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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2021

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.3602 of 2013 &  
MP.No.2 of 2013

Arulmigu Kamatchi Ammai Udanurai  
Arulmigu Nageswara Swamy Thirukoil  
Vadathirunageswaram Sengunthar Pothunala  
Sangam, Kunrathur, Rep.By its President  
T.K.Mohan, No.24, Mettur Street, Kundrathur,  
Chennai - 69. ... Petitioner

Vs

1. The Secretary to Government,  
Department of Hindu Religious & Charitable Endowment,  
Fort St., George, Chennai-9.
2. The Special Commissioner/Commissioner  
Hindu Religious & Charitable Endowment Board,  
Uthamar Gandhi Road, Chennai-34.
3. The Executive Officer  
Arulmigu Thirunageswara Swamy Thirukoil,  
Thirunageswaram-cum-Sekizhar Thirukoil, Kundrathur,  
Kancheepuram District.
4. The Executive Officer,  
Arulmigu Sekkizhar Thirukoil,  
Kundrathur, Kancheepuram District. ...Respondents.

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the entire records of the 2<sup>nd</sup> respondent pertaining to the order in Se.Mu.Na.Ka.No.20979/2008/L1 dated 7-5-2008 merging Arulmighu Sekkizhar Temple with the Petitioner Temple and quash the same.

For Petitioner : Mr. N.Sivaprakash

For Respondents: Mr. NRR. Arun Natarajan  
Government Advocate for R1, R2 & R4  
Mr.A.K.Sriram  
of M/s.A.S.Kailasam and Associates  
for R3



## ORDER

Mr.N.Sivaprakash, learned counsel for writ petitioner, Mr.NRR.Arun Natarajan, learned State counsel for respondents 1, 2 & 4 and Mr. A.K Sriram of M/s.A.S.Kailasam and Associates (Law Firm) on behalf of 3<sup>rd</sup> respondent are before this Virtual Court.

2. Captioned writ petition arises under 'The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959)', which shall hereinafter be referred to as 'TN HR & CE Act' for the sake of brevity, convenience and clarity. Subject matter of captioned writ petition is a temple, which goes by the name 'Arulmigu Thirunageswara Swamy Thirukoil, Kundrathur' (hereinafter 'said temple' for the sake of convenience and clarity).

3. In and by an 'order dated 07.05.2008 bearing reference No.Se.Mu.Na.Ka.No.20979/2008/L1' (hereinafter 'impugned order' for the sake of convenience and clarity) made by the second respondent i.e., the Special Commissioner and Commissioner of 'Tamil Nadu Hindu Religious and Charitable Endowments Department' ('TN HR & CE Dept.' for the sake of convenience, clarity and brevity), which has been wrongly described as 'Board' in the cause title of the writ petition, has been called in question.

4. Learned counsel for writ petitioner submits that the impugned order has been made under Section 23 of TN HR & CE Act. Notwithstanding very many averments and very many grounds raised in the writ petition, learned counsel for writ petitioner made two focussed submissions assailing the impugned order and a summation of the same are as follows:

a) Impugned order having been made under Section 23 of TN HR & CE Act by the second respondent, the writ petitioner ought to have been given a reasonable opportunity of making a representation vide proviso to Section 23;

b) The said temple is governed by a scheme which has been duly settled in accordance with the provisions of TN HR & CE Act vide O.A.No.65 of 1980 and the same has been duly published in the Government Gazette on 20.08.1981 and going by the scheme, the administration of said temple shall vest in trustees appointed from and amongst members of one community.

5. In response to the above, learned State counsel made submissions, a summation of which is as follows:

(a) The writ petitioner is a Society registered under the Tamil Nadu Societies Registration Act, 1975 and it cannot claim the benefit of proviso to Section 23 and the impugned



order has been made under Section 23 only for administrative convenience.

(b) The impugned order does not in any manner alter the scheme and therefore, the second submission is clearly untenable.

6. Mr.A.K Sriram, learned counsel for 3<sup>rd</sup> respondent does not really have a say in the lis as far as challenge to the impugned order is concerned, but at the instance of the Court, by way of assistance to the Court, learned counsel made submissions, a summation of which is as follows:

a) Writ petitioner does not have locus as it is a Society and it will not qualify as a person having interest within the meaning of Section 6(15) of TN HR & CE Act. A writ petition is not maintainable at the instance of a Registered Society;

b) On a demurrer, even if the proviso to Section 23 is made applicable it can at best be the fourth respondent which can make such a plea. It is not for the writ petitioner to say that there is infraction of the proviso. To be noted, this submission was highlighted by learned State counsel also;

c) On the date the impugned order was made i.e., 07.05.2008, there were no trustees qua said temple and there was only a Fit Person. The sequitur is, argument predicated on the proviso to Section 23 has no legs to stand.

7. By way of reply submission, learned counsel for writ petitioner reiterated the submissions made in the opening part of the hearing and learned counsel submitted that the scheme vests the administration of said temple in a body of trustees appointed from a particular community and the impugned order is therefore untenable.

8. I carefully considered the rival submissions. The first submission turns on proviso to Section 23. Section 23 with the proviso reads as follows:

'23. Power and duties of [the Commissioner] in respect of temples and religions endowments.- Subject to the provisions of this Act, the administration of [all temples (including specific endowments attached thereto) and all religious



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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 had a reasonable opportunity of making their representations.]'

9. The aforementioned proviso talks about reasonable opportunity of making representation being given to the trustees and when it is prejudicial to any temple. The term 'trustee' is defined in Section 6(22) of TN HR & CE Act and the term 'temple' is defined in Section 6(20) of TN HR & CE Act, which read as follows;

'6(22) "trustee" means any person or body by whatever designation known in whom or in which the administration of a religious institution is vested and includes any person or body who or which is liable as if such person or body were a trustee;'

'6(20) "temple" means a place by whatever designation known, used as a place of public religious worship and dedicated to, or for the benefit of, or used as of right by, the Hindu community or of any section thereof, as a place of public religious worship;'

10. A perusal of the aforementioned definitions make it clear that the writ petitioner does not qualify either as a 'Trustee' or as a 'Temple'. To be noted, writ petitioner is a registered Society under the Tamil Nadu Societies Registration Act, 1975 and registration Certificate has been enclosed to the typed-set of papers and a scanned reproduction of the same is as follows:



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**FORM No. II**  
(See Rule 6 of the TamilNadu Societies Registration Rules, 1978)

**CERTIFICATE OF REGISTRATION UNDER SECTION 10 OF THE TAMIL  
NADU  
SOCIETIES REGISTRATION ACT, 1975 (TAMILNADU ACT 27 OF 1975)**

**CERTIFICATE OF REGISTRATION OF SOCIETIES**

**SL. NO. : 65 of 2008**

I hereby Certify that

**“அருள்மிகு காமாட்சி அம்மை உடனாத அருள்மிகு நாகேச்சர கவாமி  
திருக்கோயில் வடத்திருநாகேச்சரம் செங்குந்தர் பொது நலச்சங்கம் -  
குன்றத்தூர் ”**

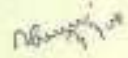
has this day been Registered Under The Tamil Nadu Societies Registration Act, 1975.  
(Tamil Nadu Act 27 of 1975).

Given under my hand at CHENNAI SOUTH this 3<sup>rd</sup> day of MARCH 2008.



Seal : 

Station : 

Signature of the Registrar  


11. A perusal of the scanned reproduction of the Certificate makes it clear that writ petitioner-Society was registered only in 2008 and the Certificate is dated 03.03.2008, whereas the scheme was settled way back in 1980 and the Gazette publication itself was made on 20.08.1981. In other words, the writ petitioner-Society was formed and registered more than a quarter century after the scheme was settled and after the Scheme started operating. In this view



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of the matter also, the writ petitioner-Society will certainly not be entitled to the benefit of proviso to Section 23 of TN HR & CE Act. Obviously, there is no mention about the writ petitioner-Society in the Scheme as published in the Government Gazette which reads as follows:

'O.A.No.65 of 1980

Thiruvalagral (1) T.K.M. Devarajan, (2) T.M. Nagalingam, (3) K.Kuppusamy, (4) T.M. Sivashanmugam, (5) T.K. Ganesan-Petitioners.

In the matter of Arulmigu Nageswaraswami Devasthanam, Thirunageswaram Kunnathur, Sriperumpudur taluk, Chengalpattu district.

Petition under Section 64 (1) of the Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959).

This case having come on for final hearing on 5th August 1981 in the presence of Thiru M. Subramania Bao, Counsel for the petitioners, the Deputy Commissioner passes the following:-

Order.

Draft scheme for the above temple was issued in this office notice in O.A.No.65/80 B1, dated 3rd June 1981 calling for objections and suggestions. No objection or suggestion has been received. Hence, the draft scheme issued in this office notice in O.A. 65/80 B1, dated 3rd June 1981 is confirmed as hereunder

Scheme.

1. The scheme shall come into force from the date of the publication in the Madras and Chengalpattu District Gazette.

2. The administration of Arulmigu Nageswaraswami Devasthanam, Thirunageswaram Kunnathur, Sriperumpudur Taluk, Chengalpattu district and all properties movables and immovables which belong to or have been or hereafter be given dedicated or in general or to any one or more of the of the deities Trustees not exceeding five and not less than three who shall be appointed from and amongst the members of the Sengunthar Mudaliars of the Village of Thirunageswaram alias Kunnathur of Sriperumpudur taluk, Chengalpattu district by the appropriate authorities in accordance with the provisions of the Act.

3. In all other respects, the administration shall be carried on in accordance with the provisions of the Hindu Religious and Charitable Endowments Act and Rules in force from time to time.

M.Srinivasan

Deputy Commissioner for Hindu

Religious and Charitable Endowments (Administration)

Department



12. This takes us to the next argument that whether the impugned order in any manner derails or dislodges the Scheme that is operating. A careful perusal of the Scheme as published in the Government Gazette (scanned and reproduced supra) makes it clear that the impugned order does not in any manner interfere with the scheme. All that the impugned order has done is, it has moved said temple from being a group of temple of Arulmighu Subramania Swamy Thirukoil, Kundrathoor to a group of temple of Arulmigu Nageswara Swamy Temple. This Court is informed that these two temples are at a distance of 2½ kms from each other. Therefore, the said temple being moved from a group of Arulmighu Subramania Swamy Thirukoil, Kundrathoor to be a group of temple of Arulmigu Nageswara Swamy Temple does not in any manner alter the scheme, which is settled and which is operating. Therefore, this Court is of the considered view that the argument that the impugned order would dilute or dislodge the scheme is clearly unfounded and it is no argument.

13. This Hon'ble Court has no difficulty or no hesitation in agreeing with the learned State counsel and learned counsel for 3<sup>rd</sup> respondent (by way of submissions made assisting this Court and not by way of defending the impugned order) that the proviso even at the highest (if at all and if that be so) can be projected by the fourth respondent and not by the writ petitioner owing to dispositive reasoning delineated supra elsewhere in this order.

14. There is no disputation or disagreement before this Court that there were no trustees qua said temple on the date of the impugned order i.e. 07.05.2008. There was only a Fit person qua said temple. There is one other way of looking at it. The term 'Fit person' is not defined in TN HR & CE Act. Therefore, Fit person may qualify as a trustee within the meaning of Section 6(22) as Section 6(22) talks about any person in whom the administration of a Religious Institution is vested 'by whatever names called'. In the instant case, the Fit person has not come before this Court and therefore, it is not necessary to dilate any further on this aspect of the matter. In sum totality of narrative and discussion thus far, a careful perusal of the impugned order makes it clear that it is purely a matter of administrative convenience and it is quite innocuous. In this view of the matter, this Court deems it appropriate to scan and reproduce the one and quarter page impugned order, which reads as follows:



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முன்னிலை:- திரு. த. பிச்சாண்டி, இ.ஆ.ப.,  
சிறப்பு ஆணையர் மற்றும் ஆணையர்.

செ.மு.ந.க. 20979/2008 / எல்1, நாள். 07.05.2008

பொருள் :- பணிப்பிரிவு - உபகோயிலாக இணைத்தல் - அருள்மிகு  
சேக்கிழார் திருக்கோயில் - குன்றத்தூர் - அருள்மிகு  
நாகேச்சரசுவாமி திருக்கோயில் - திருநாகேஸ்வரம் -  
கோயிலுடன் இணைத்தல் - உத்தரவிடப்படுகிறது.

பார்வை :- இணை ஆணையர்/வேலூர், ந.க.234/08/இ1/நாள் 16.4.08

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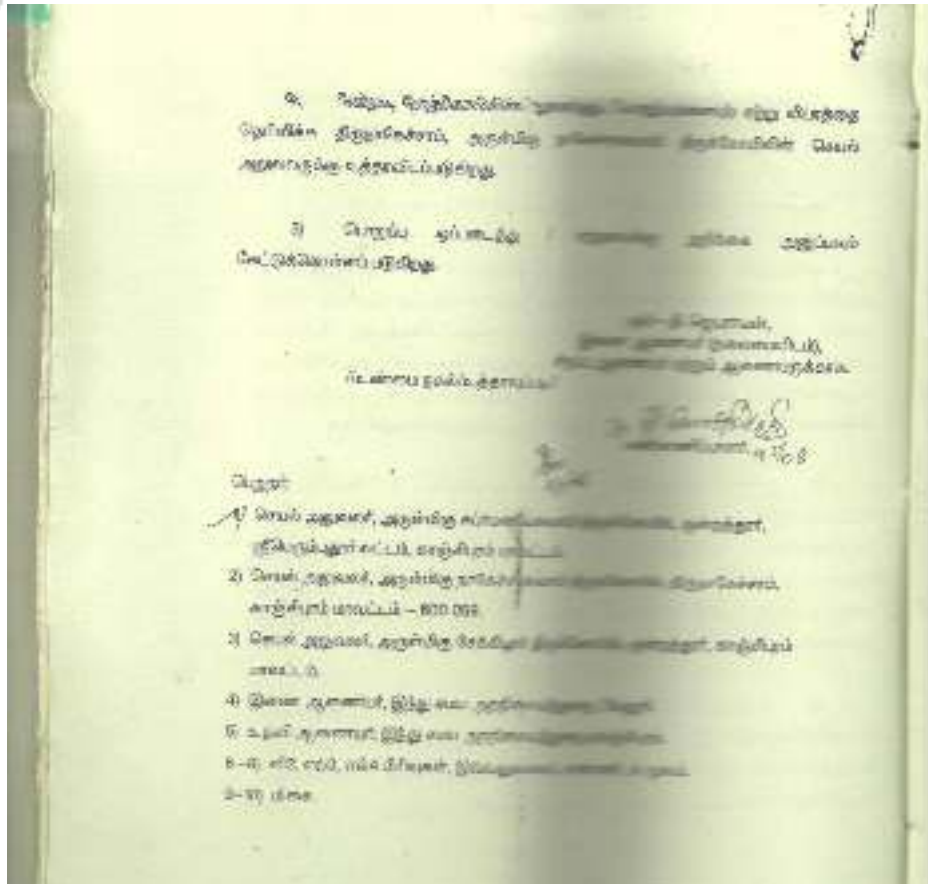
குன்றத்தூர், அருள்மிகு சேக்கிழார் திருக்கோயில் தற்போது குன்றத்தூர், அருள்மிகு சுப்ரமணியசுவாமி திருக்கோயிலின் குழுக்கோயிலாக இருந்து வருகிறது. மேற்படி திருக்கோயிலில் சேக்கிழார் மணி மண்டபம் அமைத்தல் தொடர்பாகவும், திருக்கோயிலின் நிர்வாக நலன் கருதியும் குன்றத்தூர், அருள்மிகு சேக்கிழார் திருக்கோயிலை, திருநாகேச்சரம், அருள்மிகு நாகேச்சரசுவாமி திருக்கோயிலுடன் உபகோயிலாக இணைக்குமாறு பார்வைக்குறிப்பில் இணை ஆணையர் பரிந்துரை செய்துள்ளார்.

2) இணை ஆணையரின் அறிக்கைப் பரிசீலிக்கப்பட்டு கீழ்க்கண்டவாறு உத்தரவிடப்படுகிறது. காஞ்சிபுரம் மாவட்டம், குன்றத்தூர், அருள்மிகு சேக்கிழார் திருக்கோயிலை குன்றத்தூர், அருள்மிகு சுப்ரமணியசுவாமி திருக்கோயில் தொகுப்பிலிருந்து பிரித்து, காஞ்சிபுரம் மாவட்டம், திருநாகேச்சரம், அருள்மிகு நாகேச்சரசுவாமி திருக்கோயிலில் உபகோயிலாக சட்டப்பிரிவு 23 -ன் கீழ் இணைத்து ஆணையிடப்படுகிறது.

3) காஞ்சிபுரம் மாவட்டம், குன்றத்தூர், அருள்மிகு சேக்கிழார் திருக்கோயிலின் பொறுப்புக்களை கவனித்துவரும் செயல் அலுவலர், மேற்படி திருக்கோயிலின் அனைத்துப் பொறுப்புகளையும் காஞ்சிபுரம் மாவட்டம் திருநாகேச்சரம், அருள்மிகு நாகேச்சரசுவாமி திருக்கோயிலின் செயல் அலுவலரிடம் ஒப்படைக்க உத்தரவிடப்படுகிறது.



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15. The question as to whether a writ petition is maintainable at the instance of a Society registered under the Tamil Nadu Societies Registration Act, 1975 and as to whether it is a juristic person is left open as it is not imperative to decide this issue for deciding the case on hand. In the case on hand, suffice to say that writ petitioner does not qualify as a person having interest within the meaning of sub-section (15) of Section 6 of TN HR & CE Act and in any event does not qualify qua proviso to Section 23 of TN HR & CE Act. That draws the curtains qua the captioned writ petition and that is the end of the road for the writ petition. The sequitur is captioned writ petition is dismissed. As a further sequitur, the connected miscellaneous petition is also dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-CCC)

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Sub Assistant Registrar

GPA/NST



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1. The Secretary to Government,  
Department of Hindu Religious & Charitable Endowment,  
Fort St., George, Chennai-9.
2. The Special Commissioner/Commissioner  
Hindu Religious & Charitable Endowment Board,  
Uthamar Gandhi Road, Chennai-34.
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Arulmigu Thirunageswara Swamy Thirukoil,  
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Kancheepuram District.
4. The Executive Officer,  
Arulmigu Sekkizhar Thirukoil,  
Kundrathur, Kancheepuram District.

+1cc to Mr.N.Sivaprakash, Advocate SR.No.50341

+1cc to M/s.A.S.Kailasam and Associates, Advocate SR.No.51064

+1cc to Government Pleader SR.No.51360

W.P.No.3602 of 2013 &  
MP.No.2 of 2013

EV(CO)  
GMY(22/10/2021)