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W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : **18.12.2023**
Pronounced on : **27.03.2024**

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019
and connected miscellaneous petitions

W.A.No.2191 of 2018

The Executive Officer
Sri Pamban Kumara Gurudasar Temple
@ Sri Mayuranatha Temple,
Mayurapuram, Thiruvannamiyur,
Chennai - 600 041.

... Appellants

Vs.

1. Maha Thejo Mandala Sabha
A Society registered under Tamil Nadu Societies Registration Act
(Regn. No.15/1988),
Rep. by its Secretary M.Jayaraman,
Having Office at No.7/18, Crystal Garden, II Street,
Nowroji Street, Chetpet,
Chennai - 600 031.



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

2. The Assistant Commissioner
H.R. & C.E., Department / Fit Person
Sri Mayuranatha Swami Temple,
Sri Mayurapuram, Thiruvanmiyur,
Chennai - 600 041, Tamil Nadu.

3. The Deputy Commissioner
H.R. & C.E., Department,
Chennai - 600 034, Tamil Nadu.

4. The Commissioner
H.R.& C.E., Department,
Chennai - 600 034, Tamil Nadu.

.... Respondents

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent, against the order, dated 14.09.2018 in W.P.No.14205 of 2018.

W.A.No.2316 of 2018

Maha Thejo Mandala Sabha
Rep. by its President,
Mr.S.Yuvaraj Krishnan,
No.5, L.B.Road, Adyar,
Chennai - 600 020.

... Appellant

Vs.

1. The Commissioner
Tamil Nadu Hindu Religious &
Charitable Endowment Department,
Chennai - 600 034.

2. The Executive Officer
Sri Pamban Kumara Gurudasa Swamigal Temple,
Thiruvanmiyur, Chennai - 600 041.



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

3. M.Jayaraman
No.7/18, Crystal Garden, II Street,
Nowroji Street, Chetpet,
Chennai - 600 031.

.... Respondents

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order made in W.P.No.19776 of 2018 dated 02.08.2018.

W.A.No.2390 of 2018

1. The Commissioner
HR & CE Department,
Chennai - 600 034, Tamil Nadu.

2. The Deputy Commissioner
HR & CE Department,
Chennai - 600 034, Tamil Nadu.

... Appellants

Vs.

1. Maha Thejo Mandala Sabha
A Society registered under Tamil Nadu Societies Registration Act
(Regn. No.15/1988),
Rep. by its Secretary M.Jayaraman,
Having Office at No.7/18, Crystal Garden, II Street,
Nowroji Street, Chetpet,
Chennai - 600 031.

2. The Assistant Commissioner
HR & CE Admn, Department / Fit Person,
Sri Mayuranatha Swami Temple,
Mayurapuram, Tiruvanmiyur,
Chennai - 600 041, Tamil Nadu.



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

3. The Executive Officer
Sri Pamban Kumara Gurudasar Temple,
Sri Mayuranatha Swami Temple,
Mayurapuram, Tiruvanmiyur,
Chennai - 600 041, Tamil Nadu

.... Respondents

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order, dated 14.9.2018 made in W.P.No.14205 of 2018 by this Court and thereby dismiss the Writ Petition.

C.M.P.No.9487 of 2019
in W.A.Sr.No.48132 of 2019

Sreemath Pamban Swamigal
Maha Dhejo Mandalam,
Rep. by the Secretary,
S.S.P.Sakthivel,
No.17, Jeens Road, Saidapet,
Chennai - 600 015.

.... Petitioner

Vs.

1. Maha Thejo Mandala Sabha by
its Secretary M.Jayaraman,
Office at No.7/18, Crystal Garden,
2nd Nowroji Street, Chetpet,
Chennai - 31.

2. The Assistant Commissioner
HR & CE Department / Fit Person,
Sri Mayuranatha Swami Temple,
Mayurapuram, Thiruvanmiyur,
Chennai - 41, Tamil Nadu.



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

3. The Executive Officer
Sri Mayuranatha Swami Temple,
Mayurapuram, Thiruvanmiyur,
Chennai - 41, Tamil Nadu.
4. The Deputy Commissioner
Hindu Religious and Charitable Endowments Department,
Sri Mayuranatha Swami Temple,
Mayurapuram, Thiruvanmiyur,
Chennai - 41, Tamil Nadu.
5. The Commissioner
Hindu Religious and Charitable
Endowments Department,
Chennai - 34, Tamil Nadu. ... Respondents

Prayer : Petition filed under Clause 15 of Letters Patent r/w Section 151 CPC, to grant leave to the petitioner / appellant to file the present Writ Appeal against Judgment, dated 14.09.2018 in W.P.No.14205 of 2018.

W.P.No.13141 of 2019

Sreemath Pamban Swamigal
Maha Thejo Mandalam (Regn. No.160/89)
Represented by the Secretary,
S.S.P.Sakthivel,
No.17, Jeens Road, Saidapet,
Chennai - 600 015.

... Petitioner

Vs.

1. State of Tamil Nadu represented by
Secretary to Government,



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

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Commercial Taxes and Hindu Religious
and Charitable Endowment Department,
Fort St. George, Chennai - 600 009.

2. The Commissioner
HR & CE Department,
Chennai - 34, Tamil Nadu.
3. The Executive Officer, Fit Person
HR & CE Department,
Sri Mayurantha Swami Temple,
Mayurapuram, Thiruvanmiyur,
Chennai - 41, Tamil Nadu.
4. Maha Thejo Mandala Sabha (15/1988)
Represented by M.Jayaraman,
as Secretary having office at
No.7/18, Crystal Garden, II Street,
Nowroji Street, Chetpet,
Chennai - 600 031.

.... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a writ of mandamus directing the respondents 1 to 3, to administer and manage the institution of Pamban Swamigal known as Arulmigu Pamban Kumaraguru Dasar Temple alias Arulmigu Mayuranathar Thirukovil at Mayurapuram as religious institution and as Temple under the provisions of the Hindu Religious & Charitable Endowment Act as amended.



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

WEB COPY

For Appellants
/ Petitioner

: Mr.AR.L.Sundaresan,
Senior Counsel
for Mr.AR.Karthik Lakshmanan
in W.A.No.2191 of 2018

Mr.S.Natarajan
in W.A.No.2316 of 2018

Mr.R.Shanmugasundaram,
Advocate General
assisted by
Mr.N.R.R.Arun Natarajan, Spl.G.P
in W.A.No.2390 of 2018

Mr.R.Bharanidharan
in C.M.P.No.9847 of 2019 in
W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

For Respondents

: Mr.T.R.Rajagopalan, Senior Counsel
for Mr.T.M.Hariharan for R1
in W.A.No.2191 of 2018, 2390 of 2018
and C.M.P.No.9847 of 2019 in
W.A.Sr.No.48132 of 2019

Mr.R.Shanmugasundaram,
Advocate General
assisted by
Mr.N.R.R.Arun Natarajan, Spl.G.P
for R2 to R4 in W.A.No.2191 of 2018
and W.P.No.13141 of 2019
for R2 to R5 in C.M.P.No.9847 of 2019
in W.A.Sr.No.48132 of 2019



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

for R1 in W.A.No.2316 of 2018

Mrs.A.L.Gandhimathi, Senior Counsel
for Mr.L.Palanimuthu
for R2 and R3 in W.A.No.2390 of 2018

No Appearance for R3
in W.A.No.2316 of 2018

COMMON JUDGMENT

R.SURESH KUMAR, J.

Since two Appeals arise out of a common order passed by the writ court, dated 14.09.2018 made in W.P.No.14205 of 2018, one writ appeal against the order, dated 02.08.2018 made in W.P.No.19776 of 2018 and one writ petition and one miscellaneous petition at sr stage in the writ appeal tagged along with these batch also relates to the same issue, all these cases were heard together and are disposed of by this common order.

2. Factual background :

2.1. There was a Saint called Kumara Gurudasar Swamigal of Pamban popularly known as "Pamban Swamigal", was living in Chennai in the early years of 20th century. He was an inspired bhaktha of Lord Muruga



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

and he had developed or contributed a celebration to worship Lord Muruga during his life time. He has composed more than 6000 compositions on Lord Muruga. During his life time, he was having lot of followers and devotees.

2.2. Towards the end of his life, the Swamigal thought of executing a Will, therefore on 17.07.1926 he has written a Will. The Will pertains to how the immovable properties acquired by him including the cash deposit in the Fixed Deposits are to be maintained and how the poojas on Lord Muruga, otherwise called as Mayura Vagana Seva, in short to be called as Seva to be performed after his demise has been mainly stated. Swamiji has also constituted a committee consisting of 21 members for the aforesaid purpose. The committee was called as Sabha, in other words it was called as Maha Thejo Mandalam. In Schedule A of the said Will, the names of the 21 members of the sabha had been mentioned by Swamiji, in schedule B of the Will, what are all the movable items available had been listed out and also what are all the items which form part of Mayura Vahana Sevanam also had been written. The said Will was registered on the same day at the concerned



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

Registrar Office.

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2.3. Though the said Will had been written by Swamiji on 17.07.1926, after a year, i.e., on 19.12.1927, the Swamiji had written a Codicil as a supplement to the Will, where he had stated that, the sabha known as Maha Thejo Mandalam mentioned in that Will has been established by him and he had enlisted 21 members as members of the Sabha, now as some of them did not appear to conduct themselves agreeable to his views, he removed them and admitted some others devoted to God Kumara Bhagavan (Lord Muruga) and himself and establish that sabha with some appropriate instructions.

2.4. Accordingly, the Swamiji's constituted Sabha would consisting of 17 persons headed by one T.T.Kuppusami Chettiar, S/o. Egappa Chettiar.

2.5. The Swamiji also had stated in the Codicil that 9 out of 17



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

persons headed by the said Kuppusami Chettiar shall be in the committee, they should look after the instructions given by the Swamiji in the said Will as well as in the Codicil. Mainly the Swamiji directed the Committee to conduct the festival called Mayura Vahana Sevana Festival. For conducting of such festival, the Committee had no right to pledge for money or sell or give to anybody on loan or hire or to give for use in the festivals of any sabha or temple.

2.6. The festival is to take place on the Pradhamai, the first day of the bright fortnight of the tamil month Margazhi (December - January) as mentioned in paragraph 2 of the Will and that function shall be conducted very grandly just he had conducted. This is how the Will as well as Codicil had been written by the Swamiji as stated supra.

2.7. The Swamiji since attained the mukthi on 30.05.1929, he was placed in the samadhi in a land of 2 cawnies and 4 grounds bearing Pymash No.967 at Thiruvanmiyur village which was purchased in the name of the



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

Secretary, Maha Thejo Mandalam on 04.06.1929.

2.8. From 1929 to 1971, it seems that, the pooja was conducted or the festival was conducted by sabha / mandalam. At one point of time, a notice had been issued on 05.11.1971 by the Hindu Religious and Charitable Endowments Department (in short "the HR & CE Department) who wanted to take possession of the Sri Pamban Kumara Gurudasar Swamigal Samadhi Koil at Thiruvannamiyur and its property over which the above samadhi or tomb is situated. The said move of the HR & CE Department was questioned by the Pamban Kumara Gurudasar Samadhi Koil represented by its President, T.T.Kuppusami Chettiar in W.P.No.3501 of 1971.

2.9. The said writ petition was ordered by the writ court by making the following observations :

"Merely because some idols have been installed in and around a Samadhi of a sacred person in order to propitiate his soul, that by itself may not convert the sites into religious institution or a temple.



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W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

Without adverting to these essential facts, respondents have assumed jurisdiction under the provisions of the Act and, in particular, have invoked Section 49 of the Act and called for applications for the appointment of non-hereditary trustees to the institution. It has to be decided in a regularly instituted action either at the instance of the petitioner or by the department suo motu as to whether this institution is one which should come within the rigorous supervision and jurisdiction of the Hindu Religious and Charitable Endowments Board. Without a prior decision on that question, the assumption of jurisdiction is without authority. The petitioner, therefore, is entitled to a writ of prohibition. The Rule Nisi is made absolute. The Writ Petition is allowed. No costs.

In the instant case, it is for the Department, which has set the ball in motion, to take such steps, if they are interested to establish that the institution is one which ought to come within the purview of the provisions of the Tamil Nadu Religious and Charitable Endowments Act, 1959 and it is not for the petitioner to go to court and establish to the



WEB COPY



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

contrary."

2.10. The said order of the writ court was made on 04.09.1973.

Thereafter for about a decade, there was no issues it seems. However in the year 1984, the President of the Sabha, T.T.Kuppusami Chettiar found some foul play of the members of the Sabha and the festival or pooja had not been conducted in proper manner and those members of the sabha wanted to swindle the property. Therefore the said President of the sabha, namely Kuppusami Chettiar wrote a letter on 09.08.1984 in the capacity as a President of the sabha to the Deputy Commissioner, HR & CE, where he stated the following :

"Now the time has changed, Shri Mayuranathar has been installed in the above institution according to the Agama and Poojas are also being performed in accordance with the Agamas. I concede that Shri Pambhan Kumaragurudasar Swamigal Samathy Koil and Sri Mayuranathar Devasthanam referred to above are religious institutions and request the Deputy Commissioner to initiate proceedings for the settlement of a



WEB COPY



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

scheme for the better administration of the institution. I agree for the appointment of a fit person pending settlement of the scheme for the better administration of the institution to take charge of the above institution and their properties and to manage them property for the benefit of thousands of devotees.

A proceeding has to be initiated very expeditiously as some of the people styling themselves as co-opted members of Sri Mayuranathar Management Committee and are trying virtually to take over the entire management with an ulterior motive of taking over the day today collections and also take possession of the properties including the lands attached to the temple. Often times they resort to violence create an atmosphere of tension and behave very badly with me and the members of my family. I am practically kept under the "house arrest". When devotees are assembled for worship and pooja, the members of this Committee used all sorts of obsessive words and threaten the devotees. The spate of petitions against this Committee received by H.R.& C.E. office from devotees bear



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W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

testimony to the bad conduct and activities of these persons.

On 12.07.1984, all the devotees shed tears when these hooligans carried the Uthsavar (Idol meant for procession) without removing their shoes or chappals despite severe objections from the devotees. The pooja was obstructed as the idol was carried away before the recitals of Kumarasthavam. This is in total violation of the direction already issued to these hooligans to the effect that no obstructions should be caused to the Kumarasthavam worship.

In view of my old age, I can not any more manage the administration and control these unruly elements from swallowing the property of religious charitable institution. I am rather broken and feel that these properties may ultimately be swindled by these unsocial elements for their personal benefits and deprive the genuine devotees of present and future generations to come.

Thanking you,

Yours faithfully,



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

(T.T.Kuppuswamy Chettiar)"

2.11. Pursuant to the said letter of the President of the Sabha, the HR & CE Department appointed a fit person vide his proceedings, dated 29.08.1984. The fit person also had taken charge on 09.09.1984. The powers and duties of the Executive Officer of the Mayuranathar Thirukoil, Thiruvanmiyur, i.e., Sri Pamban Kumara Gurudasar Swamigal Temple had also been provided by the proceedings of the Commissioner, HR & CE Department, dated 30.11.1989. Thereafter the HR & CE found that, the Temples revenue since has crossed Rs.1 lakh, the temple has been brought as a Scheduled Temple under Section 46(iii) of the Act.

2.12. Thereafter on 06.11.1990, a fit person has been appointed. After all these developments and the proceedings that has been issued by the HR & CE, of course pursuant to the handing over of the Temple / Samadhi to the HR & CE which had taken over the same, in the year 1991, not the sabha but one individual namely, R.Shanmugasundaram claimed to be the strong devotee of Swamiji had filed a writ petition in W.P.No.6157 of 1991



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

WEB COPY

seeking a prayer of writ of mandamus directing the Commissioner and Deputy Commissioner of HR & CE to entrust the performance of all the religious and spiritual rituals of Sri Pamban Kumara Gurudasar Swamigal Samadhi at Thiruvannamiyur to the Maha Thejo Mandala Sabha. It is to be noted that, in the said writ petition, the Sabha was made as a third respondent.

2.13. The said writ petition came to be decided by a single Judge of this Court vide order, dated 20.06.1991, where the learned Judge has infact moulded the relief and passed the following order :

" 19. In such circumstances, though the prayer asked for is entirely different, it is well settled that this court can mould the prayer to suit the occasion and as such a writ of mandamus will issue to the affairs of the Samadhi etc., to the Sabha, the third respondent herein, within a month from to-day, as it was done before the respondent department took over the same. As such, I am granting the relief to the Sabha the third respondent herein, to take over the management of the affairs of the Samadhi of



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

Pamban Swamigal . The writ petition is allowed. However, there will be no order as to costs. I do hope that the Sabha will understand the situation and act according to the pious wishes of the Swamigal as laid down in his Will and codicil, without giving any room to anybody to contend that the Sabha is not in existence."

2.14. As against which, the HR & CE Department has filed Writ Appeal in W.A.No.853 of 1991, wherein the Division Bench has passed the following order :

" The writ petition shall stand allowed and by a writ of mandamus, respondents 1 and 2 in the writ petition, the appellants herein, shall entrust to the third respondent Mahathejo Mandala Sabha, the performance of all the religious and spiritual rituals of Sri Pamban Kumara Gurudasa Swamigal at Thiruvanmiyur, Madras-41, in accordance with the sacred and pious wishes of Sri Pamban Kumara Gurudasa Swamigal in his Last Will and Testament dated 17.07.1926. So far as the management of the affairs of the Samadhi and the



WEB COPY



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

properties attached thereto is concerned, it shall continue to remain with the appellants 1 and 2 herein, who shall properly maintain the institution and may carry out repairs and renovations, but shall not in any way alter the basis character of the institution by any means. The order herein above made shall continue in force till the matter is decided by the Deputy Commissioner before whom Application No.19 of 1989 under Section 63 of the Hindu Religious and Charitable Endowments Act filed by the 3rd respondent to the writ petition, viz., the Mahathejo Mandala Sabha, is pending disposal since 11.04.1989. The decision of the authorities under the Hindu Religious & Charitable Endowments Act shall ultimately govern the continuance of dis-continuation of the directions given herein above.

6. In view of the agreed order made herein above, the order of the learned Single Judge impugned in the writ appeal will stand modified to the extent indicated above and the writ appeal is disposed of as finally settled."



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

2.15. Even prior to the filing of the said writ petition in W.P.No.6157 of 1991, the Maha Thejo Mandala Sabha represented by its Secretary, one S.M.Nathan filed a Original Application in O.A.No.19 of 1989 under Section 63(a) of the Tamil Nadu HR & CE Act, to declare that, Sri Pamban Kumara Gurudasar Swamigal Temple, Thiruvanmiyur is not a religious institution as defined under Section 6(18) nor a temple under Section 6(20) or a math as defined under Section 6(13) of the Act.

2.16. The said Original Application had been decided by the Deputy Commissioner of HR & CE vide order, dated 01.09.1993, where ultimately the Deputy Commissioner of HR & CE, held that, it is a religious institution attracting the provisions under Section 6(18) of the Act. Therefore there was no merits in the prayer sought for by the petitioner in the Application. Resultantly, the application under Section 63(a) of the HR & CE, Act seeking to declare it as a non-religious institution was dismissed.

2.17. As against the said order passed by the Deputy Commissioner of HR & CE, dated 01.10.1993, the Maha Thejo Mandala Sabha filed an appeal in A.P.No.2 of 1994 and one Dr.B.Raman filed A.P.No.3 of 1994



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

before the Commissioner of HR & CE, The Commissioner, HR & CE, decided the said appeals vide his order, dated 27.10.1994. The Commissioner in the said order had not agreed with the conclusion arrived at by the Deputy Commissioner and therefore he had set aside the order passed by the Deputy Commissioner and held that, the institution is not a public temple as defined in Section 6(20) of the Act. In the result, the appeal petition filed under Section 69(1) of the HR & CE, Act was allowed.

2.18. Against the said order passed by the Commissioner, HR & CE, in A.P.No.2 of 1994, there were three suits filed. The Suit in O.S.No.9257 of 1994 was filed by one individual called Kumarasthava Ramanujam who sought for the prayer not to entrust the institution to the Maha Thejo Mandala Sabha. The other two suits in O.S.Nos.9404 and 9405 of 1994 were filed by the HR & CE Department represented by the Assistant Commissioner and Executive Officer of the Sri Pamban Kumara Gurudasar Swamigal Temple @ Mayuranathar Temple, Mayurapuram, Thiruvannamiyur with a prayer to set aside the order passed by the Commissioner, HR & CE,



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

dated 27.10.1994 in A.P.No.2 of 1994 and A.P.No.3 of 1994 and pass a Judgment and Decree of permanent injunction restraining them from interfering with the management of the temple by the HR & CE Department.

2.19. The said three suits were tried together and the trial court passed a common Judgment and Decree in all those three suits on 30.08.2000, where the Civil Court dismissed all the three suits. Aggrieved over the same, the HR & CE, i.e., the Assistant Commissioner as well as the Executive Officer of Sri Pamban Kumara Gurudasar Swamigal Temple at Sri Mayuranathar Temple, Mayurapuram, Thiruvannamiyur filed Appeal Suits in A.S.Nos.310 and 311 of 2000 and Kumarasthava Ramanujam had also filed an Appeal Suit against the said common Judgment and Decree in A.S.No.650 of 2001.

2.20. These three Appeal Suits, i.e., A.S.Nos.310 and 311 of 2000 and A.S.No.650 of 2001 were finally disposed of by a single Judge of this Court in a common order, dated 21.12.2009, where the learned Judge



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

dismissed all the three Appeals.

2.21. As against the order passed by the learned single Judge in the three Appeals by order, dated 21.12.2009, the Assistant Commissioner, HR & CE and another had filed Special Leave Petitions in S.L.P (Civil).Nos.9148 and 9149 of 2010, where an interim order was passed by the Hon'ble Supreme Court on 19.04.2010, where the parties were directed to maintain status quo as it exists that date on the property in dispute. Thereafter the Civil Appeal was dismissed by order of the Hon'ble Supreme Court, dated 30.11.2017, where the Hon'ble Supreme Court passed the following order :

" No case is made out for interference in the judgments and orders passed by the High Court as well as Civil Court. Let the judgments be complied with. The civil appeals are dismissed.

However, as prayed, the appellants are free to initiate the proceedings under Section 3 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 in accordance with law. It



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

is open to the respondents to take all the legal pleas as and when such action is initiated. We make it clear that we have not commented on the merits of the said prayer and the liberty is given only on the basis of the submissions made by the counsel."

2.22. In the said circumstances, the Maha Thejo Mandala Sabha which was registered as a society under the Tamil Nadu Society Registration Act with Regn.No.15/1988 represented by its Secretary M.Jayaraman had filed a writ petition in W.P.No.14205 of 2018. In the said writ petition, the prayer sought for was a writ of mandamus directing the respondents therein to hand over to the petitioner, the possession and management of the affairs of Sri Pamban Kumara Gurudasar Swamigal samadhi, with properties movable and immovable, land and buildings. The said writ petition was heard and orders were reserved by the learned single Judge. During that period, yet another writ petition was filed in W.P.No.19776 of 2018 by Maha Thejo Mandala Sabha represented by its President, S.Yuvaraj Krishnan seeking a prayer of writ of prohibition prohibiting the respondents



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

1 and 2, i.e., Commissioner, HR & CE and Executive Officer of the temple from managing and enjoying the possession of the property of Sri Pamban Kumara Gurudasar Swamigal Samadhi, Thiruvannamiyur even after the passing of the orders of the Apex Court, dated 30.11.2017 made in S.L.P.Nos.9148 and 9149 of 2010 and consequently, direct the respondents 1 and 2 to hand over the possession of the property to the petitioner society.

2.23. Infact the said writ petition in W.P.No.19776 of 2018 filed by Maha Thejo Mandala Sabha represented by its President Yuvaraj Krishnan was dismissed by the writ court by the same learned Judge on 02.08.2018 where he found that the sabha represented by Yuvaraj Krishnan had no locus to seek such a prayer and therefore the same was rejected. As against the said order passed by the writ court, dated 02.08.2018 made in W.P.No.19776 of 2018, the writ petitioner as an aggrieved party filed Intra Court Appeal in W.A.No.2316 of 2018.

2.24. On 14.09.2018, the other writ petition filed by Maha Thejo



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

Mandala Sabha represented by its Secretary, M.Jayaraman in W.P.No.14205 of 2018 was disposed by the learned Judge of the writ court, where the writ petition was allowed. Aggrieved over the said order passed on 14.09.2018 made in W.P.No.14205 of 2018, the Executive Officer of Sri Pamban Kumara Gurudasar Swamigal Temple @ Sri Mayuranathar Temple had filed Intra Court Appeal in W.A.No.2191 of 2018. Against the very same order, dated 14.09.2018, the Commissioner, HR & CE had filed Intra Court Appeal in W.A.No.2390 of 2018. This is how these three writ appeals came to be filed and had come up for joint hearing before us.

2.25. In the meanwhile, in the year 2019, yet another writ petition was filed in W.P.No.13141 of 2019 by Sreemath Pamban Swamigal Maha Thejo Mandalam represented by its Secretary S.S.P.Sakthivel which was also claimed to have been registered with Regn.No.160 of 1989, with the prayer of writ of mandamus, directing the respondents 1 to 3, i.e., the State of Tamil Nadu and HR & CE, Department to administer and manage the institution of Pamban Swamigal known as Arulmigu Pamban Kumara



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

Gurudasar Temple @ Arulmigu Mayuranathar Thirukovil, Mayurapuram as religious institution and as temple under the provisions of the Hindu Religious and Charitable Endowments Act. Since this writ petition also had raised a issue connected to the issue which has already been raised in the said writ appeals, this writ petition also along with the said writ appeals has been tagged and heard.

2.26. Yet another writ appeal has been filed in W.A.Sr.No.48132 of 2019 by Sreemath Pamban Swamigal Maha Thejo Mandalam represented by its Secretary, S.S.P.Sakthivel with a miscellaneous petition, i.e., C.M.P.No.9847 of 2019 to seek for grant of leave to the petitioners / appellants to file the appeal against the Judgment, dated 14.09.2018 made in W.P.No.14205 of 2018. In the affidavit filed in support of the said petition, the said petitioner namely Sreemath Pamban Swamigal Maha Thejo Mandalam represented by its Secretary S.S.P.Sakthivel had submitted that, the petitioner / appellant society having the Registration No.160/1989, whereas the first respondent / writ petitioner was the society registered with



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

Regn.No.15/1988 who only filed W.P.No.14205 of 2018.

2.27. It has further been stated in the affidavit that, the society with Regn.No.15/1988 who filed the said writ petition in W.P.No.14205 of 2018 did not exists as on 15.02.1989, as per the order, dated 15.02.1989 made in I.A.No.39207 of 1988 and I.A.No.20602 of 1988 in O.S.No.11359 of 1998 on the file of the City Civil Court, Madras filed previously by S.M.Nathan claiming to be the Secretary under the first respondent society. The suit was dismissed on 12.04.1991 and the Appeal A.S.No.143 of 1992 was dismissed as withdrawn with a liberty to file fresh suit, however, no fresh suit was filed. Therefore it is the contention of the petitioner in the said C.M.P.No.9847 of 2019 that the society with Regn.No.15/1988 was not in existence and not in administration and management of the Maha Thejo Mandala Sabha initiated and established by Pamban Swamigal.

2.28. It is the further contention of the petitioner in that petition, only thereafter O.A.No.19 of 1989 was filed before the Deputy Commissioner of HR & CE, in or about 11.04.1989 under Section 63(a) of the HR & CE Act. After the said O.A., was dismissed by the Deputy Commissioner on



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

WEB COPY

01.10.1993, the said Nathan filed Appeal in A.P.No.2 of 1994 and one Dr.B.Raman filed Appeal No.3 of 1994 against the order passed by the Deputy Commissioner under Section 69(1) of the Act before the Commissioner. Since the Commissioner allowed those appeals, as against which, the HR & CE Department filed the Original Suits, since the Original Suits were dismissed on 30.08.2000, Appeal suits were filed, that were also dismissed on 21.12.2009.

2.29. In this context, it has been averred that, in the first respondent, i.e., the Society with Regn.No.15/1988 hitherto was represented by one S.M.Nathan, subsequently by R.Rmakrishnan as Secretary, there had been an inter rivalry dispute which surfaced among the said group of the first respondent society. The movable or the immovable property had never been transferred in the name of the said society, i.e., Regn.No.15/1988 at any point of time. There had been a fluid situation prevalent during 1988-89 and a third party appellant society with Justice Late N.Krishnasamy Reddiar as patron and eminent and devoted disciple and admirer of Pamban Swamigal



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

WEB COPY

as its member registered on 28.04.1989 having Regn. No.160/1989 with the name of Sreemath Pamban Swamigal Maha Thejo Mandalam. The main object of the society is to follow the directions contained in the Will and Codicil of the Pamban Swamigal in letter and spirit.

2.30. It is the further contention of them that, the H.R. & C.E., had not taken over the administration illegally inasmuch as the succeeding secretary of the Maha Thejo Mandalam initiated and established by Pamban Swamigal in his Codicil by T.T.Kuppusami Chettiar, since has surrendered the administration through his letter, dated 09.08.1984 to frame a scheme for the Pamban Swamigal Thirukoil. A fit person was appointed on 20.09.1984 and Thiruppani committee was appointed on 02.01.1985, it was reconstituted on 30.01.1987. It has further been stated that, a palalaya pradhista was held on 14.09.1988 and Karpagraha Thirunellaikal festival was held on 12.06.1992. Therefore there had been a complete change of circumstances in the form of worship by lakh of devotees and disciples of Swamigal as well as the deities of God Balasubramaniya and Vinayagar in



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

the same premises. It was agitated by various group of devotees forming themselves as societies to perform Mayura Vahana Sevana festival and other religious activities, therefore it was their contention that, the said society, i.e., Regn.No.15/1988 cannot claim any exclusive right over the administration of the temple, samadhi or koil. There had been two more societies registered in the year 1997 and 1999 in the name of Maha Thejo Mandala Sabha with Regn. No.466/1997 represented by one Yuvaraj and Maha Thejo Mandala Guruppeedam Srimath Kumara Gurudasar Swamigal Annadhana Sabha with Regn. No.540/1999.

2.31. By stating all these factors, the said miscellaneous petition in C.M.P.No.9847 of 2019 was filed in W.A.Sr.No.48132 of 2019 and at the Sr. stage itself, the said writ appeal has been tagged along with these writ appeals and accordingly, that was also heard along with the main three appeals as well as the writ petition by this Bench. That is how three writ appeals, one writ petition as well as one writ appeal at SR stage along with an miscellaneous petition to grant leave were heard combinedly which are



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

covered under this common order.

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3. Heard the arguments of Mr.AR.L.Sundaresan, learned Senior Counsel, Mr.R.Shanmugasundaram, learned Advocate General, Mr.T.R.Rajagopalan, learned Senior counsel, Mrs.A.L.Gandhimathi, learned Senior counsel, Mr.S.Natarajan and Mr.R.Bharanidharan, learned counsels.

4. When the Swamiji wrote a Will on 17.07.1926 constituting a committee consisting of 21 persons, that was only relates to the immovable properties and how the festival and poojas to be performed. The immovable property in fact had been purchased by Doc.No.808/1929 on 04.06.1929 after three or four days after the demise of Swamiji. As per the said sale deed, punja land to the extent mentioned therein was purchased by Kuppusami Chettiar, S/o. Egappa Chetiar who was the then Secretary of Maha Thejo Mandalam.

5. When an attempt was made by HR & CE Department issuing



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

notice dated 05.11.1971 which triggered Pamban Kumara Gurudasar Swamigal samadhi koil represented by the said T.T.Kuppusami Chettiar who approached this Court by filing writ petition in W.P.No.3501 of 1971. While disposing the said writ petition, the writ court, by order, dated 04.09.1973 has held that, the property was purchased at the cost of Kuppusami Chettiyar to an extent of 2 cawnies and 4 grounds and built up a samadhi in a portion thereon.

6. Thereafter some idols have been installed therein apart from the samadhi of Swamiji. Therefore based on that only, the HR & CE wanted to take control of the property including the idol / samadhi / temple which was initially prohibited by the said writ court order, where the learned Judge in fact has further observed that, before appointing non-hereditary trustees or to make an attempt for appointing non-hereditary trustees, it has to be decided in a regularly instituted action either at the instance of the petitioner or by the department suo motu as to whether this institution is one which should come within the rigourous supervision and jurisdiction of the HR &



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

CE Board. Without prior decision on that question, the assumption of jurisdiction is without authority.

7. That position being continued till 1984. In the meanwhile, the President of the Sabha namely Kuppusami Chettiyar had become aged and at one point of time, on 09.08.1984 he wrote a detailed letter of concern to the HR & CE Department to take the management of the temple / samadhi. The relevant portion of his letter has already been extracted herein above. Among other things, T.T.Kuppusami Chettiyar has stated that, now the time has changed, Sri Mayuranathar (Lord Muruga) has been installed in the above institution according to the Agamas and poojas are also being performed in accordance with the Agamas. He has further stated that, he concedes that , Sri Pamban Kumara Gurudasar Swamigal Samadhi koil and Sri Mayuranathar Devasthanam referred to above are religious institution and request the Deputy Commissioner to initiate proceedings for the settlement of the scheme for the better administration of the institution.

8. The letter further states that, when devotees were assembled for



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

worship and pooja, the members of the committee use all sorts of derogative words and threatened the devotees. The spate of petitions against the committee received by the HR & CE office from the devotees mere testimony to the bad conduct and activities of the persons. He has also mentioned an incident that, on 12.07.1984, all the devotees shed tears when these hooligans carried the Urchavar, i.e., idol meant for procession without removing the shoes or chappals, despite several objection from the devotees. The pooja was obstructed as the idol was carried away before the recitals of Kumara Thavam. This was the total violation of the direction already issued to these hooligans to the effect that no obstruction should be caused to the Kumarasathavam worship.

9. These are all the complaints given by the President of the Sabha. Only thereafter the HR & CE has swung into action and issued proceedings dated 29.08.1984 appointing a fit person who had taken charge on 09.09.1984. Thereafter on 12.02.1986, the Special Commissioner and Commissioner for Land Reforms had given exemption under Section 29 of



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

the Tamil Nadu Urban Land Tax Act for the property in question as it has been considered as Kumara Gurudasar Swamy Koil Devasthanam.

10. Thereafter by proceedings, dated 23.05.1990, the temple has been brought under listed temple under Section 46(iii) of the Act. By subsequent proceedings, dated 06.11.1990 further Thakkar (Fit person) had been appointed.

11. Only at that juncture not the Maha Thejo Mandala Sabha but one Shanmugasundaram filed writ petition in W.P.No.6157 of 1991, seeking to issue a direction to the HR & CE Department to entrust the performance of all the religious and spiritual rituals of the swamigal samadhi in accordance with the sacred and pious wishes of the Swami to the Maha Thejo Mandala Sabha.

12. When that writ petition was decided, the learned Judge has gone to the extent of moulding the relief and has allowed the writ petition giving



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

WEB COPY

direction to the Mandala Sabha to take over the management and affairs of samadhi of Pamban Swamigal. As against which, when HR & CE Department filed Intra Court Appeal in W.A.No.853 of 1991, a consent or via media order has been passed by the Division Bench, by order, dated 18.07.1991, under which, the management and affairs of the samadhi and the properties attached thereto was directed to continue or shall remain with the HR & CE Department who was permitted to maintain the institution and to carry out the repairs and renovation.

13. The said position was directed to continue till a decision is taken by the Deputy Commissioner in the O.A.No.19 of 1989 already been filed and was pending.

14. The said O.A.No.19 of 1989 was decided by the Deputy Commissioner, HR & CE on 01.10.1993, where a very detailed order running to more than 100 pages were written by the Deputy Commissioner, where it has been held that, it is a religious institution attracting the provisions under Section 6(18) of the Act. Therefore, the application



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

submitted by the Sabha was rejected.

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15. However when appeal was filed in A.P.Nos.2 of 1994 and 3 of 1994 by the Sabha represented by one Nathan and individually by one B.Raman, that appeals were allowed by the Commissioner of H.R. & C.E., by order, dated 27.10.1994.

16. Thereafter suits were filed both by the HR & CE Department as well as the individual namely Kumarasthava Ramanujam, all those suits were dismissed by the order of the V Asst. City Civil Judge by Judgment and Decree, dated 30.08.2000. When appeal preferred against that Judgment and Decree before this Court in A.S.Nos.310 and 311 of 2000 and A.S.No.650 of 2001, the learned Judge had dismissed those Appeals.

17. In this context, it is to be noted that, the learned Judge while dismissing the said Appeal Suits has mainly taken into account the amendment made in Section 6(18) of the HR & CE Act. The relevant portion of the discussion made by the learned Judge is at para 75 to 77 which are extracted hereunder :



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

"75. On a careful consideration of the submissions laid down by the learned counsel for the plaintiff it has been categorically pointed by the Hon'ble Apex Court in the said judgment that religious practice vary from State to State, region to region, place to place and section to section. The said case had emanated from the State of Andhra Pradesh. The definition of religious institution as in the State of Andhra Pradesh includes the samadhi of any person. However the inclusion of Samadhi in the definition of Religious Institution was excluded by the amendment act passed by the Tamil Nadu Government. Therefore it is clear that the definition in the Act after removal of the word samadhi from the purview of religious institution u/s. 6 (18) of the Act has to be considered. Therefore, submissions made by the learned counsel for the plaintiff would not apply to the facts and circumstances of this case.

76. According to the argument put forth by the learned counsel for the 1st defendant u/s. 6 (18) prior to the amendment would be as follows:

(18) "religious institution" means a math, temple or specific endowment and includes,-

- (i) a samadhi or brindhavan; or
- (ii) any other institution established or



WEB COPY



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

maintained for a religious purpose.

Explanation.

(1) "samadhi" means a place where the mortal remains of a guru, sadhu or saint is interned and used as a place of public religious worship;

(2) "brindhavan" means a place established or maintained in memory of a guru, sadhu or saint and used as a place of public religious worship, but does not include samadhi"

After amendment is carried out the definition of religious institution runs as follows;

(18) "religious institution" means a math, temple or specific endowment."

Therefore, we could see that the word samadhi has been removed with effect from 1.04.2008. When we see the reasons and objections of the Act it is stated that in order to avoid the samadhis of persons except saintly person to be brought under the purview of the Act the amendment has been sought for.

77. Admittedly, the samadhi of Chinnaasami Josier was located adjacent to Srimath Pamban Swamigal. When Chinnaasami Josier was not spoken to be a saintly person the Gurupooja performed for Srimath Pamban Swamigal cannot be considered as the celebration of pooja to the tomb of Chinnaasami



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

Josier also. Moreover, there is no evidence to show that poojas were done for the Chinnasami Josier along with the poojas done to the samadhi of Swamigal. In the aforesaid circumstances, the removal of the word samadhi from the definition Section 6 (18) of the Act regarding the description of religious institution is beneficial to the 1st defendant Sabha since the samadhi of Chinnasami Josier was adjacently present along with the samadhi of Swamigal. When the performance of guru pooja was admitted by both sides, the samadhi of Srimath Swamigal is predominant at the institution premises and the idols and other festivals conducted by the Sabha would be only adjuncts to the said samadhi and the Guru pooja."

18. In this context, we must see the legal position, where Section 6(18) of the HR & CE Act gives definition to the word "Religious Institution". It was originally having the following meaning, i.e., "Religious Institution" means math, temple or specific endowment and including (i) a samadhi or brindhavan or (ii) any other institution established or maintained for a religious purpose. Under explanation, samadhi has been explained that samadhi means a place where the mortal remains of a guru, sadhu or saint is



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

interned and used as a place of public religious worship.

19. This was the definition clause of Section 6(18) prior to the amendment, however, this was amended w.e.f. 01.04.2008. Therefore at the time when the Judgment and Decree was passed by the trial Court on 30.08.2000, the position was as per Section 6(18) of the HR & CE Act that, the "Religious Institution" includes samadhi, despite that, the suits were dismissed by the trial Court. However, when it was considered in the Appeal Suits by this Court, the learned single Judge has taken note of the fact that, Section 6(18) underwent an amendment w.e.f., 01.04.2008, where the word samadhi has been removed.

20. In this context, it is to be noted that, had there been no amendment from 01.04.2008 removing the word samadhi, whether the learned Judge who disposed the said Appeal Suits on 05.09.2008 would have given the said Judgment and Decree upholding the Judgment and Decree passed by the trial court dismissing the suits filed by the H.R. &



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

C.E., Department and another person is the question.

21. Be that as it may, since the amendment had been taken place, such a finding had been given by the learned Judge and ultimately, the learned Judge dismissed those Appeal Suits.

22. However, if we look at the subsequent development where the very same section 6(18) of the HR & CE Act underwent further amendment. The amending Act is called Act.No.26 of 2012. The said amending Act, i.e., Act.No.26 of 2012 reads thus :

"An Act further to amend the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959

Be it enacted by the Legislative Assembly of the State of Tamil Nadu in the Sixty-third year of the Republic of India as follows : -

1. (1) This Act may be called the Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 2012.

(2) In section 6 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 -



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

(1) in clause (15), after sub-clause (c), the following sub-clause shall be added, namely : -

"(d) in case of samadhi, brindhavan or any other institution established or maintained for a religious purpose, a person who is entitled to attend at or is in the habit of attending the performance of worship or service in such religious institution, or who is entitled to partake or in the habit of partaking in the benefit of the distribution of gifts thereat;"

(2) for clause (18), the following clause shall be substituted, namely : -

(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. Explanation.- For the purpose of this clause- (1) "samadhi" means a place where the mortal remains of a guru, sadhu or saint is interned and used as a place of public religious worship;

(2) "brindhavan" means a place established or maintained in memory of a guru, sadhu or saint



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

and used as a place of public religious worship, but
does not include the samadhi;)

(By order of the Governor)

G.JAYACHANDRAN,
Secretary to Government,
Law Department."

23. The Government of Tamil Nadu issued Gazette Extraordinary,
dated 27.06.2012, where the appointed day has been mentioned which reads
as follows :

"In exercise of the powers conferred by sub-section
(2) of Section 1 of the Tamil Nadu Hindu Religious
and Charitable Endowments (Amendment) Act,
2012 (Tamil Nadu Act 26 of 2012), the Governor of
Tamil Nadu hereby appoints the 27th day of June
2012, as the date on which the said Act shall come
into force.

M.RAJARAM,
Secretary to Government."

24. Therefore from 27.06.2012, the said Section 6(18) has got



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

WEB COPY

amended and the original position prior to 01.04.2008 has got restored and the word samadhi or brindhavan had been included within the extended meaning of religious institution. Therefore from 27.06.2012, the religious institution means a math, temple or specific endowment and include a samadhi or brindhavan. Samadhi has been explained that, samadhi means a place where the mortal remains of a guru, sadhu or saint is interned and used as a place of public religious worship.

25. It is further to be noted that, initially though the swamiji samadhi has been made in the site, subsequently the idols like lord Muruga and lord Vinayaga had been installed. Palalaya and samrokshanam as per agamas rule claimed to have been performed. Therefore it is the claim of one group of people, i.e., devotees as well as the HR & CE Department that it is a temple apart from samadhi.

26. Assuming that it is not at all a temple, it is only a samadhi of swamiji, even then, the samadhi can very well be brought under the meaning of religious institution under section 6(18) of the Act. Merely because an



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

WEB COPY

amendment had been taken place during the year 2008, the learned Judge had taken note of such amendment w.e.f., 01.04.2008, therefore when he wrote the Judgment on 21.12.2009, as per the amendment dated 01.04.2008 the word samadhi since has been removed from the definition section 6(18), he had come to such a conclusion. However, from 27.06.2012, the word samadhi again has been brought back, thereby the original position of the definition section 6(18) since has been restored, even then the arguments advanced by various group of people claimed to be the mandala sabha, whether can be accepted or not is also another question.

27. However, when SLP was filed against the order passed by this Court, i.e., single Judge order, dated 21.12.2009, initially status quo order was passed and subsequently, when the Civil Appeal Nos.4178 and 4179 of 2013 was disposed of by order, dated 30.11.2017, the Hon'ble Supreme Court has dismissed those Civil Appeals.

28. However in the said order, dated 30.11.2017, liberty was given to



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

the HR & CE Department to initiate proceedings under Section 3 of the HR & CE Act and in accordance with law.

29. Only in this context, the writ petitions had been filed mainly the W.P.No.14205 of 2018.

30. It is further to be noted that, the said writ petition was filed by Maha Thejo Mandala Sabha which is a society registered under Tamil Nadu Societies Registration Act with Regn. No.15/1988 represented by its Secretary M.Jayaraman. However, it is to be noted that, apart from the said writ petition filed in the name of Sabha, yet another writ petition was filed in W.P.No.19776 of 2018 by Maha Thejo Mandala Sabha represented by its President, S.Yuvaraj Krishnan. However, the learned Judge who reserved orders in the writ petition in W.P.No.14205 of 2018 was inclined to dismiss this writ petition in W.P.No.19776 of 2018. As against which only W.A.No.2316 of 2018 has been filed.



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

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31. If we look at the pleadings and supporting documents filed in WA.No.2316 of 2018, it could be found out that, there has been a certificate of registration of societies, under which the Maha Thejo Mandala Sabha was registered as a society with Regn.No.15/1988. It is further to be noted that, yet another registration had been made, by which the Maha Thejo Mandala Sabha was registered as society with Regn. No.466/1997.

32. The reason for registration of Maha Thejo Mandala Sabha with Regn.No.466/1997 according to the said appellant is because that, the Maha Thejo Mandala Sabha registered with Regn.No.15/1988 has become defunct after some years. Therefore the Maha Thejo Mandala Sabha once again registered as fresh in Regn.No.466 of 1997. Both the registration certificates had been filed in the typed set of documents.

33. Had there been Maha Thejo Mandala Sabha with Regn.No.15/1988 functional, in the same name without any change, no further registration could be permitted by the Registrar of Societies. Therefore it can very well be taken that, the Maha Thejo Mandala Sabha registered with Regn.No.15/1988 had become defunct at one point of time,



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

therefore in the same name with Regn.No.466/1997 the Maha Thejo Mandala Sabha was freshly registered.

34. Now there had been a tussle between the persons claiming to be the members of the Maha Thejo Mandala Sabha with Regn.No.15/1988 and the members of the Maha Thejo Mandala Sabha of Regn.No.466 of 1997.

35. It is further to be noted that, apart from these two associations, there has been another association called Sreemath Pamban Swamigal Maha Thejo Mandalam with Regn.No.160/1989. Here it is represented by S.S.P.Sakthivel who in fact filed the writ petition in W.P.No.13141 of 2019 with prayer of writ of mandamus directing the HR & CE Department to administer and manage the institution of Pamban Swamigal known as Arulmigu Pamban Kumara Gurudasar Swamigal Temple @ Arulmigu Mayuranathar Thirukoil at Mayurapuram as religious institution and as a temple under the provisions of HR & CE Act.



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

36. The very same Maha Thejo Mandalam had also filed writ appeal in W.A.Sr.No.48132 of 2019 challenging the order passed by the single Judge which is impugned herein in W.P.No.14205 of 2018. Since Sreemath Pamban Swamigal Maha Thejo Mandalam registered in the year 1989 was not a party in the writ petition, in order to get the leave to file the writ appeal, C.M.P.No.9847 of 2019 has been filed, where in the affidavit filed in support of the said petition, certain facts have been narrated which we have already recorded herein above.

37. According to the said petitioner, apart from these three sabhas or mandalams or society, one more society came into existence in the name of Maha Thejo Mandala Guru Pamban Sreemath Kumara Gurudasar Swamigal Annadhana Sabha with Regn.No.540 of 1999.

38. Therefore there have been at least 4 sabhas or mandalam or association claimed right over the property or the performing right of the pooja or the festival or they seek for direction from the Court to direct the HR & CE Department to continue to administer the property and to perform the poojas and festivals as religious institution.



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

WEB COPY

39. In this context, the liberty given by the Hon'ble Supreme Court in the order, dated 13.11.2017 observing that, the HR & CE Department are free to initiate the proceedings under Section 3 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 in accordance with law has assumed significance.

40. Under Section 3 of the HR & CE Act, the power of the HR & CE Department to extend the act to charitable endowment has been provided, where if the Government has reason to belief that any Hindu or Jain public charitable endowment is being mismanaged, they may direct the Commissioner to enquire or to cause an enquiry to be made by any officer authorised by him in this behalf into the affairs of such charitable endowment and to report to them whether in the interest of administration of such charitable endowment it is necessary to extend that to all or any of the provisions of the Act and any of the rules made thereunder.



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

WEB COPY

41. Under Section 3 of the HR & CE Act if the HR & CE Department felt that, there had been a mismanagement, certainly they can plunge into action to extend the provisions of the Act to such a religious institution of Hindus and Jains.

42. Under these legal background, the report by way of letter given by the said Kuppusami Chettiar in the year 1984 also has assumes significance where how the members of the committee at that time had been acting as a hooligans to swindle the property without performing the festival and pooja as desired by the Swamiji. Though the said situation in 1984 cannot be taken as of now, the HR & CE had taken management only pursuant to such a situation, that was prevailing in the year 1984 and since then, i.e., from 1984 till date, the HR & CE has been in the administration of the temple / samadhi.

43. However as of now, none of the original members of the committee formed by the Swamiji are alive or part of the members of these



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

sabhas, especially the Sabha who filed the writ petition in W.P.No.14205 of 2018.

44. There had been lot of inner rivalries among the individuals who claimed to be members of any of these association or sabha or mandalam and therefore, the legacy of the Maha Thejo Mandala Sabha formed by way of a committee by the Swamiji in the year 1926 has not been followed by any of these sabhas or mandalams or the society.

45. In the same name of Maha Thejo Mandala Sabha, two societies had been registered. It could not have been possible under law especially under the provisions of the Tamil Nadu Societies Registration Act, 1975.

46. In this context, the argument was advanced by one of the sabha that, the sabha started in the year 1988 since has become defunct in 1997, in the same name, sabha was registered or freshly registered. Therefore the moment a fresh or re-registration had been taken place, the initial registration in the same name in the year 1988 lost its existence is to be



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

accepted.

47. At least one or two of these four sabhas had come out with petitions or appeals seeking the prayer that, the temple and samadhi to be continuously administered by the HR & CE Department and it should not be given to any individuals or group of individuals, either in the name of the society or in the name of Maha Thejo Mandala Sabha or Maha Thejo Mandalam.

48. Therefore it may be a herculean task for the HR & CE Department to find out the real people who carry the legacy of the Swamiji to atleast perform the poojas and participate in the annual festival called Mayura Vahana Seva if not the administration of the properties, temple and samadhi.

49. In this context, it is further to be noted the arguments advanced on behalf of the writ petitioner in W.P.No.13141 of 2019 that is Sreemath Pamban Swamigal Maha Thoj Mandalam which was registered in the year 1989 itself and had been continuously claimed to have been functioning. It says that under Section 6(15)(b), it is a temple from the beginning. On



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

WEB COPY

22.08.1988, a letter had been issued by Maha Thejo Mandala Sabha, that is the society registered with Regn.No.15/1988, who is none other than the petitioner in W.P.No.14205 of 2018. The said letter has been written in a letter head of the sabha, where one A.Krishnasami has been shown as the President and one Sowma was shown as Treasurer and one S.M.Nathan was shown as Secretary. In para 2 of the letter, they have written like this :

"2.ஸ்ரீமத் பாம்பன் சுவாமிகள் சமாதியடைந்த இடத்தில் கோயில் கட்டி சமாதி மேடையில் முதல் முதலில் வேல் வைத்து பூஜை செய்தும், அதன் பிறகு முதல் சுற்று வெளி மண்டபம் முதலியவைகளையும் கட்டியதுடன் படிப்படியாக ஸ்ரீமயூர நாதப் பெருமானுக்கும், ஸ்ரீமத் பாம்பன் சுவாமிகளுக்கும் சிவா மூர்த்தங்கள் பிரதிஷ்டை செய்து அதற்கான கும்பாபிஷேகங்களையும் பற்பல காலங்களில் நிறைவேற்றி வந்ததும், மகா தேஜோ மண்டல சபையாகும்."

50. Yet another document had been brought before this Court, where order has been passed by the I Asst Judge, City Civil Court, Madras on



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

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15.02.1989 in I.A.Nos.20327 of 1988 and 20602 of 1988 in I.A.No.20327 of 1988 in O.S.No.11359 of 1988, where the learned Judge has held that, since 1984 it has been maintained by the HR & CE Department and in the year 1984 there has been no sabha only the Kuppusami Chettiar was the sole person who maintained it and at his wish since it has been taken by the HR & CE Department, the plaintiff namely Maha Thejo Mandala Sabha represented by its Secretary S.M.Nathan cannot seek for any injunction against the HR & CE Department and accordingly, the ad-interim injunction already granted is vacated.

51. Letters have been written individually on 13.06.1990 by the then President of the Sabha A.Krishnasamy, Vice President R.Ramakrishnan, Member Dr.M.K.Vishweshwaran, Secretary S.M.Nathan, another member S.V.Sadhanandhan and Vice President Thirunavukarasu to the HR & CE Department that, they will not claim any right over the administration of the temple / samadhi.



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

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52. These are all some crucial documents which had been brought to the notice of this Court.

53. Though there had been Civil Court decrees upheld by this Court, in view of the liberty that has been given by the Hon'ble Supreme Court in the order referred to above to the HR & CE Department to invoke Section 3 of the HR & CE Act, this Court feel that, in order to do that exercise first preliminarily who is the actual person or persons or group of persons who carry the legacy of the original Maha Thejo Mandala Sabha or Maha Thejo Mandalam or a committee formed by the Swamiji in later 1920's have to be found out. For such an exercise, all stakeholders belongs to these four groups, as we stated supra, have registered societies, defunct or otherwise, can be put on notice and if ultimately HR & CE Department come to a conclusion that some of them out of these large people consisting of four groups and also some more individual who might not be part of any of these four groups but really would carry the legacy of Swamiji, that kind of genuine people can also be found out, to whom the right of performing the



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

Mayura Vahana Seva can be entrusted.

54. As of now, the HR & CE employed 17 employees for the day today affairs of the temple. The HR & CE as on date has Rs.16 lakhs in thier Annadhana account, Rs.54 lakhs in the temple account, Rs.89 lakhs in the temple Fixed Deposit and Rs.1 crore 16 lakhs in Annadhanam Fixed Deposits. That apart the property consisting of 3 acres 11 cents would fetch the value of several crores of rupees.

55. Apart from the main festival of Mayura Vahana pooja being performed every year in the Tamil month of Marghazhi , there are other temple festivals being conducted by the HR & CE Department in the temple, i.e., called (i) Chitra Pournami Festival (in the Tamil month of Chitirai), (ii) Gurupoojai (in the Tamil month of Vaigasi), (iii) Mahasivarathiri (in the Tamil month of Maasi) and (iv) Kandha Sashti (in the Tamil month of Ipasi).



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

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56. That apart every Pournami day, i.e., Full Moon Day, thousands of devotees are visiting the temple to worship the God and the Saint. Apart from that regular function in every Pournami day those main festivals that are listed out herein above are being performed and in those festivals several thousands of people are gathering.

57. Therefore practically the place in question has become the worship place for general public thousand in numbers. Very many devotees regularly visiting the temple where not only the samadhi of Swamiji is located but also the idols of gods like lord Muruga and lord Vinayaga had already been installed and being worshipped.

58. The learned Senior counsel Mr.AR.L.Sundaresan appearing for the Executive Officer of the temple has cited a decision reported in (2005) 5 SCC 390 in the matter of Shakuntla Devi v. Kamala. If we apply the principle stated by the Hon'ble Supreme Court in the said case in Shakuntla



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

Devi, the amendment that has been made under Act 26 of 2012, by which the word samadhi has been restored in definition clause, i.e., section 6(18) of the HR & CE Act, would have a significant impact on the entire gamut of the issue.

59. Even though Mr.T.R.Rajagopalan, learned Senior counsel appearing for the respondent Maha Thejo Mandala Sabha who was the writ petitioner in W.P.No.14205 of 2018 has cited (2008) 11 SCC 753 in the matter of Dadu Dayalu Mahasabha, Jaipur (Trust) v. Mahant Ram Niwas, the said Judgment especially para 11 can be a distinguishable one.

60. Be that as it may, now two aspects of the Hon'ble Supreme Court order since has to be complied with. The first one is that, the order passed by the trial court confirmed by the High Court has to be complied with. Secondly the liberty given to the HR & CE Department to invoke section 3 has to be explored.



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

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61. As we have recorded herein above, from 1984 till date, the temple / samadhi had been maintaining by the HR & CE Department, several developments had been taken place, it has become a temple for the worship of thousands of people and various festival which are mainly related to lord Shiva, Vinayaga and Muruga are being performed in the temple.

62. In each and every festival several thousands of people are gathering who are the ardent and strong devotees of the respective God of Hindu religion. If that being so, assuming that it is basically a samadhi of swamiji within the meaning of section 6(18) of the HR & CE Act, in view of the amendment which has been taken place w.e.f. 27.06.2012 what shall be the legal consequences also to be gone into.

63. Therefore if this splinted group of persons claiming in the name of Maha Thejo Mandala Sabha or Maha Thejo Mandalam or any other name having registered the society long years back, out of whom if some of them have become defunct at one point of time whether can be considered to be



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

the devotees or disciples who carry the legacy of the Swamiji especially the original committee formed by Swamiji in the late 1920's.

64. This question has to be first explored and answer to be found out by the HR & CE Department and in this process Section 3 of the HR & CE Act can be pressed into service.

65. If that exercise is completed by the efforts taken by the HR & CE Department, then only to whom the right or privilege of participating or performing the poojas of Mayura Vaha Seva to be entrusted can be decided. Therefore in order to comply the orders of the Hon'ble Supreme Court, the aforestated exercise shall be first undertaken by the HR & CE Department to find out the correct person or group of persons or the correct society to whom the aforestated action can be entrusted.

66. Therefore, to that extent, the order passed by the learned Judge which is impugned herein in both the writ appeals are liable to be modified.

67. Resultantly the following orders are passed in this batch of cases :



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W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

(i) That there shall be a direction to the HR & CE Department to take necessary steps to find out the real person or group of persons who made these claim by at least four such registered societies in the name of Maha Thejo Mandala Sabha or Maha Thejo Mandalam and in this regard, notices can be given to those who all make such claim and their genuinity of the claim to carry the legacy of the Swamiji to perform the functions or poojas, mainly the Mayura Vahana Seva, should be first identified. Thereafter such right or privilege should be entrusted to those genuine people who really carry the legacy of Swamiji.

(ii) Till such time, the poojas and festivals can be performed by the HR & CE where all these claimants can be permitted to participate. Since the Hon'ble Supreme Court had already given a liberty to invoke section 3 of the HR & CE Act, that exercise also shall be undertaken immediately by the HR & CE Department.

68. With all these directions, the orders impugned passed by the



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

learned Judge is modified to the extent indicated above.

69. In view of the aforestated order, no separate order is necessary in the writ petition in W.P.No.13141 of 2019 and C.M.P.9847 of 2019 in W.A.Sr.No.48132 of 2019. Accordingly all the Writ Appeals, Writ Petition as well as the Writ Appeal in the SR stage are disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(R.S.K., J.) (G.A.M., J.)
27.03.2024

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes

tsvn
To

1. The Secretary to Government,
State of Tamil Nadu,
Commercial Taxes and Hindu Religious
and Charitable Endowment Department,
Fort St. George, Chennai - 600 009.
2. The Commissioner



W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

WEB COPY

Tamil Nadu Hindu Religious &
Charitable Endowment Department,
Chennai - 600 034.

3. The Deputy Commissioner
H.R. & C.E., Department,
Chennai - 600 034, Tamil Nadu.
4. The Deputy Commissioner
Hindu Religious and Charitable Endowments Department,
Sri Mayuranatha Swami Temple,
Mayurapuram, Thiruvanmiyur,
Chennai - 41, Tamil Nadu.
5. The Assistant Commissioner
H.R. & C.E., Department / Fit Person
Sri Mayuranatha Swami Temple,
Sri Mayurapuram, Thiruvanmiyur,
Chennai - 600 041, Tamil Nadu.
6. The Executive Officer
Sri Pamban Kumara Gurudasar Temple,
Sri Mayuranatha Swami Temple,
Mayurapuram, Tiruvanmiyur,
Chennai - 600 041, Tamil Nadu



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W.A.Nos.2191 of 2018, 2316 of 2018, 2390 of 2018,
C.M.P.No.9847 of 2019 in W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019

R.SURESH KUMAR, J.
and
G.ARUL MURUGAN, J.
tsvn

2018,

Common Judgment in
W.A.Nos.2191 of 2018, 2316 of
2390 of 2018,
C.M.P.No.9847 of 2019 in
W.A.Sr.No.48132 of 2019
and W.P.No.13141 of 2019
and connected miscellaneous petitions

27.03.2024