BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.09.2023

PRONOUNCED ON :01.12.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.20194 and 20384 of 2023

and

W.M.P.(MD)Nos.16663, 16666 and 16821 to 16823 of 2023

W.P.(MD)No.20194 of 2023

Sri La Sri Harihara Sri Gnanasambanda
Desika Paramachaariya Swamigal
Hereditary Trustee,
Arulmigu Agneeswara Swamy Temple,
Kanjanoor, Thiruvidaimaruthur Taluk,
Thanjavur District. ...Petitioner

.Vs.

1.The Commissioner,
Hindu Religious & Charitable Endowment,
Chennai.

2.The Joint Commissioner,
Hindu Religious & Charitable Endowment,
Mayiladuthurai.

3.C.Ganesh Kumar,
Executive Officer,
Nageswarasamy Thirukovil,
Kumbakonam. ...Respondents

PRAYER: This Writ Petition is filed for Writ of Certiorari, to call for the records of the impugned order passed by the first respondent in Na.Ka.No. 41420/2023/L3 dated 08.08.2023 and quash the same.

For Petitioners	: Mr.N.Anantha Padmanabhan, Senior Counsel, For R.M.Arun Swaminathan
For R-1 & R-2	: Mr.Veerakathiravan, Additional Advocate General, Assisted by Mr.S.P.Maharajan, Special Government Pleader
For R-3	: Mr.V.Chandra Sekar

W.P.(MD)No.20384 of 2023

Sri La Sri Harihara Sri Gnanasambanda
Desika Paramachaariya Swamigal
Hereditary Trustee,
Arulmigu Agneeswara Swamy Temple,
Kanjanoor, Thiruvidaimaruthur Taluk,
Thanjavur District. ...Petitioner

.Vs.

The Commissioner,
Hindu Religious & Charitable Endowment,
Chennai. ...Respondent

PRAYER: This Writ Petition is filed for Writ of Certiorari, to call for the records of the impugned order passed by the respondent in Na.Ka.No. 74600/2021-181/U3 dated 25.01.2022 and quash the same.

For Petitioner : Mr.N.Anantha Padmanabhan,
Senior Counsel,
For R.M.Arun Swaminathan

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

ORDER

The writ petition in W.P.(MD)No.20194 of 2023 was filed for Writ of Certiorari to quash the impugned order dated 08.08.2023, which was passed appointing the Executive Officer. The writ petition in W.P.(MD)No.20384 of 2023 was filed for Writ of Certiorari to quash the impugned order dated 25.01.2022, which is passed by including five sub temples along with the petitioner's Adheenam Mutt.

2. The brief facts as stated in the affidavit is that Madurai Adheenam is the oldest Saivite Adheenam, an active Centre of Saiva Siddhanta Philosophy, a form of Hindu Monastery in South India. It was established 1300 years ago and it was rejuvenated by Arulmigu Thirugnana Sambanthar. The present pontiff is 293rd pontiff and its coronation ceremony took place on 23.08.2021. The Mutt also administers four temples in Thanjavur District and Tiruvarur District, namely Agniswarar Temple, Kanjaur, Sakshinatheswarar Temple,

Thiruppurambiyam, Kaichinam Kaichineswarar Temple and Pannakaparanar Temple. Arulmigh Agniswaraswami Temple belongs to Madurai Thirugnana Sambandar Adheenam and for better administration of the temple, the District Court, Thanjavur West framed a Scheme in O.S.No.18 of 1939. Subsequently, the Deputy Commissioner, Thanjavur has modified the scheme of administration of the subject temple and its endowments in P.A.No.09/1965 dated 27.07.1965. Thereafter, the temple was administered based on the said scheme. Based on the scheme the respondent ought to appoint an Executive Officer who has to administer the temple along with the petitioner. In order to implement the scheme, the first respondent had appointed the third respondent as Executive Officer of the temple vide proceedings, dated 08.08.2023, which was received by the petitioner on 16.08.2023. But the contention of the petitioner is that the third respondent has not followed the scheme and not acted as per the scheme. Under Clause 3, a panel of three candidates shall be sent by the commissioner to the Hereditary Trustee and the Hereditary Trustee shall choose anyone from the panel. As per the said clause the selected person, the third respondent herein, ought to inform his joining to the petitioner before joining duty. Under sub clause (iv) of clause 3, before joining the duty, the candidates shall furnish the security as required under the relevant rules. Moreover, under the same clause of the modified scheme, the petitioner alone is vested with the rights to manage the temple. The Executive Officer is duty bound to assist the Hereditary Trustee in day-to-day administration of the temple and its properties and should collect the rents, conduct the festivals, and protect the jewels and lands of the temple.

3. Further the 3rd respondent before joining as Executive Officer should furnish security bond in the name of the Governor of Tamil Nadu under Furnishing of Securities by Officers and Servant Rules (G.O.No.4055/Revenue dated 26.09.1961). The above rule and scheme were informed to the 3rd respondent before joining the duty as Executive Officer, but he has neglected the same. The 3rd respondent himself is the servant to the temple and the petitioner is the Hereditary Trustee, but without appearing before the Hereditary Trustee, without furnishing the security bond to the petitioner has violated the scheme. Further the third respondent refused to hear the advises of the petitioner. As per the said scheme, the Executive Officer shall carry out the lawful directions of the Hereditary Trustee and the Hereditary Trustee has power to appoint any servants to the temple. The petitioner was appointed as Pontiff of Madurai Atheenam on 23.08.2021 and the same was approved by the Department. On assuming the charge, the petitioner came to understand that for the past several years, to be precise since 1989 the Executive Officer was not appointed as stipulated by the scheme. The purpose of the appointment of Executive Officer is to assist the Hereditary Trustee in all matters in accordance

with the scheme and modified scheme and the duties of the Executive Officer is prescribed in the scheme. Since 11.07.2022, without Executive Officer, the temple was running smoothly with the assistance of the temple staffs likely Manager, Superintendent and other staffs. Therefore, it is not necessary for appointment of Executive Officer to the temple, hence the petitioner has filed an application on 18.07.2022 to modify the scheme under section 64(5) of the Act and the said application was not taken for hearing. For the past several years, the in-charge Executive Officer (temporary Executive Officers) did not fulfill the object of the scheme. Moreover, the temporary Executive Officers are holding charges as Executive Officers of several temples and in some temples, they are appointed as Fit Persons as well. In the present case the 3rd respondent is holding the post of Executive Officer and Fit person in several temples. The government pays huge amount as salary to the temporary Executive Officers but there is no benefit either to the government or to the temple. Hence the petitioner has filed a Writ Petition to quash the appointment of Executive Officer.

4. The 3rd respondent had filed counter affidavit stating that the Pontiff of Mutt has gone to the extent of preventing the Department from exercising the right of management of the temple by filing this Writ Petition. The petitioner has to act in accordance to scheme settled for the temple and as per the scheme,

the Executive Officer is responsible for the collection of income and dues to the temple, but for the reasons best known to petitioner and agents, the temple has not maintained in good status. Normally the temple has two accounts, one operated by the Trustee which is called the 1st account and the 2nd account only operated by the Executive Officer. This arrangement is in vogue almost in all temples, only to have control over the disbursements and to have direct control over the investments. Strangely, the petitioner temple is not having second account and the petitioner on his own could issue cheques of his choice without any restrictions. The entire account is operated only by the petitioner on his own, forgetting the fact that the property of the temple are the properties of the God and the Executive Officer and the petitioner are answerable to the public. This piece of conduct clearly establishes that the petitioner is not ready and willing to have Executive Officer from Hindu Religious and Charitable Endowments department. In order to prevent the Executive Officer to have control over the administration including collection of income and dues in accordance with the scheme, the present Writ Petition has been filed. The Superintendent of the temple had addressed a communication to the Executive Officer which would go to the root of matter and the intention of the petitioner. As far as Tamil Nadu is concerned, all the temples are public temples and as per section 1(3) of Hindu Religious and Charitable Endowment Act, 1959, the provisions of the Act could be extended to all the religious institutions and as per law, the petitioner cannot eliminate the Department and cannot act against the provisions of the Act. The Pontiff of the Mutt is only a Hereditary Trustee and as per section 62 of HR & CE Act, the trustee shall keep regular accounts of receipts of “pathakanikkai” (gift of property or money made to him as the head of the math) and shall be entitled to spend only in accordance with customs and usage of institutions and the Hereditary Trustee has no unfettered right in the management of the temple and its properties. The provisions of Act are supreme and only to exercise the powers contemplated under the Act, the scheme provides for appointment of Executive Officer. But the petitioner intention is to prevent the Department from discharging its duties. The petitioner before taking charge as Trustee and Pontiff, the Archanai and Akalvilakku sale shops were auctioned and the amount was deposited in the Temple Bank Account. Subsequent to the taking over charge, the then superintendent Mr.Muthukumar and 3 other temple employees had failed to conduct auction inspite of permission from the Department to conduct auction. However, they started collecting money at the rate of Rs.1000/- (Rupees One Thousand only) per day from the respective shops on daily basis and had not accounted the same and the amount is not traceable. The malpractice was found out by the then Executive Officer namely Krishnakumar and an FIR was lodged before Thiruppanandal Police Station. This temple being Sukkaran Sthalam attracts huge devotees and the income is on the other higher side and there is no drinking water facility as directed by the Department and other irregularities narrated in subsequent paragraphs. Hence the petitioner develops the animosity against the Executive Officer and the following irregularity was extracted found:

> *(i) There is no second account opened in the name of the temple for the operation of the Executive officer which is totally against the scheme.*
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> *(ii) The amounts in the fixed deposits are closed indiscriminately without getting any sanction from the department.*
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> *(iii) For the safety of the devotees no CCTV is fixed in the temple even after due instructions.*
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> *(iv) For the benefit of the general public viz., the devotees no rest room facility is provided in the temple.*
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> *(v) Kosalai is not being maintained by the temple.*
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> *(vi) The properties of the temple have not been uploaded in the website of the department and the valuables have not been accounted for the reasons best known to the petitioner.*
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> *(vii) Almost in all temples under control of the department income and dues are received only through online receipts but in Kanjanoor temple the agents of the petitioner are receiving income by putting manual receipts.*
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> *(viii) The uploading of details of the properties and income of the temples has not been uploaded in the integrated monitoring system so far.*
>
> *(ix) No auction is being conducted by the petitioner for the stalls and the stalls are being given to persons of the petitioner's choice and thereby the income of the temple is being siphoned off by those persons.*

5. If the Executive Officer is allowed to perform duty in accordance with the directives of the Department, then the truth will come out. The petitioner is

not ready and willing to abide by the directives. The agents of the petitioner are having custody of all documents and the documents were not audited by the reasons best known to the petitioner. The petitioner apprehends action from the Department, hence approached this Court with evil designs in mind or fall prey to the machinations of his agents. The Executive Officers are appointed only through TNPSC and they are the servants of Tamil Nadu Government and are governed by Tamil Nadu State Government Servants (Conditions of Services) Rules. Even at the time of appointment, the 3rd respondent had executed a bond in favour of the commissioner HR & CE along with the security. The 3rd respondent is a servant of the State Government and not a servant of the petitioner and the petitioner Mutt is not paying any salary or renumeration or any other emoluments and not providing vehicles or any allowances whatsoever in any manner. Hence, the petitioner cannot demand security from the 3rd respondent. Further the allegation that since 11.07.2022, without Executive Officer, the temple is moved smoothly could be tested only by appointing a suitable authority in the cadre of Revenue Divisional Officer and also an audit to enquire into the style of functioning of the so called staffs of the Mutt and also regarding the funds of the institution. Even then the Act is supreme and all the temples should be managed or administered only in accordance to the Act and not at the whims and fancies of the trustees. The person appointed as Executive Officer has to execute the security in favour of the Governor of Tamil

Nadu, i.e., the security amount is to be paid to the Government and as a matter of fact every order of appointment of Executive Officers is made with a direction to pay in favour of the Commissioner, HR&CE. The 3rd respondent being appointed as Grade-III Officer was directed to pay Rs.1000/- (Rupees One Thousand only) as security and the same is paid by the 3rd respondent. It is further submitted that the payment of security amount by the EO is the concern of the government. The petitioner has relied on Rule 6 of the Furnishing of Security by Officers which is framed under the powers granted in Section 116 of the Act and the contention of the petitioner would clearly proves the fact that it is misinterpretation of Rules. A mere reading and perusal of 116 of the HR & CE Act and the Rules especially Rules 2, 3 and 5 would clearly reveal the object of framing the rules. The rule does not specify that the payment of security amount is subjective satisfactions of the Trustees. The Executive Officers are appointed in the temples belonging to the Mutts and Endowments only in the interest of the deity in order to safeguard the income and property of the temple from malpractices and misadministration or maladministration. If the contention of the petitioner is allowed, it would definitely affect the interest of the revenue and income of the temple, which is mainly derived by the offerings made by the General Public. The contentions of the petitioner are based on ill motive. The allegations in the affidavit clearly reveals the petitioner is not interested in the affairs of the institution and the petitioner is only to help the so called staffs and his close associates. All is not going well in the temple and if the Executive Officer started exercising his powers, then only the administration will be in tune with the provisions of the Act and the funds of institution could be safeguarded and invested as per the guidelines in force. The petitioner had filed an affidavit alleging that the third respondent has taken the offering in the Hundial and taken away. The third respondent denied such allegations by filing additional counter affidavit stating that the third respondent has taken the collections and has kept in safe custody in Nageswaran Thirukovil where he holding as additional charge. Therefore, the 3rd respondent prayed to dismiss the Writ Petition.

6. Heard Mr.N.Anantha Padmanabhan, the Learned Senior Counsel for Mr.R.M.Arun Swaminathan appearing for the petitioner and Mr.Veera Kathiravan, the Learned Additional Advocate General, assisted by Mr.S.P.Maharajan, the Learned Special Government Pleader appearing for the respondents 1 and 2 and Mr.V.Chandrasekar, Learned Counsel appearing for the 3rd respondent in W.P.(MD)No.20194 of 2023 and Mr.S.P.Maharajan, learned Special Government Pleader appearing for the respondent in W.P.(MD)No. 20384 of 2023 and perused the materials available on record.

7. In order to administer Arulmigu Agneeswara Swamy Temple, Kanjanoor, Thiruvidaimaruthur Taluk initially a scheme was settled in O.S.No. 18 of 1939 on the file of the District Court, West Thanjavur, wherein the Kattalai Thambiran was granted the power of administration. After the enactment of the Hindu Religious & Charitable Endowments Act 1959 (Madras Act 22 of 1959), the Commissioner of HR & CE had filed an application under section 65(5) in P.A.No.9/1965, wherein the scheme was modified on 27.07.1965 and in the modified scheme the day-to-day administration ought to be carried out by the Executive Office. In order to consider the issues raised in this writ petition, it is pertinent to refer the modified scheme and the same is extracted hereunder:

> *"1) This scheme shall come into force from the date of this order. In this Scheme, if not inconsistent with the context, the act means the Madras Hindu Religions and charitable Endowments Act, 1959 (Madras Act 22 of 1959) and all other words and impression used shall have the respective meaning assigned to given by this Act.*
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> *2) The administration of the affairs of Sri Agneeswaraswamy Temple, Kanjanur, Kumbakonam Taluk, Thanjavur District and all the properties movable and immovable which belong to or have been or may hereafter be given, dedicated or endorsed thereto, shall, subject to the provisions of the scheme vest heriditarily in the Adheenakarthar (Madathipathi) for the time being of Sri.Thirugnanasambanda swamigal Adheenan, South Avani Moola Street, Madurai.*
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> *3) A panel of three candidates possessing qualified persons prescribed*

under the Act shall be sent by the Commissioner to the Hereditary Trustee who will select one among them and intimate the fact to the commissioner who will pass orders appointing the candidate chosen by the Hereditary Trustee as Executive Officer of the temple. The Salary allowance and other conditions of service of the Executive Officer shall be regulated by the rules framed under the Act. The Executive officer shall before joining the duty furnish such security as required under the rules framed under the Act.

*4) The Executive Officer shall **assist the Hereditary Trustee in the day-to-day administration of the temple and its properties**.*

*5) The Executive Officer, shall collect or receive lease rentals and other incomes and dues to the temple and make disbursements on behalf of the temple, in accordance with Budget and **under the orders of the Hereditary Trustee**.*

*6) The conduct of the festivals, the regulation of expenses, the consideration of repairs to building, lands, Jewellery and paraphernalia preparation of the temple shall be decided upon and conducted by the Hereditary Trustee and **the Executive Officer shall carry out all the lawful directions of the Hereditary Trustee in this behalf**.*

7) The Executive Officer shall maintain regular and proper accounts of all receipts and disbursement supported by proper vouchers. He shall not retain with him at any time temple funds exceeding Rs.250/- (Rupees Two hundred and fifty) only and all monies in excess of Rs.250/- shall be lodged in the Post Office Savings Bank or any other bank approved under the rules framed under the Act in the name of the temple. The Hereditary Trustee shall have the power to operate on the Bank accounts.

8) a) The Hereditary Trustee may appoint a Kattalai Thambiran or any other person is his agent on a salary not exceeding Rs.50/- per mansem to be disbursed out of the temple funds. It shall be open to the Hereditary

Trustee to empower such Kattalai Thambiran or agent to have custody of the duplicate keys of the safe room or Iron safe in which the jewels are kept with reference to clause is of this scheme, and the discharge such functions and duties as may be assigned to him by the Hereditary Trustee, which do not clash with the powers and duties of the Executive Officer under this scheme.

8) b) The Hereditary Trustee shall have the power to appoint all the other servants of the temple to fine, suspend, remove or dismiss any such servant of the temple for good and sufficient cause. An enquiry shall proceed every order imposing any substantive punishment other than find or any office Holder or servant of the temple as laid down in the rules framed under the Act.

8) c) Any servant or office holder, punished by an order of the Hereditary Trustee under clause a(b) may appeal against that order to the Deputy commissioner within one month and in the case of servants further appeal shall lie to the commissioner within the time specified-under the Act.

9) The Hereditary Trustee shall be responsible for timely submission of Budgets, return and reports under the provisions of the Act and the rules framed thereunder.

10) The Hereditary Trustee shall represent the Temple in all proceedings before Courts or before the commissioner and the Deputy Commissioner provided that it shall be open to the Hereditary Trustees to authorize the Executive officer in this behalf in cases of emergency.

11) The Hereditary Trustee shall not lend or borrow on behalf of the temple either on pro-notes or on securities of the temple properties or pledge or lend any movable of the temple or negotiate or part with valuable securities of the temple without the prior approval of the Commissioner.

12) The immovable properties of the temple shall be leased in accordance with the rules framed under the Act by the Hereditary Trustee the lease deeds and rental deeds shall be executed in favour of the Hereditary Trustee in the name of the temple.

13) The jewels and other costly articles of the temple not required for daily use shall be secured in the safe room in an Iron Safe within the temple precincts of the temple and shall be secured by double locks, the keys of one of which shall be with the Hereditary Trustee or his agent and those of the other with the Executive officer. The jewels and valuables required for daily use and other movables shall be in the custody of the Executive officer.

14) If any difficulty, doubt or dispute arises either in the interpretation of any of the provisions of the scheme or in giving effect to any of the provisions, the matter shall be referred to the Commissioner, whose decision shall be final.

15) Save in so far as is expressly provided herein the provisions of the Act and the Rules made thereunder shall apply to the temple and its endowments."

8. The petitioner submitted that in the modified scheme the duties of the Executive Officer may be summarized as under:

"a. He shall assist the Hereditary Trustee in day-to-day administration of the temple and the properties.
b. He shall collect the lease, rentals and other dues to the temple.
c. He has to prepare the budget under the order of Hereditary Trustee.
d. He has to assist to conduct every festivals, regulate the expenses, repair the buildings, protect the jewels and paraphernalia of the temple

under the directions of the Hereditary Trustee.
e. He shall maintain regular accounts and disburse the amounts etc.
f. The Hereditary Trustee has the power to operate the bank accounts.
g. The Jewels and valuables of the daily use shall be in the custody of the Executive Officer.
h. As per the dictations and directions of the Hereditary Trustee, the Executive Officer has to execute the day-to-day administration."

9. Under Clause 4 of the modified scheme, the Executive Officer ought to "assist the Hereditary Trustee in the day-to-day administration of the temple and its affairs of the temple". In the present case it is seen that the Executive Officer is not the "Exclusive Executive Officer" or "Permanent Executive Officer", but an in-charge officer appointed for the temple. Especially the present Executive Officer, the 3rd respondent herein, is the Executive Officer for Nageswaran Thirukovil, this is evident from the additional affidavit of the 3rd respondent. The 3rd respondent is having additional charge of the petitioner's temple namely, Arulmigu Agneeswaraswamy temple. It is also seen that the 3rd respondent is assigned with additional charge as Executive Officer for the following Grade II Temples:

1. *Arulmigu Gowthameswarar Thirukovil, Kumbakonam Nagar*
2. *Arulmigu Bhavath Vinayagar Thirukovil, Madathu Street, Kumbakonam Nagar*
3. *Arulmigu Kasi Viswanathar Thirukovil, Kumbakonam Nagar*
4. *Arulmigu Sodasee Mahalingaswamy Thirukovil, Kumbakonam Nagar*
5. *Arulmigu Draupathi Amman Thirukovil, Kumbakonam Nagar*
6. *Arulmigu Yanaiadi Ayyanar Thirukovil, TSR Road, Kumbakonam Nagar*

7. *Arulmigu Meenakshi Sundareswarar Thirukovil, Kumbakonam Nagar*
8. *Arulmigu Kalahasthivarer Thirukovil, Kumbakonam Nagar*
9. *Arulmigu Sundareswarar Thirukovil, Koranattukaruppur, Kumbakonam Taluk*
10. *Arulmigu Petti Kaliamman Thirukovil, Koranattukaruppur, Kumbakonam Taluk*
11. *Arulmigu Viswanathaswamy Thirukovil, Thiruvisainallur Kumbakonam Nagar*
12. *Arulmigu Karkadeswarar Thirukovil, Thiruthevankudi, Kumbakonam Taluk*
13. *Arulmigu Vinayargar Thirukovil, Vappaththur, Thiruvidaimaruthur Taluk*

10. Apart from the aforesaid list, the 3rd respondent is appointed as “Fit Person” to some temples and in total the 3rd respondent is handling 36 temples as Executive Officer or Fit Person. As per the scheme the 3rd respondent is appointed to assist the Hereditary Trustee to manage the day-to-day affairs of the temple and its properties. Since the 3rd respondent is handling 36 temples, it is difficulty for the 3rd respondent to spare adequate time to administer the day-to-day administration of the temple and hence the grievance of the petitioner is absolutely right and it ought to be considered.

11. The next contention of the petitioner is that in the modified scheme the entire power is granted to the Executive Officer thereby nullifying the power of the Hereditary Trustee. It is seen as per the scheme the Executive Officer is mandated to receive lease rentals and other incomes and disburse on behalf of the temple in accordance to budget, to conduct festivals, regulate expenses,

consider repairs of building, lands, jewellery etc. Infact all the works ought to be carried out by the Executive Officer and the Hereditary Trustee is not having any power. In order to substantiate the said allegation, the petitioner had relied on the judgment of the Hon'ble Supreme Court in the case of Sri La Sri Subramania Desiga Snanasambanda Padara Sannadhi Vs State of Madras vide judgement dated 08.02.1965 reported in 1965 SCR (2) 934 (1965 AIR 1683). The present petitioner and the petitioner referred in the judgment belongs to same Mutt but different temple. In the said judgment it is seen that the administration power was granted to "Kattalai Thambiran" through the scheme framed in A.S.No.181 of 1917. The Kattalai Thambiran would be appointed by the Hereditary Trustee. After the Madras Hindu Religious and Charitable Endowments Act, 1951 the Commissioner had filed a petition under section 65(3)(a) before Sub Judge, Mayuram for modifying the scheme based on various allegations of mismanagement and full income of the temple not having been secured and safeguarded. However, the Sub Judge had rendered a finding that the allegation of mismanagement is not proved. Aggrieved over, the Government had preferred an appeal in Appeal Suit No.318 of 1954 before High Court of Madras and the scheme was approved for appointing Executive Officer and the powers of Kattalai Thambiran was granted to Executive Officer. Aggrieved over, the Mutt had filed SLP and the Hon'ble Supreme Court after referring to the categorical finding of the Sub Court that the allegation of mismanagement is not proved, had held that the Executive Officer cannot be appointed when the allegation of mismanagement was not proved. And further held that the appointment of Executive Officer is not necessary and had restored the power to the Kattalai Thambiran and the Executive Officer was replaced by Kattalai Thambiran. From the said judgment it is evident that Executive Officer can be appointed if there is mismanagement or for other reasons stated in the Act. Hence this Court proceeds to analyze whether there is any evidence of mismanagement.

12. In the present case the 3rd respondent had filed counter alleging various allegations against the petitioner and one such allegation shall be analyzed. The first allegation against the petitioner is that "there is no second account opened in the name of the temple for the operation of the Executive Officer which is totally against the scheme". It is seen that as per the counter of the 3rd respondent the Executive Officer ought to have opened a second account in the name of the Executive Officer and the same ought to be operated **"only by the Executive Officer**". The Hereditary Trustee cannot open an account in the name of the Executive Officer. When that is so, this Court fails to understand when the previous Executive Officer (not exclusive Executive Officer) namely Mr.Krishnakumar was functioning as Executive Officer and all other executive officers who were appointed prior to him, why they had not

opened the second account and why the present Executive Officer is blaming the petitioner. It is pertinent to state herein that the modified scheme was in existence from 27.07.1965. The earlier temporary Executive Officers had terribly failed to open the 2nd account in the bank and has not acted as per the scheme. But the 3rd respondent alleges the petitioner has not opened the account which is total non-application of mind. Further this Court had already held that the Executive Officer is preoccupied with administration of other temples (since no exclusive Executive Officer was not appointed) and he is not able to devote his time for the administration of the petitioner's temple, hence the present situation arises. Since permanent Executive Officer was not appointed, if the permanent Executive Officer is available, he would have opened the second account in the name of the Executive Officer. By not appointing the permanent Executive Officer, the respondents have not implemented the scheme in its true spirit.

13. The next allegation is that temple has not installed drinking water and has not provided rest room facilities to the devotees. But on perusal of the scheme itself, it is evident that the Executive Officer ought to administer the temple and it is the duty of the Executive Officer to install drinking water and to provide all other facilities. But the 3rd respondent is alleging that the Department had issued direction to provide the facilities and the petitioner had

not followed the directions. The 3rd respondent alleges as if the petitioner has failed to perform his duties. The highlight of the allegation is that for not installing the drinking water and other facility, the 3rd respondent alleges there is mismanagement and tried to convince this Court that the continuing the appointment of Executive Officer is necessary. But as per the scheme the Executive Office ought to administer and duty is cast upon the 3rd respondent as per the scheme and hence this Court is of the considered opinion that the third respondent who had failed in the duty. It is pertinent to mention herein, based on the aforesaid facts it is evident that the "Temporary Executive Officer" or the "In-charge Executive Officer" is the root cause for the mess in the administration and the scheme ceases to work and it has become unworkable scheme.

14. It is seen that the scheme states that the Executive Officer shall assist the Hereditary Trustee in day-to-day administration of the temple and its properties, which means the Executive Officer ought to be available on all working days and at all working hours. Hence appointing an Executive Officer who is already serving in 36 temples would make the present temple administration and the scheme a mockery. Literally there is no administration as per the scheme. It is the specific contention of the petitioner that at times the petitioner ought to wait for several months to complete some of the

administrative work, since the Executive Officer could not spare time for the present temple administration. Based on the above narration of facts, this Court is of the considered opinion that the scheme could not be implemented effectively, hence the scheme has become unimplementable and the administration of the temple is the causality. Under the above circumstances the petitioner had filed a petition dated 18.07.2022 for modify the scheme for effective to administration of the temple, but the same is pending. Therefore, this Court is of the considered opinion that the respondents ought to consider to modify the existing scheme.

15. It is pertinent to state herein that the 3rd respondent alleges that the petitioner Mutt is not carry out the directions of the Executive Officers. In the counter the 3rd respondent had stated that

> *"4. ...in order to **prevent the Executive Officer to have control over the administration** including collection of income and dues in accordance with the scheme, the present Writ Petition has been filed. The Superintendent of the temple had addressed a communication to the EO which would go to the root of matter and the intention of the petitioner."*

The entire counter and additional counter gives an impression that the Executive Officer is the controlling authority of the Mutt. But the scheme is other way round. In each paragraph of the scheme, it is stated that the Executive Officer shall act as per the directions of the Hereditary Trustee. There is a peculiar allegation against the Executive Officer that the present Executive Officer after assuming the office had not intimated to the Hereditary Trustee and had not met the Hereditary Trustee. The reply of the Executive Officer is that it is not necessary to meet the Hereditary Trustee and further states that the staffs of the temple should obey the commands of the Executive Officer. The additional counter affidavit of the 3rd respondent states that the Executive Officer is the controlling authority of the temple and there is no role to the Hereditary Trustee. The counter and the additional counter clearly indicate there is no possibility of coordinated administration of the temple and the Executive Officer claims supremacy of his power. But the scheme states that the Executive Officer shall carry out the directions of the Hereditary Trustee and the Executive Officer is bound by the directions of the Hereditary Trustee.

16. Further the 3rd respondent had filed a counter stating that *"if the Executive Officer is allowed to perform duty in accordance with the directives of the Department, then the truth will come out."* After seeing this portion of the counter, this Court is of the considered opinion that the 3rd respondent is contradicting himself. The scheme is formulated as early as 1965 wherein the Executive Officer was appointed to administer the temple, but the counter states that the Executive Officer was not allowed to perform duty. Which means the Executive Officer has not performed or carry out his duty as Executive Officer

all these years. But the 3rd respondent alleges as if the petitioner had not allowed the Executive Officer to administer the temple all these years, which allegation is unbelievable. Hence this Court is of the considered opinion that the 3rd respondent is alleging the petitioner for the sake of usurping the administration. And also clearly exhibits arrogance and authoritativeness to administer the temple. It is pertinent to state herein that the role of the Executive Officer is to support the temple administration under the Hereditary Trustees or Board of Trustees. But the Executive Officer's counter clearly establish that the Executive Officer is trying to displace the Hereditary Trustee and bring the temple under his control, for which he is seeking the support of HR&CE Department.

17. The 3rd respondent further submitted that the petitioner is not his pay master and hence the 3rd respondent is not the servant of the petitioner. The 3rd respondent further stated that he was appointed through TNPSC recruitment and the Tamil Nadu Government Servants (Conditions of Services) Rules are applicable. The petitioner Mutt is not paying any salary or renumeration or any other emoluments and not providing vehicles or any allowances whatsoever in any manner, hence the 3rd respondent claims that he not the servant of the Mutt. But as per the HR&CE Act the government pay the salary, but the same ought to

be re-imbursed by the temple and the religious institutions. The relevant portion of the provisions are extracted hereunder:

> *"12. Commissioner, etc., to be servants of Government.—(1) The Commissioner, 1[Additional Commissioner], 2[Joint Commissioners], Deputy Commissioners, Assistant Commissioners and other officers and servants including executive officers of religious institutions employed for the purposes of this Act shall be servants of the Government and their salaries, allowances, pensions and other remuneration shall be paid* ***in the first instance*** *out of the Consolidated Fund of the State. The 3[* * *] cost of auditing the accounts of religious institutions shall also be paid in the first instance out of the Consolidated Fund of the State.*
>
> *(2)(a) The Commissioner shall, out of the 4[Tamil Nadu Hindu Religious and Charitable Endowments Administration Fund],* ***repay to the Government sums paid by the Government under sub-section*** *(1).*
>
> *(b) Omitted by Sec. 2 of Tamil Nadu HR & CE Act, 2006 (Tamil Nadu Act 1 of 2006)*
>
> *(c) (i) For the purpose of pension or other remuneration payable to any executive officer serving immediately before the date of the commencement of this Act and retiring on or after that date, the Government may take into account the service of such officer before that date, subject to such conditions as may be prescribed;*
>
> *(ii)* ***The Commissioner may recover from the religious institution concerned also the portion of the pension or other remuneration attributable to the service of such executive officer as is mentioned in***

sub-clause (i) before the date of the commencement of this Act."

The Executive Officer may be a government servant, but his salary including pension are paid by the government **at first instance** and the government thereafter recover the paid amount from the institution where the said officers are appointed. It is pay and recovery concept. It is pertinent to state that right from the Commissioner, Additional Commissioner, Joint Commissioners, Deputy Commissioners, Assistant Commissioners and other officers and servants including executive officers of religious institutions employed for the purposes of this Act, the salary is paid by the religious institutions where they are serving.

18. The next contention of the petitioner is that the Executive Officer should pay the "security deposit" which is quantified based on the income of the temple. But the 3rd respondent in his counter had submitted that as a matter of fact every order of appointment of Executive Officer of the Department is made with a direction that they should pay the security deposit to Commissioner HR&CE. The 3rd respondent being Executive Officer, Grade III had paid the security deposit for Rs.1000/- on 05.10.2018 in the name of the Commissioner HR&CE in Syndicate Bank. On perusal of the relevant rule, it is seen the

Executive Officer is categorized based on the income of the temple and the security deposit ought to be paid based on the classification of the temple. Infact the temple is classified based on the income of the temple. Moreover, it has to be paid in the name of the Governor. The relevant Rule is extracted hereunder:

"Furnishing of Security by Officers and Servants Rules
Published vide Notification No. G. O. No. 4055, Revenue, dated 26th September 1961

Original rules published in Part V of the Fort St. George Gazette, dated 25th October 1961.

S.R.O. No. A-1039 of 1961. *- In exercise of the powers conferred by clause (xvi) of sub-section (2) of section 116 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959), the Governor of Tamil Nadu hereby makes the following Rules, namely:-*

1. Short title. *– These Rules may be called the Furnishing of Security by Officers and Servants Rules.*

2. Executive Officer to furnish security. *– Every Executive Officer appointed either temporarily in the place of any other Executive Officer or otherwise for a religious institution under any of the provisions of the Act or in pursuance of any scheme settled or deemed to be settled* *thereunder shall furnish security and execute a security bond in the name of the Governor of Tamil Nadu:*

Provided that the Government may, on the recommendation of the Commissioner (i) exempt subject to such conditions as the Government may fix, any person appointed or proposed to be appointed as such Executive Officer from furnishing the whole or any part of the security, or (ii) permit any other person to furnish his immovable property as security on behalf of the person appointed or proposed to be appointed as Executive Officer subject to the condition that such other person executes jointly with the person appointed or proposed to be appointed as Executive Officer, a security bond in the name of the Governor of Tamil Nadu.

3. Amount of security to be furnished. *- The amount of security to be furnished by an Executive Officer shall be regulated by the income of the institution to which he is appointed and be at the rate specified in the Appendix.*

4. Period within which security is to be furnished. *- (1) No Executive Officer holding office on the date of the coming into force of these rules, shall continue to hold office, if he does not furnish security before the expiry of three months after these Rules have come into force.*
(2) No person first appointed to any post for which security has to be furnished shall assume office unless he furnishes the security fixed for the post within fifteen days of the receipt of the order of appointment or unless he is exempted under the proviso to rule 2.
(3) When a person holding a post for which he has furnished security is appointed to another post for which the prescribed security is higher than the amount of security already furnished by him or is appointed to

an additional post for which security has been fixed, he shall not continue in the new post if he does not, within three months of his assumption thereof, furnish the required additional security.

5. Government may extend the time for furnishing the security. *- Notwithstanding the provisions of rule 4, the Government may extend the time for furnishing the security or the additional security.*

6. Form of security. *- The security to be furnished by a person may be in the form of-*

(a) cash; or

(b) promissory notes of the State Government or any other State Government or the Union Government or Municipal Debentures or Port Trust bonds; or

(c) stock certificates of the State Government or any other State Government or the Union Government; or

(d) Post Office Savings Bank Deposits; or

(e) Post Office Cash Certificates and National Savings Certificates; or

(f) Deposit receipt of Madras Provincial Cooperative Bank, a Central Co-operative Bank, approved by the Registrar of Cooperative Societies, Chennai, for deposit of the funds of Local Boards and Municipalities or a Scheduled Bank as defined in the Reserve Bank of India Act, 1934 (Central Act 2 of 1934); or

(g) Unencumbered immovable property:

Provided that in the case of Executive Officers not belonging to the Scheduled Caste, the security to be accepted may be in the form of fidelity bond:

Provided further that in the case of an Executive Officer belonging to the Schedules Caste, security shall be accepted in the form of a fidelity bond, if such officer is unable to furnish security in any one of the forms referred to above:

Provided also that the security may, with the previous permission of the Commissioner, be furnished partly in one and partly in another of the forms specified above.

7. The provisions of the Tamil Nadu Financial Code to apply to security. *–*

(1) Where security is furnished in any of the forms mentioned in clauses (b) to (f) of rule 6, the provisions of the Tamil Nadu Financial Code relating to the conditions subject to which such form of security shall be accepted, shall apply to such security.

(2) Where security is furnished in the form of cash, it shall be invested in any of the forms of securities mentioned in rule 6 as the person furnishing securities desires, and the interest derived from such investment shall be paid to him. No interest shall become in any event payable till the security amount is actually invested."

Appendix

Class of Institutions	***Annual income of the Institution***	***Amount of security in any form mentioned in clauses (a) to (f) of rule 6 (Rs.)***	***Value of immovable property, if security is offered under clause (g) of rule 6 (Rs.)***
1	***2***	***3***	***4***
I	*Over Rs. 1,50,000*	*4000*	*8000*
II	*From Rs. 75,001 to Rs. 1,50,000*	*2000*	*4000*
III	*From Rs. 30,001 to Rs.75,000*	*1000*	*2000*
IV	*From Rs. 10,001 to Rs. 30,000*	*500*	*1000*
V	*Less than Rs. 10,000*	*250*	*500*

19. The said Rules is passed under section 116 of the HR&CE Act. Under Rule 3 it has been stated that the security deposit shall be regulated based on the income of the institution to which he is appointed and be at the rate specified in the Appendix. In the Appendix, the amount is fixed based on the income of the institution. Further the rule states that the security deposit ought to be issued in the name of the Governor. In the present case the petitioner had submitted security deposit on 05.10.2018, when the 3rd respondent was appointed for the

first time in some other temple. But in the present temple the 3rd respondent was appointed on 08.08.2023 and the petitioner had not paid the security deposit as per the income of this Temple. Moreover, the security deposit was taken in the name of Commissioner HR&CE, but as per the rule the security deposit ought to be taken in the name of the Governor. Moreover on perusal of the receipt, it is seen such deposit was made for a period of one year only. Whether subsequently it was withdrawn or extended, which is not evident from the papers submitted by the third respondent. Therefore, the security deposit by the 3rd respondent to the tune of Rs.1000/- (Rupees One Thousand only) in the name of the Commissioner on 05.10.2018 is not in accordance to the rules stated supra. Therefore, as per the said rule the third respondent is bound to pay the security deposit in the name of the Governor when he had been appointed in the petitioner temple. Hence, the petitioner has rightly objected for such appointment.

20. The appointment of Executive Officer is elaborately considered in Dr.Subramanian Swamy and another Vs. State of Tamil Nadu and Others reported in 2014 (1) CTC 763 wherein it is held as under:

> *"47. **Even if the management of a temple is taken over to remedy the evil, the management must be handed over to the person concerned immediately after the evil stands remedied. Continuation thereafter would tantamount to usurpation of their proprietary rights or violation***

of the fundamental rights guaranteed by the Constitution in favour of the persons deprived. Therefore, taking over of the management in such circumstances must be for a limited period. Thus, such expropriatory order requires to be considered strictly as it infringes fundamental rights of the citizens and would amount to divesting them of their legitimate rights to manage and administer the temple for an indefinite period. We are of the view that the impugned order is liable to be set aside for failure to prescribe the duration for which it will be in force.

Super-session of rights of administration cannot be of a permanent enduring nature. Its life has to be reasonably fixed so as to be co-terminus with the removal of the consequences of maladministration. The reason is that the objective to take over the management and administration is not the removal and replacement of the existing administration but to rectify and stump out the consequences of maladministration. Power to regulate does not mean power to supersede the administration for indefinite period.

Regulate is defined as to direct; to direct by rule or restriction; to direct or manage according to the certain standards, to restrain or restrict. The word `regulate' is difficult to define as having any precise meaning. It is a word of broad import, having a broad meaning and may be very comprehensive in scope. Thus, it may mean to control or to subject to governing principles. Regulate has different set of meaning and must take its colour from the context in which it is used having regard to the purpose and object of the legislation. The word `regulate' is elastic enough to include issuance of directions etc. (Vide: K. Ramanathan v. State of Tamil Nadu & Anr., AIR 1985 SC 660; and Balmer Lawrie & Company Limited & Ors. Partha Sarathi Sen Roy & Ors., (2013) 8 SCC 345)

48. Even otherwise it is not permissible for the State/Statutory Authorities to supersede the administration by adopting any oblique/circuitous *method. In Sant Lal Gupta & Ors. v. Modern Coop. Group Housing Society Ltd. & Ors., (2010) 13 SCC 336, this Court held:*

"It is a settled proposition of law that what cannot be done directly, is not permissible to be done obliquely, meaning thereby, whatever is prohibited by law to be done, cannot legally be effected by an indirect and circuitous contrivance on the principle of "quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud". An authority cannot be permitted to evade a law by "shift or contrivance"." (See also: Jagir Singh v. Ranbir Singh, AIR 1979 SC 381; A.P. Diary Dev. Corporation federation v. B. Narsimha Reddy & Ors. AIR 2011 SC 3298; and State of Tamil Nadu & Ors. v. K. Shyam Sunder & Ors. AIR 2011 SC 3470).

49. We would also like to bring on the record that various instances whereby acts of mismanagement/maladministration/ misappropriation alleged to have been committed by Podhu Dikshitars have been brought to our notice. We have not gone into those issues since we have come to the conclusion that the power under the Act 1959 for appointment of an Executive Officer could not have been exercised in the absence of any prescription of circumstances/ conditions in which such an appointment may be made. More so, the order of appointment of the Executive Officer does not disclose as for what reasons and under what circumstances his appointment was necessitated. Even otherwise, the order in which no period of its operation is prescribed, is not sustainable being ex facie arbitrary, illegal and unjust."

The aforesaid judgment categorically states that the appointment of Executive Officer perpetually, is against the concept of appointment of Executive Officer stated in the Act and Rules made thereunder.

21. In W.P.(MD)No.21734 of 2023 vide judgment dated 11.09.2023, this Court following the aforesaid judgments had considered the issue of appointing Fit person vide order dated 11.09.2023 and has held as under:

"13. The Learned Counsel appearing for the petitioner submitted that the respondents are appointing Fit person or Executive Officer based on the judgment dated 07.06.2021 of the Hon'ble Division Bench rendered in Suo Moto W.P.No.574 of 2015. Consequently, the Commissioner HR&CE had issued Circular to appoint Fit person or Executive Officer in all the temples. The relevant portion of the said judgement 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.

But the Learned Counsel appearing for the 2nd respondent submitted that the Commissioner had issued such Circular based on the said Judgment, but in the present case the Fit person was appointed was appointed on 08.06.2018, which is prior to the judgment or the Circular stated supra. Be that as it may, it is seen that the respondents are appointing indiscriminately without any basis. The Hon'ble Division Bench had directed to appoint Fit Person or the Executive Officer where ever there is no Trustees. But the respondents are trying to appoint Fit person and Executive Officer by somehow the trustees and the same cannot be entertained.

14. The aforesaid judgments, conclusively in unequivocal terms had laid down:

(i). That the respondents should subjectively satisfy based on the evidence, facts and circumstances of the case that it is necessary to appoint Fit person or Executive Officer for the management of temple.

(ii) That the respondents should issue notice to the existing management before appointing the Fit person or Executive Officer.

(iii) That the respondents shall appoint the Fit person or Executive Officer for the limited period only and the tenure ought to be indicated in the appointment order of Fit person or Executive Officer.

(iv) That the respondents should hand over the management to the temple at the earliest.

(v) That the respondents may appoint Fit person or Executive Officer where ever there are no Trustees

(vi) That the respondents shall not artificially create a situation in order to usurp the management.

15. In the present case, there is no allegation of misappropriation and mismanagement of temple and there is no subjective satisfaction to this effect. The respondents have not issued any prior notice for appointing the Fit person. The respondents have not mentioned any tenure for appointing the Fit person. Therefore, the appointment of Fit person is illegal and the impugned order is quashed.

16. The petitioner is at liberty to file appropriate petition / suit to management the and the same shall be filed within a period of four weeks.

17. With the above observations and directions, this Writ Petition is allowed. There shall be no order as to costs. Consequently, miscellaneous petitions are closed.

18. Before parting with the judgment, this Court is bound to record that *the administration of temples are being carried out by the people. If the same is disturbed then the people would be forced, either to litigate or remain jobless. In either way the Government or the respondents ought to face the same. If litigation then the Courts would be flooded with litigation against the respondents. If to remain jobless then it would be devil's mind, which would be creating ruckus and the Government would be forced to handle the same. Therefore, the Government and respondents ought to show some restrain before appointing Fit person or Executive Officer. They cannot mechanically appoint Fit person or Executive Officer."*

22. The appointment of Executive Officers and Fit Persons were dealt with in the following judgments, wherein it has been held that they cannot be appointed perpetually:

a. W.P.(MD)No.20915 of 2013 dated 30.09.2015 in Arulmigu Angala Eswari Amman Temple Vs. Commissioner

b. N.Sivasubramanian Vs. Government of Tamil Nadu reported in 2006 (2) CTC 49

c. Arulmigu Athanoorammal Podarayasamy Vs. Assistant Commissioner HR & CE (Admn) Department reported in CDJ 2012 MHC 3783

d. R.R. Thirupathy and others Vs. Commissioner Hindu Religious and Charitable Endowment reported in (2015) 3 LW 106

e. H.H.Sankarachari Seamigal Kanchi Kamakodi Peetam Vs. Government of Tamil Nadu in W.P.No.23096 of 2013 dated 12.02.2020

f. Sri Ram Samaj Vs. Commissioner HR & CE reported in 2022 (4)

MLJ 449

e. Solaimuthuraja Vs. Commissioner HR & CE reported in 2010 (2) CTC 289

f. R.Shanmugasundram Vs. Commissioner of HR & CE (1991 2 MLJ 582)

g. W.P.(MD)No.22398 of 2023 and this Court vide order dated 13.09.2023

h. W.P.(MD) No.13749 of 2014 vide order dated 21.09.2023

i.W.P.(MD) No.15234 of 2023 vide order dated 11.09.2023

j. W.P.(MD) No.20349 of 2023 vide order dated 03.11.2023

23. From the judgments cited supra it would be evident that the Executive Officer and Fit Person cannot be appointed beyond the period of five years at time. Even under Rule 3 of the Conditions for Appointment of Executive Officers Rules, 2015 it has been stated

> *“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."*

In the present case the Executive Officer is appointment based on the scheme. Even in scheme the Executive Officer cannot be appointed beyond a period five years, since the scheme is framed by alleging mismanagement. Once the allegation of evils of mismanagement etc. stands remedied or the mischief is set right, then the management ought to be handed over to the Hereditary Trustee or the Board of Trustees only. In the present case by appointing temporary Executive Officer, the respondents have not only acted against the scheme, but is clearly interfering with the right to manage the temple guaranteed under the constitution and tantamount to usurpation of their proprietary rights and it is violation of the fundamental rights guaranteed by the Constitution in favour of the petitioner.

24. At this juncture the Learned Counsel appearing for the 3rd respondent had stated that under the guise of receiving "pathakanikkai", the petitioner is receiving lease amount which is huge and the same is not accounted. The word "pathakanikkai" means gift of property or money given to the Head of the Mutt. In the present case the administration of temple is questioned and not the administration of the Mutt. The 3rd respondent either is confused or is deliberately confusing the Court. Even otherwise the Head of the Mutt is entitled to receive gifts as property or money offered by the devotees. HR&CE Act is not prohibiting such gifts offered to the Head of the Mutt. Infact such legislation cannot be made and if made it would be clear interference in the

individual rights and constitutional rights. The 3rd respondent had filed a counter wherein it is stated that the "amount shall be entitled to spend only in accordance with customs and usage of institutions". When the 3rd respondent had admitted it can be spend as per customs and usage of institutions, then the 3rd respondent has not right to interfere in the customs and usage. If the Executive Officer is allowed to interfere in the customs and usage, then the same would amount to violation of the fundamental rights guaranteed by the Constitution. However, the petitioner cannot receive the lease amount under the guise of "pathakanikkai". Therefore, in order to have good administration the following directions are issued:

a. The petitioner shall maintain transparency in the administration and shall maintain all records properly

b. All monetary transactions shall be through bank accounts, including collecting lease amount from the lessees. The lessees shall be directed to make the payment in the bank account of the petitioner.

c. The lease agreements shall be executed for five years and shall be registered.

d. The lease shall be renewed periodically with increased lease amount as agreeable to parties and as per the guidelines issued from time to time.

e. The petitioner shall maintain separate account for "pathakanikkai" and other income like lease etc.

f. The petitioner shall provide all mandatory facilities like drinking water etc. to the devotees.

In short, the petitioner shall adhere to the basic and core principles of the Mutt and shall administer without any room for any allegations.

25. For the reasons stated supra the impugned order dated 08.08.2023 appointing the Executive Officer is quashed. The petitioner had filed an application dated 18.07.2022 under section 64(5) of HR & CE Act to modify the scheme and the said application shall be considered by taking into account the judgment rendered in Sri La Sri Subramania Desiga Snanasambanda Padara Sannadhi Vs State of Madras vide judgement dated 08.02.1965 reported in 1965 SCR (2) 934 (1965 AIR 1683) and other judgments rendered in this issue and pass appropriate orders within a period of six months from the date of receipt of the copy of this order. Therefore, until the modification petition is considered, the administration shall be carried out by the petitioner.

26. As far as the prayer in W.P.(MD)No.20384 of 2023 is concerned the petitioner is directed to maintain the sub temples and a separate account shall be maintained for its income and expenses.

27. With these observations and directions, the writ petition in W.P.(MD)No.20194 of 2023 is allowed and W.P.(MD)No.20384 of 2023 is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

01.12.2023

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

1.The Commissioner,
Hindu Religious & Charitable Endowment,
Chennai.

2.The Joint Commissioner,
Hindu Religious & Charitable Endowment,
Mayiladuthurai.

S.SRIMATHY, J.

Sml

W.P.(MD).Nos.20194 and 20384 of 2023

01.12.2023