



W.A.No.503 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:03.08.2023

Delivered on: 29.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.A.No.503 of 2012

and

M.P.No.1 of 2012

1.K.M.Murthy

2.S.Neelakandan

3.P.R.Sivaramakrishnan

4.T.N.Thanikachalam

5.P.S.Shankaran

.. Appellants

Vs.

1.K.B.Punniyakotti (deceased R1)

2. The Secretary
Hindu Religious & charitable Endowments Board
Secretariat, Chennai-9.

3.The Commissioner
Hindu Religious & charitable Endowments Board
Nungambakkam, Chennai-34.



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4.Arulthiru Sivasubramaniya Swamy Thirukoil

Rep by its Fit person

No.43 Vadyiyar Subraya Mudali Street
Saidapet, Chennai-15.

5.P.Gopinath

6.P.Harikrishnan

.. Respondents

(R5 and 6 impleaded as legal heirs
of deceased 1st respondent vide
order of this Court dated 30.07.2021
in C.M.P.No.11660 of 2021).

Prayer:- Appeal filed under Clause 15 of Letter Patent praying to set aside
the order passed by this Court in W.P.No.6295 of 2011 dated 22.12.2011.

For Appellants : Mr.N.Sivaprakash

For Respondents : Mr.Yashwanth, AGP (HR&CE) for R2 & R3

Mr.NRR.Arun Natarajan for R4

No appearance for R5 & R6.

Counsel who assisted the Court

Mr.S.M.Loganathan, Advocate

Mr.R.Singaravelan, Senior Counsel



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JUDGMENT

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(Judgment of the Court was made by P.B.BALAJI,J.)

The respondents 3 to 7 in the Writ Petition have preferred the present Writ Appeal against the order of the learned Single Judge allowing W.P.No.6295 of 2011, setting aside the impugned order passed by the Hindu Religious and Charitable Endowments (HR&CE) department and to consequently appoint trustees to the temple, Arulthiru Sivasubramaniya Swamy Temple, Saidapet as per the scheme passed in O.A.No.76 of 1965.

2. Brief facts that are necessary for adjudicating the issues involved in the present Writ Appeal are as follows:

The 1st respondent in the present Writ Appeal (since deceased) approached the Writ Court, contending that the temple viz., Arulthiru Sivasubramaniya Swamy Temple, Saidapet, belongs to Sengunthar community members living in 13 streets of Saidapet, Chennai-600 015. The further case pleaded by the Writ Petitioner was that a scheme was framed on 28.10.1986 by the Deputy Commissioner of HR&CE for the purposes of administering the temple, in O.A.No.76/65. It was the further case of the Writ Petitioner that 5 respectable persons would be appointed as trustees of the temple board by a Sengunthar Sabha, a registered society.



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While so, the Tamil Nadu Government passed an Ordinance which subsequently became a legislation in Act 15 of 2006, in and whereby, the period of office of trustees was reduced from 3 years to one year. Consequent to the same, 5 trustees surrendered their trusteeship on 23.08.2006, pursuant to a meeting of the Board of trustees held on 21.08.2006. One Mr.K.B.Punniyakotti was appointed as fit person of the Temple by the Commissioner HR&CE in and by order dated 20.01.2007. The said order appointing a fit person was challenged by the erstwhile trustee, Mr.D.Chandrasekar in W.P.No.4799 of 2007 and the said Writ Petition was dismissed by this Court on 29.07.2010. Subsequently, the office bearers of the Sengunthar Sabha, headed by a President were elected in the year 2006, their tenure ending 30.06.2009. In view of the tenure coming to a close, a general body meeting was convened on 14.06.2009, in order to fix a date for convening the election to elect the new office bearers. However, the meeting did not go on smoothly and the election was challenged on the ground that required quorum was not there and unilaterally, the respondents had declared themselves as elected members in an arbitrary and high handed fashion. According to the Writ Petitioner, since the scheme is already in place, only the competent authority can



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appoint trustees from amongst the members of the Sengunthar community, in terms of the Scheme. The petitioner further stated that the Secretary of the Sabha took up the matter with the Joint Commissioner HR&CE, by recommending two persons to be appointed as trustees to the temple and like wise the remaining vacancies were also sought to be filled up by similar recommendations.

3. A Civil Suit in O.S.No.5649 of 2009 came to be filed, challenging the validity of the election of the office bearers in the election held on 14.06.2009. It is the grievance of the Writ Petitioner that without taking into consideration any of these facts, the respondents have passed the impugned order, appointing respondents 3 to 7 as trustees of the temple. On these facts, the Writ Petitioner challenged the impugned order.

4. Before the Writ Court, a counter affidavit has been filed by the Commissioner of HR&CE stating that the temple in question is under the administrative control of the department, governed by a scheme of administration that was framed by the Deputy Commissioner, HR&CE. According to the department, persons belonging to Sengunthar community, residing in 13 streets situated in Saidapet, Chennai-600 015 are eligible to be appointed as non-hereditary trustees. The trust board has been duly



5. The learned Single Judge referring to Sec.47 of the HR&CE Act, 1959, held that the Commissioner is bound to appoint a member of Scheduled Caste or Scheduled Tribe as a non-hereditary trustee and in so far as appointment of a woman member as a trustee, the learned Single Judge finding that Sec.47(1)(A) did not specifically stipulate that a woman member would have to be appointed only by the Commissioner or by the Government, directing the department to appoint a woman candidate, set aside the impugned order appointing non-hereditary trustees from amongst the members of Sengunthar community residing in 13 streets of Saidapet, Chennai-600 015.



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6. Aggrieved by the said order of the learned Single Judge, the respondents 3 to 7 in the Writ Petition have preferred the present Writ Appeal, challenging the directions issued in the Writ Petition to the department to appoint one among 3 members of non-hereditary trustees from the Scheduled Caste or Scheduled Tribe community and the Government or the Commissioner, HR&CE to appoint a woman candidate. The main grounds of challenge to the order of the learned Single Judge are that when the scheme has been framed and is in place, the appointment of trustees can be only in terms of the scheme and not otherwise; Article 226 of the Constitution of India protects the rights of the appellants and the other residents of Sengunthar community who were living in 13 streets of Saidapet, which were enlisted in the scheme and that the department does not have the power to appoint trustees exercising power U/s. 47 of the Act. The further ground raised is that the temple is a denominational temple and the department cannot appoint trustees exercising power U/s. 47 of the Act merely because a temple is a listed temple (published under Sec.46(2) of the Act).

7. When the matter was listed earlier for final disposal, we found that the Writ Petitioner was not represented and the issue involved being



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substantial and also raising an interesting question of law, we deemed it fit to request Senior Counsel Mr.R.Singaravelan and also Mr.S.M.Loganathan, Advocate who had originally appeared for the Writ Petitioner before the Writ Court, to assist us.

8. We have heard Mr.N.Sivaprakash, learned counsel for the appellants, Mr.Yashwanth, Additional Government Pleader, (HR&CE) for the respondents 2 and 3, Mr.NRR.Arun Natarajan, learned counsel for the 4th respondent, Mr.R.Singaravelan, learned Senior Counsel and Mr.S.M.Loganathan, Advocate. We have also perused the records available and the order of the Writ Court.

9. Mr.S.M.Loganathan, would invite our attention to Sec.47 of the TNHR&CE Act, 1959 and lay emphasis on the requirement of one member of the Scheduled Caste or Scheduled Tribe & a woman to be trustees in the board. He would also refer to Sec. 50 and 118 of the Act and contend that even the department did not have a power to contravene provisions of Sec.49 and that even if there is a scheme in place, if it was found repugnant to the provisions of the Act, then u/s.118, such repugnant portion of the scheme would have to give way to the provisions of the Act. He would therefore contend that there is no error or illegality in the order of



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the learned Single Judge who had only directed compliance of the mandatory provisions of the Act.

10. Per contra, the learned counsel for the appellants would submit that when there is a scheme in place, Sec.49 and 118 will not stand attracted and therefore the directions issued by the Writ Court have to be necessarily set aside.

11. Learned Senior counsel, Mr.Singaravelan would submit that when there is a scheme in place, unless recourse is had to Sec.64(5) of the Act, the scheme cannot be modified. However, he would fairly state that the power of the department was very much available in the matter of appointment of non-hereditary trustees.

12. Learned AGP Mr.Yashwanth (HR&CE), would invite our attention to a status report filed before this Court by the HR&CE department and he would take us through the same, to point out that in so far as scheme temples, a procedure under U/s.64(5) of the Act has to be followed, in the matter of appointment of trustees. He would also state that wherever temples are not governed by any schemes, the department has implemented the appointment of women candidates as also candidates belonging to either Scheduled Caste or Scheduled Tribe community to the



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trust board of the temples.

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13. We have paid our anxious consideration to the submissions made by the learned Senior counsel, Mr.R.Singaravelan, the counsel for the appellants and Mr.S.M.Loganathan, as well as the counsel appearing for the statutory respondents.

14. In order to appreciate the submissions advanced by the counsel, it would be necessary to refer to the relevant provisions. Sec.49 of the HR&CE Act, reads as follows:

15. Sec.49 of the HR & CE Act, reads as follows:

“ 49. Power of [Assistant Commissioner] to appoint trustees and fit persons.-

(1) In the case of any religious institution which is not included in the list published under section 46 and is not a religious institution notified or deemed to have been notified under Chapter VI of this Act, the 1[Assistant Commissioner] shall have the same power to appoint trustees including fit persons or constitute a Board of Trustees and is vested in 2[the Government, the Commissioner or the Joint / Deputy Commissioner] in the case of a religious institution referred to in clause (a) of sub-section (1) or in sub-section (2), as the case may be, of section 47 :



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[Provided that the Board of Trustees constituted under this sub-section shall consist of three persons appointed by the Assistant Commissioner of whom one shall be member of the Scheduled Caste or Scheduled Tribe and another one shall be a woman. Provided further that in addition to the trustees appointed by the Assistant Commissioner under this sub-section, the Government may nominate two persons who are qualified for appointment as trustees under this act as members of the said Board of Trustees, having regard to the following matters, namely:—

- (a) the interest of the public generally ;*
- (b) the income and the properties of the religious institution ;*
- (c) the number of worshippers and importance of the religious institution as a pilgrim center; and*
- (d) such other matters as may be prescribed*

Provided also that notwithstanding anything aforesaid in this sub-section, the Assistant Commissioner, may in the case of any such religious institution which has no hereditary trustee, appoint a single trustee].

(2) The provisions of sub-sections (3) and (4) of section 47 and of section 48 shall apply to the trustee or trustees appointed, or the Board of Trustees constituted, by 1[the Assistant



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Commissioner] as they apply to the trustee or trustees appointed, or the Board of Trustees constituted, under section 47.

Sec.50 reads as follows:

“ 50. Power under [sections 47, 49 and 49-A] to be exercisable notwithstanding provisions in scheme.—The power to appoint trustees under section 47 or section 49 2[or section 49-A] shall be exercisable notwithstanding that the scheme, if any, settled, or deemed under this Act to have been settled for the institution contains provision to the contrary.”

Sec.118 reads as follows:

“ 118. Repeals and savings.—

(1) The 2[Tamil Nadu] Hindu Religious and Charitable Endowments Act, 1951 (2[Tamil Nadu] Act XIX of 1951) (hereinafter in this section referred to as the said Act) is hereby repealed.

(2) Notwithstanding the repeal of the said Act by sub-section (1)— (a) all rules made, or deemed to have been made, notifications or certificates issued or deemed to have been issued, orders passed or deemed to have been passed, decisions made or deemed to have been made, proceedings or action taken or deemed to have been taken, schemes settled or deemed to have been settled



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and things done or deemed to have been done by the Government, the Commissioner, a Deputy Commissioner, an Area Committee or an Assistant Commissioner under the said Act, shall, in so far as they are not inconsistent with this Act, be deemed to have been made, issued, passed, taken, settled or done by the appropriate authority under the corresponding provisions of this Act, and shall have effect accordingly ;

(b) (i) if any provision contained in any scheme settled or deemed to have been settled under the 2[Tamil Nadu] Hindu Religious and Charitable Endowments Act, 1926 (2[Tamil Nadu] Act II of 1927), including a scheme settled under section 92 of the Code of Civil Procedure, 1908 (Central Act V of 1908), and in force immediately before the 30th September 1951 is repugnant to any provision contained in this Act or the rules made thereunder, the latter provision shall prevail, and the former provision shall, to the extent of the repugnancy, be void ;

(ii) all powers conferred and all duties imposed by such scheme on any Court or Judge or any other person or body of persons not being a trustee or trustees or an honorary officer or servant of the religious institution or endowment, shall be exercised and discharged by the



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Commissioner, the 1[Joint Commissioner or Deputy Commissioner] or the Assistant Commissioner, as the case may be, in accordance with the provisions of this Act;

(c) all orders made under section 67 of the 3[Tamil Nadu] Hindu Religious Endowments Act, 1926 (3[Tamil Nadu] Act II of 1927) shall, notwithstanding that they are inconsistent with this Act, continue in force, but any such order may at any time be modified or cancelled by the 4[Joint Commissioner or the Deputy Commissioner, as the case may be], if it is an order made under sub-section (1) or sub-section (3) of that section and by the Commissioner if it is an order made under sub-section (4) or sub-section (5) of that section ; and any person aggrieved by any modification or cancellation made by the 4[Joint Commissioner, or the Deputy Commissioner, as the case may be], may prefer an appeal to the Commissioner within such time as may be prescribed.

(3) The mention of particular matters in this section shall not be held to prejudice or affect the general application of sections 8 and 18 of the 3[Tamil Nadu] General Clauses Act, 1891 (3[Tamil Nadu] Act I of 1891) with regard to the effect of repeals.”



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16. The submissions of Mr.S.M.Loganathan learned counsel revolves around Sec.47, 50 and 118 of the Act. We have already noticed that U/s. 49, one trustee must be from amongst Scheduled Caste or Scheduled Tribe community and one trustee should be a woman. Placing reliance on Sec.50 of the Act, learned counsel would submit that there was no discretion vested with the department even if the scheme was in place and necessarily the department had to comply with the requirements of Sec.49 of the Act. He would also refer to Sec.118 of the Act, which is a repeal and savings provision which has already been extracted herein above. He would contend that Sec.118(2)(b) renders any scheme settled already, being repugnant to any of the provisions of the Act to be void to the extent of such repugnancy. Placing strong reliance on the said provision, learned counsel would state that in the light of the statutory provisions, the order of the Writ Court was perfectly in order and does not warrant any interference. He would also place reliance on a Division Bench judgment of this Court in *Area Committee, HR&CE (Administration Department) Nagapattinam, rep by the Assistant Commissioner Vs. K.Kasinathan Padayachi and Ors*, reported in *1975 1 MLJ 94* and also a judgment of



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the Hon'ble Supreme Court in *T.Lakshmikumar Thathachariar Vs. Commissioner HR&CE and Ors*, reported in (1998) 6 SCC 643 and *Commissioner, HR&CE (Admn) Madras and Ors Vs. Vedantha Sthapna Sabha* reported in (2004) 6 SCC 497.

17. According to Mr.S.M.Loganathan, the ratio laid down by the Division Bench of this Court would squarely apply to the facts of the present case. He would also refer to the ratio laid down in the judgment of the Apex Court referred herein above, to fortify his submissions with regard to the applicability of the Act and its provisions to scheme temples.

18. Rebutting such submissions, learned Senior counsel Mr.R.Singaravelan, would submit that no doubt, the department may have power to appoint trustees, but when it came to modifying a scheme, then, unless a recourse is taken to Sec.64(5) of the Act, the scheme cannot be tinkered with and appointments would have to be necessarily made only in terms of the scheme. He would place reliance on the judgment of the Hon'ble Supreme Court in *Cherukuri Mani w/o Narendra Chowdari Vs. Chief Secretary, Government of Andhra Pradesh and Ors*, reported in (2015) 13 SCC 722 and also *Opto Circuit India Limited Vs. Axis Bank and Ors*, reported in (2021) 6 SCC 707, for the proposition that when a



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statute requires a thing to be done in a particular manner, then it must be done only in that manner or not at all be done.

19. On a reading of Sec.47 of the Act, we do not have any difficulty in accepting the contentions of Mr.S.M.Loganathan, with regard to the mandate to appoint one trustee amongst Scheduled Caste or Scheduled Tribe community and one woman trustee. Sec.50 of the Act and its right interpretation will straight away answer the contentious issue in the present Writ Appeal. We have already extracted Sec.50 of the Act. It only states that the power to appoint trustees either U/s. 47 or 49 or Sec.49(A) shall be exercisable, whether or not a scheme has been settled or deemed to be settled is in place and such scheme contains a provision contrary to Sec.50 of the Act.

20. In our view, the only meaningful interpretation that can be given to Sec.50 of the Act is that the department's right to appoint trustees u/s. 47 or 49 is available, even if a scheme already in place contains a provision under which the department does not have a power to appoint trustees. We are unable to give any other interpretation to Sec.50 of the Act.

21. With regard to Sec.118, on a reading of the said provision, especially Sec.118(2)(b), we can straight away reject the argument of



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Mr.S.M.Loganathan. What all the provisions sets out is that if any provision in a scheme settled under the TNHR&CE, 1926 or a scheme settled by a Civil Court U/s. 92 of C.P.C being in force immediately before 30.09.1951, happens to be repugnant to any of the provisions contained in 1959 Act (Present Act) then it is only the present Act/provisions that shall prevail. Such of the provisions that are repugnant to the present Act would be void.

22. Admittedly, in the present case, the scheme has been framed only under the present enactment Viz., TNHR&CE, 1959. Therefore, we see no reason for applying Sec.118 (2)(b) to the facts of the present case as the said provision pertains only to scheme settled only under the old Act or passed/settled U/s. 92 of C.P.C and were in force on the date of coming into force of the present enactment.

23. In the instant case, the scheme itself came to be framed only by the competent authority under the present enactment exercising power U/s. 64(1) of the Act. Moreover, as rightly pointed out by the learned Senior counsel as well as the counsel for the appellants, which was also reinforced by the learned AGP, HR&CE, though there is a power to appoint trustees U/s. 47 and 49 of the Act, when there is a scheme in place, the only manner



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or way in which the trustees can be appointed by the department is to modify the scheme for which a separate detailed procedure is envisaged

U/s. 64(5) of the Act and the same runs as follows:

“ 64. Power of [Joint Commissioner or Deputy Commissioner] to settle schemes.—

.....

(5) (a) [The Joint Commissioner or the Deputy Commissioner, as the case may be], may, at any time, after consulting the trustee and the persons having interest, by order, modify or cancel any scheme in force settled under sub-section (1) or any scheme is force settled or modified by the Board under the 3[Tamil Nadu] Hindu Religious Endowments Act, 1926 (3[Tamil Nadu] Act II of 1927), or deemed to have been settled under that Act, or any scheme in force settled or modified by 1[the Commissioner or the Deputy Commissioner, as the case may be], or the Commissioner under this Act, or any scheme in force settled or modified by the Court in a suit under sub-section (1) of section 70, or on an appeal under sub-section (2) of that section or any such scheme in force deemed to have been settled or modified by the Court under clause (a) of subsection (2) of section 118; Provided that such cancellation or modification of a scheme



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in force settled or modified by the Court in a suit under sub-section (1) of section 70 or on an appeal under sub-section (2) of that section or of a scheme in force deemed to have been settled or modified by the Court under clause (a) of subsection (2) of section 118 shall be made only subject to such conditions and restrictions as may be prescribed.

(b) If 1[the Joint Commissioner or the Deputy Commissioner, as the case may be], is satisfied that any such scheme referred to in clause (a) is inconsistent with this Act and the rules made thereunder, he may, at any time, after consulting the trustee and the persons having interest in the institution, modify it in such manner as may be necessary to bring it into conformity with the provisions of this Act and the rules made thereunder.”

24. Sub-section.5(a) of Sec.64 of the Act, thus refers to a scheme in force, settled under Sub-section (1) as well as settled or modified under the earlier enactment TNHR&CE Act, 1926. Sub-section (1) of Sec.64 empowers the Joint Commissioner or Deputy Commissioner to settle a scheme for proper administration of a institution. This exercise has already been carried out in the instant case while framing the scheme in O.A.No.76 of 1975 on 23.08.1967. Therefore, unless the procedure u/s.64(5) is



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followed, the appointment of trustees under the scheme cannot be modified.

Infact, separate rules have also been framed in G.O.Ms.No.4851 Revenue, dated 26.11.1960. The rules are styled as “Framing of Schemes Rules”.

These rules specifically set out the procedure to be followed by the department when exercising power under Sub-Sec(1), 5(a), 5(b) of Sec.64 of the Act. We have also taken note of the status report that has been filed by the Department before us. In their additional counter also, it is stated that Sec.50 of the Act does not refer to the method of appointment of non-hereditary trustees but only speaks about the power of the authorities to appoint trustees.

25. It is clear from the said status report that the department does not have any intention to appoint trustees to the Arulthiru Sivasubramaniya Swamy Temple, Saidapet, Chennai-600 015. Infact, they have set out their stand in no uncertain terms in the status report that the scheme is in force and they do not wish to modify the scheme already in place and that Sec.50 of the Act is a special provision dealing with only the power of appointment of trustees and not regarding the method to appoint a non-hereditary trustee and that if at all there is any necessity to appoint trustees in terms of Sec.49 or Sec.47, then the procedure contemplated U/s.64(5) will have to be



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followed to modify the scheme. We are also in agreement with the said interpretation sought to be given by the Department.

26. From a clear reading of the provisions viz., Sec.47, 49 as well as Sec.50, it is only the power to appoint trustees that vests with the Department or the authorities under the Act. The said provisions, especially Sec.50, does not require that the mandate of Sec.47 or 49 has to be necessarily followed in the case of existing scheme temples. It is one thing to say that the authorities/department have got a power to appoint trustees and another thing to say that the power has to be exercised and extended to even schemes already settled and in place. Here, we have already observed that the scheme has been framed only under the present enactment, that too by the department themselves and that being the said position, the Court cannot compel the department/authorities functioning under the Act to follow the mandate of Sec.47 or 49 and direct appointment of one trustee from amongst Schedule Caste or Schedule Tribe community and one woman trustee.

27. As rightly contended by the learned Senior counsel, Mr. R.Singaravelan, as well as the learned AGP, the power to appoint trustees is always available to the department/authorities functioning under



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the Act. However, when a scheme is already in force and such scheme being framed under the present enactment, then, in such cases appointment of trustees shall be only in accordance with the scheme and not otherwise. If at all the department/authorities desire to invoke their power to appoint non-hereditary trustees to fill such scheme temples, then they have to necessarily follow the mandate of Sec.64(5) of the Act and follow the procedure laid down in the Framing of Scheme Rules (G.O.Ms.No.4851 dated 26.11.1960).

28. In so far as the judgment of the Division Bench of this Court in ***Area Committee, HR&CE (Administration Department) Nagapattinam, rep by the Assistant Commissioner Vs. K.Kasinathan Padayachi and Ors, reported in 1975 1 MLJ 94***, that was a case where the scheme was framed under the old Act prior to coming into force of the present Act of 1959 and therefore applying Sec.118(2)(b), the Division Bench held that any repugnant provision relating to appointment of trustees would be void and in such circumstances, the Division Bench held that there was no necessity to amend the scheme as the statute itself had declared such a scheme to be void. Therefore, the ratio laid down by the Division Bench of this Court in ***Area Committee's*** case would have no application to the facts



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of the present case. The other judgment relied on by the counsel viz.,

T.Lakshmikumara Thathachariar's case is a case where a scheme was settled by the High Court in the year 1909, even prior to Madras Hindu Religious Endowments Act, 1926 being enacted. The issue before the Hon'ble Supreme Court was that the authorities under the Act had no jurisdiction U/s.64(5) to modify the scheme framed by the High Court U/s. 92 of C.P.C. The Hon'ble Supreme Court held that schemes settled or deemed to be settled under the Act of 1951 have been expressly saved by the Act of 1959 and Sec.64(5)(a) would apply to even such schemes framed under the old enactments or by the Civil Court exercising power U/s. 92 of C.P.C prior to 30.09.1951.

29. On the facts of the case before the Apex Court, the Apex Court held that the power U/s.64(5)(a) was available to the authorities under the Act as the power to modify and cancel the schemes was expressly transferred under the new legislation to the authorities specified therein.

30. Mr.S.M.Loganathan would also place reliance on **Commissioner, HR&CE (Admn) Madras and Ors Vs. Vedantha Sthapna Sabha** reported in **(2004) 6 SCC 497**, wherein the Hon'ble Supreme Court dealt with a case of hereditary trustees. The facts of the said case were on a totally different



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footing and would have no application to the case on hand, which pertains to only the power of the department to appoint non-hereditary trustees.

31. For all the above reasons and discussions, we conclude:

i) the HR&CE Department/authorities functioning under Act 22 of 1959 are vested with absolute powers to appoint non-hereditary trustees to the Board of Trustees;

ii) in so far as schemes settled under the Act 22 of 1959, the trustees shall be appointed only in terms of the scheme;

iii) if the Department/authorities desire to have their say in the appointment of trustees to such settled schemes, then they have to necessarily take recourse to Sec.64(5) of the Act and follow the procedure laid down under framing of scheme Rules under G.O.Ms.No.4851 dated 26.11.1960.

iv) the power under Sec.50 of Act 22 of 1959 is only the power in the matter of appointment of non-hereditary trustees and does not require appointing trustees in line with the mandate of Sec.47 or 49 or 49(a) of the Act, in so far as the schemes already settled under the present Act 22 of 1959. In so far as schemes settled prior to the present enactment and especially where Sec.118 would come into play, then, where a scheme was



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framed under the earlier enactments or settled by the Civil Court U/s. 92 of C.P.C did not recognize the power of the Department/authorities functioning under the Act 22 of 1959 to appoint non-hereditary trustees, then such provisions that are repugnant and attempting to take away the power of appointment of trustees at the hands of the department/authorities would be void.

32.Applying the above principles to the facts of the present case, we have to necessarily interfere with the order of the learned Single Judge. We place on record our appreciation for the assistance rendered by Learned Senior Counsel, Mr.R.Singaravelan and Mr.S.M.Loganathan, Advocate.

33. In fine, the appellants are entitled to succeed and consequently the Writ Appeal stands allowed and the order of the learned Single Judge is set aside. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.J) & (P.B.B.J)
29.08.2023

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To

1.The Secretary
Hindu Religious & charitable Endowments Board
Secretariat, Chennai-9.

2.The Commissioner
Hindu Religious & charitable Endowments Board
Nungambakkam, Chennai-34.



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D.KRISHNAKUMAR, J.,
and
P.B.BALAJI, J

(mjs)

Pre-delivery judgment in
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