



W.P.No.32267 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 16.09.2022

DELIVERED ON : 22.09.2022

CORAM:

**THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

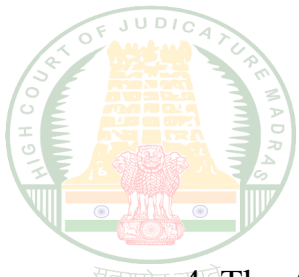
**W.P.No.32267 of 2015**  
**and M.P.Nos.1 to 5 of 2015**

Sri Santhana Srinivasa Perumal Public  
Charitable Trust,  
Moggappair, Chennai - 37,  
Represented by its Trustee/Treasurer  
Mr.V.Venkateswaran,  
No.50, Thiruvalluvar Nagar,  
Mogappair, Chennai - 37.

.. Petitioner

Vs.

1. The State of Tamil Nadu rep  
by its Secretary to Government,  
HR and CE Department,  
St.George Fort, Chennai.
2. The Commissioner,  
Hindu Religious & Charitable  
Endowments Department,  
Nungambakkam High Road,  
Chennai - 600 0034.
3. The Joint Commissioner,  
Hindu Religious & Charitable  
Endowments Department,  
Nungambakkam High Road,  
Chennai - 600 034.



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4. The Assistant Commissioner,  
Hindu Religious & Charitable  
Endowments Department,  
Nungambakkam High Road,  
Chennai - 600 034.

5. The Fit Person / Executive Officer,  
Arulmighu Santhana Srinivasa  
Perumal Temple,  
Vellala Street, Mogappair,  
Chennai - 600 037.

6. M.S.Ganesan

.. Respondents

**Prayer:** Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorari calling for the records and to quash the order of the 4th respondent dated 05.10.2015 given to the petitioner Trust on 06.10.2015 in Se.Mu.Na.Ka.En.934/2015/a1.

For Petitioner	:	Mr.V.G.Sureshkumar
For Respondents 1 to 4	:	Mr.N.R.R.Arun Natarajan Spl.G.P. (HR&CE)
For Respondent 5	:	Mr.V.Srikanth
For Respondent 6	:	No appearance

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## **ORDER**

This writ petition has been filed challenging the order of the fourth respondent declaring the petitioner Trust as a Religious Institution and appointment of a fit person to Arulmighu Santhana Srinivasa Perumal Temple, Mogappair.

2. The brief facts leading to the filing of this writ petition is as follows:

(i) The petitioner trust was created on 08.03.1993, by means of a registered Trust Deed by the founding members of the trust and the residents of the area around the Temple Arulmighu Santhana Srinivasa Perumal Temple, Mogappair. The object of the Trust is to carry out various other charitable activities as per Clause 4:1 to 4:9 of the trust deed viz.,

*"4:1. To spread the cult of Lord Srinivasa Perumal, viz., universal brotherhood among all persons irrespective of religion, caste, creed, community.*

*4:2. To arrange for periodical discourses lectures etc.,*

*4:3. To propagate the idea of charity by rendering assistance to deserving children for*



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*prosecuting their students studies by giving scholarships, donation, free supply of books etc.,*

*4:4. To arrange for feeding of poor as well as to provide mid-day meals to needy and poor school children.*

*4:5. To establish and run educational institutions.*

*4:6. To render free medical assistance to needy and poor.*

*4:7. To establish and run reading rooms, libraries containing books of all religions and Faith.*

*4:8. To do all things which are charitable and that would promote objects of public utility.*

*4:9. To do all such things as are incidental or conducive to the above-mentioned objects of the Trust."*

(ii) The Trust had contributed extensively for the maintenance and development of the Arulmighu Santhana Srinivasa Perumal Temple, Mogappair. The temple has now become a very popular and fully developed Temple in the Mogappair area.

(iii) The Trustees of the petitioner Trust decided to bring it under the purview of the Hindu Religious & Charitable Endowments (hereinafter



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referred to as "HR&CE") Department and hence they filed a petition before the second respondent to frame a Scheme for the maintenance of the Temple and after due enquiry, the Temple had been brought under the overall control and supervision of the HR&CE Department of the Government of Tamilnadu with effect from 21.07.2010, through a Scheme and Order passed in O.A.No.8 of 2009, by the third respondent.

(iv) As per the Scheme the administration of the temple and its properties shall vest in the non-hereditary trustees and shall be carried out by the Board of Trustees consisting of not less than three and not more than five, to be duly constituted by the competent Authority under the Act, in accordance with the provisions of the Tamil Nadu HR & CE Act, 1959 and the Rules made thereunder, as amended from time to time.

(v) It is further stated that the petitioner Trust alone is managing the affairs of the Arulmighu Santhana Srinivasa Perumal Temple, Mogappair. However, the 6th respondent had started acting contrary to the purpose of the Trust and he also started making attempts to misuse the funds of the Temple and therefore the majority Trustees of the petitioner trust had initiated disciplinary proceedings against him and after proper enquiry, he



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was removed from the post of Managing Trustee of the petitioner trust.

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(vi) The sixth respondent filed suit and also obtaining interim orders, which has been subsequently vacated and in the meanwhile the fourth respondent appointed the fifth respondent Executive Officer and took over the management of the Temple on 02.05.2014, by her proceedings dated 25.11.2013, in Na.Ka.No.3982/2014/A1 and since then the Temple and its funds have been under the control of the fifth respondent Executive officer.

(vii) It is further contended that Sri Santhana Lakshmi Charitable Trust has no connection whatsoever with the affairs of the Arulmighu Santhana Srinivasa Perumal Temple, Mogappair and it merely bears the name of the Goddess of the Temple and it is engaged in various social charitable activities, other than the activities of the temple, though the Trustees of Sri Santhana Lakshmi Charitable Trust and the petitioner trust are one and the same persons, the activities are entirely different.

(viii) The appointment of the Executive Officer has been challenged before this Court, which is still pending. Further on 07.04.2015, the fourth respondent sent a letter calling upon both the Trust to submit the statement

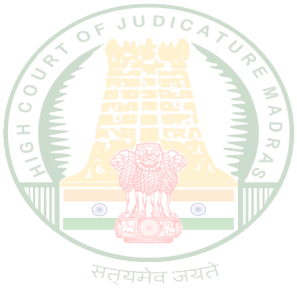


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of accounts for the past 10 years. The above notice was challenged by filing a Writ Petition in W.P.No.12176 of 2015 and the same was disposed of on 24.04.2015, by directing the fourth respondent to consider the petitioners reply to the notice and pass appropriate orders after affording opportunity of personal hearing in accordance with law.

(ix) However, the 4th respondent in pursuance to the said directions passed the impugned order declaring the petitioner trust as a religious institution as defined under section 6(18) of the HR&CE Act based on the 6th respondents statement.

(x) Hence challenging the impugned order, the present writ petition has been filed and in the meanwhile the fourth respondent has taken over the Public Charitable Trust. At that time, it was made clear that the public trust is different and Temple is different and as per the Scheme the Trustees have to be appointed on the recommendation of the Trust. At the time of framing the scheme the Joint Commissioner knew that the public trust does not come under the provisions of the Act and the scheme has become final. Hence challenge is mainly made on the ground that the fourth respondent does not have any power to take over a public charitable trust.



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**WEB COPY 3.** The fourth respondent has filed a counter affidavit contending as follows:

(i) That a Scheme of administration for the Temple was settled by the third respondent on the statutory original application made under Section 64(1) of the HR&CE Act in O.A.No.8 of 2009.

(ii) Since there was serious allegation of mismanagement raised against the above Trust in managing the affairs of the temple, the fifth respondent was appointed as a fit person to the temple vide order dated 25.11.2013 and subsequently the fit person has also taken charge of the temple on 02.05.2014.

(iii) Subsequently the administration of the temple vested with the fit person and on the basis of the management of the temple the fit person unearthed misappropriation and siphoning of funds of the Temple by the Trust and the same was reported to the fourth respondent vide letter dated 01.03.2015. The fit person also brought to the notice of the fourth respondent that on the date of report that is within a span of nine months, the temple has collected Rs.135 lakhs, but however the Trust which was in





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management of the temple for more than two decades as handed over  
Rs.43,000/- alone at the temple income. It is also alleged that the Trustees  
have purchased several valuable properties worth of several crores in and  
around Mogappair and as well as at Uthukottai village, Thiruvallur district.

(iv) The Trust has also deposited the temple funds under fixed deposit in the name of the Trust rather than in the name of the deity-idol. Hence, it is contended that the Trustees of the subject Trust have themselves admitted and clearly spelt out that the purpose and object for the creation of the Trust and its activities is only to manage the temple and to spread and propagate the cult of Lord Sri Santana Srinivasa Perumal.

(v) Accordingly, it is stated that order has been passed considering the various irregularities in the temple fund and declared it as a religious institution and fit person was also appointed. It is contended that the activities of the temple will fall within the ambit of section 6(18) of the HR&CE Act.

(vi) Therefore, the impugned order has been passed taking into consideration various illegalities and irregularities committed in the management of the temple funds.



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**WEB COPY 4.** The 6th respondent rival claimant has also filed a counter affidavit

The detailed allegations in the counter are not germane for consideration since it is only in the nature of rival claim.

**5.** The learned counsel appearing for the petitioner would submit that the object of the Trust is not only to contribute to the development of Arulmighu Santhana Srinivasa Perumal Temple, Mogappair but also to carry out various other charitable activities. It is his contention that Temple has been developed and the Temple is drawing thousands of devotees day by day and the Temple attains a prominent place in the society.

**6.** It is his further contention that apart from the temple, there are properties which are meant for other charitable purposes and other activities is totally different from the temple. The temple is also subjected to a scheme framed by the Commissioner under Section 64 of the HR&CE Act by order dated 21.07.2010. Such being the position, the trust is independent of the temple and therefore to declare the trust as a religious institution, only the Joint Commissioner or the Deputy Commissioner has power to declare any institution as a religious institution, whereas in the instant case the fourth



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respondent being the Assistant Commissioner has no power under the HR&CE Act to declare a institution as a religious institution and appoint fit person. Thus, it is his contention that only a Joint Commissioner or a Deputy Commissioner alone has power to cause enquiry and decide the issue as to whether an institution is a religious institution or not. Therefore, when the power is not vested with the Assistant Commissioner under the Statute the Assistant Commissioner has no power or authority to declare an institution as a religious institution.

7. The declaration as to the character of a temple can be made under Section 63 of the HR&CE Act only by the Joint Commissioner or Deputy Commissioner, thereafter the question of appointment of a fit person will arise under Section 49 of the HR&CE Act. Therefore, it is his contention that the Assistant Commissioner has assumed the role of the Joint Commissioner or Deputy Commissioner without sanction of the law and therefore the order passed by the fourth respondent Assistant Commissioner declaring the petitioner trust as religious institution and appointing fit person under Section 49 of the HR&CE Act is not sustainable in the eye of law.

8. In support of his submission the learned counsel placed reliance



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on the following judgments:

**WEB COPY (i) *Sri Ram Samaj Vs. The Commissioner passed in W.A.No.1057 of 2022 dated 27.04.2022 and***  
**(ii) *Assistant Commissioner Vs. Rajkumar Manradiyar reported in (2021) 3 MWN (Civil) 178.***

9. Whereas the learned Special Government Pleader appearing for the HR&CE Department submitted that Section 49 of the HR&CE Act makes it very clear that if a religious institution not listed under Section 46 of the HR&CE Act or notified under Chapter VI, the Assistant Commissioner has power to appoint fit persons hence submitted that even the own pleading of the petitioner makes it clear that the Temple and Trust are inseparable and Trust is of public nature.

10. The learned Special Government Pleader also brought to the notice of this Court the pleadings of the petitioner in the petition filed before the Commissioner under Section 64 of the HR&CE Act while framing the scheme and submitted that Section 49 gives power to the Assistant Commissioner to appoint fit person and therefore, it is his contention that declaration by Joint Commissioner or Deputy Commissioner is not required



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for appointment of fit person. Even Section 3 of the HR&CE Act cannot be invoked. According to him the Trust Deed itself clearly shows that institution is only a religious institution and therefore the order of the 4th respondent is well within law and cannot be set aside. In support of his contentions the learned Special Government Pleader relied upon the following judgments of the Hon'ble Supreme Court:

***(i) Parsi Zoroastrian Anjuman, MHOW Vs. The Sub Divisional Officer passed in Civil Appeal No.490 of 2022, dated 28.01.2022 and***

***(ii) Idol of Sri Renganathaswamy Vs. P.K.Thoppulan Chettiar reported in (2020) 17 SCC 96.***

**11.** The learned counsel appearing for the 5th respondent also submitted that appointing the Executive Officer or a Fit Person is maintainable as per Section 49 of the HR&CE Act.

**12.** I have heard the learned counsel on either side and also perused the records carefully.

**13.** Now the point that arises for consideration in this writ petition is as to whether the Assistant Commissioner has power under the Statue to



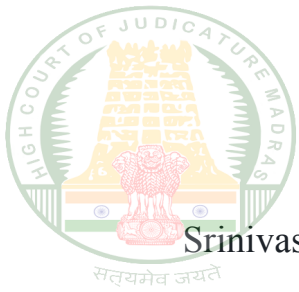
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declare an institution as religious institution and appoint a fit person.

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**14.** It is not disputed that the trust was formed in the year 1993 and the object of the Trust as per the petitioner is to spread the cult of Lord Srinivasa Perumal viz., the universal brotherhood among all persons irrespective of religion, caste, creed, community. The amended Trust Deed also shows that the object of the Trust is to perform poojas and maintain Arulmighu Santhana Srinivasa Perumal Temple, at Vellalar Street, Mugappair, Chennai - 600 037 which is a hereditary Temple of the family of M.S.Ganesan, Managing Trustee. It is also not disputed that an application has been filed under Section 64 of the HR&CE Act by the Trustees for framing a Scheme by the Tamil Nadu HR&CE department in O.A.No. 8 of 2009. Thus, in the above original petition it has been clearly shown that the purpose of forming the Trust is for effective administration and maintenance of the said Temple as the said Temple is drawing thousands of devotees day by day and therefore Scheme is sought to be framed by the Joint Commissioner.

**15.** One other suit was also filed by the writ petitioner in O.S.No.282 of 2013, wherein also it was clearly averred that since the Sri Santhana



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Srinivasa Perumal Public Charitable Trust was formed, the temple showed tremendous growth in all social and charitable activities and in due course the lands surrounding the old temple were purchased and extensive buildings were erected all around the temple for the benefit of the devotees and over a period of time, the temple has earned the name and reputation of a very well maintained temple in the region with uninterrupted poojas and distribution of prasadam to all devotees throughout the day without fail.

16. In the petition filed in O.A.No.8 of 2009, before the Joint Commissioner, HR&CE, it is also averred that the Trust is created fully in the interest of the said Temple, in other words, the Trust and the said Temple are under one roof and cannot be separated.

17. It is also not disputed that the Executive Officer has been appointed for the Temple and the Temple was also under the management of HR&CE department from 21.07.2010. As per the petitioner, now the Executive Officer appointed to the Temple found out maladministration of the temple and mismanagement as well as diversion of Temple funds to the Trust. Therefore, the fourth respondent initiated proceedings by calling for statement of accounts and issued notice.



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**WEB COPY 18.** The issuance of said notice dated 07.04.2015, for production of accounts, was challenged by the petitioner by filing writ petition in W.P.No. number 12176 of 2015. However, this Court while disposing of the said writ petition on 24.04.2015, directed the fourth respondent herein to consider the petitioner's representation and pass appropriate orders after affording an opportunity of personal hearing to the petitioner herein. Pursuant to the above direction, after considering the mismanagement and diversion of funds etc., the 4th respondent has passed the impugned order declaring the Trust as religious institution and appointed a fit person by his order dated 05.10.2015. While passing the impugned order, the fourth respondent took out various factors and the amount collected by the Trust and finally declared the Trust as a religious institution under Section 6(18)(ii) of the HR&CE Act and accordingly appointed an Executive Officer (Fit Person).

**19.** The fourth respondent has powers under Section 49 of the HR&CE Act to appoint trustees and fit persons. The said Section 49 of the Act reads as follows:

"Section 49. Power of Assistant Commissioner to appoint trustees and fit persons.—





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*(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 of whom one shall be member of the Scheduled Caste or Scheduled Tribe and another one shall be a woman.*

*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:—*



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- (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 center ; 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."*

**20.** Thus, Section 49 of the HR&CE Act makes it very clear that in 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 the HR&CE Act, the Assistant



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Commissioner shall have the same power to appoint Trustees including Fit Person.

**21.** Section 46 of the HR&CE Act makes it very clear that the Commissioner shall publish in the prescribed manner a list of religious institutions. Chapter VI deals with notification of religious institutions by the Commissioners. Section 71 of the HR&CE Act deals with notification, notwithstanding that a religious institution is governed by a Scheme settled or deemed to have been settled under this Act, where the Commissioner has reason to believe that such institution is being mismanaged and is satisfied that in the interest of its administration, it is necessary to take proceedings under this Chapter, the Commissioner may, by notice published in the prescribed manner, call upon the trustees and all other persons having interest to show cause why such institution should not be notified to be subject to the provisions of this Chapter.

**22.** It is very clear that even for publication of the list of religious institutions, notification of religious institution has to be made only by the Commissioner. Power under Section 49 is available to the Assistance Commissioner to appoint Trustees and Fit Persons in a religious institution,



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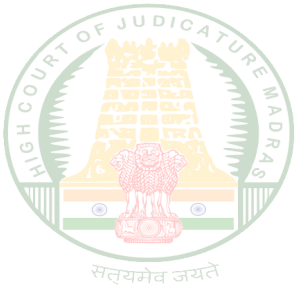
to exercise such such power, the institution must be a religious institution or otherwise it should have been declared as a religious institution. Once a decision is taken that the institution is a religious institution irrespective of the fact that the list has been published under Section 46 or not notified under Section 71 in Chapter VI, the Assistant Commissioner can very well exercise the power on the institution which has been declared as a religious institution. Without declaring an institution as a religious institution, the Assistant Commissioner cannot assume the role and power of the Joint Commissioner or Deputy Commissioner and decide whether an institution is a religious institution. Section 63 of the HR&CE Act reads as follows:

*"Section 63. Joint Commissioner or Deputy Commissioner to decide certain disputes and matters.—*

*Subject to the rights of suit or appeal hereinafter provided, the Joint Commissioner or the Deputy Commissioner, as the case may be, shall have power to inquire into and decide the following disputes and matters:—*

*(a) whether an institution is a religious institution ;*

*(b) whether a trustee holds or held office as a hereditary trustee ;*



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*(c) whether any property or money is a religious endowment ;*

*(d) whether any property or money is a specific endowment ;*

*(e) whether any person is entitled, by custom or otherwise, to any honour, emolument or perquisite in any religious institution ; and what the established usage of a religious institution is in regard to any other matter ;*

*(f) whether any institution or endowment is wholly or partly of a religious or secular character; and whether any property or money has been given wholly or partly for religious or secular uses ; and*

*(g) where any property or money has been given for the support of an institution which is partly of a religious and partly of a secular character, or the performance of any service or charity connected with such an institution or the performance of a charity which is partly of a religious and partly of a secular character or where any property or money given is appropriated*



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*partly to religious and partly to secular uses, as to what portion of such property or money shall be allocated to religious uses."*

**23.** Any institution which has to be declared as a religious institution it has to be done so as per the procedure established by law. This Court is of the view that power of the Assistant Commissioner to declare an institution as religious institution and appoint fit person is misconceived. In this regard a Division Bench of this Court in ***Sri Ram Samaj Vs. The Commissioner*** in W.A.No.1057 of 2022 dated 27.04.2022, in paragraphs 26 and 27 has held as follows:

*"26. The question as to whether an institution is a religious institution or not, the Act of 1959 is a self contained Code. Chapter-V, specifically deals with inquiries. Under Section 63, the Joint Commissioner or Deputy Commissioner as the case may be, have the powers to enquire into and decide whether the institution is a religious institution or not. Any person aggrieved by the decision is entitled to file an appeal to the Commissioner under Section 69 of the Act and any person aggrieved by the order of the Commissioner is entitled to file a suit under Section 70 of the Act. Section 110 of the Act provides that where a Commissioner or a Joint Commissioner*



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*or a Deputy Commissioner makes an enquiry or hears an appeal under Chapter – V or Chapter – VI, enquiry shall be made and the appeal shall be heard, as nearly as may be, in accordance with the procedure applicable under Code of Civil Procedure to the Trial of suits or hearing of the appeal as the case may be. Provisions of the Indian Evidence Act and Indian Oaths Act shall apply to such enquiries and appeal. Further, the Commissioner or Joint Commissioner or Deputy Commissioner holding such enquiry or hearing such appeal shall be deemed to be a person acting judicially within the meaning of the Judicial Officers Protection Act, 1850.*

*27. The power to appoint a fit person vests in the Assistant Commissioner, as per Section 49, which can be exercised on two contingencies. First, the institution must be a religious institution and second, upon satisfaction of any mal-administration of the institution by the existing trustees. It may be seen in the instant case that while appointing a fit person, the Assistant Commissioner himself has attempted to proclaim and decided that the institution is a religious institution. When the fourth respondent filed a complaint that the institution is a religious institution, the appellant having denied the same, it*



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*was necessary that the matter should have been taken up first by the Joint Commissioner/Deputy Commissioner under Section 63 for determining whether the institution is a religious institution or not. The same has to be done by following due procedure, that is, recording evidence and thereafter, pronouncing a decision under Section 63 of the Act. If any party is aggrieved, they can file an appeal and thereafter, a suit, but without following the said procedure, straight away, the second respondent has assumed jurisdiction and appointed a fit person in an illegal manner. As a matter of fact, the learned Single Judge of this Court in the case of R.Shanmugasundram Vs. Commissioner of HR & CE (1991 2 MLJ 582), had specifically held that power under Section 49 to appoint a fit person cannot be exercised before determination of the issue under Section 63 of the Act of 1959. The aforesaid judgment is applicable to this case."*

**24.** In *Assistant Commissioner Vs. Rajkumar Manradiyar* reported in **(2021) 3 MWN (Civil) 178**, this Court in paragraph 12 has held as follows:

*"12. The suit proceedings which have been challenged in this suit has been issued under*





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*Section 49 of HR&CE Act. According to Section 49, if any religious institution is not included in the list published under Section 46, or not notified or deemed to have notified under chapter 6 of the Act, the Assistant Commissioner shall have the power to appoint trustees including fit persons and constitute board of trustees etc. So before taking any action under Section 49, it should have been ascertained whether something is an institution and if so whether it is a religious institution. It is immaterial whether the said religious institution is a listed or a notified institution. But it is sufficient if it is a religious institution. So the language of Section 49 would show that there is a pre-requisite that something should be a religious institution. That means any action under Section 49 should follow only after a decision under Section 63 has been taken. Section 63 is applicable only where there is an institution and there is a dispute about the religious nature of the institution. So before assuming jurisdiction on any place or idol, there should be a prima facie proof to show that something is an institution."*

**25.** When the power is vested specifically with the Joint

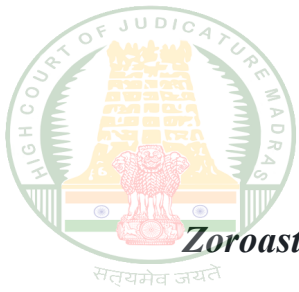


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Commissioner and Deputy Commissioner to decide the issue as to whether a institution is a religious institution or not, such power cannot be exercised by the Assistant Commissioner. The Executive Officer's report indicates that there is diversion of funds and misappropriation, such case, appropriate enquiry ought to have been made under Section 63 of the HR&CE Act. The Assistant Commissioner ought to have referred the matter to the Joint Commissioner or the Deputy Commissioner who are competent to decide the issue and declare an institution as a religious one.

26. Admittedly, the scheme has been framed by the Joint Commissioner only in respect of the Temple at the relevant point of time. Therefore, the Assistant Commissioner ought not to have assumed the role of Joint Commissioner or Deputy Commissioner to decide the character of the institution. The power is vested only under Section 63 of the HR&CE Act to decide such issues by following the procedure, which has been violated in this case and therefore the impugned order passed by the 4th respondent Assistant Commissioner cannot be sustained in law.

27. Much emphasis has been made by the learned Special Government Pleader to the decision of the Honorable Apex Court in *Parsi*



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**Zoroastrian Anjuman, MHOW Vs. The Sub Divisional Officer** in Civil

WEB COPY Appeal No.490 of 2022, dated 28.01.2022, wherein in paragraph 27 the

Hon'ble Apex Court has held as follows:

*"27. Public control of charities (whether social or religious) has been recognized in our country for over a century. In the context of religious endowments, such public control is essential, for the simple reason that in its absence, there is likelihood of diversion of monies and properties accumulated through public donation and gifts. The role of the designated state official (commissioner, or registrar, etc.) is to ensure that accounts are properly maintained; monies are expended in accordance with the aims and objects of the endowments; the proper rituals are conducted, etc. Such regulation does not mean that the state is allowed to appropriate monies which rightly belong to the endowment. In the case of public charities and trusts, slightly different considerations prevail. The aim of public control is to ensure that the trust is administered efficiently and smoothly. The state interest is that far, and no more; it cannot mean that the state can dictate what decisions can or cannot be taken. In the*

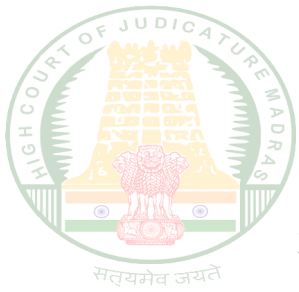


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*specific context of alienation of properties, depending on the nature of the oversight, the state's interest is to ensure that valuable assets of public trusts are not frittered away. It is for this reason, that provisions like Section 36 clearly enunciate a principle that the Commissioner can impose such conditions as may be appropriate. However the statute in the present case (the M.P. Public Trusts Act) does not contain such a power to impose conditions; the only considerations that weigh with the officer (Registrar) are the stipulations in law, or in the instrument of public interest. Other than these considerations, the principle of autonomy and democratic decision-making cannot be undermined. Any organization which is self-governed, cannot be subjected to overarching state control. As long as its decisions are well informed, and grounded on relevant considerations, the interests of the trust are those defined by its members. Any measure of public control enacted through express stipulations in law, should not be expanded to such an extent that the right to freedom of association, under Article 19 (1) (c), is reduced to an empty husk, bereft of meaningful exercise of choice."*



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28. Absolutely, there is no dispute with the above decision, as that matter arises out of Bombay Public Trust Act, whereas the case on hand is specifically governed by the Tamil Nadu HR&CE Act, where Joint Commissioner or Deputy Commissioner vested with authority to decide such issues. Such power being vested with the Joint Commissioner and Deputy Commissioner to decide a particular issue, the Assistant Commissioner is not vested with such power, the Assistant Commissioner cannot assume the role of the Joint Commissioner or the Deputy Commissioner. Such view of the matter, the above judgment relied upon by the learned Special Government Pleader is not applicable to the facts of this case.

29. Likewise the another judgment relied upon by the learned Special Government Pleader in *Idol of Sri Renganathaswamy Vs. P.K.Thoppulan Chettiar* reported in (2020) 17 SCC 96, wherein the appeal arises out of the permission granted by the Court to sell the properties which were endowed to a religious charity. The Hon'ble Apex Court considering the fact that specific endowment created is an absolute endowment in favour of the religious charity and without the sanction by the Commissioner under Section 34 of the HR&CE Act the property cannot be sold and while holding Section 3 of the HR&CE Act will apply only where the Government has



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reasons to believe that a Hindu Public Charitable Endowment is being mismanaged. In the absence of any such allegations or the Government having any reasons to believe that the Trust is being mismanaged, the applicability of Section 3 of the HR&CE Act cannot be pressed into service. The above judgment is under different context with regard to the alienation of the property, but in the case on hand the 4th respondent Assistant Commissioner who is not vested with power has declared an institution as a religious institution. Therefore, the impugned order is liable to be set aside and accordingly set aside.

**30.** Such view of the matter, it is well open to the third respondent Joint Commissioner to decide the issue as per law with regard to the institution taking into consideration various reports and the report of the Executive Officer and pass appropriate orders on merits and in accordance with law. The third respondent is directed to commence such exercise within a period of three months from the date of receipt of a copy of this order by issuing appropriate notice to all the parties concerned and by following the procedure as contemplated under law, ascertain whether the petitioner Trust is a religious institution or not within a period of four months thereafter. With the above direction the writ petition is allowed and



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the impugned order passed by the 4th respondent Assistant Commissioner

dated 05.10.2015 is set aside. Consequently, the connected miscellaneous

petition is closed. No costs.

**22.09.2022**

Index : Yes / No

kk

To

1. The Secretary to Government,  
HR and CE Department,  
St.George Fort, Chennai.
2. The Commissioner,  
Hindu Religious & Charitable  
Endowments Department,  
Nungambakkam High Road,  
Chennai - 600 0034.
3. The Joint Commissioner,  
Hindu Religious & Charitable  
Endowments Department,  
Nungambakkam High Road,  
Chennai - 600 034.
4. The Assistant Commissioner,  
Hindu Religious & Charitable  
Endowments Department,  
Nungambakkam High Road,  
Chennai - 600 034.
5. The Fit Person / Executive Officer,  
Arulmighu Santhana Srinivasa  
Perumal Temple,  
Vellala Street, Mogappair,  
Chennai - 600 037.



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**N.SATHISH KUMAR, J.**

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**PRE DELIVERY ORDER**  
**in W.P.No.32267 of 2015**  
**and M.P.Nos.1 to 5 of 2015**

RESERVED ON : 16.09.2022

DELIVERED ON : 22.09.2022