

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.9087 & 7617 of 2020 and
and WMP.No.11068 of 2020

S.ManoharChettiar

Managing Trustee,

Sri Prasanna Venkata Narashimha

Perumal Temple,

Perumal Kovil Street,

Saidapet, Chennai-600 015.

... Petitioner in
WP. No.9087 of 2020

Dr.K.J. Renuka

... Petitioner in
WP. No.7617 of 2020 & R5

Vs.

1. The Principal Secretary
Hindu Religious and Charitable Endowment Department,
St George Fort, Secretariat,
Chennai-9.
- 2 The Commissioner,
Hindu Religious and Charitable Endowment Department,
Chennai-34.
- 3 The Joint Commissioner,
Hindu Religious and Charitable Endowment Department
Chennai-34.
- 4 The Fit Person/ Executive Officer,
ArulmiguMudakanimamman Temple,
Mylapore, Chennai-4.
- 4 The Fit Person/ Executive Officer,
ArulmiguSidhi Buddhi Vinayakar&Sudareswarar Temple,
Royapettah, Chennai.

(suo motu impleaded in place of R4)

5 DR.K.J.Renuka

6. A.R.ThulasiramChettiar

.. Respondents in
W.P.No.9087 of 2020

- 1 The Secretary to Government,
Commercial Taxes and Registration Department,
Fort.St.George, Chennai-9.
- 2 The Inspector General of Registration,
No 120, Santhome High Road,
Santhome, Chennai.
- 3 The Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam High Road, Chennai- 34.
- 4 The District Registrar,
Chennai South Guindy Industrial Estate,
Guindy, Chennai.
- 5 S.Manohar
- 6 B.Suresh
- 7 R.D.Suryaprakash

.. Respondents in
W.P. No.7617 of 2020

Prayer in WP. No.9087 of 2020 : Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari to call for the order of the 3rd Respondent in Se.Mu.Ka.No.2658/ 2020 -1/ E3 dated 02.07.2020 and quash the same.

Prayer in WP. No.7617 of 2020 : Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Mandamus to direct the 4th Respondent to hold on enquiry into the illegal lease deeds executed by the 5th Respondent of the Land belonging to the Sri Prasanna Venkata Narasimha Perumal Temple on the basis of the Letter EN.3402/U2/2020 dated 5.2.2020 issued by the 2nd Respondent to the 4th Respondent.

For Petitioner : Mr.G.Ashokpathy in
W.P. No.9087 of 2020
Mr.Vineet Subramani in
W.P.No.7617 of 202

For Respondents : Mr.M.Karthikeyan,
Special Government Pleader
- R1 to R3 in W.P.No.9087 of 2020
A.K.Sriram - R4 in W.P.No.9087 of 2020
Mr.Sathishkumar - R6 (vakalat not filed)
R5 and R7 - no appearance

C O M M O N O R D E R

These two writ petitions are taken up together since they relate to similar/identical allegations made as against the petitioner in W.P.No.9087 of 2020, Manohar Chettiar, by the Hindu Religious and Charitable Endowments Department (HR&CE Department) in W.P.No.9087 of 2020 and by one Dr.K.J.Renuka in W.P.No.7617 of 2020. Manohar Chettiar is the Managing Trustee of the Sri Prasanna Venkata Narashimha Perumal Temple (in short 'temple') since the year 2014.

2. The challenge in W.P.No.9087 of 2020 is to an order passed by the third respondent, the Joint Commissioner, HR&CE Department dated 02.07.2020, in terms of which, Manohar Chettiar has been removed from Trusteeship and directed to hand over charge of the temple administration to a Fit Person appointed to manage the affairs of the temple, arrayed as R4.

3. Incidentally, R4, the Executive Officer of the ArulmighuMundakanni Amman Temple, Mylapore though originally appointed as Fit Person under the impugned order, is not presently serving in that capacity. When this was pointed out, the HR & CE Department says that after passing of the impugned order, under an internal communication, R3 directed the Executive Officer of the ArulmighuMundakanni Amman Temple, Mylapore to hand over charge to the Executive Officer of the Arulmighu SidhiBudhiVinayakar&Sundareswarar Temple, Royapettah. Since the amendment as aforesaid was not brought to the notice of the petitioner, the Executive Officer appointed originally has been arrayed as R4, who is neither a proper nor appropriate party. Hence, the Executive Officer of the Arulmighu SidhiBudhiVinayakar&Sundareswarar Temple, Royapettah is impleaded suo motu in place of R4, and the latter deleted from the array of parties. Notice is taken on behalf of the newly impleaded R4 by Mr.A.K.Sriram, learned counsel.

4. R5 and R6, being devotees of the temple had sought impleadment as respondent Nos.5 and 6 in W.P.No.9087 of 2020 and were impleaded on 21.07.2020 and 22.07.2020 respectively.

5. This order is passed after hearing all parties in detail. Several disputes evidently exist in regard to the factual aspects of the allegations levelled as against Manohar Chettiar, and I thus chronicle hereunder the admitted facts alone, for clarity.

- i) The temple is denominational in status, said to have been consecrated by the Baliya Chetty Community over 800 years ago, having as its main deity as Lord Venkateswara.
- ii) The denominational status of the temple was settled by the 7th Assistant City Civil Court by judgment and decree in O.S.No.1134 of 1988 dated 11.02.1991.

- iii) The appeal filed by the HR&CE Department in A.S.No.325 of 1993 was dismissed by the 3rd Additional City Civil Court, Chennai on 26.04.1994. Judgment dated 11.02.1991 has thus attained finality.
- iv) While confirming the denominational nature of the temple, the Court rejected the prayer for a permanent injunction as against the HR&CE department, making it clear that the petitioner shall remit Annual contribution and Audit fee in terms of Section 92 of the Hindu Religious and Charitable Endowments Act, 1959 (in short 'Act') and reserving the right of the HR&CE Department to collect the aforesaid remittances from the temple.
- v) Admittedly, neither annual contribution nor audit fee has been paid from 1991 till date. Though some notices/communications inter se the HR&CE Department and the temple trustees are placed on record by R5 to state that demands were periodically being made for the books of accounts in order to quantify the contribution and audit fee, no final determination for any period is placed before me.
- vi) At paragraph 5 of the affidavit filed in support of the writ petition, Manohar Chettiar, in spite of the specific direction of the Courts as early as in 1991 to remit annual contribution and audit fee, refers to O.S.No.2086 of 2014 ('2014 suit') filed by him along with another member of the community, Dasai Krishna Kumar, before the 12th Assistant City Civil Court, Chennai challenging the demand of contribution and Audit fee by the HR & CE Department.
- vii) An interim order appears to have been obtained in I.A.No.6274 of 2014 on 16.04.2014 restraining the HR&CE Department from collecting annual contribution and audit fee. However, a Civil Revision Petition came to be filed by a third party, one A.V.Rajan, before the High Court in C.R.P.No.1211 of 2019, in which, as an interim measure, in C.M.P.No.7797 of 2019, suit proceedings have been stayed on 28.03.2019.
- viii) Thus, despite the categoric pronouncement of the Court in 1991, confirmed in 1994, there has been a feeble attempt by the petitioner to wheedle out of the payment of annual contribution and audit fee.
- ix) In the reply/written submissions filed before the Joint Commissioner (JC) in the course of the proceedings leading to the impugned order, the petitioner would attempt a distinction between the order passed in CRP staying the suit and a stay of the interim order passed in the 2014 suit appearing to suggest that the interim stay granted on 16.04.2014 restraining the HR & CE Department from collecting

- annual contribution and audit fee would survive and continue. The distinction has been rejected by the JC.
- x) However, perhaps in the light of the categorical judgment and decree dated 11.02.1991 reiterated in appeal on 26.04.1994, learned counsel for the petitioner in W.P.No.9087 of 2020, on instructions, states that the petitioner does not dispute the fact that the temple is in arrears of annual contribution and audit fee and also that learned counsel has advised, in all fairness, that the 2014 suit be withdrawn. This position is recorded and the petitioner is urged to do the needful in this regard at the earliest juncture.
 - xi) Removal of the petitioner/Manohar Chettiar from Trusteeship has been initiated on two grounds - arrears of annual contribution and audit fee and for the reason that temple properties were allegedly being alienated by the Trustees in violation of Section 34 of the Act.
 - xii) The main challenges to the impugned order dated 02.07.2020 are that being a denominational temple, it stands outside the control and purview of the HR&CE Department, the allegations relating to violation of Section 34 are baseless on merits and there is a gross violation of the principles of natural justice in the passing of the impugned order.

6. I straightaway deal with the preliminary, fundamental and jurisdictional objection raised by the petitioner to the effect that being a denominational temple, it is independent and not subject to intervention of any nature by the HR & CE Department. In this regard, great reliance is placed on the judgment and decree of the Court passed in 1991 and confirmed in Appeal in 1994.

7. The HR & CE Act was enacted to provide for a mechanism to oversee the management of religious institutions. The question in regard to whether the HR & CE Act would apply to all religious institutions including a denominational temple is not a novel one and has been answered by a Division Bench of this Court in Madurai Sourashtra Sabha represented by its Honorary Secretary T.D.Rajagopalier vs The Commissioner, Hindu Religious and Charitable Endowments (Administration Department), Nungambakkam, Madras (84 L.W. 86), incidentally also in the case of a denominational temple for Sri Prasanna Venkateswaraswami. The appeal suit arose from a judgement of the Subordinate Judge at Madurai dismissing the appeal of the plaintiff temple challenging the decision of the Commissioner to the effect that it was a public temple under Section 6(2) of the Act. The Court

concluded that the temple was denominational in nature but that would not stand in the way of it falling under the general superintendence of the HR&CE Department.

8. A note of caution was however sounded in that, the Department was advised to respect and be guided by the spirit underlying the establishment and existence of denominational temples and intervene only if warranted. The circumstances that would justify such intervention are set out in the concluding paragraphs as follows:

The suit temple was founded and has throughout been maintained and all its expenses are met out of voluntary generous contribution and liberal donations made by members of the Sourashtra Community and in particular the members of the Sourashtra Sabha who are rich and high by respectable persons in the locality. They have been uniformly contributing liberally to the upkeep and maintenance of the temple, the performance of the warship and the celebration of the festivals. There is no contribution from the public. The members of the Sourashtra Sabha have been very well managing the affairs of the temple all throughout without giving any occasion for complaint; till now there has been no complaint of any mismanagement whatsoever. They are maintaining regular accounts. The committee is meeting as often as required and the committee scrutinises everything concerning the management by the Office-bearers. Any injudicious and frequent interference in the management of the affairs of this long established institution on the part of the authorities would introduce deadlock and frustration and dampen the enthusiasm of the members of the Sourashtra Sabha. In course of time, they would become indifferent and voluntary donations and contributions would also disappear. This would naturally adversely affect the proper maintenance and upkeep of the temple, the worship and the celebration of the usual festivals. The less the interference by the authorities, the better will be the promotion of the good interests and the objects of the institution.

The authorities should also bear in mind that the temple accounts have been regularly maintained by the Devasthanam Committee of the Sourashtra Sabha and also periodically audited under the provisions of the Indian Companies Act, and till now nothing adverse has been suggested. It may be that the authorities functioning under the Hindu Religious

and Charitable Endowments Act have a right to audit through their Officers and also demand audit fees; but it is a matter for them to deeply consider if they have such powers, whether such an audit involving expenses to the institutions is at all necessary and whether it is going to serve any further or additional purpose besides the audit under the provisions of the Indian Companies Act. So long as the income and the expenditure are properly accounted for, there may be absolutely no need for a double audit.

In the result, the appeal is allowed and the judgment and Decree of the Court below are set aside, and it is hereby declared that Sri Prasaana Venkateswaraswami Temple, Madurai is a denominational temple within the meaning of Art. 26 of the Constitution of India. The order of the Commissioner passed in A.P. No. 46 of 1961 is set aside and the parties will be hereafter regulated by the Madras Hindu Religious and Charitable Endowments Act in so far as it is applicable to the denominational temples.

9. In that case, the temple was run with contributions from members of the denomination only. In the present case, the temple benefits from public money in the form of contributions/donations. There is a finding of fact rendered on the basis of evidence led in that matter that temple accounts were regularly maintained. Not so in the case before me. That temple was subject to audit under the Indian Companies Act. There is no such averment in regard to the temple before me. It is only in such circumstances that the Court rendered the observations questioning the need for an audit when that temple was subject to audit by another statutory authority. Even so, the conclusion in that case was that the temple was denominational in status, subject to regulation by the applicable provisions of the HR&CE Act.

10. Taking a cue from the above decision, the Madurai Sourashtra Sabha again challenged the intervention of the Department in its affairs, specifically, in the matters of audit and maintenance of accounts. In a decision reported in 2007 (2) CTC 11, Madurai Saurashtra Sabha vs The State of Tamil Nadu and others, a Division Bench of this Court forbade the authorities from intervening in the affairs of that temple and causing enquiry into its finances and accounts. The Court quoted from the earlier decision of the Division Bench in the petitioners' own case and recorded the admitted facts in relation to proper maintenance of accounts and regular audit by that temple.

11. After referring to Article 26 of the Constitution of India and Section 107 of the Act, the Bench states as follows:

On considering together the constitutional provision viz., Article 26, Section 107 of the Act and the Division Bench decision of this Court in the Appeal Suit, wherein the petitioner herein was the appellant, we find that the Sabha is a religious denomination and the Temple is a denominational Temple governed by Article 26 (a) & (b) of the Constitution of India. Though the authorities under the Act are empowered to go into the affairs of the Temple particularly with regard to maintenance of accounts, we are of the view that, in the case of a denominational Temple, it is not automatic or a regular feature for the authorities to interfere or verify the accounts whenever they desire so, under the guise of exercising the superintending power. In other words, the HR&CE authorities, before proceeding to act in terms of the powers vested in them, should deeply consider as to whether auditing is warranted based on the complaints or allegations such as mismanagement etc. As observed by the Division Bench, so long as the income and expenditure are properly accounted for, there is no need for the HR&CE Department to call for the records or interfere with their accounts. It is made clear that if there is a specific complaint/allegation, undoubtedly, the authorities can summon all the relevant records for their verification.

12. Thus, it was on a detailed examination of facts, upon being convinced that there were no complaints as regards the temple administration and that the accounts were regularly maintained and audited that the Bench held that intervention by the authorities in that case was not warranted. At paragraph 11, the Bench reiterates as follows:

11. In this background, it is relevant to point out that, in the first notice, dated 23.08.1993, the Deputy Commissioner merely directed the petitioner Sabha to produce the entire records in respect of the affairs of the Temple. Even after the reply dated 06.09.1993, the Deputy Commissioner, in his letter dated 13.09.1993 (which is impugned), by referring the Division Bench decision in A.S. No.645/63 dated 31.07.1970, directed the Sabha to produce the entire accounts/records relating to the Management of the Temple. Both the notices dated 23.08.1993 and 13.09.1993 do not refer to a single complaint or

allegation except pointing out the judgment of the Division Bench of this Court. No doubt, in the counter affidavit filed before the learned single Judge, the Deputy Secretary to Government, Commercial Taxes and Religious Endowments Department, stated that certain allegations in the form of petitions from public and also from the Secretary, Hindu Temple Protection Committee, Madurai, dated 03.10.1988, were received by the HR&CE Department regarding maladministration of the temple which necessitated them to issue notice for production of accounts for auditing and verification. As said earlier, absolutely there is no reference to any of the petitions/complaints in both the notices issued by the authority. In such circumstances, in view of the legal provisions mentioned above and the decision of the Division Bench, we are of the view that the Deputy Commissioner or any other authority in the HR&CE Department is not automatically permitted to call for the entire records/accounts as if dealing with a 'Public Temple' directly under the control of the Department. We once again reiterate and clarify that, if there is a specific complaint or allegation, it would be open for the authorities to summon the required accounts for auditing and verification. These relevant aspects have not been considered by the learned Judge while dismissing the Writ Petition filed by the petitioner. Before concluding, we make it clear that there cannot be a blanket mandamus, forbearing the authorities of the HR&CE Department from interfering with the affairs of the Temple, as claimed by the petitioner.

13. Article 26 of the Constitution of India grants full freedom to every religious denomination or sections thereof, to manage its religious affairs, establish and maintain religious and charitable institutions, manage its own affairs in matters of religion, own and acquire movable and immovable property and administer such property in accordance with law. The provisions of Section 107 of the Act seek to protect all the guarantees extended under Article 26 barring those referred to under Article 25(2) of the Constitution as well as Section 106 of the HR&CE Act and reads as follows:

107. Act not to affect rights under Article 26 of the Constitution. - Nothing contained in this Act shall, save as otherwise provided in section 106 and in clause (2) of Article 25 of the Constitution, be deemed to confer any power or impose any duty in contravention of the rights

conferred on any religious denomination or any section thereof by Article 26 of the Constitution.

14. Article 25 grants the freedom of conscience and free profession, practice and propagation of religion and clause (2) thereof states that nothing in that article shall affect the operation of any existing law or prevent the State from making any law regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice or providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

15. A three Judge Bench of the Hon'ble Supreme Court in the case of Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi and Ors. Vs. State of U.P. and Ors. ((1997) 4 SCC 606) had occasion to deal with a challenge to the validity of a Statute enacted for the protection and preservation of the assets of the Kashi Vishwanathar Temple at Varanasi. The Kashi Vishwanathar Temple was being subject to maladministration along with theft and loss of jewellery and other assets belonging to the deity. The Uttar Pradesh Sri Kashi Vishwanath Temple Act, 1983 had thus come to be enacted providing for a Committee to oversee the management of that temple and that came to be challenged.

16. While considering the challenge, one of the important points considered by the Court was the interpretation of Articles 25 and 26 of the Constitution of India, that provide for protection of the religious beliefs of denominations and sections thereof. The Court held that the protection envisaged encompassed all aspects of the religious activities carried on, but such protection would not extend to the secular aspects of administration and management of the properties and assets of the religious institution. Thus, in matters such as protection of property and safeguarding of assets as well as all other matters relating to secular administration of the institution, the discretion, control and management would vest in a group of individuals/a body that was given this specific task. Religious rituals and ceremonies involving matters pertaining to the deity and/or its worship would remain within the control of Archakas, by whatever name called, who possess the expertise, both scholastic, vedic and in whatever manner required, to carry out those functions. Secular functions on the other hand relate to the general administration of an Institution and cover all those activities barring those religious and temporal. The two classes of activity are distinct and different.

17. Thus, while intervention of the Departmental authorities might be brooked for overseeing secular and non-religious activities, religious and temporal activities would remain the exclusive domain of the religious institution itself.

The latter would be overseen and managed by the religious institution and would not be subject to intervention or interference by the HR & CE Department. The line demarcating religious and secular activity is one of fact and would have to be determined on a case by case basis.

18. That apart, Section 23 provides for overall supervision and management of all religious institutions as defined under Section 2 (18), extracted below:

[(18) "religious institution" means a math, temple or specific endowment and includes,-

- (i) a samadhi or brindhavan; or
- (ii) any other institution established or maintained for a religious purpose.

Explanation. - For the purpose of this clause-

(1) "samadhi" means a place where the mortal remains of a guru, sadhu or saint is interned and used as a place of public religious worship;

(2) "brindhavan" means a place established or maintained in memory of a guru, sadhu or saint and used as a place of public religious worship, but does not include Samadhi;]

19. Section 23 of the HR & CE Act, states as follows:

23. Powers and duties of the [Commissioner] in respect of [temples and religious endowments]. - Subject to the provisions of this Act, the administration of [all temples (including specific endowments attached thereto) and all religious endowments] shall be subject to the general superintendence and control of [the Commissioner]; and such superintendence and control shall include the power to pass any orders which may be deemed necessary to ensure that [such temples and endowments] are properly administered and that their income is duly appropriated for the purposes for which they were founded or exist:

Provided that [the Commissioner] shall not pass any order prejudicial to any temple or endowment unless the trustees concerned have had a reasonable opportunity of making their representations.

20. The exclusion of a denominational temple from the ambit of the HR&CE Act is, thus, in my view, simply not envisaged. The reasons are clear. Having set up a mechanism for overseeing the administration and safeguarding of the management and assets of a religious institution, there cannot be any doubt that such

mechanism should rise to the occasion if and when there is a threat, either internal or external, to the proper functioning of the religious institution or to the safety and security of the temple assets.

21. The danger in the argument advanced by the petitioner, that a denominational temple stands on a separate footing and the management in entirety, both religious and secular, vests only inter se the members of the denomination, is evident from the narration of facts set out above. As in the present case, members of communities are, often, divided when it comes to issues concerning the administration of a religious institution. Unfortunately, the division deepens proportionate to the increase in the net worth of the Deity's assets and in such circumstances, it is the administration, maintenance and preservation of the temple and its assets that stand compromised. The framework provided under the Act is expected to swing into action to ensure that mis/mal administration or inefficiency in administration detrimental to the proper functioning of religious institutions qua secular activities are swiftly and efficiently addressed and redressed.

22. It cannot thus be countenanced that maladministration or negligent administration in a denominational religious institution should go unchecked without there being a mechanism provided for redressal. There is however a caveat. The power under Section 23 is to be exercised only in those cases where the evidence of maladministration/negligent administration is prima facie, apparent.

23. The proviso to Section 23 specifically states that intervention by the HR & CE Department should be only after proper opportunity is extended to the religious institution to establish why the proposed intervention is unnecessary in the facts of the specific matter. Such opportunity will be by issuance of a show cause notice to the religious institution calling for its explanation as to why such intervention is justified or warranted. The notice should make it clear as to what the allegations are and all materials available in support of the allegation of negligence, misfeasance, malfeasance or maladministration should be furnished to the temple trustees even at that stage.

24. In the present case, the warrant for the issue of show cause notice dated 02.07.2020 is two-fold (i) Non-payment of annual contribution and audit fee, ii) alleged conveyance of temple property to a private party, detailed in extenso in the following paragraphs. The annual contributions and audit fee are admittedly payable and there are arrears since 1991. In the affidavit filed in support of W.P.No.7617 of 2020, there is reference to more than one no-objection certificate alleged to

have been issued by the temple Trustees for conveyance of temple property. Over the years there have been allegations that have been raised by other members of this community raising questions on the veracity of the financial statements, the maintenance of accounts and the management of affairs of the temple. For instance, in proceedings 10.05.2017 of the Joint Commissioner, HR & CE Department, there is a reference to a representation filed by one Srinivasan requesting that the Trustees be required to produce books of accounts and to substantiate the same. That apart, the rival contentions in relation to the property at Block No.19, Rangabashyam Street, Saidapet, Chennai further make it abundantly clear to me that an examination into the affairs and method of administration of the temple and its properties is warranted. Let me explain.

25. The facts as emanate from a consideration of the rival submissions advanced on this issue, are as follows:

- (i) The temple owns 1768 sq.ft. of land at Block No.19, Rangabashyam Street, Saidapet, Chennai - 15 (land/land in question).
- (ii) The aforesaid land is said to have been leased to one Veeraraghavalu Chetty in or around the 1950s. Admittedly, the lease has long expired and no documents are placed before me to substantiate either the aforesaid lease or extension thereof.
- (iii) During the period when Veeraraghavalu Chetty was in possession of the land, he built a super structure (building/building in question) thereupon. It is unclear as to whether the lease was in subsistence at this time or not, in the absence of the lease documents. I have, at paragraphs 59 to 63, set aside impugned order dated 02.07.2020 on the ground of violation of the principles of natural justice, directing the Commissioner HR&CE to conduct an enquiry de novo into the affairs/management of temple and pass appropriate orders after hearing the petitioner and other necessary parties. This aspect of the matter must be specifically adverted to and a finding rendered by the Commissioner in the remand proceedings.
- (iv) After the demise of Veeraraghavalu Chetty, a partition deed came to be executed by and between his sons and five daughters on 24.02.1993. The family arrangement-cum-partition deed (Document No.241/1993) was registered before Joint II Sub-Registrar, Saidapet, Chennai, in terms of which, the building in question was allotted to his son R.V.Damodaran.

- (v) Thus the superstructure standing in the land in question was allotted to R.V.Damodaran and after his life time came to be inherited by his sons R.D.Suryaprakash, R.D.Gunasekar and R.D.Raghuram (sons).
- (vi) The sons approached the temple for a certificate of no-objection to sell the building, that came to be issued by Manohar Chettiar, petitioner in W.P.No.9807 of 2020 on 26.11.2019.
- (vii) Pursuant to the issuance of the no-objection certificate, a sale deed dated 29.11.2019 came to be executed by the sons conveying the superstructure in question to B.Suresh (Purchaser/R6 in W.P.No.7617 of 2020) and S.Sangeetha, vide document No.2734 of 2019 dated 29.11.2019, registered in the office of Joint II Sub-Registrar, Saidapet, Chennai.
- (viii) The above transaction was questioned by K.J.Renuka, petitioner in W.P.No.7617 of 2020. Incidentally, K.J.Renuka is the cousin of R.D.Suryaprakash, R.D.Gunasekar and R.D.Raghuram, her mother and their father being siblings.
- (ix) The point raised is that sale deed dated 29.11.2019 purports to transfer the land in question as well as the superstructure, for which necessary and mandatory permission had not obtained from the Commissioner, HR & CE, as per the provisions of Section 34 of the Act.
- (x) The above argument is objected to by both the temple as well as the purchasers, who point out that the property dealt with under sale deed dated 29.11.2019 is the super structure alone barring the land (mo kid eP';fyhf) and also that the valuation of the property conveyed as per Annexure 1-A annexed to the deed, was only a sum of Rs.24.00 lakhs (Rupees Twenty Four lakhs only), clearly excluding the land.
- (xi) The prayer in W.P.No.7617 of 2020 is for an enquiry to be caused by the Sub-Registrar into the transaction of sale under deed dated 29.11.2019 and this Court vide interim order dated 13.05.2020 permitted the enquiry to go on.
- (xii) On 04.08.2020 the matter had been heard by me and listed for orders on 07.08.2020. Just prior to the hearing, a report of the District Registrar dated 27.07.2020 came to be circulated. There are allegations by some of the parties that the timing of the report is curious and indicates undue pressure

exerted by K.J.Renuka over the authority concerned. I refrain from advertng to these allegations solely for the reason that the report has been issued consequent upon an earlier direction of this Court and must therefore be taken note of in the final resolution of the matter.

26. After extracting the rival contentions of the parties, the District Registrar concludes as follows:

எனவே சைதாப்பேட்டை ஸ்ரீ பிரசன்னவேங்கடநரசிம்மபெருமாள் திருக்கோயிலுக்கு சொந்தமான சொத்தினை இந்து சமய அறநிலையத்துறையிடம் முறையாக அனுமதிபெறாமல் சைதாப்பேட்டை எனன் இணைசார்பதிவகத்தில் பதிவு செய்யப்பட்ட புத்தக ஆவண எண்.2734/2019 ஒரு “உரியதடையின்மை சான்றிதழ் பதிவு செய்யப்பட்ட சட்டப்படியான ஆவணம் அல்ல” என முடிவு செய்யப்படுகிறது. மேற்படி ஆவணத்தின் தொடர்புடைய அட்டவணை 11-ல் “சட்டப்படியான ஆவணம் அல்ல” எனவும், இவ்வாவணத்தின் அடிப்படையில் யாதொரு ஆவணமும் பதிவு செய்யப்படமாட்டாது எனவும், அடிக்குறிப்பு சேர்த்திட எனன் இணைசார்பதிவாளருக்கு ஆணையிடப்படுகிறது.

இவ்வாவணயின் மீது முறையீடு செய்ய இருப்பின், இவ்வாவண கிடைக்கப் பெற்றநாளில் இருந்து 60 நாட்களுக்குள், துணைப் பதிவுத்துறைத்தலைவர் சிட்கோ இன்டஸ்ட்ரியல் எஸ்டேட்,எலெக்ட்ரானிக் காம்ப்ளக்ஸ், 3வது பிளாக், 2வது தளம்,கிண்டி, சென்னை-600 032,என்ற முகவரிக்கு மேல்முறையீடு செய்து கொள்ளலாம் எனவும் தெரிவிக்கப்படுகிறது.

இவ்வாவண என்னால் வாய்மொழியாக பகரப்பட்டு. உதவியாளரால் கணினியில் தட்டச்சுசெய்யப்பட்டது. நாள்.27.07.2020.

மாவட்டப்பதிவாளர் (நிர்வாகம்),

(உ.ப.து.தநிலையில்),

தென்சென்னை

27. While finalising the proceedings, the report of the District Registrar dated 27.07.2020, though not binding upon the HR&CE Department, should also be taken note of by the Commissioner to illustrate how the facts have been appreciated by another statutory authority. Both Mr.T.M.Pappaiah, learned Special Government Pleader for the District Registrar and Mr.Karthikeyan, learned Special Government Pleader for the HR & CE Department concur with my view as aforesaid.

28. The issue in regard to alienation of building/superstructure constructed by lessees upon lands admittedly belonging to a temple, was a vexed one. The contention of the lessees/purchasers in such cases was that the superstructure alone could well be alienated without there being any prejudice caused to the underlying land which would continue to stand in the name of the temple.

29. This issue came to rest in the case of K.V.Pushpavalli V. Arulmighu Theerthabaleeswarar Devasthanam (2006 (3) MLJ 437). The facts in brief are that the property of the Theerthabaleeswarar Devasthanam had been occupied by a lessee/first defendant therein for many years. The lessee had proceeded to sub-lease the property to K.V.Pushpavalli. Action

had been initiated by the Devasthanam to reclaim the property, at which time, a defence was taken by K.V.Pushpavalli, based on an interpretation to Section 106 of the Transfer of Property Act, that notice ought to have been issued to the original lessee prior to any action taken for eviction. In that case, it appears that notice had not been issued to the original lessee and thus the action to evict Pushpavalli had been challenged on the aforesaid ground.

30. This technical argument was rejected by the Court noticing that the original lease was itself valid only for a period of five years as per the provisions of Section 34 of the HR & CE Act. In that case, as in the present, no materials had been made available to the Court at any stage of the matter to indicate that the original lease had been extended as required under Section 34 of the Act. The Court held that the provisions of Section 34 had been enacted specifically to provide for overall protection of the properties of religious institutions and it was thus incumbent upon all parties to ensure that the procedure set out therein was followed scrupulously. Thus, in conclusion, the Court held that K.V.Pushpavalli did not hold any right over the property sub-leased to her, in the absence of the original lease itself not being in accordance with Section 34. After a detailed discussion, this Court held as follows:

26. The Second Defendant claims right only through the lease hold right sold to her by the First Defendant. Under Section 34 of the H.R & C.E Act, any alienation of immovable property of any religious institution by way of sale, mortgage, exchange or lease for a term exceeding five years shall be null and void, unless sanctioned by the Commissioner as being beneficial or necessary for the institution. The Commissioner shall accord such sanction only with the previous approval of the Government and subject to Government's directions in this regard. The Commissioner may, in according the sanction, give directions as to the utilisation of the amount raised, the investment of the amount, etc. An Appeal shall lie to the Court against any such order at the instance of a Trustee or interested person.

27. There are similar provisions in Section 41 in respect of inams granted for maintenance of a religious institution for performance of service or charity connected therewith, and such alienations are not valid unless sanctioned by the Government on the ground of its being necessary or beneficial to the Institution. For the breach of the above, and for other specified grounds, the Collector may, resume the whole or any part of such inam, after due notice to the inamdar and

other specified persons and against the order of the Collector, an appeal shall lie to the District Collector, whose orders thereon shall be final.

28. The tenor of the document assigning leasehold right of the First Defendant to the Second Defendant is like a regular sale deed. In view of Section 34 of the H.R. & C.E. Act, unless the transaction is approved by the Commissioner, the document shall be null and void. Perhaps, realising the purport of Section 34 of the H.R. & C.E. Act., the Second Defendant has made the representation to the Hon'ble Minister for H.R. & C.E. Department to recognise her as the Tenant under the Plaintiff - Devasthanam. In the absence of approval by the Government and by the H.R. & C.E., Department, the Second Defendant is only a stranger and a trespasser in the Suit Property. In proper appreciation of the evidence, the Courts below have rightly found that on the basis of the document dated 24.08.1981, the Second Defendant cannot be construed as the Tenant. Since the Second Defendant is only a trespasser, there is no necessity to give Notice to quit under Section 106 T.P. Act.

31. Thus, the validity of an arrangement in regard to the superstructure built on land belonging to a religious institution is subject to the lease/arrangement in regard to the underlying land being in accordance with the stipulations contained in Section 34. Section 34 reads as below:

34. Alienation of immovable trust property. - (1) Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purposes, of any religious institution shall be null and void unless it is sanctioned by [the Commissioner] as being necessary or beneficial to the institution:

Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in such manner as may be prescribed, inviting objections and suggestions with respect thereto; and all objections and suggestions received from the trustee or other persons having interest shall be duly considered by [the Commissioner]:

[Provided further that the Commissioner shall not accord such sanction without the previous approval of the Government.]

Explanation. - Any lease of the property above mentioned though for a term not exceeding five years shall, if it contains a provision for renewal for a further term (so as to exceed five years in the aggregate), whether subject to any condition or not, be deemed to be a lease for a period exceeding five years.

(2) When according such sanction, [the Commissioner] may impose such conditions and give such directions as [he] may deem necessary regarding the utilisation of the amount raised by the transaction, the investment thereof and in the case of a mortgage, regarding the discharge of the same within a reasonable period.

(3) A copy of the order made by [the Commissioner] under this section shall be communicated to the Government and to the trustee and shall be published in such manner as may be prescribed.

(4) The trustee may, within three months from the date of his receipt of a copy of the order, and any person having interest may, within three months from the date of the publication of the order, [appeal to the Court] to modify the order or set it aside.

[(4-A) The Government may issue such directions to the Commissioner as in their opinion are necessary, in respect of any exchange, sale, mortgage or lease of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution and the Commissioner shall give effect to all such directions.]

(5) Nothing contained in this section shall apply to the inams referred to in section 41.

32. Section 34 requires the exchange, sale, mortgage or lease of property by a religious institution to be for a period of less than five years only and any arrangement in excess of five (5) years will require the specific sanction of the Commissioner, HR & CE Department as one being necessary or beneficial to the institution. Such sanction is also specifically to be preceded by a public notice calling for objection and/or suggestions to the proposed extended arrangement. This procedure is critical to ensure that the use/deployment of the property of the religious institution is monitored. It is thus, mandatory and non-negotiable.

33. Unfortunately, the above decision has not reached the attention of the Registration Department for necessary and consequent action. The Registry is directed to circulate a copy of the decision in the case of K.V.Pushpavalli V. ArulmighuTheerthabaleeswarar Devasthanam (2006 (3) MLJ 437) forthwith to the office of the Inspector General of Registration for onward transmission to the attention of Sub-Registrars in all offices in Tamil Nadu.

34. I also draw support from the decision of this Court in Tamarakulam Vella Samudhyam Arya KulasekharaMangaiAmmal Temple V. The State of Tamil Nadu rep. By the District Collector, Nagercoil (93 L.W.643) where, at paragraphs 14 and 15, the learned Judge rejects the arguments of the temple therein, also a denominational Institution, that (i) the remittance of annual contribution and audit fee are not mandatory and (ii) a denominational temple stands outside the purview of the HR&CE Department. The relevant paragraphs are extracted below:

13. In the light of the declaration, it is clear that this temple has been in the management of the Vellalas of this area. It is true that there are two sects of these Vellalas governed by distinct lines of succession, one group following the law of succession by Makkavazhi (lineal descendants) and the other by (Marumakkavazhi matriarchal descendants). Except in matter of succession to properties, there does not seem to be any distinction between the two sections of the community. Therefore, the community would be a sect entitled to maintain this temple as it has been doing so for a long time, as evidenced by Ex. A-1. The plain tiff would, therefore, be entitled to a declaration that the temple, is a denominational temple, and for the relief prayed on that basis.

14. Even in respect of a denominational temple, the authorities, under Tamil Nadu Act XXII of 1959 would have jurisdiction to levy contribution and audit fee. The denominational temples are not exempted from payment of audit fee or contribution. The learned Counsel for the appellant faintly contended that no particular services had been rendered to this temple by the Departmental authorities, and that, therefore, there is no obligation to pay contribution or audit fee. This contention is a misconceived one. The contribution and audit fee are levied for the services rendered by the Department in the matter of superintendence of a temple. It is in exercise of such powers of superintendence that the accounts are audited and other services are ordered to all the temples. Therefore, it is not possible to relate the

services to a particular temple to examine whether fees and contribution are payable by it. The contribution and audit fee would be leviable on any public temple of which this temple is one. It is not in dispute that the public have access to this temple. Even a denominational temple, so long as it is not a private one, would be liable to the contribution and audit fee.

15. Therefore, except in the matter of declaration and any relief in consequence the rest of the reliefs cannot be granted to the plaintiff.

35. Thus, both issues raised by the HR&CE Department in show cause notice dated 18.05.2020 relate to matters of general administration, being annual contribution and payment of audit fee and alleged irregularity in dealing with the assets of the temple.

36. In the light of the discussion above, the challenge to assumption of jurisdiction by the HR&CE Department is rejected. It is made clear that though the intervention at this juncture is upheld, the continued intervention/role to be played by the Department in future is subject to the result of de novo enquiry to be carried out.

37. Before considering the final relief to be granted, if any, I believe, this is an appropriate case where the petitioner should be put to terms upon satisfaction of which the final relief granted will come into effect.

38. It is an admitted position that the temple is in arrears of annual contribution and audit fee. To that extent, the allegation in the impugned order is correct and the petitioner should remit the arrears of annual contribution and audit fee or at least some portion thereof, upfront. However, the quantification of the arrears presents a difficulty.

39. On 27.07.2020, I directed the petitioner to appear before the Joint Commissioner (JC) along with statement of accounts to enable the latter to quantify the arrears of contribution and audit fee and contribution. The parties were to report on the final amount determined before the Court on 31.07.2020. On 31.07.2020, R3 filed a report of even date along with a deposition recorded from Manohar Chettiar to the effect that there were no records of accounts and receipts for the period 1991 to 2015 and that the complete records for the aforesaid period had been destroyed by floods. It was also the contention of the petitioner that the erstwhile Managing Trustee, one Balakrishnan Chettiar, had not handed over the accounts and other temple documents in 2014 when the present petitioner took charge.

40. Scanty and insufficient accounts were produced from the period July 2016 onwards by way of handwritten cash book and bank statements. The JC thus concluded that the petitioner had miserably failed to maintain accounts as required in law and the incomplete cash book and bank statements would be insufficient to arrive at a proper quantification of the arrears.

41. At the hearing on 31.07.2020, learned Special Government Pleader for the HR&CE Department requested the assistance of the Audit wing of the Department and sought some more time to complete the exercise of determination of arrears and acceding to his request, the matter was adjourned to 04.08.2020.

42. On 04.08.2020, an affidavit of S.Haripriya, Joint Commissioner, HR & CE Department/ R3 of even date has been filed wherein at paragraph 3, the JC states as follows:

'3. It is humbly submitted that the annual fee and audit fee payable under Sections 92(1) and 92(2) has been calculated for the fasli year 1427 (01.07.2020 to 30.06.2020) by the Audit Officials. The fee payable is as follows:

Annual fee payable under Sec. 92(1)	-
Rs.2,33,240/-	
Audit fee payable under Sec.92(2)	- Rs.77,747/-
Total	- Rs.3,10,987/-

43. The petitioner objected to the quantification made as being baseless and offered to remit a grand sum of Rs.1.00 lakh towards annual and Audit fee for the entirety of the period, 1991 till date. The offer of the petitioner is rejected in limine as being wholly insufficient and unfair.

44. Since the quantification of annual contribution and audit fee calls for factual examination of available accounts and books and other particulars/ materials, it is best left to the officials of Department. Tentative reference was made to the provisions of Section 95 stating that a demand for annual contribution and audit fee must be made within a period of three years from the relevant date when the requirement for the remittance arises.

45. To address and answer this argument, it becomes necessary to examine the scheme set out under the Act in relation to the maintenance of accounts, audit of finances and assessment of the income of religious institutions. An obligation is cast upon a Trustee of 'every religious institution' to furnish accounts and returns in relation to its funds, income and monies in Section 32, extracted below:

32. Trustee to furnish accounts, returns, etc. -
(1) The trustee of every religious institution shall furnish to [the Commissioner] such accounts, returns,

reports or other information relating to the administration of the institution, its funds, property or income or moneys connected therewith, or the appropriation thereof, as [the Commissioner] may require and at such time and in such form as [he] may direct.

(2) Without prejudice to the provisions contained in sub-section (1), [the Assistant Commissioner] in the case of any religious institution other than a math [xxx] may require the trustee of such religious institution to [furnish to him] such accounts, returns, reports or other information relating to the administration of the institution, its funds, property or income or moneys connected therewith or the appropriation thereof and at such time and in such form [as he may direct]

46. This includes a denominational temple. Sub-section (2) states that any additional information in regard to the finances, accounts or other aspects of administration may also sought for by the appropriate authority in the case of any religious institution other than a Math. 'Budget, Accounts and Audit' is dealt with under Chapter VIII of the Act spanning Sections 86 to 91 and the subject of 'Finances' under Chapter IX of the Act spanning Sections 92 to 95.

47. Section 86 requires the Trustee of every religious institution to submit the budget of the institution for the forthcoming year indicating its probable receipts and disbursement. There is also a provision for the appropriate authority in the Department to alter the budget and such alteration, by way of an omission or addition, may be challenged by way of appeal by the Trustee. The Trustee may modify the provision originally made and submit a supplemental or revised budget in the course of the year itself. Section 86(6) states that the Trustee shall within, two months after the close of the fasli year, submit to the appropriate authority a statement in the prescribed form of actual receipts and disbursement relating to that year specifying the particulars of expenditure, if any, incurred without prior sanction.

48. Section 87, dealing with accounts and audit, requires the Trustee of every religious institution to keep regular accounts and all receipts and disbursements for every fasli year separately. Such accounts are to be audited by Auditors forming part of the Audit wing of the HR & CE Department. The methodology for audit is set out under Section 87(3) and sub-section (5) casts a responsibility upon the Trustee of the institutions to produce before the Auditors complete accounts

and records and other information as may be necessary to facilitate proper audit.

49. Sections 88 to 90 deal with the contents of the audit report, the authority to whom it is to be submitted and the rectification of defects contained in such report. Section 91 states that Chapter VIII would apply to every religious institution notwithstanding anything to the contrary contained in any scheme settled or deemed to have been settled under the Act.

50. Section 92 requires every religious institution to remit an annual contribution to the Government in the following terms:

92. Religious institutions to pay an annual contribution to the Government. - (1) Every religious institution shall, from the income derived by it, pay to the Commissioner annually such contribution not exceeding [twelve per centum] of its income as may be prescribed in respect of the services rendered by the Government and their officers and for defraying the expenses incurred on account of such services.

[(2) Every religious institution, the annual income of which, for the fasli year immediately preceding as calculated for the purposes of the levy of contribution under sub-section (1), is not less than five thousand rupees, shall pay to the Commissioner annually, for meeting the cost of auditing its accounts, such further sum not exceeding one and a half per centum of its income up to five lakhs rupees and four per centum of its income if the income exceeds five lakhs, as the Commissioner may determine.]

(3) The annual payments referred to in sub-sections (1) and (2) shall be made notwithstanding anything to the contrary contained in any scheme settled or deemed to have been settled under this Act for the religious institution concerned.

(4) The Government shall pay the expenses incurred for the purposes of this Act, including the-

[(i) ***]

(ii) expenses of consultative committees and sub-committees thereof, constituted by the Government or by any officer or authority subordinate to the Government and specially authorised by them in this behalf,

(iii) cost of the publication of journals, books, annuals and descriptive accounts relating to religious institutions,

[(iv) expenses of the District Committees.

51. Audit fee and contribution are mandatory levies and 'shall' be remitted by a religious institution as prescribed in Sections 92(1) and (2) read with the procedure set out in the Assessment, levy and recovery of Contribution Costs Rules (G.O.Ms.No. 4920, Revenue dated 30.11.1960) (Rules), elaborated in the succeeding paragraphs. Thus, Section 92 statutorily enjoins all religious institution to remit annual contribution and audit fee, more so in the case of this petitioner when the mandate to remit also arises from the 1991 judgment and decree upon which great reliance is placed by the petitioner in support of its denominational status.

52. Section 93 deals with recovery of costs and expenses incurred on legal proceedings and states that all costs, charges and expenses incurred by the Government or by specified authorities of the HR&CE Department as party to or in connection with legal proceedings in respect of a religious Institution shall be payable from out of the funds of that Institution unless the reimbursement thereof has been expressly stated to be by another party.

53. Section 94 deals with the assessment and recovery of contributions, costs, charges and expenses, and reads as follows:

94. Assessment and recovery of contributions, costs, charges and expenses. - (1) The contributions, costs, charges and expenses payable under sections 92 and 93 shall be assessed on, and notified to, the trustee of the religious institution concerned in the prescribed manner:

Provided that, if for any reason, any portion of the contribution, costs, charges and expenses has escaped assessment, the Commissioner may, within the prescribed period, serve on the trustee a notice assessing him to the portion of the contribution, costs, charges or expenses, as the case may be, due and demanding payment thereof within fifteen days from the date of such service; and the provisions of this Act and the rules made there under shall, so far as may be, apply as if the assessment was made in the first instance.

54. The other sub-sections of Section 94 provide for the filing of objections by the Trustee to the proposed enhancement and re-assessment of the contributions/costs/charges/expenses, the decision of the Commissioner upon such objections and the time frame by which the amount finally determined is to be

remitted by the religious institution. Sub-Section (3) states that if the Trustee fails to pay the amount finally determined within the time frame provided, such amount shall be recovered from the religious institutions as if it were an arrear of land revenue. Sub-sections (4) to (8) provide for procedure to be followed by the Collector in such cases.

55. Section 95 states that it shall not be competent for the Commissioner to levy any contribution for more than three (3) fasli years immediately preceding the year in which a notice of assessment is issued under Section 94. The funds so collected form the corpus of the Religious and Charitable Endowments Administration Fund constituted under Section 96 of the Act that vests in the Commissioner.

56. The Rules set out the procedure for assessment and recovery of the collections. Section 94, read with Rule 1 of the Rules sets out a procedure for self-assessment and voluntary remittance of the contribution and audit fee. Rule 1 provides for the percentage of contribution to be made, computed as a percentage of the annual income of the religious institution. Rule 2-A tabulates the percentage of deduction to be made from annual income towards pooja expenses and Rule 2-B the audit fee payable on the same basis. Rule 3 states that the assessment of the contribution shall be made for each fasli on the basis of the income derived by the institution during that year. Rule 4 refers to the statements to be filed by the institution setting out the receipts, charges, expenses, deductions claimed and assessable income, the staff employed for collection of rents, their designation and remuneration and the details of collections made by them. Rule 5 states that the Forms in which the statements are to be filed should be specified by the Commissioner. In this case, there is nothing to suggest that the temple has complied with any of the stipulations as aforesaid. Admittedly, it has not submitted any statements of receipts or expenses or income till date and has, in fact, been seriously contesting any demands made in this regard. This is a serious omission.

57. Rule 6 states that if the person responsible for the same does not submit the requisite statements or, if, in the opinion of the Commissioner, the statements filed are incorrect, an assessment to the best of the Commissioners' judgement may be made and income so determined and assessed shall be deemed to be the income of the institution for the purpose of Section 92(1) of the Act. Rule 7 has been omitted and Rule 8 provides for the mode of service of a demand of contribution and audit fee upon a Trustee or Chairman of the Board of Trustees of an Institution, stating that the same is to be delivered in person or by way of registered post acknowledgement due. Rule 9 stipulates the limitation for raising a demand based on the income determined

to have escaped assessment as per Rule 8 as being a period of five (5) years following the year to which the fasli relates.

58. No orders of assessment or demand notices have been produced before me though some material has been placed that indicates that periodic and regular notices are being issued to the temple calling upon it to produce accounts to facilitate and co-operate in the matter of assessment. There is also sufficient material to show that the temple has not just been delinquent in not filing statements or remitting contribution and fee, but has been strongly resisting all attempts at assessment. In such circumstances, the Commissioner shall, in the remand proceedings, record specific findings in regard to the notices and communications issued on the aspect of contributions and audit fee and the responses received thereto from the temple as well as orders of assessment/demand notices, if any, framed/issued, bearing in mind the procedure as well as the timelines stipulated in the Act and the Rules in regard to the completion of assessments. The provisions of Section 95 that provide for a limitation of three (3) years from the end of the fasli when a notice of assessment has been issued under Section 94 for the raising of a demand for contribution and of Rule 9 that provides for a limitation of five (5) years for assessing income escaping assessment and quantifying the demand payable, will also be borne in mind in recording the sequence of dates and events and quantifying the final demand.

59. I am however impressed with the submission of the learned counsel for the petitioner that the impugned order has been passed in violation of principles of natural justice. In response to show cause notice dated 18.05.2020, the petitioner states that it approached the office of the Joint Commissioner to explain in person its stand in relation to the allegations levelled. Since the petitioner was not heard, he sent a letter dated 03.06.2020 under cover of registered post acknowledgement due, explaining his stand. The Joint Commissioner called for further explanations to be submitted within seven (7) days from date of receipt of the notice dated 15.06.2020. The notice was received by the petitioner on 30.06.2020 as can be seen from the postal track enclosed. However, even without waiting for the stated period of seven (7) days, the authority passes the impugned order on 02.07.2020 in violation of the principles of natural justice. The petitioner has evidently not been heard prior to passing of the impugned order. For this reason alone, the impugned order is liable to be set aside to enable a proper enquiry to be caused into all allegations made. I might state that very little resistance is offered by the learned SGP to this conclusion and he would in fact fairly, suggest this remedy himself, being of the view that the petitioner has not been heard effectively prior to passing of the impugned order.

60. In summary, my conclusions on the issues arising from these two writ petitions are as follows:

- i) In general, the fact that a temple/Religious Institution is denominational in nature will not stand in the way of intervention and enquiry by the HR & CE Department as provided for under Section 23 of the Act provided sufficient evidence of maladministration/mismanagement is set forth by the Department in the show cause notice issued as per the proviso to Section 23 to, prima facie, warrant such intervention. In particular, the allegations levelled against the temple in question under show cause notice dated 18.05.2020 reveal the necessity for intervention and enquiry on the issues raised as well as other issues, if any, that come to light in the course of the aforesaid enquiry. The preliminary objection raised on the assumption of jurisdiction by the HR&CE Department is rejected.
- ii) Arrears of Audit fee and annual contribution are liable to be paid by the temple to be quantified by the Commissioner denovo in the light of my observations above.
- iii) The impugned order dated 02.07.2020 is violative of the principles of natural justice and is set aside conditional upon the petitioner complying with the condition at point (iv) below.
- iv) The petitioner shall remit, adhoc, an amount of Rs.10,00,000/- (Rupees ten lakhs only) towards arrears of annual contribution and audit fee within a period of four (4) weeks from today, conditional upon which the impugned order shall stand set aside for de novo proper enquiry by the Commissioner. The aforesaid amount will be appropriated towards part satisfaction of the arrears of annual contribution and audit fee and will be adjusted against the final demand, once determined.

61. With the issuance of report dated 27.07.2020 by the District Registrar, the prayer of the petitioner in W.P.No.7617 of 2020 stands achieved and nothing further survives in this Writ Petition. Recording the same, W.P.No.7617 of 2020 is closed. No costs. Connected Miscellaneous Petition is closed.

62. Conditional upon remittance of the sum of Rs.10,00,000/- as above, impugned order dated 02.07.2020 is set aside. The petitioner will appear for a de novo detailed enquiry before the Commissioner on 14.09.2020. Upon verifying compliance of the direction to remit the amount as aforesaid, the

Commissioner will cause enquiry on all aspects of secular management and administration of the temple including but not limited to the finances and accounts as well as ensure that an exhaustive inventory of the Deity's assets and properties are drawn up. The enquiry shall be completed after hearing the petitioner, K.J.Renuka as well as any other parties as may be deemed necessary and completed within a period of six (6) weeks from date of first hearing, that is, 14.09.2020.

63. With the above directions, W.P.No.9087 of 2020 stands disposed. The petitioner will not deal with the temple assets, both movable and immovable, in any way, till finalization of the proceedings now remitted to the file of Commissioner, HR&CE.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Principal Secretary
Hindu Religious and Charitable Endowment Department,
St George Fort, Secretariat, Chennai-9.
2. The Commissioner,
Hindu Religious and Charitable Endowment Department,
Chennai-34.
3. The Joint Commissioner,
Hindu Religious and Charitable Endowment Department
Chennai-34.
4. The Fit Person/ Executive Officer,
ArulmiguMudakanimamman Temple,
Mylapore, Chennai-4.
4. The Fit Person/ Executive Officer,
ArulmiguSidhi Buddhi Vinayakar&Sudareswarar Temple,
Royapettah, Chennai.
5. The Secretary to Government,
Commercial Taxes and Registration Department,
Fort.St.George, Chennai-9.
6. The Inspector General of Registration,
No 120, Santhome High Road,
Santhome, Chennai.

7 The District Registrar,
Chennai South Guindy Industrial Estate,
Guindy, Chennai.

+1cc to M/s.A.S.Kailasam & Asso., Advocate in SR.26531
+2cc to Mr.Vineet Subramani, Advocate in SR.26401 and 26392
+1cc to Mr.Krishna Ravindran, Advocate in SR.26585
+3cc to Government Pleader, High Court, Madras in Sr.26553

W.P. Nos.9087 and 7617 of 2020
and WMP.No.11068 of 2020

gp(co)
rv(16/09/2020)



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