BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.02.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

W.A(MD)Nos.642 & 643 of 2022
and
C.M.P(MD)No.5348 of 2022

W.A(MD)No.642 of 2022:

Arulmighu Muthalamman Thirukovil Trust,
Thambipatti,
Represented by its President Thensamy,
S/o.Sundararaj,
Thambipatti Village,
Watrap Taluk,
Virudhunagar District. ... Appellant / Petitioner

Vs.

1.The Principal Secretary to Government,
Hindu Religious and Charitable Endowments Department,
Secretariat,
Chennai – 600 009.

2.The Commissioner,
Hindu Religious and Charitable Endowments Department,

Chennai – 600 009.

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

4.The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Sivagangai.

5.The District Collector,
Virudhunagar District,
Virudhunagar.

6.The Inspector,
Hindu Religious and Charitable
Endowments Department,
Srivilliputtur,
Virudhunagar District.

7.Fit Person for Arulmighu
Muthalamman Thirukovil,
Thambipatti, cum Executive Officer,
Arulmighu Kasi Viswanathasamy Thirukovil,
Watrap,
Virudhunagar District.

8.The Inspector of Police,
Watrap Police Station,
Virudhunagar District.

9.P.Baluchamy ... Respondents / Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent Act to set aside the order dated 15.03.2022 in W.P(MD)No.17693 of 2020.

For Appellant : Mr.G.Prabhu Rajadurai

For Respondents : Mr.K.S.Selvaganesan
Additional Government Pleader
for R.1 to R.6

Mr.K.K.Kannan for R.7

Mr.M.Karunanidhi
Government Advocate for R.8

Mr.R.Suriyanarayanan for R.9

W.A(MD)No.643 of 2022:

Arulmighu Muthalamman Thirukovil Trust,
Thambipatti,
Represented by its President Thensamy,
S/o.Sundararaj,
Thambipatti Village,
Watrap Taluk,
Virudhunagar District. ... Appellant / Petitioner

Vs.

1.The Principal Secretary to Government,
Hindu Religious and Charitable Endowments Department,
Secretariat,
Chennai – 600 009.

2.The Commissioner,
Hindu Religious and Charitable Endowments Department,

Chennai – 600 009.

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

4.The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Sivagangai.

5.The District Collector,
Virudhunagar District,
Virudhunagar.

6.The Inspector,
Hindu Religious and Charitable
Endowments Department,
Srivilliputtur,
Virudhunagar District.

7.Fit Person for Arulmighu
Muthalamman Thirukovil,
Thambipatti, cum Executive Officer,
Arulmighu Kasi Viswanathasamy Thirukovil,
Watrap,
Virudhunagar District.

8.The Inspector of Police,
Watrap Police Station,
Virudhunagar District.

9.P.Baluchamy ... Respondents / Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent Act to set aside the order dated 15.03.2022 in W.P(MD)No.7418 of 2021.

For Appellant : Mr.G.Prabhu Rajadurai

For Respondents : Mr.K.S.Selvaganesan
Additional Government Pleader
for R.1 to R.6

Mr.K.K.Kannan for R.7

Mr.M.Karunanidhi
Government Advocate for R.8

Mr.R.Suriyanarayanan for R.9

COMMON JUDGMENT

(By G.R.SWAMINATHAN, J.)

Heard both sides.

2.The case on hand pertains to the affairs of Arulmigu Muthalamman Temple, Thambipatti, Watrap Taluk. One Baluchamy / ninth respondent herein filed WP(MD)No.5462 of 2016 for directing the Commissioner, HR&CE Department to take action under Section 71 of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The writ petition was disposed of on 07.08.2017 with a direction to the Assistant Commissioner, HR&CE Department, Virudhunagar to submit the earlier report dated 24.02.2010 in proper format to the Commissioner, and the Commissioner on receipt thereof was directed to conduct enquiry under Section 71 of the Act and pass appropriate orders. Subsequently, the Department filed Rev.AplcW(MD)No.87 of 2019. The Review Application was allowed on 22.11.2019 in the following terms:

> *"4.It is an admitted fact that the subject matter temple is not governed by a scheme settled or deemed to have settled under the HR&CE Act. In such case, the Assistant Commissioner by virtue of the power under Section 49 of the Act, can take control over the administration of the temple in question, after getting permission from the Commissioner of HR&CE Dept. Further, as per the averments made in this review application, the Assistant Commissioner of HR&CE Dept., had already conducted a detailed enquiry as regards the subject matter in issue. Hence, this Court is inclined to review the order dated 07.08.2017 to that extent.*
>
> *5.Accordingly, the order dated 07.08.2017 passed in WP(MD)No. 5462 of 2016 is modified, para 4 of which, would run thus:*
>
> > *"4.Considering the facts and circumstances of the case, to give quietus, this Court directs the second respondent to submit the report dated 24.02.2010, in proper format to the Commissioner, HR&CE Dept., Chennai, within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the Commissioner of HR&CE Dept., shall consider the same and pass appropriate orders on*

> *merits and in accordance with law, after affording due opportunity of hearing to the petitioner and all interested parties, if any, within a period of four weeks thereafter. On receipt of the same, the Assistant Commissioner of HR&CE Dept., Virudhunagar, shall act in accordance with Section 49 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 and pass appropriate orders.""*

Pursuant to the said direction, the Commissioner, HR&CE Department passed order dated 15.10.2020. By the said order, the Commissioner treated the subject temple as a public temple and brought it under the category of listed temples. He also directed the jurisdictional Assistant Commissioner to take action for appointing a fit person for managing the temple. Pursuant to the order of the Commissioner dated 15.10.2020, the Assistant Commissioner, Virudhunagar issued proceedings dated 13.11.2020 appointing the Executive Officer of Arulmighu Kasi Viswanathasamy temple as a fit person for the subject temple. Challenging the said orders, W.P(MD)Nos.17693 of 2020 and 7418 of 2021 were filed. The learned single Judge vide order dated 22.04.2022 dismissed the writ petitions granting them liberty to file revision before the Government under Section 114 of the Act. Questioning this dismissal order, these two intra-Court appeals have been filed.

3.The order dated 13.11.2020 passed by the Assistant Commissioner obviously cannot stand. He has invoked Section 49 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 which confers power on Assistant Commissioner to appoint trustees and fit person. But, Section 49 of the said Act cannot be applied in the case of listed temples published under Section 46 of the Act. The learned counsel appearing for Baluchamy / ninth respondent herein submitted that the order dated 13.11.2020 should not be taken as an order passed under Section 49 of the Act but as one passed pursuant to the administrative direction given by the Commissioner, HR&CE.

4.The Commissioner/Deputy Commissioner/Joint Commissioner of HR&CE/the Government as the case may be has power and jurisdiction to appoint fit person under Section 47 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Section 47(1)(a) of the Act reads as follows:

> *"**47. Trustees and their number and term of offices**.—*
> *(1)(a) Where a religious institution included in the list published under section 46 or in respect of which the Assistant Commissioner has no power to appoint trustees, has no hereditary trustee,—*

(i) in cases falling under clause (i) of section 46, the Joint Commissioner / Deputy Commissioner ;

(ii) in cases falling under clause (ii) of section 46, the Commissioner; and

(iii) in cases falling under clause (iii) of section 46, the Government, shall constitute a Board of Trustees"

Section 46 of the Act is as follows :

*"[**46.Commissioner to publish list of certain institutions.**—The Commissioner shall publish, in the prescribed manner, a list of the religious institutions whose annual income, as calculated for the purposes of the levy of contribution under sub-section (1) of section 92,—*

(i) is not less than ten thousand rupees but is less than two lakh rupees ;

(ii) is not less than two lakh rupees but is less than ten lakh rupees ;

(iii) is not less than ten lakhs rupees, and may,

from time to time, modify such list in the prescribed manner :

Provided that the Commissioner shall not remove any institution from such list unless its annual income calculated as aforesaid has fallen below ten thousand rupees for three consecutive years:

Provided further that if the annual income of any such institution calculated as aforesaid has–

(a) exceeded the limits specified in clause (i) and (ii); or

(b) fallen below the limits specified in clause (ii) or clause (iii),

for three consecutive years, the Commissioner may alter the *classification assigned to such institution in the list and enter the same under the appropriate classification in the said list.]"*

Any temple would fall under one of the aforementioned three categories i.e, those having annual income of not less than 10,000/- but less than 2 Lakhs; those having annual income not less than 2 Lakhs but less than 10 Lakhs and those having annual income not less than Rs.10 Lakhs. In this case, it has not been clarified under which category, the petition mentioned temple would fall. The Commissioner will have jurisdiction only if the temple in question is having an annual income of not less than 2 lakh rupees but is less than 10 lakh rupees. Without specifically clarifying that the temple in question falls under clause (ii) of Section 46 of the Act, the Commissioner could not have assumed jurisdiction in the matter under Section 47.

5.It was contended on behalf of the Board that since the TN HR&CE Act, 1959 is a self-contained code, the petitioner will have to be relegated to avail the alternate remedy. We are however not persuaded by the said submission. When the challenge is made on the jurisdictional foundation, the petitioner need not be relegated to avail the alternative remedy. It is well settled principle of law that availability of alternative remedy is not an absolute bar for granting relief in exercise of power under Article 226 of the Constitution (vide ***Rajasthan State Electricity Board v. UOI, (2008) 5 SCC 632)***.

6.Secondly, it is the Commissioner who could have passed an order appointing a fit person. He could not have delegated his power in favour of the Assistant Commissioner. We are therefore of the view that the order appointing fit person will have to be necessarily set aside. The order of the learned Single Judge impugned in this appeal is also set aside.

7.We, however, sustain the order of the Commissioner dated 15.10.2020 insofar as it treats the subject temple as a public temple. Once a temple is treated as a public temple, it is well settled that devotees of all hues, irrespective of their castes or any other background, can and are entitled to offer their worship. No kind of discrimination can be practiced in the matter of worship. Likewise, the administration of the temple will have to be conducted in an appropriate manner in consonance of the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Section 107 of the Act itself makes it clear that the protection afforded to a Religious Denomination under Article 26 is subject to Article 25(2) of the Constitution of India and Section 106 of the Act. Therefore, if there is any Complaint regarding the denial of right to worship by any person is made, the same can be remedied by the Authorities by taking suitable action. In other words, if there is any caste discrimination or if any irregularity is noticed, it is always open to the parties concerned including the department to take action as per law.

8.With the aforesaid liberty, these Writ Appeals are allowed. No costs. Consequently, connected miscellaneous petition is closed.

[G.R.S., J.] [M.J.R., J.]
26.02.2025

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

To

1.The Principal Secretary to Government,
Hindu Religious and Charitable
Endowments Department,
Secretariat,
Chennai – 600 009.

2.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Chennai – 600 009.

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

4.The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Sivagangai.

5.The District Collector,
Virudhunagar District,
Virudhunagar.

6.The Inspector,
Hindu Religious and Charitable
Endowments Department,
Srivilliputtur,
Virudhunagar District.

7.The Inspector of Police,
Watrap Police Station,
Virudhunagar District.

G.R.SWAMINATHAN,J.

AND

M.JOTHIRAMAN, J.

MGA

W.A(MD)Nos.642 & 643 of 2022
and
C.M.P(MD)No.5348 of 2022

26.02.2025