

K.Mayilvel vs / on 16 July, 2024

Author: S.Srimathy

Bench: S.Srimathy

W.P. (MD) .No.16512

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.12.2023

PRONOUNCED ON : 16.07.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD) .No.16512 of 2023

and

W.M.P. (MD)No.13808 of 2023

K.Mayilvel

... Pe

/Vs./

- 1.The Commissioner,
Hindu Religious & Charitable Endowments Department,
119, Uthamar Gandhi Road,
Nungambakkam, Chennai-600 034.
- 2.The Joint Commissioner,
Hindu Religious & Charitable Endowments Department,
Sivagangai, Sivagangai District.
- 3.The Assistant Commissioner,
Hindu Religious & Charitable Endowments Department,
Sivagangai.
4. Fit Person / Inspector,
Hindu Religious & Charitable Endowments Department,
Manamadurai, Sivagangai.
- 5.M.Ramakrishnan
- 6.Sengaimaran

... Respon

(R5 and R6 are impleaded, vide Court order,
dated 25.09.2024, in WMP(MD)Nos.15997
and 16032 of 2023 in WP(MD)No.16512 of 2023)

<https://www.mhc.tn.gov.in/judis>

PRAYER: Writ Petition filed under Article 226 of the Constitution of India issuance a Writ of Certiorari, calling for the records pertaining to the order passed by the third respondent in proceedings in Se.Mu.Na.Ka.No. 2605/2021/A4, dated 26.04.2023 and to quash the same as illegal, null and void and ultra-vires.

For Petitioner : Mr.S.R.Raghunathan,
Assisted by Mr.Manjunath Karthik
For Mr.V.Ramakrishnan

For Respondents 1 to 3: Mr.S.Kameswaran
Government Advocate

For Respondents 4 & 5: Mr.Jegadesh Pandian

For 6th Respondent : Mr.R.Udhayakumar

ORDER

The present writ petition is filed for Writ of Certiorari to quash the impugned order dated 26.04.2023 passed by the 3rd respondent as illegal, null and void and ultra vires. Through the impugned order, the 3rd respondent has appointed the 4th respondent as fit person to administer the “Thanner Pandal Service”. Aggrieved over the said appointment of fit person, the present writ petition is filed.

2(i). PETITIONER’S CASE: The brief facts as stated in the affidavit is that the property in S.No.101/3 in Thiruppuvanampudur, Thiruppavanam Taluk, Sivagangai District is the ancestral property of one Sivaparangiriya Pillai @ Parangiriya Pillai, who had created a water pandal charity (Thanner Pandal <https://www.mhc.tn.gov.in/judis> Service) to provide drinking water to the needy and thirsty people during summer season without any restriction as to any community or religion in particular and charged the said property to use a portion of its income for defraying the expenses of the said charity. Though, the charge was created and the property was deemed as a Minor Inam property under Section 17(1)(b) of Tamil Nadu Estate Abolition Act (Act 26 of 1948), based on the creation of charge, the right and interest of the said Sivaparangiriya Pillai over the property was continued till his lifetime and after his lifetime, the same devolved on his legal representatives namely Sankaranarayana Pillai, Karuppaiah Pillai, Kandasamy Pillai, Somasundaram Pillai and Diraviyam Pillai. Subsequently it was subjected to settlement proceedings entertained under Tamil Nadu Minor Inam (Abolition & Conversion into Ryotwari) Act 30 of 1963, wherein the Settlement Tahsildar (Minor Inams) Unit-1, Madurai conducted an enquiry under Section 11 of the said Act, by taking into consideration of running of the water pandal at Thiruppuvanam and also the Release Deed dated 20.02.1953 executed in favour of the Karuppaiah Pillai, Kandasamy Pillai, Somasundaram Pillai and Diraviyam Pillai and granted patta under Section 8 (2)(1) read with Section 8 (5) of the said Act by observing that such issuance of the said patta is subject to the provisions of Section 21 of the said Act in favour of Diraviyam Pillai and Kandasamy Pillai, who were alive then. While granting no claim was made by anyone especially by the respondents and no reference was made to any religious institution. Later, in the family of the

<https://www.mhc.tn.gov.in/judis> above said Kandasamy Pillai and Diraviyam Pillai, arrangements have been made for the division of the said property and revenue mutations have been made in consonance with the said arrangement of division by subdividing the said land as S.No.101/3A, 101/3B, and 101/3C in favour of the above said Kandasamy Pillai and legal heirs of Diraviyam Pillai. When such revenue mutations were made by recognizing the right and interest in the said property, no one including the HR&CE Department objected to the same. With reference to Kandasamy Pillai, a Will dated 14.10.1995 was executed in favour of the petitioner and after the demise of the said Kandasamy Pillai on 10.11.1995, the said Will came into effect and the petitioner, as the legatee became entitled to the said property, then revenue mutations have also been made in favour of the petitioner by granting patta in respect of S.No.101/3A.

2(ii). The said property had faced several litigations and the same is narrated hereunder:

A. One P.Subramaniam unilaterally alleged to be the President of Supervising Committee of Charity Property in Thiruppuvanam Circle filed a petition dated 09.05.1992 before the Manager of Sivagangai Devasthanam without any basis as though the said property was gifted by Sivagangai Devasthanam in favour of the ancestors of the said Sivaparangiriya Pillai for running water pandal charity. Though, the said petition was made to the Sivagangai Devasthanam, the 3rd respondent conducted an enquiry. The said Kandasamy Pillai <https://www.mhc.tn.gov.in/judis> appeared for enquiry and submitted necessary documentary evidence to prove the said property is an ancestral property and not at all gifted by the Sivagangai Devasthanam or earmarked for any function or festival in any religious institution and does not lie within the domain of HR&CE. The said petition was dismissed as without any merits or truth and no action was taken and action was dropped.

B. During the life time of the said Sivaparangiriya Pillai the said property was leased out through registered lease deed dated 15.12.1945 to one Venkataperumal Naidu, which is prior to Act 26 of 1948, wherein the property was referred as ancestral property. After the demise of Sivaparangiriya Pillai his legal heirs continued the lease through lease deed dated 30.05.1968. After the demise of Venkataperumal Naidu his son namely R.M.K.V.Janakiraman continued the lease by executing fresh lease deed. In the said lease deed sub lease was permitted. Thereafter during the life time of Kandasamy the said lease in favour of a R.M.K.V.Janakiraman was terminated and his sub-lessees preferred to attorn their tenancy in favour of the original owners, i.e., Kandasamy Pillai and legal heirs of Diraviyam Pillai. Some of the said tenants acted against the terms of lease and also against the interest of the lessors and appropriate legal actions were taken for their ejectment.

C. One Ramesh along with one Ambalam and others made a claim that the above said properties should be classified as Natham and sought for issuance of patta in their favour before the Revenue Divisional Officer of Sivagangai. The said claim was negatived and <https://www.mhc.tn.gov.in/judis> an appeal before the District Revenue Officer, Sivagangai was filed and the said appeal was also dismissed. Aggrieved over an appeal in C.M.A No.1 of 2001 before the Tribunal / Sub Court of

Sivagangai challenging the issuance of patta under Act 30 of 1963 after a long lapse of 34 years and the CMA was also dismissed. In the said CMA the Settlement Tahsildar Unit-1, Madurai, Tahsildar, Manamadurai and the Revenue Divisional Officer, Sivagangai were arrayed as respondents¹ to 3, who vehemently contested to justifying the orders of the Settlement Tahsildar and filed detailed written arguments stating that the said appeal cannot be entertained at all since the appeal is barred by limitation and cited various authorities and provisions of law. Thus the government itself has justified the issuance of patta by the Settlement Tahsildar under Minor Inam Abolition Act and has not chosen to file any appeal under Section 11 (3) of the said Act to challenge the said order.

D. The above said Ambalam filed W.P.(MD)No.6995 of 2007 challenging the orders of the DRO without properly advertng to C.M.A.No.1 of 2001. One A.Natarajan along with one Muthuirulandi also filed a writ petition in W.P.(MD)No.7540 of 2007 for Mandamus for issuance of patta in favour of the tenants by classifying the lands as Natham and sought an order of interim stay of operation of ryotwari patta issued under Act 30 of 1963 after lapse of nearly 40 years. Both the writ petitions were dismissed by the Hon'ble Court. However one Poovalingam obtained a patta in respect of a portion of the above said property fraudulently, when it came to the knowledge the petitioner filed an appeal before the Revenue Divisional Officer <https://www.mhc.tn.gov.in/judis> of Sivagangai and the said patta was cancelled. Upon which the said Poovalingam preferred a revision before the District Revenue Officer, Sivagangai and the same was also dismissed as early as 12.05.2000. The said order was challenged before the Commissioner of Land Administration by the above said Poovalingam and in the said proceedings also, the issuance of patta in favour of the petitioner's predecessors was duly considered and the said revision was also dismissed.

E. The writ petitioner had terminated the lease against one Venkatachalapathy and others and directed to vacate the premises, but they refused, hence the writ petitioner had filed O.S.No.105 of 2005 on the file of Principal District Munsif, Manamadurai, for ejectment of the lessees. In the said suit the lessees challenged the patta granted to the writ petitioner and their predecessors. The suit was decreed in favour of the writ petitioner, as appeal was preferred by the lessees in A.S.No.124 of 2010 on the file of Sub Court, Sivagangai. Against the concurrent decrees S.A.(MD)No. 394 of 2013 was filed by lessees, wherein the lessees had taken a plea that the above property belonged to water pandal charity and patta was incorrectly granted to petitioner's predecessor and the petitioner had no locus standi to file the suit as owner of the property. But said second appeal was also dismissed on 18.07.2013, wherein the Hon'ble Court observed that the water pandal charity is a burden over the property and the property was not absolutely dedicated for the purpose of doing water pandal charity and that the property belongs to the petitioner absolutely and that the petitioner has locus standi to <https://www.mhc.tn.gov.in/judis> institute the suit, thereby in unequivocal terms upheld and confirmed petitioner's title over the property.

F. The petitioner had initiated legal actions against the tenants for ejectment. The tenants resisted by filing various petitions to various forums. The ejectment petitions ended against the tenants. Hence the tenants filed a petition before HR&CE authorities as if the land is a religious charity. The 4th respondent had sent communication dated 21.03.2011 directing the petitioner to appear for an enquiry on 08.04.2011 by stating that the said property was wrongly classified as ryotwari punja in UDR scheme and steps are taken to cancel the patta. The petitioner along with his wife submitted a

detailed written submission dated 25.07.2011 together with enclosures of various orders and judicial pronouncements upholding their right in the property and clarifying the position. In spite of advance copy of the said reply to the 2nd respondent, who is the jurisdictional superior of the 4th respondent, no action was taken by the respondents for challenging the patta which was granted in favour of the petitioner and the legal heirs of Diraviyam Pillai. Later, the 2nd respondent sent a communication dated 25.06.2012 to Executive Officer of Thirupuvanam Town Panchayat alleging that patta has been wrongly issued in favour of petitioner's predecessor-in-interest and to the petitioner and called upon the Local Body, not to accord any plan approval for anyone. And informed the Sub Registrar of Thirupuvanam as early as 10.02.2011, not to register any documents in respect of the above property in S.No.101/3.

<https://www.mhc.tn.gov.in/judis> G. The petitioner has executed several registered deed in favour of various persons which were registered in the Office of Sub-Registrar, Thirupuvanam and the execution of those documents were not objected by the respondents. Several subsequent transactions were entertained by the transferees also which were also registered, which were also never challenged by any of the respondents. By referring to the objections made by the 2nd respondent, when plan approval was not granted by the Local Body to one Rajagopalan, a subsequent transferee in respect of a portion of the property had filed W.P (MD) No.15764 of 2014 against the 2nd respondent and the Assistant Director of Town Panchayat who refused to grant planning permission. During the pendency of the said writ petition, planning permission was accorded to the said Rajagopal and therefore, the need for continuation of the writ petition became infructuous and the said writ petition was withdrawn on 23.04.2015 by referring to the granting of approval of building plan. However, in the said writ petition, the 2nd respondent was duly represented by his counsel who did not object to the withdrawal of the said writ petition on the basis of the granting of the building planning permission.

H. When the petitioner executed a sale deed executed in favour of one Mohemmed Muthu but the same was withheld based on the objection of one Sengaimaran (who is a politician) and hence the authority directed the petitioner to get "No Objections" from HR & CE Department for releasing the document, the petitioner filed a writ petition in W.P. (MD) No.19280 of 2019 before this Hon'ble Court for releasing the said document which was pending registration. The <https://www.mhc.tn.gov.in/judis> Hon'ble Court was pleased to implead the 2nd respondent suo-moto and after elaborate hearing and by referring to the judicial pronouncements and law, the said writ petition was allowed on 22.03.2021, wherein it is held that the water charity work is merely an appendage to the property which cannot dilute the character of the property being a private property and hence it can be alienated legitimately and further observed that if at all there is any objection, the objection could be only to the extent of mandating the water charity work as the condition to be made to the integral part of the transferring of the property. It was also further observed that the property, as such, is not endowed to any religious cause attracting the provisions of HR & CE Act and the authorities have misconstrued as if the immovable property itself being endowed with any religious purpose assuming that the charity (water distribution) envisaged originally is for religious purpose. Further it was held that the decision of this Hon'ble Court in S.A.No.394 of 2013 dated 18.07.2013 would hold good for all times to come and against all claims as well and would be binding.

I. Even though counter was not filed by the 2nd respondent, the 2nd respondent has preferred a writ appeal in W.A.(MD)No.1539 of 2021. Wherein, no order of stay was granted and petitioner's document was duly registered. It is pertinent to state in the grounds of appeal the 2nd respondent had alleged that an appeal has been filed by the inspector of HR & CE, Sivagangai in R.C No: 48/2019 (1) dated 05.10.2020 before the District Revenue Officer of Sivagangai for cancellation of patta and issuance of patta in favour of the religious institution and <https://www.mhc.tn.gov.in/judis> the same has been pending for enquiry. During November, 2020 the Tahsildar of Thiruppuvanam requested the petitioner to submit documentary evidences in respect of issuance of patta and subsequent legal proceedings and the petitioner had submitted the same. However, till date, the petitioner has not received any notice or communication of the alleged appeal.

J. One G.Ganeshan, a subsequent transferee, when presented a sale deed for registration, the same was refused to be registered by the Sub-Registrar, Thiruppuvanam by insisting on "No-Objection" to be obtained from the 2nd respondent. The said Ganeshan filed W.P. (MD)No.10003 of 2023 against the officials of Registration Department as well as the 2nd respondent herein and the Hon'ble Court vide order dated 19.06.2023 had allowed the writ petition by following the observations made by the Hon'ble Court in S.A. (MD)No.394 of 2013 dated 15.07.2013. Wherein it is observed that the property is petitioner's absolute property and the charity is only a burden imposed on the property and also referred to the petitioner's writ petition in W.P.(MD)N.19280 of 2019 and have made observations as to the petitioner's absolute right over the property and the unavailability of any right for the respondents over the said property.

K. One Sengaimaran had filed public interest litigation in W.P. (MD)No.951 of 2015 against the Sivagangai District Collector, Revenue Divisional Officer, Tahsildar, Executive Officer of Thiruppuvanam Panchayat against the issuance of patta in favour of <https://www.mhc.tn.gov.in/judis> the one Rajagopal and Pandmavathi, who are the subsequent transferees in respect of the said property by alleging that the said property belonged to water pandal and the said writ petition was also dismissed on 19.09.2016 itself.

L. The petitioner had filed civil suit in O.S.No.26 and 31 of 2021, District Munsif Court, Thiruppuvanam against a tenant Loganathan for ejectment and the same is pending.

2(iii). The contention of the petitioner is that based on limitation the respondents have no power to appoint Fit Person. Further the order of appointing the fit person was passed without notice to the petitioner. The 3rd respondent has invoked Section 49(1) of HR & CE Act, but the respondent have no power to invoke the same and hence the respondent had exercised his non-existing powers and the impugned order is passed without jurisdiction. The water pandal charity is not a religious charity and the same would not come within the purview of section 6 (5) of the HR & CE Act and hence the respondents have no power to pass the impugned order. Hence the present writ petition is filed raising various grounds. The petitioner had filed rejoinder affidavit for the counter of the respondents, wherein it is stated that the order under challenge should reflect the reasons and in the absence of the same, the same cannot be supplemented by counter. And the counter only reflects the language of the 3rd parties who sought to implead <https://www.mhc.tn.gov.in/judis> themselves,

hence it is highly motivated. Further the counter nowhere states that the petitioner was given an opportunity before passing the order. At the cost of repetition the petitioner listed the proceedings where it has been held the land is not inam land, water pandal is secular and the property is capable of being alienated. Further the respondents are well aware that S.No.101/3 is assigned for water pandal charity and not for Mandagapadi. The respondents also aware that there is a specific agreement between Sivagangai Devasthanam and the petitioner's predecessors for providing Rs.150/- for Mandagapadi from the income of the two buildings situated in S.No.49/24, Thirupuvanam Padur Village, hence the 3rd respondent in the counter is twisting the facts and is attempting to mislead the Court. Notwithstanding the above fact insofar as the Mandagapadi is concerned, the same cannot be said to be an integral part of the Hindu festival and public is not a beneficiary to the same. Moreover, the Sivagangai Devasthanam which controls the Sri Pushpavaneswarar Soundaranayagi Amman Temple had preferred a suit in O.S. No. 54 of 2010 before the Sivagangai Sub Court for recovery of possession of the two buildings and this Hon'ble Court was pleased to reject the plaint of the Devasthanam in C.R.P.(MD) No.1820 of 2016 and the latter has preferred an appeal to the Hon'ble Supreme Court and the same is pending. The petitioner has filed a separate affidavit stating that the present writ petition is filed challenging the appointment of person, hence the proper and necessary party to decide the issue is the HR&CE department. However, one Mr.Sengaimaran and <https://www.mhc.tn.gov.in/judis> Mr.Ramakrishnan being neither proper or necessary parties, sought to implead themselves in the writ petition on the ground that their names have been mentioned in the writ affidavit. Hence as per the petitioners undertaking before this Court on 25.09.2023, the petitioner is stating that he is not pressing any allegations against the said persons in the present proceedings and hence prayed to adjudicate upon the legality of the impugned order on its own merits without delving on the said allegations about the impleading parties.

3(i). RESPONDENT'S CASE: The 3rd respondent, the Assistant Commissioner of HR&CE Department had filed detailed counter for himself and on behalf of other three respondents, wherein it is stated that the petition is not maintainable and denied the contention stated by the petitioner that it is only a charge created over the said property to use a portion of its income for defraying the expenses of the water pandal charity during summer season. And submitted that the petitioner has not produced any document to show that a charge alone created over the water pandal charity. Further in the order dated 01.11.1967 of Settlement Tahsildar (Minor Inam) Madurai it is held that Diraviam Pillai and Kandasamy Pillai are running the water pandal charity and they are entitled to Ryotwari Patta for S.No.101/3 and the patta was granted with a condition to carry the water pandal charity and if the persons are not interested in carrying on the water panel charity, the said persons shall inform the same to the government and <https://www.mhc.tn.gov.in/judis> pay compensatory amount and get relieved from the said charity activity. Further the Tamil Nadu Minor Inam (Abolition and Conversion into Ryotwari) Act 1963 under section 8 states when Ryotwari Patta can be granted, under section 21 states about the "Service Inams", under section 21(7)(b) states when the "service holder" fails to render the service and his right to occupy permanently the land under clause (a) shall cease and determine and the institution shall be at liberty to make such arrangements for performance of the service and shall be entitled to hold the land as its absolute property.

3(ii). Further the specific claim of the petitioner that the Hon'ble High Court in S.A.No.394 of 2013 (appeal from O.S.No.105 of 2005 and A.S.No.124 of 2010) had held there is only charge over the said property and does not belong to the water charity and it is a private property fully capable of being transferred or alienated. But the said suit was filed by the petitioner (plaintiff is the suit) for eviction of lessees. The defendants thereunder contended the property belongs to them by way of settlement deed executed by their predecessor namely Kamatchi Ammal. Further the suit was not contested as to whether the property is a water panel charity or only a charge was created over the property. Moreover the respondents herein are not parties to the said suit and hence the observation in the suit may not be applicable for deciding the issue. Hence the order passed in W.P.(MD)No.19280 of 2019 and W.P.(MD)No.10003 of 2023 by following the <https://www.mhc.tn.gov.in/judis> judgment in S.A.No.394 of 2013 cannot be relied on. Moreover against the order passed in W.P.(MD)No.19280 of 2019, the respondents had preferred W.A.(MD)No.1539 of 2021 and the same is pending. As far as the allegation the respondent have not taken any action against the Settlement Tahsildar order, the contention of the respondents is that they have repeatedly requested from the year 2011 to the District Collector, Sivagangai to furnish the files pertaining to SLR pertaining to survey number 101/3 and the order dated 01.11.1967. As far as the allegation that the respondents had not objected for registering the sale deeds especially in W.P.(MD)No.15764 of 2014 filed by one Rajagopal, the said writ petition was withdrawn and hence the said contention cannot be entertained. Further the petitioner made allegation as against one Singaimaran without including him as a party. But anyone can set the law motion more particularly when the properties are endowed for water pandal charity and conducting one day mandagapadi on the eve of Panguni festival at Sri Pushpavaneshwarar Soundaranayagi Amman Temple. The order passed in W.P.(MD)No.951 of 2015 Public Interest Litigation filed by one Sengaimaran is not helping the case of the petitioner since the Hon'ble Court held that the patta granted to the petitioner is right or wrong is a matter to be gone into through evidence and same cannot be decided in the public interest litigation. Hence the patta issued to petitioner was not considered in the said writ petition. As far as the issue of limitation to challenge the Settlement Patta order dated 01.11.1967 is concerned, the law <https://www.mhc.tn.gov.in/judis> limitation is not applicable to HR&CE Department as it is representing the minor deity and in this case the property relates to Panguni festival at Sri Pushpavaneshwarar Soundaranayagi Amman Temple. The allegation that the impugned order appointing Fit Person was not served is denied as false. The respondents deny the allegation that to satisfy certain disgruntled complaints and persons belonging to political party, the respondent are constantly misusing their power. As far as the plea of water charity not religious charity is concerned, the respondents submit that the word "Charitable endowments" are defined under section 6(5) of Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 and any property endowed for any charity would come within the purview of the Act and relied on various judgments. The respondents further submitted that under section 6(17) of the Act, wherein the word "religious endowment" or "endowment" are defined and the present property would come within the purview of the said definition and relied on various judgments. Under section 49(1) of the HR&CE Act the 3rd respondent Assistant Commissioner has power to appoint Trustees and Fit Persons and any order passed then the petitioner has alternative remedy of revision to the Government, hence the writ petition is not maintainable. Under section 41(2)(a)(iii) of the HR&CE Act states of resumption and re-grant of inam granted for performance of any charity or service. When the petitioner failed to resume the water pandal charity, then the petitioner had lost the right to hold the

settlement patta. Further submitted any alienation would hit by <https://www.mhc.tn.gov.in/judis> section 34 of the HR&CE Act, even if the case of the claimants were to be taken at face value the same would hit by section 41 of the Act and relied on certain judgments. The claim of the petitioner that water pandal charity is being carried on is denied as false by the respondents, wherein the respondents rely on the Village Administrative Officer's report 21.09.2022 and it states that the petitioner is not carrying the said charity for the past 25 years.

3(iii). The respondents further submitted that the Court in W.P.(MD) No. 14428 of 2017 has ordered the following directions:

- i. That the Commissioner HR&CE shall prepare and file a report specifying the details of the temple lands in Tamil Nadu for which Patta has been granted to 3rd parties / encroachers within four weeks.
- ii. The secretary of the Government Revenue Department shall instruct all the Tahsildar and Revenue Officers to take steps to alter the Patta granted to the beneficiaries based on the illegal transfer of land and restore the name of the temple.
- iii. The authorities shall refrain from issuing patta related to Temple Lands without getting written communication from the HR&CE.
- iv. The Commissioner HR&CE shall constitute a committee for each territories/regions and direct the members to visit all the temples in Tamil Nadu, identify the land belonging to and in the custody of the temple and in the hands of the encroaches <https://www.mhc.tn.gov.in/judis> with the help of the Tahsildar of the respective Revenue Districts.

Based on the aforesaid directions, the Joint Commissioner vide letter dated 10.02.2011 and 31.10.2018 requested the Sub Registrar not to entertain any document for registration in S.No.101/3 admeasuring 2.80 acres, vide letter dated 25.06.2010 requested the Executive Officer of Town Panchayat not to grant plan approval, vide letter dated 31.10.2018 requested the Revenue Officials not to transfer patta and Inspector of HR&CE, Sivagangai vide his letter dated 24.02.2012 to Assistant Commissioner HR&CE, requested to appoint Executive Officer as Thakkar for the Water Pandal Charity. The Special Tahsildar, Madurai vide letter dated 12.10.2018 has informed the JC and AC of HR&CE that he made enquiry upon the complaint of one Sengaimaran dated 12.09.2018 and has come to his notice that in the village accounts the property in S.No.101/3 is shown as "Thanner Pandal" and the lands were given by the Government under Ryotwari Patta to the Trustees, but the land are illegally sold by them and requested to take steps upon the same. The inspector, HR&CE vide letter dated 05.10.2020, requested the District Revenue Officer, Sivagangai to cancel Patta issued to the private individuals in respect of subject property and to change the name as "Thanner Pandal Charity".

<https://www.mhc.tn.gov.in/judis> 3(iv). The respondents submitted that the petitioner had sold the said property to several third parties without conducting the Water Pandal Charity for more than 25 years. The Release deed dated 20.02.1953, executed by Sankar Narayanan Pillai in favour of Kandasamy Pillai and three others, it has been clearly stated that the property in the said survey number was earmarked for the purpose of Water Pandal Charity and to conduct one day Mandapadi on the eve of Panguni festival at a Sri Pushpavaneswarar temple. Further in "A" register, the property in S.No.101/3 has been mentioned as "Thaneer Pandal charity". In the resettlement register, it has been stated that the purpose of granting Ryotwari Patta as "Thaneer Pandal charity" subject to the provisions of section 17(1)(b) of Tamil Nadu Estate (Abolition and Conversion into Ryotwari) Act 1948, which provides that "in all other cases, the holder of the land shall have the same rights in the land and be subject to the same liabilities as the Inamdar of minor service in the Ryotwari village". The petitioner is only a Water Pandal Charity service holder, but as per the report of the Village Administrative Officer, the petitioner did not conduct any Thaneer Pandal Charity for several decades and therefore the impugned order was passed under section 49(1) of HR&CE Act. Further the Settlement Tahsildar had granted conditional patta, mentioning that this is an "Iruvaram minor inam granted for running the Water Pandal Charity", and therefore the two persons who are running the Water Pandal Charity are entitled to Settlement Patta in S.No.101/3 subject to the provisions of section 8(2)(ii) read <https://www.mhc.tn.gov.in/judis> with section 8(5) and Section 21 of the Act. If so then the property is bound by the provision of section 6(5) of HR&CE Act. But based on the Will dated 14.10.1995, the petitioner mutated the revenue records in his name and constructed multi storage building several shops and houses and let out the property for commercial purpose and used the consideration received therefrom for his personal need. The petitioner has sold the property to 3rd parties as against the provisions of section 38 (3) of Act 1963. Further in the "Minor Inam Land B Register Memo" and in the SLR register, the property shown as "Thaneer Pandal Charity". Therefore, the above property shall not be construed as individual property. The Settlement Patta was issued with a specific condition that the property shall not be alienated and to do Thaneer Pandal charity, and therefore the same is bound by the provisions of HR&CE Act. The contention of the petitioner the charity is purely secular and not religious charity is denied. Under section 6(19) of the HR&CE Act, the "specific endowment" is defined and the same is applicable to the present case and relied on judgment. Therefore, the respondents pray that the Thanner Pandal Charity comes under "specific endowment", therefore the respondents have power to appoint Fit Person and prayed to dismiss the writ petition.

4(i). IMPEADING PETITIONERS: In W.M.P.(MD)No.15997 of 2023 one M. Ramakrishnan had filed petition to implead himself as 5th respondent and in W.M.P.(MD)No.16032 of 2023 one Sengaimaran had filed petition to imply <https://www.mhc.tn.gov.in/judis> himself as sixth respondent and both the petitions were allowed. Both the impleading petitioners have filed separate affidavit.

4(ii). IMPEADING PETITIONER / 5th RESPONDENT M.RAMAKRISHNAN'S CASE: The impleading petitioner M.Ramakrishnan had denied the claim of the writ petitioner that the land in S.No.101/3 is the ancestral property belongs to Sivaparangiriya Pillai and also denied the other claims of the writ petitioner. Further submitted that he is a resident of Thiruppuvanam Town and Thaneer Panthal Charity was originally ear marked in S.No.101/3 and conditional patta was given to

Diraviampillai and Kandasampillai, the petitioner had claimed the property under a WILL and based on the same the Petitioner had sold the property to several 3rd persons and did not conduct the Thaneer Panthal Charity for the past several decades. Hence the said Ramakrishnan had submitted representation before the District Collector, the DRO, RDO and to the official respondents herein to take action as against the petitioner and the property under Section 41(2)(a) of HR&CE Act, 1959 and Section 21(7)(b) of Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 (hereinafter referred as MIA & CR Act). An enquiry was initiated by the DRO and notice was served to the petitioner for appearance for 06.06.2023 and he appeared through his counsel and sought time until 04.07.2023. Again it was posted on 08.08.2023 and the same is pending. Since the <https://www.mhc.tn.gov.in/judis> petitioner is selling the property, the respondent had taken action under section 49(1) of HR&CE Act. Hence the said Ramakrishnan is aggrieved and had filed an impleading petition raising various grounds. This Court allowed the impleading petition in W.M.P.(MD)No.15997 of 2023 on 25.09.2024.

4(iii). IMPEADING PETITIONER / 6th RESPONDENT SENGAIMARAN'S CASE: The impleading petitioner Sengaimaran had stated that he is the Chairman of Thirupuvanam Town Panchayat, the Thanneer Pandhal property in S.No.101/3 to an extent of 2.04 acres is situated in Thirupuvanam, the petitioner and his groups are attempting to land grabbing and created the documents against original nature of the land. Therefore, he had filed public interest litigation in W.P.(MD)No.951 of 2015 and the Hon'ble Court after recording the submission of HR&CE that the land is endowed for temple and passed detailed order on 19.09.2016. Thereafter, he had preferred repeated representations before the Revenue authorities and Temple authorities seeking to cancel the Patta and other Revenue documents against the petitioner. The Hon'ble Court passed a general order dated 12.02.2018 in W.P.(MD)No.14428 of 2017, wherein it was directed to cancel the pattas granted to individual person if the land belongs to Temple. Since the petitioner is not carrying on the charity, the respondents had appointed fit person through the impugned order which is challenged and there is an interim order by this Court. the petitioner has <https://www.mhc.tn.gov.in/judis> purposefully omitted the petitioner from arriving as one of the party in order to suppress the truth. Hence, the present impleading petitioner is the necessary party. This Court allowed the impleading petition in W.M.P.(MD)No.16032 of 2023 on 25.09.2024.

5. Heard Mr.S.R.Raghunathan, assisted by Mr.Manjunath Karthikeyan for Mr.V.Ramakrishnan, the Learned Counsel appearing for the petitioner, Mr.S.Kameswaran, the Learned Government Advocate appearing for the respondents 1 to 3, Mr.Jegadesh Pandian, the Learned Counsel appearing for the 4th and 5th respondents and Mr.R.Udhayakumar, the Learned Counsel appearing for the 6th respondent and perused the documents and records placed before this Court.

6. The primary contention of the respondents is that the petitioner had not produced any documents to prove that the water pandal charity ought to be carried out from the income derived from the land. Such contention of the respondents ought to be rejected since the same is answered in the order passed by the Settlement Tahsildar. The third paragraph of the order states as under:

“As per the release deed the above persons run the water pandal from out of the income derived from the Inam lands” <https://www.mhc.tn.gov.in/judis> Further, on

perusal of the Release Deed dated 20.02.1953 it is seen that the executant Sankaranarayana Pillai had stated that the said Sivaparangiriya Pillai was in exclusive possession and enjoyment of the two items of the schedule properties and having patta in his name. The property had been let for rent / lease and out of the said income he is carrying on the water pandal charity. Further the Settlement Tahsildar while passing the order had considered the aforesaid Release Deed dated 20.02.1953 and also the scheme draft for water pandal charity which are marked by Diraviyam Pillai as Ex.A1 and Ex.A2. From the above it is clear that the water pandal charity is conducted out of the income from the subject lands. Hence the allegation of the respondents that 'petitioner had not produced any documents to prove that the water pandal charity ought to be carried out from the income of derived from the land' is without any basis and the petitioner had produced documents before the appropriate authority i.e. the Settlement Tahsildar to prove the same and the said allegation is without any contra evidence.

7. The next contention of the respondents is that the property in dispute is endowed not only for conducting water pandal charity, but for performing one day Mandagapadi during Punguni month Utsavam in Thiruppuvanam Sri Pushpavaneswarar Soundaranayaki Amman Kovil and to conduct Guru pooja in the ancestor's Samadhi. On perusal of the Agreement for Mandagapadi dated 28.03.1955 entered into by the petitioner's ancestors with the Sivagangai <https://www.mhc.tn.gov.in/judis> Samasthanam to conduct Mandagapadi in the aforesaid temple, it is seen that the property allotted to do Mandagapadi is situated in S.No.49/24, Ward No.3 Door No.3/45 and 3/43, which is shown as 1st item in the Release Deed. Whereas for carrying Gurupooja for ancestor and water pandal charity the property allotted is situated in S.No.101/3 Ward No.2, which is shown as 2nd item in the property mentioned in the Release Deed dated 28.03.1955. Further it is seen in Agreement for Mandagapadi Deed that the water pandal charity land is shown as one of the four boundaries. Therefore the said two properties are different and the said fact is evident from perusing the Release Deed and Agreement for Mandagapadi Deed. Therefore this Court is of the considered opinion that the Mandagapadi for the aforesaid temple is not from the subject property situated in S.No.101/3 Ward No. 2 but from S.No.49/24, Ward No.3 Door No.3/45 and 3/43. The official respondents and the impleaded respondents are deliberately confusing the Court by stating the property in S.No.101/3 is meant for Mandagapadi.

8. Even if the contention of the respondent that the property is allotted to carry out one day Mandagapadi for the aforesaid temple is accepted, then also the said property will not come within the purview of HR&CE Act. The issue of "Mandagapadi" was already dealt with by the Hon'ble Supreme Court in the case of Sri Kallalagar Soundaraja Perumal Chitra Poornami Mandakapadi Trust, through its hereditary trustees, Muthiah Konar and another vs. Maruthamalai <https://www.mhc.tn.gov.in/judis> Ambalam, reported in 1959 (72) LW 646 wherein it is held that the property endowed for Mandagapadi cannot be considered as public endowment, since the Mandagapadi is not integral part of Chitrapournami Festival of the temple. The relevant portion is extracted here under:

.....

“Before considering that question it is necessary to refer to a contention raised on behalf of the appellants by Mr.T.R.Srinivasan. He contented, that the trust created by Ex.A.1 was a public trust. The learned Subordinate Judge held that the trust was only private in character. Under Ex.A.1 provision is made for the construction of a mandapam on a property of the donor and a mandagappadi was directed to be performed to Sri. Soundararaja Perumal during the time of the festival of the temple. The mandagappadi is not an integral part of the Chitrapournami Festival of the temple which is being conducted every year on the sands of the Vaigai. It is in no way connected with it. The occasion of that festival is taken advantage of to perform the worship under the trust when the Deity would be on its way to or from the temple to Madurai for the festival. Such worship which is familiarly known as Mandagappadi is common in our country. The Deity is invited to stop a while and worship is offered at places where the devotees want to worship it. An endowment for the conduct of such worship cannot be a specific endowment as it is in no way connected with the temple or any of its principal festivals. It is intended only for the benefit of the persons offering worship. Such an endowment being neither for the public nor for the performance of any recognized puja or festival of the temple. In Deoki Nandun V. Muralidhar (1) reported in AIR 1957 SCR 133, the Supreme Court held that in the case of a private trust the beneficiaries would be specific individuals while in the case of a public endowment it <https://www.mhc.tn.gov.in/judis> would be the general public or a class thereof. In the present case, there is no difficulty in finding that the intention of the donor was to secure spiritual benefit to Mooka Konar and his family. I am of opinion that the conclusion of the lower Court that the trust is a private one is correct”.

In the above case one Mooka Konar had created the endowment for Mandagapadi of Kallazhagar and while considering the same the Hon’ble Supreme Court had held that the concept of Mandagapadi is unique and it is generally practiced in our country and especially in Tamil Nadu. In Mandagapadi the deity is invited to stop a while and worship is offered at places where the devotees want to worship it.

For carrying out such worship, a specific endowment is created and it is in no way connected with the temple or any of its principal festivals.

9. Further, the issue whether the endowment for Mandagapadi can be considered as private trust or public trust was considered in the case of M.G.Narayanaswami Naidu and another Vs. M.Balasundaram Naidu and others, reported in [1952] 65 LW, 368 and the Court had held that the endowment for Mandagapadi is only private trust and not public trust and the relevant portion is extracted hereunder:

“The question as to whether a private trust was created does not admit of any serious doubt. The previous litigations regarding these properties have ended in decisions that the trust is a private trust. In Ex.P6, a judgment in S.A.No.281 of 1896, Subramania Ayyar and Benson JJ found that the <https://www.mhc.tn.gov.in/judis>

property was trust property. But the more recent decision is contained, as we have stated in A.S.No.406 of 1943. That arose out of O.S.No.6 of 1942 on the District Court of Madurai. The Hindu Religious Endowment Board, on the footing that the trust in question was a public trust framed a scheme for the management of the trust, where upon the first defendant filed O.S.No.6 of 1942 on the file of the District Court of Madura for setting aside the scheme on the ground that the properties dedicated do not constitute an endowment of a public trust. The District Judge dismissed the suit considering that the offerings made to a deity when installed in the mandapam in item 1 was a service connected with the temple and considered that the mandagapadi was an integral part of the temple itself as it was performed in the course of the festival. The High Court after considering the evidence in the case as well as the decisions arrived at in previous litigation, came to the conclusion that the endowment in question is an endowment for a private trust and the public has no connection with it whatever”.

10. This Court has considered the same issue in W.P.(MD)No.2327 of 2016 in the case of Selva Rajakumar Vs. the Commissioner HR&CE and others vide judgment dated 25.04.2024 and the aforesaid judgments are followed. In the aforesaid judgments it has been held that when the deity is invited and stopped for a while to worship then the same cannot be considered as integral part of the main temple festival and further held that Mandagapadi cannot be considered as forming part of main temple festival consequently Mandagapadi cannot be considered as public charitable trust coming within the purview of the HR&CE Act. <https://www.mhc.tn.gov.in/judis> Therefore, in the present case the said Mandagapadi cannot be considered as forming part of main temple festival and hence the respondents have no jurisdiction to invoke the HR&CE Act.

11. As far as Gurupooja in Samadhi is concerned the same is considered in Saraswathi Ammal and another V. Rajagopal Ammal reported in (1953) 2 SCC 390, wherein it is held as under:

“It was held in the Madras decisions above noticed that the building of a samadhi or a tomb over the remains of a person and the making of provision for the purpose of Gurupooja and other ceremonies in connection with the same cannot be recognised as charitable or religious purpose according to Hindu law. This is not on the ground that such a dedication is for a superstitious use and hence invalid. Indeed the law of superstitious uses as such has no application to India. The ground of the Madras decisions is that a trust of the kind can claim exemption from the rule against perpetuity only if it is for a religious and charitable purpose recognised as such by Hindu law and that Hindu law does not recognise dedication for a tomb as a religious or charitable purpose. It is, however, strenuously argued by the learned counsel for the appellants that the perpetual dedication of property in the present case, as in the Madras cases above referred to, must be taken to have been made under the belief that it is productive of spiritual benefit to the deceased and as being somewhat analogous to worship of ancestors at a sradh. It is urged, therefore, that they are for religious purposes and hence valid. The following passage in Mayne's Hindu Law, 11th Edition, at page 192, is relied on to show that.

<https://www.mhc.tn.gov.in/judis> "What are purely religious purposes and what religious purposes will be charitable must be entirely decided according to Hindu law and Hindu notions."

The Hon'ble Court had held that Gurupooja and other ceremonies in connection with the same cannot be recognised as charitable or religious purpose since as per Hindu law and Hindu notions it is not considered as charity or religious.

Following the same this Court is of the considered opinion that Gurupooja will not come within the purview of HR&CE.

12. The next contention of the respondents is that the Settlement Tahsildar had granted ryotwari patta with a condition that the petitioner ought to carry out water pandal charity but the petitioner has not carried the water pandal charity, but had sold the lands allotted to the water pandal charity and as on date there is no land available for conducting water pandal charity. But the said contention of the respondents was vehemently objected by the petitioner and submitted that the said water pandal charity is carried out along with maintaining the ancestor's samadhi. Every year during summer season, the petitioner is conducting the water pandal charity in a place meant for providing water to the needy and thirsty person irrespective of caste, creed or religion and the same is confined not only to Hindus or Jains or any section of the said community, but to everyone. On perusing the Release Deed it is seen that the water pandal charity and the ancestor samadhi are <https://www.mhc.tn.gov.in/judis> in S.No.101/3. It is an admitted fact that the land allotted to samadhi is not sold. Therefore the contention of the respondents that all the lands allotted to conduct water pandal charity are sold is incorrect and without evidence. Hence the plea of the petitioner that he is maintaining the Samadhi along with the water pandal charity is acceptable. But the respondent contended that the Village Administrative Officer had submitted a report stating the petitioner is not conducting the said charity, but it is seen that the Village Administrative Officer before conducting enquiry and before filing the said report had not issued any notice to the petitioner calling for evidence to substantiate that the petitioner is conducting the said charity. Hence the said report ought to be rejected. Based on the report the impugned order appointing Fit Person is passed, hence the same is liable to be interfered for violating the principles of natural justice.

13. The contention of the petitioner is that the impugned order to appoint Fit Person was passed without issuing any notice to the petitioner. The 3rd respondent had passed the order without conducting any enquiry and without providing an opportunity, not even the copy of the impugned order was served on the petitioner till date. But deliberately given the copy to one of tenants of the petitioner. The official respondents have filed detailed counter, but the counter is silent on the non-issuance of notice to the petitioner. Therefore this Court is of the considered opinion that the impugned order is passed without issuing notice to the <https://www.mhc.tn.gov.in/judis> petitioner, thereby violative of principles of natural justice. Hence the impugned order is liable to be set aside. Having held so, the contention of the respondents that there is alternative remedy under Section 21-A of the HR&CE Act, to file appeal before the appellate authority cannot be entertained and the said plea of alternative remedy is rejected.

14. The next contention of the petitioner is that the issue “whether the property in S.No.101/3 is Inam lands or not” was already considered in O.S.No. 105 of 2005 vide judgment dated 15.09.2010, on appeal the same is confirmed in A.S.No.124 of 2010 vide judgment dated 02.04.2013 and again confirmed in S.A.No.394 of 2013 vide judgment dated 18.07.2013. Further the same issue was also considered in O.S.No.96 of 2002 and O.S.No.45 of 2003 vide judgment dated 15.09.2004, on appeal the same is confirmed in A.S.No.101 of 2004 and A.S.No. 102 of 2004 vide judgment dated 15.12.2006 and again confirmed in S.A.No.685 of 2007 and S.A.No.686 of 2007 vide judgment dated 09.09.2016. The said judgment passed in S.A.No.394 of 2013 was relied on and referred in other litigations in W.P.(MD)No.19280 of 2019 and W.P.(MD)No. 10003 of 2023 and the writ petitions were allowed in favour of the petitioner / subsequent purchasers. Hence the respondents cannot raise the same issue again. This contention of the petitioner was vehemently opposed by the official respondents and the impleaded respondents wherein the respondents submitted that the said second appeal <https://www.mhc.tn.gov.in/judis> judgement were passed against the tenants and hence the same is not binding on them, since the judgment passed in persona and not in rem. Further the respondents were not given any opportunity to put forth the revenue documents before the Court before deciding the issue. In order to consider the rival contentions this Court perused the judgment passed in S.A.No.394 of 2013, wherein it is held that, “24. The present suit has been instituted for the relief of the recovery of possession by way of stating that the present defendants have been enjoying the suit property as tenants. In fact on the side of the first respondent / plaintiff, exponential evidence has been let in for the purpose of proving that the plaintiff is having title to the suit property and further the suit property has not been absolutely dedicated for the purpose of doing water charity and in fact the suit property is burdened with such kind of charity and therefore the plaintiff is very well having locus standi to institute the present suit. Even at the risk of repetition the Court would like to point out that the plaintiff has clearly established his alleged title to the suit property and also he clearly terminated the tenancy rights of the defendants and under the said circumstances the plaintiff is entitled to get the relief sought for in the plaint.”

15. In the suit filed in O.S.No.96 of 2002 and O.S.No.45 of 2003 a specific issue was framed “whether the suit property along with other properties originally belongs to Minor Inam Thanneer Pandal Charity properties” and the finding rendered is extracted below:

<https://www.mhc.tn.gov.in/judis> “13. gpujpthjp jug;gpy; jhth nrhj;J xU ikdu; ,dhk;

nrhj;J vd;Wk;> mJ jz;zPu;ge;jy; ju;kj;jpw;F ghj;jpag;gl;lJ vd;Wk;> vdNt mjidg; nghWj;J fe;jrhkpgps;is capy; rhrdj;ij vOjp itf;f KbahJ vd;Wk; \$wg;gl;Ls;sJ. ,jidg; gw;wp ghu;fF ; k;NghJ th.rh.1 mtupd; rhl;rpaj;jpy; Mjpapy; Gy vz;.101/3V nfhz;l jhth nrhj;J rq;fuypq;fk;gps;is kfd; fe;jrhkpgps;isf;F ghj;jpag;gl;lJ vd;Wk;> Nkw;gb nrhj;jpd; gl;lh Mjpapy; fe;jrhkpgps;is> nyl;Rkzgps;is kw;Wk; rpd;dr;rhkpgps;is MfpNahu;fs; ngaupy; toq;fg;gl;L gl;lhjhhu;fs; nra;Jnfhz;l Vw;ghl;bd;gb fe;jrhkpgps;isf;F Nkw;gb nrhj;J jdpj;J ghj;jpakhdJ vd;Wk;> mtu; mjw;fhd epytup nrYj;jp te;jhu; vd;Wk; \$wpapUf;fpwhu;. epyclik Nkk;ghl;L jpl;l;jpd; fPo; toq;fg;gl;l gl;lh th.rh.M.1 MfTk;> fe;jrhkpgps;isf;F toq;fg;gl;l rpl;lh> th.rh.M.2 MfTk; jhf;fy; nra;ag;gl;Ls;sJ. th.rh.1 mspj;j rhl;rpaj;jpypUe;Jk;> th.rh.M.1>2-y; ,Ue;Jk; jhth nrhj;J jdpj;gl;l Kiwapy; fe;jrhkpgps;isf;F ghj;jpakhf ,Uf;fpwJ vd;gij mwpa KbfpwJ. vdNt

th.rh.M.1>2 Kiwahf tprhuiz ,y;yhky; toq;fg;gl;lJ vd;W gpupjthjp jug;gpy; \$wg;gLtJ Vw;Wf; nfhs;s;jf;fjy;y. th.rh.M.4-y; ,Ue;Jk; jhth nrhj;ijg; nghWj;J thjp kapy;NtYf;F gl;lh khWjy; cj;juT nfhLf;fg;gl;Ls;sJ vd;gJk; njupfpwJ. kw;Wk; gp.rh.M. 15d;gb fe;jrhkpgps;is kw;Wk; jputpak;gps;isf;F jhth nrhj;ijAk; kw;Wk; gpw nrhj;Jf;fisAk; nghWj;J gl;lh nfhLf;fg;gl;bUf;fpwJ vd njupfpwJ. NkYk; th.rh.1 mtupd; rhl;rpaj;jpy; G+typq;fk; vd;gtu; jhth nrhj;Jld; Nru;e;j nrhj;jpd; xU gFjpia mtuJ ngaUf;F khw;wpaij vjpu;j;J jhd; kD nra;J mjd;Ngupy; rptfq;if Nfh;lhl;rpau; Nkw;gb gl;lh khw;wj;ij uj;J nra;jhu; vd;Wk;> ,J Fwpj;J rPuha;tpy; khtl;l tUtha; mYtyu; rptfq;if Nfh;lhl;rpau;pd; cj;juit jdf;F Mjuthf cWjpgLj;jpdhu; vd;Wk;> Nky;KiwaPlb ; y; rpwg;G Mizau; kw;Wk; jiyik epy Mizau;> khtl;l tUtha; mYtyupd; Mizapid mq;fPfpupj;J cj;jutpl;lhu; https://www.mhc.tn.gov.in/judis vd;Wk; \$wpapUf;fpwhu;. mjw;fhd cj;jpuTfs; th.rh.M.5 Kjy; 7 Mf jhf;fy; nra;ag;gl;Ls;sJ. th.rh.M.5 Kjy; 7I ghu;ff ; k;NghJ mitfs; thjpad; cupikia cWjpgLj;Jk; Mtzq;fshf mike;jpUf;fpwJ. jhth nrhj;Jf;Fk;> gpw nrhj;Jf;fSf;Fk; thjp nrYj;jpa epytup urPJ th.rh.M.8 Mf jhf;fy; nra;ag;gl;Ls;sJ. th.rh.2k;> mtupd; rhl;rpaj;jpy; jhth nrhj;jhdJ fe;jrhkpgps;is vd;gtUf;Fk;> mtuJ \$l;L Rthd;jhuuhd jputpak; gps;isf;Fk; ghj;jpag;gl;ljhFk; vd;W \$wpapUf;fpwhu;. th.rh.1>2 mspj;j rhl;rpq;fspypUe;Jk; th.rh.M.1>2>4 kw;Wk; th.rh.M.8-y; ,Ue;Jk;

jhth	nrhj;jhdJ	Muk;gj;jpy;	fe;jrhkpgps;isf;Fg;
mtu;	vOjp	itj;j	th.rh.M.3 capy;

ghj;jpakhfp ,Uf;fpwJ vd njupfpwJ. NkYk; gp.rh.M.2 Kjy; 4 ypUe;Jk; jkpo;ehL ikdu; ,dhk; xopg;G kw;Wk; uaj;Jthup khw;Wr;rl;l; 1963 - d;gb jhthr;nrhj;Jk;> mjidr; rhu;e;j gpw nrhj;Jf;fSk; muRf;Fr; nrhe;jkhdJ vd;W fUjKbahJ. NkYk; jhth nrhj;jpw;Fk; kw;Wk; mjDld; Nru;e;j gpw nrhj;Jf;fSf;Fk;

Nru;j;J fe;jrhkpgps;is tifawhTf;F gl;lh nfhLf;fg;gl;L ,Ug;gjw;F NtW ahUk; tUtha;j;Jiw mjpfpupfsplk; Ml;Nrgiz nfhLj;jjhF gpupjthjp jug;gpy; Mtzq;fs; vJTk; jhf;fy; nra;ag;gltpy;iy. mjw;fhd NtW rhl;rpfsk; tprhupf;fg;gl;L rhl;rpq;fs; ,lg;gltpy;iy. MfNt jhth nrhj;J ikdu; ,dhk;

nrhj;J ,y;iynad;gJk; mJ fe;jrhkp gps;isf;F Mjpapy; ghj;jpag;gl;L th.rh.M.3 capy; rhrdj;jpy; %yk; thjpf;F fpilf;fg;

ngw;Ws;sJ vd;Wk; njupfpwJ. ,t;thwhd epiyapy; jhth nrhj;ijAk; kw;Wk; mjDld; Nru;e;j rpy nrhj;Jf;fisg; nghWj;Jk; fe;jrhkpgps;is capy; vOjp itg;gjw;F cupik cz;L vd;gJ ed;whf tpsq;Ffpd;w epiyapy; mjidg; gw;wp Ml;Nrgk; nra;tjw;F gpupjthjpf;F vt;tpj cupikAk; fpilahJ vd;gijAk;

mwpaKbfpwJ.” https://www.mhc.tn.gov.in/judis The said judgment is confirmed in A.S.No.101 of 2004 and A.S.No.102 of 2004 also. After perusing the aforesaid judgments this Court is of the considered opinion that the Civil Courts had framed the question regarding the Inam character of the property in dispute and had answered the same. Even though the official respondents are not party in the said civil litigations, when the relevant issue was framed and the Court had perused the

records, thereafter had rendered the judgment, then the judgment cannot be stated as erroneous. Therefore, even though the official respondents are not party in the civil proceedings, when the issue was discussed and based on the records, it has been held as that land is not Inam land, then the same is binding on the present respondents. Also binding against all respondents including the impleaded respondents.

16. Having held so, this Court is proceeding to independently scrutinize the records to ascertain the Inam character of the property in dispute. The contention of the respondents is that even in Settlement Land Register it has been remarked as Thanneer Pandal Kanibam, therefore the same ought to be considered as land given for charity and the same is Inam. The said contention of the respondents was vehemently opposed by the petitioner and submitted that the land is an ancestral property of Sivaparangiriya Pillai and the said Sivaparangiriya Pillai had carried out the water pandal charity in their own land. In order to ascertain this fact this Court perused the Settlement Register submitted by the impleaded <https://www.mhc.tn.gov.in/judis> respondents, wherein it is seen that the extract of the register is submitted by both the impleaded respondents. In one extract it is shown as “Thanneer Pandal Kanibam Parangiriya Pillai son of Subramania Pillai – ancestral” In another extract it is seen that the “Thanneer Pandal Manibam” but there is no mention of other particulars. Further the impleaded respondents had produced the noting in the margin, wherein it is stated as under:

“It is noted in village B register as “Thanneer Pandal Manibam”. No quit rent or fasali is fixed. The present employee Sivaparangiriya Pillai son of Vaiyapuri Pillai states that he has no record to show how the grant was made and but the thanneer pandal service is being done by him. Since he had no record to prove the conditions of grant, the land may be treated as ryoti land” The above noting were made on 29.09.1952, wherein it only states that the said Sivaparangiriya Pillai could not produce the details of the grant and hence based on the doubt the land is being treated as ryoti land. But the contention of the petitioner is that the said land is private land, that is the reason it has been noted as “purvigam” i.e. “ancestral” in the said Settlement Register. And further relied on the lease agreement dated 15.12.1945 entered into by the said Sivaparangiriya Pillai with one of his tenant, wherein it is mentioned that the property is ancestral.

Admittedly the said lease agreement dated 15.12.1945 is prior to the settlement entry register dated 29.09.1952. It is pertinent to note that the settlement order passed by the Tahsildar also recorded the fact that the said proceedings is suo <https://www.mhc.tn.gov.in/judis> moto proceedings and not based on any application, which means the said property may not be “grant for carrying on water pandal charity”, that is why the earlier land holder had not filed any petition and only suo moto proceedings was initiated. For all these reasons, especially when the extract of Settlement Land Register states that the said property is “ancestral”, this Court is of the considered opinion that the land is not Inam lands. And the judgment rendered in O.S.No.96 of 2002 and O.S.No.45 of 2003 and the judgment rendered in

S.A.No.394 of 2013 is absolutely right and the same needs no interference.

17. The next contention of the respondents is that the writ appeal in W.A. (MD)No.1539 of 2021 is pending along with status quo but the petitioner had concealed the status quo order. On perusal of the order passed in W.P.(MD)No. 19280 of 2019 it is seen the said writ petition is filed for quashing the order denying to register the sale deeds and consequently to register the sale deed. By relying on the judgment rendered in S.A.No.394 of 2013, the said writ petition was allowed, aggrieved over the said writ appeal was filed. In the present case the challenge is against the appointment of Fit Person. This Court is of the considered opinion the main contention of the respondents is that the judgment rendered in S.A.No.394 of 2013 is not binding on the respondents and on such plea the writ appeal is filed. This Court has considered the same and has held that the said judgment rendered in S.A.No.394 of 2013 is binding on the respondents also, <https://www.mhc.tn.gov.in/judis> since the issue was framed thereafter the Civil Court had rendered the finding based on documents. Further, this Court independently also considered the said issue based on the Settlement Land Register and especially by taking into the remarks “ancestral” entered into settlement register, therefore the respondent plea that the judgment rendered in S.A.No.394 of 2013 is not applicable is rejected. Hence, pendency of writ appeal and interim status quo order cannot be cited to consider the case of merits based on the facts of this case.

18. The next contention of the respondents is that the 3rd respondent had preferred an appeal on 05.10.2020 before the District Revenue Officer, Sivagangai and the said proceedings are pending. But the petitioner had relied on the Patta numbers based on the earlier Settlement order and hence the present writ petition cannot be entertained and further the petitioner had approached the Court without clean hands. But the contention of the petitioner is that the said DRO appeal is being filed after a lapse of 53 years and the same is hit by principles of limitation. The section 5 under the Limitation Act is not applicable to any appeal or revision filed under section 27 of the Tamil Nadu Minor Abolition Rules.

19. The further contention of the petitioner is that the Minor Inam Abolition Act is a self-contained code and the limitation prescribed under the said statute shall prevail over Section 109 of the HR & CE Act. Hence the said provisions of section 109 are not applicable to the proceeding under section 11(3) of Tamil Nadu Minor Inam Abolition Act. The said proposition is considered in W.P.No. <https://www.mhc.tn.gov.in/judis> 22858 of 2006 dated 22.12.2006 in the case of Periyar Nagar Veetu Urimaiyalargal Podhu Nala Sangam and other Vs. Special Commissioner and Land Administration and others, wherein it is held as under:

“22. When the first respondent temple has taken a stand that the order of the Settlement Tahsildar I Gobichettipalayam dated 22.04.1969, was not known to them till they have filed the present impugned appeal in C.M.A.No.81 of 2003 on 20.11.2003 which is nearly 35 years after the order passed by the authority under the Minor Inams Act and especially, placing reliance on Section 45 of the Madras Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963, it is the duty of the first respondent to say at least now as to when such copy of the Settlement Tahsildar I Gobichettipalayam, dated 22.04.1969 was received by them. Unfortunately, in the

counter affidavit filed by the temple even though a reference is made about Section 45 of the Minor Inams Act, it is not stated as to when the order of the Settlement Tahsildar was either received by them or they came to know about it. The facts as I have enumerated above that in the Inams Tribunal and in the batch of appeals in C.M.A.No.670 of 1969 etc., batch they were represented through the counsel, goes to show that the present claim is made only for the purpose of dragging on the proceedings, which is otherwise hopelessly barred by limitation.

23...

24. Therefore, while conducting an enquiry the Assistant Settlement Officer has to give notice to various persons as stated under Section 11(2) of the Act. In the present case Settlement Tahsildar I Gobichettipalayam in his order dated 22.04.1969 has stated that he has examined 25 witnesses. It is also the specific case of the first respondent temple that the trustees or administrators have not been given notice but the temple was represented by poojaris.

<https://www.mhc.tn.gov.in/judis>

25. On the other hand as I have stated above the order of the Inams Tribunal dated 31.10.1972 passed in C.M.A.No.670 of 1969 etc., batch, in which the second respondent is the temple represented by its Managing Trustee Varadaraja Naidu, who was represented by the counsel and therefore, on fact it cannot be accepted as if, some unauthorized persons have represented the temple.

26. As correctly pointed out by the learned Senior Counsel for the petitioners, the Madras Minor Inams (Abolition and Conversion into Ryotwari) Act 1963, is self-contained code and it contemplates the specific provision and period of limitation for appeal under Section 11(3) is provided. Further, any order passed by the authorities under the Act becomes final as it is stated under Section 46 of the Act which runs as follows:

....

27. The Act is given a overriding effect to the contract or any other laws under Section 49 and also confers power in respect of grant of Ryotwari patta to Innamdars under Section 8(2) notwithstanding the other laws including the Hindu Religious & Charitable Endowment Act, 1959 on certain conditions. Therefore, there is absolutely no difficulty to come to the conclusion that the period of limitation for filing appeal for the first respondent against the order of the Settlement Tahsildar I Gobichettipalayam dated 22.04.1969 was 3 months from the date of the order or further period of 2 months, which can be excused. It is in this regard the contention of the learned counsel for the respondents placing reliance on Section 45 of the Act which is relevant to be considered. Section 45 of The Madras Minor Inams (Abolition and Conversion into Ryotwari) Act 1963 runs as follows:

<https://www.mhc.tn.gov.in/judis>

28. While it is true that the first respondent has not stated anywhere as to when he has received the order of the Settlement Tahsildar I Gobichettipalayam dated 22.04.1969 and also it is true that in respect of one of the portions of the order of the Settlement Tahsildar I Gobichettipalayam dated 22.04.1969, when some of the occupants have filed the appeal before the Inams Tribunal in which the temple was shown as second respondent, which was represented by the counsel, it is relevant to point out that even as admitted by the first respondent temple, one T.Thiyagarajan has filed appeal before the Minor Inams Tribunal in C.M.A.No.1 of 1981 against the same order of the Settlement Tahsildar I Gobichettipalayam dated 22.04.1969 and that was dismissed by the Tribunal as early as on 05.01.1983. A reference to the copy of the said decree passed by the Inams Tribunal in C.M.A.No.1 of 1981 as filed by the first respondent temple itself in the typed set of paper shows that the copy of the said order has been communicated to the counsel who appeared in the said appeal before the Inams Tribunal. Therefore, even assuming that the order of the Inams Tribunal passed in C.M.A.No.670 of 1969 etc., batch dated 31.10.1972 was not represented properly by the first respondent, when admittedly the first respondent has represented in C.M.A.No.1 of 1981 the order of dated 05.01.1983 which was communicated to the counsel as it is seen in the decree of the Tribunal, it has to be presumed that at least 1983 the first respondent temple had the knowledge about the order of the Settlement Tahsildar I Gobichettipalayam dated 22.04.1969. When that is the factual position, I do not think that the wordings of Section 45 can be taken advantage of by the first respondent temple for the purpose of explaining the long delay of 35 years in filing the appeal. The benefit under Section 45 can be made applicable to those persons who are not parties or who are not represented through counsel either before the <https://www.mhc.tn.gov.in/judis> Settlement Tahsildar or before the Innam Tribunal. Adding to that in the present case as I have pointed out earlier, the first respondent temple has not even stated as to when the first respondent came to know about the order of the Settlement Tahsildar dated 22.04.1969. On the facts and circumstances of the case when once the copy has been served to the counsel representing the first respondent, that should be taken as knowledge of the petitioners and therefore, the contention raised by the learned counsel for the first respondent as if the actual notice should be serviced and that has to be decided in the appeal is unsustainable. In such circumstances allowing of such appeal after a belated period of 35 years which is hopelessly barred by limitation and in the present factual situation herein can only be an abuse of process of law and this Court cannot be mute spectator to allow such proceedings to go on.

29. The further contention placing reliance on Section 109 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 has no legs to stand Section 109 which runs as follows:

“109. Central Act 36 of 1963 not to apply for recovery of properties of religious institution.- Nothing contained in the Limitation Act, 1963 (Central Act 36 of 1963) shall apply to any suit for possession of immovable property belonging to any religious institution or for possession of any interest in such property.”

30. A reading of the said section shows that the period of limitation is dispensed with only in respect of cases filed by the religious institutions for the purpose of possession of properties occupied

unauthorisedly by the occupants who claim adverse possession whereas on the facts and circumstances of the present case the same is governed by the special enactment, namely, the Madras Minor Inams (Abolition and Conversion into Ryotwari) Act 1963. Equally, the reliance placed on by the learned counsel for the first respondent temple in the judgement rendered in <https://www.mhc.tn.gov.in/judis> Alamelu Ammal Vs. District Collector, Salem reported in 1997(1) CTC 669 is not sustainable. That was the case wherein the appellant before the Division Bench of this Court was not a party to the proceedings before the Settlement Tahsildar. On the other hand in the present case, the first respondent has been a party not only before the Settlement Tahsildar I Gobichettipalayam but also effectively represented through the Inams Tribunal in C.M.A.No.670 of 1969 etc., batch constituted under the Madras Minor Inams (Abolition the Conversion into Ryotwari) Act 1963, as per Section 11(3) of the Act and C.M.A.No.1 of 1981.

31. The reliance placed on the judgement of the Division Bench of this Court reported in 1978 (2) MLJ 388 in Panduranga Chetty and another Vs. The Government of Tamil Nadu rep.by its Collector, North Arcot and another. That was the case wherein the appellant has specifically made a claim that the order was communicated on a particular day and that point was not considered by the Tribunal at all and the Division Bench has also gone into the merits of the case. On the present factual position as I have enumerated above, seeking refugee under Section 45 of the Act will only thwart the entire object of the Act which is specialized in nature.” In the present case, the Settlement Tahsildar had passed the order on 01.11.1967. The 3rd respondent had conducted an enquiry when a petition was filed claiming that the land belongs to Sivagangai Devasthanam and an order was passed by the 3rd respondent on 09.05.1992 dropping the proceedings. Then again proceedings was initiated based on the petition dated 21.03.2011 filed by lessee before the 4th respondent / Inspector and notice was issued to the petitioner to appear for enquiry on 08.04.2011. Hence, the respondents are aware of the settlement patta granted to the petitioner in the year 1992 and 2011. But the contention of the <https://www.mhc.tn.gov.in/judis> respondents that they sought the copy of the Settlement Tahsildar proceedings from the District Collector all these years and the same could not be obtained. Therefore it is evident that the respondents are aware of the same from 1992 onwards, at least from 2011. Hence the appeal filed by the respondents on 05.10.2020 is beyond the limitation period prescribed in the Inam Abolition Act, 1963. Moreover as rightly held in the aforesaid judgment the section 109 is applicable only when it is encroached in temple land. Admittedly in the present case the land in dispute does not belong to any temple.

20. The next contention of the respondents that the petitioner has not challenged the report of the Inspector of HR&CE. It is settled principles that any report cannot be challenged, unless the same is acted upon and a consequential order is passed. Therefore the said plea is rejected.

21. The contention of the impleaded respondents that under right to information the document shows that the T.D.No.1853 an extent of 2 acres 4 cents is owned by Pagoda Pushbhavaneswarar Samy and the patta name Thirumalai Naicker and kattiyaam Ragava. However the same ought to be proved by correlation register and further the same ought to be proved in a civil suit only. As on date the same is not proved by filing civil suit, moreover as held supra any <https://www.mhc.tn.gov.in/judis> challenge to the settlement patta as on date would hit by limitation and hence the said plea is rejected.

22. The next contention of the respondents is that the records, old documents and exparte orders relied by the petitioner is being tested in the writ appeal and there is an interim status quo order. Further the thanneer pandal property is a temple property or private property is being considered in the writ appeal and the writ appeal is pending. Hence the present writ petition is a parallel proceedings and the same is hit by res sub-judice. The impleaded respondent is absolutely right in stating that the parallel proceedings is unnecessary, but such parallel proceedings is a creation of the 3rd respondent by appointing a fit person. When there is an order in favour of the petitioner, when the respondent had challenged the same in writ appeal proceedings, the respondents ought not to have passed the impugned order of appointing fit person. In fact the impugned order is against the order passed in the writ petition and the same would amount to contempt. The respondents cannot take shelter under the interim status quo passed in the writ appeal and appoint fit person. The respondents ought to have waited for the out-come of the writ appeal and ought not to have appointed the Fit Person. When the petitioner is having favourable judgments from Civil Courts and favourable orders from High Court, the petitioner was forced to file the present writ petition, since the respondents had appointment fit person. This multiplicity <https://www.mhc.tn.gov.in/judis> of litigation is the creation of the respondents. Hence this plea is liable to be dismissed with cost. Also the respondents are liable for contempt proceedings.

23. The contention of the petitioner that the water pandal charity will not come within the purview of section 6(5) of the HR&CE Act, but the respondents submitted that the same comes within the purview of the Act. This Court is of the considered opinion that even if the contention of the respondents is accepted, then the respondents ought to have issued notice under section 63 of the HR&CE Act. In the present case the specific plea of the petitioner that the appointment of Fit Person came to his knowledge through one of the tenant and the same is violative of principles of natural justice as held supra. Further the respondents ought to have decided whether the water pandal charity is coming within “religious endowment” or “specific endowment” after conducting enquiry by issuing notice under section 63. It is an admitted fact no such proceedings was conducted under section 63. In the absence of such proceedings then the respondents cannot appoint Fit Person under section 49, hence the appointment of fit person is against the provisions of HR&CE Act and hence the power exercised by the respondents is bad in law as held in R.Shanmugha Sundaram Vs. The Commissioner HR&CE Act reported in 1991-LW-582 and the relevant portion is extracted hereunder:

<https://www.mhc.tn.gov.in/judis> “As I have already pointed out, unless the characteristics of the Institution is decided under section 63(a) of the HR&CE Act, the Respondent Department cannot have any jurisdiction.” Further, the water pandal charity will not come within the purview of section 6(5) of the HR&CE Act as held in the judgment dated 09.09.2022 rendered in W.P. (MD)No.390 of 2014 in the case of K.Subramanian Vs. Fit Person, wherein it is held as under:

“9. Our High Court in a judgment reported in 1977 TLNJ 250 (G.Viswalingam Pillai Vs. The Secretary, Commercial Taxes and Religious Endowments, Madras) has held that Water pandal Charity cannot be said to be a “Hindu” charitable endowment as a person not belonging to Hindu religion can also be a beneficiary. This Court has

further held that the benefit of this water pandal is not confined to the persons professing Hindu religion. Therefore, this object of the Trust is for the benefit of the entire public irrespective of the religion to which one belongs. On the basis of the above said findings, this Court held that Water Pandal is not a Hindu religious and charitable endowment. In the present case, the fit person has not placed any record to establish the connection between the Water Pandal and Arulmigu Soundararaja Perumal Temple, Thadicombu.” In the present case, the order of the Settlement Tahsildar does not reflect that the Water Pandal Charity is related to any religious institution or any festival of a religious institution. Even the respondents have not stated that the Thanneer Pandal Charity is related to any temple. Therefore this Court is of the considered <https://www.mhc.tn.gov.in/judis> opinion that the Water Pandal Charity is not a Hindu religious charity and the same will not come within the purview of section 6(5) of the HR&CE Act.

24. The next contention of the petitioner is that the water pandal charity will not come under the definition of ‘specific endowment’ as stated in section 6(19) of the Act. The relevant provision is extracted hereunder:

“(19) “specific endowment” means any property or money endowed for the performance of any specific service or charity in a math or temple or for the performance of any other religious charity, but does not include an Inam of the nature described in Explanation (1) to clause (17)” The provision under section 6(17) is extracted hereunder:

“(17) “Religious endowment” or “endowment” means all property belonging to or given or endowed for the support of maths or temples, or given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity; and includes the institution concerned and also the premises thereof, but does not include gifts of property made as personal gifts to the archaka, service holder or other employee of a religious institution;” The provision under section 6(16) is extracted hereunder:

“religious charity” means a public charity associated with Hindu festival or observance of a religious character, whether it be connected with a math or temple or not <https://www.mhc.tn.gov.in/judis> The ingredients in all the three provision states as under:

- i. The endowment is for the support of the math or temple.
- ii. The endowment is for performance of religious charity
- iii. The endowment is for performance of charity of public nature connected therewith.
- iv. The endowment is for public charity associated with Hindu festival or religious character In order to come within the purview of section 6(17) 6(16) and 6(19), the

endowment should have the above ingredients. In the present case the water pandal charity is not connected with any math or temple. Not connected with any religious charity since it is open to all irrespective to any religion, caste etc. Not connection with the charity of public nature connected with the math or temple.

Also not connected with Hindu festival or religious character. Therefore this Court is of the considered opinion that in the present case the water pandal charity will not come under the provisions of HR&CE Act.

25. Based on the above discussions, it can be stated in a nutshell as under:

i. The Thanneer Pandal Charity is public charity but may not associated with religious festival.

ii. The Mandagapadi is not public charity but may be associated with religious festival.

<https://www.mhc.tn.gov.in/judis> iii The Gurupooja is not public charity and not associated with religious festival.

26. Both petitioner and the respondents had referred to the judgment rendered by the Hon'ble Supreme Court in the case of the Idol of Sri Renganathasamy represented by Executive Officer Vs. P.K.Thoppulan Chettiar and other reported in (2020) 10 SCR 410 had held that, "12. The term endowment means to give or bequeath a thing, property or otherwise. Where the text of the deed purports to divest the property from the settlor and reserves it for a charitable purpose, the property has been endowed. In certain cases, an endowment may not be absolute towards the charitable purpose and may reserve some portion of the property or resultant income from the property for the legal heirs of the settlor. The question of whether the settlor intended the religious purpose to be the primary beneficiary subject to a charge in favour of the legal heirs of the settlor, or whether the heirs were the primary beneficiaries subject to a charge towards the continuation of the charitable purpose must be determined by reading the settlement deed as a whole.

13. In Menakuru Dasaratharami Reddi v. Duddukuru Subba Rao reported in AIR 1957 SC 797 a Constitution Bench of this Court dealt with the question of whether the suit properties were the subject-matter of a public charitable trust or were merely charged with the obligation to undertake specific charities. Justice P B Gajendragadkar (as the learned Chief Justice then was), speaking for the Court, held:

5. ... Now it is clear that dedication of a property to religious or charitable purposes may be either complete or partial. If the dedication is complete, a trust in favour of public religious charity is created. If the dedication is partial, a trust in favour of the charity is not created but a charge in favour of the charity is attached to, and follows, the property which retains its original private and secular character. Whether or not dedication is

complete would naturally be a question of fact to be determined in each case in the light of the material terms used in the document. In such cases it is always a matter of ascertaining the true intention of the parties; it is obvious that such intention must be gathered on a fair and reasonable construction of the document considered as a whole. The use of the word trust or trustee is no doubt of some help in determining such intention; but the mere use of such words cannot be treated as decisive of the matter. Is the private title over the property intended to be completely extinguished? Is the title in regard to the property intended to be completely transferred to the charity? The answer to these questions can be found not by concentrating on the significance of the use of the word trustee or trust alone but by gathering the true intent of the document considered as a whole..." (Emphasis supplied)" The Hon'ble Supreme Court had categorically held that if the dedication is total and complete then Trust is created for the public religious charity. If the dedication is partial then only charge is created over the property. If only charge is created, then the property would retain the original character as "private property". In the present case the property was under lease (as per the Lease Agreement dated 15.12.1945) even prior to the issuance of Settlement Patta (as per the Settlement Tahsildar Order dated 01.11.1967), which would prove the private nature of the property. In such circumstances, then the property in dispute <https://www.mhc.tn.gov.in/judis> is only charge over the property, the original character of private property is retained. Consequently the petitioner is entitled to deal with the property.

27. The next contention of the respondent is that the service is the pre-

existing right. But the same was refuted by the petitioner and submitted that the land is ancestral, hence the pre-existing right is private property and not Inam land. It is an admitted fact that the settlement proceedings was taken suo-moto. This Court already held that the property is ancestral even as per the Settlement Registrar and hence the respondents are incorrect in stating that there is pre-existing right of 'service'. Hence mere granting of Ryotwari Patta will not wipe away the pre-existing rights of the petitioner's predecessors. This issue was already dealt with in the case of Srinivasan and six others Vs. Madhya arjuneshwaraswami Pattavaithalai reported in 1998-2-LW-189 and the relevant portion is extracted hereunder:

"A careful analysis of the scheme underlying these Abolition laws would go to show that the vesting on abolition under everyone of these legislations is subject to the pre-existing rights of the occupants, except in respect of what are known as public or communal properties, meant for common use and the grant of patta has been always considered and held to be in recognition of their pre-existing rights. The provisions relating to abolition and investing of the properties do not have the effect of obliterating or destroying such pre-existing rights, if any, except in respect of public or communal properties and the rights which in here are the <https://www.mhc.tn.gov.in/judis> basic and fundamental rights which entitle a person to preferentially get patta under these legislations, and the same could not be equated to the grant of patta by way of assignment under the Revenue Standing

Orders or under rules of assignment outside the scope of the statutory enactments. Similarly, a meticulous analysis of the scheme underlying the provisions of the Act dealing with the nature of rights dealt with by the various authorities, the manner in which such authorities adjudicate such rights and the consequences of such adjudication, disclose that they do not mean and even intend to be a substitute or alternate mode of resolution of the ordinary civil right of a citizen or for that matter persons asserting competing claims, in their attempt to project a claim for patta. Consequently, in our view, the ratio of the decisions of the Apex Court reported in AIR 1986 SC 794=98 L.W.849 (supra), (1995) 4 SCC 156=1995-1-L.W. 731 (supra) and (1998) 2 SCC 642 (supra) and that of a Division Bench of this Court in 1988-2-L.W. 513 (supra) and of a learned single Judge of this Court in 1992-1-L.W. 207 (supra) would squarely apply and govern the case and consequently, it has to be necessarily held that the jurisdiction of the civil courts cannot be held to have been completely ousted or barred at any rate in respect of adjudication of claims of title and questions or issues which are not obliged or required to be adjudicated for the purposes of enforcement of these laws which have, as their object and aim, to implement ryotwari settlement in the areas governed by them.” Therefore, following the aforesaid judgment, this Court is of the considered opinion that in the present case the pre-existing right is private property to Sivaparangiriya Pillai and his ancestors. Hence the character of private property would not change even if settlement patta is issued. <https://www.mhc.tn.gov.in/judis>

28. The respondents relied on the following judgments but the same is not applicable to the present case, since they are distinguishable based on facts of each case and the same is stated in the tabulation below:

S. No.	Citation
1	The Idol of Sri Renganathasamy Temple Vs. The endowment is for perform Charitable and Thirunal for

Religious Trust reported in 2017 (6) temple and so on. When the endowment is MLJ 157 for religious function of idol Sri Renganathasamy, it has been held the endowment is for religious purpose. Hence the said case is not applicable to the present facts of the case.

2 The Commissioner of HR&CE Vs. It was held that the property is endowed in G. Venkatachalapathy and others the name of Sri Gopalakrishna Deity, hence reported in 2008 (3) MLJ 775 the Court held it as religious endowment.

Hence the case is not applicable to the present facts of the case.

3. W.P.No.11981 of 2012 dated It was held that the petitioner rendered the 17.07.2012 in the case of charity for the benefit of the devotees who V.R.Maragatham Vs. worship Sri Arulmigu Subramania Swamy, Commissioner HR&CE Marudamalai, hence the court held the same would come under

HR&CE Act. Therefore the said case not applicable to the present facts of the case

4. The Executive Officer, Arulmigu It was held that the land was service Inam Kallalagar Devasthanam Vs. The land to archaka and hence is not applicable District Collector and others to the present facts of the case W.P.No.7775 of 2003 dated 21.04.2023 <https://www.mhc.tn.gov.in/judis> 5 M.Muthukrishnan Vs. The It was held that there is no records to show Assistant Commissioner and others the temple is a private temple and is not W.P.(MD)No.23952 of 2016 dated applicable to the present facts of the case 06.12.2021 6 Sudheshwaran Vs. The District It was held that the land was service Inam Collector and others W.P.Nos.6440 land to archaka and hence it is not of 2022 batch dated 06.06.2022 applicable to the present facts of the case 7 W.N.Allal Sundaram Vs. The It was held that the land was endowed for Commissioner HR&CE and others construction of choultry and the choultry reported in 2019 14 SCR 194 was in connection with Devasthanam to accommodate devotees during religious festivals and hence is not applicable to the present facts of the case 8 The Idol of Sri Renganathasamy The endowment was for supplying drinking represented by EO Vs. P.K. water and millet porridge for three days Thoppulan Chettiar and other during Gajendra Moksham and eighteen reported in (2020) 10 SCR 410 padi festivals and hence is not applicable to the present facts of the case. The Hon'ble Supreme Court had elaborately discussed the issue and granted guidelines to determine whether it falls within the provisions of the HR&CE Act.

9 K.S.Soundararajan and others Vs. The endowment was for performing pooja Commissioner HR&CE reported in during panguni festival at (2015) 10 SCR 176 Thiruparankundram and supply of food to people belonging to same caste and hence is not applicable to the present facts of the case 10 Arulmigu Lakshmi Narayanaswamy The issue is whether the entire land in Temple Vs. Nallammal and others Komarapalayam Village is Inam lands or reported in (2011) 12 SCR 627 not and it is nothing to do with the facts of the present case <https://www.mhc.tn.gov.in/judis> 11 Ayyankutty Gounder and others Vs. The issue is whether the Khazi Service The Revenue Divisional Officer provider is entitled to Settlement Patta and and others reported in 2009-4- whether the Cultivating tenancy is entitled LW-510 to Settlement Patta and it is nothing to do with the facts of the present case 12 Arulmigu Kallalagar Thirukovil Vs. The water pandal and Thirukkan for the S.S.Rajaram and 9 others reported pilgrims and general public and hence the in (2008) 5 MLJ 737 Court held it is charity for religious purpose and hence is not applicable to the present facts of the case.

The above judgments were rendered based on the facts of the relevant cases, the same is not applicable to the present facts of the case. As far as P.K.Thoppulan Chettiar's case is concerned, this Court had already discussed the same supra.

29. The contention of the respondents is that as per the direction of the Court in W.P.(MD) No.14428 of 2017, the respondents had initiated proceedings. It is seen in the said judgment the Hon'ble Court had dealt with the property belonging to Arulmigu Avudainayagi Ambal Sametha Desiganatha Swami Temple, Nagara Soorakudy, Poovandipatti. The Hon'ble directed the HR&CE authorities to recovery the temple lands wherein patta was granted to third parties / encroachers, in future patta cannot be issued to temple lands without the prior permission of HR&CE authorities and several other directions. The Hon'ble Court has not issued any direction to cancel the settlement

patta issued by the Settlement <https://www.mhc.tn.gov.in/judis> Tahsildars. Further settlement patta ought to be dealt with under the Inam Abolition Act (which is a self-contained code), by filing appeal or revision and the respondents cannot cancel the same high-handedly. Therefore this Court is of the considered opinion that the respondents have acted beyond their powers.

30. For the observations and reasons stated supra, the impugned order appointing Fit Person is quashed as illegal and the present writ petition is allowed. No costs. Connected Miscellaneous Petition is closed.

31. Before parting with the judgment, this Court is of the considered opinion that several devotees during 18th and 19th centuries had dedicated their lands or created charge to their lands in order to do charity or service to the general public or to the religion or to the temple since in Hinduism the charity is considered as “punniyam”. But the said lands are facing several litigations due to steep increase in the market value. Especially in the present case the tenants are litigating against the owners, the local people / politicians are litigating against owners, their own community people is litigating, revenue officials and HR&CE are litigating. Had those devotees know about the future litigations, they would not have dedicated or created charge over their property. That a part, the authorities ought to exercise their power carefully, cautiously and realistically. For example in the present case the land belongs to the petitioner to an extent of 1 <https://www.mhc.tn.gov.in/judis> acre 2 cents (but according to the respondents it is 2 acres 4 cents, but the respondents failed to see it has been partitioned between Kandasamy Pillai and Diraviyam Pillai). The water pandal charity during summer season would be conducted for a period of one month and it may cost at the maximum Rs.10,000/- or Rs.20,000/- (on the higher side) for which the property to an extent of 1 acre and 2 cents is huge space. The practical and realistic approach would be to retain a small portion or an amount to carry out the said charity. Without ascertaining whether the petitioner has means to carry out the charity with the said amount, preventing the petitioner from dealing with the property is not correct. Further if the petitioner is prevented from dealing with the property, then the petitioner would be put into difficulty to protect the land. Even if Fit Person is appointed, then also the Fit Person would give the property for lease to protect the land as done in several cases. Therefore, it is high time the government and the respondents ought to take a call on the issues based on the present day situation.

16.07.2024

NCC	:	Yes / No
Index	:	Yes / No
Internet	:	Yes / No
Tmg		

<https://www.mhc.tn.gov.in/judis>

To

1.The Commissioner,

Hindu Religious & Charitable Endowments Department, 119, Uthamar Gandhi Road,
Nungambakkam, Chennai-600 034.

2.The Joint Commissioner, Hindu Religious & Charitable Endowments Department, Sivagangai,
Sivagangai District.

3.The Assistant Commissioner, Hindu Religious & Charitable Endowments Department, Sivagangai.

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