

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 31-07-2012

CORAM:

THE HONOURABLE MR.JUSTICE VINOD K. SHARMA

WRIT PETITION NO.22466 OF 2011  
AND M.P.NO.1 OF 2011

A/m.Athanooramman Podarayasamy,  
Arakkattalai, rep.by its  
President K.Anbarasu,  
Kurukkal Palayam,  
Maruthurai village,  
Kangeyam Taluk,  
Thirupur District. ... Petitioner

Versus

1.Assistant Commissioner,  
H.R. & C.E. (Admn.)Dept.,  
Erode,  
2.Fit Person/Executive Officer,  
Office at A/m.Subramaniaswamy  
Thirukoil, Chennimalai,  
Perunthurai Taluk,  
Erode District.  
3.R.Eswaran,  
4.P.Sundararaj,  
5.N.Chinnasamy ... Respondents

Respondents No.3 to 5 are  
added as parties as per order  
dated 31.7.2012 in M.P.No.1 of  
2011 in WP.22466 / 2011.

For Petitioner :: Mr.G.Sugumaran

For Respondents :: Mr.R.Kannan,G.A. (H.R. & C.E.)

for RR.1 and 2

Mr.N.S.Sivakumar

for RR3 to 5 (impleaded respondents)

Prayer: This Writ Petition is filed under Article 226 of The Constitution of India for the relief of issuance of a writ of certiorari to call for the records relating to the impugned order passed by the first respondent in his proceedings Nada.Na.Ka.No.2438/2011/A3 dated 16.8.2011 and quash the same.

## ORDER

The petitioner has approached this Court with a prayer for issuance of writ in the nature of certiorari to quash the order Nada.Na.K.No.2348/2011/A3 dated 16.8.2011 appointing a fit person to manage the affairs of Athanooramman Podarayasamy and Karuppusamy temple.

2. The petitioner claims to be managing the affairs of the above said temple as President of registered Arakkattallai. The temple is a private temple. It is submitted by the petitioner that this private temple is being managed by three sub sects of Kongu Vellala community namely (i) Kaadai Kulam (2) Sengunni Kulam and (3) Aandai Kulam living in five districts i.e., Erode, Coimbatore, Thirupur, Salem and Dindigul.

3. The temple is constructed by the contribution from the members of the above communities and by their dedicated service. The three Kulams decided to form a Trust for the development of the temple and its affairs, which was registered under the Societies Act.

4. The Trust is meeting all the expenses of the temple. It is the case of the petitioner that without any notice to the petitioner, respondent No.1 has appointed a fit person to manage the affairs of the temple, which is against law.

5. The translated copy of the order appointing fit person reads as under:

"Proceedings of Asst.Commissioner, Hindu Religious

and Endowments Department

Present: Thiru.P.Dhanapal, M.A., Asst.Commissioner

Sub: Appointment of Fit person - A/m.Athanoor  
Amman Karuppusamy and Podaroyasamy Thiru Koil -  
Kuppuchipalayam Village, Perunthurai Taluk - Erode  
District - Regarding.

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By virtue of the powers conferred under section 49(1) of the Hindu Religious & Endowment Act, 22/1956 the Asst.Commissioner hereby appoint the Executive Officer of A/m. Subramaniasamy Temple Sennimalai, as Fit Person, to the above temple as Temporary arrangement till the appointment of Trustee.

On receipt of the order, the person in Management of the temple is requested to hand over the charge relating to the income and expenditure, documents including moveable and immovable properties, to the Fit person of the temple.

Fit person is requested to submit report of taking over the charges from the Fit Person.

/By Order/

Sd. Asst. Commissioner

1. Thakkar of the above temple, official Executive Officer,  
A/m. Subramaniaswamy Temple, Sennimalai, Perunthurai,
2. Person in Management of the above temple."

6. The petitioner has challenged the impugned order on the grounds that

(i) The order has been passed in violation of principle of natural justice, even though right of Trust to manage the temple has been taken away;

(ii) That impugned order is not sustainable in law, as the impugned order is completely silent, about the ground for appointing fit person;

(iii) In absence of any ground as stipulated under Section 49, it was not open to appoint a fit person.

7. The writ petition is opposed by respondent No.1, on the ground that the petitioner has a statutory remedy of appeal under Section 21-A of the Tamilnadu Hindu Religious & Charitable Endowments Act against the impugned order. Therefore, this writ petition is not maintainable.

8. It is contended by the learned counsel for respondent No.1 that appointment of fit person has been made in exercise of powers conferred under Section 49 of Tamilnadu Hindu Religious and Charitable Endowments Act, 1959, which reads as under:

"49. Powers of Assistant Commissioner to appoint trustees and fit persons. - (1) In the case of any religious institution which is not included in the list published under section 46 and is not a religious institution notified or deemed to have been notified under Chapter VI of this Act, the Assistant Commissioner shall have the same power to appoint trustees including fit persons or constitute a Board of Trustees and is vested in the Government, the Commissioner or the Joint-Deputy Commissioner in the case of a religious institution referred to in clause (a) of sub-section (1) or in sub-section (2), as the case may be, of section 47:

Provided that the Board of Trustees constituted under this sub-section shall consist of three persons appointed by the Assistant Commissioner from among the panel of names of persons sent by the District Committee concerned under sub-section (4) of Section 7-A:

Provided further that in addition to the trustees appointed by the Assistant Commissioner under this sub-

section, the Government may nominate two persons who are qualified for appointment as trustees under this Act as members of the said Board of Trustees, having regard to the following matters, namely:-

- (a) the interest of the public generally;
- (b) the income and the properties of the religious institution;
- (c) the number of worshippers and importance of the religious institution as a pilgrim centre; and
- (d) such other matters as may be prescribed:

Provided also that notwithstanding anything aforesaid in this sub-section, the Assistant Commissioner may, in the case of any such religious institution which has no hereditary trustee, appoint a single trustee.

(2) The provisions of sub-sections (3) and (4) of section 47 and of section 48 shall apply to the trustee or trustees appointed, or the Board of Trustees constituted, by the Assistant Commissioner as they apply to the trustee or trustees appointed, or the Board of Trustees constituted, under section 47."

9. The contention of the learned counsel is that there were allegations of mismanagement of funds by the Trust. Therefore, it was felt necessary to appoint a fit person under Section 49 for the better management of the temple.

10. The reading of Section 49 shows, that Joint Commissioner could exercise powers under Section 49, in the interest of public generally, keeping in view the income and the properties of religious institution, taking in view the number of worshippers and importance of religious institution as a pilgrim centre or any other matter as may be prescribed. However, the reading of impugned order does not show any reason as stipulated, to appoint the fit person vide impugned order. The contention of learned counsel for respondent No.1 that appointment has been made as there were allegation of misuse of funds, cannot be accepted. It is well settled law that a quasi-judicial order should be self speaking order giving reasons for passing of the order. The defect in order cannot be cured by filing counter to justify the order.

11. The impugned order is a non-speaking order as it does not disclose any ground as per Section 49 for appointing a fit person. The impugned order thus is contrary to provisions of statute, the alternative remedy of appeal therefore cannot be a bar to maintainability of this writ.

12. The learned counsel for added respondents vehemently contended that before passing the impugned order an enquiry under Section 64 of T.N. H.R. & C.E. Act was held and it was pursuant to the decision under Section 64 that the impugned order has been passed.



This contention cannot be accepted, as action under Section 64 is independent of Section 49 of the Act. It is only during the pendency of proceedings under Section 64 that a fit person can be appointed by way of interim measure, but not after final disposal of proceeding under Section 64.

13. The petitioner therefore cannot claim that it had no notice as the petitioner had participated in proceedings under Section 64.

14. The impugned order is not only contrary to provisions of T.N H.R. & C.E.Act but is also violative of principles of natural justice and also suffers all vices of non-speaking order, as no reasons are given which may show application of mind by the Joint Commissioner for appointing a fit person to a temple, as it is admitted that the temple is not covered under the provisions of the Act.

15. For the reasons stated, the writ petition is allowed. The impugned order is set aside. However, it shall not bar the respondents to take fresh action in accordance with law, if so advised. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-  
Deputy Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. Assistant Commissioner,  
H.R. & C.E. (Admn.) Dept.,  
Erode,
  2. Fit Person/Executive Officer,  
Office at A/m.Subramaniaswamy  
Thirukoil, Chennimalai,  
Perunthurai Taluk,  
Erode District.
- 1 CC To Mr.G.Sugumaran, Advocate SR NO.45497  
1 CC To Mr.N.S.Sivakumar, Advocate SR NO.45707  
1 CC to Government Pleader SR 45658

W.P.No.22466 of 2011

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