BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.12.2023

PRONOUNCED ON : 28.12.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.19081 of 2023 & 16453 of 2017

W.P.(MD).No.19081 of 2023

A.Venkatesh Kumar ... Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable
Endowment Department,
No.19, Uthamar Gandhi Salai,
Nungambakkam, Chennai-600 034.

2.The Joint Commissioner,
Hindu Religious & Charitable
Endowment Department,
Madurai District,
Madurai. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the 2nd respondent to consider the applications filed by the petitioner as per the notification issued by the 2nd respondent in Na.Ka.No.6285/2022 dated 08.08.2022 to appoint three persons as Non-Hereditary Trustees for the Puttu Urchava Kattalai, Puttuthoppu, Madurai, from among the representatives of petitioner's community of Vanniyar Vysya community and to direct the 2nd respondent to appoint the petitioner as Non-Hereditary trustee so as to facilitate performance of Puttu Thiruvizha by the petitioner's community.

For Petitioner : Mr.S.Madhavan

For Respondents : Mr.S.P.Maharajan,
Special Government Pleader

<u>W.P.(MD).No.16453 of 2017</u>

S.Nagaraj ... Petitioner

Vs.

1.The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Madurai-625 001.

2.The Joint Commissioner/
Executive Officer,
Arulmighu Meenakshi Sundareswarar
Temple,
Madurai-625 001.

3.The Fit Person,
Arulmighu Puttu Urchava
Vagaiarah Kattali, @ Executive Officer,
Arulmigu Madanagopal Swamy Temple,
Madurai.

4.E.Manickam

5.M.Janakaran

6.S.Saravana Muthu

7.S.Balasubramanian

8.R.Chandrasekaran

9.I.Sekaran

10.V.Thillai Chidambaram

11.S.Shanmugavelu

12.G.Krishnan Chettiar

13.N.Saravana Kumar

14.A.Shankar

15.S.Palani ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the impugned order in O.A.No.11/2000 dated 10.03.2017 and the consequential order in O.A.No.11/2000 dated 19.06.2017 passed by the 1st respondent and quash the same as illegal.

For Petitioner	: Mr.M.Kannan
For R-1	: Mr.S.P.Maharajan, Special Government Pleader
For R-2	: Mr.V.R.Shanmuganathan
For R-3 to R-6	: Mr.M.Saravanan
For R-7, 9, 10, 12 & 13	: Mr.S.Manickam

COMMON ORDER

This Writ Petition in W.P.(MD)No.16453 of 2017 is filed by S.Nagaraj for Writ of Certiorari, to quash the impugned order in O.A.No.11 of 2000 dated 10.03.2017 and the consequential order in O.A.No.11 of 2000 dated 19.06.2017 passed by the first respondent. The impugned order dated 10.03.2017 is a draft modified scheme and the impugned order dated 19.06.2017 is a final scheme.

2. The brief facts of the case as stated in the affidavit are that the petitioner is a member of the Vaniya Vysya Community in Madurai, Madurai North Chellathamman Kovil Street, North Simmakkal, Sholavandan, Thenkarai and surrounding 18 villages. The petitioner is belonging to the "Arulmighu Puttu Urchava Vagayara Kattalai Puttu Thoppu", Madurai. The property 'Puttuthoppu' belonging to the above said Kattalai was purchased and administered by the committee formed by the denomination of the Vaniya Vysya Community people. The HR & CE Department has got a supervisory power i.e. to appoint trustees and to verify accounts but cannot interfere in the management and administration of the Kattalai Community Trust (Private) property purchased from the contribution by the members of the committee i.e.

from the contribution by the members of the committee i.e. by the said community people. The trust was administered by a scheme framed in O.A.No. 53/1939. When dispute arose in administering the Kattalai, the Madras High Court vide its order dated 23.10.1942 in A.S.No.181 of 1941 had held that "the management and administration of the Religious Charity namely

1. Puttu Chockanathar Temple and Puttu Festival Endowment

2.Sivarathiri Arai Kattalai in Sri Meenakshi Temple, Madurai

3. The tenth day festival Kattalai in Chellathamman Temple attached to Sri Meenakshi Devasthanam, Madurai

4. Daily Puja service of Sri Vinayakar Temple in Chellathamman Street, Madurai and their endowment

shall vest in three trustees who shall be appointed by the Madras Hindu Religious Endowment Board from among the members of the Vania Vysia Community in accordance with the judgement of the High Court in Appeal No. 181 of 1941". The High Court had also held that the HR&CE shall appoint two of them from larger faction and the third faction shall be appointed from smaller faction and the Board will have the power of appointing one of three persons as Managing Trustee as provided for. Based on the scheme the Kattali was administered for the past 72 years. It is the usual practice that the community meeting will be held and the trustees will be selected on behalf of the community and the names will be sent to the first respondent for appointment of the three trustees and from the said three trustees, the 1st respondent would select the managing trustee. To substantiate one such appointment order which was issued on 18.03.2001 is produced as evidence. The contention of the petitioner is that the 1st respondent has always been trying to take over the management of "Puttu Urchava Vagayara Kattalai" belonging to the minority community which is the denomination community. All the earlier attempts had been set aside by the High Court and every time the members of the community had to approach this Court to safeguard their constitutional right. The first respondent in the year 2000 tried to appoint an Executive Officer of Dhandayuthapani Temple, Madurai as a "Fit Person" thereby defeating the community's right of administration, which was challenged in W.P.No.6905 of 2000 and this court, vide order dated 16.10.2000, held that election to the office of the trustees has to be held and after the election the administration should be handed over to the elected trustees. Since the first respondent did not implement the order, Cont.Pet.No.88 of 2001 was filed and notice was issued to the first respondent on 21.02.2001. On receipt of such statutory notice, the first respondent immediately constituted Trust Board from the elected members from the Vania Vysya Uravinmurai on 18.03.2001. Since the Contempt Application was filed against the first respondent, the respondents developed animosity against the petitioner and the community people. The petitioner is protected by a scheme decree in O.A.No.53 of 1939 as upheld in A.S.No.181 of 1941 by this

Court, but the respondent intended to water down the said scheme. Therefore, the first respondent initiated a Suo Moto proceedings under section 64 of the Tamil Nadu Hindu Religious & Charitable Endowment Act in O.A.No.11 of 2000. The community members vehemently opposed the appointment of any “Executive Officer” or “Fit Person”. The community people had claimed that the Kattalai is a denominational one and various persons of the petitioner's community got impleaded in the O.A.No.11 of 2000 and filed their detailed objections. The first respondent kept the proceedings in O.A.No.11 of 2000 in Cold Storage and virtually abandoned the proceedings till the year 2017. Pending the said O.A., the first respondent once again tried to appoint an Executive Officer under section 45(1) of the HR&CE Act on 20.08.2003, which was challenged in W.P.No.9824 of 2004 and obtained stay, thereby the first respondent failed in their attempt to appoint a fit person and take over the management. The fourth respondent was selected as the Managing Trustee of the Kattalai for a period of 2004 to 2007. Once again, the fourth respondent and the other trustees were selected for a period 4.10.2007 and 3.10.2010. The 1st respondent by its proceedings dated 19.11.2007 had held that the tenure of non-hereditary trustee is only one year. Further the 4th respondent had challenged the Amended Act 15 of 2006 in W.P.(MD)No.2501 of 1008 and W.P.(MD)No.10796 of 2008. The 1st respondent vide, proceedings dated 03.02.2009 called for application for appointment of non-hereditary trustees for the fresh period and the said proceeding was challenged by the 4th respondent in W.P.(MD)No.1728 of 2009. The 4th respondent by filing the above said writ petitions continued in the office as Managing Trustee till 2011, even though his period was over in the year 2009 itself. The first respondent also did not take any steps to contest the above said Writ Petitions and allowed the fourth respondent to continue in office. Therefore, certain members of the petitioner's community filed impleading applications. Ultimately, on 17.02.2011, this Court dismissed all the above Writ Petitions and directed the first respondent herein to take steps for appointment of fresh non-hereditary trustees. Earlier when the 4th respondent wanted to become trustee, he consulted the community members and all consented to appoint him as Managing Trustee with a hope he would act in the interest of the community. But later the community understood the design behind the 1st respondent repeatedly selecting the 4th respondent, who would act as per the dictum of the 1st respondent and against the interest of the community. Even in the election, which was conducted pursuant to the orders of this Court, the 1st respondent indirectly tried to select the fourth respondent as a Managing Trustee by not giving wide publicity for the fresh election. Once again, the community members were constrained to approach this Court by filing W.P.(MD)No.5633 of 2011 which was allowed vide order dated 13.02.2012 by quashing the impugned notification dated 28.02.2011 and directed to issue fresh notification and complete the election within three months. The first respondent vide, proceedings dated 11.03.2012 called for fresh application for appointment of trustees. Thereafter, the meeting was held under the President, Secretary and Special Observers and elected three persons on behalf of the Uravinmurai and sent the names to the 1st respondent. On the other hand, the first respondent having failed in the attempts to take over the administration, with evil intention had obtained a letter of undertaking dated 01.05.2011 from the 2nd respondent, Joint Commissioner for appointment of Executive Officer, who had consented for appointment of Executive Officer if he is selected as Managing Director. Thus the 1st and 4th respondent had entered into such illegal agreement to defect the rights of the denomination community. Inspite of vehement objection by the Uravinmurai Members, the 1st respondent appointed the 4th respondent as Managing Trustee. Therefore, the members of the community requested the first respondent to conduct an election in transparent manner. But the first respondent on 10.10.2014 rejected the proposal saying that there is no provision in the scheme for conducting election. Hence, the petitioner had filed W.P.(MD)No. 17258 of 2014 to direct the 1st respondent to conduct election among the 18 villages Vaniya Vysya Uravinmurai and select parties for the Puttu Urchava Vagayara Kattalai in a free and fair mannet and the said writ petition is pending. Pending writ petition the 1st respondent did not appoint proper officer bearers. When there is no elected Trust Board as stated in the scheme, the 1st respondent had completely thrown all the provisions of law to the wind and interfered in the administration as per their whims and fancies. In the meanwhile, the first respondent has taken the Suo Motu O.A.No.11 of 2000 from cold storage after 17 years. The 1st respondent having successfully evaded from bringing into existence a lawful Board of Trustees has passed the impugned orders dated 10.03.2017, illegally framing a modified draft scheme. The impugned order was passed without following any procedure prescribed under section 65(5) read with the Framing of Scheme Rules. Following the draft scheme order dated 10.03.2017, the subsequent impugned order dated 19.06.2017 was passed confirming the scheme. Challenging the same, the present Writ petition is filed raising various grounds.

3. Pending writ petition, one A.Venkatesh Kumar had filed writ petition in W.P.(MD)No.19081 of 2023 inter alia praying for Mandamus to consider the application of the petitioner as per the notification issued by the 2nd respondent in Na.Ka.No.6285/2022 dated 08.08.2022 to appoint three persons as Non-Hereditary Trustees for the Puttu Urchava Kattalai from among the Vanniyar Vasya Community and to direct the 2nd respondent to appoint the petitioner as Non-Hereditary Trustee. The contention of the said A.Venkatesh Kumar is that the community represented by S.Nagaraj had filed W.P.(MD)No. 16453 of 2017, in which the order dated 19.06.2017 passed in Suo Moto O.A.No.11 of 2000 was challenged and there is an interim order of status quo.

Another writ petition in W.P.(MD)No.16802 of 2019 was filed for appointment of Non-Hereditary Trustees and as per the direction of the Court three persons were appointed on 19.08.2020 for a period of two years. Now the said period is over and fresh applications has been filed and the same was not considered. In the meanwhile, the department has changed the nature of scheme by usurping the entire rights of the Vanniyar Vysya community mentioning that an Executive Officer can be appointed by invoking section 45(1) thereby the entire powers would be granted to Executive Officer and the Trustees would be mere titular head. On 08.08.2022 a notification in Na.Ka.No.6285/2022 was issued calling for the appointment of trustees. The contention of the petitioner is that the petitioner had applied for the along with the necessary documents. Likewise, several persons had applied for based on the said notification, but the same was not considered by the respondents. Further the respondent had appointed Fit Person for interim administration, which the respondents wanted to continue so as to hold the administration. The respondents are adopting the method of inaction to continue in the administration. Hence the petitioner A.Venkatesh Kumar had filed the present writ petition to appoint non hereditary trustees by considering the applications filed by several persons.

4. The 3rd respondent, Fit Person had filed counter wherein it is

stated that the petition is not maintainable since the impugned notice dated 10.03.2017 is only a notice issued under section 64(5) of HR&CE Act inviting objections for the modified draft scheme. The petitioner in his affidavit has admitted that Vaniya Vaysya Community people had sent objections for the draft scheme. Hence the present writ petition challenging the notice is not maintainable. Further the impugned order dated 19.06.2017 framing modified scheme under section 64(5) of HR&CE Act is an appealable order under section 69 and any person aggrieved can file an appeal to the Commissioner HR&CE within 60 days. Hence the present petition filed without exhausting the statutory remedy is liable to be dismissed in limine. The Puttu Utsava Kattlai is a religious endowment and the income from the properties is used for the religious charities, especially the performance of Pattu Utsava Mandagapadi at the Aavani Moola festival of Sri Meenakshi Sundareswarar Thirukovil. For the administration of the Kattalai, a scheme was framed and the same was settled by the Hon'ble High Court in A.S. No.181 of 1941 and as per Clause (2) of the scheme, the HR&CE Department has to appoint three trustees from Vaniya Vaysya Community people and the Department has been appointing trustees for more than 80 years. The Joint Commissioner or the authorised authorities appointed from time to time will publish notification calling for application from among the community people and appoint trustees. After the enactment of HR&CE Act, 1959 (Act 22/1959), the power to settle scheme vests with the

HR&CE Department and as per section 64 the Joint Commissioner is having power to settle schemes. Further the provisions of the Act will prevail over the scheme already settled by the authorities and Courts. Section 118(2)(1)(b) of the Act, declares that any scheme repugnant to the Act will become void. The Joint Commissioner / Deputy Commissioner is appointing trustee by inviting applications. The contention raised by the petitioner that the community people alone are entitled to elect the trustees is baseless, imaginary and impracticable. The petitioner is a close relative of one I. Sekaran, a former trustee, against whom a criminal case of misappropriation of Kattalai fund is pending. It seems that the present petitioner is set up by I. Sekaran to stall the process of appointing trustees. In earlier occasion when the first respondent issued a notification calling for application for appointment of trustees challenging the same the petitioner herein had filed W.P.(MD)No.17258 of 2014, raising the contentions raised in the present writ petition and the same was dismissed on 28.04.2022, The object of the petitioner in filing the above petition is to stall the selection process of the post of trustees. Under HR&CE Act, if the 1st respondent has reason to believe that in the interest of proper administration of an institution a scheme should be settled, he can frame / modify the scheme. In exercise of the power conferred under section 64(5) the 1st respondent has modified the earliest scheme by following the procedures under section 64 and framing of schemes rules. The contra allegations in the affidavit are stoutly denied as false and the petitioner is liable to prove the same. The contention of the petitioner of the third respondent is a denominational trust that they were not given opportunity while framing scheme, that the procedure under the Framing of Scheme Rules were not followed are denied as false. The scheme was framed by following procedures contained in the act and as well as the rules. The contention of the petitioner that the trustees were elected by the community members by conducting a meeting is totally denied as false. Even as per scheme the power to appoint trustee is vest with the Board and hence the question of electing trustees by the community members does not arise. Hence the writ petition is devoid of merits and liable to be dismissed.

5. The seventh respondent namely S.Balasubramanian had filed separate elaborate counter, which gives the glimpse of the Puttu Utsav and the background of the litigation. It is stated that the members of the Arulmigu Puttu Urchva Vagaiyara Kattalai belongs to Vaniya Vysya Ayira Thalaivars Denomination residing in Madurai, Madurai North Simmakkal Street, North Chellathamman Kovil Street, Shoavandan Vagaiyarah and surrounging 18 village of Madurai District namely Madurai, Sholavandan, Mullipallam, Thenkarai, Mannadimangalam, Kuruvithurai, Irumbadi, Vadipatti, Thathampatti, Katchakatti, Andipatti (Madurai District), Vadugapatti, Kondaiyampatti, Ayyankottai, Thanichiyam, Thiruvedagam, Melakkal, Thenur.

Hence the members of the said denomination are well defined and identifiable sect, having common faith, common organisation and designation of a distinctive name having traditional vocation of production of oil in the country, owing oil mills and also trading in other commodities. It is a religious belief of denomination that one Vanthiammai was an ancestor of the denomination, who played the main role in Pattu Thiruvilaiyadal, which is one among the 64 Thiruvilaiyadals enacted by Lord Shiva at Madurai in the Pandian Kingdom. Among the 63 Saivaite Saints of South India (Nayanmars) there lived a Nayanmar by name Kaliyanayanar belonging to the same denomination doing the oil trade in Oil Monger Streets. The said Kaliyanayanar used to spend all his money through oil trade for lighting lamp in seven temples, when he lost all his money, he got employed in oil Mill and even thereafter when he did not have money, he ultimately decided to let the lamp with his blood and wanted to sever his head and ultimately got interrupted by the Lord Shiva himself. This is a peculiar faith of the denomination and the said Kaliyanayanar is revered, worshipped as one of their ancestors and had installed a deity of Kaliyanayanar in the Puttu Chokkanathar Temple constructed by Arulmigu Pattu Urchava Vagaiyara Kattai. Further within the temple, there is a Samdhi of one Mariappa Chettiar, who is the founder of the Kattalai. Since time immemorial the said denomination is celebrating the Thiruvilaiyadal of Puttu Chokkanathar in the banks of river Vaigai. To improve the denomination, properties were purchased in Madurai Town S.No.V, Block No.72, Old T.S.No.1187/1, 1187/2, New T.S. No.49 extent 4 Acres 84 cents, Patta No.995 by a registered sale dated 16.10.1889, on behalf of Vaniya Vysya Kula Ayarathars for conducting the Madurai Sri Meenakshi Sundareswarar Puttu festival. On 01.08.1892, a meeting of the Vaniya Vysya Chettiar denomination met and executed a document whereby the executives agreed to pay Mahamai collections for celebrating the above festival and also for construction of Mandapam to the founder. Another meeting was held on 07.06.1895 as there was a requirement for more money for completing the Stone Mandabam and for celebrating the Sri Meenakshi Sundareswarar Avani Moola Puttu Thiruvaizha Yagam in the Thoppu, additional construction of pillars and platforms and among other purpose and it was agreed by the members for payment of Mahamai. Again the committee members met on 18.08.1906 for revising the rate of Mahamai for performance of four charities as stated supra. It is a popular belief that the Chellathamman Temple situated at Simakkal originally it is a Kannaki Temple established in memory of Kannaki of Silapathikaram Epic and the main characters in Silapathikaram namely, Kannaki and Kovalan belong to Vaniya Vysya Community and they were oil merchants. It is the belief that Kannaki later on referred as Chellathamman, hence the 10th day Mandagapadi is celebrated in the Chellathamman Temple by the denomination and there is a separate sanadhi for Kannaki. Hence the peculiar belief and faith of the community residing in the 18 villages constitute a denomination and it is protected with a special rights guaranteed under article 26 of the Constitution of India. The denomination has a separate Guru by name Brahma Sri Sri Venkata Subramanniya Baskara Prouda Gnana Sivachariyanam Swamy. The erstwhile HR&CE Board had framed a scheme in O.A.No.53 of 1939, which was challenged in O.S.No.53 of 1939 on the file of District Court, Madurai and the same was allowed. The Department preferred appeal in A.S.No.181 of 1941 on the file of High Court and as per the decision only supervisory jurisdiction was granted to the department. It was specifically held that the Trustees appointed from the denomination should govern the Trust. Three trustees are selected from the denomination and from them one of them will be appointed as managing trustee by the Board. With the enactment of Constitution of India the rights and privileges enjoyed by the denomination was enlarged and now the denomination enjoys an absolute right in the administration and management of properties of the trust. The properties of the trust belong to the trust and none of the properties is vested with any deity. From time immemorial the Vaniya Vysya denomination had spiritual organisation and were conducting the Puttu festival. The property belonging to the trust was occurred for the welfare of the denomination to celebrate the festival for the spiritual welfare under the earnest effort of the elders of the denomination, especially by the said Mariappa Chettiar, who is the founder of Kattalai. The management of the properties always belonging to the denomination and the trust has been collecting the rent and other incomes accruing to the trust. All the litigations for and against the turst properties were conducted only in the name of trust. The properties were leased out by the managing trustee of the trust. In Uravinmurai consisting of members of the denomination would select three persons as trustee and send the name to the Joint Commissioner and one among them will be managing trustee.

6. Every year the Avvai Mulla festival in the Puttu thoppu the first honour is given to the Sholavandan Maniakarar of the denominational denomination. The second honour to the Madurai Maniakarar of denominational denomination, the third honour to the Sholavandan Nattanmai, the fourth honour to Katchaikatti Nattanmai and thereafter to the other Uravinmurai members. The first honour is given to the above members by the Managing Trustee of the Trust. During the festival the Puttu is given as Prasadam and the same is free of cost. The temple situated in Pattu Thoppu was constructed by the Trust after the purchase in the year 1889, the temple is exclusively administered by the trust. The employees in the temple are only appointed by the trust and the salary is paid by the trust. No fund whatsoever is collected by the trust from the public for administration of the temple, no hundial was installed by the trust in the temple, but with male intention to take over the management the Board installed hundial in the year 2000. Immediately

an objection was made on behalf of the denomination to remove the Hundial on 23.07.2000. Thereafter the management of the trust has been in the hands of 4th respondent who is acting in favour of 1st respondent and against the interest of the denomination, therefore no action has been taken thereafter. The administration of the trust was going very smooth, but from 1990 the department started their effort to take over the complete administration of the Trust. With that intention they repeatedly kept appointing Thakkar and Executive Officer of the Department. The denomination members have been thwarting all such attempts by filing writ petitions. The appointment of Thakkar was successfully challenged in W.P.No.3710/1990 and the department itself cancelled the proceeding by its proceeding dated 30.12.1991 and appointed Thakkar belonging to the denomination. Since the denomination challenge, the appointment of non-denomination members, the Department by proceedings dated 16.11.1992 appointed proper trustees belonging to the denomination. The effort of the Department to take over the management of the trust did not stop and the Joint Commissioner framed charges against the Trustees namely S.Balasubramanian (the 9th respondent herein), Karuppaiah and R.Chandrasekaran and a criminal case in C.C.No.329 of 2000 on the file of IV Judicial Magistrate, Madurai was registered and the same ended in acquittal on 11.08.2005. After suspending the above Trust Board the first respondent vide proceeding dated 20.03.2000 appointed the Executive Officer, Madurai

Arulmigu Dhandayuthapani, Thirukovil as Fit Person. Again the same was challenged in W.P.No.6905 and W.P.No.13813 of 2000 in which the department admitted that fresh elections will be held and the denomination members would be appointed, recording the set submission the petition was allowed vide order dated 16.10.2000, but no appointment was made as per the undertaking. Hence a contempt petition was filed, thereafter the respondent appointed trustees vide proceedings dated 18.03.2001 and was produced before the court thereafter contempt was closed. In that order three persons belonging to the denomination has been appointed as trustee as per the resolution of the Uravinmurai. But the department taking advantage of appointment of executive officer in the year 2000 immediately installed hundial with an intention to take over the temple belonging to the trust. Immediately objections was submitted against the act of encroachment into the powers of denomination. In fact during the administration of Executive Officer, even the name of the trust disclosing the denomination community was scrapped and it was displayed as if it was under the administration of HR&CE Department. Only after the High Court set aside the appointment of Executive Officer, the name of the denomination was restored. Once again, the first respondent attempted to interfere in the administration of the trust vide the proceedings dated 20.08.2003 appointed an Executive Officer belonging to the Temple to work jointly with the trustees of the Kattalai. Challenging the same W.P.No.9824 of 2004 was filed by one

C.Pitchumani Chettiar and the appointment was stayed by the Court. Hence all the attempts by the Department to take over the administration by appointing Executive Officer belonging to the Department has been successfully resisted by the community. As a continuation of an of the attempt the first respondent had invoked the powers under Section 64(5)(a)and(b) of HR&CE Act, 1959 issued notice dated 29.12.2000 in Suo Motu O.A.No.11 of 2000 for modification of the scheme and thereby take over the entire administration of the denomination. The rights of the denomination in the administration of the Trust is much larger than the was guaranteed under earlier scheme after the enactment of the Constitution of India under Article 26. The department was also aware of its limits within which it can interfere in the administration of the denomination. The trust also felt that the limited powers of supervision of the trust properties given to the department acceptable as long as the department respected the autonomy and rights of the denomination it was only for that reason, the denomination did not choose to seek a declaration and enforcement of its rights. The department was also staying within its limits as prescribed under article 26 for the past 50 years. Whereas from 2000 the intention of the Department had changed and now it is bent upon usurping the property of the denominational trust. With this intention the notice in O.A.No.11/2000 was issued and the community submitted their strong objections to the notice. Since the Department was facing strong strictures and contempt notices from the High

Court regarding the trust properties, the department dropped all further proceedings in O.A.No.11/2000 and nothing further was heard about it for the past 17 years. Having failed in all their attempts to take over the administration through legal means, the department started to indulge in malafide and surreptitious methods. With that intention the department selected the 4th respondent as Managing Trustee in the year 2004 and he has been repeatedly selected as managing trustee in the year 2007. Having got an appointment in the year 2007, the fourth respondent filed writ petitions in W.P.No.2501/2008, W.P.No.10796/2008 and W.P.No.1728/ 2009 seeking extension of his period of Trusteeship and the department did not take steps to dispose the petitions. Therefore, the community impleaded themselves and contested the case, then all the writ petitions were dismissed vide order dated 17.02.2011. Even thereafter the same person was temporarily appointed as Thakkar and attempts were being made to conduct elections secretly without giving opportunity to all the denomination members. Again W.P.No.5633 of 2011 was filed and vide order dated 13.02.2012 the 1st respondent was directed to give wide publicity before conducting elections. Even thereafter the elections were held in an improper manner and the 4th respondent was once again selected as managing trustee. Thereafter the denominational sent notice dated 3.10.2013 under section 80 of CPC to the first respondent to stop their attempt to take over the denomination trust, failing which would file a civil suit. Even thereafter the respondents 1 to 3 did not stop their attempt to take over the administration of the trust. The other members of the denomination were not given opportunity even in the present selection of trustees. Once again by an order dated 6.08.2012 the 4th respondent has been appointed as managing trustee and it is unknown how the same person has been selected. Infact it was brought to the knowledge of the misdeeds committed by the fourth respondent. Criminal cases have been registered against the fourth respondent for theft of Kalasam and falsification of Trust accounts. In spite of the same the 4th respondent was selected as managing trustee. During the enquiry conducted by the 1st respondent on 16.10.2012, the 1st respondent openly stated that the fourth respondent has executed an undertaking letter dated 01.05.2012 by which he has given an undertaking that in the event of his being appointed as managing trustee, he would pass a resolution for appointment of Executive Officer by the Department. Only then the community came to understand that the Department has used the 4th respondent as a ruse to take over the management of the trust. Immediately after the appointment of fourth respondent as a managing trustee by an order dated 06.08.2012, the department has issued a new Archanai ticket with the seal of the department as if the temple belongs to the department. This is the 1st time that Archanai ticket has been issued, which is a blatant interference in the administration of the denominational Kattalai by the department with the help of the fourth respondent. All communications on behalf of the trust has been changed from the managing trustee to that of the Chairman Board of Trust. This is also a clear encroachment into the denomination and against the scheme upheld by the High Court. Behind the screen the department was pulling the stings, to take over the management. The Department which has been given only an inch is asking ell and trying to take over the entire administration of the denominational trust. The first respondent repeated attempts to take over the administration and the community's repeated orders against them for removal of the managing trustee, who was inimical to the interest of the trust, once again has racked up and reopened the Suo Motu O.A.No.11 of 2000. The first respondent has openly stated that only because the trust was having the protection of previous orders passed by the Hon'ble Court and the existence of scheme framing the appointment of trustee from the denomination, the trustee were not allowing the Department to take over the trust. The first respondent without following the mandatory procedures prescribed under the Act and Rules has passed impugned orders thereby violated the rights of the denomination. The first respondent has by the impounded orders completely obliterated the century old right of the denomination in administering its own properties and it is a clear violation of the right guaranteed under article 26 of the Constitution. The first respondent has not proved any of the allegations stated in the O.A.No. 11/2000. By modification of the scheme virtually the entire rights of the denomination has been taken away. The trustee to be appointed from the denomination has been delegated to insignificance and the entire management of the administration including the day-to-day administration of the temple etc. have been handed over to the Executive Officer without any reason whatsoever. The denominational property was purchased and administered by the members of their own community and now by appointing the Executive Officer with arbitrary and excessive power amounts to unlawful interference into the rights of the denominational community and right to administer their own property guaranteed under article 26 was taken away by the impugned order. In substance, the trustee have been relegated to the position of mere servants and the Executive Officer has been put in charge of the entire management of the Trust. Nothing can be done in the temple without Executive Officer permission. It is not even the Executive Officer functions under the supervision of the Trustee. The Department which was only having a supervisory role has now in gross denial of the right to property of the denominational trust has completely taken over the management of the denominational trust and made the denominational trustees as namesake persons. The respondents 1 to 3 here in without making out any case for appointment of Executive Officer who practically displaces the trustee has acted in violation of the law laid down by the constitutional bench of the honourable Supreme Court of India in Sri La Sri Subramanya Desiga Gnanasambada Pandara Sannadhi Vs. State of Madras reported in AIR 1965 SC 1683. The first respondent has passed orders without recording any reasons whatsoever and has merely reproduced the words contained in Section 64(5) and that is clear violation of the statue. The 1st respondent having failed to substantiate the impeded orders by giving reasons in the impugned orders itself, cannot file counter to improve the impugned order. The first respondent has to stand or fall by the contents of the impugned orders alone and cannot level unfounded and unsubstantiated allegations in the writ petition. The first respondent has not proved the allegations levelled against the office bearers and the members of the denomination and has not made out any case for modifying the scheme. If such arbitrary exercise of power is given to the first respondent then the right and interest of the Hindu denominational Trust and temples could be erased and written at the whims and fancies of the officials of the HR&CE Department. The Hon'ble Court has repeatedly been holding the authorities under the Act should act in accordance with the procedures prescribed under the Statue. If Law requires a particular thing has to be done in a particular manner, it cannot be done otherwise. If the procedural safeguards given under the Constitution and the statues is diluted on unfounded and unproven allegations, whatsoever the gravity of the charge may be, it will lead to negation of role of law and it will lead to administration in an unconstitutional manner. Hence the 7th respondent prayed to allow the writ petition.

7. The ninth respondent namely I. Sekaran who had held the post of Managing Trustee from 2001 to 2004 had filed counter stating that he along with S. Murugesan, V. Thilli Chithambaram had jointly submitted detailed written objections with the 1st respondent as early as 26.02.2001, the 1st respondent without following the statutory period had passed the impugned orders and they were contemplating to challenge the same. In the meanwhile the present petitioner had filed the case as a community member and hence in order to avoid multiplicity of proceedings another petition was not filed. Hence he has filed the counter and has put forth the few facts for consideration. The first respondent was aware that they (they indicates I.Sekaran, S. Murugesan and V. Thilli Chithambaram) have been dule elected as trustees in the Community General Body Meeting held on 19.11.2000, the minutes of which were communicated to the first respondent on 11.12.2000, intentionally the first respondent issued the original Suo Motu notice to the erstwhile trustees, who ceased to hold office on and from 26.12.2000. Yet being then president and the Office Bearers of the specific endowment, they had sent the reply dated 26.02.2001 for the Suo Motu notice, wherein they have specifically pleaded that the provisions of section 64 are not applicable. Further as per the custom established from time immemorial and also as recognised by the 1st respondent,

the administration of the Kattali vests with the particular community namely, Vaniya Vysya Community people living in a defined area of 18 villages. Therefore, the specific endowment is denominational in character and the provisions of the Act are not applicable as it is saved under Article 26 of the Constitution of India and hence the first respondent has no authority or power to modify, annual or cancel the existing scheme of management which falls within the purview of the specific community which is denominational in character. Since he had filed writ petition to protect the interest of the denomination by challenging the appointment of Executive Officer in W.P.No.6905 of 2000 and initiated contempt proceedings in Cont.Pet.No.88 of 2001 and obtain orders. Hence the first respondent has deliberately and intentionally levelled false allegation of mismanagement and misappropriation against him. Even though he had demitted the office in the year 2004 itself, the first respondent has passed an order dated 24.05.2011 as if the petitioner had committed misappropriation operation and the criminal action was taken against him. The order dated 24.05.2011 was passed immediately after passing of the order by the Hon'ble Court in W.P.(MD)No.10796 of 2008 etc. on 17.02.2011 as he was one of the contesting respondent who got the petition dismissed and obtained order for conducting election. Every time a member of the community questions the authority of the first respondent such false allegations are brought against them and similar criminal case was filed against the erstwhile trustee Mr.S.

Balasubramanian and the same ended in acquittal before the competent criminal court. He had demitted the office in the year 2004 itself, but the 4th respondent has taken position and charge forcefully by breaking open the bureau unauthorizedly without any permission and without following the procedures prescribed under the Act and was been running the office of Managing Trustee. And after a period of seven years the false criminal case has been levelled against him. The 7th respondent further submitted he had preferred criminal case against the fourth respondent regarding the above facts. The respondent 1 to 3 cannot project the case regarding the unproven and unsubstantiated belated allegations for justifying the impugned orders. Admittedly, such unsubstantiated allegations are found in the impugned orders. Therefore, the modification of scheme is clearly unlawful, erroneous and the writ petition ought to be allowed. Further he had submitted in order to protect the interest of denomination, during the his tenure as Managing Trustee he had conducted proper survey of the entire Puttu Thoppu property and all the tenant lists were prepared, tenancy agreements were executed with enhanced market rate based upon the actual square feet of occupation by the tenants. Infact he had regulated the tenancies and had argument the income of the trust. But the fourth respondent has allowed so many subleasing and unauthorised letting of the trust property and the fourth respondent with the help of the department is unauthorised receiving money and the same can be proved if proper Trustees are appointed from the denomination.

If the accounts and records are verified, then it can be ascertained that the respondents 1 to 4 have indulged in mismanagement. Hence, the 7th respondent prayed to allow the writ petition.

8. Heard Mr.S.Madhavan, the Learned Counsel appearing for the petitioner in W.P.(MD)No.19081 of 2023, Mr.M.Kannan, the Learned Counsel appearing for the petitioner in W.P.(MD)No.16453 of 2017, Mr.S.P.Maharajan, the Learned Special Government Pleader appearing for the respondents in W.P.(MD)No. 19081 of 2023 and for 1st respondent in W.P.(MD)No.16453 of 2017, Mr.V.R.Shanmuganathan, the Learned Counsel appearing for the 2nd respondent in W.P.(MD)No.16453 of 2017, Mr.M.Saravanan the Learned Counsel appearing for the respondents 3 to 6 in W.P.(MD)No.16453 of 2017 and Mr.S.Manickam, the Learned Counsel appearing for the respondents 7, 9, 10,12 and 13 in W.P.(MD)No.16453 of 2017 and perused the records.

9. The first contention of the petitioner is that the 1st respondent had initiated the Suo Motu O.A.11 of 2000 for modifying the scheme under section 64(5) of the HR&CE Act in order to give the entire power of administration to the Executive Officer. When the scheme was settled in A.S.No.181 of 1941 and the same is implemented for the past 60 years and the administration of the endowment is functioning properly, there is no necessity

to modify the scheme. But the contention of the respondents 1 to 3 is that the said scheme was settled prior to Act 22 / 1959, the Section 118(2)(1)(b) of the Act declares that any scheme repugnant to the Act will become void and the provisions of the Act will prevail over the scheme already settled by the Authorities and Courts and for this reason the Suo Motu proceedings was initiated. After hearing the rival submissions this Court has given its anxious consideration. Even though the respondents 1 to 3 have taken a stand that the present scheme which formulated prior to Act 22 of 1959 is repugnant to the Act 1959, the respondents have not specifically stated which portion of the scheme is repugnant to the Act 22 of 1959. In the impugned orders also the respondents 1 to 3 have not stated which clauses of the earlier scheme are repugnant to the Act 1959. In the counter also the respondents have not stated which portion is repugnant. Therefore, this Court is of the considered opinion that if none of the clause is repugnant to the Act 22/1959, then the respondents are not empowered to change the scheme. Hence the scheme which was confirmed and settled in A.S.No.181 of 1941 is not repugnant to Act 22/1959 and it is not necessary to change / modify the scheme. And the Suo Motu O.A.No.11 of 2000 itself is unnecessary, when there are no impending circumstances for changing the scheme.

10. While passing orders in A.S.No.181 of 1941, the Hon'ble High

Court has held that the Vaniya Vaysya Community had contributed the money for conducting festival of

1. Puttu Chockanathar Temple and Puttu Festival Endowment;
2. Sivarathiri Arai Kattalai in Sri Meenakshi Temple, Madurai;
3. The tenth day festival Kattalai in Chellathamman Temple attached to Sri Meenakshi Devasthanam, Madurai;
4. Daily Puja service of Sri Vinayakar Temple in Chellathamman Street, Madurai and their endowment.

The excess money was invested in purchasing the property and the properties were endowed with Trust. But litigations started because of two rival factions and the trustees were appointed from the smaller faction. After taking all factors into consideration the scheme was settled with certain modifications. Earlier the power of appointing the trustees was with the Vaniyar Vysya Community but in the A.S.No.181 of 1941 it is given to HR&CE Department. The relevant portion is extracted hereunder:

Clause 2 as per original scheme:

"The management of the specific endowment relating to 1. Puttu Chockanathar Temple and Puttu Festival Endowment, 2.Sivarathiri Arai Kattalai in Sri Meenakshi Temple, Madurai, 3. The tenth day festival Kattalai in Chellathamman Temple attached to Sri Meenakshi Devasthanam, Madurai and 4. Daily Puja service of Sri Vinayakar Temple in Chellathamman Street, Madurai and their endowments shall be administered by three trustees appointed

among the Vanniar Vaisya Community"

Clause 2 as per A.S.No.181 of 1941

> *"The management **and administration** of the **religious charitable** relating to 1. Puttu Chockanathar Temple and Puttu Festival Endowment, 2. Sivarathiri Arai Kattalai in Sri Meenakshi Temple, Madurai, 3. The tenth day festival Kattalai in Chellathamman Temple attached to Sri Meenakshi Devasthanam, Madurai and 4. Daily Puja service of Sri Vinayakar Temple in Chellathamman Street, Madurai and their endowments **shall vest in three trustees who shall be appointed by the Madras Hindu Religious Endowments Board from among the Vanniar Vaisya Community in accordance with the judgment of the High Court in Appeal No. 181 of 1941."***

The only difference is that as per original scheme the three trustees should be appointed by the community people. But the scheme as per A.S.No.181 of 1941, the Madras Hindu Religious Endowments Board has to appoint the three trustees. In the scheme it has been specifically stated that the administration is only by the Trustees belonging to the Vanniyar Vaisya Community. Therefore, this Court is of the considered opinion that the Board cannot administer the Trust, but it is only the Trustees appointed from the Vanniyar Vaisya Community alone ought to manage and administer the endowment.

11. The Learned Counsel appearing for the respondents 1 and 2 submitted that the scheme is not providing any clause to appoint Executive Officer for administration of the Trust and hence the same is against the Act 1959 and it is for this reason the respondents 1 to 3 sought to modify the scheme. This plea of the respondents cannot be accepted since the temple and the endowments ought to be managed by the Trustees only and not by the HR&CE Department. In fact, the Hon'ble Division Bench of this Court vide order dated 07.06.2021 in Suo Motu W.P.No.574 of 2015 had held that the Department should take steps to appoint Hereditary Trustees where ever Hereditary Trustees are managing the temples and endowments. And appoint Non-Hereditary Trustees where ever Hereditary Trustees are not available for proper administration of the temples and endowments. The relevant portion is extracted hereunder:

> *"TRUSTEE*
> *(54) The HR&CE Department shall file a report before this Court within a period of eight (8) weeks listing out the number of temples without Trustees, the duration of such vacancy, the particulars of the persons appointed as "Fit Person" and* ***the steps taken by the Department to appoint trustees****.*
> *(55)* ***If no hereditary trustees stake claim, then steps must be taken to appoint non-hereditary trustees. The non-hereditary trustees must be from the religious denomination, to which the temple belongs to,***

without the political background.

(56) Stringent rules on the conduct, character, interest and knowledge on both religious affairs as well as administrative abilities of the trustees, must be enacted to ensure that the right person is appointed to manage the religious affairs of the temples.

(57) Keeping in mind that the overall administration shall be with the HR&CE Department, the ***authorities shall supervise the affairs of the religious institutions*** *ensuring that the HR&CE Act is strictly complying with by the trustees and taking necessary remedial steps for which they are paid an annual contribution as specified under Section 92"*

Further the temple and endowments ought to be managed and administered by Trustees only. The HR&CE department is empowered to appoint Executive Officer only if there is mismanagement or allegation of misappropriation. And once the said allegation is set right then the management ought to be handed over to the trustees only. The Executive Officer or the Fit Person cannot have perpetual power to manage and administer the temple or endowments. Further this power to appoint Executive Officer (when mismanagement or misappropriation) will not empower the HR&CE Department to replace Executive Officer in the place of Trustees. More so, it cannot reduce the power of the Trustees and grant such power to Executive Officer. Moreover, any appointment of Executive Officer or Fit Person ought to be only for a period of five years as per the Conditions for Appointment of Executive Officers Rules, 2015, which was issued in G.O.Ms.No.260 Tourism, Culture and Religious Endowments (RE4-2) Department dated 06.11.2015 published in gazette on 06.11.2015. The relevant portion of the rule is extracted hereunder:

> *"The Commissioner may, after holding such inquiry as he may consider it necessary and expedient, in the interest of such religious institution, by order, appoint an Executive Officer for such religious institution, for such period or periods as may be specified by the Commissioner in the order* ***not exceeding a period of five years at a time****"*

When the provisions allow to appoint Executive Officers / Fit Person for a limited period, then appointing the Executive Officers in the scheme perpetually would be against the provisions of law. When the appointment of Executive Officer or Fit Person can be only for a period of five years, then the Executive Officer or Fit Person cannot replace Trustees or cannot take over the power of Trustees. Hence the appointment of Executive Officer to replace Trustees is impermissible as per HR&CE Act. Also, the trustees cannot be placed as servants to Executive Officer. Therefore, this Court is of the considered opinion that the modification in the impugned order is against the provisions of law, specifically against Conditions for Appointment of Executive Officers Rules, 2015 and hence the impugned order is liable to be quashed.

12. Further in the present case the allegation against the respondents 1 to 3 is that they are trying to appoint Executive Officer in the place of Trustee or give less power to Trustees in order to usurp the administration. This Court is of the considered opinion that the above narration of facts would prove that the respondents are trying to usurp the administration. The respondents are acting beyond the provisions of law.

13. The next contention of the respondents 1 to 3 is that the Joint Commissioner / Deputy Commissioner is appointing trustee by inviting applications, but the petitioner is contending that the Vaniyar Vsyaya Community people alone are entitled to elect the trustees is baseless, imaginary and impracticable. The said contention of the respondent cannot be accepted since the High Court in A.S.No.181 of 1941 had held that the three trustees ought to be appointed from the said Vaniyar Vsyaya Community alone. Even in the judgment rendered in the Suo Motu W.P.No.574 of 2015 the Hon'ble Division has issued direction under the heading "Trustee" in Clause 55 that the non-hereditary trustees must be from the religious denomination, to which the temple belongs to". Of course, there cannot be any election to select the trustees. But the 1st respondent ought to appoint the Trustees from the Vaniyar Vsyaya Community only. As on date even though there is no election in the scheme, if in future election is necessary the community may go for election as

well.

14. The next contention of the 3rd respondent is that the petitioner is a close relative of one I. Sekaran, a former trustee, against whom a criminal case of misappropriation of Kattalai fund is pending. And the present petitioner is set up by I. Sekaran to stall the process of appointing trustees. The 3rd respondent further submitted that in earlier occasion when the first respondent issued a notification calling for application for appointment of trustees challenging the same the petitioner herein had filed W.P.(MD)No.17258 of 2014, raising the same contentions that is raised in the present writ petition and the same was dismissed on 28.04.2022 and the object of the petitioner in filing the above petition is to stall the selection process of the post of trustees. On perusing the order passed in W.P.(MD)No.17258 of 2014, it is seen that the said writ petition was dismissed since already trustees were appointed for the concerned period and nothing survives for adjudication. The aforesaid writ petition has not declared any ratio decidendi and hence the same cannot be relied. As far as the criminal case is concerned it is stated by the 9th respondent, Balasubramanian that the said criminal case had ended in acquittal. Even if the plea of the respondent that cases are pending is accepted, merely because some cases are registered against the said I.Sekaran, the petitioner S.Nagaraj cannot be

restrained from filing a case or from claiming trusteeship, since the HR&CE Act recognises the right of a person who are next in line of succession, when the existing trustees are facing disciplinary proceedings. Therefore the plea of the 3rd respondent is rejected.

15. The next contention of the respondent is that under HR&CE Act, if the 1st respondent has reason to believe that in the interest of proper administration of an institution a scheme should be settled, he can frame / modify the scheme. In exercise of the power conferred under section 64(5) the 1st respondent has modified the earlier scheme by following the procedures under section 64 and framing of schemes rules. The respondents 1 to 3 have not come out with the specific plea which part of the earlier scheme had become impracticable or what is the reason to believe that the scheme ought to be modified. Even in the impugned order the respondents had verbatim reproduced the provisions of the section. In the counter the respondents have not stated what is the reason to believe that the scheme ought to be modified. This Court is of the considered opinion, that the Suo Motu O.A.No.11 of 2000 application itself is bereft of any particulars, bereft of reason to modify the scheme. The provisions of the Act ought to be invoked if there is reasons to believe and the reasons ought to be explicitly stated. The said provisions cannot be misused. As rightly pointed out by the petitioner, the right to administer religious

endowments is guaranteed under Article 26 of the Constitution. Even the HR&CE Act was enacted only to interfere whenever there is mismanagement or misappropriation. Hence the provisions of HR&CE Act cannot be invoked without any compelling circumstances stated in the Act.

16. The contention of the petitioner is that the respondents are empowered to formulate a scheme under section 64(5) of the Act. If the respondents are intended to any modification of a settled scheme, then the respondents ought to follow the procedure that has been prescribed under section 64(5)(a). Wherein under the provisions the respondents ought to give notice by enclosing the proposal of modification under section 64(5)(a) to the trustees, to the interest persons and thereafter consider the same. Admittedly the Suo Motu O.A. is filed in the year 2000, the trustees and interested persons were issued notice. The trustees and interested persons vehemently objected to the proposed amendments and were waiting for hearing of the case. But after lapse of 17 years the respondents have passed an order of “modified draft scheme”. There is no proper notice before issuing the modified draft scheme, since the same was issued after a lapse of 17 years. Moreover, the earlier notice cannot be considered as notice at all, when the order is passed after the lapse of 17 years. Interestingly a specific plea was raised by the learned counsel appearing for the writ petitioner in W.P.(MD)No.19081 of 2023 that all the 15

respondents / parties are being represented by only one Advocate. In the said 15 respondents most of them would have died because the said petition was filed in the year 2000 and the impugned order was passed in the year 2017. Hence it ought to be construed that there was no proper notice to any of the parties. On perusing the said order, it is seen that there are 15 respondents, the said advocate was engaged by the Fit Person / Joint Commissioner. But it is seen from the order that the said Advocate is representing the Fit Person as well as the contesting private parties. When the private parties are contesting the case vehemently that too the case is being contested against the appointment of Fit Person / Executive Officer, the same Advocate representing the rival contesting parties, would amount to mockery of justice. Hence this Court is of the considered opinion that the entire proceeding is a mockery, the impugned order is passed without notice to the contesting parties, hence it is violative of principles of natural justice.

17. Since this Court has held that there is violative of principles of natural justice, consequently, the plea of the respondents that the writ petition is not maintainable when alternative statutory appellate remedy is available to the petitioner is also rejected.

18. The next contention that was raised by the petitioner is that under Rule 2 of the Framing of Scheme Rules (G.O.Ms.No.4851 Revenue dated 26.11.1960), the Joint Commissioner ought to state the reasons for believe for changing the scheme. On perusing the modified draft scheme, the reason for modification, it is stated that the Joint Commissioner is satisfied that in the interest of better administration of above petitions, modification is necessary. Simply verbatim extraction of the provisions is not sufficient for exercising the said power. Absolutely there are no reasons stated in the modified draft order, hence this Court is inclined to interfere in the impugned order.

19. The next contention of the petitioner is that Rule 8 states under what circumstances the scheme can be modified and the respondents have not stated under what circumstances the present modification was proposed. In order to consider this contention, the Rule 8 is extracted hereunder:

> ***"8.*** *(1) The powers of the Joint/Deputy Commissioner under section 64(5)(a) or the Commissioner under section 65(4)(a), respectively, to modify or to cancel a scheme settled or deemed to have been settled by a Court, shall be subject to the condition that the Joint/Deputy Commissioner or the Commissioner, as the case may be shall satisfy himself that such modification or cancellation is necessary under all or any of the following circumstances, namely:-*
>
> *1. Where the provisions already contained in the scheme could not be worked out properly in the interests of the institution concerned.*

2. Where the provisions though ordinarily precise and complete had become under altered circumstances unsuitable to carry out the intentions and objects of the provisions.

3. Where a scheme framed by the Court itself had in like manner become unsuitable for the purpose.

4. Where it is necessary to provide sufficient safeguards for the protection of the properties of the institutions and for realisation of the income therefrom.

5. Where it is felt necessary to eliminate or minimise the difficulties which may arise in the matter of nomination or election of trustee or trustees or other procedure, if any, contemplated in such scheme."

Since the present application is a Suo Motu Original Application, then the burden is on the respondents to state under which sub clause under Rule 8 the present modification arises. But the impugned order is silent. The 1st and 2nd respondent have not filed any counter and hence it ought to be taken that the present case is not coming under any of the aforesaid five categories. The 3rd respondent had filed counter but has not stated anything regarding Rule 8. Moreover, he is not the appropriate authority to state, infact he is holding the post as Executive Officer based on the impugned order and hence, he is an interest party. Therefore, this Court necessarily have to come to the conclusion that the very basis of the modification is not in accordance to Rule 8. The respondents have acted beyond the circumstances granted with Rule 8, which is without any jurisdiction.

20. Further the enquiry contemplated under chapter V and VI ought to be conducted as stated under Section 110, wherein it is stated that the authority ought to act Judicially and ought to follow Civil Procedure Code. The enquiry under section 64 comes under chapter V. In short, the Joint Commissioner ought to have conducted Trial, call for evidence, witness etc. before passing any order under section 64. In the present case, no documents marked, no evidence recorded. On a bare reading of the impugned order, it would be evident that the order is passed arbitrarily without any evidence, by merely extracting the provisions of law.

21. For the reasons stated supra, this Court is of the considered opinion that the very Suo Motu application in O.A.No.11 of 2000 itself is without jurisdiction, illegal, mockery of justice and the same is liable to be stuck of. Accordingly, the Suo Motu application in O.A.No.11 of 2000 is stuck of, consequently the impugned orders dated 10.03.2017 and 19.06.2017 are quashed. The writ petition in W.P.(MD)No.16453 of 2017 is allowed.

22. As far as the writ petition in W.P.(MD) No.19081 of 2023 is concerned, the Deputy Commissioner have already submitted a report in Na.Ka.

No.6285/2022/Aa1 dated 02.03.2023 recommending to appoint A.Manikkam son of K.S.Ethiraj Chettiar, A.Venkatesh Kumar son of K.B.Veluchami, V.Arunachalam son of K.B.Veluchami and all the three persons belong to the Vanniyar Vysya Community. Therefore, the Commissioner HR&CE shall take the same on file and issue orders appointing them as trustees within a period of four weeks from the date of receipt of this order. Hence the W.P.(MD) No.19081 of 2023 is allowed. No costs and consequently all the Miscellaneous are closed.

23. Before parting with this judgment, this Court appreciates the 7th respondent who has placed the details of Puttu Thiruvilaiyadal and the brief history of the litigation.

28.12.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Sml
To

1.The Commissioner,
Hindu Religious and Charitable
Endowment Department,
No.19, Uthamar Gandhi Salai,
Nungambakkam, Chennai-600 034.

2.The Joint Commissioner,
Hindu Religious & Charitable
Endowment Department,
Madurai District, Madurai.

S.SRIMATHY, J.

Sml

W.P.(MD).Nos.19081 & 16453 of 2023

28.12.2023