



BEFORE THE MADURAI BENCH OF MADRAS HIGH Court

DATED: 28.01.2016

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Writ Appeal(MD) Nos.207, 181, 160, 226 and 227 of 2016
and
C.M.P(MD)Nos.1009, 1010 and 785 to 787 of 2016
and
Writ Petition (MD)No.1863 of 2016
and
W.M.P. (MD)No.1617 of 2016

1 A.RAMAMOORTHY POOSARI
2 A.GANAPATHIRAMAN POOSARI
3 A.DHARMARAJ POOSARI ... APPELLANTS in WA(MD). 207/ 2016

1 S.KATHIRESAN POOSARI
2 S.RAMAR POOSARI
3 R.ARIRAM POOSARI ... APPELLANTS in WA(MD). 181/ 2016

1 V.R.M.JEYARAMAN POOSARI
2 V.R.M.GANESAN POOSARI
3 V.R.M.JOTHI ANANDA GANESAN POOSARI,
4 T.BALASUBRAMANIAN POOSARI
5 T.MARIMUTHU POOSARI ... APPELLANTS in WA(MD). 160/ 2016

1 THE SECRETARY TO GOVERNMENT,
HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS DEPARTMENT,
FORT ST.GEORGE, CHENNAI.
2 THE COMMISSIONER,
HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS DEPARTMENT,
NUNGAMBAKKAM HIGH ROAD, CHENNAI-24.
3 THE JOINT COMMISSIONER,
HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS DEPARTMENT,
SIVAGANGAI.
4 THE ASSISGTANT COMMISSIONER/ EXECUTIVE OFFICER,
A/M IRUKKANKUDI MARIYAMMAN THIRUKOVIL, IRUKKANKUDI,
SATTUR TALUK, VIRUDHUNAGAR DISTRICT.
... APPELLANTS in WA(MD). 226/ 2016

1 THE SECRETARY TO GOVERNMENT,
HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS DEPARTMENT,
FORT ST GEORGE, CHENNAI.
2 THE COMMISSIONER,
HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS DEPARTMENT,
NUNGAMBAKKAM HIGH ROAD, CHENNAI-24.
3 THE JOINT COMMISSIONER, HINDU RELIGIOUS AND
CHARITABLE ENDOWMENTS DEPARTMENT, SIVAGANGAI.
... APPELLANTS in WA(MD). 227/ 2016



1 A.RAMAMOORTHY POOSARI
2 A. GANAPATHIRAMAN POOSARI
3 A. DHARMARAJ POOSARI,

... Petitioners in WP(MD). 1863/ 2016

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- Vs. -

1 S.KATHIRESAN POOSARI
2 S.RAMAR POOSARI
3 R.ARIRAM POOSARI
4 V.R.M.JEYARAMAN POOSARI
5 L.MUTHURAMAN POOSARI
6 V.R.M.GANESAN POOSARI
7 V.R.M.JOTHI ANANDA GANESAN POOSARI
8 S.S.MURUGAN @ SARKARAI POOSARI
9 T.KATHIRESAN POOSARI
10 T.MUTHURAMN POOSARI
11 T.BALASUBRAMANIAN POOSARI
12 T.RAMACHANDRAN POOSARI
13 T.MARIMUTHU POOSARI

... Respondents 1 TO 13 in WA(MD).207/ 2016

14 THE SECRETARY TO GOVERNMENT
HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS DEPARTMENT,
FORT ST GEORGE, CHENNAI.
15 THE COMMISSIONER, HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS
DEPARTMENT, NUNGAMBAKKAM HIGH ROAD, CHENNAI-24.
16 THE JOINT COMMISSIONER, HINDU RELIGIOUS AND CHARTIABLE ENDOWMENTS
DEPARTMENT, SIVAGANGAI.
17 THE ASSISTANT COMMISSIONER / EXECUTIVE OFFICER,
ARULMIGHU IRUKKANKUDI MARIYAMMAN THIRUKOVIL,
IRUKKANKUDI, SATTUR TALUK, VIRUDHUNAGAR DISTRICT.
18 S.R.M.RAMAMURTHI POOSARI
19 S.A.RAJENDRAN POOSARI
20 M.NAVARATHINAM

... Respondents 14 TO 20 in WA(MD).207/ 2016

1 THE SECRETARY TO GOVERNMENT
HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS DEPARTMENT,
FORT ST GEORGE, CHENNAI.

2 THE COMMISSIONER,
HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS DEPARTMENT,
NUNGAMBAKKAM HIGH ROAD, CHENNAI-24.

3 THE JOINT COMMISSIONER,
HINDU RELIGIOUS AND CHARTIABLE ENDOWMENTS DEPARTMENT,
SIVAGANGAI.

4 THE ASSISTANT COMMISSIONER / EXECUTIVE OFFICER,
ARULMIGHU IRUKKANKUDI MARIYAMMAN THIRUKOVIL,
IRUKKANKUDI, SATTUR TALUK, VIRUDHUNAGAR DISTRICT.

5 S.R.M.RAMAMURTHI POOSARI

6 S.A.RAJENDRAN POOSARI

7 M.NAVARATHINAM

... Respondents 1 TO 7 in WA(MD). 181/ 2016

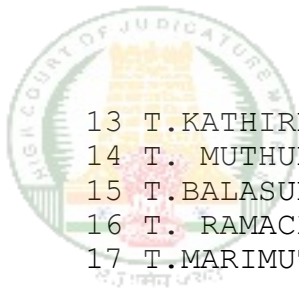
8 V.R.M.JEYARAMAN POOSARI

9 L.MUTHURAMAN POOSARI

<https://hccservices.ecourts.gov.in/HCServices/>

11 V.R.M. JOTHI ANANDA GANNESAN POOSARI

12 S.S.MURUGAN @ SARKARAI POOSARI



13 T.KATHIRESAN POOSARI
14 T. MUTHURAMAN POOSARI
15 T.BALASUBRAMANIAN POOSARI
16 T. RAMACHANDRAN POOSARI
17 T.MARIMUTHU POOSARI

... Respondents 8 TO 17 in WA(MD). 181/ 2016

1 S.KATHIRESAN POOSARI
2 S.RAMAR POOSARI
3 R.ARIRAM POOSARI
4 L.MUTHURAMAN POOSARI
5 S.S.MURUGAN @ SARKARAI POOSARI
6 T.KATHIRESAN POOSARI
7 T.MUTHURAMAN POOSARI
8 T. RAMACHANDRAN POOSARI
9 THE SECRETARY TO GOVERNMENT,
HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS DEPARTMENT,
FORT ST. GEORGE, I CHENNAI.
10 THE COMMISSIONER,
HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS DEPARTMENT,
NUNGAMBAKKAM HIGH ROAD, CHENNAI -24.
11 THE JOINT COMMISSIONER,
HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS DEPARTMENT,
SIVAGANGAI.
12 THE ASSISTANT COMMISSIONER / EXECUTIVE OFFICER,
ARULMIGHU IRUKKANKUDI MARIYAMMAN THIRUKOVIL,
IRUKKANKUDI, SATTUR TALUK, VIRUDHUNAGAR DISTRICT.
13 S.R.M.RAMAMURTHI POOSARI
14 S.A.RAJENDRAN POOSARI
15 M.NAVARATHINAM

... Respondents in WA(MD). 160/ 2016

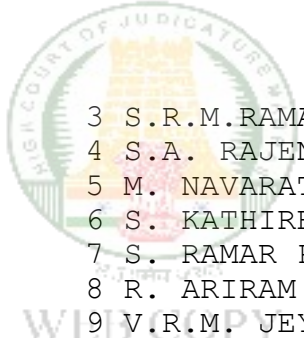
1 S.KATHIRESAN POSSARI
2 S.RAMAR POOSARI
3 R.ARIRAM POOSARI
4 V.R.M.JEYARAMAN POOSARI
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6 V.R.M.GANESAN POOSARI
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11 T.BALASUBRAMANIAN POOSARI
12 T.RAMACHANDRAN POOSARI
13 T.MARIMUTHU POOSARI
14 S.R.M.RAMAMURTHI POOSARI
15 S.A.RAJENDRA POOSARI
16 M.NAVARATHINAM

... Respondents in WA(MD). 226/ 2016

1 S.A.RAJENDRA POOSARI
2 S.R.M.RAMAMURTHI POOSARI

... Respondents in WA(MD). 227/ 2016

1 THE JOINT COMMISSIONER,
HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS DEPARTMENT,
SIVAGANGAI.
2 THE ASSISTANT COMMISSIONER/ EXECUTIVE OFFICER,
ARULMIGHU IRUKKANKUDI MARIYAMMAN THIRUKOVIL,
IRUKKANKUDI, SATTUR TALUK, VIRUDHUNAGAR DIST



3 S.R.M.RAMAMURTHI POOSARI
 4 S.A. RAJENDRAN POOSARI
 5 M. NAVARATHINAM
 6 S. KATHIRESAN POOSARI
 7 S. RAMAR POOSARI
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 16 T. BALASUBRAMANIAN POOSARI
 17 T.RAMACHANDRAN POOSARI
 18 T. MARIMUTHU POOSARI

... Respondents in WP(MD). 1863/ 2016

Prayer in WA(MD)No. 207, 160,181,226 and 227 of 2016:

The Writ Appeals filed under clause 15 of the letters patent
 (i) against the order dated 03/12/2015 in WP(MD)No. 17450/15, (WA.207/16)
 (ii) against the order dated 03/12/2015 in WP(MD)No. 17450/15, (WA.160/16)
 (iii) against the order dated 03/12/2015 in WP(MD)No.17450/15, (WA.181/16)
 (iv) against the order dated 03/12/2015 in Rev.APLC(MD)No.43/15, (WA.227/16)
 (v) against the order dated 03/12/2015 in WP(MD)No. 17450/15, (WA.226/16)

Common Prayer in WP(MD)No. 17450 of 2015:

This Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARIFIED MANDAMUS to call for the records relating to the impugned order No.Se.Mu.Na.Ka.No.8/2015 A4 dated 21.09.2015 on the file of the 5th Respondent and quash the same on the ground that the same is arbitrary, illegal and without jurisdiction and consequently directing the Respondents not to proceed further pursuant to the orders in WP(MD) No.15653 of 2015 dated 31.08.2015 on the file of this Honble Court.

Rev. APLC(MD) 43/15: This review has been filed as against the order dt: 31/08/2015 in WP(MD)No. 15653 of 2015.

Prayer in WP(MD). 15653/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the Chairman Board of Trustee M/S. ArulmiguMariamman Thirukoil, Irrukankudi, Sattur Taluk, Virudhunagar District the fourth respondent herein to dispose of petitioner representation dated 21.7.2015 in a time bound manner in view of the urgency of the issue.

Prayer in WP(MD). 1863/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records of the 3rd respondents impugned order in Se.Mu.Na.Ka.8/2015 A4 dated 06/01/2016 and quash the same as illegal and pass such further or other orders as this Honble Court may deem fit



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For Appellants : Mr.G.R.Swaminathan in
WA(MD)No. 207 of 2016
WP(MD)No.1863 of 2016
: Mr.M.V.Venkatesan, in
WA(MD)No. 181 of 2016
: Mr.G.Prabhu Rajadurai in
WA(MD)No. 160 of 2016
: Mr.V.R.Shanmuganathan in
WA(MD)No.226 & 227 of 2016.

For Respondents : Mr.S.Vellaisamy for R1 to R3
in WA(MD)Nos.207 of 2016 and 160 of 2016 for R1 to R3 in
WA(MD)No. 226 & 227 of 2016
Mr.V.R.Shanmuganathan,
Special Government Pleader
for R14 to R16 for WA(MD)No.207/16 R1 to R3 in WA(MD)No.181/16
for R9 to R11 in WA(MD)No.160/16 and for R1 in WP(MD)No.1863/16.

Mr.N.Dilip Kumar, for R.20 in WA(MD)No.
207/16, for R.7 in WA(MD)No.181/16 for R.15 in WA(MD)160/16,
for R.16 in WA(MD)NO.226 & 227/16, for R.5 in WP(MD)No.1863/16

Mr.K.Alagirisamy, Senior Counsel for
Mr.S.D.Ramalingam, for R.19 in WA(MD)No.
207/16 for R.6 in WA(MD)No.181/16, for R.14 in WA(MD)No. 160/16
for R.15 in WA(MD)No.226 & 227/16, for R.4 in WP(MD)No.1863/16.

Mr.Michel Bharathi for R.18 in WA(MD)
No.207/16, R.5 in WA(MD)No.181/16, for R.13 in WA(MD)No.160/16,
for R.14 in WA(MD)NO. 226 & 227/16, for R3 in WP(MD)No. 1863/16.

Mr.P.Mahendran, Standing counsel for R.2 in
WP(MD)No. 1863/16

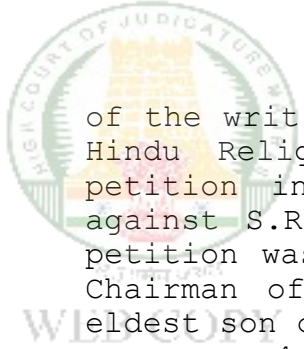
JUDGMENT

(Judgment of the Court was delivered by V.RAMASUBRAMANIAN,J)

Sri Mariamman Temple at Irukkangudi in Sattur Taluk, Virudhunagar District is a temple that comes within the administrative control of the Department of Hindu Religious and Charitable Endowments. By an order dated 04.05.1935, the erstwhile Board of Commissioners for Hindu Religious and Charitable Endowments framed a scheme for the administration of the temple in I.A.No.160 of 1934, in terms of Sections 18 and 63 of Madras Act II of 1927.

2.The said scheme was later modified by the Deputy Commissioner for Hindu Religious and Charitable Endowments by his proceedings in O.A.No.9 of 1955.

3.After about 20 years of the modification of the said scheme, a writ petition came to be filed in W.P.No.4433 of 1975 on the file of this Court by one S.R.Muthuraman Poosari challenging a decision of one of the hereditary trustees to call for a special meeting for the election of the Chairman of Board of Trustees. The election was stayed. But when a fresh notice was issued, they moved the Sub Court and obtained an order of injunction. Eventually, by an order dated 20.09.1976, this Court disposed



of the writ petition in W.P.No.4433 of 1975 directing the Commissioner of Hindu Religious and Charitable Endowments to dispose of a revision petition in R.P.No.169 of 1975 filed by a group of six trustees as against S.R.Muthuraman Poosari. The question that arose in the revision petition was as to whether the election of S.R.Muthuraman Poosari as the Chairman of Board of Trustees was valid or not and as to whether the eldest son of the family could alone be the hereditary trustee?.

4.By a final order dated 23.03.1977, the revision petition was allowed declaring the election of S.R.Muthuraman Poosari as the Chairman as invalid. This was on the ground that he was not the eldest family member as per the rule of primogeniture. Thereafter, a suit came to be filed by three persons by name S.A.Rajendran, S.Seenichamy Poosari and S.Sangiah Poosari in O.S.No.437 of 1982 on the file of the District Munsif Court, Sattur praying for a division of emoluments due to one branch of hereditary trustees to the plaintiffs 1 to 3 separately by allotting one clear month in a cycle of one year to each pangali.

5.At this stage, it is relevant to mention that the hereditary trusteeship as well as the hereditary Poosariship fell upon the children of three branches of persons namely:- (i) Ramasamy @ Mookan Poosari, (ii) Muthuraman Poosari and (3) Jothian Poosari. The branches of these three persons divided the right to perform poojas and to collect the offerings by a method of rotation which was as follows:-

(i) In the first rotation that started from the Tamil month of Thai, the branch of Ramasamy @ Mookan Poosari was allotted the exclusive right to perform poojas and collect offerings. The next Tamil month of Masi was allotted to the branch of Muthuraman Poosari. The following Tamil month of Panguni was allotted to the branch of Jothian Poosari and so on and so forth.

(ii) Once the first turn of 12 calendar months starting from the Tamil month of Thai and ending with the month of Margazhi got completed, the second turn was to start from the month of Thai but the rotation will commence from the second branch. In other words, the second branch Muthuraman Poosari will have their turn in the month of Thai, in the second rotation, the third branch Jothian Poosari will have their turn in Masi and the branch of Ramasamy @ Mookan will have their turn in Panguni and so on and so forth.

6. By adopting such a process of rotation in different turns, the legal heirs of all the three branches maintained peace between themselves. Even now there are inter se disputes only among the legal heirs of Jothian Poosari and not among the persons representing the other two branches namely, Ramasamy @ Mookan Poosari and Muthuraman Poosari branches.

7. As we have stated earlier, disputes started among the legal heirs of the third branch namely, Jothian Poosari in the year 1982 which resulted in O.S.No.437 of 1982 being filed. The said suit in O.S.No.437 of 1982 was dismissed by the trial Court by a judgment and decree dated 07.03.1985. But once again S.A.Rajendran filed a fresh suit in O.S.No.33 of 2004 on the file of the Sub Court, Sivakasi, praying for a mandatory injunction directing the allotment of one separate share out of four shares, that the legal heirs of Jothian Poosari are entitled to together and for a consequential decree of permanent injunction. This suit was dismissed as settled out of Court on 19.04.2004.

8. Thereafter, S.A.Rajendran filed a writ petition in W.P (MD) No.15653 of 2015 seeking a mandamus to direct the Chairman of Board of
<https://hcservices.courts.gov.in/hcservices/>
 to dispose of the representation made by him on 21.07.2015. Though the said writ petition was clearly not maintainable, an order was passed by a learned Judge on 31.08.2015 directing the Chairman of Board

of Trustees to consider the representation and pass orders in accordance with law.

9. Pursuant to the said order, the Chairman of Board of Trustees issued notices to the other legal heirs of Jothian Poosari on 21.09.2015 to appear for enquiry.

10. Immediately, the other legal heirs of Jothian Poosari came up with a writ petition in W.P(MD)No.17450 of 2015 challenging the said notice of enquiry dated 21.09.2015. During the pendency of the said writ petition, the State Government filed a review petition seeking review of the order dated 31.08.2015 passed in W.P.(MD)No.15653 of 2015. By a common order passed on 03.12.2015 in W.P.(MD)No.17450 of 2015 and Review Petition (MD) No.43 of 2015, the learned Judge dismissed both the writ petition as well as the review petition.

11. The reasoning given by the learned Judge was that the Chairman of Board of Trustees had jurisdiction to conduct an enquiry, as the enquiry was confined only to the manner in which the system is to be regulated. Moreover, the learned Judge held that Sections 56 and 57 of the Act gave power to the Board of Trustees to decide certain matters and hence, the dispute taken up for consideration would fall within the ambit of those sections. The learned Judge also held that the trustees namely the children of Jothian Poosari had submitted themselves to the jurisdiction of the Chairman of the Board of Trustees and hence they could not question the notice. In that view of the matter, the learned Judge dismissed both the writ petition and the review petition.

12. As against the order dismissing the writ petition in W.P(MD) No.17450 of 2015, one set of persons have come up with an appeal in W.A (MD)No.160 of 2016. Another set of persons have come up with an appeal in W.A(MD)No.181 of 2016. The third set of persons have come up with an appeal in W.A(MD)No.207 of 2016.

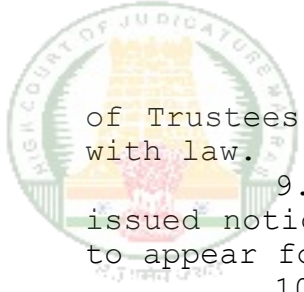
13. The State has come up with two writ appeals in W.A.(MD) No. 226 and 227 of 2016 challenging the order passed in the writ petition as well as in the review application.

14. In the meantime, the Chairman of Board of Trustees proceeded to pass final orders on 06.01.2016. The said order has come to be challenged by way of a fresh writ petition in W.P(MD)No.1863 of 2016.

15. Thus, we have on hand, three writ appeals at the instance of private parties and two writ appeals at the instance of the State, as against the common order passed by the learned Judge on 03.12.2015 in W.P (MD)No.17450 of 2015 and Review Application (MD)No.43 of 2015. Apart from these five writ appeals, we also have on hand a writ petition challenging the final order passed by the Chairman of Board of Trustees.

16. We have heard Mr.G.Prabhu Rajadurai, Mr.G.R.Swaminathan, Mr.M.V.Venkatasheshan, learned counsel for the appellants in the three writ appeals filed by the private parties Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the State who is the appellant in two writ appeals and who is also the respondents in the other writ appeals, Mr.K.Alagirisamy, learned Senior Counsel appearing for the person at whose instance, the Chairman of Board of Trustees passed the order impugned in the writ petition, Mr.N.Dilipkumar, learned counsel appearing for the 20th respondent in W.A(MD)No.207 of 2016, Mr.S.Vellaisamy, learned counsel for the respondents 1 to 3 in W.A(MD) No.207 of 2016, Mr.D.Selvanayagam, learned counsel for the respondents 5, 8, 9, 10 and 12 in W.A(MD)No.207 of 2016, Mr.Michel Bharathi, learned counsel for the 18th respondent in W.A(MD)No.207 of 2016, Mr.S. G. R. S. Govindarajan, learned counsel for the 19th respondent in W.A(MD) No.207 of 2016.

17. Since the issue raised in the five writ appeals and the writ



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petition are common, all the writ appeals and the writ petition are taken up together for disposal.

18.As we have pointed out earlier, Sri Mariamman Temple, at Irukkangudi, Sattur Taluk, Virudhunagar District came to be administered by a scheme framed on 04.05.1935 by the Board of Commissioners for Hindu Religious and Charitable Endowments. The scheme came to be modified first by an order of the Deputy Commissioner dated 31.05.1955. The management of the temple has seen several litigations in the past five decades. Since the branches of all the three original trustees have been expanding in the past several decades, the rights, liabilities, claims, suits, writ petitions and disputes are also ever expanding keeping pace with the growth of the families.

19.The trusteeship as well as the poosariship of the temple are now confined to the families of three branches namely Ramasamy @ Mookan Poosari, Muthuraman Poosari and Jothian Poosari. The Board of trustees comprises of 11 persons, out of whom five belong to the branch of Jothian Poosari. Interestingly, the number of Poosaries from the first branch of Ramasamy @ Mookan Poosari are 13. The number of Poosaries from Muthuraman Poosari's branch are 23 and the number of Poosaries from Jothian Poosari's branch are 20.

20.Despite the fact that the branch of Ramasamy @ Mookan Poosari and Muthuraman Poosari are having lesser representation in the Board of Trustees than the branch of Jothian Poosari and despite the fact that the number of Poosaries from Muthuraman Poosari's branch are more in number than the number of Poosaries hailing from Jothian Poosari's branch, the other two branches, have no fight either among themselves or with the branch of Jothian Poosari. It is only the legal heirs of Jothian Poosari who are now fighting among themselves. This fight is at least 33 years old which started in 1982.

21.Keeping the above background in mind, if we come to the grounds to the challenge to the order of the learned Judge, it is seen that the order of the learned Judge is assailed basically on four grounds:-

(i)No writ of mandamus could have been entertained as against the Chairman of Board of Trustees of a temple.

(ii)In any case, the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 does not confer any power upon either the Chairman or the Board of Trustees to decide such disputes and the parties should go only before the Civil Court.

(iii)Assuming that there are some powers vested with the Board of Trustees under Sections 56 and 57, it is only the body namely, Board of Trustees and not the Chairman of Board of Trustees who is competent to take any decision.

(iv)In any case, the relief sought by the writ petitioner before the Chairman of Board of Trustees in his representation dated 21.07.2015 was barred on the principles analogous to res judicata, in view of the decision rendered in two earlier suits.

22.We have carefully considered the above submissions.

23.The last ground of attack to the impugned judgment of the learned single Judge can be disposed of easily without much ado. Since the last ground of attack is on the principle of res judicata, all that we have to see is just to compare the relief sought in the petition dated 21.07.2015 and the reliefs sought in two earlier suits.

24.The relief sought in O.S.No.437 of 1982, was to divide the services of Jothian Poosari to the plaintiffs 1 to 3 separately by allotting one clear month in a cycle of one year to each Pangali of Jothian Poosari. This prayer was made in view of the fact that

the first plaintiff in that suit S.A.Rajendran happened to be the only legal heir to his father. The other two persons had their siblings which resulted in their share getting diminished.

25.The relief sought in O.S.No.33 of 2004 was to at least allot one separate share after dividing the month allotted to the legal heirs of Jothian Poosari into four weeks so that S.A.Rajendran could get an exclusive right to perform poojas and take collections one week in a month. But the relief sought in the representation dated 21.07.2015 before the Chairman of Board of Trustees was at least to retain some days as common days for all and to divide the remaining days.

26.In other words, the suit instituted in 1982 was for a larger relief to take away one full month's rights for S.A.Rajendran Poosari. After 22 years of experience in Civil Courts, the relief sought by S.A.Rajendran Poosari got reduced in O.S.No.33 of 2004 to grant him at least one full week. After 10 years of the institution of the said suit, the relief got further reduced at least to the exclusive allotment of certain days while retaining some other days as common days.

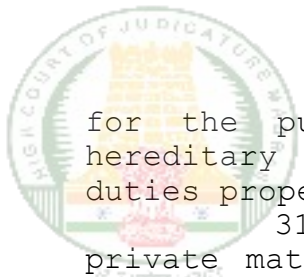
27.Therefore, it cannot be stated that the reliefs sought in the representation dated 21.07.2015, are barred by the principle of res judicata. The demand for one full month made in 1982 got reduced to a demand for one full week in 2004 and it further got reduced at least to the exclusive allotment of some days of the week as seen from the prayer made on 21.07.2015. The question as to whether such a prayer could have been made before the Chairman of Board of Trustees is a different question which we shall address, while we take up the other grounds of attack. Therefore, the fourth ground of attack namely, that the prayer made in the representation dated 21.07.2015 is barred by res judicata is to be rejected.

28.Now, we shall take first ground of attack namely as to whether a writ of mandamus could have been issued as against the Chairman of Board of Trustees. The answer to this question is too obvious. The Chairman of Board of Trustees is neither the State nor other authority within the meaning of Article 12 of the Constitution of India.

29.Though a writ under Article 226 of the Constitution of India, could be issued as against any person, such a power is circumscribed by a further condition that such a person should have a public duty to be performed. The Chairman of the Board of Trustees may perform public duties insofar as the devotees of the temple who make offerings to the deity are concerned. But the Chairman of the Board of Trustees is certainly not performing a public function or public duty while distributing the collections in the temple to the Poosaries and the trustees. If ever, the Chairman of Board of Trustees dedicates all those offerings and collections to the deities, it would become a public function. Therefore, we are of the clear view that no mandamus could have been sought or issued as against the Chairman of Board of Trustees. What was sought was actually a partition of the share of proceeds. Such a partition is purely a private affair between the trustees and poosaries. Due to a strange coincidence, this is a case where the trustees also happen to be beneficiaries. Generally, the trustee should not be a beneficiary. But since the family members performed dual role, one in the capacity of trustee and another in the capacity of a poosari, they also take the share of collections received in the temple. But that does not make the role of the Chairman of Board of Trustees as a public function. Therefore, this Court could not have entertained the first writ petition

<https://hseervices1.courts.gov.in/HSEServices/15653> of 2015.

30.The reference to the Board of trustees in various provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 are



for the purpose of ensuring that the temples administered by the hereditary trustees, are performing their statutory duties or public duties properly.

31.The decision as to how to share the collections is purely a private matter. Therefore, the original order passed in W.P(MD)No.15653 of 2015 issuing mandamus to the Chairman of the Board of Trustees to consider the representation could not have been issued. Once it is found that the learned Judge could not have issued a mandamus in W.P.(MD) No.15653 of 2015, it follows as a corollary that the application for review filed by the State in Review Application (MD)No.43 of 2015 ought to have been allowed by the learned Judge.

32.If Review Application (MD)No.43 of 2015 had been allowed, the notice dated 21.09.2015, issued by the Chairman of the Board of Trustees on the basis of the mandamus issued by this Court should have also gone and the writ petition in W.P(MD)No.17450 of 2015 ought to have been allowed.

33.However, it is contended by Mr.K.Alagarisamy, learned Senior Counsel that if a mandamus will not issue against the Chairman of Board of Trustees, a writ of certiorari will also not issue against the order passed by the Board of Trustees. But unfortunately, the notice issued by the Chairman of Board of Trustees on 21.07.2015 is a creation of this Court. It is a product of a writ of mandamus issued by this Court wrongfully. Once an act of Court has resulted in a wrong order passed by a person against whom, a mandamus will not issue, the Court has a duty to set the wrong right by setting aside that order. Therefore, the question of maintainability of the first writ petition, will have a bearing upon the question of maintainability with regard to the writ petition that arose out of an order passed in consequence of the order in the first writ petition.

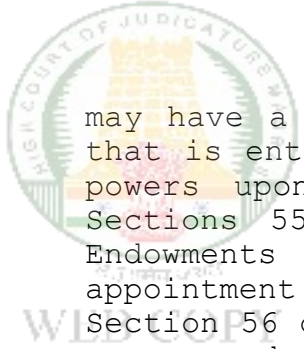
34.In such circumstances, the first ground of attack has to be upheld. Once the ground of attack to the order of the learned Judge on the ground of maintainability of the first writ petition that triggered the subsequent writ petition is upheld, it is not necessary to consider the other two grounds of attack. This is due to the fact that a ground of maintainability goes to the root of the matter.

35.As a consequence of the above discussion, the earliest order of the learned single Judge in W.P(MD)No.15653 of 2015 dated 31.08.2015 is liable to go. Once it goes, the action initiated by the Chairman of Board of Trustees by his proceedings dated 21.09.2015 should go. Once it goes, the final order passed by him on 06.01.2016 should also go.

36.It is contended by Mr.K.Alagirisamy, learned Senior Counsel that there was no doubt a representation before the Chairman of the Board of Trustees. Though there was Court intervention in W.P(MD)No.15653 of 2015, the Chairman of the Board of Trustees could have also independently passed an order. Therefore, it is contended by the learned Senior Counsel that the mere intervention made by the Court in activating a petition that was dormant before the Chairman of the Board of Trustees will not upset the action that the Chairman of Board of trustees was otherwise entitled to take under the Act.

37.But unfortunately this argument goes contrary to the very purpose of having the Board of Trustees. This is the reason why the impugned order is attacked not merely on the ground of maintainability of the writ petition against the Chairman of the Board of Trustees but also on the ground as to whether the Chairman has powers independent from that of the Board of Trustees. The answer to this question should also be an obvious no.

38.The Chairman of Board of Trustees in certain circumstances



may have a casting vote. But it is only the Board as a collective body that is entitled to take any decision even assuming that the Act confers powers upon the Board of Trustees to do certain things. A look at Sections 55 and 56 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 would show that Section 55 deals with the appointment of office holders and servants in religious institutions and Section 56 deals with the punishment of office holders and servants. The powers under both the Sections are conferred upon the trustee. Both these Sections use the expression 'trustee'.

39. The expression 'trustee' is defined in Section 6 (22) of the Act to mean a person or body by whatever designation known, in whom or in which, the administration of a religious institution is vested.

40. If there is a single trustee for a religious institution, Sections 55 and 56 confer powers upon that single person. But if there is a body, Sections 55 and 56 confer power upon that body and not upon the Chairman of Board of Trustees. Therefore, assuming for a minute that the Chairman was not led by the order of this Court, but independently dealt with the matter, even then that order would have to be treated as a nullity since it was not the order of the Board. But unfortunately, the rights of body namely the Board, to exercise the jurisdiction was conferred upon the Chairman of the Board of Trustees by the order of this Court in W.P(MD)No.15653 of 2015. Any decision by a trustee, if it happens to be a body under Section 6(22) should have been taken in a meeting of the Board. But this statutory prescription stood annulled by the order of this Court and hence the Chairman cannot be taken to have exercised a jurisdiction de hors the order of this Court. Therefore, the said argument of the learned Senior Counsel cannot be accepted.

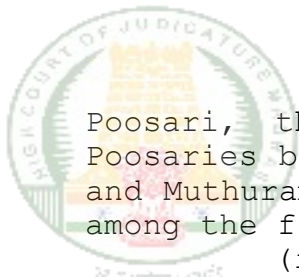
41. Therefore, in fine, the original order dated 31.08.2015 passed in W.P(MD)No.15653 of 2015 should go and the review filed by the Government deserves to be allowed. Since the review was dismissed, the writ appeals of the Government deserve to be allowed. As a consequence, the notice dated 21.09.2015 issued by Chairman of Board of Trustees and the writ appeals arising out of the order passed in W.P(MD)No.17450 of 2015 should be allowed. As a consequence, W.P(MD)No.1863 of 2016 is liable to be allowed and the final order is liable to be set aside.

42. But we cannot leave the matter at this stage, without at least some kind of a solution at least temporary. A lot of debate was initiated on the question as to whether the Joint Commissioner has powers as per one of the clauses of section 63 of the Act or whether the issue has to be resolved only before the Civil Court. We do not wish to poke our nose into the issue but we can provide a temporary solution. We can leave it open to the parties to take recourse either to Section 63 of the Act or to go before the Civil Court to establish their rights. But when they do so, it is very likely that the litigation is going to multiply and they will land up in this Court. Even an interim order passed either by the Joint Commissioner or by the Civil Court is also prone to be challenged in this Court. Therefore, while setting aside the order of the Chairman of the Board of Trustees, we wish to evolve a temporary arrangement so that any person who takes up the issue for a final adjudication before the Joint Commissioner or before the Civil Court will not be able to trouble either that authority or Civil Court or this Court even at the interlocutory stage.

43. Therefore, the following interim arrangement shall prevail till the parties go before the appropriate authority or Civil Court and

<https://hcservices.ecourt.gov.in/hcservices/>

“(i) Since there are 13 Poosaries (approximately) from branch 1, 23 Poosaries from Muthuraman Poosari and 20 Poosaries from Jothian



Poosari, the Joint Commissioner shall take the affidavits from the Poosaries belonging to branches 1 and 2 namely, Ramasamy @ Mookan Poosari and Muthuraman Poosari as to what is the system that actually keeps peace among the flock belonging to these branches.

(ii) The above exercise shall be done by the Joint Commissioner within four weeks.

(iii) Whatever is the pattern that is followed by the branches 1 and 2 shall be the same pattern that should be followed by the legal heirs of Jothian Poosari subject however to the rights of parties to have a proper adjudication before the appropriate forum.

(iv) Insofar as the present month of Thai is concerned, the Joint Commissioner shall see what has been done in the past two weeks and direct the repetition of the same practice for the remaining two weeks".

44. With the above directions, the writ appeals and the writ petition are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar.

To

1. The Secretary to Government, Hindu Religious and Charitable Endowments Department, Fort St., George, Chennai.

2. The Commissioner, Hindu Religious and Charitable Endowments Department, Nungambakkam High Road, Chennai 24.

3. The Joint Commissioner, Hindu Religious and Charitable Endowments Department, Sivagangai.

4. The Assistant Commissioner/Executive Officer, Arulmighu Irrukkankudi Mariyamman Thirukoil, Irukkankudi, Sattur Taluk, Virudhunagar District.

+1CC to Mr.M.V.Venкатaseshan, Advocate, SR.No. 5125

+2CC to Mr.G.Prabhu Rajadurai, Advocate, SR.No. 5303 & 5564

+1CC to Mr.N.Dilip Kumar, Advocate, SR.No. 5616

+1CC to Mr.M.Kannan, Advocate, SR.No. 5562

+1CC to Mr.P.Mahendran, Advocate, SR.No. 5158

+1CC to Mr.S.D.Ramalingam, Advocate, SR.No. 5168

Writ Appeal(MD) Nos.207, 181, 160, 226 and 227 of 2016
and

C.M.P(MD) Nos.1009, 1010 and 785 to 787 of 2016
and

Writ Petition (MD) No.1863 of 2016
and

W.M.P. (MD) No.1617 of 2016
28.01.2016