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WP.Nos.17419 & 22157 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:30.10.2025

Pronounced on:30.01.2026

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P. Nos.17419 & 22157 of 2025

and

WMP. Nos.19750, 19751, 24930 & 24931 of 2025

W.P. No.17419 of 2025:

P.Ezhumalai

Petitioner(s)

Vs

- 1.The Secretary to Government,
Tourism, Culture and Religious Endowments,
Fort St. George, Chennai – 600 009.
- 2.The Commissioner,
Hindu Religious Culture & Endowments Department,
Nungambakkam, Chennai – 600 034.
- 3.The Joint Commissioner,
Hindu Religious Culture & Endowments Department,
Kanchipuram.
- 4.The Executive Officer,
Adhipeeda Parameswari Kalikambal Koil,
No.1, Jawaharlal Street,
Kanchipuram – 631 502.

Respondent(s)

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call



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for the records in G.O.(P) No.275, dated 17.11.2023, Tourism, Culture and Religious Endowments (AN3-1) Department and quash the paragraph 3 of the said G.O, as far as it restricts the term of office of the trustees as 2 years and further direct the respondents to change the term of office of the trustees from 2 years to 3 years and further direct the 4th respondent/Executive Officer to handover complete management of the temple to the trustees as per the Scheme of the temple in O.S. No.19/1934 dated 31.03.1936, on the file of the learned District Judge, Chengalpattu within a stipulated time.

W.P. No.22157 of 2025:

Sri Adipeeda Parameswari,
Kalikambal Koil Rep by
Thiru P.Ezhumalai Asari

Petitioner(s)

Vs

- 1.The Secretary to Government,
Tourism, Culture and Religious Endowments,
Fort St. George, Chennai – 600 009.
- 2.The Commissioner,
Hindu Religious Culture & endowments Department,
Nungambakkam, Chennai – 600 034.
- 3.The Joint Commissioner,
Hindu Religious Culture & Endowments Department,
Vellore.
- 4.The Executive Officer,
Adhipeeda Parameswari Kalikambal Koil,
No.1, Jawaharlal Street,
Kanchipuram – 631 502.

Respondent(s)



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PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records in Nada.Na.Ka.No.7792/2006/A2, dated 06.03.2006, on the file of the 3rd respondent and quash the same as no definite period of office is prescribed in the order as per the judgment in *Dr.Subramanian Swamy vs The state of Tamil Nadu, reported in (2014) 5 SCC 75* and in view of the trustees appointment on 17.11.2023 and as illegal, incompetent, without jurisdiction and liable to set aside the further direct the 4th respondent/Executive Officer to handover complete management of the temple to the trustees as per the scheme of the temple in O.S. No.19/1934, dated 31.03.1936 on the file of the learned District Judge, Chengalpattu.

For Petitioner : Mr.R.Singaravelan,
Sr. Counsel, for
Mr.M.Muruganantham
in both cases

For Respondents : Mr.N.R.R.Arun Natarajan,
Special Government Pleader
in both cases

COMMON ORDER

W.P. No.17419 of 2025 has been filed for issuance of Writ of Certiorarified Mandamus to quash Paragraph No.3 of G.O.(P) No.275, dated 17.11.2023, Tourism Culture and Religious Endowments (AN3-1)



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Department, insofar as it relates to the term of office of the trustees as 2 years and to direct the respondents to change the term of office of the trustees from 2 years to 3 years and consequently, direct the 4th respondent/Executive Officer to hand over management of the temple to the trustees as per the Scheme of the temple in O.S. No.19/1934 dated 31.03.1936, on the file of the learned District Judge, Chengalpattu.

2. **W.P. No.22157 of 2025** has been filed to issue a Certiorarified Mandamus to quash the proceedings in Nada.Na.Ka.No.7792/2006/A2, dated 06.03.2006, on the file of the 3rd respondent on the ground that there is no definite period of office is prescribed in the order as per the judgment in *Dr.Subramanian Swamy vs The state of Tamil Nadu*, reported in (2014) 5 SCC 75 and to consequently, direct the 4th respondent/Executive Officer to hand over management of the temple to the trustees as per the Scheme referred herein above.

3. I have heard Mr.R.Singaravelan, learned Senior Counsel for Mr.M.Muruganantham, learned counsel for the petitioner in both Writ Petitions, as well as Mr.N.R.R.Arun Natarajan, learned Special Government Pleader for the respondents.



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4. The short, yet interesting issue that is involved in W.P. No.17419 of 2025 is as to whether the Government has the power to reduce the tenure of the Trustees who are elected as per the Scheme settled under Act II of 1927 (Madras Hindu Religious Endowments Act), from three years to two years, without resorting to the procedure prescribed under Section 64(5)(a) of the Hindu Religious and Charitable Endowments Act, 1959. (hereinafter referred to as '1959 Act').

5. Mr.R.Singaravelan, learned Senior Counsel would submit that in the present case, it is not in dispute that the Scheme was settled by the Civil Court under Act II of 1927. In such circumstances, pointing out to the provisions of the 1951 enactment and the present 1959 Act, Mr.R.Singaravelan, learned Senior Counsel would submit that the Scheme decree passed by the Civil Court is deemed to have been settlement under the two enactments.

6. With regard to the alleged repugnancy that is relied on by the respondents to modify the tenure from three years to two years, Mr.R.Singaravelan, learned Senior Counsel would submit that Section 47 (1) and 47(2) of the 1959 Act, dealing with appointment of Trustees, no



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doubt, prescribes the tenure of two years, however, only under sub section 3. He would contend that Section 47 of the Act cannot be interpreted to override the appointment of trustees under the Scheme in question, which is admittedly one deemed to have been settled under the present enactment as well as under the 1951 Act.

7. Mr.R.Singaravelan, learned Senior Counsel would further concede that the Department does have a power to modify the terms of the Scheme, however it can be done only by taking recourse to Section 64 of the Act and not otherwise. Mr.R.Singaravelan, learned Senior Counsel would also refers to Section 39 of the 1951 Act and Section 47 of 1959 Act and contend that there is a difference between the two provisions in as much as under Section 39 of the 1951 Act, appointment of the Trustees is unrestricted whereas under Section 47 of the 1959 Act, it can be done only on satisfaction of the two conditions which have been set out under Clauses 1 and 2. He would therefore state that it is only in respect of Sub Sections 1 and 2 of 47, Sub Section 3 would apply, relating to tenure and therefore, the Department was clearly in error in restricting the tenure to two years in contrast to the term of three years as available under the Scheme.



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8. Mr.R.Singaravelan, learned Senior Counsel would further state that the Hon'ble Supreme Court, in the Constitution Bench Judgment in *Sri Jagadguru Kari Basava Rajendraswami of Govimutt Vs. Commissioner of Hindu Religious and Charitable Endowments, Hyderabad and another*, reported in (1964) SCC Online SC 158, has held that unless the modifications being made to the Scheme under Section 62(3), the Scheme as a whole will be deemed to have been made under the latter Act and will be enforced as a valid Scheme. The Hon'ble Supreme Court has interpreted Section 103(d) of the 1951 Act in this regard, which is analogous to Section 118(2)(a) of the 1959 Act. Mr.R.Singaravelan, learned Senior Counsel would further submit that without satisfying the requirement of Section 64(5) of the Act, no modifications or amendments to the Scheme are permissible and the very object of incorporating Section 64(5) of the Act was to ensure sufficient safeguards to prevent the officials from acting with ulterior motives, presuming inconsistency or repugnancy with the provisions of the 1959 Act.

9. The learned Senior Counsel would also rely on the decisions of



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the Hon'ble Supreme Court in *Cherukuri Mani W/o. Narendra Chowdari Vs. Chief Secretary, Government of Andhra Pradesh and others*, reported in (2015) 13 SCC 722 and *Opto Circuit India Limited Vs. Axis Bank and Ors*, reported in (2016) 6 SCC 707, where the Hon'ble Supreme Court held that when a statute requires a thing to be done in a particular manner, then it must be done only in that manner or not at all to be done otherwise. He would also place reliance on the decision of the Constitution Bench of the Hon'ble Supreme Court in *Sri Jagadgur Kari Basava Rajendraswami of Govi Mutt's* case and state that it has not been taken note of by the later Division Bench in Writ Appeal 2444 of 2022 and he would therefore state that the Division Bench in W.A. No.2444 of 2022 is not a binding precedent and is not good law. He would further contend that in a similar case involving Kalikambal Temple, Chennai, the Commissioner, HR & CE has, in fact, filed a sworn affidavit before this Court that, resort has been taken under Section 64(5) of the Act to modify the tenure of the non-hereditary trustees and therefore, the Department cannot blow hot and cold and take a different stand when it comes to the present temple.

10. He would also state that the Division Bench Judgment in



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R.Sampath and another Vs. The Government of Tamil Nadu by its Secretary, HR & CE, in W.A. No.2444 of 2022 dated 20.08.2024, has not taken note of the decisions of the Hon'ble Supreme Court in *T.Lakshmikumara Thathachariar Vs. Commissioner, HR & CE and others*, reported in (1998) 6 SCC 643 as well as *Commissioner, HR & CE, Administrative Department, Madras Vs. P.S.Sethurathinam*, reported in (1999) 2 SCC 327, where the Hon'ble Supreme Court has held that resorting to Section 64(5) of the Act was mandatory. The learned Senior Counsel would also rely on the decision of the Hon'ble Division Bench, where I was a party and delivered the judgment for the Bench, where the Bench directed the Department to proceed under Section 64(5) of the Act, rejecting the contentions of the Department that the provisions were repugnant to the 1959 Act.

11. Lastly with regard to the other writ petition, the learned Senior Counsel referred to the decision of the Hon'ble Supreme Court in *Dr.Subramanian Swamy vs The State of Tamil Nadu*, reported in (2014) 5 SCC 755, where the Hon'ble Supreme Court held that the Executive Officer cannot be appointed under Section 45 of the Act for an indefinite period of time. He would therefore pray for both the writ petitions being



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allowed.

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12. Per contra, Mr.N.R.R. Arun Natarajan, learned Special Government Pleader, appearing for the Department, referring to Section 47(3), Section 50 and Section 118(2)(b)(i) of the 1959 Act, would submit that admittedly, the Scheme providing for tenure of Trustees for a period of 3 years, contravenes Section 47(3) and therefore, being repugnant, on the face of it, it was a case of the scheme being void, in so far as the tenure of trustees is concerned and thus, it was not necessary for the Department to move for modification or amendment of the Scheme under Section 64 (5) of the Act, as contended by the learned Senior Counsel for the petitioner.

13. He would further rely on the Division Bench judgment in W.A. No.2444 of 2022, where, though the learned Single Judge had clearly held the Scheme providing for a longer tenure was repugnant to Section 47(3), however, had directed an enquiry to be conducted as against which, the Hon'ble Division Bench held that once there was admittedly a repugnancy, there was no necessity for any further act to be done, as, in terms of Section 118(2)(b), it would render the repugnant



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clause or provision void and there was no necessity for modifying or amending the Scheme to fall in line with the statutory provisions of the 1959 Act. He would further state that the impugned order was passed even in 2023 and even on the ground of delay and laches, the petitioner is to be non-suited to any relief. He would further state that the petitioners themselves have acquiesced with the reduced tenure of two years which was not challenged by them when they were appointed earlier for a period of two years. In such circumstances, it is contended by Mr.N.R.R.Arun Natarajan, learned Special Government Pleader that the petitioners are even estopped from challenging the reduction of tenure from three years to two years.

14. The learned Special Government Pleader would further state that the initial appointment of the Executive Officer was only at the request of the then Trustees and therefore, it is not open to the petitioner to now contend that the appointment of the Executive Officer is illegal or that the indefinite period of time fixed is contrary to the settled principles laid down by the Hon'ble Supreme Court, more specifically in *Dr.Subramanian Swamy's* case. The learned Special Government Pleader also relies on the Conditions for Appointment of the Executive Officers



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Rule, 2015, which has come into force after the decision of the Hon'ble Supreme Court in *Dr.Subramanian Swamy's* case (referred herein supra).

Inviting my attention to Rule 3(viii), he would submit that the appointment of Executive Officer cannot be challenged, since the Trustees themselves have opted for appointment of an Executive Officer to assist them in better administration and development of the Religious Institution. According to Mr.Arun Natarajan, when the Trustees have not withdrawn the request till date, the appointment of Executive Officer cannot be challenged by the petitioners

15. He would also rely on Rule 10(1) of the said Rules, which stipulates an exception that the Rules would not adversely affect the powers of the Executive Officer, who has been holding the post, immediately before the date of commencement of the Rules.

16. Insofar as the second Writ Petition, Mr.N.R.R.Arun Natarajan, learned Special Government Pleader would submit that the Fit Person was appointed way back in March 2006 and subsequently, non-hereditary trustees, as per the Scheme were appointed by order dated 30.01.2009 and Fit Person has handed over the charge to the Regular Trustees even in



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August 2009. In view of the same, he contends that nothing survives for consideration insofar as the W.P.No.22157 of 2025 is concerned. He would also submit that however, the Executive Officer having been appointed only at the request of the then Trustees themselves and when he is continuing to manage the temple, along with the other Trustees, the decision of the Hon'ble Supreme Court *Dr.Subramanian Swamy's* case (referred herein supra) or subsequent Rules will also not entitle the petitioner to relief in W.P. No.22157 of 2025.

17. I have carefully considered the submissions advanced by the learned counsel for both sides and I have also gone through the records and various decisions that had been relied on by the learned counsel for the parties.

18. The petitioner Temple Arulmighu Sri Adipeeda Parameswari and Kalikambal Temple, Kanchipuram (herein after referred to as 'Temple'), came to be administered by a Scheme passed by the learned District Judge, Chengalpattu in O.S. No.19 of 1934, in and by judgment dated 31.03.1936, revising a Scheme which had been initially framed by the Religious Recruitment Board in Order No.999 dated 23.09.1934. The



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portion of the Scheme around which the present dispute revolves is that the tenure of the non-hereditary Trustees under the Scheme was for a period of three years. In and by impugned G.O.(P).No.275 dated 17.11.2023, the tenure of the non-hereditary trustees has been capped at two years, in order to bring it in line with Section 47(3) of the Act, 1959.

19. Addressing the preliminary objections on the ground of delay and acquiescence and the Petitioners being estopped from even challenging the reduction of tenure from three years to two years, it is trite legal position that there can be no estoppel against statute and when the Petitioners complain that there is a violation of the mandate of law, any amount of acquiescence cannot be put against them, to deny them relief, if they are otherwise entitled to any. Even with regard to delay, the same cannot be termed as inordinate or fatal as the proceedings in November, 2023 are challenged in May, 2025 and therefore, I am unable to favourably consider the arguments of Mr.Arun Natarajan, in this regard.

20. Now, moving on to the merits of the claims of the parties, for easy reference, the relevant provisions of 1959 Act are extracted hereunder:



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Section 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.

Provided that the Board of Trustees constituted under items (i) and (ii) of the clause shall, subject to the provisions of clause (c) consist of three persons appointed by the Joint Commissioner / Deputy Commissioner or the Commissioner, as the case may be, of whom, one shall be a member of the Scheduled Castes or Scheduled Tribes:

Provided further that in addition to the persons appointed by the Joint Commissioner / Deputy Commissioner or the Commissioner under items (i) or (ii) of this clause, as the case may be, the Government may nominate two persons who are qualified for appointments as trustees under this Act, as members of the said Board of Trustees, having regard to the following matters, namely:

(a) the interest of the public generally;

(b) the income and the properties of the religious institutions;

(c) the number of worshippers and importance of the religious institutions as a pilgrim center; and

(d) such other matters as may be prescribed.

(b) in respect of all the incorporated and unincorporated Devaswoms in the transferred territory, the Government shall constitute a single Board of Trustees;



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(c) every Board of Trustees constituted under clause (a) or clause (b) shall consist of not less than three and not more than five persons, of whom one shall be a member of the Scheduled Castes or Scheduled Tribes: and another one shall be a woman

Provided that the Government, the Commissioner, the Joint Commissioner or the Deputy Commissioner, as the case may be, may, pending the constitution of such Board of Trustees under this sub-section, appoint a fit person to perform the functions of the Board of Trustees.

(2) Where in the case of any institution include in the list published under section 46 having a hereditary trustee or trustees, 5[the Government, the Commissioner or the Joint/Deputy Commissioner, after notice to such trustee or trustees and after such enquiry as the Government, the Commissioner or the Joint/Deputy Commissioner, as the case may be, deems adequate, considers for reasons to be recorded, that the affairs of the institution are not and or not likely to be properly managed by the hereditary trustee or trustees, the Government, the Commissioner or the Joint / Deputy Commissioner may, by order, appoint a non-hereditary trustee or such number of non-hereditary trustees, as may be considered necessary by the Government, the Commissioner, or the Joint/Deputy Commissioner, as the case may be.

(3) Every trustee appointed under sub-section (1) and subject to the result of an application, if any, filed under sub-section (4), every non-hereditary trustee appointed under sub-section (2) shall hold office for a term of two years, unless in the meanwhile the trustee is removed or dismissed or his resignation is accepted by the Government, the Commissioner or the Joint / Deputy Commissioner, as the case may be, or he otherwise ceases to be a trustee.

Provided that every trustee, who has completed a term of office of one year on the 16th day of July 2006 shall cease to hold office forthwith and every trustee who completes a term of office of one year after such date shall cease to hold office on such completion.

Provided further that every trustee who has not completed a term of office of one year on the date of commencement of the Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 2010(Tamil Nadu Act 12 of 2010) shall continue to be the trustee for the period of two years from the date of his appointment.



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(4) *Where the Government, the Commissioner or the Joint / Deputy Commissioner, by order, appoints a non-hereditary trustee or trustees, the hereditary trustee or trustees may, within thirty days of the receipt of the order, file an application to the Court to set aside or modify such an order:*

Provided that the Court shall have no power to stay the order of the Government, the Commissioner or the Joint / Deputy Commissioner, as the case may be, pending the disposal of the application.

50. Power under 1[sections 47, 49 and 49-A] to be exercisable notwithstanding provisions in scheme.— *The power to appoint trustees under section 47 or section 49 2 or section 49-A shall be exercisable notwithstanding that the scheme, if any, settled, or deemed under this Act to have been settled for the institution contains provision to the contrary.*

Section 118 - Repeals and savings.— (1) *The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1951 [Tamil Nadu Act XIX of 1951] (hereinafter in this section referred to as the said Act) is hereby repealed.*

(2) *Notwithstanding the repeal of the said Act by subsection (1)—*

(a) *all rules made, or deemed to have been made, notifications or certificates issued or deemed to have been issued, orders passed or deemed to have been passed, decisions made or deemed to have been made, proceedings or action taken or deemed to have been taken, schemes settled or deemed to have been settled and things done or deemed to have been done by the Government, the Commissioner, a Deputy Commissioner, an Area Committee or an Assistant Commissioner under the said Act, shall, in so far as they are not inconsistent with this Act, be deemed to have been made, issued, passed, taken, settled or done by the appropriate authority under the corresponding provisions of this Act, and shall have effect accordingly;*

(b) (i) *if any provision contained in any scheme settled or deemed to have been settled under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1926 [Tamil Nadu Act II of 1927], including a scheme settled under section 92 of the Code of Civil Procedure, 1908 (Central Act V of 1908), and in force immediately before the 30th September 1951 is repugnant to any*



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provision contained in this Act or the rules made thereunder, the latter provision shall prevail, and the former provision shall, to the extent of the repugnancy, be void ;

(ii) all powers conferred and all duties imposed by such scheme on any Court or Judge or any other person or body of persons not being a trustee or trustees or an honorary officer or servant of the religious institution or endowment, shall be exercised and discharged by the Commissioner, the Joint Commissioner or Deputy Commissioner or the Assistant Commissioner, as the case may be, in accordance with the provisions of this Act;

(c) all orders made under section 67 of the Tamil Nadu Hindu Religious Endowments Act, 1926 [Tamil Nadu Act II of 1927] shall, notwithstanding that they are inconsistent with this Act, continue in force, but any such order may at any time be modified or cancelled by the Joint Commissioner or the Deputy Commissioner, as the case may be, if it is an order made under sub-section (1) or sub-section (3) of that section and by the Commissioner if it is an order made under sub-section (4) or sub-section (5) of that section ; and any person aggrieved by any modification or cancellation made by the Joint Commissioner, or the Deputy Commissioner, as the case may be, may prefer an appeal to the Commissioner within such time as may be prescribed.

(3) The mention of particular matters in this section shall not be held to prejudice or affect the general application of sections 8 and 18 of the Tamil Nadu General Clauses Act, 1891 [Tamil Nadu Act I of 1891] with regard to the effect of repeals.

21. On a reading of Section 47(3) of the Act, herein above, it is clear that every Trustee who is appointed under sub section (1) or sub section (2) of Section 47, is entitled to hold office for a period of two years, unless otherwise, he is removed or dismissed from the post, or he voluntarily resigns and his resignation is accepted by the Competent



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Authority.

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22. Under Section 50 of the Act, the power to appoint Trustees under Section 47 or Section 49 (or Section 49(1)) is exercisable notwithstanding that the Scheme, if any, settled or deemed to be settled under the 1959 Act, contains provisions to the contrary.

23. Now coming to the Repeals and Savings clause under Section 118(2)(b)(i) of the Act, it is clear that any provision contained in any Scheme or deemed to have been settled under Tamil Nadu Hindu Religious and Charitable Endowments Act, 1926 (Act II of 1927), including a Scheme settled under Section 92 of the Code of Civil Procedure, 1908 and in force, immediately before 30.09.1951, is found to be repugnant to any provisions contained in the 1959 Act or Rules made under the Act, then it is only the 1959 Act and Rules that would prevail and the repugnant provisions under the Scheme would be void.

24. It will not be enough to refer to only the provisions of the 1959 enactment, since there has been an intervening legislation in the year 1951, repealing Tamil Nadu Act II of 1927, by The Tamil Nadu Hindu



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Religious and Charitable Endowments, 1951. The said enactment, Act II of 1927 had a repeal Clause under Section 103. The same is extracted for easy reference:

“103. Effect of repeal of the Madras Hindu Religious Endowments Act, 1926.

Notwithstanding the repeal of the Madras Hindu Religious Endowments Act, 1926 (hereinafter in this section referred to as the said Act)-

(a)all rules made, notifications or certificates issued, orders passed, decisions made, proceedings or action taken, schemes settled and things done by the Government, the Board or its President or by an Assistant Commissioner under the said Act, shall, in so far as they are not inconsistent with this Act, be deemed to have been made, issued, passed, taken settled or done by the appropriate authority under the corresponding provisions of this Act and shall, subject to the provisions of clause (b), have effect accordingly;

Explanation. - Certificates issued by the Board under section 78 of the said Act shall be deemed to have been validity issued under that section, notwithstanding that the certificates were issued before the making of rules prescribing the manner of their issue.

(b)if the Government are satisfied that any such rule, notification certificate, order, decision, proceeding, action, scheme or thing, although not inconsistent with this Act would not have been made, issued, passed, taken, settled or done, or would not have been made, issued, passed, taken settled or done in the form adopted, if this Act had been in force at the time they shall have power, by order made at any time within one year from the commencement of this Act, to cancel or to modify in such manner as may be specified in the order, the said rule, notification, certificate, order, decision proceeding, action, scheme or thing, and thereupon, the same shall stand cancelled or modified as directed in the said order, with effect from the date on which it was made or from such later date as may be specified therein:

Provided that before making any such order, the Government shall publish in the Fort St. George Gazette a notice of their intention to



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do so, fix a period which shall not be less than two months from the date of the publication of the notice for the persons affected by the order to show cause against the making thereof and consider their representations, if any;

(c) a notification published in respect of any religious institution under section 65-A, sub section (3), or sub-section (5), of the said Act and in force immediately before the commencement of this Act shall be deemed to be a notification published under Section 64 of this Act.

Explanation. - The scheme of administration, if any, settled for the religious institution and the rules, if any, framed under such scheme which ceased to apply to the institution under section 65-B of the said Act shall not be deemed to be revived by reason of the cancellation of the notification under section 64, sub-section (4), or by reason of its having ceased to be in force by efflux of time.

(d) all schemes settled or modified by a Court of law under the said Act or under section 92 of the Code of Civil Procedure, 1908, shall be deemed to have been, settled or modified by the Court under this Act and shall have effect accordingly;

(e) in any scheme settled or deemed to have been settled under the said Act (including a scheme settled under section 92 of the Code of Civil Procedure, 1908) and in force immediately before the commencement of this Act-

(i) all powers conferred and all duties imposed by such scheme on one or more trustees, whether hereditary or non-hereditary, shall be exercised, subject to the restrictions and conditions, if any, specified in the scheme by the trustee or trustees appointed for the religious institution under this Act.

(ii) all powers conferred and all duties imposed by such scheme on any Court or Judge or any other person or body of persons not being a trustee or trustees or a paid or an honorary officer or servant of the religious institution, shall be deemed to have been conferred or imposed on the Area Committee if the institution is subject to the jurisdiction of such a Committee and on the Commissioner, in other cases; and the Area Committee or the Commissioner, as the case may be, shall exercise such powers and discharge such duties in accordance with the provisions of the scheme subject to such restrictions and conditions, if any, specified in the Scheme;



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(f)all orders made under section 67 of the said Act shall, notwithstanding that they are inconsistent with this Act, continue in force, but any such order may at any time be modified or cancelled by the Deputy Commissioner if it is in an order made under sub-section (1) or sub section (3) of that section and by the Commissioner if it is an order made under sub-section (4) or sub-section (5) of that section; and any person aggrieved by any modification or cancellation made by the Deputy Commissioner may appeal to the Commissioner within such time as may be prescribed;

(g)all bylaws made by the Board under the said Act shall in so far as they are not inconsistent with this Act, be deemed to be orders issued by, the Commissioner under this Act;

(h)all proceedings pending before the Government or the Board or its President or an Assistant Commissioner under the provisions of the said Act at the commencement of this Act, may, in so far as they are not inconsistent with the provisions of this Act, be continued by the appropriate authority under this Act;

(i)all costs, expenses, charges, penalties, and contributions payable to the Board under the said Act, immediately before the commencement of this Act, shall be [payable to the Commissioner] [Substituted 'payable to the Government' by Act No. 27 of 1954.] instead; and any assessment, levy or demand of such sums made before the commencement of this Act shall be deemed to be valid and may be continued and shall be enforceable under this Act;

(j)all suits, application or proceedings taken by, or on behalf of, or against, the Board under the provisions of the said Act and pending at the commencement of this Act, may be continued by, or on behalf of, or against, the Commissioner subject to the provisions of, and in so far as they are not inconsistent with this Act;

Explanation. - All suits and applications instituted under the said Act in the High Court in respect of religious institutions situated within the presidency town and pending on the date of the commencement of this Act, which would have been instituted in the Madras City Civil Court of this Act had been in force at the time when such suits or applications were instituted shall be continued in, and disposed of, by the High Court.

(k)any remedy by way of application, suit or appeal which is provided by this Act shall be available in respect of proceedings under the said Act pending at the commencement of this Act as if



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the proceedings, in respect of which the remedy is sought had been instituted under this Act.”

25. From a reading of Section 103 of 1951 Act, it is seen that in and by the said enactment, Act II of 1927 was repealed and under Section 103(a) Schemes settled and things done by the Government, the Board or President or by the Assistant Commissioner under the Act, shall insofar as they are not inconsistent with the 1951 Act, are deemed to have been made or settled by the appropriate authority under the corresponding provisions of the 1951 Act. However, this was subject to Clause (b), which set out that, if the Government was satisfied that any Scheme or thing, although not inconsistent with the Act, would not have been made or settled in the form adopted, if the 1951 Act had been in force at that time, then the Government was vested with the power, to be exercised within one year from the commencement of the 1951 Act, to seek cancellation or modification of such Scheme, proceeding or action or thing, by publishing in the Government Gazette, the intention to do so, giving a period of not less than two months from the date of publication for affected persons if any, to show cause against such modification or cancellation.



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26. In terms of Section 103 (d), all Schemes settled or modified by a Court of law under the said Act, that is, Act II of 1927 or under Section 92 of the CPC, are deemed to be settled or modified by the Court under the 1951 Act and shall have effect accordingly. Interestingly, Section 103 is more or less analogous to Section 118 of the present Act. As discussed herein above, under Section 103(d) of the 1951 Act, a Scheme settled by the Court under Act II of 1927 is deemed to be a Scheme under the Act of 1951. This now takes us to the effect of Section 118 (2) of the present 1959 enactment. The scope of Section 118 (2)(b)(i) is restricted to a Scheme settled or deemed to have been settled under the Madras HR & CE Act II of 1927, including a Scheme settled under Section 92 of the CPC and in force, immediately before 30.09.1951 and any such provision in the said Scheme being repugnant to any provisions contained in the 1959 Act or Rules is to be treated as void. Conspicuously, there is no mention of a Scheme settled by the Court under the Act II of 1927 and deemed to be a Scheme under the 1951 Act. In the case on hand, admittedly, the Scheme was framed by a Civil Court under Act II of 1927 and not under the provisions of the CPC. The said Scheme continued to be in force, even immediately before 30.09.1951 when the 1951 Act took



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27. In terms of Section 103 (d) of the 1951 Act, a Scheme passed by the competent Civil Court has been deemed to be a Scheme under the 1951 Act. Section 118(2)(b)(i) does not speak about repugnancy of provisions contained in a Scheme that is deemed to have been made under the 1951 Act, but specifically restricts its operation to Act II of 1927. It is therefore the submissions of Mr.R.Singaravelan, Senior Counsel that, in such circumstances, Section 118(2)(b)(i) cannot be set in motion and applied to contend that the tenure of non-hereditary trustees being three years, in a deemed to be a Scheme of 1951, is repugnant to Section 47(3) of the Act and consequently void as the 1959 Act is conspicuously silent with regard to any repugnancy under the 1951 statute and it speaks only about Act II of 1927 and a Scheme which is in force, immediately before 30.09.1951 being repugnant to the provisions of the 1959 Act. However, I am unable to accept this line of submissions and much cannot be made out of this, since, the Court was only revisiting a Scheme framed by the Board and when sub section (b)(i) talks about a scheme settled or deemed to have been settled under Act of 1927, it cannot be said that then omission to mention a scheme framed by the



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Court in sub-section would mean that sub section (2)(b)(i) cannot apply to the scheme framed by the Court. The omission to mention schemes framed by the Court is of actually no consequence as, already said, the Court has only varied the scheme framed by the Board and for all practical purposes, it would only be a scheme settled/deemed to have been settled under Act 2 of 1927.

28. It is the further argument of the learned Senior Counsel that the Repeals and Savings Clause will not apply to the facts of the present case and the Scheme would continue to hold field and if at all the Government or the Department deems it necessary to modify or amend, then the procedure that has been prescribed under Section 64(5) of the Act has to be necessarily followed. He would also invite my attention to Section 57(4) of Act II of 1927. The same is extracted hereunder:

“57(4) Any Scheme of administration which has been settled by a Court under this Section or which under Section 75 is deemed to be a Scheme settled under this Act may, at any time, for sufficient cause be modified or cancelled by the Court in a suit instituted by the Board or the Trustee or any person having interest, but not otherwise.”

29. Placing strong reliance on this Section 57(4) of Act II of 1927,



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Mr.Singaravelan contended that as a Scheme has been framed for the subject Temple under Act II of 1927, if at all there was any requirement to amend, modify or cancel the Scheme, it could have been only by way of a suit instituted, either by the Board or the Trustees or any person having interest before the competent Court and not otherwise. Section 64(5)(a) of the 1959 Act empowers the Joint Commissioner or the Deputy Commissioner to modify or cancel any Scheme in force, either settled or modified by the Board under the HR & CE Act, Act II of 1927 or deemed to have been settled under the said Act. He would further contend that even this exercise is permissible only after consulting the Trustees and persons having interest and not otherwise. The sum and substance of the argument in this regard is that as the Scheme that has been settled under Section 57(4) of 1926 Act, (Act II of 1927), it clearly falls within the scope of Section 64(5)(a) of 1959 Act. Further, he contended that under Section 118(2)(a) of the 1959 Act, what is contemplated is only act of the Government, Commissioner, Deputy Commissioner, Area Commissioner, Assistant Commissioner and not a Scheme covered under Act of 1951 and therefore, even if it can be taken that the Scheme is not a Scheme settled under the Act II of 1927, but even then, it becomes a deemed Scheme settled under the 1951 Act, and



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consequently, recognised by the 1959 Act. Therefore, resultantly, the subject Scheme settled under Act II of 1927 is also a Scheme settled or modified by the Court or a Scheme in force deemed to have been settled under the present enactment as well and it is not open to the respondents to contend that there being an alleged repugnancy, it would automatically be rendered void and consequently, of no effect.

30. With regard to the repugnancy that is alleged by the Department, the Senior Counsel would contend that the tenure of the non-hereditary Trustees cannot even be said to be repugnant to Section 47(3), for the simple reason that the tenure of two years provided under Section 47(3) of the Act applies to appointment of Trustees who are appointed under Sub Sections 1 & 2 of Section 47 of the 1959 Act alone and in such circumstances, according to him, there is no repugnancy between the tenure prescribed under Section 47(3) and the Scheme and even putting the worst against the petitioner, even if there is a repugnancy, in view of the Section 51(4) of 1927 Act read with Section 103(d) of 1951 Act and Section 64(5) and Section 118 of 1959 Act, the alleged inconsistent portion cannot be termed as void and if all the Government seeks to reduce the tenure from three years to two years,



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then, the only avenue open is to follow the mandate of Section 64(5) of the Act and not otherwise.

31. The present dispute, necessarily, will have to be tested in the light of the present 1959 Act. Vide Notification published in the Tamil Nadu Government Gazette, dated 16-12-1959, the Tamil Nadu HR & CE Act was brought into force, with effect from 1-1-1960. In view of the earlier enactment of 1951 then being in force, by sub section (1) of Section 118, from the date of enforcement of Act of 1959, the Madras Hindu Religious and Charitable Endowments Act, 1951, was repealed. In terms of sub section 2 (a) of section 118 of Act of 1959, notwithstanding such repeal, all rules made, or deemed to have been made, notifications or certificates issued or deemed to have been issued, orders passed or deemed to have been passed, decisions made or deemed to have been made, proceedings or action taken or deemed to have been taken, schemes settled or deemed to have been settled and things done or deemed to have been done by the Government, the Commissioner, a Deputy Commissioner, an Area Committee or an Assistant Commissioner under the said Act, shall, in so far as they are not inconsistent with the 1959 Act were declared to be deemed to have been made, issued, passed,



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taken, settled or done by the appropriate authority under the corresponding provisions of the 1959 Act, to have effect accordingly.

32. Thus, in terms of Section 118 (2) (a) of the Act of 1959, any order, scheme or actions taken under the earlier enactment of 1951 will continue to have force, as long as they are consistent with the provisions of the prevailing Act. If however, the scheme, provisions or orders or action taken under the repealed Act are repugnant to the 1959 Act, then they will cease to have effect. In the light of the above, a scheme which was settled by the Madras Hindu Religious Charitable Endowments Act, 1951, is deemed to be a scheme under the present Act, and accordingly, it is amenable for modification or cancellation in terms of section 64 (5) (a) or (b) of the Act of course, subject to such conditions and restrictions as may be prescribed. In fact, Rules are also in place in so far as the procedure contemplated in Sections 64 and 65 are concerned, vide Framing of Scheme Rules, dated 26.11.1960.

33. However, in so far as Schemes framed under Madras Hindu Religious & Charitable Endowments Act, 1926 and schemes settled under Section 92 of CPC which were in force immediately before



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30.09.1951, if it is repugnant to any of the provisions of the 1959 Act as well as Rules, then there is no second opinion that, the latter provision, i.e. Act of 1959 and Rules alone shall prevail and the former provision, to the extent of repugnancy, would be void.

34. In this back drop, testing the facts of the present case, admittedly, the scheme has been framed under the provisions of the Madras Hindu Religious & Charitable Endowments Act, 1926, Act II of 1927. One of the clauses framed under the scheme contemplated that non-hereditary trustees who are appointed under the scheme shall function for a term of three years. Under Act of 1959, the appointment of non-hereditary trustees and their tenure is governed under sections 47 and 49, in terms of which, irrespective of whether their appointment is made either under section 7-A of the Act of 1959 through recommendation of District Committee or vide the clauses of the scheme, the tenure of 2 years prescribed under section 47 and 49 of the Act XXII of 1959 would appear to be applicable.

35. In the above back drop, the argument in so far as Section 47 that the power of the Government to constitute a Board of trustees under



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Section 47(3) applies only to trustees appointed under sub-sections (1) and (2) and both these scenarios aren't available in the present case. Sub-section (1) deals with cases where there are no hereditary trustees in respect of a religious institution which is included in the list published under Section 46 or where the Assistant Commissioner has no power to appoint trustees. Sub-section (2) deals with cases where the institution is included in the list published under Section 46 and has hereditary trustee/s and when the said trustee/trustees are not properly managing the institution. In such cases, after hearing the hereditary trustee/trustees, non-hereditary trustee/trustees may be appointed. The temple in the present case does not have hereditary trustees and hence Section 47(2) will not come into play. Sub-section (1) will apply as the religious institution has no hereditary trustee/s. Therefore, I am unable to countenance the arguments of the senior Counsel that Section 47(1) would also not apply because the provision is to only address an emergency situation where the hereditary trustees are not available and more as a stop gap arrangement. Any such situation where vacancy to the office of hereditary trustees arises, is taken suitable care of, under Section 54 of the Act. Reading sub section (2) and (3) of Section 47, the only interpretation that can be given is that Section 47(1) deals with cases



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where the temple or institution is managed by non-hereditary trustees and Section 47(2) deals with temples and institutions where there are hereditary trustee/s.

36. A very subtle, yet very important and fine distinction is noticeable in the language employed by the legislators. Under Section 118(2)(a), the legislature has used the word ‘not inconsistent with the Act’, whereas under 2(b)(i), very consciously the legislature has chosen to employ the phrase, ‘repugnant to any provisions....’ and the word ‘repugnancy’. It is not without any reason that this distinction has been drawn. Though Mr.Singaravelan, Senior Counsel argued that both mean the same and only because the 1927 Act being a pre-constitutional enactment, the word ‘repugnancy’ has been employed, I am unable to accept the said argument. Firstly, there is a stark difference between ‘inconsistent’ and ‘repugnant’ or ‘inconsistency’ and ‘repugnancy’ and they do not have the same meaning, to convey a single effect. Secondly, when the meaning of both terms are different, the Court has to put itself in the armchair of the legislature and law makers and find out why there has been such different usage. I do not see any logic or reason for the such usage, merely because the 1927 Act is a pre-constitution Act, the



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word 'repugnant' is used in Section 118(2)(b).

37. In an endeavour to delve deeper into the difference between inconsistency' and 'repugnancy', I have looked into their respective definitions. Stroud's Judicial Dictionary of Words and Phrases, defines 'inconsistent' as 'variance with the machinery and procedure indicated'. In the very same dictionary, 'repugnant' is defined as 'contrary'. In *State of U.P. v. Daulat Ram Gupta*, reported in (2002) 4 SCC 98, the Apex Court held that the expression 'inconsistent' means lacking consistency and not compatible with. Dealing with the word 'repugnancy', in *Kanaka Gruha Nirmana Sahakara Sangha v. Narayanamma*, reported in (2003) 1 SCC 238, the Apex Court held that repugnancy may be ascertained by considering whether the Parliament intended to lay down an exhaustive code in respect of the subject matter replacing the Act and if the paramount legislation does not purport to be exhaustive or unqualified, there is no inconsistency and it cannot be said that any qualification or restriction introduced by another law is repugnant to the provision in the main or paramount law.

38. Keeping the definitions as well as ratio laid down by the



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Hon'ble Supreme Court in the above cases, it is noticed that both 'inconsistent' and 'repugnant' are sometimes used interchangeably, though they are not exactly synonymous. Everything 'inconsistent' need not necessarily be 'repugnant' but at the same time, everything which is 'repugnant' certainly carries an element of 'inconsistency'. This should be borne in mind in when the provisions of the statute are interpreted. Consciously, the legislature has rendered only repugnant provisions contained in a scheme as void and not merely inconsistent provisions.

39. Let us take an example of the Scheme had provided for alienation of immovable properties belonging to any religious institution, then, such a provision would be repugnant to Section 34 that specifically declares any exchange, sale or mortgage and any lease for a term existing five years of any immovable properties belonging to any religious institution to be null and void, unless it is sanctioned by the Commissioner, as being necessary or beneficial to the Institution. This is a classic illustration which demonstrates that the clause in the scheme is not merely inconsistent but also contradictory to the provisions of the Act and both cannot co-exist. Mere inconsistency does not always lead to repugnancy. Only if it is a case where the inconsistency is irreconcilable



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to an extent where the provisions themselves cannot stand together, it would be a case of repugnancy, rendering the provision contrary to the 1959 Act void. When the period of 3 years is reduced to 2 years, it is merely a variation alone and it would therefore not lead to being categorized as repugnant and thereby rendering it void. Resultantly, Section 118(2)(b) of 1959 Act cannot be made applicable to contend that it is the provisions of the 1959 Act alone that would prevail and the inconsistent portion, viz., tenure of 3 years is rendered void and the term of two years alone would operate or hold field in so far as the appointment of non-hereditary Trustees.

40. There is yet another interesting angle, which in my considered opinion, throws more light and also, in fact, even provides an answer itself to the moot question that falls for consideration in this writ petition.

Section 64(5) (a) empowers the Joint Commissioner or the Deputy Commissioner to modify or even cancel any scheme in force, settled or modified by the Board under Act II of 1927, or deemed to have been settled under that Act. Sub clause (b) stipulates that if the Joint Commissioner or Deputy Commissioner is satisfied that any such scheme referred to in clause (a) is inconsistent with the 1959 Act, then, the Joint



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Commissioner or Deputy Commissioner, as the case may be, after consulting the trustee and person having interest in the institution, modify it in such manner as may be necessary to bring it into conformity with the provisions of the 1959 Act and Rules made thereunder. Even in Section 64(5)(b), the word used is 'inconsistent' only. Therefore, when the scheme in the present case, as already discussed hereinabove, elaborately, is one settled under Act II of 1927, then the only interpretation that is possible is that, if there is any inconsistency between the scheme provisions and the provisions of Act of 1959, the authority concerned, either the Joint Commissioner or Deputy Commissioner has to only and necessarily invoke the power conferred on him under clause (a) which is a general power to modify or cancel or clause (b) which specifically deals with a case of inconsistency. Otherwise, it would render the very clause (b) otiose, which could not and cannot be the intention of the legislature.

41. There is yet another compelling reason for holding that the issue regarding tenure of the non-hereditary trustees can only be inconsistent and not repugnant. It is not out of place to mention that the tenure of non-hereditary trustees to hold office in terms of Section 47 and 49 of the 1959 Act has suffered several amendments. When the Act came



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into force, the terms stipulated was 5 years and by Act XIX of 1968, it was reduced to 3 years and again, by Amendment Act 15 of 2006, the term was reduced to just one year. Subsequently by virtue of Act 12 of 2010, the present term of two years came to be fixed. If the argument of the State is to be accepted to hold that the variance in tenure between the scheme and Section 47(3) is a repugnancy, then there would have been no necessity for the State to repeatedly amend the provision regarding tenure need not have been subjected to repeated and frequent modifications. Therefore, even from this angle, the subject *lis* relating to the tenure is curable, being merely inconsistent and not repugnant.

42. At this juncture, I am conscious of the decision of the Division bench of this Court in WA No.2444 of 2022, where it has been held, in very similar facts, where there is a conflict between the scheme and Section 47(3) of the Act, with regard to the term or tenure of the non-hereditary trustees, the provisions in conflict would be repugnant and void. However, the decision of the Hon'ble Supreme Court in *Commissioner, Hindu Religious and Charitable Endowments v. P.S.Sethurathinam*, reported in (1999) 2SCC 327 has not been brought to the notice of the Division Bench. The Hon'ble Supreme Court, after



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considering the import of the ratio laid down earlier in *T.Lakshmikumara Thathachariar v. Commissioner, HR & CE, (1998) 6 SCC 643*, held that when various clauses referred to in the order passed under Section 45 of the Act, modifying the Scheme, were inconsistent to the Scheme, the appropriate course to be adopted would be to modify the Scheme under Section 64(5) read with Section 118 of the Act. In fact, even earlier, the Apex Court, in the Constitution Bench judgment, in *Sri Jagadguru Kari Basava Rajendraswami of Govi Mutt v. Commissioner, HR & CE, reported in AIR 1965 SC 502* has held that Section 103(d) of the 1951 Act provided that a scheme settled or modified under the earlier Act shall be deemed to have been settled or modified under the latter Act and make it operative and the question of consistency or otherwise of the Scheme is irrelevant. However, modifications can be effected only by adopting the procedure under Section 62(3) of the 1951 Act and until then the Scheme would be automatically in operation. This decision has also not been brought to the notice of the Division Bench.

43. Very interestingly, in respect of a very similar religious denominational temple, in fact, also belonging to Vishwakarma community and Arulmigu Kalikambal temple, situated at Chennai, as in



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the present case as well, in W.A.No.2252 of 2022, the Commissioner, HR & CE has filed a counter affidavit before the Division Bench of this Court stating that the scheme decree provides for a tenure of 3 years for the Board of Trustees and in view of Section 47(3) read with amendment Act 12 of 2010, the tenure has been reduced to 2 years and therefore the Commissioner has passed an order directing the Joint Commissioner to take immediate steps to amend the scheme decree passed in CS No.62/1933, in so far as the tenure of the Board of Trustees is concerned. The Commissioner, HR & CE himself did not take a definite stand that the tenure of 3 years was repugnant and therefore void and Section 47(3) would automatically come into play.

44. Interestingly, Section 52 of the 1959 Act, entitles every non-hereditary trustee, lawfully holding office, on the date of the commencement of the Act, to be deemed to have been duly appointed as a trustee under this Act, for the residue of his term of office, on the date of such commencement order. In that sense, there is slight inconsistency even between Section 47(3) and Section 52 of the Act and therefore, the only remedy that is available for the Department is to seek modification of the Scheme, invoking the power under Section 64 of the Act.



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45. Coming to the decisions that have been relied on by the learned Senior Counsel for the petitioner, in *CT.PL.Chidambaram V. R.Muthukumaraswami Pilla and others*, reported in 71 L.W.365, this Court held that if any particular Scheme contained provisions which were found later to work to the detriment of the Institution, the proper mode of removing the hardship would be, not by ignoring the provisions of the Scheme, but by having the Scheme amended by appropriated proceedings in that behalf.

46. The Constitutional Bench Judgment in *Sri Jagadgur Kari Basava Ranjendraswami of Govi Mutt's* case (referred herein supra), referring to Section 103(d) of the 1951 Act, held that Section 103(d) provides for a Scheme settled or modified by the Court under the earlier Act as deemed to have been settled or modified under the latter Act and the effect of the provisions is to make the Schemes in question operative as though they were framed under the provisions of the latter enactment and the intention was not to examine the Scheme once again by reference to relevant provisions of the latter Act and re-frame them so as to make them consistent with these provisions. The Hon'ble



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Constitutional Bench also took note of Section 62(3)(a) which provides for any Scheme settled or modified by the Court in a suit under sub section 1 of Section 103, Clause (d) to be modified or cancelled by the Court on an Application made to the Court. The Hon'ble Supreme Court held that such Schemes would automatically continue to be in operation and would only be liable to be modified with appropriate steps are taken in that behalf as provided under the Act. It was Section 62(3) under the latter enactment insofar as the facts of the case before the Hon'ble Supreme Court is concerned. Here, the later enactment Section 64(5) of the 1959 Act. This decision has not been noticed by the Division Bench in W.A.No.2444 of 2022.

47. The Division Bench Judgment in *Area Committee HR & CE's case (referred herein supra)*, held that Section 64(5)(b) would apply to a case where a Scheme is inconsistent with the Act, when Section 118(2)(b) (ii) would apply to the provisions in the Scheme, repugnant to a provision in the Act, which alone would be void and in view of scope of Section 64(5)(b), if the provision is inconsistent, then an amendment of the Scheme is permissible. Therefore, the Hon'ble Division Bench acknowledged the fine line of distinction between repugnancy and



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inconsistency. However, this decision of the Hon'ble Division Bench will not apply to the facts of the present case, since it did not deal with an issue like in the present case, pertaining to reduction of the tenure of the Trustees, which is a curable defect and only being inconsistent and not repugnant to the scheme of the Act.

48. In *T.Lakshmikumara Thattachariar's* case, the Hon'ble Supreme Court held that a Scheme settled under the Act of 1951 or even a scheme deemed to be settled under the Act of 1951 is also deemed to have been settled under the corresponding provisions of Act, 1959. Taking note of Section 64 of the Act, 1959, the Hon'ble Supreme Court held that the Joint Commissioner or the Deputy Commissioner is expressly conferred with the powers to modify or cancel a Scheme, which is deemed to have been settled or modified by the Court under Clause (a) of Sub Section 2 of Section 118. The Hon'ble Supreme Court further held that a Scheme deemed to have been settled by the Authority under Act of 1959 in terms of Section 118 (2)(a) would also be a Scheme settled by the appropriate Authority under the Act of 1959 and recourse will have to be necessarily taken under Section 64 (5) (a) of the Act. In fact, the Hon'ble Supreme Court held that all Schemes which have been



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settled or modified or deemed to be so settled or modified under Section 103 (d) of Act of 1959 are now covered, validated under Section 118 (2) (a) of the Act and these Schemes so validated and continued under Act of 1959 can also be modified under Section 64(5)(a) of Act of 1959.

49. In *Commissioner, HR & CE Vs. P.S.Sethurathinam's* case, as already discussed, the Hon'ble Supreme Court taking note of the ratio laid down by the Hon'ble Supreme Court in *T.Lakshmikumara Thattachariar's* case, held that various Clauses referred to and which were challenged before the High Court as being inconsistent in the Scheme could not stand unless the Scheme is modified and the appropriate course to be adopted is to not exercised power under Section 45 of the Act, but by exercising the power only in terms of Section 64(5) read with 118 of the Act.

50. The Division Bench of this Court in *N.Sivasubramanian Vs. Government of Tamil Nadu and others*, reported in 2006 (2) CTC 49, held that the power under Section 45(1) of the Act 1959 deals with appointments of Executive Officer and such appointment has to be only in terms of the policy of the Act and not otherwise. This Court in



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Solamuthuraja Vs. The Commissioner, HR & CE and other, reported in 2010 (2) CTC 289, dealing with Section 45 held that the Executive Officer cannot be appointed in the place of hereditary trustee without notice to the hereditary trustees, calling upon them to show cause and proposed order or alternatively is permissible when the hereditary trustee consent for appointment of such Executive Officer and further held that even when such consent had been given, it would absolve the authorities from giving notice before passing an order appointing an another Executive Officer. In *Dr.Subramanian Swamy's* case, (referred herein supra), the Hon'ble Supreme Court held that the very purpose of appointment of Executive Officer was only temporary in nature and life has to be fixed to be co-terminus of removal of consequences of mal-administration, for which purpose the Executive Officer is appointed.

51. Reliance was also placed on by the learned Senior counsel to the decision in Writ Appeal in 503 of 2012, where I authored the Judgment, on behalf of the Bench. That was a case where the Scheme itself was settled under the 1959 Act and in such circumstances, we have held that it was not open to the respondents to contend inconsistency or repugnancy and the only option was to modify or amend the Scheme by



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taking resort to Section 64(5) of the Act. This decision does not therefore, help the petitioners.

52. However, for all the above reasons and discussions, the decision of the Division Bench holding that reduction of tenure of the non-hereditary trustees is amounting to repugnancy, without being made aware of the decisions of the Hon'ble Supreme Court; the tenure of the non-hereditary trustees being only a curable defect and amounting to a mere inconsistency and not repugnancy, attracting Section 64(5) of the 1959 Act alone, and more so, in the light of the stand of the Department itself, in going for modification of the scheme on the very same issue, I am not obligated to follow the decision of the Division Bench in WA Nol.24445 of 2022. The petitioner in W.P. No.17419 of 2025 is therefore entitled to succeed. The impugned proceedings in G.O.(P) No.275, dated 17.11.2023, Tourism, Culture and Religious Endowments (AN3-1) Department are hereby set aside. However, it shall be open to the Department to take recourse to Section 64(5)(a) of the 1959 Act, if there is any necessity to amend the Scheme to bring the tenure of non-hereditary trustees in line with Section 47(3).



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53. Coming to the second writ petition, as conceded by the learned Special Government Pleader, even in 2009, after election of the then Trustees, the Fit Person has already handed over the charge to the elected Body. The Executive Officer who has been appointed to assist the Trustees for the purposes of the better administration of Trust is however continuing. It is pointed out by Mr.N.R.R.Arun Natarajan, learned Special Government Pleader, that with the coming into force of 2015 Rules and Rules 3, 8 and 10, there is no infirmity or illegality in the Executive Officer continuing to assist the Trustees for the purposes of better administration of the Temple. I am unable to accept the said submission. No doubt, the Executive Officer was appointed initially, only at the instance of the trustees themselves. However, in view of the decision of the Hon'ble Supreme Court, in Dr.Subramanian Swamy's case, even where the management is taken over to remedy the evil, the management must be handed over to the person concerned immediately after the evil stands remedied and continuation thereafter would tantamount to usurpation of their proprietary rights or violation of the fundamental rights guaranteed by the Constitution in favour of the persons deprived. The Apex Court, ultimately held that the appointment of Executive Officers can only be for a limited period and the order of



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appointment was set aside on the ground that it failed to prescribe a duration for which it will be in force.

54. I am conscious of the fact that the 2015 Rules were framed only in pursuance of the judgment in Dr.Subramanian Swamy's case. Rules 3 of the Conditions For Appointment of Executive officers Rules, 2015 now stipulates that the Executive officer cannot be appointed for a period of more than 5 years at a time. Mr.Arun Natarajan has heavily relied on Rule 10 of the Rules. Rule 10(1) reads thus:

“Nothing contained in these rules shall adversely affect the powers of the Executive Officer, who has been holding the post immediately before the date of the commencement of these Rules.”

55. The above Rule 10(1) only deals with the powers of the Executive Officer and not their appointment. The purport of this Rule is to only protect any actions that may have been taken by Executive Officers who may be holding the post at the time of the Rules coming into force. The dictum of the Apex Court and the cap of 5 years will certainly apply to the case on hand and therefore the appointment of the Executive Officer, for an indefinite period has to necessarily go. Mr.Arun Natarajan would also contend, as referred earlier, that the Executive Officer was appointed only at the request of the then Board of Trustees



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and therefore when the said request has not been recalled, there is no necessity for the removal of the Executive Officer. I am unable to concur with the said argument. Even if the Trustees had consented for appointment of the Executive Officer, it is a consent, at best in their personal capacity and it cannot be an estoppel against the institution. Further, that consent would not survive beyond a period of 5 years from the coming into force of the Rules in 2015. Therefore, viewed from any angle, there is absolutely no justification for the continuation of the Executive Officer. The Petitioners in W.P. No.22157 of 2025 are entitled to succeed.

56. In fine, both W.P. No.17419 of 2025 and W.P. No.22157 of 2025 are allowed. The order in these writ petitions, however, will not come in the way of the Department moving for suitable amendments to the scheme decree, in so far as reducing the tenure of the non-hereditary trustees, to bring it in line with Section 47(3) of the 1959 Act by taking recourse to the powers available under Section 64(5) of the 1959 Act, read with specific Rules framed thereunder. Consequently, connected Miscellaneous Petitions are closed. No costs.



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To:

- 1.The Secretary to Government,
Tourism, Culture and Religious Endowments,
Fort St. George, Chennai – 600 009.
- 2.The Commissioner,
Hindu Religious Culture & endowments Department,
Nungambakkam, Chennai – 600 034.
- 3.The Joint Commissioner,
Hindu Religious Culture & Endowments Department,
Kanchipuram.
- 4.The Executive Officer,
Adhipeeda Parameswari Kalikambal Koil,
No.1, Jawaharlal Street,
Kanchipuram – 631 502.



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WP.Nos.17419 & 22157 of 2025

P.B.BALAJI, J.,

rkp

Pre-delivery order in
W.P. Nos.17419 & 22157 of 2025
and
WMP. Nos.19750, 19751, 24930 & 24931 of 2025



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WP.Nos.17419 & 22157 of 2025

30.01.2026