

(2010) 12 MAD CK 0176**Madras High Court****Case No:** Writ Petition No. 28206 of 2010 and M.P. No. 1 of 2010

P. Rathinavelu

APPELLANT

Vs

The Commissioner, The
Additional Commissioner
(Enquiry), The Joint
Commissioner, Hindu Religious
and Charitable Endowment and
The Executive Officer

RESPONDENT

Date of Decision: Dec. 22, 2010**Acts Referred:**

- Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 - Section 114, 45(1), 46

Hon'ble Judges: M. Jaichandren, J**Bench:** Single Bench**Advocate:** R. Jothimani, for the Appellant; T. Chandrasekaran, for the Respondent**Judgement**

@JUDGMENTTAG-ORDER

M. Jaichandren, J.

It has been stated that Arulmighu Ayyanarappan Temple Vembenari, Edapadi Taluk, Salem District, has been in existence for nearly 200 years. The temple is a denominational temple, maintained by the hereditary trustees. The Petitioner has been functioning, as a hereditary trustee, from 11.4.2007, after the demise of his father Ponnusamy. While so, the third Respondent had issued a charge memo, dated 14.7.2008, based on the report given by the Thakkar of Mettur, dated 12.7.2008. In spite of the Petitioner having submitted his explanation to the frivolous charges levelled against him, no enquiry had been conducted and no order had been passed, till date.

2. It has also been stated that, on 27.7.2009, the third Respondent had issued a show cause notice regarding the counting of the hundial collections. The Petitioner had submitted his written explanation, on 4.8.2009. However, without giving an opportunity of hearing to the Petitioner, the first Respondent had passed the impugned proceedings, dated 8.11.2010, u/s 45(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. By the said proceedings, the first Respondent had appointed an Executive Officer to manage the affairs of Arulmighu Ayyanarappan Temple.

3. The main contention of the learned Counsel appearing on behalf of the Petitioner is that he had not been given an opportunity of hearing before the impugned proceedings, dated 8.11.2010, had been issued by the first Respondent. Further, no notice had been issued to him before the said proceedings had been passed. The learned Counsel had relied on the following decisions in support of his contentions:

- 1) Commissioner, Hindu Religious and Charitable Endowments (Administration) Department, Madras Vs. K. Jothiramalingain and Another, .
- 2) Solamuthuraja Vs. The Commissioner, Hindu Religious and Charitable Endowment Board, The Assistant Commissioner, Hindu Religious and Charitable, Endowment Board and The Executive Officer,

4. A counter affidavit had been filed on behalf of the fourth Respondent denying the averments and allegations made by the Petitioner in his affidavit filed in support of the writ petition. It has been stated that Arulmighu Ayyanarappan Temple, situated at Vembeneri Village, Edapadi Taluk, Salem District, is a denominational temple, published u/s 46(i) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The said Temple is under the administrative jurisdiction of the Joint Commissioner, Hindu Religious and Charitable Endowments, Salem. The office of the trustee ship had been declared as 'Hereditary", by the Joint Commissioner, Hindu Religious and Charitable Endowments, Salem, in O.A. No. 23/93, dated 11.4.2007.

5. It had also been stated that several complaints had been received from the general public regarding the mismanagement and misappropriation of temple funds, by the hereditary trustee. Therefore, after a detailed enquiry, the Joint Commissioner, Hindu Religious and Charitable Endowments, Salem, had sent a detailed report to the Commissioner, to appoint an Executive Officer to manage the affairs of the temple, u/s 45(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. After considering all the relevant facts, and the explanation submitted by the Petitioner, the Commissioner, Hindu Religious and Charitable Endowments, Administration Department, had appointed an Executive Officer, u/s 45(1) of the Act, by the impugned proceedings, dated 8.11.2010.

6. It had also been stated that the writ petition is not maintainable, in view of the order passed by a Division bench of this Court, in the writ appeals, in W.A. Nos. 145

of 1997, and 590 of 2007, as an alternative remedy is available to the Petitioner, u/s 114 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. It had also been stated that the temple in question is not a denominational temple, as alleged by the Petitioner. It is a public temple, where persons belonging to all sections of the Hindu community are worshipping.

7. It had also been stated that a notice had been issued to the hereditary trustee, by the Joint Commissioner, Hindu Religious and Charitable Endowments, Salem. The explanation submitted by the Petitioner was not satisfactory. Therefore, the first Respondent had passed the impugned proceedings, dated 8.11.2010, appointing an Executive officer, to manage the affairs of the temple in question.

8. In view of the averments made in the affidavit filed in support of the writ petition and the counter affidavit filed on behalf of the fourth Respondent and in view of the submissions made by the learned Counsels appearing on behalf of the Petitioner, as well as the Respondents and in view of the decisions cited supra, it is seen that even though it had been claimed that a notice had been issued to the Petitioner before the first Respondent had passed the impugned proceedings, dated 8.11.2010, it has not been shown by the Respondents that such a notice had been issued. The Respondents had not been in a position to produce a copy of the notice said to have been issued to the Petitioner.

9. From the decisions relied on by the learned Counsel appearing on behalf of the Petitioner, it is clear that the Petitioner, who is said to be a hereditary trustee of the temple in question, ought to have been given an opportunity of hearing on the charges levelled against him, before the impugned proceedings had been passed. In such circumstances, without going into the merits of the case, this Court finds it appropriate to set aside the impugned proceedings of the first Respondent, dated 8.11.2010. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed. However, it is made clear that it would be open to the Respondents to pass appropriate orders based on the charges levelled against the Petitioner, after giving him an opportunity of hearing, as per the relevant provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.