BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **11.01.2022**

CORAM

THE HON'BLE MR. JUSTICE M.SUNDAR

W.P(MD)No.461 of 2022
and
W.M.P.(MD)No.364 of 2022

N.Lakshmanan ... Petitioner

Vs.

1. The Commissioner,
   Hindu Religious and
   Charitable Endowment Department,
   119, Uthamar Gandhi Road,
   Nugambakkam, Chennai.

2. The Joint Commissioner,
   Hindu Religious and
   Charitable Endowment Department,
   Tirchy.

3. The Assistant Commissioner,
   Hindu Religious and
   Charitable Endowment Department,
   Trichy.

4. The Fit Person Appointee Cum
   Executive Officer,
   Arulmigu Sedal Mariamman Thirukovil,
   Beema Nagar,
   Trichy. ... Respondents

PRAYER: This Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, calling for the records relating to the impugned order issued by the 3rd respondent in Se.Mu.Na.Ka.No.2888/2016/A5 dated 30.11.2021 and the consequential proceedings dated 27.12.2021 issued by the 4th respondent and quash the same as illegal and pass such further or other orders.

For Petitioner : Mr.VR.Shanmuganathan

For Respondents : Mr.A.Baskaran,
Additional Govt. Pleader
for R1 to R3

: Dr.C.Guhaseelarupan for R4

O R D E R

A public temple which goes by the name 'Arulmigu Venugopala Swamy Temple, Situate in Beema Nagar, Trichy' (hereinafter 'said temple' for the sake of convenience and clarity) is the subject matter of captioned writ petition and appointment of Executive Officer of Sedal Mariamman Thirukovil (also situate in Beema Nagar, Trichy) as Fit person (***தக்கா;***) of said temple vide order dated 30.11.2021 bearing reference ***செ.மு.ந.க.எண;***.2888/2016/***அ***5 made by the third respondent, consequential communication of fourth respondent dated 27.12.2021 and challenge to the same is the central theme of the captioned writ petition.

2. Mr.VR.Shanmuganathan, learned counsel for writ petitioner, Mr.A.Baskaran, learned Additional Government Pleader who accepted notice on behalf of respondents 1 to 3 and Dr.C.Guhaseelarupan, learned private counsel who accepted notice on behalf of fourth respondent (Executive Officer of Sedal Mariamman Thirukovil who has been appointed as Fit person of said temple) are before this virtual Court, with the consent of all the learned counsel, main writ petition is taken up and heard out.

3. Owing to the narrow compass on which the captioned matter turns, factual matrix in a nutshell will suffice. Short facts shorn of particulars which are not imperative for appreciating this order are that said temple is a public temple governed by 'The Tamil Nadu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959)' (hereinafter 'TN HR&CE Act' for the sake of convenience and clarity); that said temple is therefore under 'Tamil Nadu Hindu Religious and Charitable Endowments Department, Government of Tamil Nadu' (hereinafter 'TN HR&CE Dept.' for the sake of convenience and clarity); that it is the case of the writ petitioner that said temple was constructed by his ancestors about 100 years ago; that writ petitioner moved the second respondent (jurisdictional Joint Commissioner of TN HR&CE Dept.) vide O.A.No.30 of 2016 under Section 63(b) of TN HR&CE Act with a prayer to declare the office of trusteeship of said temple as hereditary; that O.A.No.30 of 2016 came to be disposed of after full enquiry by the second respondent by an order dated 15.07.2020; that the writ petitioner has carried the same in

appeal by way of a statutory appeal under Section 69(1) of TN HR&CE Act vide A.P.No.25/2021/D2; that the statutory appeal is now pending on the file of first respondent (Commissioner of TN HR&CE Dept.); that under such circumstances, the third respondent (jurisdictional Assistant Commissioner of TN HR&CE Dept.) issued proceedings dated 30.11.2021 bearing reference nr.மு.ந.க.எண் .2888/2016/அ5 appointing Executive Officer of Sedal Mariamman Thirukovil, Trichy as Fit person of said temple; that these proceedings were not served on the writ petitioner and the writ petitioner obtained the same by way of taking the 'Right to Information Act, 2005' ('RTI Act' for the sake of brevity) route; that pursuant to this 30.11.2021 proceedings, the fourth respondent has now sent a communication dated 27.12.2021 to the writ petitioner *inter alia* calling upon the writ petitioner to hand over the responsibilities qua said temple within seven days; that assailing the order dated 30.11.2021 of the third respondent and the communication from fourth respondent dated 27.12.2021, captioned writ petition has been filed.

4. In his campaign against the impugned orders (to be noted 30.11.2021 order of third respondent and 27.12.2021 communication of fourth respondent are being collectively referred to as 'impugned orders' for the sake of convenience and clarity), learned counsel notwithstanding very many averments in the writ affidavit and several grounds raised in the writ affidavit, made pointed submissions, a summation of which is as follows:

a) writ petitioner is admittedly in administration of said temple even according to 12.02.2018 report of the jurisdictional Inspector of TN HR&CE Dept.;

b) impugned orders have been made without notice to the writ petitioner and 30.11.2021 proceedings of third respondent have not been served on the writ petitioner; and

c) the writ petitioner's appeal against dismissal of his petition under Section 63(b) of TN HR&CE Act is pending.

5. In response to the above submissions, learned State Counsel submitted that the writ petitioner was put on notice and the writ petitioner on 11.05.2018 has made a statement in writing saying that Fit person (Thakkar) should not be appointed for said temple until his petition under Section 63(b) of TN HR&CE Act viz., O.A.No.30 of 2016 on the file of the second respondent is decided. The same (O.A.No.30 of 2016) was decided against the writ petitioner on 15.07.2020 (after full enquiry) and therefore, Fit person has now been appointed by the third respondent in exercise of his powers under Section 49(1) of TN HR&CE Act.

6. Learned Private Counsel, who accepted notice on behalf of fourth respondent submitted that he sent the communication dated 27.12.2021 only pursuant to the impugned order of the third respondent and otherwise he will only stand bound by any orders made by this Court without taking any adversarial position in this lis.

7. By way of reply to the above submission, learned counsel for writ petitioner made submissions, a summation of which is as follows:

a) there is no disputation or disagreement about the character of said temple i.e., that it is a public temple but the issue pertains to administration of said temple;

b) 11.05.2018 statement in writing does not mean that the writ petitioner has consented for appointment of Fit person qua said temple; and

c) absent proceedings under Section 63(b) of TN HR&CE Act also, the writ petitioner has a right to be in administration of said temple.

8. This Court has carefully considered the rival submissions and this Court is of the considered view that the prayer of the writ petitioner cannot be acceded to. The discussion and dispositive reasoning i.e, reasons for such a considered view / conclusion are as follows:

a) TN HR&CE Act received the assent of the President on 19.11.1959 and it was published in the official gazette on 02.12.1959. On and from these dates, by virtue of Section 1(3) of TN HR&CE Act all Hindu public religious institutions, endowments, incorporated dewaswoms and unincorporated dewaswoms come under the sweep of TN HR&CE Act. The only exception is Jain religious institutions vide explanation to Section 1(3) of TN HR&CE Act. To be noted, all four entities viz., religious institutions, endowments, incorporated Dewaswoms and unincorporated Dewaswoms are defined terms vide Sections 6(18), 6(17), 6(12) and 6(23) respectively of TN HR&CE Act. We are not concerned with Incorporated Dewaswoms and Unincorporated Dewaswoms in the case on hand. Therefore, Section 6(18) of TN HR&CE Act which defines 'religious institution' comes into play and the same has to be read in conjunction with Section 6(20) of TN HR&CE Act which defines 'temple'. Sections 6(18) and 6(20) of TN HR&CE Act reads as follows:

'6. Definitions.- In this Act, unless the context otherwise requires,

(1) to (17) ....

(18) "Religious institution" means a math, temple or specific endowment";

(19).......

(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;'

Section 6(17) of TN HR&CE Act which defines 'religious endowments / endowments' reads as follows:

'6. Definitions.- In this Act, unless the context otherwise requires,

(1) to (16) ....

(17) "religious endowment" or "endowment" means all property belonging to or given or endowed for the support of maths or temples, or given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity; and includes the institution concerned and also the premises thereof; but does not include gifts of property made as personal gifts to the archaka, service holder or other employee of a religious institution;'

b) The above is the scheme of TN HR&CE Act. This Court has repeatedly held that TN HR&CE Act is a self-contained code. Therefore, if any one claims a right to be in administration of a public temple i.e., a religious institutions within the meaning of Sections 6(18) and 6(20) of TN HR&CE Act, the same can be only by perambulating within the four corners of TN HR&CE Act. In the case on hand, the writ petitioner has chosen the section 63(b) of TN HR&CE Act route. On Section 63(b) of TN HR&CE Act, the law is well settled that Section 63(b) of TN HR&CE Act is a legal drill by which the Joint Commissioner by a quasi-judicial adjudication decides whether the office of trusteeship of a temple is hereditary or not. In this case, the Joint Commissioner has answered the question in negative. This means that as of today the office of trusteeship of said temple is not hereditary but this question has been carried in appeal by way of a statutory appeal and the appeal is pending, but there are no interim orders in the appeal. The first respondent who is the appellate authority is in seizin of the statutory appeal. It is further to be noted that Chapter V of TN HR&CE Act captioned 'Inquiries' consists of a mechanism consisting various /hierarchy of tiers for enquiry into various aspects of such nature and the matter is now in tier two. To be noted, this Court has already reminded itself that TN HR&CE Act itself is a self-contained code.

c) The sequitur qua the above points is the right of the third respondent to appoint a Fit person under Section 49(1) of TN HR&CE Act cannot be taken away. This right is only qua administration of a public temple. It only means that administration of the temple should be in the hands of a Fit person (Thakkar) appointed within a legal parameter and ambit of TN HR&CE Act. It is a transitory provision. A careful reading of Section 49(1) of TN HR&CE makes it clear that it take us to Section 47 of TN HR&CE Act and a conjoint reading of the two will make it clear that the administration of said temple (as already alluded to supra) should necessarily be in the hands of a Fit person duly appointed in accordance with the Statute albeit purely as a transitory measure;

d) In the above view of the matter, it is clear that the writ petitioner does not have any legal / statutory right much less a statutory right under TN HR&CE Act (as of today) to be in administration qua said temple. Assuming (on a demurer) even if it is a matter of usage of a religious institution the same has to be decided only by quasi-judicial drill under Section 63(e) of TN HR&CE Act';

e) With regard to the question of being put on notice, this Court vide order dated 07.12.2021 in W.P.(MD)No.20561 of 2014 [K.Kumaraguruparan Vs. The Joint commissioner, TN HR&CE Dept.] after making a survey of the aforesaid proceedings and after referring to two case laws viz., ***Sri Devi Ellamman Paripalana Sangam Vs. The Assistant Commissioner, Hindu Religious and Charitable Endowments Board, Chennai and another*** reported in ***2010 (2) CWC 915*** and ***P.R.Thirupathy and others Vs. The Assistant Commissioner, Hindu Religious and Charitable Endowment and others*** reported in ***(2015) 4 CTC 755*** held that the same will not come to the aid of the cases such as the writ petitioner by applying the celebrated constitution Bench judgment in ***Padma Sundara Rao*** case being ***Padma Sundara Rao Vs. State of Tamil Nadu*** case reported in ***(2002) 3 SCC 533.*** This aspect of the matter is captured in paragraphs 12 to 16 in K.Kumaraguruparan's case which read as follows:

'12. *This takes us to the next point that turns on NJP. On NJP, I deem it appropriate to deal with the two case laws, which were pressed into service. One is* ***P.R.Thirupathy case,*** *where the facts are completely different. I am able to find at least four distinguishing features/facts. One is, as captured in paragraph 4 that was a case where non-hereditary trustee had already been appointed in accordance with TN HR&CE Act. The second point is (as captured in paragraph 15 thereat) the impugned order was never served on the writ petitioner. Third distinguishing feature is also captured in paragraph 15 and that is, the question as to whether the temple concerned therein is a denominational temple was left open. For this purpose, I deem it appropriate to extract and reproduce entire paragraph 15 of* ***P.R.Thirupathy*** *case law and the same reads as follows:*

'15. It is to be further pointed out that the impugned order was not communicated to the petitioners and in the counter affidavit filed by the third respondent, it has been stated that the copy of the order was also sent to the person in management by post and it is not necessary to send the same to the Writ Petitioner stating that they are not trustees as claimed by them. The averment made in the counter affidavit of the third respondent is vague, as it does not state the date of despatch whether it was sent by registered post or not and other details. Therefore, the contentions of the third respondent that the copy of the order was sent to the person in management by post is held to be not substantiated. Though the third respondent takes a stand that the petitioner need not be provided with the copy, it is not known under what circumstances the signature of the petitioner and others were obtained by the fit person, when the hundial was opened on 28.10.2013. The learned Special Government Pleader appearing for the respondent submitted that though the term of office of the trustee is over, they are still continuing. In such circumstances, the petitioners ought to have been heard in the matter after issuing notice to them, since such procedure had not been followed, it has to be necessarily held that the impugned order has been passed in 17 violation of principles of natural justice. Though the petitioner would contend that the temple is a denomination temple, established and maintained by the people belonging to a particular community, the third respondent has denied the contention and submitted that the H.R.,&C.E., department has been appointing non-hereditary trustees belonging to other community to the temple from time to time and the trustees are appointed in accordance with the stipulation under Section 47 of the Act. In the light of the above stand taken by the parties, this issue cannot be adjudicated in this Writ Petition and it is for the petitioners to work out their remedies under the Act in the manner known to law.'

13. Relevant portion of paragraph 4 which deals with non-hereditary trustees reads as follows:

'4.The learned Special Government Pleader appearing for the respondents 1 to 4, by referring to the counter affidavit filed by the respondents 3 and 4 submitted that the temple is receiving financial assistance from the H.R. and C.E., Department for pooja to be performed and non-hereditary trustees were appointed to the said temple by the department from 1995 onwards and those non-hereditary trustees belong to various communities. It is further submitted that among the five non-hereditary trustees, one trustee is a lady and one other trustee belongs to the Schedule Caste community and these appointments were made in terms of Section 47 of the Act........'

14. The fourth distinguishing feature is it is not a case where there is no disputation that there is no declaration or decree that temple concerned is a denominational temple. In other words as already alluded to supra in the case on hand, said temple is a public temple. Likewise **Sri Devi Ellamman Paripalana Sangam case** is also distinguishable on facts as that is a case where an application had been made for declaring that the trusteeship of the office of the temple concerned is hereditary. This is captured in paragraph 8 of that order and the relevant portion reads as follows:

'8.........Though there has been an application for declaration of the office of trustee of the religious institution to be a hereditary one, no application under Section 63(a) for a declaration as to whether the temple in question is a religious institution 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 section thereof was filed......'

15. Going by the narrative, the above may well be a petition under Section 63(b) and not 63(a). This may be a typographical error. It is not necessary to delve further into this and it will suffice to say that the two case laws are clearly distinguishable on facts. In this regard, I remind myself of the celebrated **Padma Sundara Rao** case being **Padma Sundara Rao Vs. State of Tamil Nadu** case reported in **(2002) 3 SCC 533** which was rendered by a Hon'ble Constitution Bench owing to which it is a declaration of law and the relevant paragraph in **Padma Sundara Rao** case law is paragraph 9 and the same reads as follows:

'**9.**Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington Vs. British Railways Board (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.'

16. I have applied the celebrated **Padma Sundara Rao** declaration of law to distinguish the aforementioned two case laws. As the aforementioned two case laws do not apply to the case on hand it does not help the cause of the writ petitioner and it does not come to the aid of the writ petitioner in the case on hand. This by itself puts an end to the NJP argument. In my considered view, Section 49(1) of TN HR & CE Act has to necessarily be read with Section 47(1)(a) of TN HR&CE Act. A conjoint and careful reading of Section 49(1) of TN HR&CE Act read with Section 47(1)(a) more particularly second proviso to Section 47(1)(a) makes it clear that it is a transitory provision and appointment of Fit person under Section 49(1) is pending constitution of board of trustees. In the instant case, as already alluded to supra, steps in this direction have been taken by the State as a notification for constitution of the selection panel for selecting the trustees has already been made about 3 weeks ago.'

The case on hand is no different and that douses the argument. After all this Court is *parens patriae*, idol is a minor and this Court is guardian. Law is well settled in this regard.

f) The moment a religious institution / temple is a public temple i.e, public religious institution which comes within the scope of TN HR&CE Act administration can vest in a person only in accordance with TN HR&CE Act and not in any other manner. The above points by themselves answer the point pivoted on report of the jurisdictional Inspector dated 12.02.2018 and appointment of Fit person without notice. The point that 11.05.2018 statement in writing cannot be construed as a consent is quite acceptable, it may not be a consent but the writ petitioner has made it clear that the appointment of Fit person will be subject to Section 63 (b) of TN HR&CE Act proceedings. Section 63(b) TN HR&CE Act proceedings has ended against the writ petitioner.

g) The above points also answer the arguments of learned counsel for writ petitioner that absent Section 63(b) of TN HR&CE Act proceedings also, the writ petitioner has a right to be in administration of said temple. In other words, this argument has been negatived in the light of discussion and dispositive reasoning set out supra as there can be no right outside of TN HR&CE Act.

9. Before writing the concluding paragraph, this Court deems it appropriate to summarize the obtaining legal position and the same is as follows:

(i)TN HR&CE Act received the assent of the President on 19.11.1959 and it was published in the Government Gazette on 02.12.1959;

(ii)On and from the aforementioned appointed date, all religious institutions [Section 6(18) of TN HR&CE Act] and all temples [Section 6(20) of TN HR&CE Act] per se, i.e., by operation of the statute (Section 1(3) of TN HR&CE Act) stand governed by TN HR&CE Act, the sequitur is, the administration and management of all temples vest in TN HR&CE Dept., Government of Tamil Nadu by operation of statute;

(iii)There is no concept of making a notification and bringing religious institution or temple under TN HR&CE statute;

(iv)On the contrary, there is provision for the Government (Section 4 of TN HR&CE Act) to exempt a religious institution / temple from some or all provisions of TN HR&CE Act;

(v)Therefore, a temple or religious institution should take the section 4 route to come outside the legal perimeter of TN HR&CE statute in entirety or one or some of its provision/s and the power to do is vested in the Government;

(vi)Another legal route available for a religious institution / temple is to seek a declaration that it is a private temple in the jurisdictional civil court. If a decree is passed, that will exempt such religious institution / temple from operation of TN HR&CE statute;

(vii)Absent aforementioned exemption/ declaration, every temple in the State of Tamil Nadu stands governed by TN HR&CE Act and the administration/ management vests in TN HR&CE Dept., Government of Tamil Nadu as alluded to supra and there is no concept of separate notification to bring a religious institution / temple within the legal perimeter of TN HR&CE Act as alluded to supra;

(viii)The sequitur to the above is, if any individual or group of individuals stake a claim to be in administration/ management of a religious institution/temple, they should do so by perambulating within the legal perimeter of TN HR&CE Act;

(ix)For an illustration, it may be by way of section 63(b) route (hereditary trustee) or section 64(1) legal route (scheme). These are only illustrations and are not exhaustive;

(x)As a continuation of the above position, as already alluded to supra elsewhere in this order, this court has repeatedly held that TN HR&CE Act is a self contained code. A further extension of this legal position is, with regard to aforementioned illustrations, for a person / persons to stake a claim, there is a dedicated Chapter under TN HR&CE Act, namely Chapter V captioned 'INQUIRIES'. This Chapter provides for various means by which a person or persons can stake his/her/their claim to be in administration/ management of a temple. However, this legal route under TN HR&CE Act is not limited to Chapter V proceedings. Be that as it may, Chapter V proceedings provides for a self contained quasi judicial adjudication machinery where there are clearly drawn out tiers / hierarchy for quasi judicial adjudication;

(xi)For an illustration, a section 63(b) [hereditary trustee] application in tier 1 is heard by Joint Commissioner of TN HR&CE Dept., tier 2 statutory appeal under section 69(1) lies to the Commissioner, TN HR&CE Dept, tier 3 is, as against the order of the Commissioner, there is a statutory suit in the jurisdictional civil court under section 70 and there is a fourth tier by way of a further appeal to this court (High Court) under section 70(2). Needless to add that a decision of this court under section 70(2) can always be carried to Hon'ble Supreme Court under Article 136 of the Constitution of India;

(xii)Reverting to the administration/management vesting in TN HR&CE Dept., the appointment of a trustee should also be done within the legal perimeter of TN HR&CE Act, as besides hereditary trustee (alluded to supra), scheme, etc., there is provision for constitution of Board of Trustees (non hereditary trustees too) and election of one amongst them as Chairman of Board of Trustees;

(xiii)If there is any delay or gap in the aforementioned procedure, i.e., constitution of Trust Board or appointment of hereditary trustee / non hereditary trustee, scheme appointment or when the appointed hereditary trustee is suspended, as a transitory / temporary measure, a Fit Person (jf;fhh;) can be appointed. Provisions in this regard are contained *inter-alia* in sections 47, 49 and 53(4) of TN HR&CE Act;

(xiv) In addition to the above, there is a provision for appointment of Executive Officer under section 45 of TN HR&CE Act. Interestingly, the term 'Fit Person'is not defined, but terms 'Executive Officer' and 'Trustee' are defined vide Section 6(9) and Section 6(22) respectively of TN HR&CE Act which reads as follows:

'**Section 6(9)**:

(9)"**executive officer**" means a person who is appointed to exercise such powers and discharge such duties appertaining to the administration of a religious institution as are assigned to him by or under this Act or the rules made thereunder or by any scheme settled or deemed to have been settled under this Act;

Section 6(22):

(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;'

(xv) Therefore, it is clear that Fit Person (jf;fhh;) is also a trustee;

(xvi) In the light of the above, appointment of a Fit Person (jf;fhh;) being purely as transitory / temporary measure qua a religious institution / temple which is clearly under the sweep and rigor of TN HR&CE Act and consequently under administration / management of TN HR&CE Dept., Government of Tamil Nadu, there is no question of putting an individual on notice until such individual establishes his right under the statute through a legal drill, i.e., getting himself appointed as hereditary trustee, non hereditary trustee or getting appointed under the scheme, etc.,;

(xvii) TN HR&CE Act is a self contained code, it is so devised that there is no vacuum in administration / management of public temples and aforementioned Fit Person (jf;fhh;) appointment provision is one such temporary/transitory measure. To be noted, this Court has repeatedly held that TNHR&CE Act is a self contained code, Sections 108, 109 which bar civil suits in respect of administration or management of religious institutions and excludes Limitation Act (respectively) buttress, bolster this obtaining proposition. Sections 108, 109 read with Section 1(3) puts the obtaining legal position that all temples per se come under TNHR&CE Act and consequently under administration and management of TNHR&CE Dept. beyond the arena of any disputation. To be noted, in a long line of authorities i.e., catena of case laws this Court has taken a clear categoric and unambiguous view that TNHR&CE Act is a self contained and an illustrative not exhaustive list of this line of case laws is as follows:

(a) In *R.Lakshmi Narasimha Bhattar v. The Commissioner, HR&CE* case, reported in *2011 SCC OnLine Mad 2474*, while inter-alia dealing with a honour (during 'Viswaroopa Dharsanam' in Arulmigu Aranganatha Swamy Thirukovil Srirangam, Trichy) and while referring to earlier orders vide Chapter V inquiry proceedings after holding that remedy is by way of statutory revision under Section 21, a learned Single Judge held that TNHR&CE Act is a self contained code. Most relevant portions are contained in paragraphs 25 and 27 and the same read as follows:

Relevant portion in paragraph 25:

'...*Ultimately, if at all the petitioner's grievance to establish an honour attached to his office if any held it can be gone into only by instituting a proceedings under Section 63(e) of the TN HR&CE Act followed by a suit under Section 70(1) and a further appeal to this court under section 70(2) of the Act. Merely accusing the Joint Commissioner cum Executive Officer as biased or contending that the remedy by way of revision need not be availed since the Joint Commissioner cum Executive Officer has no jurisdiction to pass orders cannot be countenanced by this court.*

Paragraph 27:

27. In fact the petitioner's hereditary right to receive honour is seriously under challenge by the temple management by relying upon the Tamil Nadu Act 2/1971 and also the allegation was that Rengesa Prohida service is done only by temple servants and hereditary succession over such Kaingaryams is not recognised under law. The so-called custom pleaded was also broken many times and reading of Panchangam was done by other families. All the more reasons, the petitioner has to only approach the authority under the Act and cannot bypass the Act. The Act is the self contained code. Only after exhausting all the remedies, a statutory appeal to this court is available over the action of the authorities. Under these circumstances, W.P.(MD) Nos. 9202 and 9263 of 2011 are also liable to be rejected.'

(Underlining made by this Court for ease of reference)

(b) In order dated 21.06.2016 in W.P(MD) No.10840 of 2016 vide *V.Subramanian v. The Joint Commissioner, HR&CE Department* case, another Hon'ble Single Judge of this Court while dealing with challenge to proceedings under Section 78 of TNHR&CE Act and while negativing the challenge to an order under Section 78 of TNHR&CE Act (treating the writ petitioner as an encroacher) held that TNHR&CE Act is a self contained code. This is articulated in paragraph 7 of this *V.Subramanian's* order and the relevant portion in paragraph 7 reads as follows:

'7.*It is to be noted that the above said Act is a self-contained and in-built 'Act'. It has also gives right to the aggrieved to move before the appropriate forum under the 'Act'. As such, this Court is of the considered view that the Petitioner can* *very well seek appropriate remedy as against the impugned order, dated 16.03.2016 of the First Respondent and the consequential order, dated 06.06.2016 of the second Respondent, under the Tamil Nadu Hindu Religious and Charitable Endowments Act,1959.'*

(c) In *Palanichamy v. The Commissioner, HR&CE Department* case, reported in *2016 SCC Online Mad 21977*, the same Hon'ble Single Judge who authored *V.Subramanian's* case, while dealing with a challenge to an order/proceedings under Section 78 of TNHR&CE Act qua removal of encroachment reiterated the aforementioned paragraph 7 of *V.Subramaniam's* case. This is in paragraph 30 of *Palanichamy's* case and the relevant portion reads as follows:

*'**30.** At this stage, on behalf of Respondent Nos. 1 to 3, it is brought to the Notice of this Court that on 21.06.2016, in W.P. (MD) No. 10840 of 2016 between V. Subramanian v. Joint Commissioner, Hindu Religious and Charitable Endowments Department, Theni, Dindigul and Madurai Administration, Madurai, this Court, at paragraph 7, had observed the following:—*

"7. It is to be noted that the above said Act is a self-contained and in-built 'Act'. It has also gives right to the aggrieved to move before the appropriate forum under the 'Act'. As such, this Court is of the considered view that the Petitioner can very well seek appropriate remedy as against the impugned order, dated 16.03.2016 of the First Respondent and the consequential order, dated 06.06.2016 of the second Respondent, under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.'

(d) In *M/s.Temple Worshippers Society v. Government of Tamil Nadu* case, some provisions of one set of Rules which go by the name 'Conditions for Appointment of Executive Officer Rules, 2015' ('said Rules' for brevity and convenience) were assailed. This challenge was negatived by a Hon'ble Division Bench presided by Hon'ble Justice Sanjay Kishan Kaul as Chief Justice of this Court (as His Lordship then was) vide order dated 31.01.2017 reported in 2017 SCC Online Mad 7178. I was party to the Bench and I had penned the order for the Hon'ble Division Bench. To be noted, one of the primary grounds of challenge to some provisions of said Rules which is a piece of subordinate legislation made by the Government under Section 116 of TNHR&CE Act. To be noted, Section 116 of TNHR&CE Act is a rule making power. Some provisions of said Rules do not conform to the statute under which it has been made and it exceeds the limits of authority conferred by the enabling statute is one of the main grounds on which the challenge was predicated. In negativing this challenge, one of the fundamental premise on which the order was written is that TNHR&CE Act is a self contained statute. This is captured in sub-paragraph (i) of paragraph 5 of the order of Hon'ble Division Bench and the same reads as follows:

<u>Sub-paragraph (i) of paragraph 5</u>:

'*(i) The said parent Act was enacted in 1959 with the object of providing a self contained statute relating to the administration and governance of Hindu Religious and Charitable Institutions and Endowments in the State of Tamil Nadu. The said parent Act was enacted with the intention of amending and consolidating the law relating to the administration and governance of Hindu Religious and Charitable Institutions and Endowments in the State of Tamil Nadu. We are informed that about thirty six thousands Temples are administered by the Tamil Nadu Hindu Religious and Charitable Endowments Department, Government of Tamil Nadu, (hereinafter referred as 'TNHR & CE Department' for brevity) by applying the said parent Act.*'

(e) In *R.S.Mani v. The Joint Commissioner* case, an order made by the jurisdictional Joint Commissioner of TNHR&CE Dept. being an order under Section 63(b) of TNHR&CE Act (to be noted Section 63 (b) pertains to declaring the office of trusteeship of a temple as hereditary) was assailed. In and by order dated 09.11.2021 made in W.P(MD) No.20109 of 2021, I had negatived the challenge by relegating the writ petitioner to alternate remedy and while so relegating, the principles i.e., obtaining position that the TNHR&CE Act is a self contained code and Chapter V proceedings therein (to be noted, Chapter V is captioned 'Inquiry') is a legal drill which has a self contained mechanism were reiterated. This is articulated in paragraph 11 of this *R.S.Mani* judgment and the same reads as follows:

'*11. The narrative supra as well as the dispositive reasoning set out supra will make it clear that the entire matter turns heavily on facts. As the matter turns heavily on facts, it is only appropriate that the same is dealt with by a statutory appellate authority rather than testing it in writ jurisdiction where the issues are decided on the basis of affidavits and counter-affidavits. This is more so, as TN HR & CE Act itself is a self contained code (as repeatedly held by this Court) and therefore, Chapter V proceedings of TN HR & CE Act is a legal drill which has self contained mechanism (as already alluded to supra).*'

(f) In *C.Rajamohan v. Commissioner & Another case*, a Hon'ble Division Bench of this Court dismissed a PIL (Public Interest Litigation) wherein the petitioner wanted his representation regarding worship there to be considered. In dismissing this PIL, the Hon'ble Division Bench proceeded on the basis that the TNHR&CE Act is a self contained code. This is articulated in paragraph 2 of this short order dated 26.04.2019 made in W.P(MD) No.10392 of 2019 reported in 2019 SCC Online Mad 10975. Paragraph 2 of *C.Rajamohan's* case reads as follows:

'2. In the opinion of this Court, the Hindu Religious and Charitable Endowment Act is a self-contained Code and a mandamus of this nature in a public interest litigation cannot be issued. Hence, this Writ Petition is dismissed with liberty to the petitioner to work out his remedy in the manner known to law. No costs.'

(xviii) The legal position / statutory scheme as adumbrated supra is further developed by case law jurisprudence. The development of case law jurisprudence is, a presiding deity, i.e., idol in a religious institution / temple is in the status of a minor and courts are guardians qua such minors. To put it differently, Courts are *parens patriae* qua such religious institutions / temples and *custodia legis* qua properties belonging to such religious institutions / temples;

(xix) It is common knowledge that many of religious institutions / temples are vested with / endowed with vast and valuable immovable properties which all have been dedicated for a common cause and therefore, the *parens patriae*, *custodia legis* jurisprudence development assume significance.

(xx) In the light of the adumbration of legal position thus far, in cases of appointment of Fit Person, a person / individual or group of persons / individuals who are in administration and management of a temple cannot complain that they are deprived of any legal right as there is none. Such persons for convenience are referred to as '***நடைமுறை நிர்வாகி***' in the communications. Absent legal / statutory right, NJP (Natural Justice Principle) or violation of the same do not come into play. On the contrary, the rights of such 'eilKiw eph;thfp' are preserved, as appointment of Fit Person is after all a temporary / transitory provision, it is always open to 'eilKiw eph;thfp' to trigger a legal drill under TN HR&CE Act and get himself recognized if he or she has such legal entitlements.

10. At a micro level, in the case on hand, the attempt of the writ petitioner (***நடைமுறை நிர்வாகி***) to establish his right in the aforementioned manner by taking section 63(b) route under TN HR&CE Act failed at tier 1 of Chapter V proceedings. In other words, section 63(b) petition being O.A.No.30 of 2016 was dismissed after full enquiry by the jurisdictional Joint Commissioner, appeal is pending and there are no interim orders. Therefore, the complete absence of NJP is fortified and bolstered in the case on hand. To be noted, NJP violation will come into play only when the rights of an individual or legal entity being legal / statutory rights are either being tread upon or infracted or infarcted in some cases. None in the case on hand and as a general principle too in cases of such nature. As delineated supra, the rights are

preserved notwithstanding appointment of Fit Person. To put it differently, appointment of Fit Person does not curtail, abridge, denude or take away such rights (if there are any), on the contrary they are preserved but they have to be established through legal drill under the statute.

11. In the discussion and dispositive reasoning supra itself the right of the writ petitioner to move the first respondent Commissioner for an interim order has been preserved. This Court deems it appropriate to leave it open to the writ petitioner to seek suitable interim orders before the first respondent / Commissioner who is in seizin of the appeal. If the writ petitioner chooses to do so, such a plea has to be considered on its own merits and in accordance with law by the first respondent. In addition to the same, this Court deems it appropriate to direct the first respondent to dispose of A.P.No.25/2021/D2 as expeditiously as his business would permit and in any event within three months from today i.e., on or before 11.04.2022. The disposal of the appeal will be on its own merits and in accordance with law uninfluenced by / untrammeled by any observation made in this order.

12. Ergo captioned writ petition is dismissed albeit preserving the rights of the writ petitioner to the limited extent indicated supra. Consequently, captioned WMP is also dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

//2022

Sub Assistant Registrar(CS-)

vsm

To

1. The Commissioner,
   Hindu Religious and
   Charitable Endowment Department,
   119, Uthamar Gandhi Road,
   Nugambakkam, Chennai.

2. The Joint Commissioner,
   Hindu Religious and
   Charitable Endowment Department,
   Tirchy.

3. The Assistant Commissioner,
   Hindu Religious and
   Charitable Endowment Department,
   Trichy.

+1 CC to M/s.SPL.GOVERNMENT PLEADER (SR-1494[F] dated 12/01/2022)

+1 CC to M/s.C.GUHASEELARUPAN, Advocate
(SR-1605[F] dated 12/01/2022)

+1 CC to M/s.V.R.SHANMUGANATHAN, Advocate
(SR-1354[F] dated 12/01/2022)

W.P(MD) No.461 of 2022
and W.M.P.(MD)No.364 of 2022
11.01.2022

SP/31/01/2022/17P/7C