



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Order Reserved on : 17.11.2016

Order Pronounced on : 23.12.2016

CORAM

THE HONOURABLE MR. **JUSTICE V.BHARATHIDASAN**

Writ Petition (MD)Nos.10126 & 10888 of 2016
and
WMP (MD) .No.7935 of 2016 in W.P. (MD) .No.10126 of 2016
and
WMP (MD) .Nos.8430 & 8431 of 2016 in W.P. (MD) .No.10888 of 2016

VR.Suyamprakasam
Hereditary Trustee,
Arulmigu Suyampirakasa Easwar Thiru Kovil,
Iluppagudi, Karaikudi Taluk,
Sivagangai District.

... Petitioner
(in W.P. (MD) No.10126 of 2016)

vs.

1.The Commissioner,
Hindu Religious and Charitable Endowments,
Chennai - 600 034.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowments,
Sivagangai.

3.The Executive Officer,
Arulmigu Kopudainayagi Amman Thiru Kovil,
Karaikudi Town,
Sivagangai District.

4.AR.L.N.RM.AR.SV.RM.Annamalai

5.T.Periyar Muthu

R-4 and 5 are impleaded vide Court Order
dt.17.10.2016 in WMP (MD) Nos.8155 & 10794/2016)

... Respondents
(in W.P. (MD) No.10126 of 2016)



Vs.

1.The Commissioner,
Hindu Religious and Charitable Endowments,
Chennai - 600 034.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowments,
Sivagangai.

3.The Executive Officer,
Arulmigu Kopudainayagi Amman Thiru Kovil,
Sivagangai District.

4.The Fit Person/Executive Officer,
Arulmigu Koppudainayagi Amman Thiru Kovil,
Sivagangai District.

5.VR.Suyamprakasam
Hereditary Trustee,
Arulmigu Suyampirakasa Eeswar Thiru Kovil,
Iluppakkudi, Karaikudi Taluk,
Sivagangai District.

... Respondents
(in W.P.(MD)No.10888 of 2016)

W.P. (MD) .No.10126 This writ petition has been filed under Article 226 of the Constitution of India, praying for issuing a writ of certiorari, to call for the records relating to the impugned order made in Na.da.Na.Ka.No.11785/2012/L5 dated 24.05.2016 passed by the first respondent and quash the same.

W.P. (MD) .No.10888 This writ petition has been filed under Article 226 of the Constitution of India, praying for issuing a writ of certiorari, to call for the records relating to the proceedings of the first respondent in Nada.Na.Ka.No.11785/2012/L5 dated 24.05.2016 and quash the same.

For Petitioner : Mr.G.R.Swaminathan for
(In W.P(MD)No.10126/2016) Mr.T.Antony Arul Raj

For Petitioner : Mr.AN.Ramanathan
(In W.P(MD)No.10888/2016)

For Respondents : Mr.V.R.Shanmuganathan
Spl. Govt. Pleader for R1 to 3
Mr.T.Srinivasa Raghavan for
S.Madhavan for R4
Mr.T.Lajapathiroy for R5 in
W.P. (MD) .No.10126/2016.

<https://hcservices.ecourts.gov.in/hcservices/> For Respondents : Mr.V.R.Shanmuganathan,
Special Government Pleader for R1 to 4



For 5th Respondent
(W.P.No.10888/2016)

: Mr.G.R.Swaminathan for
Mr.T.Antony Arul Raj

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COMMON ORDER

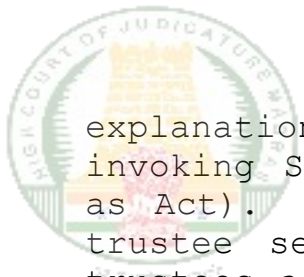
Since both the writ petitions challenging the order passed by the first respondent dated 24.05.2016, the writ petitions are disposed of by way of this common order.

2. W.P.(MD).No.10126 of 2016 has been filed by a Hereditary Trustee of one Arulmigu Suyampirakasa Eeswar Thiru Kovil, Iluppagudi Village, Karaikudi Taluk, Sivagangai District and W.P.(MD) No.10888 of 2016 has been filed by the petitioner who claims to have been elected as a non-hereditary trustee as per the scheme of administration of temple. Both the writ petitions are filed challenging the order passed by the first respondent appointing an Executive Officer for Arulmigu Suyampirakasa Eeswar Thiru Kovil, Iluppagudi Village, Karaikudi Taluk, Sivagangai District.

3. The case of the petitioners in brief is as follows:-

Arulmigu Suyampirakasa Eeswar temple is administered in terms of a scheme framed by this Court in APP.No.492, 743 and 491 of 1951, dated 05.05.1954 and amended by Deputy Commissioner, Hindu Religious and Charitable Endowment Department, in O.A.No.44/1962 dated 21.11.1966, and Commissioner, HR & CE in A.P.No.71 of 1967. As per the scheme, the said temple have one hereditary trustee from A.R.L. family of Devakottai and two non-hereditary trustees appointed by the Area Committee, Ramanathapuram District, from among the non A.R.L. Illuppakudi Nagarathars of the 33 villagers owing allegiance to the temple. The said non-hereditary trustees shall hold office for five years from the date of their appointment. As per the scheme, the petitioner in W.P.(MD).No.10126 of 2016 has been appointed as hereditary trustee in the month of August,2010 and two non hereditary trustees were earlier appointed to the temple and their period expired in the year 2013 itself. After expiry of their period as per the scheme a election was conducted and the petitioner in W.P.(MD)No.10888 of 2016 and one Ramanathan of Devakottai were elected as two non hereditary trustees to the temple on 09.05.2013, and the same was also forwarded to the second respondent/Joint Commissioner, HR & CE Department, Sivagangai for approval, but so far their appointment was not approved by the second respondent and the same is still pending. In the mean time, the first respondent issued a show cause notice to the hereditary trustee on 09.04.2012, pointing out as 24

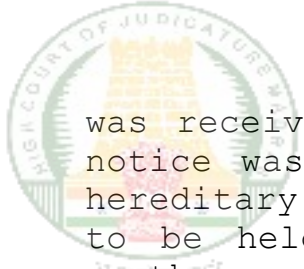
several reasons regarding mismanagement of the temple and directed the hereditary trustee and then non hereditary trustees to give their



explanation why an Executive Officer should not be appointed invoking Section 45(1) of the T.N.HR & CE Act(hereinafter called as Act). After receipt of the above explanation, the hereditary trustee sent a detail reply on 03.05.2012 and non-hereditary trustees also sent their explanation on 09.05.2012. Thereafter, no enquiry was conducted and the matter was kept pending with the first respondent. In the meantime, by an order dated 19.05.2016, the hereditary trustee was suspended by the first respondent pending enquiry and third respondent was appointed as a fit person. Thereafter, within a period of one week, the impugned order has been passed appointing the third respondent as an Executive Officer for a period of five years or until further orders. Hence, challenging the above order the hereditary trustee filed W.P.(MD)No.10126 of 2016, and the person who has been elected as non hereditary trustee, and waiting for approval from the Joint Commissioner, HR & CE, filed W.P.(MD).No.10888 of 2016.

4. The contentions in both the writ petitions are that, the impugned order was passed in violation of principles of natural justice, when the show cause notice was issued in the year,2012, and the trustees have submitted their explanation as early as in May,2012, the first respondent having waited for more than 4 years, now without approving the appointment of non-hereditary trustees and after suspending the hereditary trustee hurriedly appointed the 3rd respondent as Executive Officer, who was earlier appointed as a fit person to the temple after suspending the Hereditary Trustee. Apart from that the Executive Officer was also appointed for indefinite period which is not permissible under Law. Now, by appointing Executive Officer for a indefinite period, the first respondent perpetually suppressed the rights of the hereditary trustee and non-hereditary trustees. Hence, it violates their fundamental rights to administer the temple and also amounts to usurpation of their proprietary right.

5. Per contra, the respondents 1 to 3 filed their counter affidavit and contended that the Joint Commissioner, HR & CE Department, Sivagangai, has sent a detail report dated 24.01.2012, for appointment of an Executive Officer on the ground that there are lot of defects found in the administration of the temple. After perusing the said report, a show cause notice was issued to the hereditary trustees and non-hereditary trustees on 08.04.2012, and reply was also submitted by them on 03.05.2012 and 09.05.2012 respectively. Subsequently, the Joint Commissioner has sent another report dated 15.10.2014, to the Commissioner. In that report, the Joint Commissioner had reported 9 additional charges against the trustees of the temple and the above report dated 15.10.2014, was furnished to the administrative section of the first respondent office for taking further action to frame charges against the trustees of the temple. Based on the report submitted by the 2nd respondent, a notice was issued to one Krishnan, the non hereditary trustee, on 05.02.2005, and a reply



was received from the said Krishnan on 25.02.2015. Thereafter, a notice was sent to the hereditary trustee Suyamprakasam, and non hereditary trustees Krishnan and Chindamani for personal enquiry to be held on 30.03.2015. Since nobody attended the enquiry, another notice was issued on 01.04.2015, fixing the date of enquiry on 20.04.2015, subsequently at the request of Thiru.Suyamprakasam, the petitioner in W.P.(MD).No.10126 of 2016, the enquiry was conducted on 08.06.2015, on that date he alone attended the enquiry along with his advocate. After enquiry, the appointment of Executive Officer was kept in abeyance in view of the pendency of Rule amendment for appointment of Executive Officer under Section 45(1) of the Act. The said amendment was issued in G.O.MS.No.260, TC & RE (RE4-2) department dated 06.11.2015, which was also Gazetted on 06.11.2015. Thereafter, the impugned order has been passed appointing the executive officer. In the meantime, based on the report of the Joint Commissioner, Sivgangai, the 2nd respondent herein, 1st respondent framed 19 charges against the hereditary trustee and he was also placed under interim suspension, the Executive Officer of Arulmigu Koppudainayagi Amman Thirukovil, Karaikudi Town, the third respondent herein, was appointed as a fit person. Once the enquiry is completed against the hereditary trustee, further action for appointing hereditary trustee will be decided, and the Executive officer appointed by the impugned order shall function along with either official fit person who is now taken charge as an interim arrangement, or with the regular hereditary trustee who will be come to the chair after the finalisation of the disciplinary proceedings. Apart from that in the counter affidavit filed in W.P.(MD).No.10888/2016, it is stated that, in general when the administration is in the hands of the hereditary trustee, he can be replaced only by another trustee, but in this case the 5th respondent is the only hereditary trustee managing the temple and has been placed under suspension pending enquiry, under Section 53(4) of the Act, since the hereditary trustee is under suspension, now the Executive Officer was appointed, as there is no hereditary trustee in the office of the trustee for the temple.

6. I have heard Mr.G.R.Swamination, the learned counsel appearing for the petitioner in both writ petitions and Mr.V.R.Shanmuganathan, the learned counsel appearing for the respondents 1 to 3 and Mr.T.Srinivasa Raghavan, the learned counsel appearing for the 4th respondent and Mr.T.Lajapathi, the learned counsel appearing for the 5th respondent in both writ petitions and perused the materials available on record.

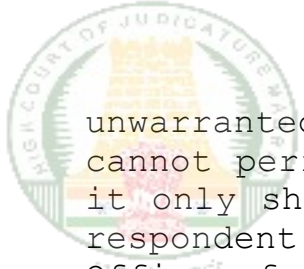
7. It is the admitted fact that the show cause notice was issued for appointing a hereditary trustee as early as on 09.04.2012, at the time, a hereditary trustee and two non-hereditary trustees were managing the affairs of the temple. Immediately, the hereditary trustee and non-hereditary trustees sent their reply on 03.05.2012 and on 09.05.2012 respectively.



Thereafter nothing was happened and the enquiry was pending with the first respondent. In the meantime, the tenure of the non-hereditary trustees were expired and two non hereditary trustee were elected as per the scheme on 09.05.2013, and the same was also forwarded to the second respondent for approval. But, so far it was not approved by the second respondent, hence there is a vacancy in the office of the non-hereditary trustee from the year 2013. Even as per the counter affidavit filed by the first respondent, after receipt of the reply from the hereditary trustee and non-hereditary trustees in May, 2012, the Joint Commissioner, HR & CE, the second respondent herein sent a another report dated 15.10.2014, in the above report, the Joint Commissioner reported to frame 9 additional charges against the trustees of the temple. Thereafter, the administrative section framed charges and notice was sent to one Thiru.Krishnan, a non hereditary trustee, and a reply was received from him on 25.02.2015. Thereafter, the enquiry notice was issued to the hereditary trustee and non-hereditary trustees.

8. From the averments made in the counter affidavit it is clear that apart from the original charges levelled in the earlier show cause notice dated 08.04.2012, some additional charges were framed in the year, 2014, based on the report of the second respondent, but the additional charges was communicated only to one of the non hereditary trustee by name Krishnan, but at the time his period was over, but the additional charges was not communicated to the hereditary trustee, namely, V.R.Suyamprakasam. Thereafter, the enquiry was conducted on 23.05.2016, in which the hereditary trustee V.R.Suyamprakasam alone attended the enquiry and filed his objection, it is pertinent to mentioned that at the time of enquiry was conducted, the tenure of two non-hereditary trustees was over and two non hereditary trustee were elected as per the scheme and the same was pending before the second respondent for approval. But without approving the appointment of non hereditary trustees, the enquiry has been conducted based on the submissions made by the hereditary trustee. The first respondent passed the impugned order only considering the objection raised by the hereditary trustee and the objection submitted by the earlier non-hereditary trustees were not considered.

9. The main grievance of the petitioner in W.P.No.10888 of 2016, was that, when the appointment of non-hereditary trustees is pending with the second respondent from the year, 2013 without approving their appointment, now, the first respondent cannot appoint an Executive Officer after suspending the only available hereditary trustee which is totally illegal. Apart from that earlier the first respondent appointed the third respondent who is Executive Officer of Arulmigu Kopudainayagi Amman Thiru Kovil, Karaikudi, and the very same person was appointed as Executive Officer in the impugned proceedings, which is totally



unwarranted, and same person cannot hold two different posts and cannot perform both duties, which are totally different in nature, it only show the non application of mind on the part of the first respondent. The first respondent also appointed the Executive Officer for indefinite period, which is also not permissible under law. I find much force in the argument of the learned counsel appearing for the petitioners.

10. First of all, when the approval of appointment of non hereditary trustees were pending with the second respondent from 20.09.2013, which was not disputed in the counter affidavit filed by the respondents, the first respondent, after suspending the hereditary trustee, cannot appoint the Executive Officer, especially when a fit person was appointed in the place of hereditary trustee and he has taken charge of the administration of the temple. Apart from that while passing the impugned order, even though the then non hereditary trustees submitted their objection to the show cause notice dated 09.04.2012, none of their objections were considered by the first respondent. But, only considered the objection filed by the hereditary trustee, the impugned order has been passed, which shows total non application of mind on the part of the first respondent. Now the Executive Officer has been appointed for a period of five years or until further orders, which clearly indicates that the Executive Officer has been appointed for a unlimited period. It is a settled principles of law that the Executive Officer can be appointed only as a temporary measure and only for the purpose of removal of maladministration. A very purpose of appointment of Executive Officer is only to rectify the maladministration and also to regulate the administration of the temple, but in the guise of appointing the executive officer, the respondent cannot supersede the administration for indefinite period. The Hon'ble Supreme Court in a judgment reported in **2014 (1) CTC 763 in Dr. SUBRAMANIAN SWAMY AND ANOTHER Vs. STATE OF TAMILNADU AND OTHERS**, has held as follows:-

"47. Even if the management of a Temple is taken over to remedy the evil, the management must be handed over to the person concerned immediately after the evil stands remedied. Continuation thereafter would tantamount to usurpation of their proprietary rights or violation of the fundamental rights guaranteed by the Constitution in favour of the person deprived. Therefore, taking over the management in such circumstances must be for a limited period. Thus, such expropriatory order requires to be considered strictly as it infringes fundamental rights of the citizens and would amount to depriving them of their legitimate rights to manage and administer the temple for an



indefinite period. We are of the view that the impugned order is liable to be set aside for failure to prescribe the duration for which it will be in force.

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

Since the impugned order has been passed appointing the Executive Officer for indefinite period it definitely infringes the fundamental right guaranteed the petitioner to administer the temple and perpetually divesting them of their legitimate rights to manage and administer the temple.

11. Apart from that the appointment of Executive Officer is drastic in nature, the power should be exercised cautiously, reasonably and fairly, a Division Bench of this Court in the judgment reported in **AIR 1985 MADRAS 341 in COMMISSIONER, HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS (ADMINISTRATION) DEPT. MADRAS Vs. K.JOTHIRAMALINGA AND ANOTHER**, had held as follows:-

".....By the appointment of an Executive Officer under Section 45(1) of the Act, coupled with the conferment on him of all or almost all of the above powers, would be to relegate the hereditary trustee to the position of a non entity. We ought not to be understood as saying that the Commissioner cannot exercise his powers under Section 45(1) of the Act, in a case, where the institution is under the administration and management of a hereditary trustee. No doubt, the power under Section 45 of the Act can be and has also to be exercised by the Commissioner appropriately in such case. The power vested in the Commissioner under Section 45 (1) of the Act, being a very drastic one, it has to be exercised cautiously, reasonably and fairly as the exercise of such power may even result in the effective elimination of the hereditary trustee from management and administration of the institution. Therefore, it is that natural justice and fair play require that the Commissioner should properly exercise the power under Section 45(1) of the Act, after being



satisfied that the institution has not been properly managed and the then administration leaves much to be desired and requires to be toned up or improved and the appointment of an Executive Officer is justified to secure such better administration....."

12. In another Judgment reported in **1970 MLJ 599 in D.R.NAGARAJAN Vs. THE COMMISSIONER, HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS (ADMN) DEPARTMENT, MADRAS,** it has been held as follows:-

"In our opinion, such a power, drastic as it is, has to be exercised carefully and only where proper reasons existed showing that the temple or the math concerned has not been properly managed by the hereditary trustee. The power under Section 45(1) does not mean that the Commissioner, if he so wills, though there is no reason whatever justifying, can exercise the power and appoint an Executive Officer for a religious institution. We consider, therefore, that before making the appointment he must inform the hereditary trustee of the reasons, which, according to him, would justify the appointment of an Executive Officer, ask for his explanation and after considering the same, if he still thinks that an Executive Officer is necessary, he may properly exercise his power. It is true that Section 45 does not contemplate any notice or enquiry, but that does not mean that by exercising power under Section 45 at will the Commissioner can invade the hereditary trusteeship which is property as he has done in this case."

13. Recently, the learned Single Judge of this Court Judgment reported in **2015 Writ L.R. 479 in P.R.THIRUPATHY AND OTHERS Vs. THE COMMISSIONER, HINDU RELIGIOUS AND CHARITABLE ENDOWMENT, CHENNAI,** has held as follows:-

"9. The Hon'ble Division Bench in the case of Commissioner, Hindu Religious & Charitable Endowments(Administration) Dept., Madras Vs. K.Jothiramalingam & Anr., (Supra), while considering the correctness of appointment of an Executive Officer under Section 45(1) to manage the affairs of the temple held that the power vested with the Commissioner under the said provision is a very drastic one, it has to be exercised cautiously, reasonably and fairly, as the exercise of such power may even result in the effective elimination of the

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15. The first respondent himself admitted in the counter affidavit that the Executive Officer can only function along with either the fit person or with the hereditary trustees. The relevant portion of the counter affidavit is extracted below:-

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Now the third respondent has been appointed as a Fit Person as well as the Executive Officer and directed to discharge both the



powers of the Fit Person and also the Executive Officer, which also show the non application of mind on the part of the first respondent.

16. Apart from that even though the proceedings were initiated in the year, 2012, after four years, the impugned order has been passed hurriedly after suspending the hereditary trustee almost on the similar charges of maladministration and an enquiry is also pending against him, which also clearly shows the improper exercise of power under Section 45 of the Act. In the above circumstances, the impugned order passed by the first respondent is liable to be set aside.

17. In the result, the Writ Petitions are allowed and the impugned order passed by the first respondent made in Na.da.Na.Ka.No.11785/2012/L5 dated 24.05.2016 is set aside. No costs. Consequently, connected MPs. are closed.

Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

1. The Commissioner,
Hindu Religious and Charitable Endowments,
Chennai - 600 034.

2. The Joint Commissioner,
Hindu Religious and Charitable Endowments,
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3. The Executive Officer,
Arulmigu Kopudainayagi Amman Thiru Kovil,
Karaikudi Town,
Sivagangai District.

+1 cc to M/s.AN.Ramanathan, Advocate in SR.No. 83360

+1 cc to M/s.T.Lajapathi Roy, Advocate in SR.No. 83545

rrg

CSL/SS-3/SAR-III/09.01.2017 : 11P/6C

**Common Order in
W.P. (MD) Nos.10126 of 2016
and
W.P. (MD) Nos.10888 of 2016
DATED: 23.12.2016**