



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 27.06.2016

ORDERS DELIVERED ON : 15..07.2016

CORAM

THE HON'BLE MR. JUSTICE M. VENUGOPAL

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W.P.(MD) No.10257 of 2016 and WMP(MD)No.8018 of 2016

Saravana Pandian

.. Petitioner

vs.

- 1.The Government of Tamilnadu,
Rep. by its Principal Secretary,
Tourism, Culture and Charitable(ANi3-1) Department,
Fort St.George, Secretariate,
Chennai - 600 009.
- 2.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Chennai - 600 034.
- 3.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Administration Department,
Madurai - 625 001.
- 4.The Fit Person,
Arulmigu Pandi Muneeswarar Temple,
Melamadai, Madurai District.
- 5.The Executive Officer/Joint Commissioner,
Arulmigu Subramaniaswamy Thirukkivil,
Thirupparankundram, as
Executive Officer of Arulmigu Pandi
Muneeswarar Temple,
Melamadai, Madurai District.
6. Arulmigu Subramaniaswamy Thirukkivil,
Thirupparankundram,
Rep. by the Deputy Commissioner/
Executive Officer.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records pertaining to the impugned order passed by the 2nd respondent in Nada.Na.Ka.No.8078/2015/L5, dated 12.05.2016, quash the same.

For Petitioner : M/s.J.Anandhavalli

For R1 to R3 : Mr.K.Chellapandian

Additional Advocate General

Assisted by

Mr.V.R.Shanmuganathan

Special Government Pleader

For R4 to R6 : Mr.S.Manohar

**ORDER**

The Petitioner has preferred the instant writ petition praying for passing of an order by this Court in calling for the records relating to the impugned order passed by the Second Respondent, dated 12.05.2016 and to quash the same.

2.The Learned Counsel for the Petitioner submits that the impugned order, dated 12.05.2016 passed by the Second Respondent/Commissioner, Hindu Religious and Charitable Endowments Department, is in violation of the Principles of Natural Justice.

3.The Learned Counsel for the Petitioner urges before this Court that the Second Respondent failed to appreciate that although the Trustees are under suspension, they are entitled to notice before an appointment of 'Executive Officer', as the same would affect their right of administration.

4.It is represented on behalf of the Petitioner that the Commissioner/HR & CE Department/same person is acting in dual capacity and by invoking Section 45(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, he has predetermined to pass order for taking over of the Institution before disposing of the Enquiry Proceedings. Yet another argument advanced on behalf of the Petitioner is that the communication dated 24.05.2016 of the Third Respondent/Joint Commissioner, HR&CE Department itself shows that Hereditary Trustees are there in the office and they are to be served with the impugned order. Furthermore, the Petitioner was not served with the alleged proceedings of the Third Respondent.

5.According to the Learned Counsel for the Petitioner, the six charges levelled against the Petitioner were based on the proceedings of the Second Respondent, in and by which, a show cause notice was issued by the First Respondent/Government of Tamil Nadu and further that in the impugned order the Second Respondent/Commissioner, HR&CE Board mentions that these charges are found out by the Third Respondent/Joint Commissioner, HR&CE Department.

6.The Learned Counsel for the Petitioner takes a prime plea that the Second Respondent/Commissioner, HR&CE Department has no jurisdiction to exercise power under Section 45(1) of the Act, when allegation of charges are pending before the First Respondent/State Government.

7.The version of the Petitioner is that the Second Respondent/Commissioner, HR&CE Department, should have sent communication that the order of fit person is under challenge before the First Respondent/State Government and therefore, the alleged Resolution, which is not referred to in the impugned order, cannot be a reason for passing the impugned order. Moreover, it is the stand of the Petitioner that except the charges levelled against the Petitioner, which is pending enquiry before the First Respondent/State Government, no other independent reasons are furnished by the Second Respondent/Commissioner, HR&CE Department, for appointment of 'Executive Officer'.

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8.The Learned Counsel for the Petitioner strenuously contends that the power under Section 45(1) of the Act, 1959, can only be exercised



by the Second Respondent/Commissioner, HR&CE Department, subject to conditions prescribed under the Act. Also that the impugned order annexing the Pandi Muneeswarar Temple as sub Temple of Arulmigu Subramaniaswamy Temple is an erroneous one.

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9. At this stage, the Learned Counsel for the Petitioner brings it to the notice of this Court that there are two more Trustees in the administration of the Temple and they were not served with any notice before passing the impugned order dated 12.05.2016 and this itself would clearly point out that there is non application of mind on the part of the Second Respondent.

10. That apart, the Learned Counsel for the Petitioner proceeds to point out that the 'Pandi Muneeswarar Temple' is a listed Temple under Section 46(3) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and that the Petitioner is one of the 'Hereditary Trustees' on and from 26.11.2015. As a matter of fact, it is represented that the Petitioner comes under the branch of Mahamuni Poosari.

11. It comes to be known that on the death of Petitioner's father Raja Poosari, an application under Section 54(1) of the Act, was filed before the Third Respondent/Joint Commissioner, HR&CE Department and the said application was ordered on 18.07.2014 by the Third Respondent and his brother and mother gave No Objections for passing of such an order. Besides this, the Third Respondent/Joint Commissioner, HR&CE Department, cancelled the order on 29.10.2014. But the said order of the Third Respondent dated 29.10.2014 was set aside by this Court in W.P.(MD) No.18671 of 2014 (filed by the Petitioner), as per order dated 07.01.2015. In fact, this Court while setting aside the order of the Joint Commissioner, HR&CE Department, dated 29.10.2014, had remitted back the matter to the Joint Commissioner, who was directed to pass appropriate orders afresh pursuant to his earlier order.

12. It transpires that the writ Petitioner filed W.A.(MD)No.71 of 2015 (aggrieved against the order dated 07.01.2015 in W.P.(MD)No.18671 of 2014 passed by the learned single Judge) as an aggrieved person and in fact, the Division Bench of this Court on 26.11.2015, allowed the writ appeal by setting that portion of the learned single Judge 'remitted back the matter'. However, in other respects, the order of the learned single Judge was confirmed.

13. Apart from the above, the Learned Counsel for the Petitioner submits that the Second Respondent/Commissioner, HR&CE Department, issued a charge memo on 21.03.2015 to the eight Hereditary Trustees (including the Petitioner) and the same was quashed by this Court on 06.10.2015 in W.P.(MD)No.9952 of 2015 (filed by the present writ Petitioner). In this connection, the Learned Counsel for the Petitioner emphatically takes a plea that the same charge memo was issued by the First Respondent/State Government dated 02.03.2016 and this would go to show that barring the designation of the Respondents, the charges are *Ifso facto* the same.

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14. The Learned Counsel for the Petitioner strenuously submits that in W.P.(MD)No.9952 of 2015 the affidavit explains as to why the Petitioner could not be issued with a charge memo and an important



aspect is that all the purported charges are before 26.11.2015, on which date only the Petitioner became the 'Trustee of the Temple'. Furthermore, the Petitioner, pending disciplinary proceeding was kept under suspension and fit person was appointed on the very same date of the issuance of charge memo. In fact, it is represented on behalf of the Petitioner that the charge memo, order of suspension and appoint of Fit Person are all subject matter of W.P.Nos.5386 to 5388 of 2016. Inasmuch as there was no stay and also the Petitioner become the Trustee only on 26.11.2015, he was advised to submit his explanation, which is submitted on 21.03.2016 and pending enquiry, the impugned order dated 12.05.2016 was passed by the Second Respondent/Commissioner, HR&CE Department.

15.The Learned Counsel for the Petitioner to fortify her contention that the Petitioner (being one of the Hereditary Trustees under suspension on the date of impugned order dated 12.05.2016) admittedly was not served with notice, relies on the Division Bench decision of this Court in **K.EKAMBARAM AND ANOTHER v. COMMISSIONER HR&CE OF ADMINISTRATION DEPARTMENT ETC.** reported in **1995 (2) L.W. 213**, wherein it is observed as under:-

"It is not possible to hold that Section 45(1) of the Tamil Nadu HR & CE Act excludes the application of principle of natural justice when an Executive Officer is to be appointed on the ground of failure of trustees in performing the functions, and action against trustees cannot be taken or they cannot be deprived of their without affording an opportunity to explain the allegations made against them, depriving of the right vested in them as trustees."

16.The Learned Counsel for the Petitioner also cites the decision in **COMMR. H.R. & C. ENDOWMENTS (ADMN.) DEPARTMENT v. K.JOTHIRAMALINGAM** reported in **AIR 1985 MADRAS 341**, wherein it is inter alia observed and held as follows:-

"... The power vested in the Commissioner under S.45(1) to appoint an Executive Officer to manage the temple 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 temple. Therefore, though S.45(1) by its terms does not contemplate any notice or enquiry before exercising the power of appointing an Executive Officer, the principles of natural justice require that the hereditary trustee who is in actual control, management and day to day administration of the temple should be given notice and opportunity to show cause against the appointment of an Executive Officer by the Commissioner under S.45(1) resulting virtually in his displacement and the appointment of the Executive Officer should be made after being satisfied that the institution has not been properly managed by the hereditary trustee and the administration requires to be toned up or improved and the appointment of an Executive officer is justified to secure such better administration. Therefore, the failure to give notice to the hereditary trustee to show cause against the appointment of an Executive Officer under S.45(1) would render the appointment, invalid. ..."



17. In support of her contention that 'suspension is not a bar for notice under Section 45(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the Learned Counsel for the Petitioner submits that 'interim suspension' is only a prohibition not to do service and in fact, the service on a person is not taken away (in the instant case Hereditary Trustee) and in this regard, relies on a decision of the Hon'ble Supreme Court in **V.P.GINDRONIYA v. STATE OF MADHYA PRADESH & OTHERS** reported in **AIR 1970 SC 1494**, whereby and where under at paragraph No.8, it is *inter alia* observed as under:-

"... The distinction between suspending the contract of a service of a servant and suspending him from performing the duties of his office on the basis that the contract in subsisting is important. The suspension in the latter case is always an implied term in every contract of service. When an employee is suspended in this sense, it means that he employer issues a direction to him that he should not do the service required of him during a particular period. In other words the employer is regarded as issuing an order to the employee which because the contract is subsisting, the employee must obey."

18. The Learned Counsel for the Petitioner submits that the First Respondent/Government of Tamil Nadu after reserving orders in the disciplinary proceedings, one day earlier to the order of removal on 13.05.2016, passed the impugned order on 12.05.2016. It is also represented on behalf of the Petitioner that the impugned order, dated 12.05.2016 of the Second Respondent/Commissioner, HR & CE Department, refers to the Third Respondent/Joint Commissioner, HR & CE Department proceedings dated 07.05.2016, which was not communicated to him. Added further, it is the stand of the Petitioner that the proceedings of the Third Respondent/Joint Commissioner, HR & CE Department, dated 07.05.2016 is a replica of the request made by the Fit person.

19. The Learned Counsel for the Petitioner projects an argument that the State Government had framed the Rule for appointment of an Executive Officer of a temple after the Judgment of the Hon'ble Supreme Court between **Dr.SUBRAMANIAN SWAMY v. STATE OF TAMIL NADU & OTHERS** in **Civil Appeal No.10620 of 2013 with Civil Appeal Nos.10621 & 10622 of 2013**, dated 06.01.2014, wherein it was categorically held that without the Rules, exercise of power under Section 45(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, cannot be exercised.

20. It is represented on behalf of the Petitioner that following the Judgment of the Hon'ble Supreme Court, this Court in the decision in **ARULMIGU VAITHIANATHASWAMY DEVASTHANAM, NAGAPATTINAM DISTRICT v. THE GOVERNMENT OF TAMIL NADU HE&CE**, reported in **2014 (2) TLNJ 423 (Civil)**, had held that the power under Section 45 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, cannot be exercised by the Commissioner unless the Government prescribes the circumstances/conditions, upon which such appointment could be made etc.

21. The Learned Counsel for the Petitioner refers to the Conditions for Appointment of Executive Officers Rules, 2015 (G.O.Ms.No.260, Tourism, Culture and Religious Endowments (RE4-2), dated 06.11.2015) and contend that as per Rule 3, the Second Respondent is to conduct an



enquiry before appointing an Executive Officer and in the present case, the impugned order, dated 12.05.2016 does not speak about any such conduct of enquiry.

22. The Learned Counsel for the Petitioner contends that the Fit Person was appointed on 02.03.2016 pending enquiry and by means of that order, he has to act on behalf of the Hereditary Trustees temporarily. Further, a plea is taken on behalf of the Petitioner that the Fit Person cannot send a request without consulting the hereditary trustee of the temple, particularly, when there are two more Trustees still in office. In short, the Core stand of the Petitioner is that 'Fit Person' cannot recommend to replace the administration with the Board in the absence of any consultation with the Hereditary Trustees and that too at the time of 'Suspension'.

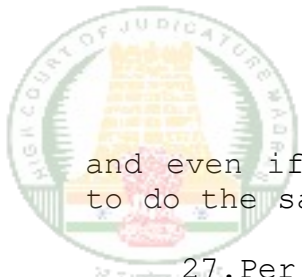
23. The Learned Counsel for the Petitioner submits that the Executive Officer of a Temple is to administer the Temple along with Trustees. Further, it is projected on the side of the Petitioner that when a permanent vacancies occurs in the of Hereditary Trustee, as per explanation to Section 54(3) of the Act, the individual next in line of succession is to succeed to the office of the Hereditary Trustee and the same is automatic as per decision in **PREM ANAND v. THE COMMISSIONER, HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS DEPARTMENT, ETC.** reported in **1990 (1) L.W. 144**. Furthermore, in the said decision, it was observed that there is no need to apply for an appointment of Hereditary Trustee by means of an application.

24. The Learned Counsel for the Petitioner contends that Section 114 of the Act, is not an alternative remedy for the Petitioner, because of the reason there is an embargo as per Section 114(3) of the Act. In reality, the ingredients of Section 114 of the Act confers 'suo-motu power of Revision' to the Government or the same can be exercised on the application of any Trustee in respect of any proceedings. However, it is represented on behalf of the Petitioner that the Trustee can file a petition/application under Section 114 of the Act only after he approaches the Second Respondent/Commissioner, HR & CE Department. At this stage, it is brought to the notice of this Court on behalf of the Petitioner that in the present case, the impugned order dated 12.05.2016 was not passed by the Second Respondent/Commissioner, HR & CE Department, as 'Revisional Authority'. As such, the plea of 'Alternative Remedy' is to be negated.

25. The Learned Counsel for the Petitioner submits that even in the year 2012, a representation was sent by the Managing Trustee of the Temple for introduction of ticket system in the temple and if it was disposed of by granting permission to the Trustee, then there may not have arisen an occasion for appointment of respondent Nos. 4 to 6 and in fact, from the year 2003, the temple would have earned an income through auction and from 2012, through introduction of ticket system. In short, because of the fault of the Respondents, they cannot take advantage of their own inaction.

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26. Lastly, it is the contention of the Learned Counsel for the Petitioner that there is no provision under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, for 'Grouping of Temple'



and even if the Second Respondent/Commissioner, HR &CE Department wants to do the same, it cannot be done without issuance of notice.

27. Per contra, it is the submission of the Learned Additional Advocate General for the Respondents 1 to 3 that Arulmigu Pandimuneeswarar is a temple published under Section 46(iii) of the Act and governed by a scheme framed by the HRE Board in B.O.No.2074/dated 5.9.1935 (O.A.No.459/1933). Further, it is the stand of the official respondent Nos.1 to 3 that only on the basis of the report received from the Joint Commissioner, Madurai, a detailed report had been sent to the Government by the Commissioner in RC.No.6223/2015/A2 dated 26.11.2015. The First Respondent/Government on scrutiny of the report in detail, had framed about 12 Charges against the Hereditary Trustees of the temple under Section 53 of the Act in Government letter No.15104/RE3-1/2015-1, dated 02.03.2016 and called for the explanation from them.

28. At this juncture, the Learned Additional Advocate General for the Respondents 1 to 3 brings it to the notice of this Court that since the charges framed against the Hereditary Trustees were grave in nature, they were placed under temporary suspension under Section 53(4) of the Act and an order was issued by the Government on 02.03.2016. Also that, the Deputy Commissioner/Executive Officer of Arulmigu Subramaniaswamy Thirukkivil, Thirupparankundram was appointed as an official fit person on 02.03.2016 and in fact, the said fit person had taken charge of the temple on 07.03.2016 and he is now functioning in that capacity.

29. The Learned Additional Advocate General for the Respondents 1 to 3 submits that in W.P.(MD)No.5647 of 2016 (filed by one V.K.Pandi, this Court on 22.03.2016, had *inter alia directed the respondent therein to pass appropriate orders on the disciplinary proceedings initiated against the Petitioner, dated 02.03.2016, on merits and in accordance with law, etc.* In fact, it is the version of the respondent Nos.1 to 3 that the Government had considered the explanation submitted by the Hereditary Trustees and came to the conclusion that all the charges were proved and issued a final order as per G.O.(நிலை)No.158, TC&RE (RE3-1) Department dated 13.05.2016 by removing all the 8 Hereditary Trustees from the post of the Hereditary Trusteeship.

30. The Learned Additional Advocate General for the Respondents 1 to 3 vehemently contends that the Fit Person had passed a Resolution No.6 dated 07.05.2016 to get permission of the Commissioner for appointment of an Executive Officer for A/m.Pandi Muneeswarar temple under Section 45(1) of the Act. Therefore, the fit person sent a detailed report to the Joint Commissioner, Madurai explaining the need for the appointment of Executive Officer. In fact, in the report of the fit person, defects found in the administration of the temple during the hereditary trustee period, the improvements made in the temple after taking over charge as the official fit person etc. Ultimately, the Fit Person had wound up his report that the appointment of fit person is only an interim arrangement till regular Hereditary Trustees are appointed.

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31. The Learned Additional Advocate General for the Respondents 1 to 3 takes a categorical stand that only after perusing the report of the Fit Person, the Third Respondent/Joint Commissioner, HR&CE Department,



after observing the necessary formalities, sent a detailed proposal for appointment of an Executive Officer under Section 45 of the Act. Further, the First Respondent after perusing the report of the Third Respondent/Joint Commissioner, HR&CE Department issued the order appointing the Deputy Commissioner/Executive Officer of Arulmigu Subramaniaswamy Thirukkivil, Thirupparankundram as Executive Officer under Section 45(1) of the Act to the said temple for a period of 5 years etc.

32.Indeed, the order of the First Respondent dated 12.05.2016, is only as per direction of the Hon'ble Supreme Court in **ARULMIGU VAITHIANATHASWAMY DEVASTHANAM, NAGAPATTINAM DISTRICT v. THE GOVERNMENT OF TAMIL NADU HE&CE**, reported in **2014 (2) TLNJ 423 (Civil)**, as as per Rules framed under Section 45(1) of the Act. The Learned Additional Advocate General for the Respondents 1 to 3 submits that the 'Hundial Income' between the administrative period of Hereditary Trustees and that of the official fit person runs as under:-

வ. எண்	தக்கார் பொறுப்பு ஏற்பதற்கு முன்னர் உண்டியல் வரவினம் நாள் மற்றும் தொகை	தக்கார் பொறுப்பு ஏற்ற பின்னர் உண்டியல் வரவினம் நாள் மற்றும் தொகை
1.	16.03.2015 - ரூ.1,91,079	14.03.2016 - ரூ.3,09,356
2.	27.03.2015 - ரூ.1,44,041	21.03.2016 - ரூ.2,55,112
3.	30.03.2015 - ரூ. 89,530	28.03.2016 - ரூ.2,98,317
4.	06.04.2015 - ரூ.1,32,592	04.04.2016 - ரூ.2,31,789
5.	13.04.2015 - ரூ.1,66,421	11.04.2016 - ரூ.2,91,678
6.	20.04.2015 - ரூ.1,26,272	18.04.2016 - ரூ.2,72,769
7.	27.04.2015 - ரூ.1,32,247	25.04.2016 - ரூ.3,16,844
8.	05.05.2015 - ரூ.1,20,817	02.05.2016 - ரூ.3,56,965
அன்னதான உண்டியல் திறப்பு வரவினம்		
1.	23.03.2015 - ரூ. 11,389	28.03.2016 - ரூ.1,24,510
2.	27.04.2015 - ரூ. 13,451	25.04.2016 - ரூ. 93,177

and the chart would show the need of full time functioning of an official of the HR &CE Department in the present Temple. Moreover, after taking charge of the official Fit Person, a surplus amount of Rs.10 lakhs was deposited from the income of the Temple and further that a sum of Rs.1 lakh deposit was made under the Head of "Annathanam." The Executive Officer appointed under Section 45(1) of the Act, according to the Respondents 1 to 3 took charges of the post of executive officer from the fit person on 17.05.2016.

33.The Learned Additional Advocate General for the Respondents 1 to 3 contends that under Section 45(1) of the Act is in no way connected with the appointment of fit person or framing of charges. Besides that, it is represented on behalf of the Respondents 1 to 3 that Fit Person himself had made a request for appointment of Executive Officer and in fact, the appointment of an Executive Officer would not affect the rights of Hereditary Trustees in any manner, because of the reason that he is to work along with the 'Hereditary Trustees'. In short, the plea of the Respondents 1 to 3 is that the impugned order dated 12.05.2016 of the First Respondent is issued only for better management of the Temple in accordance with the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and the Rules made thereunder.



34.The Learned Additional Advocate General for the Respondents 1 to 3 proceeds to state that there is no need to take over the administration by hook or crook means and in fact, the First Respondent/Government of Tamil Nadu, had already issued a final order removing 8 Hereditary Trustees (including the Petitioner) and therefore, the Petitioner has no *locus standi* to file the present Writ Petition.

35.The Learned Additional Advocate General for the Respondents 1 to 3 submits that for better administration, the Second Respondent/Commissioner, HR &CE Department, has power to appoint an Executive Officer. Further, it is represented on behalf of the respondent Nos.1 to 3 that 'every action of the Trustee of a Temple gives a cause of action' for an appointment of Executive Officer. Furthermore, in the present case, there are irregularities, malfeasance, mismanagement, breach of trust, misappropriation and gross neglect of duty committed by the Trustees. Besides this, it is brought to the notice of this Court on behalf of the respondent Nos.1 to 3 that 'Fit Person' as per Rules is to act along with the Trustees of the Temple and in the present case, the charges levelled against the Trustees are very grave in nature. Also that there exists an necessity to appoint an Executive Office for the Temple.

36.The Learned Additional Advocate General for the Respondents 1 to 3 contends that the present Commissioner/Second Respondent of HR &CE Department is only incharge Secretary of HR & CE Department and his original post is Commissioner, HR&CE Department. Further, under Section 53 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, as Secretary of the Government, can deal with the charges. Moreover, the Second Respondent/Commissioner, HR&CE Department can also appoint another Secretary. In short, the contention of the Learned Counsel for the Respondents 1 to 3 is that the Second Respondent/Commissioner, HR&CE Department, when he acts as Commissioner, he acts in terms of the ingredients of Section 45(1) of the Act and when he acts as Secretary, then, he discharges his duties in terms of Section 53 of the Act. Also that on behalf of the Respondents 1 to 3 a stand is taken before this Court that when there is a mismanagement in the Temple, it is the duty of the Second Respondent/Commissioner, HR &CE Department, under Section 45 of the Act to appoint an Executive Officer.

37.The Learned Additional Advocate General for the Respondents 1 to 3 cites a decision in **L.P.NARAYANAN CHETTIYAR, HEREDITARY TRUSTEE OF ARULMIGHU SUYAMPRAKASA ESWARAR TEMPLE, SIVAGANGA v. THE COMMISSIONER, H.R.&C.E. ADMINISTRATION DEPARTMENT, CHENNAI AND OTHERS** reported in 2005 (4) MLJ 252, wherein it is held as follows:-

"All orders of the Commissioner can be challenged under Sec.114 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Hence, a writ petition is not maintainable."

38.He also relies on the decision of this Court in reported in **COMMR. H.R. & C. ENDOWMENTS (ADMN.) DEPARTMENT v. K.JOTHIRAMALINGAM** AIR 1985 MADRAS 341, wherein it is observed as follows:-

"... The appointment of an Executive Officer under S.45(1) coupled with the conferment on him of the powers of management and administration of the temple would be to relegate the



hereditary trustee to the position of a non-entity. The power vested in the Commissioner under S.45(1) to appoint an Executive Officer to manage the temple 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 temple."

39. He also seeks in aid of the decision of this Court in **M.E.SUBRAMANI v. COMMISSIONER, H.R. & C.E. (ADMN.)** reported in **AIR 1976 MADRAS 264**, wherein it is observed as follows:-

"Section 45 cannot be taken to confer an unguided and arbitrary power on the Commissioner. The power has got to be exercised in terms of the policy of the Act i.e. to provide for the administration and governance of the religious and charitable institutions, and endowments, under the State of Tamil Nadu.

Where the Commissioner has specifically stated in the order appointing the executive officer, that the power has been exercised for the better and proper administration of the group of temples, it cannot be held that the impugned order passed is in any way arbitrary."

40. Besides the above, the Learned Additional Advocate General for the Respondents 1 to 3 cites the decision in **PALANIAPPA PANDARAM v. THE COMMISSIONER OF HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS (ADMINISTRATION), NUNGAMBAKKAM, MADRAS-34 AND ANOTHER** reported in **1972 (2) MLJ 276**, wherein it is held as follows:-

"Section 53(4) of Madras Act (XXII of 1959), is to the effect that pending the disposal of the charges framed against the trustee, the appropriate authority may place the trustee under suspension and appoint a fit person to discharge the duties and perform the functions of the trustee. There is nothing in the section to warrant the conclusion that there should be proved charges against the trustee before a fit person could be appointed to perform the duties and functions of the trustee."

41. He also invites the attention of this Court to the decision of the Hon'ble Supreme Court in **A.A.GOPALAKRISHNAN v. COCHIN DEVASWOM BOARD** reported in **2007 (7) SCC 482**, wherein at special page Nos.483 and 484, it is observed and held as follows:-

"The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their Trustees/Archaks/Sebaites/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the Government and its subordinate authorities. Such acts of 'fences eating the crops' should be dealt with sternly. The Government, members or trustees of Boards/Trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the



duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation."

42. On behalf of the Respondents 1 to 3 reliance is placed on the decision of this Court in **K. EKAMBARAM AND ANOTHER v. COMMISSIONER HR&CE OF ADMINISTRATION DEPARTMENT ETC.** reported in **1995 (2) L.W. 213**, wherein at page 214, it is observed as follows:-

"Section 45(1) of the Act gives vast powers to the Commissioner. It opens with the non-obstante clause. Thus, the provision has the overriding effect on the other provisions contained in the Act and thereby it empowers the Commissioner, notwithstanding any other provisions contained in the Act, to appoint an Executive Officer, subject to such conditions as may be prescribed, for any religious institution other than a math or a specific endowment attached to a math. When such a power is conferred, the scope and ambit of such power shall have to be determined with reference to other provisions contained in the Act and also the object which the Act intends to achieve and serve. It cannot be disputed that the Act is to consolidate the law relating to the administration and governance of Hindu Religious and Charitable Institutions and Endowments in the State of Tamil Nadu. In order to achieve that object, the Act provides for establishment of the Temple Administration Board, Constitution of District Committees, creation of Authorities under the Act, religious institutions and its general provisions and in addition to this, it also deals with the Maths."

43. The Learned Counsel for the Respondents 4 to 6 contends that the sixth respondent took charge of the Temple as Fit Person/Deputy Commissioner from the former Trustee on 07.06.2016 and after and after taking charge of the Temple, the income of the Temple had risen above Rs.2 lakhs every week after the Department took over. The details of the same are as follows:-

<u>Previous Income</u>			
14.03.2016	- Rs.3,09,356.00	29.02.2016	- Rs.1,19,780.00
21.03.2016	- Rs.2,55,112.00	22.02.2016	- Rs.1,38,425.00
28.03.2016	- Rs.2,98,317.00	15.02.2016	- Rs.2,41,563.00
04.04.2016	- Rs.2,31,789.00	08.02.2016	- Rs.1,64,162.00
11.04.2016	- Rs.2,91,678.00	01.02.2016	- Rs.1,54,796.00
18.04.2016	- Rs.2,72,769.00		
25.04.2016	- Rs.3,16,844.00		
02.05.2016	- Rs.3,56,965.00		
09.05.2016	- Rs.3,81,683.00		
17.05.2016	- Rs.3,15,587.00		
23.05.2016	- Rs.4,89,405.00		
30.05.2016	- Rs.5,07,487.00		
06.06.2016	- Rs.3,84,780.00		
13.06.2016	- Rs.3,65,751.00		

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44. Apart from that, it is represented on behalf of the Respondents 4 to 6 that even the Annadhana Hundial income had raised manifold after



the Temple was taken over and the same is as follows:-

	Previous Income
03.05.2016 - Rs.1,58,710.00	25.01.2016 - Rs.32,603.00
25.04.2016 - Rs. 93,177.00	21.12.2015 - Rs.17,711.00
28.03.2016 - Rs.1,24,510.00	23.11.2015 - Rs.27,945.00
but on 29.02.2016 - Rs.22,946.00.	

45.The Learned Counsel for the Respondents 4 to 6 contends that tickets are being introduced to regulate the income of the Temple and till now, there was not tickets for garland, coconut collections, ear boring, head tonsuring etc. and now, after obtaining necessary permission from the Department, for auctioning the right of license of coconut collections, ear boring, head tonsuring etc.and all steps are being taken to regulate the Temple administration and steps are being taken to remove the encroachment.

46.The Learned Counsel for the Respondents 4 to 6 submits that there were 10 Hereditary Trustees and 8 were dismissed from service as per proceedings in G.O.(நினைவு)No.158, TC&RE (RE3-1) Department dated 13.05.2016, and one Pandian Poosari died and there are disputes in Courts for next line in succession in O.S.No.92 of 2013 on the file of District Court, Madurai between **MARUTHUPANDIAN AND SEETHALAKSHMI** and the said place is still lying vacant and that the other Hereditary Trustee P.M.Chellapandian was dismissed from service on 06.07.2013 and his Appeal under Section 114 of the Act was dismissed. Thereafter, he filed O.S.No.305 of 2015 on the file of Sub Court (Camp) Melur and the same is pending. Further, the other place is lying vacant and hence, to administer and manage the Temple, Fit Person was appointed by the Government and he took charge of the Temple on 07.03.2016. As a matter of fact, after taking over the administration of the Temple by the Fit Person, the income of the Temple had increased manifold.

47.The Learned Counsel for the Respondents 4 to 6 contends that the Petitioner has no *locus standi* to file the present writ petition after the dismissal of his petition from the office of Trusteeship and in fact he has a remedy under Section 114 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Also that after taking over the administration, there is an investment of Rs.40 lakhs by the Temple and Rs.1 lakh in respect of Annathanam and the Temple is grouped with Arulmigu Subramaniasway Temple, Thirupparankundram, Madurai and the administration has taken all effective steps to manage in proper manner and it is rectifying the mismanagement of the previous Hereditary Trustees.

48.The Learned Counsel for the Respondents 4 to 6 cites the decision of Hon'ble Supreme Court in **NAGENDRA NATH v. COMM. OF HILLS DIVISION** reported in **AIR 1958 SC 398**, wherein at special page 400, it is inter alia observed and held as under:-

"... It is not for the High Court or Supreme Court to examine the order in any detail. Where an Act has created its own hierarchy of officers and appellate authorities to administer the law the High Court has no concern with the manner in which those powers have been exercised so long as those authorities have functioned within the letter and spirit of the law."



49. Also in the aforesaid decision at page No.400, it is observed as under:-

"The powers of judicial interference under Art.227 with orders of judicial or quasi-judicial nature are not greater than the powers under Art.226. Under Art.226, the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Art.227 the power of interference is limited to seeing that the tribunal functions within the limits of its authority.

Although ordinarily the Supreme Court would not entertain an appeal against an interlocutory order passed by the High Court in the writ proceedings pending before it yet it would interfere with such orders when exceptional and unusual features in the case presented before it warrant such interference."

50. The Learned Counsel for the Respondents 4 to 6 relies on the decision of Hon'ble Supreme Court in **CALCUTTA GAS COMPANY (PROPRIETARY) LTD., v. STATE OF WEST BENGAL AND OTHERS** reported in **AIR 1962 SC 1044**, wherein it is held as follows:-

"Article 226 in terms does not describe the classes of persons entitled to apply there-under; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. The existence of the right is the foundation of the exercise of jurisdiction of the High Court under Art.226. The legal right that can be enforced under Art.226, like Art.32, must ordinarily be the right of the Petitioner himself who complains of infraction of such right and approaches the Court for relief. The right that can be enforced under Art.226 also shall ordinarily be the personal or individual right of the Petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified. AIR 1952 SC 12 and AIR 1951 SC 41, Foll."

51. Apart from that, the Learned Counsel for the Respondents 4 to 6 cites the decision of the Hon'ble Supreme Court in **JASBIR SINGH CHHABRA v. STATE OF PUNJAB** reported in **2010 (4) SCC 192**, wherein at special page Nos.193 and 194, it is observed and held as follows:-

"It is trite to say that while exercising power of judicial review, the superior courts should not readily accept the charge of malus animus laid against the State and its functionaries. The burden to prove the charge of mala fides is always on the person who moves the court for invalidation of the action of the State and/or its agencies and instrumentalities on the ground that the same is vitiated due to mala fides and the courts should resist the temptation of drawing dubious inferences of mala fides or bad faith on the basis of vague and bald allegations or inchoate pleadings. In such cases, wisdom would demand that the court should insist upon furnishing of some evidence by the petitioner in support of his/her allegations.

In a democratic polity like ours, the functions of the Government are carried out by the different individuals at



different levels. The issues and policy matters which are required to be decided by the Government are dealt with by several functionaries some of whom may record notings on the files favouring a particular person or group of persons. Someone may suggest a particular line of action, which may not be conducive to public interest and others may suggest adoption of a different mode in the larger public interest. However, the final decision is required to be taken by the designated authority keeping in view the larger public interest. The notings recorded in the files cannot be made the basis for recording a finding that the ultimate decision taken by the Government is tainted by mala fides or is influenced by extraneous considerations. This Court is duty-bound to carefully take note of the same."

52. Furthermore, the Learned Counsel for the Respondents 4 to 6 refers to the Division Bench decision of this Court in **T.K. SAMINATHAN v. THE SPECIAL COMMISSIONER AND COMMISSIONER OF LAND ADMINISTRATION** reported in **2011 (4) CTC 48**, wherein at special page 54, at paragraph No.9, it is among other things, observed as follows:-

"... When public interest and private interest are pitted against each other, it is the well settled proposition of law that the public interest will have to be prevailed over private interest and the Courts have to lean to uphold the public interest in preference to the private interest. The said principles is reiterated by the Supreme Court in the case of **STATE OF UTTAR PRADESH AND OTHERS v. BHUPENDRA NATH TRIPATHI AND OTHERS, 2010 (8) Supreme 690 : 2010 (11) Scale 521**. In the said Judgment, the Supreme Court held as follows:-

.... In cases like these, interest of individuals cannot be placed above or preferred to larger public interest. [See *L.Muthukumar v. State of Tamil Nadu, 2000 (7) SCC 618 : 2000 (6) Scale 536*]....."

53. As regards the prime plea taken on behalf of the writ Petitioner that the impugned order dated 12.05.2016 of the Second Respondent/Commissioner, HR & CE Department, is in breach of the principles of natural justice viz., that although the Trustees are under suspension, they are entitled to notice before appointment of an Executive Officer, it is to be pointed out by this Court that the office of 'Hereditary Trusteeship is a property' and undoubtedly, it is entitled to claim protection. As a matter of fact, the ingredient of Section 45 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, does not specify the issuance of any notice or conduct of an enquiry, but it does not mean that by exercising power under Section 45 of the Act, the Second Respondent/Commissioner can make an inroad into the position of 'Hereditary Trustee'. Apart from that, the power under Section 45 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, in regard to 'appointment and duties of Executive Officers', the same cannot be construed as one enabling the Second Respondent/Commissioner, H.R. & C. E. Department to exercise the power and appointment of the Executive Officer based on his own Will. As such, before appointing an Executive Officer, the Trustees (whether functioning or under suspension), must be informed of necessary reasons,



which would justify the appointment of Executive Officer requiring them to submit their explanation and only after taking into account of the objections/explanations, the Commissioner, H.R. & C.E. Department, is to exercise his power for appointing an Executive Officer based on facts and circumstances of a given case. The rudimentary aspect of adhering to the Principles of Natural Justice would require that the Hereditary Trustees who are in control/management of the Administration of the Temple (whether functioning or under suspension based on some charges levelled against them) ought to be given notice and opportunity to show cause against such Executive Officer's appointment, in the considered opinion of this Court. Unfortunately, in the instant case, before appointment of Executive Officer by means of issuance of impugned order dated 12.05.2016, the Trustees were not issued with show cause notice and their objections were not obtained. Further, without issuance of show cause notice and not receiving their objections, indeed the impugned order dated 12.05.2016 was passed by the Second Respondent and in this regard, there is violation of Principles of Natural Justice.

54. In this connection, it is to be borne in mind that on behalf of the Respondents, it is represented that on 02.03.2016 8 Trustees were suspended and on 07.03.2016, the Fit Person took charge and in fact, when the 8 Trustees were not functioning on the date of passing the impugned order, dated 12.05.2016 by the Second Respondent/Commissioner, H.R. & C. E. Department, then, there is no need for issuance of notice to them. Also it is the categorical stand of the Respondents that only when they are in service, the aspects of issuance of notice would arise. In short, the legal plea taken on behalf of the Respondents is that when the 8 Trustees were not there in the administration of the Temple and they were under suspension, on the date of passing the impugned order dated 12.05.2016, the question of issuance of notice would not arise.

55. It is to be relevantly pointed out that even though the Commissioner of H.R. & C.E. Department has wide power under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, to appoint a Fit Person to any Institution, where a Hereditary Trustee is under suspension, still he must bear in mind the 'General Law', under which, the next of kin of Hereditary Trustee would be entitled to fill up the vacancy. Hence, before appointing an outsider or Executive Officer as a Fit Person, indeed the Commissioner of H.R. & C.E. Department should apply his mind and come to a conclusion that there are no persons in the family of Hereditary Trustee who could be appointed as per decision in **SHANMUGA CHETTIAR v. COMMISSIONER, H.R. & C.E., MADRAS**, reported in **1962 (1) MLJ 60 NORC**. In fact, the power to appoint a Fit Person under Section 54 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, is only an enabling provision exercisable in certain contingencies specified in section. However, the discretion in this regard to be exercised must be done objectively in the scenario of the specified conditions stated in the section.

56. It is to be noted that in Law, Suspension from service of an individual marks an interlude before commencing a formal disciplinary action. Even though the welfare of the Temple/Institution is paramount consideration of a Court of Law, yet this Court is of the considered opinion that when Hereditary Trustees in the instant case, although they are under suspension, yet the Principles of Natural Justice call for a



show cause notice to be issued in such a case before appointing an Executive Officer. In fact, the power under Section 45 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, can be exercised irrespective of the fact that a particular Temple is a 'denomination Temple or Community Temple'. Even in cases of Mal-administration and mismanagement of a particular Temple, even though the Commissioner by means of the ingredients of Section 45(1) of the has power to appoint an Executive Officer, the same is to be done by following the Principles of Natural Justice, as opined by this Court. After all, the Principles of Natural Justice are not the edicts of a statute. In reality, everything that affects Homo-Sapien in his Civil life 'Inflicts a Civil Consequence', as opined by this Court.

57. Viewed in that perspective, admittedly, in the present case, 8 Trustees, who were suspended, were not issued with any show cause notice and further, their explanations were not obtained by the Second Respondent. In fact, without issuance of show cause notice and not receiving any explanations from the concerned 8 Trustees (who were under suspension), the Second Respondent/ Commissioner, HR & CE Department had issued the impugned notice, dated 12.05.2016 and in this regard, there is violation of Principles of Natural Justice. Resultantly, on that score alone, the impugned order dated 12.05.2016 is liable to be set aside.

58. Dealing with the aspect that the Petitioner as against the impugned order, dated 12.05.2016, passed by the Second Respondent, has a viable alternative remedy under Section 114 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, before the Government, it is to be pointed out that when there is violation of Principles of Natural Justice, a Writ of Certiorari would lie, where a judicial or quasi-judicial authority has breached the Principles of Natural Justice, even though the authority had acted within his jurisdiction. In fact, an administrative or any quasi-judicial authority for that matter, cannot make any decision adverse to any party without providing an adequate opportunity of meeting, any relevant allegation against him. Suffice it for this Court to make a significant mentioned that every individual, whose Civil right is affected, must have a reasonable notice of the case, he has to meet or must be furnished with information, upon which, an action is based. In reality, he must have a reasonable opportunity of being heard in his defence or to meet the case against him. Also, it cannot be forgotten that the Rules of Natural Justice are fundamental principles, which are applicable to almost wide range of administrative actions. Furthermore, when there is a legal right, Principles of Natural Justice can be invoked. Also that where proceedings require taking of evidence, then, one must provide an opportunity of adducing of relevant materials/evidence on which he relies.

59. Coming to the aspect that the Principal Secretary to Government before whom the enquiry was pending had acted as Commissioner and has appointed the Executive Officer by means of the impugned order dated 12.05.2016, for the same set of allegations for which, an enquiry was pending before the very same person and therefore, there is 'bias' as projected on the side of the petitioner, it is to be pointed out that the Second Respondent/Commissioner, H.R. & C.E. Department, holding charge as Secretary to Government, had acted in a different capacity and



in fact, it is to be remembered that the charges were framed and enquiry was held and orders were passed against the Hereditary Trustees concerned, who were dismissed from service on 13.05.2016 and this was done under Section 53 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. However, the Second Respondent, as Commissioner, H.R. & C.E. had appointed an Executive Officer under Section 45(1) of the Act and in this regard, it is the plea of the Respondents 1 to 3 that as per G.O.Ms.No.260, Tourism, Culture and Religious Endowments (RE4-2), dated 06.11.2015, the Rules were framed in respect of 'Conditions for Appointment of Executive Officers Rules, 2015'. In this regard, the Respondents 1 to 3 place heavy reliance on Rule 3 of the 'Conditions for Appointment of Executive Officers Rules, 2015', wherein 10 contingencies were specified for appointment of an Executive Officer by the Commissioner, in respect of a Religious Institutions for such period or periods, to be specified by the Commissioner in the order not exceeding five years period at a time.

60. At this stage, this Court, very significantly points out that Rule 3 of the aforesaid Rules, 2015, clearly enjoins the Second Respondent/Commissioner, H.R. & C.E. Department, to hold an enquiry as he considers necessary and expedient in the interest of such Religious Institutions. In the instant case on hand, this Court very pertinently points out that before passing the impugned order, dated 12.05.2016, the Second Respondent/Commissioner, H.R. & C.E. Department, had not issued any prior notice to the 8 Hereditary Trustees, who are under suspension and also not received their objections. In short, without issuing notice to them and not receiving their objections, the Second Respondent/Commissioner, H.R. & C.E. Department, had passed the impugned order, dated 12.05.2016 appointing the Executive Officer for the Temple. Even for an appointment of Executive Officer, the objections and views of the Hereditary Trustees, who are under Suspension, should have been sought for and received by the Second Respondent/Commissioner, H.R. & C.E. Department, based on the Principles of Natural Justice. In short, there is violation of Rule 3 of the 'Conditions for Appointment of Executive Officers Rules, 2015', by the Second Respondent/Commissioner, H.R. & C.E. Department, because of the simple reason that Hereditary Trustees were not issued with show cause notice, their objections were not received and no enquiry was held. On that basis also, the impugned order, dated 12.05.2016, passed by the Second Respondent/Commissioner, H.R. & C.E. Department, in appointing Executive Officer for the Temple in question, suffers from infirmity, in the Eye of Law.

61. Apart from that, although the First Respondent having conducted an enquiry on 11.04.2016 in his position as 'Principal Secretary to Government', he passed the impugned order dated 12.05.2016, under Section 45 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. While passing the impugned order, dated 12.05.2016, the First Respondent acted as Commissioner, H.R. & C.E. Department (Second Respondent) and although it is termed as 'Dual' capacity, yet before appointing the Executive Officer, by means of the impugned order, dated 12.05.2016, a prior notice or show cause notice should have been given to the 8 Hereditary Trustees who are under Suspension at that point of time and the objections ought to have been received and subsequently adverted to. Unfortunately, these things were conspicuously absent in the impugned order, dated 12.05.2016. On that score also, the impugned



order suffers from legal flaw, in the considered opinion of this Court. In any event 'the concept of dual capacity' by the same person (in the instant case, the Second Respondent acting as Secretary to Government and Commissioner, H.R. & C.E.) cannot be taken advantage of by the respondents, especially, when they want to invade into/curtail the rights of the Hereditary Trustees (who are under suspension at the time of passing the impugned order), in regard to the functioning, management and control of the Temple.

62. It is not out of place for this Court to aptly point out that Rule 2 of 'The Religious Institutions (Lease of immovable property) Rules, 1963, speaks of 'Lease by Public Auction'. Rule 3 refers to 'Period and Terms of Lease'. Rule 4 deals with 'Auction Notice'. Rule 5 enjoins 'Particulars to be Furnished in the Auction Notice'. Rule 8 deals with 'Grant of Lease'. Rule 9 speaks of 'Security'. Rule 10 under the Head 'Extension' says that no provision for extension of the Lease shall be made in the Lease Deed'. Rule 11 relates to 'Lease otherwise than by Public Auction'.

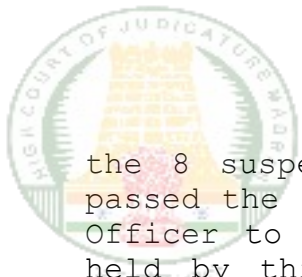
63. In fact, Rule 12(1) speaks as under:-

"When a lease is granted for a period of less than five years, any further extension of lease upto a period of five years from the date it was originally granted shall be made only with the previous sanction of the Commissioner. Leases exceeding five years shall be made in accordance with the provisions contained in section 34."

64. As a matter of fact, Section 6 (22) of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, defines 'Trustee' meaning any person or body by whatever designation known in whom or in which the administration of Religious Institution is vested and includes any person or body who or which is liable as if such person or body were Trustee. Indeed, the definition of 'Trustee' would include defacto Trustees exercising the power of Trustees. Even a defacto Trustee can alienate Trust properties so long as he acts bona fide and for the benefit of the Trust, as opined by this Court. Also, in case of co-trustees, the office is a joint one and they form a 'Collective Body' and discharge their duties and exercise their rights in a joint capacity, as per settled legal position in respect of Section 28 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

65. To put it precisely, the power of Commissioner under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, and while exercising such powers, the principles to be borne in mind are explained in the decision in **P.L.S.K.R.L. CHANDRAMOULEESWARAN v. COMMISSIONER, H.R. & C.E., 1997 (2) MLJ, 588.**

<https://hcservices.courts.gov.in/hcservices> 66. Be it noted that it may and in the upshot of detailed qualitative and quantitative discussions and also this Court taking note of the facts and circumstances of the present case, the Second Respondent/Commissioner, HR & CE Department had not issued any show cause notice to



the 8 suspended Trustees and also not received their objections, had passed the impugned order, dated 12.05.2016, by appointing the Executive Officer to Arulmigu Pandi Muneeswarar Temple and in this regard, it is held by this Court that there is violation of Principles of Natural Justice. Indeed, on that count also, the impugned order dated 12.05.2016 passed by the Second Respondent/Commissioner, HR &CE Department, is liable to be set aside in furtherance of substantial cause of justice. Further, this Court opines that since there is a violation of Principles of Natural Justice, the writ of Certiorari filed by the writ Petitioner is perfectly maintainable before this Court, because of the reason that 'Rules of Natural Justice or fundamental Principles' are applicable to almost whole range of administration of powers or quasi-judicial powers to be exercised by the concerned authorities. In the instant case, the Petitioner by exercising his legal right has complained that the Second Respondent had violated the Principles of Natural Justice while passing the impugned order dated 12.05.2016 and therefore, filed the present writ petition, which is per se maintainable in Law. Also that in the present case, even for ordering the present Temple as group Temple of the sixth Respondent, the Hereditary Trustees who were under suspension at the time of passing the impugned order, dated 12.05.2016 should have been given prior notice and their objections should have been received and thereafter only, the orders ought to have been passed in the subject matter in issue, in the considered opinion of this Court.

67. In view of the foregoing, the writ petition is allowed leaving the parties to bear their own costs. The impugned order dated 12.05.2016 passed by the Second Respondent/Commissioner, HR &CE Department, is set aside for the reasons assigned in this writ petition. At this stage, this Court makes it abundantly clear that since it has allowed the present writ petition by setting aside the impugned order, dated 12.05.2016, passed by the Second Respondent/Commissioner, HR &CE Department, on the ground of violation of Principles of Natural Justice, it has not gone into the merits of controversies between the respective parties keeping in mind of the fact that writ petitions filed by the concerned parties, challenging charge memo, order suspending Trustees, order appointing Fit Person are pending independently in W.P.(MD) Nos.4741 to 4743; 5262; 5364 to 5366; 5386 to 5388; 5338 to 5340 of 2016 are pending before this Court. Liberty is granted to the Second Respondent/Commissioner, HR &CE Department, to pass fresh orders in the subject matter in issue by issuing show cause notice to the Trustees of the Temple (including the Trustees under Suspension) and to receive their objections/remarks for appointment of Executive Officer and thereafter, the Second Respondent/Commissioner, HR &CE Department, is to pass a reasoned, speaking order on merits by adverting to the objections raised and scrupulously adhering to the relevant provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, (ofcourse by providing adequate opportunity to the concerned Trustees and others, if any). Liberty is granted to the petitioner and other Trustees to raise all factual and legal pleas before the Second Respondent/Commissioner, HR &CE Department, in the manner known to Law and in accordance with Law. The Second Respondent/Commissioner, HR &CE Department, shall pass orders afresh in the subject matter in issue in a fair and free manner with an open mind and that too, in an unbiased manner and dispassionate manner, as he deems fit and proper and based on the facts and



circumstances of the present case, which float on the surface. Consequently, connected Miscellaneous Petition is closed.

Sd/

Assistant Registrar (CS-I)

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Sub Assistant Registrar

To:

1. The Principal Secretary,
Tourism, Culture and Charitable (ANi3-1) Department,
Fort St. George, Secretariate, Chennai - 600 009.
2. The Commissioner, Hindu Religious and Charitable Endowment Department,
Chennai - 600 034.
3. The Joint Commissioner,
Hindu Religious and Charitable Endowments Administration Department,
Madurai - 625 001.
4. The Fit Person, Arulmigu Pandi Muneeswarar Temple,
Melamadai, Madurai District.
5. The Executive Officer/Joint Commissioner,
Arulmigu Subramaniaswamy Thirukkivil,
Thirupparankundram, as Executive Officer
of Arulmigu Pandi Muneeswarar Temple,
Melamadai, Madurai District.
6. The Deputy Commissioner/Executive Officer,
Arulmigu Subramaniaswamy Thirukkivil,
Thirupparankundram.

+1cc to Mrs. J. Anandhavalli, Advocate in SR.No.36708

+1cc to Special Government Pleader in SR.No.33914

+1cc to Mr. S. Manohar, Advocate in SR.No.37023

Pre-Delivery Order Made in
W.P. (MD) No.10257 of 2016
15.07.2016

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PA/NGM-MP/SAR II/15.07.2016/20P/10C (IT)