



W.P.No.15841 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.09.2023

PRONOUNCED ON : 09.11.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.15841 of 2022
and W.M.P.No.15143 of 2022sq

Thirukayilaya Parambarai
Sri-La-Sri Sivaprakasa Desika
Sathiyagnana Pandara Sannidhi Swamigal,
The 103rd Madathipathi of Sengol Adheenam Math,
Perungulam Village, Srivaikuntham Taluk,
Tuticorin District.

... Petitioner

VS.

1.The Commissioner,
Hindu Religious and Charitable
Endowment Department,
Nungambakkam,
Chennai.

2.The Assistant Commissioner,
Hindu Religious and Charitable
Endowment, Administration Department,
Tuticorin.

3.The Executive Officer,
Sri Kallapiran Swami Temple
Sri Vaikundam
Tuticorin District.

... Respondents



W.P.No.15841 of 2022

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Order passed by the 1st Respondent dated 11.01.2022 in O.A.No.1 of 2018 D2, quash the same and consequently, direct the revocation the scheme framed in O.A.No.1 of 1960 dated 31.05.1960, by the 1st Respondent.

For Petitioner : Mr.G.Rajagopalan
Senior Advocate
for M/s. G.R.Associates

For Respondents : Mr.N.R.R.Arun Natarajan
Special Government Pleader (HR and CE)

Sl. No.	Particulars	Page Nos.	Paragraph Nos.
1	Introduction	3	1
2	Factual Background of the Case	3 to 9	2 (a) – 2 (d)
3	Submissions of the learned Senior Counsel appearing for the Petitioner	9 to 13	3
4	Submissions of the learned Special Government Pleader appearing for the respondents	13 to 14	4
5	History of Mutts and <i>Adhinams</i> in Tamilnadu	14 to 19	5 (a) - 5 (c)
6	Legal Status of the Head of the Mutt	19 to 37	6 (i)(d) -6 (viii)
7	Discussions on the Maintainability of the Writ Petition in view of Availability of Alternative Remedy	37 to 46	7(i) - 7(vi)
8	Discussion on Merits of the Case	46 to 75	8(i) - 8(xviii)
9	Discussion on the Question of <i>Res judicata</i>	76 to 79	9(a) - 9(b)
10	Conclusion	79 to 80	10 (a)
11	Operative Portion of Order	81 to 82	11 (a) to (f)



W.P.No.15841 of 2022

ORDER

WEB COPY **1. Introduction:-**

The Writ Petition is filed challenging the order passed by the 1st respondent dismissing the application filed by the petitioner herein seeking cancellation of scheme framed for administration of petitioner-Mutt dated 31.05.1960 in O.A.No.1 of 1960 and to permit the petitioner to have and hold the entire administration of the Mutt both the spiritual and secular. The writ petition raises important question with regard to the power of the State to interfere with the secular affairs of religious institutions having constitutional protection under Article 26 of the Constitution of India and the time limit for such intervention.

2. Factual Background of the Case:-

2 (a) The petitioner is the 103rd Head of the Mutt called Sengol Adheenam situated in the town of Perungulam, Tuticorin District. The Mutt has got a long history and its origin goes back to several centuries as seen from the fact the petitioner is the 103rd in the line of succession to the



W.P.No.15841 of 2022

Headship of the Mutt. According to the petitioner, the Mutt was originally established at Chidambaram and during the reign of 18th Head, at the request of Pandya King, the location of the Mutt was shifted to present place at Perungulam. It is also stated that Pandya King used to receive mace from Head of Sengol Mutt at the time of their ascendance to the throne. It is also stated that the Mutt acquired its name 'Sengol Adheenam' due to said practice. It is also stated that the practice of receiving mace at the time of coronation continued during the period Nayakar Rulers.

2 (b) It is seen from the pleadings of the parties that during the reign of 101st Head of the Mutt, there was mismanagement of the secular affairs of the Mutt like alienation of Mutt properties without proper sanction. Therefore, the 1st respondent herein by exercising his power under Section 65 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Act 22 of 1959) (hereinafter referred to as 'HR and CE Act' for the sake of brevity) framed a scheme for administration of secular affairs of the Mutt by order dated 31.05.1960 in O.A.No.1 of 1960. As per the scheme of the Act, an Advisory Committee was appointed to advise the Head of the Mutt in the secular affairs. Clause – 4 of the scheme declares that an



W.P.No.15841 of 2022

Advisory Committee will function for a period of two years from the date of framing of the scheme and the question of continuing Advisory Committee for a further period will be decided by 1st respondent in consultation with Head of the Mutt and the Chairman of the Advisory Committee, having regard to the circumstances at the end of the period of two years. The Head of the Mutt is bound to refer all the secular affairs of the Mutt to the decision of the Advisory Committee and he is bound to act, in secular affairs, as per the resolutions of the Advisory Committee. In case of any difficulty in carrying out the resolutions of the Advisory Committee in any matter, it is open to Head of the Mutt to report the same to the 1st respondent and seek his directions in that regard. Any directions issued by 1st respondent is binding on the Head of the Mutt. As per Clause – 8 of the scheme, a Manager (Executive Officer) was also appointed to attend to the day-to-day administration of the Mutt and to proper maintenance of all registers and accounts etc., as per the Act and Rules and submission of the same to the appropriate authority. The Manager was given power to realise the income of the Mutt and deposit the same in the accounts of the Mutt. The bank account of the Mutt shall be operated jointly by the Manager and Head of the Mutt. The monthly budget of the Mutt shall be prepared by



W.P.No.15841 of 2022

Manager with the previous approval of the Head of the Mutt and he is entitled to withdraw the funds for meeting the expenditures provided in the budget by issuing cheque. Thus, the power to take all decisions in secular affairs vested with Advisory Committee with ultimate control of 1st respondent. All the decisions of the Advisory Committee (on reference by the Head of the Mutt) shall be executed by the Manager (Executive Officer).

2 (c) (i) It is seen from the pleadings that 101st Head of the Mutt whose alleged mismanagement led to the framing of scheme abdicated (resigned) from the headship of Mutt on 25.05.1962. The term of office of the Advisory Committee appointed under the scheme also came to an end by efflux of time and thereafter, there was no Head of the Mutt for nearly 44 years. The entire administration of the Mutt had been looked after by the Manager (Executive Officer).

2 (c) (ii) The 101st Head of the Mutt, who abdicated his position, subsequently, filed a suit in O.S.No.272 of 1977 on the file of the Subordinate Court, Tirunelveli seeking declaration that he was both spiritual and secular head of the Sengole Adheenam Mutt. The said suit was



W.P.No.15841 of 2022

filed mainly on the ground that Head of the Mutt had no power to resign the post and such resignation was not customary in the Mutt. It was also averred that Endowment Board obtained his resignation by practising dubious methods like promise, fraud, threat etc. The said suit was opposed by 1st respondent on the ground that resignation was voluntary one and same was duly accepted, acted upon to the knowledge and with consent of the plaintiff therein. It was also averred that steps were being taken to appoint a Head of the Mutt in substitution of plaintiff, who resigned. The Civil Court, which went to the factual aspects founds that the plaintiff therein resigned from headship due to the restriction on his power imposed by the scheme and he abandoned his office and was not available in the Mutt. It was also found that institution was without a religious and spiritual head. The Civil Court also observed that if the plaintiff wanted he could move his disciples and get himself elected as head of Mutt. Ultimately, the suit was dismissed on the ground that prayer sought for by the plaintiff was barred by limitation and the scheme framed cannot be questioned before the Civil Court. On these reasoning, the civil suit filed by the 101st Head of the Mutt, who abdicated his position, was dismissed.



W.P.No.15841 of 2022

2 (d) During the year 1996, one Sri Kalyanasundara Sathiya

Ganana Pandara Sannadhi Swamigal was elected as 102nd Head of the Sengol Adheenam Mutt by its disciples and he has been functioning as such. He attained “*Paripooranam*” (passed away) on 18.01.2016. Thereafter, the petitioner herein assumed charge as 103rd Head of the Mutt and the same has been recorded by the 1st respondent in his proceedings in Na.Ka.No.3534/2016/S2 dated 03.02.2016. The writ petitioner, after he assumed charge as 103rd Head of the Mutt, made a representation to 1st respondent on 03.09.2016 bringing it to his notice that the tenure of Advisory Committee appointed as per the scheme provisions on 31.05.1960 came to an end by efflux of time on 30.05.1962 and thereafter, no Advisory Committee was appointed for the past 54 years and therefore, the scheme has become redundant. The petitioner requested the 1st respondent to pass necessary orders to allow the petitioner to run the administration of the Mutt. As there was no response from the 1st respondent, the petitioner appeared to have filed a writ petition in W.P.(MD).No.20256 of 2016 seeking direction to 1st respondent to consider his representation dated 03.09.2016. The said writ petition was disposed by citing order of the 1st respondent to file an application under Section 65(4) of HR and CE Act.



W.P.No.15841 of 2022

Thereafter, the petitioner preferred an application under Section 65(4) of the HR and CE Act seeking cancellation of the scheme dated 31.05.1960 and also permission to the petitioner to run both the spiritual as well as secular administration of the Mutt. The said application came to be dismissed by the 1st respondent by directing the 3rd respondent herein (Manager-Executive Officer) to maintain the records and accounts as per the provisions of scheme and HR and CE Act. Aggrieved by the said order, the present writ petition came to be filed.

3. Submissions of the learned Senior Counsel appearing for the Petitioner:-

3. Mr.G.Rajagopalan, learned Senior Counsel appearing for the petitioner submitted that the term of the Advisory Committee envisaged by the scheme expired in the year 1962 and thereafter, no Advisory Committee was constituted by the 1st respondent to advice the Head of the Mutt to run the secular administration. In such circumstances, the scheme was abandoned by 1st respondent in the year 1962 and consequently, the refusal of the 1st respondent to cancel the scheme, which had become redundant is



W.P.No.15841 of 2022

not justified in law. It was also submitted by the learned Senior Counsel that provision in the scheme facilitating appointment of Manager/Executive Officer to look after day-to-day functions of the Mutt is directly repugnant to the present HR and CE Act, 1959. The learned Senior Counsel elaborated it by saying that under Section 58 (2)(d) and (3)(b) of previous of HR and CE Act of 1951, there was a provision for appointment of a Executive Officer while framing scheme for Mutt. However, the legislature consciously omitted the said provision in the present HR and CE Act, 1959. When there is no enabling provision to enable the 1st respondent to appoint Executive Officer while framing scheme for Mutts, the impugned order directing the 3rd respondent to look after day-to-day administration of the Mutt as per the provisions of HR and CE Act, is wholly without jurisdiction and should be treated as non-est in the eye of law. The learned Senior Counsel also submitted that only provision in the HR and CE Act, enabling the 1st respondent to appoint an Executive Officer to a religious institution is Section 45 of HR and CE Act and the same is not applicable to Mutts. The learned Senior Counsel further submitted that even assuming the 1st respondent can appoint an Executive Officer, the same cannot be for a perpetual period and such appointment of Executive Officer can only for a



W.P.No.15841 of 2022

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limited period to correct the maladministration, if any. In this regard, he relied on the judgment of the Hon'ble Apex Court in ***Dr Subramanian Swamy vs. State of Tamil Nadu*** reported in ***(2014) 5 SCC 75***. The learned Senior Counsel emphatically submitted that all Mutts are religious denomination institutions and the petitioner Mutt belongs to Shaivite religious denomination and consequently, entitled to protection in the matters of administration of religious institution under Article 26 of the Constitution of India. The learned Senior Counsel also submitted that the Head of the Mutt is not a mere trustee and he is entitled to beneficial interest by virtue of his position as Head of the Mutt and therefore, his right to administer the affairs of the Mutt both secular and religious cannot be taken away. In this regard, he relied on the judgment of the Hon'ble Apex Court in ***Commissioner, Hindu Religious Endowments vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*** reported in ***AIR 1954 SC 282***. When the learned Senior Counsel appearing for the petitioner was questioned with regard to the availability of alternative remedy under the HR and CE Act by way of suit under Section 70 of HR and CE Act, he submitted that the impugned order passed by 1st respondent continuing the appointment of Executive Officer to run day-to-day administration of the Mutt is directly



W.P.No.15841 of 2022

repugnant to the provisions of the HR and CE Act and illegality is apparent in the impugned order and therefore, the petitioner need not be relegated to avail the alternative remedy. The learned Senior Counsel further submitted that the impugned order allowing continuance of Executive Officer for the petitioner Mutt interferes with the fundamental right of the petitioner under Article 26 of the Constitution of India and therefore, this Court can very well entertain the writ petition. In support of his contention regarding maintainability of the writ petition notwithstanding availability of alternative remedy, the learned Senior Counsel relied on the following decisions:-

- (i) ***T.E.Vijayaraghavan vs. The Joint Commissioner, HR & CE Administration Department*** reported in ***2010 (1) CTC 551***.
- (ii) ***Whirlpool Corporation vs. Registrar of Trade Marks*** reported in ***(1998) 8 SCC 1***.
- (iii) ***Godrej Sara Lee Limited vs. Assistant Commissioner (AA) and another*** reported in ***(2009) 14 SCC 338***.
- (iv) ***Godrej Sara Lee Ltd., vs. Excise and Taxation Officer-cum-Assessing Authority*** reported in ***2023 SCC Online SC 95***.



W.P.No.15841 of 2022

WEB COPY (v) Order passed by this Court in ***KS Lakshmikumara Thathachariar***
vs. TE Vijayaraghavan (W.A.Nos.10 and 12 of 2010, dated
06.11.2012)

**4. Submissions of the learned Special Government Pleader appearing
for the respondents:-**

4. Mr.N.R.R.Arun Natarajan, learned Special Government Pleader (HR and CE) appearing for the respondents opposed the writ petition on the ground that against the order passed by 1st respondent refusing to cancel the scheme settled in the year 1960, the petitioner has alternative remedy of filing a statutory suit under Section 70 of the HR and CE Act. The learned Special Government Pleader further submitted that the 101st Head of the Petitioner Mutt, who resigned his position, filed a suit in O.S.No.272 of 1977 on the file of the Subordinate Court, Tirunelveli for a declaration that he was both secular and spiritual Head of the Sengol Aadhinam Mutt and the said suit was dismissed as time barred. In such circumstances, the present writ petition is barred by *res judicata*. The learned Special Government Pleader also tried to support the impugned



W.P.No.15841 of 2022

order passed by the 1st respondent by submitting that the 3rd respondent had taken number of steps to improve the secular administration of the Mutt and consequently, there is no necessity to cancel his appointment. Finally, the learned Special Government Pleader submitted that petitioner has not produced any material to show that he had taken effective steps to retrieve the properties of the Mutt alienated by 101st Pontiff and hence, he is not entitled to claim restoration of secular administration of the Mutt to himself. Therefore, the learned Special Government Pleader prayed for dismissal of the writ petition.

5. History of Mutts and *Adhinams* in Tamilnadu:-

5 (a) The Mutts are unique religious institutions as distinguished from other religious institutions like temples, religious endowments, specific endowment, samadhi, brindhavan or other institution for religious purposes. The expression religious institution is a genus and mutt is species. A Mutt may be called as a religious institution but all religious institution cannot be called as Mutts. The Section 6(13) of TN HR and CE Act defines Mutt as follows:-



W.P.No.15841 of 2022

“6.(13) “math” means a Hindu religious institution with properties attached thereto and presided over by a person, the succession to whose office devolves in accordance with the direction of the Founder of the institution or is regulated by usage and -

(i) whose duty it is to engage himself in imparting religious instruction or rendering spiritual service; or

(ii) who exercises or claims to exercise spiritual headship over a body of disciples;

and include places of religious worship or instruction which are appurtenant to the institution;

Explanation.- *Where the headquarters of a math are outside the State but the math has properties situated within the State, control shall be exercised over the math in accordance with the provisions of this Act, in so far as the properties of the math situated within the State are concerned;”*

Section 6(18) of the said Act defines religious institution, which reads as follows:-

“6 (18) “religious institution” means a math, temple or specific endowment and includes,

(i) a samadhi or brindhavan ; or

(ii) any other institution established or maintained for a religious purpose.”

A reading of above provisions would show mutts stands on different footing



as distinguished from other religious institution.

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5 (b) The origin and history of Mutts and *Adhinams* had been traced and explained by Division Bench of this Court in famous *Kasi mutt's* case, namely *Giyana Sambandha Pandara Sannadhi vs. Kandasami Tambiran* reported in *ILR 10 (1887) Madras 375*. In the said case law, speaking for the Division Bench, the First Indian High Court Judge Mr. Justice Muttusami Ayyar, while tracing the history of Mutts and *Adhinams* observed as follows:-

“6. Having referred to the notion of a spiritual family as embodied in the Mitakshara law and to the special rule of succession applicable to the individual property of an ascetic, it is desirable to explain what is meant by a Mutt and by an Adhinam and by the terms Tambiran and Pandara Sannadhi.

....

The term “Adhinam” signifies the seat of the chief ascetic at the head of a religious association or brotherhood or a holy crowd, and takes its name from the village in which it is situated.

....

Originally, the ascetic, who renounced the world and devoted himself to religion, confined his attention to the study of theology, to imparting religious institution to his disciples, and to



complying with the ordinances prescribed for the guidance of his order. He then owned no property, except his cloths, sandals, religious books and the idol he kept for his personal worship and a few other articles of trifling value were absolutely necessary (1). He had no fixed residence and moved from village to village, accepting such lodging and food as were provided for him by pious laymen who were in their turn enjoined by the Shastras to honor and support him. This is the mode in which Brahman Sannyasis live even at the present time. In several villages pious laymen erected buildings for the residence of hermits when they visited their villages, and these were called Mutts. In its original and narrow sense, then, the term Mutt signified the residence of an ascetic or Sannyasi or Paradesi.

But when the Buddhists assailed the Brahminical religion and when Sankarachariyar, the founder of the Advaita or non-dualistic school of philosophy, ultimately prevailed against them, he established some Mutts in order to maintain and strengthen the doctrine and the system of religious philosophy he taught, Sannyasis being placed at the head of those institutions. After Sankarachariyar, the founders of the Vaishnava, Madhva and other schools of religious philosophy in this Presidency established Mutts for a similar purpose. In former times these institutions exercised considerable influence over the laymen in their neighbourhood, they became centres of classical and religious learning and materially aided in promoting religious knowledge and in encouraging religious and other charities. The ascetics who presided over them were held, owing to their position as religious preceptors and often



also in consequence of their own learning and piety, in great reverence by Hindu princes and noblemen, who from time to time made large presents to them and endowed the Mutt under their control with grants of land. Thus, a class of endowed Mutts came into existence in the nature of monastic institutions, presided over by ascetic or Sannyasis who had renounced the world. Thus, the ascetic who originally owned little or no property, came to own the Matam under his charge and its endowment, in trust for the maintenance of the Mutt, for his own support, for that of his disciples, and for the performance of religious and other charities in connection with it, according to usage.

....

The distinction between an Adhinam and a Mutt as an endowed institution consists in the latter being an isolated institution, whilst the former is the central institution from which the chief ascetic exercises control and supervision over a group of endowed institutions and religious trusts committed to his management and subject to his jurisdiction as the responsible trustee. It will be remembered that the ascetic is prevented by the usage of his order from owning or managing property for personal enjoyment. The administration of a Matam endowment presided over by an ascetic was an exception to the rule recognized on the ground that such administration was in furtherance of the cause of religion.
.... ”

5 (c) A reading of above judgment would make it clear that mutt is a religious institution presided over by a religious preceptor



W.P.No.15841 of 2022

exercising control over religious congregation or disciples and properties endowed for maintenance of mutts, for his own support, for that of his disciples and for the performance of religious and other charities connected there with according to usage. The succession to his office also governed by usage of mutt. Thus, the head of the mutt stands in different footing as distinguished from hereditary trustees of other religious institutions. Because he administers the endowed properties not only for benefit of the mutt and also for his own maintenance and that of his disciples. Thus, he has got beneficial interest in endowed properties. The “Adhinams” are more much larger institutions in the sense chief ascetic presides over the same exercise control over group of endowed institutions from a central institution.

6. Legal Status of the Head of the Mutt:-

6 (i) (a) The present writ petition has been filed by 103rd Head of the Sengol Adheenam Mutt and therefore, before going into rival contentions raised by the parties, it would be useful to understand the legal position of Head of the Mutt with reference to various decided case laws.



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6 (i) (b) In ***Angurbala Mullick vs. Debabrata Mullick*** reported in ***1951 SCC Online SC 33 : AIR 1951 SC 293***, the Hon'ble Apex Court while considering the status of Shebaitship of Hindu Religious Institution came to the conclusion that it was a blend of office and property and therefore, it can be treated as a property. The relevant observation of the Hon'ble Apex Court reads as follows:-

“18. We will first advert to and examine the provisions of the Hindu Women's Rights to Property Act and see whether the Act includes within its scope a property of such character as shebaitship is. The exact legal position of a shebait may not be capable of precise definition but its implications are fairly well established. It is settled by the pronouncement of the Judicial Committee in Vidya Varuti v. Balusami Ayyar that the relation of a shebait in regard to debutter property is not that of a trustee to trust property under the English law. In English law the legal estate in the trust property vests in the trustee who holds it for the benefit of cestui que trust. In a Hindu religious endowment on the other hand the entire ownership of the dedicated property is transferred to the deity or the institution itself as a juristic person and the shebait or mahant is a mere manager. But though a shebait is a manager and not a trustee in the technical sense, it would not be correct to describe the shebaitship as a mere office. The shebait has not only



duties to discharge in connection with the endowment, but he has a beneficial interest in the debutter property.

19. As the Judicial Committee observed in the above case, in almost all such endowments the shebait has a share in the usufruct of the debutter property which depends upon the terms of the grant or upon custom or usage. Even where no emoluments are attached to the office of the shebait, he enjoys some sort of right or interest in the endowed property which partially at least has the character of a proprietary right. Thus, in the conception of shebaiti both the elements of office and property, of duties and personal interest, are mixed up and blended together; and one of the elements cannot be detached from the other. It is the presence of this personal or beneficial interest in the endowed property which invests shebaitship with the character of proprietary rights and attaches to it the legal incidents of property. This was elaborately discussed by a Full Bench of the Calcutta High Court in Manohar Mukherji v. Bhupendra Nath Mukherji and this decision of the Full Bench was approved of by the Judicial Committee in Ganesh Chunder Dhur v. Lal Behary Dhur and again in Bhabatarini v. Ashalata Debi. The effect of the first two decisions, as the Privy Council pointed out in the last case, was to emphasize the proprietary element in the shebaiti right, and to show that though in some respects anomalous, it was an anomaly to be accepted as having been admitted into Hindu law from an early date. "According to Hindu law," observed Lord Hobhouse in Gossamee Sree Greedharreejee v. Rumanlolljee Gossamee:[IA p.144],



“... when the worship of a Thakoor has been founded, the shebaitship is held to be vested in the heirs of the founder, in default of evidence that he has disposed of it otherwise, or there has been some usage, course of dealing, or some circumstances to show a different mode of devolution.”

Unless, therefore, the founder has disposed of the shebaitship in any particular manner - and this right of disposition is inherent in the founder - or except when usage or custom of a different nature is proved to exist, shebaitship like any other species of heritable property follows the line of inheritance from the founder.”

6 (i) (c) In ***Ram Rattan vs. Bajrang Lal*** reported in ***AIR 1978 SC 1393 : (1978) 3 SCC 236***, the Hon'ble Apex Court while considering the legal status of Shebaitship observed as follows:-

“13. ... In the conception of Shebait both the elements of office and property, duties and personal interest are mixed up and blended together and one of the elements cannot be detached from the other. Old texts, one of the principal sources of Hindu law and the commentaries thereon, and over a century the Courts with very few exceptions have recognised hereditary office of Shebait as immovable property, and it has all along been treated as immovable property almost uniformly. While examining the nature and character of an office as envisaged by Hindu law it would be correct



W.P.No.15841 of 2022

to accept and designate it in the same manner as has been done by the Hindu law text writers and accepted by courts over a long period. It is, therefore, safe to conclude that the hereditary office of Shebait which would be enjoyed by the person by turn would be immovable property. ...”

6 (i) (d) In a subsequent judgment of the Hon'ble Apex Court in ***Badri Nath vs. Punna*** reported in ***AIR 1979 SC 1314***, the Hon'ble Apex Court referred to above mentioned earlier decisions and affirmed the same. Therefore, the position of Shebait of a religious institution is that of a Manager and it can be equated with proprietary right in an immovable property.

6 (ii) (a) In ***His Holiness Sri-La-Sri Ambalavana Pandara Sannathi Avergal vs. State of Tamil Nadu*** reported in ***(1982) 2 MLJ 221***, the Division Bench of this Court considered the position of Head of the Mutt. In fact, the Division Bench preciously considered the peculiar religious institutions available in State of Tamil Nadu called “Adheenams” and its head “Adheenakarhar”. The relevant observation of the Division Bench in this regard reads as follows:-



WEB COPY



W.P.No.15841 of 2022

“4. It is common ground that the appellant squarely comes within the definition of "Math" as per the Act and this is not in controversy. In Gnana Sambanda Pandara Sannadhi v. Kandasami Thambiran, it was held that in legal parlance Math connotes a monastic institution presided over by a superior and established and maintained for the use and benefit of ascetics belonging to a particular order who generally are disciples or co-disciples of the superior". Some spiritual leaders of South India, who were actuated by a desire to disseminate religious knowledge and promote religious charities have established maths in various places and in Tamil Nadu they are often referred by the term "Adheenams", and their heads as "Adheenakarthars." The founders of these Maths gather round them a number of disciples whom they initiate into the tenets of their order for the propagation of religious knowledge which includes the doctrine of a particular cult, and this is done by maintenance of a competent line of teachers. Grants of property came to be made by pious persons, for the use and benefit of the fraternity and in this process the Maths were constituted. It has been well-settled by a long line of decisions of the High Court and the Supreme Court that the primary purpose of a math is to encourage and foster spiritual learning by maintaining a competent line of teachers who impart religious instructions to the disciples. The status of a mahant is described by the Privy Council in Ram Prakash Das v. Anand, thus:

“The Mahant is the head of the institution-he manages the property of the institution-he administers its affairs and the



whole assets are vested in him as the owner thereof in trust for the institution itself.

In these institutions, ordinarily the custom to entitle a "chela" to succeed to the gadi or headship or peetam is that he must be appointed or nominated by the Mahant in office during his lifetime. The Privy Council in Greedhari Dass v. Nando Kishore observed that, the only law as to these Mahants and their offices, functions and duties is to be found in custom and practice which is to be proved by testimony."

6 (ii) (b) In ***Shri Krishna Singh vs. Mathura Ahir*** reported in **(1981) 3 SCC 689**, while considering the position of Head of the Mutt, the Hon'ble Apex Court observed as follows:-

"19. The first question, therefore, to consider here is: Whether there was a math in existence at Garwaghat, and if so, whether the house in suit was an accretion to the math? Math means a place for the residence of ascetics and their pupils, and the like. Since the time of Sankaracharya, who established Hindu maths, these maths developed into institutions devoted to the teaching of different systems of Hindu religious philosophy, presided over by ascetics, who were held in great reverence as religious preceptors, and princes and noblemen endowed these institutions with large grants of property. Dr. Bijan Kumar Mukherjea in his Tagore Law Lectures on the Hindu Law of Religious and Charitable Trusts, 4th edn., p. 321, succinctly states:



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W.P.No.15841 of 2022

'Math' in ordinary language signifies an abode or residence of ascetics. In legal parlance it connotes a monastic institution presided over by a superior and established for the use and benefit of ascetics belonging to a particular order who generally are disciples or co-disciples of the superior. (Emphasis Supplied)

20. *The property belonging to a math is in fact attached to the office of the mahant, and passed by inheritance to no one who does not fill the office. The head of a math, as such, is not a trustee in the sense in which that term is generally understood, but in legal contemplation he has an estate for life in its permanent endowments and an absolute property in the income derived from the offerings of his followers, subject only to the burden of maintaining the institution. He is bound to spend a large part of the income derived from the offerings of his followers on charitable or religious objects. The words 'the burden of maintaining the institution' must be understood to include the maintenance of the math, the support of its head and his disciples and the performance of religious and other charities in connection with it, in accordance with usage.*

21. *From the principles, it will be sufficiently clear that a math is an institutional sanctum presided over by a superior who combines in himself the dual office of being the religious or spiritual head of the particular cult or religious fraternity, and of the manager of the secular properties of the institution of the math. In the instant case, the evidence on record sufficiently establishes that a math came to be established at Garwaghat and the building known as 'Bangla Kuti' and certain other buildings, including the house in*



W.P.No.15841 of 2022

suit constituted the endowment of the math itself.”

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6. (iii) (a) In ***Commissioner, Hindu Religious Endowments, Madras vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*** reported in ***AIR 1954 SC 282***, the Hon'ble Apex Court while considering the position of a Mutt observed 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 same name : a religious sect or body having a common faith and organisation and designated by a distinctive name." It is well know that the practice of setting up Maths as centers of theological teaching was stated 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 organization. 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." (Emphasis Supplied)

6 (iii) (b) In the very same ***Shirur Mutt*** case, the Hon'ble Apex Court while considering the scope and ambit of right to administer the property available to a religious denomination under Article 26(d) of the Constitution of India observed as follows:-

"23. It is to be noted that both in the American as well as in the Australian Constitutions the right to freedom of religion has been declared in unrestricted terms without any limitation whatsoever. Limitations, therefore, have been introduced by courts of law in these countries on grounds of morality, order and social protection. An adjustment of the competing demands of the interests of Government and constitutional liberties is always a delicate and a difficult task and that is why we find difference of judicial opinion to such an extent in cases decided by the American courts where



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W.P.No.15841 of 2022

questions of religious freedom were involved. Our Constitution-makers, however, have embodied the limitations which have been evolved by judicial pronouncements in America or Australia in the Constitution itself and the language of articles 25 and 26 is sufficiently clear to enable us to determine without the aid of foreign authorities as to what matters come within the purview of religion and what do not. As we have already indicated, freedom of religion in our Constitution is not confined to religious beliefs only; it extends to religious practices as well subject to the restrictions which the Constitution itself has laid down. Under article 26(b), therefore, a religious denomination or organization enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters. Of course, the scale of expenses to be incurred in connection with these religious observances would be a matter of administration of property belonging to the religious denomination and can be controlled by secular authorities in accordance with any law laid down by a competent legislature; for it could not be the injunction of any religion to destroy the institution and its endowments by incurring wasteful expenditure on rites and ceremonies. It should be noticed, however, that under article 26(d), it is the fundamental right of a religious denomination or its representative to administer its properties in accordance with law; and the law, therefore, must leave the right of administration to the religious denomination itself subject to such restrictions and regulations as it might choose to impose. A law which takes away



W.P.No.15841 of 2022

the right of administration from the hands of a religious denomination altogether and vests it in any other authority would amount to a violation of right guaranteed under clause (d) of article 26.”

6 (iv) A close scanning of the above referred decisions would make it clear that the position of a Head of the Mutt involves both religious duties and secular duties. As far as religious duties are concerned, as a religious superior, he has got absolute right to manage the religious affairs of the Mutt without interference by State. The said right is protected by Article 26(a) and (b) of the Indian Constitution subject only to the public order, morality and health. Therefore, the Head of the Mutt enjoys full freedom in running the affairs of the Mutt as far as religious affairs are concerned and if at all, the State can only interfere on limited grounds of public order, morality and health. As a Head of the Mutt the Mahant or Adheenakarhar in this case, has duty to administer the properties of the Mutt as per the customary usage. As a Superior of a Mutt, he has not only duties to discharge in connection with the endowment, but he has a personal interest of a beneficial character, which is much larger than that of a Shebait or the debutter property. Therefore, the position of Head of the Mutt in



W.P.No.15841 of 2022

secular affairs, is a blend of office and property. The duties and personal interest are blended together and both of them cannot be detached from each other. As held in ***Shirur Mutt*** case, the power of the Head of the Mutt in running the secular affairs of the Mutt can be regulated by law. However, the law enacted to regulate such secular administration of Mutt can not altogether take away such power to administer the property. In this regard, I would like to refer to the following observation of the Hon'ble Apex Court in ***Commissioner, Hindu Religious Endowments, Madras vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*** reported in ***AIR 1954 SC 282:-***

“12. There is no reason why the word "property", as used in article 19(1)(f) of the Constitution, should not be given a liberal and wide connotation and should not be extended to those well recognised types of interest which have the insignia or characteristics of proprietary right. As said above, the ingredients of both office and property, of duties and personal interest are blended together in the rights of a Mahant and the Mahant has the right to enjoy this property or beneficial interest so long as he is entitled to hold his office. To take away this beneficial interest and leave him merely to the discharge of his duties would be to destroy his character as a Mahant altogether. It is true that the beneficial interest which he enjoys is appurtenant to his duties and as he is in.



charge of a public institution, reasonable restrictions can always be placed upon his rights in the interest of the public. But the restrictions would cease to be reasonable if they are calculated to make him unfit to discharge the duties which he is called upon to discharge. A Mahant's duty is not simply to manage the temporalities of a Math. He is the head and superior of spiritual fraternity and the purpose of Math is to encourage and foster spiritual training by maintenance of a competent line of teachers who could impart religious instructions to the disciples and followers of the Math and try to strengthen the doctrines of the particular school or order, of which they profess to be adherents. This purpose cannot be served if the restrictions are such as would bring the Mathadhipati down to the level of a servant under a State department.” (emphasis supplied)

6 (v) Therefore, it is clear State is entitled to enact law and regulate the power of Head of the Mutt as far as secular administration of the Mutt is concerned. However, the State cannot by such law bring the Head of the Mutt down to the level of a servant to the State Department. I am conscious of the fact subsequent to decision of the Hon'ble Apex Court in **Shirur Mutt** case, by virtue of 44th amendment to the Constitution of India fundamental right to property that was available under Article 19 (1)(f) of the Constitution of India was taken away and the right to property



W.P.No.15841 of 2022

has been reduced from the status of fundamental right to that of ordinary Constitutional right by incorporation of Article 300-A. By virtue of deletion of Article 19 (1)(f), the right to the property as a fundamental right available to the citizen was taken away. However, right to acquire property and administer such property in accordance with law available to religious denominations under Article 26 is still available as a fundamental right to institutions of religious character like Mutts.

6 (vi) The Paragraph No.15 of the *Shirur Mutt* case extracted above, would make it clear that a Mutt or the spiritual fraternity represented by it can legitimately come within the purview of Article 26 of the Constitution of India. The right available under Article 26 of Constitution of India is not only for religious denomination but also a section there of. Hence, a mutt or religious fraternity represented by it can legitimately entitled to protection of rights available under Article 26. Each one of the sects or sub-sects by which Mutt is established can be treated as a religious denomination and therefore, every Mutt can be treated as an institution of religious denomination. In this regard, I would like to re-quote the observations of the Division Bench of this Court in *Sri-La-Sri Ambalavana*



Pandara Sannathi Avergal case cited supra:-

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“4. It is common ground that the appellants squarely comes within the definition of "Math" as per the Act and this is not in controversy. In Gnana Sambanda Pandara Sannadhi v. Kandasami Thambiran, it was held that in legal parlance Math connotes a monastic institution presided over by a superior and established and maintained for the use and benefit of ascetics belonging to a particular order who generally are disciples or co-disciples of the superior". Some spiritual leaders of South India, who were actuated by a desire to disseminate religious knowledge and promote religious charities have established maths in various places and in Tamil Nadu they are often referred by the term "Adheenams", and their heads as "Adheenakarthars." The founders of these Maths gather round them a number of disciples whom they initiate into the tenets of their order for the propagation of religious knowledge which includes the doctrine of a particular cult, and this is done by maintenance of a competent line of teachers. Grants of property came to be made by pious persons, for the use and benefit of the fraternity and in this process the Maths were constituted. It has been well-settled by a long line of decisions of the High Court and the Supreme Court that the primary purpose of a math is to encourage and foster spiritual learning by maintaining a competent line of teachers who impart religious instructions to the disciples. The status of a mahant is described by the Privy Council in Ram Prakash Das v. Anand, thus:



W.P.No.15841 of 2022

“The Mahant is the head of the institution-he manages the property of the institution-he administers its affairs and the whole assets are vested in him as the owner thereof in trust for the institution itself.

In these institutions, ordinarily the custom to entitle a "chela" to succeed to the gadi or headship or peetam is that he must be appointed or nominated by the Mahant in office during his lifetime. The Privy Council in Greedhari Dass v. Nando Kishore observed that, the only law as to these Mahants and their offices, functions and duties is to be found in custom and practice which is to be proved by testimony.”

Therefore, a Mutt founded by a religious Superior to inculcate his special teaching on group of its followers or sub-sect will certainly come within the meaning of religious denomination and entitled to protection of fundamental rights enumerated under Article 26 of the Constitution of India as held in ***Shirur Mutt*** case.

6 (vii) Article 26 of the Constitution of India reads as follows:-

“26. Freedom to manage religious affairs.- 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;



W.P.No.15841 of 2022

- (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.”

6 (viii) A perusal of the above said Article would make it clear every religious denomination is not only entitled to establish and maintain institutions for religious and charitable purposes with right to manage its own religious affairs, it can also own and acquire properties and administer such properties in accordance with law. Hence, every religious denomination has fundamental right to acquire property and administer such property in accordance with law. The State is entitled to enact law so as to regulate such power of administration in the interest of public order, morality and health. However, in the guise of regulating secular administration, State is not entitled to take away the entire administration by reducing the Head of the Mutt as a servant of a Government Department or solely dependent on any authority for administration of Mutt's properties. Therefore, the ratio of ***Shirur Mutt*** case in this regard still holds good in view of fundamental rights conferred on the religious denominations under



W.P.No.15841 of 2022

Article 26 of the Constitution of India notwithstanding deletion of fundamental right to property in so far as other citizens.

7. Discussions on the Maintainability of the Writ Petition in view of Availability of Alternative Remedy:-

7 (i) One of the main objection raised by the learned Special Government Pleader appearing for the respondents was that the writ petition is not maintainable in view of availability of alternative remedy to file a statutory suit under Section 70 of HR and CE Act. It is settled law that availability of alternative remedy is not a total or absolute bar for this Court to exercise its power under Article 226 of the Constitution of India. It is only a self imposed discipline for the Constitutional Courts not to entertain writ petitions, when there are alternative remedies under the statute. However, it is settled law that writ petitions are maintainable, notwithstanding availability of alternative remedies, atleast in following cases:-

- (a) When petitioner seeks enforcement of fundamental rights.



W.P.No.15841 of 2022

- (b) Violations of natural justice principles.
- (c) Impugned order is wholly without jurisdiction.
- (d) Where vires of the Act is challenged.

It would be appropriate to refer to the following decisions in this regard:-

7 (ii) In ***Whirlpool Corporation vs. Registrar of Trade Marks*** reported in (1998) 8 SCC 1, while considering the power of the Constitutional Courts to entertain writs notwithstanding availability of alternative remedy, the Hon'ble Apex Court observed as follows:-

“15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case- law on this point



but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

16. Rashid Ahmad vs. Municipal Board, kairana, laid down that existence of an adequate legal remedy was a factor to be taken into consideration in the matter of granting writs. This was followed by another Rashid case, namely, K.S.Rashid & Son Vs. Income Tax Investigation Commission which reiterated the above proposition and held that where alternative remedy existed, it would be a sound exercise of discretion to refuse to interfere in a petition under Article 226. This proposition was, however, qualified by the significant words, "unless there are good grounds therefor", which indicated that alternative remedy would not operate as an absolute bar and that Writ Petition under Article 226 could still be entertained in exceptional circumstances.

17. A specific and clear rule was laid down in State of U.P. vs. Mohd. Nooh as under:

"But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies."

18. This proposition was considered by a Constitution Bench of this Court in A.V.Venkateswaran, Collector of Customs v. Ramchand Sobhraj Wadhwani and was affirmed and followed in the following words:

"The passages in the judgments of this Court we



have extracted would indicate (1) that the two exceptions which the learned solicitor General formulated to the normal rule as to the effect of the existence of an adequate alternative remedy were by no means exhaustive and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court".

19. Another Constitution Bench decision in Calcutta Discount Co. Ltd. v. ITO, Companies Distt., laid down:

"Though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment. the High Court will issue appropriate orders or directions to prevent such consequences. Writ of certiorari and prohibition can issue against Income Tax Officer acting without jurisdiction under Section 34, Income Tax Act".



20. *Much water has since flown beneath the bridge, but there has been no corrosive effect on these decisions which though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a Writ Petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the Writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.”*

7 (iii) In ***Godrej Sara Lee Ltd., vs. Excise and Taxation Officer-cum-Assessing Authority*** reported in ***2023 SCC Online SC 95***, the Hon'ble Apex Court observed as follows:-

“6. At the end of the last century, this Court in paragraph 15 of the its decision reported in (1998) 8 SCC 1 (Whirlpool Corporation v. Registrar of Trade Marks, Mumbai) carved out the exceptions on the existence whereof a Writ Court would be justified in entertaining a writ petition despite the party approaching it not having availed the alternative remedy provided by the statute. The same read as under:

- (i) where the writ petition seeks enforcement of any of the fundamental rights;*
- (ii) where there is violation of principles of natural justice;*
- (iii) where the order or the proceedings are wholly*



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W.P.No.15841 of 2022

without jurisdiction; or

(iv) where the vires of an Act is challenged.

7. Not too long ago, this Court in its decision reported in 2021 SCC OnLine SC 884 (Assistant Commissioner of State Tax v. Commercial Steel Limited) has reiterated the same principles in paragraph 11.

8. That apart, we may also usefully refer to the decisions of this Court reported in (1977) 2 SCC 724 (State of Uttar Pradesh v. Indian Hume Pipe Co. Ltd.) and (2000) 10 SCC 482 (Union of India v. State of Haryana). What appears on a plain reading of the former decision is that whether a certain item falls within an entry in a sales tax statute, raises a pure question of law and if investigation into facts is unnecessary, the high court could entertain a writ petition in its discretion even though the alternative remedy was not availed of; and, unless exercise of discretion is shown to be unreasonable or perverse, this Court would not interfere. In the latter decision, this Court found the issue raised by the appellant to be pristinely legal requiring determination by the high court without putting the appellant through the mill of statutory appeals in the hierarchy. What follows from the said decisions is that where the controversy is a purely legal one and it does not involve disputed questions of fact but only questions of law, then it should be decided by the high court instead of dismissing the writ petition on the ground of an alternative remedy being available.



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7 (iv) In ***Godrej Sara Lee Limited vs. Assistant Commissioner***

(AA) and another reported in ***(2009) 14 SCC 338***, the Hon'ble Apex Court observed as follows:-

“13. Even otherwise, in our opinion, the question as to whether the said notification could have a retrospective effect or retroactive operation being a jurisdictional fact, should have been determined by the High Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India as it is well known that when an order of a statutory authority is questioned on the ground that the same suffers from lack of jurisdiction, alternative remedy may not be a bar. (See Whirlpool Corpn. v. Registrar Trade Marks and Mumtaz Post Graduate Degree College v. Vice-Chancellor.”

7 (v) In ***T.E.Vijayaraghavan vs. The Joint Commissioner, HR***

& CE Administration Department reported in ***2010 (1) CTC 551***, almost in a similar situation the order passed by the Joint Commissioner modifying scheme settled under the HR and CE Act has been questioned in a writ petition. The writ petition was opposed on the ground of availability of alternative remedy of appeal under Section 69 (1) of HR and CE Act and further remedy of statutory suit under Section 70 of HR and CE Act, this Court repelled the objection of the respondent and entertained the writ



W.P.No.15841 of 2022

petition on the ground that the points raised in the writ petition were purely legal issues and hence, it was not necessary to drive the party to avail alternative remedy after long time.

7 (vi) Even in this writ petition, the impugned order passed by 1st respondent has been attacked on the grounds of violation of fundamental rights available to the petitioner under Article 26 of the Constitution of India and the power to appoint Manager/Executive Officer is without jurisdiction and contrary to the provisions of HR and CE Act. These two grounds are purely legal points. The first ground of attack is violation of fundamental rights. As held in decisions cited supra, when impugned order is attacked on the grounds of violation of fundamental rights, the writ petition is very well maintainable and parties need not be relegated to avail alternative remedies. As far as the other legal point raised by the petitioner that the appointment of Manager/Executive Officer is wholly without jurisdiction and contrary to the provisions of HR and CE Act is concerned, it is a pure question of law and the said question has to be decided based on the undisputed facts available on the pleadings of the parties. The decision on the above said question of law is not based on any disputed question of



W.P.No.15841 of 2022

facts. In such circumstances, the petitioner need not be relegated to avail alternative remedy especially in a case where the pleadings are completed and the writ petition is posed for hearing. A perusal of the records would suggest that the writ petition came up before this Court on 05.07.2022. My predecessor passed the following order:-

*“This matter would require a detailed consideration.
Post this case on 02.08.2022 for filing counter affidavit”*

Again the matter came up on 02.08.2022 and this Court passed the following order:-

“Post this case on 25.08.2022 under the caption 'part heard cases'”.

On 25.08.2022, the matter was adjourned at request to 15.09.2022 with direction to Registry to remove the caption 'part heard cases'. Thereafter, the matter has been listed on 19.09.2022, 22.09.2022, 05.12.2022, 19.12.2022, 06.01.2023, 25.01.2023, 09.02.2023, 29.08.2023 and 13.09.2023. It is seen from the records that the counter affidavit of 1st respondent was filed on 19.09.2022 and the 3rd respondent was filed on 22.09.2022. The rejoinder affidavit of the petitioner was filed on 23.01.2023. In such circumstances, I



do not want to reject the writ petition on the ground of availability of alternative remedy for the reasons stated supra.

8. Discussion on Merits of the Case:-

8 (i) It is not disputed that the petitioner is one of the eighteen Shaivite Mutts in State of Tamil Nadu. It is also not in serious dispute that 101st Head of the Mutt indulged in some mismanagement and as a consequence, the 1st respondent exercised his power under Section 65 of HR and CE Act and framed scheme for administration of the Mutt. Admittedly, in the original order framing scheme an Advisory Committee was appointed to advice the Head of the Mutt in the secular affairs of the Mutt. The Clause-4 of the scheme framed by the 1st respondent reads as follows:-

“4. The Advisory Committee consisting of the following persons who already functioning will continue to function for a period of two years from the date of this order. Any vacancy that may arise in the meantime will be filled up by the Commissioner from among the disciples or persons having interest in the Math. The question of constituting an Advisory committee for a further period will be considered by the Commissioner in Consultation of the Atheenakarthar and the Chairman of the Advisory Committee with reference to the circumstances at the end of period of 2 years from



W.P.No.15841 of 2022

this date.”

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8 (ii) A reading of above provision of scheme would demonstrate that Advisory Committee was appointed only for a period of two years and the question of constituting an Advisory Committee for a further period would be considered by Commissioner in consultation with the Atheenakartha and the Chairman of the Advisory Committee with reference to the circumstances at the end of period of two years from date of commencement of scheme (31.05.1960). It is not in dispute that 101st Head of the Mutt abdicated (resigned) from his position on 25.05.1962. It is also not in dispute that term of office of Advisory Committee expired on 30.05.1962 and thereafter, no fresh committee was constituted. Therefore, after 1962, there was no Head of the Mutt, admittedly, for a period of 44 years from 1962 to 1996. Likewise, after 1962 admittedly, for the past 60 years no Advisory Committee had been constituted. As per the 1960 scheme framed by 1st respondent all the secular affairs of the Mutt like lease of Mutt properties, action for recovery of Mutt properties, framing of budget estimates, investment of Mutt funds, raising of loans on behalf of Mutt, execution of major repairs and improvements to the buildings of the Mutt,



W.P.No.15841 of 2022

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incurring expenses for any charity or services unconnected with the usages and purposes of the Mutt, improvements of properties of the Mutt, acquisition of properties for the Mutt and promotion of object of the Mutt etc., have to be referred to the decisions of the Advisory Committee and the Head of the Mutt is expected to act as per the resolution of the Committee. In case, Head of the Mutt feels any difficulty in carrying out the resolution of the Advisory Committee on any matter it is open to him to bring it to the knowledge of the 1st respondent within a week and seek his directions. Any direction issued by the Commissioner in this regard is binding on the Head of the Mutt. Therefore, in effect the Head of the Mutt has been incapacitated from taking any decision on secular affairs of the Mutt. He has to either carry out resolutions of the Advisory Committee or in case of difficulty with decision of the Committee, he has to abide by the orders of the 1st respondent. It is also seen from the scheme provision, the day-to-day affairs of the Mutt like, maintenance of all registers, accounts, realisation of rental and other incomes of the Mutt, deposit of the same into the bank, preparation of budget estimates etc., have to be done by the Manager. The account of the Mutt shall be operated by the Manager jointly and the budget estimates shall be prepared with the previous sanction of the Head of the



Mutt. However, Manager can incur expenditure on his own as per the sanctioned budget estimate. Therefore, the role of Head of the Mutt in the decision making and implementation are reduced to nought as far as secular activities are concerned, except limited powers in operation of accounts and preparation of budget estimates. In other words, there cannot be a secular administration without Advisory Committee. As per the undisputed facts as seen from the pleadings of the parties and documents filed in the typed-set of papers, no new Advisory Committee was constituted after 30.05.1962. It is also seen from the pleadings that the earlier Head of the Mutt resigned on 25.05.1962. Hence, from 1962 onwards there was no Head of the Mutt for 44 years and there was no Advisory Committee for 60 years. In other words, the scheme framed by 1st respondent on 31.05.1960 was implemented only for two years and thereafter, it had become redundant or inoperative.

8 (iii) After resignation of 101st Head of the Mutt and expiry of term of original Advisory Committee, the administration of the Mutt was looked after only by the 3rd respondent namely Manager/Executive Officer. Under the scheme provisions, the 3rd respondent cannot take decisions on the above mentioned important matters and decisions on the secular affairs



W.P.No.15841 of 2022

shall be taken only by the Advisory Committee. The 3rd respondent is expected to implement the same. Therefore, under the scheme provision, he has no independent power to administer the institution. Likewise, the Head of the Mutt also has got some limited role in the secular affairs as per the scheme provision. It is he, who has to refer the secular matters to decision of the Committee and after Committee passed a resolution, he has to see that the said resolution is implemented through the 3rd respondent. Since there was no Head of the Mutt and Advisory Committee, it appears 3rd respondent was allowed to administer the institution under Section 60(1) of the HR and CE Act. The same can be gathered from proceedings of the 2nd respondent dated 07.07.1997 in Na.Ka.No.1600/97.Aa2 and his proceedings in Na.Ka.No.1600/1997/Aa1, dated 19.01.2016, which are available in Page Nos.67 and 82 of the Typed set of papers. Section 60 of the HR and CE Act, reads as follows:-

“60. Arrangements when vacancies occur.-(1) When a vacancy occurs in the office of the trustee of a math or specific endowment attached to a math and there is a dispute respecting the right of succession to such office, or

when such vacancy cannot be filled up immediately, or when the trustee is a minor and has no guardian fit and willing to act as such or there is a dispute respecting the person



W.P.No.15841 of 2022

who is entitled to act as guardian, or

when the trustee is by reason of unsoundness of mind or other mental or physical defect or infirmity unable to perform the functions of the trustee,

the [Assistant Commissioner] may take such steps and pass such order [as he thinks] proper for the temporary custody and protection of the endowments of the math or of the specific endowments, as the case may be, and shall report the matter forthwith to the [Commissioner].

(2) Upon the receipt of such report, if [the Commissioner], after making such inquiry [as he deems] necessary, is satisfied that an arrangement for the administration of the math and its endowments or of the specific endowment, as the case may be, is necessary, [he shall] make such arrangement [as he thinks fit] until the disability of the trustee ceases or another trustee succeeds to the office, as the case may be.

(3) In making any such arrangement, [the Commissioner] shall have due regard to the claims of the disciples of the math, if any.

(4) Nothing in this section shall be deemed to affect anything contained in the [Tamil Nadu] Court of Wards Act, 1902 ([Tamil Nadu] Act I of 1902)."

8 (iv) A perusal of the above provision would make it clear that under Section 60 of the HR and CE Act, in case of vacancy in the office of



W.P.No.15841 of 2022

Head of the Mutt due to some contingencies specified therein, the 1st respondent is entitled to make arrangement for administration of the Mutt until the disability of the Head of the Mutt ceases or another trustee succeeds to the office as the case may be. In the case on hand, 101st Head of the Mutt resigned his office on 25.05.1962 subsequently, 102nd Head of the Mutt assumed charge on 15.06.1996. He attained 'Paripooranam' on 18.01.2016 and the petitioner herein assumed charge as 103rd Head of the Mutt immediately thereafter and the same was also recorded by 1st respondent's office in its proceedings Na.Ka.No.3534/2016/S2 dated 03.02.2016. Therefore, the 3rd respondent, who is running the administration by virtue of vacancy arose in the office of Head of the Mutt is bound to handover the administration of the Mutt to the successor Head of the Mutt on his assumption of office. When it was brought to notice of the 1st respondent, he, in his proceedings dated 18.02.1998 appeared to have taken a strange stand as if, 3rd respondent was discharging his functions as per the scheme provisions and he was not appointed under Section 60(1) of HR and CE Act. The said stand of the 1st respondent and 3rd respondent appears very strange in the light of the undisputed fact there was no Advisory Committee for more than 60 years and no Head of the Mutt for more than 44 years. The



W.P.No.15841 of 2022

respondents have no answer to offer how the 3rd respondent could function as per the provisions of the scheme when there is no Advisory Committee and Head of the Mutt, when he has no independent power to take decisions on the secular affairs of the Mutt as per the scheme provisions. Obviously, after resignation 101st Head of the Mutt and expiry of term of office of the First Advisory Committee, the 3rd respondent should have assumed charge under Section 60(1) of HR and CE Act. The 2nd respondent in the proceedings mentioned above clearly admitted 3rd respondent was appointed to look after the administration of the Mutt for the time being after resignation of the Head of the Mutt under Section 60(1) of HR and CE Act. Therefore, by no stretch of imagination, we can assume the 3rd respondent is discharging his function only as a Manager under the provisions of the scheme after expiry of term of office of the Advisory Committee on 31.05.1962. Once Successor Head of the Mutt assumes charge, the 3rd respondent is bound to handover the secular administration of the Mutt to him.

8 (v) As discussed earlier, after May-1962, there was no Head of the Mutt and Advisory Committee as per the scheme provisions,



W.P.No.15841 of 2022

therefore, the scheme framed on 31.05.1960 had become redundant from 31.05.1962 onwards. It is clear from the undisputed facts that the scheme settled by 1st respondent had become inoperative as early as 1962 and has been so for the past 62 years. When petitioner filed an application seeking formal revocation of the scheme which had already become inoperative and for handing over of the secular administration by the 3rd respondent to the petitioner, by impugned order 1st respondent refused to direct the 3rd respondent to handover the charge and proceeded to pass impugned order as if, the scheme is still in operation. The observation of the 1st respondent in the impugned order as if, no tenure is fixed for Manager in the scheme provisions and therefore, he continued as per the scheme is not acceptable to this Court in the absence of Head of the Mutt and Advisory Committee for several years. If at all his continuation and exercise of power over the administration of the Mutt can only be traceable to Section 60(1) of HR and CE Act and in such circumstances, he is bound to handover charge to the petitioner, who is a Successor Head of the Mutt.

8 (vi) The impugned order also attacked on the ground that continuance of Manager/Executive Officer to look after administration of



W.P.No.15841 of 2022

the Mutt would be repugnant to the provisions of present HR and CE Act.

The power of 1st respondent to frame scheme is governed by Section 65 of

HR and CE Act, which reads as follows:-

“65. Power of Commissioner to settle schemes.-(1)

When the Commissioner has reason to believe that in the interests of the proper administration of a math or a specific endowment attached to a math, a scheme should be settled for the math or the specific endowment attached to a math, or when not less than five persons having interest make an application in writing, stating that in the interests of the proper administration of the math or the specific endowment attached to the math, a scheme should be settled for it, the Commissioner shall consult in the prescribed manner the trustee and the persons having interest; and if, after such consultation, he is satisfied that it is necessary or desirable to do so, he shall, by order, settle a scheme of administration for the math or the specific endowment attached to the math.

(2) A scheme settled under this section for the administration of a math or a specified endowment attached to a math may contain provision for-

(a) constituting a body for the purpose of assisting in the whole or any part of the administration of the endowments of such math or of the specific endowment:

Provided that the members of such body shall be chosen from persons having interest in such math or endowment;



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W.P.No.15841 of 2022

(b) defining the powers and duties of the trustee.

(3) The Commissioner may determine what the properties of the math or of the specific endowment attached to the math are and append to the scheme a Schedule containing a list of such properties.

(4)(a) The Commissioner may, at any time after consulting the trustee, by order, modify or cancel any scheme in respect of a math or a specific endowment attached to a math and in force and settled under sub-section (1) or any scheme in force settled or modified by the Board under the Madras Hindu Religious Endowments Act, 1926 (Madras Act II of 1927), or deemed to have been settled under that Act or any scheme in force settled or modified by the Commissioner under this Act or any scheme in force settled or modified by the Court in a suit under sub-section (1) of section 70 or on an appeal under sub-section (2) of that section or any such scheme in force deemed to have been settled or modified by the Court under clause (a) of subsection (2) of section 118:

Provided that such cancellation or modification of a scheme in force settled or modified by the Court in a suit under sub-section (1) of section 70 or of an appeal under sub-section (2) of that section or of a scheme in force deemed to have been settled or modified by the Court under clause (a) of subsection (2) of section 118 shall be made only subject to such conditions and restrictions as may be prescribed.

(b) If the Commissioner is satisfied that any such scheme referred to in clause (a) is inconsistent with this Act and the rules made thereunder, he may, at any time, modify it in such



W.P.No.15841 of 2022

manner as may be necessary to bring it into conformity with the provision of this Act and the rules made thereunder.

(5) Every order of the Commissioner, settling, modifying or canceling scheme under this section shall be published in the prescribed manner and on such publication shall, subject to the provisions of sections 69 and 70, be binding on the trustee, the executive officer and all persons having interest.”

8 (vii) A perusal of the above provision would make it clear that Section 65 of the HR and CE Act, empowers 1st respondent to constitute a body of persons to assist in the administration of the Mutt. The members of such body shall be chosen from the persons having interest in the Mutt. Obviously, there is no provision under Section 65 of the HR and CE Act enabling 1st respondent to appoint a Manager/Executive Officer to carry on the day-to-day administration of the Mutt. Section 65 (2) (a) of the Act, clearly mentioned constitution of body for the purpose of assisting the administration and the body shall be chosen from the persons having interest in such Mutt. Section 65 (2)(b) of HR and CE Act, enable 1st respondent to define the powers and duties of the Trustees. In the absence of any enabling provision empowering 1st respondent to appoint an Executive Officer to a Mutt, while framing scheme, continuance of 3rd respondent in



the administration of the petitioner Mutt would certainly amount to violation of the provisions of the present HR and CE Act. It would be useful to refer to the provisions of the earlier HR and CE Act, 1951 with regard to the power of the 1st respondent to frame scheme for Mutts in the earlier enactment. The Section 58 of TN HR and CE Act, 1951, predecessor of the present HR and CE Act, defines the power of the 1st respondent to frame schemes for religious institution. The same reads as follows:-

“58. Power of Deputy Commissioner to frame schemes.- (1)

When the Deputy Commissioner has reason to believe that in the interests of the proper administration of a religious institution, a scheme should be settled for the institution, or when not less than five persons having interest make an application writing, stating that in the interests of the proper administration of religious institution a scheme should be settled for it, the Deputy Commissioner shall consult in the prescribed manner the trustee and the persons having interest and the Area Committee, if any, having jurisdiction over the institution; and if, after such consultation, he is satisfied that it is necessary or desirable to do so, he shall, by order, frame a scheme of administration for the institution.

(2) A scheme settled under sub-section (1) for a temple or for a specific endowment other than one attached to a math may contain provision for-

(a) removing any existing trustee, whether hereditary or non-hereditary:



W.P.No.15841 of 2022

Provided that where provision is made in the scheme for the removal of a hereditary trustee, provision shall also be made therein for the appointment as trustee of the person next in succession who is qualified;

(b) appointing a new trustee or trustees in the place of or in addition to any existing trustee or trustees;

(c) defining the powers and duties of the trustee or trustees

(d) appointing or directing the appointment of, a paid executive officer, who shall be a person professing the Hindu religion on such salary and allowance as may be fixed, to be paid out of the funds of the institution; and defining the powers and duties of such officer:

Provided that in making any provision of the nature specified in clause (b) due regard shall be had to the claims of persons belonging to the religious denomination for whose benefit the institution is chiefly maintained.

(3) A scheme settled under sub-section (1) for a math or for a specific endowment attached to a math may contain provision for-

(a) associating one or more persons with the trustee or constituting a separate body for the purpose of participating or assisting in the whole or any part of the administration of the endowments of such math or of the specific endowment; provided that such person or persons or the members of such body shall be chosen from persons having interest in such math or endowment;



(b) appointing or directing the appointment of a paid executive officer, who shall be a person professing the Hindu religion, on such salary and allowances as may be fixed by the Deputy commissioner, to be paid out of the trust funds, and defining the powers and duties of such officer;

(c) defining the powers and duties of the trustee;

(4) The Deputy Commissioner may determine what the properties of the religious institution are and append to the scheme a schedule containing a list of such properties:

Provided that such determination shall not affect the rights of persons who are the hostile possession of any of the said properties.

(5) Pending the framing of a scheme for a temple or for a specific endowment other than one attached to a math, the Deputy Commissioner may appoint a fit person to discharge all or any of the functions of the trustee thereof and define his powers and duties.

(6) The Deputy Commissioner may, at any time, after consulting the trustee and the persons having interest and the Area Committee, if any, having jurisdiction over the institution, by order, modify or cancel any scheme settled under sub-section (1) or a scheme settled by the Board under the Madras Hindu Religious Endowments Act, 1926.

(7) Every order of the Deputy Commissioner setting, modifying or cancelling a scheme under this section shall be published in the prescribed manner and on such publication shall, subject to the provisions of section 61 and 62, be binding on the



W.P.No.15841 of 2022

trustee, the executive officer and all persons having interest.

(8) The powers conferred by this section shall, in respect or maths, be exercised by the Commissioner or by a Deputy Commissioner to whom powers in this behalf have been delegated by the Commissioner under section 10, sub-section (2).”

8 (viii) A perusal of the above provision would suggest that Section 58 (2)(d) and 3 (b) of the HR and CE Act, 1951, enabled 1st respondent to appoint Executive Officer while framing scheme for religious institutions or mutts. However, there is no similar provision in the present HR and CE Act, 1959 enabling 1st respondent to appoint a Manager/Executive Officer to mutts while framing scheme. When legislature in its wisdom had chosen to delete the provisions in the earlier Act enabling the 1st respondent to appoint an Executive Officer while framing scheme for mutts, it shall be construed that 1st respondent is not entitled to make such appointment while framing scheme. Therefore, the impugned order passed by the 1st respondent directing the 3rd respondent to continue with the administration of the secular affairs of the Mutt along with the petitioner is without jurisdiction and clearly repugnant to the provisions of present HR and CE Act.



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8. (ix) Interestingly, the earlier HR and CE Act, 1951 contained a provision under Section 56 of the said Act, enabling the 1st respondent to appoint a Manager for looking after secular affairs of the Mutt, the relevant provision reads as follows:-

“56. Appointment of manager of secular affairs of math.- (1) For the administration of the secular affairs of a math, the trustee of the math shall, when so required by the Commissioner, appoint a competent person as manager and report the name of the person so appointed, to the Commissioner; and in default of such appointment, the Commissioner may himself make the appointment.

(2) The manager appointed under subsection (1) shall be subordinate to the trustee of the math and shall, in addition to the trustee, be responsible for the due submission to the Commissioner of the registers, accounts and budges of the math, and also for the performance of other statutory duties imposed upon the trustee by or under this Act.”

The above said Section 56 of earlier Act was struck down as unconstitutional by this Court and the decisions of this Court was affirmed by the Hon'ble Apex Court in **Shirur Mutt** case cited supra, the relevant observation of the Hon'ble Apex Court reads as follows:-

“35. Section 56 has been rightly invalidated by the



High Court. It makes provision of an extremely dramatic character.
Power has been given to the Commissioner to require the trustee to
appoint a manager for administration of the secular affairs of the
institution and in case of default, the commissioner can make the
appointment himself. The manager thus appointed though nominally
a servant of the trustee, has practically to do everything according
to the directions of the Commissioner and his subordinates. It is to
be noted that this power can be exercised at the mere option of the
Commissioner without any justifying necessity whatsoever and no
prerequisites like mismanagement of property or maladministration
of trust funds are necessary to enable the trustee to exercise such
drastic power. It is true that the section contemplates the
appointment of a manager for administration of the secular affairs
of this institution. But no rigid demarcation could be made as we
have already said between the spiritual duties of the Mahant and his
personal interest in the trust property. The effect of the section really
is that the Commissioner is at liberty at any moment he chooses to
deprive the Mahant of his right to administer the trust property even
if there is no negligence or maladministration on his part. Such
restriction would be opposed to the provision of article 26(d) of the
Constitution. It would cripple his authority as Mahant altogether
and reduce his position to that of an ordinary priest or paid
servant.”

8 (x) Since the provision of law in the earlier HR and CE act enabling the 1st respondent to appoint a Manager to a Mutt was struck down



W.P.No.15841 of 2022

by this Court and affirmed by Hon'ble Apex Court, the Tamil Nadu legislature, in the subsequent enactment namely present HR and CE Act, 1959, consciously omitted to introduce such a provision enabling 1st respondent to appoint a Manager to look after secular affairs of the Mutts. Unfortunately, even in the absence of such a statutory power to appoint Manager to a Mutt, the 1st respondent in the guise of framing scheme under Section 65 of HR and CE Act had chosen to appoint a Manager to look after the scheme affairs. When such an enabling provision available in the earlier Act was struck down by this Court and affirmed by the Hon'ble Apex Court, the action of the 1st respondent in appointing a Manager to carry out the day-to-day secular administration of the Mutt is a clear colourable exercise of power. It is settled law that what cannot be done directly cannot be done indirectly. When power of 1st respondent to appoint a Manager to a Mutt to carry out secular affairs is absent in the present enactment, the 1st respondent cannot assume such a power by taking shelter under his power to frame scheme. It would be appropriate to say under Section 65 of the HR and CE Act, there is no enabling provision to appoint Manager. It only enables 1st respondent to constitute a Committee to assist the administration of the Mutt. Therefore, the impugned order of the 1st respondent refusing to



W.P.No.15841 of 2022

handover the secular affairs of the Mutt to the petitioner by issuing necessary direction to 3rd respondent to handover the secular administration is clearly without jurisdiction. The 1st respondent while issuing directions to 3rd respondent to maintain the accounts and records as per the provisions of the scheme under HR and CE Act, clearly acted without jurisdiction and consequently, the impugned order is liable to be set aside.

8 (xi) The impugned order was also challenged on the ground that appointment of Manager to look after the secular affairs of the Mutt would affect the fundamental rights of the petitioner available under Article 26 of the Constitution of India. In ***Sri-La-Sri Ambalavana Pandara Sannathi Avergal*** case cited supra, the Division Bench of this Court observed that a Head of the Mutt like Adheenam in this case would gather around him a number of disciples whom he initiate into the tenets of his order for the propagation of religious knowledge which includes the doctrine of a particular cult and this is done by maintenance of a competent line of teachers. The relevant observation reads as follows:-

“4. It is common ground that the appellant squarely



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W.P.No.15841 of 2022

comes within the definition of "Math" as per the Act and this is not in controversy. In Gnana Sambanda Pandara Sannadhi v. Kandasami Thambiran, it was held that in legal parlance Math connotes a monastic institution presided over by a superior and established and maintained for the use and benefit of ascetics belonging to a particular order who generally are disciples or co-disciples of the superior". Some spiritual leaders of South India, who were actuated by a desire to disseminate religious knowledge and promote religious charities have established maths in various places and in Tamil Nadu they are often referred by the term "Adheenams", and their heads as "Adheenakarthars." The founders of these Maths gather round them a number of disciples whom they initiate into the tenets of their order for the propagation of religious knowledge which includes the doctrine of a particular cult, and this is done by maintenance of a competent line of teachers."

8 (xii) In ***Shirur Mutt*** case, the Hon'ble Apex Court empathetically observed a Mutt or the spiritual fraternity represented by it can legitimately come within the purview of Article 26 of the Constitution of India, the relevant observation of the Hon'ble Apex Court reads 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



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W.P.No.15841 of 2022

expression. The word "denomination" has been defined in the Oxford Dictionary to mean "a collection of individuals classed together under 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 centers of theological teaching was stated 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 organization. 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."



W.P.No.15841 of 2022

8 (xiii) Therefore, it is clear that Mutts like that of the petitioner is a denominational institution entitled to protection of fundamental rights available under Article 26 of the Constitution of India. In fact, continuance of a Manager by 1st respondent to look after secular affairs of a Mutt in the absence of any mismanagement would certainly amount to violation of fundamental right guaranteed under Article 26 of the Constitution of India. In the case on hand, in the year 1960 scheme was framed by 1st respondent on the allegation of mismanagement by 101st Head of the Mutt. Undisputedly, 101st Head of the Mutt resigned from his post and 44 years thereafter, 102nd Head of the Mutt assumed charge, he also attained “*Paripooranam*” and now the 103rd Head of the Mutt assumed charge in the year 2016. There is no allegation of mismanagement against the petitioner. In fact, there is no chance or opportunity for him to mismanage as he is not enjoying the powers of secular administration. The 1st respondent in the impugned order observed that after assumption of charge, the petitioner has not taken any steps to retrieve the properties of the Mutt, which was alienated by 101st Head of the Mutt. As per the scheme framed by 1st respondent, petitioner cannot function independently he can only act in accordance with advice tendered by Advisory Committee.



W.P.No.15841 of 2022

However, no Advisory Committee has been constituted subsequent to 1962.

The day-to-day administration is with the 3rd respondent, therefore, as on today, the petitioner has no power to take any legal steps to retrieve properties alienated by 101st Head of the Mutt in the year 1960. The 1st respondent without handing over secular administration of the Mutt to the petitioner cannot accuse himself as if, he is complacent in discharge of his duties. On the contrary, the 3rd respondent is continuing in the administration from 1960 to today. In spite of passing of 63 years, 3rd respondent is not successful in fully retrieving the properties alienated. In such cases, no purposes will be served in his continuance, if he is not able to deliver during the long period of 63 years.

8 (xiv) In *Sri Ahobila Mutt Parampara vs. State of Andhra Pradesh (K.B. Sethuraman vs. State of A.P.)* reported in **2022 SCC OnLine AP 3486**, the appointment of Executive Officer for Ahobilam temple which is part of Ahobilam Mutt was challenged. The Division Bench of Andhra Pradesh High Court held that appointment of Executive Officer to said temple which is part of Mutt would amount to violation of Article 26(d) of Constitution of India as it affects head of the Mutt's right of administration. The relevant observation of Division Bench of Andhra



W.P.No.15841 of 2022

Pradesh High Court reads as follows:-

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“63. The above discussion leads us to an irresistible conclusion that the Ahobilam Temple is an integral and inseparable part of Ahobilam Math, which was established as a part of propagation of Hindu religion and for rendering spiritual service for propagating Sri. Vaishnavism. The successive Jeeyars are the trustees of the Ahobilam Devasthanam and since the Government cannot appoint an Executive Officer for the Ahobilam Math, it has no power to appoint an Executive Officer for the Ahobilam Temple by treating it separate from the Math. Appointing an Executive Officer for Temple, which is a part of the Math, is violative of Article 26(d) of the Constitution of India, as the same affects Jeeyars'/Mathadipathis' right of administration.”

The said order passed by the Andhra Pradesh High Court was confirmed by Apex Court by dismissal of SLP (C) No.1538-1540 of 2023 dated 27.01.2023.

8 (xv) The Hon'ble Apex Court in ***Dr Subramanian Swamy vs. State of Tamil Nadu*** reported in (2014) 5 SCC 75, while dealing with the power of the 1st respondent to appoint Executive Officers to religious institutions other than Mutt under Section 45 of the HR and CE Act observed as follows:-

70/84



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W.P.No.15841 of 2022

“65. Even if the management of a temple is taken over to remedy the evil, the management must be handed over to the person concerned immediately after the evil stands remedied. Continuation thereafter would tantamount to usurpation of their proprietary rights or violation of the fundamental rights guaranteed by the Constitution in favour of the persons deprived. Therefore, taking over of the management in such circumstances must be for a limited period. Thus, such expropriatory order requires to be considered strictly as it infringes fundamental rights of the citizens and would amount to divesting them of their legitimate rights to manage and administer the temple for an indefinite period. We are of the view that the impugned order is liable to be set aside for failure to prescribe the duration for which it will be in force.

66. Supersession of rights of administration cannot be of a permanent enduring nature. Its life has to be reasonably fixed so as to be co-terminus with the removal of the consequences of maladministration. The reason is that the objective to take over the management and administration is not the removal and replacement of the existing administration but to rectify and stump out the consequences of maladministration. Power to regulate does not mean power to supersede the administration for indefinite period.”

8 (xvi) A reading of above said observation of the Hon'ble Apex Court would demonstrate that in case of mismanagement of administration, the 1st respondent, in order to remedy the evil can appoint an



W.P.No.15841 of 2022

Executive Officer but once the evil is removed or remedied, the management shall be handed over to the person from whom it was taken over. In other words, there cannot be any appointment of Executive Officer for an indefinite period. In the case on hand, the 1st respondent framed scheme and had made provision for taking over of the administration by Advisory Committee and Manager/Executive Officer appointed by 1st respondent. The said step was taken by the 1st respondent on the allegations of mismanagement by 101st Head of the Mutt. Now, the 101st Head of the Mutt is not available and there is no allegations of mismanagement against present head of Mutt (infact there cannot be an allegation owing to his present position, without secular powers). In such circumstances, the 1st respondent is not justified in continuing the appointment of 3rd respondent to look after the secular affairs, even after expiry of 62 long years. As laid down by the Hon'ble Apex Court in ***Dr Subramanian Swamy*** case the appointment of the Executive Officer shall be for a limited period and if appointment is made for indefinite period the same is bad in law. Therefore, viewing from any angle the order impugned allowing the 3rd respondent to exercise the secular powers is bad in law.



W.P.No.15841 of 2022

8 (xvii) This Court in ***M.P.Anandam Pillai vs. The State,***

represented by its Secretary to Government, reported in ***2004 (4) CTC 368***

ruled that in case of appointment of the Executive Officer on the allegation of mismanagement by Hereditary Trustee, the delinquency which was attached to the Hereditary Trustee will not survive on his death and it is open to his legal representatives to take over the administration and in such cases, the continuance of Executive Officer is not permissible and administration shall be handed over to legal representatives. The relevant observation of this Court in this regard reads as follows:-

“11. ... Though on that issue it is true that the learned Special Government Pleader is justified in his contention that the issue may be remitted back to the Commissioner for his fresh consideration, as regards whether the administration should continue to be in the hands of the Executive Officer even after the death of Anandam Pillai, there is no justification to deny the request made by both the petitioner as well as the tenth respondent to allow them to take over the administration and to function as trustees. It is not disputed that the Executive Officer came to be appointed only by the order of the Commissioner dated 24.6.1978 after finding that the then existing trustee had committed certain irregularities and that the Commissioner considered that appointment of the Executive Officer under Section 45(1) of the Hindu Religious and Charitable Endowments Act will pave the way for ensuring better



administration of the Kattalai. But, now that the said trustee is dead and no more, the reasons for appointment of the Executive Officer does not survive as on date. In the judgment referred to above, the learned Judge has held that under Section 54 of the Hindu Religious and Charitable Endowments Act, when a permanent vacancy occurs in the office of the hereditary trustee of a religious institution, the next in the line of succession shall be entitled to succeed to the office and that there is no necessity, whatever, for the next hereditary trustee to make an application for being appointed under the Act. At any rate, on the facts of this case, the Executive Officer came to be appointed only because of the alleged improper administration by the then Trustee. Now that he has expired, there can be no objection for their legal heirs to take over administration.

12. The delinquency which was attached to the then hereditary trustee which warranted the appointment of the Executive Officer does not survive anymore and now that the new set of legal heirs of the two branches have come into existence and it is also stated that there are no controversies between themselves regarding their rights, the continued administration by the Executive Officer is not warranted.” (emphasis supplied)

8 (xviii) A perusal of the above decision would make it clear that in cases where appointment of Executive Officer is made on the allegation of mismanagement by the Hereditary Trustee, the delinquency attached to the office of the Hereditary Trusteeship dies with the person and



W.P.No.15841 of 2022

there is no bar for his legal representatives to take over the Hereditary Trusteeship. In the case on hand, there was allegation of mismanagement against 101st Head of the Mutt, the said allegations of mismanagement dies with vacation of office by 101st Head of the Mutt. In the absence of any mismanagement by petitioner, the 1st respondent is not justified in refusing to cancel the scheme and handover the secular administration to the petitioner.

9. Discussion on the Question of *Res judicata*:-

9 (a) The learned Special Government Pleader (HR and CE) appearing for the respondents submitted that 101st Head of the Mutt, after his abdication, filed a suit in O.S.No.272 of 1977 on the file of the Subordinate Court, Tirunelveli seeking declaration that he was both spiritual and secular head of the Sengole Adheenam Mutt and the said suit was dismissed by the Civil Court and consequently, the present writ petition is barred by principles of *res judicata*. A reading of judgment passed by the Civil court in O.S.No.272 of 1977 filed in the typed-set of papers would



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suggest that the said declaration was prayed for by the plaintiff in the said suit (101st Head of the Mutt, who resigned) mainly on the ground that his resignation was obtained by respondents-Department by practising dubious methods such as promise, fraud, threat etc. Therefore, it is clear that the above said suit was filed after his abdication from the position of Head of the Mutt. In other words, though in the cause title of the plaint, he described himself as Head of the Mutt, the averments found in his plaint would make it clear that the suit was filed after his resignation from the post. Hence, we can safely come to the conclusion that the above said suit was filed by him in his individual capacity. Once we come to the conclusion the earlier suit was filed by 101st Head of the Mutt, in his individual capacity, the present writ petition filed by the petitioner in his capacity as 103rd Head of the Mutt cannot be said to be barred by doctrine of *res judicata*. The earlier suit was filed by Ex-Head of the Mutt in his individual capacity and however, the present writ petition is filed by petitioner in his official capacity. Therefore, the petitioner cannot be termed as a person claiming under the same title. Hence, one of the essential ingredients for application of doctrine of *res judicata* is absent and consequently, I hold the present writ petition is not barred by *res judicata*.



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9 (b) Further, the present writ petition is arising out of an order passed by 1st respondent in an application filed by petitioner by invoking Section 65 (4) of HR and CE Act, 1959. Section 65 (4) of the HR and CE Act, enables the 1st respondent to modify or cancel any scheme framed under the Act. The present application has been filed by the petitioner on the basis of subsequent change of circumstances. The earlier scheme was settled due to mismanagement of Mutt properties by 101st Head of the Mutt. Admittedly, he resigned from his position in the year 1962. Subsequently, a Successor Head of the Mutt had taken over the Headship of the Mutt in the year 1996 and after his death, the present petitioner had taken over the Headship of the Mutt in the year 2016. On resignation of 101st Head of the Mutt, the contingency that warranted framing of scheme got vanished and now a new person had taken over Headship of the Mutt and there is no mismanagement by the present petitioner (in fact there cannot be any mismanagement by the petitioner when the power to run the secular affairs of the Mutt is not available to him). The main ground on which the earlier scheme was framed got automatically vanished on resignation of 101st Head of the Mutt. It is also seen that scheme provisions has not been implemented



W.P.No.15841 of 2022

from the year 1962 after expiry of term of office of Advisory Committee by efflux of time. Virtually, the scheme had become redundant or abandoned even in the year 1962. Therefore, by pointing out the subsequent change of circumstances, the present application has been filed by the petitioner seeking cancellation of the scheme, which had already become redundant and for consequential direction to the 3rd respondent to handover the secular affairs of the Mutt to the petitioner. Therefore, the writ petition challenging the order passed by 1st respondent refusing to cancel the scheme which had become redundant by subsequent change of circumstances is certainly maintainable and the same is not barred by doctrine of *res judicata* for the reason mentioned above.

10. Conclusion:-

10 (a) In view of the discussions made earlier, the impugned order passed by the 1st respondent is quashed for each of the following reasons:-

- (a) The impugned order is held to be violative of fundamental rights available to the petitioner under Article 26 (d) of the



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W.P.No.15841 of 2022

Constitution of India.

- (b) The impugned order is repugnant to the present HR and CE Act, which does not contain a provision for appointment of Manager/Executive Officer while framing scheme for Mutts.
- (c) The impugned order is bad for colourable exercise of power by 1st respondent in allowing 3rd respondent to continue in the administration of mutt, in the absence of any enabling provision empowering him to appoint a Manager/Executive Officer to a Mutt.
- (d) The impugned order is clearly against the decisions of the Hon'ble Apex Court in *Shirur Mutt* case, which struck down Section 56 of HR and CE Act of 1951, which enabled the 1st respondent to appoint Manager for Mutts.
- (e) The impugned order passed by 1st respondent is bad in law as the scheme settled on 31.05.1960 had become redundant as early as



W.P.No.15841 of 2022

1962 by non-constitution of Advisory Committee from 1962 and absence of Head of the Mutt for 44 years from 1962 to 1996.

- (f) The impugned order is bad in the light of the law settled by the Hon'ble Apex Court in *Dr Subramanian Swamy* case cited supra, which laid down that there cannot be an appointment of Executive Officer for indefinite period without specifying the term.

11. Operative Portion of the Order:-

- (a) The **Writ Petition stands Allowed** by quashing the impugned order passed by the 1st respondent and it is declared that scheme framed by 1st respondent had become redundant on 30.05.1962, after expiry of term of office of First Advisory Committee constituted under the scheme.
- (b) The 1st respondent is directed to take necessary steps for handing over the secular affairs of Sengol Adheenam Mutt to the 103rd



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W.P.No.15841 of 2022

Head of the Mutt namely the petitioner.

- (c) The 1st respondent shall frame a time schedule for the 3rd respondent to handover the secular affairs of the Mutt including the accounts and movables to the petitioner in consultation with the petitioner and the 3rd respondent.
- (d) In any event, the handing over of the secular affairs of the Mutt by the 3rd respondent to the petitioner shall be completed within a period of twelve weeks from the date of receipt of copy of this order.
- (e) Consequently, the connected miscellaneous petition is closed.
- (f) In the facts and circumstances of the case, there will be no order as to costs.

09.11.2023

Index : Yes
Speaking order : Yes



W.P.No.15841 of 2022

Neutral Citation : Yes
dm

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W.P.No.15841 of 2022

To

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- 1.The Commissioner,
Hindu Religious and Charitable
Endowment Department,
Nungambakkam, Chennai.
- 2.The Assistant Commissioner,
Hindu Religious and Charitable
Endowment, Administration Department,
Tuticorin.
- 3.The Executive Officer,
Sri Kallapiran Swami Temple
Sri Vaikundam, Tuticorin District.



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W.P.No.15841 of 2022

S.SOUNTHAR, J.

dm

**Pre-delivery order made
in W.P.No.15841 of 2022**

09.11.2023