misappropriation of funds of the temple, which are noticed by the competent authorities of the HR & CE Department on receipt of complaints. Therefore, actions are initiated, placing the trustees under suspension with a view to conduct a free and fair enquiry uninterrupted by such trustees.

16. The trustees are suspended for the purpose of conducting an enquiry in a free manner. Mere suspension is not a punishment and therefore, the petitioner along with other trustees are bound to co-operate for the completion of the enquiry proceedings as the allegations against the trustees are very serious, involving several crores rupees worth of temple properties. Instead of co-operating for the completion of enquiry, the petitioner, along with the other trustees, are adopting delay tactics and attempting to escape from the clutches of the disciplinary proceedings. Thus, the writ petition is devoid of merits.

17. The learned Advocate General drew the attention of this Court with reference to the judgment delivered in W.P.No.24113 of 2011 filed by Sri Audikesava Perumal Peyalwar Devasthanam, Mylapore, represented by

the Board of Trustees, wherein the present petitioner Mr.N.C.Sridhar was the Chairman. This Court has elaborately considered the provisions of the HR & CE Act and made a finding that the jurisdiction to take action against the trustees can be by the State Government, and Joint Commissioner / Commissioner has no jurisdiction. The above said submission was made by Mr.D.Rajagopal, learned counsel, who appeared for the writ petitioner. When the petitioner themselves submitted to the jurisdiction of the State Government with reference to Section 46 (3) and under Section 53(1) of the Act, then a different argument now placed on behalf of the petitioner deserves to be rejected. This, High Court accepted the contentions based on the provisions of the Act and made a finding that the decision in the writ petition shall not bar the State Government to take action against the trustees. Even at that point of time, the trustees had involved in certain misappropriation of the funds belongs to the temple and the Show Cause Notice itself was quashed during the relevant point of time on the ground that it was issued by the Joint Commissioner of HR & CE Department and the petitioner themselves submitted the jurisdiction for initiation of action against the trustees by the State Government. Therefore, the Department

was consistently taking action against such irregularities and illegalities as the misappropriation and illegalities in dealing with the properties of the temple are continuing for several years and many such devotees of that locality are making frequent complaints against such illegalities being committed by the trustees.

18. No doubt, the trustees are claiming that they have initiated action for eviction of encroachers. However, on verification, it is found that they were not diligent enough in pursuing the matter and contrarily, they allowed the encroachers to continue without even recovering any amount to the temple. The lessees are also not paying the rent properly to the Temple. The Temple is without income, despite the fact that the Deity possess large extent of properties worth about several crores. Under these circumstances, the first respondent initiated action and place the trustees under suspension and framed charges on initiation of disciplinary proceedings. Mere initiation of disciplinary proceedings cannot be construed as a grievance, except the point raised by the petitioner regarding the jurisdiction. However, the jurisdiction issue was decided by this Court in W.P.No.24113 of 2011 dated

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08.06.2012 as the petitioner himself submitted the jurisdiction with the State Government and therefore, the respondents must be allowed to continue the disciplinary proceedings initiated against the trustees for the purpose of protecting the temple administration its properties and the funds belongs to the temple.

19. The petitioner / Head Trustee namely Mr.N.C.Sridhar filed W.P.No.33892 of 2014 in the name of Sri Audi Kesava Perumal Peyalwar Devasthanam, to demolish the building and on-going construction activities unlawfully commenced in Survey No.4236 of Mylapore village, which belongs to the petitioner temple. Interestingly, the temple represented by the Head Trustee Mr.N.C.Sridhar (the petitioner herein) withdrew the writ petition with a liberty to approach the Civil Court and an endorsement was made to that effect before this Court. However, no action was taken subsequently either to deal with the encroached properties or initiate action to demolish the illegal construction put up in the temple properties. Therefore, the irregularities and illegalities are identified in a larger magnitude. All such factors are to be enquired into by conducting an

enquiry. At this point of time, the respondents are not fixing any liability on the trustees and they have initiated disciplinary proceedings against the trustees and therefore, such trustees are accountable and answerable in respect of the illegalities traced out in the temple administration and in dealing with the temple funds and properties.

20 a). The learned Advocate General with reference to the ground of jurisdiction raised on the ground that the temple is a denomination temple, relied on the judgment of the Constitution Bench of the Hon'ble Supreme Court of India in the case of *Seshammal and others Vs. State of Tamil Nadu, reported in [(1972) 2 SCC 11]*, wherein it is held as follows:

“21. It is true that a priest or an Archaka when appointed has to perform some religious functions but the question is whether the appointment of a priest is by itself a secular function or a religious practice. Mr Palkhivala gave the illustration of the spiritual head of a math belonging to a denomination of a Hindu sect like the Shankaracharya and expressed horror at the idea that such a spiritual head could be chosen by a method recommended by the State though in conflict with the usage and the traditions of the particular

institution. Where, for example, a successor of a Mathadhipati is chosen by the Mathadhipati by giving him mantra-deeksha or where the Mathadhipati is chosen by his immediate disciples, it would be, he contended, extraordinary for the State to interfere and direct that some other mode of appointment should be followed on the ground of social reform. Indeed this may strike one as an intrusion in the matter of religion. But we are afraid such an illustration is inapt when we are considering the appointment of an Archaka of a temple. The Archaka has never been regarded as a spiritual head of any institution. He may be an accomplished person, well versed in the Agamas and rituals necessary to be performed in a temple but he does not have the status of a spiritual head. Then again the assumption made that the Archaka may be chosen in a variety of ways is not correct. The Dharam-karta or the Shebait makes the appointment and the Archaka is a servant of the temple. It has been held in K. Seshadri Aiyangar v. Ranga Bhattar [ILR 35 Mad 631] that even the position of the hereditary Archaka of a temple is that of a servant subject to the disciplinary power of the trustee. The trustee can enquire into the conduct of such a servant and dismiss him for misconduct. As a servant he is subject to the discipline and control of the trustee as recognised by the

unamended Section 56 of the principal Act which provides “all office-holders and servants attached to a religious institution or in receipt of any emolument or perquisite therefrom shall, whether the office or service is hereditary or not, be controlled by the trustee and the trustee may, after following the prescribed procedure, if any, fine, suspend, remove or dismiss any of them for breach of trust, incapacity, disobedience of orders, neglect of duty, misconduct or other sufficient cause”. That being the position of an Archaka, the act of his appointment by the trustee is essentially secular. He owes his appointment to a secular authority. Any lay founder of a temple may appoint the Archaka. The Shebaitis and Managers of temples exercise essentially a secular function in choosing and appointing the Archaka. That the son of an Archaka or the son's son has been continued in the office from generation to generation does not make any difference to the principle of appointment and no such hereditary Archaka can claim any right to the office. See Kali Krishan Ray v. Makhan Lal Mookerjee [ILR 50 Cal 233] , Nanabhai Narotamdas v. Trimbak Balwant Bhandare [(1878-80) Vol. 4, Unreported printed Judgments of the Bombay High Court, p. 169] and Maharanee Indurjeet Kooer v. Chundemun Misser [16 WR 99] . Thus the appointment of an Archaka is a

secular act and the fact that in some temples the hereditary principle was followed in making the appointment would not make the successive appointments anything but secular. It would only mean that in making the appointment the trustee is limited in respect of the sources of recruitment. Instead of casting his net wide for selecting a proper candidate, he appoints the next heir of the last holder of the office. That after his appointment the Archaka performs worship is no ground for holding that the appointment is either a religious practice or a matter of religion.

22. In view of sub-section (2) of Section 55, as it now stands amended, the choice of the trustee in the matter of appointment of an Archaka is no longer limited by the operation of the rule of next-in-line of succession in temples where the usage was to appoint the Archaka on the hereditary principle. The trustee is not bound to make the appointment on the sole ground that the candidate, is the next-in-line of succession to the last holder of office. To that extent, and to that extent alone, the trustee is released from the obligation imposed on him by Section 28 of the principal Act to administer the affairs in accordance with that part of the usage of a temple which enjoined hereditary appointments. The legislation in this respect, as we have shown, does not

interfere with any religious practice or matter of religion and, therefore, is not invalid.

23. We shall now take separately the several amendments which were challenged as invalid. Section 2 of the Amendment Act amended Section 55 of the principal Act and the important change which was impugned on behalf of the petitioners related to the abolition of the hereditary principle in the appointment of the Archaka. We have shown for reasons already mentioned that the change effected by the Amendment is not invalid. The other changes effected in the other provisions of the principal Act appear to us to be merely consequential. Since the hereditary principle was done away with the words "whether the office or service is hereditary or not" found in Section 56 of the principal Act have been omitted by Section 3 of the Amendment Act. By Section 4 of the latter Act clause (xxiii) of sub-section (2) in Section 116 is suitably amended with a view to deleting the reference to the qualifications of hereditary and non-hereditary offices which was there in clause (xxiii) of the principal Act. The change is only consequential on the amendment of Section 55 of the principal Act. Sections 5 and 6 of the Amendment Act are also consequential on the amendment of Sections 55 and 56. These are all the sections in the Amendment Act and in our view the

Amendment Act as a whole must be regarded as valid.

24. It was, however, submitted before us that the State had taken power under Section 116(2), clause (xxiii) to prescribe qualifications to be possessed by the Archakas and, in view of the avowed object of the State Government to create a class of Archakas irrespective of caste, creed or race, it would be open to the Government to prescribe qualifications for the office of an Archaka which were in conflict with Agamas. Under Rule 12 of the Madras Hindu Religious Institutions (Officers and Servants) Service Rules, 1964 proper provision has been made for qualifications of the Archakas and the petitioners have no objection to that rule. The rule still continues to be in force. But the petitioners apprehend that it is open to the Government to substitute any other rule for Rule 12 and prescribe qualifications which were in conflict with Agamic injunctions. For example at present the Ulthurai servant whose duty it is to perform pujas and recite vedic mantras etc, has to obtain the fitness certificate for his office from the head of institutions which impart instructions in Agamas and ritualistic matters. The Government, however, it is submitted, may hereafter change its mind and prescribe qualifications which take no note of Agamas and Agamic rituals and direct that the Archaka candidate should produce

a fitness certificate from an institution which does not specialise in teaching Agamas and rituals. It is submitted that the Act does not provide guidelines to the Government in the matter of prescribing qualifications with regard to the fitness of an Archaka for performing the rituals and ceremonies in these temples and it will be open to the Government to prescribe a simple standardised curriculum for pujas in the several temples ignoring the traditional pujas and rituals followed in those temples. In our opinion the apprehensions of the petitioners are unfounded. Rule 12 referred to above still holds the field and there is no good reason to think that the State Government wants to revolutionise temple worship by introducing methods of worship not current in the several temples. The rule-making power conferred on the Government by Section 116 is only intended with a view to carry out the purposes of the Act which are essentially secular. The Act nowhere gives the indication that one of the purposes of the Act is to effect a change in the rituals and ceremonies followed in the temples. On the other hand, Section 107 of the principal Act emphasises that nothing contained in the Act would be deemed to confer any power or impose any duty in contravention of the rights conferred on any religious denomination or any section thereof by Article 26 of the

Constitution. Similarly, Section 105 provides that nothing contained in the Act shall (a) save as otherwise expressly provided in the Act or the rules made thereunder, affect any honour, emolument or perquisite to which any person is entitled by custom or otherwise in any religious institution, or its established usage in regard to any other matter. Moreover, if any rule is framed by the Government which purports to interfere with the rituals and ceremonies of the temples the same will be liable to be challenged by those who are interested in the temple worship. In our opinion, therefore, the apprehensions now expressed by the petitioners are groundless and premature.”

(b) In the case of *the Assistant Commissioner HR & CE, Salem Vs. Nattamai K.S.Ellappa Mudaliar & 11 others*, reported in [AIR 1987 MAD 187], wherein it is held as follows:

“30. As seen from the decision of the Supreme Court, the words 'religious denomination' must take their colour from the word 'Religion'. It is, therefore, clear that the common faith of the community should be based on religion. It is essential that they should have common religious tenets. The basic cord which connects them should be religion and

not anything else. If the aforesaid tests are applied in the present case, it will be seen that Senguntha Mudaliar community of Tharamangalam cannot claim to be a religious denomination. There is absolutely no evidence on record to prove that the members of the community have common religious tenets peculiar to themselves other than those which are common to the entire Hindu community. The only witness examined on the side of the plaintiffs is the first plaintiff who speaks repeatedly about the temple being owned by the community and administered by the two sections called Chinna Katchi and Periya Katchi. Though he asserts in the cross examination that there is no person in Tharamangalam who does not belong either to Chinna Katchi or Periya Katchi, there was no such averment in the plaint to that effect. He is not able to explain the absence of such an averment in the plaint. One significant fact is brought out in the admission of P.W. 1 that the person who performs the pujas in the temple is a Gounder and not a Senguntha Mudaliar. Though the pujari is said to be a paid employee of the community, it is a matter of admission that before the present pujari his father was doing pujas. P.W. 1 pleads ignorance as to who was doing puja prior to 1966. Though he states that accounts are available for the periods both prior to and after 1966, no

such accounts have been produced. He admits that there is a street in Tharamangalam for Karkatha Vallalars. Obviously, his assertion that there is nobody in the village who does not belong either to Chinna Katchi or Periya Katchi is false. In another place, P.W. 1 admits that 90% of the Mudaliars of Tharamangalam belong to Chinna Katchi and Periya Katchi. That proves that there are other Mudaliars not belonging to either Chinna Katchi or Periya Katchi. D.W. 1, who was appointed as a trustee by the Department, also belongs to Senguntha Mudaliar Community. According to him, the persons who carried the deity in procession are Padayachi Gounders and Karkatha Vellalars. According to him, members of all communities will take part in festivals and will do "fire walking". According to him, Gounders were doing pujas in the temple for 30 or 40 years, and that contributions for festivals are made by members of all communities. Even if it can be urged that the evidence of D. W. 1 having been rejected by the learned appellate Judge as thoroughly unsatisfactory and that I should not place any reliance thereon, I do not find any necessity to rely upon the oral evidence of D.W. 1 in the present case. In my opinion, neither the oral evidence of P.W. 1 nor the documentary evidence produced by the plaintiffs would be sufficient to prove that the

three conditions laid down by the Supreme Court are satisfied in the present case. In fact, there is no iota of evidence to sustain the claim that the members of Senguntha Mudaliar Community have a common religious faith. The ingenious argument advanced by learned counsel for the plaintiffs before the lower appellate Court is that the common faith peculiar to Senguntha Mudaliars of Tharamangalam is evident from their worshipping a peculiar idol known by the peculiar name Kannanoor Mariamman. I do not find any peculiarity in worshipping the idol of Mariamman which is a common deity to several sections of the Hindu Community. There is no evidence on record as to how the idol got the name Karmanoor Mariamman. In all probability the idol might have been brought from a place called Kannanoor or the deity of Mariamman in Kannanoor is so famous that the people in Tharamangalam named the idol which they worshipped after that deity. It is very common in these days to see the idols of Sabarimalai Ayyappan being installed in every city, town and village in this country. In the absence of any evidence that there are religious tenets and practices special to the community, the plaintiff cannot succeed in proving that the community of Senguntha Mudaliars of Tharamangalam is a religious denomination. There is also no

evidence to show that the members of other communities have been excluded during certain religious ceremonies performed by Senguntha Mudaliars. On the other hand, there is an admission on the part of P.W. 1 that the idol of Kannanoor Mariamman is worshipped by members of other communities also, though he adds that they would do so with the permission of the plaintiffs.

33. For the purpose of invoking Art. 26 of the Constitution the plaintiffs have got to prove two facts, (1) that they established the temple and (2) they maintain the temple. In fact, learned counsel for the respondents himself referred to the decision of the Supreme Court in *Azeez Basha v. Union of India*, where the Supreme Court held that the word "establish and maintain" in Art. 26(a) of the Constitution 'must be read conjunctively and it is only those institutions which a religious denomination establishes which it can claim to maintain and that the right under Cl. (a) of Art. 26 will only arise where the institution is established by a religious denomination. In view of the same, the burden is on the plaintiffs to prove that the temple in question was established by the community of Senguntha Mudaliars of Tharamangalam and it is not sufficient if it is proved that the temple was being maintained by the community. I am of the opinion that the

entire evidence let in by the plaintiffs in the present case will only go to the extent of proving that the temple in question was being maintained by the members of Senguntha Mudaliars of Tharamangalani community and it will not prove that the temple was established by them.”

(c) In the case of ***B.Dharmaraj Vs. The District Collector in W.P.No.617 of 2019 dated 07.03.2019***, wherein the Hon'ble Madras High Court held as follows:

“9.Considering the arguments as advanced by the respective learned counsel appearing on behalf of the parties to the lis, this Court is of an opinion that suspension is not a punishment. Suspension is an interim arrangement to keep the public servant away from performing the official duties and responsibilities for the purpose of conducting free and fair investigation and enquiries. Suspension being an interim arrangement, cannot be quashed based on the merits of the allegations nor on the basis of certain documents or complaint. Even, on contemplation of charges, an employee can be placed under suspension. An information to the competent authorities is enough to place an employee under suspension. The Tamil Nadu Government Servants Conduct

Rules stipulates the nature of the misconducts and even sometimes, moral turpitude would cause a reason for placing an employee under suspension.

10.For instance, if an employee attending the duty in a drinking mood, that may be a cause for placing an employee under suspension. Thus, reasons may be many. However, the authority competent must satisfied that there are some allegations against the writ petitioner, warranting a detailed enquiry and under these circumstances, an order of suspension can be issued. Thus, an order of suspension is not a final order. It is only initiation of disciplinary proceedings against an employee. Thus, the writ against the order of suspension can be entertained only on certain limited grounds. The order of suspension can never be adjudicated in respect of the nature of the allegations or the complaint filed against the delinquent officials. All those allegations, counter allegations, documents are to be enquired into by the competent authorities and thereafter, a charge memo is to be issued and an enquiry is to be conducted by affording opportunity to the delinquent officials.

11.This being the procedures to be adopted for

continuing the departmental disciplinary proceedings. The suspension issued at the initial stage can be attacked on limited grounds.

12.If an order of suspension is issued by an incompetent authority having no jurisdiction or an allegation of mala fides are raised or if the same has been issued in violation of the statutory rules in force, then alone a writ proceedings can be entertained. Even, in case of raising an allegation of mala fides, the authority against whom such an allegation is raised, to be impleaded as party respondent in his personal capacity in the writ proceedings. In the absence of any such legal ground, the Hon'ble High Court would not interfere with the order of suspension in a routine manner. Judicial review against the order of suspension has to be exercised cautiously as the order of suspension is initiation of disciplinary proceedings and the merits and the demerits of the allegations can never be adjudicated. All such complex facts and circumstances are to be adjudicated only at the time of conducting an enquiry by affording the opportunity to the delinquent officials.

13.This being the principles to be followed, the efforts

taken by the learned counsel for the writ petitioner to convince this Court by reading the copy of the complaint and other documents would not arise at all. All such grounds are to be considered only at the time of conducting a detailed enquiry and such an exercise cannot be undertaken by the Hon'ble High Court in a writ proceedings, wherein the order of suspension is under challenge.”

21. The arguments as advanced by the respective learned counsel for the petitioner and the learned Advocate General are considered. The issues to be considered in this writ petition are:-

“(1) Whether the subject temple is to be construed as denomination temple or not, if so, the exemption is to be granted under Section 107 of HR & CE Act or not?”

(2) Whether the State Government is competent and having jurisdiction to initiate disciplinary proceedings against the trustees or not?”

ISSUE REGARDING DENOMINATION TEMPLES AND JURISDICTION

22. The ordinary dictionary meaning of the word “denomination” is that *“a religious organization whose congregations are united in their adherence to its beliefs and practices.”*

23. Section 107 of the HR & CE Act, 1959 contemplates “Act not to affect rights under Article 26 of the Constitution.” The provision states that “Nothing contained in this Act shall, save as otherwise provided in Section 106 and in clause (2) of Article 25 of the Constitution, be deemed to confer any power or impose any duty in contravention of the rights conferred on any religious denomination or any section thereof by article 26 of the Constitution.”

24. As a first criteria to extend the benefit of Section 107 of the Act, any such temple claiming to be a denomination temple, there must be a declaration to that effect. In the absence of any such declaration, the protection cannot be extended under Section 107 of the HR & CE Act. Mere fact, the temple belongs to Thengalai Sect and the Thengalai Sect devotees are worshiping the temple, would not confer any right to claim protection

under Section 107 of the Act. A declaration to that effect must be in force as the denomination temple has certain distinct characteristics.

25. A difference between community temple and denomination temple is community temple cannot be considered as a denomination temple. Therefore, protection given under Article 26 of the Constitution of India cannot be extended to a community temple. If at all a claim regarding the denomination temple is to be established, a declaratory relief is mandatory from the competent Civil Court of law. The protection provided under Articles 25 & 26 of the Constitution extends to a guarantee for rituals and observances, ceremonies and modes of worship, which are integral part of religion or religious practice and it has to be decided by the Court with reference to the doctrine of a particular religion or practices regarded as parts of religion, came to be equally firmly laid down. Thus, the religious denomination under Article 26 of the Constitution must satisfy three requirements namely:-

“(1) It must be a collection of individuals, who have a system of belief or doctrine which they regard as conducive to

their spiritual well being, i.e., a common faith;

(2) A common organization; and

(3) Designation of a distinctive name. It necessarily follows that the common faith of the community should be based on religious and in that they should have common religious tenets and the basic chord which connects them should be religion and not merely consideration of caste or community or social status.”

26. Therefore, in the absence of fulfilling all these mandatory requirements and in the absence of any declaration from the competent Court of law, a temple cannot seek protection under Section 107, merely claiming that it is a denomination temple.

27. Even in case of denomination temples, if there is a specific complaint or allegation of mismanagement, it is open to the authorities to summon and required accounts for auditing and verification. Thus, the proposition is well settled. Under these circumstances, in the absence of any

specific declaration to the effect that the temple is a denomination temple, the arguments as advanced by the petitioner in this regard deserves no merit consideration. Admittedly, the petitioner has not produced any such declaration and further, the temple being an ancient temple, situate in Mylapore and people from various communities are the devotees of the said temple and the temple being notified under the provisions of the HR & CE Act, there is no impediment for the respondents to enter upon into the temple and initiate appropriate action in the event of any complaint regarding misappropriation of the funds or the illegalities in dealing with the properties of the temple.

28. Let us now consider the relevant provisions of the HR & CE Act and the scope of Article 26 of the Constitution of India regarding the denomination temple.

29. Section 27 of the Act 1959, provides that the trustee would be bound to obey all lawful orders issued by the Government or the Statutory authorities.

30. Section 45 of the Act 1959, provides for appointment and duties of Executive officers and the relevant portion reads as under:

“(1) Notwithstanding anything contained in this Act, the Commissioner may appoint, subject to such conditions as may be prescribed, an executive officer for any religious institution other than a math or a specific endowment attached to a math.

“(2) The executive officer shall exercise such powers and discharge such duties as may be assigned to him by the Commissioner.”

Provided that only such powers and duties as appertain to the administration of the properties of the religious institution referred in subsection (1) shall be assigned to the executed officer.”

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On the other hand, Section 107 of the Act, 1959 provides that the Act would not affect the rights guaranteed under Article 26 of the Constitution. It reads:

“Nothing contained in this Act shall, save as otherwise provided in section 106 and in clause (2) of Article 25 of the

Constitution, be deemed to confer any power or impose any duty in contravention of the rights conferred on any religious denomination or any section thereof by article 26 of the Constitution.”

31. Section 116 of the Act 1959 stipulates “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 ;

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(3) All rules made and all notifications issued under this Act shall, as soon as possible after they are made or issued, be placed on the table of the Legislative Assembly and shall be subject to such modifications by way of amendment or repeal as the Legislative Assembly may make either in the same session or in the next session.”

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32. Article 26 of the Constitution provides “Freedom to manage religious affairs.” and it reads as under:

“Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law.”

33. In the case of *Khajamian Wakf Estates etc., Vs. State of Madras etc., AIR 1971 SC 161*, the Constitution Bench of the Hon'ble Supreme Court held that the religious denomination can own, acquire properties and administer them in accordance with law. In case, they lose the property or alienate the same, the right to administer automatically lapses for the reason that property ceases to be their property. Article 26(d) of the Constitution protects the rights of religious denomination to establish and administer the properties as clauses (c) and (d) guarantee a fundamental right to any religious denomination to own, acquire, establish and maintain such

properties.

34. As far as the present writ petition on hand is concerned, admittedly, the petitioner has not placed any declaration to establish that the subject temple is the denomination temple. Admittedly, the temple is an ancient temple in Mylapore, Chennai City and people from different communities are the devotees and worshipping the temple. The trustees from various communities professing Thengalai Sect have continue to hold the post of trustees. More than these aspects, perusal of the allegations in the impugned Government letter would reveal that large scale properties belongs to the temple are under encroachment or leased out in an illegal manner and in respect of few properties, illegal sale were also executed. There are other allegations of misappropriation of funds of the temple. In view of these facts, the petitioner has not established that Sri Audikesava Perumal Peyalwar Devasthanam Temple is a denomination temple and even in respect of a denomination temple, in case, they lose property or alienate the same, the right to administer automatically lapses for the reason that property ceases to be their property as per the principles laid down by the Constitution Bench

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in the case of *Khajamian Wakf Estates (cited supra)*. In both the counts, the subject temple namely Sri Audikesava Perumal Peyalwar Devasthanam Temple and its administration are falling under the control of the HR & CE Department under the provisions of the HR & CE Act, 1959. Thus, the contentions raised that the subject temple is a denomination temple, is not supported with any documents or evidences, and when the allegations of misappropriation and alienating the properties are set out in the disciplinary proceedings, then the competent authorities under the HR & CE Department is empowered to exercise control over the temple and initiate all appropriate actions to protect the interest of the temple.

35. As far as the Powers of the Government is concerned, the issue was already considered by this Court elaborately in the petitioner's own case in W.P.No.24113 of 2011 dated 08.06.2012. The petitioner in the said writ petition is Sri Audikesava Perumal Peyalwar Devasthanam Temple, represented by its Board of Trustees and the Chairman is the petitioner herein Mr.N.C.Sridhar. This Court elaborately considered the provisions of the Act and the contentions raised on behalf of the petitioner therein was

that by referring to Section 53 of the Act, is that the Temple, though notified under Section 46(2), but on account of enhanced income, it will fall under Section 46(3), and under Section 53(1) of the Act, the jurisdiction to take action against the Trustees can be by the State Government, and Joint Commissioner / Commissioner has no jurisdiction.

36. On the ground that the Joint Commissioner issued the Show Cause Notice, the Court quashed Show Cause Notice. However, the Court in unambiguous terms held that the decision in the said writ petition shall not bar the State Government to take action against the Trustees. Therefore, the petitioners themselves have contended that the State Government is competent to initiate action against the trustees and the Court also accepted the said contention and quashed the Show Cause Notice issued by the Joint Commissioner of HR & CE Department and held that the decision shall not bar the State Government to take action against the trustees. This being the proposition already in force, the very contention now raised on behalf of the petitioner is diametrically opposite to the judgment delivered in their own

case, cannot be considered. Thus, the State Government, represented by the Secretary to Government, Religious Endowments Department is empowered to initiate action against the trustees of Sri Audikesava Perumal Peyalwar Devasthanam Temple.

37. In respect of the judgments relied on behalf of the petitioner, the principles laid down by the Apex Court and the High Court is not disputed by either of the parties. However, the applicability of those principles are to be tested with reference to the facts and circumstances established in the present case. When the learned counsel for the petitioner reiterated that application under Section 92 C.P.C., would be appropriate, this Court is of the considered opinion that those judgments relating to the denomination temples cannot be applied in the present case as the petitioner has not established that the subject temple is a denomination temple nor any declaration granted by the competent Civil Court has been filed before this Court. Thus, those judgments and the principles established through the said judgments may not have application with reference to the facts and circumstances of the present case. Even the Courts have held that in

denomination temples, if any illegalities committed, “State” is the authority to initiate appropriate action. This being the principles, the case of the petitioner is to be considered on facts.

38. As far as the Suspension is concerned, it is not a final order and an interim arrangement, enabling the competent authorities of the HR & CE Department to create free access to the records and to conduct free and fair enquiry in respect of the serious allegations against the trustees of the said temple. Suspension cannot be construed as final proceedings. Thus, it cannot be considered as a stigma on the trustees. It is only an interim order, issued only for the purpose of conducting an enquiry in a free and fair manner. An order of suspension can be questioned undoubtedly on limited grounds. If any order of suspension is issued by an incompetent authority having no jurisdiction, directly hitting the provisions of the Statute or rules or an allegation of malafides are raised against the authority, who issued the order of suspension. Even in case of raising an allegation of malafides, the authority against whom such an allegation is raised, must be impleaded as a party respondent in his personal capacity. Thus, the petitioner has to defend

his case in respect of the allegations raised against him and to prove his innocence or otherwise by submitting documents, explanations, evidences etc., Therefore, the petitioner is bound to participate in the process of enquiry and establish his case by availing the opportunities to be provided by the competent authority. Contrarily, allegations as well as the suspension order cannot be quashed at the initial stage on merits. High Court cannot adjudicate the disputed facts, more specifically in respect of the allegations against the trustees and their explanations provided in the writ petition. Allegations and counter allegations are required to be adjudicated based on the documents and evidences and such power of adjudication need not be exercised by the High Court under Article 226 of the Constitution of India.

39. Let us now consider the nature of allegations against the petitioner.

40. The petitioner is continuing as a Head Trustee for more than 10 years and not paved way for the other eligible persons to be co-opted as trustees and thereby violated the rules. No doubt, certain lapses may be

related to the period, in which, the petitioner was not holding the post of trustee. However, the petitioner is continuing as a trustee for more than 10 years. Thus, he is accountable and answerable for the lapses, negligence and dereliction of duty in not maintaining the property belongs to the temple vigilantly and prudently. The petitioner cannot simply seek exoneration on the ground that the encroachments were prevailing even prior to his assumption to the Post of Trustee. Any trustee on assumption of charges, is expected to maintain the property and even in case of encroachment, illegality or irregularity, the actions initiated and the progress made are to be established in such circumstances, where allegations are raised. Therefore, the petitioner cannot say that even prior to his assumption as Trustee, the encroachments were there. There are allegations of misappropriation of the funds of the society and collection of money from the worshipers.

41. The learned Advocate General brought to the notice of this Court that several crores worth of properties (running more than 100 crores) are either encroached or encumbered or rent is not collected or other illegalities are committed. It would be a greater task for the Department to retrieve the

properties belongs to the subject temple. It is contended that unless the respondents are allowed to proceed based on the allegations set out against the trustees, it would be very difficult to recover the properties belongs to the temple as the subject temple is unable to establish any income from and out of such valuable properties. Perusal of the allegations would reveal that they are very serious in nature. However, at this moment, no one can form an opinion that the present trustees alone are responsible for all such illegalities and irregularities.

REPORT FILED ON BEHALF OF THE RESPONDENTS:

42. The learned Advocate General, based on the report filed by the respondents, contended that an Identifying Committee was constituted, consisting (1) Executive Officer/Trustee/Fit Person/Hereditary Trustee etc., of the concerned temple, (2) The Village Administrative Officer, and (3) Field Surveyor (Retired). The said Committee shall physically identify each and every properties belonging to the religious institutions. The Scrutinizing Committee, at each District Level consisting of (1) The Assistant Commissioner of the concerned Division (2) Tahsildar or Deputy Tahsildar

(Retd), (3) Village Administrative Officer, and (4) Field Surveyor (Retired). The Scrutinizing Committee, on obtaining the records from the Identifying Committee will scrutinize the relevant Revenue Records and other documents and submit a report to the Commissioner with a certification that the properties identified are belonging to the religious institution.

43. Thus, Identifying and Scrutinizing Committees have been constituted for 39,743 religious institutions and the said Committees have so far identified properties of 17,185 religious institutions covering an extent about 1,28,563 acres of lands comprising 50490 numbers of pieces / parcels of lands. Similarly, the said Committees have scrutinized 15,256 properties and have identified 20,776 encroachments i.e., unauthorizedly in occupation of property without the approval of the competent authority sanctioning lease, or mortgage or licence and continues to remain in the property after the expiry or termination or cancellation of the lease, mortgage or licence.

44. Actions for removal of encroachments were initiated by invoking

Section 78 of the HR & CE Act, 1959. Already actions have been initiated against 8,188 encroachers covering an extent of 4,118 Acres of land. Actions is about to be taken against 10,930 encroachers covering an extent of 3,526 acres of lands. So far, from 16.05.2011 to 06.05.2021, an extent of 3,177 Acres of lands, 629 Grounds of Vacant Site, 343 Grounds of buildings have been retrieved worth of Rs.3,819 crores. From 07.05.2021 to 09.09.2021, an extent of 214 Acres of lands, 217 grounds of vacant site, 2 grounds of buildings, 15 grounds of temple tank-worth of Rs.925 crores have been retrieved. The enquiry into the removal of encroachment proceedings pending before the Regional Joint Commissioners are being continued against all such encroachers.

45. Instructions are provided to all the subordinate officials and temple Executive authorities to compare the details of properties with the data base of “Tamil Nilam”, Website of the Government. Accordingly, comparisons are being made and three types of reconciled statement would reveal that (i) Fully Matched Properties (ii) Partially Matched Properties and (iii) New Properties.

46. Based on these types of three properties, actions are being initiated and all necessary proceedings by following the provisions of the Statute and Rules are proceeded with. Department has filed appeals against the patta issued under Up-Dating Registry Scheme / Computerised Chitta etc., So far orders have been obtained in 1,518 appeals covering an extent of 9474 acres of lands, cancelling the patta issued in the name of the private individuals. It is identified that properties belonging to 2078 temples covering an extent of about 9,339 acres of lands have been changed in the Computerised Chitta, and orders have been obtained for 187 temples covering an extent of about 817 acres of lands reverting the name of the temple in the Computer Chitta.

47. The details of land and immovable properties belonging to each and every religious institution have been uploaded in the Department Website for viewing by the public. The Register of Properties (Section 29 Register) of all the religious institutions, have been digitalised by the Department. The survey of lands by Licensed Surveyors with Rover

equipment are being done to have a comprehensive record of the landed properties belonging to all the religious institutions. The Department has also engaged the services of 142 licensed Surveyors and 50 Rover equipments, on the advice of the Director of Survey and Settlement Department to identify, earmark the boundaries of each parcel of the land, lay survey stones and to upload the progress of work in the Google spread sheet daily.

48. The Rover equipment uses the DGPS-RTK (Differential Global Positioning System-Real Time kinematic) method, which ensures the accuracy of the survey work by capturing the latitude-longitude, co-ordinates of the land parcels, by co-ordination with the 70 CORS (Continuously Operating Reference System) Base Stations, maintained by the Survey and Settlement Department.

49. The Maps will be drawn with the held of Collabland Software, supported by Revenue Department. This ensures seamless integration between the data bases of the HR & CE Department and the Revenue

Departments. The Department has also engaged retired Deputy Director of Survey and Settlement to monitor and advice the licensed Surveyors in carrying out the above process of work.

50. For Strengthening the Revenue Officials, 2 Posts of Special Officers (for Temple Lands) in the cadre of District Revenue Officers are functioning at Headquarters. Apart from the above posts, 2 more posts of District Revenue Officers (for Temple Lands) one at Madurai and another at Coimbatore are also functioning. In addition to the above, in order to assist the subordinate officers in the mofussils, the Department has engaged the services of retired 8 Deputy Collectors, 18 Tahsildars, 2 Deputy Tahsildars, 18 Surveyors, 3 Revenue Inspectors and 9 Village Administrative Officers for identification and retrieval of the temple properties.

51. To resolve the inter-departmental issues through and by the Chief Secretary to Government, meeting was convened on 23.08.2021 by the Chief Secretary to Government with the Secretaries / Heads of Departments of Revenue Department, Registration Department, Public Department, Town

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and Country Planning Department, Rural Development and Panchayat Raj Department, Municipal Administration and Water Supply Department, Energy Department and Electricity Distribution Corporation etc., Therefore, the discrepancy arose due to the entries found in the Government records will be eliminated at the budding stage and encroachment caused in the temple properties will also be prevented.

52. Immediately, an Amendment to Section 79-B of the HR & CE Act, 1959 is made. Section 79-B of the Act deals with Penalty for offences in connection with encroachments. Sub-Section 3 of Section 79-B of the Act emphasis written complaint of the Commissioner, which is practically not possible in view of the fact that the Commissioner to sit as Revision authority to hear the Revisions filed under Section 21 of the Act against the orders of removal of encroachments passed by the Joint Commissioners under Section 78(4)/80 of the Act and could not in a position to file numerous complaints before various authorities and to appear before the Judicial Magistrate concerned on each and every hearing of the case, in view of the nature of the Complaint lodged being considered as private. For

effective working of the section, the Government has decided to amend Section 79-B of the Act suitably.

53. The learned Advocate General reiterated that swift actions are initiated in all respects for speedy recovery of encroached properties belonging to the religious institutions across the State of Tamil Nadu and further actions are initiated to deal with the cases of misappropriation, theft, etc., Thus, by following the said procedures, the case of the petitioner is also to be enquired into and all appropriate actions are to be initiated. It is brought to the notice of this Court that several crores worth of properties belonging to the subject temple is under encroachment and therefore, the authorities must be allowed to conduct an enquiry by following the procedures as contemplated under law for the purpose of retrieving the temple properties from the hands of the encroachers and to recover the misappropriated funds from the offenders. In order to conduct free and fair enquiry, an order of suspension is passed. Thus, the writ petition is to be rejected.

54. Raising allegations and counter allegations between the trustees and the HR & CE Department, is one aspect of the matter. But foremost important aspect is that the public interest in respect of religious institutions must be of paramount importance and this Court has to step-in such circumstances and issue appropriate orders in order to protect the interest of the temple administration and its properties.

55. Sri Audikesava Perumal Peyalwar Devasthanam Temple is an Ancient temple. Many great souls not only constructed the temple, but contributed their hard-earned money for the benefit of the temple. The properties, jewellerys, ornaments etc., are donated to the Deity of the temple for performing services to the temple and to the devotees. Thus, the protection of property belongs to the temple is the constitutional duty of the Courts.

56. The “Deity ” in the temple is a “minor” and the Court should be astute to protect the interests of an idol in any litigation. Therefore, when the trustee or the Executive Officer or the custodian of the idol, temple and its

properties, leave the same in lurch, any person interested in respect of such temple or worshipping the 'Deity' can certainly be clothed with an adhoc power of representation to protect its interest. Where the persons in management of a temple failed to protect the interest of the temple diligently, the Court is empowered to take notice of such facts and deal with the issues in an appropriate manner. The Court is bound to take notice of the fact that the Executive Officers appointed in the temples are being changed periodically and in many a case, they do not get fully acquainted with the history or affairs of the temple. If there is lapses, slackness or negligence on the part of the Executive Officer and the trustees of the temple, **“it is the duty of the Court to ensure that the 'Deity' does not suffer thereby. The Courts should be astute to protect the interests of an idol in any litigation.”**

57. Fraudulent and illegal encroachments of temple properties is a crime against the society at large. Misappropriation of the funds of the temple is undoubtedly an offence and all such offences are to be registered and the offenders are liable to be prosecuted by the State as the State is the

controller of these temples and the offences are also committed against the State. Temple properties are allowed to be looted by few greedy men and by few professional criminals and land grabbers. Active or passive contribution and collusion by the officials of the HR & CE Department cannot be overruled. These lapses, negligence, dereliction of duty on the part of such public officials are also to be viewed seriously and all appropriate actions in this regard are highly warranted.

58. The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their Trustees/Archaks/Sebais/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 concerned authorities. 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.

59. Therefore, beyond the private right, a public right is involved in such matters. When a public right is involved and the allegations are far more serious, then the Courts are expected to step-in and deal with such matters sternly and in an appropriate manner, failing which, the High Court is failing in its duty to exercise its Constitutional obligations.

60. The facts and circumstances would reveal that comprehensive directions are necessarily to be issued to protect the funds and properties of the temple and to preserve the public right in respect of such temples falling under the control of the competent authorities of the HR & CE Department.

61. It is brought to the notice of this Court that the other four trustees filed C.M.A.No.2558 of 2021 during the pendency of the present writ petition and an interim stay of the suspension order was granted. The Court,

while passing the interim order held that *“the third respondent is appointed as Supervisor, who shall act on behalf of the respondents to supervise the proper management and functioning of the subject Temple by the appellants as well as the other trustees. The appellants shall co-operate with the third respondent for the proper management and functioning of the subject Temple and shall render all assistance to his as and when he requires the same.”* The Court in clear terms, held as above that the appellants shall also co-operate with the third respondent and other authorized officials of HR & CE Department in the investigation with regard to the affairs of the said temple. It is the interim order, is considered only as an interim arrangement.

62. In view of the interim arrangement made by this Court in C.M.A.No.2558 of 2021 dated 08.09.2021, keeping the present writ petitioner / Head Trustee alone under suspension would not serve any purpose. Contrarily, the allegations against all such trustees must be enquired into by affording opportunity to them and a decision is to be taken by following the procedures as contemplated under the Statute and Rules. It

is needless to state that based on the enquiry, all actions including criminal actions are to be initiated against the persons, who all are accountable and liable. The respondents shall not take any lenient view in respect of dealing with such offences against the “Minor Deities” and in such circumstances, the Court has to step-in and initiate appropriate action. Misplaced sympathy would lead to miseries and result in infringement of the right of Minor Deity in the temple. Offences against the minors are far more serious than the offences against the persons. The Minor in this case being an idol, the trustees and administrators are the persons solely responsible and accountable for all such illegalities noticed. Thus, this Court has to take into account of the interim order passed by this Court in C.M.A.No.2558 of 2021 dated 08.09.2021.

63. Goondas Act (Tamil Nadu Act 14 of 1982). Sub-Section (a) to Section 2 of the Goondas Act defines “acting in any manner prejudicial to the maintenance of public order”. Sub-Clause (v) enumerates that “in the case of a slum-grabber, when he is engaged, or is making preparations for engaging, in any of his activities as a slum-grabber, which affect adversely,

or are likely to affect adversely, the maintenance of public order”. Sub-Section (h) to Section (2) defines “Slum-grabber” means a person, who illegally takes possession of any land (whether belonging to Government, local authority or any other person) or enters into, or creates illegal tenancies or leave and licence agreements or any other agreement in respect of such lands; or who constructs unauthorised structures thereon for sale or hire, or gives such lands to any person on rental or leave and licence basis for construction or use and occupation of unauthorised structures thereon, or who collects or attempts to collect from any occupier of such lands, rent, compensation or other charges by criminal intimidation or who evicts or attempts to evict any such occupier by force without resorting to the lawful procedure; or who abets in any manner the doing of any of the above-mentioned things;

64. In view of the provisions of the Act and Rules, all such persons, who have involved in encroachment activities, fraudulent transactions, illegal documents in respect of the temple properties across the State are liable to be prosecuted, considering the nature and velocity of the offences committed

by such persons. In some cases, actions may be required under the HR & CE Act and in other cases, serious actions under the criminal law are required. In extreme cases, the provisions of the Goondas Act is to be invoked by the Police based on the facts to facts basis. In such circumstances, the respondents shall not hesitate to invoke the provisions of the Goondas Act against such professional land grabbers and persons involved in encroachment and illegal activities in respect of the temple properties at large for personal and unjust gains.

65. It is to be borne in mind that the Minor Deity's properties are looted by few greedy men and by some offenders, who all are liable to be prosecuted on the lines enumerated above. The Director General of Police, Mylapore, Chennai – 600 004, is *suo-motu* impleaded as third respondent in the present writ petition only for the limited purpose of providing Police Protection to the officials of the Government Departments.

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CONCLUSION:

66. In view of the principles that Court should be astute to protect the

interests of an idol (minor) in any litigation, this Court is inclined to pass the following orders:

(1) The interim order of suspension issued by the first respondent in G.O.Ms.No.107 Tourism, Culture, Religious Endowments Department, dated 06.08.2021 is quashed in respect of the petitioner alone.

(2) The impugned Letter No.15033/A.Ni.3-1/2016-1 dated 06.08.2021 issued by the first respondent (charge memo) stands confirmed.

(3) The respondents are directed to appoint an Enquiry officer, not below the rank of the Joint Commissioner of HR & CE Department immediately to conduct an enquiry.

(4) The respondents are directed to take possession of all relevant Records from the subject temple for the purpose of conducting free and fair enquiry.

(5) The trustees of Sri Audikesava Perumal Peyalwar Devasthanam temple, as per their own undertaking both before this Court and in C.M.A.No.2558 of 2021, are directed to co-operate with the respondents for completion of enquiry, expeditiously.

(6) The respondents are directed to effect publication in respect of all the temples across the State of Tamil Nadu widely in the newspapers, calling upon the encroachers / illegal occupants etc., to surrender the possession of all such properties voluntarily before the competent authorities within a stipulated period, failing which, stern actions are directed to be initiated against all such encroachers/ illegal occupants / offenders etc., under the relevant provisions of the Act and Penal laws, how so ever high they are.

(7) The respondents are directed to initiate appropriate action through the Police Department in such cases, where actions under the provisions of the Goondas Act are warranted.

(8) The respondents are directed to constitute a “Special Cell”,

consisting team of officials with integrity and devotion to duty for the purpose of monitoring the actions initiated for the retrieval of temple properties, funds, jewellery etc.,

(9) The “Special Cell” constituted in the Head Quarters shall have separate Telephone / Mobile Numbers and such numbers must be displayed in all the temples and in the offices of the HR & CE Department, facilitating the general public / devotees to register their complaints.

(10) The Director General of Police is directed to provide all the necessary protections to the Government officials and the officials engaged by the HR & CE Department to perform the works, as and when required.

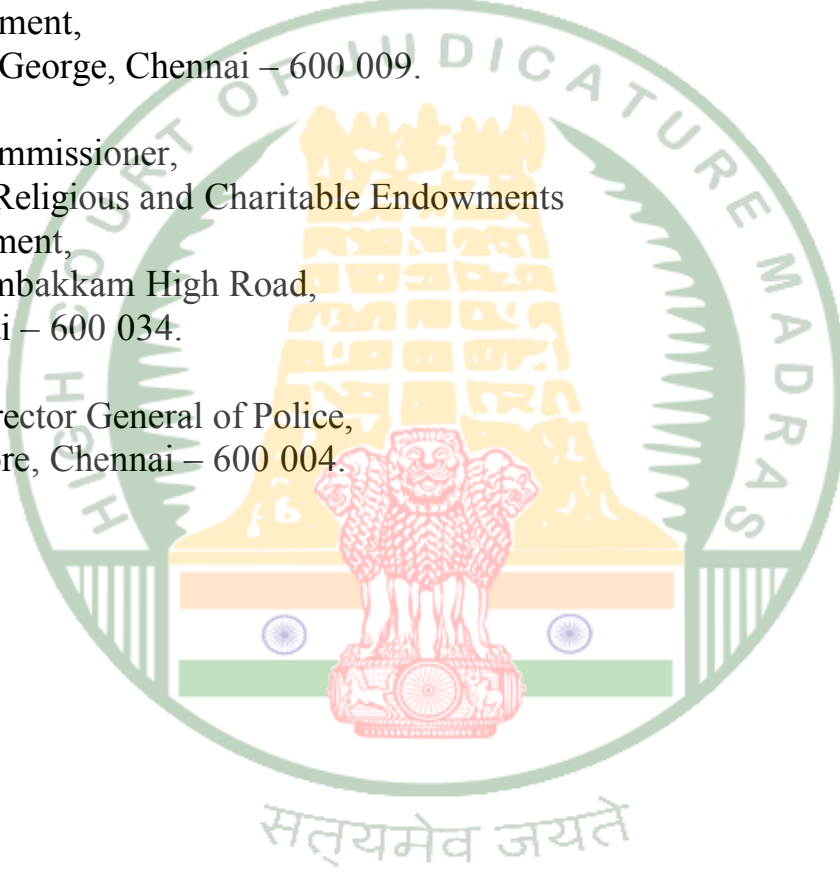
67. With all the above directions, the writ petition stands Partly-allowed. No costs. Consequently, connected miscellaneous petition is closed.

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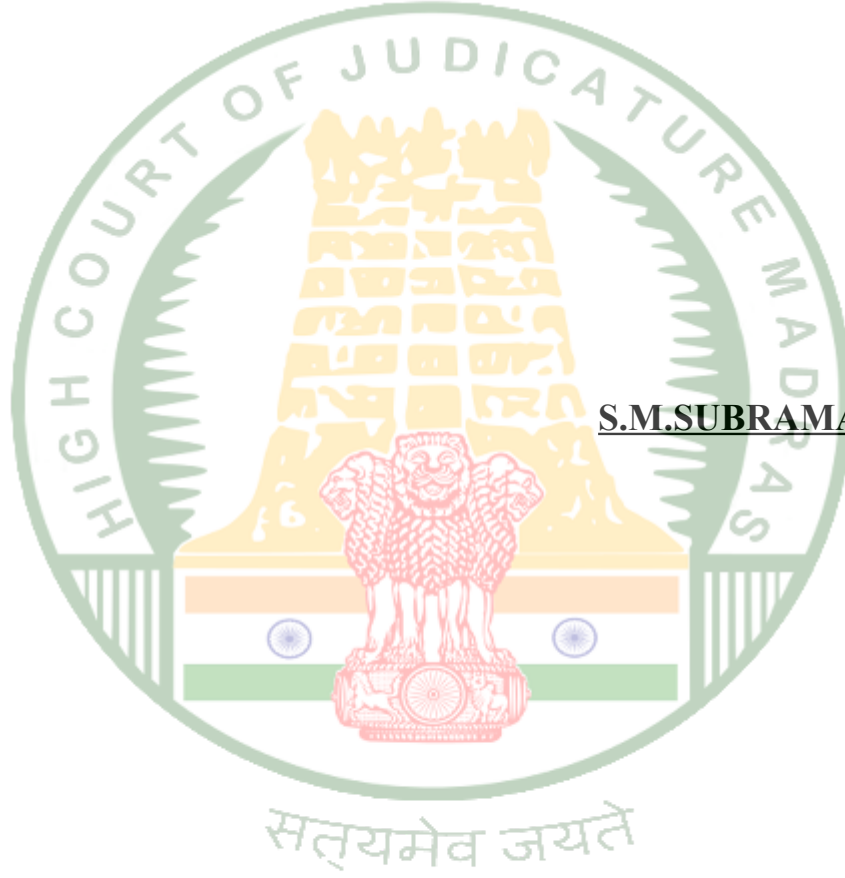
15.09.2021

Index : Yes/No
Internet: Yes / No
Speaking / Non-Speaking order
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To

- 1.The Secretary to Government,
Tourism, Culture, Religious Endowments
Department,
Fort St.George, Chennai – 600 009.
- 2.The Commissioner,
Hindu Religious and Charitable Endowments
Department,
Nungambakkam High Road,
Chennai – 600 034.
- 3.The Director General of Police,
Mylapore, Chennai – 600 004.



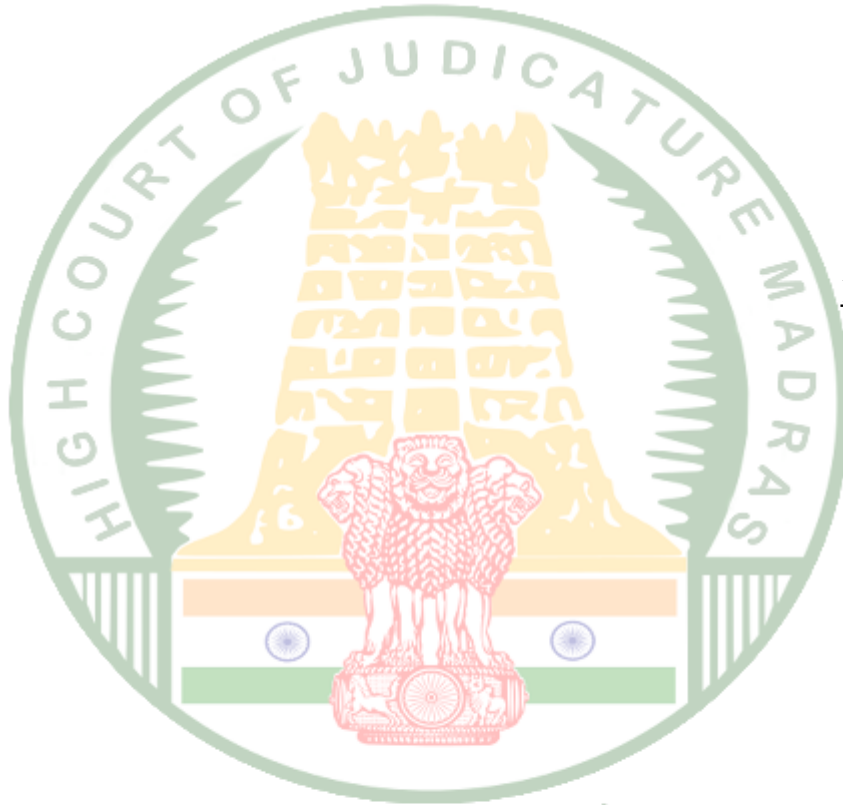
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S.M.SUBRAMANIAM, J.

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15.09.2021

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