

(1997) 03 MAD CK 0005
In the Madras High Court

M.R. Subramanian and Others

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 18-03-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Constitution of India, 1950 — Article 26

Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1991 — Section 63

Citation : (1997) 2 LW 28 : (1997) 2 MLJ 151

Hon'ble Judges : AR. Lakshmanan, J

Bench : Division Bench

Judgement

AR. Lakshmanan, J.

In all these writ petitions, the validity of Ordinance 3 of 1996, known as Tamil Nadu Hindu Religious and Charitable Endowments (Special

Provisions) Ordinance, 1996 is challenged. After we reserved these cases for judgment, the Ordinance 3 of 1996 came to be replaced by Act 23

of 1996. Therefore, these cases were directed to be posted for "being spoken to", in order to ascertain from the learned Counsel appearing for the

petitioners and the learned Counsel appearing for the respondent, as to whether they have got any additional arguments to be advanced.

Accordingly, these cases were posted before the Court on 10.12.1996. On that date, both sides submitted that there were no additional

arguments to be advanced on the validity of Act 23 of 1996, as the arguments advanced on the validity of Ordinance 3 of 1996 would equally

apply to the validity of Act 23 of 1996 also. Both the sides submitted that the writ petitions be treated as challenging the Act also. We recorded

the submissions made by both sides on 10.12.1996 and passed the following order:

These matters were heard and reserved for judgment, when the Ordinance 3 of 1996 was in force. Now the Ordinance 3 of 1996 has been

replaced by Act 23 of 1996, which is operative from the date when the ordinance was issued. Under these circumstances, these appeals and the

writ petitions came to be posted for "being spoken to" so that the very validity of the Act can be considered. Learned Counsel for the appellants

and the respondents submit that as the arguments on the validity of Ordinance and the Act are the same, inasmuch as the Act is nothing but

replacing of the Ordinance, the appeals and the writ petitions may be treated as challenging the Act also. We accordingly proceed to consider the

validity of the Act also.

Therefore, we proceed to determine the validity of the Tamil Nadu Act 23 of 1996 (hereinafter referred to as the "Act 23 of 1996").

1. Writ Appeal Nos. 668 and 671 of 1996 and Writ Petition Nos. 10111, 10113, 10133, 10332, 10180, 10618, 10846, 10901, 10920, 11141,

10832, and 11250 of 1996 are covered by a scheme framed by the authorities under the Tamil Nadu Hindu Religious and Charitable Endowments

Act, 1959 (Tamil Nadu Act 22 of 1959), (hereinafter referred to as the "Act"). W.P. Nos. 10216, 10623, 10664, 10150, 10939 and 10546 of

1996 are cases in which the trustees were appointed by the Temple Administration committee. W.P. No. 10735 of 1996, which is a community

temple, is covered by an order u/s 64(1) of the Act. In this matter, Second Appeal No. 896 of 1994 is pending in this Court.

W.P. Nos. 11310 and 11311 of 1996 are covered by Civil Court decrees.

2. By one stroke, the Government of Tamil Nadu has removed all the hereditary and non-hereditary trustees of the various temples in the State of

Tamil Nadu on the only ground that there being discontent in the minds of the general public about the functioning of the trustees and has directed

appointment of Fit Persons in the place of the existing incumbents irrespective of the fact whether the terms of the incumbent had expired or was

subsisting. The validity of this legislative action of the State is challenged in these matters. Therefore, all the writ appeals and the writ petitions have

been heard together since common question in all of them is the validity of Act

23 of 1996, which has replaced the Ordinance 3 of 1996.

3. The first batch of cases are covered by schemes framed by the authorities under the Act on the applications made u/s 64(1) of the Act. The

petitioners in the second batch of cases are non-hereditary trustees appointed by the Temple Administration District Committees under the

provisions of the Act. Their case is, that they were appointed by the Temple Administration District Committees for a period of three years and

that they were sought to be removed by virtue of the provisions of the Ordinance even before the expiry of their term. W.P. No. 10735 of 1996 is

a community temple covered by an order u/s 64(1) of the Act and a second appeal is pending in this Court. W.P. Nos. 11310 and 11311 of 1996

are covered by civil court decrees.

4. We shall now consider the short facts of each case and then take up for adjudication the law on the subject.

5. W.A. No. 668 of 1996 is filed against an interim order in W.M.P. No. 13313 of 1996 in W.P. No. 10111 of 1996. Since the main W.P. No.

10111 of 1996 itself is taken up for hearing, it is unnecessary for us to deal with this writ appeal which is filed against an interim order. The

petitioner/appellant states that he is holding office as hereditary trustee in Sri. V.R. Chatram situated at Dhanushkoti, Ramanathapuram District. He

is the present Chairman of the Board of Trustees and is in full charge of the same. He was elected as Chairman of the Board of Trustees at the

meeting held on 7.4.1994 and his election was also accepted by the Deputy Commissioner, H.R. & C.E. Department, Sivaganga, through a

communication issued in Na.Ka. No. 11404/92/A1 dated 20.4.1994. He is entitled to hold the office of the Chairman of the Board of Trustees for

a period of three years from 7.4.1994. The institution known as Sri V.R. Chatram is governed by the provisions of the scheme framed by the

Deputy Commissioner, H.R. & C.E. Department, Madurai-2, in O.A. No. 65 of 1978, dated 28.7.1979, u/s 64(1) of the Act. Clause 3 of the

said scheme provides that the institution and its properties shall be administered by five trustees from Chettiars (VR. RM. Branch three and VR. L.

Branch two) and that the Board of Trustees will hold office for a period of three years and shall have all the powers of rights, honour and duties

conferred or imposed by the provisions of the Act and the Rules framed

thereunder. It is stated that in pursuance of the scheme framed in O.A.

No. 65 of 1978, the Department has been appointing trustees as per Clause 3 of the scheme. The institution itself was founded by the petitioner's

ancestors for the benefit of the family members and no member of a public has ever got appointed as a trustee. While so, the Deputy

Commissioner, H.R. & C.E. Department, Sivaganga, has now appointed the Inspector, H.R. & C.E. Department, Ramanathapuram, as Fit Person

on the basis of the power conferred under Ordinance 3 of 1996 and Act 23 of 1996, which according to the petitioner is quite illegal and without

jurisdiction. The specific contention of the petitioner is, that the institution in question known as V.R. Chatram, is an institution governed by the

provisions of the statutory scheme framed in O.A. No. 65 of 1978, wherein the rights of the members belonging to VR.RM. Branch and VR.L.

Branch to represent the institution, were recognised and a permanent provision was also incorporated in Clause 3 of the scheme, which has

become final. Therefore, the institution in question according to the petitioner will not come under the purview of Section 2(1) of the Ordinance 3

of 1996 and Act 23 of 1996. It is further urged that the petitioner is not holding office as non-hereditary trustee in the institution to attract Section

2(1) of the Ordinance and Act 23 of 1996, but functioning as trustee under the power conferred by a statutory scheme. No notice was given to the

incumbent of the office as contemplated in Clause 3 of the scheme. In any event, the impugned Ordinance is not applicable to a scheme temple and

therefore, the order of the Deputy Commissioner, H.R. & C.E. Department, Sivaganga, in Na.Ka. No. 1660/96/15/A1, dated 4.7.1996

appointing the Inspector, H.R. & C.E. Department, Ramanathapuram, as Fit Person for the institution is liable to be set aside.

6. We have been taken through the order, dated 9.10.1978 passed by the Deputy Commissioner, H.R. & C.E. Department, Madujai-2, in O.A.

No. 65 of 1978, and the Annexure to the Order," dated 9.10.1978 which clearly state that the office of trustee with regard to the trust is

hereditary, and it is restricted to the members of the two branches of VR family and that the trust should be managed by five trustees, three of them

to be elected from VR.RM. Branch and two of them from VR.L. Branch. A confirmed scheme was made on 28.7.1979. Our attention was also

drawn to the proceedings of the Deputy Commissioner, H.R. & C.E. Department, dated 23.3.1990 inviting applications from the members of the

two branches for appointment as trustees pursuant to the scheme framed on 28.7.1979. The proceedings of the Deputy Commissioner, H.R. &

C.E. Department, Sivaganga, dated 20.4.1994 was also placed before us to show that the present petitioner M.R. Subramanian was elected as

the Chairman of the Board of Trustees on 7.4.1994.

7. W.A. No. 671 of 1996 is preferred against the order in W.M.P. No. 13315 of 1996 in WP. No. 10113 of 1996. Since the main W.P. No.

10113 of 1996 itself is taken up for hearing, we feel that it is unnecessary for us to deal with this writ appeal, which is filed against the interim

order. It is claimed that Sri Anjaneyaswami Temple alias Mukkiapuranaswami Devasthanam, Gobichettipalayam, is a denominational temple within

the meaning of Article 26 of the Constitution of India read with Section 51, proviso to Section 64(1) and Section 107 of the Act, and has been in

existence for the sole benefits of persons belonging to Madhva Community who are permanently residing in Gobichettipalayam Town. A statutory

scheme was framed by the Deputy Commissioner, H.R. & C.E. Department, Coimbatore in O.A. No. 130 of 1975 u/s 64 (1) of the Act and the

petitioner/appellant was appointed as Fit Person till the constitution of a regular Trust Board for the denominational temple. Thereupon, the District

Committee, H.R. & C.E. Department, Coimbatore, has appointed the petitioner/appellant and two others as trustees on the basis of the provisions

of the scheme framed in O.A. No. 130 of 1975 dated 15.7.1977. The petitioner was elected as the Chairman, Board of Trustees and his period

will come to an end during September, 1996. It is contended that Act 23 of 1996 which has replaced Ordinance 3 of 1996 is not applicable to

denominational temples where the statutory schemes are framed by the authorities under the provisions of the Act and that the action of the

Department is violative of Article 14 of the Constitution. The scheme provides that the temple and its endowments shall be administered by a

Board of Trustees not less than three and not more than five in number to be appointed by the appropriate authority under the provisions of the

Act and the Rules framed thereunder. The trustees so appointed shall hold office for a period of five years. The appropriate authority shall appoint

trustees for the temple from among the members of Madhva Community. The writ petition has been filed to quash the proceedings of the Deputy

Commissioner, H.R. & C.E. Department, Coimbatore, in Na.Ka. No. 7104.96/A3, dated 4.7.1996 in appointing the Inspector, H.R. & C.E.

Department, Gobichettipalayam, as a Fit Person for the temple in question u/s 2(1) of Ordinance 3 of 1996, now Act 23 of 1996.

8. W.P. No. 10133 of 1996 has been filed to quash the order dated 4.7.1996 of the Deputy Commissioner, H.R. & C.E. Department,

Coimbatore, in Na.Ka. No. 7120/96/A3 in appointing the Executive Officer, Arulmigu Mariamman Thirukoil, Pitchampalayam, Tiruppur Town, as

a Fit Person for Arulmigu Kulalar Pillayar Temple situated in Tiruppur Town. It is stated that in O.A. No. 277 of 1942, the Board of

Commissioner for H.R. & C.E. declared the temple as non-excepted temple on the ground that it is a denominational temple belonging to the

Kulalar (Potters) community of Tiruppur Town and provided for the appointment of trustees from among the members of the community as per

order dated 29.4.1943. It is submitted that the supersession of the Trust Board without notice to the trustees violates the principles of natural

justice. The Deputy Commissioner has absolutely no jurisdiction to appoint a Fit Person for the temple in question, which is denominational in

character and as such, the impugned order of the Deputy Commissioner appointing a Fit Person is against law and without jurisdiction.

9. W.P. No. 10332 of 1996 has been filed by the trustees of Arulmigu Kulalar Pillayar temple, Tiruppur Town, for a writ of declaration that the

Ordinance, now Act 23 of 1996 in question is illegal, invalid, ultra vires and without jurisdiction. It is stated that the temple in question was

established and managed by the Kulalar (Potters) community people of Tiruppur Town, and that in O.A. No. 277 of 1942, the Board of

Commissioner, H.R. & C.E. has declared this temple as a denominational temple belonging to the said community, and provided for the

appointment of trustees to the temple from and amongst the members of the said community. The community members alone are appointed as

trustees for the temple by the appropriate authorities under the provisions of the Act and since the temple being a denominational temple, the

petitioners are entitled to the protection of Article 26 of the Constitution and Sections 51 and 107 of the Act. It is stated that the petitioners are

appointed for a period of three years from the date of their election and that they are entitled to be in office till 7.5.1997.

10. In W.P. No. 10180 of 1996, the petitioner seeks to quash the proceedings of the Deputy Commissioner, H.R. & C.E. Department, Madurai

in Na.Ka. No. 7698/96/A1, dated 5.7.1996 as illegal, incompetent and without jurisdiction. It is stated that Arulmigu Sarveswarar Temple,

Sathamangalam, Madurai-20, is under the management of the Board of Trustees who are the members of Sathamangalam Aringar Anna Nagar

Temple Committee, which is a registered body. The members are elected and approved by the Department. A scheme had been framed by the

Deputy Commissioner, H.R. & C.E. Department, Madurai, on 9.5.1983 in O.A. No. 30 of 1982 and as per the said scheme, the Board of

Trustees are elected and that they shall manage the temple in accordance with the provisions of the Act. It is stated that the members of the Trust

Board are not political appointees but are elected by the members of the society and that the elected members who are holding office are one

retired College Principal, one Senior Advocate, one retired Postmaster, one retired Railway Officer and an Auditor. The scheme provides that the

temple and its properties shall be administered by a Board of Trustees of not less than five members selected from among the members of the,

Sathamangalam Aringar Anna Nagar temple Committee and that the Board of Trustees" shall be in possession of the temple and all the properties

belonging to the temple, both movable and immovable, including records, registers, etc. The scheme in question was made u/s 64(1) of the Act by

the appropriate authority.

11. W.P. No. 10618 of 1996 has been filed by the Chairman, Board of Trustees of Arulmigu Ramalinga Choudeswari Devasthanam, Tiruppur,

which was constructed by Devanga Chettiar Community, for a declaration that the Ordinance and now the Act 23 of 1996 in question is ultra

vires, unconstitutional and void. It is stated that in 1987, as per the orders of the Commissioner in O.A. No. 108 of the 1982, the temple was held

to be a denominational temple and a scheme was framed. It was further held that only persons belonging to Devanga Chettiar community living in

and around Venkatesapuram, Ramanathapuram Extension, S.V. Extension and Mettupalayam, will be considered for appointment as trustees. The

petitioner challenges the impugned order dated 4.7.1986 of the Deputy Commissioner, H.R. & C.E. Department, Coimbatore, in Na.Ka. No.

7121/96/A3 appointing the Executive Officer, Arulmigu Mariamman Thirukkoil, Pichampalayam, Tiruppur Taluk as a Fit Person to take charge of

the temple and function as a trustee in the place of the existing trustees.

12. W.P. No. 10846 of 1996 has been filed for a declaration to declare that Act 23 of 1996 and Ordinance 3 of 1996 as illegal, null and void and

ultra vires the Constitution. Arulmigu Palaniandvar Thirukoil, Thulasisingam Street, Perambur, Madras11, was founded by the Adi Saiva

Thondaimandala Vellala community in the year 1916. The Department passed an order on 12.5.1982 in O.A. No. 68 of 1980 and framed a

scheme with regard to the administration of the temple. It was made clear in that order that the scheme framed would come into force from the

date of publication in the Madras District Gazette, which was made on 1.9.1982. The scheme provides that the administration of the temple and its

properties shall vest in the Board of Trustees not exceeding five and not less than three, who shall be appointed exclusively from the members

belonging to Adi Saiva Thondaimandala Vellalas and residing in Thulasinga Mudali Street, Perambur, Madras-11, by the appropriate authority in

accordance with the provisions of the Act and the Rules in force.

13. W.P. No. 10901 of 1996 has been filed by the trustee of Arulmigu Karpaga Vinayagar Thirukkoil, K.K. Nagar, Madurai-20, which was

founded in the year 1988. The Deputy Commissioner, H.R. & C.E. Department, Madurai-2, by his order dated 26.12.1988 in O.A. No. 1 of

1988, u/s 64(1) of the Act framed a scheme for the administration of the above temple. The scheme provides that the institution in question shall be

administered by a Board of Trustees consisting of not less than five members, four of them chosen from the members of the office bearers of

Karpaga Vinayagar Arulneri Kazhagam, K.K. Nagar, Madurai Town and one member from Adi Dravida Community and a resident of K.K.

Nagar, Madurai. All the five persons shall be appointed by the appropriate authority subject to the provisions of the Act and the President of the

Karpaga Vinayagar Arulneri Kazhagam shall be the Chairman of the Board of Trustees. The writ petition has been filed challenging the impugned

Ordinance and Act 23 of 1996 as ultra vires and illegal.

14. W.P. No. 10920 of 1996 has been filed by the trustees of Sri Eswarar Karuppuswami Kuladeivam Temple, Sowripalayam, Coimbatore

Taluk, to quash the proceedings of the Deputy Commissioner, H.R. & C.E. Department, Coimbatore, in Na.Ka. No. 4535-2/96/A6, dated

4.7.1996 appointing the Inspector, H.R. & C.E. Department, Coimbatore, as Fit Person for the temple in question. It is stated that the institution in

question is denominational in character and has been in existence for the sole benefits of members belonging to 14 Sects of Agamudayar Thevar

Community as per Clause 5 of the scheme framed in O.A. No. 100 of 1985 dated 19.6.1987 by the Deputy Commissioner, H.R. & C.E.

Department, Coimbatore. Clause 5 of the scheme reads thus:

The non-hereditary trustees shall be appointed by the appropriate authority under the provisions of the H.R. & C.E. Act, 1959 (Tamil Nadu Act

22 of 1959) from among the persons selected in the meeting specially held for the purpose by the following 14 sects of Agamudaya Thevar

Community people living in Sowripalayam, Ramanathapuram and Udayampalayam villages, coimbatore Taluk and District, provided that they do

not suffer from any of the disqualifications, mentioned in Section 26 of the H.R. & C.E. Act, as amended from time to time : (1) Alagan Kootam,

(2) Poojari Koottam, (3) Naathan Koottam, (4) Naduvaluru Koottam, (5) Vadakku Valavu Koottam, (6) Pudhu Veedu Koottam, (7) Thannasi

Koottam, (8) Mayandi Koottam, (9) Mokka Thevar Koottam, (10) Kenathuvalu Koottam, (11) Uthandi Koottam, (12) Mekkathan Koottam,

(13) Sangaramoorthi Koottam, (14) Silavukaaran Koottam.

It is stated that in pursuance of the scheme, the petitioner and four others were appointed as trustees under the proceedings dated 31.5.1994 and

their rights are now interfered with by the impugned Ordinance and Act 23 of 1996 which are challenged as ultra vires and illegal.

15. W.P. No. 11141 of 1996 has been filed for a declaration that the Ordinance and the Act 23 of 1996 in question are void and unconstitutional

insofar as the petitioners' institution is concerned. Sri Ramalinga Sowdeswari Pudu Sowdamman Koil was constructed in the year 1869. The

temple is administered by a Board of non-hereditary trustees not less than three and not more than five to be appointed by the appropriate

authority under the provisions of the Act and that they are appointed from

among the panel of persons to be elected by the members of five Cheetimaais belonging to the said temple and the persons living in a few streets. The scheme was framed in the year 1985 and pursuant to the scheme, the petitioners were elected and appointed as non-hereditary trustees by the authority concerned. As per the appointment order dated 7.12.1993, the petitioner are entitled to continue as non-hereditary trustees till the end of 1996.

16. W.P. No. 10835 of 1996 is also covered by a scheme in O.A. Nos. 40 and 41 of 1980, dated 4.1.1984 passed by the Deputy

Commissioner, H.R. & C.E. Department, Coimbatore, u/s 64(1) of the Act. A scheme was framed for the administration of the Arulmigu Selva

Vinayagar Temple, Mettupalayam Road, R.S. Puram, Coimbatore, which was also published in the Gazette. The Scheme provides that the non-

hereditary trustees shall be appointed by the appropriate authority under the provisions of the Act from among the members of Attaha Chokkans

(Ganikas), who are also known as Kovari Kannada Vaniar. The petitioners were appointed pursuant to the terms of the scheme as they belong to

the said religious denomination. The petitioners were to hold office for a period of three years and since no further appointment was made, they

were continuing to hold office as trustees. It is stated that the impugned Ordinance and Act 23 of 1996 are arbitrary and amount to a virtual

punishment given by the Legislature to persons not similarly situated and is without any rationale. It is further stated that the impugned Ordinance

and Act 23 of 1996 virtually seek to treat unequals as equals and has not made a valid distinction between religious institutions and trusts to which

any member of the public could be appointed as nonhereditary trustees whereas to religious institutions only members of a particular denomination

could be appointed as non-hereditary trustees. The petitioners, therefore, prayed for a declaration that the provisions of the impugned Ordinance

and Act 23 of 1996 are illegal, unconstitutional, ultra vires and unenforceable.

17. W.P. No. 11250 of 1996 is covered by a scheme in O.A. No. 110 of 1962 framed by the Deputy Commissioner, H.R. & C.E. Department,

Madras-34. The scheme provides for the administration of the temple Arulmigu Nageswarar Kulavilakku Amman Temple, Nanjai Thalaman-galam

village, Erode Taluk, and for that purpose, the appropriate authority under the

Act shall have power to appoint not less than three and not more than five trustees selected from among the members belonging to Kannakulam Vellala Gounder Community in Punyaikula Mangalam village and in other villages in Coimbatore, Salem and Madurai Districts. It is stated that the trustees were appointed on 10.9.1993 for a period of three years and that the period is not yet expired-.Therefore, they filed the writ petition challenging the impugned Ordinance.

18. The second batch of cases, which we are now going to deal with, relate to trustees appointed by the Temple Administration Committee and

the period of office of the incumbents have not expired. In W.P. No. 10623 of 1996, the petitioner was appointed as a non-hereditary trustee of

Arulmigu Poomari Ponniamman alias Poomari amman temple situated at Basin Bridge, Washermanpet, Madras-21, by the Temple Administration

District Committee, Madras, in its proceedings, dated 11.1.1994 for a period of three years. According to the petitioner, he is lawfully entitled to

be in office upto 11.1.1997. Section 53 of the Act gives power to the appropriate authority to suspend, remove or dismiss any trustee of the

religious institution for various reasons enumerated thereunder. Hence, the lawfully appointed trustees shall continue in office for three years except

in cases of removal, resignation or efflux of time. The petitioner was not put on notice as to the charges levelled against him and he was not

afforded with reasonable opportunity of not only knowing the charges levelled against him but also to meet such charges. The petitioner has a right

of appeal as provided u/s 53(iii) of the Act. The Government of Tamil Nadu has promulgated the impugned Ordinance in order to deprive the

petitioner of his holding full term of office without any charge or show cause notice and without, conducting any enquiry. In this writ petition, the

petitioner challenges the order passed by the Assistant Commissioner, H.R. & C.E. Department, Madras, appointing a Fit Person in his place.

19. In W.P. No. 10664 of 1996, the petitioners and two others were appointed as trustees of Sri Varadharaja Manavala Mahamuni Temple

situate at Varadha Muthaiyappan Street, Madras-1, by the Temple Administration District Committee on 26.7.1994, for a period of three years

from the date of election of the Chairman of the Trust Board. The 1st petitioner was elected as the Chairman/Managing Trustee of the Trust Board

on 30.8.1994 and as such, their term of office will be upto 29.8.1997. The petitioners raised similar contentions as in W.P. No. 10623 of 1996

and prayed for a declaration to declare the impugned Ordinance and Act 23 of 1996 as illegal, invalid, ultra vires and without jurisdiction.

20. W.P. No. 10150 of 1996 has been filed to declare the impugned Ordinance and Act 23 of 1996 invalid, illegal, ultra vires and without

jurisdiction in so far as it relates to Sri Ponniyamman, Kailasanthar, Varadanarayana Perumal, Selva Vinayagar and Mariamman temples situated at

Malayambakkam village, Sriperumbudur Taluk, which are denominational temple in character, where a statutory scheme was framed u/s 64(1) of

the Act and trustees appointed on the basis of the said scheme. Originally, the writ petition was filed to set aside the order of the Assistant

Commissioner, H.R. & C.E. Department, Kancheepuram, issued in Na.Ka. No. 4200/96/A3, dated 5.7.1996, appointing the Executive Officer of

Sri Audikesavaperumal and Bashyakarswami Temple, Sriperumpudur Town, as Fit person u/s 2(1) of the impugned Ordinance and Act 23 of

1996. They, however, filed W.M.P. No. 14534, of 1996 to amend the prayer in the main writ petition as that of a declaration to declare the

impugned Ordinance and Act 23 of 1996 as invalid, illegal and ultra vires in so far as the temple in question are concerned. This case is covered by

a scheme framed by the Deputy Commissioner, H.R. & C.E. Department, Madras, in O.A. No. 32 of 1975, dated 11.3.1991. The scheme

provides for appointment of trustees for the administration of the temples in question, not less than three but not exceeding five, from among the

persons of Thandaimandala Saiva Vellala Community, who are permanently residing in Malayambakkam village, Sriperumpudur taluk. Under the

proceedings dated 19.1.1994, the Temple Administration Committee, Chengai M.G.R. District appointed the petitioners for a period of three

years. According to the petitioners, their term of office has not expired.

21. In W.P. No. 10939 of 1996, the petitioner challenges the impugned Ordinance and Act 23 of 1996 as wholly illegal, arbitrary and without any

jurisdiction. By proceedings dated 16.2.1995, the District Temple Administration Committee appointed the petitioner as a non-hereditary trustee

of Arulmigu Varadharaja Perumal Temple, Old Katpadi, as provided u/s 7-E of the Act. The petitioner assumed office on 29.6.1995 and is

entitled to hold the office for a period of three years. The petitioner has raised similar contentions as in W.P. No. 10623 of 1996.

22. In W.P. No. 10546 of 1996, the petitioner was appointed as a trustee of Arulmigu Abathsagayeswarar Temple at Alangudi village, Thanjavur

District by the Thanjavur District Temple Administration Committee by its proceedings dated 23.11.1994. In the order of appointment it is stated

that the term of office is three years from the date of his appointment or his completion of 70 years of age, whichever is earlier. It is contended that

the petitioner is entitled to be in office as trustee upto 22.11.1997. The petitioner contends that the impugned Ordinance and Act 23 of 1996 are

violative of Article 14 of the Constitution since it discriminates against one class of persons in charge of the temple administration. He, therefore,

prayed for a declaration that the impugned Ordinance and Act 23 of 1996 are unconstitutional, invalid, illegal, ultra vires and without jurisdiction.

23. W.P. No. 10216 of 1996 has been filed by the trustees of Arulmigu Thiruvatteeswarar Thirukkoil, Triplicane, Madras-5, which is a

denominational temple administered by the Mudaliar community people in Madras. This temple is being administered by the non-hereditary

trustees appointed from among the members of the community. The petitioners had been appointed by the Temple Adminr Ration Board, Madras

District, on 9.9.1993 and in the meeting held on 12.10.1993, the 1st petitioner has been unanimously elected as the Chairman. The trustees

assumed office on 20.10.1993 and their term of office of three years expires on 19.10.1996. In the circumstances, they prayed for a writ of

declaration to declare the impugned Ordinance and Act 23 of 1996 as illegal, invalid, ultra vires and without jurisdiction.

24. In W.P. No. 10735 of 1996, Arulmighu Parvathavarthini Sametha Ramanatha Ramalinga Sowdabigai Amman Temple, Cuddalore, is a

denominational temple. The petitioner challenged the proceedings of the Deputy Commissioner H.R. & C.E. Department, Mayiladuthurai, dated

4.7.1996, wherein the respondent directed the Board of Trustees to hand over charge of the temple to the Executive Officer, Arulmigu

Pataleeswarar Thirukkoil, Cuddalore. It is submitted that the authorities have no jurisdiction to impose upon a denominational temple a Fit Person

of their choice. Such an appointment negates the rights guaranteed under the Constitution to denominational temples. This Court in C.M.P. No.

10677 of 1994 in S.A. No. 896 of 1994 ordered status quo as on 2.8.1994. However, the respondent has directed the petitioner and other

trustees to hand over the management. The present order has been issued in order to circumvent the orders passed by this Court. Therefore, the

petitioner prayed for quashing the impugned proceedings dated 4.7.1996 as illegal, incompetent, irregular, unconstitutional and without jurisdiction.

25. W.P. No. 11310 of 1996 has been filed by the trustees of Sri Kannika Parameswari Amman Devasthanam, Kombai, Madurai District, to

declare the impugned Ordinance and Act 23 of 1996 in so far as they relate to the temple in question, which is a denominational temple declared

as per the decree dated 9.7.1980 in O.S. No. 136 of 1977 on the file of the Subordinate Judge, Dindigul, as confirmed in A.S. No. 156 of 1982,

dated 24.12.1982 on the file of the District Judge, Madurai North at Dindigul, as ultra vires, and unconstitutional being violative of Article 26 of the

Constitution of India. The Arya Vysya Community residing in Kombai alone have right to appoint the trustees. The Devasthanam filed O.S. No.

136 of 1977 on the file of the Subordinate Judge, Dindigul, against the respondents and the Assistant Commissioner, H.R. & C.E. Madurai, for a

declaration that the temple in question is a denominational temple with consequential reliefs. On 9.7.1980, the trial court granted a declaration that

the Arya Vysya Community belonging to 102 Gotra of the village of Kombai are owning and maintaining the Sri Kannika Parameswari Amman

Devasthanam, which is a religious denomination, and that the community is entitled to manage and administer the Devasthanam and its properties

and other matters without let or hindrance by any other authorities. The defendants filed A.S. No. 156 of 1982 on the file of the District Court,

Dindigul, and the Appellate Court by its judgment and decree dated 24.12.1982, modified the relief by adding that the declaration granted by the

trial court in favour of the plaintiffs with regard to the administration of the Devasthanam's properties is subject to any regulation that can be made

by the authorities as provided under the Act and in other respects, the judgment of the trial court was confirmed. According to the petitioners, the

respondents have no power to appoint trustees for the denominational temple and that the appointment is in violation of Article 26 of the

Constitution.

26. In W.P. No. 11311 of 1996, the petitioners, who were selected as trustees of Sri Kannika Parameswari Amman Devasthanam,

Uthamapalayam, Madurai District, for a period of three years and are managing the Devasthanam, question the legality of the impugned Ordinance

by seeking a prayer for a declaration to declare that the impugned Ordinance and Act 23 of 1996 are illegal and ultra vires. Here again, a suit in

O.S. No. 148 of 1977 was filed in the Sub Court, Dindigul, and the Court declared that the temple in question is a religious denominational

institution. On appeal in A.S. No. 69 of 1982, the District Court, Dindigul, modified the judgment of the trial court stating that the declaration

granted by the trial court in favour of the plaintiffs with regard to the administration of the Devasthanam properties is subject to the regulations that

can be made by the Department. In this writ petition, the order dated 5.7.1996 removing the petitioners and appointing a Fit Person in their place

has been challenged.

27. Counter-affidavit has been filed by the State Government only in two cases stating that the non-hereditary trustees ceases to hold office on the

appointed day, that the temple administration is not totally taken away, that the same has been taken over till new trustees are appointed and that

under the provisions of the Act, the Temple Administration District Committee and the Temple Administration Board have been empowered to

appoint non-hereditary trustees in respect of religious institutions. With respect to the appointment of non-hereditary trustees, discontent has been

voiced on a large scale by the general public and therefore, in public interest and for the proper maintenance and administration of the religious

institutions, it was considered necessary to remove the non-hereditary trustees so appointed and fill up the vacancies. Accordingly, since the

Legislative Assembly of the State was not in session, the Governor of Tamil Nadu in pursuance of the Proviso to Clause I of Article 213 of the

Constitution, promulgated the Ordinance 3 of 1996, which was published in the Government Gazette, dated 26.6.1996. Therefore, in all cases

proceedings were issued appointing fit persons in the place of the existing non-hereditary trustees. The impugned Ordinance and Act 23 of 1996

are not violative of Article 14 of the Constitution. The claim of the petitioners that the impugned Ordinance and Act 23 of 1996 are not applicable

to denominational temples is not correct. The Ordinance and Act 23 of 1996 exempt only hereditary Trustees and do not exempt a temple administered under a scheme.

28. We have heard the arguments of Mr. Mohan Parasaran, Mr. W.C. Thiruvengadam, Mr. K. Jayaraman, Mr. V. Raghavachari, Mr. S. Haja

Mohideen Gisthi, Mr. R. Natarajan, Mr. S. Subbiah, Mr. T.R. Rajaraman, Mr. V.K. Muthuswami, Mr. S. Selvarathinam, Mr. M.V.

Venkateshan, Mr. S. Chidambaranathan and Mr. V. Sitharanjandas for the petitioners, and Mr. R. Subramanian, learned Special Government

Pleader for the respondents/State.

29. The main question for our decision in these matter is the validity of the Ordinance and Act 23 of 1996. Hence we proceed to consider the

validity of the Ordinance and Act 23 of 1996. The explanatory Statement to the Ordinance gives the reason for promulgating the Ordinance. This

is also the reason for replacing the Ordinance by Act 23 of 1996. The provisions of the Act 23 of 1996 and that of the ordinance are one and the

same. Therefore, we consider it just, appropriate and sufficient to reproduce the Explanatory Statement and the Ordinance which are as follows:

1. Under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959), the Temple

Administration District Committee and the Temple Administration Board, have been empowered to appoint non-hereditary trustees in respect of

all religious institutions within their area of jurisdiction.

2. In exercise of the powers vested under the said Act, the Tamil Nadu Administration District Committees and the Temple Administration Board

have appointed non-hereditary trustees to religious institutions. However, discontent has been voiced on a large scale by the general public in the

matter of appointment of trustees made by the Temple Administration District Committees and the Temple Administration Board and the

functioning of such trustees. In view of the general feeling of the public and in public interest and for the proper maintenance and administration of

the religious institutions, it is considered necessary by the Government to remove the non-hereditary trustees so appointed, and fill up the vacancies

by fresh appointments, under the provisions of Tamil Nadu Act 22 of 1959.

3. The Ordinance seeks to achieve the above object.

30. Tamil Nadu Ordinance 3 of 1996 reads thus:

An Ordinance to provide for the removal of non-hereditary trustees appointed under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

Whereas under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959), the

Temple Administration District Committee and the Temple Administration Board has been empowered to appoint non-hereditary trustees in

respect of religious institutions; And Whereas in exercise of the said powers, the Temple Administration District Committees and the Temple

Administration Board have appointed non-hereditary trustees to the religious institutions;

And whereas discontent has been voiced on a large scale by the general public in the matter of appointment of trustees and their functioning; And

whereas in view of the general feeling of the public and in public interest, and for the proper maintenance and administration of the religious

institutions, it is considered necessary to remove the non-hereditary trustees so appointed and fill up the vacancies; And whereas the Legislative

Assembly of the State is not in session and the Governor of Tamil Nadu is satisfied that circumstances exist which render it necessary for him to

take immediate action for the purposes herein after appearing; And Whereas the instructions of the President have been obtained in pursuance of

the proviso to Clause (1) of Article 213 of the Constitution; Now, therefore, in exercise of the powers conferred by Clause (1) of Article 213 of

the Constitution, the Governor hereby promulgates the following Ordinance:

1. (1) This Ordinance may be called the Tamil Nadu Hindu Religious and Charitable Endowments (Special Provisions) Ordinance, 1996.

(2) It shall come into force at once.

2.(1) Notwithstanding anything contained in the Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to in this Ordinance

as the 1959 Act), every non-hereditary trustee of every religious institution appointed under any of the provisions of the 1959 Act and holding

office as such on the date of commencement of the Ordinance shall cease to hold such office on such date.

(2) On and from the date of commencement of this Ordinance, the functions of

the Board of Trustees or of the trustee, as the case may be, of any religious institution shall, until the vacancy is filled up in accordance with the provisions of the 1959 Act, be performed-

(a) by the hereditary trustee or trustees, if any, of such institution, and

(b) if there is no hereditary trustee of such institution, by the executive officer or if the Government so direct, by a fit person, who shall be an officer

of the Hindu Religious and Charitable Endowments Administration Department, not below the rank of Inspector, appointed by the Commissioner

or by any officer not below the rank of Assistant Commissioner, authorised by the Commissioner in this behalf.

(3) Notwithstanding anything contained in the 1959 Act,-

(a) any non-hereditary trustee who ceases to be such non-hereditary trustee under Sub-section (1), shall hand over, within a period of ten days

from the date of the commencement of this Ordinance, or within such further time as may be granted by the commissioner, any records, accounts

and properties of the religious institutions, which are in, or have come into, his possession or control, to the hereditary trustee, executive officer or

the fit person, as the case may be, referred to in Sub-section (2).

(2) if any such non-hereditary trustee fails to comply with the provisions of Clause (a), he shall, on conviction by a Metropolitan Magistrate or a

Judicial Magistrate of the first class, be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to

five thousand rupees or with both;

(c) the Magistrate referred in Clause (b), may pending the conclusion of the trial, appoint a Receiver to take possession of the records, accounts

and properties of the religious institution from such non-hereditary trustee and the remuneration, if any, paid to the receiver and other expenses

incurred by him shall be paid out of the income of the religious institution concerned.

3. Notwithstanding anything contained in Section 63 of the Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1991, any

existing vacancy and every vacancy occurring in the office of non-hereditary trustees u/s 2, shall be filled up in accordance with the provisions of

the 1959 Act within a period of one year from the date of commencement of this Ordinance or within such further period not exceeding six months

as the State Government may, by notification, specify in this behalf. 26th June, 1996

(Sd.) M. Channa Reddy, Governor of Tamil Nadu.

As already pointed out, the Act 23 of 1996 only replaces the Ordinance. There is no change. Therefore, we have chosen to extract the

Ordinance,.

31. It is contended by the learned Counsel appearing for the petitioners, that the impugned Ordinance and Act 23 of 1996 are liable to be struck

down as unconstitutional on the ground of it being discriminatory and arbitrary, is violative of Article 14 of the Constitution that it is irrational and

disproportional; that it amounts to legislative judgment affecting all non-hereditary trustees who are not similarly situated as equals. Further, it

amounts to wholesale removal of all non-hereditary trustees on the only ground of there being discontent in the minds of the general public on large

scale. A legislative interference for removal of all non-hereditary trustees is not justified and such an action amounts to legislative judgment, which is

impermissible under the provisions of the Constitution. It is then contended that the impugned Ordinance and Act 23 of 1996 are liable to be

declared as unconstitutional and violative of Article 14 of the Constitution in so far as it has failed to make any classification even amongst non-

hereditary trustees and seeks to equate all non-hereditary trustees alike thereby treating unequals as equals.

32. We have already extracted the explanatory statement. The only ground given for the impugned Ordinance and Act 23 of 1996 are that there

was large scale discontent by the general public in the appointment of trustees and their functioning. This, in our opinion, is totally vague and

arbitrary. A mere public discontent about the appointment or functioning of trustees cannot result in wholesale removal of non-hereditary trustees.

Discontent about the functioning of trustees cannot be equated to allegations of mis-management and even in cases of mis-management, removal of

a person from the office of trustee has to be preceded by following a just, fair and reasonable procedure by providing adequate constitutional

safeguards to the persons to be affected by such actions. It is true, that the right to hold office of non-hereditary trustee is not fundamental right but

only a statutory right and the said office is only a tenure office. Even then, the

State under the impugned Ordinance and Act 23 of 1996 cannot interfere by a class legislation without any justification. The State's action in the instant case, in our opinion, is illegal.

33. Our attention was drawn to the judgment of the Supreme Court of India which has frowned upon such similar exercise wherein attempts have been made by the Legislature for divesting management even in respect of management of a company which is carrying on a public activity in horse racing. In similar circumstances, the Supreme Court of India in the case of Dr. K. R. Lakshmanan Vs. State of Tamil Nadu and another, struck down the validity of the Madras Race Club (Acquisition and Transfer of Undertaking) Act, which purported to take over the management of the Madras Race Club and vesting it in the State or an Undertaking of the State, on the ground of alleged mis-management of the Madras Race Club, which, according to the Government, was not being carried on in the interest of the race going public and there had been several instances of irregularities and mal-practices in the management of the Madras Race Club. One of the objects and reasons and the preamble of the Act is as under:

An Act to provide for the acquisition, for a public purpose, and transfer of the undertaking of the Madras Race Club and formatters connected therewith or incidental thereto. And whereas instances of irregularities and malpractices in the conduct of the horse races have been brought to the notice of the Government.

In paragraph 47, the Supreme Court has observed as follows:

There is no material on the record to show that any inquiry or investigation was held by the State Government in the affairs of the Club. In the facts and circumstances of this case, it was of considerable importance that there should be a proper enquiry held by the Government before such an action is taken. The inquiry should show that the management have so misbehaved and mismanaged that they are no longer fit and proper persons to be permitted to manage the affairs of the Club. Even if the mismanagement on the part of the Club is assumed, it is not open to single out a club of the type for discriminatory treatment. May be that a race club of national importance, or of considerable importance in the State can be taken over in the interest of the State, but the Club is an ordinary race club which has

no impact whatsoever on the material resources of the community or the economic system of the State. There are no special circumstances or reasons to single out the Club as a class for the purposes of the impugned Act. Even if we were to accept the recitation in the Objects and Reasons that the company was being mismanaged, we are of the view that the Companies Act provides for ample machinery to deal with the mismanagement in the companies registered under the Companies Act. It is true that the presumption is in favour of the constitutionality of a legislative enactment and it is to be presumed that a legislature understands and appreciates the needs of its own people, but when on the face of the statute there is no classification and no attempt has been made to select an individual with reference to any differentiating attributes peculiar to that individual and not possessed by others, the presumption is of no assistance to the State. In the present case the petitioner Club is a company like any other company registered under the Companies Act. Elaborate machinery and well-established procedural safeguards have been provided under the Companies Act for dealing with the mismanagement in the companies registered under the Companies Act. We see no reasonable basis for classifying the race club for the purposes of acquiring and transfer of its undertaking on the ground of mismanagement.

34. It is thus seen that the Supreme Court has interfered with the State Legislation and has categorically held that there was no material on record to show that any enquiry or investigation was done by the State Government in the affairs of the Club. The Supreme Court further held that in the peculiar facts and circumstances of the case, it was of considerable importance that there should be a proper enquiry held by the Government before such action is taken. The Supreme Court has accordingly struck down the legislation as arbitrary and reversed the judgment of the Madras High Court.

35. The above judgment of the Supreme Court will squarely apply to the facts of the case on hand. In the present case also, the unprecedented action of the Government in superseding all hereditary trustees as a class in religious institutions has not been preceded by any enquiry or investigation. Even though it is well settled law that the Courts cannot go behind legislative facts, but when the legislative facts, are absent Courts

can certainly strike down the legislation as being arbitrary. In the counter-affidavit filed by the State no material was placed to justify the wholesale action against all non-hereditary trustees. As pointed out by the Supreme Court, there are sufficient safeguards available even under the Act for removal of non-hereditary trustees u/s 47 read with Section 53 of the Act, which empowers the appropriate authority to suspend, remove or dismiss the trustees on various grounds mentioned therein which would very much include mis-management or mis-appropriation or neglect of duty.

36. The decision reported in *Government of Tamil Nadu v. Arcot N. Veeraswami* 1988 W.L.R. 357 *Pachiappa's Trust Case*, can also be

appropriately looked into in the present context. A Division Bench of this Court consisting of Sathidev and Bellie, JJ., affirmed the views taken by

V. Ramaswami, J., as he then was in 1988 Writ L.R., 132. The writ petition was filed to challenge the constitutionality of Tamil Nadu Act 11 of

1981 (*Pachayappa's Trust (Taking Over of Management) Act*, substituting the word "four years" for "three years." The writ petition was filed by

Arcot N. Veeraswami, who had been a member of the *Pachiappa's Trust Board* and Headquarters Secretary of the then opposition party of the

State viz., D.M.K. *Pachiappa's Charities* is a trust formed by pooling the legacies bequeathed by benevolent individuals like *Pachaiyappa*

Mudaliar, P.T. Lee Chengalvaroya Naicker, C. Kandaswami Naidu, Rajathiammal and many others. There was a scramble for power among the

trustees. The Act was passed for the maintenance and administration of the trust. The *Pachiappa's Trust Board* was taken over with effect from

3.3.1981. u/s 3 of that Act, the period of take over was only two years. u/s 8 of that Act, before two months prior to the expiry of the period fixed

under the Act, the Government ought to have taken necessary steps to hold election so that the newly elected Board of Trustees could take charge

of the management of the trust. The Act was to expire on 21.12.1982. During the three year tenure by the committee appointed by the

Government, it had performed the duties appallingly in a bad manner. None of the wishes of the creators had been carried out. The only reason for

the Government's intervention was, because the elected members of the trust had indulged in quarrelling with each other. In spite of it, the

Government had chosen to extend the tenure of the committee by another year. Even then, the performance by the committee had not improved

and the poor performance and the mal-administration continued. Yet, the Government by the impugned Ordinance had chosen to extend the tenure

to four years by amending the Act. It is also stated that though the Committee indulged in mis-management and mis-appropriation of trust

properties, it is still enjoying the protection and patronage of the Chief Minister. Hence writ petition was filed on the ground that Tamil Nadu Act

11 of 1981 had been passed without any material whatsoever on hand and therefore it is arbitrary and violative of Article 14 of the Constitution

and hence the consequential impugned Ordinance is vitiated.

37. In that case it was argued on the side of the Government that the take over for a temporary period cannot be described as an arbitrary action

since lot of complaints were received regarding mal-administration and mis-management of trust properties at the hands of the erstwhile Board.

The Division Bench in paragraphs 32, 49 and 51 has held as follows:

As to what extent in the Indian Constitution, separation of powers exist among the three wings being the Judiciary, Legislature and Executive, and

how far by enacting validation laws, the judicial verdict already given declaring a law as invalid, could be invalidated and in doing so, what

principles will have to be followed, Mr. Mohan Parasaran, learned Counsel for the 7th respondent, would first submit that, a scheme decree is the

outcome of a judicial adjudication as held in *Shah Jagmohandas Purshottamdas and Another Vs. Jamnadas Vrajlal Gandhi and Others*, , and

though the legislative competence to make a law relating to trusts, charities, etc., exists in respect of Pachaiyappa's Trust, and when a scheme

decree is in force, and when Section 92, C.P.C. is available for bringing about the change which is contemplated in the impugned Act, such a

legislation cannot be passed resulting in entrenching upon the judicial power of High Court. Competence to enact legislation relating to Entries 10,

13 and 28 of List III cannot go to the extent of entrenching upon the judicial power exercisable by the Judiciary alone under the Constitution. As

already pointed out, the one and the only purpose for which the Act was passed, was to vest the management of Pachaiyappa's Trust in so far as

it vests in the Board of Trustees under the Pachaiyappa's Trust Scheme by the

Madras High Court on 12.2.1909 and subsequently modified by it.

By Section 4, on 22.12.1980, the existing Board of Trustees ceased to hold office and it was replaced by a Committee of Management

constituted by Government u/s 3(2). u/s 5, it had the power to take over the properties of the trust. u/s 7(3), it was bound to carry out the scheme

as framed by the High Court. u/s 9, the jurisdiction of the Civil Court had been barred in so far as its implementations of the Act is concerned. The

resultant effect of the legislation is the replacement of the Board of Trustees in the manner constituted under the scheme as framed by Court, by

adopting a different method. This is essentially an adjudicatory function and could not be legislative in character. Section 92, C.P.C. enables the

Court to settle a scheme, to remove trustees, to appoint new trustees, to decide on vesting of property in a trustee, etc., for the proper

administration of the trust. In *Dr D.C. Wadhwa and Others Vs. State of Bihar and Others*, it is held as follows:

The rule of law constitutes the core of our Constitution and it is the essence of the rule of law that the exercise of the power by the State whether it

be the Legislature or the Executive or any other authority should be within the constitutional limitations....

In the context of the analysis as made above, it is very clear that the basic structure of the Constitution would be lost, if the adjudicatory functions

of the Judiciary are taken over by Legislature, because adjudication is essentially a judicial power. The decisions relied upon by learned Advocate

General are referable to validating enactments, and in instant case, no amendment was brought to Section 92, C.P.C. so as to take away the

foundation on which a scheme had been framed. Section 7(1) of the Act cannot take away what had been already done. The foundation of the

scheme is the will of late Pachiappa Mudaliar, and occasions having arisen to pass decrees u/s 92, the judicial process had started. A decree

having been passed by an adjudicatory process, if that decree is to be in any manner interfered with by a legislative process, it could be only by

changing the basis of the law according to which the scheme has been already framed. If there has been any legislation in respect of trusts and

charities, and based on which any scheme had been framed, and thereafter if the law gets amended, then the judgment based on the repealed law

could become ineffective. In the event of an enactment having been passed under Entries 10 and 28 of List III of VIIth Schedule, and having been struck down or any of its provision having been held as invalid, and thereafter if an amending legislation had been introduced to validate the actions taken based on the invalid law, then the decision of the Court which had found fault with the law could be made ineffective in the sense that the decision is correct, and that the law has been changed. A decision rendered by Court declaring an enactment as invalid, cannot be set aside by Legislature. A Legislature cannot override judgment. It cannot adjudicate upon it. Finding that the law enacted by it has become invalid by a decision of the Court, if the Legislature passes an enactment realising as to how a law ought to have been validly made in the light of the decision of the Court, then the resultant effect is that, the decision rendered by the Court is on the law as it then stood was valid and correct, and it is no longer effective because the concerned law had been discarded and removed from the statute book. A law on the concerned Entry in the List having been enacted and held invalid, and the decision already rendered by Court on it not being incorrect, it does not stand in the way of the Legislature ushering in valid law relating to the concerned Entry or subject matter in the List. In such a circumstance, what is done by the Legislature is purely legislative in character. It does not adjudicate upon the decision of the Court. In the light of the decision of Court, it chooses to enact a valid law strictly within the ambit of the Constitution. In doing so, it has power to make it retrospectively. The effect will be, the period during which invalid law was operative would then be covered by a valid law made on a different basis, and with reference to which the decision rendered by the Court would certainly be inapplicable. Hence, the decisions relied upon by learned Advocate General on this aspect are of no assistance to him in justifying the impugned Act, because certainly, it is not a validating Act it had not altered or changed the basis of law in force. It is not an amending Act relating to any enactment in existence in respect of Entries 10 and 28 of List III of Seventh Schedule. It is stated that several complaints have been received and representations had been made by concerned individuals about mismanagement by Board of Trustees and this impelled the Government to resort to this legislation. If a Board of Trustees is to be removed on the plea that the members have been negligent or mismanaged,

etc., then a decision could be taken depending on assessment of correctness or otherwise of the complaints made. Hence, removal of trustees

could be only by an adjudicatory process and that is what the existing law enables to be done u/s 92, C.P.C. It is this adjudicatory Junction which

the legislature has taken over and removed the trustees in office, who have been holding office under the scheme framed by Court. The Act had

brought into existence a different kind of scheme though claimed to be for a short period, but factually it is being continued for the past eight years

by repeated extensions, and hence, the scheme as framed and approved by Court had been modified by the impugned Act by the Legislature,

without changing the basis of law.

(Italics supplied)

In that case, the Division Bench held that the Legislature had entrenched upon the powers of the Judiciary. The Bench affirmed the finding of the

learned single Judge that the impugned legislation not only offended the principles of separation of power but also interfered with the functions of

the Judiciary and it amounted to usurpation of judicial power and as such it was unconstitutional and void.

38. In the decision reported in *Thirubhuvanam Silk Handloom Weavers' Co-op. Production and Sales Society Ltd. v. State of Tamil Nadu* 1992

W.L.R. 210 writ petitions were filed challenging the Tamil Nadu Co-op. Societies (Appointment of Special Officers) Ordinance, 1991 and the

grounds of attack on the Ordinance covered the exercise of power by the Governor of the State under Article 213 of the Constitution in

promulgating the Ordinance. It was contended that Clause (1) of Article 213 of the Constitution relating to the satisfaction of the Governor is

composite, that is, the satisfaction relates to the existence of circumstances as well as the necessity for immediate action on account of those

circumstances and since the circumstances mentioned in the Preamble to the Ordinance were not immediate and were vague and not germane to

the object stipulated in that clause of the Article, the promulgation of the Ordinance was a colourable exercise of power and that the effect of the

legislation was to settle the dispute between the complainants on the one hand and the elected members and office bearers of the Managing Board

of the Co-operative Society on the other, a matter beyond the competence of the

Legislature, and in any event, smacks of all the characteristics of Bills of Attainder (legislative judgment). After referring to various judgments, the Division Bench held as follows:

A decision as to the mal-administration by those who have been elected to administer the society in accordance with the provisions of the Act, the Rules and the by-laws will be despotic if the rule of adversary adjudication is ignored and on complaints in the hands of the Government of the States. A legislative decision imposed upon the society and its members that those constituting the board indulged in mal-administration, will be a pronouncement of guilt of a sort in exercise of legislative power without there being any adjudication. No Legislature shall assume such power. The Legislature could exercise the judicial power only if a law made by it for the said purpose empowered it to act in the judicial capacity. The sovereign act of the Legislature in the teeth of basic structure theory is an exercise that we must not countenance.

(Italics supplied)

39. In the decision reported in Pannalal Bansilal Patil and others etc. Vs. State of Andhra Pradesh and another, a bunch of writ petitions were filed by the hereditary trustees of Hindu Religious and Charitable Institutions and Endowments challenging the constitutionality of Sections 15, 16, 17, 29(5) and 144 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (Act 30 of 1987). The question before the Court was, whether legislative declaration of the need for maintenance, administration and governance of all charitable and Hindu religious institutions or endowments or specific endowments and taking over the same and vesting the management in a trust or board of trustees is valid in law. In paragraph 28, the Supreme Court held as follows:

Keeping this pragmatic perspective in consideration, the question that emerges is : Whether Sections 17 and 29(5) are valid in law. Reading down the provisions of an Act is a settled principle of interpretation so as to sustain their constitutionality, as well as for effectuation of the purpose of the statute. With the above in mind, we may examine the validity of Section 17 and 29(5). These statutory provisions are grounded on the findings of the report of Challa Kondaiah Commission, which indicated mismanagement and misutilisation of funds of charitable and Hindu religious institutions

and endowments in a big way. This is, however, a general finding; and we are prepared to agree with the learned Counsel for the petitioners that all

the charitable and religious institutions may not be painted with the same brush. We have no doubt that there would be charitable or religious

institutions in the State which are neither mismanaged nor is there misutilisation of funds, Even so, if the legislature acted on the general findings

recorded by the Commission, due weightage has to be given to the same.

(Italics supplied)

However, in the case on hand there was no such commission appointed and there was no such finding. Merely on some complaints by legislative

dictum non-hereditary trustees have been removed. Thus, the legislature has entrenched upon the field reserved for the Judiciary.

40. In the decision reported in K. Ekambaram v. The Commissioner H.R. & C.E. Administration Department (1995) 2 L.W. 213, the order of the

1st respondent appointing the 2nd respondent as Executive Officer for the denominational temple was challenged. The appellants and two others

were appointed as trustees of the temple in question for a period of three years in exercise of the power u/s 47 of the Act. After the appointment,

the administration of the temple vested in them and they were carrying on the administration of the temple. In the meantime, by the impugned order,

the 1st respondent appointed the 2nd respondent as the Executive Officer on the ground that it is necessary for the better management of the

temple. The appointment was made u/s 45(1) of the Act. The contention of the petitioners was that as they have been appointed as trustees for a

period of three years pursuant to the scheme framed for the temple by the Deputy Commissioner in exercise of his power u/s 64(1) of the Act, they

are entitled to function as trustees and the administration of the temple vested in them, and as a result of the appointment of the Executive Officer,

all the powers and functions of the trustees were taken away by the Executive Officer and they were left with no power. Thus, they became

nominal trustees without any power and functions. They also contended that the appointment of the Executive Officer without notice to them

contravened the principle of natural justice. A Division Bench consisting of K.A. Swami, C.J. and T. Somasundaram, J., held in paragraph 4 as

follows:

It is not possible to hold that Section 45(1) of the Tamil Nadu H.R. & C.E. Act excludes the application of principle of natural justice when an Executive Officer is to be appointed on the ground of failure of trustees in performing the functions; an action against trustees cannot be taken or they cannot be deprived of their rights without affording an opportunity to explain the allegations made against them, depriving of the right vested in them as trustees. In the instant case it is not disputed that no notice was issued to the trustees and no opportunity was given to them to show cause as to why an Executive Officer should not be appointed because of their failure to safeguard the interests of the temple or because of several acts of misconduct alleged against them, affecting the interests of the temple. One of the objects of the Act is to vest the administration of the temple in the trustees. If the power u/s 45(1) of the Act has to be exercised, keeping in view that object whenever a Commissioner finds it necessary that Executive Officer has to be appointed on the ground that the trustees are not taking due care and caution and have failed to safeguard the interests of the temple, he can do so only on affording an opportunity to the trustees. The ground for appointment is the one which affects the trustees, because, it is alleged against them that they have failed to safeguard the interests of the temple. Section 45(1) of the Act gives vast powers to the Commissioner. It opens with the non-obstante clause. Thus, the provision has the overriding effect on the other provisions contained in the Act and thereby it empowers the Commissioner, notwithstanding any other provisions contained in the Act, to appoint an Executive Officer, subject to such conditions as may be prescribed, for any religious institution other than a math or a specific endowment attached to a math. When such a power is conferred, the scope and ambit of such power shall have to be determined with reference to other provisions contained in the Act and also the object which the Act intends to achieve and serve. It cannot be disputed that the Act is to consolidate the law relating to the administration and governance of Hindu Religious and Charitable Institutions and Endowments in the State of Tamil Nadu. In order to achieve that object, the Act provides for establishment of the Temple Administration Board, Constitution of District Committees, creation of Authorities under the Act, religious institutions and its general provisions and in addition to this, it also deals with the Maths.

41. In the decision reported in *Shah Jagmohandas Purshottamdas and Another Vs. Jamnadas Vrajlal Gandhi and Others*, , it has been held that a

scheme decree is a, decree of a judicial adjudication and that when a scheme decree is in force and when Section 92, C.P.C. is available, such a

legislation cannot be passed resulting in entrenching upon the judicial power of the High Court.

42. We have already seen that there are sufficient safeguards available even under the Act for removal of non-hereditary trustees u/s 47 read with

Section 53 of the Act, which empowers the appropriate authority to suspend, remove or dismiss the trustees on various grounds mentioned

therein, which would very much include mis-management or mis-appropriation or neglect of duty. When such is the position, the Act itself will be

sufficient enough to take action against erring trustees. The fact that the Ordinance in this regard is arbitrary and discriminatory is further evident

from the provisions of the said Ordinance. In terms of Section 2(1) of the Ordinance, every non-hereditary trustee of every religious institution

appointed under the provisions of the Act and holding office as on the date of the Ordinance are ceased to hold such office on such date.

However, u/s 3 of the Ordinance, notwithstanding anything contained in the Tamil Nadu H.R. & C.E. (Amendment) Act, 1991, any existing

vacancy and every vacancy occurring in the office of non-hereditary trustee u/s 2, shall be filled up in accordance with the provisions of the Act

within a period of one year from the date of commencement of the ordinance, or within such further period not exceeding six months as the State

Government by notification may specify in this behalf. The non-hereditary trustees appointed afresh will have to be dealt with in accordance with

the provisions of the Act, if they are to be removed. The non-hereditary trustees who have been removed by the Ordinance and Act 23 of 1996

were appointed under the Act and the fresh non-hereditary trustees also will be appointed under the Act. As such, there will be no difference

between the two nevertheless they are subjected to hostile discrimination, inasmuch as one is removed by the legislative action and the other one

has to be removed or dealt with as per the provisions of the Act. Thus, the Act 23 of 1996 makes invidious distinction and thereby operates

discriminately.

43. Any divesting of office holder from an office without any enquiry or investigation has been frowned upon by the Supreme Court not only in the

Dr. K. R. Lakshmanan Vs. State of Tamil Nadu and another, , but also in a case arising under the Andhra Pradesh Hindu Religious and Charitable

Endowment Act, as would be evident from the judgment of the Supreme Court referred in Pannalal Bansilal Patil and others etc. Vs. State of

Andhra Pradesh and another, , which was a case which involved removal of hereditary trustees and involving far reaching implications on religious

office holders. The Supreme Court had upheld the validity of the A.P. Act only in view of the fact that the legislative action was preceded on the

findings of the report of a Commission headed by a retired Chief Justice Chellah Kondiah, which indicated the mis-management and mis-utilisation

of funds of charitable and Hindu religious institutions and endowments in a big way. The Legislature in that case acted on the general findings

recorded by the Commission and gave due weightage to the general findings of the Commission. Therefore, the Supreme Court upheld the action.

44. We have already referred to the decision reported in Thirubhuvanam Silk Handloom Weavers" Co-op. Production and Sales Society Limited

v. State of Tamil Nadu 1992 W.L.R. 210, wherein a Division Bench of this Court, in a similar situation, has struck down the supersession of the

co-operative societies following the dictum of the Supreme Court in Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another, and held that

supersession of elected body on the ground of mis-management without any enquiry would amount to legislative judgment or bill of attainder,

contravening the basic tenets of the Constitution and the rule of Law. In the instant case, the Legislature apart from having failed to act on any valid

basis such as the report of enquiry commission or some other valid material, has also failed to distinguish between various religious institutions and

various types of non-hereditary trustees of such institutions.

45. The first batch of cases in this bunch of writ petitions, wherein the appointment to the office of non-hereditary trustee has been made, are

governed by a scheme decree, which is either framed by a civil court or by the Department viz., Commissioner or Deputy Commissioner, as the

case may be. There are and there cannot obviously be any public discontent over the appointments which are governed by scheme decrees.

Similarly, there may be cases where appointments are made in respect of religious institutions which are controlled by members of a particular

family or denomination, even though the appointment would be non-hereditary. But, that institution being primarily family oriented or controlled

according to the dictates of the person who dedicates it, obviously the legislature cannot interfere in such cases and the impugned Ordinance and

Act 23 of 1996 have failed to make distinction between such religious institutions which are governed by a scheme or a family trust. The impugned

legislation, in our opinion, is liable to be declared as unconstitutional at least in so far as the institutions which are governed by scheme decrees and

which are family trusts and where no public element is involved. The impugned Ordinance and the Act 23 of 1996 are also liable to be declared as

unconstitutional in the light of the pronouncement of a Division Bench of this Court in *Government of Tamil Nadu v. Arcot N. Veeraswami* 1988

W.L.R. 357 *Pachayappa's Trust Case* - which struck down the validity of the *Pachayappa's College Take Over Act* on the ground that the said

Act interfered with the scheme decree framed by the Supreme Court, which was governing the trust.

46. Our attention was also drawn to *Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another*, on the point of legislative judgment or bill of

attainder. The learned Counsel for the petitioners particularly relied on paragraphs 321 to 329 in that decision regarding separation of powers.

47. As already seen the judgment in *Pachayappa 's Trust Case* 1988 W.L.R. 357 particularly the observations contained in paragraphs 31 to 44,

would clearly go to show that the Legislature, if it seeks to interfere with the tenure of the trustees governed by the Scheme decree, it would be

virtually exercising judicial power and therefore, the impugned action would amount to violation of Article 14 of the Constitution. The conclusion

arrived at by a Division Bench of this Court in the above case, we are told, has recently been upheld by a Constitution Bench of the Supreme

Court.

48. It was argued on behalf of the petitioners that the impugned Ordinance and the Act 23 of 1996 are violative of Article 26(b) of the

Constitution. There are several institutions which are admittedly controlled by religious denominations or by family trusts. These trustees are also

deprived of their right to hold office and in their place officials of the Department will be appointed as Fit Persons. This would mean that a

particular denomination will cease to have power to control the management and supervision over the institutions which are intended solely for their

benefit. This would amount to taking away the rights of a particular denomination and such an action is violative of Article 26 of the Constitution.

We see much force in this contention. In such cases, the Department could as well appoint any other person from that denomination even assuming

that there is mis-management or appoint a member of the family itself to manage the institution instead of appointing a Fit Person. The Ordinance

also fails to take into account these types of institutions and has failed to make any classification reasonably in this regard. In this context, one may

refer to the judgment of the Supreme Court in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of*

Sri Shirur Mutt., and that of the Mysore High Court in *Mukundayya v. State of Mysore* AIR 1960 Mys. 18.

49. It is next contended that public discontent cannot at all be a ground for interfering on wholesale measure to remove all non-hereditary trustees.

The said action is *ex facie* illegal, arbitrary, discriminatory and disproportional. In this regard, the judgment of the Supreme Court in *Kumari*

Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, may be referred to even though it was a case of termination of appointment of

Government counsels by general order by arbitrary exercise of discretionary powers. The legislative action of the State shall be reasonable and

must satisfy the test of reasonableness and the requirements of Article 14 of the Constitution. The wholesale measure like the present one cannot

stand the test of reasonableness or non-arbitrariness. It is well settled that Courts can interfere when the action of the Legislature is not backed by

any material facts or has no basis when it seeks to deprive the management or an office on the ground of State's action being arbitrary.

50. It is argued that the family trusts by their nature are hereditary in nature because no member outside the family can be appointed. The

Ordinance and the Act 23 of 1996 have also failed to make a distinction between religious institutions which have been founded for performing

only religious duties in a particular place like Rameswaram and Dhanushkodi as in the case of Writ Appeal No. 668 of 1996 (Writ Petition No.

10111 of 1996). This Court has held that such"" activities of such institutions are more of a dedication of a family for creating a sort of an endowment to benefit the general public or as a Kattalai. In such cases, there cannot be a public discontent in the functioning of those trustees in respect of a family trust created for any public charity. The Ordinance, and the Act 23 of 1996 in our view, have failed to make any distinction in respect of these types of institutions.

51. The impugned Ordinance and the Act 23 of 1996 are liable to be declared as unconstitutional in view of the fact that it virtually seeks to treat the unequals as equals and has not made a valid distinction between religious institutions and trusts, to which any member of the public could be appointed as nonhereditary trustees, whereas to religious institutions only members of a particular religious denomination could be appointed as non-hereditary trustees. The impugned Act 23 of 1996 and the Ordinance, in our opinion, completely fail to take into account the rights of religious denomination and also the schemes which have been framed in respect of the administration of the religious institutions. The Government without resorting to the provisions of the Act have, therefore, resorted to remove the non-hereditary trustees in an uncereemonious manner. There are sufficient safeguards for removal of trustees under the Act. As already seen, Section 53 of the Act takes care of every such institutions and confers powers on the concerned authority to take action against the erring trustees. Merely because there is discontent in the minds of the general public in the matter of appointment, that would not be a ground for removal of the trustees and to this extent the very reasoning given in the Ordinance is arbitrary and unconstitutional and therefore liable to be declared as such.

52. Sub-sections (2) and (3) of Section 2 of the ordinance and Act 23 of 1996 only deal with the situation that would emerge as a result of operation of Sub-section (1) of Section 2 of the Ordinance and Act 23 of 1996. We have held in the preceding paragraphs that the aforesaid Sub-section (1) of Section 2 is unconstitutional. For the various reasons given above, inasmuch as Sub-section (1) of Section 2 it is liable to be struck down, consequently Sub-sections (2) and (3) of Section 2 which cannot operate without Sub-section (1) of Section 2, are also liable to be struck down.

53. As far as Section 3 of Ordinance and Act 23 of 1996 is concerned, it only provides that the existing vacancy and every vacancy occurring in the office of non-hereditary trustees u/s 2 shall be filled in accordance with the provisions of 1959 Act within a period of one year from 26th day of June, 1996, or within such further period not exceeding six months as the State Government may by notification specify in this behalf. In this section, as far as the words "'under Section 2'" are concerned, in view of the striking down of Section 2, they will not have any value and striking down of those words will not also affect the operation and implementation of Section 3 of Ordinance and Act 23 of 1996. In view of the striking down of Section 2, as pointed out above, the words, "'under Section 2'", occurring in Section 3 of the Ordinance and the Act 23 of 1996 would become surplus and will lose all the efficacy because in the context in which these words are occurring in Section 3 that context itself disappears on the striking down of Section 2.

54. As far as Section 4 is concerned, it only repeals the Ordinance and as we are not completely striking down Section 3 of Act 23 of 1996 since it only directs filling up of the vacancies within a particular period and such direction cannot be held to contravene any of the provisions of the Constitution, much less Part III of the Constitution, therefore, Sub-sections (1) and (2) of Section 4 need not be struck down. Hence we see no reason to strike down Section 4 of the Act 23 of 1996.

55. Accordingly, these writ appeals and the writ petitions are disposed of, in the following terms:

(1) Sub-section (1) of Section 2 of the Act 23 of 1996 is declared as unconstitutional and is struck down. Consequently, Sub-sections (2) and (3) of Section 2 of the Act 23 of 1996 are also struck down as these are consequential provisions. As operations of Sub-sections (1) and (2) of the Act 23 of 1996 are struck down as unconstitutional, consequently, the entire Section 2, consisting of Sub-sections 1 to 3 is struck down.

3. The words "'under Section 2'" occurring in Section 3 are struck down.

4. No provision of the Ordinance need be struck down as it is repealed by Act 23 of 1996.

5. The impugned orders passed by the respondents against the respective petitioners are quashed. W.M.Ps are also disposed of

6. There will be no order as to costs.