IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 8TH DAY OF APRIL 2015/18TH CHAITHRA, 1937

WP(C).No. 15842 of 2007 (J)
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PETITIONER:
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K.KUNHIRAMAN, NON HEREDITRY TRUSTEE
OF KOTTIYUR DEVASWOM, KOTTIYUR, RESIDING AT
SARAVANA, EDAKKAD P.O., KOZHIKODE.

BY ADVS.SRI.T.P.KELU NAMBIAR (SR.)
SRI.M.KRISHNAKUMAR
SMT.PRABHA R.MENON
SRI.R.D.SHENOY (SR.)

RESPONDENT:
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1. COMMISSIONER HR & CE ( ADMINISTRATION)
DEPT. KOZHIKODE- 20.

2. T.KARUNAKARAN NAIR, RESIDING AT
BABU SADANAM, MANATHANA P.O., THALASSERY TALUK.

Addl.3. THITTAYIL BALAN NAIR
S/O.NARAYANA KURUP, AGED 67 YEARS, MANNATHANA.P.O.
KANNUR.ADDL.
(R3 IS IMPLEADED AS PER ORDER DATED 01/01/2009 IN IA
16258/2008.)

Addl.4. SREE KOTTIYOOR KSHETHRA ADIYANTHIRA NIRVAHANA
SAMITHY
REG.NO. S 473/1997, MATTANNUR.P.O.
KANNUR DISTRICT -670 702
REPRESENTED BY ITS SECRETARY.
(ADDL. R4 IS IMPLEADED AS PER ORDER DATED 11/08/2014
IN IA 10365/2014.)

Addl.5. KULANGARATH SANKARAN NAIR
S/O.KRISHNAN NAMBOOTHIRI, AGED 81 YEARS
KULANGARATH HOUSE, KELAKAM, KELAKAM.P.O.
KANNUR DISTRICT.ADDL.
(R5 IS IMPLEADED AS PER ORDER DATED 11/08/2014 IN IA 10159/2014.)

Addl.6. P.P.MUKUNDAN
S/O.N.K.KRISHNAN NAIR, "NADUVILE VEEDU"
MANATHANA POST, KANNUR DISTRICT - 670 674.
(ADDL.R6 IMPLEADED AS PER ORDER DATED 23.03.2015 IN IA 2002/15.)

BY ADV. SRI.K.MOHANAKANNAN
BY ADV. SMT.R.RANJINI
ADV. SRI.K.LAKSHMINARAYANAN
BY ADV. SMT.A.R.PRAVITHA
BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR
BY ADV. SRI.P.GOPINATH
BY ADV. SRI.P.BENNY THOMAS
BY ADV. SRI.K.JOHN MATHAI
BY ADV. SRI.JOSON MANAVALAN
BY ADV. SRI.KURYAN THOMAS
BY ADV. SRI.S.K.MADHU
BY SRI.HARISH R.MENON
SR.GOVT. PLEADER SRI.R.PADMARAJ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**W.P.(C) NO.15842/2007**

**APPENDIX**

PETITIONER'S EXHIBITS

EXT.P1 TRUE COPY OF THE ORDER IN M.P.NO.8/2006 DATED 23/5/2007

EXT.P2 SCHEME OF MANAGEMENT FOR KOTTIYUR DEVASWOM FRAMED BY HIGH COURT JUDGMENT IN MFA NO.74/88 DATED 6.4.94.

5TH RESPONDENT'S EXHIBITS

EXT.R5(A) TRUE COPY OF THE APPLICATION SUBMITTED BY THE SECOND RESPONDENT ON 21ST AUGUST 2006 BEFORE THE FIRST RESPONDENT

EXT.R5(B) TRUE COPY OF THE JUDGMENT IN W.P.(C)NO.7646/2007 DATED 7.3.2007 OF THIS COURT.

EXT.R5(C) TRUE COPY OF THE ORDER NO.HRJ 2/2807/03 DATED 24.8.2004 OF FIRST RESPONDENT

EXT.R5(D) TRUE COPY OF THE JUDGMENT DATED 11.8.2014 IN W.P.(C) NO.26372/2004 OF THIS COURT

EXT.R5(E) TRUE COPY OF THE JUDGMENT IN O.S.NO.306/2008 DATED 26.3.2009 ON THE FILE OF THE SUB COURT, KOOTHUPARAMBA

EXT.R5(F) TRUE COPY OF THE SHOW CAUSE NOTICE DATED 5.8.2011 ISSUED TO THE PETITIONER AND ANOTHER

EXT.R5(G) TRUE COPY OF THE CHARGE MEMO DATED 22.9.2011 ISSUED TO THE PETITIONER AND ANOTHER

EXT.R5(H) TRUE COPY OF THE JUDGMENT DATED 23.12.2011 IN W.P.(c) NO.34357/2011 OF THIS COURT.

/TRUE COPY/

PA TO JUDGE

**T.R.RAMACHANDRAN NAIR &**
**P.V.ASHA, JJ.**

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**W.P.(C)No.15842 OF 2007**

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Dated this the 8th day of April, 2015

**JUDGMENT**

Ramachandran Nair, J.

This writ petition is filed by the petitioner challenging the order passed by the first respondent - Commissioner, HR & CE ( Administration). The petitioner is a non hereditary trustee of Sree Thricherumanna Alias Kottiyoor temple.

2. We heard the learned Senior Counsel Sri.R.D.Shenoy for the petitioner, the learned standing counsel Sri.K.R.Sunil for the first respondent, the learned counsel Sri.K.Mohana Kannan who was appearing initially for the second respondent ( now deceased) and presently for additional fifth respondent and Sri.K.T.Syam Kumar for the third respondent.

3. The proceeding of the first respondent under challenge has been marked as Ext.P1. A reading of the same shows that the Commissioner therein took the view that being a non hereditary trustee, the age limit prescribed under Section 22 of the Madras Hindu Religious and Charitable Endowment Act, 1951 will apply to the

petitioner. Going by the said provision, the upper age limit is 70 and as the petitioner had already crossed the same, he cannot continue as a non hereditary trustee.

4. The petitioner's case is that the said provision will not apply as the relevant clauses in the scheme framed by a Division Bench of this Court in Ext.P2 will govern. The petitioner is the General Secretary of Sri.Kottiyoor Perumal Seva Sanghom. The constitution of Board of Trustees is provided under Clause 5 of the Scheme - Ext.P2. It is submitted that under the heading 'non hereditary trustees', the provision made under Sub Clause (viii) is the following :

> " (viii) The President and Secretary of Sri.Kottiyoor Perumal Seva Sanghom, registered No.47 of 1964, Kottiyoor shall be Ex-Officio members."

5. The learned Senior Counsel Sri.R.D.Shenoy submits that the President and Secretary of Sri.Kottiyoor Perumal Seva Sanghom shall be Ex-Officio members. Therefore, the membership is by way of legal status. The learned Senior Counsel explained that the legal personality of the " Board of Trustees" is different from its members.

6. Our attention was invited to clause 4(ii) wherein it is stated that " the Board of Trustees shall by the name of " Sree Tricherumanna alias Kottiyoor Devaswom Board of Trustees" be a body corporate and shall have perpetual succession and a common seal and shall by the said name sue or be sued through the Chairman." The learned Senior Counsel submitted that importance should be given to the legal character and personality of the Board of Trustees and if so it can be seen that the same is distinct from its members. In this context, he invited our attention to Salmond on Jurisprudence ( 12th edition) page No.305 paragraph 66 under the heading " legal persons". Our attention was also invited to the decision of this Court in **Gopala Menon v. Kalyani Amma & Others (1964 KLT 166)**, wherein it was held that the tarwad has got a legal personality of its own apart from its members. The learned Senior counsel therefore drew analogy from these and submitted that the President and Secretary of the Kottiyoor Perumal Seva Sanghom will automatically become the non hereditary trustees and therefore Section 22 of the Act which fixes the upper age limit of non hereditary trustees who are appointed under Section 39 of

the Act cannot apply to the petitioner.

7. The learned counsel for the second respondent Sri.K.Mohanakannan submitted that the proceeding issued by the Commissioner was based on a complaint submitted by the second respondent. He is a hereditary trustee of the temple. According to the learned counsel, the petitioner himself had complained against another non hereditary trustee alleging the very same ground and requested the Commissioner to intervene to disqualify the said non hereditary trustee for crossing the age limit fixed under Section 22. It is submitted therefore that the petitioner cannot approbate and reprobate. The Commissioner had passed an order disqualifying the said non hereditary trustee, namely the nominee of Kottayam Rajah. The complaint by the petitioner therein, was that he had crossed the age of 70 and his continuance is in violation of the Act and the Scheme and he may be removed from the trusteeship. The order passed by the Commissioner has been produced as Ext.R5(c) along with the counter affidavit. It is submitted that the said nominee had filed a writ petition as W.P.(C)No.26372/2004 challenging the said order which was

dismissed as infructuous vide Ext.R5(d) judgment of a Division Bench of this Court.

8. The learned counsel submitted that Section 22 of the Act is a general provision and that is not confined to the fixation of age limit for non hereditary trustees appointed under Section 39 alone. Our attention was invited to Clause 4 of the scheme whereby it is made clear that the scheme will be subject to provisions of the Act. The learned counsel also relied upon the judgment of this Court in **Raman Namboothiri v. Chief Commissioner, H.R. & C.E.( 2004 (1) KLT 945)**, **Parameswaran Namboothiri v. Malabar Devaswom Board ( 2011 (2 ) KLT 988)** as well as that of the Madras High Court in **V.Annasami and others v. V.K.R.K.Govindaraja Mudaliar and others ( 1995 (1 ) MLJ 196)**. In the last of the decisions relied on the Madras High Court held the view that in regard to the appointment of a "fit person" to a religious institution going by Section 26(1) (b), a person aged more than 70 years cannot be appointed. The learned standing counsel for the Commissioner and other learned counsel appearing for other respondents supported the above arguments.

9. The scheme framed by the Division Bench is clear from Ext.P2 which is the judgment in M.F.A.No.74/1988. A reading of the judgment will show that a scheme was in operation and a few parties had filed O.P.Nos.5/1975 and 153/1986 before the Subordinate Judge's Court, Tellicherry for amendment of the existing scheme of the temple. O.P.No.153/1986 was filed by the President of Sree Kottiyoor Perumal Seva Sanghom itself. Paragraph 8 of the judgment will show that while tracing out the history of the administration of the temple, the Division Bench has observed as follows :

> " It is worthwhile to note at this juncture that nominee of the Sanghom was nominated by the Commissioner for Hindu Religious and Charitable Endowment to be the non-hereditary trustee. On the facts and circumstances of this case, we feel that the President and Secretary of the Sanghom should be in the Board of Trustees as Ex-Officio members."

Thus the Sanghom, obtained two non-hereditary trustees under the amended scheme.

10. It is seen from paragraph 9 that draft scheme submitted for

approval by the Sanghom and Hereditary Trustees. After considering draft scheme, the scheme was adopted as evident from paragraph 9 of the judgment. Clause 2 is the definition clause under which the 'Act' means Madras Hindu Religious and Charitable Endowments Act, 1951. Clauses 3 and 4 are reproduced herein below for easy reference:

> "3. The Temple and management of all the properties movable and immovable which belong to or have been or may hereafter be given, dedicated or endowed thereto shall, **subject to the provisions of the 'Act' and the Rules and this Scheme**, vest in the board of trustees.
>
> 4(i) The administration, control and management of the Devaswom shall be vested in the Board of Trustees constituted in the manner hereinafter provided and save as herein provided, **the provisions of the Act and the Rules shall apply to the administration, control and management of the "Devaswom" and the "Temple".**
>
> (ii) The Board of Trustees shall by the name of "Sree Tricherumanna alias Kottiyoor Devaswom Board of Trustees " be a body corporate and shall have perpetual succession and a common seal and shall by the said name sue or be sued through the Chairman. The Board of

> Trustees may also authorise the Executive Officer to represent the Devaswom and the temple in all proceedings before courts or other authorities."

11. Clause 3 will show that temple and management of all properties movable and immovable shall <u>subject to the provisions of the Act and the Rules</u> and the scheme vest in the board of trustees. Therefore the application of the Act and the Rules apart from the scheme has been emphasized herein. Clause 4(i) is also important under which the administration, control and management of the Devaswom shall be vested in the Board of Trustees constituted in the manner provided. It has been specified that " save as herein provided, the provisions of the Act and the Rules shall apply to the administration, control and management of the " Devaswom" and the "Temple". Clause 5 relates to the constitution of the Board of Trustees and we reproduce the same below, which includes hereditary trustees and non hereditary trustees :

"5. The said Board of Trustees shall consist of the following members, namely :

Hereditary Trustees

(i) The Karanavan for the time being of the Kolangarath tarwad or some other member of the tarwad nominated by him and accepted by the Commissioner.

(ii) The Karanavan for the time being of the Karimpanakkal tarwad or some other member of the tarwad nominated by him and accepted by the Commissioner.

(iii) The Karanavan for the time being of the Akkal tarwad or some other member of the tarwad nominated by him and accepted by the Commissioner.

(iv) The Karanavan for the time being of the Thittayil tarwad or some other member of the tarwad nominated by him and accepted by the Commissioner.

Non-hereditary Trustees

(v) Of the two present Thanthries of the temple belonging to the Kozhikkattiri and Namdhiyarvally Manas, the senior Thanthri for the time being of the temple shall be an Ex-officio member.

(vi) One Hindu Revenue Officer, not below the rank of Tahsildar, working in the Kannur District, nominated by the Commissioner with the approval of the District Collector of the Kannur District.

(vii) The Rajah of Kottayom or his nominee.

(viii) The President and Secretary of Sri.Kottiyoor Perumal Seva Sanghom, registered No.47 of 1964, Kottiyoor shall be Ex-Officio members."

12. The President and Secretary of Sree Kottiyoor Perumal Seva Sanghom are non hereditary trustees and not hereditary trustees. Clause 9 of the Scheme specifies the duties of the Board of Trustees subject to the provisions of the Act and the Rules.

13. We therefore are of the view that the constitution of Board of Trustees and their functioning are subject to the provisions of the Act and the Rules. No provision has been made in the scheme as far as the age limit, either maximum or minimum of the non hereditary trustees different from the one provided under the Act. The express provisions of the Act, will therefore have application.

14. Now we will come to the provisions of the Act. Hereditary Trustee is defined under Section 6(9) and we reproduce the same below :

" **hereditary trustee** means the trustee of a religious institution succession to whose office devolves by hereditary right or is regulated by usage or is specifically provided for by the founder, so long as such scheme of succession is in force.

15. It is evident that it devolves by hereditary right or is regulated by usage or is specifically provided for by the founder.

16. Section 22 which prescribes the age limit reads as follows :

> " **Trustees to be Hindu and within certain limits of age -** No person may succeed or be appointed to, or hold, the office of the trustee of a religious institution -
>
> (a) unless he professes the Hindu religion, and
>
> (b) except in the case of a hereditary trustee, unless he is not less than twenty-five and not more than seventy years of age."

17. The minimum age limit is 25 and the upper age limit is 70 years. Therefore, for appointment of a non-hereditary trustee, the same will apply.

18. Section 39 provides for appointment of non hereditary trustees by the Commissioner. Section 42 will show that the power

under Sections 39 and 41 will be exercisable notwithstanding the provisions in the scheme.

19. What is emphasized by the learned Senior Counsel Sri.R.D.Shenoy by relying upon “Salmond on Jurisprudence” is the distinction between a legal person and a human being to which personality can be attributed. In paragraph 66 of the 12th edition of Salmond on Jurisprudence it is stated as follows :

> *“ A legal person is any subject-matter other than a human being to which the law attributes personality. This extension, for good and sufficient reasons, of the conception of personality beyond the class of human beings is one of the most noteworthy feats of the legal imagination, and the true nature and uses of it will form the subject of our consideration during the remainder of this chapter.”*

20. In page 307, it has been sated that the first class of legal persons consists of corporation, namely those which are constituted by the personification of groups or series of individuals. The second class is that in which the corpus, or object selected for personification is not

a group or series of persons, but an institution. The third kind of legal person is that in which the corpus is some fund or estate devoted to special uses - charitable fund, for example, or a trust estate, or the property of a dead man or of a bankrupt.

21. In the judgment of this Court relied upon by the learned Senior Counsel namely **Gopala Menon v. Kalyani Amma & Others (1964 KLT 166)**, it was held in paragraph 7 that " tarwad has got a legal personality apart from its members for certain purposes and for other purposes, it is a group of persons. If the tarwad is capable of owning properties and owing debts, and if decrees could be obtained against its properties, it is certainly a right-and-duty-bearing unit, and where is the difficulty in postulating a distinct legal personality for it."

22. It is also held that the Karanavar is the representative of the Tharavadu.

23. It is pointed out by the learned Senior Counsel that even in such cases the Tharavadu will have a personality of its own distinct from its members and it is in the same setting Clause 5 of the scheme is framed. The learned Senior Counsel's submission essentially is that

the "President and the Secretary" of the Sree Kottiyoor Perumal Seva Sanghom will be non hereditary trustees. Therefore the constraints of Section 22 and the upper age limit cannot apply to them. The Board of Trustees has a distinct personality of its own for managing the affairs of the temple.

24. At the outset we may notice that Section 22 and its application is not confined to non hereditary trustees appointed under Section 39 alone as rightly pointed out by learned counsel Sri.K.Mohanakannan. As far as the framing of the scheme is concerned, the relevant provision is Section 58, giving the power to the Deputy Commissioner to frame scheme. Any party aggrieved by such an order under Section 58 is given a right to file suit under Section 62.

25. When a scheme like the one was framed for the purpose of Sree Thricherumanna Alias Kottiyoor temple, which is a public religious institution, it cannot be taken that the scheme will be totally independent of the provisions of the Act. That the said religious institution is under the control of the HR & CE Department cannot be

doubted. The scheme is for the administration of the temple. The applicability of the provisions of the Act and Rules have not been excluded by any of the provisions of the Scheme which is clear from the provisions like Clauses 2 (a) and (b) and Clauses 3 and 4(i). The provisions of the Act and Rules will therefore apply to the administration, control and management of the Devaswom. The right of the management is vested with the Board of Trustees going by Clause 5 which includes hereditary and non hereditary trustees.

26. The distinction as far as hereditary trustees and non hereditary trustees is clear from the provisions of the Act itself. The hereditary trustees are those who come into the administration under the three methods provided under section 6(9), whereas the non hereditary trustee is one appointed or nominated. In this context, we will refer to one decision of the Apex Court in **Sambudamurthi Mudaliar v. The State of Madras and another (AIR 1971 SC2363)** interpreting the provisions of Section 6(9)the Madras Hindi Religious and Charitable Endowments Act ( 19 of 1951). Their Lordships examined the meaning of the term Hereditary Trustee under the

definition clause itself. In the said case, it was by election that the office of the trustee was being filled up. It was contended by the appellant that the trusteeship of the temple was hereditary. Their Lordships held as follows in paragraph 3 :

> " 3. The question to be considered in this appeal is whether the appellant is a hereditary trustee within the meaning of the section. The definition includes three types of cases (1) succession to the office of trusteeship devolving by hereditary right ; (2) succession to such office being regulated by usage; and (3) succession being specifically provided for by the founder on condition that the scheme of such succession is still in force. It is not the case of the appellant that the trustees of the temple of the Kumaran Koil are hereditary trustees because their office devolves by hereditary right or because succession to that office is specifically provided for by the founder. The contention on behalf of the appellant is that the succession is "regulated by usage". It was said that according to the usage of the temple the trustees were elected for a period of one year each at a meeting of the members of the Sengunatha Mudaliar Community and so the appellant must be held to a trustee within the

> meaning of S.6 (9) of Act 19 of 1951. In our opinion, there is no warrant for this argument. The phrase " regulated by usage" in S.6(9) of the Act must be construed along with the phrase " succession to this office " and when so construed that part of the definition would only apply where the ordinary rules of succession under the Hindu Law are modified by usage and succession has to be determined in accordance with the modified rules. The word " succession" in relation to property and rights and interests in property generally implies " passing of an interest from one person to another". It is now well established that the office of a hereditary trustee is in the nature of property. This is so whether the trustee has a beneficial inerest of some sort or not."

27. In paragraph 4, their Lordships held that " but the election to the office of trustee in the present case is for a fixed period of one year and not for life. It is, therefore, difficult to hold that the office of the appellant is hereditary within the meaning of Section 6(9) of the Act. It is not possible to say that there is a succession of A's office to another when on the efflux of the period for which A was appointed, there is a

vacancy and B is elected to that vacancy. It is quite possible that for that vacancy A himself might be re-elected because a retiring trustee is eligible for re-election. The possibility of A being the successor of A himself is not merely an anomaly, it is an impossible legal position. No man can succeed to his own office."

28. The above principle will also come to the aid of this Court to understand the provisions of the Act and the Scheme. If the argument of the learned Senior counsel for the appellant is accepted that the non hereditary trustee herein will be equated to a hereditary trustee, in that he can continue as non hereditary trustee by ensuring election as a President or Secretary of the Perumal Seva Sanghom.

29. The person who represents the Sree Kottiyoor Perumal Seva Sanghom, which is a society registered under the Societies Registration Act, will have to be an office bearer either as President or Secretary. A person can become its office bearer when there is an appointment by general body of the society i.e. by way of election. If an element of election is there, going by the principles laid down by the Apex Court in the above decision, he cannot have the character of a

hereditary trustee. Therefore in every strict sense the petitioner is a non hereditary trustee which is the case of the petitioner also. In paragraph 1 of the writ petition, it is stated that he is the General Secretary of Sree Kottiyoor Perumal Seva Sanghom and one of the non hereditary trustees of Sree Kottiyur Devaswom in Kottiyur as provided in the Scheme.

30. The decision of Madras High Court relied upon by the learned counsel for the second respondent will show that the learned Judge had considered the provisions under Sections 26(1)(b) and 54(3) of the Tamil Nadu Hindu Religious and Charitable Endowments Act ( XXII of 1959). Section 26(1) of the said Act reads as follows :

> "Sec.26(1) : A person shall be disqualified for being appointed as, and for being, a trustee of any religious institution.
>
> (b) except in the case of a hereditary trustee if he is less than twenty-five and more than seventy years of age."

The learned Single Judge has held as follows in paragraph 4 :

> " It is thus seen that Sec. 26 provides that in

> the case of non-hereditary trustee, the qualification to be appointed as a trustee for a temple coming under the operation of the provisions of the said Act is between those who got the age above 25 and below 70 years, and those who got the age below 25 and after 70 being a non-hereditary trustee he comes under the teeth of the embargo provided therein. In this case, there is no controversy or dispute with regard to the age of the first respondent as he having crossed 78 years. If this is so, it is made very clear that the first respondent clearly comes within the ambit of Sec. 26, clause 1 (b) of the Act as claimed by and on behalf of the petitioner/appellant."

31. In that case the person was aged 78 years and his appointment as fit person was under challenge.

32. The other decisions relied upon by Sri.K.Mohanakannan in **Raman Namboothiri v. Chief Commissioner, H.R. & C.E.( 2004 (1) KLT 945)** and **Parameswaran Namboothiri v. Malabar Devaswom Board ( 2011 (2 ) KLT 988)** relate to the interpretation of Section 39 (2) of the Act and the procedure to be undertaken for appointment of

non hereditary trustee, which we are not concerned.

33. The learned Senior Counsel for the petitioner submitted that merely because the petitioner had filed a petition before the Commissioner to challenge the continuance of another non hereditary trustee as the said person had crossed 70 years cannot be taken against the petitioner since there is no estoppal against the statute also. What is emphasized by Sri.K.Mohanakannan is the impropriety of the petitioner, in trying to escape from the rigour of Section 22 and in trying to rely upon the Scheme for continuance.

34. The Commissioner in his order was of the view that the petitioner is not a hereditary trustee and as far as the President and Secretary of the Kottiyoor Perumal Seva Sanghom are concerned, they cannot be equated to the position and status of the Kottayam Raja and Thanthri. Kottayam Raja is a former ruler having connection with the legend of Sree Kottiyur Temple and other is the Thanthri or the head of the rituals and ceremonies of the temple. It is also observed that in the case of nominee of Kottayam Raja, age limit is applicable.

35. While considering the contentions of the petitioner it was

also found that Kottiyur Perumal Seva Sangh is an organization of devotees registered under the Societies Registration Act. Membership to the Sangh and election of the office bearers including President and Secretary are governed by the byelaws. The office bearers and executive committee members including President and Secretary are to be elected by members in the general body annually. The byelaw does not provide that the President and Secretary has to be one or two particular persons of two particular families, who can be nominated as trustees without any age limit, which is the case of the Kottayam Raja and Thanthri. The Commissioner therefore was of the view that the succession to the office of the President and Secretary of Kottiyur Perumal Seva Sangh is not governed by any custom or usage and at any time a new qualified Secretary or President can be elected. It was also observed that the Societies Registration Act cannot have any applicability in the affairs of the temple which is governed by the scheme and the provisions of the HR & CE Act, 1951. Even though the scheme does not provide any upper age limit for non hereditary trustee, the Act provides so. Accordingly, it was concluded that the age limit of 70 will apply to the petitioner.

36. We are also of the view that the petitioner cannot equate himself to hereditary trustees. The Kottiyoor Perumal Seva Sanghom is free to elect a person qualified under its byelaws to be the President or Secretary. Even by re-election the petitioner can come, but that cannot dilute the impact of Section 22 of the Act. He could have continued only upto the age of 70.

For all these reasons, we find that the petitioner is not entitled to succeed in the writ petition and hence the writ petition is dismissed, but without any order as to costs.

**T.R.RAMACHANDRAN NAIR, JUDGE**

**P.V.ASHA, JUDGE**

sv.