Madras High Court
Srimad Essor Sathithananda ... vs The Executive Officer on 17 February, 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2010

C O R A M

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

A.S.No.728 of 1997

Srimad Essor Sathithananda Swamigal
Dharma Paripalana Sabha
Rep. by its Secretary
K.Satchidanandam ... Appellant

Vs.

1.The Executive Officer
A/m Kandasami Adimottai Amman Koil
Kosapet, Madras-12

2.The Deputy Commissioner
Hindu Religious & Charitable
Endowmentss,
Madras-34

3.The Commissioner,
Hindu Religious & Charitable
Endowmentss,
Madras-34 ... Respondents

This appeal suit filed under Section 96 r/w Order XLI Rule 1 of Civil Procedure

For Appellant : A.Venkatesan

For Respondent : Mr.M.Murugesan,
Spl. GP (H.R. & C.E.)

J U D G M E N T

The unsuccessful plaintiff is the appellant herein. Consequent to the appointment of the first respondent herein as the fit person to perform the functions of the Board of Trustees to the suit institution holding it to be a religious institution, the appellant/plaintiff sabha, represented by its secretary, filed an application before the second respondent/second defendant, namely the Deputy Commissioner (H.R. & C.E.), Madras in O.A.No.36/1979 under Section 63(a)(c)(d) of Tamil Nadu Hindu Religious and Charitable Endowmentss Act, 1959 praying for a declaration that the suit institution was a private society and not a religious institution coming under the purview of the Tamil Nadu Hindu Religious and Charitable Endowmentss Act, 1959 (Tamil Nadu Act XXII of 1959). The said original application, after hearing, was dismissed by the second respondent herein by an order dated 04.04.1986. As against the said order, the appellant Sabha preferred an appeal in Appeal Petition No.32/1987 before the third respondent herein/third defendant, namely the Commissioner, H.R. & C.E., Administration Department, Chennai and the same was also dismissed on 13.08.1991 confirming the order of the Deputy Commissioner (H.R. & C.E.). Thereafter the appellant has preferred a statutory suit under Section 70 of the Hindu Religious and Charitable Endowmentss Act, 1959 to set aside the above said order of the Deputy Commissioner (H.R. & C.E.), which was confirmed by the Commissioner (H.R. & C.E.) and for a declaration that the suit institution is not a religious institution coming under the purview of the Hindu Religious and Charitable Endowmentss Act, 1959.

2. According to the plaint averments, Srimad Sachidananda Swamigal, a great scholar, philosopher and yogi of the 19th century, after writing several books advocating Advaita philosophy, died in or about 1886 at Kosapet, Madras (North Chennai) and his body was buried at old door No.1, new No.123, Sachidanandam Street, Kosapet, Madras-12 by his disciples. A hall with tiled roofing and a compound wall surrounding the building were also constructed by the disciples of the above said scholar. Contending that the suit institution is nothing but a 'samathi' of the above said Sachidananda Swamigal; that the same was looked after by the appellant Sabha, a registered society registered and formed in the year 1985 under the Societies Registration Act; that the said institution was neither a math, nor a temple, nor a religious or specific Endowments to be brought under the purview of the Hindu Religious and Charitable Endowmentss Act, 1959, the appellant/plaintiff contended before the respondents 2 and 3 in the original application and the appeal petition respectively and also before the trial court in the statutory suit that the Assistant Commissioner (H.R. & C.E.) had erroneously appointed the first respondent/first defendant as fit person to perform the functions of the Board of Trustees in respect of the suit institution and that the said order was liable to be set aside and the plaintiff was entitled to a declaration that the suit institution was not an institution that came under the purview of the Act XXII of 1959. It was also contended therein that the power of the Assistant Commissioner (H.R. & C.E.) to appoint a fit person to a religious institution could not be exercised in respect of a Math. In support of the contention of the appellant that the suit institution is not a religious institution, it was also pleaded in the plaint that no idol was installed inside the premises; that people do not come and offer worship to any idol in the institution; that no regular poojas are performed in the suit institution; that on the anniversary of Srimad Sachidananda Swamigal, "thidhi" would be performed in the samathi of the said yogi and that no property had been endowed to the suit institution for the purpose of any specific service or charity in a Math or temple or for the purpose of any other religious charity. The appellant/plaintiff, as an alternative plea had submitted before the trial court in the plaint that even it could be assumed

that the suit institution was a religious institution, the appointment of a fit person without issuing a notice under Section 71 of the Hindu Religious and Charitable Endowmentss Act, 1959 would make the order of the Assistant Commissioner (H.R. & C.E.) invalid and that for that reason alone the order of the Assistant Commissioner (H.R. & C.E.) appointing fit person should be set aside.

3. The suit was resisted by the first respondent herein/first defendant by filing a written statement denying the plaint allegations and contending that there was no cause of action for the suit and that the valuation for the purpose of court fee was incorrectly made. In other respects the first respondent/first defendant adopted the written statement of the third respondent/third defendant.

4. The third respondent herein/third defendant filed a written statement, which was also adopted by the 2nd respondent/2nd defendant, refuting the plaint allegations and contending as follows:-

The institution was not founded by Sri Sachidananda Swamigal as claimed by the appellant herein/plaintiff. Originally, properties were purchased and endowed in favour of the Math even during the life time of Sri Arunachala Swamigal, the guru of Srimad Sachidananda Swamigal, as evidenced by the recitals of the Will dated 14.12.1888 left by Sri Sachidananda Swamigal. The said Arunachala Swamigal was the founder and head of the Math and he was succeeded by Sri Sachidananda Swamigal as the second guru of the Math. The institution was no doubt a Math. After the death of Sri Sachidananda Swamigal, plaintiff managed to change the nomenclature of the institution as "Sabha" on the strength of the Will dated 14.12.1888 left by Sri Sachidananda Swamigal. The records of the institution would show the donors' wishes were disregarded by entombing the mortal remains of Sri Sachidananda Swamigal in the property of the suit institution which he himself would not have meant in the Will. It is true that every one who has got real interest to know Advaita and advocating the same can become the disciple of the institution, but at the same time the disciples are Hindu public at large who offer worship in the suit institution as a matter of right without any resistance from any source. The suit institution is a math falling squarely under the description of religious institution found in Section 6(18) of the Hindu Religious and Charitable Endowments Act, 1959 and the plaintiff has conveniently changed the nomenclature of the math into a "sabha" in order to take the institution from the purview of the Act. The suit is also not maintainable, as statutory notice under Section 80 CPC was not given and no order dispensing with service of such notice had been obtained. In any event, the suit filed by the appellant/plaintiff is liable to be dismissed as there is no merit in it.

5. The court below framed the following issues:

1.Whether the plaintiff is entitled to the relief of declaration and permanent as prayed for in the plaint?

3.Whether the suit is affected by the failure to issue notice under Section 80 of CPC?

5.Whether proper court fee has not been paid?

7.To what other relief the plaintiff is entitled?

6. In the trial, two witnesses were examined on the side of the plaintiff as P.W.1 and P.W.2 and 15 documents were marked as Exs.A1 to A15. Only one witness was examined as D.W.1 and nine documents were marked as Exs.B1 to Ex.B9 on the side of the defendants. After both parties adduced evidence, both oral and documentary, the learned trial judge heard the arguments advanced on either side and considered the evidence brought before him in the light of such arguments. Upon such a consideration, the court below came to the conclusion that the plaintiff failed to prove that the suit institution was not a religious institution and decided the issues 1 and 2 against the plaintiff, issue No.3 in favour of the plaintiff and consequently issue No.4 against the plaintiff and dismissed the suit by its judgment and decree dated 15.11.1996.

7. Aggrieved by and challenging the decree passed by the trial court as erroneous and praying that the decree passed by the trial court should be set aside and the suit filed by the appellant/plaintiff should be decreed as prayed for, the appellant/plaintiff has filed the present appeal on various grounds set out in the memorandum of appeal.

8. The points that arise for consideration in the appeal are as follows:-

1. Whether the suit institution is not a religious institution defined under Section 6(18) of the Hindu Religious and Charitable Endowments Act, 1959?

2. Whether the appellant/plaintiff is entitled to a declaration that the suit institution is not a religious institution?

3. Whether the appellant/plaintiff is entitled to a permanent injunction restraining the defendants, its officials or anybody acting on their behalf from in any way interfering with functioning of the plaintiff society viz., Srimad Esoor Sachidananda Swamigal Dharma Paripalana Sabha at No.52, Kandasamy Koil Street, Kosapet, Madras-600 012?

4. What other relief/reliefs, the appellant/plaintiff is entitled to?

9. Mr.A.Venkatesan, learned counsel for the appellant/plaintiff, in his arguments in support of the case of the appellant raised the following contentions:-

i) The court below committed an error in arriving at the conclusion that the suit institution is a math, whereas the appellant/plaintiff has produced documents which are more than sufficient to show that the institution is a registered society registered under the Societies Registration Act.

ii) The court below failed to appreciate the contention of the appellant/plaintiff that there can be no samadhi inside a temple or temple inside a samadhi. When the plaintiff's case that there is only a tomb with a small tiled structure over the place wherein the mortal remains of Sri Sachidananda Swamigal have been interned; the same will be no less than a samadhi and hence it could not be termed either a temple or a religious institution.

iii) Even assuming that the suit institution is a math and hence a religious institution, the H.R. & C.E. authorities do not have the power of appointing fit person as the application of Sections 45 to 58 of the Act to a math is specifically excluded by Section 44 of the Act. On that ground alone, the court below should have granted a decree in favour of the appellant/plaintiff.

iv) The court below committed an error in arriving at a conclusion that the suit is bad for non-compliance with Section 80 of CPC, as pre-suit statutory notice was not given to the respondents. Since the suit has arisen out of an order passed by a quasi-judicial authority and is a statutory suit contemplated under Section 70 of the Hindu Religious and Charitable Endowmentss Act, 1959, no statutory notice contemplated under Section 80 of CPC need be given.

v) The court below failed to properly appreciate the contentions raised on both sides and the evidence, both oral and documentary, adduced on both sides which led to the erroneous conclusion that the appellant/plaintiff was not entitled to any of the reliefs sought for in the plaint.

10. Per contra, the learned Special Government Pleader contended that the court below, on a proper appreciation of evidence and correct application of provisions of law and legal principles, decided the case against the appellant/plaintiff; that none of the findings of the trial court could be termed erroneous; that the well considered judgment and decree of the trial court do not deserve any interference by this appellate forum and that the appeal should be dismissed confirming the decree of the trial court.

11. Section 80 (1) of CPC says that no suit shall be instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of a Secretary to the central government in case the suit is against the central government, to a Secretary to the government or the Collector of the district in case the suit is against the state government and to the public officer concerned. The said requirement is made mandatory and the only exception is found in sub clause (2) of Section 80, which enables the court to dispense with the service of notice when urgent or immediate relief is sought for. Even in such cases no interim order could be granted without giving a reasonable opportunity to the government or the public officer, as the case may be, to show why such interim order cannot be granted. The proviso to sub clause (2) says that the plaint shall be returned for presentation after complying with sub-section 1 of 80 C.P.C. if the court, on hearing the parties, is satisfied that no urgent or immediate relief need be granted. The said requirement of serving a notice two months prior to the institution of the suit, as per Section 80(1) of CPC had been earlier interpreted to be mandatory in respect of each and every case either the same was a statutory suit or not. The learned counsel for the appellant drew our attention to the judgment of a division bench of this court in Tholappa Iyengar, alias Alagar Iyengar v. The Executive Officer, Sri Kallalagar Devasthanam, Alagarkoil, Madurai Etc and 7 others reported in 1993-2-L.W.537, which was subsequently followed by a learned single judge of this court in A.S.Krishnan vs. N.S.Venkatarama Pillai (deceased) and others reported in 2007(2) TLNJ 122 (Civil). Based on the observations made by the division bench of this court in Tholappa Iyengar's case, the learned counsel for the appellant submitted that no purpose will be served by issuing a statutory notice to the authorities whose orders passed as quasi-judicial

authorities are impugned in the statutory suit and the service of notice will be a mere ritual as the said authority shall have no option to rescind or review or recall its order. The observations made in the said judgment of the division bench are extracted hereunder:

" On the basis of the judicial consensus thus we are in a position to say that a notice under S.80, of the Code of Civil Procedure, 1908 is unnecessary if, having regard to the nature of the suit and the capacity and the context in which public officers have been impleaded, it is found that no purpose can be served by notice to such officers. The fact that the officer concerned has acted judicially or quasi-judicially may be one such fact which will lead to the conclusion that the purpose of the suit is not to sue the officer for any such act done by him in his official capacity, which shall attract S.80, of the Code of Civil Procedure, 1908. The fact that a special procedure is created and a special jurisdiction is conferred for a certain type of adjudication upon a public officer and in that official capacity he is required to decide a dispute or a matter and a suit is provided as a remedy under the Special Act for the cancellation or modification of the order of such public officer shall also be a fact showing that such act done by such public officer in his official capacity will not attract S.80, of the Code of Civil Procedure, 1908. As the Supreme Court has said, the provisions in S.80, of the Code of Civil Procedure, 1908 are not intended to be used as booby-traps against the ignorant illiterate persons, but are intended to advance justice by affording on the one hand a person intending to sue the Government or a public officer in his official capacity opportunity to demand from the Government or such public officer redressal of his grievance within two months next after notice, and on the other hand to provide to the government or the officer concerned opportunity to consider whether the Government or the officer should contest the claim and/or to grant the relief as asked for and thus avoid unnecessary litigation. The scheme of the suit under S.70 of the Endowmentss Act, in particular, leaves no option with the Commissioner to rescind, review or recall his order. On this is the position, it is unimaginable that a notice is necessary to afford tot he Commissioner opportunity to consider the redressal of the grievances of the person who sought relief by way of a suit under S.70(1) of the Endowmentss Act."

12. Referring to the observations of the Division Bench, the learned single judge in A.S.Krishnan vs. N.S.Venkatarama Pillai (deceased) and others has observed that the legal position has been well settled. In view of the same, this court also comes to the conclusion that the legal position in this regard is well settled that in a statutory suit under Section 70 against the orders of the Commissioner (H.R. & C.E.), a quasi-judicial authority, the service of notice under Section 80(1) C.P.C. shall be a mere ritual and no purpose will be served and that hence in such cases, there is no necessity to serve notice under Section 80(1) of the Civil Procedure Code before filing of the suit. The finding of the court below regarding the necessity to give notice under Section 80(1) C.P.C. is erroneous, perhaps because the view of the division bench came subsequent to the judgment of the court below and the view that held the field before the division bench judgment was to the contra. Therefore, this court comes to the conclusion that the finding of the court below that the suit is bad for non-compliance with the requirement under Section 80(1) of the CPC is not the correct view and the same deserves to be reversed. Consequently, this court holds that the suit cannot be dismissed on the ground that there was non-compliance with the requirement of statutory notice under Section 80(1) of Civil Procedure Code.

13. Relying on the judgment of the learned single judge in A.S.Krishnan's case, a meek attempt was made initially to contend that the court below having decided the question of maintainability on the ground of absence of notice under Section 80(1) CPC, should not have decided the case on merit and that the suit might be remanded to the trial court after setting aside the finding of the court below on the question of the maintainability of the suit on the ground of absence of notice under Section 80 of CPC. But, subsequently the learned counsel for the appellant conceded that though an issue could have been decided as a preliminary issue, it was not mandatory on the part of the trial court to decide the same as a preliminary issue when the parties did not insist upon such a procedure and that when the parties proceeded with trial adducing evidence on the merits of the case, it was improper for the trial court and in fact the trial court could be found fault with, if some of the issues alone were decided and the other issues were left untouched.

14. It is not the case of the appellant that the court below did not have the jurisdiction and after coming to the conclusion that it did not have the jurisdiction, it went on to decide the case on merit. Only in such circumstances, there is possibility of holding that the court should not have proceeded to decide the case on merit after coming to the conclusion that it did not have the jurisdiction to try the suit. Even in such cases, when full trial has been conducted and evidence has been adduced on all the issues, the appellate court cannot simply remand the case to the trial court after coming to the conclusion that the finding of the trial court in the issue regarding jurisdiction in the negative is not correct. When the trial court has passed a decree based on the findings on all the issues dismissing the suit based on its finding on one of the issues alone and the appellate court reverses the said finding, it shall not be desirable and it shall be even improper to toss the case again to the trial court to consider the case on merit once again on the other issues, as it has already been done by the trial court. Therefore, this court proposes consideration of the other issues regarding the merit of the case.

15. It is the case of the appellant/plaintiff that the appellant/plaintiff is a sabha registered as a society under the Societies Registration Act; that it cannot be construed to be a religious institution coming under the purview of the Tamil Nadu Hindu Religious and Charitable Endowmentss Act, 1959 and that therefore, the appellant/plaintiff is entitled to a declaration that the appellant/plaintiff institution is a "sabha" and not a "religious institution". It is the contention of the respondents/defendants that the suit institution was originally founded by one Srimad Arunachala Swamigal as a math to propagate "advaita principles" and after his demise, his principal disciple Srimad Sachidananda Swamigal became the madathipathi and that subsequently the same was registered as a "sabha" under the Societies Registration Act.

16. The Will, admittedly executed by Srimad Sachidananda Swamigal in the year 1888 refers to the establishment of the math by Srimad Arunachala Swamigal and the Will itself contains a direction that no mortal remains of anybody should be interned in the math. The plaintiff traces the history of the institution only to Srimad Sachidananda Swamigal, who lived in the 19th century. As rightly pointed out by the learned counsel for the respondents/defendants, there are contradictions in the stand taken by the plaintiff in the plaint viz-a-viz the evidence tendered on behalf of the plaintiff as to when the plaintiff sabha was formed. In paragraph 4 of the plaint, the year of formation of the sabha has been given as 1985. The relevant portion in the plaint is extracted here under for better

appreciation:-

"The plaintiff states that the Sabha was formed in the year 1985 itself and it was registered under the Societies Registration Act and the rules of the said Sabha prescribed the constitution of the Sabha and of the management of the Samadhi and the property left behind by the Yogi and accordingly the Sabha was carrying on its affairs from 1985 onwards till this date."

This particular averment in the plaint is proved to be erroneous by the oral evidence of P.W.1 and Ex.A1-By-laws of the plaintiff sabha, namely Srimad Sachidananda Swamigal Dharma Paripalana Sabha. Though P.W.1 who claims to be the present secretary of the plaintiff sabha, admits that yogi Sachidananda Swamigal was the disciple of guru Srimad Arunachala Swamigal, he has carefully avoided any reference to Srimad Arunachala Swamigal and his association with the suit institution. However, during cross-examination, P.W.1 has admitted in clear terms that he was aware of Arunachala Swamigal who lived in 19th century and that Sachidananda Swamigal was his disciple. P.W.1 has also admitted in his evidence during cross-examination that in the stone inscription relating to the suit institution, a reference was made to one Sengalvaraya Pillai son of Velayudham pillai as the donor of the land for the math. It is also admitted by P.W.1 that the said property was donated by the said Sengalvaraya Pillai in the year 1771 on the day of Thai Poosam. The relevant portion in vernacular language is extracted hereunder:-"

"rhypthfd rfhg;jk; 1771k; tUlk; ij khjk; 4k; njjp k';fsh thuk; ijg;g{rj;jpdj;jd;W"

17. P.W.1 has also admitted that the said stone inscription directs that no samadhi should be allowed inside the said property donated for the math. It is also admitted by P.W.1 that Sachidananda Swamigal (disciple of Arunachala Swamigal), in his Will has directed that the preaching of advaita principles should be done by any one of his disciples, either in the math situated in Kandasamy Koil Street or at some other place and that seasonal and annual guru pooja for his guru, namely Arnuchala Swamigal, should be conducted in the above said math. It is also admitted by P.W.1 that old door No.2/63, Kandasamy Koil Street has been described to be a math in the by-laws of plaintiff sabha. At the same time, P.W.1 would also plead ignorance as to whether Sachidananda Swamigal was using it as a math. The very fact that P.W.1 was not in a position to deny the suggestion that Sachidananda Swamigal was using the said property as a math will make the case of the respondents/defendants that the suit institution is a math, more probable.

18. There is an in-built contradiction in the evidence of P.W.1 as to the contention of the defendants that the suit institution was originally founded as a math and the same was later on converted into a sabha. In Ex.B9 - the statement recorded by the Inspector (H.R. & C.E.), P.W.1 has stated that the math was initially established by Arunachala Swamigal at door No.63/2, that the door number was later on changed to door No.102 and subsequently changed to door No.53, Kandasamy Koil Street, Purasai. However while deposing before the trial court he has denied having made such a statement before the Inspector (H.R. & C.E.), while admitting his signature found in the statement marked as Ex.B9. In the very next sentence, P.W.1 has admitted the suggestion made on behalf of the defendants that the said math was later on converted into a sabha.

19. One Dananjeyan has been examined as P.W.2. He would submit that there is a samathi at door No.123, Sachidanandam Street and the sabha is functioning at door No.53, Kandasamy Koil street. It is his assertion in chief-examination that there is no math in either of the premises. A consideration of his entire evidence would go to show that he has been introduced as a witness on the side of the plaintiff to speak in favour of the plaintiff that there was no math either at No.123, Sachidanandam Street or at No.53, Kandasamy Koil Street at any point of time. Though he claims to be a member of the plaintiff sabha for about 30 years prior to the date of his examination, no document has been produced to show that he was a member of the plaintiff sabha. In addition to that, even the clear admissions made by P.W.1 in his evidence have been denied by P.W.2. Though a specific question was put to him whether he could produce any document to show his membership in the plaintiff sabha, he has not chosen to produce it. Even the fact admitted by P.W.1 that the "Will" of Srimad Sachidananda Swamigal contains a direction that the property should be used only as a "math" and no samadhi should be allowed in it, has been denied by P.W.2. Therefore, no credence can be attached to the testimony of P.W.2 and the entire evidence of P.W.2 deserves rejection as unreliable.

20. It is the plaintiff's case, as per the plaint allegations that the plaintiff sabha was formed and registered as a society in 1985. But contra to the plaint allegations, evidence has been led through P.W.1 that the plaintiff sabha was formed on 14.12.1885. It is the evidence of P.W.1 that Srimad Sachidananda Swamigal was a philosopher, who lived in the 19th century; that the said Sachidananda Swamigal formed the plaintiff sabha on 14th December 1885 and that in 1886 Srimad Sachidananda Swamigal passed away and his mortal remains were buried in the property belonging to him. He refers to door No.123, Sachidanandam Street to be the property belonging to Sachidananda Swamigal, which on the demise of Sachidananda Swamigal became his samadhi. But, there is nothing on record to show that the said property belonged to the said yogi Srimad Sachidananda Swamigal. Of course it is true that the plaintiff was able to produce documents from the year 1968 in the form of Exs.A3 to A10 to show that the plaintiff sabha was issued with patta to the properties of the suit institution including old door No.2/63, new No.53, Kandasamy Koil Street, Chennai-12. It is the contention of the plaintiff and the evidence of P.W.1 that plaintiff sabha functions at door No.123, Sachidanandam Street, Chennai-12. It is also the evidence of P.W.1 that the said property bearing door No.123, Sachidanandam Street was owned by the yogi Srimad Sachidananda Swamigal and on the death of the said yogi, his mortal remains were interned in the said property and a samathi was constructed. We have already seen that there is no document to show that the said property belonged to Sachidananda Swamigal. On the other hand, there is evidecne to the effect that Arunchala Swamigal, the guru of Sachidananda Swamigal, founded a math that was functioning at old door No.63/2, Kandasamy Koil Street and that the property bearing present door No.123, Sachidanandam Street, Chennai-12 was gifted by one Sengalvaraya Pillai to the said Arunachala Swamigal. From Ex.A1, the by-laws of the plaintiff sabha, it is clear that there was a math functioning at old door No.2/63, Kandasamy Koil Street, Chennai-12. By-law 3 refers to the said math. It is admitted by P.W.1 that the property which is now claimed to be a samadhi bearing door No.123, Sachidanandam Street, Madras-12 was the one donated to the said "math" by one Sengalvaraya Pillai in 1771.

21. Though the plaintiff would have stated that the suit institution did not possess any other property, there is a clear admission on the part of P.W.1 that the properties bearing door No.53, Kandasamy Koil Street in which the "math" was functioning as per Ex.A1, a house at door No.131 Sachidanandam Street, and other buildings bearing door Nos.115, 171, 174 in Sachidanandam Street are also the properties which belonging to the suit institution. According to the plaintiff's case all those properties belong to plaintiff sabha, namely, Srimad Sachidananda Swamigal Dharma Paripalana Sabha. This court, after an independent and thorough re-appreciation of evidence, both oral and documentary, is of the considered view that all the above said properties, namely properties in Kandasamy Koil Street, Sachidanandam Street in No.123, Survey No.2402 of Sachidanandam street on which the houses bearing door Nos.115, 171 and 174 are of the properties belonging to one and the same institution, namely suit institution. The plaintiff sabha claims that the plaintiff sabha is the owner of all the above said properties. It is the further contention of the plaintiff sabha that the plaintiff sabha is a voluntary organisation formed to propagate "advaita principles" taught by Srimad Sachidananda Swamigal and is registered as a society under the Societies Registration Act and that it cannot be termed either a "temple" or a "religious institution" or a specific Endowments to bring it under the purview of the provisions of the Hindu Religious and Charitable Endowments Act, 1959. It is their further contention that there is only a samadhi of Srimad Sachidananda Swamigal at door No.123, Sachidanandam Street, Kosapet, Madras-12, which cannot be described to be a temple or a religious institution to bring it under the purview of the H.R. & C.E. Act, 1959. It is the further contention of the appellant/plaintiff that the plaintiff sabha is the owner of the other properties, hence there is no scope for the H.R. & C.E. authorities poking their nose in the administration of the affairs of the plaintiff society and that hence the order of the Assistant Commissioner (H.R. & C.E.) appointing a fit person to the suit institution is liable to be set aside as one without jurisdiction.

22. From the facts narrated and the evidence discussed above, it is quite obvious that the plaintiff sabha has made an attempt to fish out of troubled waters by creating a confusion by identifying the plaintiff society with the math for the administration of which the H.R. & C.E. authorities have chosen to exercise their power of appointing a fit person. It is clear from evidence, especially from the admission made by P.W.1 that the institution regarding which a fit person was appointed by the Assistant Commissioner (H.R. & C.E.) was initially founded as a math by Arunachala Swamigal, the guru of Srimad Sachidananda Swamigal. It is also corroborated by the particulars found in the by-laws of the plaintiff sabha produced as Ex.A1. Though the plaintiff would claim that the property in which the samathi of Srimad Sachidananda Swamigal stands was the one belonging to Srimad Sachidananda Swamigal, there is no document to show that the same belonged to him. On the other hand, there are documents to show that from 1929 properties of the suit institution including the property which was admittedly used as math as per by-law No.3 of the plaintiff institution as found in Ex.A1, pattas were issued in the name of and taxes were collected from the plaintiff sabha. The mere fact that after the formation of the plaintiff sabha, revenue records were changed in the name of plaintiff sabha regarding the properties of the suit institution and property taxes were collected from the plaintiff sabha, will not be enough to show that the property belonged to the plaintiff sabha and that there was no math in existence at any point of time.

23. On the other hand, it is quite obvious that the property wherein the samathi of Srimad Sachidananda Swamigal has been built itself was the one donated by one Sengalvaraya Pillai to Arunachala Swamigal for being used as a math. It is also obvious from the admission of P.W.1 that the said property should be used only for the purposes of math and that the above said Sachidananda Swamigal himself, in his Will, directed that no samathi should be put up in the said property. It is also obvious from the evidence that plaintiff sabha was established in 1885 by Sachidananda Swamigal himself only as an institution to aid the math in the propagation of advaita and that after the demise of Srimad Sachidananda Swamigal, much against the dictates and wishes of Sachidananda Swamigal himself, the office bearers of the plaintiff sabha put up the samathi of Srimad Sachidananda Swamigal in door No.123, Sachidanandam Street and of late with a view to enjoy the properties of the math and keep them out of the control of the H.R. & C.E. Authorities, have come forward with the plea that there was no math at all and that the plaintiff sabha is the sole proprietor of all the properties mentioned above.

24. From a careful scrutiny of evidence, this court is able to find that the original institution owned the properties was a math functioning at new and that the plaintiff sabha was founded only to aid the administration of the math, whereas the plaintiff, taking advantage of the same, has chosen to come forward with a plea that there was no math at all to support its case that the suit institution is not at all a religious institution. When confronted with the fact that there was a math of which Arunachala Swamigal was madathipathi and the property bearing door No.123, Sachidanandam Street (wherein the samathi of Srimad Sachidananda Swamigal has been built according to the plaintiff) was also intended for the use of the math as per the Will of the donor and even as per the Will of Srimad Sachidananda Swamigal, P.W.1, as an after thought, has come forward with an explanation, that the math was subsequently converted into a sabha. The mere fact that Srimad Sachidananda Swamigal, who became the madathipathi after the demise of his guru Arunachala Swamigal, founded the sabha to supplement the objects of math, will not change the character of the institution from that of a math.

25. Section 6(18) of Tamil Nadu Hindu Religious and Charitable Endowmentss Act, 1959 defines a "religious institution" as follows:-

(18) "religious institution" means a math, temple or specific Endowments.

It was the original definition of 'religious institution' provided in the Act. In 2003, by Act 10/2003, the said definition was amended by including "a 'samadhi or brindavan and any other institution established or maintained for a religious purpose" within the definition of 'religious institution'. However, the said amendment was nullified and the original position of the definition of 'religious institution' was restored, vide Tamil Nadu Act 4/2008, whereby "samadhi, brindavan and any other institution established or maintained for a religious purpose" included in the definition of 'religious institution' by Act 10 of 2003 has been deleted. The question actually involved in this case is not whether the suit institution is a samadhi or math? A close study of the evidence will show that the property in which the samadhi of Srimad Sachidananda Swamigal has been put up is one of the properties belonging to a religious institution, namely a math. The math has been founded and run to propagate advaita philosophies, which is no doubt a specie of Hindu religion. Therefore, the math

functioning at 53, Kanda Sami Koil Street is, no doubt, a religious institution falling squarely within the definition of religious institution found in section 6(18) of the Hindu Religious and Charitable Endowments Act, 1959. In case, the plaintiff's contention is accepted, then it will open the gates for the disciples of a math to form a society to run the math, intern the mortal remains of a madathipathi in one of its properties and then claim that only a sabha and not the math which is in existence and hence the Hindu Religious and Charitable Endowments Act will not be applicable to the properties of the math. Therefore, this court comes to the conclusion that the appellant/plaintiff has miserably failed in proving the suit institution, for which the Assistant Commissioner has appointed a fit person to carry out the function of a board of trustees, to be not one coming under the definition of religious institution under section 6(18) of the Hindu Religious and Charitable Endowments Act, 1959 and that the plaintiff sabha, formed to supplement the objectives of the suit math, completely ignoring the said fact, has chosen to wrongly claim that there is no math and the sabha alone is in existence and thus, the Hindu Religious and Charitable Endowments authorities have no power to appoint a fit person. This court also comes to the conclusion that the defendants have proved that the suit institution is a math very much coming within the definition of religious institution and that the plaintiff has come forward with the suit for a declaration under a supposed misconception that fit person was appointed for the society and not for the math. The finding of the court below to the effect that the suit institution is a math deserves no interference and the same deserves to be confirmed. Point Nos.1 and 2 are answered accordingly.

26. The learned counsel for the appellant, as an alternate argument contended that assuming the suit institution to be a religious institution, since admittedly the same is a math, sections 45 to 58 of the Hindu Religious and Charitable Endowments Act, 1959 are not applicable to it as per the specific exclusion provided in Section 44 of the said Act and hence the order of the Assistant Commissioner appointing fit person to the suit institution is liable to be set aside and that an injunction not to interfere with the affairs of the suit institution as prayed for in the plaint should be granted. Sections 45 to 58 deal with the powers of the State Government to appoint Executive Officers, publish list of institutions, appoint trustees, constitute board of trustees, suspend, remove or dismiss trustees, fill up the vacancies in the office of the trustees, appoint office holders and servants of religious institutions and punish office holders and servants of the religious institutions, power to fix fees for services and fix standard scales of expenditure. Section 47 proviso (c) provides for the appointment of a fit person to perform the functions of the board of trustees.

27. Section 44 specifically excludes application of sections 45 to 58 to maths or specific Endowmentss attached to math. As such, the contention of the learned counsel for the appellant that even if it is assumed that the suit institution is a math, the Assistant Commissioner (H.R. & C.E.) does not have the power to appoint a fit person is well founded. It has already been held supra that the appointment of a fit person was done not for the samadhi in door No.123, Sachidanandam Street, but for the math that is functioning at door No.53, Kanda Swami Koil Street. The learned counsel for the appellant rightly contended that when appointment of the fit person was made either for the math or for the samadhi, in either case the same was without power, as Section 44 of the Act excludes the application of sections 45 to 48 to maths and Section 45(1) specifically excludes religious institutions run by maths from the operation of Section 45. Section 59 alone deals with the removal of trustee of a math on specific grounds. It says, 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 on the ground that the trustee is of unsound mind etc. The section empowers the Commissioner or any two or more persons with the permission of the Commissioner in writing to institute a suit in the court to obtain a decree for removal of the trustee of a math. Therefore, section 59 cannot be availed of by the Assistant Commissioner (H.R. & C.E.) to appoint a fit person to the math, the suit institution. The appropriate section shall be section 60 of the Act. Section 60 deals with the powers of the authorities under the H.R. & C.E. Act. When a vacancy arises in the office of the trustee of a math or specific Endowments attached to a math or there is a dispute respecting the right of succession to the office or when such vacancy cannot be filled up immediately or when the trustee is a minor and has no guardian fit and willing to act as such or when the trustee is, by reason of unsoundness of mind or other mental and physical defect or infirmity, unable to perform the functions of the trustee. In such circumstances, the Assistant Commissioner shall have the powers to pass such orders as he thinks proper for the temporary custody and protection of the Endowmentss of the math or of the specific Endowments, as the case may be, and shall report the matter forthwith to the Commissioner. Upon receipt of such report, the Commissioner, after making such enquiry, if satisfied that an arrangement for the administration of the math and its Endowmentss or of the specific Endowments, as the case may be, is necessary, he shall make arrangements until the disability ceases or another trustee succeeds to the office. In making such arrangement, the Commissioner shall have due regard to the claims of the disciples of the math, if any.

28. In this case, the Assistant Commissioner seems to have exercised his power of appointment of a fit person to discharge the functions of the Trust Board under section 47(c) of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Such a power of appointment of a fit person under Section 47(c) in respect of a math is not available to the Assistant Commissioner as the operation of Section 47 stands specifically excluded by section 44 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The impugned order of the Assistant Commissioner is not one purported to be made under Section 60(1) of the Tamil Nadu Hindu Religious Charitable and Endowments Act, 1959 as a measure for temporary custody and protection of endowments of the math. Section 60(1) mandates the Assistant Commissioner making such arrangements for the temporary custody and protection of endowments of the math to report the matter forthwith to the Commissioner and as per sub-clause (2) the Commissioner, on receipt of such report and after making such enquiry as he deems necessary, if he is satisfied that an arrangement for the administration of the math and its endowments is necessary, shall make such arrangements as he thinks fit until the disability of the trustee is ceased or another trustee succeeds to the office as the case may be. A reading of section 60 will make it clear that the Assistant Commissioner's power is confined to taking such steps and pass such orders for the temporary custody and protection of the endowments of the math. The Assistant Commissioner is also duty bound to report the same to the Commissioner, who shall make an arrangement under sub-clause (2) of Section 60 until the disability of the trustee ceases or another trustee succeeds to the office.

29. In this case, the Commissioner has not made any such arrangement by virtue of the power conferred on him under Section 60(2) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. On the other hand, the Assistant Commissioner has passed an order

appointing a fit person to discharge the functions of the Trust board, purportedly under Section 47(c) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The very exercise of such power is not permissible under law. Therefore, the contention of the appellant that the order of the Assistant Commissioner appointing the first respondent as fit person for the suit institution is not legally sustainable, has got to be countenanced. However, while holding that the Assistant Commissioner could not have lawfully passed an order appointing a fit person to the suit institution (math) by virtue of the powers under Section 47(c) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, it is observed that the Assistant Commissioner could have relied on the provision found in Section 60 of the H.R.C.E. Act for the interim arrangements to be made in respect of a math in the contingencies stated in the said provision. The prayer made by the appellant/plaintiff is for a permanent injunction restraining the respondents from interfering with the affairs of the suit institution besides a declaration that the suit institution is not a religious institution coming under the purview of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Though an order was erroneously passed under Section 47(c) of the Act instead of having recourse tot he proper provision of law, namely Section 60 of the Act, the prayer for injunction restraining the respondents from interfering with the affairs of the suit institution altogether cannot be sustained.

30. In the case on hand, though there is evidence to the effect that previously Arunachala Swamigal was the madathipathi and after him Srimad Sachidananda Swamigal succeeded as madathipathi, there is no evidence to show that the suit institution (math) is being headed by anybody, including P.W.1 as the head of the math (madathipathi). It is not the case of the plaintiff that P.W.1 or anybody else is functioning as madathipathi (head of the math). On the other hand, the very plea of the appellant/plaintiff seems to be that there is no math in existence which cannot be sustained. Only a limited relief of injunction restraining the first defendant from acting as fit person of the suit institution, which is held to be a math can be granted in favour of the appellant/plaintiff. Such a relief of limited injunction against the first respondent restraining him from acting as fit person to the suit institution is based on the finding that the order of the Assistant Commissioner appointing the first person as fit person was without the sanction of law. At the same time, this court hastens to add that the grant of injunction against the first respondent from acting as fit person of the suit institution shall in no way curtail the powers of the Assistant Commissioner under Section 60(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 to take such steps and pass such order for the temporary custody and protection of endowments of the math under sub clause (1) of section 60 or such powers of the Commissioner under sub clause (2) of Section 60 to make arrangements for the administration of the math or its endowments until the disability of the trustee is ceased or another trustee succeeds to the office as the case may be. Point Nos.3 and 4 are answered accordingly.

31. In the result, the appeal is allowed in part and the decree of the trial court is modified by granting a permanent injunction against the first respondent/first defendant alone from interfering with the affairs of the suit institution as fit person. The injunction granted against the first respondent/first defendant shall not in any way affect the powers of the Assistant Commissioner under Section 60(1) and that of the Commissioner under Section 60(2) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The dismissal of the suit in all other respects by

the trial court shall stand confirmed. The parties are directed to bear their respective cost.

17.02.2010 Index : Yes Internet : Yes asr To

1) V Assistant Judge, City Civil Court, Madras

2)The Executive Officer A/m Kandasami Adimottai Amman Koil Kosapet, Madras-12

3)The Deputy Commissioner Hindu Religious & Charitable Endowmentss, Madras-34

4)The Commissioner, Hindu Religious & Charitable Endowmentss, Madras-34 P.R.SHIVAKUMAR, J.

asr

PRE-DELIVERY JUDGMENT
in A.S.Nos.728 of 1997

Dated : 17.02.2010