BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	31.03.2022
Pronounced On	16.06.2022

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.(MD).Nos.19611 & 20368 of 2019

and

W.M.P.Nos.16985 and 16987 of 2019

W.P.No.19611 of 2019

N.Palaniappan ... Petitioner

Vs

1. The Joint Commissioner,
The Hindu Religious and
Charitable Endowments Department,
Thanjavur – 613 007.

2. The Executive Officer,
Arulmigu Saduranga Vallabhanathaswamy Thirukoil,
Poovanur,
Needamangalam Taluk,
Thiruvarur District – 613 803.

3. The Assistant Commissioner,
The Hindu Religious and
Charitable Endowments Department,
Tiruvarur – 610 001.

4. The Tahsildar,
Needamangalam Taluk,
Tiruvarur District. ... Respondents

(R4 Suo motu impleaded Vide order dated 12.09.2019
made in WP(MD)No.19611 of 2019 by MGRJ)

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus calling for the records of the first respondent pertaining to his order dated 13.03.2019 in Muu.Mu.No.10266/2017/E2 and the consequent order of the second respondent dated 03.09.2019 and quash the same and consequently forbear the Respondents from interfering with the petitioner's administration of the Poovanur Sri Saduranganathaswamy Pasumadam, Nandavanam Arthajama Kattalai and Trust, Poovanur.

For Petitioner : Mr.P.L.Narayanan
For R1, R3 & R4 : Mr.P.Subbaraj
Special Government Pleader
For R2 : Mr.Chandrasekar

W.P.No.20368 of 2019

M.Meiyappan ... Petitioner

Vs

1. The Joint Commissioner,
The Hindu Religious and
Charitable Endowments Department,
Thanjavur - 613 007.

2. The Assistant Commissioner,
The Hindu Religious and
Charitable Endowments Department,
Tiruvarur - 610 001.

3. The Executive Officer,
Arulmigu Saduranga
Vallabhanathaswamy Thirukoil,
Poovanur,
Needamangalam Taluk,
Thiruvarur District - 613 803. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus calling for the entire records relating to the impugned proceedings of the first respondent in Na.Ka.No.10266/2017/E2, dated 13.03.2019 and the consequential impugned proceedings issued by the third respondent dated 03.09.2019 and quash the same as illegal and consequently forbear the respondents from interfering with the petitioner's administration of the Poovanur Sri Saduranganathaswamy Temple, Pasumadam, Nandavanam and Arthajama Kattalai.

For Petitioner	: Mr.V.R.Shanmuganathan for Mr.M.Dinesh
For R1 & R2	: Mr.P.Subbaraj Special Government Pleader
For R3	: Mr.V.Chandrasekar

COMMON ORDER

Since common issues are involved in both these Writ Petitions, they are being disposed of by this common order.

2. In these two Writ Petitions, the respective petitioners have challenged the impugned order dated 13.03.2019 bearing reference Mu.Mu.No.10266/2017/E2 passed by the first respondent, the Joint Commissioner of H.R. & C.E., Thanjavur and the consequential proceeding dated 03.09.2019 of the second respondent Executive Officer, Arulmigu Sri Saduranga Vallabhanathaswamy Thirukoil, Poovanur.

3. By the first mentioned impugned order dated 13.03.2019 bearing reference Mu.Mu.No.10266/2017/E2, the first respondent Joint Commissioner of H.R. & C.E. Department has stated that Assistant Commissioner (the third respondent in W.P.(MD) No.19611 of 2019 / the second respondent in W.P.(MD) No.20368 of 2019) in his proceeding dated 12.02.2019 bearing reference Na.Ka.No.5804/2017/A1 has recommended that instruction may be given to the Executive Officer (the second respondent in W.P.(MD) No.19611 of 2019 / the third respondent in W.P.(MD) No.20368 of 2019) to take charge of the Trust under Section 38 of the H.R. & C.E. Act and that since already the Executive Officer of the Arulmigu Sri Saduranganathaswamy Temple was appointed as the Takkar of the said Trust by the then Commissioner vide his Proceedings dated 05.06.1976 bearing reference No.40960/1976/A1, the Executive Officer be instructed to take charge of the Pasumadam, Nandavanam & Arthajama Trust simultaneously and to safeguard the properties of the Trust.

4. In his proceedings dated 03.09.2019, the second respondent Executive Officer of Arulmigu Sri Saduranga Vallabhanathaswamy Thirukoil, Poovanur has asked the petitioners to hand over all documents of the Trust and the management of the Trust properties to ensure that the obligations under the Trust are being carried out on or before 24.09.2019 failing which, steps will be taken to take control.

5. A reading of the impugned orders seems to indicate that the Assistant Commissioner, H.R. & C.E. in proceedings dated 12.02.2019 bearing No.5804/2017/A1, appears to have opined that proceedings against the Trust should be initiated under Section 38 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 [H.R. & C.E. Act] as the obligations have not been observed by the Trustees.

6. In his proceedings dated 05.06.1976, bearing Ref.No.Na.Ka.No.40960 of 1976 A1, the then Commissioner, H.R. & C.E., Chennai had already appointed the second respondent Executive Officer of Arulmigu Saduranga Vallabhanathaswamy Thirukoil, Poovanur as a fit person to manage the affairs of the said Trust.

7. These two orders of the Commissioner dated 05.06.1976, bearing Ref.No.Na.Ka.No.40960 of 1976 A1 and the Assistant Commissioner 12.02.2019 bearing No.5804/2017/A1 have neither been produced nor have been challenged.

8. The specific case of the respective petitioners in these Writ Petitions is that the impugned order of the first respondent is not sustainable. Therefore, the consequential proceeding of the second respondent Executive Officer is not maintainable.

9. It is submitted that the copy of order dated 12.02.2019 of the Assistant Commissioner bearing No.5804/2017/A1 has also not been furnished to the respective petitioners.

10. It is further submitted that prior to the impugned orders, the petitioners were also not put on notice and hence, the impugned proceedings are liable to be quashed.

11. The learned counsel for the respective petitioners submit that a Thakkar or a fit person cannot be appointed to take over the assets of an Endowment when the Founder-settlor has only dedicated the income from the properties for the due performance of the obligation/ Kattalais.

12. In this connection, reliance is placed on the decision of this Court in **C. Andiappan & others** Vs. **The Joint Commissioner, Tamil Nadu Hindu Religious and Charitable Endowment Board & others,** 2015 SCC OnLine Mad 13137; (2016) 1 LW 340, wherein, it was held that that the appointment of a fit person was illegal when the next in the line of succession was present and therefore only such a person should have been appointed.

13. It is further submitted that the ownership of the property/Trust did not pass on to the Idol/deity under the Settlement Deed. It is submitted under the scheme of the Act, a mere charge was created on the properties for the performance of various services (Katalias), for which, the specific endowment was created by the founder trustee.

14. It is submitted that even otherwise, invocation of Section 38 of the H.R. & C.E Act, 1959 was bad, as there was no failure in the due performance of the services under the Katalais under the Settlement Deed dated 16.12.1937.

15. The authorities can only expect the person, in possession of the properties endowed, to pay for the expenses incurred or likely to be incurred for the services/Kattalais or Charity to be performed as per the Settlement Deed of the founder.

16. It is submitted that before taking any drastic action under Section 38 of the H.R. & C.E. Act, a notice was required to be given and a reasonable opportunity should be afforded to give objections. Since no such opportunity was given to the respective petitioners, the impugned proceedings and the consequential communication of the second respondent are liable to be quashed.

17. It is submitted that the petitioners came to know about the impugned order dated 13.03.2019 of the Joint Commissioner only after the Executive Officer of Arulmigu Saduranga Vallabhanathaswamy Thirukoil, Poovanur, issued the consequential impugned notice dated 03.09.2019.

18. It is further submitted that the impugned orders also do not specify the basis on which it has concluded that the Kattalais/obligations were not being observed to give powers to the second respondent Executive Officer of the Arulmigu Saduranga Vallabhanathaswamy Thirukoil, Poovanur who was earlier appointed as the Fit Person by the then Commissioner vide his proceedings dated 05.06.1976, bearing Ref.No.Na.Ka.No.40960 of 1976 A1.

19. It is further submitted that the act of the first respondent and the second respondent Executive Officer of the Arulmigu Saduranga Vallabhanathaswamy Thirukoil, Poovanur are tainted and *mala fide* and the exercise of power under the Act was arbitrary.

20. It is further submitted that the impugned proceedings have been issued without taking note of the fact that already the petitioner in W.P.(MD)No.20368 of 2019 [M.Meiyappan] had taken steps to safeguard the properties under Kattalais and obtained orders against the persons, who are having arrears of rent and encroached the properties illegally.

21. The learned counsel for the petitioner in W.P.(MD)No.20368 of 2019 submits that the said petitioner has also filed necessary applications before the appropriate forum for executing the orders and the same are pending.

22. It is submitted that the impugned proceeding of the first respondent also suffers from want of reasons as it is a non speaking order.

23. It is submitted that the first respondent ought to have seen that appointment of Thakkar/Fit person can arise only when there is no person next in line of succession to assume the Office of Hereditary Trustee of the institution.

24. It is submitted that the impugned proceedings of the first respondents and the second respondent Executive Officer of the Arulmigu Saduranga Vallabhanathaswamy Thirukoil, Poovanur, are against the doctrine of legitimate expectation.

25. It is further submitted that the impugned action of the first respondent is only based on the proceedings of the Commissioner passed in the year 05.06.1976, which was *non est* in law, as it was neither served on either of the respective petitioners of their predecessor nor acted upon.

26. It is further submitted that the first respondent before passing the impugned proceedings, failed to take note of the fact that the founder and settler of the aforesaid Kattalais only dedicated the income arising out of its properties for offering

flowers to the Deity and other charity and the ownership of the non-alienable properties was given to the person, who is holding the post of Trustee. Hence, the appointment of a fit person to take over the Trust's assets does not arise.

27. In support of his submissions, the learned counsel for the petitioner in W.P.(MD)No.19611 of 2019 has placed relied on the following decisions:-

i. **Pannalal Bansilal Pitti and others** Vs. **State of A.P. and another**, 1996 (2) SCC 498.
ii. **Prem Anand** Vs. **The Commissioner, Hindu Religious and Charitable Endowments, Madras and others**, in W.P.No.113291 of 1989, dated 21.12.1989 passed by this Court, [MANU/TN/0583/1989].
iii. **M.R.Subramanian and others** Vs. **State of Tamil Nadu and others**, 1997 (2) LW 28.
iv. **N.Sivasubramanian** Vs. **The Government of Tamil Nadu and others**, 2006 (2) CTC 49.
v. **T.R. Ramesh** Vs. **The Commissioner, Hindu Religious and Charitable Endowments Department and others**, 2020 (5) CTC 836.
vi. **A/m.Badrakaliamman Temple, Melakottai** Vs. **Madanraj and others**, in W.P.(MD)Nos.10188 and 12319 of 2008, dated 03.09.2009 passed by the Madurai Bench of this Court.

28. Opposing the prayer in these Writ Petitions, the respondents have stated that the properties, which were endowed for the performance of various Kattalais were being misused by both the petitioners for personal aggrandizement.

29. It is submitted that the Settlement Deed dated 16.12.1937 executed by the founder Late Thiru P.N. Palaniappa Chettiar (PNPC) contemplates several Kattalais/rituals/obligations to be performed and the properties were specifically endowed for the above said purpose.

30. The learned counsel for the second respondent Executive Officer of Temple submits that only after filing of the Writ Petitions, one of the petitioner started supplying one litre of milk to the temple for observing of obligation as per Settlement Deed dated 16.12.1937 which was again suspended during Covid - 19 and has now been resumed when the Writ Petition was taken up for hearing.

31. It is submitted that all along after the initial trustees passed away, various obligations under the Settlement Deed dated 16.12.1937 were observed in breach and therefore, the Authorities under the Act are empowered to initiate action in accordance with law (Section 37 / 38 of the H.R. & C.E. Act).

32. It is submitted that no steps have been taken by the members of the family to observe the Kattalais after the death of its founder Late Thiru P.N. Palaniappa Chettiar (PNPC) despite the pious obligation cast on them.

33. It is submitted that the Temple on the other hand has been performing rituals as per the Settlement Deed with no contributions either from the petitioners or their respective predecessors. It is therefore submitted that proceedings under Section 38 of the Act is apt.

34. The learned counsel for the second respondent Executive Officer of Arulmigu Saduranga Vallabhanathaswamy Thirukoil, Poovanur, has produced copies of receipts issued by the petitioner in W.P.(MD)No.20368 of 2019 [M.Meiyappan] declaring himself as the Hereditary Trustee of Sri Saduranga Vallabhanathaswamy Temple Nandvanam Darmangal [நிர்வாகி, ஏகபோக பரம்பரை டிரஸ்டி, ஸ்ரீ சதுரங்க வல்லப நாதசுவாமி, நந்தவன தர்மங்கள், பூவனூர்].

35. It is therefore submitted that huge amount of money are being collected by the petitioners and that none of the obligations contemplated in the Settlement Deed dated 16.12.1937 has been observed by either of the petitioners.

36. It is therefore submitted that the Fit Person, who was appointed earlier on 05.06.1976, was asked to take charge of the property endowed and to initiate proceedings under Section 38 of the H.R. & C.E. Act.

37. It is further submitted that the petitioners and their predecessor are powerful person in the locality and have ensured that the Fit person appointed by the Commissioner vide his proceedings dated 05.06.1976, bearing Ref.No.Na.Ka.No.40960 of 1976 A1 could not take charge of the properties.

38. I have considered the arguments advanced by the learned counsel for the petitioner in W.P. (MD) No.19611 of 2019 and the learned counsel for the petitioner in W.P. (MD) No.20368 of 2019. I have also considered the arguments advanced by the learned counsel for the respondents.

39. I have also perused the documents filed on behalf of the respective petitioners in support of the writ petition and in defence on behalf of the respondents.

40. There is a very long history which requires to be covered for a proper disposal of the present writ petitions. Several properties and income from it were dedicated/endowed by Late Thiru P.N.Palaniappa Chettiar (PNPC) S/o Meiyappa Chettiar vide Settlement Deed dated 16.12.1937 for performance of certain pious obligation

(kattalais) for the Arulmigu Sri Saduranga Vallabhanathaswamy Thirukoil, Poovanur.

41. The properties endowed were however not been transferred to the deity of Arulmigu Sri Saduranga Vallabhanathaswamy Thirukoil, Poovanur. Some of Obligations under the Settlement Deed dated 16.12.1937 are as under :-

1. **Pasumadam:**
   - The duty of this Kattalai is to offer 8-12 Seer of Milk every day (approx 7.54 ltrs of Milk/day).
   - Every Morning the milk will be offered to the deities and later that it will be sent to the nearby schools
   - In the evening the milk will be given to the devotees by adding palm Jaggery as Parasadham.
   - Milk will be sent to the temple Morning at 7.00 am and evening 4.00 p.m.

2. **Arthajam Kattalai:**
   - The duty of this Kattalai is to offer 30 kalam of wheat to the temple every year.
   - On the 1st day of every month the kattalai has to offer groceries worth Rs.30 to the temple and also including necessary items for the Poojas including 3 Coconuts and 6 bundles of Beetel leaf.

3. **Nadhavana Kattalai:**
   - The duty of this kattalai is to offer flowers and garland and Scuth grass and other materials required to decorate the idols in the temple.

42. In the Settlement Deed dated 06.12.1937, the founder / settler late Thiru P.N.Palaniappa Chettiar(PNPC) had declared that during his lifetime, he will be responsible for all obligations under the said Settlement Deed.

43. As per the Settlement Deed dated 06.12.1937, after the demise of Late Thiru P.N.Palaniappa Chettiar(PNPC), his son and son-in-law (i.e. the father of the petitioner in W.P. (MD) No.19611 of 2019) along with one Thiru Ramaswaminathan Chettiar, S/o. Raman Chettiar belonging to Karaikudi District will be responsible for obligation under the katalais and for maintenance of the endowed property. It appears that Thiru Ramaswaminathan Chettiar, however did not come forward to take the responsibility.

44. Thus, the obligations and endowed properties were to be managed by the adopted son and the son-in-law of the founder/ settler late P.N.Palaniappa Chettiar (PNPC) and thereafter by their eldest male successors.

45. The Settlement Deed dated 06.12.1937 further stipulates that the income from the properties were to be exclusively used only for the purpose of obligations (various Kattalais) under the Settlement Deed and that none of the properties were to be transferred and/or sold and any sale or transfer or conveyance would be void.

46. Late Thiru P.N.Palaniappa Chettiar(PNPC) did not have a son. He only had a daughter named Smt. N.Meyyammai who was married to Late Thiru N.N.Narayana Chettiar. He therefore adopted late Thiru Venkatachalam Chettiar (the grandfather of the petitioner in W.P.(MD) No.20368 of 2019) as his son during his lifetime. Late Thiru Venkatachalam Chettiar is the grandfather of the petitioner in W.P.(MD) No.20368 of 2019.

47. Thus, the control over the endowed properties under the Settlement Deed dated 06.12.1937 remained within the family fold after the death of late Thiru P.N.Palaniappa Chettiar(PNPC).

48. After the life time of his adopted son Late Thiru Venkatachalm Chettiar (the grandfather of the petitioner in W.P.(MD) No.20368 of 2019) and his son-in-law namely, Late Thiru. N.N.Narayan Chettiar (NNNC) (the father of the petitioner in W.P.(MD) No.19611 of 2019) and became the Trustees. It is noticed that the name of Late Thiru N.N.Narayanan Chettiar (NNNC) has also been interchangeably with "Narayanan '' in some of the proceedings.

49. It further appears that after the death of Late Thiru P.N.Palaniappa Chettiar (PNPC) (the author of the Settlement Deed dated 16.12.1937), there was a dispute between the adopted son Thiru Late Venkatachalam Chettiar (grand father of the petitioner in W.P.(MD)No.20368 of 2019) and his son-in-law Thiru Late N.N.Narayanan Chettiar (NNNC) (the father of the petitioner in W.P. (MD) No.19611 of 2019) as to who was to manage the properties endowed for observing the obligations under the Settlement Deed dated 16.12.1937.

50. A civil suit appears to have been filed in O.S.No.37 of 1959 by Late Thiru Venkatachalam Chettiar (the adopted son/ grand father of the petitioner in W.P.(MD)No.20368 of 2019) against Late Thiru N.N.Narayanan Chettiar (NNNC) (the father of the petitioner in W.P. (MD) No.19611 of 2019) to declare former as the sole Trustee for administering the endowed properties and for recovery of possession of the properties from the hands of the latter.

51. The suit was decreed by the trial Court on 25.01.1960. Aggrieved by the same, A.S.No. 128 of 1960 was filed by late Thiru N.N.Narayanan Chettiar (NNNC) (the father of the petitioner in W.P.(MD) No.19611 of 2019) before the District Judge of West Thanjavur.

52. Later a Compromise Memo was reportedly filed in the said Appeal. It is stated that as per the Compromise Memo, it was agreed by both the parties that Arthajama Pooja and Pasumadam Kattalai will be performed by Late Thiru N.N.Narayanan Chettiar (NNNC) (the father of the petitioner in W.P. (MD) No.19611 of 2019) and therefore he had to manage the properties dedicated for the said Kattalai.

53. Further, as per the Compromise Memo, Nandavanam Kattalai was to be performed by Late Thiru Venkatachalam Chettiar (the grandfather of petitioner in W.P 20308 of 2019) and therefore, he was to manage the properties dedicated for the aforesaid Kattalai.

54. Though, a copy of the Compromise Decree in A.S.No.128 of 1960, has not been filed, it appears plausible as both the petitioners are said to be in control of some of the properties dedicated for the aforesaid purpose.

55. It appears that both, Late. Thiru Venkatachalm Chettiar (the grandfather of petitioner in W.P. (MD) No.20308 of 2019) and Late Thiru N.N.Narayanan Chettiar (NNNC) (the father of the petitioner in W.P. (MD) No.19611 of 2019) died in the year 1969.

56. After the death of Late. Thiru Venkatachalm Chettiar (the grandfather of petitioner in W.P. (MD) No.20308 of 2019), his son Late Thiru V. Meyappan Chettiar (the father of petitioner in W.P. (MD) No.20308 of 2019) stepped into his shoes and thereafter after the death of Late Thiru. V. Meyappan Chettiar (the father of petitioner in W.P. (MD) No.20308 of 2019), the petitioner in W.P. (MD) No. 20368 of 2019 has stepped into the shoes of his father as one of the Hereditary Trustee.

57. After the death of Late Thiru N.N.Narayanan Chettiar (NNNC) died in the year 1969, his eldest son Late Thiru N.Naryanan Chettiar (NNC) (the brother of the petitioner in W.P.(MD) No.19611 of 2019) appears to have stepped into his shoes. Late N.Narayanan Chettiar (NNC) reportedly died on 10.12.2012 and thereafter, the petitioner in W.P.(MD) No.19611 of 2019 being the younger brother has stepped in as the Hereditary Trustee.

58. Thus, the petitioner in W.P. (MD) No.19611 of 2019 the grandson of the Late Thiru P.N.Palaniappa Chettiar (PNPC) through his daughter Late Thiru Smt. N. Meyyammai W/o Late Thiru N.N.Narayanan Chettiar (NNNC) and the petitioner in W.P(MD).No. 20368 of 2019, the great grandson of the founder through his adopted son Late Thiru Venkatachalm Chettiar are in control of the properties.

59. Both the petitioners were controlling the properties endowed for the performance of the obligation under the Settlement Deed dated 16.12.1937. However, obligations appear to have been observed in breach, right from the time when the properties came

under the control of Late Thiru .N.N. Narayana Chettiar (NNC) and Late Thiru V. Meiyappan.

60. During the interregnum, vide proceedings dated 05.06.1976, bearing Ref.No.Na.Ka.No.40960/1976/A1, Commissioner, H.R. & C.E., Chennai, had appointed the second respondent Executive Officer of the Temple as a "Fit Person" for managing the endowed properties to observe the obligations under aforesaid Kattalais as the father of the petitioner in W.P. (MD) No.19611 of 20191 Late Thiru N.N.Narayana Chettiar (NNNC) and the father of the petitioner in W.P. (MD) No.20368 of 2019 Late Thiru V. Meiyappan failed to perform the obligations. This appointment coincides with the period when the country was under emergency between (25.06.1975 and 21.07.1977).

61. The appointment of "Fit Person" was not challenged either by Late Thiru N.Narayanan Chettiar (NNC) (the brother of the petitioner in W.P. (MD) No.19611 of 2019) or by Late Thiru V. Meiyappan (the father of the petitioner in W.P. (MD) No.20368 of 2019) during their lifetime. No steps were taken to set aside the aforesaid order under provisions of the Hindu Religious and Charitable Endowments, Act, 1959 [H.R.&C.E. Act].

62. The facts on record also seem to indicate that though a fit person was appointed by the then Commissioner under Hindu Religious and Charitable Endowments Act, 1959 vide proceedings bearing reference Na.Ka.No 40960/76/A1 dated 05.06.1976, the "Fit Person" was however not allowed to take charge of the assets endowed under the Settlement Deed dated 16.12.1937.

63. Meanwhile, after the appointment of the "fit person" vide proceedings dated 05.06.1976 bearing reference Na.Ka.No 40960/76/A1, Late Thiru N.Narayana Chettiar (NNC) (the brother of the petitioner in W.P. (MD) No.19611 of 2019), the then Trustee (since deceased) appears to have filed a General Revision Petition before the Commissioner on 06.01.1977, wherein, he had also requested the Commissioner to recognise him as a Hereditary Trustee.

64. A detailed order came to be later passed by the then Commissioner, H.R. & C.E. Department, Chennai vide Na.Ka.No 47763/76 dated 13.12.1977 in General Revision Petition filed on 06.01.1977, wherein it was observed that already a Fit Person and Second Lock Officer were appointed vide Na.Ka.No 40960/76/A1 dated 05.06.1976 and therefore Late Thiru N.Narayana Chettiar (NNC) (the brother of the petitioner in W.P.(MD) No.19611 of 2019), could not be recognized as Hereditary Trustee.

65. It was further observed that with regard to recognition of Late Thiru N. Narayana Chettiar (NNC) (the brother of the petitioner in W.P (MD) No 19611 of 2019) as the Hereditary trustee, sufficient time was granted to him to file a petition under Section 63(b) of Hindu Religious and Charitable Endowments Act, 1959. However, Late

Thiru N.Narayana Chettiar (NNC) (the brother of the petitioner in W.P. (MD) No 19611 of 2019), did not approach the Deputy Commissioner under Section 63(b) of Hindu Religious and Charitable Endowments Act, 1959.

66. Therefore, the claims of Late Thiru N.Narayana Chettiar (NNC) (the brother of the petitioner in W.P. (MD) No.19611 of 2019), for recognizing him as the Hereditary Trustee was rejected by the Commissioner in his order dated 13.12.1977 bearing reference No. 47763/76.

67. A further Revision Petition was later filed under Section 114 of the H.R. & C.E. Act, 1959 before the Secretary to Government of Tamil Nadu. The Government dismissed the said petition vide G.O.Ms.No.871 dated 06.09.1980.

68. The Government therefore tacitly affirmed order dated 05.06.1976 in Na.Ka.No 40960/76/A1 of the Commissioner appointing a "Fit Person" vide its proceedings dated 06.09.1980 in G.O.Ms.No.871.

69. Meanwhile, on 26.06.1976, Late Thiru N.Narayana Chettiar (NNC) (the brother of the petitioner in W.P.(MD) No.19611 of 2019), had also filed a miscellaneous petition under Section 23 of the H.R. & C.E. Act, 1959 to recognize his as the Hereditary Trustee. On 10.05.1977, Office of the Deputy Commissioner of H.R. & C.E. Department asked Thiru Late N.Narayana Chettiar (NNC) (the brother of the petitioner in W.P. (MD) No.19611 of 2019), to file a petition under Section 63(b) of the H.R. & C.E. Act, 1959. A further reminder was sent by the said office on 03.08.1977.

70. It is in this background, Late Thiru N.Narayana Chettiar (NNC) (the brother of the petitioner in W.P (MD) No 19611 of 2019), filed a petition under Section 63(b) of H.R. & C.E. Act, 1959 before the Deputy Commissioner, H.R. & C.E. Department. The said petition was numbered as O.A.No.1 of 1978. By an order dated 27.12.1978, O.A.No.1 of 1978 was rejected by the Deputy Commissioner, H.R. & C.E. Department.

71. The facts on record also indicate that Late Thiru.N.Narayana Chettiar (NNC) (the brother of the petitioner in W.P (MD) No 19611 of 2019), thereafter filed an appeal before Commissioner in A.P.No.38 of 1980 under Section 69(1) of H.R. & C.E. Act, 1959 against order dated 30.08.1977 in O.A.No.1 of 1978. It appears to have been allowed by the then Commissioner vide order dated 28.06.1982 and thus set aside the order passed by the Deputy Commissioner dated 27.12.1978 declining to recognise late Thiru.N.Narayana Chettiar (NNC) (the brother of the petitioner in W.P. (MD) No.19611 of 2019), as a Hereditary Trustee.

72. Though the copy of the order dated 28.06.1982 in A.P.No.38 of 1980 and the copy of the order dated 27.12.1978 in O.A.No.1 of 1978 have not been filed, same is evident from reading of the order dated 01.12.1993 of this Court in W.P.No.2728 of 1985, wherein, the following order was passed:-

> ***Order:*** *This Writ Petition coming on for hearing on this day upon perusing the petition and the affidavit filed in support thereof the order of the High Court dated 27.03.1985 and made herein and the records relating to the prayer aforesaid comprised in the return of the respondent to the Writ made by the High Court, and upon hearing the arguments of Mr.W.C.Thiruvengadam Advocate for the petitioner and of Mr.P.M.Bhaskaran Advocate on behalf of the 1st respondent and of Mr.K.Raghunathan Advocate for the 2nd respondent, the Court made the following order:*
>
> *The petitioner challenges the order of the 2nd respondent dated 06.02.1985. That order is consequential to the order of the Deputy Commissioner dated 29.01.1985.* ***The learned counsel for the petitioner places reliance on an order of the Commissioner dated 28.06.1982(order in A.P No 38 of 1982)*** *and submits that in as much as the Commissioner has declared the trusteeship of the Kattalai in question as hereditary within the meaning of Section 6 (11) of the Tamilnadu Hindu Religious and Charitable Endowments Act, the order of the respondents cannot be sustained.* ***It is not clear whether the petitioner has brought to the notice of the concerned authorities about the order of the Commissioner dated 28.06.1982.*** *In the circumstances, the petitioner is directed to go before the 1st respondent and apprise him of the order of the Commissioner mentioned above and the Deputy Commissioner will pass appropriate orders. Subject to this, the Writ Petition is dismissed. No costs.*

73. The above Writ Petition was filed by Late Thiru.N.Narayana Chettiar (NNC) (the brother of the petitioner in W.P. (MD) No.19611 of 2019), in the face of an attempt of the then Deputy Commissioner, H.R. & C.E. Department, to appoint a "Fit person" vide his proceeding dated 29.01.1985. It is not clear whether Late Thiru.N.Narayana Chettiar (NNC) (the brother of the petitioner in W.P. (MD) No.19611 of 2019), complied with the said order.

74. Though it was contended that the appointment of the fit person by the Commissioner on 05.06.1976 vide his proceedings bearing reference Na.Ka.No.40960/1976 had been set aside by an order

dated 28.06.1982 of the Commissioner, a reading of the facts based on the available records indicates that the order dated 28.06.1982 is an order passed by the Commissioner in A.S.No.38 of 1980 against order dated 27.12.1978 in O.A.No.1 of 1978 of the Deputy Commissioner declining the request of late Thiru.N.Narayanan Chettiar for recognizing him as a Hereditary Trustee in terms of Section 63(b) of the H.R. & C.E. Act, 1959.

75. Thus, by an order dated 28.06.1982 in A.S.No.38 of 1980 of the Commissioner, the earlier order dated 05.06.1976 of the then Commissioner in his proceedings bearing reference Na.Ka.No.40960/1976, appointing a fit person had not been set aside as was contended. The said order dated 05.06.1976 still remains in force, though during the interregnum, after the order dated 28.06.1982 was passed by the Commissioner in A.S.No.38 of 1980, the Deputy Commissioner again appointed a fit person in his proceedings dated 29.01.1985 bearing reference Mu.Mu.No.14770/1980, pursuant to which, the Executive Officer attempted to take control of the Trust and property endowed vide his communication dated 06.02.1985.

76. The then Executive Officer of the temple therefore had issued a communication dated 06.02.1985 to the then Trustee Late Thiru.N.Narayana Chettiar (NNC) (the elder brother of the petitioner in W.P. (MD) No.19611 of 2019) and had directed him to hand over the possession of the properties endowed, failing which, the Assistant Commissioner was authorized to take appropriate steps.

77. Communication dated 29.01.1985 of the Deputy Commissioner of the then H.R. & C.E. Department in Mu.Mu.No.14770 of 1980 dated 29.01.1985, was thus challenged before this Court in W.P.No.2728 of 1985, wherein the above mentioned order was passed on 01.12.1993.

78. Though the copy of the order of the Deputy Commissioner dated 29.01.1985 bearing reference Mu.Mu.No.14770/1980 and consequential communication of the Executive Officer dated 06.02.1985 are not available, it is to be noted that the said appointment was set aside vide order dated 01.12.1993 in W.P.No.2728 of 1985 filed by late Thiru.N.Narayanan Chettiar (NNC) [brother of the petitioner in W.P.(MD) No.19611 of 2019] as detailed above.

79. Thus, order rejecting the recognition of Late Thiru.N.Narayana Chettiar (NNC) (the elder brother of the petitioner in W.P.(MD) No.19611 of 2019) as the Hereditary Trustee under Section 63(b) of the H.R. & C.E. Act, 1959 appears to have been reversed.

80. The facts on record also seem to indicate that right from the time, Late. Thiru.Venkatchalam Chettiar, (VC) [the adopted son of Late Thiru P.N.Palaniyappa Chettiar (PNPC) the author of the Settlement Deed dated 16.12.1937] and his son in law, late Thiru

N.N.Naryana Chettiar (NNNC) (father of the petitioner in W.P. (MD) No.19611 of 2019) were in control of the properties under the Settlement Deed dated 16.12.1937 till their death in the year 1969 and thereafter, by the father of the respective petitioners, obligations under the Katalais were observed in breach and therefore the Commissioner in his proceedings dated 28.06.1982 had appointed the second respondent as a Fit person/Thakkar once again.

81. Since the income from the assets are meant for carrying out the obligations under the Settlement Deed dated 06.12.1937, there is a charge over the endowed properties under Section 38 of the H.R. & C.E. Act, 1959.

82. Under Section 38(1) of the H.R. & C.E. Act, 1959, where a specific endowment attached to a math or temple consists merely of a charge on property and there is a failure in the due performance of the service or charity, the trustee of the math or temple concerned may require the person in possession of the property on which the endowment is a charge, to pay the expenses incurred or likely to be incurred in causing the service or charity to be performed otherwise. Thus, the second respondent is entitled to call upon the petitioners to pay.

83. Sub Section (2) to Section 38 of the Act deals with the situation where the person in possession of the property on which the endowment is a charge, is not the person responsible in law for the performance of the service or charity and any amount is paid by or recovered from the person in possession and the Commissioner in the case of a specific endowment attached to a math and the Joint Commissioner or the Deputy Commissioner, as the case may be, in the case of a specific endowment attached to a temple, may, on the application of the person in possession and after giving the person responsible in law a reasonable opportunity of stating his objections in regard thereto, by order, require the person responsible in law to pay to the person in possession the amount so paid or recovered.

84. In this connection, it will be useful to refer to Section 38 of the (HR&CE), Act,1959 which reads as under:

> **38. Enforcement of service or charity in certain cases.** —(1) Where a specific endowment attached to a math or temple consists merely of a charge on property and there is failure in the due performance of the service or charity, the trustee of the math or temple concerned may require the person in possession of the property on which the endowment is a charge, to pay the expenses incurred or likely to be incurred in causing the service or charity to be performed otherwise. In default of such person making payment

as required, the Commissioner in the case of a specific endowment attached to a math, and the Joint Commissioner or the Deputy Commissioner, as the case may be, in the case of a specific endowment attached to a temple, may, on the application of the trustee and after giving the person in possession, a reasonable opportunity of stating his objections in regard thereto, by order determine the amount payable to the trustee.

(2) Where the person in possession of the property on which the endowment is a charge is not the person responsible in law for the performance of the service or charity and any amount is paid by or recovered from the person in possession, the Commissioner in the case of a specific endowment attached to a math and the Joint Commissioner or the Deputy Commissioner, as the case may be, in the case of a specific endowment attached to a temple, may , on the application of the person in possession and after giving the person responsible in law a reasonable opportunity of stating his objections in regard thereto, by order, require the person responsible in law to pay to the person in possession the amount so paid or recovered.

(3) Against an order of the Commissioner or the Joint Commissioner or the Deputy Commissioner under sub-section (1), or sub-section (2), the trustee or the person affected may, within two months from the date of the receipt of the order by him, appeal to the Government or the Commissioner, as the case may be. An order passed on appeal by the Government or the Commissioner shall be final.

(4) On application by the trustee to the Collector of the district in which the property referred to in sub-section (1) is situated, or on application by the person in possession to the Collector of the district in which is situated any property of the person responsible in law, as the case may be, the Collector shall recover from the person in possession or the person responsible in law, as the case may be, the amount specified in the order of the Commissioner or the Joint Commissioner or the Deputy Commissioner as modified in appeal, if any, and the expenses of such recovery, as if they were arrears of land revenue and pay to the trustee or, as the case may be, to the person in possession, the amount due to him.

85. In **Andiappan and Ors** Vs. **The Joint Commissioner of H.R. & C.E.,** 2015 SCC Online Mad 13137 : (2016) 1 LW 340, it was observed as follows:-

i. "It must be borne in mind that Hindu Religious and Charitable Endowments admits two categories of trustees, namely (i) general trustees, who may be in-charge of the management and administration of the temple itself, and (ii) special trustees who may be administering specific endowments, which may be religious or charitable or a combination of both.

ii. Since the primary object of creating a kattalai is to ensure the continued performance of a specific service, the trustees are also normally endowed with an obligation to spend money out of their own pockets whenever the income from the dedicated properties fall short of the expenditure required for the performance of the kattalai.

iii. If a fit person is appointed completely ousting the descendants of the founder from trusteeship, on the ground that one of them or some of them in the lineage committed an irregularity, thereby disqualifying all his descendants, the very purpose of the kattalai will be in jeopardy.

iv. But, that is not the case with a fit person. A fit person cannot be expected to spend money out of his pocket to perform the kattalai. Therefore, if the wishes of the founder of a specific endowment are to be honoured, it is necessary that the rule of next in the line of succession statutorily recognised, has to be followed. This is perhaps the reason why this Court has consistently taken the view that even in cases where the parents were guilty of some wrong doing, the children were not disqualified from being appointed as trustees.

v. We are not to be understood as putting a seal of approval on the attempts of the present trustees to alienate a property. We are also not to be understood as affixing a seal of approval on the alienation made by the parents of the appellants in 1956 and 1957. By law, all these alienations are null and void. Even under the deed dated 07.09.1921, by which the endowment was created, the trustees had no power of alienation. Therefore, irrespective of *whether steps were taken for the restoration of the properties or not, those alienations are null and void.*

vi. Therefore, in fine, the last contention of Mr. M. Vallinayagam, learned senior counsel for the appellants, that the appointment of the fit person was illegal and that the next in the line of succession should have been appointed, merits acceptance. Interestingly, none of the seven charges framed against any of the appellants allege that they ever failed to perform the mandagapadi in a befitting manner. Therefore, the obligations created under the document of the year 1921, creating an endowment, appear to have been fulfilled all these years by the descendants of the founder of the endowment. It is only when there is any laxity on the part of the trustees in the performance of these obligations that their complete removal from the scene, if at all it is legally possible, can be resorted to".

86. There is thus a continuing charge over the endowment property dedicated for the aforesaid purpose under Section 38 of the H.R. & C.E. Act, 1959. The second respondent Executive Officer of the Temple can demand the amount which ought to have been paid by Late Thiru N.N.Narayanan Chettiar (the father of the petitioner in W.P.(MD) No.19611 of 2019) and by the grandfather of the petitioner in W.P.(MD) No.20368 of 2019 namely Late Thiru Venkatachalam Chettiar during their life time and thereafter by late Thiru.V.Meiyappan Chettiar who subsequently controlled some of the properties dedicated under the Settlement Deed dated 16.12.1937 executed by Late Thiru P.N.Palaniappa Chettiar (PNPC) (the author of the Settlement Deed dated 16.12.1937).

87. Considering the fact that the temple has been bearing expenses for the Kattalais, the respondents are entitled to recover the amount from the respective petitioners jointly and severally under Section 38 of the H.R. & C.E. Act, 1959. Any transfer of owed properties meant for the Kattalai are to be declared as null and void, in which case, the "Fit Person" already appointed shall be entitled to take control of the assets, in which, the respondents are to be given a free hand to recover the same from the alienees.

88. It is also not clear whether there was any alienation of the endowed properties by any of the members of the family who were in control. The respondents have been kept in dark. This aspect has to be verified by the respondents as neither the petitioners nor

their immediate predecessors appear to have given a proper account of the same to the official respondents.

89. Since there are also possibilities for alienation of the endowed properties by the members of the family, tracing their origin from the daughter Late. Smt. N.Meyyammai, and the adopted son of the founder of Late Thiru. P.N.Palaniappa Chettiar (PNPC), the H.R. & C.E. Department is entitled to know the status and make a claim over the expenses incurred by the temple for performance of the Kattalai by them ever since the members of the family failed to observe the same.

90. In case of any alienation made in the past, such transactions are liable to be declared as null and void and steps will have to be taken to recover the endowed properties. Therefore, if required, the second respondent who was appointed as a "Fit Person" in 1976 can be directed to take stock of the position to set the law in motion. Since the amounts have not been paid for the expenses incurred, it is therefore open for the respondents to recover the amount spent for the katalais from the respective petitioners jointly and severally.

91. Therefore, the impugned order of the first respondent/the Joint Commissioner dated 12.02.2019, authorizing steps to be taken under Section 38 of the H.R. & C.E. Act, 1959 cannot be interfered to that extent.

92. In the light of the above, both Writ Petitions are disposed with the following directions:-

i. The petitioners are directed to file a return of assets endowed and the assets available under their control and the details of any alienations made if any, either by the petitioners or their predecessors to the Office of the Assistant Commissioner within a period of thirty days from the date of receipt of a copy of this order.
ii. The official respondents are directed to ensure that a suitable charge over the properties is registered in the office of Jurisdictional Sub-Registrar Office, to reflect the same in the Encumbrance Certificate.
iii. They shall issue appropriate letter to the Jurisdictional Sub Register office to this effect.
iv. In case, the petitioner fails to furnish the documents and/or if it is noticed that there have been alienations in the past, the second respondent Executive Officer of the Arulmigu Sri Saduranganathaswamy Temple shall take control of the assets endowed and further take steps to recover the same from the persons to whom such alienations have been made.

v. Needless to state, if the above circumstances are noticed, the second respondent as the "Fit Person", can assume office in place of the petitioners to manage the affairs of the Trust and the properties endowed for the performance of the obligation to the temple.

vi. In case there are no alienations and only there are dues for the amounts spent by the temple for observing various Kattalais, the respondents shall call upon the respective petitioners to pay the amounts jointly and severally, failing which, appropriate steps can be taken to recover the amount from the respective petitioners.

vii. The petitioners and their descendants shall ensure that the wishes of the founder Late Thiru P.N Palaniappa Chettiar are observed as per Settlement Deed dated 16.12.1937 without any breach.

viii. The amounts and properties that have been utilised contrary to Alienation of Immovable Trust Property Rules and Utilisation of Surplus Funds Rules and several other Rules, shall be recovered from the respective petitioners in accordance with law.

ix. No costs.

Sd/-
Assistant Registrar (CS-II)

// True Copy //

/07/2022
Sub Assistant Registrar(CS)

rgm / jen

To

1. The Joint Commissioner,
The Hindu Religious and
Charitable Endowments Department,
Thanjavur - 613 007.

2. The Executive Officer,
Arulmigu Saduranga Vallabhanathaswamy Thirukoil,
Poovanur,
Needamangalam Taluk,
Thiruvarur District - 613 803.

3. The Assistant Commissioner,
The Hindu Religious and
Charitable Endowments Department,
Tiruvarur - 610 001.

4. The Tahsildar,
Needamangalam Taluk,
Tiruvarur District.

+1 CC to M/s.SPL.GP (SR-26724[F] dated 20/06/2022)

COMMON ORDER MADE IN
W.P.(MD) Nos.19611 & 20368 of 2019 and
W.M.P.(MD) Nos.16985 & 16987 of 2019
16.06.2022

CK(CO)
GC(04.07.2022) 21P 6C