



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 28.07.2016

ORDERS DELIVERED ON : 17.08.2016

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THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.P.(MD) Nos.12125 to 12129 of 2016
and

WMP(MD)Nos.9252 to 9256 of 2016

P.Krishnamoorthy

.. Petitioner in W.P.(MD)No.12125 of 2016

P.Santhanakrishnan

.. Petitioner in W.P.(MD)No.12126 of 2016

P.Thanda Kudumban

.. Petitioner in W.P.(MD)No.12127 of 2016

E.Ponnusamy

.. Petitioner in W.P.(MD)No.12128 of 2016

V.Perumal

.. Petitioner in W.P.(MD)No.12129 of 2016

vs.

1.The Commissioner,

Hindu Religious & Charitable Endowments Department,
Nungambakkam High Road, Chennai.

2.The Joint Commissioner,

Hindu Religious & Charitable Endowments Department,
Madurai.

3.The Executive Officer,

Arulmigu Vigneshwarar Vagaiyara Thirukovil,
Old Ayakudi, Palani.

4.The Inspector,

Hindu Religious & Charitable Endowments Department,
Devasthanam Chathiram,
Railway Feeder Road, Palani.

.. Respondents in all the Writ Petitions

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned orders in Se.Mu.Na.Ka.No.2578/2016/Aa1-1; Se.Mu.Na.Ka.No.2578/2016/Aa1-2; Se.Mu.Na.Ka.No.2578/2016/Aa1-2; Se.Mu.Na.Ka.No.2578/2016/Aa1-2; Se.Mu.Na.Ka.No.2578/2016/Aa1-2 respectively, as well as the



consequential order in Se.Mu.Na.Ka.No.2578/2016/Aa1-3 passed by the 2nd respondent both dated 20.06.2016 and quash the same.

For Petitioners in
all the W.Ps. : Mr.G.Prabhu Rajadurai
For R1, R2 & R4 in
all the W.Ps. : Mr.V.R.Shanmuganathan
Special Government Pleader
For R3 in all the
Writ Petitions : Mr.Muthugeethayan

C O M M O N O R D E R

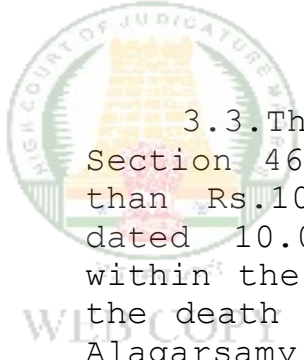
Heard the Learned Counsel for the Petitioners; the Learned Special Government Pleader for the Respondent Nos.1, 2 and 4 and the Learned Counsel for the Third Respondent.

2.The Petitioners have preferred the present writ petitions seeking to call for the records relating to the impugned orders in Se.Mu.Na.Ka.No.2578/2016/Aa1-1; Se.Mu.Na.Ka.No.2578/2016/Aa1-2; Se.Mu.Na.Ka.No.2578/2016/Aa1-2; Se.Mu.Na.Ka.No.2578/2016/Aa1-2 respectively, as well as the consequential order in Se.Mu.Na.Ka.No.2578/2016/Aa1-3 passed by the Second Respondent, dated 20.06.2016 and to quash the same.

3. The Factual Matrix of the Writ Petitions:-

3.1.According to the Petitioners, they were Hereditary Trustees of Arulmigu Vigneshwarar Vagaiyara Temple, Old Ayakudi, Palani and three sub-temples viz., Arulmigu Idumban Temple, Sivagiripatti, Palani, Utchimakaliamman Kovil and Muthupetchi @ Kaliamman Kovil as well as the present Chairman of Trust Board of Arulmigu Vigneshwarar Vagaiyara Temple. The aforesaid Temples were originally built by their forefathers and they were in complete administration and management of the affairs of the temple. As a matter of fact, a scheme was also settled in O.A.No.142 of 1929, which was later modified in O.A.No.290 of 1935 as well as the subsequent order, dated 20.01.1936, by the then Board by exercising its powers under Sections 18 & 63 (iii) of the Old Act II of 1927.

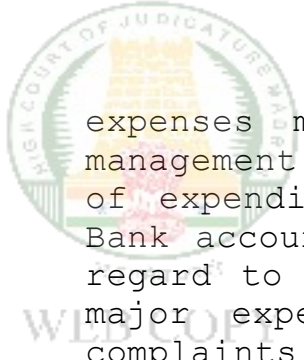
3.2.By virtue of the order made in O.A.No.25 of 1978, dated 28.11.1978, by the then Deputy Commissioner for HR&CE (Admn) Department, Madurai, the father of the Petitioner in W.P.(MD) No.12125 of 2016 viz., P.Krishnamoorthy and five others were appointed as Hereditary Trustees pertaining to the above said four temples and that the whole management of the temple was with the Hereditary Trustees of the temple and later the department appointed Executive Officer for the temple in order to manage the temple along with the Hereditary Trustees in the year 1984, in spite of the objections made by the earlier Hereditary Trustees.



3.3. The Arulmigu Vigneshwarar Temple is a listed temple under Section 46 (iii) of HR&CE Act, as the annual income is not less than Rs.10 lakhs. Indeed, the First Respondent by proceedings dated 10.09.1990 in Na.Ka.A2/72200/90 has brought the temple within the purview of Section 46 (iii) of HR&CE Act. Later, after the death of the Hereditary Trustees viz., Perumal, Thirumoorthy, Alagarsamy and Vallimuthu, the Second Respondent by proceedings dated 15.02.2011 in Pa.Mu.No.972/2011/A1 has recorded the writ Petitioners as Hereditary Trustees of the above said Arulmigu Vigneshwarar Temple. Even prior to that by means of proceedings dated 02.01.2009 and after the death of some of the Hereditary Trustees, the writ Petitioners were recorded as Hereditary Trustees. Besides, by means of proceedings of the Second Respondent dated 24.01.2009, the Petitioner in W.P.(MD)No.12125 of 2016 (P.Krishnamoorthy) was elected as the Chairman of the Trust Board. Later, by means of G.O.(Pa)No.29, dated 10.02.2015 Tourism, Culture and Religious Endowments (A.Ni.3.1) Department, the Petitioner in W.P.(MD)No.12125 of 2016 (P.Krishnamoorthy), was appointed as the Chairman of Trust Board of the above said Arulmigu Vigneshwarar Temple, Old Ayakudi, Palani as the other Trustees elected the Petitioner in W.P.(MD)No.12125 of 2016 (P.Krishnamoorthy), in the election conducted on 19.02.2014 by the government itself, since the temple is a listed temple under Section 46 (iii) of the HR&CE Act.

3.4. The Second Respondent, who was originally appointed as Executive Officer of the very same temple in the year 2001 started to act indifferently in one way or other due to personal animosity as he had difference of opinion in management of the temple with the then Hereditary Trustees and the earlier Hereditary Trustees have also made certain complaints against the Second Respondent while he was discharging his duties as the Executive Officer in the year 2001. Further, the erstwhile Executive Officer M.Ramasamy also due to various personal animosity, started to make frivolous complaints, since the writ Petitioners had not cooperated for his highhanded and arbitrary activities. As a matter of fact, the said Ramasamy also went to the extent of stating as if resolutions were passed by the Board of Trustees for keeping new Hundial in the Temple even in the absence of the alleged resolution itself. Immediately complaints were made against the Third Respondent to the Second Respondent, which infuriated the Third Respondent to make unnecessary complaints.

3.5. Later, the respondent Nos.2 & 3 found fault with the Trustees for no reasons and consequently the Third Respondent viz., M.Ramasamy to wreck vengeance made certain complaints to the Second Respondent and on complete coercion as well as compulsion received certain complaints from the temporary staff as well. The complaints were made as if there were mismanagement and misappropriation by the writ Petitioners with the earlier Executive Officer viz., Mr.K.Velusamy who was holding the office prior to Mr.M.Ramasamy as Executive Officer. As a matter of fact the writ Petitioners have absolutely no role with regard to the



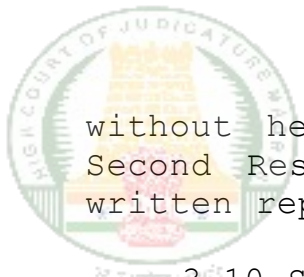
expenses made by the Executive Officer and even the mode of management of temple will also explicit the same. The whole power of expenditure is only with the Executive Officer and even the Bank account is being operated only by the Executive Officer with regard to the day-to-day expenses to be made as well as for the major expenses. As such it is not known on what basis the complaints were made.

3.6. The plea of the Petitioners is that the Second Respondent/Joint Commissioner, Hindu Religious & Charitable Endowments Department, Madurai, without any authority or jurisdiction, had issued a notice dated 02.05.2016 followed by another show cause notice, dated 20.05.2016 to the other Hereditary Trustees listing out the charges purported to be one under Section 26 (h) of HR&CE Act in order to initiate proceedings under Section 26 to supersede the Hereditary Trusteeship as well as the Board of Trustees.

3.7. It is to be remembered that Second Respondent/Joint Commissioner, Hindu Religious & Charitable Endowments Department, Madurai, has no jurisdiction at all to initiate proceedings under Section 26 (h) (4) of the HR&CE Act, especially the powers under Section 26 cannot be invoked against Trustees appointed on succession. Also that by virtue of Section 53 (1) (a) it is within the domain of the Government to initiate any proceedings either to suspend, remove or dismissal of the Trustees, especially on the admitted fact the temple is a listed temple under Section 46 (iii) of the HR&CE Act and the Trustees appointed are only by way of line of succession (Hereditary) by virtue of the order dated 28.11.1978 passed in O.A.No.25 of 1979 under Section 63 (b) of the HR&CE Act by very office of the Second Respondent.

3.8. There is no necessity to submit a reply in respect of the purported charges levelled against the writ Petitioner in W.P.(MD) No.12125 of 2016 in respect of notice dated 02.05.2016 as well as 20.05.2016. In regard to the request of the writ Petitioner (P.Krishnamoorthy), instead of issuing the documents, in a strange manner, the Second Respondent's office had replied as if the documents will be supplied only after the enquiry is over which is unknown to law and contrary to rudimentary principles of law. In reality, the entire contents of the notice issued by the Second Respondent dated 02.05.2016 are contrary to records and a farfetched one.

3.9. A specific representation was made to the First Respondent pointing out the highhanded attitude of the Second Respondent/Joint Commissioner, Hindu Religious & Charitable Endowments Department, Madurai, and specifically requested to set aside the proceedings of the Second Respondent as well as to cancel the very enquiry which has no sanction in Law. But, with <https://hdservices.com/india/hlservice> records, a reply was prepared for the show cause to be submitted on 13.06.2016, the date on which the final enquiry was scheduled. However, without any enquiry whatsoever, even



without hearing the writ Petitioners or even meeting them, the Second Respondent simply went away, even without accepting the written reply.

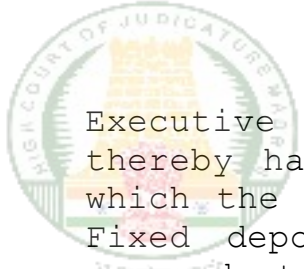
3.10. Subsequently, the Second Respondent/Joint Commissioner, Hindu Religious & Charitable Endowments Department, Madurai, in a premeditated and preconceived notion absolutely without conducting any enquiry passed the impugned proceedings dated 20.06.2016 by invoking Section 26 (h) (4) of the HR&CE Act and has passed an order by superseding the very Trusteeship. In short, the entire contents of the impugned proceedings dated 20.06.2016 is contrary to law, facts as well as admitted records. In a similar fashion, the Second Respondent passed an order on the very same day by superseding all the other five Hereditary Trustees by invoking Section 26 (h) (4) of HR&CE Act absolutely without any application of mind and the entire proceedings are vitiated. Also, on 20.06.2016, the Second Respondent/Joint Commissioner, Hindu Religious & Charitable Endowments Department, Madurai, appointing the Fourth Respondent as 'Thakkar' of the temple and also directed the writ Petitioners to hand over the entire affairs to the Fourth Respondent as well as file a report by the Fourth Respondent after taking over charge of the temple.

4. Gist of Respondents' Common Counter:-

4.1. The writ petitions are not maintainable because of an availability of an effective alternative remedy of filing an 'Appeal' under Section 26 (5) of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The writ Petitioners were recorded as Hereditary Trustees and Petitioner in W.P.(MD). No.12125 of 2016 was recorded as Chairman of Board of Trustees etc.

4.2. As a matter of fact, the Chairman of Board of Trustees was elected on 19-02-2014 for a period of 2 years and the same was approved vide G.O.(Pa).No.29 dated 10-02-2015. The controversy of the Petitioners with the then Executive officer pertains to placing of a 'Hundial' at the temple and which controversy has nothing to do with the present Lis.

4.3. In reality, the present issue refers to the acts of the Chairman of Board Trustees adverse to the welfare and interest of the temple. The temple staffs, who are collecting the 'Fee' from the 'Barbers' engaged in the work of tonsuring at the temple were prevented from collection and in that regard the staffs have given a complaint. Also that, he had prevented collection of fee from the heavy and light vehicles entering the temple for a period of 3 years and thereby had caused loss to the Institution. In fact, the Chairman, Board of Trustees had threatened the clerk and computer operator of the temple that they should not do any other work, than what he had assigned to them. In fact, he had Jointly with the then executive officer one K.Veluchamy and had spent the temple funds arbitrarily. Moreover, the Chairman had suomotu adjourned a tender on his own without consulting the

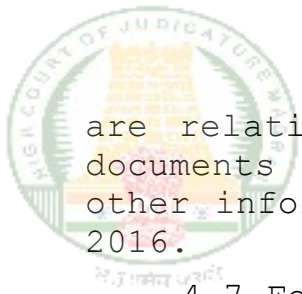


Executive Officer and without passing a Board Resolution and thereby had caused loss to temple (in the adjourned tender), in which the bid amount had gone 15.34% less than the previous year. Fixed deposits of the temple, have been changed without being renewed, to other banks to the disadvantage of the temple.

4.4. Apart from the above, the Trustees together with the then Executive Officer without permission of the Commissioner, HR & CE Department, had paid Rs.5,37,026/- to a contractor, in whose favour tender was given, exceeding the financial sanction by the Commissioner for the work, though there was a resolution in the Board that the permission of commissioner shall be obtained and thereafter payment be made. There is a considerable reduction in the sale of tickets in the temple. In regard to the sale of tickets, there is a considerable reduction. Also, that there were numerous complaints against the then Executive Officer and the Chairman of the Board of Trustees.

4.5. In view of the fact that in all respects, the Chairman of the Board of Trustees had acted against the interest of the temple, he had acquired disqualification within the meaning of Sec 26(h) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Therefore, a show cause notice, dated 02-05-2016, calling up on him for an enquiry, since the other Trustees were silent spectators to these illegalities and have abetted them in such acts as against the interest of the institution, show cause notice was issued to other Trustees on 20-05-2016. Further, the enquiry was held on 23-05-2016, 08-06-2016 and 13-06-2016. They had also submitted their objections/Explanations in the form of written statement. After considering all materials available on record and the explanation submitted by the Petitioners, this Second Respondent/Joint Commissioner, Hindu Religious and Charitable Endowments Department, Madurai, had passed two independent proceedings dated 20-06-2016, superseding the Chairman and the Trustees u/s 26(4) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. As an interim measure, by means of separate proceedings, dated 20-06-2016, a fit person was appointed, because of the fact the Trustees were superseded. The then Executive Officer Mr. Velusamy, who was hand in glove with the Chairman of the Board of Trustees was suspended from service and charges were framed against him and departmental proceedings is pending against him.

4.6. It is not correct to take a plea that the Second Respondent/Joint Commissioner, Hindu Religious and Charitable Endowments Department, Madurai, has no jurisdiction to initiate proceedings u/s 26 of the Act, as the temple is listed u/s 46(iii) of the Act and since the office of Trusteeship is Hereditary. In fact, there was an enquiry and the writ Petitioners have submitted their explanations/objections (including objection as to the jurisdiction of the Second Respondent) to hold enquiry. The documents, which were required by the Trustees under the RTI Act



are relating to enquiry. As such, a reply was given that those documents shall be furnished after completion of enquiry. The other informations were furnished as per proceedings, dated 05-05-2016.

4.7. For any 'Temple' either 'Listed' or Non Listed u/s 46(i) or 46(ii) or 46(iii) of the Act, the Authority to supersede Hereditary Trustees who are disqualified u/s 26 of the Act, is vested with Joint Commissioner or the Deputy Commissioner, as the case may be. The 'Appropriate Authority' for a listed temple u/s 46 (iii) of the Act, is Government for invocation of powers u/s 47 and 53 of the Act.

4.8. Under Section 53 of the Act, any disciplinary proceedings against existing and serving Trustees could be initiated. However, any disqualification proceedings against any Trustee either existing and serving or to be appointed could only be resorted to under Section 26 of the Act. As such, there is no need to invoke section 53 viz., to take disciplinary proceedings against existing and serving Trustees.

4.9. Section 53 is for existing and serving Trustees and for disciplinary proceedings against them. But section 26 is for 'All Trustees' either existing and serving or not and also for former Trustees and is for disqualification proceedings.

4.10. Inasmuch as the present proceedings are only disqualification proceedings, it is only a summary proceedings and it requires only an opportunity to show cause and explain. It cannot be equated to a quasi judicial proceedings as required u/s 53 to enable the delinquents to lead evidence and other things. In the present case, a show cause was issued and the Petitioners submitted their explanations and were considered before passing the impugned orders impugned. As such, there is no violation of any principles of natural justice. In short, the writ petitions are misconceived and the same are devoid of merits.

5. The Petitioners' Contentions:-

5.1. The Learned Counsel for the Petitioners contents that the impugned proceedings of the Second Respondent, dated 20.06.2016 is contrary to law, vitiated by Malice, without jurisdiction as well as contrary to the express provisions of the Tamil Nadu HR&CE Act, 1959. The Learned Counsel for the Petitioners urges before this Court that the Second Respondent has absolutely no jurisdiction to pass the impugned proceedings, dated 20.06.2016 as well as the very show cause notices dated 02.05.2016 & 20.05.2016 purported to be one under Section 26 (h) of the HR&CE Act.

5.2. It is reported on behalf of the writ Petitioners that the Second Respondent/Joint Commissioner, Hindu Religious and Charitable Endowments Department, Madurai, had exceeded its jurisdiction and even invoking Section 26 (h) of HR&CE Act even without advertting to the fact that the Petitioner is a Hereditary Trustee appointed in line of succession by virtue of Section 54 of

the HR&CE Act. Therefore, if at all any proceeding is sought to be initiated could be done only as contemplated under Section 53 of the HR&CE Act, and consequently, the whole proceeding initiated under Section 26 (h) of HR&CE Act stands vitiated.

5.3. At this stage, the Learned Counsel for the Petitioners projects an argument that the impugned proceedings of the Second Respondent is liable to be quashed on the sole ground that admittedly, the writ Petitioner (W.P.(MD)No.12125 of 2016) is a Hereditary Trustee as well as Chairman of the Board of Trustees as per Government Order in G.O.(Pa)No.29, dated 10.02.2015 Tourism, Culture and Religious Endowments (A.Ni.3.1) Department, as the temple, in which the Petitioner was appointed as a Chairman of Board of Trustees and Hereditary Trustee, is a listed temple under Section 46 (iii) of HR&CE Act. If at all any proceedings could be initiated, it could only by the Government as per Section 53 (1) (a) of HR&CE Act.

5.4. The Learned Counsel for the Petitioners proceeds to take a stand that the procedures envisaged under Section 26 is not similar to the one provided under Section 53 of the HR&CE Act and if at all any proceedings could be initiated, it should be only by the authority provided under Section 53 (1) (a) as the temple is a listed temple under Section 46 (iii) of HR&CE Act.

5.5. The Learned Counsel for the Petitioners takes a plea that the Petitioners as well as all other Trustees were appointed by way of line of succession in accordance with Section 54 of the HR&CE Act and under these circumstances, the powers provided under Section 26 cannot be invoked against the Hereditary Trustees at any extent. Absolutely, there is no charges levelled against the Hereditary Trustees, except the charges made against the Chairman of Board of Trustee. Therefore, the whole proceedings initiated against the Board of Trustee is unwarranted, especially, when there is no specific charge against them.

5.6. The Learned Counsel for the Petitioners strenuously projects an argument that the 2nd respondent/Joint Commissioner, Hindu Religious and Charitable Endowments Department, Madurai, had passed the impugned proceedings in a mechanical manner without advertting to the very earlier order passed in O.A.No.25 of 1978 under Section 63(b) of the HR&CE Act as well as the very scope of Section 46 (iii), 53 (1) (a) and the very limited scope of Section 26 of HR&CE Act.

5.7. The Learned Counsel for the Petitioners contends that the Petitioners were not provided with sufficient opportunity and admittedly the very documents i.e. the complaints which are put against the Petitioners were not supplied to them. Furthermore, it is brought to the notice of this Court on behalf of the Petitioners that the reply was sent by the office of the Second Respondent on 27.05.2016 under RTI Act as if the documents which were sought by the Petitioners as well as the other Trustees

would be supplied only after the enquiry was over, which is unknown to law and converse to the principles of natural justice and therefore, the whole proceeding stands vitiated .

5.8. The Learned Counsel for the Petitioners submits that pursuant to the proceedings dated 20.06.2016, the Second Respondent/Joint Commissioner, Hindu Religious and Charitable Endowments Department, Madurai, had passed yet another order on the same day on 20.06.2016 by appointing the Fourth Respondent/Inspector, Hindu Religious & Charitable Endowments Department, as 'Thakkar' of the Temple, which in violation of the Provisions of the Tamilnadu Hindu Religious and Charitable Endowments Act, 1959. In fact, a plea is taken on behalf of the Petitioners that the Second Respondent has no jurisdiction or authority of Law, to pass such an order considering the fact that the Temple is a listed one under Section 46(iii) of the HR&CE Act, and also the very order passed is contrary to Section 54 (2) of the HR&CE Act. Resultantly, it is represented on behalf of the Petitioners that the consequential order dated 20.06.2016 of the Second Respondent is bad in Law and the same is liable to be quashed.

6. Petitioners' Side Citations:-

6.1. The Learned Counsel for the Petitioners cites a decision of this Court in **S.V. RAMASWAMY POOSARI v. THE DEPUTY COMMISSIONER, HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS, MADURAI** reported in **1973 (1) MLJ 320**, whereby and where under, at paragraph No.8, it is observed as follows:-

"8. If the expression 'appropriate authority, is thus understood, then, the argument of Mr. Parasaran that if such a complaint is made against one or more of the members of such a Board that they have suffered the disqualifications mentioned in Sub-section (1) of Section 26, it is the duty of the Commissioner to enquire into it under Section 53 (1) (k) as the duly constituted authority under the Act has great force. The Commissioner in the instant case as the duly constituted authority has jurisdiction to enquire into the dispute of the temple in question. I am of the view that in such a contingency as in the instant case, where the presence or absence of Trustees from three consecutive meetings of such a Board is in dispute then, certainly, one has to find the machinery within the four corners of the Act itself which machinery has to be set in motion to find whether the complaint is justified or not. Section 26(4) as I have already staged, enables the Deputy Commissioner to supersede a Hereditary Trustee if such a Trustee suffers from any of the enumerated disqualifications under Section 26 (6). If the Deputy Commissioner supersedes such a Hereditary Trustee then it would not be impossible to conceive that under Section 53 (1), it is the Commissioner



who is the appropriate authority to decide whether the respondents impeded herein have absented themselves from three consecutive meetings of the Board of Trustees and whether further action would have to be taken by him as contemplated in Section 53 (c). Whenever a statute is silent about a process by which a right can be established, then equity steps in accordance with the maxim'' ubi jus, ibi remedium i.e., where there is a right there is a remedy." The argument of Mr. Krishnamurti that in the absence of a specific provision, in respect of such an enquiry under the Act, no enquiry at all should be undertaken is a wide contention and which I am unable to accept. The Petitioners project a right in themselves. Whether such a right exists or not, whether the Trustee who has absented himself has ceased to be a Trustee or not or whether the Constitution of the Board of Hereditary Trustees as claimed by the Petitioners is proper or not have to be enquired into and the Petitioners given the necessary relief. As no right can exist without a remedy, I am of the view that under Section 53 (2), the Commissioner, as the appropriate authority under Section 53 (1) (a) has the right to enquire into a controversy whether a particular Hereditary Trustee has absented himself from three consecutive meetings of the Board of Trustees and has, therefore, ceased to hold Office as such. Thus it is imperative that an enquiry after hearing all the parties, should be undertaken. Instead of doing this, the Commissioner has summarily rejected the petition and lodged it stating there was no case for interference and on the top of it, stated that the disqualifications mentioned in Section 26 (6) of the Act will not apply to Hereditary Trustees. I am unable to agree that the disqualifications referred in Section 26 (6) do not apply to a Hereditary Trustee. The scheme of the Act provides that a Trustee includes a Hereditary Trustee and therefore, the disqualification which an ordinary Trustee has to suffer under the Act, would equally be a disqualification for a Hereditary Trustee as well. It is open, however, to the appropriate authority which, in the instant case, is the Commissioner, to hold an open enquiry into the allegations about the alleged absence of the respondents and after such detailed enquiry come to a decision one way or the other. Until then, it cannot be said that the respondents have ceased to be Hereditary Trustees of this temple. In the light of the above discussion, it appears to me that if the Commissioner thinks it necessary to have a Chairman to the Board of Trustees, he may issue a fresh notice under the Act and ~~therein~~ ^{therein}, calling upon the Trustees to elect a Chairman. It is however, left to the discretion of the Commissioner to direct the Trustees to elect a Chairman

pending disposal of the enquiry in the complaint preferred by the Petitioners against the respondents."

6.2. The Learned Counsel for the Petitioners relies on the decision of the Hon'ble Supreme Court in **S. CHOCKALINGAM POOSARI AND OTHERS v. S.V. RAMASWAMI POOSARI AND OTHERS** reported in **AIR 1977 MADRAS 169**, wherein it is observed and held as under:-

"A Hereditary Trustee in a Board of Trustees will not cease to hold office merely because he absents himself from three consecutive meetings of such Board of Trustees within a period of two months. To hold that he so ceased would amount to extinguishing his right of succession and to continue his office by reason of his Hereditary right. S.26 itself draws a distinction between a Hereditary Trustee and a non-Hereditary Trustee and this distinction also is to be found in other sections.

While the expression 'Board of Trustees' in S.26(6) may apply to a Board of Trustees constituted under S.47 (1) and (2) or in exercise of power by the Hindu Religious and Charitable Endowments Board or the Commissioner, to settle a scheme of management, when the Board consists of Hereditary Trustees S.26(6) will have no application to such Hereditary Trustees. (1973) 1 Mad L J 320, Reversed."

6.3. The Learned Counsel for the Petitioners seeks in aid of the decision of this Court in **S. SANKARALINGAM POOSARI AND OTHERS v. THE JOINT COMMISSIONER, H.R. & C.E. ADMINISTRATION DEPARTMENT, SIVAGANGAI AND OTHERS** reported in **1997 (2) MLJ 529**, wherein at paragraph Nos.10 and 11, it is observed as under:-

"10. Learned senior counsel for the Petitioner submitted that the provisions of the Act do not permit removal of a Hereditary Trustees on the ground of his becoming very old, as the age limit of 70 prescribed for non-Hereditary Trustees does not apply to a Hereditary and therefore, the reason given for this removal being 'old age' was wholly illegal. It was also submitted that the respondents that Sec.53 of the Act which deals with removal or suspension of Hereditary Trustees has not been complied with, and the removal effected is in the purported exercise of power to supersede under Sec.26(4) which is not the provision that can be invoked for removing a Hereditary Trustee. Further submission was that rules of natural justice had not been complied with in effecting the purported removal of the Petitioner from the office of the Trustee.

11. These submissions for the Petitioner deserves to be upheld. The act does not prescribe any age limit of the Hereditary Trustee. The legislative intention is that as long as the Hereditary Trustee is capable of discharging his functions notwithstanding his age, he should be allowed to continue, as his right to function as Trustee is acquired by inheritance and not by appointment. The

Hereditary Trustees, to this extent, differ from other Trustees in the scheme of the Act."

6.4. Further, the Learned Counsel for the Petitioners in the aforesaid decision refers to paragraph No.19, wherein it is observed as under:-

"19. It is not in the interest of institution to leave it without a Chairman particularly, when the Fourth Respondent has admittedly been functioning as the Chairman of the institution from the year 1988 continuously. His continuing in office for some more time cannot be regarded as prejudicial to the institution. He is, therefore, permitted to hold office as Chairman for six months from to day, within which period, the authorities may take such proceedings as they may consider necessary for the removal of the Petitioner in the event of their considering him to have incurred any of the disqualification set out in Sec.53 of the Act. If no final order is passed on such proceedings initiated, or if no such proceeding is not initiated, a fresh meeting of the Board of Trustees shall be held at the end of the period of six months from to day for the purpose of electing a new Chairman."

6.5. The Learned Counsel for the Petitioners cites the Division Bench Judgment of this Court, dated 23.12.2009 in **W.A. (MD) No. 673 of 2008** between **S. RAMAKRISHNAN v. S. MARIMUTHU AND OTHERS**, wherein at paragraph Nos.12 to 14, it is observed as follows:-

"12. That apart, in the given facts and circumstances of the case, whether the First Respondent was appointed in terms of Section 26(1)(h) of the Act or he succeeded to the vacancy that arose in terms of Section 54 of the Act should be considered. If a permanent vacancy occurs in the office of Hereditary Trustee of a religious institution, the next person in the line of succession shall be entitled to succeed to the office. This provision entitles the next in the line of succession to succeed to the office without any consideration by the authorities in terms of Section 26(1) of the Act. In case of a dispute respecting the right of succession to the office either be it permanent or temporary or that when a Hereditary Trustee is a minor and has no guardian fit and willing to act as such or there is a dispute respecting the person who is entitled to act as guardian or when a Hereditary Trustee is by reason of unsoundness of mind or other mental or physical defect or infirmity unfit for performing the functions of the Trustee as provided under sub-section (3) of Section 54 of the Act, the Joint Commissioner or the Deputy Commissioner, as the case may be, may appoint a fit person to perform the functions of the Trustee of the institution until the disability of the



Hereditary Trustee ceases or another Hereditary Trustee succeeds to the office or for such shorter term as they may direct. The above provision under sub-section (3) of Section 54 shows the disqualification of the next in the line of succession to succeed to the office of Hereditary Trustee, indicating thereby that it is not a fresh appointment and it is only by way of succession. As against the said order, an appeal is also provided to the Commissioner in terms of sub-section (4) of Section 54 of the Act.

13. In addition to the above, an enquiry is also contemplated under Section 63 of the Act by the Joint Commissioner or Deputy Commissioner, as the case may be, in respect of a dispute. That apart, there is a power provided under Section 53 to the appropriate authority to suspend, remove or dismiss any Trustee if he ceases to profess Hindu religion or fails to discharge the duties and perform the functions of a Trustee in accordance with the provisions of the Act and the rules and so on. Clause (j) of sub-section (2) of Section 53 again refers to "acts adversely to the interests of the institution" as one of the disqualification. Therefore, if at all a person is aggrieved by the succession of Hereditary Trustee, he could only invoke the provisions of Section 63 and approach the Joint Commissioner to point out the disqualification enumerated under Section 53 insofar as it applies to the Hereditary Trustee and seek for suspension, removal or dismissal of such Hereditary Trustee. Factually as well, as rightly contended by Mr. T. R. Rajagopalan, Learned senior counsel, the appellant has approached the Joint Commissioner only by invoking the provisions of Section 63 for an enquiry, where the Joint Commissioner has got only limited jurisdiction and not under Section 53 seeking for suspension, removal or dismissal of the Hereditary Trustee on the disqualification enumerated thereunder.

14. Whenever such succession takes place to the vacancy in the office of Hereditary Trustee, the provisions of Section 54 alone would apply and not the provisions of Section 26, which relate to fresh appointments and that too, only in respect of a Trustee and not to a Hereditary Trustee. Therefore, the disqualification provided under Section 26(1), if at all to be relied upon, can be only in the case of fresh appointment to the office of Trustee and not to the office of Hereditary Trustee."

6.6. The Learned Counsel for the Petitioners refers to the decision of this Court in **SRI AUDIKESAVA PERUMAL PEYALWAR DEVASTHANAM, MYLAPORE & OTHERS v. THE COMMISSIONER, H.R. & C.E.**



DEPARTMENT & OTHERS reported in **2012 (3) L.W. 899**, at special page 900, wherein it is observed as under:-

"The allegations of mismanagement can be the ground for removal of Trustees in exercise of powers under Section 53 of the Act. Section 46(2) deals with categorisation of Temple, based on income. The enquiry under Section 33 of the Act, can be conducted with regard to misappropriation and surcharge proceedings, and not for removal of the Trustees.

As regards the contention of the respondents, that under Section 53, notice could be issued by the Joint Commissioner, cannot be accpeted, as admittedly the income of the Temple brings it within the jurisdiction of the State Government under Section 53(1) and the Joint Commissioner does not have the delegated powers of the State Government either to issue show cause or hold enquiry into the allegations, therefore, the show cause notice is without jurisdiction."

6.7.The Learned Counsel for the Petitioners relies on the decision of the Hon'ble Supreme Court in **M.P. STATE AGRO INDUSTRIES DEVELOPMENT CORPN. LTD. v. JAHAN KHAN** reported in **2007 (10) SCC 88**, at special page 93, wherein at paragraph No.12, it is observed as follows:-

"Before parting with the case, we may also deal with the submission of Learned Counsel for the appellants that a remedy by way of an appeal being available to the respondent, the High Court ought not to have entertained his petition filed under Articles 226/227 of the Constitution. There is no gainsaying that in a given case, the High Court may not entertain a writ petition under Article 226 of the Constitution on the ground of availability of an alternative remedy, but the said rule cannot be said to be of universal application. The rule of exclusion of writ jurisdiction due to availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of the availability of an alternative remedy, a writ court may still exercise its discretionary jurisdiction of judicial review, in at least three contingencies, namely, (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. In these circumstances, an alternative remedy does not operate as a bar. (See: *Whirpool Corporation Vs. Registrar of Trade Marks* [(1998) 8 SCC 11], *Harkanslal Sahnia & Anr. Vs. Indian Oil Corporation Ltd.* [(2003) 2 SCC 107] & Ors. , *State of H.P. Vs. Gujarat Ambuja Cement Ltd.* [(2005) 6 SCC 499] and *Sanjana M. Wig*

Vs. Hindustan Petroleum Corporation Ltd. [(2005) 8 SCC 242]).

6.8. The Learned Counsel for the Petitioners refers to the decision of the Hon'ble Supreme Court in **LILY THOMAS v. UNION OF INDIA AND OTHERES** reported in **2013 (7) SCC 653**, at special page 656, whereby and where under, it is observed as follows:-

"Articles 102(1)(e) and 191(1)(e) of the Constitution, Parliament is to make one law for a person to be disqualified for being chosen as, and for being, a member of either House of Parliament or Legislative Assembly or Legislative Council of the State. The Constitution Bench of this Court in Election Commission, AIR 1953 SC 210, held that Article 191(1) [which is identically worded as Article 102(1)] lays down "the same set of disqualifications for election as well as for continuing as a member". Parliament thus does not have the power under Articles 102(1)(e) and 191(1)(e) of the Constitution to make different laws for a person to be disqualified for being chosen as a member and for a person to be disqualified for continuing as a member of Parliament or the State Legislature. To put it differently, if because of a disqualification a person cannot be chosen as a member of Parliament or State Legislature, for the same disqualification, he cannot continue as a member of Parliament or the State Legislature. This is so because the language of Articles 102(1)(e) and 191(1)(e) of the Constitution is such that the disqualification for both a person to be chosen as a member of a House of Parliament or the State Legislature or for a person to continue as a member of Parliament or the State Legislature has to be the same."

6.9. Also, in the aforesaid decision at page Nos. 662 and 663, at paragraph No. 5, it is among other things mentioned as under:-

"In support of this submission, Mr. Nariman cited a Constitution Bench judgment of this Court in Election Commission, India v. Saka Venkata Rao (AIR 1953 SC 210) in which it has been held that Article 191 lays down the same set of disqualifications for election as well as for continuing as a member."

6.10. The Learned Counsel for the Petitioners cites a decision of the Hon'ble Supreme Court in **ELECTION COMMISSION v. VENKATA RAO** reported in **AIR 1953 SC 210**, at special page Nos. 214 and 215, wherein at paragraph Nos. 12 to 14, it is mentioned as under:-

"[12] The relevant provisions of the Constitution on which the determination of the question turns are as follows:



190. (3) If a member of a House of the Legislature of a State---

(a) becomes subject to any of the disqualifications mentioned in clause (1) of article 191 ; or

(b) resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be, his seat shall thereupon become vacant,

191. (1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State -

(a) if he holds any office of profit under the Government of India or the Government of any State, specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament.

192. (1) If any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in clause (1) of article 191, the question shall be referred for the decision of the Governor and his decision shall be final. (2) Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion.

193. If a person sits or votes as a member of the Legislative Assembly or the Legislative Council of a State..... when he knows that he is not qualified or that he is disqualified for membership thereof, or that he is prohibited from so doing by the provisions of any law made by Parliament or the Legislature of the State, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the State.

[13]As has been stated already, the respondent's conviction and sentence in 1942 disqualified him both for being chosen as, and for being, a member of the Legislative Assembly under article, 191 (1) (e) read with



section 7 of the Representation of the People Act, 1951, passed by Parliament, the period of five years since his release on 15th August, 1947, not having elapsed before the date of the election. The respondent having thus been under a disqualification since before his nomination on 15th March, 1952, could he be said to have "become" subject to that disqualification within the meaning of article 192? The rival contentions of the parties centred round the true interpretation to be placed on that word in the context of the provisions quoted above.

[14]The Attorney-General argued that the whole fasciculus of the provisions dealing with "disqualifications of members", viz., articles 190 to 193, should be read together, and as articles 191 and 193 clearly cover both preexisting and supervening disqualifications, articles 190 and 192 should also be similarly understood as relating to both kinds of disqualification. According to him all these provisions together constitute an integral scheme whereby disqualifications are laid down and machinery for determining questions arising in regard to them is also provided. The use of the word "become" in articles 190 (3) and 192 (1) is not inapt, in the context, to include within its scope preexisting disqualifications also, as becoming subject to a disqualification is predicated of "a member of a House of Legislature", and a person who, being already disqualified, gets elected, can, not inappropriately, be said to "become" subject to the disqualification as a member as soon as he is elected. The argument is more ingenious than sound.

Article 191, which lays down the same set of disqualifications for election as well as for continuing as a member, and article 193 which prescribes the penalty for sitting and voting when disqualified, are naturally phrased in terms wide enough to cover both preexisting and supervening disqualifications; but it does not necessarily follow that articles 190 (3) and 192 (1) must also be taken to cover both. Their meaning must depend on the language used which, we think, is reasonably plain. In our opinion these two articles go together and provide a remedy when a member incurs a disqualification after he is elected as a member. Not only do the words "becomes subject" in article 190(3) and "has become subject" in article 192(1) indicate a change in the position of the member after he was elected, but the provision that his seat is to become thereupon vacant, that is to say, the seat which the member was filling theretofore becomes vacant on his becoming disqualified, further reinforces the view that the article contemplates only a sitting member incurring the disability while so sitting. The



suggestion that the language used in article 190(3) can equally be applied to a pre-existing disqualification as a member can be supposed to vacate his seat the moment he is elected is a strained and farfetched construction and cannot be accepted. The Attorney-General admitted that if the word " is " were substituted for "becomes" or " has become ", it would more appropriately convey the meaning contended for by him, but he was unable to say why it was not used.

6.11. The Learned Counsel for the Petitioners refers to the decision in **R. VENKATA RANGAREDDY v. N. MURALIDHAR RAO** reported in **AIR 1983 AP 83**, it is observed as under:-

"Rule 22 (9) empowers the election officer to adjourn the meeting of the elected members of the committee convened for the purpose of electing its office-bearers only if there be no quorum, the quorum being the majority of elected members of the committee. He is not empowered to adjourn the meeting on any other objection raised by the members. Nor is he empowered to adjourn it for the purpose of holding an enquiry into the alleged disqualification of an elected member to vote at the meeting. In fact, no power is vested in the election officer by the Act or the rules or the bye-laws to go into the qualification or disqualification of an elected member of the committee. Wherever the legislature or the rule-making authority thought it advisable to empower the election officer to adjourn the meeting, they have specified so explicitly. The election officer is not empowered to decide about the qualification or disqualification of elected members of the society.

The summary enquiry contemplated by R.22 (9) is for specific purpose. The rule-making authority did not intend that the meeting should be adjourned for the purpose of summary enquiry. Further any objection to the nomination of a member of the committee could be taken only after the nominations are made and not before. The nominations have to be made at the meeting. Therefore, the convening of the meeting of the elected members itself cannot be held to be bad or in any way vitiated.

When it is alleged that a member of the committee is not eligible for being its member, the Act does not empower the Election Officer to decide this objection. On the other hand, it is the Registrar or the Arbitrator appointed under Ss.61 and 62 of the Act that is competent in this behalf to enquire and decide, W.P.No.4676 of 1982, dated 05.08.1982 (Andh Pra), Reversed."

7. Respondents' Submissions:-

7.1. The Learned Special Government Pleader for the Respondent Nos.1, 2 and 4 submits that Section 26 of the H.R. & C.E. Act is applicable to all past Trustees for all disqualifications mentioned in the section itself. Further, it is represented that Section 26 is applicable to the present Trustees also. If it comes to an act adverse to any religious institution, it is the past conduct of an existing Trustee which enables superseding.

7.2. The Learned Special Government Pleader for the Respondent Nos.1, 2 and 4 contends that Section 53 of the Act, is applicable only to the existing Trustees for the reasons specified therein. Moreover, if it comes to an act adverse to any religious institution, it is for the present conduct of existing Trustees. Also it is represented on behalf of the respondents 1, 2 and 4 that all the charges in the present case relate to the past conduct of the writ Petitioners.

7.3. The Learned Special Government Pleader for the Respondent Nos.1, 2 and 4 contends that the Petitioner in W.P.(MD)No.12125 of 2016 was elected on 19.02.2014 for 2 years and his period was over on 19.02.2016 and that the Proceedings were initiated against him on 02.05.2016, the date on which he was not a Chairman and as such, he was not an existing Chairman. In fact, the Charges against other Trustees are only to the effect that they aided and abetted the Chairman of the Board of Trustees. In effect, it is represented on behalf of the respondent Nos.1, 2 and 4 that the proceedings against other Trustees must go along with the proceedings against the Chairman of the Board of Trustees (principal delinquent). In short, the Second Respondent/Joint Commissioner has all process to supersede the Petitioners, invoking section 26 of the Act and hence, the Second Respondent had not lack jurisdiction.

7.4. In regard to the plea of 'Violation of Principles of Natural Justice' it is the plea of the Learned Special Government Pleader for the Respondent Nos.1, 2 and 4 that no documents were required from the Joint Commissioner, before whom disqualification proceedings were pending and in fact, in two requests under RTI Act before public information officer, one was furnished on 05.05.2016 and other was replied that they would be furnished (after enquiry. In fact, an appeal was preferred under RTI Act and the same is pending. Also that the Petitioners submitted their explanations without any hesitation, and without insisting upon those documents. As a result on which, "No prejudice" was caused to them. In short, there was no plea taken on behalf of the Petitioners that because of the non supply of documents, they were prejudiced. Besides that, further documents asked for are the complaints given against the Petitioner and the crux of the complaint finds a place in the show cause notice itself and therefore it is not as if the Petitioners were put on total darkness.

7.5. The Learned Special Government Pleader for the Respondent Nos.1, 2 and 4 contends that very reading of the impugned order would show that they are well reasoned orders, and not a non speaking order. Moreover, it is represented on behalf of the Respondent Nos.1, 2 and 4 that although the impugned order does not specifically mentioned such and such objections were considered, yet the order deals with each and every objections.

7.6. That apart, the Learned Special Government Pleader for the Respondent Nos.1, 2 and 4 takes an emphatic plea that the proceedings under Section 26 of the Tamilnadu Hindu Religious and Charitable Endowments Act, are only summary in nature and no notice or enquiry is contemplated under the said Section. In the instant case, notice was given, explanation was obtained and was considered by the Second Respondent before passing the impugned order. As such, it is projected that there is no violation of Principles of Natural Justice.

7.7. The Learned Special Government Pleader for the Respondent Nos.1, 2 and 4 contends that only Section 53 of the Act, requires independent enquiry, as it is a Quasi Judicial proceedings and it is like almost a suit, requiring evidence, as specified under section 53(3) of the HR&CE Act. However, there is no corresponding provisions in Section 26 of the Act. As such no enquiry as specified under section 53(3) is required for the present case. Viewed in that perspective, it is the plea of the respondent Nos.1, 2 and 4 that there is no violation of Principles of Natural Justice.

7.8. The Learned Special Government Pleader for the Respondent Nos.1, 2 and 4 takes a categorical stand that Section 26(5) of the HR&CE Act provides for alternative remedy and when the charges levelled against the Petitioners are very serious, the impugned orders passed against them, are clearly sustainable in the Eye of Law.

8. The Learned Counsel for the Third Respondent, adopts the arguments of the Learned Special Government Pleader for the Respondent Nos.1, 2 and 4.

9. The Learned Counsel for the Third Respondent/Temple refers to Rule 2 of the Collectin of Income and Incurring of Expenditure Rules (G.O.Ms.No.4065, Revenue, dated 26.11.1961), which runs as under:-

"[Income to be collected on the due dates].- Every item of income of religious institutions shall be collected regularly and as far as may be, on the date on which it falls due."

10. Also, Rule 3 of the above said Rules, reads as follows:-

"Responsibility of the Trustee.- The Trustee of the temple shall be responsible for making all collections of income, whether in cash or in kind."



11. In fact, Rule 19 of the said Rules, enjoins as under:-

"Accounts, etc., to be maintained according to the Manual of Accounts of the Hindu Religious and Charitable Endowments Administration Department.- Accounts, Registers and other relevant forms shall be maintained according to the Manual of Accounts of the Hindu Religious and Charitable Endowments Administration Department."

12. Also, he refers to Section 116 (1) (x) of the Tamilnadu Hindu Religious and Charitable Endowments Act, 1959, under the caption 'Power to make Rules', in and by which, the Government may by notification make Rules to carry out the purpose of the Act and in fact, Section 116 (1) (x) speaks of the proper collection of the income and the incurring of the expenditure by Religious Institutions. Moreover, it is represented on behalf of the Third Respondent that as per Rule, the Executive Officer of the Temple cannot operate separately. In fact, in respect of 'Functioning' of the Board of Trustees, in G.O.Ms.No.4524, Revenue, dated 05.11.1960, Rules were framed in exercise of the powers conferred by clauses (viii) and (ix) of sub-section (2) of Section 116 read with Sections 47, 48, 49 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959). In short, Rule 2 of the 'Functioning' of the Board of Trustees Rules, reads as under:-

"2.(1) The Board of Trustees of a religious institution shall meet ordinarily once in a month and more often, if need be, for the transaction of the business of the religious institution. Meetings shall be convened by the Chairman of the Board of Trustees:

Provided that not more than three months shall lapse between the date of one meeting of the Board of Trustees and that of the next.

(2) In the case of religious institutions having an Executive Officer, meetings shall be convened by the Executive Officer on such dates as he may fix in consultation with the Chairman of the Board of Trustees:

Provided that the Executive Officer shall himself fix the date for a meeting if the Chairman on a reference made to him in writing by the Executive Officer in that behalf, does not communicate his opinion to the Executive Officer within the time specified in such reference.

(3) In the case of a religious institution which has no Executive Officer, the meeting shall be convened by the Chairman of the Board of Trustees on such dates as he may fix."



13. Further, Rule 3 'Functioning' of the Board of Trustees Rules, reads as under:-

"The meetings of the Board of Trustees shall be held at the place where the religious institution is situated and in the premises of the religious institution itself or in the premises of its office. Where the religious institution is a specific endowment having no office premises, the meeting shall be held at the places fixed by the Commissioner [Joint Commissioner, the Deputy Commissioner] or the Assistant Commissioner, as the case may be."

14. As per Rule 7 'Functioning' of the Board of Trustees Rules, 'every meeting of Trustees shall be presided over by the Chairman and, in his absence, by a Trustee chosen by the meeting to preside for the occasion.'

15. Rule 9 of the above said Rules, speaks as follows:-

"The Executive Officer, if any, of the religious institution shall always be present at the meetings, produce whatsoever accounts, registers or records, cash or other movable properties which are called for by the Trustees or are relevant to the subjects in the agenda. The Executive Officer shall not be entitled to vote."

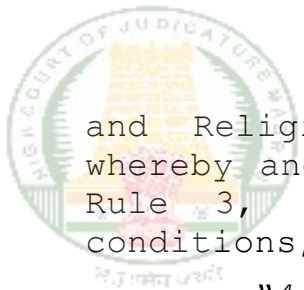
16. Rule 10 of 'Functioning' of Board of Trustees Rules, runs as under:-

"Minutes of the proceedings at each meeting shall be recorded in a book to be kept for that purpose and shall be signed by the Chairman or the Trustee who presided at such meetings, as the case may be, and all the other Trustees present at the meeting. The minutes book shall be kept in the office of the institution in the custody of the Chairman or in the custody of the Executive Officer in the case of an institution having an Executive Officer."

17. Rule 11 of 'Functioning' of the Board of Trustees Rules enjoins as follows:-

"The minutes shall be recorded in English or in Tamil as may be decided upon by the Trustees."

18. The Learned Counsel for the Third Respondent/Temple refers to Rule 4(b)(iv) & (c) of the **CONDITIONS FOR APPOINTMENT OF EXECUTIVE OFFICERS RULES, 2015** (G.O.Ms.No.260, Tourism, Culture



and Religious Endowments (RE4-2), dated 6th November, 2015), whereby and where under, the Executive Officer so appointed under Rule 3, shall perform his duties subject to the following conditions, which runs as under:-

"4(b)(iv) Deposit the money received by the religious institution in such bank, as prescribed in the rules framed under clauses (x) and (xi) of sub-section (2) of Section 116 of the Act and be entitled to sign all orders or chequest against such moneys; and

(c) He shall be responsible for carrying out all lawful directions issued by the Trustees of the religious institution, and the directions as may be issued, from time to time, by the authorities under the Act."

19.The Learned Counsel for the Third Respondent/Temple submits that the Chairmand and other Trustees of the Temple jointly misappropriated the amound and in fact, as per Section 27 of the Tamilnadu Hindu Religious and Charitable Endowments Act, 1959, the Trustees are bound to obey all lawful orders issued uner the Provisions of Tamilnadu Hindu Religious and Charitable Endowments Act, 1959, by the Government, the Commissioner (Additional Commissioner) etc.

20. In fact, Section 28 of the Tamilnadu Hindu Religious and Charitable Endowments Act, 1959, speaks of 'Care required of Trustee and his powers.' More specifically, Section 28(3) of the Act, 1959, says that 'A Trustee shall not be entitled to spend the funds of the religious institution for meeting any costs, charges or expenses incurred by him in any suit, appeal or application or other proceeding for, incidental to, his removal from office or the taking of any disciplinary action against him:

Provided that the Trustee may reimburse himself in respect of such costs, charges or expenses if he is specifically permitted to do so by an order passed under Section 102.'

21.The Learned Counsel for the Third Respondent/Temple refers to Section 86 of the Tamilnadu Hindu Religious and Charitable Endowments Act, 1959, which speaks of 'Budget of Religious Institution.'

22.The Learned Counsel for the Third Respondent/Temple, cites a decision of this Court in **S.V.RAMASWAMY POOSARI v. THE DEPUTY COMMISSIONER, HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS, MADURAI** reported in **1973 (1) MLJ 320**, wherein it is observed a follows:-



"The mere fact that one or more Trustees can come into the picture as Hereditary Trustees, making them a Board of Trustees, does not mean an enunciated or acceptance of such a body by the appropriate authority under section 53 of the Tamil Nadu Hindu Religious and Charitable Endowments Act as Board of Trustees. It is neither necessary nor is it compulsory under the Act, for the statutory functionaries to accept and refer to such a body of Hereditary Trustees as a Board for any particular or general purpose under the Act. So long as the expression 'a Trustee' includes a Hereditary Trustee is not in dispute and indeed, is indisputable, the Board of the Trustees under Section 26 would certainly take into its compass Hereditary Trustees as well and the appropriate authority under the Act can deal with it as such.

Where the presence or absence of Trustees from three consecutive meetings of such a Board is in dispute then, certainly, one has to find the machinery within the four corners of the Act itself which machinery has to be set in motion to find whether the complaint is justified or not. Whenever a statute is silent about a process by which a right can be established, then equity steps in accordance with the maxim'' ubi jus, ibi remedium i.e., where there is a right there is a remedy." As no right can exist without a remedy, I am of the view that under Section 53 (2), the Commissioner, as the appropriate authority under Section 53 (1) (a) has the right to enquire into a controversy whether a particular Hereditary Trustee has absented himself from three consecutive meetings of the Board of Trustees and has, therefore, ceased to hold Office as such. The scheme of the Act provides that a Trustee includes a Hereditary Trustee and therefore, the disqualification which an ordinary Trustee has to suffer under the Act, would equally be a disqualification for a Hereditary Trustee as well."

23. The Learned Counsel for the Third Respondent/Temple relies on the order of this Court in **W.P.No.7244 of 2013**, dated 08.07.2013, between **S.SAIT BASHA v. THE CHIEF EXECUTIVE OFFICER, TAMILNADU WAKF BOARD, CHENNAI AND 10 OTHERS**, wherein at paragraph No.36, it is observed as follows:-

"To put it succinctly, when the Wakf Tribunal, being the designated Court, has the necessary jurisdiction, to decide all disputes, questions or other allied matters pertaining to Wakf property, then, this Court comes to an inevitable conclusion that the present Writ Petition filed by the Writ Petitioner is not maintainable per se in law. Viewed in that perspective, the interim stay already granted by this Court on 22.03.2013 in M.P.No.2

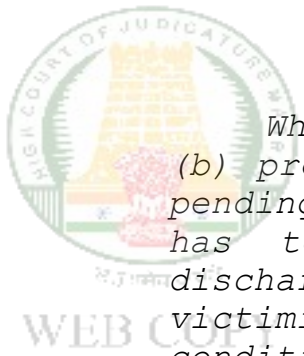


of 2013 in W.P.No.7244 of 2013 and later, extended by an order dated 06.06.2013 till 27.06.2013 are not legal and stand vacated. Consequently, the Writ Petition fails."

24. He also cites the decision of the Hon'ble Supreme Court in **JAIPUR ZILA SAHAKARI BHoomI VIKAS BANK LTD. v. RAM GOPAL SHARMA** reported in **2002 (2) SCC 244**, at special page Nos.245 to 247, it is observed as under:-

"The object behind enacting Section 33 of the ID Act, as it stood before the 1956 amendment, was to allow continuance of industrial proceedings pending before any authority/court/tribunal prescribed by the Act in a peaceful atmosphere undisturbed by any other industrial dispute. In course of time, it was felt that unamended Section 33 was too stringent. Therefore, it was amended in 1956 permitting the employer to make changes in conditions of service or to discharge or dismiss an employee in relation to matters not connected with the pending industrial dispute. At the same time, it seems to have been felt that there was need to provide some safeguards for a workman who may be discharged or dismissed during the pendency of a dispute on account of some matter unconnected with the dispute. This position is clear by reading the re-raftered expanded Section 33.

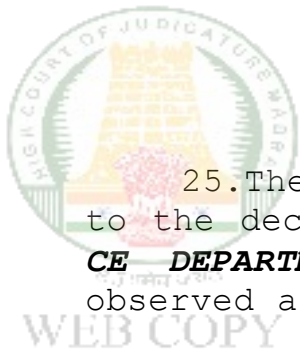
The proviso to Section 33(2)(b), as can be seen from its very unambiguous and clear language, is mandatory. This apart, from the object of Section 33 and in the context of the proviso to Section 33(2)(b), it is obvious that the conditions contained in the said proviso are to be essentially complied with. Further any employer who contravenes the provisions of Section 33 invites a punishment under S.31(1). This penal provision is again a pointer of the mandatory nature of the proviso. In other words, the said conditions being mandatory, are to be satisfied if an order of discharge or dismissal passed under Section 33(2)(b) is to be operative. Taking a view to the contrary would defeat the very purpose of the proviso and it becomes meaningless. It is well-settled rule of interpretation that no part of statute shall be construed as unnecessary or superfluous. The proviso cannot be diluted or disobeyed by an employer. He cannot disobey the mandatory provision and then say that the order of discharge or dismissal made in contravention of Section 33(2)(b) is not void or inoperative. The protection afforded to a workman under the said provision cannot be taken away. Otherwise, the employer may with impunity discharge or dismiss a workman.



Where an application is made under Section 33(2) (b) proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to examine whether the order of dismissal or discharge is bona fide; whether it was by way of victimization or unfair labour practice; whether the conditions contained in the proviso were complied with or not, etc. If the authority refuses to grant approval obviously it follows that the employee continues to be in service as if order of discharge or dismissal never had been passed. The order of dismissal or discharge passed invoking Section 33(2) (b) dismissing or discharging an employee brings an end of relationship of employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end de jure only when the authority grants approval. If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed.

The view that when no application is made or the one made is withdrawn, there is no order of refusal of such application on merit and as such the order of dismissal or discharge does not become void or inoperative unless such an order is set aside under Section 33A, cannot be accepted. In our view, not making an application under Section 33(2) (b) seeking approval or withdrawing an application once made before any order is made thereon, is a clear case of contravention of the proviso to Section 33(2) (b).

Section 33A is available only to an employee and is intended to save his time and trouble inasmuch as he can straightaway make a complaint before the very authority where the industrial dispute is already pending between the parties challenging the order of approval instead of making efforts to raise an industrial dispute, get a reference and thereafter adjudication. This provision is not intended to give any remedy to an aggrieved employee. It is only to punish the offender. Merely because penal provision is available or a workman has a further remedy under Section 33A to challenge the approval granted, it cannot be said that the order of discharge or dismissal does not become inoperative or invalid unless set aside under Section 33A."



25. The Learned Counsel for the Third Respondent/Temple refers to the decision of this Court in **S. MARIMUTH v. COMMISSIONER, HR & CE DEPARTMENT** reported in **2009 (2) MLJ 1018**, wherein it is observed as under:-

"The term 'institution' under Section 26(1)(h) cannot be assigned wider meaning. The said section would be applicable only if an individual acted adverse to the interest of that temple religious institution in which he was seeking appointment as Trustee and not to any other temple/religious institution."

26. Analysis and Findings:-

26.1. In the instant case, the writ Petitioners are assailing the orders passed by the Second Respondent/Joint Commissioner, Hindu Religious & Charitable Endowments Department, Madurai, under Section 26(4) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. As a matter of fact, the impugned orders, dated 20.06.2016 in respect of the writ Petitioners, came to be passed by the Second Respondent/Joint Commissioner, Hindu Religious & Charitable Endowments Department, Madurai, based on the reason that 'the Petitioners acted adverse to the interest of the Institution', which is a ground of disqualification under Section 26(i)(h) of the Act. In this connection, it is represented on behalf of the Petitioners that the same ground is very much available as a basis for imposition of punishment of suspension or removal of Trustee under Section 53(2)(j) of the Act.

26.2. In this connection, it is not out of place for this Court to make a pertinent mention that Section 53(3) of the Act, 1959, speaks of 'When it is proposed to take action under Sub-section (2), the appropriate authority shall frame charges against the Trustee concerned and give him an opportunity of meeting such charges, of testing the evidence adduced against him and of adducing evidence in his favour; and the order of suspension, removal or dismissal shall state the charges framed against the Trustee, his explanation and the finding on each charge with reasons therefor.'

26.3. In reality, Section 26(h) of the Act, says that 'if he has acted adverse to the interest of the institution' (viz., Trustee), then, it refers to the erstwhile acts of the Trustee, whereas Section 53(j) of the Act reads 'acts adversely to the interest of the institution', which refers to the present acts.

26.4. It is to be borne in mind that Section 26 of the Tamil



Nadu Hindu Religious and Charitable Endowments Act, 1959, enables the Joint/Deputy Commissioner to decide about the 'Trustees' disqualification. Section 26(4) of the Act speaks to the effect that 'if a Hereditary Trustee becomes subject to any of the disqualifications mentioned in sub-section (1), the Joint Commissioner or the Deputy Commissioner, as the case may be, may supersede the Trustee. It appears that straightaway, the Joint/Deputy Commissioner shall supersede a Hereditary Trustee under Section 26(4) of the Act without even issuing a show cause notice or conducting a fact finding enquiry. However, as per ingredients of Section 53(3) of the Act, when a proposed action under Sub-section (2) of Section 53(3) is contemplated, the appropriate authority shall frame charges against the Trustee concerned and give him an opportunity of meeting such charges, of testing the evidence adduced against him and of adducing evidence in his favour; and the order of suspension, removal or dismissal shall state the charges framed against the Trustee, his explanation and the finding on each charge with reasons therefor.'

26.5.As a matter of fact, Section 53(4) of the Act enjoins that 'pending disposal of the charges framed against the Trustee, the appropriate authority may place the Trustee under suspension and appoint a Fit Person to discharge his duties and perform the functions of the Trustee'. Further, when a Trustee is aggrieved by an order passed under Sub-Section(2) of Section 53 of the Act, he may within one month from the date of receipt of the order of suspension, removal or dismissal, may prefer an appeal against the order to the Government, when the order has been passed by the Commission and in case, where the order has been passed by the Joint Commissioner or Deputy Commissioner, to the Commissioner etc.

26.6.It comes to be known that as per ingredients of Section 26(5) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, any person affected by the order of the Joint/Deputy Commissioner under Sub-Section (3) of Section 26 or Sub-Section (4) of Sections 26 of the Act, may within a period one month from the date of receipt of the order by meetings can file an appeal against the order to the Commissioner.

26.7.A cursory glance of Section 26(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, unerringly point out that a person shall be disqualified for being appointed and for being a Trustee of any religious institution.-

26.8.It cannot be gainsaid that the scheme of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, provides that the

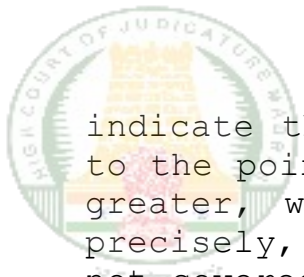


Trustee includes a 'Hereditary Trustee' and therefore, the disqualification, which an ordinary Trustee has to suffer under the Act, would equally be a disqualification for a Hereditary Trustee as well. As per Sections 23 and 27 of the Act, a Trustee of a Religious Institution is bound to obey all Lawful Orders issued by the Commissioner and under the Provisions of the Act, which would include orders, which are necessary to ensure that the Endowments are properly administered.

26.9.As a matter of fact, the ingredients of Section 26 of the Act are quite applicable to both the 'past Trustees' and 'existing and continuing Trustees'. However, Section 53(j) of the Act speaks of 'acts adversely to the interests of the institution'. Thus, it is candidly clear that Section 26 of the Act, applies to past conduct of 'existing Trustees'. In reality, Section 53 of the Act applies to the present conduct of existing Trustees. That apart, Section 26 of the Act, is a disqualification proceedings and Section 53 is a disciplinary proceedings.

26.10.In the present case, it cannot be forgotten that all charges levelled against the writ Petitioners pertain to their past conduct. In regard to the Petitioner in W.P.(MD)No.12125 of 2016 (P.Krishnamoorthy), he was elected as Chairman of Board of Trustees, on 19.02.2014 for a period of two years and his turn expired on 19.02.2016. When the proceedings were initiated against him on 02.05.2016, he was not a Chairman. Besides that, charges against other Trustees are to the effect that they aided and abetted the writ Petitioner in W.P.(MD)No.12125 of 2016 (P.Krishnamoorthy). A reading of Section 26 of the Act, clearly spell out that the Joint Commissioner of Tamil Nadu Hindu Religious and Charitable Endowments Department, has all powers to supersede the Petitioners/Trustees.

26.11.Coming to the aspect of 'Principles of Natural Justice', this Court points out that ordinarily 'ONE SHOULD NOT JUDGE HIS OWN CAUSE'. The other principle of natural justice is '*Audi Alteram Partem*' (Hear the otherside). It is to be remembered that 'Rule of Hearing' is that no decision shall be taken without hearing the person affected. Indeed, no order having any Civil Consequences can be passed without following the Rules of Principles of Natural Justice. At this stage, this Court aptly points out the decision in **RIDGE V. BALDWIN** reported in **1963 All E.R. 66**, wherein it is observed that 'if there is power to decide and determine to the prejudice of a person, duty into act judicially is implicit in exercise of such power.' Apart from that, non-observance of Rule of Natural Justice itself is a prejudice. After all, justice should not only be done, but manifestly be seen to be done. No wonder, 'Fairness' involves reasonableness. The principle 'Hearing the other side' is applied, where an administrative order involves Civil Consequences. Further, reasons ought to be cleared and explicit, so as to



indicate that the concerned authority had given due consideration to the points in controversy. The need for recording of reasons is greater, where the order is passed at original stage. To put it precisely, 'Rules of Natural Justice' can operate only in cases not covered by any law validly made.

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26.12. There is no two opinion of a vital fact that 'Natural Justice' is an Antithesis of an arbitrariness. Since non-arbitrariness is a salient of Article 14 of the Constitution of India, which follows that '*Audi Aleteram Partem*' is a requirement of Article 14, as per decision in **BASUDEO TIWARI v. SIDO KANHU UNIVERSITY**, reported in **AIR 1998 SC 3261**.

26.13. One cannot brush aside a primordial fact that 'purported Rules of Natural Justice' are not engraved of 'Tables of Stone.' The primary aim of the Rule of Natural Justice is to prevent miscarriage of justice.

26.14. Again turning to the aspect of salient features of 'Fair Hearing' are:-

- (i) Issuance of prior notice;
- (ii) Right to make representation; and
- (iii) Right to be heard.

26.15. At this stage, this Court worth recollects and recalls the decision of the Hon'ble Supreme Court in **MOHINDER SINGH GILL v. CHIEF ELECTION COMMISSIONER, NEW DELHI** reported in **AIR 1978 SC 851**, whereby and where under, it is held that the term 'Civil Consequences' undoubtedly covers infractions of not merely property or personal rights, but of Civil liberties, material deprivation and non-pecuniary damages.

26.16. It is to be borne in mind that Section 6(22) of the 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 a religious institution is vested and includes any person or body who or which is liable as if such person or body were a trustee. As a matter of fact, the definition of 'Trustee' would include defacto trustees exercising the powers of Trustees. Even a defacto trustee can alienate trust properties so long as, he acts *bona fide* and the benefit of the trust, in the considered opinion of 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.

26.17. In the present case, the Second Respondent/Joint Commissioner, Hindu Religious & Charitable Endowments Department, Madurai, had passed an order on 20.06.2016 in respect of the writ petitioner in W.P.(MD)No.12125 of 2016 (P.Krishnamoorthy, Chairmand of Board of Trustees), by holding that 8 charges levelled against him were proved and considering the seriousness of charges, he was superseded from the post of Hereditary Trustee, as per Section 2(h)(4) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Likewise, the Second Respondent/Joint Commissioner, Hindu Religious & Charitable Endowments Department, Madurai, had passed an order on 20.06.2016 in respect of the writ petitioners in W.P.(MD)No.12126 of 2016 (P.Santhanakrishnan); in W.P.(MD)No.12127 of 2016 (P.Thanda Kudumbam); in W.P.(MD)No.12128 of 2016 (E.Ponnusamy) and in W.P.(MD)No.12129 of 2016 (V.Perumal) and one Raja, by holding that the 8 charges levelled against them were proved and considering the seriousness of charges, they were superseded as per Section 26(h)(4) of the Act.

26.18. At this stage, this Court points out that the said Raja, Hereditary Trustee, who was superseded by the order of the Second Respondent, dated 20.06.2016, has not come before this Court, to assail the correctness of the order of the Second Respondent.

26.19. It appears that the writ petitioners, for the 8 charges levelled against them mentioned in the show cause notice, dated 20.05.2016, had addressed their Joint explanations, dated 13.06.2016, to the Second Respondent/Joint Commissioner, Hindu Religious & Charitable Endowments Department, Madurai. Consequently, prayed for dropping of charges levelled against them.

26.20. In this connection, this Court, very relevantly points out that even though Section 26 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, does not speak of conducting of fulfilled enquiry by the Joint Commissioner in regard to the Hereditary Trustee, acted adverse to the interest of institution and had suffered any of the disqualification mentioned in Sub-section(1) of Section 26 of the Act, yet, this Court is of the considered view that when the Chairman of the Board of Trustees of Arulmigu Vigneshwarar Vagaiyara Temple and the other trustess of the temple who were in an actual control, management and administration, by adhering to the Principles of Natural Justice should be given notice and also provided with an opportunity to

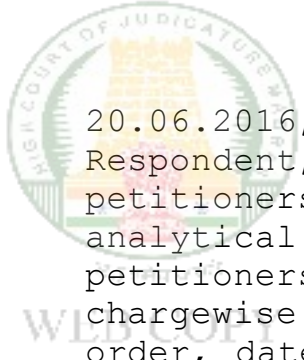


show cause against the charges levelled against them.

26.21. In the instant case, except the Hereditary Trustee Raja, other Trustess (including the Chairman of the Board of Trustees), had approached this Court and filed separate writ petitions before this Court being aggrieved against the impugned order, dated 20.06.2016, passed by the Second Respondent. In the present case, there is no dispute that the writ petitioners (including the Chairman of Board of Trustees of the Temple), were issued with a show cause notice in respect of the charges levelled against them and their objections were also received, but fulfledged enquiries were not conducted against them by the Second Respondent/Joint Commissioner, Hindu Religious & Charitable Endowments Department, Madurai.

26.22. In fact, the complaints of the Executive Officer and two officials were not furnished to the petitioners or provided to them. Even though, Section 26 of the Act, empowers the Second Respondent/Joint Commissioner, Hindu Religious & Charitable Endowments Department, Madurai, to supersede the trustee, if a Hereditary trustee has suffered any of the disqualifications mentioned in Sub-section(1) of Section 26 of the Act, this Court is of the considered view that a regular enquiry should have been conducted by the Second Respondent notwithstanding the fact Section 26 speaks of summary proceedings. By superseding the writ petitioners, by passing of the impugned order, dated 20.06.2016, by the Second Respondent, the petitioners once and for all, loose their position as Hereditary Trustees and therefore, the impugned order, dated 20.06.2016 in respect of the writ petitioners, do have serious Civil Consequences and without following the Rules of Natural Justice, the said impugned order ought not to have been passed by the Second Respondent. Certainly, the impugned order, dated 20.06.2016, in respect of the writ petitioners (including the Chairman of the Board of Trustees) in a clear cut fashion deprives their personal liberty or property and also that the writ petitioners were not provided with the documents sought for by them (even though, they had asked for the documents under RTI Act), the non-supply of the documents had caused serious prejudice and hardship to them in not defending the proceedings in a proper manner. Even at later point of time, the documents were not furnished to the writ petitioners. Further, it is pertinently pointed out by this Court that 'an unreasoned order' may be just from the point of view of a person, who passes the same. But to the affected/aggrieved person, the said order may not appear to be so. Per contra, a reasoned order will have an appearance of justice.

26.23. That part, a perusal of the impugned order, dated



20.06.2016, in respect of the petitioners passed by the Second Respondent, shows that the Joint explanation submitted by the writ petitioners were not adverted to by the Second Respondent in an analytical fashion. In short, the Joint explanation of the writ petitioners were not adverted to by the Second Respondent chargewise and finding rendered thereof. Per contra, the impugned order, dated 20.06.2016 of the Second Respondent in respect of the writ petitioners *inter alia*, after mentioning the charge Nos.1 to 8 under each charge, speaks of the finding to that charge. Suffice it for this Court to point out that although, the Second Respondent is empowered to decide on the question as to whether 'Hereditary Trustee' has become subject to any of the disqualification mentioned in Sub-section (1) of Section 26 of the Act, in the instant case, he had not followed the rudimentary Principles of Natural Justice and in fact, the Trustees were not provided with an opportunity to examine themselves and to cross examine the concerned witnesses. They were also not provided with an opportunity to mark documents and straightaway, the impugned order, dated 20.06.2016, superseding the Hereditary Trustee was passed by the Second Respondent in respect of the writ petitioners (Hereditary Trustees including the Chairman of the Board of Trustees and another trustee by name Raja, who had not come before this Court, seeking necessary relief). Viewed in that perspective, this Court, comes to a consequent conclusion that there is a violation of Principles of Natural Justice by the Second Respondent at the time of passing the impugned order, dated 20.06.2016, in respect of the petitioners. Since there is a violation of Principles of Natural Justice by the Second Respondent, by passing the impugned order, dated 20.06.2016, this Court is of the considered view that the writ petitions filed by the petitioners, is perfectly maintainable before this Court, because of the prime reason that 'Rules of Natural Justice' or 'Fundamental Principles' are applicable to the entire range of administration of powers or quasi judicial powers to be exercised by the appropriate authorities. As such, resorting to filing of an appeal by the petitioners under Section 26(5) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, as an effective alternative remedy, does not arise, as opined by this Court.

26.24. In fact, in the present case, the writ petitioners by exercising their legal rights had complained that the Second Respondent/Joint Commissioner, Hindu Religious & Charitable Endowments Department, Madurai, had violated the Principles of Natural Justice, while passing the impugned order, dated 20.06.2016, in respect of the writ petitioners, bristles with legal infirmities, considering the fact that the Second Respondent had not followed the Principles of Natural Justice and especially, when the aspect of superseding the Hereditary Trustees (including the Chairman of the Board of Trustees), in Law, is one of Civil



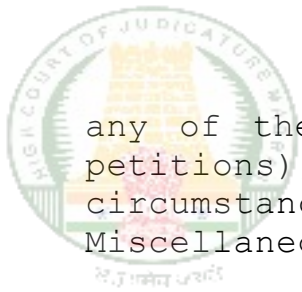
Consequences affecting their liberty and property rights. As such, this Court, to prevent an aberration of Justice, interferes with the said impugned order, dated 20.06.2016, passed by the Second Respondent, in respect of the writ petitioners and sets aside the same. Consequently, the writ petitions succeed.

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26.25. In the result, the writ petitions are allowed leaving the parties to bear their own costs. The impugned order, dated 20.06.2016, passed by the Second Respondent, is set aside for the reasons assigned in this writ petition. In this connection, this Court makes it quite clear that since it has allowed the present writ petitions by setting aside the impugned order, dated 20.06.2016, passed by the Second Respondent, on the ground of violation of Principles of Natural Justice, it has not dealt with the merits of controversies between the respective parties.

26.26. However, this Court, grants liberty to the Second Respondent/Joint Commissioner, Hindu Religious & Charitable Endowments Department, Madurai, to pass fresh order in the subject matter in issue by providing adequate opportunity to the writ petitioners/Hereditary Trustees of the Temple (including the Chairman of the Board of Trustees) by supplying the copies of documents (Ofcourse, based on the written request of the petitioners' well in advance) prior to the commencement of the conduct of enquiry once again and in case, if the writ petitioners are desirous of letting in any oral or documentary evidence, then, this Court directs the Second Respondent/Joint Commissioner, Hindu Religious & Charitable Endowments Department, Madurai, to permit them because of the reason that Justice should not only be done, but manifestly be seen to be done. After providing adequate/necessary opportunities to the petitioners, the Second Respondent/Joint Commissioner, Hindu Religious & Charitable Endowments Department, Madurai, is to pass a reasoned, speaking order afresh on merits (even by formulating the points for adjudication/consideration) by adverting to the objections/points raised assigning necessary reasons independently and by scrupulously following the relevant provisions of the Tamilnadu Hindu Religious and Charitable Endowments Act, 1959 and its Rules. It is open to the writ petitioners to raise all factual and legal pleas before the Second Respondent in the manner known to Law and in accordance with Law.

26.27. Before parting with the cases, this Court very pertinently points out that the Second Respondent/Joint Commissioner, Hindu Religious & Charitable Endowments Department, Madurai, is to pass fresh orders in the subject matter in issue with an open, fair and free mind and that too, in a unbiased and dispassionate manner (ofcourse, untrammelled and uninfluenced with



any of the observations made by this Court in the present writ petitions), as he deems fit and proper and based on the facts and circumstances encircling the present case. The Connected Miscellaneous Petitions are closed.

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Sd/-
Assistant Registrar(T&P)

/TRUE COPY/

Sub Assistant Registrar

To:

- 1.The Commissioner,
Hindu Religious & Charitable Endowments Department,
Nungambakkam High Road, Chennai.
 - 2.The Joint Commissioner,
Hindu Religious & Charitable Endowments Department,
Madurai.
 - 3.The Executive Officer,
Arulmigu Vigneshwarar Vagaiyara Thirukovil,
Old Ayakudi, Palani.
 - 4.The Inspector,
Hindu Religious & Charitable Endowments Department,
Devasthanam Chathiram,
Railway Feeder Road, Palani.
- +5 cc to Mr.M.P.SENTHIL ,Advocate, Sr.No: 45199-45203
- +1cc to M/S Special Government Pleader, Sr No. 45348
- +1 cc to Mr.A.K.BASKARA PANDIAN ,Advocate, Sr.No: 45101
- jam/24.08.16/SKS-RR/35P-12C

Pre-Delivery Order Made in
W.P.(MD)Nos.12125 to 12129 of 2016

17.08.2016