

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 11.09.2017****CORAM:****THE HONOURABLE MR.JUSTICE R.MAHADEVAN****WEB COPY****W.P(MD)No.8391 of 2011**

1. S.Vijayakumar
2. M.Senthilvel
3. K.Perumal
4. P.Senthilkumaran
5. S.Murugan

... Petitioners

-vs-

1. Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Sivagangai.

2. Singaraju, S/o.Ramasamy Pillai
3. S.R.Mookiah Pillai
4. M.R.Sekar
5. Ra.Ramasamy Pillai
6. M.Singaraj, S/o.Muthiah Pillai
7. S.Muthuvel Pillai
8. M.Selliah Pillai
9. K.Pitchai Muthu
10. P.Senthil

11. Inspector,
Hindu Religious and Charitable Endowment Department,
Srivilliputhur.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order dated 28.06.2011 in U.Mu.3555/2011 A1 passed by the first respondent and quash the same and consequently direct the first respondent to take on file the un-numbered O.A. filed by the petitioners under section 64(5) of Tamilnadu Hindu Religious and Charitable Endowment Act,1959 seeking cancellation of the scheme settled by order dated 31.03.1987 in O.A.No. 31 of 1986.

For Petitioners	: Mr.ARL.Sundaresan, Senior Counsel
	For Mrs.AL.Ganthimathi
For R1 & R11	: Mr.J.Gunaseelan Muthiah
	Govt. Advocate
For R6 to R10	: Mr.T.Srinivasaraghavan
For R2 & R5	: No Appearance
For R3	: Dismissed by order dated 15.03.13
For R4	: Died

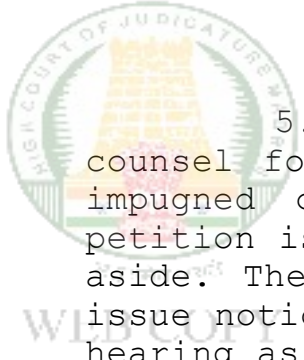
**ORDER**

This writ petition has been filed, seeking to quash the impugned order dated 28.06.2011 in U.Mu.3555/2011 A1 passed by the first respondent, by which the O.A. filed for cancellation of the scheme settled earlier was rejected without holding any enquiry. The petitioner also sought a direction to the first respondent to take on file the un-numbered O.A. filed by the petitioners under section 64(5) of Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 seeking cancellation of the scheme settled by order dated 31.03.1987 in O.A.No.31 of 1986.

2. It is the case of the petitioners that pursuant to the confirmation of the draft scheme without any modification vide O.A.No.31 of 1986 on the file of the Deputy Commissioner, H.R.&C.E., Madurai, the scheme came into force, as per which, the temple shall be administered by a Board of Trustees chosen by the Vellalar Community members of Pudupalayam. Even though such a scheme order was passed as early as on 31.03.1987, it was not enforced in a manner so as to interfere with the traditional rights of administration of the members of the Maravar community, who were not aware of such settlement of the scheme. It is the further case of the petitioners that the 2nd petitioner was served with a notice dated 09.05.2010 calling upon him to have over the temple keys and therefore, the petitioners filed an application under Section 64(5) of Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 for cancellation of the draft scheme, which stood rejected by the 1st respondent unilaterally, aggrieved by which, the petitioners are before this Court.

3. The learned Senior Counsel for the petitioners has submitted that the 1st respondent has passed the order with pre-determined mind and has come to the conclusion without even holding any enquiry on the O.A. He would further submit that the authority concerned has not applied the correct provisions of law and therefore, the impugned order is vitiated in the eye of law.

4. The learned counsel for the respondents 6 to 10 has submitted that it is the Vellalar Community, which has the predominant right in administration of the temple even before and after recognition of pre-existing right of the said Community. It is further submitted that against the order of the 1st respondent, there is appeal remedy available before the Commissioner, because there is no jurisdiction vested with the 1st respondent to change the character of the order under Section 64(5) of the Act. However, he has fairly submitted that the observation made by the 1st respondent in the impugned order is not in consonance with the relevant provisions of law, which cannot stand in the eye of law.



5. In view of the fair submission made by the learned counsel for the respondents, this Court is of the view that the impugned order is liable to be set aside. Accordingly, this petition is allowed and the impugned order dated 28.06.2011 is set aside. The first respondent is directed to number the petition, issue notice to the Trustees and after affording an opportunity of hearing as well as any of the interested parties, pass appropriate orders thereon on merits and in accordance with law, bearing in mind the provisions of Section 64(5) of the Act within a period of six months from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar

To:

1. Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Sivagangai.
2. Inspector,
Hindu Religious and Charitable Endowment Department,
Srivilliputhur.

+1cc to Mrs.AL.Ganthimathi, Advocate Sr.No.78056
+1cc to Mr.T.Srinivasaraghavan, Advocate Sr.No.78158

AR

VB/SKN/RSK/SAR2/18/09/2017/3P/5C

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11.09.2017