



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON:13.12.2017

DELIVERED ON:21.12.2017

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CORAM:

**THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND**

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A(MD)No.1434 of 2017

and

C.M.P (MD) No.10951 of 2017

1.P.M.Pandiarajan
2.R.Saravana Pandian
3.Rebello

.. Appellants/Petitioners

.vs.

1.The Commissioner,
Hindu Religious and Charitable
Endowments (Admn.) Department,
Chennai - 34.

2.The Joint Commissioner,
Hindu Religious and Charitable
Endowments (Admn.) Department,
Madurai.

3.Sivaji Poosari

4.C.Karthik

5.K.Ramesh

6.V.K.Pandian

7.Chellapandi

8.P.M.Jagadish Pandian

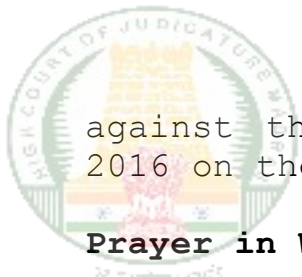
9.The Fit Person/Deputy Commissioner,
Arulmigu Pandi Mueeswarar Temple,
Melamadai, Madurai District.

10.The Executive Officer/Deputy Commissioner,
Arulmigu Pandi Muneeswarar Temple,
Melamadai,
Madurai District.

..Respondents/Respondents

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

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent,



against the order dated 10.10.2017 passed in W.P(MD)No.24632 of 2016 on the file of this Court.

Prayer in WP(MD) . 24632/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari calling for the records of the 2nd respondent proceedings in O.A.No.21 of 2016, dated 07.10.2016 and quash the same.

For Appellants	:Ms.J.Anandhavalli
For R-1, R-2 & R-9	:Mr.V.R.Shanmuganathan, Special Government Pleader
For R-8	:Mr.V.Elaiyaraja
For R-10	:Mr.M.Muthugeethaiyan Standing Counsel
For R-3 to R-7	:No Appearance

JUDGMENT

M.VENUGOPAL. ,J:

The Appellants have preferred the present Writ Appeal as 'Aggrieved Persons', as against the order dated 10.10.2017 in W.P(MD)No.24632 of 2016 passed by the Learned Single Judge.

INTRODUCTION:

2. Earlier, the Learned Single Judge while passing the impugned order on 10.10.2017 in W.P(MD)No.24632 of 2016 filed by the Appellants (as Petitioners), at Paragraph Nos.3 and 4, had observed the following and disposed of the Writ Petition by granting liberty to the Petitioners(Appellants) to file necessary Objections/Suggestions to the Second Respondent, within a period of two weeks from the date of receipt of a copy of the order etc:

"3.The learned Special Government Pleader appearing for R-1 & R-2 would submit that the impugned proceeding is nothing, but a notice, for which, the petitioners have to offer their objections/suggestions only and without doing so, they have straightaway approached this Court.

4.There is every force in the contention raised by the respondents. A cursory look at the impugned proceedings dated 07.10.2016 would go to show that the 2nd respondent has only invited objections/suggestions from the petitioners to frame a scheme under Section 64 (1) of the Tamil Nadu HR & CE Act, 1959, which in the considered opinion of this Court, need not be challenged."

**APPELLANTS' CONTENTINS:**

3. The Learned Counsel for the Appellants submits that Appellants/Petitioners are Hereditary Trustees-cum-Poojaries in the Temple and the impugned notice dated 07.10.2016 issued by the Second Respondent/Joint Commissioner, Hindu Religious and Charitable Endowments (Admn.) Department, Madurai, is a *suo motu* proceedings initiated for framing a Scheme as per Section 64(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, (Tamil Nadu Act 22 of 1959).

4. It is the plea of the Appellants that the reason for initiation of *suo motu* proceedings is stated to be that the 'Administration of the Temple' was vested with the Family of one Valliammal. Initially, there were two Hereditary Trustees and now, presently there are ten Hereditary Trustees in the Administration and if the situation continues, there may be litigations and therefore, in order to control and regulate the number of Hereditary Trustees, the impugned notice, dated 07.10.2016 was issued by the Second Respondent.

5. Advancing her arguments, the Learned Counsel for the Appellants takes a stand that the impugned notice dated 07.10.2016 of the Second Respondent is beyond and contradictory to the ingredients of Section 64 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and that apart, the impugned notice dated 07.10.2016 of the Second Respondent is against the order of the Board, dated 05.09.1935.

6. The Learned Counsel for the Appellants contends that the impugned notice dated 07.10.2016 of the Second Respondent is premature in view of the final order in W.A(MD)Nos.1133 & 1143 of 2016, C.M.A(MD)Nos.583, 669, 670 & 819 of 2016 & W.P(MD)Nos.5262, 5340, 10563, 11679, 13436 & 13493 of 2016.

7. The Learned Counsel for the Appellants expatiating her submissions, submits that in the instant case on hand, there is no Application for 'Settlement of Scheme' and the contents of the impugned notice dated 07.10.2016 indicates that it is not initiated due to any prevailing 'mal-administration'. Per contra, according to the Appellants, the impugned notice dated 07.10.2016 of the Second Respondent anticipates litigations in future and as such, seeks to reduce the number of Hereditary Trustees.

8. The Learned Counsel for the Appellants projects and argument that 'reduction of Hereditary Trustees', is not one in the interest of proper administration of the Temple. Furthermore, it is represented on behalf of the Appellants that the Second Respondent has taken a hypothetical view that the 'Future Hereditary Trustees' will be litigious.



9. Continuing further, it is the version of the Appellants that Section 54 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, speaks of 'in the event of permanent vacancy in the Office of the 'Hereditary Trustee', the next in the line of succession is entitled to succeed in the Office'. Besides this, it is projected on the side of the Appellants that the Office of the 'Hereditary Trustee' to a Temple is in the nature/character of an 'Immovable Property' and and succession opens in case of 'Permanent Vacancy'.

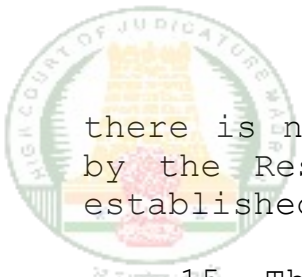
10. The Learned Counsel for the Appellants strenuously contends that the impugned notice dated 07.10.2016 of the Second Respondent issued to reduce the number of 'Hereditary Trustee', is a measure to disentitle a Right accruing under the Statute and if such a measure is allowed, it is not only traverses the scope of Section 64 of the Act, 1959, but also hits the rights vested under Section 54(1) of the Act.

11. The Learned Counsel for the Appellants proceeds to point out that in the counter affidavit filed by the Second Respondent (Joint Commissioner, Hindu Religious and Charitable Endowments (Admn.) Department, Madurai in W.P(MD)No.24632 of 2016) at paragraph No.12, it is mentioned that the Collection of data would reveal that hundreds of Writ Petitions, Suits, Appeals and Revisions are before various forums in the past two decades and they are inter-parties or with Department, because of the reason 'Non-Availability' of proper Scheme.

12. In this connection, the Learned Counsel for the Appellants submits that the afore stated contents of Paragraph No.12 with regard to 100 cases, according to the Appellants is only an improvisation of the impugned order and they are traced from the year 2004 onwards and most of them were already disposed of. Also that, it is the plea of the Appellants that most of the litigations after 02.03.2016 pertain to the proceedings of 9th and 10th Respondents and they are still under challenge.

13. The Learned Counsel for the Appellants brings it to the notice of this Court that the Board's order No.2074 dated 05.09.1935 of the Commissioner of Hindu Religious Endowments, Chennai, declares 'Sri Pandimuni Temple, Melamadai, Madurai Taluk' in O.A.No.459 of 33, as one to be excepted under Section 84 of the Madras Act II of 1927 and further that, it directs the Hereditary Trustees to maintain proper accounts and periodically submit the same for scrutiny and it directs to administer the Temple without any complaints and in case of failure to the above directions, provides for 'Settlement of Scheme'.

14. The Learned Counsel for the Appellants in view of the
<https://hccservices.courts.gov.in/hccservices/> Board No.2074 dated 05.09.1935, submits that the impugned notice dated 07.10.2016, does not reflect any dereliction from the aforesaid order of the Board No.2074 dated 05.09.1935 and



there is no complaint against the Trustees except those initiated by the Respondents, all of which are challenged and yet to be established.

15. The Learned Counsel for the Appellants contends that after the appointment of 'Fit Person' and 'Executive Officer' by orders dated 02.03.2016 and 12.05.2016 respectively, those Officers are only in the Administration of the Temple and in such circumstance, charging complaints regarding the Administration against the Trustees, cannot be done and it shows the malafide attitude of the Respondents.

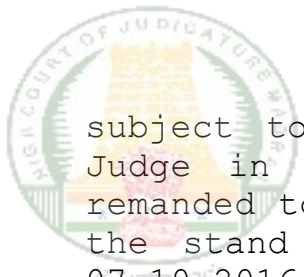
16. The Learned Counsel for the Appellants points out that the First Respondent/Commissioner, Hindu Religious and Charitable Endowments(Admn.) Department, on 12.05.2016 passed an order appointing the Executive Officer for the Temple, which was challenged before this Court in W.P(MD)No.10257 of 2016 and the order of the First Respondent dated 13.05.2016 ordering removal of Hereditary Trustees was also challenged by them in Civil Miscellaneous Appeals and in fact, Writ Petition was allowed by this Court and challenging the same, W.A(MD)Nos.1133 & 1143 of 2016 were filed and the said Writ Appeals were heard together with other matters.

17. The Learned Counsel for the Appellants submits that in the batch of Writ Appeals stated supra, judgment was delivered on 28.03.2017 and because of the dissenting opinion, the matter was referred to a Third Judge and the same as on date, is pending and as such, the subject matter in issue has not reached the finality.

18. The Learned Counsel for the Appellants points out that the 'point of dissent' is in regard to the necessity of notice before suspension under Section 53 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and therefore, the order of the Learned Judge has a bearing on the status of Hereditary Trustees ie., suspension or removal and further that, in case of suspension, the Trustees remain in Office and in case of removal, the person(s) next in the line of succession, shall be recorded in their office and either way, there arises no circumstance to initiate proceedings under Section 64 of the Act.

19. The Learned Counsel for the Appellants adds to state that insofar as the order of dismissal of the Appellants is concerned, the same was challenged by way of Civil Miscellaneous Appeals and the same was remanded to the file of the Secretary, Tourism, Culture & Endowments Department and in view of the remand, the charges levelled against the Trustees are yet to be proved and one cannot assume the result of enquiry. Therefore, it is the

the Learned Counsel for the Appellants that invocation of 'suo-motu' power under Section 64(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, is



subject to the outcome of the decision of the Honourable Third Judge in the Writ Appeal batch and the result of an enquiry remanded to the file of the Secretary to Government. In effect, the stand of the Appellants is that the impugned notice dated 07.10.2016 of the Second Respondent at this stage is a premature one at this stage.

20. In regard to the maintainability of the Writ Petition, the Learned Counsel for the Appellants, places reliance on the decision of the Honourable Supreme Court in *Siemens Ltd., State of Maharashtra and Others* reported in (2006) 12 Supreme Court Cases 33, wherein it is held as follows:

"Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction, but the question herein has to be considered from a different angle viz., when a notice is issued with premeditation, a writ petition would be maintainable. In such an event, even if the court directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose. It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter-affidavit as also in its purported show-cause notice."

21. The Learned Counsel for the Appellants contends that the impugned notice dated 07.10.2016 of the Second Respondent is one issued with malafide intentions to reduce the number of Trustees and once it is premeditated one, it will be a futile exercise to go before the very same Authorities.

22. The Learned Counsel for the Appellants relies on the decision of the Honourable Supreme Court in *V.C.Banaras Hindu University and Another v. Sharikant* reported in (2006) 11 Supreme Court Cases Page No.42, at Special Page No.60, wherein at Paragraph Nos.48 and 49, it is observed as under:

"48. The Vice-Chancellor appears to have made up his mind to impose the punishment of dismissal on the respondent herein. A post-decisional hearing given by the High Court was illusory in this case."

49. In K.I.Shepard v. Union of India (1987) 4 SCC 431, this Court held: (SCC p.449) para 16)

"It is common experience that once a decision has been taken, there is a tendency to uphold it and a post-decisional hearing may not really yield any fruitful purpose."

(See also Assam Sillimanite Ltd. v. Union of India



(1990) 3 SCC 182 and H.L.Trehan v. Union of India (1989) 1 SCC 764)."

23. The Learned Counsel for the Appellants refers to the decision in *The Government of Tamil Nadu, rep. by its Principal Secretary, Tourism, Culture and Charitable (Ani3-1) Department and others* reported in 2017(4) CTC at Page No.581, at Special Page No.588, wherein 'the Editors Note' reads as under:

"Editor's Note: The Division Bench consisting of Justice Nooty Ramamohana Rao & S.S.Sundar, JJ. has held that the Competent Authority had not conducted Enquiry strictly in accordance with sub-section(3) of Section 53 of T.N. HR & CE Act and resultantly set aside impugned order removing Hereditary Trustees and remanded matter for fresh consideration. Justice S.S.Sundar has held that having regard to the fact, charges framed against Trustees are serious, the Order temporarily suspending the Trustees during pendency of Enquiry shall continue to be in force till the Final Order is passed by Competent Authority and accordingly affirmed Order of Suspension. Justice Nooty Ramamohana Rao has partly dissented with the opinion of Justice S.S.Sundar on the aspect of temporary Suspension of Trustees pending disposal of proceedings initiated for removal. Justice Nooty Ramamohana Rao set aside the Suspension pending enquiry and restored the status of Trustees."

24. The Learned Counsel for the Appellants refers to the judgment of the Honourable Supreme Court in *Ram Rattan (Dead) by Legal Representatives v. Bajrang Lal and Others* (CDJ 1978 SC 181), wherein it is observed and held that "It is, therefore, safe to conclude that the hereditary office of Shebait which would be enjoyed by the person by turn would be immovable property."

SUBMISSIONS OF RESPONDENT NOS.1, 2 AND 9:

25. In response, the Learned Special Government Pleader for R-1, R-2 and R-9 contends that the object of Section 64 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, is to secure proper Administration for the Welfare of the Institution and the impugned notice dated 07.10.2016 of the Second Respondent itself points out that for better administration of the Temple, why the Scheme should not be framed. Further, the three major reasons to frame a Scheme to the Temple are (1) the Temple which started with one Hereditary Trustee, whose family have now extended its branch to hundred approximately and in fact, all of them cannot administer the temple at a time and they need to be regulated; (2) the Legal Heirs fight among themselves and the same more than one hundred litigations and as such, they need to be regulated; and (3) there are serious allegations against the Trustees in the management (including



misappropriation, theft of hundi income, criminal cases, negligence of duty, sale of properties of temple etc.,) and therefore, there is every need for securing proper Administration.

26. The Learned Special Government Pleader for R-1, R-2 and R-9 shows that the appointment of an Executive Officer had not reached finality and in fact, the Appeal of the State was allowed and that the order of appointing 'Executive Officer' was sustained and further, the Executive Officer has to function along with Trustees in administration and at present, Fit Person had replaced Trustees temporarily and therefore, he is not in exclusive administration.

27. The Learned Special Government Pleader for R-1, R-2 and R-9 comes out with the plea that the Temple in question is an 'Excepted Temple' and is not an 'Exempted Temple', which means the Administration is vested with Hereditary Trustees and therefore, it is not correct to contend that they are excluded from the purview of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Apart from that, it is the contention of the Learned Special Government Pleader for R-1, R-2 and R-9 that the order of the Board declaring the Temple as an 'Excepted Temple', unerringly points out that if there are complaints, then, the proceedings for 'Settlement of Scheme' will be initiated. Now since there are lot of complaints, there is nothing wrong in initiating the Scheme.

28. The Learned Special Government Pleader for R-1, R-2 and R-9 vehemently points out that Section 54 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, speaks of 'individual case' and the dispute as to 'individual vacancy', whereas the ingredients of Section 64 of the Act, pertains to 'entire Institution and its welfare'. Moreover, by framing a Scheme in the instance case, what is to be done, is only a 'regulation' and not 'restriction'.

29. The Learned Special Government Pleader for R-1, R-2 and R-9 contends that show-cause notice cannot be assailed in a Writ Petition and to lend support to his contention, he places reliance on the decision of the Honourable Supreme Court in *Anant R.Kulkarni v. Y.P.Education Society and Others* reported in (2013) 6 Supreme Court Cases 515, wherein, it is observed that a charge sheet or show cause notice issued in the course of disciplinary proceedings cannot ordinarily be quashed by Court. Paragraph No.17 of the said judgment is extracted hereunder:

17. The purpose of holding an enquiry against any person is not only with a view to establish the charges levelled against him or to impose a penalty, but is recording the truth of the matter, and in that sense, the outcome of an enquiry may either result in



establishing or vindicating his stand, and hence result in his exoneration. Therefore, fair action on the part of the authority concerned is a paramount necessity."

30. The Learned Special Government Pleader for R-1, R-2 and R-9 cites the order of the Division Bench in W.P.No.5301 of 2016 (between N.Rajalakshmi v. The Registrar General, High Court, Madras, Chennai 104), wherein the above stated Judgement of the Honourable Supreme Court in Anant R.Kulkarni v. Y.P.Education Society and Others reported in (2013) 6 SCC 515, was followed and at Paragraph No.7, it was held as follows:

"7. We are of the considered view that there is absolutely no merits in the Writ Petition. It is open to the petitioner to face the enquiry and produce materials to substantiate her contention that she has not committed the misconduct in question."

31. The Learned Special Government Pleader refers to the order dated 28.06.2016 passed in W.P(MD)No.11550 of 2016 (between S.Karuthapandi v. the Joint Commissioner and another), wherein at Paragraph No.11, it is observed as under:

"11. In this connection, it is not out of place for this Court to make a pertinent mention that ordinarily the spirit, tenor and the entire contents of the impugned notice will have to be looked into and a clear cut meaning is to be gathered as that of a prudent and reasonable man would do in a given case. Of course, based on the facts and circumstances, of a given case which float on a surface."

32. The Learned Special Government Pleader for R-1, R-2 and R-9 points out that outcome of the enquiry before the Second Respondent in the subject matter in issue, may result in establishing or vindicating the right of parties and therefore, there is no impediment on the part of the Appellants to submit their Objections/Explanations to the impugned notice dated 07.10.2016 issued by the Second Respondent.

33. The Learned Special Government Pleader contends that outcome of the decision of the Honourable Third Judge in the Writ Appeal batch and the result of the enquiry remanded to the file of the Secretary to Government has no bearing to the present facts of the Writ Petition.

SUBMISSIONS OF TENTH RESPONDENT

34. The Learned Counsel for R-10 submits that for the impugned <https://hccservicescourts.gov.in/hccservices/> 07.10.2016 of the Second Respondent, it is open to the Appellants to give a reply and in fact, the Board's Order dated 05.09.1935 *inter alia* mentioned that 'we do not consider



that there is any necessity for framing a scheme at present etc.,' and further that, a show-cause notice cannot be assailed in a Writ Petition.

35. The Learned Counsel for the Tenth Respondent submits that only on technical ground, the Civil Miscellaneous Appeals were allowed. The Learned Counsel also refers to Section 64 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, under the caption 'Power of [Joint Commissioner or Deputy Commissioner] to settle schemes', which runs as under:

"64. Power of [Joint Commissioner or Deputy Commissioner] to settle schemes.- (1) When [the Joint Commissioner or the Deputy Commissioner, as the case may be], has reason to believe that in the interest of the proper administration of an institution, a scheme should be settled for the institution, or when not less than five persons having interest make an application, in writing, stating that in the interest of the proper administration of an institution a scheme should be settled for it, [the Joint Commissioner or the Deputy Commissioner, as the case may be], shall consult in the prescribed manner the trustee and the persons having interest [***] and if after such consultation, he is satisfied that it is necessary or desirable to do so, he shall, by order, settle a scheme of administration for the institution.

Explanation.- For the purposes of this section, "institution" means a temple or a specific endowment attached to a temple.

(2) A scheme settled under sub-section (1) for an institution may contain provision for-

(a) removing any existing trustee, whether hereditary or non-hereditary:

Provided that where provision is made in the scheme for the removal of a hereditary trustee, provision shall also be made therein for the appointment as trustee of the person next in succession who is qualified;

(b) appointing a new trustee or trustees in the place of, or in addition to, any existing trustee or trustees;

(c) defining the powers and duties of the trustee or trustees:

Provided that in making any provision of the nature specified in clause (b) due regard shall be had to the claims of persons belonging to the religious denomination for whose benefit the institution is chiefly intended or maintained.

The Joint Commissioner or the Deputy Commissioner as the case may be], may determine what the properties of the institution are and append to the



scheme a schedule containing a list of such properties.

(4) Pending the settlement of a scheme for an institution, [the Joint Commissioner or the Deputy Commissioner, as the case may be] may appoint a fit person to perform all or any of the functions of the trustee thereof and define his powers and duties.

(5) (a) [The Joint Commissioner or the Deputy Commissioner, as the case may be], may, at any time, after consulting the trustee and the persons having interest [***], by order, modify or cancel any scheme in force settled under sub-section (1) or any scheme in force settled or modified by the Board under the [Tamil Nadu] Hindu Religious Endowments Act, 1926 ([Tamil Nadu] Act II of 1927), or deemed to have been settled under that Act, or any scheme in force settled or modified by [the Joint Commissioner or the Deputy Commissioner, as the case may be] or the Commissioner under this Act, or any scheme in force settled or modified by the Court in a suit under sub-section (1) of Section 70, or on an appeal under sub-section (2) of that section or any such scheme in force deemed to have been settled or modified by the Court under clause (a) of sub-section (2) of Section 118:

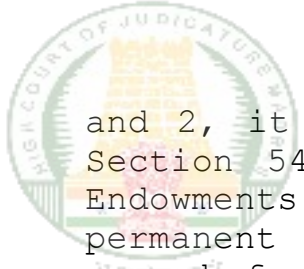
Provided that such cancellation or modification of a scheme in force settled or modified by the Court in a suit under sub-section (1) of Section 70 or on an appeal under sub-section (2) of that section or of a scheme in force deemed to have been settled or modified by the Court under clause (a) of sub-section (2) of Section 118 shall be made only subject to such conditions and restrictions as may be prescribed.

(b) If [The Joint Commissioner or the Deputy Commissioner, as the case may be], is satisfied that any such scheme referred to in clause (a) is inconsistent with this Act and the rules made thereunder, he may, at any time, after consulting the trustee and the persons having interest [***] modify it in such manner as may be necessary to bring it into conformity with the provisions of this Act and the rules made thereunder.

(6) Every order of [the Joint Commissioner or the Deputy Commissioner, as the case may be], settling, modifying or cancelling a scheme under this section shall be published in the prescribed manner and on such publication shall, subject to the provisions of Sections 69 and 70 be, binding on the trustee, the executive officer and persons having interest."

REPLY SUBMISSIONS OF APPELLANTS:

<https://hcservices.ecourts.gov.in/hcservices/> of reply, the Learned Counsel for the Appellants says that admittedly, there are eight Trustees, who were in Administration were removed and according to the Respondent Nos.1



and 2, it is their Officers, who are in Administration. As per Section 54(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the next in the line of succession to the permanent vacant post to the Trustee is entitled to succeed and even before they enter into the Administration, the Respondents cannot presume 'malafide administration' and to regulate the same, they desired to frame a Scheme, which is unsustainable in the eye of Law. In short, the Learned Counsel for the Appellants points out that the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, provides for filling up of vacancy on certain contingencies and that right cannot be taken away. More importantly, in the Scheme also, 'Hereditary Trustee' alone can manage and not third party can enter.

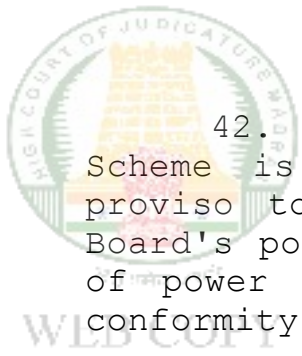
37. The Learned Counsel for the Appellants submits that even if the Scheme is framed, the Second Respondent has no jurisdiction to minimise the number of Trustees as the Administration is by the Hereditary Trustees.

38. Heard both sides and noticed their contentions.

39. There is no second opinion of a primordial fact that the Commissioner of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, has powers under the Act to appoint a 'Fit Person' to any Institution, where a Hereditary Trustee is under suspension, but, he ought to take note of the general law under which, the Hereditary Trustee is entitled to fill up the vacancy. The discretion as per Section 54 of the Act, must be exercised in a fair and objective manner, taking note of the contingencies mentioned in Section 54 of the Act.

40. Insofar as the proceedings initiated under Section 64(5) of the Act, 1959, they are 'quasi Judicial' in character and not administrative one. Therefore, any order passed therein is undoubtedly, passed by a quasi Judicial Authority, in the considered opinion of this Court. As per Sections 64 and 65 (4) (a) of the Act, the power to modify or cancel the Scheme, can be exercised by a Commissioner under Section 65 (4)(a) of the Act 'suo motu' only.

41. In this connection, it may not be out of place for this Court to make a relevant mention that the Authorities concerned should spell out reasons, which compelled them to frame a Scheme and their objective satisfaction is of 'quasi judicial nature'. The framing of scheme for management carries with it the power to ascertain the properties of the Temple/Institution, which are to be managed and regulated by the Scheme under whose control the same have to be maintained.



42. Of course, invoking the power to cancel or modify the Scheme is subject to the conditions and restrictions as per proviso to Section 65 of the Act. To put it succinctly, the Board's power is not a restricted one and the purview of exercise of power of modification is limited i.e., to bring it only in conformity with the provisions of the Act.

DISPOSITION:

43. On a careful consideration of respective contentions and also this Court taking note of the relevant surrounding facts and attendant circumstances of the instance case in a wholesome manner comes to a conclusion that the impugned notice dated 07.10.2016 of the Second Respondent is only in the form of notice for which, the Appellants/Petitioners can submit their Objections/Representations/Remarks before the Second Respondent vindicating their stand point of view to substantiate their version with necessary supporting materials (inclusive of oral and documentary evidence as the case may be) and the reasons for the initiation of '*suo motu*' proceedings mentioned in the impugned notice dated 07.10.2016, cannot *prima facie* be considered to be a case of one issued with '*pre-determination*' or '*pre-conceived notion*', in the considered opinion of this Court. As such, this Court in the interest of justice, fair play, equity, good conscience and even as a matter of prudence, directs the Appellants to submit their Objections/Remarks/Representations before the Second Respondent (since there is no impediment in Law in this regard), within a period of three weeks from the date of receipt of a copy of this judgment. Soon after the receipt of a copy of the Representations/Objections/Remarks/Filing of Response by the Appellants, the Second Respondent shall look into the same with all seriousness and earnestness and to dispose of the same by passing a reasoned speaking order by assigning necessary qualitative and quantitative details, of course, after providing adequate opportunity of hearing to the Appellants by adhering to the principles of natural justice. It is open to the Appellants to raise all factual and legal pleas before the Second Respondent, who shall advert to the same by point to point and answer the same in a complete and comprehensive manner (which will have an appearance of justice) to give a quietus to the subject matter in issue.

44. It cannot be gainsaid that the Second Respondent shall pass necessary orders in the subject matter in issue in a Fair, Just, Free, Impartial, unbiased and in a dispassionate manner and in any event, uninfluenced and untrammelled with any of the observations made by this Court in this Writ Appeal.

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

45. With the above observation(s)/direction(s), the Writ Appeal is disposed of. No Costs. Consequently, connected



Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (AS)

/True copy/

Sub Assistant Registrar

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To

- 1.The Commissioner,
Hindu Religious and Charitable
Endowments (Admn.) Department,
Chennai - 34.
- 2.The Joint Commissioner,
Hindu Religious and Charitable
Endowments (Admn.) Department,
Madurai.
- 3.The Fit Person/Deputy Commissioner,
Arulmigu Pandi Muneeswarar Temple,
Melamadai, Madurai District.

+1cc to Mr.M.MUTHUGEETHAYAN,Advocate,SR.94243

+1cc to Mr.J.ANANDAVALLI,Advocate,SR. 94040

PM

KK/SV MMS/SAR 1/12.01.2018/ 14P- 6C/

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