IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **03.11.2025**

CORAM

THE HONOURABLE MR.JUSTICE P.B. BALAJI

W.P. No.10447 of 2024

and WMP. Nos.11441 & 11442 of 2024

Arulmighu Devi Sri Ellamman Temple,
Rep. by its Trustee M.N.S.Vijayakumar,
S/o.Mr.N.K.Sriramalu Naidu,
No.40, Uthukkadu, Walajabad Circle,
Kancheepuram – 631 605.

Petitioner

Vs

1.The Commissioner,
Hindu Religious & Charitable
Endowment Board, Nungambakkam,
Chennai – 600 034.

2.The Assistant Commissioner,
Hindu Religious & Charitable
Endowment Board, Kancheepuram.

3.The Executive Officer/Fit Person,
Sri Subramania Swami Temple,
Kumara Kottam, Chennai – 600 108.

...Respondents

PRAYER: This petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the impugned order bearing Se.Mu.Na.Ka.No.46294/2010/Aa3, dated 02.08.2021, on the file of the 2nd respondent and quash the same as arbitrary, illegal and unconstitutional.

For Petitioner : Mr.Abhinav Parthasarathy
For Respondents : Mr.S.Ravichandran,
Additional Government Pleader for HR & CE

ORDER

This Writ Petition is filed to quash the impugned order bearing Se.Mu.Na.Ka.No.46294/2010/Aa3, dated 02.08.2021, on the file of the 2nd respondent.

2. Heard Mr.Abhinav Parthasarathy, learned counsel for the petitioner and Mr.S.Ravichandran, learned Government Advocate for the respondents.

3. The petitioner/temple is represented by one of its Trustees Mr.N.S.Vijayakumar. According to the learned counsel for the petitioner, the Temple has been always managed and administered by the descendants of Mr.Nagal Naidu, ever since 1608. In the year 1990, a suit came to be filed by the successors in interest of the said Late.Nagal Naidu in O.S. No.174 of 1990 as against the officials of the HR & CE. The said suit was contested and came to be decreed on 23.09.1998. According to the learned counsel for the petitioner, the said judgment and decree has become final

with no further appeal filed therefrom.Whileso, when the portion of the land belonging to the Temple which is acquired from the Highways Authority, the compensation was withheld on the ground that a Fit Person has been appointed for the petitioner/Temple.

4. Contending that the petitioner never put on notice about the appointment of the Fit Person and the entire compensation amount was to be paid only to the petitioner, the petitioner has approached this Court in W.P. No.31492 of 2023 and this Court after hearing the third respondent/Executive Officer of the Temple viz., Sri Subramania Swami Temple, Kumara Kottam, who has been appointed as Fit Person, passed an orders on 14.12.2023, directing the parties to avail their remedy before the appropriate Civil Court and the compensation amount was directed to be deposited before the jurisdictional Civil Court. Subsequent to the said order dated 14.12.2023, the petitioner Temple has filed an Application for payment out of the compensation amount, in the land acquisition proceedings and the same is pending. In the meantime, on coming to know of the appointment of Fit Person in the earlier proceedings in W.P. No.31492 of 2023, the petitioner has filed the instant writ petition challenging the appointment of the Fit Person.

5. Firstly, the learned counsel for the petitioner would submit that the petitioner was not heard prior to the appointment of the Fit Person. Secondly, the order appointing Fit Person is a non speaking order and no reasons have been assigned warranting invocation of proceedings under Section 49 of the Hindu Religious and Charitable Endowments Act, 1959 (in short 'HR & CE Act/Act'). Thirdly, he would state that there is a valid judgment and decree recognising the right of Late.Nagal Naidu and the respondents are not entitled to interefere with the administration of the petitioner/temple. The petitioner would also rely on the following decisions in support of his contentions:

(i) *Commissioner of Income Tax and others Vs. Chhabil Dass Agarwal,* reported in *(2014) 1 SCC 603*;

(ii) *Dr.Subramanian Swamy Vs. State of Tamil Nadu and others,* reported in *(2014) 5 SCC 75*; and

(iii) *N.Sivasubramanian Vs. The Government of Tamil Nadu, rep. By its Secretary, Hindu Religious and Charitable Endowments Department and others,* reported in *2006 (2) CTC 49*.

6. Per contra, the learned counsel for the respondents would however firstly contend that the writ petitioner has an alternate remedy and the writ petition is not maintainable and the petitioner has to avail of the revisional remedy available under Section 21 of the Act. Consequently, the writ petition itself has been filed belatedly and despite appointment of the Fit Person as early as in August 2021, the present Writ Petition filed only in the year 2024 and therefore on the ground of delay and latches as well, he prayed for dismissal of the writ petition. Thirdly, according to the learned Government Advocate, the Trustees are mis-managing the affairs, more specifically, the funds of the petitioner Temple and therefore, invoking the provisions of the Act, according to the learned counsel for the respondents, the respondents are well within their rights to appoint a Fit Person and the same does not call for interference and pray for dismissal of the Writ Petition.

7. I have carefully considered the submissions advanced by the learned counsel on either side and also gone through the decisions that has been relied on by the learned counsel for the petitioner.

8. As already discussed, as between the parties to the writ petition, a civil suit has been filed and the rights of petitioner's predecessor in interest/late Nagal Naidu was recognised and for the past several years, it is the said clan who has been managing and administering the said Temple. No doubt, the respondents have a right under Section 49 of the Act, if they notice any mal-administration, to invoke the said provisions and appoint a Fit Person. However, the same does not enable the respondents to by pass the statutory requirements and also violate principles of natural justice, by not even giving a notice to the petitioner, before proceedings to pass the impugned order. Though in their counter affidavit, it claimed that the petitioner was aware of the appointment of Fit Person even as early as 02.08.2021, I do not find this averment in the counter affidavit being supported by any material documents and on the contrary, the petitioner in the earlier writ petition pertaining to the land acquisition proceedings has come on record stating that it was only for the first time when the compensation was denied to the petitioner, that the petitioner came to know about the appointment of the Fit Person and has categorically asserted not only in the earlier writ petition, but also in the present writ petition, no notice was served on the petitioner, prior to the impugned order being

passed. The said averments have not been denied expressly by the learned Additional Government Pleader appearing for the respondents. Therefore, it is clearly seen that the impugned order has been passed without notice to the petitioner.

9. Coming to the next submission as regards the alternate remedy available viz., revision under Section 21 of the Act, the learned counsel for the petitioner has relied on the decision in the case of in *Commissioner of Income Tax and others Vs. Chhabil Dass Agarwal's* case, (referred herein supra), where the Hon'ble Supreme Court has held that there are certain exceptions to the rule of alternate remedy and if the impugned proceedings are in defiance of the fundamental principles of judicial procedure, or by resorting to non invocation of provisions, or when the order has been passed in total violation of principles of natural justice, then the High Court can certainly entertain the Writ Petition and need not drive the aggrieved parties to resort to procedures set out under statute. This case squarely come under the exception to the rule, as discussed by the Hon'ble Supreme Court and having found that the petitioners were not put on notice, there is a clear violation of principles of natural justice, committed by the respondents.

P.B.BALAJI.J.,

10. In the light of the above, the impugned order impugned order bearing Se.Mu.Na.Ka.No.46294/2010/Aa3, dated 02.08.2021, on the file of the 2nd respondent is set aside and the Writ Petition is allowed. However, it is open to the respondents, if so advised to initiate fresh proceedings after following the procedures prescribed in the Act. Consequently, connected Miscellaneous Petitions are also closed. No costs.

03.11.2025

rkp

To
1.The Commissioner,
Hindu Religious & Charitable
Endowment Board, Nungambakkam,
Chennai – 600 034.
2.The Assistant Commissioner,
Hindu Religious & Charitable
Endowment Board, Kancheepuram.
3.The Executive Officer/Fit Person,
Sri Subramania Swami Temple,
Kumara Kottam, Chennai – 600 108.

W.P. No.10447 of 2024
and WMP. Nos.11441 & 11442 of 2024