BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.07.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.(MD)No.2161 of 2023
and
C.M.P.(MD)No.17322 of 2023
and
C.M.P.(MD)Nos.8554 of 2024 and 5555 of 2025

1.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai - 600 034.

2.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Mullippadi, Seelapadi Post,
Dindigul.

3.The Executive Officer,
Arulmighu Suyambu Saneeswarar Thirukoil,
Kuchanoor, Theni District.

4.The Fit Person,
Arulmighu Suyambu Saneeswarar Thirukoil,
Kuchanoor, Theni District. ... Appellants

Vs.

1.Thirumalai Muthu

2.T.Deepan

3.The District Collector,
Theni.

4.The Superintendent of Police,
Theni. ... Respondents

Prayer : Writ Appeal filed under Clause XV of Letters Patent, to allow the writ appeal by setting aside the order passed in W.P.(MD)No.20349 of 2023 dated 03.11.2023 on the file of this Court.

For Appellants : Mr.Veerakathiravan,
Addl. Advocate General,
Assisted by Mr.P.Subbaraj,
Spl. Government Pleader.

For Respondents : Mr.V.R.Shanmuganathan for R1 & R2.
Mr.A.Kannan,
Addl. Government Pleader for R3.
Mr.T.Senthilkumar,
Addl. Public Prosecutor for R4.

JUDGMENT
(By G.R.SWAMINATHAN, J.)

Heard both sides.

2.The Commissioner, Hindu Religious and Charitable Endowments Department, Theni has filed this writ appeal questioning the order dated 03.11.2023 made in W.P.(MD)No.20349 of 2023 filed by M.M.Thirumalaimuthu and his son / Deepan.

3.The prayer in the writ petition was for declaration that continuation of the Executive Officer and fit person for Arulmighu Suyambu Saneeswara Bhagavan Thirukovil, Kuchanur, Theni District is illegal. The learned Single Judge allowed the writ petition in the following terms:-

> *"25. Therefore, from the judgments cited supra it would be evident that the Executive Officer and Fit Person cannot be beyond the period of five years at time. In the present case the Executive Officer and Fit Person are in the management for more than 20 years and hence they cannot be allowed to continue. Hence the respondents ought to hand over the charge to the Board of Trustees. Hence the 1st petitioner along with the other trustees is entitled to get the management. Even though only one trustee is before this Court, this Court is directing the respondents to hand over the charge to the Board of Trustees*

with a period of four weeks from the date of receipt of the copy of the order. As far as the claim of the 2nd respondent is concerned, he is entitled to be considered after the disposal of the stay application or after disposal of the writ appeal pending in W.A.(MD)No. 1509 of 2023."

4.The writ petitioners have questioned the continuation of not only the Executive Officer but also the fit person. We take up the issue of Fit Person first. It is well settled that Fit Persons cannot be appointed for eternity. It can only be a stop-gap arrangement. The office of the trustee of the petition mentioned temple was declared to be hereditary way back in the year 1927. The temple had seven trustees in the year 2003. Out of them, one is no more and one of them has been disqualified. At present, there are only five trustees and they are also under suspension. In this background, Section 54(2) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 will come into play. The said provision reads as follows:-

*"54. **Filling up of vacancies in the offices of hereditary trustee:***

(2) When a temporary vacancy occurs in such an office by reason of suspension of the hereditary trustee under sub-section (2) of section 53, the next in the line of succession shall be entitled

to succeed and perform the functions of the trustee until his disability ceases."

5.The persons who are next in the line of succession are entitled to submit applications before the jurisdictional Joint Commissioner and their names shall be entered in the relevant register. The Madras High Court in the decision reported in ***1990 (1) L.W. 144 (Prem Anand Vs. The Commissioner, Hindu Religious and Charitable Endowments Department)*** had held that this act of entering the name of trustee who is next in the line of succession is a ministerial act and nothing more than that. The learned counsel for the writ petitioner states that within a period of one of week from the date of receipt of a copy of this order, such an application will be submitted. The jurisdictional Joint Commissioner is directed to pass a positive order constituting the board of trustees within a period of three weeks thereafter. Once a new board is constituted, whether with full strength or with shortfall, the Fit Person has to vacate his office immediately thereafter. It is needless to mention that there can only be seven applicants in all. Every branch can nominate one member from their branch. If any dispute arises among the members of a particular branch, the issue has to be resolved by the jurisdictional Civil Court.

6.Likewise an Executive Officer also cannot be there for eternity. Section 45 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 reads as follows:-

> *"**45. Appointment and duties of Executive Officers.**—(1) Notwithstanding anything contained in this Act, the Commissioner may appoint, subject to such conditions as may be prescribed, an executive officer for any religious institution other than a math or a specific endowment attached to a math.*
>
> *[Explanation.—In this section "math" shall not include a temple under the control of a math].*
>
> *(2) The executive officer shall exercise such powers and discharge such duties as may be assigned to him by the Commissioner.*
>
> *Provided that only such powers and duties as appertain to the administration of the properties of the religious institution referred in subsection (1) shall be assigned to the executed officer.*
>
> *(3) The Commissioner may define the powers and duties which may be exercised and discharged respectively by the executive officer and the trustee, if any, of any religious institution other than a math or a specific endowment attached to*

a math.

(4) The Commissioner may, for good and sufficient cause, suspend, remove or dismiss the executive Officer."

Whenever administrative power is conferred by a statute, the presumption is that it will be exercised in a manner which is fair in all the circumstances (vide ***(1994) 1 AC 531 (R. Vs. Secretary of State for the Home Department)***. This principle was cited approvingly by the Hon'ble Supreme Court in ***NHAI Vs. Madhukar Kumar (2022) 14 SCC 661***. We, therefore hold that the power under Section 45 of the Act has to be exercised fairly.

7.In ***D.R.Nagarajan Vs. Commissioner, HR & CE, (1970) 83 L.W. 753***, the Hon'ble Division Bench held in that case that the appointment of an Executive Officer had reduced the hereditary trustee to a non-entity, the power under Section 45 can no doubt be exercised in proper cases. The discretion vested in the Commissioner is to be exercised reasonably and fairly because the power by its very nature is a drastic one and appointment of an Executive Officer is more often than not likely to virtually eliminate a hereditary trustee. Hereditary trusteeship is property and as such is entitled to protection.

8.In ***M.E.Subramani Vs. Commissioner (1976) 89 L.W. 195***, it was held that Section 45 cannot be taken to confer an unguided and arbitrary power on the Commissioner. The power has to be exercised in terms of the policy of the Act ie., to provide for the administration and governance of the religious and charitable institutions and endowments. This decision was overruled in Chidambaram Dikshikar case on another point.

9.Executive Officer came to be appointed for an endowment because of the alleged improper administration by the then trustee. Following his demise, the reasons which warranted the appointment of the Executive Officer did not survive. The legal heirs were permitted to take over the administration and it was held that the continued administration by the Executive Officer was not warranted ***(M.P.Anandam Pillai Vs. State 2004 (4) CTC 368)***

10.In ***the Commissioner, HR & CE Vs. K.Jothiramalingam (1986) 99 L.W. 600***, the Hon'ble Division Bench held that the power vested in the Commissioner under Section 45(1) of the Act being a very drastic one, it has to be exercised cautiously, reasonably and fairly as the exercise of such power may even result in the effective elimination of the hereditary trustee from management and administration of the institution.

11.In ***N.Sivasubramanian Vs. Government of Tamil Nadu 2006 (2) CTC 49***, it was held as follows:-

> *"**10.** In the decision reported in T. Vellala Samudayam v. State of Tamil Nadu, 1980 (2) MLJ 358, in paragraph 15, this Court held that even though the denomination has a right to administer the temples, if there is any maladministration, the departmental authorities would be in a position to exercise the necessary powers to the extent possible under the statute.*
>
> ***11.** Section 45 of the Act, even though empowers the second respondent to pass an order appointing Executive Officer, that power has to be exercised in terms of the policy of the Act. The said power shall be exercised coupled with a duty. Therefore it is the duty of the second respondent to see as to whether the Executive Officer has to be appointed for better and proper administration of the group of temples.*
>
> ***12.** As pointed out above, no doubt the second respondent is empowered to appoint Executive Officer under Section 45(1) of*

the Act. But to exercise the said power, there must be a mal-administration by the trustees and to find out whether there is any mal-administration or not, it is the duty of the second respondent to issue notice to the trustees, hear their objections and only after prima facie satisfaction of the mal-administration, the second respondent is empowered to exercise the power under Section 45(1) of the Act and appoint the Executive Officer."

12.The Hon'ble Supreme Court had authoritatively laid down in ***Subramanian Swamy Vs. State of Tamil Nadu (2014) 5 SCC 75*** that Supersession of rights of administration cannot be of a permanent enduring nature and that 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 stamp out the consequences of maladministration. Power to regulate does not mean power to supersede the administration for an indefinite period.

13.We, therefore, endorse the stand of the learned counsel for the writ petitioners that an Executive Officer cannot be there for eternity.

Even as per the Conditions for Appointment of Executive Officers Rules, 2015, issued vide G.O.(Ms)No.260 Tourism, Culture and Religious Endowments dated 06.11.2015, the Commissioner can appoint an Executive Officer for a 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. This does not mean that the appointment can be periodically extended every five years for all times to come. That would be nothing but a fraud on the Constitution as well as the statute. We emphatically declare that the arrangement of having an Executive Officer for a religious institution under the 1959 Act is permissible only till the causes that led to his appointment are remedied. Five years is certainly a long enough time to set right any maladministration. If an Executive Officer is not able to set things right by then, the very purpose is lost and the institution can very well do without an Executive Officer. The religious institutions should be managed in the manner set out in the statute ie., either by a hereditary trustee or by a trust board. In fact, we are not saying anything new. Rule 7 itself says thus:

> *"7.Notwithstanding anything contained in Rule 3, the Commissioner may permit the Executive Officer to continue to discharge his administrative functions in accordance with the*

provisions of the Act,

(i) till the circumstances warranting the appointment of an Executive Officer subsists as pointed out in rule 3, except clauses (vii) and (ix) of the said rule 3 stand remedied; or

(ii) till such time as the circumstances of the religious institution warrants;"

While in particular cases, the aggrieved trustees, whether hereditary or non-hereditary, can seek discontinuance of the arrangement of Executive Officers by invoking the principles laid down above, such a situation is yet to fructify in the case on hand. We are satisfied that there is a need for the office of Executive Officer to continue for the petition mentioned temple. The issue can be revisited at an appropriate stage later.

14.The order of the learned Single Judge is modified and the writ appeal is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

(G.R.S. J.,) & (K.R.S. J.,)
30.07.2025

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

To:-

1.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai - 600 034.

2.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Mullippadi, Seelapadi Post,
Dindigul.

3.The Executive Officer,
Arulmighu Suyambu Saneeswarar Thirukoil,
Kuchanoor, Theni District.

4.The Fit Person,
Arulmighu Suyambu Saneeswarar Thirukoil,
Kuchanoor, Theni District.

5.The District Collector,
Theni.

6.The Superintendent of Police,
Theni.

G.R.SWAMINATHAN, J.
and
K.RAJASEKAR, J.

ias

W.A.(MD)No.2161 of 2023

30.07.2025
(3/3)