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W.P.Nos.23398 and 23402 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 16.08.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE S.SOUNTHAR**

**W.P.Nos.23398 and 23402 of 2023**

**and**

**W.M.P.Nos.22933, 22935 and 22937 of 2023**

A/m.Ellari Mariamman Thirukovil,  
Rep. by its Hereditary Trustee cum Poojari  
M.Eswaran, M/44  
Erampalayam – 638 457,  
Gobichettipalayam Taluk,  
Erode District.

... Petitioner in both WPs

VS.

1.The Hindu Religious and Charitable  
Endowment Department rep. by  
The Joint Commissioner,  
Erode.

2.The Assistant Commissioner,  
Hindu Religious and Charitable  
Endowment Department,  
Erode.

3.The Thakkar/ Executive Officer Grade I,  
A/m.Kondathukaliamman Thirukovil,  
Pariyur, Gobichettipalayam Taluk  
Erode District.

4.S.Muthusamy

... Respondents in both WPs



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**PRAYER in W.P.No.23398 of 2023:** Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order dated 22.05.2023 made in Se.Mu.Na.Ka. No. 3543/2022-2/P3 (served on 12.06.2023) passed by the 1<sup>st</sup> respondent and quash the same.

**PRAYER in W.P.No.23402 of 2023:** Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order dated 22.05.2023 made in Se.Mu.Nata Na.Ka. No.3543/2022/Aa3 (served on 12.06.2023) passed by the 1<sup>st</sup> respondent, Quash the same and consequently forbear the respondents from interfering with petitioner right to act as the hereditary trustee cum poojari of A/m. Ellari Mariamman Temple, Erampalayam, Gobichettipalayam Taluk, Erode District under Section 54 (1) of the TN HR and CE Act, 1959.

For Petitioner : Mr.V.Srikanth  
for Mr.N.Manoharan  
(in both WPs)

For R1 to R3 : Mr.K.Karthikeyan  
Government Advocate (HR and CE)

### **COMMON ORDER**

The writ petition in W.P.No.23398 of 2023 is filed against an order appointing 3<sup>rd</sup> respondent as a Fit Person to Arulmighu Ellari Mariamman Thirukovil, Erampalayam, Gobichettipalayam Taluk, Erode District as a consequence to the suspension of its Hereditary Trustee.



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2. The writ petition in W.P.No.23402 of 2023 is filed challenging the order of suspension passed by the 1<sup>st</sup> respondent suspending the petitioner herein from the post of Hereditary Trusteeship pending enquiry into the charges against him.

3. The learned counsel appearing for the petitioner assails the order of suspension and consequential order of appointment of Fit Person mainly on the ground that the charges levelled against him are not grave and serious in nature so as to place him under suspension pending enquiry. The learned counsel further submitted that the 1<sup>st</sup> respondent while placing the petitioner under suspension ought not to have appointed the third person as a Fit Person of the temple overlooking the claim of the next person in the line of succession.

4. Mr.K.Karthikeyan, learned Government Advocate (HR and CE) takes notice for the respondents 1 to 3.



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5. The learned Government Advocate (HR and CE) by taking this Court to the various charges levelled against the petitioner, submitted that charges made against the petitioner are serious in nature and therefore, the 1<sup>st</sup> respondent is justified in placing the petitioner under suspension pending enquiry into charges.

6. A perusal of the impugned order would suggest an enquiry is contemplated against the petitioner in respect of as many as 27 charges, some of the charges made against the petitioner are serious in nature. Therefore, this Court is not inclined to accept the submission of the learned counsel for the petitioner that the charges are not serious in nature and hence, petitioner need not be placed under suspension pending enquiry. However, this Court is inclined to issue a direction to the 1<sup>st</sup> respondent to conduct enquiry as expeditiously as possible and pass final orders preferably within a period of twelve weeks from the date of receipt of copy of this order.

7. As far as the contention of the learned counsel for the petitioner that the next person in the line of succession is entitled to preference while



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appointing the Fit Person to the petitioner/temple is concerned, Section 54(2) of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 mandates that in case of a temporary vacancy in the office of the Hereditary Trustee due to suspension of a trustee, the next person in the line of succession shall be entitled to succeed and perform the functions of the trustee until his disability ceases.

8. Section 54(3) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 enables the 1<sup>st</sup> respondent to appoint a Fit Person to perform the functions of the trustee of the institution in case of vacancy in the office of the hereditary trusteeship until the next trustee succeeds to the office. Explanation to Section 54 (3) of said Act also recognises right of next person in line of succession.

9. In the case on hand, the 1<sup>st</sup> respondent already appointed a Fit Person in the place of the suspended trustee. However, while appointing the Fit Person, the 1<sup>st</sup> respondent failed to take into consideration the claim of the next person in line of succession. The claim of the next person in line of succession while appointing a Fit Person in case of vacancy in the office of



Hereditary Trusteeship came up before the Division Bench of this Court in

***C. Andiappan vs. Joint Commissioner, Tamil Nadu Hindu Religious and Charitable Endowment Board*** reported in ***2015 SCC Online Mad 11352 : 2016 (1) CTC 9***, wherein the Division Bench of this Court observed as follows:-

*“55. If a fit person is appointed completely outing 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.”*

After observing so, the Hon'ble Division Bench of this Court set aside the appointment of Fit Person and directed the appropriate authority therein to appoint the next person in the line of succession as a trustee.

10. In the case on hand, while appointing a Fit Person to the temple to fill up the vacancy caused by suspension of the Hereditary Trustee, pending enquiry into the charges against him, the 1<sup>st</sup> respondent failed to take into consideration the legitimate claim of the next person in the line of succession. Therefore, the next person in the line of succession is permitted to file a representation before the 1<sup>st</sup> respondent. If any such representation



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is submitted by the next person in the line of succession, the same shall be considered and final orders shall be passed by the 1<sup>st</sup> respondent in accordance with law in the light of the ratio laid down by the Division Bench of this Court in **C.Andiappan** case cited supra, within a period of ten days from the date of receipt of such representation.

11. With these observations, both the writ petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

**16.08.2023**

Index : Yes/No  
Speaking order: Yes/No  
Neutral Citation: Yes/No  
dm

To

- 1.The Hindu Religious and Charitable  
Endowment Department rep. by  
The Joint Commissioner, Erode.
- 2.The Assistant Commissioner,  
Hindu Religious and Charitable  
Endowment Department, Erode.
- 3.The Thakkar/ Executive Officer Grade I,  
A/m.Kondathukaliamman Thirukovil,  
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**S.SOUNTHAR, J.**

dm

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