



W.P.No.32768 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2023

CORAM

**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM**

W.P.No.32768 of 2013

S.Ekambaram

...Petitioner

-Vs-

1. The Joint Commissioner,  
Hindu Religious Charitable And Endowment Department,  
Salem - 1.
2. The Assistant Commissioner,  
Hindu Religious Charitable And Endowment Department,  
Namakkal.
3. The Executive Officer,  
Arulmighu Kandasamy Thirukkoil,  
Kalipatti , Tiruchengode Taluk, Namakkal Dt.  
Now appointed as a Takkar,  
A/m.Mariamman Thirukkoil and  
Muthukumaraswamy Thirukkoil,  
Sattayampudur Villate,  
Tiruchengode Taluk,  
Namakkal District.
- 4.The Commissioner of HR & CE Department,  
Nungambakkam, Chennai-34.

(R4 is suo motu impleaded in W.P.No.32768 of 2013 by order dated  
21.04.2023 in W.P.No.32768 of 2013 by SMSJ) ...Respondents



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**Prayer:-** Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings Na.Ka.No. 2877/2013/A3 dt. 12.11.2013 passed by the 2nd respondent, quash the same and consequently forebear the respondents from interfering with the management and administration of Arulmigu Mariamman and Muthukumarasamy Thirukoils of Sattayampudur Village, Tiruchengode Taluk, Namakkal Dt. in Compliance with the scheme order made in O.A.34/92/B1/Dt: 13.10.2004 passed by the 1st respondent.

For Petitioner : Ms.N.Manokaran

For Respondents :  
( for R1, R2 & R4) : Mr.K.Karthikeyan, Govt.Advocate  
(for R3) : Mr.M.Muthukumaran

### **ORDER**

The order impugned dated 12.11.2013 appointing a fit person in respect of the 3rd respondent temple is under challenge in the present writ petition.

2.The petitioner states that Arulmigu Mariamman and Muthukumarasamy temples, Sattayampudur Village, Tiruchengode Taluk, are the community temples belonging to the writ petitioner. The temples were established nearly 200 years ago and maintained by the ancestors of



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Sengunthar Mudaliar community people of Sattayampudur Village,  
Tiruchengode Taluk.

3.The community people filed O.A. No.34 of 1992 before the first respondent under Section 64(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, for framing a scheme. A preliminary order was passed and finally the scheme was approved. Relying on the scheme, the learned counsel for the petitioner states that the Assistant Commissioner is incompetent to appoint a fit person in respect of the temple belonging to the petitioner. That apart, a fit person can be appointed only if there is a mal-administration or mismanagement. The order impugned does not speak about any such allegation of mismanagement or mal-administration and therefore, the order impugned is untenable and liable to be set aside.

4.The learned counsel for the writ petitioner relied on the judgment of the Division Bench of this Court in the case of ***Sri Ram Samaj Vs. The Commissioner HR & CE (2022)4 MLJ 449***, decided on 27.04.2022. The Hon'ble Division Bench held that there was no mal-administration or misuse or otherwise in respect of the institution and therefore, invocation



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of the provisions of the act for appointing a fit person is unsustainable. The

Hon'ble Division Bench has dispensed with the appellate remedy in the said case and relying on the said observation, the learned counsel for the petitioner states that the order impugned in the present writ petition is to be set aside.

5.The learned Government Advocate appearing on behalf of the respondents raised an objection by stating that the petitioner has not exhausted the appellate remedy contemplated under the provisions of the HR & CE Act. The petitioner has to approach the Commissioner of HR & CE Department for adjudication of the actual disputes and thus, the writ petition is to be rejected.

6.Perusal of the order impugned would reveal that there was no complete adjudication of facts or otherwise. The order impugned is cryptic and even in the said circumstances the Courts have an option to remand the matter back to the very same authority for fresh adjudication.

7.In the present case, remanding back the matter now, after a lapse of more than 10 years would do no service to the cause of justice. For the



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past about 10 years, by virtue of the interim order, the petitioners are in administration of the temple and therefore, the administrative affairs and other aspects of the temple for the past 10 years are also to be ascertained by the competent authority for the purpose of forming an opinion. In the event of remanding the matter back, it would cause prejudice to the parties since the petitioner's community people are administering the temple for the past 10 years during the pendency of the writ petition. Thus, the option left open is to approach the Commissioner of HR & CE Department for complete adjudication of issues raised between the parties. The petitioners are at liberty to raise all their objections including grounds of jurisdiction, validity of the order impugned, as well as the allegations, if any raised by the competent authorities of the Department. In the event of submitting an appeal/ revision in this regard, the Commissioner of Hindu Religious and Charitable Endowment Department has to consider the same and pass orders on merits and in accordance with law by affording opportunity to all the parties.

8.The Commissioner has not been impleaded as a party/respondent in this writ petition. Thus, this Court is inclined to implead the Commissioner of HR & CE Department, Nungambakkam Chennai-34, as



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the 4th respondent suo moto in the present writ petition and the learned Government Advocate takes notice on behalf of the impleaded respondent.

9. Accordingly, the writ petition is disposed of with a direction granting liberty to the writ petitioner to prefer an appeal / revision before the Commissioner of HR & CE Department, Nungambakkam, Chennai, within a period of 4 weeks from the date of receipt of a copy of this order. On receipt of any such appeal / revision from the petitioner, the Commissioner of HR & CE Department shall adjudicate the issues on merits and in accordance with law by affording opportunity to all the parties concerned and thereafter pass final orders on merits and in accordance with law within a period of 12 weeks from the date of receipt of a copy of that appeal.

10. With these directions, the writ petition stands **disposed of**. No costs.

(sha)  
Index : Yes  
Speaking Order  
Neutral Citation : Yes

21.04.2023  
(2/2)



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WEB COPY

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**S.M.SUBRAMANIAM. J.,**

(*sha*)

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(2/2)