

MA. Gouthaman and Another Vs. the State of Tamilnadu, Rep.by Its Secretary to Government, Hindu Religious, Charitable Endowments and Tamil Development Department and Others

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Court : Chennai

Decided On : Oct-31-2012

Judge : The Honourable Mrs. Justice R. Banumathi & R. Subbiah

Appeal No. : Writ Petition Nos.12915 and 26567 of 2012 and W.P.(MD) No.8260 of 2012 and connected M.Ps.

Appellant : MA. Gouthaman and Another

Respondent : The State of Tamilnadu, Rep.by Its Secretary to Government, Hindu Religious, Charitable Endowments and Tamil Development Department and Others

Advocate for Pet/Ap. : For the Petitioners: S. Ramesh, N.R. Chandran, Senior Counsel for R. Kannan, Advocates. For the Respondents: A. Navaneethakrishnan, Advocate General along with S. Kandaswamy, Spl.G.P. (HR & CE), G. Rajagopalan, Senior Advocate for M/s. Bala & Daisy, Inbad

Judgement :

(Prayer: W.P.No.12915 of 2012: Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the 1st and

2nd respondents to forbear the 4th respondent from acting as the 293rd Guru Maha Sanneedhanam of the 3rd respondent Adheenam by holding his appointment as illegal, arbitrary, contrary to the provisions contained in Tamilnadu Hindu Religious and Charitable Endowments Act, 1959.

W.P.No.8260 of 2012: Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to act in accordance with law on the petitioner's various representations more particularly representation dated 13.06.2012 and direct the 5th respondent to take custody and protection of the endowment of the Madurai Aadeenam Mutt situated at No.70, South Avani Moola Street, Madurai-1 and all the properties and other endowments belongs and attached to the Madurai Aadeenam Mutt and administer the same in accordance with law.

W.P.No.26567 of 2012: Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of 3rd respondent dated 20.06.2012, and quash the same and also issue direction that the appointment of the 5th respondent as successor to the 4th respondent on 27.04.2012 as illegal and declare his appointment as void-ab-initio.)

COMMON JUDGMENT:

R. BANUMATHI, J. and R. SUBBIAH, J.

Among these three writ petitions, W.P.No.12915 of 2012 has been filed by one Gowthaman, a practising Advocate and an ordained Saivaite follower, for a direction to the 1st and 2nd respondents to forbear the 4th respondent from acting as 293rd Guru Maha Sanneedhanam of the Madurai Adheenam, by holding his appointment as illegal, arbitrary and contrary to the provisions contained in Tamilnadu Hindu Religious and Charitable Endowments Act, 1959.

2. Other two writ petitions in W.P.Nos.8260 and 26567 of 2012 have been filed by one Jagathalapradapan, who is the Secretary of 'Meenakshi Pillaikal' (means the Children of Goddess Meenakshi) the Society involved in social and religious activities. W.P.(MD)No.8260 of 2012 has been filed for a direction to the

respondents to consider his representation dated 13.06.2012 and also to direct the Assistant Commissioner of HR & CE Department, Madurai to take custody and protection of the endowment of the Madurai Adheenam Mutt and all the properties and other endowments attached to the Madurai Adheenam Mutt and administer the same in accordance with law.

3. W.P.No.26567 of 2012 has been filed to call for the records of the Assistant Commissioner, HR & CE Department, Madurai dated 20.06.2012 and quash the same and to declare that the appointment of the 10th respondent as successor to the 9th respondent on 27.04.2012 as illegal and void ab initio.

4. Since the issue involved in all the writ petitions is one and the same and the parties are also same, they are taken up together and are being disposed of by this common order.

5. For convenience, parties would be referred to as in their rank in W.P.No.8260 of 2012.

6. Brief facts, which are necessary to decide the issue involved in the writ petitions, culled out from all the writ petitions and also from the available materials, are as follows:

Firstly, it would be proper to refer some facts about the Madurai Adheenam.

Madurai Adheenam is a world renowned Monastery spreading the cause of Saivism. As per the events chronicled in various literatures, the Madurai Adheenam had its origin even prior to the 8th Century A.D. and has been in existence even during the Sangam Literature period. It came into prominence during the period of great Nayanmar Thirugnanasambandar. According to literary records, a great debate between the scholars of Jainism and Saivism in the Madurai Adheenam. Saint Thirugnanasambandar succeeded in debate as against the Jain Scholars and it is only from this point of time, Madurai Adheenam began to gain greater prominence in social, religious as well as in the field of Literature. This Adheenam has been a guiding light for spreading of saivite philosophy for several centuries together. The movable and immovable properties

of Adheenam are worth several thousands of crores. Apart from the movables in the form of jewels and cash reserves, other objects of antique value, including the temples that come under the control of the Adheenam.

7. After the enactment of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the control of Adheenam also came under the supervision of the 2nd respondent Hindu Religious and Charitable Endowments Department. The Adheenam is headed by a Guru Maha Saneedhanam, who is the Chief Administrator or Mahant in general parlance. He is the Administrative as well as the Financial Controller of the entire Adheenam wielding extraordinary powers and comes within the definition of the "Trustee" as defined under section 6(22) of the Tamilnadu Hindu Religious and Charitable Endowments Act, 1959 (in brevity "the HR & CE Act"). Apart from being an Administrator, he is also the Trustee of the properties of the Adheenam, which have been preserved for more than 1400 years.

8. At this stage, it would be appropriate to refer salient features of Madurai Adheenam Mutt and its constitution.

The Adheenakartha, who is the head of the Adheenam, under him a body of Ascetics which includes (a) Pradesis who are Sanyasis waiting for ordainment into the holy order of that Adheenam, (b) several ordained Tambirans entrusted with various distinct religious and administrative duties by the Adheenakartha, (c) one Junior Pontiff who is also known and called in the spiritual field as 'Elaya Sannithanam' or 'Elavarasu' or 'Chinnapattam'. All the above are collectively called as Tirukootam (Holy Crowd).

Adheenakartha is the head of the Adheenam, who is known as Guru Maha Sannithanam or Pandara Sannathi. The junior most order in Ascetics hierarchy of Adheenam is Paradesis. The procedure for nominating a Successor is well established and it has been followed all these years. The following procedures are mandatory to become a Saiva Sanyasi in a Saiva Adheena Mutt which are universally followed in all Saiva Adheenas (Mutt) as customs and usage:

1. Should be Saivite;

2. Yathra Kaashayam (Paradesi)

3. Samaya Deekshai

4. Visheda Deekshai

5. Mandira Kashayam

6. Nirvana Deekshai

7. Dhikshai Kurai

8. Aarukatti (6-Katti)

9. Acharya Abhishegam

10. Junior Pontiff

9. Procedure for appointing Madathipathi at Madurai Adheenam, being adopted for the past 1400 years by way of custom and usage:

It has been the tradition and culture as well as the custom of the Madurai Adheenam to appoint a person who is ingrained in Hindu scriptures and customs. The incumbent undergoes rigorous training and has to be well versed in Saivite philosophy. There has been a structured process in the selection of the Guru Maha Saneedhanam of the Madurai Adheenam till this point of time. Generally, as per custom and tradition of Madurai Adheenam, one of the Thambirans or junior monk would be anointed as Ilaya Sannidhanam to succeed Guru Maha Sannidhanam.

10. During his lifetime, Adheenakartha identifies a Tambiran, out of the available Tambirans in his Adheenam, whom he considers duly qualified to succeed him after his demise and then he nominated such Tambiran as the Ilaya Sannidhanam or Junior Pontiff by performing a mandatory ritual namely "Acharya Abhisheka" to be conducted within the premises of the Adheenam in the presence of disciples of Adheenam and the representatives of Kindred Adheenams.

11. Sanyasi of Saivite Adheenam is selected from Saiva Velalar, Mudaliar and Karkatha Velalar. The reason for soliciting from the particular sect is that such person will be vegetarian from his hereditary. A saivite alone is entitled to become Sanyasi of a Saivite Adheenam. In case the Adheenakartha in his spiritual wisdom, considers that no eligible Tambiran is available, then it becomes obligatory by custom that he has to approach the Heads of either Thiruvavaduthurai Adheenam or Dharmapuram Adheenam to seek an eligible and duly qualified Tambiran from their Adheenams to be nominated as Junior Pontiff of his Adheenam.

12. The Adheenakartha, in his spiritual wisdom, selects one Tambiran from his Adheenam and leaves a Will nominating such Tambiran to be his successor after his demise. After his demise, the person so nominated by the deceased Adheenakartha through the Will, becomes the Adheenakartha of the Adheenam after the performance of the mandatory ritual of "Acharya Abhishekan" done in the presence of the disciples of the Adheenam and representatives of Kindred Adheenams. In case the Adheenakartha attains Mukti (reaching the heavenly abode) suddenly and if he had not nominated the Junior Pontiff during his lifetime or if he has not left a Will, then the spiritual disciples attached to the Adheenam and in consultation with the Adheenakarthas of Thiruvavaduthurai Adheenam and/or Dharmapuram Adheenam arrive at a consensus, select a Tambiran whom they consider would be the proper successor to become the Head of Adheenam out of the eligible and qualified Tambirans. The mandatory ritual of "Acharya Abhishekan" would be done for such selected Tambiran in the presence of the disciples of the Adheenam and representatives of Kindred Adheenams.

13. These three writ petitions have been filed questioning the appointment of Nithyanandha @ Rajasekar as 293rd Madhahipathi of Madurai Adheenam, a world renowned Monastery spreading the cause of saivism. It is the common grievance of all the writ petitioners that 10th respondent, Swami Nithyanandha, who is running an Ashram at Karnataka State, viz., Bidathi Ashram, has nothing to do with the Saivaitic Philosophy. Moreover, he is having criminal background and criminal cases are pending against him. By giving a go-bye to all cardinal principles, which the Madurai Adheenam is adopting for the past 1400 years by

way of custom and usage, 9th respondent has appointed the 10th respondent as Junior Pontiff (Ilaya Sanneedhanam), which created humiliation and consternation among the followers of Saivism and also among the similarly placed Madhadhipathis of various Mutts.

14. The present Maha Guru Sannidhanam - Sri-la-sri Arunagirinatha, Sri Gnanasampanta Desika Paramacharya Swamigal, who was Thambiran at Dharmapuri Mutt came to be nominated as Junior Pontiff on 27.05.1975 by the then 291st Madathipathi in accordance with the custom which has been followed for 1400 years. From the date of appointment, he is continuing as Guru Maha Sanneedhanam of Madurai Adeenam.

15. Grievance with regard to the appointment of 10th respondent as Junior Pontiff:

It is the case of the petitioners that the 10th respondent is the head of Bidathi Ashram at Karnataka and he is not the follower of Saiva Sidhantha. His method of worship and celebration of religion is entirely different in form and these forms of worship is no way connected or related to the saivait religious form of worship. He is totally an alien and stranger to the Saivism and as such, he cannot be even considered to be the disciple of Saivism. Apart from that, 10th respondent has absolutely no connection with the Madurai Adheenam Mutt. The former Madhadhipathi 292nd Guru Maha Sanneedhanam Sri Arunagiri, in gross dereliction of his religious duty and conscience, has wantonly, illegally, intentionally and wrongly had chosen the 10th respondent as his successor to the Mutt, who is the person with criminal background involved in grave offences, particularly offences relating to women. To keep away from the reach of general public about illegal activities being carried out inside the Mutt, he never allow the general public inside the Mutt for worship. He is unfit to be the Head of the Madurai Adheenam Mutt. He is a self styled godman. Several criminal cases have been registered and are pending against him before the various Courts in Tamil Nadu as well as Karnataka. Unless the 10th respondent and his associates are removed from the Mutt, the Holistic Endowment of the Madurai Adheenam cannot be protected in any manner.

16. Grievance on the 292nd Guru Maha Sanneethanam in appointing 10th respondent as Junior Pontiff:

As per the custom and usage which is prevailing for over 1400 years, Adheenakartha has to identify a Thambiran, out of the available Tambirans in his Adheenam, whom he considers duly qualified to succeed him after his demise and then he has to nominate such Thambiran as Ilaya Sannithanam or Junior Pontiff, by performing a mandatory ritual namely "Acharya Abisheka" to be conducted within the premises of the Adheenam in the presence of disciples of Adheenam and the representatives of Kindred Adheenams. This was not done in the present case. Moreover, 10th respondent is not the Thambiran from the Madurai Adheenam. Even if there is no eligible Thambiran in his Adheenam, then it becomes obligatory by custom that he has to approach the Heads of either Tiruvavavaduthurai Adheenam or Dharmapuram Adheenam to seek an eligible and duly qualified Thambiram from their Adheenams to be nominated as Junior Pontiff of his Adheenam. At any stretch of imagination, he cannot appoint a stranger who is having criminal background.

17. Moreover, in this case, without performing the mandatory ritual, namely, 'Acharya Abhishekam', the present Madhadhipathi Guru Maha Sannidhanam, by ignoring the well established customary procedure and usage, has illegally and unlawfully executed a Deed of Declaration of Trust at Madurai on 12.04.2012 to establish a new Trust with the 10th respondent to administer, manage, control and supervise Madurai Adheenam, which is in gross dereliction of his religious duty and obligation and as such, the same is illegal. 10th respondent is an outsider and the structure of the Adheenam does not permit any of the Adheenakartha to execute such a declaration of trust to abdicate his power. Since a Madathipathi is both spiritual and corporal head and he is holding the property in trust and there is no power for delegation for sharing such power with third parties, the agreement is invalid and it amounts to abdication of duties of the 9th respondent. In addition to that, the 9th respondent has executed an Affidavit dated 27.04.2012 before the Notary public at Karnataka in a Non-judicial stamp paper issued by Government of Karnataka that the 10th respondent is competent, eligible and entitled to hold, administer and manage the entire affairs of Madurai Adheenam as Junior Pontiff.

Pursuant to the said Declaration of Trust dated 12.04.2012, 10th respondent has taken over a charge of the Mutt and it is now controlled by the 10th respondent and his aides as Saivite and disciples of Mutt. The unceremonious act of the 9th respondent is highly illegal, unlawful and in total violation to the procedure which has been adopted by the Mutt for several decades. Hence, he is unfit in the eye of law to serve in the Religious, Holistic and traditional Madurai Adheenam Mutt which is having 1500 years of Holistic history.

18. Circumstances that led to filing of W.P.No.8260 of 2012 as public interest litigation:

It is the grievance of the writ petitioner that the attitude of 292nd Madadhipathi in appointing 10th respondent as Junior Pontiff is totally illegal, immoral and against the religious sentiments and religious freedom of the public, as envisaged under Articles 26 and 21 of Constitution of India. Both 9th and 10th respondents criminally conspired and colluded with each other with a common intention to enrich the valuable wealth of the Historic Madurai Adheenam Mutt. It is the specific allegation of the petitioners that the 9th respondent Sri Arunagirinatha has literally pledged the Mutt to the 10th respondent on receiving crores of rupees from the 10th respondent. After the appointment of Junior Pontiff, poojas are not being performed regularly and continuously. The Sanctity, Purity, real value and traditional custom of the Mutt is put into question mark in the hands of former and present 292nd & 293rd Madathipathis of Madurai Adheenam. Due to criminal background and involvement in criminal activity of 10th respondent who was arrested and remanded to judicial custody and because of the above said reasons, there arises vacancy in the office of the Trustee of the Madurai Adheenam Mutt. It leads to attract Section 60 of HR & CE Act, 1959.

19. Writ petitioner gave representation to the official respondents on 08.05.2012, 14.05.2012, 24.05.2012 and finally on 13.06.2012 requesting them to take action in accordance with law as against 9th and 10th respondents. Though the said representations were received and acknowledged by the official respondents and they assured that suitable action would be taken, they have not taken any steps in accordance with law. Hence, W.P.No.8260 of 2012 has been filed to consider his

representation dated 13.06.2012 and also to take custody of the endowment of Madurai Adheenam Mutt and its properties.

20. After filing W.P.No.8260 of 2012, representation dated 13.06.2012 was rejected by order dated 20.06.2012 by the Assistant Commissioner, HR & CE Department, Madurai stating that only 9th respondent is administering the Mutt and the Junior Pontiff has not taken over the office of Madathipathi and therefore, as on date no action could be taken. Challenging the said order, writ petitioner has filed W.P.No.26567 of 2012 to quash the impugned order.

21. W.P.No.12815 of 2012 is filed by one Gowthaman independently to declare the appointment of 10th respondent as illegal and arbitrary.

22. Counter statement filed by the Government in W.P.12915 of 2012:

According to the Government, Madurai Adheenam is a Mutt, as defined under section 6(13) of HR & CE Act. As per section 6(13), "Math" means a Hindu Religious institution, which is defined under sub-clause (18) of Section 6 of HR & CE Act, 1959 and has been included in the list published under clause (iii) of section 46 of the HR & CE Act and is under the administrative and supervisory control of HR & CE Department. Administration of Mutt is governed by a Scheme framed by the erstwhile Hindu Religious Endowment Board in Board's Order No.3458 (O.A.No.3 of 1948) dated 08.09.1948 and confirmed by this Court in A.S.No.336 of 1951. Moreover, in the approved Register of Properties under section 38 of the then Hindu Religious Endowments Act, II of 1927, contains the usage that was being followed as to succession of the trustee of this Math, which runs as follows:

VERNACULAR (TAMIL) PORTION DELETED

23. The 292nd Guru Maha Sannidhanam has now created a Deed of Trust through registered document No.237 of 2012 dated 23.04.2012 called "Madurai Adheenam Trust" to jointly administer the Math along with Sri Nithyananda and also executed an Affidavit on 27.04.2012 in the presence of Notary Public at Karnataka nominating Sri Nithyanandha as 293rd Guru Maha Sannidhanam of

Madurai Adheenam Math. Since the writ petition has been filed to direct the official respondents to take custody of Madurai Adheenam Mutt and all properties and all endowments attached to Madurai Adheenam Math and administer the same in accordance with law, only a suit under section 59 of HR & CE Act for removal of the trustee of a Math or specific endowment attached thereto, would lie. As per section 60, the role of Assistant Commissioner, HR & CE Department arises only when a vacancy occurs in the office of the trustee of Madurai Adheenam Math. But, in the instant case, the present Trustee of the Math, viz., the 292nd Adheenakarhar of the Math is very much alive, and also functioning as Madathipathi of Madurai Adheenam till date. Therefore, there is no such exigency arisen for the Assistant Commissioner to interfere with administration of Madurai Adheenam.

24. With regard to the appointment of Junior Pontiff, it is the contention of the State that the present Head of Mutt has not followed the provisions of HR & CE Act in the selection of succession to the office of trustee of the Math. However, for the misdeeds committed by the present Trustee of the math Sri Arunagirinathar, the Commissioner is contemplating legal action as per section 59 of the Act. As per clause 13 of section 6 of the Act, the present Adheenakarhar, the 9th respondent is still the trustee of the Math, even though 10th respondent was nominated as Junior Pontiff, who is not at all a trustee.

25. The contention of the writ petitioner that due to criminal background and involvement in criminal activities of the 10th respondent, who was arrested and remanded to the judicial custody and because of the above said reasons, there arises vacancy in the office of the Trustee of the Madurai Adheenam Math, it leads to attract section 60 of the Act is not correct. In fact, Sri Arunagirinathar is still functioning as the trustee of the Math under dispute and no vacancy has occurred in the office of trustee of the Math, as contended by the petitioner. Therefore, the question of filling up the vacancy does not arise. Already a suit was filed in O.S.No.621 of 2012 before the Sub Court, Madurai for a declaration that the appointment of 10th respondent as 293rd Trustee by Sri Arunagirinathar is void ab initio and for permanent prohibitory injunction and the same is pending. The Commissioner, HR & CE Department is taking steps to file a separate civil suit

under section 59 of the Act. Thus, they prayed the Court to pass appropriate orders.

26. The Commissioner has filed a counter affidavit adopting the counter statement filed by the Government.

27. Common Counter by 292nd Guru Maha Sannidhanam: It is inter alia stated in the counter statement that all the writ petitions are not maintainable under law. 9th respondent's right to appoint his successor is absolute and this Court exercising power under Article 226 cannot, in law, interfere with the same. Even otherwise, an Adheenam which is a Mutt is neither a State under Article 12 of the Constitution nor any other authority to enable this Court to exercise jurisdiction over him. The power to nominate a successor is a part of a religious function and under section 105 of the HR & CE Act, even the Assistant commissioner has no authority to interfere with the same. Already a Division Bench of Madurai Bench of this Court has dismissed a similar public interest petition filed in W.P.(MD) No.6607 of 2012 on 10.05.2012. The main prayer in W.P.(MD) No.8260 of 2012 as well as W.P.(MD) No.6607 of 2012 is almost same. After rejection of the similar prayer by a Division Bench, the petitioner has filed W.P.(MD) No.8260 of 2012 on 15.06.2012, which would establish the fact that this writ petition has been filed with an ulterior motive and for personal gain and media popularity. The choice of a successor is a religious function and prerogative of the Head of the Mutt. Under Article 26(b) of the Constitution, a religious denomination, organization, mutt, etc., enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion and no outside authority has any jurisdiction to interfere with the decision in such matters. In this writ petition, the petitioner is re-agitating the issue which has already been decided in W.P.(MD) No.6607 of 2012.

28. It is further stated by the 9th respondent that 10th respondent was born at Thiruvannamalai in a community which is also one of the communities from which successors can be appointed as per the usage of the Mutt and he had spiritual yearning from his very young age. He had been serving under several known and unknown yogis at Thiruvannamalai. He left his family at the age of 17 and went on

"Parivarajahan". During the said period, he stayed at Ramakrishna Mutt at Chennai and Calcutta to learn about the values of Hinduism. Later, he had travelled all over India seeking religious and spiritual enlightenment and he had established a spiritual and yoga organization called "Nithyanandha Dhyanapeedam" at Bidadi, Ramanagar District, Karnataka, with a noble intention to spread the values of Hinduism to the common man around the world. In the year 2002-2003, 10th respondent came to Madurai and stayed at Mutt in order to learn more about the religious truths and the principles of Saivism. From the first visit of the 10th respondent to the Madurai Adheenam Mutt, he became the disciple of the Mutt and follower of Madurai Adheenam. He is a good orator and has given thousands of religious discourses around the world and specifically preached about Shiva Sutra for more than 100 hours.

29. It is further stated by 9th respondent that he had created a Trust on 12.04.2012 so as to help him in discharge of his religious functions and in administration. Thereafter, he nominated the 10th respondent as his successor on 27.04.2012. Prior to that, he solemnized the 10th respondent with Vesheda Deeksha, Manthra Kaashayam, Nirvana Deekhsa and Acharaya Abishekam. Since the 10th respondent is his disciple, successor and part of Madurai Adheenam, the Trust was no longer in need and on 11.09.2012, 9th respondent had passed a resolution at Madurai along with 10th respondent, to dissolve the above said Trust created by the Deed dated 12.04.2012. Certain false cases have been initiated against the 10th respondent. Further, a criminal case registered against the 10th respondent in Crime No.111 of 2010 before the Central Crime Branch CID., Chennai under section 420 and 295-A IPC was investigated and was dropped since it was found that the allegations are false. Another complaint registered in Crime No.112 of 2010 was transferred to the State of Karnataka and final report had been filed and the trial is yet to commence. Allegations in the other complaint filed by different persons are all motivated, fabricated and concocted and contrary to the truth. Pendency of cases cannot prevent the 9th respondent from exercising his right to appoint the 10th respondent as his successor. The nomination and appointment of 10th respondent is strictly in accordance with the provisions of the Act and also as per the traditions and usage prevalent in the Adheenam. Generally the disciples of the Mutt born in Siva Vellalar, Muthanmaiyyar

also called as Mudaliyar, Karkatha Vellalar would be appointed as the successor. The predecessors of the Mutt such as 289 and 290 Adheenakarthis had belonged to the same community as that of his successor, the 10th respondent herein. Mutt premises is not a public temple and it is an administrative headquarters of the Adheena Karthar. Being the Head of a very old Traditional Hindu Religious Mutt, 9th respondent has absolute power and right to profess, practice and propagate the Hindu Religion. The above right includes conducting pooja, performing religious rituals, preaching and also appointing his successor. The present writ petitioner had chosen to file this Public interest Litigation without any substantial material and without any valid grounds and it is nothing but the abuse of the process of this Court. Already two suits have been filed in the Madurai District Court for the similar relief. Thus, he prayed for dismissal of all the writ petitions.

30. Arguments advanced by Mr.N.R.Chandran, learned Senior Counsel appearing for the petitioner in W.P.Nos.8260 and 26567 of 2012:

Mr.N.R.Chandran,learned Senior Counsel appearing for the writ petitioner submitted that 10th respondent Nithyanandha @ Rajasekar is not the disciple/Thambiran/ Saivit of Madurai Adheenam Mutt. When that being so, his appointment as Junior Pontiff is in violation of the usage of Mutt. In this regard, learned senior counsel invited the attention of this Court to Section 6(13) of the Act, which defines the word "Math" and it reads as follows:

"Math" means a Hindu religious institution with properties attached thereto and presided over by a person, the succession to whose office devolves in accordance with the direction of the Founder of the institution or is regulated by usage and---

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

(ii) who exercises or claims to exercise spiritual headship over a body of disciples;

and includes places of religious worship or instruction which are appurtenant to the institution".

By relying upon the definition of Section 6(13) of the Act, learned senior counsel submitted that the usage of Madurai Adheenam Mutt that the successor should first be the "Sisya" (Thambiran) and so far as the 10th respondent is concerned, he is not the Thambiran of the Madurai Mutt even as on the date of Trust Deed dated 12.04.2012. In fact, there is no mentioning of Thambiram of Madurai Adheenam Mutt in the Affidavit dated 27.04.2012 executed before the Notary public at Karnataka in a Non-judicial stamp paper issued by Government of Karnataka that the 10th respondent was appointed as 293rd Madadhipathi. Even in the affidavit, there is no mentioning as to he being a Thambiran. This method adopted by 9th respondent to appoint 10th respondent as his successor is totally contrary to the usage and custom of the Mutt, which they have been following for 1400 years. Mutt does not permit a stranger to occupy the holistic place of Mutt. It is a clear case of violation of usage of Mutt and an attempt to damage and tarnish the religious freedom of a particular sect namely the Saivait whose religious institution, namely, Madurai Adheenam is put into danger in the hands of a stranger.

31. In support of his contentions, learned senior counsel, by drawing the attention of this court to the transcription of speeches by 10th respondent, submitted that a reading of the said speeches would show that he is not following the Saivasithanda. Appointment of 10th respondent as Junior Pontiff on 27.04.2012 is not valid in the eye of law. A person cannot be a disciple straightaway. He should undergo some rigorous religious rites like Yathiraikasayam, Samayathiksai, Vissha thiksai, Nirvana thiksai, Mandrakashayam and subsequently become disciple/sanyasi/member of the Mutt under the name of 'Thambiran', then he will be included in the colony of Thambiran, called 'Thirukkootam' and he shall undergo the training in the Mutt and then only he will be eligible for being appointed as Junior Pontiff, that too not as a Madathipathi straightaway. But, by ignoring all the customary procedures, by way of Trust Deed dated 12.04.2012 and by an Affidavit dated 27.04.2012, 10th respondent was appointed as 293rd Madadhipathi, which is not legally valid in the eye of law. In this regard, learned senior counsel has relied on a judgment reported in the case of Mahalinga Thambiran Swamigal .vs. His Holiness Sri La Sri Kasivasi Arulnandi Thambiran Swamigal (AIR 1974 SC 199) and His Holiness Sri-La-Sri Ambalavana Pandara

Sannathi .vs. State of Tamil Nadu(1982(2) MLJ 221) in support of his contention that the successor should be appointed in conformity with the usage of the Mutt. Relevant paragraph in AIR 1974 SC 199 (supra) reads as follows:

"12.In course of time, a junior Thambiran came to be associated with the senior Thambiran in the management of Thiruppanandal Mutt. The necessity for the services of a junior at Thiruppanandal was felt, because it would, on the one hand, give an opportunity to the senior to see whether the junior might be relied upon as a competent successor. While, on the other hand, it would enable the junior to acquire experience before he became the head of the Mutt.....

.....

14. it is clear that the custom in the Kasi Mutt is for the head of the Mutt for the time being to nominate a successor to succeed him from one among the Thambirans of Thirukkuttam of the Dharmapuram Adhinam that the nomination is made by will and that it is attended by certain religious ceremonies like Manthakashyam, Deeksha, Pooja and Arukatti".

But, in the instant case, without following the mandatory rituals, 10th respondent had been appointed, who is totally a stranger to the Mutt.

32. Learned senior counsel further submitted that though in the counter filed by the 9th respondent, it has been stated that 10th respondent had undergone all the rituals, no specific details were given in the counter affidavit as to what are the rituals the 10th respondent had undergone, on which dates, etc. Under such circumstances, it has to be construed that the said statement was a bald one.

33. Submission with regard to the maintainability of the writ petitions:

In the counter filed by the official respondents, it has been stated that the Mutt is a religious institution, as defined under section 6(18) of the Act. Hence, a Madathipathi being a religious head is doing service or charity of a public nature. A Madathipathi is a trustee under section 6(22) and he can be removed only by suit filed under section 59 of the Act. When there is an alternative remedy, Public Interest Litigation is not maintainable.

34. Attacking the said contention, Mr.N.R.Chandran the learned senior counsel submitted that only if the appointment of the Madathipathi is legal, question of filing the suit under section 59 would arise. So far as the appointment of 10th respondent is concerned, it is totally illegal and hence, it is not a valid appointment in the eye of law. Moreover, 10th respondent is having criminal background and several cases are pending against him. His appointment is created uproar among the public and there were lot of agitation, road roko and severe opposition from the public at large against the 9th and 10th respondents. In spite of opposition from the people throughout Tamil Nadu and various parts of the world, 9th respondent abdicated 10th respondent as Junior Pontiff. In this situation, when the appointment of 293rd Madadhipathi is illegal, the question of filing suit does not arise in this case. So far as the removal of 292nd Madathipathi is concerned, even if he is removed by way of filing suit, automatically the 10th respondent will become the Madathipathi since he is already appointed by 292nd Madathipathi as his successor by way of Trust Deed and Affidavit, which would defeat the very object of removing him from the Mutt. Therefore, the writ petitions are maintainable,

35. Learned senior counsel, by relying upon the judgments reported in the case of ABL International Ltd., and another .vs. Export Credit Guarantee Corporation of India Ltd., and others ((2004) 3 SCC 553) and Shalini Shyam Shetty and another .vs. Rajendra Shankar Patil (2011(1)CTC 854) submitted that writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact. The relevant paragraph in (2004) 3 SCC 553 (supra) reads as follows:

"16. A perusal of this judgment though shows that a writ petition involving serious disputed questions of facts which requires consideration of evidence which is not on record, will not normally be entertained by a court in the exercise of its jurisdiction under Article 226 of the Constitution of India. This decision again, in our opinion, does not lay down an absolute rule that in all cases involving disputed questions of fact the parties should be relegated to a civil suit."

36. In 2011(1)CTC 854 (supra), the Supreme Court has held that writ will lie against a private individual who is performing statutory or public duty. The relevant

paragraph reads as follows:

"64. It is well settled that a Writ Petition is a remedy in public law which may be filed by any person but the main Respondent should be either Government, Governmental agencies or a State of instrumentalities of a State within the meaning of Article 12. Private individuals cannot be equated with State of instrumentalities of the State. All the Respondents in a Writ Petition cannot be private parties. But private parties acting in collusion with State can be Respondents in a Writ Petition. Under the phraseology of Article 226, High Court can issue Writ to any person, but the person against whom Writ will be issued must have some statutory or public duty to perform".

Thus, by relying upon the said judgments, learned senior counsel submitted that the writ petitions are maintainable.

37. Submission with regard to the contention of 9th respondent that the present writ petitions are hit by constructive res judicata:

Learned senior counsel for the petitioner relied on the judgment reported in the case of V.Purushotham Rao .vs. Union of India and others ((2001) 10 SCC 305), wherein it has been held that the principle of constructive res judicata cannot be made applicable in each and every public interest litigation, irrespective of the nature of litigation itself and its impact on the society and the larger public interest which is being served and submitted that there cannot be two Madathipathis at a time for a single Mutt. But due to the illegal act of 292nd Madadhipathi, now presently there are two different Madathipathis from two Mutts having different denominations. Further, under the HR & CE Act, the Madathipathi is a religious head of the institution, namely, the Mutt, which is a religious institution under sub-clause 18 of section 6. Section 6(17) states that "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. Hence, it is apparently clear that a Madhathipathi being a religious head is doing service or charity of a public nature. A person who is discharging public duty is certainly amenable to the jurisdiction of this Court under Article 226.

38. Arguments advanced by Mr.R.Kannan, learned counsel appearing for the petitioner in W.P.No.12915 of 2012:

Learned counsel submitted that the main contention of the 9th and 10th respondents is with regard to the maintainability of the public interest litigation in case of this nature. On several occasions, criminal cases have been registered as against 10th respondent and the same are pending in various courts of law in Tamil Nadu as well as in Karnataka. It is not merely the question of pendency of criminal cases, but the manner in which the 10th respondent has been conducting himself. If the authority and power is granted to such a person in respect of a Mutt, which has got very deep cultural, social and religious roots and which has been in existence for several centuries and stood the test of time, the same would undermine the very existence of the mutt. 10th respondent, who is a self-styled godman professes his activities in an independent manner by having an Ashram on his own. He is seeking to interfere and take the position of the Head of Mutt, which has got a global presence and which is ardently followed by saivites for several centuries. Madurai Adheenam Mutt comes within the control of respondents 1 and 2 and is governed by HR & CE Act, 1959. As per the criminal jurisprudence, 10th respondent would be presumed to be innocent till he is convicted, the same does not absolve him insofar as his appointment of such a high office is concerned. The Hon'ble Supreme Court in several judgments relating to constitutional appointments held that the fact that the person who is being appointed to such a high post is an accused in a criminal case would certainly be a factor which has to be taken into consideration while being appointed for such an important post. The appointment made by the 9th respondent certainly cannot be a private affair. Therefore, in the facts and circumstances of the case, we are of the view that the public interest litigation is maintainable.

39. This is not the case where the writ petitioner cannot be compelled to go for the alternative remedy. When there are allegations of gross violation in appointment, availing alternative remedy does not arise. In this regard, learned counsel relied on the case reported in *Sheela Barse .vs. Union of India and others* (AIR 1988 SC 2211), wherein it has been held that in extraordinary circumstances public interest litigation can be maintained even if there is an alternative remedy. Learned

counsel further relied on the decision reported in C.K.Rajan .vs. State of Kerala and others (AIR 1994 Kerala 179), wherein it has been held that in cases where there are allegations of infringement of fundamental rights or the pursuit of alternate remedy is a meaningless ritual or an empty formality or the alternate remedy is not equally efficacious or there is violation of the principles of natural justice or fairness, the alternate remedy is never a bar. Relying upon the said judgment, learned counsel submitted that in the instant case, insulting the sentiments of the followers of Saivite, 292nd Madadhipathi has appointed the 10th respondent who is having criminal background as junior pontiff. In this situation, public interest litigation will lie as against his appointment.

40. Learned counsel further relied on the decision reported in A.A.Gopalakrishnan .vs. Cochin Devaswom Board and others ((2007) 7 SCC 482) in support of his contention that the Courts as well as Government, members or trustees of boards/trusts and devotees owe a duty to protect or safeguard such properties from usurpation by collusive or fraudulent means with active or passive collusion of authorities concerned.

41. By inviting the attention of this Court to the definition of Mutt, which means a Hindu religious institution with properties attached thereto, the Madadhipathi is enjoined as a trustee to account for the properties in his possession and is responsible for due management which is a secular act, the learned counsel for the petitioner submitted that the questions relating to administration of properties relating to Math or specific endowment are not matters of religion under Article 26(b). Therefore, it is accountable with regard to the properties administered by him to the HR & CE Department which has a supervisory control over it. Therefore, the action of the Madathipathy could be questioned by way of writ. In this regard, learned counsel relied on the decision reported in Sri Sri Sri Lakshmana Yatendrulu and others .vs. State of A.P.and another ((1996) 8 SCC 705.

42. Arguments advanced on behalf of the State:

Mr.A.Navaneethakrishnan,learned Advocate General appearing for the State submitted that the writ will lie only as against the State. So far as the present writ

petitions are concerned, the grievance of the writ petitioners is that the 9th respondent had committed an illegal act in appointing the 10th respondent as Junior Pontiff. This is the individual act of the 10th respondent. Hence, writ will not lie under Article 226 of the Constitution of India. If any violation is done by the 9th respondent, then the same can be rectified by the Court in a suit proceedings. Moreover, the Mutt cannot be construed as "State" as defined under Article 12 of the Constitution of India. Presently, the 9th respondent is presiding over the Mutt. Succession of the Mutt should be only in accordance with the usage which the Mutt is following for the several decades for over 1400 years. But, contrary to the provisions under section 6(13) of HR & CE Act, by way of Deed of Declaration of Trust, the 9th respondent had appointed the 10th respondent who is having criminal background. However, the learned Advocate General submitted that Commissioner is contemplating legal action as per section 59 of the Act. Hence, there is no need to prosecute the present writ petitions. Thus, he prayed for the dismissal of the writ petitions.

43. Arguments advanced by Mr.G.Rajagopalan, learned Senior Counsel appearing for 9th and 10th respondents:

Learned Senior Counsel invited the attention of this Court to the representations sent by the petitioner in W.P.No.8260 of 2012, more particularly the representation dated 13.06.2012 and submitted that the petitioner requested the authorities to invoke section 60 of HR & CE Act. Invoking the provision of section 60 of the Act to initiate action against the 10th respondent, learned senior counsel submitted that section 60 deals about the arrangement that has to be made when vacancies occur. Presently, 10th respondent is continuing as Senior Pontiff and only in the event of he attaining Mukthi, the question of filling up the vacancy would arise. On this ground only, his representation was rejected by the Assistant Commissioner, HR & CE Department. The said order of Assistant Commissioner dated 20.06.2012 was challenged by him in another writ petition in W.P.No.26567 of 2012. It is not the representation before the authority under section 59 of the GR & CE Act for initiation of suit for removal of the trustee of the Mutt. When that being so, the present writ petition (W.P.No.26567 of 2012) challenging the order passed by the Assistant Commissioner has no relevance to the prayer now he is seeking

to remove the 10th respondent. Therefore, on this ground alone, the present writ petition is not maintainable.

44. It is the further submission of learned Senior counsel appearing for 9th and 10th respondents that there are lot of disputed questions, such as whether the 10th respondent belongs to Saivite community, whether all the rituals have been followed and whether the person had attained Paripakkuvam are all matters in the issue raised by the writ petitioners, which could be decided only in the suit and not in the writ petitions. Unless the disputed question of facts are decided, the question of entertaining the relief now the writ petitioners is sought for cannot be considered. Further, the public interest litigation have been filed based on imaginary complaints against the 9th respondent and the veracity of which are yet to be decided. Right to appoint the successor vested only with the head of the Mutt and Courts did not have any jurisdiction or expertise to adjudicate the issue. Appointing the successor is the right of the head of a religious institution and it is not subject to judicial review. Interference with the activities of the Mutt would amount to violation of Article 25 of the Constitution of India. Justifying the appointment made by the 9th respondent, learned senior counsel further submitted that 10th respondent had been ranked by a reputed US magazine among the 100 Most spiritually inclined living people in the world and only after satisfying with the capabilities of the 10th respondent, he was anointed the post of Junior Pontiff. Thus, he prayed for the dismissal of all the writ petitions.

45. During the time of arguments advanced by the learned Advocate General, this Court put a question that when lot of agitations have been going on against the appointment of 10th respondent as junior pontiff, why there was delay on the part of the Government to initiate action either under the relevant provisions of HR & CE Act or any other action ?

46. On 19.10.2012, learned Advocate General submitted before this Court that the Commissioner has filed a suit before the Sub Court, Madurai in O.S.No.1000 of 2012 on 18.10.2012 for removal of Senior Pontiff as Madurai Adheenam and therefore, nothing survives in the writ petitions. But the learned senior counsel Mr.N.R.Chandran appearing for one of the writ petitioners submitted that even

though the suit is filed, since 10th respondent is continuing as Junior Pontiff, the issues involved in the writ petitions have to be decided.

47. We have reserved the matters for Orders on 19.10.2012. On 20.10.2012, it was widely reported in the newspapers that the 10th respondent Nithyananda has been removed from the position of 293rd Pontiff of Madurai Adheenam. Since the development came a day after we have reserved the matters for Orders and HR & CE moved the Civil Court in Madurai to remove the Senior Head of the Mutt, the matters were again listed on 30.10.2012 under the caption "for clarification".

48. Mr.A.Navaneethakrishnan, learned Advocate General submitted that so far they have not received any official communication regarding the removal of 10th respondent as 293rd Pontiff of Madurai Adheenam. Mr.G.Rajagopalan, learned Senior Counsel appearing for Respondents 9 and 10 submitted that 9th respondent has removed the 10th respondent - Nithyananda as 293rd Pontiff of Madurai Adheenam. Learned Senior Counsel also stated that 10th respondent is yet to receive the communication from Madurai Adheenam about his removal as 293rd Pontiff of Madurai Adheenam.

49. In view of the submission made by the learned Advocate General as well as learned Senior Counsel appearing for respondents 9 and 10, we are of the view, now the issue raised by the writ petitioners cannot be decided in the writ petitions since if any finding that has to be rendered in the writ petitions will definitely have a bearing over the issue involved in the suit. However, the questions,

Whether the public interest litigation is maintainable in the case of this nature and

Whether the present writ petitions are hit by constructive res judicata in view of the dismissal of earlier writ petition by a Division Bench of Madurai Bench of this Court?

are still available for consideration.

50. Maintainability of writ petitions: It is the submission of the learned Senior Counsel appearing for the 9th respondent Mutt that several disputed questions of facts are involved in the writ petitions, which could be decided only in the trial.

Moreover, there is an alternative remedy under section 59 of the HR & CE Act to file a suit for removal of the trustee and when there is an alternative remedy, writ petitions are not maintainable. Similarly, it is the submission of the learned Advocate General that appointment of 10th respondent as Junior Pontiff by the Senior Pontiff is an individual act of present Madadhipathi - 9th respondent, the State is in noway involved in the Act of appointment. Under such circumstances, the public interest litigation petitions are not maintainable.

51. On a perusal of section 6(13) of HR & CE Act which defines 'Math', we find that a person, who presides over the Mutt, is entrusted with dual nature of work. One as a head of religious institution and another work related to administering the property attached to the said Mutt. It would be apt to extract the definition of Mutt.

"Math" means a Hindu religious institution with properties attached thereto and presided over by a person, the succession to whose office devolves in accordance with the direction of the Founder of the institution or is regulated by usage and---

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

(ii) who exercises or claims to exercise spiritual headship over a body of disciples;

and includes places of religious worship or instruction which are appurtenant to the institution".

52. So far as the appointment of successor is concerned, it is purely religious act. We find, under section 59 of the HR & CE Act, only a suit can be filed for removal of trustee of math or specific endowment attached thereto. Section 59 reads as follows:

"59. Suit for removal of trustee of math or specific endowment attached thereto:-

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

The word "trustee" is defined under section 6(22) as under:

"Trustee" means any person or body by whatever designation known in whom or in which the administration of a religious institution is vested and includes any person or body who or which is liable as if such person or body were a trustee".

Since Madathipathi is administering the religious institution along with the properties attached thereto, he would come within the definition of 'trustee' as defined under section 6(22). Therefore, according to the learned Advocate General, only the suit is maintainable under section 59 of the Act for removal of the Madadhipathi/trustee. But according to the learned senior counsel for the petitioners, when the State has omitted to act and if such omission passes any legal injury to public at large, an individual can file public interest litigation. In this regard, a reference could be placed in some of the judgments relied on by the writ petitioners. In C.K.Rajan .vs. State of Kerala and others (AIR 1994 Kerala 179), the Kerala High Court held as follows:

"16. It is settled law that the bar relating to alternate remedy is a rule of self-imposed limitation by the Courts -- a rule of policy and expediency, convenience and discretion. We are of the view that in cases where there are allegations of infringement of fundamental rights or the pursuit of alternate remedy is a meaningless ritual or an empty formality or the alternate remedy is not equally efficacious or there is violation of the principles of natural justice or fairness, the alternate remedy is never a bar. We are also of the view that in a public interest litigation, the entire complexion changes and the availability of alternate remedy sinks into oblivion".

53. In State of Uttaranchal .vs. Balwant Singh Chauhan and others ((2010) 3 SCC 402), the Hon'ble Supreme Court has held as follows:

"36. Public interest litigation is not in the nature of adversarial litigation but it is a challenge and an opportunity to the Government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice which is the signature tune of our Constitution. The Government and its officers must welcome public interest

litigation because it would provide them an occasion to examine whether the poor and the downtrodden are getting their social and economic entitlements or whether they are continuing to remain victims of deception and exploitation at the hands of strong and powerful sections of the community and whether social and economic justice has become a meaningful reality for them or it has remained merely a teasing illusion and a promise of unreality, so that in case the complaint in the public interest litigation is found to be true, they can in discharge of their constitutional obligation root out exploitation and injustice and ensure to the weaker sections their rights and entitlements".

54. On a perusal of the above judgments, we are of the view that though there is an alternative remedy, if there is any inaction on the part of the State in initiating action in the matter of public concern, considering the facts and circumstances of the case, the Court can give a direction on its judicial discretion to the Government by entertaining public interest litigation.

55. In the instant case, on the factual aspects, we find that 10th respondent was appointed as Junior Pontiff in the month of April, 2012. One Solaikannan, claiming to be the Madurai District President of Hindu People Party moved the Madurai Bench of this Court by way of public interest litigation in the month of May, 2012 even without waiting for action to be taken by the Government and the said writ petition was dismissed by the Division Bench on 10.05.2012 stating that when there is an alternative remedy, writ petition is not maintainable. At the time of dismissal of writ petition, it was not known whether the Government is going to initiate action or not. Even after the dismissal of the said writ petition, there was some delay on the part of the State in initiating action. Hence, various representations were given to the authorities concerned to take action against 9th and 10th respondents. When the said representations were turned down by the authorities concerned, the present writ petitions have been filed. In these circumstances, we are of the view that when there is an inaction on the part of the Government to initiate action, public interest litigation could be entertained for a limited purpose seeking to issue a direction to the State, particularly when the Math, defined under section 6(13) of the HR & CE Act, has been included in the list published under clause III of Section 46 of HR & CE Act and since HR & CE

Department is having supervisory control over the mutt.

56. Further, from the definition of "Mutt", we find that Madathipathi has a dual role in managing the Mutt, one as a Religious Head connected with religious administration and another in administering the properties attached to the Mutt. Hence, if any irregularities committed by the religious institution in administering the properties attached to the Mutt, which is a secular act and not connected with religious activities, and if there is any delay on the part of the State to take action, Public Interest Litigation could be entertained for the limited purpose to give a direction to the supervisory authority to initiate action so far as secular act is concerned. In this regard, a reference could be placed in the judgment relied on by one of the petitioners (W.P.No.12915 of 2012) reported in Sri Sri Sri Lakshamana Yatendrulu and others .vs. State of A.P.and another ((1996) 8 SCC 705), wherein the Supreme Court has held that the regulations are permissible under Article 25 of the Constitution and it does not amount to interference with the religious functions of the madathipathi as head of the math. The relevant paragraph reads as follows:

"In law, the madathipathi is enjoined as a trustee to account for the properties in his possession and is responsible for due management which is a secular act. Questions relating to administration of properties relating to math or specific endowment are not matters of religion under Article 26(b). They are secular activities though connected with religion enjoined on the Mahant. After deletion of Articles 19(1)(f) and 31 from Part III of the Constitution by 44th Constitution (Amendment) Act, the law laid down by the Supreme Court that the madathipathi had a fundamental right to property no longer is available to him. Section 50 of the Act which requires the madathipathi to maintain accounts in the manner prescribed therein which is a secular activity on the part of a madathipathi. The intervention of the legislature in that behalf is in the interest of the math itself. He is, therefore, enjoined to maintain accounts in the regular course of the administration and maintenance of the math. Operation of Section 50 is, therefore, a permissible statutory intervention under Articles 25(2)(a) and 26(b) and (d) of the Constitution".

57. From the principles enunciated in the said decision, it is very clear that the submission made by the learned senior counsel for 9th respondent that public interest litigation cannot be maintained does not merit acceptance when there is mismanagement of properties administered by the Mutt, because the Courts as well as Government, members or trustees of boards/trusts and devotees owe a duty to protect or safeguard such properties from usurpation by collusive or fraudulent means with active or passive collusion of authorities concerned. Under such circumstances, we are of the view that for the limited purpose, appropriate direction can be given to the Government to safeguard and protect the interest of lot of disciples and endowments of the Mutt in the Public Interest Litigation, so far as the secular act of the Madathipathi is concerned.

58. The next question falls for consideration is, whether the present writ petitions are hit by constructive res judicata since the earlier writ petition was dismissed by the Madurai Bench of this Court. At this stage, an useful reference could be given in the judgment reported in V.Purushotham Rao .vs. Union of India and others ((2001) 10 SCC 305) which gives a fitting answer to this issue, wherein it has been held as follows:

"19. the principle of constructive res judicata cannot be made applicable in each and every public interest litigation, irrespective of the nature of litigation itself and its impact on the society and the larger public interest which is being served....".

Therefore, when a larger public interest is involved in the public interest litigation, it cannot be said the present writ petitions are hit by constructive res judicata. Moreover, the present writ petitions have been filed when there is a considerable delay on the part of the State in initiating action under the HR & CE Act, whereas at the time of filing earlier writ petition, it is not known, whether the State is going to initiate action or not subsequently. When the State is keeping silence in initiating suitable action, writ petitioner in W.P.No.8260 of 2012 gave representation and when the same was rejected, the present writ petition has been filed. In these circumstances, in our view, the present writ petitions are not hit by constructive res judicata.

59. Learned counsel appearing for the writ petitioner in W.P.No.12915 of 2012 has brought to our notice by producing the judgment reported in ((1996) 8 SCC 705 (supra) delivered under Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (30 of 1987) and submitted that in the Andhra Pradesh Act, power of removal of Madathipathi is given to the Commissioner under section 51 of the said Act, which is corresponding to the Act 59 of Tamil Nadu HR & CE Act. We find from Section 51 of the Andhra Pradesh Act that any Madathipathi or trustee aggrieved by the order passed by the Commissioner, can file a suit within 90 days challenging the said order and it is more effective in initiating action against erring Madhathipathis.

60. Section 51 of Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (30 of 1987) reads as follows:

"51. Removal of Mathadhipathi:- (1) The Commissioner may suo motu or on an application of two or more persons having interest initiate proceedings for removing a mathadhipathi or a trustee of a specific endowment attached to a math, if he---

(a) is of unsound mind;

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

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

(d) has been sentenced for any offence involving moral turpitude, such sentence not having been reversed;

(e) is guilty of breach of trust, or misappropriation in respect of any of the properties of the math;

(f) commits persistent and wilful default in the exercise of his powers or performance of his functions under the Act;

(g) violates any of the restrictions imposed or practices enjoined by the custom, usage or the tenets of the math, in relation to his personal conduct, such as

celibacy, renunciation and the like;

(h) leads an immoral life; or

(i) fails or ignores to implement the principles set out in clause (17) of Section 2.

(2) The Commissioner shall frame a charge on any of the grounds specified in sub-section (1) against the mathadhipathi or trustee concerned and give him an opportunity or meeting such charge, of testing the evidence adduced and of adducing evidence in his favour. After considering the evidence adduced and other material before him, the Commissioner may, by order exonerate the mathadhipathi or trustee, or remove him. Every such order shall state the charge framed against the mathadhipathi or the trustee, his explanation and the finding on such charge together with the reasons therefor:

Provided that in the case of a math or specific endowment attached thereto whose annual income exceeds rupees one lakh, the order of removal passed by the Commissioner against the mathadhipathi or trustee shall not take effect unless it is confirmed by the Government.

(3) Pending the passing of an order under sub-section (2) the Commissioner may suspend the mathadhipathi or the trustee.

(4) (a) Any mathadhipathi or trustee aggrieved by an order passed by the Commissioner under sub-section (2), may within ninety days from the date of receipt of such order, institute a suit in the court against such order;

(b) An appeal shall lie to the High Court within ninety days from the date of a decree or order of the Court in such suit".

61. No such power of removal of Madathipathi is available to the Commissioner under Tamil Nadu HR & CE Act. Under Tamil Nadu Act 22 of 1959, removal could be done only by way of filing a suit. The relevant portion reads as follows:

"59. Suit for removal of trustee of math or specific endowment attached thereto:-

(1) The Commissioner or any two or more persons having interest and having obtained the consent in writing of the Commissioner, may institute a suit in the

Court to obtain a decree for removing the trustee of a math or a specific endowment attached to a math for any one or more the following reasons....".

62. Considering the present scenario that Mutts are engaged in varied activities both secular and non-secular act and running number of educational institutions, we are of the considered view that when certain allegations are made against the trustees of the Mutt by the disciples and devotees of the Mutt, instead of making HR & CE to undergo ordeal of trial by filing a suit, the Commissioner must have power to deal with the situation. As per Section 59 of Tamil Nadu HR & CE Act, the Commissioner or any two or more persons who have obtained the consent of the Commissioner in writing, can only institute a suit for removal of a trustee of a Math or a specific endowment attached to a Math. Instituting a suit for removal and finality of suit will take considerable time and by which time, much damage could be done to the Mutt. We are of the opinion that, to have more regulatory control over Mutts, the State can consider to amend the provisions of section 59 of Tamil Nadu HR & CE Act by giving suo motu powers to the Commissioner, as found in Section 51 of Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (30 of 1987).

63. So far as the present case is concerned, since already a suit has been filed, we are not inclined to issue any direction in the present writ petitions. More so, when 10th respondent is now said to have been removed from the position of 293rd Mutt of Madurai Aheenam. Suffice it to note that State can file appropriate application in the suit pending before the Sub Court, Madurai, to get any interim direction, if they so desire. All the issues are left open.

With the above observation, writ petitions are disposed of. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

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