IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.03.2018

Delivered on : 05-06-2018

CORAM

THE HONOURABLE THIRU JUSTICE **V. PARTHIBAN**

W.P.No.31714 of 2012 and
W.M.P.No.2672 and 2673 of 2018

His Holiness Kasiviswanatha Pandara Sannidhi,
The Adheena Head of
Thiruvavaduthurai Adheenam,
Mayiladuthurai taluk,
Nagapattinam District. .. Petitioner

versus

1. State of Tamil Nadu,
represented by the Secretary,
Hindu Religious and Charitable Endowments Department,
Fort St.George, Chennai.

2. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai.

3. The Assistant Commission
Hindu Religious and Charitable Endowments Department,
Kumbakonam.

4. Sri Meenakshisundara Thambiran,
Kattalai Thambiran at Thiruvidaimarthur Temple,
now self declared as Head of Thiruvavaduthirai Adheenam,
Mayiladuthurai taluk,
Nagapattinam District. .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, to forbear the respondents from anyway hindering or preventing the petitioner from functioning as the Head of Thiruvavaduthurai Adheenam.

For Petitioner : Mr.Shanmugasundaram, SC for Mr.N.Chandrasekaran

For Respondents: Mr.S.R.Rajagopal, Addl.A.G., assisted by Mr.M.Maharaja, Spl.G.P.-R1toR3
Mr.B.Kumar, SC for Mr.K.Chandrasekaran & Mr.K.S.Vaithianathan -R4

ORDER

The present writ petition has been filed, seeking originally for the following relief:

"To issue Writ of to forbear the respondents from anyway hindering or preventing the petitioner from functioning as the Head of Thiruvavaduthurai Adheenam."

2. The facts and circumstances necessitating the filing of

the present Writ Petition need to be stated as under for better understanding the broad issues involved in the Writ Petition.

3. The petitioner claims himself to be the Head of Thiruvavaduthurai Adheenam. Thiruvavaduthurai Adheenam Mutt is governed by a scheme decree in O.S.No.46 of 1933 passed by the Sub Court, Kumbakonam as amended in A.S.No.51 of 1936 by this Court, exercising its jurisdiction on the appellate side. As per the amended scheme, *inter alia* among other things, the Head of the Mutt, namely, Panndara Sannadhi shall nominate Junior Pandara Sannadhi during his life time and duly install him with appropriate ceremonies. It also provided for in the absence of installation of Junior Pandara Sannadhi, the Tambiran in the Tirukkuttam shall elect a Pandara Sannadhi. The earlier Madathipathi (Pandara Sannadhi) was Sri La. Sri Sivaprakasa Desika Pandara Sannadhi. According to the petitioner, he was appointed as Junior Pandara Sannadhi on 24.3.1997 after observing religious ceremonies in terms of custom and usage of the petitioner Mutt. Subsequent to the appointment of the petitioner as Junior Pandada Sannadhi, it was found that he was

acting against the interest of the Mutt as well as Pandara Sannadhi and a criminal complaint was lodged on 6.7.2002. On investigation of the criminal complaint, a case was registered for offences of conspiracy and attempt to murder against Junior Pandara Sannadhi. The trial Court convicted the petitioner and others and the same was also confirmed in C.A.No.4 of 2004 by the Principal Sessions Court, Nagapattinam. However, ultimately, in Crl.R.C.No.1252 of 2005, this Court was pleased to set aside the judgment of conviction and acquitted the petitioner and others vide order dated 1.8.2011. During the pendency of the criminal case against the petitioner, a show cause notice was issued on 15.7.2002 by the Mutt, directing him to show cause as to why action should not be initiated against him for various irregularities committed by him. In response to the show cause notice, a reply was sent by the petitioner through his advocate to the Madathipathi. Since the reply given on behalf of the petitioner was not satisfactory, ultimately, vide letter dated 24.7.2002, the petitioner was removed from the position of Junior Pandara Sannadhi. As per the removal notice, Junior Pandara Sannadhi had not been attending regular rituals and

performing poojas and had been incarcerated in prison and thereby was disabled from performing due rituals and poojas and such person cannot be a Junior Pandara Sannadhi and therefore, disentitled to succeed as Madathipathi in respect of the petitioner Mutt. It appears that the removal of the petitioner from the position of Junior Pandara Sannadhi, has been communicated to the Hindu Religious and Charitable Endowments Department on the same day.

4. On being removed as Junior Pandara Sannadhi, the petitioner approached the District Munsif Court, Myladuthurai in O.S.No.343 of 2002 in November 2002, praying for declaration that his removal from the post of Junior Adheenakarthar of Thiruvavaduthurai Adheenam, by communication dated 24.7.2002 was not legally valid and not binding upon him and with consequential prayer, restraining the Adheenakarthar, namely, Head of the Mutt, from interfering with the post of Junior Adheenam, the plaintiff, by appointing any other person in his place.

5. A detailed written statement was filed on behalf of the Mutt and a counter affidavit was also filed in the Interlocutory Application filed along with the suit. No orders were passed in the Interlocutory Application pending the suit. Ultimately on 24.12. 2004, the suit came to be dismissed for default. The trial Court had dismissed the suit as the plaintiff was not present when the suit was called on that date for hearing though the defendant was present through their counsel. Admittedly, the dismissal of the suit has become final and no steps were taken by the petitioner herein to restore the suit. Subsequently, after lapse of several years, previous Pandara Sannadhi attained Mukthi, i.e. died on 22.11.2012 and during his life time, Pandara Sannadhi had not nominated any person as Junior Pandara Sannadhi in the place of the petitioner. Since the Mutt cannot be without a Head, as per the scheme decree, on the same day, i.e. 22.11.2012, Tirukkuttam comprising Tahambiran from various Mutts associated, by tradition and culture, assembled and unanimously elected 4th respondent as 24th Guru and installed him as Madathipathi of the petitioner Mutt. This election of 4th respondent was done in the presence and under supervision of

HR & CE Officials and assumption of new Pandara Sannadhi as Head of the Mutt has been informed to the authorities concerned by the Assistant Commissioner, HR & CE by proceedings dated 22.11.2012. On 26.11.2012, the present Writ Petition was filed by the petitioner, seeking to issue Writ of Mandamus as stated supra.

6. During the pendency of the Writ Petition, a Writ Miscellaneous Petition in W.M.P.No.2672 of 2018 has been moved by the petitioner, seeking to amend the prayer in the Writ Petition, as follows:

> "To issue Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the 2nd respondent herein made in Na.Ka.No.6386/2012 dated 22.11.2012 and quash the same as illegal and further forbear the respondents herein from in any manner interfering with the day to day administration and discharge of the religious functions of the petitioner as the Head of Thiruvavaduthurai Adheenam Mutt".

7. According to the writ petitioner, the amendment became necessary in view of the communication dated 22.11.2002 of the official respondents approving the installation of the 4th respondent as Pandara Sannadhi of the petitioner Mutt and this fact was made known to them only in the court proceedings and therefore, the present WMP is filed for amendment of the prayer in 2018.

8. There were many strong objections raised on behalf of the 4th respondent on the maintainability of the writ miscellaneous petition, seeking the amendment at this distant point of time and the amendment sought for by the petitioner was only a communication by 3rd respondent to the 2nd respondent informing the installation of 4th respondent as Madathipathi of petitioner Mutt, challenge to the same is misconceived and invalid. However, taking into consideration the overall circumstances of the case and the final orders to be passed in the Writ Petition, WMP for amendment is allowed and the Writ Petition is therefore, being dealt with by the amended prayer which was sought for and allowed. The amended prayer is

extracted as follows:

> "To issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the 2nd respondent herein made in Na.Ka.No.6386/2012 dated 22.11.2012 and quash the same as illegal and further forbear the respondents herein from any manner interfering with the day to day administration and discharge of the religious functions of the petitioner as the Head of Thiruvavaduthurai Adheenam Mutt."

9. In support of the Writ Petition, Shri Shanmugasundaram, learned senior counsel appearing for the petitioner, has made the following submissions, viz.,

At the outset, the learned senior counsel would refer to Clause 18 of the amended scheme decree passed by this Court in C.A.No.51 of 1936, which reads as follows:

> "18. It is desirable that the Pandarasannadhi should nominate a junior Pandarasannadhi and duly install him with

appropriate ceremonies with the least practicable delay."

10. According to the learned senior counsel, the petitioner was appointed as Junior Pandara Sannadhi after observing due religious ceremonies of acharya abhishekam and installed as such on 24.3.1997. While being coronated as Junior Pandara Sannadhi, the Mutt has followed its religious custom usage and tradition and therefore, for all practical purposes and also as per the scheme decree, the petitioner was validly coronated as Junior Pandara Sannadhi. Once validly coronated as Junior Pandara Sannadhi as indicated above, the petitioner cannot be removed from such position in view of Section 59 of Hindu Religious and Charitable Endowments Act, 1959 (in short, 'HR & CE Act). Section 59 of the HR & CE Act reads as follows:

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

(1) The Commissioner or any two ore more persons having interest and having obtained the consent in writing of 1[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, namely:"

(a) the trustee being of unsound mind ;

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

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

(d) his conviction for any offence involving moral delinquency ;

(e) breach by him of any trust created in respect of any of the properties of the religious institution ;

(f) waste of the funds or properties of the institution or the wrongful application of such funds or properties for purposes unconnected with the institution ;

(g) the adoption of devices to convert the income of the institution or of the funds or properties thereof into "pathakanika" ;

(h) leading an immoral life or otherwise leading a life which is likely to bring the office of head of the math into contempt ;

(i) persistent and willful default by him in discharging his duties or performing his functions under this Act or any other law.

(2) Where the Commissioner refuses to give consent under sub-section (1), the party aggrieved may, within three months from the date of the receipt of the order by him, appeal to the Government who may, after making such inquiry as they may consider necessary, confirm the order of the Commissioner or direct the Commissioner to give his consent in writing.

11. According to the learned senior counsel, the procedure

that has to be followed as provided under Section 59, had not been followed and therefore, the removal was not valid in the eye of law.

12. As a corollary to his arguments, the learned senior counsel would also draw the attention of this Court to Sub Section 15 of Section 6 of HR & CE Act where the definition of 'person having interest' is provided, which is extracted as under:

> "6(15). 'person having interest' means-
>
> (a) in the case of a math, a disciple of the math or a person of the religious persuasion to which the math belongs;
>
> (b) in the case of a temple, a person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple, or who is entitled to partake or is in the habit of partaking in the benefit of the distribution of gifts thereat;
>
> (c) in the case of a specific endowment, a person who is entitled to attend at or is in the habit of attending the performance of the service or charity, or who is entitled to partake

or is in the habit of partaking in the benefit of the charity;

13. With the same breadth, the learned senior counsel would also draw the attention of this Court to Section 108 which contemplates bar of suits in respect of administration or management of religious institutions, like the petitioner Mutt. Section 108 is reproduced below:

> "108. Bar of suits in respect of administration or management of religious institutions, etc.- No suit or other legal proceeding in respect of the administration or management of a religious institution or any other matter or dispute for determining or deciding which provision is made in this Act shall be instituted in any Court of Law, except under, and in conformity with, the provisions of this Act.

14. The endeavour of the learned senior counsel is to impress upon this Court that the suit which was filed originally in O.S.No. 343 of 2012 before the District Munsif Court, Myladuthurai, was dismissed for default, was not pursued by the

petitioner in view of the prohibition contained in the HR & CE Act. Therefore, the dismissal of the suit cannot be held against the petitioner. This submission is made by the learned senior counsel in anticipation of the objections being raised on behalf of the respondents as to the maintainability of the Writ Petition in view of the petitioner failing to pursue the civil remedy which he had instituted on his own volition questioning his removal from the position of Junior Pandara Sannadhi. '

15. According to the learned senior counsel, the evidence given by Junior Pandara Sannadhi in the criminal proceedings vouch the fact that the petitioner had been installed as Junior Pandara Sannadhi on 24.3.1997 and the said fact cannot be disputed or disowned. The learned senior counsel would further submit that as per Section 60 of the HR & CE Act, certain procedure is contemplated in order to fill the vacancy in the office of the trustee of the Mutt and such procedure was not followed and therefore, the appointment of the 4th respondent, cannot be held to be valid appointment in terms of the provisions of the HR & CE Act. According to him, the authority has the power to fill up

vacancy only under Section 60 of the HR & CE Act and in the absence of following the procedure as contemplated in the said section, it cannot be gainsaid that the appointment of the 4th respondent is valid.

16. The learned senior counsel would further submit that the reasons stated in the show cause notice, seeking explanation from the petitioner and the reasons stated in the removal order dated 24.7.2002 are at variance and therefore, even on this score, the removal order has to be interfered with. According to the learned senior counsel though several reasons were stated in the show cause notice dated 15.7.2002, there was no proper consideration of the petitioner's reply and removal order was passed only on the basis of the fact that the petitioner could not carry out his day-to-day religious activities in terms of the custom and usage of the petitioner Mutt.

17. According to the learned senior counsel, one of the reasons which confirmed the basis of the show cause notice, removing the petitioner as Junior Pandara Sannadhi was

incarceration of the petitioner, pending trial of the criminal case and once the petitioner had been acquitted by the High Court, the conviction gets completely wiped out in its entirety as ruled by various decisions of the Hon'ble Supreme Court. According to the learned senior counsel, the petitioner having been acquitted by this Court in the criminal revision, the reason for removal, did not hold good and therefore, the act of removal of the petitioner cannot construed to be a valid act.

18. In support of his various contentions, the learned senior counsel would rely upon the following decisions, viz.,

i) "(1974) 1 SCC 150 (***Sri Mahalinga Thambiran Swamigal versus His Holiness Sri La Sri Kasivasi Arulnandi Thambiran Swamigal)",*** wherein, the learned senior counsel would draw the attention of this Court to the observations and the ruling of the Hon'ble Supreme Court as stated herein below in paragraphs 26, 29, 30, 31, 34, 35, 36 and 44:

> "26. The question is whether, by the nomination, the appellant acquired a status in law,

and, if he acquired a status, whether it was liable to be put an end to by the defendant at his whim."

"29. In Nibovet v. Nibovet (1878) P.D. 1, Brett, L.J. said :

"The status of an individual, used as a legal term, means the legal position of the individual in or with regard to the rest of the community.

30. The fundamental difference between status and capacity is that the former is a legal state of being while the latter is a legal power of doing. Status determines a person's legal condition in community by reference to some legal class or group and cannot normally be voluntarily changed. The imposition of status carries with it attribution of a fixed quota of capacities and incapacities, but it does not directly compel the holder to do or refrain from doing any particular act. Capacity, on the other hand, is a legally conferred power to affect the rights of oneself and other persons to whom the exercise of the capacity is directed, subject to certain generally and legally defined limits-limits which vary in relation to each particular form of capacity. Capacity in this form is an incident of status. And, a distinction therefore must be made between the legal principles

applicable to the major conception of status and those affecting the minor conception of its incidents. The closest approach to a judicial statement of the distinction between status and its incidents is found in the judgment of Gray, C.J. in Ross v. Ross 129 Mass. 243 (1880) :

"The capacity or qualification to inherit or succeed to property, which is an incident of the status or condition, requiring no action to give it effect, is to be distinguished from the capacity or competency to enter into contracts that confer rights upon others.

31. It would follow that status is a condition imposed by law and not by act of parties, though it may be predicated in certain cases on some private act as the contract of marriage. Whether the condition of status will be imposed as the result of private contract or private or public act depends on the public interest in the relation created by the contract or act. In other words, as we said, the interest and concern of the society of which parties form part determine whether or not status will be imposed or conferred as the result of private contract or by private or public act. Social interest is a feature of the concept of status; unfortunately, this aspect has been little stressed in the cases.

'Austin's neglect of this aspect of status has made no small contribution to the judicial disregard of social interest involved in the concept'.

"34. What is the relationship in which junior heads stand to their seniors In Sambandha Case (supra), Muttusami Ayyar, J. said (at P. 493) :

"By appointment as junior, the Tambiran became a spiritual brother or a brotherly companion and by both the senior who appoints and the junior who is appointed belonging to the same Adhinam, they were associates in holiness."

As we said, status is something apart from and beyond its incidents. 'The status of a child is not his duties or disabilities in relation to his parents, but the legally recognised fact of being a child'. The fact of a person being legally nominated as junior, having a peculiar relationship with the senior is status, and the capacity to succeed to the head is the incident of that status. The status, when created by a nomination, cannot be withdrawn or cancelled at the mere will of the parties. The law must determine the condition and circumstances under which it can be terminated. Merely because the status originated from the act of a senior head in making the nomination, it would not follow that

the senior head can put an end to it by another act. In other words, the junior heads as a class occupy a position of which the creation, continuance or relinquishment, and its principal incident, namely, succession to the office of the headship of the Mutt are matters of sufficient social or public concern in the sense that the Hindu religious community is vitally interested in all of them.

"35. There was some debate at the bar on the question whether, by nomination, the junior gets a contingent interest in the office or in the properties of the Mutt, the contingency being the survival by the junior of the head of the Mutt. A contingent interest or ownership is a present right. But we do not propose to decide that point in this appeal. As we said, the concept of nomination is sui generis; and that makes it rather difficult to bring it under any legal rubric. Perhaps, it has its analogue in Canon Law and that was the reason why Bhashyam Ayyangar, J. in Vidyapurna Tirthaswami v. Vidvanidhi Tirthaswami I.L.R. 27 Mad. 435 likened the position of a junior head to that of a co-adjutor in Canon Law. A co-adjutor stands in a peculiar relationship with the Bishop.

He has a right to succeed the Bishop; while he is a co-adjutor, he has no administrative functions of his own, but has only to do the work assigned to him by the Bishop. But, nevertheless, during the life time of the Bishop he enjoys a status and is accorded honours and regard by the religious community, second only to those accorded to the Bishop.

"36. Even if it is assumed that the position of a junior head is not a status as known to law, we think that the relationship created by the nomination is one which cannot be put an end to by the head at his sweet will and pleasure.

"37. to 43. ....

44. Looking at the matter from another angle, we come to the same conclusion. We have already said that the power of nomination must be exercised not corruptly or for ulterior reason but bona fide and in the interest of the Mutt and the Hindu community. It then stands to reason to hold that power to revoke the nomination must also be exercised bona fide and in the interest of the institution and the community. In other words, the power to revoke can be exercised not arbitrarily,

> but only for good cause. We do not pause to consider what causes would be good and sufficient for revoking a nomination as the defendant had no case before us that he revoked that nomination for a good cause."

The learned senior counsel would fortify his argument from the above decision of the Hon'ble Supreme court of India, that the power to invoke the nomination of the religious head, cannot be exercised arbitrarily, but only for good cause. According to the learned senior counsel, what is good cause demonstrated in the present case, is not expressed by the Mutt or by the previous Pandara Sannadhi who had passed the order of removal of the petitioner as Junior Pandara Sannadhi vide communication dated 24.7.2002. According to the learned senior counsel, for the duration during which, the petitioner was imprisoned, he was prevented from performing poojas and that cannot be a sufficient or good cause for removal of the petitioner. The learned senior counsel would further submit that by virtue of his appointment as Junior Pandara Sannadhi, the petitioner got the status of spiritual brotherhood between the Madathipathi and himself and such

status cannot be disturbed casually or arbitrarily. He would also emphasize the fact that in view of peculiar spiritual relationship being created by such appointment, it cannot be put an end by the Head of the Mutt on his sweet will and pleasure, as held by the Hon'ble Supreme Court of India.

ii) "1982 (2) MLJ 221 (***His Holiness Sri-La-Sri Ambalavana Pandara Sannathi Avergal versus State of Tamil Nadu, rep. by the Secretary and Commissioner to Government, Department of CT & RE)",*** wherein, the learned senior counsel would draw the attention of this Court to the almost entire judgment starting from paragraph 2 and paragraphs 5 to 12 and paragraph 15, which read as under:

> "2. The learned single Judge held that the choice of a successor (Junior) is purely an administrative function and not a religious function and that none of the fundamental rights under Article 26 of the Constitution has been violated. Now, the vital point for consideration in this writ appeal is whether the nomination and appointment of a successor by the Head of the

Mutt is a religious function as contended by the appellant or is purely a secular act as urged by the respondents.

3. ....

4. ....

5. Thus, the law on the question of succession to the office of the Head of the. Mutt is that if the founder-grantor has laid down any particular rule of succession, that has to be given effect to. In Thiruvambala v. Chinna I.L.R.(1915) Mad. 177 : 30 M.L.J. 274 : 4 L.W. 306, it has been held the practice is for the Pandara Sannadhi or Head of the Mutt to nominate and ordain a Junior Pandara Sannadhi who acts as a co-adjutor during the lifetime of the senior and succeeds him after his death and the right thus acquired by the Junior Mahant cannot be deprived, except for grave cause. Thus, the right of making an appointment is appurtenant to the office of the Mahant and the duty of the Head of the Mutt is to impart spiritual instruction and to propagate Hindu religion.

6. Under Article 26 of the Constitution of India, subject to public order, morality and

health, every religious denomination or any section thereof shall have the right:

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion.

7. In Commissioner of Hindu Religious Endowments, Madras v. Sirur Mutt : [1954]1SCR1005 , the Supreme Court has declared that under Article 26(b), a religious denomination or organisation enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters. In Panachand Gandhi v. State of Bombay : [1954]1SCR1055 , the Supreme Court has further held that in regard to affairs in matters of religion, the right of management given to a religious body is a guaranteed fundamental right which no legislature can take away, though as regards administration of property, it has undoubtedly the right to administer such property but only in

accordance with law. In Tilkayat Shri Govindlalji Maharaj v. The State of Rajasthan and Ors. : [1964]1SCR561 , the same principle as laid down in Commissioner of Hindu Religious Endowments, Madras v. Sirur Mutt : [1954]1SCR1005 , is reaffirmed and it is not correct to say that religion is nothing else but a doctrine or belief and that it includes rituals and observances and modes of worship which are integral parts of religion.

8. In a later case reported in Mahalinga Thambiran v. Arulnundi Thambiran : [1974]2SCR74 , the Supreme Court observed that the succession to the office of Mahant or Head of a Mutt is to be regulated by the custom of the particular Mutt and that the power of nomination is a concept pertaining to the law of Hindu Religious Endowments. In that case, a controversy arose whether the Headship of the Mutt was an office or a status in law and the Supreme Court stated that it is a well-known custom in several Mutts for the Heads to nominate their successors and that the Junior Heads so nominated form a class by themselves,

and as they stand in special and peculiar relationship with the senior Heads, the custom and usage will decide the same. The Supreme Court approved the decision in the earlier Madras case reported in Gnana Sambanda Pandara Sannadhi v. Kandaswami Thambiran I.L.R.(1887) M. 375 and observed thus:

By appointment as Junior, the Thambiran became a spiritual brother or a brotherly companion and by both the senior who appoints and the junior who is appointed belonging to the same Adheenam, they were associates in holiness.

The Supreme Court further held that the fact of a person being legally nominated a Junior and the capacity to succeed to the Head is an incident of that status and it was further held that the status, when created by a nomination, cannot be withdrawn or cancelled at the mere will of the parties, unless in accordance with the law. Thus, the position is that the Junior once nominated cannot be removed even by the Head of the Mutt except for a good and. valid cause. The observations of Seshagiri Ayyar, J., in

Tiruvambala Desikar v. Chinna Pandaram 1915 30 M.L.J. 274 : I.L.R. (1915) Mad. 177, were quoted with approval and it was held by the Supreme Court that the Head of the Mutt is entitled to appoint a Junior Pandarasannadhi, that this Junior has a recognised status, that he is entitled to succeed to the headship if he survives the appointer,...that for good cause shown he can be removed, and that it is not open even to the head of the mutt to dismiss him arbitrarily.

9. The latest case on this subject is the one reported in Krishna Singh v. Mathura Ahir A.I.R. 1980 S.C. 707, wherein the Supreme Court observed that a math is an institutional sanctum presided over by a superior who combines in himself the dual office of being the religious or spiritual head of the particular cult of religious fraternity and of the manager of the secular properties of the institution of the math. It was further observed that the property belonging to a math is, in fact; attached to the office of the Mahant and passes by inheritance. The Supreme Court then went on to say that the law is well-settled that succession to mahant-ship of a math

or religious institution is regulated by custom or usage of the particular institution, except where a rule of succession is laid down by the founder himself who created the endowment. Thus, the mahant-ship descends from Guru to Chela, i.e., the existing mahant alone appoints his successor, and the general rule is that the mahants having a common origin acknowledge one of the members as a Head, who is for some reason pre-eminent.

10. From these decided cases on this subject, it is clear that the choice of a successor is a religious function of the Head of the Mutt and it can never be construed as a purely administrative function. So far as the Mutt in question is concerned, the nominee has to undergo a rigorous religious ritual and observe celibacy and he should not have been previously married also. It is not disputed that certain elaborate rituals are conducted for the ordainment of a Junior Head and, in the instant base, they have been performed on 6th August, 1980, and the appellant has nominated his spiritual successor, who is known as Junior Pandarasannadhi. Section 105(b) of the Act clearly states that

nothing in this Act shall authorise any interference with the1 religious and spiritual functions of the Head of a math including those relating to the imparting of, religious instruction or the rendering of spiritual service. In the Act, a clear-cut distinction is maintained throughout between the acts by the Trustees in administering the endowed1 properties and the functions of the Head of the Mutt as is apparent from the provisions of Sections 23 and 105(b) of the Act.

11. In the light of these decided cases and having regard to the usage and custom of the Mutt, we are unable to agree that the choice of a successor to the Headship of the Mutt is an administrative function, Status is something apart from and beyond its incidents. The fact of a person being legally nominated as Junior having a peculiar relationship with the Senior is status and the capacity to succeed is an incident of that status. Since the basic purpose and feature of nomination is designed to perpetuate a line of Acharyas to function as Preceptor in a wholly spiritual brotherhood and associate in holiness, the installation ceremonies and the management

of properties are only incidental and merely the effect of the choice or the nomination which is the prerogative of the Head of the Mutt. Section 23 of the Act merely empowers the Commissioner with supervisory jurisdiction to supervise the mundane and secular administration of the endowed properties. In other words, in the matter of choice or succession to the office, it shall be only according to the usage or direction of the founder and the jurisdiction of the Commissioner is excluded from the purview of the Act.

12. Learned Advocate-General argued that the respondents are not questioning the appointment of the successor, but they are only questioning or disputing the qualifications of the Junior, who has since been appointed. As already stated, the respondents are not empowered under the provisions of the Act to probe into the qualifications of the successor. As against this it is submitted on behalf of the appellant (Head of the Mutt) that the successor (Junior) is fully qualified and a most deserving person with religious bent of mind and a staunch disciple of

the cult of the Mutt. If, as contended by the respondents, the Junior suffers any disqualification, then there is ample provision under the Act to file a suit for his removal after proving the alleged disqualifications--Vide Section 59 of the Act. Under this section, even a worshipper or a group of worshippers can file a suit stating that the Head of the Mutt is disqualified. But, it does not mean that the Government or the Commissioner can question the very appointment of a successor and till now, there is no precedent for any such interference from outside authorities. As laid down in Mahalinga Thambiran v. Arulnandi Thambiran : [1974]2SCR74 , stated supra, when once the Junior is appointed, even the Senior cannot remove him unless for very valid and good cause. In the instant case, the Junior has been appointed and he has undergone the investiture ceremony and is now the Junior Head of the Mutt from 6th August, 1980. The impugned notice issued by the Commissioner was issued on 8th August, 1980, pointing out that there were complaints from certain quarters that the Junior

Head was not a fit or deserving person. As already stated, it is clear that it is not open to the Commissioner, who is the Head of the Department to question the nomination under a threat of disciplinary action. The remedy is found only in Section 59 of the Act to file a suit for the removal of the Trustee of the Mutt on any one of the grounds mentioned therein. If the right of interference on the question of succession is recognized as a matter of routine, then no Head of the Mutt can ever appoint a successor, which is an exclusive personal right of the Head of the Mutt. It was also submitted at the Bar that there is no precedent in the history of the Mutts in South India where the Government has questioned the nomination of the Junior on the ground that there are some complaints about his qualifications. This is a matter exclusively within the province of the Head of the Mutt and the Act, as it is, does not enable the Commissioner to question the appointment by means of departmental action.

13. ....

14. ....

15. It was strenuously argued on behalf of the appellant that the Commissioner has predetermined the matter in issue regarding the qualification of the Junior and that the respondents had jumped to the conclusion with a bias and without any material or enquiry whatsoever. Be that as it may, it is clear from the scheme of the Act that there is no provision therein to question the nomination or the choice of a successor to the Head of the Mutt and that, as laid down by the various decisions stated supra, it has always been governed by the usage and custom of the Mutt. The religious and the spiritual functions of a Madathipathi in initiating and ordaining Thambirans and nominating one of them as his Junior and successor have been recognised by the Courts of law as early as in Gnana Sambanda Pandara Sannadhi v. Kandasami Thambiran I.L.R.(1887) Mad. 375. The entire ceremony of initiation and investiture is wholly religious and spiritual and no part of it is secular or administrative. Section 105(b) of the Act affords protection to the Mutts in respect of religious and spiritual functions which obviously

include nomination and customary ceremonies or ordainment. The secular functions are only incidental to the office. The result is, the impugned notice issued by the second respondent is without legal authority and it tantamounts to interference with the religious practice of the institution. We are, therefore, unable to uphold the view of the learned single Judge and consequently, a writ of certiorari will be the proper writ to be issued in this case and the same is hereby issued quashing this impugned notice, dated 8th August, 1980, to the Head of the Mutt, as without jurisdiction issued by the second respondent Commissioner and devoid of legal authority."

The learned Division Bench of this Court, in extenso, dealt with various cases laws on the subject matter and over ruled the order passed by the learned single Judge that the appointment of Junior Madathipathi was only an administrative function and not a religious function. The learned Division Bench has held that the appointment of Junior Madathipathi was absolutely a religious

function. It has also held that the secular function of the Office of the Junior Madathipathi was only incidental, but the office of the Junior Pandara Sannadhi was entirely spiritual and religious and therefore, cannot be subject to any adverse action by the authorities under HR & CE Act.

iii) "1982 (2) MLJ 11 (***Alangadu Immudi Aghora Sivacharya Ayira Vysia Mutt, Nerinjipettai by the Chairman of the Committee of Trustees versus Sankarasubramaniam and another)",*** wherein, the learned counsel would particularly draw the attention of this Court to paragraphs 9 and 13, which are extracted as under:

> "9. From a reading of the plaint it appears that the case of the plaintiff is that the first defendant committed acts of misconduct in not attending veda classes regularly, not doing poojas properly, not accounting for the Padakanickais received by him, and by leaving the Madam and going away with his father on 2.7.78. Though several issues have been framed by the trial court no specific issue

has been framed with regard to the allegation that the first defendant failed to attend classes regularly and failed to do poojas. It further appears that there is a general issue framed to the effect that whether the first defendant is liable to be removed from office on the ground of his misconduct. With regard to all the aforesaid four alleged misconduct the trial court has not given a clear finding but has just stated that in cannot be accepted that the first defendant attended the classes regularly, did poojas properly, accounted for the Padakanickais, and he did not leave the mutt of his own accord. On the other hand I find from the Judgment of the first appellate court that in respect of each of the above-said four subjects a specific and clear finding has been given. According to the first appellate court the first defendant has not committed any of the misconduct alleged against him. These findings appear to be purely findings of fact and therefore unless any finding is perverse or of grave error that results in miscarriage of justice, the second appeal cannot be

maintained. In this context Mr.V.R. Venkataraman, learned Counsel for the first defendant strongly relies on the dictum laid down by the Supreme Court in 'Deity Pattabhiramaswamy v. S. Hanumayya and Ors. A.I.R.1959 S.C.57, wherein it has been held that:

The provisions of Section 100 are clear and unambiguous. There is no jurisdiction to entertain a second appeal on the ground erroneous finding of fact, however gross the error may seem to be. Nor does the fact that the finding of the first appellate court is based upon some documentary evidence make it any the less a finding of fact. A judge of the High Court has, therefore, no jurisdiction to interfere in second appeal with the findings of fact given by the first appellate court based upon an appreciation of the relevant evidence.

The Supreme Court has quoted in the Judgment a passage from the Judgment of the Privy Council in paragraph 13 which reads:

There is no jurisdiction to enetertain a second appeal on the ground of erroneous finding of fact, however gross the error may seem to be.

When considered in this background of the law it does not appear to me that this court can interfere with any of the findings arrived at by the first appellate court. Mr.KAlagumalai, learned Counsel for the appellant-plaintiff would however contend

that the first appellate court has erred in law in failing to understand the scope of the misconduct alleged. According to the learned Counsel the word misconduct is a relative term and in this case it should have been considered as regards the first defendant's conduct as a Madathipathi and not his conduct as an individual divorced from his postition as Madathipathi, but the first appellate court has considered the alleged misconduct as a general term relating to any individual and thus it has come to a wrong conclusion that there was no misconduct. I am afraid I find there is no substance in this submission. A reading of the judgment of the first appellate court would clearly show that the first appellate court has considered the alleged misconduct one by one as the acts alleged against the first defendant in his capacity as the Madathipathi and there is absolutely no basis for the contention of the learned Counsel.

As regards the alleged misconduct Mr. K. Alagumalai mainly argued on the alleged conduct of the first, respondent that he did not attend the veda classes. He would submit that two of the documents filed by the plaintiff on this point have not been considered by first appellate court and they are ExsA.22 and A50 ExA.22 dated 28.11.1977 is a letter sent by the then Manager of the Madam P.W.2 to the chairman and ExA.50 dated 21.2.1978 is fortnightly report sent by P.W.2 to all the trustees. In Ex.A.22 it is stated among others that the first defendant was not

properly studying and in Ex A.50 it is mentioned that he did not attend veda classes for 15 days. Even if it is true that the first defendant did not attend veda classes for a few days can it be said to be misconduct on his part as Madathipathi? It must be remembered that he was installed as Madathipathi when he was just 12 years old on 5.2.1977, and when he was thus 12 or 13 years old he is alleged to be guilty of misconduct. It is but natural when a boy has been separated from his parents and made to live with strangers in austerity in a mutt, he cannot be expected to behave in a manner as one would like him to behave. For a few days' absence from the veda classes or even if he shows some aversion to study vedas it cannot be said he does not behave properly and he renders himself unfit to be a Madathipathi and hence he must be removed. Thus there is absolutely no merit in the plea that the first defendant did not attend veda classes and thus he is guilty of misconduct.

10. ....

11. ....

12. ....

13. Considering the nature of the office of Madathipathi unless there are strong grounds and not flimsy reasons for holding that he is guilty of mis-conduct he cannot be removed from the office. The scheme (Ex.A.73) describes the Madathipathi as the

religious and secular head of the mutt. In 'The Commissioner, Hindu Religious Enowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt' : [1954]1SCR1005 , in paragraph 11, it is observed by the Supreme Court that the office of a Madathipathi is generally held by an ascetic whose connection with his natural family being completely cut off. In 'Sud-hindra Thirtha Swamiar and Ors. v. The Commissioner for Hindu Religious and Charitable Endowments, Mysore and Anr. : AIR1963SC966 , in paragraph 9 it is stated that the Mahant of a Math is generally a sanyasin who has renounced wordly affairs: he has no family ties either by blood or by marriage, and in a theoreti-. cal sense he has taken a vow of not owning any property. It is clear therefore that generally once a person is appointed as Madathipathi he becomes an ascetic and loses all his connections with his family and the worldly affairs. From this it could be understood what would be his position in life if he is removed from the office of Madathipathi. It would appear that he will

> not have any career at all. Added to this, in this particular case, the Madathipathi was a boy of just 13 years old and he was sought to be removed from his office within a short time of 17 months, as pointed out by the first appellate court, from the time of his installation. It is not the case of the plaintiff mutt that this boy is so incorrigible that he could never be made to or never will behave properly. Therefore the first appellate court has rightly held that no case of misconduct has been proved against the first respondent.

According to the learned senior counsel unless there is a compelling reason or strong grounds, Junior Madathipathi cannot be removed from the Office. According to him, there were neither compelling reasons nor strong grounds made out by the Mutt for removing the petitioner.

As regards the legal validity of the removal of the petitioner from the office of the Junior Pandara Sannadhi in terms of the provisions of the HR & CE Act, the learned senior counsel would

rely on the following decision of this Court.

iv) "2010 (1) MWN (Civil) 667 (***Srimad Essor Sathithananda Swamigal Dharma Paripalana Sabha versus Executive Officer, A/m Kandasami Adimottai Amman Koil)",*** wherein, the learned senior counsel would rely on a portion of paragraphs 27 and 28, which are extracted hereunder:

> "27. ... ... Section 59 alone deals with the removal of trustee of a math on specific grounds. It says, the Commissioner or any two or more persons having interest and having obtained the consent in writing of the Commissioner, may institute a suit in the Court to obtain a decree for removing the trustee of a math on the ground that the trustee is of unsound mind etc. The section empowers the Commissioner or any two or more persons with the permission of the Commissioner in writing to institute a suit in the court to obtain a decree for removal of the trustee of a math. Therefore, section 59 cannot be availed of by the Assistant Commissioner (H.R. & C.E.) to appoint a fit person to the math, the

suit institution. The appropriate section shall be section 60 of the Act. Section 60 deals with the powers of the authorities under the H.R. & C.E. Act. When a vacancy arises in the office of the trustee of a math or specific Endowments attached to a math or there is a dispute respecting the right of succession to the office or when such vacancy cannot be filled up immediately or when the trustee is a minor and has no guardian fit and willing to act as such or when the trustee is, by reason of unsoundness of mind or other mental and physical defect or infirmity, unable to perform the functions of the trustee. In such circumstances, the Assistant Commissioner shall have the powers to pass such orders as he thinks proper for the temporary custody and protection of the Endowmentss of the math or of the specific Endowments, as the case may be, and shall report the matter forthwith to the Commissioner. Upon receipt of such report, the Commissioner, after making such enquiry, if satisfied that an arrangement for the administration of the math and its Endowmentss or of the specific

Endowments, as the case may be, is necessary, he shall make arrangements until the disability ceases or another trustee succeeds to the office. In making such arrangement, the Commissioner shall have due regard to the claims of the disciples of the math, if any.

28. ... ... Section 60(1) mandates the Assistant Commissioner making such arrangements for the temporary custody and protection of endowments of the math to report the matter forthwith to the Commissioner and as per sub-clause (2) the Commissioner, on receipt of such report and after making such enquiry as he deems necessary, if he is satisfied that an arrangement for the administration of the math and its endowments is necessary, shall make such arrangements as he thinks fit until the disability of the trustee is ceased or another trustee succeeds to the office as the case may be. A reading of section 60 will make it clear that the Assistant Commissioner's power is confined to taking such steps and pass such orders for the temporary custody and protection of the endowments of the math. The Assistant

> Commissioner is also duty bound to report the same to the Commissioner, who shall make an arrangement under sub-clause (2) of Section 60 until the disability of the trustee ceases or another trustee succeeds to the office."

In the absence of invocation of Sections 59 and 60 of HR & CE by the person interested, the removal of the petitioner becomes non est and therefore, the petitioner is deemed to have continued as Junior Pandara Sannadhi.

v) "2000 (6) SCC 1 (***Baba Charan Dass Udhasi versus Mahant Basant Das Babaji Chela Baba Laxmandas Udasi Sadhi).*** The learned senior counsel would emphasize the fact that the only power available for the HR & CE authority for filling up the vacancy in the Mutt is only under Section 60 of the HR & CE Act as held by the Hon'ble Supreme Court of India. He would rely upon paragraph 19, which is extracted as under:

> "19.The last contention urged on behalf of the appellant relying upon Section 60 of the Madras Hindu Religious and Charitable Endowments Act is

that the appointment of Nagendra Dass as a Mahant was regularised under the orders dated 4th June, 1973 passed by the Commissioner and on this ground too suit ought to have been dismissed. This contention also deserves to be rejected. Prior to 4th June, 1973 the respondent had been appointed as a head of the Math. Further, Section 60 only empowers the Commissioner to take steps for the temporary custody and protection of the endowments of the Math. Thus, the regularisation of appointment, if any, could only be as a temporary measure. Section 60 does not empower the Commissioner to appoint a head of the Math. The said Section reads as under:-

> Section 60(1) : When a vacancy occurs in the office of the trustee of a math or specific endowment attached to a math and there is a dispute respecting the right of succession to such office or when such vacancy cannot be filed up immediately, or when the trustee is a minor and has no guardian fit and willing to act as such or there is a dispute respecting the person who is entitled to act as guardian, or When the trustee is by reason of unsoundness of mind or other mental or physical defect or infirmity unable to perform the functions of the trustee.
>
> The Assistant Commissioner take such steps and pass such order as he thinks proper for the temporary custody and protection of the

endowments of the math or if the specific endowment as the case may be, and shall report the matter forthwith to the Commissioner."

(2) Upon the receipt of such report, if the Commissioner, after making such enquiry as he deems necessary, is satisfied that an arrangement for the administration of the math and its endowments or of the specific endowment, as the case may be, is necessary, he shall make such arrangement as he thinks fit until the disability of the trustee ceases or another trustee succeeds to the office, as the case may be.

(3) in making any such arrangement, the Commissioner shall have due regard to the claims of the disciples of the math, if any.

(4) Nothing in this section shall be deemed to affect anything contained in the Tamil Nadu Court of Wards Act, 1902. (Tamil Nadu Act I of 1902)."

The last contention is thus also without any merit. The direction in the earlier judgment that the Commissioner under the Madras Hindu Religious and Charitable Endowments Act may intervene and take steps to fill up the vacancy if any in the headship of the Math has to be understood to mean that the vacancy is to be filled by the Commissioner as a temporary measure within the ambit and scope of the provisions of the said Act. The appellant

> cannot make the order of the Commissioner dated 4th June, 1973 as a basis for his rights to be appointed as a head of the Math."

19. In regard to the submissions made on behalf of the petitioner that subsequent acquittal wipes out the conviction and the original conviction after the acquittal in the appeal does not become a disqualification, the learned senior counsel wouild rely on the following decisions, viz.,

i) 1981 (2) SCC 84 (***Vidya Charan Shukla versus Purushottam Lal Kaushik),*** wherein, the learned senior counsel would rely upon paragraph 33 and a portion of paragraph 35, which are extracted herein below:

> "33. In other words, the ratio decidendi logically deducible from the above extract, is that if the successful candidate is disqualified for being chosen, at the date of his election or at any earlier stage of any step in the election process on account of his conviction and sentence exceeding two years' imprisonment, but his conviction and sentence are set aside and he is acquitted on appeal before the

pronouncement of judgment in the election-petition pending against him, his disqualification is annulled and rendered non est with retroactive force from its very inception, and the challenge to his election on the ground that he was so disqualified is no longer sustainable.

"34. ... .

"35. ..... Thus, the ratio of Manni Lal squarely and fully applies to the present case. On the application of that rule, the acquittal of the appellant herein by the appellate court, during the pendency of the election-petition must be held to have completely and effectively wiped out the disqualification of the appellant with retrospective effect from the date of the conviction, so that in the eye of law it existed neither at the date of scrutiny of nominations, nor at the date of the 'election' or at any other stage of the process of "being chosen".

(ii) 2001(7) SCC 231 (***B.R.Kapur versus State of T.N. and another)",*** wherein, the learned senior counsel would draw the attention of this Court to paragraphs 39 and 40 which are extracted hereunder:

"39. Section 8(4) opens with the words Notwithstanding anything in sub-section (1), sub-section (2) and sub-section (3), and it applies only to sitting members of legislatures. There is no challenge to it on the basis that it violates Article 14. If there were, it might be tenable to contend that legislators stand in a class apart from non legislators, but we need to express no final opinion. In any case, if it were found to be violative of Article 14, it would be struck down in its entirety. There would be, and is no question of so reading it that its provisions apply to all, legislators and non-legislators, and that, therefore, in all cases the disqualification must await affirmation of the conviction and sentence by a final court. That would be reading up the provision, not reading down, and that is not known to the law.

"40. In much the same vein, it was submitted that the presumption of innocence continued until the final judgment affirming the conviction and sentence was passed and, therefore, no disqualification operated as of now against the second respondent. Before we advert

to the four judgments relied upon in support of this submission, let us clear the air. When a lower court convicts an accused and sentences him, the presumption that the accused is innocent comes to an end. The conviction operates and the accused has to undergo the sentence. The execution of the sentence can be stayed by an appellate court and the accused released on bail. In many cases, the accused is released on bail so that the appeal is not rendered infructuous, at least in part, because the accused has already undergone imprisonment. If the appeal of the accused succeeds the conviction is wiped out as cleanly as if it had never existed and the sentence is set aside. A successful appeal means that the stigma of the offence is altogether erased. But that it is not to say that the presumption of innocence continues after the conviction by the trial court. That conviction and the sentence it carries operate against the accused in all their rigour until set aside in appeal, and a disqualification that attaches to the conviction and sentence applies as well."

Yet another decision relied upon by the learned senior counsel reported in 2005(1) SCC 754 **(*K.Prabhakaran versus P.Jayarajan*)**. This decision by the Constitution Bench of the Hon'ble Supreme Court appears to have been rendered in the context of provisions of the Representatives of Peoples Act 1951 and this Court is of the opinion that the ratio laid down in the said judgment of the Hon'ble Supreme Court does not even remotely advance the case of the petitioner.

20. In all, the learned senior counsel would submit that the removal of the petitioner as Junior Madathipathi vide communication dated 24.7.2002 was not in terms of the provisions of the HR & CE Act and therefore the same was non est and as a corollary, the petitioner deemed to have continued as Junior Madathipathi and was entitled to succeed after the demise of earlier Pandara Sannadhi on 22.11.2012. He would further contend that since the removal of the petitioner was not valid in the eye of law, the appointment of 4th respondent is also not valid in the eye of law. Therefore, the appointment of 4th

respondent as Pandara Sannadhi for the petitioner Mutt is liable to be set aside.

21. In regard to the objections raised as to the maintainability of the writ petition in view of the dismissal of the suit in O.S.No.344 of 2012 by the Principal District Munsif Court, Mayiladuthurai on 24.12.2002, the learned Senior Counsel would submit that the dismissal of the suit was not a bar for maintaining the writ petition, since the cause of action was different and the parties are different and also such suit was not maintainable in view of the specific bar contained under the provisions of the H.R. & C. E. Act, particularly, Section 108. According to the learned senior counsel, there is no necessity to challenge the removal since such removal being *non est* in the eye of law. Therefore, he would submit that the writ petition is maintainable and he would request the Court to grant the prayer as sought for in consideration of the above factual and legal submissions.

22. Per contra, Shri B.Kumar, the learned Senior Counsel appearing for 4th respondent made his submissions as follows:

According the learned Senior Counsel on behalf of 4th respondent, several objections were raised for questioning the maintainability of the writ petition. His foremost objection is that the writ petition is not maintainable in view of Order IX Rule 8 of the Code of Civil Procedure and also in terms of Rule 9. Order IX Rule 8 and R9 are extracted herein below:

> "8. Procedure where defendant only appears
>
> Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.
>
> 9. Decree against plaintiff by default bars fresh suit

> (1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit. and shall appoint a day for proceeding with suit.
>
> (2) No order shall be made under this rule unless notice of the application has been served on the opposite party."

23. Once the suit has been dismissed for default, the petitioner having chosen not to restore the suit, he cannot approach this Court by seeking a Writ of Mandamus for the same cause of action. Therefore, he would submit that on this ground alone, the writ petition has to be rejected. The learned Senior Counsel would further submit that the writ petition has to be rejected for suppression of material facts, since filing of the suit and dismissal of the same was not disclosed or whispered anywhere in the affidavit filed in support of the writ petition and

on suppression of the material facts and withholding of such material information from the Court, the petitioner is dis-entitled to get any relief from this Court as he approached this Court with unclean hands.

24. Without prejudice to the above, the learned Senior Counsel would submit that in the absence of challenge to the removal, the petitioner cannot maintain the writ petition and no relief could be granted to the petitioner on the basis of the grounds raised in the writ petition and therefore, on this ground also the writ petition deserves to be rejected and dismissed.

25. The learned Senior Counsel would also submit that the dispute is between the Senior Pandara Sannadhi and Junior Pandara Sannadhi and the petitioner Mutt being a religious institution governed by Article 26 of the Constitution of India, writ will not lie even otherwise in regard to either the removal of the petitioner as junior Pandara Sannadhi or the appointment of 4th respondent as Madathipathi. As held by the Division Bench of this Court, the act of appointment of Madathipathi is being purely

religious and spiritual in nature and the same cannot be interfered with by the H.R. & C.E. Authority. The power to regulate the Mutt under the provisions of H.R. & C.E. Act is rather very limited and power which could be exercisable under the Act is transitory for smooth transition of successor to the Mutt. In such case, the substantive issue is one between the action taken by the Senior Pandara Sannadhi against the junior Pandara Sannadhi and that cannot be the subject matter of the dispute in writ proceedings and what is challenged is only the information of the third respondent to the second respondent about the appointment entirely done within the Mutt. The learned Senior Counsel would further add that the nomination being admittedly religious act, cannot be decided by a secular Court.

26. The learned senior counsel appearing for 4th respondent inter alia would assail the maintainability of the Writ Petition on several grounds in addition to the above submissions and the sum and substance of the submissions of the learned senior counsel is elucidated as follows:

27. According to the learned senior counsel, no worthwhile grounds have been raised in the Writ Petition assailing the appointment of 4th respondent as Pandara Sannadhi of the petitioner Mutt. The grounds raised originally in the Writ Petition, seeking to issue Writ of Mandamus, have not been changed or added while amending the prayer in the writ petition, seeking to challenge the communication of 2nd respondent dated 22.11.2012. Further, the communication dated 22.11.2012 is only an intra-office communication sent by 3rd respondent to 2nd respondent informing the installation of 4th respondent as Pandara Sannadhi. Therefore, challenging the said communication, is per se, misconceived and invalid and therefore, the Writ Petition is not maintainable on this ground also. Even otherwise, the Writ Petition is not maintainable in view of Section 59 of HR & CE Act as the validity of the appointment of Madathipathi can be questioned only before a competent civil Court under the said section after following the procedure contemplated therein. He has further added that the status of Junior Pandara Sannadhi is not recognized in the scheme of HR &

CE Act and therefore, the question of invoking Section 59 of HR & CE Act did not arise while removing the petitioner as Junior Pandara Sannadhi. According to the learned senior counsel, the arguments advanced by the learned senior counsel appearing for the petitioner that Section 59 ought to have been invoked before removing the petitioner, is deeply flawed and it is not as per the scheme of the HR & CE Act. Apart from submissions made on the maintainability of the writ petition, the learned senior counsel also submit that it is admitted position that the person who nominates can revoke such nomination for a good cause and what is a good cause is purely falls within the realm of the subjective satisfaction of Pandara Sannadhi and Courts cannot substitute its views as to what is good cause. When appointment of Junior Pandara Sannadhi is admittedly a religious affair and not an administrative act, Pandara Sannadhi alone can take a final call in forming an opinion as to what is a good cause. The learned senior counsel would further add that what is a good cause cannot be evaluated in the writ petition on the basis of averments mentioned in the affidavit without any evidence let in to establish what is a good cause, before a competent civil Court.

In such view of the matter, the learned senior counsel would submit that the petitioner cannot successfully maintain the writ petition.

28. In support of his contentions, the learned senior counsel would rely on the following decisions, viz.,

i) "AIR 1965 SC 295 (***Suraj Ratan Thirani and others versus The Azambad Tea Co. & others),*** wherein, the learned sennior counsel would rely upon paragraphs 19, 28, 29 and 30.

> "19. The suit was instituted on 28th November, 1931 and after the issues were settled, the suit was posted for trial on 22nd August, 1932, on which date the plaintiffs were absent, no witnesses on their behalf were present, and their pleader reported no instructions. The suit was therefore directed to be dismissed with costs in favour of the National Agency Co. Ltd.

who was the only party present in Court. It may be mentioned that Mohd. Ismail never appeared during the hearing of the suit.

"20. to 27. ... .

"28. A cause of action is a bundle of facts on the basis of which relief is claimed. If in addition to the facts alleged in the first suit, further facts are alleged and relief sought ,on their basis also, and he explained the additional facts to be the allegations about possession and dispossession in October, 1934, then the position in law was that the entire complexion of the suit is changed with the result that the words of 0. IX. r. 9 "in respect of the same cause of action" are not satisfied and the plaintiff is entitled to reagitate the entire cause of action in the second suit. In support of this submission, learned counsel invited our attention to certain observation in a few decisions to which we do not consider it necessary

to refer as we do not see any substance in the argument.

"29. We consider that the test adopted by the Judicial Committee for determining the identity of the cause of action in the two suits in Mohammed Khalil Khan and Ors. v.Mahbub Ali Mian and Ors. is sound and expresses correctly the proper interpretation of the provision. In that case Sir Madhavan Nair, after an exhaustive discussion of the meaning of the expression "same cause of action" which occurs in a similar context in para (1) of O. 11 r. 2 of the Civil Procedure Code, observed:

> "In considering whether the cause of action in the subsequent suit is the same or not, as the cause of action in the previous suit, the test to be applied is/are the causes of action in the two suits in substance-not technically-identical?"

"30. The learned Judge thereafter referred to an earlier decision of the

Privy Council in "*Soorijamonee Dasee v. Suddanund* and extracted the following passage as laying down the approach to the question :

> "Their Lordships are of opinion that the term 'cause of action' is to be construed with reference rather to the substance than to the form of action.....".

The above judgment of the Hon'ble Supreme Court has been cited for bolstering his submissions in regard to the maintainability of the writ petition in view of the disposal of the civil suit filed by the plaintiff himself before the Civil Court in O.S.No.343 of 2002.

ii) For the same proposition, the learned senior counsel would rely on the judgment of this Court reported in the case in "2006 (2) LW 259 (***Dr.S.Jayakumar and another versus K.Kandasamy Gounder)***. In the said judgment, the learned Judge of this Court has held that Order IX Rule 9 of the Code of Civil Procedure precludes the

second suit in respect of the same cause of action where the first suit has been dismissed for default. The learned Judge of this Court in the said judgment, has held that re-litigation is an abuse of process of Court and contrary to justice and public policy.

(iii) In regard to the suppression of the fact i.e, filing of the suit and the dismissal of the same, by the petitioner, the learned senior counsel would rely on the following decisions, to submit that the person who suppresses the material fact, is not entitled to grant of any relief from the Court.

(a) 2003 (LW) 725 (***M.Mohana versus the Bharathiyar University, rep. by its Registrar, Coimbatore and others),*** wherein, it has been held as under in paragraph 6:

"6. In these circumstances, the resultant position would be that:

(a) The appellant having opted to approach the Civil Court, cannot now seek to invoke the writ jurisdiction of this Court.

In fact, the Supreme Court in M.S.R. Prasad v. Bommisetti Subba Rao, , ruled as under :

> ". . . .In view of the fact that the remedy available to the petitioner in the civil suit has already been available of, the High Court has rightly declined to interfere and dismissed the writ petition of the respondent."

(b) The decision in the Civil Suit, which has become final, would operate as res judicata in the writ proceeding.

In fact, the Supreme Court had to consider in Ashok Kumar Srivastav v. National Insurance Co. Ltd., as to whether the decision in writ proceedings will operate as res judicata in the subsequent judicial proceedings. In paragraph 14 of the judgment, it referred to the earlier ruling of three Judge Bench in Y. B. Patil v. Y. L. Patil. and quoted the relevant sentence from the judgment, which reads as under :

> "The principles of res judicata can be invoked not only in separate subsequent proceedings, they also get attracted in subsequent stage of the

> same proceedings. Once an order made in the course of a proceeding becomes final, it would be binding at the subsequent stage of that proceeding."

(b) "(2010) 2 SCC 114 (***Dalip Singh versus State of Uttar Pradesh and others)",*** wherein, the Hon'ble Supreme Court of India, has observed as under in paragraphs 1 and 2:

> "1. For many centuries, Indian society cherished two basic values of life i.e., `Satya' (truth) and `Ahimsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has over-shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood,

misrepresentation and suppression of facts in the court proceedings.

"2. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

The learned senior counsel would, therefore, submit that the petitioner having approached this Court with unclean hands, cannot expect this Court to grant any relief even assuming he has any worthwhile cause calling for this Court's intervention. The learned Senior Counsel would vehemently oppose the contention of the learned Senior Counsel appearing for the petitioner that subsequent

acquittal by the Court, wiped out the conviction in its entirety in all circumstances. In support of his contention, the learned Senior Counsel would rely on the judgment which was also cited on behalf of the petitioner reported in "2005 (1) SCC 754 ***(K.Prabhakaran versus P.Jayarajan)"***. The learned Senior Counsel would draw the attention of this Court to paragraphs 39, 40 and 41.

> "39. An appellate judgment in a criminal case, exonerating the accused-appellant, has the effect of wiping out the conviction as recorded by the Trial Court and the sentence passed thereon is a legal fiction. While pressing into service a legal fiction it should not be forgotten that legal fictions are created only for some definite purpose and the fiction is to be limited to the purpose for which it was created and should not be extended beyond that legitimate field. A legal fiction pre-supposes the existence of the state of facts which may not exist and then works out the consequences which flow from that state of facts. Such consequences have got to be worked out only to their logical extent having due regard to the purpose for which

the legal fiction has been created. Stretching the consequences beyond what logically flows amounts to an illegitimate extension of the purpose of the legal fiction (See, the majority opinion in Bengal Immunity Co. Vs. State of Bihar AIR 1955 SC 661). P.N. Bhagwati, J., as his Lordship then was, in his separate opinion concurring with the majority and dealing with the legal fiction contained in the Explanation to Article 286 (1) (a) of the Constitution (as it stood prior to Sixth Amendment) observed "Due regard must be had in this behalf to the purpose for which the legal fiction has been created. If the purpose of this legal fiction contained in the Explanation to Article 286 (1) (a) is solely for the purpose of sub- clause (a) as expressly stated it would not be legitimate to travel beyond the scope of that purpose and read into the provision any other purpose howsoever attractive it may be. The legal fiction which was created here was only for the purpose of determining whether a particular sale was an outside sale or one which could be deemed to have taken place inside the State and that was the only scope of the provision.

It would be an illegitimate extension of the purpose of the legal fiction to say that it was also created for the purpose of converting the inter-State character of the transaction into an intra-State one." His Lordship opined that this type of conversion would be contrary to the express purpose for which the legal fiction was created. These observations are useful for the purpose of dealing the issue in our hands. Fictionally, an appellate acquittal wipes out the trial court conviction; yet, to hold on the strength of such legal fiction that a candidate though convicted and sentenced to imprisonment for two years or more was not disqualified on the date of scrutiny of the nomination, consequent upon his acquittal on a much later date, would be an illegitimate extension of the purpose of the legal fiction. However, we hasten to add that in the present case the issue is not so much as to the applicability of the legal fiction; the issue concerns more about the power of the Designated Election Judge to take note of subsequent event and apply it to an event which had happened much before the commencement of that proceeding in which

the subsequent event is brought to the notice of the Court. An election petition is not a continuation of election proceedings.

"40. We are clearly of the opinion that Shri Manni Lal's case (supra) and Vidya Charan Shukla's case (supra) do not lay down the correct law. Both the decisions are, therefore, overruled.

"41. The correct position of law is that nomination of a person disqualified within the meaning of sub-section (3) of Section 8 of the RPA on the date of scrutiny of nominations under Section 36(2)(a) shall be liable to be rejected as invalid and such decision of the returning officer cannot be held to be illegal or ignored merely because the conviction is set aside or so altered as to go out of the ambit of Section 8(3) of the RPA consequent upon a decision of a subsequent date in a criminal appeal or revision."

According to the learned Senior Counsel, the petitioner was acquitted by giving benefit of doubt by this Court and therefore, his conviction cannot be said to be wiped out in its entirety. He would specifically draw the attention of this

Court to the observation made by this Court as found in penultimate paragraph in the order in Crl.R.C.Nos.845 of 2005 etc., which reads as under:

> "63. ... Thus, on the failure of the prosecution to establish the guilty of the accused for the offence for the charges laid against them beyond reasonable doubt, the accused are entitled to benefit of doubt and entitled to be acquitted."

29. The learned Senior Counsel would also rely on the following decisions in order to fortify his submissions regarding the legal principle that acquittal on the basis of benefit of doubt, does not amount to exoneration of charges.

a) "2016(1) SCC 671 (***Baljinder Pal Kaur versus State of Punjab and others)",*** wherein, it has been held in paragraph 11 as under:

"11. In Inspector General of Police v. S. Samuthiram 2013 1 SCC 598, this Court, in para 26, has held as under: (**SCC pp. 609-610)**2

> **"26**. As we have already indicated, in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say that in the instant case, the

> respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so."

b) "2016 (9) SCC 179 (***Ajay Kumar Singh versus Flag Officer Commanding-in-Chief and others, etc.)***", wherein, it has been held as under in paragraph 29:

> "29. The tribunal came to the collective conclusion that no satisfactory evidence had been adduced by the prosecution to sustain the conviction of DK Singh and therefore the tribunal set aside the conviction giving him the benefit of doubt. From a perusal of the impugned judgment, it is clear that the tribunal has acquitted the appellant-DK Singh on the ground that the prosecution has not established the guilt of the accused beyond reasonable doubt. It is not as if, the appellant-DK Singh was honourably acquitted. It is also to be pointed out that as discussed above, that we have taken the view that the identity of the appellants by PW-14 (Manager) and PW-18 (Cashier) is credible and acceptable.

Evidence of PW-14 and PW-18 identifying DK Singh as one of the culprits is a factor to be reckoned with while considering the plea of the appellant-DK Singh for reinstatement. Additionally, it is to be pointed out that as seen from the evidence of K. Rama Krishna Rao-Inspector of Police (PW-17) on 10.06.1998, DK Singh deposited Rs.90,000/- in his bank account No.3395 of SBI BR Township Branch and the explanation of the appellant for this deposit is not convincing. Having regard to our findings on the evidence of PWs 14 and 18, the acquittal of appellant-DK Singh itself becomes a debatable point. However, we do not propose to go into this aspect since the Union of India has not filed any appeal challenging acquittal of DK Singh. Appellant–DK Singh who was only granted benefit of doubt cannot seek for reinstatement and the consequential benefits and his appeal is also liable to be dismissed."

c) "(2017) 13 SCC 365 (***C.R.Radhakrishnan versus State of Kerala and others)"*** wherein, the Hon'ble

Supreme Court has held that the denial of service benefits to the employee in the circumstances where the employee was not honourably acquitted, was found to be justified. Therefore, the learned Senior Counsel would submit that the Courts have made a distinction between "acquittal on merits" and "acquittal on the basis of benefit of doubt". In the instant case, admittedly the petitioner was acquitted only on the basis of benefit of doubt and therefore, he cannot be heard to contend that the conviction has been wiped out in its entirety and therefore, the basis for his removal was no more valid. Even otherwise, the learned Senior Counsel would submit that it was not only the conviction which weighed with the original Pandara Sannadhi for removing the petitioner as Junior Pandara Sannadhi, but also various other factors as mentioned in the show cause notice dated 15.07.2002 as well as the reasons stated in the removal communication dated 24.07.2002.

30. The learned counsel would draw the attention of this Court to the counter affidavit filed on behalf of 4th respondent, particularly paragraph – 7, in which it is stated that apart from conviction, there were relevant factors taken into consideration for removal of the petitioner as Junior Pandara Sannadhi. In fact, the learned Senior Counsel would draw the attention of this Court to the detailed counter filed in I.A.No.343 of 2002 particularly, the averments contained in paragraphs 10, 16 and 18 which are extracted below:

> "10. On the other hand the petitioner began to abuse the power by doing indiscriminate acts for his own advantage and amassing wealth. He even went to the extent of purchasing a rice mill benami in the name of an employee by name Sundaresan and appropriating the income there from. He has also created fixed deposits and SB Accounts in his name in Karur Vysya Bank and in other ban ks. This respondent received at him camp at Kasi large number of complaints of such misdeeds of the petitioner. So the respondent

had to come back to head quarters in 1999, and resumed the administration of the Mutt, temple and kattalais attached to the mutt. This respondent also revoked the power of attorney granted to the petitioner. The petitioner\ has also endorsed the revocation. Thus the petitioner is legally estopped from making any claim or claim he has independent right or power in himself.

11 to 15 ... ...

16. None can believe the petitioner's allegation, that he is innocent and everything has been concocted. The allegation of the petitioner in his affidavit are hereby denied. It is also relevant to note during all his 95 days the petitioner could not do his usual pooja and jabam. The fact that he is charged of a heinous offence is itself a good cause for revocation and that too the attempt to take away the like of his Guru will clearly satisfy that such a person cannot to admit and occupy any place in a Hindu Religious order. He is totally disqualified from being a member of a Religious order.

17. ... ...

18. Even though a notice was not needed, however to record the events and circumstances and further make it known to the petitioner, a notice was given on 15.07.2002 pointing out 8 prominent heinous acts amongst others, for revoking the selection. The petitioner having received the notice instead of complying with the terms of the notice, gave a reply on 18.07.2002 as if everything is false and he is innocent and the case is foisted on him and further requesting to defer further action till the criminal case is over. This respondent states the decision in the criminal case cannot have any impact on the various misdeeds committed by him. In any event not only as a Thambiran attached to a mutt but also as an ordinary Hindu disciple the misdeeds committed by him are so grave with wrong propensities, the continuance of the petitioner will not be in the interest of institution and will bring disgrace, and disrepute and pollution to the mutt. So by a notice dated 24.07.2002 the decision of this respondent was communicated for revoking the

> selection and removing him from the Thirukootam. No other cause can be a good cause other than these stated supra. The very fact that some of the articles given to the petitioner were not returned in spite of reminding him to do so will expose materialistic mind and his intention is not obeying the orders of the respondent."

31. The learned Senior Counsel would further submit that admittedly the Courts have held that any nomination can be revoked for a good cause. In this connection, the learned Senior Counsel would particularly draw the attention of this Court to the observation made by the Hon'ble Supreme Court of India in the case relied upon by the petitioner reported in "1974 (1) SCC 150 (***Sri Mahalinga Thambiran Swamigal versus His Holiness Sri LA Sri Kasivasi Arulnandi Thambiran Swamigal)",*** wherein, the Hon'ble Supreme Court has made a specific observation as found in paragraph 44 as follows:

> "44. ..... In other words, the power to revoke can be exercised not arbitrarily, but only for good cause. We do not pause to consider what causes would be good and sufficient for revoking a nomination as the defendant had no case before us that he revoked the nomination for a good cause."

32. The nomination of Matadhipathi is admittedly being a religious and spiritual act and such nomination can be revoked for a good cause and as far as the case on hand is concerned, there was more than sufficient cause for removing the petitioner as Junior Pandara Sannadhi and the Court's jurisdiction to interfere in such matters only when the act of the Head of the Mutt, is per se, capricious, arbitrary and whimsical.

33. According to the learned Senior Counsel, needless to mention that the petitioner's conduct as a disciple of the

Mutt, lowered the reputation of the Mutt and showed the Mutt in bad light in the eye of its myriad devotees and followers. Therefore, his retention was opposed to the faith reposed by the devotees of the Mutt.

34. It is once again submitted that as held by the Division Bench of this Court in the decision in the matter of "***His Holiness Sri-La-Sri Ambalavana Pandara Sannathi Avergal v. State of Tamil Nadu***" reported in 1982 (2) MLJ 221, that the act of nomination of Pandara Sannathi is purely in religious nature and not an administrative act, which judgment has been extracted in extenso supra, how far this Court can extend its jurisdiction and whether intervention in matters like this can be within the judicially management standards. The learned Senior Counsel would draw the attention of this Court to paragraph – 12 of the judgment rendered by the Hon'ble Supreme Court of India, reported in "1991(4) SCC 73 (***A.K.Kaul versus Union of***

India)", which reads as under:

"12. It is, therefore, necessary to deal with this question in the instant case., We may, in this context, point out that a distinction has to be made between judicial review and justiciability of a particular action. In a written constitution the powers of the various organs of the State,are limited by the provisions of the Constitution. The extent of those limitations on the powers has to be determined on an interpretation of the relevant provisions of the Constitution. Since the task of interpreting the provisions of the Constitution is entrusted to the Judiciary, it is vested with the power to test the validity of an action of every authority functioning under the Constitution on the touch stone of the constitution in order to ensure that the authority exercising the power conferred by the constitution does not transgress the limitations placed by the Constitutions on exercise of that power. This power of judicial review is, therefore, implicit in a written constitution and unless expressly excluded by

> a provision of the Constitution, the power of judicial review is available in respect of exercise of powers under any of the provisions of the Constitution. Justiciability relates to a particular field falling within the purview of the power of judicial review. On account of want of judicially manageable standards, there may be matters which are not susceptible to the judicial process. In other words, during the course of exercise of the power of judicial review it may be found that there are certain aspects of the exercise of that power which are not susceptible to judicial process on account of want of judicially manageable standards and are, therefore, not justiciable."

35. The learned senior counsel would thus submit that the act being purely religious in nature and such act cannot be subjected to judicial scrutiny unless the same appears to be for an extraneous consideration or the same was per se whimsical, arbitrary and capricious against the public interest. The Court exercising its judicial review under

Article 226 of the Constitution of India cannot sit in judgment over what is good cause except for the factors as stated above, he would extend his argument to submit that the dispute is purely between Senior Pandara Sannadhi and Junior Pandara Sannadhi and a Writ Court will not interfere in such matters.

36. The learned senior counsel would further elongate his arguments 'as to what is a good cause' and would submit that good cause must relate to tradition, usage and custom of the mutt and such fact needs to be established through evidence before the competent civil Court and the same cannot be decided in the writ jurisdiction. Simultaneously, the learned senior counsel would also submit that the jurisdiction of the Writ Court cannot be invoked for settlement of the dispute between the parties, merely on the basis of the affidavits. In support of his contentions, the learned senior counsel relied upon decision

reported in "(2015) 9 SCC 461 (***Riju Prasad Sarma and others versus State of Assam and others)",*** wherein, elaborate reasons have been given in paragraphs 54 and 55 which are extracted as under:

> "54. Before referring to the various judgments by Mr. Shanti Bhushan, learned senior counsel for the petitioners and the judgments relied upon by Mr. Rajiv Dhawan and Mr. Jaideep Gupta, senior advocates for the respondents, the basic facts pleaded by the parties may be noted with a view to find out whether the factual foundation has been laid down and established for claiming equality with Bordeories Samaj which elects the Dolois as per customs. In the pleadings, petitioners have highlighted that in the several kinds of pujas the women Bordeories take active part and hence are equally aware of all the rituals and have the necessary qualification to be treated as equal of men Bordeories for the purpose of electing the Dolois and also for being a candidate. The reply of the respondents in essence is a complete denial of aforesaid assertion with a counter plea

that women participate only as worshippers and not as priests and they have no say in the matter of management of the temple so as to claim same knowledge and consequent equality with the male Bordeories. Such dispute of facts may be resolved only on basis of a detailed proper study of the customs and practices in the temple of Sri Sri Maa Kamakhya but there is no authoritative textual commentary or report which may help this Court in coming to a definite finding that women belonging to Bordeori families are equally adapt in religious or secular matters relating to that temple. The relevant scriptures have also not been disclosed to this Court which could have helped in ascertaining whether the basic religious tenets governing the Shakti Peethas in the Kamakhya Temple would not stand violated by permitting female Bordeories to elect or to get elected as Dolois. Hence on facts we are not in a position to come to a definite finding on the issue of equality for the purpose at hand as claimed by the petitioners. The same logic is equally, if not more forcefully, applicable in the case of claim of the Deories that they are

equally situated as the Bordeories Samaj in the matter of election of Dolois. The petitioners have also not explained at all as to why equality be extended only to female Bordeories and Deories and not to all and sundry.

"55. In the aforesaid situation it is always with a heavy heart that a Writ Court has to deny relief. It may not always be safe for a Writ Court to decide issues and facts having great impact on the general public or a large part of it only on the basis of oath against oath. Where the right is admitted and well established, the Writ Court will not hesitate in implementing such a right especially a fundamental right. But enforcement of established rights is a different matter than the establishment of the right itself. When there is a serious dispute between two private parties as to the expertise, experience and qualification for a particular job, the prime task before the Court is first to analyse the facts for coming to a definite conclusion whether the right stands established and only when the answer is in affirmative, the Court may have no difficulty in enforcing such an established right, whether statutory,

fundamental or constitutional. In the present case, as indicated above, it is indeed difficult for this Court to come to a definite conclusion that the petitioners claim to equality for the purpose at hand is well established. Hence we have no option but to deny relief to the petitioners."

37. The learned senior counsel also relied upon a decision reported in "2003(6) SCC 230 (***Dwaraka Prasad Agarwal (D) by LRs. and another versus B.D.Agarwal and others)"***, wherein, it has been held in paragraph 28 as under:

"28. A writ petition is filed in public law remedy. The High Court while exercising a power of judicial review is concerned with illegality, irrationality and procedural impropriety of an order passed by the State or a statutory authority. Remedy under Article 226 of the Constitution of India cannot be invoked for resolution of a private law dispute as contra distinguished from a dispute involving public law character. It is also well-settled that a writ remedy is not available for

> resolution of a property or a title dispute. Indisputably, a large number of private disputes between the parties and in particular the question as to whether any deed of transfer was effected in favour of M/s Writer & Publishers Pvt. Ltd. as also whether a partition or a family settlement was arrived or not, were pending adjudication before the Civil Courts of competent jurisdiction. The reliefs sought for in the writ petition primarily revolved round the order of authentication of the declaration made by one of the respondents in terms of the provisions of the said Act. The writ petition, in the factual matrix involved in the matter, could have been held to be maintainable only for that purpose and no other."

38. According to the learned senior counsel, the writ petitioner has not stated anywhere in the affidavit about his status whether he being ascetic, unmarried and has been following Saiva Sidhantha philosophy for all these years since the date of his removal in 2002. In the absence of such specific averments in the affidavit, the relief sought for

by the petitioner is absolutely baseless, unfounded and has no justification.

39. Therefore, the learned senior counsel would sum up that the writ petition suffers from various grave infirmities which cannot be countenanced in law and liable to be rejected outright.

40. On behalf of respondent Nos.1 to 3, learned Additional Advocate General, Shri S.R.Rajagopal has made his submissions as follows:

41. At the outset, he would submit that the appointment of successor, namely, 4th respondent was not at all challenged and what is challenged in the writ petition is only intra communication and therefore, on this ground alone, the writ petition has to be rejected. He would submit that as per Section 60 of HR & CE Act, procedure has been

envisaged for filling up of the vacancies in the office of the trustee of the Mutt. He would submit that Section 59(2) of HC & CE Act alone can be invoked for challenging the appointment of Madathipathi and the Writ Petition is therefore, not maintainable and proper course open to the petitioner is to approach the competent civil Court in terms of the above said section. According to the learned Addl.Advocate General, the grounds raised in the Writ Petition are aimed at challenging the appointment of 4th respondent as Madathipathi and in such view of the matter, Writ of Mandamus is not maintainable. Of-course, his submission was made when miscellaneous petition for amendment was pending consideration by this Court and since by this order, the amendment is allowed, the said submission need not merit any consideration. However, the learned Addl.Advocate General would submit that even in the impleading petition, no additional grounds have been raised in order to sustain the writ petition with the proposed

amendment. In the absence of any additional grounds, the writ as it is, cannot be issued and the same, therefore, has to be rejected.

42. The learned Addl.Advocate General would further submit that the writ petitioner has not declared in terms of Sub Section 6 of Section 15 of HR & CE Act that he is the person having interest in the Mutt in terms of Section 59 of the Act. In the absence of such declaration, he cannot maintain the writ petition and therefore, the writ petition has to be rejected on this ground alone. He would submit that the appointment of the 4th respondent which was accepted by the HR & CE Department has to be challenged under Section 59 of HR & CE Act and he supported the contention put forth by the learned senior counsel for 4th respondent that the position of Junior Pandara Sannadhi or Pandara Sannadhi is not recognized under HR & CE Act. He would rely on unreported decision of this Court rendered in

WP (MD) No.19004 of 2017 on 5.3.2018, wherein, in paragraph 26, it has been observed as under:

> "26. Before parting with this, this Court is of the view that the administration of Various mutts is subject to the control of the 2nd respondent under the HR & CE Act, without interference with the religious functions and activities of the mutt. Though the right of the pontiff in appointing his successor cannot be ordinarily challenged, as it is a fundamental right under Articles 25 and 26 of the Constitution of India, the same cannot be said with regard to the appointee, as such appointment can be revoked, under certain circumstances, like failure to follow the procedure under the scheme or practices followed by the mutt and for any of the reasons stated in Section 59 of the HR & CE Act. It also means that if a person, who is likely to bring disrepute to the mutt because of any of his traits or practices not in line with the procedures

and philosophies of the mutt, is appointed, he can be removed or his appointment can be revoked by the Pontiff himself. It is the duty of the 2nd respondent to ensure that the properties of all the religious endowments are under protection. The definition of religious endowment under Section 6(17) and religious institution under Section 6(18) also include the Maths. The country is mounting will self proclaimed godmen like the eighth respondent, who claim to be spiritual gurus initially and later proclaim themselves to be god and in the process end up amassing wealth and abusing innocent and vulnerable children and women. ....."

43. The learned senior counsel would lay emphasis with the fact as held by the learned Judge of this Court that the appointment of Madathipathi cannot ordinarily be challenged in view of Articles 25 and 26 of the Constitution of India.

44. In response to the submissions made on behalf of th respondents, the learned senior counsel appearing for the petitioner would submit that as per Sub Section (b) of Section 105 of HR & CE Act, there cannot be any interference with the religious and spiritual functions of the head of a Mutt. Sub Section (b) of Section 105 of HR & CE Act reads as under:

> "105. Saving.-Nothing contained in this Act shall_
>
> (a) ....
>
> (b) authorize any interference with the religious and spiritual functions of the head of a math including those relating to the imparting of religious instruction or the rendering of spiritual service."

45. The learned senior counsel for the petitioner would rebut the arguments advanced on behalf of 4th respondent, that a writ is not maintainable in view of dismissal of the

suit filed by the petitioner, by heavily relying upon the decision reported in "(2009) 1 SCC 689 (***State of Uttar Pradesh and another versus Jagdish Sharan Agrawal and others)".*** He would submit that the dismissal of the suit for non-prosecution was not a decision on merit and therefore, cannot operate as res judicata. He would draw the attention of this Court to paragraphs 2, 4, 10 and 14, which are extracted as under:

> "2. Challenge in this appeal is to the judgment of a learned Single Judge of the Allahabad High Court dismissing the writ petitions filed by the State of Uttar Pradesh and the Municipal Board Nagar Palika Lalitpur (hereinafter referred to as the `Board'). Both the writ petitions were directed against the order dated 11th February, 1994 passed by the District Judge, Lalitpur. By the said order learned District Judge allowed appeal No.23 of 1992 filed by the respondent No.1 Jagdish Sharan Agrawal and two others. State of U.P. and 27 others were parties. It was held in that order that the

proceedings initiated by the State against Jagdish Sharan Agrawal and others under the Uttar Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (in short the `Act') were barred by the principle of resjudicata, in view of the decision of the proceedings, which were initiated earlier by the Nagar Palika, Lalitpur, being suit No. 25 of 1960 as also in view of the dismissal of the proceedings which were initiated by the State of Uttar Pradesh being case No. 521-353 under Section 3(1) of the Uttar Pradesh Public Land (Eviction and Recovery of Rent and Damages) Act, 1959 (in short the `Eviction Act').

"4. During the pendency of the proceedings, the aforesaid Act was declared ultra vires by this court and as a result thereof the State of Uttar Pradesh made necessary amendments and proceeded with the case after taking steps under the provisions of the Act and the case was re-numbered as Case No.521-353. Proceedings were dismissed for default by the Prescribed Authority by order dated 26th November, 1976. An application to recall the said order was filed

which was dismissed for default on 3rd January, 1977 by the Prescribed Authority. Thereafter the State initiated proceedings under the Act which was numbered as Case No.1/1988-89. Before the Prescribed Authority preliminary objection was raised on behalf of the alleged occupants contending that the proceedings were barred by the principles of resjudicata as well as on the principles of Order IX Rule 9 of the Code of Civil Procedure, 1908 (in short the `CPC') and consequently the case cannot be proceeded with. The Prescribed Authority by Order dated 14th January, 1992 rejected the aforesaid objections and held that the orders passed in the Case No.521 of 1970 and 25 of 1960 do not operate as res judicata.

"10. Learned counsel for the appellant submitted that dismissal for default does not operate as resjudicata. It is pointed out that there is a recurring cause of action. Since 1959 Act was declared to be ultra vires, the proceedings were initiated, State was not a party in the suit by Nagar Palika and the High Court was wrong in

holding that the principles of res judicata apply so far as State is concerned. It is submitted that the principles of res judicata do not apply to the facts of the case as there was no decision on merit. One remedy was restoration and other remedy was the second suit because of continuing cause of action. There is no finding that the non official respondents were authorized occupants.

"14. In the present case, the suit filed by Nagar Palika was dismissed on technical ground and in any case the State was not a party. So far the suit where the state was a party and amendments were made, the same was dismissed for non- prosecution. But the same was not dismissed under Order IX Rule 8. Order IX Rule 8 and Order IX Rule 9 of CPC read as follows:

> Rule 8. Procedure where defendant only appears Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where part

only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

Rule 9. Decree against plaintiff by default bars fresh suit (1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with suit.

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party.

Therefore Order IX Rule 9 can not be said to be applicable. The dismissal of the suit for non-prosecution was not a decision on merit. Consequently, the said order cannot operate as res judicata."

46. He would rely upon the decision of the High Court of Jammu & Kashmir rendered in OWP No.608 of 2015 dated

10.3.2016, wherein, the High Court has held in paragraph 13 as follows:

> "13. The dismissal of Civil Suit for non prosecution, which means nothing is decided by the Civil Court on merits, will not render this writ petition unsustainable in law."

Therefore, he would submit that the arguments advanced on behalf of the 4th respondent by the learned senior counsel that the writ petition was not maintainable in view of dismissal of the civil suit filed by the petitioner, is legally flawed and unsustainable.

47. Lastly, the learned senior counsel appearing for the petitioner would rely upon the judgment of this Court rendered in "1991 (2) MLJ 582 (***R.Shanmugha Sundaram versus The Commissioner, HR&CE and others)".*** The said decision dealt with the issues, namely, whether the writ is maintainable against the institution of present nature and

also the dismissal of the suit without deciding the same on merits, can be held against the petitioner. The learned senior counsel would draw the attention of this Court to the various portions of the judgment and the final operative portion of the judgment passed by the learned Judge in paragraphs 18 and 19, is extracted as under:

> "18. Having said so, it is necessary for me to observe that this is a typical case where the department has assumed jurisdiction and spoiled the quietness of the place in which the Samadhi is installed. In my view, this is a case where the department has hot applied its mind at all before taking any action on the basis of a letter of the Trustee. In my view, the department cannot at all be a sentinel where it has not got any jurisdiction. It cannot take over a Samadhi-not one but two-and try to build up a temple in that place. What all has been done for the past six years by the department is in my view, is a highhanded action. The respondent department ought to have left the place to the worshippers and the followers to

worship the Samadhi of Pamban Swamigal peacefully.

"19. In such circumstances, though the prayer asked for is entirely different, it is well settled that this Court can mould the prayer to suit the occasion and as such a writ of mandamus will issue to the respondents 1 and 2 to hand over the management of the affairs of the Samadhi etc., to the Sabha, the third respondent herein, within a month from to-day, as it was done before the respondent department rook over the same. As such, I am granting the relief to the Sabha, the third respondent herein, to take over the management of the affairs of the Samadhi of Pamban Swamigal. The writ petition is allowed. However, there will be no order as to costs. I do hope that the Sabha will understand the situation and act according to the pious wishes of the Swamigal as laid down in his will and codicil, without giving any room to anybody to contend that the Sabha is not in existence."

48. In reply to the arguments of the learned senior counsel for the petitioner, the learned counsel senior

counsel appearing for 4th respondent would finally submit that the appointment of Junior Pandara Sannadhi is purely a religious affair and falls outside the scope of the HR & CE Act. In support of his contentions, he would once again rely upon the judgment of the Division Bench of this Court reported "1982 (2) MLJ 221 (***His Holiness Sri-La-Sri Ambalavana Pandara Sannathi Avergal versus State of Tamil Nadu, rep. by the Secretary and Commissioner to Government, Department of CT & RE)".***

49. In the conspectus of the arguments advanced by the learned senior counsel for the parties, the broad issues which fall for consideration before this Court, are stated hereunder:

1. Whether the writ petition is maintainable in view of the dismissal of the suit in O.S.No.343 of 2002 filed by the petitioner, questioning his removal as Junior Pandara Sannathi, by communication dated 24.07.2002?

2. Whether the writ petition is maintainable in the absence of challenge to the removal of the petitioner is Junior Pandara Sannathi on 24.07.2002?

3. Whether the writ petition is maintainable in the absence of any worthwhile grounds for assailing the appointment of 4th respondent as Pandara Sannathi of the petitioner Mutt on 22.11.2012?

4. Whether the writ petition is maintainable in view of the settled legal position that the act of the appointment of the Head of the Mutt is purely a religious act and not an administrative act?

5. Whether the writ petition is maintainable since the amended challenge of the letter dated 22.11.2012 is only a intra-office communication by 3rd respondent to 2nd respondent informing the installation of 4th respondent as Pandara

Sannathi?

6. Whether the writ petition is to be rejected for suppression of material fact in not disclosing the dismissal of the suit in O.S.No.343 of 2002 filed by the petitioner in the civil Court?

7. Whether the writ petition is maintainable in view of Section 59 of HR & CE Act?

8. Whether the act of removal of the petitioner can be for a good cause or not?

9. Whether the good cause is purely subjective satisfaction of the Pandara Sannadhi and the Courts cannot substitute its views as to what is good cause in the matter which falls absolutely within the realm of religious Management?

10. Whether what is good cause can be evaluated in the writ petition on the basis of

avements alone without any evidence to be established for and against before the competent civil Court?

11. Even otherwise, whether sufficient material is made available before this Court to hold that the act of removal of the petitioner, was for a good cause?

50. **Issue No.1**:

Whether the writ petition is maintainable in view of the dismissal of the suit in O.S.No.343 of 2002 filed by the petitioner, questioning his removal as Junior Pandara Sannathi, by communication dated 24.07.2002?

The arguments advanced on behalf of the petitioner that the dismissal of the suit for default, cannot operate as *res judicata* and the cause of action was different as between the issues raised in the suit and in the present writ petition and therefore, the writ petition is maintainable, has

to be considered in the light of the pleadings and the prayer sought in the writ and also with reference to the objections raised on behalf of the respondents.

51. In fact, Mr.B.Kumar, learned Senior Counsel appearing for 4th respondent would submit that the cause of action has to be considered with reference to the substance than to the form and present subject matter of the present writ petition in substance what relates to the appointment of the office of Pandara Sannathi and the petitioner's suit questioning his removal and the succession to the office of Pandara Sannadhi is inter-linked and therefore, the objection as to the maintainability of the writ petition in view of the dismissal of the suit even though for default is very much valid and legally acceptable. In this context, it has to be seen that the petitioner himself, on his own volition decided to question his removal from the office of Junior Pandana Sannathi and he having failed to pursue the

suit despite its dismissal for his non-appearance, cannot be allowed to re-agitate the same issue before this Court in the form of a writ petition.

52. In fact, as held by this Court in the decision relied upon by the learned counsel for 4th respondent reported in 2006(2) LW 259 (cited supra), the learned Judge of this Court frowned upon the practice of re-litigation for the same cause of action which is found to be an abuse of process of Court and contrary to justice and public policy. In this case, it is clear attempt on the part of the petitioner to re-litigate the issue by resorting to writ jurisdiction, after having failed to pursue the remedy before the Civil Court. In these circumstances, the arguments advanced on behalf of the petitioner that the dismissal of the suit for default does not operate as res judicata and the decision relied upon in support of the said proposition of factual matrix of the present case loses its legal significance and efficacy. As

rightly contended by the learned Senior Counsel appearing for 4th respondent that there is a clear bar under a well defined statute viz., the Civil Procedure Code, under Order IX Rule 8 and 9 for re-litigation in respect of the same cause of action. This Court, therefore, has no doubt in rendering a finding that the cause of action which formed the basis of the writ petition and the civil suit is one and the same and therefore, the writ petition is clearly not maintainable in view of the dismissal of the suit filed by the petitioner.

53. Needless to mention that when the suit is dismissed, whether it is on the basis of the contest or default, the same is binding on the party more particularly the petitioner who is none other than the plaintiff in the suit. The petitioner cannot disown or discredit the outcome of the suit in order to maintain the present writ petition. Therefore, this Court has no hesitation in coming to the conclusion that the writ petition is clearly not maintainable. Having held as

such, this Court, however, is of the considered view that various issues that are raised which are part of the narration as above by this Court need to be answered one way or the other, since all the learned counsels have advanced arguments both on maintainability as well as on merits of the writ petition. This Court is, therefore, constrained and compelled to embark upon to give its finding on other issues as a whole including the other aspects touching upon the maintainability of the writ petition as well as the merits of the claim of the petitioner.

54. **Issue No.2:**

Whether the writ petition is maintainable in the absence of challenge to the removal of the petitioner is Junior Pandara Sannathi on 24.07.2002?

Now the original prayer sought for in the writ petition is only for Writ of Mandamus forbearing the respondents from in any way hindering or preventing the petitioner from

functioning as the Head of Thiruvavaduthurai Adheenam. However subsequently, it was sought to be amended by challenging the intra-office communication dated 22.11.2012 between 3rd respondent and 2nd respondent informing/confirming the installation of 4th respondent as Madathipathi. There appears to be audacious presumption on the part of the petitioner that his removal was non est in the eye of law and therefore, he was entitled to succeed to the office of the Pandara Sannadhi on the demise of the original Pandara Sannidhi. Whether such presumption can be allowed to gain legal legitimacy, is what to be seen on the basis of the pleadings and materials placed before this Court.

55. First of all, if such presumption has any legal basis, the petitioner need not have approached the Civil Court challenging his removal from the office of the Junior Pandana Sannathi. Having laid a suit before the Civil Court

and having failed to pursue the civil remedy, the petitioner has chosen to approach this Court by attempting to achieve indirectly what he could not directly achieve. This Court does not see any iota of basis for the claim of the petitioner that he has been acting as Junior Pandara Sannadhi, all the time from 2002 to till the date of filing of the writ petition. Such presumption on the part of the petitioner is unsupported by any facts or legal basis and it is a clear attempt to unsettle the appointment of 4th respondent.

56. Unless or until, the removal of the petitioner is tested in a proper legal forum, the prayer for Mandamus in its nature as sought for in the writ petition, cannot be granted and such prayer in the opinion of this Court, is only a consequential relief without validity of the removal is put to judicial scrutiny in the first place. Therefore, this Court is of the view that the writ petition has to fail in the absence of challenge to the petitioner's removal from the office of the

Junior Pandara Sannadhi vide communication dated 24.07.2002.

57. **Issue No.3:**

Whether the writ petition is maintainable in the absence of any worthwhile grounds for assailing the appointment of 4th respondent as Pandara Sannathi of the petitioner Mutt on 22.11.2012?

The grounds raised in the writ petition do not point out as to what is illegality in the appointment of 4th respondent as Pandara Sannadhi on 22.11.2012. The grounds raised in the writ petition in substance is the challenge to the appointment of 4th respondent, this Court does not see as to how the writ petition can be maintained when what is originally sought for in the writ petition, is only for issue of Writ of Mandamus. This is 0more so when no additional grounds have been referred along with the plea for

amendment. Therefore, this Court is of the view that the entire writ petition is completely misconceived as the prayer and grounds do not match and as such framing of the prayer in the writ petition cannot be sustained in law. Even otherwise, the grounds as raised in the writ petition are per se disjointed, patchy, inadequate and do not advance any cogent plea for seeking this Court's intervention. This Court, therefore, does not see any merit in the grounds for assailing the appointment of 4th respondent and therefore, the writ petition has to once again fail on this count also.

58. **Issue No.4:**

Whether the writ petition is maintainable in view of the settled legal position that the act of the appointment of the Head of the Mutt is purely a religious act and not an administrative act?

As held by the Division Bench of this Court reported in 1982 (2) MLJ 221 (cited supra), the act of appointment of

the Head of the Mutt is a religious function and can never be considered as an administrative function and the learned Division Bench has held as such, which has been extracted in extenso supra, that the authority under H.R.& C.E. Act, has practically no role in the appointment of the Head of the religious Mutt. In this case, the appointment of 4th respondent as Madathipathi being a religious and spiritual act and the same cannot be put into question for a judicial review, particularly, under Article 226 of the Constitution of India. When the statute itself governing the Mutt and its activity does not envisage any role in the appointment, this Court, exercising its extraordinary jurisdiction under Article 226 of the Constitution, cannot extend its jurisdiction in the nebulous area of religious institutional function. In the absence of any statue governing such point, this Court cannot extend its long arm of jurisdiction in a vacuum unless or until, there is a strong case for protecting the public policy and public interest as against the interest of

the institution. As far as the present case on hand, this Court is of the clear view that the appointment of 4th respondent as Pandara Sannadhi, is purely religious act and the writ petition, cannot therefore, be maintained.

59. **Issue No.5:**

Whether the writ petition is maintainable since the amended challenge of the letter dated 22.11.2012 is only a intra-office communication by 3rd respondent to 2nd respondent informing the installation of 4th respondent as Pandara Sannathi?

Even otherwise what is challenged in the writ petition is only an intra-office communication exchanged between 3rd respondent and 2nd respondent dated 22.11.2012. Such communication does not give the petitioner any cause of action for challenging the appointment of 4th respondent as Pandara Sannadhi. This is more so, when 3rd respondent

and 2nd respondent have no role in the appointment of 4th respondent and 3rd respondent has merely overseen the transition and succession which took place to the office of the Senior Pandara Sannadhi on the death of the erstwhile Pandara Sannathi on 22.11.2012.

60. The petitioner has chosen to challenge the communication dated 22.11.2012 ostensibly to maintain the writ petition as if the statutory authority's order is being challenged. This Court, is, therefore of the view that the petitioner has devised a clever ploy to attract the jurisdiction of this Court under Article 2226 of the Constitution or unwittingly challenged the communication dated 22.11.2012, without realizing the communication's limited legal implications as far as the issues raised in the writ petition are concerned. Therefore, this Court comes to the conclusion that challenge to the communication dated 22.11.2012, is misconceived and therefore, the writ petition

has to be discountenanced on this aspect also.

61. **Issue No.6:**

Whether the writ petition is to be rejected for suppression of material fact in not disclosing the dismissal of the suit in O.S.No.343 of 2002 filed by the petitioner in the civil Court?

As regards the suppression of material facts viz., the dismissal of the original suit in O.S.No.343 of 2002 which was filed by the petitioner himself, there appears to be no proper answer from the petitioner side. It cannot be argued that the filing of the suit and the dismissal of the same is not a material fact which need not be disclosed in the affidavit filed in support of the writ petition before this Court, as the facts so emerged, the dismissal of the suit is a material fact which ought to have been disclosed in the writ petition. In the absence of such disclosure, the petitioner has attempted to withhold the vital information

from this Court and therefore has approached this Court with unclean hands. Therefore, the petitioner became dis-entitled to get any relief from this Court and and the citations relied upon by the learned Senior Counsel appearing for 4th respondent would amply support his objection. The prayer in the Writ Petition is therefore ought to be refused on this ground also.

62. **Issue No.7:**

Whether the writ petition is maintainable in view of Section 59 of HR & CE Act?

Section 59 of H.R.& C.E.Act as extracted supra, is very clear as to how and what manner, a trustee of the Mutt can be removed. Section 59 enumerates disqualification which attracts removal from the trusteeship of the Mutt and with the consent of the Commissioner of HR & CE , two or more persons interested in the Mutt can institute a suit for

removal of the trustee. According to the learned Senior Counsel appearing for the respondents, the petitioner ought to have invoked under Section 59 of H.R & C.E Act by filing the suit for removal of 4th respondent as Madathipathi. When statute clearly provides for action to be taken in this regard, the petitioner cannot by-pass the statutory directive and directly approach this Court by invoking its special jurisdiction under Article 226 of the Constitution of India. As rightly contended by the learned Senior Counsel appearing for 4th respondent that 'what is good cause or not' is a matter to be established in a Civil Court by letting in oral or documentary evidence. This Court, exercising its jurisdiction under Article 226, cannot decide such issue in the normal circumstances on the basis of the averments contained in the affidavit alone. Therefore, the invocation of the writ jurisdiction by this petitioner, in the teeth of Section 59 of the H.R.& C.E. Act, is clearly unsustainable and invalid. Normally, the proper course which probably for the

petitioner is to approach the Civil Court after conforming to the procedure laid down under Section 59 of HR & CE Act. In any event, since this Court has proceeded to pass orders on merits as well, the option of resorting to Section 59 of HR & CE Act is also foreclosed forthwith as far as the present case is concerned.

63. **Issue No.8:**

Whether the act of removal of the petitioner can be for a good cause or not?

Admittedly any nomination can be revoked for a good cause. In fact, the Hon'ble Supreme Court has held that it is always possible to revoke the nomination for a good cause. What has to be seen is what constitutes a good cause and the perception of a good cause has to be defined in the counter in which it is pleaded. After having adverted to various materials and decisions cited by the learned counsels, the admitted position is that the revocation of

nomination such as in the present case, can be done for a good cause and the same cannot be at the sweet whims and fancies of a person who nominates.

64. <u>Issue No.9:</u>

Whether the good cause is purely subjective satisfaction of the Pandara Sannadhi and the Courts cannot substitute its views as to what is good cause in the matter which falls absolutely within the realm of religious Management?

Admittedly, the appointment of Madathipathi falls outside the scope of statutory boundary as drawn by the H.R. & C.E. Act. When such is the position, the act of removal as such, cannot be the subject matter of administrative action unless the same runs against the public policy or interest. Therefore, the good cause needs to be defined in terms of subjective satisfaction of the Pandara

Sannadhi, since he alone is in a better position to understand and advise how the Junior Pandara Sannadhi is to function and whether his functioning is in furtherance of philosophical custom, usage and practice of the Mutt by the petitioner. Since the appointment is admittedly a religious function without any administrative colour to it, a religious Head alone would be the competent person to judge what is good cause or not. Of course, such judgment can be put to test only in extreme cases where the Head of the Mutt acts whimsically and capriciously against the interest of the Mutt. Therefore, this Court is of the clear view from the materials placed before it, predominantly and sufficiently a good cause has to be defined within the perceptive frame work of the Mutt Head concerned and this shall be the rule and any exception being an exceptional not warranting interference by this Court as a matter of routine.

65. **Issue No.10:**

Whether what is good cause can be evaluated in the writ petition on the basis of avements alone without any evidence to be established for and against before the competent civil Court?

A custom, usage and tradition of every Mutt can be understood on the basis of the averments and pleadings of the parties. However, whether such custom, usage and tradition has been practiced by the person concerned , has to be necessarily established by oral and documentary evidence and only on such evidence made available, proper evaluation can be put in place to establish the factum of a person observing all the required ceremonies and rituals in terms of custom, usage and tradition of the Mutt. As rightly contended by the learned Senior Counsel appearing for 4th respondent, in the absence of any plea in the affidavit filed by the petitioner that he has been leading a life of ascetic,

unmarried and has been observing rituals and performing poojas in terms of Saiva Sidhantha philosophy professed by the Mutt, this Court cannot accept the claim of the petitioner to succeed the earlier Pandara Sannadhi who attained Mukthi on 22.11.2012.

66. As rightly submitted by the learned Senior Counsel for 4th respondent, it is for the petitioner to establish his credentials as a true disciple of the Mutt and has been following all the religious precept practice and tradition before the competent Civil Court by letting in oral and documentary evidence. In the areas of purely religious function, the Courts must be wary in interfering when strong evidence is required either way to decide the claim and counter claim of the parties. In such situation, the Court is not called upon to decide the validity of the administrative action which action can always be decided with the realm of statutory principles and laws. As far as the religious function

is concerned, no such test is available and therefore, the Courts have to be extremely circumspect and cautious before making any transgression in such a function. In these circumstances, this Court is of the view that proper course for the petitioner to establish his *bone fides* being ardent disciple and following custom before a proper Civil Court by establishing his *locus standi* to succeed as Madahipathi of the Mutt.

67. **Issue No.11:**

Even otherwise, whether sufficient material is made available before this Court to hold that the act of removal of the petitioner, was for a good cause?

As far as the materials which were placed for consideration before this Court and the submissions made on behalf of the parties, this Court can come to a reasonable conclusion without erring that there is a good cause made out on behalf of the respondents for removing the petitioner

from the office of the Junior Pandara Sannadhi. As rightly contended by the learned Senior Counsel appearing for 4th respondent that the subsequent acquittal does not in the present case wipe out the conviction in its entirety, since the petitioner was left of the hook by the revision Court only on the basis of benefit of doubt. Even otherwise it appears from the records both in the show cause notice dated 15.07.2002 and the removal order dated 24.07.2002, several other reasons were cited which formed the basis for ultimate act of removal of the petitioner from the position of Junior Pandara Sannathi. The very fact that the petitioner was convicted by the trial Court and upheld by the appellate Court would construe a good cause since such conduct on the part of the petitioner had lowered the esteem and reputation of the Mutt before its religious devotees and followers. More over, there were other irregularities pointed out in the removal order as well as is the show cause notice and the allegations were sufficient enough to remove the

petitioner from the position of Junior Pandara Sannadhi. Though what is a good cause has not been defined, but any act on the part of the nominee which undermines his position as a religious head, can be a valid reason of his removal from the position he occupies. After all, in this case, the earlier Head of the Mutt felt that continuation of the petitioner as Junior Pandara Sannadhi would completely erase the esteem and the reputation enjoyed by the Mutt for centuries before its scores of devotees and its followers. Even otherwise, there was nothing on record to show that the petitioner had been continuously practicing regular rituals and performing poojas in terms of the Mutt's custom and tradition. In the absence of such evidence to be established by the petitioner, it was a clear case where the aspirant had invited disqualification upon himself for which he was rightly removed by the deceased Pandara Sannathi.

68. If what is stated in the show cause notice or removal order is not a good cause for removing a religious functionary, this Court does not see what other reasons can be stated as good cause. The conviction which was ultimately set aside by the Revision Court can get wiped out in certain situation, but such initial conviction as confirmed by the appellate Court cannot forever be forgotten by the followers and devotees of the Mutt. Therefore, this Court is fully convinced that there are enough materials to establish the fact that there existed good cause for removal of the petitioner as Junior Pandara Sannadhi. Hence, the petitioner cannot plead that he is deemed to have succeeded to the office of the Senior Pandara Sannadhi on his death on 22.11.2012.

69. Be that as it may, today, the tentacles of the judicial power particularly under Article 226 of Constitution of India can permeate to all levels as the Courts is

confronted with new challenges by passage of time. Peoples' expectation in judicial institution has witnessed manifold increase in the recent times. The Courts very often today reached out to the people's expectation and offer judicial remedies wherever they are required and necessary. Some times judicial activism becomes imperative to address extraordinary situation for serving larger public interest and to serve larger public purpose. At the same time, the Court cannot lose its sight of the fact that it cannot travel beyond the areas of judicial management unless it is compelled for serving larger public interest. There ought to be a judicially manageable standards in order to allow reasonable space for certain legitimate activities outside the reach of the judicial power. The Courts cannot be the sole repository of all knowledge and wisdom in all matters and can substitute its views particularly in matters of religious function. The Courts in such situation have to do tight rope walking without falling on either side namely unnecessary judicial

activism or mute spectator to any blatant wrong doing against public interest. The Courts have to maintain the fine balance in order to protect its hallowed existence. In fact, in the words of the Hon'ble Supreme Court of India, emphasized what is judicial review and justiciability of a particular action, as observed in paragraph-12 in its decision reported in "(1995) 4 SCC 73 (***A.K.Kaul and another versus Union of India and another***)", which is once again extracted as under:

> "12. It is, therefore, necessary to deal with this question in the instant case., We may, in this context, point out that a distinction has to be made between judicial review and justiciability of a particular action. In a written constitution the powers of the various organs of the State,are limited by the provisions of the Constitution. The extent of those limitations on the powers has to be determined on an interpretation of the relevant provisions of the Constitution. Since the task of interpreting the provisions of the Constitution is entrusted to the Judiciary, it is vested with the

power to test the validity of an action of every authority functioning under the Constitution on the touch stone of the constitution in order to ensure that the authority exercising the power conferred by the constitution does not transgress the limitations placed by the Constitutions on exercise of that power. This power of judicial review is, therefore, implicit in a written constitution and unless expressly excluded by a provision of the Constitution, the power of judicial review is available in respect of exercise of powers under any of the provisions of the Constitution. Justiciability relates to a particular field falling within the purview of the power of judicial review. On account of want of judicially manageable standards, there may be matters which are not susceptible to the judicial process. In other words, during the course of exercise of the power of judicial review it may be found that there are certain aspects of the exercise of that power which are not susceptible to judicial process on account of want of judicially manageable standards and are, therefore, not justiciable."

70. In the light of the above observation of the Hon'ble Supreme Court of India, this Court does not wish to bring all actions of the Mutt within its power of judicial review, since the appointment of the petitioner as Pandara Sannadhi (Madathipathi) admittedly falls outside the scope of the statutory enactment viz., H.R. & C.E. Act. Further, the petitioner Mutt enjoys the protection of Article 26 of the Constitution of India which is undoubtedly a fundamental in nature. Such being the case, this Court has to inexorably come to a conclusion that the act of removal of the petitioner as Junior Pandara Sannathi on the basis of bone fide consideration by the then Head of the Mutt and such action being purely religious in nature, the same falls out side the judicial reach. In the absence of any prejudice to the public policy or interest, the impugned action has to be regarded as not justiciable and therefore, this Court has no hesitation in answering all the Issues against the petitioner

and on such conclusion, this Court does not find any merit or substance to entertain the present Writ Petition.

71. In the result, the Writ Petition is dismissed as not maintainable as well as devoid of merits. No costs. Consequently, connected WMP is closed.

suk 05-06-2018
Index: Yes/No
Internet: Yes/No

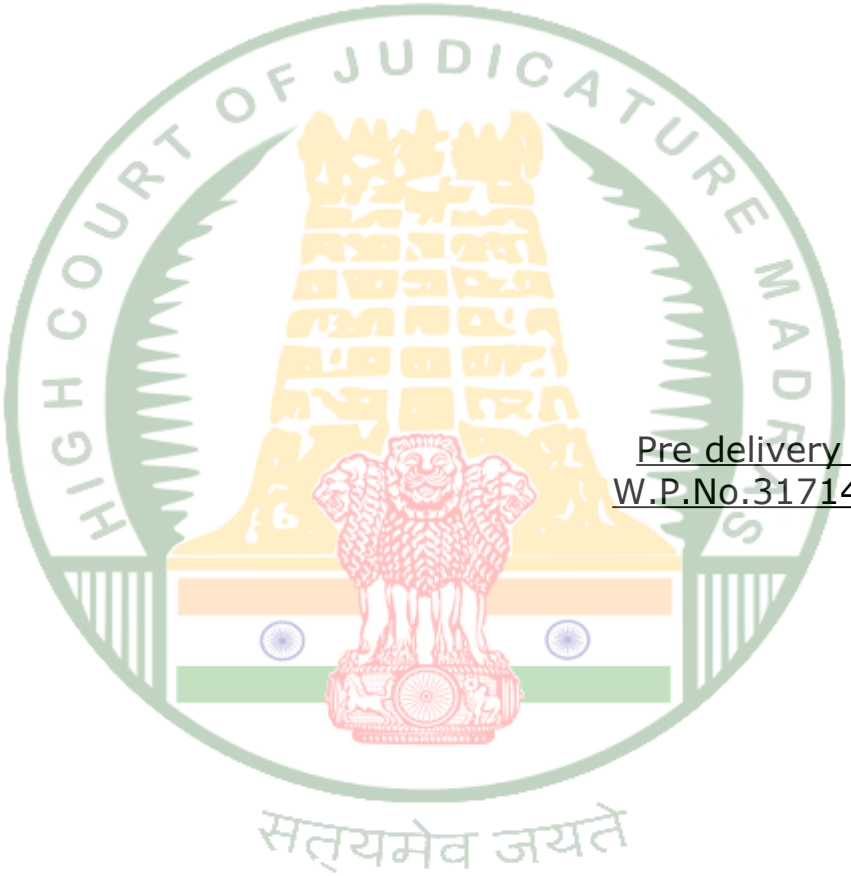
To

1. The Secretary,
State of Tamil Nadu,
Hindu Religious and Charitable Endowments Department,
Fort St.George, Chennai.

2. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai.

V.PARTHIBAN, J.

suk



Pre delivery Order in
W.P.No.31714 of 2012

05-06-2018