

(2009) 10 MAD CK 0055

In the Madras High Court

Case No : Writ Petition No's. 23049 and 23050 of 2003

T.E. Vijayaraghavan and P.B. Ranganathan

APPELLANT

Vs

The Joint Commissioner, HR and CE Administration
Department and Others

RESPONDENT

Date of Decision : 24-10-2009

Acts Referred:

Civil Procedure Code, 1882 — Section 539

Constitution of India, 1950 — Article 366

Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1959 —
Section 118, 26, 46, 46A(4), 47

Citation : (2010) 1 CTC 551 : (2010) 4 LW 577

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Advocate : K. Alagirisamy for K.V. Ananthakrishnan, for the Appellant; S. Ramasamy, A.A.G. assisted by T. Chandrasekaran, Special Government Pleader for R-1, S. Balasubramaniam, for R-2, R. Singaravelan, for R-4, S. Parthasarathy for J. Ramakrishnan, for R-6, K. Vamanan, for R-7 and T.C.A. Srinivasan, for K.S. Gnanasambandam, for R-8, for the Respondent

Final Decision : Allowed

Judgement

V. Ramasubramanian, J.—Belying the hopes expressed by eminent judges and ignoring the scathing criticism and ridicule, made on and off

the Court, for over two centuries, the two schools (Thengalais and Vadagalais) of Srivaishnavism have continued to engage Lord Devarajaswami

of Kancheepuram in a never ending litigation. Every judgment is rendered by a court in the fond hope that it would resolve the disputes between

the parties once and for all. But the disputes relating to the temple of Devarajaswami always belied such hopes as seen from the observations of

the Sub-Court, Chinglepet in O.S. No. 30 of 1956 wherein the learned Judge observed:"The history of litigation shows that when one controversy

is solved by judicial decision, another controversy arises, as a sphinx from its ashes, to help the flame of eternal disputations"" The writ petitions herein are part of that legacy.

2. The petitioners have come up with the present writ petitions (i) challenging the initiation of suo motu proceedings by the Joint Commissioner of the Hindu Religious and Charitable Endowments Department in O.A. No. 21 of 1999 for the modification of a scheme for the management of the

Arulmigu Devaraja Swamy Temple at Kancheepuram and (ii) seeking a direction to him to pass final orders in an earlier proceeding of similar nature in O.A. No. 95 of 1978.

3. I have heard Mr. K. Alagirisamy, Senior Counsel appearing for the petitioners in both the writ petitions, Mr. S. Ramasamy, Additional

Advocate General appearing for the Department, Mr. S. Balasubramaniam, learned Counsel appearing for the second respondent in both the writ

petitions, Mr. R. Singaravelan, learned Counsel appearing for the fourth respondent in both the writ petitions, Mr. S. Parthasarathy, learned Senior

Counsel appearing for the sixth respondent in both the writ petitions, Mr. K. Vamanan, learned Counsel appearing for the seventh respondent in

both the writ petitions and Mr. T.C.A. Srinivasan, learned Counsel appearing for the eighth respondent in both the writ petitions.

4. Sri Devaraja Swamy temple at Kancheepuram is one of the most ancient temples of South India, though the early history of the temple is

involved, as stated by a Division Bench of this Court, in much obscurity. It is considered to be one of the 108 ""Divya Desas"" by some of the

followers of Sri Vaishnavism. Though Sri Vaishnavism, as propagated, postulated and popularised by one of the greatest Saints of all times by

name Sri Ramanujacharya, is firmly rooted in ""eternal love"", the two schools of Vaishnavism viz., ""Thengalais"" and ""Vadagalais"" plunged some of

the ancient and holy shrines into ""eternal litigation"". Sri Devaraja Swamy temple of Kancheepuram is one such temple, described by a Division

Bench of this Court way back in 1912 as a source of constant and bitter litigation.

5. The history of litigation in this temple, which may provide an interesting case study for a student of law, may be stated in a nutshell as follows:

(i) It appears that towards the close of the 17th Century, the idol of Lord Varadaraja Swamy was removed from Kancheepuram and taken to

Udayarpalayam, with a view to protect it from a possible threat of invasion. However, one Athan Thiruvenkata Ramanuja Jeer, who belonged to

the Thengalai sect, brought the idol back to Kancheepuram in 1710 A.D., with the aid provided by the Nawab of Hyderabad. Interestingly, Lord

Varadaraja Swamy remained peaceful at Udayarpalayam, perhaps due to the fact that the word ""Udayar"" from which the word ""Udayavar"" is

derived also denotes Sri Ramanuja. From the time the idol was brought back to Kancheepuram, the warring groups of devotees have dragged the

Lord into ever so many disputes. It appears that after the idol was brought to Kancheepuram, the localites known as Sthalasthars and one Lala

Thodar Maulji, a Chieftain of the Mohemmedan Prince by name Sadulla Khan, conferred the right of management on the said Athan Jeer. This

enabled the Thengalais to gain the right of management of the temple, till the end of the 18th century.

(ii) However, the last of the trustees of the Thengalai sect (of the 18th century) by name Rama Row was dismissed by the Government, when the

Government's attention was invited to the serious differences between the two sects. Interestingly, Rama Row was considered to be a descendant

of Ramanuja Jeer, who belonged to the Thengalai sect and whose ancestor Attan Jeer brought back the idol to Kancheepuram. However, the

Vadagalais claimed that Rama Row was a clerk appointed by them. There was also a theory that Ramanuja Jeer (predecessor of Rama Row) got

the trusteeship from the family of Todur Mall, which got it from Sthalathars (localites).

(iii) After the dismissal of Rama Row, one Srinivasa Raghavachari was appointed by the Board of Revenue, but he was also dismissed in 1796.

From 1796, the temple continued under the management of the Government till 1842.

(iv) In 1842, the Government decided to disconnect itself from the management of religious institutions in the country, in pursuance of the orders of

the Court of Directors. At that time, 3 sets of persons viz., (i) the descendants of Attan jeer (ii) the Sthalathars and (iii) the Thathachars, staked

claim to the management and administration of the temple. The Collector proposed a Board of Trustees comprising of (i) the head of the

Thathachar family (ii) an Archaka (iii) a Paricharaka (iv) a descendant of Rama Row and (v) a member of Arulappad.

(v) However, the Board of Revenue opined that the appointment of a plurality of trustees was undesirable and hence recommended the

appointment of one Kumara Thathachariar, the head of the Thathachar family to be the sole hereditary trustee. The Government of Madras

confirmed the proceedings of the Board of Revenue and issued an order appointing him as, what is described as ""Churchwardenship"".

(vi) Though the proceedings of the Board of Revenue and the order of the Government did not bear an intention to appoint Kumara Thathachariar,

on behalf of his family, he nevertheless entered into an agreement on 9.2.1843 with the members of his family, with the professed object of

preventing future disputes and for saving the mirasi office from ruin.

(vii) Though the above agreement maintained peace for some time, among the members of the family of Thathachars, a suit in O.S. No. 5 of 1844

came to be instituted in the Zillah Court of Chinglepet, by Appa Row, whose claim for trusteeship had been earlier rejected by the Government.

The suit was dismissed and the dismissal was confirmed by the Court of Sadr Adalat in Appeal No. 29 of 1849.

(viii) After the dismissal of the claims by Appa Row, a set of rules were framed by the members of the family of Thathachars, recognising the

common rights of all the members of the family and placing all the Dharma-kartas on an equal footing. Subsequently, a tenure of office was also

fixed and fresh agreements came to be executed.

(ix) However, the respect that all those agreements claimed, was only short lived. As the Vampire(vethalam) in the story of Vikramaditya, would

often return to its tree, the members of the group of families of the Thathachars again went back to a litigative mood and a suit in O.S. No. 11 of

1907 came to be instituted in the District Court of Chinglepet, u/s 539 of the Code of Civil Procedure, 1882, for framing a scheme for the

administration of the temple. Allegations of non-feasance, misfeasance and malfeasance were made against the trustees. The District Judge settled

a scheme providing just for periodical stock taking, for the receipt and custody of the offerings and the income of the temple and for the audit of

accounts and certain other matters. However, the District Judge refused to frame any rules for the election of trustees, appointment of mediators

and for filling up vacancies in the office of the trustee.

(x) Not satisfied with the scheme framed by the District Judge, an appeal was filed in A.S. No. 212 of 1909 on the file of this Court and the

defendants also filed objections to the judgment of the District Court. During the pendency of the appeal, disputes became serious, leading to the

appointment of a Receiver. Several persons representing the Thengalai sect and the Sthalathars of the temple, sought to implead themselves in the

appeal on the ground that they had instituted independent suits for the settlement of a scheme and that all those disputes could be resolved at one

stop shop by impleading them in the appeal.. A Division Bench of this Court comprising of Abdul Rahim and Sundaram Ayyar, JJ., allowed the

impleadment of those two groups of persons and considered two principal issues, which are as follows:

(a) Whether the family of defendants 1 to 5 was entitled to the exclusive right of trusteeship ?

(b) Whether additional trustees should be appointed to put an end to the constant and recurring quarrels and litigation connected with the temple

and to put the administration of its affairs on a satisfactory footing ?

(xi) In its decision rendered on 26.4.1912 { K.A. Veeraraghava Thatha Chariar and Others Vs. T. Srinivasa Thatha Chariar and Others, }, the

Division Bench held on the first issue that the alleged exclusive right of the family of defendants 1 to 5, if it ever existed, was extinguished by the

statute of limitation. The Bench pointed out that the title of the family was not an ancient title, but one derived, if at all, only under the order of the

Government made in 1842. The Bench also observed that they were averse to the creation of any hereditary right to the office of a public trustee,

as such a course would not be in the interests of the institution. On the second issue, it was held that the Court had the power, if it considered it

desirable, to appoint additional trustees. However, in the circumstances of the case, the Division Bench held it unnecessary and undesirable to

appoint any additional trustees, either from amongst the Thengalai sect or from amongst the Sthalathars. The Bench opined that the appointment of

a Thengalai as trustee may not promote harmony in the management of the temple and that one or two Thengalais may not be likely to control the

actions of the Vadagalai trustees, though it might lead to constant opposition and mutual recrimination. The Bench also rejected the claim of

Sthalathars, on the ground that they were only the servants of the temple.

(xii) However, the Division Bench also opined, having regard to the past management of the temple, that it was desirable to provide some

authorities to supervise the administration by the trustees. The Bench found that the members of the Thengalai sect held offices in the temple and

also possessed important interests such as (i) to address the invocation before the recitation of the Prabandham or Tiruvaimozhi to Saint Manavala

Maamuni (ii) the right to Adhyapakam office (iii) the right to a good proportion of the Thirtham offices (iv) the right of Asirvartham and (v) the right

to the office of Mulji Dharmakarta. Interestingly, each of these rights had also led to separate series of litigation. While the right to Adhyapakam

office was decided in Krishnaswami Thathachar v. Krishnamachar 1882 ILR 5 Mad. 313, the dispute relating to the type of the mark to be

painted on the forehead, known as ""Namam"", was decided in Krishnaswami Iyengar v. Samaram Srirangachariar 1906 ILR 30 Mad. 158. Each of

those litigations, is a history by itself, but we are concerned in this case, only with the dispute relating to framing of scheme.

(xiii) In short, in its decision dated 26.4.1912, K.A. Veeraraghava Thatha Chariar and Others Vs. T. Srinivasa Thatha Chariar and Others, the

Division Bench summarised the reasons for appointing a Supervisory Board, on the following lines:

The documents filed in the case clearly show that there is bitter enmity between the members of the Thengalai and Vadagalai communities in the

place and each community has manifested a most reprehensible amount of unwillingness to recognise the just claims of the other community and of

office holders belonging to it. We have therefore considered it desirable in appointing a Board of Supervision to provide that one of the members

of the Board should be a Thengalai gentleman not holding any office in the temple

(xiv) Though the Bench refrained from adjudicating on the allegations of misconduct on the part of the trustees, the Bench noted that ""there can be

no doubt that the history of the temple is one of incapacity, indifference and disharmony among the trustees"". Therefore, while framing a scheme,

the Division Bench provided for the appointment of a Board of Supervision for the Devasthanam(different from the Board of Trustees), comprising

of 3 members (i) one Vadagalai Vaishnava who is not a member of the

Thathachari family (ii) one Thengalai Vaishnava and (iii) one Smartha or Madhwa.

(xv) The scheme framed by this Court in the aforesaid decision {(1912) 23 Mad. 134}, provided for the appointment of 5 trustees, 3 of whom

shall be the members of the Eastern Branch and 2 shall be from the Western Branch of the family of Koti Kanyakadanam Sri Thathadesikar. The

scheme envisaged the tenure of office of the trustees as 5 years and provided for the appointment of one of them by rotation as Executive Trustee

for a period of one year, so that all the 5 will hold office for one year each during their tenure. However, the Board of Supervision was entrusted

with the powers of supervision over the trustees.

(xvi) The scheme settled by the Division Bench in the year 1912, in the aforesaid decision {K.A. Veeraraghava Thathachariar v. Srinivasa

Thathachariar}, also did not last for long, as a fresh suit for modifying the same was filed in O.S. No. 1 of 1928 by T.A. Krishnama Chariar and

Ors. on the file of the District Court, Chinglepet. By the time the said suit was filed, the Madras Hindu Religious and Charitable Endowments Act,

1927, had come into force. Therefore, the Board was added as the 36th defendant in the suit. By a judgment and decree dated 21.12.1933, the

District Court, Chinglepet held that the existing scheme {as framed by the Division Bench in the aforesaid decision in 23 MLJ 134} was not

working satisfactorily. The District Judge decreed a modification, to the extent that the Board of Supervision appointed by the existing scheme

would no longer be necessary and that the powers of supervision conferred on that Board stood vested by statute upon the Hindu Religious

Endowments Board. But this decision of the District Court, Chinglepet, became the subject matter of challenge in A.S. No. 175 of 1934 on the file

of this Court.

(xvii) After the aforesaid decision of the District Court, Chinglepet, in O.S. No. 1 of 1928, the Hindu Religious Endowments Board passed an

order, declaring the temple to be an excepted temple on the ground that the right of succession to the office of trustee had been hereditary. That

order of the Endowments Board was challenged in O.P. No. 8 of 1940, on the file of the District Court, Chinglepet, by T.V. Bashyakar and Ors.

But the District Judge upheld the order of the Board that the temple is an

excepted temple. While ordering so, Mr. P.N. Ramaswamy, the District Judge, Chinglepet (who later became a Judge of this Court) made an interesting observation which reads as follows:

The scheme framed by the High Court with such full patience and labour has unfortunately proved to be an unqualified failure. The scheme had to

be worked, not by reasonable people, in a spirit of compromise but by veteran litigants consistently described by all persons who have had to

decide those matters as being, ""inspired by Sectarian rivalry and animosity"", to whom every judgment of the District Court has been only a furlong

stone and every Judgment of the High Court has been only a mile stone in the long road of litigation the end of which no one can see.

(xviii) However, the order of the District Judge, Chinglepet, in O.P. No. 8 of 1940 was set aside by a Division Bench comprising of Wadsworth

and Patanjali Sastri, JJ., in T.V. Bashyakar and Others Vs. The Madras Hindu Religious Endowments Board and Others, . It was held by the

Division Bench that this temple is not a temple, the succession to the trusteeship whereof is hereditary. The Division Bench also declared the temple

to be a non-excepted temple.

(xix) After disposing of the appeal and revision arising out of O.P. No. 8 of 1940 in the manner aforesaid, the very same Division Bench

comprising of Wadsworth and Patanjali Sastri, JJ., heard the appeal A.S. No. 175 of 1934, arising out of the modification of the scheme decreed

in O.S. No. 1 of 1928 by the District Judge, Chinglepet. By a judgment dated 17.1.1941, the Division Bench held that the then existing scheme

required considerably more modification than what was thought sufficient by the District Judge. In their judgment, the Division Bench made a

prophetic observation which reads as follows:

Doubtless such of the troubles were due to the quarrels between Thengalais and Vadagalais and to factious strife between different subdivision of

the main sects. But these quarrels are no new thing nor are they likely to disappear in the near future, and scheme which does not have regard to

this tendency to faction and which does not endeavour to safeguard the temple administration, from its effects, is not a suitable scheme for this

particular institution, whatever its merits in the abstract.

Ultimately, the Bench provided for the appointment of only 2 honorary trustees

(instead of 5), who were to be elected by and from the lineal male descendants of Sri Thatha Desikar and one Executive Trustee, who should be a Smartha or Madhwa Brahmin to be appointed by the Hindu

Religious Endowments Board.

(xx) Till a modified scheme was put in place by the Division Bench in the above decision A.S. No. 175 of 1934, the disputes were confined either

(i) to the different branches of the family of Thathachars or (ii) between the Thathachars and the Thengalais or (iii) between Thathachars,

Thengalais and Sthalathars. But after the creation of the Endowments Board by statute, they also jumped into the arena, adding a fourth dimension

to the disputes, though the role of the Board (now a Department of the State), is to provide an efficient administration and to maintain peace and

harmony. As a matter of fact, the fight between the two factions (Thengalais and Vadagalais) for the past nearly 50 years (from 1961), revolves

around the various proceedings initiated by the Department.

(xxi) After the advent of the Madras Hindu Religious and Charitable Endowments Act XXII of 1959, the Deputy Commissioner initiated

proceedings in O.A. No. 99 of 1961, for amending the scheme so as to bring it in accord with the provisions of the Act. Challenging the said

proceedings, initiated u/s 64(5) of the Act, R. Thatha Desika Thathachariar filed a writ petition in W.P. No. 2468 of 1969. But the writ petition

was dismissed by Alagiriswami, J., on 18.8.1969. The appeal was also dismissed by a Division Bench comprising of K. Veeraswami, Chief Justice

and P.R. Gokula Krishnan, J. R. Thatha Desika Thathachariar Vs. The Deputy Commissioner, Hindu Religious and Charitable Endowments

(Administration) and Others, . The decision was confirmed by the Supreme Court.

(xxii) However, as if to make the love's labour lost, the proceedings initiated in O.A. No. 99 of 1961 were dropped by the Deputy Commissioner,

HR&CE, on 8.10.1973, after perhaps enjoying the fun of litigation. Interestingly, he dropped the proceedings on the ground that he had no

jurisdiction to modify the scheme. Therefore, the order of the Deputy Commissioner was challenged before the Commissioner, by way of a

statutory appeal in A.P. No. 153 of 1974. The Commissioner set aside the order of the Deputy Commissioner dated 8.10.1973 and remitted the

matter back to him for fresh consideration.

(xxiii) The Deputy Commissioner initiated a fresh enquiry, after renumbering the proceedings as O.A. No. 95 of 1978. After hearing the parties

and considering their contentions and statements, the Deputy Commissioner issued a notice dated 25.6.1982, proposing to modify the existing

scheme, as per the Draft Modified Scheme annexed to the notice. As per the Draft Modified Scheme, proposed by the Deputy Commissioner, the

administration of the temple was to vest in a Board of Trustees. The Board was to comprise of 5 trustees, with one from Thathacharis, one from

the Thengalai sect, one non-Brahmin Vaishnavaita, one Smartha or Madhwa Brahmin and one Harijan. The Board was also to have an Executive

Officer appointed in accordance with the provisions of the Act.

(xxiv) Challenging the Draft Modified Scheme and the notice dated 25.6.1982, issued by the Deputy Commissioner, one T. Lakshmikumara

Thathachariar filed a writ petition in W.P. No. 5121 of 1982. He belonged to the Eastern Branch of Sri Koti Kanyakadanam Thathadesikar

family. The writ petition was dismissed.

(xxv) Aggrieved by the dismissal of the writ petition, T. Lakshmikumara Thathachariar filed an appeal in W.A. No. 122 of 1987. He also filed a

writ petition in W.P. No. 2082 of 1987 challenging the vires of Section 64(5) and 118 of the Tamilnadu Hindu Religious and Charitable

Endowments Act, 1959. After the dismissal of that writ petition, he filed an appeal in W.A. No. 141 of 1987. Both the appeals viz., W.A. No.

122 of 1987 and 141 of 1987 were dismissed by the Division Bench. The appeals arising out of the same in C.A. Nos. 4570 and 4571 of 1998

also met with the same fate, when the Supreme Court dismissed them on 2.9.1998.

(xxvi) Thus the challenge to the Draft Modified Scheme issued by the Deputy Deputy Commissioner in O.A. No. 95 of 1978, on 25.6.1982, failed

ultimately with the dismissal of the Civil Appeals by the Supreme Court in September 1998. It must be remembered at this juncture that O.A. No.

95 of 1978 was actually initiated in the year 1961 in O.A. No. 99 of 1961 and got renumbered after remand in the first round by the

Commissioner.

(xxvii) Despite the challenge to the Draft Modified Scheme, having been rejected by a single Judge, by the Division Bench and by the Supreme

Court, the Deputy Commissioner abandoned the further proceedings. Instead, the Joint Commissioner initiated fresh proceedings suo motu, in

O.A. No. 21 of 1999, invited objections and passed an order on 11.6.2003, notifying another Draft Modified Scheme and inviting objections and suggestions thereto.

(xxviii) Aggrieved by these proceedings, the petitioners have come up with the present writ petitions. As stated earlier, the challenge in one writ

petition is to the fresh proceedings dated 11.6.2003 in O.A. No. 21 of 1999. In the other writ petition, the prayer is for passing final orders in the

previous proceedings in O.A. No. 95 of 1978, whereby a Draft Modified Scheme was notified on 25.6.1982.

6. By the modified scheme now proposed by the Joint Commissioner in his suo motu proceedings O.P. No. 21 of 1999, as notified in his order

dated 11.6.2003, which is the subject matter of challenge in one writ petition, the Joint Commissioner has proposed that there shall be 3 non-

hereditary trustees, apart from an Executive Officer appointed by the Government in the cadre of Assistant Commissioner in the HR&CE

Department. As per the proposed scheme, 2 out of the 3 non-hereditary trustees, shall be from the Eastern Branch and 1 from the Western

Branch of the male descendants of Koti Kanyakadanam Thatha Desikar. Consequently, there will be no representation for the Thengalai sect in the

Board of Trustees. Therefore, the petitioners, who belong to the Thengalai sect, have come up with these writ petitions.

7. The main plank of the argument of Mr. K. Alagiriswami, learned Senior Counsel for the petitioners is that after the challenge to the previously

proposed scheme in O.A. No. 99 of 1961 (which later became O.A. No. 95 of 1978), failed before the single Judge, the Division Bench and the

Supreme Court, after a prolonged battle for 37 years (from 1961 to 1998), it was wholly illegal and unjustified on the part of the Joint

Commissioner to drop the earlier proposal and initiate a proceeding suo motu. Moreover, the proposal now made, is also not in accordance with

the statutory provisions, though the impugned order claims to be so.

8. In response, Mr. S. Balasubramaniam, learned Counsel for the contesting respondent, submitted that as against the impugned order, a statutory

alternative remedy of appeal is available and hence the writ petition, by passing

the alternative remedy, is not maintainable. It is his further contention that immediately after the Joint Commissioner initiated suo motu proceedings in O.A. No. 21 of 1999, the writ petitioners herein moved two applications before the Supreme Court, seeking (i) a direction to the Deputy Commissioner to complete the proceedings in O.A. No. 95 of 1978 and (ii) a direction to the Joint Commissioner not to proceed with the fresh suo motu proceedings in O.A. No. 21 of 1999. But those applications were dismissed by the Supreme Court on 13.11.2000. Therefore, according to the learned Counsel for the contesting respondent, the present writ petitions for the very same reliefs, are not maintainable.

9. Since a question of maintainability of the writ petitions has been raised, I shall deal with the same first, before considering the writ petitions on merits.

10. It is true that the writ petitioners have a statutory alternative remedy of appeal available u/s 69(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. As against an order passed u/s 69, the petitioners also have the remedy of a suit u/s 70(1) and a right of first appeal to this Court u/s 70(2). Therefore, under normal circumstances, the petitioners should only be directed to avail the alternative remedy.

11. But the case on hand is not of the normal variety. The parties herein and their predecessors are more seasoned in litigation than any of the

lawyers who represented them. As observed by the learned Subordinate Judge, Chinglepet, in O.S. No. 30 of 1956, every time one controversy

is attempted to be resolved by a judicial decision, another controversy arises as a sphinx from its ashes, to keep the flame of litigation burning for

ever. The Thengalais and Vadagalais have fought in various Courts, including the Privy Council and the Supreme Court, for over two centuries, at

least on 5 issues viz., (i) the trusteeship (ii) the type of Namam (mark on the forehead) to be applied (iii) the Adhyapakam rights (iv) the right to

Thirtham and (v) the right to the office of Mulji Dharmakarta. The history of litigation relating to Adhyapaka rights and Namam, spread over two

centuries. To my mind, the litigation involving Sri Devarajaswami Temple of Kancheepuram, is the only one of its kind in the whole world, that

enabled Mr. T.S. Ramaswamy, a Senior member of the Madras Bar, to undertake a research, facilitating him ultimately to acquire a Doctorate

(Ph.D) degree on ""Judicial Resolutions for Temple Disputes"", which has also come out in the form of a book. Therefore, the ordinary dictat of the

writ Court to ask the parties to avail the alternative remedy, need not be invoked in an extraordinary case of this nature.

12. Moreover, the writ petitions were admitted way back in the year 2003, the pleadings are complete and arguments were heard at length, in the final hearing of the writ petitions. It is well settled that at the stage of final hearing, parties need not be driven out of Court, to take recourse to alternative remedies.

13. In any case, the impugned scheme is attacked only on two legal grounds. The first ground is that there was no justification for dropping further

proceedings under the earlier scheme proposed in O.A. No. 99 of 1961 (which later became O.A. No. 95 of 1978). The second ground is that

though the impugned order has been issued with the professed object of bringing the scheme in tune with the Act, it is not so, as seen from the

proposed constitution of the Board of Trustees. I find from the history of the litigation and the facts already on record that these two issues can

easily be decided in these writ petitions and hence it is not necessary to ask the petitioners to avail the alternative remedy, after 6 years of the filing

of the writ petitions.

14. Interestingly, when the Deputy Commissioner initiated similar suo motu proceedings in the year 1961, for modification of the scheme, the

contesting respondents herein challenged the same only by way of a writ petition in the year 1969. The writ petition was dismissed and the same

was confirmed by the Division Bench and also by the Supreme Court. Thereafter, those suo motu proceedings in O.A. No. 99 of 1961 were

sought to be abandoned, but at the instance of the writ petitioners, the Commissioner remanded the matter back. Thereafter, they were

renumbered as O.A. No. 95 of 1978. But these proceedings were again challenged, only by way of a writ petition, by the contesting respondents

herein. The writ petition W.P. No. 5121 of 1982 was dismissed and the dismissal was confirmed by the Division Bench and by the Supreme

Court. Thus, the contesting respondents herein, have, in the past always by-passed the alternative remedy and challenged identical proceedings,

only by way of writ petitions. Therefore, the contention of the contesting

respondents regarding the availability of alternative remedy, is nothing but a case of pot calling the kettle black. Hence, the same is rejected.

15. Mr. S. Balasubramaniam, learned Counsel for the second respondent, questioned the maintainability of the writ petitions also on the ground that after having participated in the suo motu proceedings before the Joint Commissioner in O.A. No. 21 of 1999, it is not open to the petitioners

to challenge the very initiation of the proceedings. The learned Counsel relied upon a decision of a Division Bench of this Court in *P. Vidhyavathi v.*

The Chairman, TNPSC 1991 (1) LW 46, in support of his contention that a person who participates in the proceedings, is barred by

acquiescence from challenging the validity of the proceedings. I am afraid, neither the said decision nor the principle laid down therein, has any

application to the cases on hand. *Vidhyavathi's* case arose out of a process of selection for recruitment to the post of District Munsif. It cannot be

compared to the disputes with which we are now concerned. The petitioners are not challenging the initiation of suo motu proceedings, on the

ground of lack of jurisdiction. If the challenge of the petitioners, was on the ground of jurisdiction, it may be open to the respondents to contend

that the petitioners have submitted themselves to the jurisdiction of the official respondent. Even in such a case, the law is well settled that by

consent, the parties cannot confer jurisdiction. The petitioners have challenged the suo motu initiation of proceedings on the ground that the

previous proposed modified scheme, ought not to have been abandoned. Such a challenge does not get extinguished, by the petitioners

participating in the proceedings. The proceedings before the Joint Commissioner, were u/s 64(5) and are quasi judicial in nature. Therefore, the

participation of the petitioners in those proceedings, would not take away their rights to challenge those proceedings.

16. The next objection of Mr. S. Balasubramaniam, learned Counsel for the second respondent, is that the Supreme Court had already rejected

the challenge of the petitioners, to the very same proceedings and that therefore, the petitioners cannot reopen the issue all over again. This

contention also cannot be countenanced, for the reasons stated in the following paragraph.

17. As seen from the history of the litigation, after the advent of the Madras Act

XXII of 1959, the Deputy Commissioner initiated proceedings in O.A. No. 99 of 1961. The Thathacharis challenged the same in W.P. No. 2469 of 1969. The writ petition was dismissed on 18.8.1969 and the appeal W.A. No. 91 of 1970 was dismissed on 6.9.1970. The SLP was dismissed on 22.10.1971. However, the Deputy Commissioner dropped further proceedings in O.A. No. 99 of 1961 by order dated 8.10.1973. But the Commissioner set aside that order on an appeal in A.P. No. 153 of 1974 and remanded the matter back. The proceedings were renumbered as O.A. No. 95 of 1978, in which an order was passed on 25.6.1982, proposing to notify a modified scheme. That order dated 25.6.1982 was challenged by Thathachars in W.P. No. 5121 of 1982. But the challenge failed and the appeal was also dismissed by the Division Bench in W.A. No. 122 of 1987. The Supreme Court confirmed the same on 2.9.1998 1998 (6) SCC 643}.

18. It is only after the dismissal of the civil appeals C.A. Nos. 4570 and 4571 of 1998 by the Supreme Court on 2.9.1998 that the impugned suo motu proceedings in O.A. No. 21 of 1999 were initiated. Though the impugned suo motu proceedings provided an independent and subsequent cause of action and though the civil appeals had long before been disposed of, the petitioners herein made an attempt to bring to the notice of the Supreme Court, the abandonment of the previous proceedings and the initiation of fresh proceedings suo motu. The petitioners herein filed two interlocutory applications in I.A. Nos. 3 and 4 of 2000 in Civil Appeal Nos. 4570 and 4571 of 1998. The prayers made therein were as follows:

It is therefore most respectfully prayed that this Hon''ble Court may be pleased to:

- a) direct Respondent No. 2 to complete the pending proceedings in O.A. No. 95 of 1978, pending before him;
- b) direct Respondent No. 2 not to take any further steps in respect of suo-motu O.A. No. 21 of 1999 initiated by him and to quash the proceedings in the said suo-motu O.A. No. 21 of 1999.

19. On 13.11.2000, the Supreme Court dismissed the interlocutory applications by a short order which reads as follows:

We do not find any justification for entertaining these I.As. The I.As are accordingly dismissed.

20. In view of the above order of the Supreme Court and especially in view of the usage of the words ""justification"" and ""entertaining"", in the above order, Mr. S. Balasubramaniam, learned Counsel contended that the present writ petitions are barred by res judicata or at least the petitioners are estopped from raising the issue once again. The learned Counsel cited a decision of Mrs. Prabha Sridevan, J., in Mahabaleswar Service Station v. Indian Oil Corporation Ltd. 2002 (1) MLJ 497, in support of his contention that the use of the word ""entertain"", would connote some thing more than a mere dismissal. In response, Mr. K. Alagiriswamy, learned Senior Counsel appearing for the petitioners, relied upon a decision of the Constitution Bench of the Supreme Court in The Samarth Transport Co. (P) Ltd. Vs. The Regional Transport Authority, Nagpur and Others, , to show as to how the word ""entertain"" is to be construed.

21. But with due respects to the learned Counsel on either side, I am of the considered view that the order of the Supreme Court extracted above, does not call for any interpretation on semantics. Time and again, the Apex Court has cautioned that the judgments of Courts are not to be read and interpreted as Statutes. It is only in respect of Statutes that the question of interpretation, for the purpose of finding out the legislative intent would arise. In a judgment, the findings of fact and conclusions arrived at, are for the consumption of the parties to the litigation and the exposition of law is for the consumption of the Subordinate Courts and the public as well. The Apex Court has cautioned time and again that decisions are to be read as a whole and not to be split word by word and sought to be interpreted.

22. In Bharat Petroleum Corporation Ltd. and Another Vs. N.R. Vairamani and Another, , the Supreme Court held as follows:

Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

23. Keeping the above principles in mind, if we look at the order of the Supreme Court, dismissing both the interlocutory applications, it will be clear that the Supreme Court did not express any opinion on the merits of the

claim of the petitioners. The reasons for the dismissal were too obvious to be stated. First of all, the civil appeals had already been disposed of on 2.9.1998 and nothing was pending before the Supreme Court, to enable the parties to move any interlocutory application. The interlocutory applications were filed in May 2000 and moved in November 2000, more than after 2 years of the disposal of the civil appeals. It is a settled position in law that no relief can be granted to a party, after the disposal of the proceedings, by the very same Court, except by way of review. Moreover, what was sought to be agitated by way of interlocutory applications, after the disposal of the main cases, did not arise out of the appeals which were disposed of, but arose out of subsequent proceedings which provided an independent, separate and subsequent cause of action. Therefore, the interlocutory applications filed by the petitioners herein, before the Supreme Court, in the appeals disposed of 2 years earlier, were, without any semblance of a doubt, not maintainable. It is in that view that the Supreme Court dismissed the applications, holding that there was no justification for entertaining the applications. Therefore, the same cannot operate either as *res judicata* or as *estoppel*.

24. Now coming to the merits, the main ground of attack of the writ petitioners to the impugned suo motu proceedings, is that after allowing the parties to litigate over the proposal to modify the existing scheme, from 1961 till 1998 and after this Court and the Supreme Court put the seal of approval on those proceedings, there was no justification to abandon those proceedings and initiate a fresh one. The ancillary ground of attack is that in any case, the proposed scheme is not in tune with the provisions of the Act, though the professed object of the proposed scheme is to do so.

25. In order to test the correctness of the above grounds of attack, it is necessary to have a close look at the events that happened subsequent to the dismissal of the civil appeals C.A. Nos. 4570 and 4571 of 1998 on 2.9.1998. They are as follows:

(i) For a period of 1-1/2 years after the disposal of the civil appeals by the Supreme Court, the Joint Commissioner did not take any action in furtherance of the proceedings in O.A. No. 95 of 1978. It is claimed by the petitioners that they made requests and also issued notices to the Joint

Commissioner to pass final orders in those proceedings.

(ii) However, the Joint Commissioner issued a notice dated 9.3.2000, in suo motu O.A. No. 21 of 1999. In paragraphs 1 to 4 of the said notice,

the Joint Commissioner narrated the history of the litigation and the judgments of this Court and the Supreme Court, upholding the power of the

Deputy/Joint Commissioner to modify the scheme. After doing so, the Joint Commissioner stated in paragraph-5 of the said notice, three reasons

for initiating suo motu proceedings. They are as follows:

(a) that the provisions already contained in the existing scheme, being inconsistent with the provisions of the HR&CE, Act 1959 (Amended Act 39/96) are ambiguous and therefore, cannot be worked out perfectly and properly.

(b) that though the provisions of the scheme are ordinarily precise and complete had become unsuitable to carry out the intentions and objects of such provisions, in the present altered circumstances;

(c) that the scheme settled and modified by the Court, in the year 1941, itself had, by the test of time, in like manner becomes necessary to be redrafted for the purpose.

(iii) In the aforesaid notice dated 9.3.2000, the Joint Commissioner fixed a date for preliminary enquiry and called upon the parties to submit their

objections. After the enquiry and after considering the objections, the Joint Commissioner issued an order dated 11.6.2003, notifying a draft

modified scheme, subject to objections and suggestions. It is at this stage that the petitioners came up before this Court.

26. A perusal of the first notice dated 9.3.2000, in the suo motu proceedings O.A. No. 21 of 1999, shows that no reasons are stated by the Joint

Commissioner, for not pursuing the previous proceedings O.A. No. 95 of 1978 (which was only a continuation of O.A. No. 99 of 1961), though

the previous proceedings were also initiated only for the purpose of bringing the scheme settled in 1941, in tune with the 1959 Act. It is unfortunate

that this is the third occasion when the department has resorted to a game of hide and seek. First they initiated suo motu proceedings in 1961.

After the validity of those proceedings were confirmed upto Supreme Court, they were abandoned in 1973. Therefore an intra departmental

appeal was filed in which the matter was remitted back and the proceedings

started all over again for a second time in O.A. No. 95 of 1978. After the challenge to those proceedings failed upto the Supreme Court in the year 1998, they have been abandoned and the proceedings impugned in the present writ petitions were initiated. Thus, the department has added fuel to the fire of litigation at every stage.

27. When the professed object of initiating suo motu proceedings in O.A. No. 99 of 1961 and O.A. No. 95 of 1978, was to bring the scheme in tune with the provisions of the Act, there is no reason as to why those proceedings should be abandoned and fresh proceedings initiated for the very same purpose. The impugned proceedings do not contain even an apology of a reason, for abandoning further proceedings in O.A. No. 95 of 1978, even after the Apex Court put its seal of approval on the same. Therefore the impugned proceedings appear to be the product of an arbitrary exercise of power.

28. It is not stated in the impugned proceedings that the proposed modified scheme made in O.A. No. 95 of 1978 itself, was also not in tune with the provisions of the Act. In fact, the order dated 25.6.1982, passed in O.A. No. 95 of 1978, which became the subject matter of litigation upto the Supreme Court, was only a Draft Modified Scheme. Therefore, after the dismissal of the civil appeals C.A. Nos. 4570 and 4571 of 1998 on 2.9.1998, it was open to the Joint Commissioner to consider the objections and pass a final order, consistent with the provisions of the Act. In other words, what is sought to be achieved by the impugned proceedings, by going back to square one, as in the game of "snakes and ladder", could have been achieved easily by considering the objections and passing final orders in the previous proceedings O.A. No. 95 of 1978. If that had been done, a modified scheme could have now come into operation. Instead, the department has played spoil sport in the final stages of the previous proceedings by abandoning them.

29. As stated earlier, the Supreme Court disposed of the civil appeals on 2.9.1998. The Joint Commissioner abandoned the previous proceedings and initiated fresh proceedings in 1999 itself. If the Joint Commissioner had no intention of proceeding further with the previous action, he could have at least informed the Court of the same, so that an exercise in futility would not have been undertaken by the Court.

30. In any case, the draft scheme proposed by the order dated 25.6.1982 in the previous proceedings O.A. No. 95 of 1978 and the draft scheme

now proposed by the impugned order dated 11.6.2003 in O.A. No. 21 of 1999, are at variance, with regard to the constitution of the Board of

Trustees. Under the order dated 25.6.1982 in O.A. No. 95 of 1978, the Trust Board was to have 5 members, comprising of one Thathachari

Trustee, one Thengalai Brahmin Trustee, one non-Brahmin Srivaishnavaita Trustee, one Smartha or Madhwa Brahmin Trustee and one Scheduled

Caste Trustee.

31. But under the order impugned in the writ petition, the Trust Board is to have only 3 trustees, out of whom 2 should be from the Thathacharis

and one from Smartha or Madhwa Brahmins permanently residing in Kancheepuram. This according to the Joint Commissioner is in tune with the

provisions of the Act. However, the impugned order does not disclose as to how the proposal made in the previous proceedings dated 25.6.1982

was not in accordance with the provisions of the Act.

32. Section 47(1)(a) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, empowers the Joint Commissioner/Deputy

Commissioner, the Commissioner and the Government to constitute a Board of Trustees for a religious institution included in the list published u/s

46 (depending upon its annual income) or in respect of a religious institution for which the Assistant Commissioner has no power to appoint

Trustees and which has no hereditary Trustee. The first proviso u/s 47(1)(a) mandates that the Board constituted by the Joint/Deputy

Commissioner or the Commissioner shall consist of 3 persons, from among the panel of names sent by the District Committee, of whom one shall

be a member of the Scheduled Castes or Scheduled Tribes. Section 47(1)(c) stipulates that every Board of Trustees constituted under Clause (a)

or (b) shall consist of not less than 3 and not more than 5 persons, of whom, one shall be a member of the Scheduled Castes or Scheduled Tribes.

Section 47(2) empowers the Government, Commissioner, Joint Commissioner or Deputy Commissioner to appoint one or more non-hereditary

Trustees, in respect of an institution included in the list and having a hereditary Trustee.

33. Section 49 confers similar powers upon the Assistant Commissioner to

appoint Trustees, in respect of a religious institution which is not included in the list published u/s 46 and which is not a religious institution notified under Chapter-VI. The proviso u/s 49(1) requires such a Board to comprise of 3 persons from among the panel of names sent by the District Committee.

34. Section 7-A of the Act, mandates the Government to constitute a Committee called the District Committee for every Revenue District, in

respect of all religious institutions (other than those falling u/s 46(ii). The District Committee so constituted is obliged u/s 7-A(4) to prepare a panel

of names of persons, who are qualified for appointment as Trustees, including the members of the Scheduled Castes and Scheduled Tribes. But

Sub-section (5) of Section 7-A excludes the jurisdiction of the District Committee to send any panel of names for a religious institution for which a

scheme is settled by the High Court or any Subordinate Court.

35. In the light of the provisions of Sections 47 and 7-A, it was contended by Mr. K. Alagiriswami, learned Senior Counsel for the petitioners that

it is actually the present suo motu proceedings, which are inconsistent with the provisions of the Act, while the previous proceedings O.A. No. 95

of 1978 were in consonance with the Act. Though the previous proceedings contemplated a 5 member Board of Trustees, of whom, one should

be a member of the Scheduled Castes or Scheduled Tribes, the present impugned order does not provide for the inclusion of a person belonging

to the Scheduled Castes or Scheduled Tribes. Therefore, it was contended that the present proceedings are not in tune with the Act. But the said

contention was resisted by Mr. S. Balasubramaniam, learned Counsel for the contesting respondent on the premise that when the very power of

the Joint/Deputy Commissioner or Commissioner to appoint Trustees is confined under the proviso to Section 47(1), to a list of persons sent by

the District Committee and when the power of the District Committee to send a panel is curtailed by Section 7-A(5) in respect of institutions for

which a scheme is already settled, the proposal now made cannot be said to be inconsistent with the provisions of the Act.

36. In order to test the correctness of the above contention, it is necessary to have a look at Sections 7-A and 47. Therefore they are extracted as

follows:

Section 7-A. (1) In respect of all religious institutions (other than those religious institutions falling under Clause (ii) of Section 46) situated within

the territorial jurisdiction of a Revenue District, the Government shall constitute a Committee called the District Committee consisting of not less

than three and not more than five non-official members as may be nominated by the Government. Only persons who are qualified for appointment

as trustees under this Act shall be nominated to the District Committee.

(2) The term of office of the members of the District Committee shall be three years and other matters relating to the said Committee shall be such

as may be prescribed.

(3) The Government, may after giving a show cause notice, remove all or any of the members of the District Committee in the public interest.

(4) The District Committee shall prepare, in such manner as may be prescribed, a panel of names of persons who are qualified for appointment as

Trustees under this Act (including members of Scheduled Castes and Scheduled Tribes) and suitable for appointment as non-hereditary trustee or

trustees, as the case may be and shall send it to:

(i) the Joint or Deputy Commissioner, in respect of religious institutions falling under Clause (i) of Section 46;

(ii) the Commissioner in respect of religious institution falling under Clause (ii) of Section 46; and

(iii) the Assistant Commissioner in respect of any religious institution which is not included in the list published u/s 46 and is not a religious institution

notified or deemed to have been notified under Chapter VI of this Act.

(5) Notwithstanding anything contained in this Section, the District Committee shall have no jurisdiction to send any panel of names of persons

under this Section in respect of any religious institution for which a scheme has been settled or deemed to have been settled under this Act by the

High Court or any Court subordinate to the High Court.

Section 47. (1)(a) Where a religious institution included in the list published u/s 46 or in respect of which the Assistant Commissioner has no power

to appoint trustees, has no hereditary trustee,:

(i) in cases falling under Clause (i) of Section 46 the Joint Commissioner/Deputy Commissioner;

(ii) in the case of falling under Clause (ii) of Section 46, the Commissioner; and
(iii) in the case of falling under Clause (iii) of Section 46, the Government shall constitute a Board of Trustees.

Provided that the Board of Trustees constituted under items (i) and (ii) of the clause shall, subject to the provisions of Clause (c) consist of three

persons appointed by the Joint Commissioner or Deputy Commissioner or the Commissioner, as the case may be, from among the panel of names

of persons, sent by the District Committee concerned under Sub-section (4) of Section 46-A, of whom one shall be a member of the Scheduled

Castes or Scheduled Tribes:

Provided further that in addition to the persons appointed by the Joint Commissioner or Deputy Commissioner or the Commissioner under items (i)

or (iii) of this clause, as the case may be, the Government may nominate two persons who are qualified for appointments as trustees under this Act,

as members of the said Board of Trustees, having regard to the following matters, namely:

(a) the interest of the public generally;

(b) the income and the properties of the religious institution;

(c) the number of worshippers and importance of the religious institutions as a pilgrim centre; and

(d) such other matters as may be prescribed.

(b) in respect of all the incorporated and unincorporated Devaswoms in the transferred territory, the Government shall constitute a single Board of

Trustees;

(c) Every Board of Trustees constituted under Clause (a) or Clause (b) shall consist of not less than three and not more than five persons of whom

one shall be a member of the Scheduled Castes or Scheduled Tribes:

Provided that the Government, the Commissioner, the Joint Commissioner or Deputy Commissioner as the case may be, may, pending the

constitution of such Board of Trustees, under this sub-section, appoint a fit person to perform the functions of the Board of Trustees.

Explanation: For the purpose of this sub-section ""Scheduled Castes"" and ""Scheduled Tribes"" shall have the same meanings assigned to them

respectively in Clauses (24) and (25) of Article 366 of Constitution.

(2) Where in the case of any institution included in the list published u/s 46 having a hereditary trustee or trustees, the Government, the

Commissioner or the Joint Commissioner or the Deputy Commissioner after notice to such trustee or trustees and after such enquiry as the

Government, the Commissioner or the Joint Commissioner or the Deputy Commissioner as the case may be deems adequate, considers for

reasons to be recorded, that the affairs of the institution are not and or not likely to be properly managed by the hereditary trustee or trustees, the

Government, the Commissioner or the Joint Commissioner or the Deputy Commissioner may, by order, appoint a non-hereditary trustee or such

number of non-hereditary trustees, as may be considered necessary by the Government, the Commissioner, or the Joint Commissioner/ Deputy

Commissioner as the case may be.

(3) Every trustee appointed under Sub-section (1) and subject to result of an application, if any, filed under Sub-section (4), every non-hereditary

trustee appointed under Sub-section (2) shall hold office for a term of three years, unless in the meanwhile the trustee is removed or dismissed or

his resignation is accepted by the Government, the Commissioner or the Joint Commissioner or the Deputy Commissioner as the case may be, or

he otherwise ceases to be a trustee.

(4) Where the Government, the Commissioner or the Joint Commissioner or the Deputy Commissioner appoints a non-hereditary trustee or

trustees, the hereditary trustee or trustees may, within thirty days of the receipt of the order, file an application to the Court to set aside or modify

such an order:

Provided that the Court shall have no power to stay the order of the Government, the Joint Commissioner or the Deputy Commissioner or the

Commissioner as the case may be, pending the disposal of the application.

37. A combined reading of Sections 7-A and 47 would show that the non obstante clause found in Sub-section (5) of Section 7-A, is confined to

Section 7-A alone and is not found in Section 47(1) or 47(2). Such an exclusion clause is not even found in Section 49(1). Moreover, though the

first proviso to Section 47(1)(a) makes a reference to the panel of names sent by the District Committee, Clause (c) of Section 47(1) makes no

reference to the District Committee.

38. It is clear from a reading of the above provisions that the scheme of Sections 7-A, 47 and 49 makes a dichotomy between (i) the constitution of the Board of Trustees (ii) the composition of such Board of Trustees and (iii) the actual act of making appointments to such a Board. Once this scheme of the Act is understood, it will be easy to find out if the bar u/s 7-A(5) of the Act would apply, and if so, at what stage.

CONSTITUTION:

The first stage in the whole process of appointment of trustees is the Constitution of a Board. In the case of institutions included in the list and having no hereditary Trustee, Section 47(1) confers powers upon the Joint/Deputy Commissioner, Commissioner and the Government to constitute a Board of Trustees. In the case of institutions included in the list, but which has a hereditary Trustee, Section 47(2) confers similar powers. In the case of institutions not included in the list, Section 49(1) confers similar powers upon the Assistant Commissioner. Thus a part of Sections 47(1), 47(2) and 49(1) deal with Constitution of the Board of Trustees. Apparently, the bar of jurisdiction in Section 7-A(5) will have no relevance to the stage of Constitution of the Board of Trustees.

COMPOSITION:

The second stage is the composition of the Board of Trustees. The composition of a Board constituted u/s 47(1)(a), is prescribed as 3 persons under the first proviso to Section 47(1)(a). The second proviso empowers the Government to nominate 2 more persons, (in addition to those 3) thus making the composition of the Board, to be not less than 3 and not more than 5. This is further clarified by Section 47(1)(c), which stipulates that the Board shall comprise of not less than 3 and not more than 5 persons. In respect of incorporated and unincorporated Devaswoms, in the transferred territory, Section 47(1)(b) requires the Government to constitute a single Board of Trustees. In respect of an institution included in the list, but having a hereditary Trustee, Section 47(2) does not speak about the composition, in the sense that the number of non-hereditary Trustees, who may be appointed u/s 47(2), is left to the choice of the Government, Commissioner, Joint Commissioner or Deputy Commissioner.

By the first proviso to Section 47(1)(a) and by Section 47(1)(c), it is made mandatory to have one of those Trustees from among the members of

the Scheduled Castes or Scheduled Tribes, subject however to his fulfilling the qualifications prescribed in Section 26.

Thus there is a clear divide between the constitution of the Board of Trustees and the composition to be maintained in such a Board. Even at this

second stage, dealing with the composition of the Board of Trustees, the bar found in Section 7-A(5) cannot apply, since it deals only with

appointments.

APPOINTMENTS:

Now, we come to the third stage, viz., that of making appointments. Apart from conferring powers for the constitution of the Board of Trustees

and prescribing the composition of such a Board, the above provisions also indicate the method of appointment.

The method of appointment prescribed by the first proviso to Section 47(1)(a) and the first proviso to Section 49(1), is that all those appointments

shall be from the panel of names sent by the District Committee constituted u/s 7-A. But the power of the District Committee to send a panel of

names, is curtailed by Section 7-A(5) in respect of institutions for which a scheme has already been settled by the High Court or any subordinate

Court. The non obstante clause in Section 7-A(5) is restricted only to the provisions of that Section.

39. If the provisions of Sections 7-A, 47 and 49 are understood as dealing with three issues viz., (i) constitution of the Board (ii) composition of

the Board and (iii) appointments to the Board, it will be clear that the bar of jurisdiction of the District Committee contained in Section 7-A(5) is

restricted to the third stage of appointments to the Board and not to the first stage relating to the power of constitution of the Board of Trustees or

to the second stage of prescribing the composition of such Boards. This conclusion is inevitable for two more reasons viz.,:

(i) there is no reference to any District Committee, either in Section 47(1)(c) which deals with the composition of the Board of Trustees of a listed

institution having no hereditary Trustee or in Section 47(2) which deals with the appointment of non-hereditary Trustees for a listed institution which

has a hereditary Trustee; and

(ii) there is also no reference to any District Committee in the second proviso u/s 47(1)(a) which deals with the power of the Government to

nominate two additional Trustees, apart from the Trustees appointed by the Commissioner, Joint Commissioner or Deputy Commissioner.

40. Moreover, the first proviso to Section 47(1)(a), makes a reference to the District Committee and the panel of names sent by the Committee,

only in respect of the Boards constituted by the Joint Commissioner/Deputy Commissioner or Commissioner, in respect of institutions whose

income is (i) not less than Rs. 10,000/- but less than Rs. 2,00,000/- and (ii) not less than Rs. 2,00,000/- but less than Rs. 10,00,000/-. In respect

of temples, whose annual income is not less than Rs. 10,00,000/-, the power of constitution of the Board vests with the Government u/s 47(1)(a)

(iii). The first proviso to Section 47(1)(a) makes a reference to District Committee only in relation to Section 47(1)(a)(i) and 47(1)(a)(ii). In

respect of Boards constituted by the Government in terms of Section 47(1)(a) (iii), the first proviso u/s 47(1) does not apply, as it applies

expressly, only to items (i) and (ii). It is the second proviso which applies to Section 47(1)(a) (iii). There is no reference to a District Committee in

Section 47(1)(a)(iii).

41. All the above make it very clear that the bar of jurisdiction of the District Committees to send panel of names for appointment as Trustees,

applies only at the stage of making appointments. The bar does not apply either at the stage of constitution of the Board for a religious institution or

for determining the composition of the Board of such institution. If the bar u/s 7-A(5) is understood to be applicable even at the stage of

constitution of a Board, it would mean that the power of the Joint/Deputy Commissioner, Commissioner and the Government, to constitute a

Board of Trustees, would stand ousted by any scheme settled or deemed to have been settled by this Court or any subordinate Court. Such a

contention as a matter of fact, has already been negated by the Apex Court in the previous round. Therefore I am of the view that (i) the

requirement to have a Board comprising of not less than 3 persons and not more than 5 persons and (ii) the requirement that one of them should be

a member of the Scheduled Castes or Scheduled Tribes, cannot be thrown overboard, by taking refuge u/s 7-A(5).

42. As a matter of fact, Section 50 of the Act, steers clear of any doubt in this regard and it reads as follows:

Section 50. The power to appoint trustees u/s 47 or Section 49 or Section 49-A shall be exercisable notwithstanding that the scheme, if any,

settled, or deemed under this Act to have been settled for the institution contains provision to the country.

43. Therefore the power to constitute a Board and the power to make appointments to such Boards, do not depend upon the absence of any

scheme. If a scheme is in existence, the appointments cannot be made from out of the list of persons sent by the District Committee, in view of the

bar contained in Section 7-A(5). In other words, the appointments in such cases should be made otherwise than by nominating persons from such

a list. The bar u/s 7-A(5) goes only so far and no further. If there is no scheme in existence, the power to appoint is curtailed by Section 7-A in the

sense that the appointments are to be made only from amongst persons whose names find a place in the list sent by the District Committee.

44. In the case on hand, there is an existing scheme, settled earlier by this Court. Therefore, appointment to the Board of Trustees, cannot be

made from amongst persons whose names find a place in the list sent by the District Committee. But the obligation imposed u/s 47(1)(c), upon the

Joint Commissioner, to constitute a Board comprising of not less than 3 members and not more than 5 members, one of whom should be a

member of the Scheduled Castes or Scheduled Tribes, is not whittled down or obliterated by Section 7-A(5). Consequently, the scheme

proposed by the impugned order should necessarily provide for a composition in tune with Section 47(1)(c). But in the impugned proceedings,

there is no provision for one of the Trustees to be a member of the Scheduled Castes or Scheduled Tribes. On the contrary, in the Draft Modified

Scheme, proposed in the previous proceedings O.A. No. 95 of 1978, there was a provision for one among the 5 Trustees to be a member of the

Scheduled Castes or Scheduled Tribes.

45. Therefore, it was actually the scheme proposed in the previous proceedings that was in tune with the provisions of the Act, while the scheme

proposed in the impugned proceedings is not. Hence, the impugned proceedings are violative of the statutory provisions, though the professed

object of the impugned proceedings is to bring the scheme in tune with the provisions of the Act.

46. In view of the above, the petitioners are entitled to succeed and the writ petitions are liable to be allowed. Accordingly the writ petitions are

allowed and the impugned proceedings dated 11.6.2003 in O.A. No. 21 of 1999 are set aside. The Joint Commissioner is directed to issue notice,

within 15 days of receipt of a copy of this order to the parties, calling upon them to file objections to the draft modified scheme. The parties will

have 15 days time from the date of service of notice on them, to file their objections to the draft modified scheme proposed by the proceedings

dated 25-6-1982 in O.A. No. 95 of 1978. The Joint Commissioner shall then consider all the objections and pass final orders on the Draft

Modified Scheme issued on 25.6.1982 in O.A. No. 95 of 1978 (which got confirmed upto the Apex Court), within a period of 8 weeks

thereafter. After final orders are passed and a Board of Trustees constituted with eligible persons to the Board, it is always open to the parties as

well as the department, to work out their remedies, if the scheme that comes into force, ever becomes unworkable at a later point of time. There

will be no order as to costs.