BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 29.04.2025

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU
AND
THE HONOURABLE Mrs. JUSTICE S.SRIMATHY

WA(MD). Nos.1149 and 1150 of 2025
and CMP(MD) No.7230 and 7233 of 2025

WA(MD) No.1149/2025

The Executive Officer
Arulmigu Sri Sutha Rathneswara Swamy Temple
Sorakkottai Village
Thanjavur District ... Appellant/4th respondent

v.

1.Sri Sutha Rathneswara Swamy Private Temple Trust
Sorakkottai represented by its
President and Treasurer of the Trust
Madhusudan Dilipsinh Mohite ... 1st respondent/writ petitioner

2.The Secretary
Secretariat
Hindu Religious and Charitable Endowment Department
Chennai.

3.The Commissioner
Hindu Religious and Charitable Endowments Department
Chennai.

4.The Assistant Commissioner
Hindu Religious and Charitable Endowments Department
Chennai. ... Respondents

WA(MD) No.1150/2025

Fit Person
Sri Sutha Rathneswara Swamy Temple Trust
Executive Officer Kotteeswarar Endowment
Thanjavur District ... Appellant/5th respondent

v.

1.Sri Sutha Rathneswara Swamy Private Temple Trust
Sorakkottai represented by its
President and Treasurer of the Trust
Madhusudan Dilipsinh Mohite ... 1st respondent/writ petitioner

2.The Secretary to Government
Tourism, Culture and Religious Endowments Department
Chennai.

3.The Commissioner
Hindu Religious and Charitable Endowments Department
Chennai.

4.The Joint Commissioner
Hindu Religious and Charitable Endowments Department
Chennai.

5.The Assistant Commissioner
Hindu Religious and Charitable Endowments Department
Thanjavur District ... Respondents

PRAYER :- Writ Appeal filed under Clause 15 of Letters patent against the order of this Court dated 25.11.2024 in WP(MD). Nos. 25273 of 2023 and 12566 of 2024.

For Appellants : Mr.V.Chandrasekar (in both appeals)
For Respondents : Mr.K.Mahendran for
Mr.T.Ravikumar for R1
Mr.J.Ashok
Addl. Government Pleader

COMMON JUDGMENT

(Judgment of the Court was delivered by S.SRIMATHY,J.)

Both the writ appeals have raised similar issues, hence both taken together and a common order is passed.

2.(i) The W.A.(MD)No.1149 of 2025 is filed by the Executive Officer, 4th respondent in the writ petition against the order dated 25.11.2024 passed in W.P.(MD) No.25273 of 2023, wherein the writ petition was filed for Writ of Mandamus to direct the respondents to remove the board immediately that was installed in the land belonging to Shree Sudda Ratheneswara Swamy Private Trust Temple situated at Soorakkottai Village of Thanjavur District based on representation dated 05.09.2023 and consequently direct the respondents to hand over the land to the petitioner Trust.

2.(ii) The W.A.(MD)No.1150 of 2025 is filed by the Fit Person, 5th respondent in the writ petition against the order dated 25.11.2024 passed in W.P.(MD)No.12566 of 2024, wherein the writ petition was filed for Writ of Certiorarified Mandamus to quash the order dated 19.08.2021 and consequently direct the respondents to handover the administration of the temple to the petitioner. Through the said order the Fit Person was appointed.

BRIEF FACTS:

3.(i) The brief facts as stated in W.P.(MD)No.25273 of 2023 and W.P.(MD)No.12566 of 2024 are that the writ petition is filed by the President-cum-Treasurer of the Sri Sudda Ratheneswara Swamy Private Trust Temple namely, Madhusudan Dilipsinh Mohite and the temple is situated at Soorakkottai Village, Thanjavur which is a private trust temple administered by the said Madhusudan Dilipsinh Mohite, who is the present writ petitioner. The private trust was created in the year 1943 and registered on 31.01.1943 vide Doc.No.444 of 1943 by one Late Venkatarao Mohite, the grandfather of the president President. The deed is subsequently amended in Doc.No.148/2023 dated 19.07.2023, wherein the petitioner is the President-cum-Treasurer and one Satwasheel Udayashil Mohite is the Secretary. The president, secretary and other members totally 14 members belong to the same family. The temple administration and its agricultural lands are being managed by Trust.

3.(ii) The respondents attempted to interfere in the administration of the temple in the year 1962, hence the petitioner's forefathers had filed O.A.No.61 and 83 of 1962 before the Deputy Commissioner of HR&CE to declare that the temple is private temple and the same was dismissed. Aggrieved over the petitioner had filed an appeal in A.P.No.2 and 3 of 1966 and the same was also dismissed. Hence O.S.No.44 and 45 of 1969 on the file of Sub Court, Thanjavur was filed to declare the temple is a private temple and the same was decreed with cost. The respondents had preferred appeal in A.S.No.257 of 1975 and the same was dismissed. Against which no appeal was filed and the same had attained finality.

3(iii). Thereafter, the Authorized Officer under Tamil Nadu Land Reforms (Fixation of Ceiling of Land) as amended by Act 17/1970 initiated action by issuing notice to submit return against the agricultural lands of the temple admeasuring 152.21 acres in S.No.398/1B, 3.63 acres and other survey numbers equivalent to 89.981 standard acres. The temple submitted reply on 11.11.1978 stating it is a private trust temple and not public temple and it is not coming within the purview of HR&CE. But the authority had declared the holding of 15 standard acres as excess. The temple had preferred appeal in LTC No.Ma.15 of 1979 on the file of Land Tribunal (District Revenue Officer) and the same was dismissed on 12.11.1979, wherein it is held that the Temple Trust itself as person under section 3 (34) and hence it could hold only 15 standards acres under section 7 of the Act. Aggrieved over, the temple had preferred C.R.P.No.1111 of 1981 and the CRP was disposed of by remanding the matter back to the Authorized Officer.

On remand the Authorized Officer had allowed the petition preferred by the Temple Trust. Hence from the above it is clear that the temple is a private temple and the trust is a private trust. Further it is held that there is no surplus land of holding by the temple. Hence no one had any right including the respondents to deal with the properties belonging to the Private Trust Temple, except the Trustees of the temple.

3.(iv) While that being so, the 3rd respondent had trespassed in the temple lands and has placed a board mentioning that the temple is public temple and the property belonging to the HR&CE and took the possession of the land from the temple tenants. Further informed to the general public that the temple and the lands are belonging to HR&CE and if anyone trespassed the above said land would be prosecuted. Also published a news on 18.05.2023 in Daily Thanthi that in the presence of the Anitha, the Assistant Commissioner in-charge (3rd respondent in writ petition), the Special Tahsildar Sankar, Temple Trustee Brintha Devi, Brika Surveyor Geetha Bai, Thiruvaiyavur Inspector Gunasundari, the special staff Ashok Kumar, Ravichandran, Sakthivel and other staffs belonging to the HR&CE took possession of the temple trust land. Aggrieved over the high handedness the petitioner had submitted representation dated 05.09.2023 to remove the board and hand over the possession of the land, but the respondents failed to do so. The said act of the respondents that too without informing the temple or prior notice to the temple is violative of principles of natural justice. Hence the writ petitioner filed W.P.(MD)No.25273/ 2023 for Mandamus to remove the board and to hand over possession.

3.(v) Thereafter to the shock of the writ petitioner the respondents appointed the 5th respondent as Fit Person, vide order dated 19.08.2021 and directed him to accept the responsibility of Acting Administrator. The said appointment is against the principles of natural justice as the same has been passed when the hereditary trustees of the temple are in existence, further the same came to knowledge of the petitioner from the news item published in newspaper. Neither notice was served nor enquiry was conducted before appointing Fit Person. Hence challenging the same W.P.(MD)No.12566 of 2024 was filed by the writ petitioner. Hence two writ petitions are filed by the temple.

COUNTERS:

4.(i) The Executive Officer, the 4th respondent in the writ petition had filed counter affidavit, wherein it is stated that the writ petition is not maintainable in view of the fact that the so-called trust which was defunct is now claiming the right over the temple and its properties by creating an amendment trust deed vide Document No.148 of 2023 dated 19.08.2023. A deed of settlement was executed in the year 1943 and the settlee has not performed anything for the betterment of temple, but on the other hand allowed the dedicated properties to be encroached, no pooja activity was performed in the temple by the settlee or the present incumbent at any point of time. The persons living in the vicinity has appointed an archaka to perform the poojas and treated the same as Public Temple. The trustees never visited the village to perform the obligations stated in the settlement deed. The conduct of creating a so-called amendment trust deed totally deviate from the obligation enumerated in the original settlement deed clearly depicts that the person representing the so-called trust or the temple wants to make a fortune without doing anything for the temple all these years.

4.(ii) The temple was situated adjoining to the palace of Sulakshanamba Bai, who was the sister of Sivaji Raja, a Maratta Ruler. The said Sulakshanamba Bai applied for grant of inam of some lands and accordingly 20,000 kulis of land was granted as inam by the King. The temple was constructed in a portion of land. After the palace was ruined, (even in the year 1969 the palace was in ruined condition) the entire family left the village and settled elsewhere, thereby abandoned the temple. The people in the village have maintained the temple and they have also paid the salary to the archakas all these years. Therefore, the so-called trust was not in management of the temple and its properties at any point of time, that too after the creation of the settlement deed and after the judgement of the Civil Court. The Trust has not produced an iota of evidence to prove that they are really administering the affairs of the temple. The plea that the so-called trust has its office at the palace at the East Main Street, is purely imaginary story. In fact, the palace is under the control of hereditary trustee of Thanjavur Palace Devasthanam. Infact the said office address has not been given in the writ petition, which speaks volume. The present settlement deed is totally deviating from the early settlement deed. Hence it is clear that the settlee has abandoned the palace in the temple long back. Even now the so-called trustees are having their address only at Pune, Maharashtra. Further the geneology stated by the petitioner ought to be proved by the petitioner.

4.(iii) Certain clauses in the newly created amendment trust deed allows the trustees to siphon of the income and grab the income from the temple properties at the whims and fancies of the so-called trustees which goes to the root of the matter. On all these years, the so-called trust has not spent any amount for the upkeep of the temple and never spent for any money to conduct of pooja etc.

4.(iv) Be that as it may, the mutation for the properties owned by the temple stands in the name of the deity. In fact, a portion of the properties owned by the temple was acquired by National Highways. At that point of time nobody was available of receive the compensation. The National Highways addressed to the

HR&CE department. In order to get the compensation, the department has step in, to save the interest of the temple, in particular a Fit person was appointed. After assuming charge the then Fit person has taken steps to get the compensation amount from the acquiring authority. Accordingly, an amount of Rs.23,43,668/- was received from the authorities and it was deposited in a fixed deposit in Indian Overseas Bank. Thereafter the fit person has contacted all the encroachers of the land, explained the position, then the encroachers readily accepted to handover the lands to the then Fit person. Thereafter statement in writing was obtained from all the encroachers. After that the entire lands were surveyed by spending amount from the other temple funds and survey stones were laid in 151 acres of land. Then auction was conducted and all the lands were auctioned for cultivation and thereby an amount of Rs.13,00,000/- was collected from the successful bidders. Bank account was opened and the amount has been deposited in the account. Now a salary of Rs.7,000/- was fixed for the archaka, a watchman was appointed and his salary was fixed at Rs.6,000/- and the typist was appointed to do the clerical work. One Balasubramanian has stated the renovation work by spending his own money. After the fit person took charge things are moving in the right direction and the renovation work was stopped for want of permission from the State Level Committee. The fit person has presented the necessary papers before the State Level Expert Committee for renovation of the temple and the estimate is under preparation by the engineer attached to the department. The temple was also brought under the Integrated Monitoring System and ITMS number is TNO. 45154. The entire activity is being monitored by the department through ITMS system. Therefore, the appointment of fit person is legally valid.

4.(v) Wisdom dawn on the so-called trustee only after the department has done all the necessary acts to realize the income of the temple and also to safeguard the properties of the temple. It is needless to point out that after the realization of the income to the tune of Rs.37,00,000/- the so-called trustee came into the picture and claim his right over the temple which is unacceptable. At best the so-called trustee could approach the Assistant commissioner to settle a scheme to act as hereditary trustee in the presence of an Executive Officer to have transparency in the management. Without resorting to the lawful remedy, it is not open to file the writ petition to remove the board and consequential relief to handover the lands. Hence the writ petitions are devoid of merits and prayed to dismiss the same.

5. After hearing the rival submission, the writ Court had allowed both the writ petitions. Aggrieved over the Executive Officer in W.P.(MD)No.25273 / 2023 had filed the W.A.(MD)No.1149 / 2025 and the Fit Person in W.P.(MD)No.12566 of 2024 has filed the W.A.(MD)No.1150 of 2025.

6. Heard the counsels appearing for either side and perused the materials on record.

7. The primary contention of the appellants is that even though the writ petitioner is claiming that the temple as private temple, the writ petitioner had failed to administer the temple and its properties, the people nearby had started maintaining the temple by spending their own money and another private person started to do renovation work by spending his own money. Further when a portion of the land was acquired by National Highways and nobody was there to receive compensation, hence the National Highways had addressed to the HR&CE Department.

8. From the above short narration of events, it would clearly establish that the National Highways in order to pay the compensation had intimated to HR&CE, thinking that temple belongs to HR&CE. Even if the HR&CE received such communication, instead of informing to the trust/writ petitioner, the HR&CE had taken possession of the temple and its properties, appointed Fit Person, archaka, watchman, typist. Then received the amount from National Highways and deposited in the bank, conducted auction of land and deposited the said amount in the bank. Such action of the appellants is totally against the order passed in O.S.No.44 and 45 of 1969, since it has already been held that the temple

is a private temple run by a private trust. It is pertinent to state in both the suits the appellants are arrayed as one of the parties. Infact the appellants had preferred Appeal Suit but the same was dismissed and appellants had not preferred any second appeal, hence the judgment and decree has attained finality. In such circumstances, interfering in the private trust temple is without jurisdiction, besides being contempt as against the judgment and decree passed in above referred suit.

9. It is pertinent to state that the petitioner temple was declared as private trust temple in another proceeding initiated by the appropriate authority under Tamil Nadue Land Reforms (Fixation of Ceiling of Land) Act. Therefore, the issue whether the petitioner is private trust temple or public temple is no more res integra. Especially the issue is settled between the petitioner and the HR&CE, therefore the appellants have no jurisdiction to interfere in the temple. Hence, the other pleas that would touch upon the issue of private trust temple or public temple cannot be entertained and the same is rejected.

10. The contention of the appellants that the people living nearby are doing pooja and other activity in the temple. This plea cannot alter the nature of the temple from private temple to public temple. The issue of private temple was already considered by Hon'ble Supreme Court in the case of ***Radhakanta Deb***

and another Vs. The Commissioner of Hindu Religious Endowments, Orrisa, reported in AIR 1981 SC 798 wherein it is held that if public is not granted any permission to enter the place that itself is sufficient to conclude that it is private trust only. The relevant portion is extracted hereunder:

.....

"The concept of a private endowment or a private trust is unknown to English law where all trusts are public trusts of a purely charitable and religious nature. Thus, under the English law what is a public trust is only a form of Charitable Trust. Dr. Mukherjee in his Tagore Law Lectures on the Hindu Law of Religious and Charitable Trusts (1952 Edition) has pointed out that in English law the Crown is the constitutional protector of all properties subject to charitable trusts as these trusts are essentially matters of public concern. The learned author has further pointed out that one fundamental distinction between English and Indian law lies in the fact that there can be religious trust of a private character under the Hindu law which is not possible in English law. It is well settled that under the Hindu law, however, it is not only permissible but also very common to have private endowments which though are meant for charitable purposes yet the dominant intention of the founder is to install a family deity in the temple and worship the same in order to effectuate the spiritual benefit to the family of the founders and his descendants and to perpetuate the memory of the founder. In such cases, the property does not vest in God but in the beneficiaries who have installed the deity. In other words, the beneficiaries in a public trust are the general public or a section of the same and not a determinate body of individuals as a result of which the remedies for enforcement of charitable trust are somewhat different from those which can be

*availed of by beneficiaries in a private trust. **The members of the public may not be debarred from entering the temple and worshipping the deity but their entry into the temple is not as of right**".*

From the above it is evident if the creator of the Trust is intended to create temple for himself and his family, then the same is sufficient to declare the temple as private temple. Infact the said temple was created for the female members of the Shivaji Maharaja's family. Incidentally if some public is benefited the same would not change the character of the temple from private to public. While doing some activity by some individuals will not change the character of the private trust. Further the public cannot claim the same as a matter of right. In the present case the public cannot claim visit to the temple as a matter of right. Therefore, the twin test to determine private trust or public trust would be whether the donor had created for the benefit of himself, his family and relatives and if the answer is yes, then the same is private trust. Next test is whether the general public can claim as a matter of right and if the answer is no, then the same is private trust. In the present case, the twin test is in favour of the petitioner and hence the Sri Sudda Ratheneswara Swamy Private Trust Temple is a private trust temple and the provisions of HR&CE Act has no application at all.

11. The allegation that the new trust was created only to grab the properties

of the temple are all wild allegations. The property originally belongs to Kingdom of Tanjore when Shivaji Maharaj was ruling and he had given inam to his sister Sulakshanamba Bai and the descendants of Sulakshanamba Bai is claiming right over the property. After the Shivaji dynasty was captured by British, there was a change in law. Hence the descendants had created a trust in accordance to law, which law was prevailing then in the year 1943. Subsequently after the death of some descendants, the existing trustees thought it fit to execute amendment trust deed dated 18.07.2023. When the land belongs to private trust temple, the said private trust temple has every right to modify the trust as per law. And the same cannot be found fault with. Hence the ground raising the above allegations are rejected.

12. Even according to the appellants, the trustees had left Thanjavur in the year 1928 by appointing a local agent to administer the affairs of the temple. When the temple was administered by the said agent, then the appellants cannot allege the temple was left without administration. It is pertinent to state that one Punyasi Mathrusri was appointed to administer the affairs of the temple, in fact she was also a settlee under the document. Further it is not necessary that the said administrator alone ought to file suit, hence the said ground raised by the appellants is total erroneous. In such circumstances, the wild allegations have not substance at all.

13. The next contention of the appellants is that the power agent of the trustee has submitted a property register of the temple for approval of the department as per Section 29 of the HR &CE Act, which indicates that it is a public temple. Since some petition and documents were submitted, the appellants cannot be conferred with jurisdiction. It is settled proposition the jurisdiction cannot be conferred by parties. Since someone had submitted petition to the appellants, the same will not confer jurisdiction. The jurisdiction ought to be conferred under statute. The provisions of HR&CE Act are not applicable to private trust / temple hence the proceedings of the appellants are beyond jurisdiction, hence the same is liable to be set aside.

14. The writ Court has rightly held that the appellants cannot interfere in the affairs of the temple and consequently the appointment of fit person was held as erroneous and allowed the writ petition. This Court is concurring with the finding of the writ court. Consequently, the aforesaid two writ appeals are liable to be dismissed. Accordingly dismissed. No Costs. Connected Miscellaneous petitions are closed.

[J.N.B.,J] **[S.S.Y.,J]**

29.04.2025

NCC : Yes/No
Index : Yes/No
RR/TMG

J.NISHA BANU, J
AND
S.SRIMATHY, J.

RR/TMG

ORDER
IN
WA(MD) Nos.1149 and 1150 of 2025

Date : 29.04.2025