BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.04.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

W.A(MD)Nos.719 of 2022 & 771 of 2024
and
C.M.P(MD)Nos.6072, 6073 of 2022 & 5721 of 2024

W.A(MD)No.719 of 2022:

N.Palaniappan (Died) ... Appellant / Petitioner

2.PL.Alamelu
3.A.N.Meiyammai
4.PL.Narayanan
(Appellants 2 to 4 / LRs of the deceased Sole Appellant are substituted vide order of this Court dated 27.03.2025) ... Appellants

Vs.

1.The Joint Commissioner,
The Hindu Religious and Charitable Endowments Department,
Thanjavur – 613 007.

2.The Executive Officer,
Arulmigu Saduranga Vallabhanathaswamy Thirukoil,
Poovanur, Needamangalam Taluk,
Thiruvarur District – 613 803.

3.The Assistant Commissioner,
The Hindu Religious and Charitable
Endowments Department,
Tiruvarur – 610 001.

4.The Tahsildar,
Needamangalam Taluk,
Tiruvarur District – 613 803. ... Respondents / Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 16.06.2022 in W.P(MD)No.19611 of 2019 and consequently dismiss W.P(MD)No.19611 of 2019 and consequently allow the above Writ Appeal.

For Appellant : Mr.P.L.Narayanan
Senior Counsel
for M/s.P.Kalaiyarasi Bharathi

For Respondents : Mr.K.S.Selvaganesan
Additional Government Pleader
for R.1, R.3 & R.4

Mr.V.Chandrasekar for R.2

W.A(MD)No.771 of 2024:

M.Meiyappan ... Appellant / Petitioner

Vs.

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

2.The Assistant Commissioner,
The Hindu Religious and Charitable
Endowments Department,
Tiruvarur – 610 001.

3.The Executive Officer,
Arulmigu Saduranga Vallabhanathaswamy
Thirukoil,
Poovanur, Needamangalam Taluk,
Thiruvarur District – 613 803. ... Respondents / Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 16.06.2022 in W.P(MD)No.20368 of 2019 on the file of this Court.

For Appellant	: Mr.V.R.Shanmuganathan
For Respondents	: Mr.P.Subbaraj Special Government Pleader for R.1 & R.2 Mr.V.Chandrasekar for R.3

COMMON JUDGMENT

(Judgment of the Court was made by G.R.Swaminathan J.)

The case on hand pertains to performance of three charities, namely, Pasumadam, Arthajama Kattalai and Nandavanam Kattalai in favour of Arulmigu Saduranga Vallabhanathaswamy Thirukoil, Poovanur.

A specific endowment was created by one P.N.Palaniyappa Chettiyar vide deed dated 16.12.1937 (Document No.1552/1937). Thiru.Venkatachalam Chettiyar / adopted son of the settlor and N.N.Narayanan Chettiyar / son-in-law of the settlor were adopted as the trustees for the endowment. After the demise of the trustee, sometime in the year 1964, difference of opinion arose between Venkatachalam Chettiyar and Narayanan Chettiyar. A civil suit was instituted in O.S.No. 37 of 1959 on the file of Sub Court, Kumbakonam. The suit was decreed. Challenging the same, A.S.No.128 of 1960 was filed before the District Judge, Thanjavur. A compromise was arrived at and a compromise decree was passed on 21.09.1960. As per the terms of compromise, Narayanan Chettiyar was to function as trustee for Pasumadam and Arthajamam Kattalai and Venkatachalam Chettiyar was to function as a trustee for Nandavanam Kattalai.

2.While so, on 05.06.1976, a fit person was appointed. The Executive Officer of the Arulmigu Saduranga Vallabhanathaswamy Thirukoil was to function as the fit person for the specific endowment. A number of proceedings were instituted by the Kattalaitharar. Years rolled by. Vide proceedings dated 13.03.2019, the Joint Commissioner, HR&CE

Department, Thanjavur directed the Executive Officer of the Arulmigu Saduranga Vallabhanathaswamy Thirukoil to initiate proceedings under Section 38 of the Tamil Nadu Hindu Religious and Endowments Act, 1959. Pursuant to the said direction, the Executive Officer issued communication dated 03.09.2019 calling upon the appellants herein to hand over the endowed properties. Challenging the same, N.Palaniyappan, S/o. Narayanan Chettiyar filed W.P(MD)No.19611 of 2019 and M.Meiyappan, grandson of Venkatachalam Chettiyar filed W.P(MD)No.20368 of 2019 questioning the said communication. Both the Writ Petitions were heard together on 16.06.2022 and disposed of in the following terms:

> *"92. In the light of the above, both Writ Petitions are disposed with the following directions:-*
>
> *i. The petitioners are directed to file a return of assets endowed and the assets available under their control and the details of any alienations made if any, either by the petitioners or their predecessors to the Office of the Assistant Commissioner within a period of thirty days from the date of receipt of a copy of this order.*
>
> *ii. The official respondents are directed to ensure that a suitable charge over the properties is registered in the office of Jurisdictional Sub-Registrar Office, to reflect the same in the Encumbrance Certificate.*

iii. They shall issue appropriate letter to the Jurisdictional Sub Register office to this effect.

iv. In case, the petitioner fails to furnish the documents and/or if it is noticed that there have been alienations in the past, the second respondent Executive Officer of the Arulmigu Sri Saduranganathaswamy Temple shall take control of the assets endowed and further take steps to recover the same from the persons to whom such alienations have been made.

v. Needless to state, if the above circumstances are noticed, the second respondent as the "Fit Person", can assume office in place of the petitioners to manage the affairs of the Trust and the properties endowed for the performance of the obligation to the temple.

vi. In case there are no alienations and only there are dues for the amounts spent by the temple for observing various Kattalais, the respondents shall call upon the respective petitioners to pay the amounts jointly and severally, failing which, appropriate steps can be taken to recover the amount from the respective petitioners.

vii.The petitioners and their descendants shall ensure that the wishes of the founder Late Thiru P.N Palaniappa Chettiar are observed as per Settlement Deed dated 16.12.1937 without any breach.

viii.The amounts and properties that have been utilised contrary to Alienation of Immovable Trust

> *Property Rules and Utilisation of Surplus Funds Rules and several other Rules, shall be recovered from the respective petitioners in accordance with law.*
>
> *ix. No costs."*

Challenging the same, these Writ Appeals have been filed.

3.When the Writ Appeals were entertained, interim order was granted. During the pendency of the Writ Appeals, N.Palaniappan / original writ petitioner passed away and his son Thiru.PL.Narayanan came on record.

4.We carefully considered the rival contentions and went through the materials on record.

5.Section 38 of the Tamil Nadu Hindu Religious & Charitable Endowments Act, 1959 reads as follows:

> *"**38. Enforcement of service or charity in certain cases.** —(1) Where a specific endowment attached to a math or temple consists merely of a charge on property and there is failure in the due performance of the service or charity, the trustee of the math or temple concerned may require the person in possession of the property on which the endowment is a charge, to pay the expenses incurred or*

likely to be incurred in causing the service or charity to be performed otherwise. In default of such person making payment as required, the Commissioner in the case of a specific endowment attached to a math, and [the Joint Commissioner or the Deputy Commissioner, as the case may be], in the case of a specific endowment attached to a temple, may, on the application of the trustee and after giving the person in possession, a reasonable opportunity of stating his objections in regard thereto, by order determine the amount payable to the trustee.

(2) Where the person in possession of the property on which the endowment is a charge is not the person responsible in law for the performance of the service or charity and any amount is paid by or recovered from the person in possession, the Commissioner in the case of a specific endowment attached to a math and 1[the Joint Commissioner or the Deputy Commissioner, as the case may be], in the case of a specific endowment attached to a temple, may , on the application of the person in possession and after giving the person responsible in law a reasonable opportunity of stating his objections in regard thereto, by order, require the person responsible in law to pay to the person in possession the amount so paid or recovered.

(3) Against an order of the Commissioner or [the Joint Commissioner or the Deputy Commissioner] under sub-section (1), or sub-section (2), the trustee or the person affected may, within two months from the date of the receipt

> *of the order by him, appeal to the Government or the Commissioner, as the case may be. An order passed on appeal by the Government or the Commissioner shall be final.*
>
> (4) On application by the trustee to the Collector of the district in which the property referred to in sub-section (1) is situated, or on application by the person in possession to the Collector of the district in which is situated any property of the person responsible in law, as the case may be, the Collector shall recover from the person in possession or the person responsible in law, as the case may be, the amount specified in the order of the Commissioner or [the Joint Commissioner or the Deputy Commissioner] as modified in appeal, if any, and the expenses of such recovery, as if they were arrears of land revenue and pay to the trustee or, as the case may be, to the person in possession, the amount due to him."

A careful reading of the aforementioned provision would indicate that the trustee of the temple in favour of which the specific endowment has been created must call upon the person in possession of the endowed property to make a demand on the person in possession of the endowed property. In the case on hand, the Executive Officer of the temple had straightaway called upon the writ petitioners herein to hand over possession of the endowed properties. The course of action adopted by the Executive

Officer cannot be said to be in consonance with the statutory provision. We, therefore, have no hesitation to set aside the communication dated 03.09.2019 issued by the Executive Officer. However, the communication of the Joint Commissioner is only to the effect that the Charity must be continued to be performed. We, therefore, decline to interfere with the said communication.

6.The authorities, however, are under the impression that the special endowment is to be managed only by the Executive Officer of the Temple. We cannot give our seal of approval to this approach. It is true that a fit person was appointed for the endowment way back on 05.06.1976. But then, the fit person never took charge of the endowed properties. The properties continue to be in the possession of the founders' family. Of course, the endowed properties are in the physical possession of the tenants against whom the proceedings have been instituted before the jurisdictional revenue Court.

7.The Hon'ble Division Bench in the decision reported in ***(2016) 1 CTC 9 (C.Andiappan & Others Vs The Joint Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments Board & Others)*** had held that for a special endowment, fit person cannot normally be appointed. In any event, a fit person cannot be appointed for all times to come. A careful reading of the judgment in ***C.Andiappan's*** case would indicate if a particular trustee of a specific endowment is found to have defaulted in the performance of duties, the next in line of succession should be made the trustee and mandated to perform the charity.

8.As on date, Thiru.PL.Narayanan, the only son of Thiru. Palaniappan, has to be recognised as the trustee in respect of Pasumadam and Arthajama Kattalai. Meiyyappan has to be recognised as a trustee for Nandavanam Kattalai. As rightly argued by the learned counsel for the Executive Officer, these persons should not be trustees only on paper. They should carry out the charity which was endowed by their forefather (Palaniappan).

9.We are happy to record that both PL.Narayanan as well as Meiyappan have agreed to ensure that all the three Kattalais are duly and scrupulously performed.

10.Thiru.PL.Narayanan states that he would at the earliest create a special bank account in the names of the Kattalais (Pasumadam and Arthajama Kattai). The account will be maintained with ICICI Bank, Needamangalam. He states that he would deposit a sum of Rs.10,000/- (Rupees Ten Thousand only) every month in the said account. He would also ensure that all the pooja items and articles necessary for the aforesaid two charities will be purchased out of this account. This undertaking given by Thiru.PL.Narayanan is placed on record and this would bind all the succeeding trustees of the aforesaid two charities.

11.Thiru.PL.Narayanan laments that lessees who are in possession of the endowed lands are not paying their lease amount. We permit Thiru.PL.Narayanan to apply to the jurisdictional Joint Commissioner, HR&CE Department for recovery of money due to the specific endowment. As and when such an application is filed, the authority concerned is directed to take effective action under Section 79-C of the Tamil Nadu Hindu Religious and Endowments Act, 1959 and ensure that the money due to the endowments are recovered. We direct the jurisdictional Joint Commissioner, HR&CE Department to take appropriate steps under Section 34-A of the Tamil Nadu Hindu Religious and Endowments Act, 1959 and fix the lease rent payable by the tenants. If the noticee fails to comply with the demand, then, the defaulter has to be vacated by invoking power under Section 78 of the Act. The jurisdictional Police are also mandated to extend their fullest assistance. These directions are in the nature of continuing Mandamus and in the event of the authorities not adhering to the said directions, it is always open to the trustee move this Court by way of contempt proceedings.

12.The learned counsel appearing for Thiru.Meiyappan also states that he would at the earliest create a special bank account in the name of the Kattalai (Nandavanam Kattalai). The account will be maintained with ICICI Bank, Needamangalam. He states that he would deposit a sum of Rs.1,00,000/- (Rupees One Lakh only) every six months in the said account. He would also ensure that all the necessary garlands and flowers for the aforesaid charity will be purchased out of this account. This undertaking given by Thiru.Meiyappan is placed on record and this would bind all the succeeding trustees of the aforesaid charity.

13.For all the three charities, two Registers shall be maintained and contemporaneous entries shall be made daily with regard to supply of the pooja items and they shall be duly counter signed also. One register will be maintained by the Executive Officer and another one will be maintained by the trustees. The Revenue Courts are directed to expedite the proceedings and conclude the same within a period of six months from the date of receipt of a copy of this order.

14.These Writ Appeals are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

[G.R.S., J.]   [M.J.R., J.]
29.04.2025

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

To

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The Hindu Religious and Charitable
Endowments Department,
Thanjavur – 613 007.

2.The Executive Officer,
Arulmigu Saduranga Vallabhanathaswamy
Thirukoil,
Poovanur, Needamangalam Taluk,
Thiruvarur District – 613 803.

3.The Assistant Commissioner,
The Hindu Religious and Charitable
Endowments Department,
Tiruvarur – 610 001.

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Tiruvarur District – 613 803.

G.R.SWAMINATHAN,J.

AND

M.JOTHIRAMAN, J.

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