



**W.P.(MD).Nos.14793 of 2018, 15460,
22593 of 2019, 830 and 834 of 2021**

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.12.2023

PRONOUNED ON : 28.12.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.14793 of 2018, 15460, 22593 of 2019, 830 and 834 of 2021

and

**W.M.P.(MD)Nos.13349, 13350 of 2018, 12099 to 12101, 22484 of 2019, 696
and 698 of 2021**

W.P.(MD).No.14793 of 2018:

M.Arunachalam

... Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable Endowments
Department,
Uthamar Gandhi Salai,
Nungampakkam, Chennai.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowments
Department,
Sivagangai, Sivagangai District.



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3.The Assistant Commissioner,
Hindu Religious and Charitable Endowments
Department,
Paramakudi.

4.The Executive Officer,
Arulmigu Koppdaiya Nayagi Amman
Temple, Karaikudi,
Sivagangai District.

5.M.Palaniappan

6.S.Ramalingam

7.A.Meyyappan

8.S.Manivannan

9.M.Arumugam

10.R.Govindan

11.R.Ramasamy

12.L.Illancheliyan

... Respondents

***(R5 is impleaded vide Court order dated
13.08.2018 in WMP(MD)No.15713 of 2018)***

***(R6 to R12 are impleaded vide Court order
dated 24.03.2022 in WMP(MD)No.15690 of
2018 in WP(MD)No.14793 of 2018)***

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Mandamus***, directing the respondent No.2 to appoint the non - hereditary trustees of the Board of Trustees of Arulmigu Koppudaiya Nayagi Amman Temple, Karaikudi, under the Clause 3 of the



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Scheme framed by this Court in Appeal Nos.116 of 1956 and 117 of 1956 dated 24.12.1959 within time stipulated by this Court.

For Petitioner	: Mr.N.Anandha Padmanabhan Senior Counsel for Mr.R.M.Arun Swaminathan
For R1 to 3	: Mr.S.P.Maharajan Special Government Pleader
For R4	: Mr.R.Shankarganesh
For R5	: Mr.V.Sasikumar
For R6 to 12	: Mr.S.Madhavan

W.P.(MD).No.15460 of 2019:

Arulmigu Koppudayamman Temple,
represented by its life trustee,
M.Arunachalam
AR.A House,
39,AR.A.Street, Karaikudi,
Sivagangai District.

... Petitioner

Vs.

- 1.The Commissioner,
Hindu Religious and Charitable Endowments
Department,
Uthamar Gandhi Salai,
Nungampakkam, Chennai.
- 2.The Joint Commissioner,
Hindu Religious and Charitable Endowments
Department,
Sivagangai, Sivagangai District.



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3.The Assistant Commissioner,
Hindu Religious and Charitable Endowments
Department,
Paramakudi.

4.The Executive Officer,
Arulmigu Koppdaiya Nayagi Amman
Temple, Karaikudi,
Sivagangai District.

5.Pradeepa
Manager cum Executive Officer,
Arulmigu Koppdaiya Nayagi Amman
Temple, Karaikudi,
Sivagangai District.

6.S.Selvanathan

... Respondents

***(R6 is impleaded vide Court order dated
24.03.2022 in WMP(MD)No.19921 of 2019
in WP(MD)No.15460 of 2019)***

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Certiorarified Mandamus***, to call for the records of the impugned proceedings of the 1st respondent in Pro.Rc.No. 34611/91/A2 dated 23.12.1991 and consequent impugned proceedings of the 2nd respondent in Na.Ka.No.4517/2018/Aa1/ dated 28.05.2019 to quash the same and to direct the respondents to adhere the clauses of the scheme framed



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by this Court in Appeal Nos.116 of 1956 and 117 of 1956 dated 24.12.1959 for Arulmigu Koppudaiya Nayagi Amman Temple, Karaikudi.

For Petitioner	: Mr.N.Anandha Padmanabhan Senior Counsel for Mr.R.M.Arun Swaminathan
For R1 to 3	: Mr.S.P.Maharajan Special Government Pleader
For R4 and 5	: Mr.R.Shankarganesh
For R6	: Mr.G.Prabhurajadurai

W.P.(MD).No.22593 of 2019:

S.Meiyar

... Petitioner

Vs.

- 1.The Commissioner,
Hindu Religious and Charitable Endowments
Department,
Sivagangai.
- 2.The Assistant Commissioner,
Hindu Religious and Charitable Endowments
Department,
Paramakudi.
- 3.The Executive Officer,
Arulmigu Koppudaiya Nayagi Amman
Temple, Karaikudi,
Sivagangai District.



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4.S.Selvanathan

... Respondents

***(R4 is impleaded vide Court order dated
24.03.2022 in WMP(MD)No.20128 of 2019
in WP(MD)No.22593 of 2019)***

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Mandamus***, to direct the 1st respondent to constitute trust board for Arulmigu Koppdaiya Nayagi Amman Temple, Karaikudi, Sivagangai District, in consonance with the order dated 24.12.1959 made in A.S.Nos.116 and 117 of 1956 on the file of High court, Chennai.

For Petitioner	: Mr.R.G.Shankar Ganesh
For R1 and 2	: Mr.S.P.Maharajan Special Government Pleader
For R3	: Mr.R.Shankarganesh
For R4	: Mr.G.Prabhurajadurai

W.P.(MD).No.830 of 2021:

M.Pushpalatha

... Petitioner

Vs.

1.The Joint Commissioner,
Hindu Religious and Charitable Endowments
Department,
Sivagangai District.



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- 2.The Assistant Commissioner/Thakkar,
(Arulmigu Koppdaiya Nayagi Amman
Temple),
Hindu Religious and Charitable Endowment
Department, Paramakudi.
- 3.The Executive Officer,
Arulmigu Koppdaiya Nayagi Amman
Temple, Karaikudi,
Sivagangai District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Certiorarified Mandamus***, to call for the records in pursuant to the impugned order passed by the 1st respondent in A.Thi.Ka.No.5995/2020/E1 dated 28.12.2020 and to quash the same and consequently, to direct the 1st respondent to accept the petitioner's Original Application dated 10.12.2020 for seeking appointment of Trusty (Women) for Arulmigu Koppudaya Nayagiamman Temple, Karaikudi and to consider the same on merits according to law within the time limit that may be prescribed by this Court.

For Petitioner	: Mr.M.Karthikeya Venkitachalapathy
For R1 and 2	: Mr.S.P.Maharajan Special Government Pleader
For R3	: Mr.R.Shankarganesh



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W.P.(MD).No.834 of 2021:

N.Marimuthu

... Petitioner

Vs.

1.The Joint Commissioner,
Hindu Religious and Charitable Endowment
Department,
Sivagangai District.

2.The Assistant Commissioner/Thakkar,
(Arulmigu Koppdaiya Nayagiamman
Temple),
Hindu Religious and Charitable Endowment
Department, Paramakudi.

3.The Executive Officer,
Arulmigu Koppdaiya Nayagiamman
Temple, Karaikudi,
Sivagangai District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Certiorarified Mandamus***, to call for the records in pursuant to the impugned order passed by the 1st respondent in A.Thi.Ka.No.5994/2020/E1 dated 28.12.2020 and to quash the same and consequently, to direct the respondents to accept the petitioner's Original Application dated 10.12.2020 for seeking appointment of Trustees (SC



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Community) for Arulmigu Koppudaya Nayagiamman Temple, Karaikudi and to consider the same on merits according to law within the time limit that may be prescribed by this Court.

For Petitioner	: Mr.M.Karthikeya Venkitachalapathy
For R1 and 2	: Mr.S.P.Maharajan Special Government Pleader
For R3	: Mr.R.Shankarganesh

COMMON ORDER

The issue raised in all these writ petitions are regarding the temple namely Arulmigu Koppudaiya Nayagi Amman Temple, Karaikudi and the hence all the writ petitions are taken up and a common order is passed.

2.(i) The writ petition in W.P.(MD)No.14793 of 2018 is filed by one M. Arunachalam for Writ of Mandamus to direct the 2nd respondent to appoint the Non-Hereditary Trustees of the Board of Trustees of Arulmigu Koppudaiya Nayagi Amman Temple, Karaikudi, under the Clause 3 of the Scheme framed by this Court in Appeal Nos.116 of 1956 and 117 of 1956 dated 24.12.1959 within time stipulated by this Court.



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2.(ii) The writ petition in W.P.(MD)No.15460 of 2018 is filed by M. Arunachalam as Life Trustee of Arulmigu Koppudaiya Nayagi Amman Temple, Karaikudi for writ of Certiorarified Mandamus, to quash the impugned order dated 23.12.1991 passed by the 1st respondent and the consequent impugned order dated 28.05.2019 of the 2nd respondent and to direct the respondents to adhere to the clauses of the scheme framed by this Court in Appeal Nos.116 of 1956 and 117 of 1956 dated 24.12.1959 for Arulmigu Koppudaiya Nayagi Amman Temple, Karaikudi.

2.(iii) The writ petition in W.P.(MD)No.22593 of 2019 is filed by S. Meiyar for Writ of Mandamus to direct the 1st respondent to constitute Trust Board for Arulmigu Koppdaiya Nayagi Amman Temple, Karaikudi, Sivagangai District, in consonance with the order dated 24.12.1959 passed in A.S.Nos.116 and 117 of 1956 on the file of High court, Chennai.



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2.(iv) The writ petition in W.P.(MD)No.830 of 2021 is filed by M.Pushpalatha for Writ of Certiorarified Mandamus to quash the impugned order dated 28.12.2020 passed by the 1st respondent and consequently to direct the 1st respondent to accept the petitioner's Original Application dated 10.12.2020 for seeking appointment of Trustee (Women) for Arulmigu Koppudaya Nayagiamman Temple, Karaikudi and to consider the same on merits according to law within the prescribed time limit.

2.(v) The writ petition in W.P.(MD)No.834 of 2021 is filed by N.Marimuthu for Writ of Certiorarified Mandamus to quash the impugned order dated 28.12.2020 passed by the 1st respondent and consequently to direct the 1st respondent to accept the petitioner's Original Application dated 10.12.2020 for seeking appointment of Trustee (SC Community) for Arulmigu Koppudaya Nayagiamman Temple, Karaikudi and to consider the same on merits according to law within the prescribed time limit.



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3. The brief facts as stated in the W.P.(MD)No.14793 of 2018 and W.P. (MD)No.15460 of 2018 is that the petitioner is a Chartered Accountant by profession and also a Hereditary Trustee of the 4th respondent temple appointed by the Deputy Commissioner of HR&CE Department vide proceedings dated 29.08.1989 under the scheme framed in Appeal Nos.116 of 1956 and 117 of 1956. The Karaikudi is predominantly inhabited by Nagarathars and Nattars. Until about 1869, the affairs of the 4th respondent temple were being managed by the trustees drawn from the communities of Nagarathars and Nattars. Subsequently in the year 1869 by an arrangement among the interested parties the petitioner's family (A.R.A. Family) assumed sole management of the affairs of the temple. When the Nattar community tried to assume powers of the management and took forcible possession of a market which belonged to the temple and some Gurukals of the temple also asserted titles to the trusteeship, a suit came to be filed in O.S.No.36 of 1927, on the file of Sub Court, Devakottai, and the same was decreed in favour of the petitioner's family. The respondents/ private parties preferred an appeal in A.S.266 of 1936 before High



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Court and the same was allowed in favour of the respondents. Hence, the petitioner's family preferred appeal before Federal Court in C.A.No.VII of 1948 and the appeal was allowed and the judgment of the High Court was reversed. Based on the direction of the Federal Court, a draft scheme was notified on 16.08.1950. Aggrieved over the scheme, both the petitioner as well as the rival claimants preferred suit in O.S.No.18 of 1950 and O.S.No.6 of 1951 and the suits were partially allowed. The Commissioner of HR&CE Department preferred an appeal in A.S.Nos.116 of 1956 and the ARA Family preferred an appeal in A.S.No.117 of 1956, wherein the scheme was formulated to manage the temple and its movable and immovable properties and its day-to-day administration by incorporating 24 clauses. Under clause 3, the 2nd member of the Board was granted to the petitioner's family i.e. A.R.A. family who will hold office for life. Thereafter, one M.S.Ramasamy Chettiyar from the petitioner's family was appointed as 2nd member of the Board, but he resigned due to his ailments. Hence, the petitioner submitted application, along with “no objections” from the ARA Family members and the petitioner was appointed as



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2nd member vide proceedings, dated 29.08.1989, under Section 47 of HR and CE Act. After the petitioner's appointment, till date the 1st and 3rd member had not been appointed by the respondents. Under clause 21 of the scheme, it is stated that in case if there is vacancy for other members, the remaining trustees would have power as Board of Trustees and the relevant portion is extracted:

"21. In case there being an unfilled vacancy or vacancies in the Board of Trustees, the remaining trustee or trustees shall have during the vacancy all the powers of Board of Trustees."

But till date, the vacancy was not filled up by the respondents and the petitioner is the sole member of the Board and as per clause 21, the petitioner is having power to hold the Office as Board of Trustee. Under clause 12 of the scheme, one key of lock shall be in the custody of the Trustees representing the A.R.A family and the other key in the custody of Manager. The relevant clause is extracted hereunder:

"The Key of one lock shall be in the custody of the trustees representing the AR.A Family and other key in the custody of Manager."



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From the date of appointment i.e. 29.08.1989, till today, the post of hereditary trustee is incapacitated and the appointment of 3rd respondent as Thakkar and 4th respondent as Executive Officer is an absolute violation of the scheme. Hence, the petitioner submitted various representations dated 19.01.1992, 02.05.1992, 22.06.1992, 12.02.2000, 28.12.2000, 20.06.2011, 16.11.2011. But till date, the respondents have not taken any action and the petitioner is struggling to implement the scheme. The further contention of the petitioner is that as on date many temple properties are encroached by various people, some land grabbers have grabbed the immovable properties belonging to the temple with the support of the 5th respondent. Hence effective management and administration is essential to save the temple properties. The further contention of the petitioner is that inspite of establishing their rights before the Federal Court prior to independence and before this Court post-independence that the temple is purely a private one, but for the past 29 years without appointing appropriate Board of Trustees as mandated by the scheme framed by the High Court, the respondents deliberately trying to show that the temple belongs to



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the Government. Without implementing the scheme as framed by the High Court, the respondents have appointed the Executive Officer is absolute violation, arbitrary and also disobedience of the order of this Court.

4. Further the above temple is classified under section 46(iii), since the income of the temple is above Rs.10 Lakhs/- and hence, the respondents 3 and 4 are intentionally reluctant to appoint the Board of Trustees. As per the scheme, a manager has to be appointed by the Board of Trustees to manage the day-to-day activities, but till date the petitioner being a trustees is not able to appoint a Manager for the welfare of the temple but the Executive Officer himself is acting as Manager without any authority. In a similar case the Hon'ble Division Bench of this Court in W.P.(MD)No.15855 of 2017, dated 23.08.2017 directed the HR&CE Department to appoint the Board of Trustees within a period of three months. The respondents are neither appointing the non-hereditary trustees nor allowing the petitioner to act as a Chairperson of the Board of Trustees under the scheme formulated by High Court, but the



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respondents are managing the temple which is against the scheme and order of the Courts. Hence the petitioner had filed W.P.(MD)No.14793 of 2018 for Mandamus to appoint non-hereditary trustee as per scheme settled in A.S.No. 116 of 1956 and 117 of 1956. The said writ petition was pending for adjudication. In the meanwhile, the petitioner had sent a letter about the irregularities committed by the Manager / Executive Officer of the temple through his counsel. But after 8 months on the verge of retirement the 2nd respondent had passed the impugned order, dated 28.05.2019, stating that after the amendment of Act 46 of 1991 and based on the Commissioner's Circular dated 27.12.1991, Thakkar are being appointed to all temples. Hence the hereditary trusteeship of the petitioner is automatically cancelled and the petitioner cannot claim himself as hereditary trustee of the temple, cannot claim hereditary trustee before the public and claim concession. If the petitioner violates then action would be taken against the petitioner. In short, the petitioner is being restrained from acting as hereditary trustee inspite of the scheme formulated by High Court. Aggrieved over the same, W.P.(MD)No.



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15460 of 2019 is filed by the same person challenging the impugned order dated 28.05.2019. The contention of the petitioner is that the impugned order is against the judgment passed in A.S.No.116 of 1956 and 117 of 1956, without implementing the scheme, intentionally the respondents had appointed the Executive Officer. After appointment of Thakkar / Fit Person on 23.12.1991, the respondents had called for appointment of non-hereditary trustees, but the respondents failed to appointment them. The Executive Officer is acting as Manager as well as Executive Officer. The 2nd respondent had accepted the appointment of the petitioner as hereditary trustee in his order in O.A.No.16 of 2012 dated 21.07.2017. Further the existing scheme was upheld in W.P.No. 1363 of 1982. The proceeding referred in the impugned order deals with non-hereditary trustee and the same cannot be relied on while dealing with the right of the petitioner as hereditary trustee. The 5th respondent is influential person, has violated Agamas and customs of the temple. In spite of the scheme, the respondents are managing the temple which is against the scheme and the orders of the High Court. Hence, the petitioner had filed W.P.(MD)No.15460 of



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2019 challenging the impugned order dated 28.05.2019 and to direct the respondents to adhere to the scheme settled in A.S.No.116 of 1956 and 117 of 1956.

5. Pending writ petition the respondents 5 to 12 had filed a petition to implead themselves in the writ petition filed in W.P.(MD)No.14793 of 2018. The contention of the said respondents is that they belong to Karaikudi Nattars, the writ petitioner has not stated certain facts and has narrated various other litigations. But the respondents 5 to 12 had admitted that the scheme had been finalized in A.S.No.116 of 1956 and 117 of 1956. The affidavit further states that the Department ought to appoint trustees as per the scheme finalized in A.S.No.116 of 1956 and 117 of 1956. Hence this Court had allowed the impleading petition on 24.03.2022 and impleaded as respondents 5 to 12.

6. Likewise, pending writ petition the 5th respondent in W.P.(MD)No. 15560 of 2019 was impleaded. The same person is impleaded as 4th respondent



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in W.P.(MD)No.22593 of 2019. The contention of the 5th respondent is that he belongs to Senjai Nattar community. The writ petitioner's family had taking advantage of infights among the Senjai Nattar community had taken the management of the temple. The said Senjai Nattar Community had filed petition to modify the scheme and hence the administration cannot be granted to the writ petitioner's family and the 5th respondent prayed to dismiss writ petition.

7. The W.P.(MD)No.22593 of 2019 is filed by one S.Meiyar for issuance of a writ of Mandamus, directing the 1st respondent Joint Commissioner to constitute Trust Board for the temple in consonance with the scheme settled in A.S.No.116 of 1956 and 117 of 1956. Even though certain different facts are stated in the affidavit, but the prayer is to implement the scheme and hence the other facts narrated in the affidavit are not necessary to decide the issue raised in the writ petition.



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8. The W.P.(MD)No.830 of 2021 is filed for issuance of a writ for Mandamus to appoint a women trustee and another writ petition W.P.(MD)No. 834 of 2021 is filed for issuance of a writ for Mandamus to appoint Scheduled Caste person as trustee.

9. The 4th respondent Executive Officer of the temple in W.P.(MD)No. 14793 of 2018 had filed an elaborate counter affidavit stating that the writ petition is not maintainable on law and on facts and deserved to be dismissed in limini. The 4th respondent denied the claim of the petitioner that he is hereditary trustee and stated there is no hereditary trustee in the temple. Appointment of the writ petitioner was not as hereditary trustee, but as trustee for his life representing AR.A. family as per the scheme. Further submitted that Arulmighu Koppudayanayagi Amman temple is a public religious temple listed under section 46 (iii) of the Act. The temple is being administered by Fit Person, the 3rd respondent herein from 1991 onwards and the 4th respondent Executive Officer was appointed on 18.03.1956 under Section 45(1) of the Act. The 4th



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respondent further denied the allegation stated in paragraph nos.4 to 9 and submitted that there were some disputes in the year 1927 between the members of AR.A. family and Nattars and hence the members of the AR.A. family had filed O.S.No.36 of 1927 on the file of Sub Court Devakattai against the Nattars. In that the Court has directed for framing scheme comprising AR.A. family members and Nattars. Aggrieved over the same, appeal in A.S.No.266 of 1936 before High Court was preferred and the appeal was allowed. The AR.A. family had preferred appeal before Federal Court in Civil Appeal No.7 of 1948 and the same was disposed with certain directions to frame an appropriate scheme comprising Nattars and AR.A. family members, but must be headed by a 3rd party considering the welfare of the institution and the relevant portion is extracted hereunder:

“In these circumstances it seems desirable that a scheme of Management for this shrine should be settled by the Religious Endowment after taking into consideration the rights of A.R.A. Family as established by this Judgment and also after taking into consideration the substantial interest of this Nattar community in the temple. Perhaps both interests could be safeguarded by forming a board of trustees with



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an independent chairman and an equal right of representation to both the parties. It should not be forgotten that in the matter of public shrines, though individual family rights have to be respected, the interest of the shrine is the paramount consideration and should overweigh all other consideration and it is in this light that the matter has to be examined.”

Later, the scheme framed by the then Board was subjected to litigations and appeals were preferred, finally, the High Court framed a scheme. The Nattars filed O.S.No.18 of 1950 on the file of District Court, Ramnad challenging the scheme and the suit was decreed setting aside the scheme. Aggrieved over the Department had preferred appeal in A.S.No.116 of 1956 and AR.A. family preferred appeal in A.S.No.117 of 1956 before High Court. All the issues were settled vide judgment dated 24.12.1959 by framing scheme. The contention of the respondents is that the scheme so long as it is inconsistent with 1959 Act is void, therefore, as per the provisions of Section 47 of 1959 Act, the trustees shall hold office for a period of 2 years only. Hence, wherever the temple does not have a hereditary trustee, the non-hereditary trustee shall hold office only for two years and no one could hold office for life and the same would be



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contrary to law. Further appeal was preferred by the AR.A. family in SLP No. 103 and 104 of 1990 claiming to declare them as hereditary trustee in the scheme and the SLP's was rejected. On the other hand, the writ petitioner ancestors filed O.A.No.32 of 1965 under section 64(5) of the Act seeking modification to the scheme to the effect that their family is hereditary trustee and by an order dated 12.09.1983 the Deputy Commissioner, Madurai had rejected the said claim. Therefore, more than once the claim of hereditary trusteeship was rejected. It has been specifically held by this Court in W.P.No. 2626 of 1970 and also in W.P.No.1363 of 1982 that the said family is not a hereditary trustee but trustee for life. In fact, through G.O.Ms.No.79, Commercial Taxes and Religious Endowment Department dated 20.01.1982 five non-hereditary trustees were appointed and the same was challenged by one PR.RL.Periannan Servai in W.P.No.1363 of 1982. Though the writ petition was allowed on the score that since the temple is governed by scheme, appointment of non-hereditary trustees is not correct, it was again reiterated that the AR.A. family members are not hereditary trustees but only life trustees.



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Hence, by proceedings, dated 24.02.1988, the Deputy Commissioner appointed 3 persons as Board of Trustees namely,

- i.Mr.N.A.Marimuthu Pillai-Other than AR.A. Family or Karaikudi Nattar.
- ii.Mr. RMS. Ramasamy Chettiar - AR. A. Family.
- Iii.Mr. PR. Periannan Servai - Nattar.

Since the 2nd trustee resigned, the petitioner was appointed vide proceedings, dated 24.12.1988.

10. The respondents further stated that the State of Tamil Nadu enacted Act 46 of 1991 making amendments to the HR&CE Act 1959. As per Section 61 of Act 46/1991, every non-hereditary trustee of religious institutions appointed under any of the provisions of the Principal Act and holding office as such on the date of commencement of the Act shall cease to hold office on such date i.e., 13.12.1991. Based on the same, G.O.Ms.No.521, Commercial Taxes and Endowments Department, dated 26.12.1991, was issued whereby the term



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of Board of Trustees enlisted therein was brought to an end from 13.12.1991. It was further ordered to appoint a Fit Person in lieu of Board of Trustees. Based on the same vide proceedings dated 27.12.1991, the 1st respondent has appointed the then Assistant Commissioner, Ramanathapuram at Madurai as Fit Person to the temple. Thereafter, vide proceedings dated 23.12.1991, the double lock officer was appointed to take care of the temple jewels. The same was unsuccessfully challenged by one V.Swaminathan, Trustee appointed for Nattar category in W.P.(MD)No.5049 of 1992. Thereafter, Act 46 of 1991 was subsequently amended by Act 3 of 1996 was challenged before the High Court and had already been upheld. Further, the petitioner (M.Arunachalam) has neither challenged the said Act nor challenged the appointment of a fit person replacing him as trustee. The temple has been administered by Fit Person for the past 27 years. Now, the prayer to appoint Board of Trustees, that too without challenge to the Act or appointment of Fit Person is hit by delay, laches, acquiescence and estoppel. At the same time, it is pertinent to point out the said amendment made in 1991 replacing the Board of Trustees with Fit



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Persons was repealed by Amendment Act 1996, enabling to constitution of Board of Trustees all over Tamil Nadu. However, the same shall be done by constitution of District Committees under Section 7A of the HR and CE Act. Again, Section 7A was omitted by Amendment Act 2006 but reintroduced by Amendment Act 2012. Even thereafter till date the District Committee was not constituted. And in this regard, a public interest litigation was heard by the Hon'ble Division Bench of this Court in W.P.No.23690 of 2018 and vide order dated 25.01.2019 directions have been issued in this regard and the same is in progress. After the District Committee is constituted, the committee will take up the process of constituting Board of Directors in accordance to law. The allegation in para 11 is denied and submitted that the representations were never received. Even if the such representation is received to implement the scheme the same cannot be acceded, as the said clause of scheme is now in abeyance by an enactment enacted by a policy decision of the State. Section 118(2) of the Act makes it clear that provisions of the Act will prevail over any scheme framed prior to the Act and it is also settled by the Hon'ble Supreme



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Court in judgment reported **1998(6) SCC 643** wherein it is held that though schemes are framed by Courts prior to 1959, after the enactment of 1959 Act, the provisions and competent authorities are empowered to modify the scheme. Further the respondents submitted that the writ petitioner (M.Arunachalam) who is a land grabber of the temple property, claims that the properties of temple are being grabbed by some persons with the aid of 4th respondent (Executive Officer). The allegation against the 4th respondent is bald and baseless. In fact, the lands in S.No.58 admeasuring 2.85.5 hectares belong to the present temple. As per the revenue records, they are classified as Arasu Puramboku Kaattamman Kovil Oorani and Vattakinaru. The said temple is a sub temple of Koppudaiya Nayagi Amman temple. There was a small koodam in the portion of lands meant for pilgrims to take rest, shelter and food. The petitioner (M.Arunachalam) with a view of grabbing the said land had created a Trust called Senjai Kaattamman Kovil Annadhana Trust and had put up a new mandapam at the said place replacing old one and had got assessed property tax in the name of the Trust and had obtained electricity connection in the name of



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the Trust. The petitioner had leased out the same for rent for conducting marriages and collected money and appropriated them. The said issue was raised by the villagers during Vaikasi festival in May 2018. Till then, the 4th respondent was under the impression that such constructions were in his patta lands. After due enquiry and verification, it came to the knowledge of the 4th respondent that the land is classified as Arasu Puramboke. Hence, the 4th respondent questioned the petitioner (M.Arunachalam) and the petitioner sought some time to respond. In the meanwhile, he filed the writ petition. Hence, in continuation of the enquiry, the respondents issued notice calling upon the petitioner to explain for which the petitioner has submitted explanation stating that the constructions are in Arasu Puramboke and the temple is not the owner of the lands. It is mischievous to claim that the temple is a private one. The fact that he claims the land do not belong to temple would indicate that he is acting against the interest of the temple which would reject his eligibility of being a Trustee, but the name itself suggest it relates to temple and its affairs. Thus, it is public religious specific endowment within the



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purview of the HR&CE Act and the object is performing Annadhanam to the devotees of the temple. The case of the petitioner is not that it is his private Trust. Even as per his case it is Government Puramboke. All temple Puramboke vest with temple and encroachments are liable to be removed as per Board Standing Order 26(13). Therefore, it is not as if the respondents had initiated action, since writ petition came before the High Court but it is vice versa. Since the respondents have unearthed the illegalities committed by the petitioner (M.Arunachalam), the petitioner has come before this Court. If it is not so, the petitioner would not have slept over for 27 years and kept himself away from claiming trusteeship. Therefore, it is clear willful suppression of material facts. When even in 1926, the then disputing parties have subjected themselves to the then HR&CE Act 1927, it is not understandable how the petitioner is claiming that the temple is a private one. It is public temple having all its features and worshipped by lakhs of devotees in and around Karaikudi. Therefore, the claim that it is a private temple cannot be accepted. When the petitioner (M.Arunachalam) is no longer a Trustee after 13.12.1991, the petitioner again



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and again claiming himself to be a Trustee cannot be accepted and he is unable to appoint Manager to the temple is quite an unfortunate desire. Though there are no pleadings to this effect, the petitioner has placed proceedings dated 29.05.2015 of the Commissioner with an intend to create an impression that the Executive Officers are involving themselves in illegal activities. Be that as it may, actions were initiated against the officers who in turn challenged the proceedings before the High Court and obtained stay. The motive of the petitioner (M.Arunchalam) is not bonafide and he acts against the interest of the temple but claims administration of temple which is devoid of merits, misconceived and hence the 4th respondent prayed to dismiss the writ petition filed in W.P.(MD)No.14793 of 2018.

11. The Joint Commissioner, Sivagangai had filed counter affidavit in W.P.(MD)No.22593 of 2019 and the Executive Officer had file counter in W.P. (MD)No.22593 of 2019. The contents in the counter are more or less the same as filed W.P.(MD)No.14793 of 2018. The writ petitioner S.Meiyar had filed



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reply to the said counter, wherein it is stated that writ petition in W.P.(MD)No. 22593 of 2019 is filed seeking relief against Joint Commissioner, but the Executive Officer had filed an elaborate counter which would indicate that the Executive Officer does not want to constitute the Board of Trustees and he wants to continue as Executive Officer of the temple. Further stated that the scheme framed by the Court can be modified by the authorities under the HR&CE Act, hence O.A.No.8 of 2000 was filed under section 64(5) seeking modification of scheme framed under A.S.No.116 of 1956 and 117 of 1956. The said O.A. came to be filed by Karaikudi Nattars and the said Arunachalam Chettiar was arrayed as respondent. After filing of the said O.A. a compromise had been entered and the said O.A.No.8 of 2000 came to be withdrawn by an order dated 21.07.2017. Subsequently O.A.No.16 of 2012 came to be filed by Nattars and Arunachalam Chettiar together seeking for framing of the scheme. However, the said O.A.No.16 of 2012 was closed as unnecessary for the sole reason that already the scheme framed in A.S.No.116 of 1956 and 117 of 1956 is in force, hence there is no necessity for framing of the scheme. Hence there is



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no necessity to challenge the order dated 03.07.2017 made in O.A.No.16 of 2012 and prayed to pass appropriate orders.

12. Heard the Learned Counsels appearing on both sides in all the writ petitions and perused the records.

13. The first contention of the petitioner is that the as per the scheme settled in judgment dated 24.12.1959 in A.S.No.116 of 1956 and 117 of 1956 the Joint Commissioner ought to appoint the 1st Trustee from persons other than ARA Family or Karaikudi Nattar, 2nd Trustee from ARA Family and 3rd Trustee from Nattar, but the respondents failed to appoint them and hence the temple administration is in peril and the temple properties could not be protected. But the contention of the respondents is that as per the scheme settled vide in the said Appeal Suit three trustees were appointed from 1959 onwards. One such appointment was made in proceedings, dated 24.02.1988, whereby the following persons were appointed:



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i.Mr.N.A.Marimuthu Pillai-Other than AR.A. Family or Karaikudi Nattar.

ii.Mr. RMS. Ramasamy Chettiar - AR. A. Family.

iii.Mr. PR. Periannan Servai - Nattar.

However, the said appointee RMS. Ramasamy Chettiar belonging to ARA Family had resigned and in his place the writ petitioner Arunachalam was appointed on 24.12.1988. But subsequently the concept of Board of Trustees was put to an end by an amendment and hence after the lapse of the aforesaid Board of Trustees, the respondents did not appoint any Trustees.

14. It is seen that the last appointment of Board of Trustees was on 24.02.1988, thereafter Act 22 of 1959 was amended vide Act 46 of 1991, wherein under Section 61 of Act 46 of 1991 has stated that every non-hereditary Trustee of religious institutions appointed under any of the provisions of the Principal Act and holding office as such on the date of commencement of the Act shall cease to hold office on such date i.e.,



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13.12.1991. Further under G.O.Ms.No.521 Commercial Taxes and Endowments Department, dated 26.12.1991, it is stated that the term of Board of Trustees enlisted therein was brought to an end from 13.12.1991 and consequently, Fit Person shall be appointed in lieu of Board of Trustees. Thereafter, Act 46 of 1991 was subsequently amended by Act 3 of 1996 was challenged before the High Court and the same was upheld. In the present case, based on the amendment, the 1st respondent has appointed the then Assistant Commissioner, Ramanathapuram at Madurai as Fit Person to the temple on 27.12.1991. This Court is of the considered opinion that until this point the respondents are right in appointing Fit Person based on the amendment of Act 46 of 1991.

15. But subsequently the respondents have terribly erred, since the Act 46 of 1991 replacing the Board of Trustees with Fit Persons was repealed by Amendment Act 1996, enabling to constitution of Board of Trustees all over Tamil Nadu. On such repeal the earlier Board of Trustees would automatically



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be revived and thereafter the respondents ought to have restored the Board of Trustees.

16. But the contention of the respondents is that the Board of Trustees shall be appointed by constitution of District Committees under Section 7A of the HR&CE Act. The respondents could not stand on such contention because of subsequent amendment, since Section 7A was omitted by Amendment Act 2006. But on reintroduction by Amendment Act 2012, the respondents again relied on that the Board of Trustees should be constituted by District Committee. It is seen even after reintroduction by Amendment Act 2012 till date the District Committee was not constituted, that is from 2012 onwards till date the respondents have not constituted District Committee. Hence in this regard, a public interest litigation was heard by the Hon'ble Division Bench of this Court in W.P.No.23690 of 2018 and vide order dated 25.01.2019 directions have been issued. Even then the respondents have not constituted District Committee. But the Learned Counsel appearing for the respondents submitted



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that the District Committee would be constituted, the committee will take up the process of constituting Board of Trustees in accordance to law. After hearing this submission this Court is of the considered opinion that appointing Trustees through District Committee would arise where ever there is no scheme, but where ever the scheme is available then the respondents are duty bound to appoint trustees as per the directions in the scheme. Even if the contention of the respondents is accepted that District Committee ought to appoint the Board of Trustees, non-constitution of District Committee cannot be a ground for not appointing Trustees all these years. In the present case as per the scheme, the trustees ought to be appointed by the Joint Commissioner from the persons not belonging to ARA Family and Karaikudi Nattar, then a person from ARA Family and a person from Nattar community. In such circumstances, the Joint Commissioner ought to have appointed the Trustees and non-appointment of Trustees is against the judgment passed in A.S.No.116 of 1956 and 117 of 1956 and also the provisions of law.



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17. The next contention of the respondent is that the petitioner (M.Arunachalam) has neither challenged the said Act nor challenged the appointment of fit person replacing him as trustee and the temple has been administered by Fit Person for the past 27 years. This plea of the respondents cannot be accepted, since the Act 46 of 1991 replacing the Board of Trustees by Fit Persons was repealed by Amendment Act 1996, enabling to constitution of Board of Trustees. Then in the present case the Board of Trustees is automatically revived, which is settled in A.S.No.116 of 1956 and 117 of 1956. Where ever the settled schemes are available then the respondents are bound to implement the scheme and bound to appoint trustees. Therefore it is not necessary that the Act ought to be challenged. Once the Board of Trustees is automatically revived, then the contention of the respondents that the prayer to appoint Board of Trustees is hit by delay, laches, acquiescence and estoppel cannot be entertained. In fact, the further amendment of constitution of District Committee is only to appoint Board of Trustees through District Committee. Hence it is not necessary to challenge this provision of constitution of District



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Committed. If the respondents implemented the provisions and constituted the Board of Trustees either by the Joint Commissioners or by the District Committee, then the entire litigation would have been ended. As held supra when the District Committee is not available, the same cannot be cited for not constituting the Board of Trustees. Hence it is purely non implementation of the provisions and it is not necessary to challenge the provisions.

18. The next contention of the respondents is that the petitioner had not challenged the appointment of Fit Person and the Fit Person was in administration for the past 27 years and hence the claim to appoint Board of Trustees is hit by delay, laches, acquiescence and estoppel. As stated supra the respondents ought to have revived Board of Trustees once the provisions for appointment of Fit Persons were repealed and it is the inaction of the respondent the temple is without any Board of Trustees. Moreover, if the plea of the respondent is accepted, then the respondent ought to substantiate under which provision of law the respondents are empowered to appoint a Fit Person



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or Executive Officer perpetually. Further in the present case the Executive Officer and the Fit person were appointed based on the Act 46 of 1991 through G.O.Ms.No.521 dated 26.12.1991 and assumed office on 27.12.1991. But the said Act 46 of 1991 replacing the Board of Trustees by Fit Persons was repealed by Amendment Act 1996 enabling to constitution of Board of Trustees. When the said 46 of 1991 was repealed by Act 1996, then the said Executive Officer and the Fit Person are holding the said posts based on the repealed Act. In such circumstances the said Executive Officer and the Fit person are continuing in the said post illegally.

19. Further 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:



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*“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**”*

Even though the Executive Officer and the Fit person was appointed prior to the said Rule, after the said Rule was enacted the respondents ought to have cancelled the said appointment after the lapse of five years from the date of the said Rules, but the respondents have not done so. Therefore when the provisions allow to appoint Executive Officers / Fit Person for a limited period, then appointing the Fit Persons / Executive Officers perpetually would be against the provisions of law. The Courts have repeatedly held the Executive Officer or Fit Person can be appointed only for a period of five years and Executive Officer or Fit Person cannot replace Trustees or cannot take over the powers of Trustee. The Hon’ble Supreme Court in Dr.Subramanian Swamy and another Vs. State of Tamil Nadu and others reported in 2014 (1) CTC 763 had held as under:



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*“41. It is submitted by Dr.Swamy that rules have to be framed defining the circumstances under which the powers under Section 45 of the Act 1959 can be exercised. The Act 1959 does not contemplate unguided or unbridled functioning. On the contrary, the prescription of rules to be framed by the State Government under Section 116 read with Sections 45 and 65, etc. of the Act 1959 **indicates that the legislature only intended to regulate and control any incidence of maladministration and not a complete replacement by introducing a Statutory authority to administer the Temple.***

42. Section 2(16) CPC defines the term ‘prescribed’ as prescribed by rules. Further, Section 2(18) CPC defines rules as Rules and forms as contained in the First Schedule or made under Section 122 or Section 125 CPC. Sections 122 and 125 CPC provide for power of the High Court to make rules with respect to its own functioning and procedure. Therefore, it appears that when the legislature uses the term ‘prescribed’, it only refers to a power that has simultaneously been provided for or is deemed to have been provided and not otherwise. Similarly, Section 2(n) of the Consumer Protection Act, 1986 defines prescribed as “prescribed by rules made by the State Government or as the case may be, by the Central Government under the Act”.

43. Section 45 of the Act 1959 provides for appointment of an Executive Officer, subject to such conditions as may be prescribed. The term



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'prescribed' has not been defined under the Act. Prescribed means prescribed by rules. If the word 'prescribed' has not been defined specifically, the same would mean to be prescribed in accordance with law and not otherwise. Therefore, a particular power can be exercised only if a specific enacting law or statutory rules have been framed for that purpose. (See: Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal, AIR 1962 SC 527; Hindustan Ideal Insurance Co. Ltd. v. Life Insurance Corporation of India, AIR 1963 SC 1083; Maharashtra SRTC v. Babu Goverdhan Regular Motor Service Warora & Ors., AIR 1970 SC 1926; and Bharat Sanchar Nigam Ltd. & Anr. v. BPL Mobile Cellular Ltd. & Ors., (2008) 13 SCC 597).

44. Shri Subramonium Prasad, learned AAG, has brought the judgment in M.E. Subramani & Ors. v. Commissioner, HR&CE & Ors., AIR 1976 Mad 264, to our notice, wherein the Madras High Court while dealing with these provisions held that the Commissioner can appoint an Executive Officer under Section 45 even if no conditions have been prescribed in this regard. It may not be possible to approve this view in view of the judgments of this Court referred to in para 41 supra, thus, an Executive Officer could not have been appointed in the absence of any rules prescribing conditions subject to which such appointment could have been made.



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45. However, Shri Subramonium Prasad, learned AAG, has submitted that so far as the validity of Section of the Act 1959 is concerned, it is under challenge in Writ Petition (C) No. 544 of 2009 and the said petition had earlier been tagged with these appeals, but it has been de-linked and is to be heard after the judgment in these appeals is delivered. Thus, in view of the stand taken by the State before this court, going into the issue of validity of Section 45 of the Act 1959 does not arise and in that respect it has been submitted in written submissions as under:

(a) The scheme of administration in Board's Order No.997 dated 8.5.1933 under the Act 1927 contained various provisions inter- alia that active management would rest in the committee consisting of nine members who were to be elected from among the Podhu Dikshitaras (clause 4);

(b) At the time of issuing the order of appointment of Executive Officer, the Podhu Dikshitaras were given full opportunity of hearing and the powers and duties of the Executive Officer as defined by the Commissioner would show that the religious affairs have not been touched at all and the trustees and the Executive Officers are jointly managing the temple. The Podhu Dikshitaras have not been divested of the properties and it was not the intention of the State Government to remove the trustees altogether, rather the Executive Officers function alongwith the trustees;



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(c) In any event, the Podhu Dikshitaras are trustees in the temple and they have not been divested of their properties. The Executive Officer is only collaborating with the trustees in administering the properties. Their religious activities have not been touched. Neither the powers of the trustees have been suspended nor the Executive Officers have been vested with their powers and the Executive Officers only assist the trustees in management of the temple. It was not the intention to remove the trustees altogether, nor the order of appointment of the Executive Officer suspends the scheme already framed way back in 1939.

46. Be that as it may, the case is required to be considered in light of the submissions made on behalf of the State of Tamil Nadu and particularly in view of the written submissions filed on behalf of the State.

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



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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)



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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**



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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.

50. Thus, the appeals are allowed. Judgments/orders impugned are set aside. There shall be no order as to costs.”

The aforesaid judgment is followed by this Court in W.P.(MD)No.20349 of 2023, W.P.(MD)No.15234 of 2023 and W.P.(MD)No. 9594 of 2014. This Court in W.P.(MD)No.19081 of 2023 has held that even in the scheme framed for administration of temples and endowments the Executive Officers cannot be appointed, since Executive Officers cannot be appointed beyond five years. Therefore the appointment of the Executive Officer and Fit Person beyond five years is illegal and in the present case the both the Executive Officer and Fit Person are administering the temple for the past 27 years and the same is illegal and totally against the provisions of law Amendment Act 1996 and against the judgment rendered in Dr.Subramanian Swamy's case referred supra.



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Hence they cannot be allowed to continue in the administration of the temple in question.

20. Further the respondents have failed to constitute Board of Trustees in all the temples in Tamil Nadu, hence the Hon'ble Division Bench of this Court in Suo Motu W.P.No.574 of 2015 vide judgment dated 07.06.2021 had directed the Department 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.***



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(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 as held in Dr.Subramanian Swamy's case. 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



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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. Therefore the Executive Officers and the Fit Person cannot be allowed to continue the administration.

21. The next contention of the respondent is that the petitioner Arunachalam cannot be considered as hereditary trustees, since the ARA Family was given only life trustee. The life trustee can be considered as non-hereditary trustee only and as per the provisions the non-hereditary trustee can hold the office only for a period of two years. Since holding of the post of trustee is beyond two years then it is inconsistent to section 47 of 1959 Act and hence the scheme cannot be implemented. In order to consider this plea, the relevant portion of the scheme is extracted hereunder:

"3. The Board of Trustees shall consist of three members to be appointed by the Deputy Commissioner, the first member shall be a Hindu who will not be a member of AR. A Family or of the Karaikudi



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*Nattar Community. He will be the Chairman of the Board of Trustees and hold office for five years. **The Second Member of the Board of Trustees will be a member of the AR.A. Family. He will hold office for life.** The third member of the Board of Trustees will be a Nattar of Karaikudi and he will be appointed for a term of five years,"*

The words hereditary trustee and non-hereditary are defined in section 6(11) and 6(14) the Act as under:

“(11) “Hereditary trustee” means the trustee of a religious institution, the succession to whose office devolves by hereditary right or is regulated by usage or is specifically provided for by the founder, so long as such scheme of succession is in force;

(14) “non-hereditary trustee” means a trustee who is not a hereditary trustee;”

As per definition a trustee can claim himself as “hereditary trustee” in the following cases:

- (i). If the succession to the office devolves by hereditary right.
- (ii). If is regulated by usage.
- (iii). If is specifically provided for by the founder.



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(iv). So long as such scheme of succession is in force.

Hence as per definition as long the scheme of succession is in force the right would fall under (i), (ii) or (iii). On the elimination method, in the present case the right will not fall under (iii), since there is no founder in the present case. The ARA family was managing the temple over a period of time which has been recognised in the suit and in other appeals. It is pertinent to record there was a fight in the family that who has to assume the office whether the elder male member or not. But the family was carrying on the administration for long period which is recognised in the litigations. Hence while framing the scheme and settled in A.S.No.116 of 1956 and 117 of 1956, the 2nd trustee right was granted to the said ARA Family and hence the said right may come under (ii) by way of usage. Since it falls under (ii), it may not fall under (i) i.e. “If the succession to the office devolves by hereditary right”. While dealing with the constitutional challenge to the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 in Kakinada Anandana Samajam etc. v. Commissioner of Hindu Religious & Charitable Endowments, Hyderabad &



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others reported in (1971) 2 SCR 878 the Apex Court was called upon to consider the nature of office of hereditary trustee and whether the office of the hereditary trustee is property within the meaning of Article 19(1)(f) of the Constitution of India or not. The Apex Court examined the general position of hereditary trustee and observed that,

*“The hereditary trustees of the institutions generally have only a bare right to manage or administer the secular estate of the institution or the endowment and they do not have any proprietary or beneficial interest either in the corpus or in the usufruct of the estate. It was also observed that the hereditary trustee succeeds to the office as of right and in accordance with the rules governing succession. **In the case of hereditary trustee, the office devolves on the trustee according to the rule of succession laid down by the founder or according to usage or custom applicable to the institution or trust.**”*

Hence this Court is of the considered opinion that the right to ARA family may come under “usage”. If a person belongs to the said ARA family, then he can claim a right and such right is by usage which is recognised under the scheme formulated in A.S.No.116 and 117 of 1956.



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22. In order to analysis further it can be seen “conversely whether the right can be considered as non-hereditary trustee”. The definition as per the section 6(14) is “non-hereditary trustee” means who is not a hereditary trustee. While comparing the hereditary and non-hereditary trustees, it can state that no rights are attached to claim the post of non-hereditary trustee, but some rights are attached to claim the post of hereditary rights. In the present case, admittedly the ARA family has some rights to claim the post of trustee and hence it can be bring under the category of hereditary trustee rather than under the category of non-hereditary trustee. It is pertinent to state herein that there can be only two types of trustees in the administration of temples and endowments, one hereditary trustee and other is non-hereditary trustee. Hence the trusteeship should either be brought under hereditary or non-hereditary and there cannot be a third category. Hence on this angle also the trusteeship granted to the ARA family ought to be brought under the category of “hereditary trustee”. Therefore this Court is of the considered opinion that the said right can be categorised as “hereditary right of ARA family as a whole”



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and not hereditary right of an individual. The scheme further states that “***He will hold office for life***”, which means once any person from ARA family is appointed he will hold it until his life time. It is hereditary interest given to the family but life interest given to the individual. Therefore this Court is of the considered opinion that the right is a hereditary right to the family and the person appointed will hold office for life.

23. The next contention is that whether the authorities are empowered to modify the scheme which are formulated by Courts under section 92 of the Civil Procedure Code. The issue is no longer res-integra and the same is decided by the Hon’ble Supreme Court in T.Lakshmikumara Thathachariar Vs. Commissioner HR&CE and others reported in (1998) 6 SCC 643, wherein it is held that the under section 64(5)(a) all schemes in force deemed to have been settled or modified by the Court under the Act of 1951 and covered under clause (a) of sub section (20) of section 118 are subject to modification or cancellation under the provisions of section 64(5)(a) and the decision of



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Madras High Court in O.Radhakrishnan V. Manickam does not give correct interpretation of law. In the present case the scheme is modified by Court. Even then the authorities are empowered to modify the scheme as per the aforesaid judgment. Having said so that the authorities are having power to modify the scheme, but the authorities cannot totally change or cancel the rights granted to the ARA Family and the Nattars representation in the administration of the Arulmighu Koppudaiamman temple. Hence while making changes or modification the respondents shall modify without disturbing the rights of ARA family and the Nattars.

24. It was brought to the notice of this Court that there are allegation against the 4th respondent Executive Officer, but the 4th respondent alone had filed counter denying the allegations. If there are allegations against the 4th respondent, then the other official respondents ought to have filed counter and put forth the real facts and also ought to have stated whether the allegations were enquired, whether action was taken against the wrong doers etc. But the



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other respondents have failed to file counter and the same ought to be taken note of.

25. As far as the land dispute regarding to Kaattamman Kovil is concerned, the petitioner had preferred suit in O.S.No.120 of 2023 on the file of Sub Court Devakottai and the same is pending. It is seen both the petitioner and the 4th respondent submitted that the land in question is recorded in the Revenue records as “Arasu Puramboku - Kaattamman Kovil Oorani and Vattakinaru”. The contention of the petitioner is that it is classified as Arasu Puramboku and the appropriate authority is Revenue officials and not the HR&CE officials. But the 4th respondent submitted that the land belongs to temple, even though it is stated as Arasu Puramboku, the temple is situated in the land and hence it is temple land. After hearing the rival submission this Court is of the considered opinion that the petitioner had started a Trust to administer the said land, organised anadhanam, moreover the petitioner had put up new mandapam in the place of the old mandapam and is letting the same for



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rent to conduct marriages. If the respondents had the chance to administer the said land, the respondents would have also done the same thing like putting up new mandapam in the place of old one and let it for marriages etc. Hence this Court is of the considered opinion simple because someone is administering the temple land by creating trust, cannot be stated that he had grabbed the land. It is not the case of the 4th respondent that the petitioner had grabbed the land by treating the land as his own land, sold the land to third parties etc. and this type of allegation alone would amount to land grabbing. Therefore, the allegation by the 4th respondent against the petitioner is only bald allegation. Anyway, the petitioner had rightly preferred suit and the same is pending. Hence, by citing this litigation the 4th respondent cannot deny to consider the petitioner's claim to appoint him as Trustee as per the scheme formulated by the High Court in A.S.No.116 of 1956 and 117 of 1956.

26. In the counter even though the respondents have accepted that the scheme was formulated in A.S.No.116 of 1956 and 117 of 1956, but the



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counter is silent why the scheme was not revived after repealing of provisions to appoint Fit Person. It is pertinent to note that there is no quarrel among the petitioner Arunachalam, the petitioner S.Meiyar and the respondents HR&CE Department that the scheme formulated in A.S.No.116 of 1956 and 117 of 1956 is still in force. In fact the respondents have passed an order dated 03.07.2017 in O.A.No.16 of 2012, wherein the respondents have declined to formulate a new scheme stating that already a scheme is A.S.No.116 of 1956 and 117 of 1956 is in force, hence it is not necessary to frame a scheme and dismissed the O.A.No.16 of 2012. In such circumstances this Court has no hesitation to allow the writ petitions praying to implement the scheme settled in A.S.No.116 of 1956 and 117 of 1956. Hence the writ petitions filed to implement the scheme are entitled to relief.

27. For the reasons stated supra the impugned orders dated 23.12.1991 and 28.05.2019 are quashed and consequently the scheme framed by this Court in Appeal Nos.116 of 1956 and 117 of 1956 dated 24.12.1959 shall be



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implemented in letter and spirit. Accordingly the W.P.(MD)No.14793 of 2018 and W.P.(MD)No.15460 of 2018 and W.P.(MD)No.22593 of 2019 are allowed. Consequently the W.P.(MD)No.830 of 2021 and W.P.(MD)No.834 of 2021 are dismissed. No costs. Consequently all the Miscellaneous Petitions are closed.

28.12.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No

Tmg



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To

- 1.The Commissioner,
Hindu Religious and Charitable Endowments
Department,
Uthamar Gandhi Salai,
Nungampakkam, Chennai.
- 2.The Joint Commissioner,
Hindu Religious and Charitable Endowments
Department,
Sivagangai, Sivagangai District.
- 3.The Assistant Commissioner,
Hindu Religious and Charitable Endowments
Department,
Paramakudi.
- 4.The Commissioner,
Hindu Religious and Charitable Endowments
Department,
Sivagangai.



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S.SRIMATHY, J.

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28.12.2023