



W.P.(MD)No.2327 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

<i>Judgment Reserved On</i>	<i>Judgment Pronounced On</i>
20.12.2023	25.04.2024

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No. 2327 of 2016
and
W.M.P.(MD)No. 2047 of 2016

Selva Rajakumar

... Petitioner

Vs.

1. The Commissioner,
Hindu Religious and Charitable Endowment Department,
Government of Tamil Nadu,
Chennai.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Madurai.
3. The Assistant Commissioner,
Hindu Religious and Charitable Endowment Department,
Madurai.
4. The Executive Officer,
Arulmigu Sri Kallalagar Soundararaja Perumal Swamy Temple,
Alagar Kovil, Madurai District.



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5. R.Suriya Kumar

... Respondents

PRAYER :Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Declaration, declaring that the respondents 1 to 3 have no jurisdiction or power to appoint a fit person for the Thirukkan Mandagapadi private trust founded by Subbiah Nadar through a deed, dated 24.05.1912 under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

For Petitioner	: Mr.J.Barathan
For Respondent No.1 to 3	: Mr.R.Ragavendran, Government Advocate
For Respondent No.4	: Mr.S.Manohar
For Respondent No.5	: No appearance

ORDER

This writ petition is filed for ***Writ of Declaration*** to declare that the Respondents Nos.1 to 3 have no jurisdiction or power to appoint a Fit person for the Thirukkan Mandagapadi Private Trust founded by Subbaiah Nadar through a Settlement Deed, dated 24.05.1912 under the Provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.



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2. The petitioner is a doctor by profession and the petitioner's husband died on 08.11.2014. The petitioner's husband's great grandfather Subbaiah Nadar executed a Registered Settlement Deed, dated 24.05.1912 in Document No.974/1912 creating private Thirukkan Mandagapadi Trust. As per the settlement deed, the Thirukkan Mandagapadi has to be established every year, during Chithra Pournami Festival in Madurai, when Lord Shri Kallazhagar Soudarraja Perumal Swamy comes from Azhagar Kovil for the celestial wedding of Goddess Meenakshi Amman and Lord Sundareswarar and enters the river Vaigai. At the time, the idol of Kallazhagar would be invited to Thirukkan Mandagapadi for the worship by Subbiah Nadar his descendants and relatives. At that time, Annathanam has to be provided to the relatives of Subbiah Nadar and the persons carrying the idol.

3. Further, Thaligai, Neiveithiyam and Parivattan were offered to the Deity. The said Subbiah Nadar was carrying out the said Mandagapadi till his life time and thereafter his descendants are continuing the same to till date. The said Thirukkan Mandagapadi is carried on during the Chitra Pournami festival and



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Purattasi festival in the property earmarked by the said Subbiah Nadar till date by establishing a Thirukkan Mandagapadi Private Trust. The idol of Lord Kallalagar is invited to the Mandagapadi every year and the descendants and relatives of the said Subbiah Nadar worship the same.

4. In the year 1968, the descendants of the said Subbiah Nadar, namely his great grandson Varadharaj Nadar and his grandsons Ponnazhagu Nadar, Govindaraja Nadar have partitioned the property of the Subbiah Nadar through a registered partition deed, dated 03.05.1968 in Document No.2883 of 1968. In the partition deed, the property earmarked by the Subbiah Nadar for establishing the Thirukkan Mandagapadi is shown as 'D' schedule property and it is recited that the said Thirukkan Mandagapadi Private Trust has to be performed by the descendants in rotation basis. Subsequently, the children of Govindaraj Nadar had entered registered partition deed dated 06.05.1999 in Document No. 1102 of 1999 partitioning the properties of Govindaraj Nadar allotted in the earlier registered partition deed, dated 03.05.1968. Subsequently, the children of Govindaraj Nadar, namely Jeevanraj and Manoharan had alienated some portions of the property obtained by them through a partition deed dated 06.05.1999. The



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petitioner submitted that neither the petitioner's husband nor his ascendants had alienated any portion of the property either obtained from Subbiah Nadar or earmarked by him for performing Thirukkan Madagapadi Private Trust. When the petitioner's husband was alive, he was performing the Thirukkan Mandagapadi once in three years as per rotation basis. After his demise, the petitioner is continuing the same as per rotation basis.

5. In the year 2015, the petitioner performed the same based on her rotation and the petitioner had to perform the same during Chithirai Festival in the year 2016. While that being so, a tenant who was in occupation of a portion of the property allotted to Jeevanraj created trouble. He setup the 5th respondent herein to make the complaint to the respondents 1 to 3, as if there has been mismanagement of the Thirukkan Mandagapadi Private Trust. On the basis of the complaint, the 3rd respondent has issued the impugned notice dated 17.03.2015 and initiated proceedings for appointment of fit person under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1956. [*hereinafter referred as 'the Act'*]. The petitioner and the descendants of Subbiah Nadar appeared and submitted their respective statement of objections. The contention



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of the petitioner is that the direction of Subbiah Nadar to perform Thirukkan Mandagapadi to Sri Kallalagar Soundarraja Perumal during Chithira Pournami festival is not an integral part of Chitra Pournami festival of the temple conducted every year on the sands of river Vaigai. It is not connected with temple. The occasion is taken advantage to perform worship under the Thirukkan Mandagapadi Private Trust when the Deity would be on its way to and from the temple to Madurai for the festival. Such worship which is familiarly known as Mandagapadi is common in Tamil Nadu. The Deity is invited to stop for a while and worship in the form of Thaligai and Neivethiyam are offered at places, where the devotees want to worship the deity. An endowment for the conduct of such worship cannot be a specific endowment as it is in no way connected with the temple or any of its festivals. It is intended only for the benefit of the persons offering the worship in the Thirukkan Mandagapadi. Such endowment being neither for benefit of the public nor for performance of any festival of the temple or any religious service attached to the temple cannot be held to be specific endowment connected with the temple.



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6. Moreover, the founder of Thirukkan Mandagapadi Private Trust had made it clear through settlement deed dated 24.05.1912 that Annathanam (food) has to be offered only to his Bandhu Janangal (relatives) and Seerpatham Thangigal (the persons carrying the Deity). The general public are not permitted to worship in the of Thirukkan Mandagapadi nor offered Annathanam. Further the beneficiaries are specific individuals and hence the same would clearly indicate it is only a private trust. When the intention of the founder was to secure spiritual benefit to him, his family, his descendants and his relatives alone, then Thirukkan Mandagapadi Trust cannot be construed as public trust. Moreover, the Trust is not for the support of Kallalagar Temple or for the performance of any service attached with the temple, hence the HR&CE Act will not apply to of Thirukkan Mandagapadi. Further any alienation of portion of property inherited from Subbiah Nadar or earmarked for performance of Thirukkan Mandagapadi cannot be challenged either by the respondents 1 to 3 or the third party until the of Thirukkan Mandagapadi is preformed every year.

7. Furthermore, there is no mismanagement in the Thirukkan Mandagapadi Private Trust. It is at the instigation of the 5th respondent, who is a



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tenant, the said enquiry was conducted and no finding of any mismanagement of trust. Hence, appointment of Fit Person is against the provisions of law and facts. Hence, the petitioner had filed the present writ for declaration that the respondents have no jurisdiction to appoint any Fit Person.

8. The 3rd respondent has filed counter, wherein it is stated that the said Subbiah Nadar had endowed a house and five shops comprised in Door No. 774 at Goripalayam for conducting Thirukkan Mandagapadi every year during the Chitra Festival when Lord Sri Kallalagar Soundararajaperumal comes from Alagarkoil and Annadhanam must be provided to the Subbiah Nadar Vahayara and Nevithiyam and Parivattam must be offered to the Deity and the same performance would be done while Lord Sri Kallalagar Soundararajaperumal returning to Kallalagar Temple, Alagarkoil. In the registered document it is clearly stated that the endowed property should not be sold nor be leased out to any individual and if encumbered the same would become null and void. It is also clear that the property endowed for the performance of Kallalagar Mandagapadi during Chithra Festival and the trust formed by one Subbiah Nadar is a Religious Endowment under Sections 6(17), 6(18) and 6(19) of HR&CE Act, 1959. One



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Suriyakumar had submitted a petition to the 3rd respondent alleging that some of the above said trust properties were alienated and some other properties were leased out to some individuals, which is against the registered document executed by the said Subbiah Nadar. Based on the petition, a detailed report was called for from the Inspector and the said may be treated as part and parcel of this counter affidavit. After perusing the report, the Assistant Commissioner has issued various notices to the concerned persons to resume the properties. Many enquires were conducted by the 3rd respondent after affording opportunities, the petitioner had appeared for enquiry on 14.07.2014, the petitioner's husband has also given statement on the same day requesting that the 3rd respondent had to initiate proceedings to continue and perform the endowment.

9. At present, there are about 16 shops in the said property among them the income received from only one shop is utilized for conducting the said Dharmam. All the other income received from the remaining 15 shops are swallowed by the persons concerned who are not in any way connected with the original Testator. The property endowed in original document was apportioned by three persons, namely 1.Varatharaj Nadar 2.Ponnazhagu Nadar and 3.Govindaraj



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Nadar. After that the said property was apportioned by six persons namely; 1.Rajkumar (Late) 2.Deenadayalan 3.Dhasarathan (Late) 4.Sukumar 5.Jeevanraj and 6.Manoharan. Some of the said property was also sold to the persons who are not in any way connected with the Testator's family. At present the Mandagapadi is held only in the Platform which is in front of one among the above said 16 shops. The market value of the properties mentioned above are in Crores of Rupees. The present occupiers of the property have no legal right in the said property, because they obtained the property by various means which are against the provisions of the Act and null and void and hence, they are to be considered as encroachers in the property of the Endowment, under the Act. Since the said alienation are null and void, hence necessary effective action was initiated as per provisions of the Act, 1959.

10. The Assistant Commissioner had warned the enquiring persons including the petitioner that if the parties concerned do not attend the enquiry, then action will be taken to appoint fit person for the said Kattalai so as to protect the said property and utilize the income of the said property for the purpose for which the endowment was created by the Testator. It is the bounden duty of the



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respondents to administer the religious endowments as per the Act and had issued notice to the petitioner and others who have alienated and leased out the endowed property. The petitioner herein who ought to have attend the enquiry before the Assistant Commissioner with necessary records, without doing so had approached this Court with unclean hands. The petitioner is having alternative statutory remedy by way of filing appeal. The Deputy Commissioner/Executive Officer of Kallallagar Temple, Alagarkoil has sent letter dated 17.09.2013 to the Commissioner, Madurai Corporation, Madurai and also letters, dated 24.09.2013, 22.10.2013 to the Sub Registrar, Thallakulam at Thirumogur about the said property, raising objection for the cancellation of plan and against the registration of document in connection with the above said endowed property respectively.

11. Further the respondents deny the Trust as private trust. The petitioner herself admitted that during Chitra Festival the idol of Sri Kallalagar is invited to the Thirukkan Mandagapadi for the worship by Subbiah Nadar and his decedents and Thaligai Neivethiyam and Parivattam is offered to the Deity. As per the deed, it is pertinent that the performance should be made only for the Deity Soundararajaperumal and not for the descendants of the Subbiah Nadar, hence the



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trust would come under religious endowment. The partition deed mentioned in the petition is not a valid one for the reasons stated in the counter. The descendants of Subbiah Nadar, namely Jeevanraj and Manoharan had alienated the endowed property which is against the endowment. Based on the complaint of the 5th respondent, the 3rd respondent has issued notice for enquiry to show cause why Fit Person should not be appointed to the trust. The respondents deny the contention of the petitioner that the trust is a private trust and general public are not permitted to worship the Deity in the Thirukkan Mandagapadi. The petitioner has misconstrued the provision of the Act, at the time of performing the Mandagapadi, all public worship the Deity without any hit or hindrance. Once the property has been endowed for performance of Kattalai to the Deity of Arulmigu Soundararajaperumal, then automatically comes under the purview of Section 6(17) of the Act. The respondents further denied the contention of the petitioner that there is no mismanagement or any alienations. The petitioner herself admitted that one Jeevanraj and Manoharan had alienated the endowed property and this itself would prove there is mismanagement. In the settlement deed it is stated that if there is any alienation, it becomes null and void. Hence, such alienation is null and void. For these reasons, the respondents prayed to dismiss the writ petition.

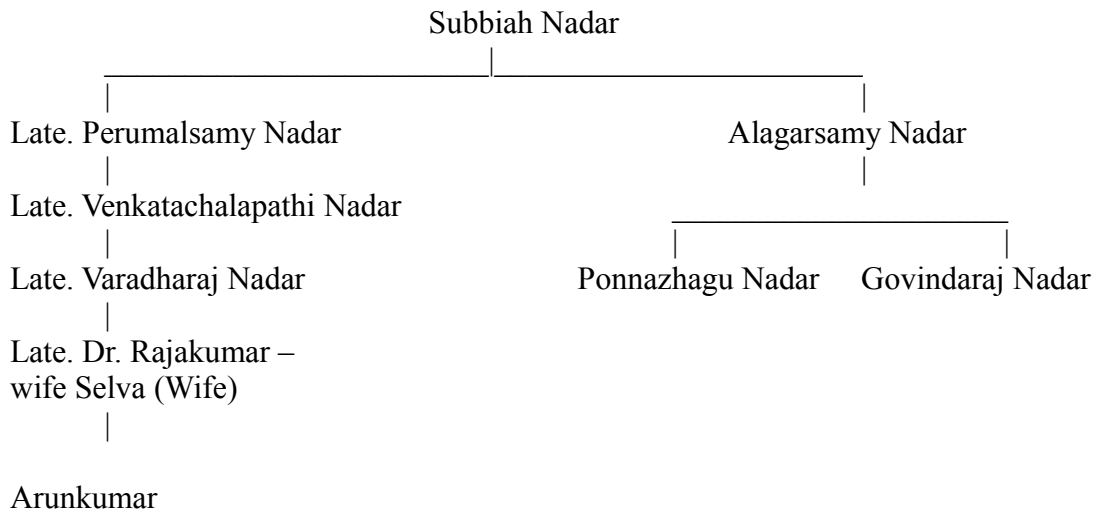


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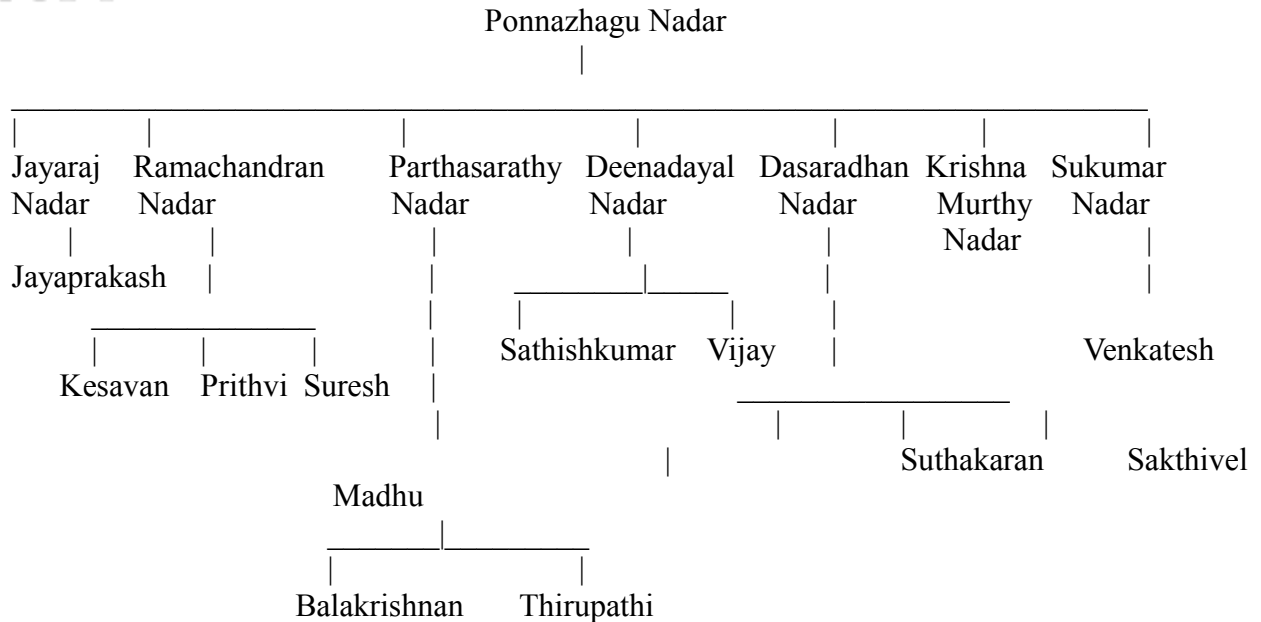
12. Heard Mr.J.Barathan, the Learned Counsel appearing for the Petitioner, Mr.R.Ragavendran, the Learned Government Advocate appearing for the respondents 1 to 3, Mr.S.Manohar, the Learned Counsel appearing for the 4th respondent. Perused the material documents available on record.

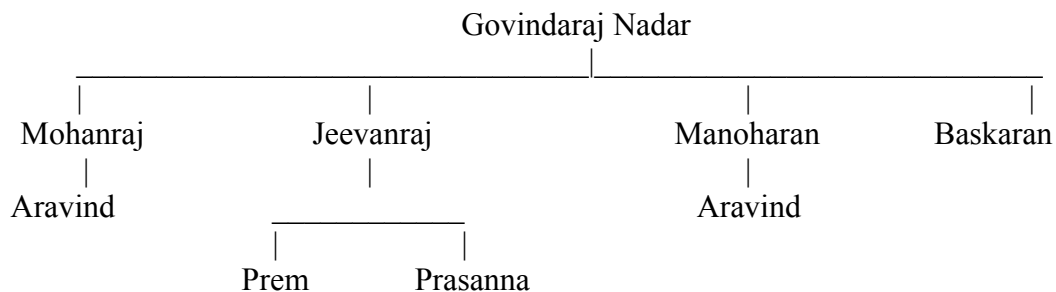
13. The family tree of the said Subbiah Nadar is extracted here under:





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Even though the respondents state that the legal heirs of the said Subbiah Nadar had sold the properties to third parties, but the respondents is not denying the above-mentioned family tree. Therefore, the said family tree is concluded as true.



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14. The contention of the respondents is that the three legal heirs namely great grandson of Subbiah Nadar namely Varadharaj (belonging to Venkatachalapathi's clan) and Subbiah Nadar's grandsons namely Ponnazhagu Nadar, Govindaraja Nadar had partitioned the endowed property. Again, the legal heirs of Govindaraja Nadar had partitioned the endowed property through partition deed dated 06.05.1999 and the said legal heirs of the Govindaraja Nadar had sold the endowed property to third parties. But the petitioner had vehemently denied the said allegation. The contention of the petitioner is that the said Subbiah Nadar was having several properties. Out of which, only one property was endowed to the Thirukkan Mandagapadi Private Trust, which was created as early as 1912 and the said one property was not sold to any persons and the same is still retained, Kal Mandapam is constructed and mandagapadi is celebrated every year in the said place. In order to consider this issue, it is necessary to peruse the settlement deed dated 24.05.1912 as well as partition deed dated 03.05.1968 and another partition deed dated 06.05.1999. In the settlement deed it is seen that only one property is endowed and the said property is situated in Goripalayam Village, Door No.774, 10th Ward on western side of 4th Rastha, on northern side of Sheik Abdul Sayebu house and lane, on eastern side of Vanniya



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Konar shop, on the southern side of Sannathi Street with compound wall on four sides admeasuring on the eastern side north-south 50 feet, on western side north-south 30 feet, on north side east-west 59 feet, on south east-west 35 feet totally 1880 square feet with building consisting of ground floor and first floor. Except this no other properties were endowed.

15. As far as the partition deed is concerned, the said great grandson of Subbiah Nadar namely Varadharaj (belonging to Venkatachalapathi's clan) and Subbiah Nadar's grandsons namely Ponnazhagu Nadar, Govindaraja Nadar had partitioned the several properties belonging to the said Subbiah Nadar through partition deed dated 03.05.1968. In the said partition deed "A" schedule properties was allowed to Varadharaj Nadar, "B" Schedule properties was allowed to Ponnazhagu Nadar and "C" Schedule properties was allowed to Govindaraja Nadar. "E" schedule property is allotted to one Rakkammal as "stridhana" for her exclusive possession and enjoyment and "F" schedule property is granted to one Sowrnammal until her life and then the same would go along with "B" schedule. The said A,B,C,E and F schedule of properties were not endowed in the settlement deed at all. In the same partition deed "D" Schedule property was set



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apart for Thirukkan Mandagapadi and the said “D” schedule property, the 1st item is the same property mentioned in the Settlement Deed. However, the measurement is reduced to the extent of 1300 square feet and the Learned Counsel for the petitioner submitted that the measurement was reduced since there was acquisition during 1954 to form the Goripalayam Main Road. In order to compensate the 2nd item of the property mentioned in “D” schedule property was added along with the property endowed by Subbiah Nadar (which is show as 1st item) and the 2nd item is admeasuring 3488 square feet. Now the endowed property is having 3488 square feet but originally Subbiah Nadar had endowed only 1880 square feet. Further in another partition between the legal heirs of Govindaraja Nadar through deed dated 06.05.1999, they have partitioned the “C” Schedule properties allotted to Govindaraja Nadar in partition deed dated 03.05.1968 and the settlement property is not partitioned at all.

16. From the above narration of schedule of properties shown in partition deeds, it would be evident that the endowed property is shown as “D” schedule property in partition deed dated 03.05.1968. Hence, the contention of the respondents that the legal heirs had partitioned the properties of Subbiah



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Nadar is a bald allegation. The respondents cannot restrain the legal heirs from partitioning the **“other properties which are not endowed”** by the said Subbiah Nadar. If the respondents are interfering regarding other properties, then it would amount to overreaching themselves and interfering in the personal properties of Subbiah Nadar and his legal heirs. The respondents may have concern with only 'D' schedule property stated in partition deed dated 03.05.1968 alone, which is endowed for carrying out the rituals of mandagapadi. Therefore, the contention of the respondents that the legal heirs have executed partition deed dated 03.05.1968 and 06.05.1999 thereby partitioned the endowed property is bald, erroneous and not legally valid objections. At the cost of repetition this Court is of the considered opinion that the legal heirs of the Subbiah Nadar are entitled to deal or encumber with other the properties which are inherited by them as legal heirs, **except 'D' schedule property** stated in the partition deed, since “D” schedule property is the only property endowed in the settlement deed. Therefore, this Court is of the considered opinion that the endowed property is maintained separately under “D” Schedule in the partition deed dated 03.05.1968 and the legal heirs have not partitioned the endowed property, have not encumbered the property, consequently there is no mismanagement to the endowed property at all.



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17. The next contention of the respondents is that the Thirukkan Mandagapadi is for the Deity of Kallazhagar and the property is endowed for the Deity and Kallazhagar Temple, hence the said endowment is religious endowment and consequently the said endowment ought to be treated as public endowment, then the said endowment would come under the purview of HR&CE Act. But the issue of Mandagapadi was already dealt with by the Hon'ble Supreme Court in the case of ***Sri Kallalagar Soundaraja Perumal Chitra Poornami Mandakapadi Trust, through its hereditary trustees, Muthiah Konar and another vs. Maruthamalai Ambalam, reported in 1959 (72) LW 646*** wherein it is held that the property endowed for mandagapadi cannot be considered as public endowment, since the mandagapadi is not integral part of Chitrapournami Festival of the temple. The relevant portion is extracted here under:

.....

“Before considering that question it is necessary to refer to a contention raised on behalf of the appellants by Mr.T.R.Srinivasan. He contented that the trust created by Ex.A.1 was a public trust. The learned Subordinate Judge held that the trust was only private in character. Under Ex.A.1 provision is made for the construction of a mandapam on a property of the donor and a mandagappadi



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was directed to be performed to Sri. Soundararaja Perumal during the time of the festival of the temple. The mandagappadi is not an integral part of the Chitrapournami Festival of the temple which is being conducted every year on the sands of the Vaigai. It is in no way connected with it. The occasion of that festival is taken advantage of to perform the worship under the trust when the Deity would be on its way to or from the temple to Madurai for the festival. Such worship which is familiarly known as Mandagappadi is common in our country. The Deity is invited to stop a while and worship is offered at places where the devotees want to worship it. An endowment for the conduct of such worship cannot be a specific endowment as it is in no way connected with the temple or any of its principal festivals. It is intended only for the benefit of the persons offering worship. Such an endowment being neither for the public nor for the performance of any recognized puja or festival of the temple. In Deoki Nandun V. Muralidhar (1) reported in AIR 1957 SCR 133, the Supreme Court held that in the case of a private trust the beneficiaries would be specific individuals while in the case of a public endowment it would be the general public or a class thereof. In the present case, there is no difficulty in finding that the intention of the donor was to secure spiritual benefit to Mooka Konar and his family. I am of opinion that the conclusion of the lower Court that the trust is a private one is correct”.



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In the above case one Mooka Konar had created the endowment for Mandagapadi of Kallazhagar and while considering the same the Hon'ble Supreme Court had held that the concept of Mandagapadi is unique and it is generally practiced in our country and especially in Tamil Nadu. In Mandagapadi the deity is invited to stop a while and worship is offered at places where the devotees want to worship it. For carrying out such worship, a specific endowment is created and it is in no way connected with the temple or any of its principal festivals.

18. In another case also the same issue of whether the endowment for Mandagapadi can be considered as private trust or public trust was considered in the case of M.G.Narayanaswami Naidu and another Vs. M.Balasundaram Naidu and others, reported in [1952] 65 LW, 368 and had held that the endowment for Mandagapadi is only private trust and not public trust and the relevant portion is extracted hereunder:

“The question as to whether a private trust was created does not admit of any serious doubt. The previous litigations regarding these properties have ended in decisions that the trust is a private trust. In Ex.P6, a judgment in S.A.No.281 of 1896, Subramania Ayyar and Benson JJ found that the property was trust property. But the more



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*recent decision is contained, as we have stated in A.S.No.406 of 1943. That arose out of O.S.No.6 of 1942 on the District Court of Madurai. The Hindu Religious Endowment Board, on the footing that the trust in question was a public trust framed a scheme for the management of the trust, where upon the first defendant filed O.S.No.6 of 1942 on the file of the District Court of Madura for setting aside the scheme on the ground that the properties dedicated do not constitute an endowment of a public trust. The District Judge dismissed the suit considering that the offerings made to a deity when installed in the mandapam in item 1 was a service connected with the temple and considered that the mandagapadi was an integral part of the temple itself as it was performed in the course of the festival. **The High Court after considering the evidence in the case as well as the decisions arrived at in previous litigation, came to the conclusion that the endowment in question is an endowment for a private trust and the public has no connection with it whatever**".*

19. In the aforesaid judgments it has been held that when the deity is invited and stopped for a while to worship then the same cannot be considered as integral part of the main festival of Chitra Pournami. In the present case, whether it is private endowment or public endowment ought to be considered and it is necessary to peruse the contents of settlement deed and the purpose for which the



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endowment is created. On perusal the following rituals emanated:

1. To invite Kallazhagar to the Subbiah Nadar's endowed property.
2. Offering Parivattam to the Deity
3. Annathanam is offered to the Subbiah Nadar family, relatives and the descendants and Seerpatham Thangigal (the persons carrying the Deity).
4. Thereafter when the Kallazhagar is returning back to Alagar Kovil, again Annathanam is granted to the Subbiah Nadar family, relatives and the descendants and Seerpatham Thangigal (the persons carrying the Deity).

This is evident from the settlement deed and the relevant portion is extracted hereunder:

□அடியில் கண்ட இடத்தையும் அதில் கட்டியிருக்கிற கெட்டிக் கட்டிடங்களையும் அதில் வரக்கூடிய வரும்படிகளையும் சவுந்தராசப் பெருமானுக்கு வருசம் தோறும் சித்திரை உச்சவத்தில் மேற்படி சுவாமி திருமலையிலிருந்து வகைக்கு வரும்போது குதிரை வாகன சேவையுடன் மேற்படி சுவாமியை மேற்படி திருக்கண் மண்டபகப்படியில் இறக்கி தளிகை நெய்வேத்தியம் செய்து பரிவட்டம் மரியாதை செய்து வருகிற தருமம் -1 அன்றைய தினம் நம்மள் வகையறா பந்துசணங்கள் சகலருக்கு அன்னதானம் செய்து வருகிற தருமம் -1 மேற்படி சுவாமி திரும்பி திருமலைக்கு போகும் போது மேற்படி சுவாமியை மேற்படி திருக்கண் மண்டபப்படியில் இறக்கி வரவழைத்து தளிகை நெய்வேத்தியம் செய்து பரிவட்டம் மரியாதைகளை செய்து வருகிற தருமத்துக்கு -1 அன்று தினம்



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சீர்பாதம் தாங்கிகளுக்கு அன்னதானம் கொடுத்து வருகிற தருமம்-1
ஆக மேல்கண்ட தருமங்களுக்காக அடியில்கண்ட சொத்தை
விட்டிருக்கிறேன்.□

20. From the narration of rituals stated in the settlement it is evident that the worshiper Subbiah Nadar along with his “Bandhu Janangal” (the family and relatives) invites the deity to the worshiper’s place to offer Parivattam, then to offer Thaligai and Neiveithiyam to the deity and Annadhanam to “Bandhu Janangal” and for Seerpatham Thangigal. Hence, there is no difficulty in finding that the intention of the donor was to secure spiritual benefit to himself, his family and his relatives. Since the donor had specifically stated for his “Bandhu Janangal” which means his family and relatives. In such circumstances, the mandagapadi is celebrated for the said Subbiah Nadar’s family and descendants and the same is not for general public.

21. Further in the settlement deed, it has been further stated that the excess amount which is derived from the said property ought to be utilized to put up Kal Mandapam. Further the settlement states the endowed property shall not



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be encumbered and if it is encumbered the same is illegal and void. The relevant portion is extracted hereunder:

“மேற்படி கட்டிடத்தில் கிளபக்கம் ஸ்ரீ சவுந்தரராசப் பெருமாள் மணிமண்டபம் கட்டவும் அப்படி கட்டுகிற மண்டபம் கட்டி முடிவான பின்பு மிச்சப்படும் துகையை மேற்படி கட்டிடத்துக்கு மேல் மேல்வீடு கட்டகவும் வேறே தாவரச்சொத்துக்களை மேற்படி தருமங்களுக்காக வாங்கவும் எனக்கு என் வாரிசுகளுக்கு பாத்தியமுண்டு. மேல்கண்ட சிலவுகளுக்கு எந்த வருடத்தில் வரும்படி போறாதிருந்தால் அந்த வருசம் வரக்கூடிய வரும்படிக்கு தக்கபடியே மேற்படி தருமம் வகையறா சகல சிலவுகளையும் செய்து வரவேண்டியது. அப்படி செய்யாமல் கடன் வாங்கி தரும சிலவுகளையும் வரி மராமத்து வகையறாக்களையும் செய்யக்கூடாது□.

□மேற்படி தருமங்களுக்கு விடப்பட்டிருக்கிற அடியில் கண்ட சொத்தை நானாவது என்னுடைய வாரிசுகளாவது எந்த காலத்திலாவது எந்தவிதமான ஒத்தித ஈடு கிரையம் தான சாஸனத்திற்கு துகை வகையறா எவ்விதமான பந்தகங்களுக்கு உள்படுத்த யாருக்கு பாத்தியமில்லை தவறி செய்தால் அது செல்லத்தக்கதுமில்லை எனவும், தரும சொத்தாகவே இருந்து வரவேண்டியது□.

22. Furthermore, based on the income the petitioner and the other legal heirs had put up Kal Mandapam, wherein the deity is invited. The said Kal Mandapam is intact and the same is not encumbered by the petitioner or the other legal heirs. In such circumstances, the allegation that the petitioner and the legal heirs of Subbiah Nadar are swallowing the other income is unnecessary. Until the



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mandagapadi is being conducted in the place earmarked for it and until the income from the endowed property is utilized for conducting the mandagapadi, then the respondents cannot make any allegations on the legal heirs of the Subbiah Nadar for utilizing the excess income as per the settlement.

23. Further the endowment specifically states if there is no income in the said property, the descendants shall not borrow and spend. It also states that if some person has any dispute and is not interested in carrying out the said service, the other interested parties may carry on the service and in future the disinterested person is intended to come back and they may be taken back for the said service. Therefore, the settlement deed elaborately narrates how the mandagapatti should be carried on and if any difficulty arises it has also given solution. Therefore, this Court is of the considered opinion that the Thirukkan Mandagapadi is only private trust and not public trust. Hence, the private trust will not come with the purview of HR&CE Act as held in ***Sri Kallalagar Soundaraja Perumal's case***.

24. The respondents further submitted that if Annathanam is granted then the general public also would take the Annathanam and in such



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circumstances the trust ought to be considered as public trust. But the Learned Counsel for the petitioner submitted that when the endowment is made as private, if public is not granted any permission to enter the place that itself is sufficient to conclude that it is private trust only and to substantiate this proposition had relied on the Judgment rendered by the Hon'ble Supreme Court in the case of ***Radhakanta Deb and another Vs. The Commissioner of Hindu Religious Endowments, Orrisa, reported in AIR 1981 SC 798***. The relevant portion is extracted hereunder:

.....

“The concept of a private endowment or a private trust is unknown to English law where all trusts are public trusts of a purely charitable and religious nature. Thus, under the English law what is a public trust is only a form of Charitable Trust. Dr. Mukherjee in his Tagore Law Lectures on the Hindu Law of Religious and Charitable Trusts (1952 Edition) has pointed out that in English law the Crown is the constitutional protector of all properties subject to charitable trusts as these trusts are essentially matters of public concern. The learned author has further pointed out that one fundamental distinction between English and Indian law lies in the fact that there can be religious trust of a private character under the Hindu law which is not possible in English law. It is well settled that under the Hindu law, however, it is not only permissible but also very common



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*to have private endowments which though are meant for charitable purposes yet the dominant intention of the founder is to install a family deity in the temple and worship the same in order to effectuate the spiritual benefit to the family of the founders and his descendants and to perpetuate the memory of the founder. In such cases, the property does not vest in God but in the beneficiaries who have installed the deity. In other words, the beneficiaries in a public trust are the general public or a section of the same and not a determinate body of individuals as a result of which the remedies for enforcement of charitable trust are somewhat different from those which can be availed of by beneficiaries in a private trust. **The members of the public may not be debarred from entering the temple and worshipping the deity but their entry into the temple is not as of right**".*

From the above it is evident if the creator of the Trust is intended for himself and his family, then the same is sufficient. Incidentally if some public is benefited the same would not change the character of the Trust from private to public. While offering annadhanam, some public had taken the annadhanam will not change the character of the private trust. Further the public cannot claim the same as a matter of right and in the present case the public cannot claim annadhanam as a matter of right. Therefore, the twin test to determine private trust or public trust would be



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whether the donor had created for the benefit of himself, his family and relatives and if the answer is yes, then the same is private trust. Next test is whether the general public can claim as a matter of right and if the answer is no, then the same is private trust. In the present case, the twin test is in favour of the petitioner and hence the Subbiah Nadar Settlement is a private trust and the provisions of HR&CE Act has no application at all.

25. The respondents further submitted that the writ of declaration is not maintainable, since the notice alone is issued and the petitioner ought to reply to the said notice. The Learned Counsel appearing for the petitioner submitted that even though it is a show cause notice, the show cause notice ought to be issued within the jurisdiction. When the show cause notice is issue without jurisdiction the same can be challenged and the petitioner has relied on the Judgment rendered in ***W.P.(MD)No. 2357 of 2013 dated 23.11.2021, in the case of Goswami Madam Vs. The Joint Commissioner, Joint Commissioner Office, HR & CE Department, Sivagangai.***

.....

“21. This takes us to the scope of challenge to a SCN in writ



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*jurisdiction. Challenge to a SCN in writ jurisdiction can only be only on very limited grounds i.e., jurisdictional issue, Natural Justice Principle ['NJP' for brevity] violation, disregarding settled principle of law to mention some of the exceptional circumstances under which a Writ Court will interfere qua challenge to an SCN. One of the recent case laws on this point is **Coastal Container Transporters Association case {order dated 26.02.2019 in Civil Appeal No.2276 of 2019}** rendered by Hon'ble Supreme Court."*

26. It is settled proposition that though there is no bar as such for entertaining the writ petitions at the stage of show cause notice, but it is settled in number of decisions of this Court that writ petitions can be entertained at the show cause notice stage if there is no jurisdiction to issue show cause notice, violation of principles of natural justice, orders passed against the settled principle of law etc. In the present, case this Court is of the considered opinion that the respondents are not having jurisdiction to issue the show cause notice at all, since the said Subbiah Nadar's Thirukkan Mandagapadi Private Trust is a private trust. If the respondents are allowed to continue with the show cause notice, then it would be interfering with the personal rights and fundamental rights granted under Constitution of India. Further the respondents are acting



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beyond the provisions of the Act. More so, when the issues are already settled by the Hon'ble Supreme Court in the cases cited supra. Hence the respondents cannot be allowed to continue with the show cause notice. Even though it is only show cause notice, when the same is issued without jurisdiction, then the same has no legal validity and the respondents are restrained from proceedings further.

27. Finally, this Court is of the considered opinion that when the deity of Kallalagar is carried from Alagarkoil and return to Alagarkovil, some worshipers would offer neivathiyam, some offer poornakumba deepam, some offer deepam etc. Many worshipers would offer one or the other things to the deity. All these offerings would happen on the mid of the road. However, some persons would offer by inviting the deity to a particular place and the deity would be available just for few minutes which is termed as Mandagapadi and for which an endowment is created. Further it is common knowledge that a mandagapadi does not mean only the performance of the pooja to the deity, but also includes annadhanam (feeding) to the guest invited for the occasion and other expenses connected to the pooja. A person who could not afford a place for mandagapadi would do it on the road with annadhanam to people in and around him. A person



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who could afford an exclusive place for mandagapadi would do it in the place earmarked for it and annadhanam to guest invited to such place. If such mandagapadi of worshiping, offering, annadhanam is allowed to be interfered with, then it clearly amounts to interfering in one's fundamental right to worship, offering and annadhanam. Moreover, annadhanam is the soul of Indian Culture. Hence the respondents cannot be allowed to interfere with such worship, offering and annadhanam, thereby cannot be allowed to interfere in the soul of the Indian Culture.

28. Accordingly, this Writ Petition is allowed and declaring that the respondents 1 to 3 are not having jurisdiction or power to appoint a Fit Person for the Thirukkan Mandagapadi private trust founded by Subbiah Nadar through the Settlement Deed, dated 24.05.1912 under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. No Costs. Consequently, connected miscellaneous appeal is closed.

Index : Yes / No
Internet : Yes

25.04.2024



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To

1. The Commissioner,
Hindu Religious and Charitable Endowment Department,
Government of Tamil Nadu,
Chennai.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Madurai.
3. The Assistant Commissioner,
Hindu Religious and Charitable Endowment Department,
Madurai.
4. The Executive Officer,
Arulmigu Sri Kallalagar Soundararaja Perumal Swamy Temple,
Alagar Kovil,
Madurai District.



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S.SRIMATHY, J

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Order made in
W.P.(MD)No. 2327 of 2016

25.04.2024