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W.P. No.15252/2023, etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
07.04.2026	29.04.2026

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**W.P. NO.15252 OF 2023
W.P. NOS. 14421 & 33254 OF 2024
AND
W.M.P. NOS. 14747 & 14749 OF 2023
W.M.P. NOS. 15689 & 36059 OF 2024**

W.P. No.15252 of 2023

&

W.P. No.14421 of 2024

Sri Dakshinamurthy Mutt
Rep. By its Trustee
Sri Lakshmaiah @ Rexmani
Udhagamandalam
Nilgiris District 643 003.

.. Petitioner

- Vs -

1. The Commissioner
HR & CE Department
Nungambakkam High Road
Chennai 600 034.
2. The Joint Commissioner
HR & CE Department, Coimbatore.
3. The Assistant Commissioner
HR & CE Department, Coimbatore.

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4. Thava Thiru. Maruthachala Adigalar
Ilayapattam, Perur Adheenam
Perur, Coimbatore.

.. Respondents

W.P. No.33254 of 2024

S.A.Nadaraja Gurukal

.. Petitioner

- Vs -

1. The Commissioner
HR & CE Department
Nungambakkam High Road
Chennai 600 034.
2. The Joint Commissioner
HR & CE Department, Coimbatore.
3. Sri Dakshinamurthy Mutt
Rep. By its Managing Trustee
Sri Lakshmaiah @ Rexmani
Udhagamandalam, Nilgiris District.
4. Thava Thiru. Maruthachala Adigalar
Ilayapattam, Perur Adheenam
Perur, Coimbatore.

W.P. No.15252 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to call for the records of the proceedings in R.P. No.174 of 2019 D2 dated 24.04.2023 on the file of the 1st respondent and quash the same as illegal and without jurisdiction and to consequently forbear the respondent from interfering with the administration of

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the affairs of the Dhakshinamurthy Matt by its trustees elected pursuant to the deed of trust.

W.P. No.14421 of 2024 filed under Article 224 of the Constitution of India praying this Court to issue a writ of prohibition prohibiting the respondents from appointing archakas or staff to Sri Dhakshinamurthy Mutt pursuant to the advertisement dated 5.5.2024.

W.P. No.33254 of 2024 filed under Article 224 of the Constitution of India praying this Court to issue a writ of prohibition prohibiting the 1st, 2nd and 4th respondents from interfering with the conduct of poojas and rituals of the Arulmigu Visalatchi Amman Udanamar Arulmigu Kasi Vishwanathar Temple as Kandhal, Ooty by the petitioner and the existing priests.

For Petitioners : Mr. Sharath Chandran in
W.P. No.15252/2023
Mr. S.Rajendrakumar in
WP No.14421/2024
Mr.C.Mohan for M/s.Viruksham
Legal in WP No.33254/2024

For Respondents : Mr. N.R.R.Arun Natarajan,
Spl.GP for RR-1 to 3 in WP
15252/23 & 14421/24 & for
RR-1 & 2 in WP 33254/24

Mr. Sharath Chandran for R-3 in
W.P. No.33254/2024

Mr. G.Prabhu Rajadurai for



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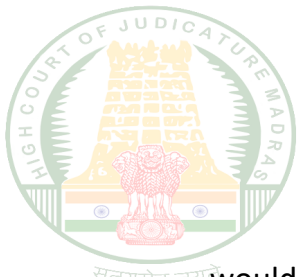
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Mr. R.Amardeep for M/s.Tamizh
Law Firm for R-4 in all petitions

COMMON ORDER

While the order of the 1st respondent affirming the order dated 20.09.2017 and 26.09.2017 of the 2nd and 3rd respondents in and by which the attempt to reinstate the 4th respondent as Madathipathi of the petitioner, viz., Dakshinamurthy Mutt (for short 'the Mutt') and to permit the 4th respondent to operate the bank account pertaining to the Mutt is put to challenge in W.P. No.15252/2023, W.P. No.14421/2024 has been filed by the Mutt against the advertisement put up by the 4th respondent for appointment of archaka. W.P. No.33254/24 has been filed by the Gurukkal, who has been performing the poojas at the temple seeking a direction to prohibit the 1st, 2nd and 4th respondents from interfering with the conduct of poojas and rituals of the Arulmigu Visalatchi Amman Udanamar Arulmigu Kasi Vishwanathar Temple at Kandhal, Ooty by the petitioner.

2. As W.P. Nos.14421 and 33254/2024 heavily lean on the averments in W.P. No.15252/23 and the direction that is to be passed in the said writ petition



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would be the basis for deciding the issue in W.P. Nos.14421 and 33254/2024,
they are taken up together and disposed of by this common order.

3. For the sake of convenience, in this order, the petitioner in W.P. Nos.15252/23 and 14421/24 shall be referred to as the 'Mutt' the petitioner in W.P. No.33254/24 shall be referred to as the 'petitioner' and the official respondents shall be referred to as 'Department'.

4. The brief facts, as set out in the writ petitions, which are necessary for the disposal of the writ petitions could be summarised thus :-

The Mutt was established in the year 1882 at Thirukandhal in Udhagamandalam and administered by the then pontiff/Madathipathi Sri Ekambara Desigar Swamigal. After his demise, the junior pontiff Brahmasri Om Prakasa Swamigal, who was managing the affairs of the Mutt, executed a trust deed dated 12.09.1917 registered as Document No.473 of 1917 in the office of the Sub Registrar, Udhagamandalam in and by which the administration of the Mutt was entrusted to be carried through a Trust Board comprising of 7 trustees.



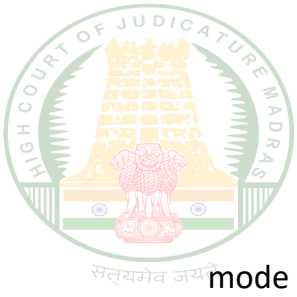
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5. While appointing of the Madhathipathi is entrusted with the Trust, equally, as per Clause 7 of the Trust Deed, removal of the Madhathipathi or any Trustee for any acts, which are prejudicial to the interests of the Trust, if it is found to be true, was entrusted with the Trustees. It is the further averment of the petitioner that the secular affairs of the temple are to be jointly administered by the trustees along with the Madhathipathi, which is evident from clauses 3 and 4 of the Trust Deed.

6. It is the further averment of the Mutt that for over 100 years the affairs of the Mutt has been properly administered by the Trustees in consonance with the Trust Deed and the inspection report of HR & CE evidence that the Trust has been properly administered by the Trust Board.

7. It is the further averment of the petitioner that the 6th pontiff, Swami Manjammal passed away in the year 1974 and no steps were taken by HR & CE to appoint any Madhathipathi and, therefore, the then Commissioner of HR & CE requested the Trustees to appoint a Madhathipathi in terms of the Trust Deed for the reason that in respect of matters concerning appointment of the pontiff, a



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mode of appointment has been devised under the original Trust Deed, which, according to the petitioner, requires to be adhered to.

8. It is the further averment of the Mutt that by resolution dated 28.08.2002, the Trust Board decided to approach the Perur Aadheenam to identify a sanyasi to fill the post of Madhathipathi, as the person who is to be appointed as Madhathipathi, as per the terms of the Trust Deed, is required to be a sanyasi. Based on the said resolution, the 4th respondent was identified to act as Madhathipathi through the letter dated 27.01.2003 issued by Santhalinga Ramaswamy Adigalar of Perur Aadheenam by making it clear in the said letter that the said appointment was purely temporary. Based on the said communication, the 4th respondent was appointed as Madhathipathi by the Trust Board vide proceedings dated 3.4.2003 and the said appointment was also informed to HR & CE Department.

9. It is the further averment of the Mutt that instead of administering the Mutt in the proper manner as envisaged under the Trust Deed, the 4th respondent started directly collecting rental income from the tenants without properly rendering accounts and that the 4th respondent was never available in



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the Mutt premises which disabled the disciples from receiving instructions regarding religious matters and that there were also various complaints raised by the devotees against the 4th respondent, which resulted in the Trust Board issuing notice dated 8.7.2013 in terms of clause 7 of the Trust Deed enabling the Trust Board to take steps for the removal of the Madhathipathi.

10. It is the further averment of the Mutt that the 4th respondent, by letter dated 16.7.2013, submitted a reply blindly denying the various allegations made against him and also made certain wild and baseless allegations, which resulted in the straining of relations between the Trustees and the Madhathipathi to such an extent that false complaints were given by the 4th respondent against the Trustees, which included a case of criminal trespass. In spite of the fact that the Trustees had every right under the Trust Deed to be part of the administration and also for ingress and egress from the property, the allegations on being found to be baseless and vexations, further proceedings was dropped by the police authorities.

11. It is the further averment of the Mutt that on account of the conduct of the 4th respondent, which is contrary to the religious tenets of the Mutt and



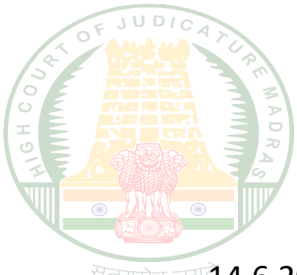
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also on account of the fact that the amounts of the Mutt have been swindled by the 4th respondent to unjustly enrich himself, the Trust Board, vide its meeting dated 4.1.2016 resolved to remove the 4th respondent as Madhathipathi in line with the power conferred under Clause 7 of the Trust Deed and vide the meeting dated 21.1.2016, the 4th respondent was called upon to hand over all articles and documents to the Trustees.

12. It is the further averment of the Mutt that as the Madhathipathi had committed irregularities in the handling of the Trust funds, the Trustees had requested the Bank to freeze the bank accounts of the Mutt. In spite of passage of almost 6 months, the 4th respondent, under the guise of being in occupation of the Mutt as its Madhathipathi, filed W.P. No.36377/2016 seeking quashment of the letter issued by the bank restraining him from operating the bank account.

13. It is the further averment of the Mutt that the resolution dated 4.1.2016 removing the Madhathipathi through the resolution passed by the Trustees in accordance with Clause 7 of the Trust Deed had not been challenged before any forum till date. Subsequently, in the year 2017, Shri Someshwara Swamigal was appointed as Madhathipathi pursuant to resolution dated



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14.6.2017, who held office till August, 2022, during which time he expressed his inability to continue his office due to old age and health issues and, therefore, one Srimath Chokkalinga Thambiran was appointed as Madhathipathi with effect from 5.12.2022. The said appointment was also communicated to the Commissioner of HR & CE for which there was no response from the Commissioner.

14. It is the further averment of the Mutt that after the appointment of Shri Someshwara Swamigal, an unlawful attempt has been made to reinstate the 4th respondent as Madathipathi with the aid of police and also calling upon the bank to defreeze the account and to allow the 4th respondent to operate the account inspite of the fact that the order of removal of the 4th respondent as Madathipathi has not been called in question and has thus reached finality by passing orders dated 20.09.2017 and 26.09.2017 of respondents 2 and 3.

15. Aggrieved by the order of the 2nd respondent dated 20.09.2017 and 26.09.2017 in and by which a veiled attempt was made to reinstate the 4th respondent as Madathipathi and calling upon the bank to defreeze the account and permit the 4th respondent to operate the same, the Mutt filed W.P.

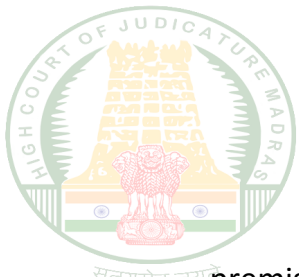


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सत्यमेव जयते No.26337/2017 and this Court, taking up W.P. No.26337/17 and W.P. No.36377/16 together, vide order dated 10.08.2018 disposed of both the petitions by directing the parties to approach the appellate authority, viz., the Commissioner of HR & CE. It is the further averment of the Mutt that in both the writ petitions, the removal of the 4th respondent as Madathipathi was not the subject matter of challenge nor was it so in the appeal before the appellate authority.

16. It is the further averment of the Mutt that as a consequence of the order of this Court dated 10.08.2018, the 1st respondent passed the impugned order dated 24.04.2023 in and by which not only the orders dated 20.09.2017 and 26.09.2017 of the 2nd respondent has been affirmed, but the removal of the 4th respondent as Madathipathi has been set aside by adverting to Section 59 of the Tamil Nadu Hindu Religious and Charitable Endowments Act (for short 'the Act') by holding that removal of Madathipathi could be done only by way of filing a suit u/s 59 of the Act.

17. It is the further averment of the Mutt that based on the said order, on 5.5.2023, the 4th respondent along with a group of persons barged into the

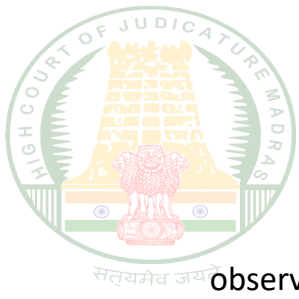


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premises and used criminal force to deter the trustees from entering the premises, which is nothing but an act of goondaism perpetrated by a man claiming to be a man of God to take over the affairs of the Mutt, which is inspite of the fact that the appointment of Shri Someshwara Swamigal was brought to the notice of the 1st respondent, which has not been properly considered by the 1st respondent while considering the revision/appeal filed.

18. It is the averment of the Mutt that the order of removal of Madathipathi dated 4.1.2016 has not been challenged before any authority till date and such being the case in the proceeding instituted at the instance of the Mutt, the 1st respondent cannot collaterally set aside the order of removal, which was not under challenge in favour of the 4th respondent while confirming the order passed by the 2nd respondent. The finding of the 1st respondent that the Trust Board did not have power to remove the 4th respondent except by way of suit is grossly erroneous as the power under Section 59 of the Act does not override the power conferred on the Trustees through the Trust Deed, when it is the Trustees, who have appointed the Madathipathi, which is the ratio laid down by the Supreme Court in ***Mahalinga Thambiran Swamigal – Vs – Arulnandi Thambiran Swamigal (1974 (1) SCC 150)***, wherein the Supreme Court had



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observed that the nomination of a pontiff can be revoked or cancelled for a good cause. Therefore, left with no efficacious remedy, the present writ petition in W.P. No.15252/23 has been filed.

19. Pursuant to the passing of the order by the 1st respondent, taking advantage of the same and due to intervening court holidays, the 4th respondent has come up with an advertisement in the newspaper calling for appointment of archakas and other staff. It is the further averment of the Mutt that when the 4th respondent has been removed following the procedure laid down under the Trust Deed and the same having not been challenged till date, the 4th respondent being divested of any authority, the 4th respondent, in clear contravention of his position, has issued the advertisement calling for appointment of archakas, which is in clear violation of the Trust Deed and the said illegal act is being perpetrated by the 4th respondent in connivance with the officials of the HR & CE Department. It is the further averment of the Mutt that the appointment of archakas and other staff are exclusively within the domain of the Mutt and the HR & CE Department has no role in the same and this clearly shows that the advertisement for appointment is a clear indicator of the intent of the 4th respondent to appoint his persons in the said positions. Therefore, to curb the



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illegal act of the 4th respondent in trying to appoint archaka and staff, left with no other alternative remedy, the writ petition in W.P. No.14421/2024 has been filed.

20. The petitioner in W.P. No.33254/24, who is the Gurukkal of the Mutt, has filed the writ petition by averring that the administration of the Mutt is being carried on through the Trust Board comprising of the 7 trustees and further it is averred that the petitioner has been serving as the priest at Arulmighu Visalatchi Amman Udanamar Arulmigu Kasi Vishwanathar temple situated in Kandhal since 1958.

21. It is the further averment of the petitioner, while concurring with the averments of the Mutt, it is further added that the 4th respondent, in connivance with HR & CE, has started interfering with the running of the Mutt notwithstanding the fact that the 4th respondent has been removed from the position of Madathipathi and that he is disturbing the peaceful performance of poojas and other daily offerings to the Lord Almighty. It is further averred that the temple, which functions adjacent to the Mutt is not a part of the Mutt, but is sought to be misused by the 4th respondent for his private benefit and the income generated by the Mutt is used in the performance of poojas in the temple.

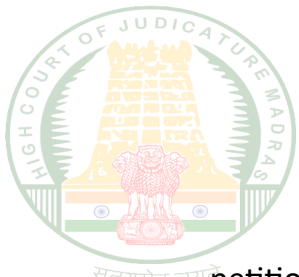


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22. It is the further averment of the petitioner that the 4th respondent, employing goondas is interfering with the peaceful performance of poojas and had, in fact, locked the temple and only at the insistence of the public and police, the locks were removed and the devotees were given access to the temple. In fact, a complaint was lodged to the police authorities and when confronted by the law enforcing agency, the 4th respondent pretends to be acting under the directions of respondents 1 and 2. The temple belongs to the Mutt and the jurisdiction of the HR & CE Department is only supervisory in nature and it cannot extend to the day to day affairs of the temple.

23. It is the further averment of the petitioner that vide notice dated 17.10.2024, the petitioner was alleged to have been suspended by the 4th respondent alleging that as priest of the temple, the petitioner has not opened the temple and performed pooja on a particular day, which is nothing but a blatant falsehood and an act to wrest control over the temple and the Mutt and the suspension is only a ruse to induct his men as archakas to take control of the temple and the Mutt and only to that end, the advertisement has been issued. Therefore, against the said order of suspension and appointment of archakas, the



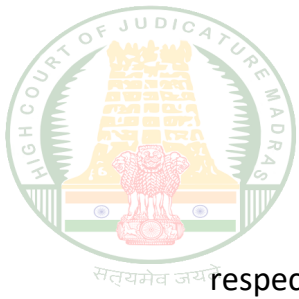
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petitioner has filed the present petition to prohibit respondents 1, 2 and 4 from interfering with the conduct of poojas and rituals at Arulmigu Visalatchi Amman Udanamar Arulmigu Kasi Vishwanathar temple at Kandhal, Ooty by the petitioner and the existing priests.

24. Learned counsel appearing for the Mutt, at the outset submitted that the resolution dated 4.1.2016 has been passed in exercise of the power conferred under the Trust Deed and there being no challenge either to the provisions in the Trust Deed or the resolution dated 4.1.2016, the 1st respondent was not right in collaterally going into the validity of the resolution, when the same was not under challenge before the 1st respondent. Therefore, the finding of the 1st respondent that the removal of the 4th respondent is bad and is not in consonance with Section 59 of the Act is not only perverse and unreasonable, but the same is erroneous and is an order passed without jurisdiction.

25. It is the further submission of the learned counsel that Section 59 of the Act does not override the powers of the trustees under the Trust Deed. It is the submission of the learned counsel that in matters concerning a Mutt, the rule of construction is to be as per the wishes of the Founder, which must always be



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respected and adhered to, which principle has been recognized and well settled through very many decisions. Therefore, where the Trust Deed explicitly permits the removal of a trustee, including a Madathipathi, who is the head of the Trust Board and is also a Trustee, the said power cannot be whittled down without any proper justification. Further, even a plain language of Section 59 of the Act shows that the same is only an enabling provision and it does not have the effect of overriding the powers granted under the deed of trust.

26. It is the further submission of the learned counsel that when the appointment of Madathipathi was on the request of the HR & CE Department through its very own communication, the said official respondents cannot make a 'U' turn and claim that the Trust Board has no power to remove a Madathipathi. The appointment of the 4th respondent having been made by the Trust Board, it defies logic to contend that the said appointing authority is not clothed of any power to remove the Trustee, including the Madathipathi, which conclusion is opposed to the decision of the Apex Court in *Mahalinga Thambiran Swamigal case (supra)*.



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27. It is the further submission of the learned counsel that the 1st respondent exceeded in his jurisdiction by collaterally going into the question of removal when the same was not the subject matter of challenge and it is a clear ex facie exceeding of jurisdiction by the 1st respondent in delving into questions, which was not posed before him. Further, in the revision petition filed by the petitioner, the 1st respondent has granted relief to the 4th respondent, which is unknown to judicial adjudication and, therefore, the order requires to be quashed.

28. It is the further submission of the learned counsel that the case raises an important question on the scope of Section 59 of the Act vis-à-vis the powers granted to the Trust Board by the Founder of the Mutt. The issue raised is one of jurisdiction coupled with the interpretation of the provision of law. Relying upon the decision in **Godrej Sara Lee Ltd. – Vs – Excise and Taxation Officer-cum-Assessing Authority & Ors. (2023 SCC OnLine SC 95)**, it is the submission of the learned counsel that where the controversy is purely legal, the High Court ought not to delegate the parties to the alternative remedy, merely because such alternative remedy is available. Therefore, it is prayed that this Court may



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adjudicate the issues on the relevance and applicability of Section 59 vis-à-vis the provisions of the Trust Deed.

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29. Learned counsel appearing for the petitioner/Gurukkal adopted the submissions advanced on behalf of the Mutt and submitted that the 4th respondent not being the Madathipathi in terms of the resolution dated 4.1.2016, which has not been challenged in any manner and has been allowed to attain finality, the subsequent order of suspension passed by the 4th respondent suspending the Gurukkal and the advertising of the posts of archakas and other staff is beyond the powers of the 4th respondent, which requires to be interfered with.

30. In support of the aforesaid submissions, learned counsel for the Mutt placed reliance on the following decisions :-

- i) *Godrej Sara Lee Ltd. – Vs – Excise & Taxation Officer-cum-Assessing Authority & Ors. (2023 SCC OnLine SC 95);*
- ii) *Sri Mahalinga Thambiran Swamigal – Vs – His Holiness Sri La Sri Kasivasi Arulnandi Thambiran Swamigal (1974 (1) SCC 150);*
- iii) *Balasubramania Gurukkal – Vs – Sankara Gurukkal & Ors. (1989 (2) LW 44);*



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- iv) *Sri Emberumanar Jeer Swamigal – Vs – The Board of Commissioners for Hindu Religious Endowments, Madras & Ors. (44 LW 539);*
- v) *Sri Hathiya Ram Math & Anr. – Vs – District Judge, Ghazipur & Ors. (1998 SCC OnLine All 1139);*
- vi) *M.Meenakshi & Ors. – Vs – Metadin Agarwal (Dead) By LRs. & Ors. (2006 (7) SCC 470);*
- vii) *Krishnadevi Malchand Kamathia & Ors. (2011 (3) SCC 363);*
and
- viii) *Sri Kanchi Kamakoti Peetathipathi Jayendra Saraswathy Sankara Nursery & Primary School – Vs – Chief Educational Officer & Ors. (2020 SCC OnLine 1876)*

31. Per contra, learned standing counsel appearing for the department/official respondents submitted that the writ petition is not maintainable, as against the impugned order, which is passed u/s 21, the Mutt ought to have preferred the statutory revision available u/s 114 of the Act. In this regard, it is the submission of the learned counsel that even on the earlier occasion, this Court had referred the parties to go before the authorities as there were disputed questions of fact, which cannot be gone into in the writ proceedings and that being the case, when the remedy of statutory revision is available, the Mutt ought to have availed the revisional remedy and ought not to have rushed to this Court with the present writ petitions.



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32. It is the further submission of the learned standing counsel that only to bypass the said statutory remedy, the Mutt has invoked the jurisdiction of this Court under Article 226 by stating that a legal issue is involved and, therefore, the statutory alternative remedy is not availed. It is the further submission of the learned counsel that the petitioner/Mutt has not established that the said representing party has been authorised to present the petition and further there is no material placed to show that the petitioner is a Trustee of the Mutt. Further, there is also no material approving/recognizing the petitioner as the Trustee by the Department. Therefore, the petition being bereft of materials, the same is liable to be dismissed.

33. It is the further submission of the learned counsel that the formation of the Mutt though admitted, the averments regarding the Trustees and their appointment is stoutly denied by the Department. However, insofar as the appointment of the 4th respondent of Madathipathi, the same is admitted and recognised by the department. It is therefore the submission of the learned counsel that once Madathipathi is appointed, the administration of the Mutt is within the control of the Madathipathi and the Trustees have no power to



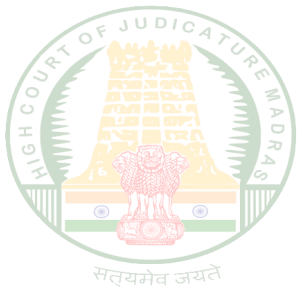
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wholly erroneous.

administer the Mutt and, therefore, the claim of administration by the Trustees is

34. It is the further submission of the learned standing counsel that the income derived from the assets belonging to the Mutt is being appropriated by the Seva Sangam, which is run parallelly and all the allegations made out by the Mutt are only for the purpose of screening the appropriation of the amount, which was mainly the reason behind the order passed by the 2nd respondent directing the 4th respondent to operate the bank account, which was done after perusing all the records and only at the time of perusing the records, it came to light that persons, who are not associated with the Mutt as Trustees are controlling the Mutt.

35. It is the further submission of the learned counsel that only on the basis of the order dated 24.5.2017 passed by the 1st respondent, action was taken by respondents 2 and 3 to secure the Mutt and hand over the keys of the Mutt to the 4th respondent and also the orders were passed directing the Bank to permit the 4th respondent to operate the Mutt account.



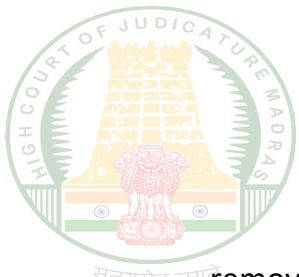
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36. It is the further submission of the learned counsel that no complaint with regard to the unlawful activities of the 4th respondent was brought to the notice of the department by any individual, which otherwise would have resulted in prompt and suitable remedial action being taken and further the Trustees have not been appointed/recognized by the Department.

37. It is the further submission of the learned counsel that the removal of the 4th respondent/Madathipathi by incompetent persons cannot have any legal sanctity and the resolution removing the 4th respondent is illegal and non-est in the eyes of law. The 1st respondent has passed the order by placing reliance on Section 59 of the Act, which relates to the manner in which the Trustees of a Mutt can be removed. Relying upon Section 6 (13), which defines 'Math', it is the submission of the learned counsel that it is only the Madathipathi, who has full control over the administration of a Mutt and not the Trustees.

38. It is the further submission of the learned counsel that Section 59 of the Act relates to removal of the trustee of a Math, which clearly provides that only by way of suit before a civil court, for the reasons mentioned in Section 59 of the Act, the Trustees and Madathipathi of a Mutt can be removed and the



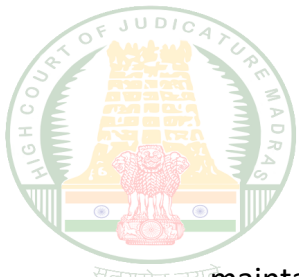
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removal procedure, which is alleged to have been adopted by the Mutt is repugnant to the provisions of the Act and is hit by Section 118 of the Act. This Court has, in the earlier round of litigation, relegated the parties to avail the statutory remedy on the ground of disputed facts and the present position fructifies in the form of a statutory revisional remedy, which has to be availed by the Mutt and it cannot invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution and, therefore, the prayer sought for are not maintainable.

39. Learned counsel appearing for the 4th respondent, in line with the submission made on behalf of the department, submitted that the Mutt has to avail the alternative remedy of revision available u/s 114 of the Act and without exhausting the said remedy, filing the present petition before this Court is not permissible and, therefore, on the ground of availability of alternative remedy, these petitions deserve to be dismissed.

40. It is the submission of the learned counsel that only where atleast one of the circumstances as propounded in ***Whirlpool Corporation – Vs - Registrar of Trade Marks, Mumbai & Ors. (1998 (8) SCC 1)*** is made out, a writ could be



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maintained, viz., i) violation of fundamental right, (ii) lack of jurisdiction and (iii) failure of natural justice. It is the contention of the learned counsel that none of the circumstances are present in this case and, therefore, the present petitions are not maintainable.

41. It is the further submission of the learned counsel that the contention of the Mutt relating to appointment of the 4th respondent as Madathipathi was only temporary and to support the said stand, the petitioner relies on the letter of Perur Mutt dated 27.01.2003 and further it is submitted that the Act does not stipulate temporary Madathipathi and once a Madathipathi is appointed and assumes the post, the said Madathipathi is governed by the provisions of the Act.

42. It is the further submission of the learned counsel that once the 4th respondent was appointed as Madathipathi and assumed the said post on the basis of the internal communication between the Trust Board and Perur Mutt in and by which the 4th respondent was recommended to be appointed as Madathipathi, the mere arrangement, which is said to be temporary in the said letter of Perur Mutt cannot be the basis to claim that the Madathipathi is only temporary and the contention in this regard on behalf of the Mutt is wholly



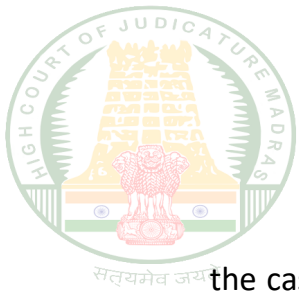
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impermissible. It is further submitted that the 4th respondent has been performing the function of Madathipathi from 2003 to 2016, which would clearly indicate that it is not a temporary appointment of Madathipathi.

43. It is the further submission of the learned counsel that the Trust Deed is of the year 1917 and admittedly, the Mutt, by their own submission had admitted that the appointment of Madathipathi was by custom and tradition of the Mutt and it is not referenced to the Trust Deed. It is further submitted that Madathipathi even by the term '*Akrasanathipathi*' means the Principal Trustee of the Trust Board and, therefore, no meeting or resolution can be passed in the absence of the Madathipathi and, therefore, the resolution in and by which the Mutt has removed the 4th respondent is wholly impermissible and unsustainable.

44. It is the further submission of the learned counsel that the Trust Deed is inconsistent/repugnant to the provisions of the Act and as such void u/s 118 (1) and (2) of the Act. It is further submitted that Sections 59 to 62 specifically reference Madathipathi, who is specifically excluded from other provisions relating to the office of the Trustees in a temple. Therefore, in the case of Mutt, by virtue of Section 44, the provisions of Section 45 to 58 are not applicable in

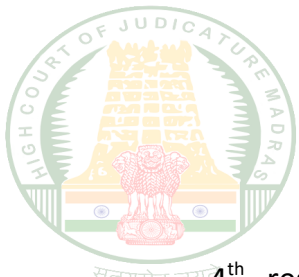


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the case of Mutts. It is therefore the submission of the learned counsel that the Legislature, conscious of the fact that Madathipathis are having higher independence and permanence than that of the trustees in a temple and, therefore, even the authorities of the Department cannot exercise the same power on a Madathipathi as is exercised in the case of Trustees, as the Trustees could be removed by the officers of the Department, while the Madathipathi could be removed only through the decree of a civil court in a suit filed u/s 59 of the Act.

45. It is further submitted that Section 59 clearly stipulates the reasons under which a Madathipathi could be removed and only to safeguard the Madathipathi from external pressure, the Legislature has framed the said provision and even any scheme framed by the Court insofar as it is inconsistent and repugnant to the Act is void. The Legislature in its wisdom has found the position of Madathipathi is more important than that of the Trustees has provided special provisions for removal, which has been considered and approved in the decision in ***R.Sampath – Vs – Government of Tamil Nadu (W.A. No.2444 of 2022 – Dated 20.08.2024)*** and, therefore, the alleged removal of the



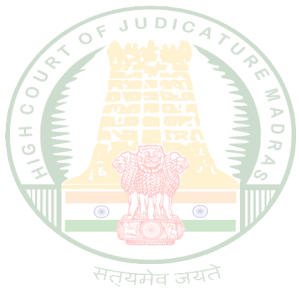
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4th respondent not in consonance with the provisions of the Act is not enforceable.

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46. It is the further submission of the learned counsel that the scheme framed by the Court or the Department has more sanctity under law with the Authority than a scheme framed by the Founder or the Trustees of the Trust and, therefore, the provisions of the Trust Deed, providing for removal of Madathipathi, insofar as is inconsistent with the Act is void for repugnancy.

47. It is the further submission of the learned counsel that the principle of good cause for which a Madathipathi can be removed, which is relied on by the Mutt through the decision in *Mahalinga Thambiran case (supra)* leans more in favour of the 4th respondent than the Mutt for the simple reason that good cause is a question of fact, which could be best decided only in a civil suit and not in a petition under Article 226, as Section 59 provides the situations under which a Madathipathi could be removed. Therefore, the said judgment would not be of any benefit to the Mutt.



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48. It is the further submission of the learned counsel that the 4th respondent/Madathipathi is a reformist Madathipathi, who had carried out various social activities and had even donated money to the Chief Minister's Flood Relief Fund for extending help to the poor and needy, as it is also a form of worship and the 4th respondent is respected all over the State by all persons irrespective of community for the social work done by him. Therefore, the social activities and works done by him cannot be labeled to be works, not relatable to the Trust activities necessitating the removal, that too in an illegal manner.

49. It is the further submission of the learned counsel that there is no legal or religious prohibition or bar against a person holding the office of two separate Mutts. Further there is no conflict of interest between the tenants of Perur Mutt as well as the petitioner Mutt and it would be evident from the provisions of Section 59 relating to disqualification as provided as holding the office of Madathipathi in two Mutts is not held to be a disqualification.

50. It is the further submission of the learned counsel that insofar as the petition filed by the Gurukkal/Archakar is concerned, the Archakar has been relieved from service and a temporary archakar has taken charge and, therefore,



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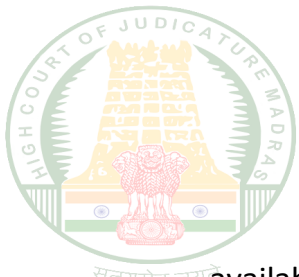
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the writ petition has become infructuous and further the relieving order has not been challenged by the Archakar and, therefore, the writ petition is liable to be dismissed.

51. In support of the aforesaid submissions, learned counsel for the respondents placed reliance on the following decisions :-

- i) *Tmt. S.Hemalatha – Vs – The Commissioner, HR & CE Dept., Chennai & Ors. (W.P. No.3719/2008 – Dated 11.08.2008);*
- ii) *R.V.S.Veeramani @ V.Mani – Vs – The Commissioner, HR & CE Dept. (W.P. (MD) No.15107/2014 – Dated 30.09.2015);*
- iii) *R.V.S.Veeramani @ V.Mani – Vs – The Commissioner, HR & CE Dept. (W.A. (MD) No.1446/2014 – Dated 21.09.2017);*
- iv) *R.Sampath – Vs – The Government of Tamil Nadu (W.A. No.2444/2022 – Dated 20.08.2024); and*
- v) *His Holiness Kasiviswanatha Pandara Sannidhi – Vs – The State of Tamil Nadu & Ors. (W.P. No.31714/2012 – Dated 05.06.2018);*
- vi) *Mahant Bhagwan Bhagat – Vs – G.N.Bhagat & Ors. (1972 (1) SCC 486); and*
- vii) *Seshammal & Ors. – Vs – State of TN (1972 (2) SCC 11)*

52. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials



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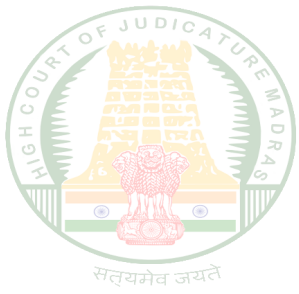
available on record as also the relevant provisions of law and the relevant
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decisions to which this Court's attention was drawn.

54. The following issues arise for determination in the present writ petitions :-

- i) *Whether the writ petition in W.P. No.15252/2023 is maintainable;*
- ii) *Whether the removal of the 4th respondent in terms with the Trust Deed is permissible without resorting to a suit u/s 59 of the Act.*
- iii) *Whether the order passed by the 1st respondent in the revision filed by the Mutt is beyond his jurisdiction.*
- iv) *Whether the act of 4th respondent to relieve the Archakar/Gurukkal and also issue an advertisement for fresh appointment of an Archakar/Gurukkal is sustainable.*

ISSUE NO.1 :

- i) ***Whether the writ petition in W.P. No.15252/2023 is maintainable.***



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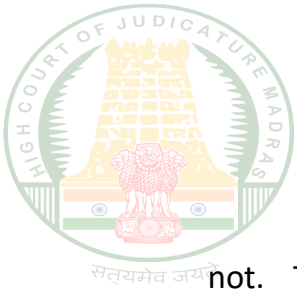
55. Towards the maintainability of the writ petition in W.P.

No.15252/2023, two-fold contentions have been advanced by the respondents –

viz.,

- i) Availability of statutory alternative remedy or revision u/s 114 of the Act;
- ii) The petitioner has not established that he has been duly appointed/recognized by the Department as a Trustee and, therefore, he has no locus to file the writ; and
- iii) A veiled attempt is made to invoke the writ jurisdiction by stating that there is a legal issue involved, though the court in the earlier round of litigation has held that there are disputed questions of facts which have to be agitated before the authority.

56. There could be no quarrel with the fact that it is the established position in law that availability of alternative remedy is not a bar for invoking the extraordinary jurisdiction of this Court. However, it is for the Courts, on the materials placed before it, to decide whether the writ should be entertained or



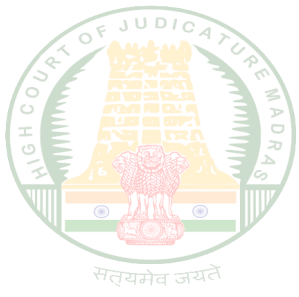
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not. Therefore, even on the short ground, question of maintainability of the petition on the availability of statutory alternative remedy of review does not merit acceptance. However, for the reasons, which are to be recorded in respect of the third contention as shown above, the contention with regard to maintainability on the ground of availability of statutory alternative remedy deserves to be negated.

57. Coming to the second contention that the petitioner has not established that he has been duly appointed/recognized by the Department as a Trustee and, therefore, he has no locus to file the writ, it is to be pointed out that the impugned order, which is put in issue before this Court is the outcome of the order passed by this Court in the earlier round of litigation in W.P. Nos.36377/2016 and 26337/2017, wherein it is seen that the very same petitioner herein in W.P. No.15252/2023 had filed W.P. No.26337/2017 and for more clarity, the cause title is quoted hereunder :-

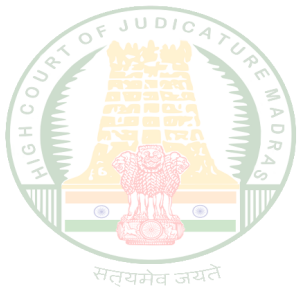
*Sri Dakshinamoorthy Mutt,
Kanthal, Udhagamandalam
The Nilgiris District
Rep., by its Trustee, Sri Lakshmaiah @ Rex Mani*



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58. On the petition filed by the very same petitioner in W.P. No.15252/2023 in the earlier round of litigation, order had come to be passed by this Court on 10.08.2018 relegating the parties to approach the authority citing availability of alternative remedy. In the said case, the Department had not taken any stand with regard to the maintainability of the said case; rather, the Department had accepted the said order and had proceeded to consider the application filed by the Mutt and had passed the impugned order. It is also to be pointed out that even in the said proceedings, it has never been the finding of the authority that the application is not maintainable, as the applicant therein, who was the petitioner in W.P. No.26337/2017 was not a Trustee of the Mutt or has established that he has been recognized/approved as the Trustee of the Mutt and had filed the application in a representative capacity. When all along the Department had not attacked the credentials of the petitioner as a Trustee of the Mutt, out of blue, the Department cannot around and now take a new plea that the petitioner has not established the fact that he has been duly appointed/recognized by the Department and, therefore, he has no locus to maintain the present petition.

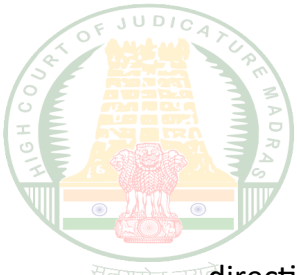


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59. Further, it is to be pointed out that the petition has been presented on behalf of the Mutt by the petitioner, in the representative capacity. The Trustees of the Mutt are appointed under the Trust Deed and, thereafter, the further appointments are covered by the provisions under the Trust Deed. The Mutt has been created in the year 1888 and has been in existence for about a century and a half and no qualms have been raised by the Department against the Trust Board or the Trustees, including the appointment of the Trustees.

60. It is to be pointed out that the duty of the Department is to administer the spiritual places, which are covered under the Act in the proper manner. If really something was haywire in the administration of the Trust Board, definitely, the Department would have invoked the provisions of the Act to step in and take control of the affairs of the Trust for better administration. However, no such action has been taken against the Mutt till the removal of the 4th respondent, which order was also communicated to the Department, on which no action was also taken by the Department. However, only when the account of the Mutt was freezed by the Bank on the instructions of the Trust Board, the Department had entered into the picture to direct defreezing of the account and with a further



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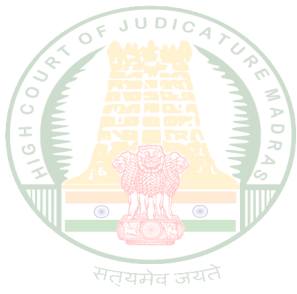
direction to the bank to permit the 4th respondent to operate the account.

However, even then, no action has been taken against the Trust Board.

61. In such a scenario, it does not lie in the mouth of the Department to contend that neither recognition nor approval was granted to the appointment of the members of the Trust, as the appointment of the members of the Trust are governed by the Trust Deed and the stoic silence of the Department could only, even otherwise, be held to be a deemed approval of the appointment of the members of the Trust. Therefore, the contention of the Department that the Mutt cannot be represented in representative capacity by the petitioner, as his appointment as a member of the Trust has not been approved deserves to be rejected. **Accordingly, all the three contentions does not merit acceptance and, accordingly, this Court holds that the writ petition in W.P. No.15252/2023 is maintainable. Issue No.1 is answered accordingly.**

ISSUE NOS.2 & 3 :

Whether the removal of the 4th respondent in terms with the Trust Deed is permissible without resorting to a suit u/s 59 of the Act.



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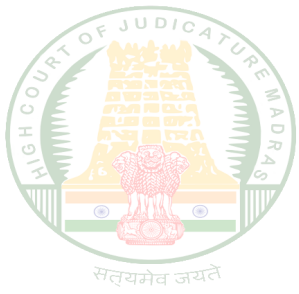
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***Whether the order passed by the 1st respondent in
the revision filed by the Mutt is beyond his jurisdiction.***

62. As both the issues are interconnected, they are taken up together for deliberation. The respondents claim that the provisions of the Trust Deed are repugnant to Section 118 of the Act and, therefore, the Madathipathi cannot be removed by adverting to the terms of the Trust Deed and that the recourse open for removal of the Madathipathi is only through a suit filed by invoking Section 59 of the Act before the civil court and, therefore, the removal is bad.

63. Before proceeding to analyse the Trust Deed vis-a-vis Section 59 of the Act, certain passages from Mukharji's book on Hindu Law of Religious and Charitable Trusts, which have been relied on in the decision in *Mahant Bhagwan Bhagat case (supra)*, which casts certain clarity on the issue before this Court, are quoted hereunder :-

"7. The general law as to succession to Mahantship is now well settled by innumerable decisions of the Judicial Committee of the Privy Council and some decisions of this Court. It will be enough to quote some passages from Mukharji's book on the Hindu Law of Religious and Charitable Trusts. The learned author states (third edition, p. 257):



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“Once a Mutt is established, succession to headship takes place within the spiritual family according to the usages that grow up in a particular institution.

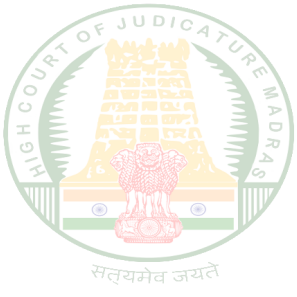
The primary purpose of a Mutt...is to encourage and foster spiritual learning by maintenance of a competent line of teachers who impart religious instructions to the disciples and followers of the Mutt and try to strengthen the doctrines of the particular school or order of which they profess to be adherents.”

At page 269 :

“In a Mutt it is the custom or practice of a particular institution which determines as to how a successor is to be appointed.”

8. Three aspects have to be borne in mind in connection with the question of succession to the office of a Mahant (p. 269):

“The first is that if the grantor has laid down any particular rule of succession, that is to be given effect to. Secondly, in the absence of any grant the usage of the particular institution is to be followed; and in the third place, the party who lays claim to the office of a Mohunt on the strength of any such usage must establish it affirmatively by proper legal evidence. The fact that the defendant is a trespasser would not entitle the plaintiff to succeed even though he be a disciple of the last Mohunt, unless he succeeds in



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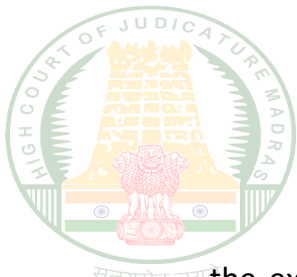
proving the particular usage under which succession takes place in the particular institution.”

(Emphasis Supplied)

64. Keeping the above in mind, to address the issue that has been laid before this Court, it is necessary to have a look into the provisions of the Trust Deed, which, according to the Mutt, provides for appointment and removal of the members of the Trust. Clause 1 of the Trust Deed, which provides for appointment of Madathipathi and the qualifications of the said individual have been prescribed and the same reads thus :-

“1. தற்காலத்திய டிரஸ்டிகளும், சபையின் அங்கங்களும் பின்வரும் டிரஸ்டிகளும் சபையின் அங்கங்களும் இச்சபைக்கு ஓர் சந்நியாசியை தெரிந்தெடுத்து அக்ரா சனாதினபதியாக்கி குருவாக பாவித்து அவசர சமூகத்தில் சபைக்கு ஆக வேண்டிய ஒவ்வொரு விஷயங்களைப் பற்றியும் பேசி அவரது புத்தியான அனுமதியையும் அனுசரித்து வியவகாரங்களை நடத்தி வரவேண்டியது.”

65. The above Trust Deed was executed by Swami Om Prakash and it is registered as Document No.473/1917 on the file of the Sub Registrar, Udthagamandalam. The said Trust Deed is admitted. Vide the said Trust Deed,



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the executor has inducted 7 persons as Trustees, and vide clause 1 of the said Trust Deed, the said Trustees were given power to appoint a person, who satisfies the conditions prescribed under clause 1 to be the Akrasanathipathi/Madathipathi of the Mutt and to act under his wisdom and guidance. Therefore, the power to select and appoint a Madathipathi has been vested in the Trustees.

66. Based on the said power available under the Trust Deed, in view of the fact that from 2.7.1974 to 14.9.2002, since the Mutt was without a Madathipathi and in view of the letter of the Department dated 19.7.2001 pointing out the vacuum in not filling up the post of Mutt head, letter dated 14.9.2002 was addressed by the Trustees of the Trust Board of the Mutt to Perur Aadheenam requesting for recommending a person to be Madathipathi to head the Mutt, who satisfies the qualification prescribed under the Trust Deed.

67. Pursuant to the aforesaid communication, letter dated 27.1.2003 was addressed by the Mutt head of Perur Aadheenam to the Trust Board of the petitioner Mutt recommending to appoint the 4th respondent, as the Madathipathi of the Mutt as a temporary measure and it was made clear in the



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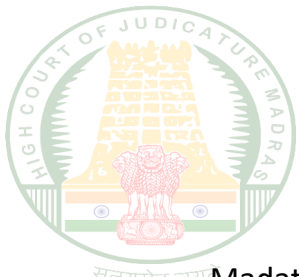
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said letter itself that the temporarily appointed Madathipathi will take the requisite steps for appointing a permanent Madathipathi for the petitioner Mutt.

68. Vide letter dated 3.4.2003, the petitioner Mutt had informed the Department about the appointment of the 4th respondent as the Madathipathi of the petitioner Mutt. The said communication of the petitioner Mutt is not disputed by the Department and all the aforesaid communications form part of the typed set of documents filed by the Mutt.

69. Thereafter, the 4th respondent, in the year 2006, during February, had issued the communication replacing Trustees in the Board citing that the outgoing Trustees had pleaded their old age and their inability to perform to their fullest extent and, therefore, three persons were replaced in the Trust Board for a period of three years.

70. It is to be noted that though the communication of the Madathipathi of Perur Aadheenam had informed that the appointment of the 4th respondent was only on temporary basis as Madathipathi of the petitioner Mutt, which was in the year 2003, however, there was no change of guard to the post of

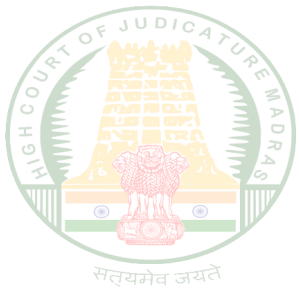


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Madathipathi and the 4th respondent was continuing in the said post till June, 2013, when on 28.06.2013, a meeting of the Trust Board was convened without the presence of the 4th respondent/Madathipathi in which the detrimental activities of the 4th respondent against the interests of the Mutt was taken note of and a resolution had come to be passed calling for explanation of the 4th respondent.

71. To the said resolution, the 4th respondent, who is the Madathipathi of the Mutt had, through his advocate, issued a notice, the details of which is not the concern of the Court, but suffice to state that the said notice and the incidents that had happened afterwards leading to communication dated 21.12.2015 of the 4th respondent had led to the meeting of the Trust Board on 4.1.2016 in which resolution had come to be passed unanimously removing the 4th respondent from the post of Madathipathi by pointing out the provisions in the Trust Deed and the 4th respondent was called upon to hand over all the documents and other materials relating to the Mutt, which are in his possession. The relevant provision in the Trust Deed, viz., Clause 7 pertaining to the power of the Trust Board to remove the Madathipathi as also any other Trustee for acts, which are prejudicial to the Trust, is quoted hereunder :-



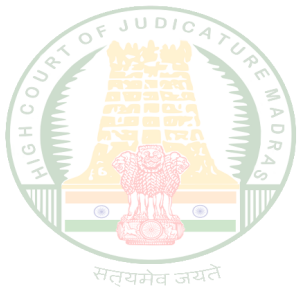
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“7. சபையின் அங்கங்கள் அக்டராசனாதிபதியானும் / மடாதிபதி டிரஸ்டிகளானும் சபையின் எவர்களானும் சபையின் ஒழுங்கிற்கு மாறாக நடப்பதாயிருப்பின் சபையோர்களுக்கு அது உண்மையாகக் காணப்படில் அவர்களை சபையிலிருந்து நீக்கவும் அதிகாரமுண்டு.”

72. The removal of the 4th respondent was through the invocation of the power under Clause 7 of the Trust Deed, which, on a careful perusal reveals that the members of the Trust Board, inclusive of the Madathipathi could be removed by the Trustees, if it is found and established that they are acting prejudicial to the interests of the Mutt. In this regard, a perusal of the minutes of the meeting of the Trust Board dated 4.1.2016 shows that a detailed deliberation has been made with regard to the activities of the 4th respondent before the resolution to remove the 4th respondent had come to be passed. Thereafter, communications have been addressed to the 4th respondent to return back the properties of the Mutt, which were in his possession during the time he was acting as Madathipathi of the petitioner Mutt.



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73. Thereafter, vide letter dated 26.9.2016, the Trust Board of the Mutt had informed the Department about the removal of the 4th respondent from the position of Madathipathi of the Mutt for the reasons, which have been stated in the said letter. Further, the Trust Board had also informed the Department that in spite of repeated requests from the Board to the 4th respondent to return the properties and documents of the Mutt which were in possession of the 4th respondent, as the 4th respondent has not adhered to the same, request was made to the Department to remove the 4th respondent from the position of Madathipathi of the Mutt.

74. On 27.9.2016, a letter has been addressed by the 4th respondent to the P.Rangasamy, who was a Trustee and also the legal advisor of the Mutt stating that the acts of the Mutt are illegal and the removal of the 4th respondent has no sanctity under the law and that it is only the 1st respondent, who has powers to order the removal of the Madathipathi. Following the said communication, W.P. No.36377/2016 had come to be filed by the 4th respondent before this Court.

75. In the interregnum, the Mutt had addressed the Bank Manager to freeze the account of the Mutt and not to permit the 4th respondent to operate

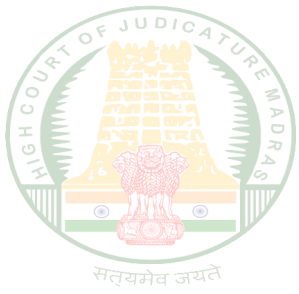


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the account, which was complied with aggrieved by which W.P. No.36377/2016 had come to be filed seeking a direction to the Department to open the Mutt to enable the 4th respondent to perform the duties of Madathipathi.

76. Pending the writ petition, the Trust Board of the Mutt had appointed one Sri Someshwara Swamigal as the Madathipathi of the Mutt on 14.6.2017, who had also taken charge. The said appointment of Sri Someshwara Swamigal as Madathipathi of the petitioner Mutt was also communicated to the Department vide communication dated 20.06.2017. In effect, not only the fresh appointment was communicated to the Department, but also the removal of the 4th respondent from the post of Madathipathi on 4.1.2016 had been communicated to the Department, but the Department was also put on notice that the 4th respondent had not returned the properties and documents relating to the Mutt vide communication dated 26.9.2016 requested the Department to take action for removal of the 4th respondent from the post of Madathipathi. However, curiously, there seems to have been no action taken by the Department, nor even any communication addressed to the Mutt pointing out that the Trust Board has no power to remove the Madathipathi, as contended before this Court.

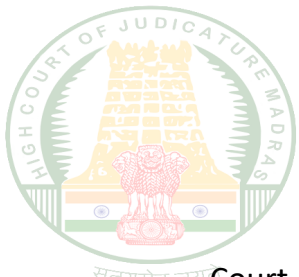


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77. After the appointment of the new Madathipathi, Sri Someshwara Swamigal on 14.6.2017 and communication of the same on 20.6.2017 to the Department, which have not been disputed or controverted by the Department, the 2nd respondent has addressed a communication to the Inspector of Police, Udhagamandalam, dated 20.9.2017, informing that the Mutt has been illegally trespassed by persons, who have not been lawfully inducted as Trustees and that on 7.1.2016, the Madathipathi/4th respondent herein had given a complaint at the police station and, therefore, sought for action to be taken against the said persons, who are alleged to have trespassed into the Mutt.

78. On even date, viz., 20.09.2017, the 2nd respondent had also addressed the Manager, Nilgiris District Central Cooperative Bank Ltd., Udhagamandalam Branch, about the alleged removal of the Madathipathi of the Mutt by persons, who claim to be members of the Trust Board and had addressed the bank not to permit the 4th respondent to operate the bank accounts to which the 4th respondent has been put on notice by the bank. The Department has further informed that a writ petition in W.P. No.36377/2016 has been filed before this



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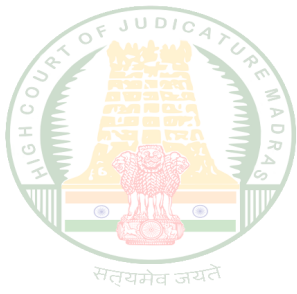
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Court and till such time an order is passed on the same, the bank shall not enforce the request of the alleged Trust Board.

79. Thereafter, the 2nd respondent has drawn a communication to the 3rd respondent dated 26.9.2017 to provide assistance for opening the lock of the Mutt and permit the 4th respondent to carry on with the poojas and other activities relating to the Mutt on 28.9.2017 and to forward a report in this regard.

80. The aforesaid two communications dated 20.9.2017 and 26.9.2017 of the 2nd respondent have been put to challenge by the Mutt by filing W.P. No.26337/2017. Since the issue involved in W.P. No.36377/2016 and in W.P. No.26337/2017 were interconnected, this Court took up the same and vide a common order dated 10.08.2018 had directed as under :-

“3. May that it be, all these complex nature of facts and circumstances can never be adjudicated in the writ proceedings under Article 226 of the Constitution of India when such complex facts arise, it is preferable that the parties should prefer the appellate remedy before the competent Forum, which inturn can record the evidences from the respective materials and parties and peruse the documents take A and the decision considering all prevailing circumstances and materials available on record. In view of the



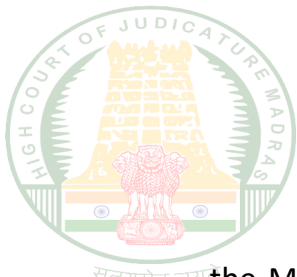
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fact that the respective parties are raising complex facts and circumstances in the case in relation to their position as Madathipathi as per the Trust Deed, this Court is of an opinion that the writ petitioners as well as the 8th respondent in WP.No.26337/2017 have to approach the appellate authority namely the Commissioner, HR & CE Department for complete adjudication of facts and other legal grounds raised in this regard in the present writ petition. The respective parties are at liberty to raise all legal grounds including the jurisdiction points and other maintainability grounds and all other legal grounds. The factual situation prevailing in the Mutt also to raken note submission evidences of from by the the Commissioner by be the recording and by adducing the parties are concerned persons Thus, all if necessary. at liberty to prefer an appeal before the Commissioner, HR CE at Chennai for the purpose of adjudicating the issues including the points of jurisdiction. It is made clear that till the appeal is disposed of by the Commissioner, HR & CE Department, the respective parties are directed to maintain Status Quo as on today and after passing of the orders, the same shall be implemented thereafter.”

81. As aforesaid, the petition in W.P. No.26337/2017 has been filed by the very same petitioner in representative capacity and no question of locus was raised by the Department at that point of time. In fact, the application filed by

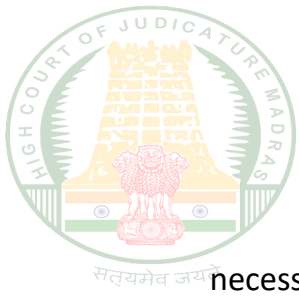


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the Mutt in representative capacity was also entertained by the 1st respondent, which has resulted in the impugned order.

82. Curiously, what is to be noted in the present case is that, both the writ petitions in the earlier round of litigation, had assailed only the directions of the 2nd respondent issued in communication dated 20.9.2017 and 26.9.2017 and neither the Department nor the 4th respondent had questioned the removal of the 4th respondent before the competent forum. Even if it is to be presumed, though not admitted, that the Department is not required to assail the said order before the competent judicial forum, it is incumbent on the part of the 4th respondent to assail the said order atleast before the Department, which the 4th respondent has miserably failed. However, through the said writ petitions, the issue that was directed to be adjudicated only pertained to the bank not permitting the 4th respondent to operate the account of the Mutt. Therefore, what was necessary for the authority, viz., the 1st respondent herein, to decide in the application was to the propriety of the order passed by the 2nd respondent. However, the 1st respondent, after exhaustively quoting the averments and contentions of both the petitioner Mutt and the 4th respondent, adverting to Section 59 of the Act has held that for removal of the Madathipathi, it is

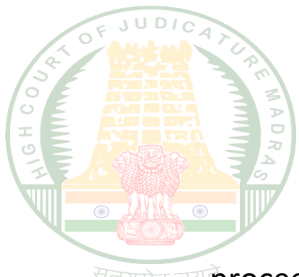


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necessary to file a suit before the civil court after obtaining the consent of the Commissioner and that the Board of Trustee of the Mutt is not competent to remove the Trustee. Further, it has been held that the bank account has been illegally freezed and that the Madathipathi is restrained from holding office by certain persons and, therefore, police authorities have been approached and, therefore, finding no fault in the order dated 20.9.2017 and 26.9.2017, the application filed by the petitioner Mutt had come to be dismissed.

83. Here too, it is to be pointed out that the communications of the Trust Board to the Department with regard to the appointment of the 4th respondent, his removal and the subsequent appointment of Sri Someshwara Swamigal has not been dealt with. In fact, the 1st respondent has written a treatise with regard to the submissions advanced by both sides, but has not adverted to the submissions raised by the Mutt and had merely gone into Section 59 of the Act and held that a suit alone has to be filed for removal and, therefore, the resolution of the Trust Board to remove the 4th respondent is illegal and has set aside the said order. In effect, in a revision petition filed for the relief of barring the 4th respondent from operating the bank accounts, the 1st respondent has went into the collateral proceedings and had given a finding on the said



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proceeding, though neither the 4th respondent nor the Department had assailed the said order of removal. This clearly reveals non-application of mind on the part of the 1st respondent in dealing with the issue.

84. The whole issue is now predicated upon two vociferous contentions advanced on behalf of the respondents, viz.,

- i) That removal of a Madathipathi could be done only by resorting to Section 59 of the Act by filing a suit before a civil court; and
- ii) The Trust Deed providing for removal of the Madathipathi and Trustee by the Trust Board is against the provisions of the Act and, therefore, by application of Section 118 of the Act, the provisions of the Trust Deed is repugnant to the Act and, therefore, the removal of the 4th respondent on the basis of the Trust Deed has no legal sanctity.

85. To appreciate the aforesaid contentions, it is just and necessary for this Court to refer to the relevant provisions of the Act, which have a bearing on the



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present case. According to the respondents, it is only through filing of a suit before a civil court as provided for u/s 59 of the Act, the Madathipathi and Trustee of a Trust can be removed. Therefore, Section 59 of the Act requires to be looked into to appreciate the aforesaid contention and the said provision is quoted hereunder :-

“59. Suit for removal of trustee of math or specific endowment attached thereto.—

(1) [The Commissioner] or any two or more persons having interest and having obtained the consent in writing of [the Commissioner], may institute a suit in the Court to obtain a decree for removing the trustee of a math or a specific endowment attached to a math for any one or more the following reasons, namely:—

(a) the trustee being of unsound mind ;

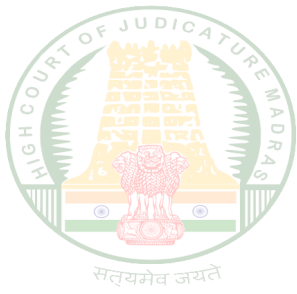
(b) his suffering from any physical or mental defect or infirmity which renders him unfit to be a trustee ;

(c) his having ceased to profess the Hindu religion or the tenets of the math ;

(d) his conviction for any offence involving moral delinquency ;

(e) breach by him of any trust created in respect of any of the properties of the religious institution ;

(f) waste of the funds or properties of the institution or the wrongful application of such funds or properties for purposes unconnected with the institution ;



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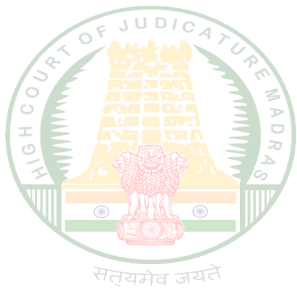
(g) the adoption of devices to convert the income of the institution or of the funds or properties thereof into "pathakanika" ;

(h) leading an immoral life or otherwise leading a life which is likely to bring the office of head of the math into contempt ;

(i) persistent and willful default by him in discharging his duties or performing his functions under this Act or any other law.

(2) Where [the Commissioner] refuses to give consent under sub-section (1), the party aggrieved may, within three months from the date of the receipt of the order by him, appeal to the Government who may, after making such inquiry as they may consider necessary, confirm the order of [the Commissioner] or direct [the Commissioner] to give [his consent] in writing."

86. Section 59, which is extracted supra, in clear prescription, spells out that the Commissioner or any two or more persons having interest and having obtained the consent in writing of the Commissioner may institute a suit in the Court to obtain a decree for removing the trustee of a math or a specific endowment attached to a math for any one or more the reasons, which are provided for under the said provision.



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87. From the above, it becomes clear that for the Commissioner of HR & CE to remove the Madathipathi or a Trustee of a Mutt, the course open to the Commissioner is to institute a suit. However, the said provision provides that any two or more persons having interest could also seek for removal of the Madathipathi by filing a suit after obtaining the approval of the Commissioner. According to the respondents, the Trustees would fall under the category of “any two or more persons having interest” and, therefore, the Trustees cannot remove the person without filing a suit.

88. Section 6 pertains to the definition clause and sub-section (15) of Section 6 defines the term “person having interest”, which reads as under :-

“6. Definitions. –

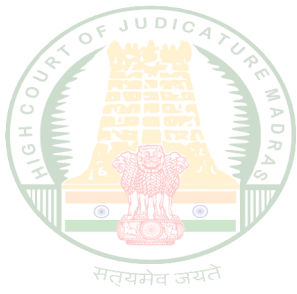
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(15) “person having interest” means—

(a) in the case of a math, a disciple of the math or a person of the religious persuasion to which the math belongs;

(b) in the case of a temple, a person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple, or who is entitled to partake or is in the habit of partaking in the benefit of the distribution of gifts thereat;

(c) in the case of a specific endowment, a person who is entitled to attend at or is in the habit of attending the



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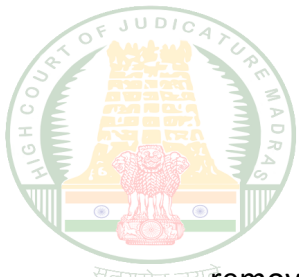
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performance of the service or charity, or who is entitled to partake or is in the habit of partaking in the benefit of the charity;

(d) in case of samadhi, brindhavan or any other institution established or maintained for a religious purpose, a person who is entitled to attend at or is in the habit of attending the performance of worship or service in such religious institution, or who is entitled to partake or in the habit of partaking in the benefit of the distribution of gifts thereat.”

(Emphasis Supplied)

89. Clause (a) of sub-section (15) of Section 6 relating to Mutt, clearly speaks that only a disciple of the Mutt or a person of the religious persuasion to which the Mutt belongs would only fall within the ambit of persons having interest. Therefore, for all purposes, the Trustees manning the Trust Board, which is overseeing the affairs of the Mutt of which the 4th respondent was inducted as the Madathipathi would not fall within the ambit of “*any two or more persons having interest*” occurring in Section 59 (1) and, therefore, there arises no necessity for the Trustees of the Board to file a suit before a civil court for removal of Madathipathi for reasons, which have been spelt out in Section 59 and the reliance placed on Section 59 by the 1st respondent to set aside the



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removal of the 4th respondent by the Trust Board is legally flawed and the same cannot be sustained.

90. Further, it is to be pointed out that the functioning of the Trust is guided by the registered Trust Deed, which has been in vogue since 1917 and for over a century, it has been guiding the affairs of the Mutt. As already stated above, all the affairs of the Mutt, including the appointment of Madathipathi, since the 4th respondent in the year 2003 and thereafter have been informed to the Department by the members of the Trust and the Department has not raised a finger to claim that the Trust is not a legally formed Trust. The appointment of the 4th respondent was only by the Trust and it has also been approved. In fact, through a communication dated 19.07.2001, as could be referenced from the typed set filed by the Mutt, the Trust Board was called upon to fill up the post of Madathipathi, which has been vacant since the year 1974, which had prompted the Mutt to address the Madathipathi of Perur Mutt to appoint a Madathipathi for the petitioner Mutt. The referenced letter dated 19.07.2001 has not been disputed by the Department. Therefore, for all intent and purposes, the Department has accepted the registered Trust Deed and the provisions thereto, which provides the Trust Board with the power to appoint the Madathipathi.



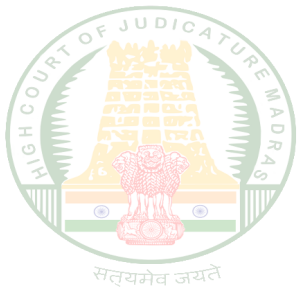
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When once a portion of the Trust Deed is accepted, the Trust Deed is to be accepted in toto and only such of the portions which are repugnant to the provisions of the Act would fall within the ambit of Section 118.

91. In this backdrop, when the Trust Deed has been the basis to appoint the Madathipathi, which is in fact the scheme which is governing the activities of the Mutt, necessarily the provisions of the Trust Deed will cover all aspects and once clause (7) of the Trust Deed provides the manner and the reasons for which a Madathipathi or a Trustee could be removed, necessarily it has to be followed. Even, for the sake of argument, if it is to be contended that the order of removal without following Section 59 of the Act is void, even then it has to be challenged in the manner known to law and the said order cannot be set aside, that too in a collateral proceeding. In this regard, useful reference can be had to the decision of the Apex Court in **Krishnadevi case (supra)**, wherein the Apex Court held thus:-

“16. It is settled legal proposition that even if an order is void, it requires to be so declared by a competent forum and it is not permissible for any person to ignore the same merely because in his opinion the order is void. In State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth Naduvil (dead) and Ors. MANU/SC/0240/1996 : AIR 1996 SC 906; Tayabbhai M. Bagasarwalla and Anr. v. Hind Rubber Industries Pvt. Ltd. etc. MANU/SC/0280/1997 : AIR 1997 SC 1240; M. Meenakshi



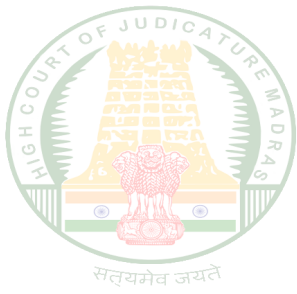
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and Ors. v. Metadin Agarwal (dead) by L.Rs. and Ors. MANU/SC/8453/2006 : (2006) 7 SCC 470; and Sneh Gupta v. Devi Sarup and Ors. MANU/SC/0238/2009 : (2009) 6 SCC 194, this Court held that whether an order is valid or void, cannot be determined by the parties. For setting aside such an order, even if void, the party has to approach the appropriate forum.”

92. In this scenario, though a contention is raised that the provisions of the Trust Deed is repugnant to the Act, however, except for the argument relating to repugnancy, the respondents are not able to lay their hand clearly on the manner in which the provisions of the Trust Deed are repugnant to the Act. Section 118 of the Act deals with the Repeal and Savings and the acts, which have been done and which are in consonance with the Act have been saved. It is to be pointed out that the appointment of the Madathipathi is based on the Trust Deed and is not on the basis of any scheme framed by the Court and the said appointment, which has been made by the Trust Board has been accepted by the Department, since the inception of the Trust in the year 1917. Such being the case, the respondents cannot blow hot and cold by claiming that the appointment, which is on the basis of the Trust Deed is as per the provisions of the Act, while the removal alone is hit by repugnancy.



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93. In this regard, the term “*Math*” as has been defined under Section 6 (13), reads as under :-

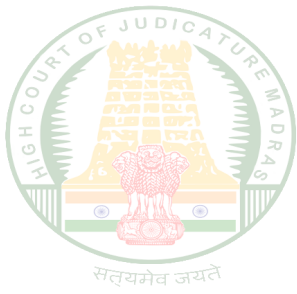
“(13) “math” means a Hindu religious institution with properties attached thereto and presided over by a person, the succession to whose office devolves in accordance with the direction of the Founder of the institution or is regulated by usage and –

(i) whose duty it is to engage himself in imparting religious instruction or rendering spiritual service; or

(ii) who exercises or claims to exercise spiritual headship over a body of disciples; and include places of religious worship or instruction which are appurtenant to the institution.”

94. The said definition clearly provides that “*math*” means a Hindu religious institution with properties attached thereto and presided over by a person, the succession to whose office devolves in accordance with the direction of the Founder of the institution or is regulated by usage.

95. In the present case, clause (1) provides for the appointment of Madathipathi by the members of the Trust while clause (7) of the Trust Deed provides for the removal of the Madathipathi as also the other Trustees for reasons mentioned therein.

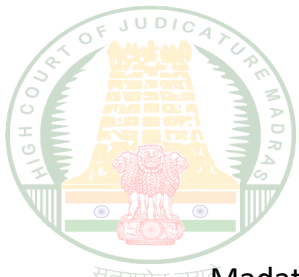


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96. There is no quarrel with the fact that the appointment of Madathipathi was on the basis of the power vested on the Trustees in the Trust Deed by the founder of the Mutt, upon fulfilment of certain qualifications and conditions. Equally, the circumstances under which the Madathipathi or a Trustee can be removed was also spelt out in the Trust Deed. The said clause (7), relating to removal, which has already been extracted supra, details that the Madathipathi or any of the Trustees, who are acting against the interests and prejudicial to the the Mutt could be removed if, to the knowledge of the Trustees, the said acts have been proved, whilst the Trustees had been granted the power to remove the Madathipathi/Trustees as the case may be.

97. In the present case, the character of the petitioner/Mutt, as a religious institution, is not disputed and it is a Mutt, which is governed by the registered Trust Deed of the year 1917 and that the appointment of the Madathipathi and Trustees are as per the dictats as made in the Trust Deed by the Founder. Such being the case, when the 4th respondent having been appointed on the basis of the power vested in clause (1) of the Trust Deed, which has been accepted by the respondents, necessarily the removal of the 4th respondent from the post of



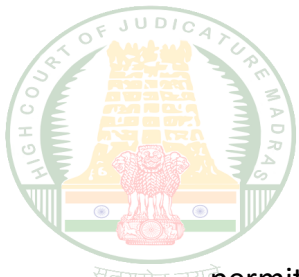
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Madathipathi by the Trustees by invoking clause (7) of the Trust Deed would also be guided by the provisions of the Trust Deed and the respondent cannot claim the same to be against the Act and by no stretch, the said action could be said to be erroneous or fallacious.

98. Furthermore, it is clear from the resolution dated 4.1.2016 that the Trustees had unanimously decided to remove the 4th respondent from the post of Madathipathi on account of the acts of the 4th respondent, which are against the provisions in the Trust Deed and are prejudicial to the interests of the Mutt. Further, the said resolution pertaining to the removal of the 4th respondent has also been communicated to the Department, however, the Department has maintained stoic silence and had not raised a finger by claiming that such removal is either hit by repugnancy or that the Trust Board is not vested with power to remove the Madathipathi.

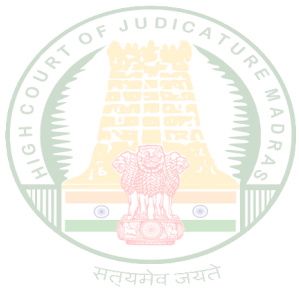
99. It is to be noted that only when the 4th respondent was stripped of the power to carry on with banking transactions, the Department has stepped in. Even then, the 2nd respondent had not addressed the Mutt/Trustees claiming that the removal is bad. The 2nd respondent had merely called upon the Bank to



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permit the 4th respondent to operate the account by further stating that the Trust Board has no authority to remove the Madathipathi and had further directed the 3rd respondent to ensure that the 4th respondent is not prevented from entering the Mutt for the purpose of doing poojas. This Court is at a loss to understand as to what prevented the 2nd respondent from communicating the Trust Board that the removal is bad and that it has no authority and that if it is aggrieved against the acts of the Madathipathi, it should resort to filing a suit after obtaining the consent of the Commissioner. The Department has not taken any steps to vindicate its stand with regard to the illegality of the constitution of the Trust Board or that the resolution removing the 4th respondent from the post of Madathipathi is illegal. In fact, neither the Department has raised its finger claiming illegality with regard to removal of the 4th respondent by the Trust Board nor the 4th respondent had taken any legal action claiming that the removal is against the provisions of the Trust Deed or the Act. The continued silence of the respondents in not questioning the said removal had only approved the power of the Mutt with regard to its acts and also to reach a conclusion that its acts are within the periphery of legal propriety, which nevertheless is true.

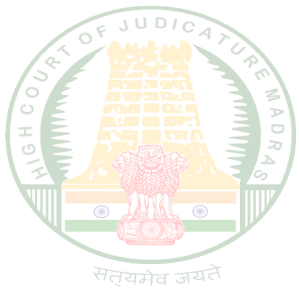


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100. One other fact, which gives more impetus to the order of removal is the fact that one of the reasons provided for u/s 59 for removing the Madathipathi or a Trustee is the misutilisation of funds or properties of the institution or the wrongful application of such funds or properties for purposes unconnected with the institution.

101. In the present case, the Trust Deed clearly stipulates the manner in which the properties and income of the Trust are to be utilised and the charities/poojas that are to be performed by utilising the said amount. However, it would transpire from the minutes of the meeting of the Trustees dated 28.6.2013, which resulted in issuance of notice to the 4th respondent leading to the resolution passed by the Trust Board on 4.1.2016 for removing the Madathipathi, that not only the properties and income of the Trust have been wrongly utilised, but the very foundational nature of the Trust insofar as maintaining its sanctity, probity and also the infraction in following the ritualistic procedure have been broken leading to diminishing the value of the Trust and the reason for its creation.



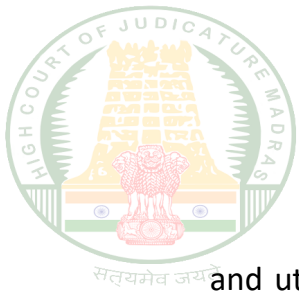
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102. The above reasons, which prevailed upon the Trustees to remove the 4th respondent from the post of Madathipathi stands fortified by the submission of the 4th respondent in written argument, wherein, on behalf of the 4th respondent, the following submission has been placed :-

“30. This Respondent is a reformist Madathipathi. It is even commented upon against this Respondent that he had carried out various social activities and even donated money for the Chief Minister's Flood relief fund. The help extended to the poor and needy is a form of worship and religious duty. The Thavathiru Maruthachala Adigalar is respected all over Tamil Nadu by all persons irrespective of the Community for the social work in the need of poor. Hence it is not improper for the religious Mutts to come out and help needy and poor people and give education and health. Besides the Respondent is a scholar and is respected for his knowledge and religion and devotion to duty.”

103. There could be no quarrel with the fact that the Trust Deed spells out the activities that are to be carried out by the Trust, for which purpose the Trust was created. When the Trust has been created for a particular purpose and the Trust Deed spells out the activities and charities, which are to be carried out by the Trust, which is the Will of the Founder of the Trust, the duty of the Trustee and the Madathipathi, as the head of the Trust to follow the Will of the Founder

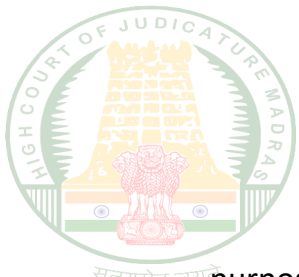


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and utilise the Trust for performing the said activities. Further, the Trust Deed has also spelt out the qualifications and qualities of the Madathipathi in the various clauses in the Trust Deed. Such being the Will of the Founder, it is not for the Madathipathi to act at his whims and fancies by utilising the funds of the Trust wrongly and doing acts, which are prejudicial to the interests of the Mutt. When the Trust Deed had clearly spelt out that the Trust should be used for carrying out spiritual activities and rendering spiritual service, it is incumbent on the part of the Madathipathi, who is the head of the Math and the head Trustee, to adhere to the directions given in the Trust Deed in letter and spirit and it is not for the Madathipathi to engage in activities, which, according to the Madathipathi are required in the current day scenario, as the Mutt has been established for propagating spiritual awareness amongst the public and inculcating spirituality and not for rendering social service as the Madathipathi may consider it necessary.

104. In fact, the submission of the 4th respondent through the written submission, would clearly show that the 4th respondent has transformed himself from the post of Madathipathi to that of a social activist and reformist, and, in fact, had gone ahead to even donate amounts of the Trust, which are not the



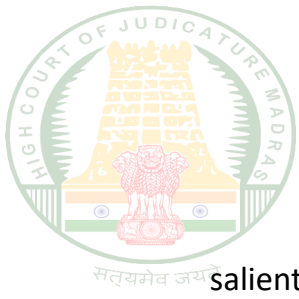
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purposes for which the Trust has been created. Such a person, definitely, cannot be entrusted with the task of maintaining the Mutt. The Mutt is a sacred place, which is founded for taking ahead the spiritual activities of the Founder to realise his vision in the spiritual sphere. The Madathipathi and for that matter, even the HR & CE Department cannot utilise the funds generated from the Mutt and the temple belonging to the Mutt for any other activities other than the activities spelt out in the Trust Deed. Therefore, the stand of the Trustees for removal of the 4th respondent from the post of Madathipathi is clearly in tune with the recitals in the Trust Deed.

105. Though it is contended on behalf of the Department that there is no scheme framed and, therefore, without resorting to the provisions of the Act, the 4th respondent cannot be removed as per the provisions of the Trust Deed, it is to be pointed out that the said contention is the last bit of straw, which the respondents try to hold to come out unscathed and wriggle out of the legal fiasco, which they have created for themselves.

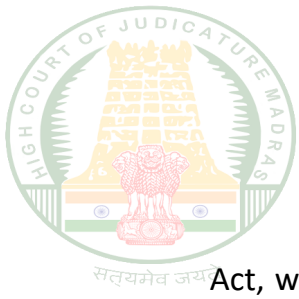
106. It is to be pointed out that the necessity to frame a scheme stems out where there is mismanagement of the Trust and that the Trust Deed is silent on



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salient aspects relating to the manner in which the Trust is to be governed so as to ensure legal compliance and also protect the assets from misuse. In the present case, for more than 100 years, the Trust is being governed on the basis of the Trust Deed and the Department has not raised any qualms about mismanagement of the Trust. Only after the present Madathipathi was removed and the Madathipathi was specifically stripped of his powers to operate the bank account, the Department has stepped in to address the Bank not to enforce the said directions of the Trust. Therefore, if at all, there is any mismanagement of the Trust outside the scope of the Trust Deed it could only have been perpetrated by the 4th respondent. Such being the case, if really the Department was interested in safeguarding the interests of the Mutt, it ought to have taken prompt action by approving the removal of the Madathipathi to maintain the Mutt properly. Instead of taking action against the Madathipathi in the manner known to law, the Department has taken a stance joining hands with the Madathipathi, which clearly shocks the conscience of this Court. In fact, the order of the 1st respondent does not speak anything about the legality of the order passed by the 2nd respondent, which was put in issue before it; rather it had questioned the removal of the Madathipathi placing reliance on Section 59 of the



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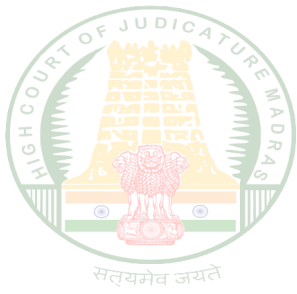
Act, which, as already discussed above, is wholly erroneous. Therefore, the said order, even on the face of it is fallacious and illegal.

107. It would be useful to refer to the decision of the Allahabad High Court in ***Sri Hathiya Ram case (supra)***, wherein the Court, in similar circumstances, held as under :-

"11. The reasoning is fallacious and the conclusions reached at is unsustainable, it is no doubt true that removal of a Mahant can "ordinarily" be directed by Court in appropriate legal proceeding but that is not the only way left to an institution to get rid of its head for 'good cause'. Article 7.98 of the Hindu Law on Religious and Charitable Trust by B. K. Mukherjee, which lays down the law as under is illustrative and not exhaustive of the modes of removal of a Mahant:

"Removal of a Mahant can ordinarily be directed by Court in an appropriate legal proceeding. But usages do exist where the right of appointment belongs to a particular religious brotherhood and the same brotherhood can exercise the right of dismissal also if the superior is found to be guilty of misconduct."

12. Just as a religious brotherhood having right of appointment according to usage prevailing in a particular Math can exercise the right of removal if the Mahant is found to be guilty of misconduct, a Mahant who has the right to appoint his successor during his life-time can exercise the right of dismissal for 'good cause' if such right has been reserved by the appointer at the time of appointment. The deed dated 21.3.96 may be just a memorandum of what happened



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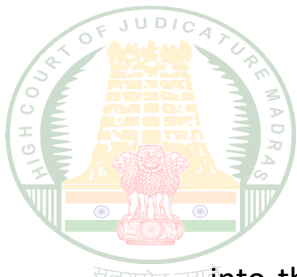
on 23.2.96 when the third respondent is said to have been consecrated Mahant of the Math, as submitted by Sri R. N. Singh, it cannot be ignored as irrelevant for conditions and terms of appointment stipulated therein can be said to be in contemplation of the parties from the very inception.

13. The individual who exercised the right of appointment in the instant case, could in an appropriate case of misconduct, exercise the right of removal also. I am of the considered view that in case the incumbent is acquitting himself in a manner which runs counter to the tenements of a religious sector militates against the traditions of the institution, he can be removed and the power to do so may either vest in the appointer or it may vest in the entire body of religious brotherhood. The question as to whether removal could be effected under clause (4) of the deed dated 21.3.96 is, however, highly debatable and contentious and can more appropriately be vetted at the trial stage and not at this stage.”

108. The above decision squarely addresses the issue that where the Trust Deed provides for removal of a Trustee for reasons, which have been spelt out in the Trust Deed, the persons, who have appointed the Trustee are clothed with power to remove the Trustee, including the Madathipathi, which is exactly what has happened in the present case.

109. Though it is contended on behalf of the respondents that the issue with regard to removal is predicated on facts and that this Court cannot enter

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into the domain of disputed questions of fact, by pointing out the order in the earlier round of litigation, it is to be pointed out that in the earlier round of litigation, the court had not dwelled into the relevant provisions of the Act vis-a-vis the Trust Deed, but had, merely on the ground of availability of alternative remedy had relegated the parties to go before the 1st respondent. Had the relevant provisions of the Act and the Trust Deed been placed before the Court in the earlier round of litigation, the Court would definitely have appreciated the issue as more being legal in nature, which could very well have been adjudicated by this Court and that the availability of alternative remedy would not have been shown as a bar to entertain the case. Therefore, the order in the earlier round of litigation would not act as a bar for this Court to entertain the present petition, as the issue, which has been discussed here is legal in nature, more reliant on the provisions of the Trust Deed vis-a-vis the provisions of the Act, which could only be decided by this Court and not by a quasi-judicial authority, viz., the 1st respondent, under the guise of alternative remedy.

110. It is further to be pointed out that mere availability of alternative remedy shall not prevent this Court from exercising its inherent and extraordinary jurisdiction when the issue which is canvassed is legal in nature.



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The present case is one such instance, where the alternative remedy has been dangled before the eyes of this Court in the earlier round of litigation to prevent this Court from dealing with the legal issue, which has seriously infringed the rights of the Trust for more than six years, thereby gravely prejudicing the interests of the Trust. The operation of the bank account by the 4th respondent pursuant to the orders of respondents 1 and 2, have greatly jeopardized the interests of the Mutt, moreso, when the 4th respondent has been removed on the basis of the provisions of the Trust Deed. Therefore, the said orders would have impacted the proper functioning of the Mutt, as permitting the 4th respondent to operate the bank account would definitely be against the interests of the Mutt.

111. Further, it is to be pointed out that neither the Department nor the 4th respondent had challenged the removal of the 4th respondent by the Trust Board and what was agitated in the earlier round of litigation is only with regard to the legality of the orders passed by the 2nd respondent permitting the 4th respondent to operate the bank account and also to enter the Mutt in which this Court had relegated the parties to the alternative remedy. Even in the application before the 1st respondent, the removal of the 4th respondent was not the issue which was raised by the Mutt; rather, the operation of the bank account



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and the entry of the 4th respondent into the Mutt alone were put in issue.

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However, the 1st respondent, without understanding the scope of the application, which has been presented before it had gone ahead and given relief to the 4th respondent, when such a relief was not sought for by the 4th respondent. Further, the said relief could not have been given when there was no claim for it by the 4th respondent contesting the removal. The 1st respondent is strictly bound by the claim made in the application and the relief sought for and the 1st respondent, exercising quasi-judicial power, cannot go beyond his jurisdiction and grant relief, which has not been sought for by the parties. When the removal of the 4th respondent has not been questioned, the issue before the 1st respondent was only with regard to the order of the 2nd respondent directing the bank to permit the 4th respondent to operate the account. The 1st respondent ought to have travelled only within the scope of the application, to wit, whether the 4th respondent is clothed with authority to operate the bank account as the legality of the removal of the 4th respondent from the post of Madathipathi was not questioned before the 1st respondent. Such being the case, the act of the 1st respondent in travelling beyond the scope of the application and holding the removal of the 4th respondent by the Mutt as wrong by adverting to Section 59 of



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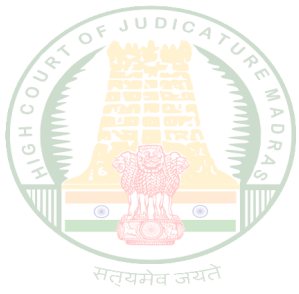
the Act is grossly erroneous and beyond his jurisdiction and definitely the said order cannot be allowed to continue.

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112. In the light of the discussion made above, this Court holds that the removal of the 4th respondent in terms of clause (7) the Trust Deed is valid and no recourse is necessary to be taken u/s 59 of the Act, as the Trustees do not come within the ambit of “two or more persons having interest”. Therefore, the removal of the 4th respondent by the petitioner Mutt is in order. Further, the order passed by the 1st respondent is beyond the scope of the application filed by the petitioner and holding the removal of the 4th respondent by the Mutt as wrong by adverting to Section 59 of the Act is grossly erroneous and beyond his jurisdiction. ***Issue Nos.2 and 3 are answered accordingly.***

ISSUE NO.4 :

Whether the act of 4th respondent to relieve the Archakar/Gurukkal and also issue an advertisement for fresh appointment of an Archakar/Gurukkal is sustainable.

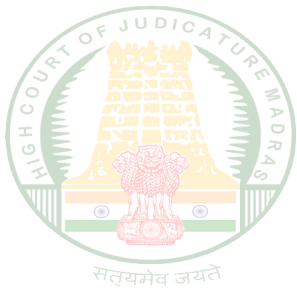


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113. Before entering into the validity of the advertisement issued by the 4th respondent, vis-a-vis, the removal of the archakar/Gurukkal, viz., the petitioner in W.P. No.33257/2024, which even at the outset could be held to be invalid, as this Court has already approved the resolution of the Trust Board to remove the 4th respondent, it would be necessary to dwell deeper into the legal status of the temple, as the affairs of the temple and Mutt are intricately connected.

114. It is evident that the temple does not take any place within the Trust Deed. In fact, the Trust Deed is only to the extent of propagating spirituality and giving spiritual guidance to the public and temple was not a part of the Trust Deed. It is even the admitted case of the Mutt that the Temple was not intended in the Trust Deed, but notwithstanding the said fact, as propagating spirituality was prominent in the Trust Deed, the temple was put up on the land on which it exists. However, it is the case of the Mutt that the land on which the temple is put up does not belong to the Mutt. This Court even browsed through the Trust Deed to find out whether the said land was a part of the Trust properties and this Court could not find any answer.



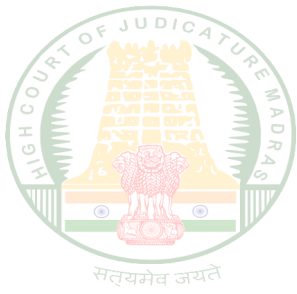
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115. To satisfy itself as to the revenue classification of the land and to whom the land belongs, a specific query was put to the Department to ascertain and state the revenue character of the land. However, no information could be elicited from the Department. Further, even the survey number on which the land exists has also not been made available to the Court. Therefore, at best this Court could infer that the said land could only be categorised as a 'Poramboke' on which the temple has been put up and it has been used by the public at large for more than six decades.

116. The characteristics of the land and its revenue classification are of much importance in deciding the nature of the land and its continued occupation and also to decide the right over the temple by the Trust and the Department. In this regard, useful reference can be had to the decision of the Division Bench of this Court in ***M/s.Arulmigu Thiru Neelakanda Nayanar Mayandi Swamigal Trust – Vs – The District Collector, Pudukottai District & Ors. (W.P. (MD) No.6966/2023 – Dated 20.06.2024)***, wherein it has been held as under :-

“9. In N.S.Kuppuswamy Odayar v. The Panchayat Narthangudi (1971) 1 MLJ 190, it was held that the mere fact that in the re-settlement register, a particular piece of land has been described as 'Poramboke' will not by itself establish title of the government to the land in question. S.Sundararaja



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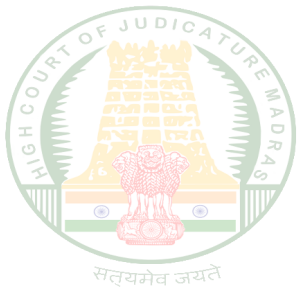


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Iyengar in his classic work “Land Tenures in the Madras Presidency” writes as follows :

“The whole area of a Tamil village is divided into (1) warapat, (2) tirwapat, (3) tarisu, and (4) poramboke. Warapat are the cultivable lands which give waram or share of the produce, generally nanja or wet lands; tirwapat, lands which pay a tirwa or money tax, generally punjas or cultivated wastes, and gardens; tarisu, waste divided into two classes, sheykal carambo i.e., cultivable waste and anadi carambo i.e. immemorial waste; and poramboke, lands incapable of cultivation consisting of rocks, public roads, beds of rivers, tanks and watercourses, burning grounds, the paracheri or suburbs of the village occupied by the huts of pariahs and other outcastes, the lands on which the different temples stand and the site of the village itself called nuttum.”

A learned Judge of this Court in the judgment reported in (2006) 3 MLJ 216 (Muthammal v. State of Tamil Nadu) had noted that patta was issued only for assessed lands and that is why, even Natham was called as 'poramboke'. “Puram” means “outside” “Poke” means “revenue record”. Poramboke lands means the lands which were not assessed in the revenue records and which were outside the revenue accounts. It only means that property which fell outside the tax assessment net was referred to as “poramboke”.

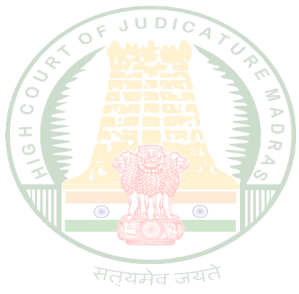


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117. As stated above, the land on which the temple is situate does not belong to the Mutt. Equally, the revenue classification of the land is unavailable and at best, it could only be termed to be a poramboke. However, due to efflux of time and the continuance of the temple over the said land for more than six decades, it could very well be stated that the lands are to be treated as '*Temple Poramboke*' as the continued occupation of the land by putting up the temple, which is used by the public in the locality would necessarily have given the land the character of '*Temple Poramboke*' as it is used by the public.

118. Once the land on which the temple has been put up by the Mutt, does not belong to the temple, it is a '*Temple Poramboke*' and necessarily, the management of the Temple will also be the additional responsibility of the Department. However, it is to be noted that the Temple has been under the control and management of the Trust for well over six decades and no issues of mismanagement of the temple has been pointed out by the Department. Equally, the monetary consideration for putting up the temple had been from the pocket of the Trust, which has not been controverted by the Department. Further, more than six decades prior, the temple has been put up by the Mutt and has been taken care of by the Trust.

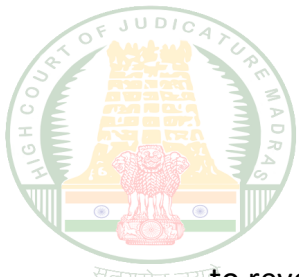


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119. In order to find out whether the temple formed a part of control by the HR & CE Department, this Court browsed the entire list of temples maintained by the HR & CE Department and finds that only the Mutt is under the aegis of the HR & CE Department and the temple is not found as being managed by the Department. Nevertheless, the temple has been under the Mutt for more than six decades and the Mutt is maintaining the temple, which is on a land, which does not belong to the temple. Therefore, for all purposes, the land on which the temple belongs should be held to be a 'Poramboke' which, as aforesaid, could be classified only as a 'Temple Poramboke', which is under the control of the Mutt.

120. As held by the Division Bench in ***Neelakanda Nayanar case (supra)***, Poramboke lands are such lands, which are not assessed in the revenue records and which are outside the revenue accounts. In the present case, it is clear that the Department is also not able to lay hands on any material to show the nature of the lands and its entry in the revenue records. It is further not disputed by the Department either that the temple has been put up on the land and is in existence for more than six decades and it is being used by the public. Such being the case, the temple being used by the public, which is on the land not assessed



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to revenue, necessarily, it does not belong to the temple and in the same stretch, the temple being put up from the funds generated from out of the properties of the Mutt, the Mutt would also have a claim over the same.

121. However, as pointed out above, the temple is not shown to be a temple under the control of the Department. Nevertheless, the Mutt, being shown to be under the control of the Department, which is not disputed and the affairs of the Mutt are also being monitored by the Department, the temple forming part of the activities of the Mutt and is being maintained and controlled by the Mutt, necessarily, the Department would also be duty bound to maintain and have control over the affairs of the temple, however, without involving into the day to-day activities of the temple, which are to be monitored and maintained by the Mutt.

122. Be that as it may. The writ petitions in W.P. Nos.14421 and 33254 of 2024 have been filed by the Mutt and the Archakar/Gurukkal of the Temple against the advertisement that has been given by the 4th respondent/Madathipathi of the Temple and also against the ouster of the Archakar/Gurukkal of the Temple. Pursuant to the order passed by the 1st



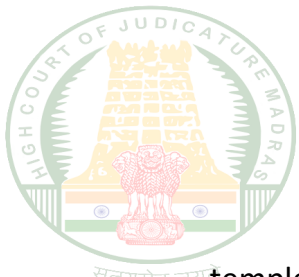
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respondent setting aside the removal of the Madathipathi/4th respondent, the 4th respondent/Madathipathi has passed the order removing the Archakar/Gurukkal and following such removal, advertisement has been issued for appointment of fresh Archakar/Gurukkal.

123. It is to be pointed out that this Court has held that the removal of the 4th respondent/Madathipathi by the Trust Board is in order and is in terms with the Trust Deed and such being the case, the order removing the Archakar/Gurukkal by the Madathipathi, subsequent to his removal, is void and cannot be sustained. Therefore, the said order of removal of the Archakar/Gurukkal and the subsequent issuance of advertisement by the 4th respondent/Madathipathi are wholly illegal and without the authority of law and, therefore, the same deserves to be interfered with.

124. While this Court has set aside the removal of the Archakar/Gurukkal, the petitioner in W.P. No.33254/24 by the 4th respondent/Madathipathi and the consequential advertisement for appointment of Archakas/Gurukkal, which is the subject matter of W.P. No.14421/24, this Court, in the preceding paragraphs has already held that the land on which the temple is built does not belong to the

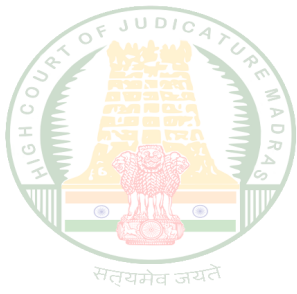


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temple and that it is a Poramboke land and, necessarily the Department would also have control over the said Temple, administratively, by invocation of the provisions of the Act, as the Mutt is under the control, maintenance and supervision of the Department. Such being the case, the Trust Board, though not vested with any right through the Trust Deed to maintain the Temple, nevertheless, the amount, which has been expended for the construction of the Temple having flown from the funds, which was realised through the properties belonging to the Mutt and all along through more than six decades the Temple having been properly maintained by the Mutt and not been the subject of any mismanagement on which action had been taken by the Department, necessarily, the further continuance of the Temple under the management of the Trust Board would be in the best interests of the public as also the Temple.

125. However, it is to be noted that the Temple should not be left without it being brought under the managing control of the Department, as the land on which the Temple is built is a piece of Poramboke land. In such view of the matter, both the Trust Board and the Department should be given equal control over managing the Temple in the interests of the Mutt, the Temple as well as its devotees/public at large.



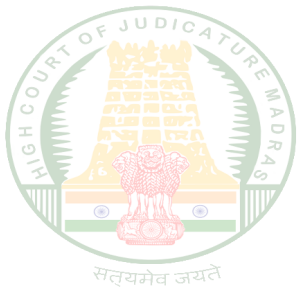
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126. In such view of the matter, this Court, sitting under Article 226 of the Constitution of India, is inclined to invoke its extraordinary jurisdiction, for the reason that extraordinary situation warrants extraordinary remedies and, therefore, exercising its extraordinary jurisdiction, deems it fit and proper to direct the Trust Board to submit an application to the 1st respondent seeking to include the Temple under the Mutt and also to bring the Temple under the managing control of the Trust Board of the Mutt and the Department and also for governing the Temple as well under the provisions of the Trust Deed and also for approving/recognizing the Trustees as per the provisions of the Trust Deed and upon receipt of such application from the Trust Board, the 1st respondent is directed to consider the same and pass appropriate orders recognizing the Trust Board in line with the provisions in the Trust Deed.

127. In the result, this Court is inclined to pass the following order :-

i) The writ petition in W.P. No.15252/2023 is allowed and the impugned order passed by the 1st respondent in R.P. No.174 of 2019 D2 dated 24.04.2023 is set aside and the resolution passed by the petitioner/Mutt by its Trustees



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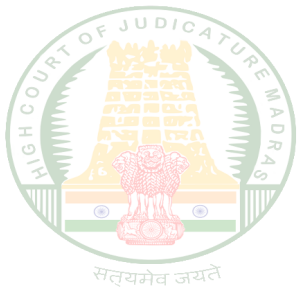
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removing the 4th respondent from the post of Madathipathi stands confirmed and the 4th respondent is barred from operating the bank accounts belonging to the Trust.

ii) The Department is further directed to take appropriate steps/action to retrieve all the documents and other materials relating to the Mutt which are in the custody of the 4th respondent and hand over the same to the Trust Board under proper acknowledgment.

iii) W.P. Nos.14421 and 33254 of 2024 are also allowed and the direction of the 4th respondent issuing advertisement is set aside and further the Trust Board is directed to reinstate the archaka/Gurukkal, viz., the petitioner in W.P. No.33254/2024 as Archaka/Gurukkal for performing poojas and other rituals in the Temple/Mutt, as was in vogue prior to the removal of the said archaka.

iv) The Trust Board is further directed to submit an application to the 1st respondent to include the Temple under the Mutt and also to bring the Temple under the managing control of the Trust Board of the Mutt and the Department



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also for governing the Temple as well under the provisions of the Trust Deed and also to approve/recognize the Trustees as per the provisions in the Trust Deed, as detailed in the preceding paragraph of this order, within a period of four weeks from the date of receipt of a copy of this order and on such application being filed, the 1st respondent is directed to pass appropriate orders on the said application within a period of four weeks thereafter. However, it is made clear that only insofar as the overseeing the affairs of the Temple in consonance with the provisions of the Act, the Department would not be entitled to involve itself with the day-to-day functioning of the Temple as also the appointment of Archaka and staff in the Temple, which will be exclusively in the domain of the Trust Board/Trustees.

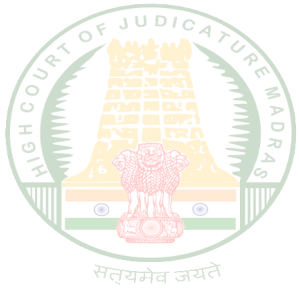
Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

29.042026

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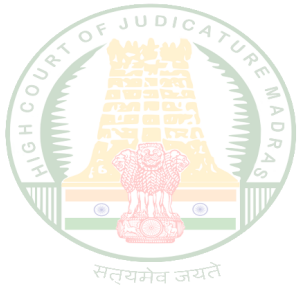


W.P. No.15252/2023, etc.

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To

1. The Commissioner
HR & CE Department
Nungambakkam High Road
Chennai 600 034.
2. The Joint Commissioner
HR & CE Department, Coimbatore.
3. The Assistant Commissioner
HR & CE Department, Coimbatore.



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W.P. No.15252/2023, etc.

M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NOS.15252 OF 2023
AND
W.P. NOS.14424 & 33254 OF 2024**

**Pronounced on
29.04.2026**