(2012) 08 MAD CK 0152

In the Madras High Court

Case No : A.S. Nos. 426 & 429 of 1999

The Special Officer (Administrator), Sri Dharbaranyeswara Swamy Temple Devasthanam — APPELLANT

Vs

Dharmapuram Adheenam — RESPONDENT

Date of Decision : 03-08-2012

Acts Referred:

Citation : (2013) 2 MadWN(Civil) 684

Hon'ble Judges : S. Palanivelu, J.

Bench : Single Bench

Advocate : Sathish Parasaran, Advocate, for the Appellant (In A.S. No. 426 of 1999); T. Murugesan, Senior Counsel, for the Government Pleader; Pondy, Advocate, for the Appellant (In A.S. No. 429 of 1999); Pondy, Advocate, for the Respondent Nos. 2 & 3 (In A.S. No. 426 of 1999); R. Krishnamurthy, Senior Counsel., for S. Sounthar, Advocate, for Respondent No. 1 (In A.S. No. 426 of 1999); R. Krishnamurthy, Senior Counsel., for S. Sounthar, Advocate, for the Respondent (In A.S. No. 429 of 1999)

Final Decision : Allowed

Judgement

S. Palanivelu, J.—Both the Appeals are preferred against the Judgment and Decree of the learned Additional District Judge, Pondicherry State at Karaikal made in O.S. No. 17 of 1995 dated 2.2.1999.

2. Following are the allegations in short available in the Plaint :

2(a). The Plaintiff, Dharmapuram Adheenam is the sole and Hereditary Trustee from time immemorial for 27 temples, out of which, two are in the state of Pondicherry. One is Sri Yazhmurinadha Swami Temple at Karaikal Dharmapuram and the other is Sri Dharbaranyeswaraswamy Devasthanam at Thirunallar, that the origin of the right is lost in antiquity, but there are certain Government Orders called as Arrets in French state, stone inscriptions and above all continuous course of conduct in the management for over three generations lasting for more than 100 years, which will clearly establish that the Plaintiff-

Adheenam is the sole Hereditary Trustee of the said temples, that it is significant that none other claimed, as the Trustee of the said temples and that the French Government in the French Colonial Territories and the British Government in their areas, envisaged schemes for the management of Hindu temples and while doing so they not only preserved the ancient customs traditions and usages prevailing from ancient days but also safeguarded the hereditary rights and maintained the time honoured and well established system of Ulthurai Management based on Agamas in doing Poojas and rituals at an exalted level, without interfering in the internal affairs of the temples.

2(b). While specific provisions are made safeguarding, the Hereditary Rights, in Tamil Nadu Act as early from 1929, the Pondicherry State has passed a legislation as late as 1972 Act 10/1972 called Pondicherry Hindu Religious Institutions Act, 10/1972 [hereinafter referred to as ''Act''], providing a saving clause simply protecting age old customs practices and traditions, that the pattern of Temple Administration by Dharmapuram Adheenam has been quite unique, that Pooja services according to Agama Sastras, are the main rituals of the temples and S.O., Dharmapuram Adheenam attaches great importance for the performance of this duty called "Ulthurai'' administration without exclusively leaving to the Archakas, who generally and usually perform the Pooja services, the same is supervised by well-versed, quite competent ascetic amongst the well trained disciples of His Holiness called as "Thambiran" and that such a person is appointed for not only keeping the Pooja services according to the schedule but also for keeping the temple premises clean neat and tidy. Such persons are stationed in the place where the temple is situate and they attend from the Ushakalam in the morning right upto Ardhajaman in the night, that, the Thambiran supervises the locking of the doors of the Sannadhis and the temple door and keep the keys in his custody.

2(c). The exclusively managed temples of Dharmapuram Adheenam have earned a stamp for themselves, and secured the satisfaction of the worshippers, besides the praise of the V.I.P.''s. Such temples have also lifted several prizes as the best administered temples that the administration of temples, the Adheenam also maintains collection of rare religious books, that Archakas are trained in the Adheenam Agama Patasala, to perform Pooja services perfectly according to Agama Sastras, that the Archakars explain to the devotees the importance of worship in curing their ills and in attaining salvation and that the festivals are conducted properly according to sastras besides Tiruppani Kumbabishekam done periodically.

2(d). On the Revenue side, for the collection of the rents and profits, maintenance of accounts, keeping the valuable jewels, etc., persons of high integrity and character, with honesty and selfless devotion for service are recruited, after considerable screening, that the Adheenam temples are able to make necessary collection for maintaining the pooja services and festivals and pay the staff salary, while several temples in the State of Tamil Nadu could not maintain even the Pooja services.

2(e). The Plaintiff is the sole Hereditary Trustee exclusively administering Sri Yazhmurinatha Swami Temple, that similarly Sri Dharbaranyeswarar temple, Thirunallur was also under the sole exclusive management of Dharmapuram Adheenam as hereditary trustee for pretty long time, that obviously on account of the renowned nature of the temple and the powerful deity Sri Saneeswara attracting Sevarthis from all over India and V.I.Ps., who cannot be welcomed and attended to by an ascetic the administration for secular side alone was later separated, managed by a Board of Committee consisting of five members for which the Plaintiff Adheenam''s representative is the ex-officio Chairman as of right, while the religious side ''ULTHURAI'' has been in the exclusive management of the Plaintiff-Adheenam without any outside interference through its representative the Thambiran Swamigal.

2(f). The Government Ordinance No. 82 dated 23.7.1840 regulating the administration of the Hindu temples in the French Colony, had only preserved the ancient terms and directions not to interfere especially with the time honoured hereditary rights of internal administration by the Plaintiff Adheenam, that the Arrets passed on 6.7.1902 and the Order dated 3.12.1912 preserved the rights of the Plaintiff-Adheenam, that the Governor of Pondicherry, by Arret dated 20.6.1918 confirmed the office of president of the Board, as ex-officio in the representative of the Plaintiff, that above all a specific clause provided that none should interfere with the internal administration of the temple which is the exclusive function of the Dharmapuram Adheenam, that from time to time when the Plaintiff''s representative was recalled or when he attained Mukthi, or when Adheenam appointed fresh representative as amongst His Thambirans, they have been duly recognised and the order of the Plaintiff-Adheenam had been given effect to.

2(g). It is further necessary to state that the five member board or the committee formed with the representative of Dharmapuram Adheenam the Thambiran as ex-officio Member Chairman did not work well or achieve the desired result as very often the nominated members either fell into disfavour with the public or party in power, that the Committee was often dissolved or ceased to function and during that period, Special Officer was appointed to discharge the functions of the nominated Members of the Committee, that the Special Officer, however worked in co-ordination with the Plaintiff''s representative, the Thambiran, the ex-officio Member of the Committee on the secular side, while Ulthurai administration, such as maintaining of Pooja services, regulations of Archana services for worshipers, the appointment of Ulthurai Servants, Archakas, fixation of salary, remuneration, supervision of their works, as well as all other matters, was carried on only by the Plaintiff through his representative.

2(h). The Archakas filed a Suit in O.S. No. 21/70 in the Sub-Court, Karaikal for redressal of the grievances when the ticket system for Archanai was introduced.

In that suit they admitted that the internal management is with Dharmapuram Adheenam. So also the Government represented by the Administrator in their Written Statement accepted and affirmed that Archakas'' services are regulated only by the Plaintiff, the scale of expenditure for them is also prepared by the Plaintiff and the Nithiya pooja service and festivals including kumbabishekam, etc., are done only under the supervision of the Plaintiff.

2(i). It is significant that even though the Act 10/72 has not provided for anything about hereditary rights, still by reason of force of the saving clause, they have been preserved and continued to maintain the ancient order and traditional rights, that besides, the jewels and valuables are also in the joint custody of the Plaintiff and the officer of the Devasthanam, that an Executive Officer has been provided to regulate and to execute the resolutions of the Board and in the absence of Board the Special Officer, who acted along with the Thambiran as aforesaid, is simply to take the orders of the Special Officer and the Plaintiff''s representative and that he cannot independently act on his own and cannot have the powers of Special Officer.

2(j). Thus, the Plaintiff through his representative the Thambiran has been administering the affairs of the temple, that while the secular matters have been attended both by the Plaintiff''s representative and the Board or in its absence by the Special Officer. The Ulthurai management was solely done by the Plaintiff''s representative, that in secular matter the Plaintiff''s representative will be consulted and consent obtained before anything is done, that both however acted in co-ordination with each other and all orders, communications, and agreements were made under the signature and authority of both and the Executive Officer was simply executing the orders.

2(k). The Plaintiff was taking earnest efforts from 1993 making representation to the Chief Minister, Government of Pondicherry, Commissioner, Hindu Religious Institutions Pondicherry to regulate and define the powers and duties of the Executive officer so that there may not be interference or bickering. While the same was pending consideration of the Government, and while all transfers, order or communications and other activities of the temple administration were made after arriving at a consensus between them under the signature of the Plaintiff''s representative and that of the Special Officer, the Fourth Defendant acting on his own not only transferred certain Ulthurai Temple staff but also issued directions about their work and service and even curtailed rice for Neivadhanam and made various arrangements inconsistent with age old practices and customs and that the communications of the Fourth Defendant dated 27.2.95, 28.2.95 and 2.3.95 which are filed herewith will speak for themselves, the autocratic manner he has done in transgressing his powers.

2(l). The Plaintiff''s representative did not want to create any scene but informed the Third Defendant by a communication on 3.4.1995 that this action, particularly in infringing upon his management, and usurping powers setting at naught the custom and practise are all flagrant violation of the ancient traditions and at any rate can not be done by him independently and he is totally incompetent to interfere with the internal Ulthurai administration.

2(m). Plaintiff further states that when the several Arrets of the Government as early from 1840 till 1972 when Act 10/72 were passed, the rights of the Plaintiff had been preserved safeguarded and secured, that it has been held that no fixed period of enjoyment is laid down by law as necessary to establish a customary right and that usage over 30 years is sufficient for the acquisition of the customary right, that above all Ulthurai administration being the most sacred duty and an important activity cannot be allowed to be interfered with by any peculiar element, particularly when ascetic is incharge, that it will also cause detriment to the temple administration, besides earning wrath of God.

2(n). Temples and maths are the two principal Institutions in the Hindu Religious system that they were under the superintending authority of the old Rulers based on some sort of Customary laws, that after the advent of the French rule in the country, the French Government professed by following the tradition of the former Indian Rulers, passed several Arrets for the purpose of implementing the duty of the Government for better management of the religious institution the colonies in India and to ensure that the endowments are applied according to the real intent and will of the grantor, that in the year 1840, the French Government being a Christian Government felt that it was not one of its duties to administer directly the Hindu temples and religious Endowment and so they decided to observe a policy of non-interference strictly in religious matters and to withdraw as far as possible from the direct active management of Hindu temples and religious endowments.

2(o). There is no hard and fast rule as to the length of time required to establish hereditary nature of Trusteeship not to speak of the association of additional non-hereditary trustees or members to assist the hereditary trustees in the management of the Religious Institutions for some administrative reasons even then it will not extinguish the hereditary right of the trustee, that it is further submitted that the office of hereditary trusteeship should not be partitioned, that if there is division and fragmentation of power it becomes impossible to perform duties and the enforcement thereof as in the instant case regarding the affairs of Sri Dharbaranyeswarar Swamy Temple, Thirunallar.

2(p). The Hereditary Trustee does not owe his position of office to any extraneous body, but succeeds to such office by devolution of right by succession that in the case of Maths, whose heads are either Sanyasis or celebrate special rules of succession prevailed by custom and usage, that it is well established that the office of Hereditary Trustee is in the nature of property, and this is so whether the trustee has a beneficial interest of some sort or not and that it has been held in various decisions that nearly 60 years of office is sufficient to establish hereditary trusteeship and if the management is for 3 or 4 generations without any break the presumption should be that the right has devolved hereditarily as a right.

2(q). Judicial power and discretion is always vested in Civil Courts unless expressly excluded and Civil Courts are resorted in the case of infringement or usurpation of rights or to preserve customs, traditions and if need be, to alter any rule of management being provided by statute, that consequentially the fourth Defendant has no right to interfere in any manner with the Ulthurai Administration by the Plaintiff, that the Plaintiff''s sole and exclusive right of hereditary management of the secular and internal affairs of Sri Dharbaranyeswarar temple, Thirunallar has to be declared and consequentially the interference of the Defendants in the active management of the Devasthanam should be injuncted and that during the pendency of the Suit, status quo should be preserved by giving specific directions to the Executive Officer the Fourth Defendant especially with reference to the rights guaranteed by various Arrets, protected and preserved by a saving clause under Section 32 of the Hindu Religious Institutions Act, Government of Pondicherry.

3. In the Written Statement filed by the 2nd Defendant both on his behalf and on behalf of 1st Defendant, it is averred as under :

3(a). The Plaintiff has claimed a vested right in matters relating to Ulthurai Administration basing it on a presumption of hereditary trusteeship, that the tenor of the prayer is an indication to the lingering uncertainty in his mind, that the prayer portion betrays the mind of the Plaintiff besides the inadequate information about his role in the Ulthurai Administration of the suit devasthanam, that the Act has come into force for purposes referred to therein, that this Defendant has been appointed under Section 3 of the Act with explanation given under Section 2 of the Act, that under the Act every "Math" like Plaintiff-Institution shall be by a Board of Trustees appointed by the Government by Notification in the Official Gazette under Section 4 of the Act and the Government have power to appoint Special Officer to perform the functions of the Board pending constitution of a Board, under the same Section, that the Government have the power to appoint an Executive Officer, in the interest of better administration and management of such institutions, that as per Section 10 of the Act, the Board shall appoint officers and other employees subject to the condition of service and they shall be entitled to remuneration as determined by the Board, that the Commissioner is entitled to inspect any movable or immovable properties, records, plans, accounts, etc., relating to any Religious Institutions as prescribed under Section 23(i) of the Act and that under Section 24-A(I)(a) of the Act, the Commissioner may call and examine the record of any Board of Trustees of an institution in respect of any proceeding.

3(b). In Tamil Nadu there are 25 Temples over which Dharmapuram Adheenam is said to have hereditary trusteeship, that in Karaikal the Adheenam has only one temple at Dharmapuram, that Sri. Dharbarayaneswara Swamy Devasthanam of Thirunallur is not temple coming under the control and hegemony of Dharmapuram Adheenam, that the suit temple was always under the control of the then French Government till 1950 and administered by a committee (Board of Trustee), that a representative from Dharmapurm Adheenam was welcomed by the Administration of the Union Territory of Pondicherry to the specific purpose of looking after the "Agamavidhi" rituals by conducting utsavas according to the Budget provisions by the Committee and also to look after the appointment of Gurukkals, Adyanabattan and Oduvarsamy and to see that they are performing duties as per Agamas prevailing in the suit temple, that vide Ordinance Arrete Nos. 29th June 1918/11th May 1929/22nd August 1932/12th February 1969 and also included in the Ad hoc Committee as a trustee to manage the internal administration vide G.O.Ms. No. 14/T/69 dated 12.2.1969 till a regular Committee assumes charges and assigned his duty as stated above, that after formation of a regular Committee and agent of Dharmapuram Adheenam will in no way be connected with the control and administration of the matters relating to the Devasthanam, that the suit temple was never under the control of the Plaintiff or for that matter the Dharmapuram Adheenam much less from time immemorial, that there was a perception and general belief that the Adheenam would be well versed in the Agamas and other connected rituals and that they were only consultants in the matter of appointing Gurukkals, Adaynabattars and Oduvarswamys.

3(c). It is a known fact that the Adheenam does not allot any fund or property for the maintenance of the temple and for any regular poojas, that the entire expenditure towards payment to the staff and poojas relating to ''Ulthurai'' is fully borne by the Devasthanam which is under the control of this Defendant and hence there is no question of any interference in the Ulthurai affairs by the Defendants as alleged by the Plaintiff, that the Plaintiff has no responsibility or liability of any sort of matters relating to the maintenance and administration of the Suit temple, that the contention of the Plaintiff that the Kumba bhishekam was performed under his supervision is a patent falsehood, that it is Kattalaivicharanai and Gurukkals, who performed ''Balalayam'' during the year 1990 and thereafter stopped all utsavas for a period of 4 years till the Executive Officer assumed charge of the administration of the Suit Devasthanam, that the Executive Officer (4th Defendant) undertook renovation works and completed them by collecting donations and performed Kumbabhishekam on 31.3.1994 and that the subordinates like 3rd and 4th Defendants of this Defendant have no obligation to consult the Plaintiff who is guilty of delinquency of his moral and religious obligations towards the Suit Devasthanam.

3(d). This Defendant is the Competent Authority to pass any orders relating to the establishment and the Plaintiff has no say in such matters, that there is no provision under the Act to entrust the administration of Ulthurai with independence to the Plaintiff, that the salary to the Plaintiff and the other staff concerned with Ulthruai are being borne by the suit Devasthanam, that the keys concerning the valuables and deities are with the Plaintiff who has come by such possession under strange circumstances would not clothe him with any vested right leading to hereditary trusteeship, that the Plaint is silent regarding instances where the Plaintiff has unfettered control of the Ulthurai administration of the Suit Devasthanam, that even during the period of French rule, the agent of the Plaintiff was only under the control and supervision of the Committee appointed by the French administration from time to time, and that the provisions of the Act which gives absolute power to this Defendant to appoint Board of trustees/Executive Officer/Special Officers to manage and administer the Suit Devasthanam and that this Court may be pleased to dismiss the Suit in limine with costs.

4. The contents contained in the Written Statement filed by the 4th Defendant are as follows :

4(a). The Plaintiff is ill-framed, with rather vague allegations and unsubstantial matters and the Plaintiff is called upon to prove strictly the veracity of the claim, the truth and genuineness of the grievances now ventilated and must further establish whether the Plaintiff has got a right to move this Court for any remedy apart from his right and entitlement to seek the main relief, that the Ulthurai Kattalai clothed with certain powers limited in character and forms part of the temple management for several decades, that the origin is unknown but its existence is certain, that the person heading the Ulthurai Kattalai is a nominee of the Plaintiff, that he is accommodated in the premises belonging to the temple, receives a salary like other employee of the temples and is discharging traditional functional function under the supervision of the Executive Officer, that nobody could question the authority of the Plaintiff to appoint a nominee for the Ulthurai Kattalai and if that is disputed perhaps the declaratory relief may be justified, that the Plaintiff cannot have any say even in the management of the Defendant temple and that asking for a declaration regarding a hereditary office, which was not connected with the Fourth Defendant-Temple Administration is certainly an improper one.

4(b). The French Government did not like to interfere unduly in the management of Religious Institution, that therefore, with an anxiety to avoid clash of sentiments, members of the public were associated in the administration of the temple and therefore, in the Defendant-Institution a Board of Committee was formed, that the person in management of Ulthurai Kattalai was a member of ex-officio, other members were appointed, that there was no rule nor was any regulation to preserve the previous right, the vested right available to a person in management of Ulthurai Kattalai while officiating as a Member of the Committee, and later on the Government exercised powers of supersession of the Committee insisted on right of removal and regulation the conduct of the Committee.

4(c). When the Board of Trustees are superseded all the functions of the Board are transferred to the Special Officer appointed in this behalf who is none other than the Third Defendant herein, that therefore it is clear that having followed the Regulations and functioning under the Act 10 of 1972 it is no longer open to the Plaintiff to look into the past history beyond 1972 and make a claim on that basis for a privilege said to be available prior to that period, that having abided by the regulations from the year 1972 the right, privilege should be looked into in the provisions of the Act and that therefore the Suit is incompetent and the relief is misconceived.

4(d). Neither in the history of this temple nor on the basis of records available, the Plaintiff was ever treated as the Hereditary Trustee of Dharbaranyeswara Swamy Temple at Thirunallar. This right was never available nor had it been so exercised at any point of time prior to the filing of the Suit. And it is very much doubtful whether in the records available even if the Plaintiff-Institution, such a right can be asserted.

4(e). The Plaintiff''s connection with the temple stops with appointing a nominee to Ulthurai Kattalai, that the nominee of the Ulthurai Kattalai has some specified functions, which cannot even be modified, substituted, or new obligations imposed by the Plaintiff-Mutt. That is the reason why the claim made by the Plaintiff is without any foundation either in history or on fact much less there is any legal backing to the claim, that under Act 10 of 1972 which had not been questioned by the Plaintiff at any point of time, having allowed his nominee to act under it, it is no longer open to the Plaintiff to come forward with the so called privilege with the right apart from ignoring the provisions of the Act, that the Plaintiff relies upon a purported saving clause to propound his claim now, that this applies to other contingencies and not to the kind of claim, that the Executive Officer alone is the Chief Administrative Officer with specific responsibility and obligations to discharge, that in the absence of Board of Directors, the functions of the Board are vested on the Third Defendant and that when a remedy is available ignoring Act 10/72, approaching a Court is rather misconceived, that the Executive Officer has got very right to regulate, delimit, assign new work and give greater responsibility for the employees under his control.

4(f). This Defendant emphatically denies the claim made by the Plaintiff in Para 20, that the statement made therein is emphatically repudiated, that the Plaintiff is not the competent person to approach the Court either to preserve the so called integrity of the Ulthurai Kattalai nor can he have any right to rectify mistakes if any in the administration on the other ground that he possesses only a right to nominate to head the person in Ulthurai Kattalai beyond which he has got no other power to control the Ulthurai kattalai itself and that in view of the above the Defendant prays for dismissal of the Suit with exemplary cost.

5. In the reply statement filed by the Plaintiff the following are stated :

5(a). Act 10 of 1972 was enacted for the Administration of the Religious Institutions in Pondicherry State, that it has also pointed out the provisions regarding the saving clause for preserving the ancient customs and rights, and the administration after the Act was carried on preserving all the ancient rights and privileges and the same continued as such, until in the recent past when the 4th Defendant, the Executive Officer, transcended his duties and rights and began to interfere with the Plaintiff''s rights and management particularly in the Ulthurai Administration.

5(b). The Defendants, in their Written Statements, have purposely made unparliamentary highly defamatory and disparaging remarks against the Plaintiff ignoring the Plaintiff''s exalted position in the society and also the exalted claim as a Hereditary Trustee for the administration of the renowned temple, that only the Defendants, who are making a misconception of Ulthruai service and stating the same as a Ulthurai Kattalai without knowing the meaning of the word ''Kattalai'' and that Kattalai is a specific fund or property endowed for some special service in a temple, distinct from one for the general up-keep and maintenance of the temple and it distinguishes the endowment for specific service from general endowment created for the general worship up-keep maintenance of a temple.

5(c). The Ulthurai service, is a very important and sacred duty to be performed in any temple, that it relates mainly to the performance of pooja rituals and other services to the deity and the performance of duties connected with rituals, that it is the reason why, when the foreign rulers attempted to take possession of the Religious Institutions, that though the origin of the hereditary right of the Plaintiff was lost in antiquity yet the Dharmapuram Adheenam had been the Hereditary Trustee of 27 temples of which two temples are situate at Karaikal and that the hereditary right vests as of right and in accordance with the Rules governing succession and the right ''itself'' is property within Article 19(1)(f) of the Constitution of India with or without emoluments attached to it.

5(d). The appointment of officers for secular or revenue side cannot nullify or quash the existing hereditary right for the management, that the Plaintiff was in joint management with the other four appointed Trustees, and now with the Special Officer in the place of other appointed Trustees or Board, the same cannot be considered to be an interruption in the continuous management of the Plaintiff, that the acceptance of the appointment of them and functioning along with the Plaintiff has not taken away the right of the Plaintiff or the Hereditary Trusteeship of the temple, that the Plaintiff was there only in an ''advisory'' capacity and was only a ''consultant'' are made without any basis and in purely imaginary without any substratum of truth in them and that such appointment and filling up the vacancies is hereditarily done by the temple as Hereditary representative of the Plaintiff.

5(e). Since Ulthurai management requires constant vigil, control and supervision over the daily rituals and poojas, from the time of the opening of the temple for Ushakalam, till the closure after Arthjamam, a responsible person well versed with Agamas as well as faith and confidence for preserving and safeguarding valuable jewels, etc., has to be chosen, and in that process an ascetic was the chosen person, who has dedicated himself to the Mutt, that there has been no confiscation or abrogation of the rights of the Plaintiff in Ulthurai Management, either before the Act 10/72 or after that, that everything was done by the

Plaintiff through his representative smoothly, that the Board, the Special Officer were only doing duties in consultation and with the consent of the Plaintiff, that they were only helping the Plaintiff in the management, but when the 4th Defendant began to arrogate for himself powers and duties which he is not entitled and transcend his limits the Plaintiff complained the same to the Government to set the matter right and defined the powers and duties of the 4th Defendant, that the Government has not heeded to the representation and that the Plaintiff has resorted to only the Civil Court for establishing the hereditary right for which there is no provision in the Act.

5(f). The claim of the 4th Defendant that he is the Chief Administrative Officer has been made without any authority and simply to over reach the Plaintiff and to interfere with the Plaintiff''s power, that he has no independent power nor any such power has been conferred under the provisions of the Act, that the allegations contained in the Written Statement of the 1st Defendant that there is misgiving on the part of the Plaintiff and certain, uncertainty are all made without any basis, that Act 10 of 1972 is not extended to all Religious Institutions in the state of Pondicherry and at any rate, no control has been exercised as per the Act in respect of all Religious Institutions and that this Court may be pleased to decree the Suit as prayed for with costs.

6. After analysing the pleadings, evidence and exhibits the learned Additional District Judge, Karaikal has decreed the suit with costs, further recording the following findings :

Velithurai administration of the temple shall be vested exclusively with the Plaintiff.

The Plaintiff has got a right to participate in the velithurai administration of the temple along with the temple executive in the matter of ?

(a) appointment of temple staff

(b) Initiating Disciplinary proceeding against the erring temple staff

(c) preparation of Budget

(d) and in other matters connecting with temple functions and administration.

All the appointment of the temple staffs by the temple executive without the consultation of the Plaintiff''s representative has no legal sanctity and such appointment shall be reviewed afresh with the consultation of the Plaintiff''s representative 1st Defendant is directed to hold an enquiry with regard to the violation of the Court''s order and take suitable action against the erring official 1st Defendant is directed to hold an enquiry with regard to the appointment of temple staff without consultation of the Plaintiffs representative against age old custom and take stern action against the erring official if corrupt practise is detected in such appointment."

7. Aggrieved against the above said Judgment, Defendants 1 to 3 have jointly

filed Appeal in A.S. No. 429 of 1999 and the 4th Defendant has filed a separate Appeal in A.S. No. 426 of 1999. In view of the interconnectivity of the matter this common Judgment is rendered in both the Appeals.

8. Following points have arisen for consideration in these Appeals :

Whether the Plaintiff Adheenakarthar has been dealing with the affairs of the temple in the capacity of Hereditary Trustee?

Whether the Plaintiff has been exercising exclusive powers/rights in internal (Ulthurai) administration alone?

Whether the clauses formulated by the Trial Court and appended to the decree defining the powers of the Plaintiff are in accordance with the law, custom and practise?

To what reliefs are the parties entitled to?

Point Nos. 1 to 4 :

9. Mr. T. Murugesan, the learned Senior Counsel appearing as Government Pleader for Puducherry Government would contend that the Defendants have no objection for the Plaintiff-Adheenam to look after the Ulthurai affairs which would involve the observance of rules of Ahama Sastras and the Plaintiff-Adheenam has to ascertain the qualification and competency of the Archagas to be appointed for the post and the Plaintiff through Kattalai Thambiran has also to exercise effective supervision over the performances whether they are conducting Poojas, etc., as per Ahamas, that insofar as the other management and administration of the temple are concerned, the Defendants alone have got powers and rights to do them and for certain matters they may have consultation with the Plaintiff, that the concept of hereditary trusteeship in the Suit temple as claimed by the Plaintiff is misconceived, that the powers and rights of the Plaintiff Adheenam have been well defined in Ex.A.4 and Ex.B.5, which rights and responsibilities have been saved by Section 32 of the Act and by no stretch of imagination it could be stated that in the capacity of Hereditary Trustee, the Plaintiff can enter into the management and administration of temple, that the decree passed by the Trial Court is not sustainable, that merely the Plaintiff-Kattalai Thambiran has been described as Hereditary Trustee in certain notices/invitations for the celebration of festivals of the temple, they would not indicate the exercise of the said right from time immemorial, that the presence of the signatures of Executive Officer and Special Officer in some communications are with respect only to the internal administration touching the appointment and Disciplinary proceedings of Archagas which have no bearing upon like powers to be exercised over other temple staff and that in the prayer as couched in the Plaint could not be granted and that the term "Hereditary Trustee" is not defined and recognised by the Act.

10. Mr. Satish Parasaran, the learned Counsel appearing for the Appellants in A.S. No. 426 of 1999 for Defendants 3 & 4 in the Suit would submit that the

Plaintiff ambitiously sought for a declaratory decree declaring himself as the Hereditary Trustee with rights for administration of Devasthanam temple subject to the Arrets and Act. However, the Trial Court has proceeded to grant reliefs exclusively vesting the Ulthurai administration of the temple with Plaintiff and further holding that the Plaintiff has a right to participate in Velithurai administration as well in the matters connected to other essential temple functions, by means of which the Trial Court has travelled far beyond the case, that the very prayer sought for by the Plaintiff was to declare it as a Hereditary Trustee with right to administer the temple subject to the Arrets and Act, by means of which the Plaintiff subjected himself to the regulations of the Act and the Arrets and hence the Court below ought to have held that the Plaintiff was estopped from claiming any exclusive rights either in respect of Ulthurai or Velithurai administration of the temple, that the Suit should have been dismissed on the short ground that Sections 24 & 24-A of the Act provided for review and Revision by the Commissioner, that one set of keys of shrines and Sannidhis are in the custody of the representative of the Plaintiff Mutt which is an absolute necessity for proper and efficient administration of the temple particularly when the Thambiran was participating in the daily Poojas and rituals in the temple and that the Trial Court had failed to afford any opportunity to the Defendants before visiting serious penal consequences upon the officials of the temple on certain pre-determined conclusions.

11. Mr. R. Krishnamurthy, the learned Senior Counsel for the Plaintiff would contend that the invitations marked by the Plaintiff would vividly show that the Plaintiff has been enjoying the right of Hereditary Trustee, that the Joint Memo issued by both the Thambiran and Executive Officer and the order of penalty with their signatures would establish that the Plaintiff is also having powers over the Velithurai Administration of the temple, that in Ex.A10, the report of the Pay and Accounts Officer, he acknowledges the right of Plaintiff, that he also oversees the budget proposals, that the Plaintiff plays a vital role in the conduct and religious festivals like Pramothsavam, Kumbabhishekam, etc., that all the Special Officers and Executive Officers subsequent to the 1972 Act understood the position and participated in administration along with Thambiran for nearly 20 years, that ignoring the Act 10 of 1972, saving re-existing rights of the Plaintiff, the then Executive Officer, DW1 attempted to strip off the Plaintiff of his right, that Exs.A4 & B5 would recognise rights of the Plaintiff, that the Arrets issued from 1843 make it clear that for the past 150 years the Thambiran has been the member of Administration Committee as of right and that the findings and conclusions of the Trial Court could not be found fault with.

12. The suit temple, Sri Dharbaranyeswaraswamy Devasthanam is situate in Thirunallar in Karaikal, which is a part of Union Territory of Puducherry is a renowned temple and from the time immemorial the devotees from various parts of the world come, worship especially the shrine of Lord Saturn (Saneeswarar) who is one among the planets believed to govern the destiny of people during specific period in man''s lifetime. Devotees used to take holy dip in the tank

known as "Nala Theertham", attached to the temple for expiation of sins. Dharbaranyeswarar is Lord Siva and the idol is installed in main Sanctum Sanctorum (Karpagraham). The other idols including consort of Lord Siva called as Pranamambika alias Bogamartha Poonmulaiammai are situate around the Sanctum Sanctorum as per Ahama rules. The idol of Lord Saturn is also installed as one among idols. However, it has earned much fame among the devotees. In this temple "Sani Peyarchi" (transit of Saturn in its periodical planetary movement from one zodiac sign to another) is significant one. Whenever the planet Saturn transits from one zodiac sign to another, millions throng this shrine for worship.

13. The Plaintiff-Adheenam claims that the Pontiff (Adheenakarthar), who has been head of the Mutt then and there, has been holding the position of Hereditary Trustee of the temple from time immemorial. There are as many as 27 temples reportedly coming under the control of Dharmapuram Adheenam in which 2 temples are located in Karaikal region and other 25 temples are situate in the territory of Tamil Nadu. Apart from Suit temple, one Yazhmurinadha Swami Temple at Karaikal also comes under the purview of Adheenam. It is stated that the Plaintiff is exercising hereditary rights over the affairs of all the aforementioned Suit temple. Likewise, he is also exercising the powers and rights of Hereditary Trustee in the Suit temple also, contended by the Plaintiff. As per Plaint allegations, the origin of said right is unknown. It is pleaded that the origin of right is lost in antiquity. However, it is further stated that by virtue of Government Orders known as "Arrets" passed by French Government, which was governing the then Pondicherry Union Territory and also by means of epigraphs and by continuous management of the temple for more than 100 years, it could be seen that Plaintiff-Adheenam is sole Hereditary Trustee of the suit temple.

14. Two categories of administrations are found prevailing and continuing in the suit temple. One is ''Ulthurai'' (Internal Administration) which concerns the performance of poojas and related affairs by the Archaga or Gurukal in the temple and supervision of their performances and other Ulthurai servants. Undoubtedly, the Plaintiff-Adheenam is well versed with the intricacies of scriptures. Hence, only they could make sure of and monitor proper chanting of exegeses (critical explanation or interpretation of scriptures). In the notes of arguments of Defendants, the functions of Ulthurai Administration have been enlisted which are as follows :

"Performances of Poojas, timing of Pooja, daily rituals, conducting annual festivals at regular intervals, performance of Kumbabishekam, fixing auspicious time for Kumbabishekam, etc. (only illustrative list not exhaustive).

Ulthurai also includes appointment of staff working in temple, Gurukals, Oduvar, Pooja Assistants, person preserving and handling Pooja materials, Thiruvaparnam including jewels because we have to decide when deity shall adorned with particular jewel, etc., It includes power to take disciplinary action.

Unless these powers are given, religious function cannot be carried out as per Plan and decision of Plaintiff.

It also includes power to have say in budget preparation, if E.O. gives negligible amount for Pooja and rituals, performance of same will get affected."

15. Another category of administration is ''Velithurai''. Velithurai Administration is over all management of other secular affairs of the temple apart from Ulthurai functions.

16. PW2 was erstwhile employee of Suit temple from the year 1964 to 1994. He retired as Manager. In his chief-examination he has described the internal administration as, it is with reference to conduct of poojas from morning to night and also looking after the work of Sivachariars [Gurukals and other Ulthurai servants]. He also adds that the festivals and other important events will be looked after by Kattalai Thambiran. A representative from Plaintiff-Adheenam nominated by the Adheenakarthar who is well-versed with Ahama rules, provided, he is an ascetic remaining always in the temple, that the Thambiran should be well versed in the niceties of Poojas who must be a quite competent ascetic amongst the well trained disciples of Adheenam, that the main Sannathi, other Sannathies and main entrance of the temple would be locked in the night and the keys are kept by Kattalai Thambiran, that they would be placed in the locker in the building where Kattalai Thambiran is residing, that the person who hands over and takes the keys ought to enter the same in the register maintained in Kattalai Madam, that the jewels, valuables and Thiruvabarnam (jewels adorning idols) are used to kept under double lock system, one set of keys will be with Kattalai Thambiran and another set of keys will be with the Executive Officer, PW2 also adds. There is no denial on the part of the Defendants in the cross-examination in this regard. This practise has nothing to do with the functions of the Board, that is to say, out of two sets of keys for Hundials, one set of key is in the possession of Kattali Thambiran and another set is with the Executive Officer.

17. Then and there the French Government had been passing Arrets regulating the functions, rights and privileges enjoyed by the Plaintiff Adheenam and the Temple Authority. The most essential Arrets are Ex.A4 and Ex.B5. The real Application and the features contained in the said Arrets would be judged and discussed in the later part of the discussion, after going through the oral testimonies and exhibits produced by both the parties. It is to be borne in mind that the Government of Pondicherry enacted the Act to provide guidelines for the administration of Hindu Religious Institutions in the Union Territory of Pondicherry and for matters connected thereto. It came to effect on 9.10.1972. Section 2(e) defines "Math" like the Plaintiff. Section 4 contemplates constitution of Board of Trustees to be appointed by the Government and in the absence of or pending the constitution of a Board, it empowers the Government to appoint a Special Officer to perform the functions of the Board. The provision goes thus :

"4(1) Every institution shall be administered by a Board of Trustees which shall consist of five Trustees (hereinafter in this Section referred to as Members) appointed by the Government by Notification in the Official Gazette, out of whom the Government shall nominate a President, Vice-President, Secretary and a Treasurer :

Provided than the Government may, pending the constitution of a Board for any institution, appoint a Special Officer to perform the functions of the Board."

18. The Government shall constitute a Board of Trustees to manage the affairs of the religious institution like suit temple. When the Board is not in existence, the Government would appoint a Special Officer. In the Suit temple, for a long time, concededly, the Board is not in operation and the Special Officer appointed by Government has been discharging the functions of the Board.

19. PW1 is Superintendent of Plaintiff-Adheenam serving as such for about 50 years. He says that in all the temples which were maintained by the Plaintiff-Adheenam, it is exercising right as Hereditary Trustee, that Kattalai Thambiran is permanent representative of Adheenam who looks after the temple Ulthurai Administration, that he has right to preside over the committee appointed by the Government, that Ex.A9 is the Letter from the Pay and Accounts Officer, who enquired about the irregularities in the temple and submitted a report to the Government under copy to Kattalai Thambiran, that Ex.A5 & A6 are the Accounts maintained by the Plaintiff-Adheenam for the years 1917 & 1933 by means of which the balance-sheet was prepared, that Exs.A12 & A.14 would show that the Special Officer has interfered with the internal administration of the Plaintiff-Adheenam, that the invitations/Notices as seen in Exs.A17 to A21 were printed for festivals between the years 1987 and 1990 would show that the Plaintiff-Adheenam was specified as Hereditary Trustee of the temple and that the other records which are appointment orders and the communications from the temple would show that the Plaintiff-Adheenam also participated in the administration of the temple along with 3rd & 4th Defendants. Ex.A12 & Ex.A13 are the office orders issued by the executive officer with reference to the functions coming within the purview of the Plaintiff-Adheenam. They are pertaining to the fixing of timings for Beshkar Ulthurai Maniam and other servants who are connected to Ulthurai and the direction to provide Prasadam to certain employees. These office orders have become the cause of action for the Suit.

20. Exs.A24 & A25 are the Notices dated 17.1.1986 & 13.1.1986 to the Gurukal, who performed Poojas in the form of Show Cause Notice for their reported mis-conduct. Ex.A.26 is the proceedings issued by the Kattalai Thambiran and Special Officer to the erring Gurukals for their alleged irregularities. They were 4 in number and they were imposed penalty of Rs. 100/- each. Exs.A24 to A.26 have been signed by both Kattalai Thambiran as well as Executive Officer/Special Officer. On the strength of these documents, it is argued that the Plaintiff has taken part in the Disciplinary proceedings initiated against the temple staff also.

21. The Executive Officer addressed Ex.A28-Letter in June 1986 to the Plaintiff-Adheenakarthar, requesting to select two competent Archagas and send them to the temple. Along with this exhibit, the permission accorded by the Commissioner for Hindu Religious Institutions, Government of Pondicherry dated 21.5.1986 is also appended. Exs.A29 to A33 are the Appointment Orders of two staff and also permission to a sweeper for her retirement on superannuation. These communications emerged in the years 1992/1993. In these communications both the Thambiran and Executive Officer have signed.

22. DW1 was working as Executive Officer in suit temple between June 1993 and December 1999. He had given instructions for preparation of Written Statement. He says that he had not consulted the Plaintiff in the matter of employment of temple staff, salary for the staff and for preparation of budget and that the duties of Thambiran have been defined in Ex.B5. He admits that Kattalai Thambiran is incharge of duplicate keys of valuable safes and shrines, which are kept in double lock system. DW2 is working as clerk in the Suit temple. He produced Exs.B6. & B7. Ex.B6 is the copy of Sale Deed executed by the Executive Officer of the Suit temple selling temple properties to M/s. Jayaprakash Narayanan Co-operative Spinning Mills Ltd., for Rs. 9,88,200/-. Ex.B7 is also a copy of Sale Deed dated 16.6.1997 executed by the Special Officer of the Suit temple in favour of General Manager, Oil and Natural Gas Corporation Ltd., with respect to certain immovable properties for Rs. 42,21,000/-. With the production of these documents, it is contended by the Defendants that without reference to the Plaintiff-Adheenam, the temple has dealt with the temple properties after getting sanction from the Commissioner of Hindu Religious Institutions. Ex.B.7 has been executed after filing of the Suit.

23. This Court heard the rival submissions with rapt attention and has gone through the exhibits more particularly the Arrets concerned and relevant provisions of the Act. In the considered view of this Court Ex.A4 & Ex.B5 are the Arrets passed after thoroughly considering the rights of both Plaintiff and Defendants. The essential, operative and important features of both the Arrets, which are relevant to the subject are as follows :

In Ex.A.4, the following Articles are available :

"ORDER:

Article 01. The order mentioned herein above of 1918 June 29 is applicable for the temple of Tirnoular under the conditions expressed hereinafter.

Articles 02. The Board of Administration of the temple comprises of the Tambirane, President by right and four members by the Governor. The latter are chosen among the brahmin inhabitants of Karikal, aged from 25 years or less, enjoying their civil rights, knowing to read and write in the Tamil Language, and capable, according to the customs and usages of the Indians, to participate in the religious ceremonies.

The decisions bearing on the appointing of administrators indicate the functions which each of them is called on to fulfil in the heart of the committee.

Article 03. The Members of the Committee establish the budget and accounts, manage the property, ensure the realisation and the regular use of the revenue of the temple.

They cannot in any case interfere with the internal administration of the temple which is the exclusive right of the Tambirane. The latter is charged, within the limits of the budgetary provisions, with the celebration of the periodical religious ceremonies, with the recruitment and the discipline of the personnel serving at the temple."

In Ex.B5 the clause modifying Paragraph 02 of Article 03 in Ex.A.4 goes thus :

"ORDER

Article 01. The dispositions of the Paragraph 02 of the Article 03 of the Order mentioned herein above, dated 1929 May 11, are repealed and are replaced by the following :

The Tambirane ensures the internal administration of the temple along with the other members of the Administrative Board.

The Members of the said Board are charged, within the limits of the budgetary predictions, with the celebration of the periodical religious ceremonies, with the recruitment and with the discipline of the personnel serving in the temple."

24. Para 2 of Article 03 would confer exclusive right to Thambiran with the internal administration of the temple of course with members of the Board, and his rights are recognised with regard to ensuring the celebration of the periodical religious ceremonies within the limits of the budgetary provisions and recruitment and the Disciplinary proceedings of the personnel serving at the temple.

25. As far as first part in Article 03 is concerned, preparation of budget provisions, accounts, managing the property, realisation of revenue of the temple and their use are with the members of the committee which shows that the Thambiran could not exercise exclusively any right or power over the functions or duties in First Para of Article 03.

26. The 2nd Para of Article 03 in Ex.A4 has been repealed, by the Arret Ex.B5 modifying to the effect that the Thambiran shall look after internal administration of the temple along with the other members of the Administrative Board. The Board of Members on the whole are empowered to celebrate periodical religious celebrations within the limits of the budgetary provisions and they will also have control over the recruitment and the discipline of the personnel serving in the temple.

27. When I intend to gather intent of the Government, it has divulged the

following features as to the rights and responsibilities of the Administrative Board, which includes Thambiran as the President by his right :

1. Administrative Board of the temple comprises Thambiran as President by right and other Board members to be appointed by the Government.

2. The Members of the Committee shall take care of budgetary provisions and accounts, management of the property and realisation and regular use of the revenue of the temple.

3. As far as the internal administration of the temple is concerned, the Thambiran shall have control over it along with other members of the Board.

4. All the Members of the Administrative Board are responsible for the celebration of periodical religious ceremonies, with the recruitment and with the discipline of the personnel serving in the temple.

28. The learned Senior Counsel appearing for the Appellants would contend that as far as Ulthurai Administration is concerned, the Thambiran may exercise right over it. In the above said circumstances, the decree to be passed, in the Suit shall contain the above said clauses, re-stating the rights and responsibilities of both Plaintiff and the Defendants subject to the directions in the Arrets as saved by Section 32 of the Act. No material is placed to show that the Plaintiff has been enjoying the right of Hereditary Trustee from the time immemorial. Worth saying it is that none of the Arret has spoken about Plaintiff''s alleged hereditary trusteeship right. The invitations showing the Plaintiff as Hereditary Trustee are all recent in origin which came to existence just two decades prior to the institution of the Suit. Hence, in the back drop of all the circumstances, this Court concludes that the declaration as prayed for by the Plaintiff as regards Hereditary Trustee could not be granted. There could be no consequent permanent injunction either. The rights, powers, privileges and responsibilities as enlisted by the Trial Court are not sustainable. They have to be modified in view of the above said factual situation. The Judgment and Decree of the Trial Court are set aside. The Suit deserves to be dismissed. However, for smooth administration of the Suit temple, this Court has re-stated the above said points which shall be incorporated as in the decree of the Suit. The Appeals deserve to be allowed. These points are answered as indicated above.

29. In fine, the Appeals in A.S. Nos. 426 & 429 of 1999 are allowed without costs. The Suit in O.S. No. 17 of 1995 on the file of the Additional District Judge, Karaikal is dismissed without costs. However for the smooth running of the Administration of the temple without any friction between both the parties, their rights, privileges, duties and responsibilities are re-stated in terms of the Arrets Ex.A4 & Ex.B5 and the provisions of Act 10 of 1972 and of customs as follows :

1. Administrative Board of the temple shall comprise Thambiran as President by right and other Board Members to be appointed by the Government.

2. The Members of the Committee shall take care of budgetary provisions and

accounts, management of the property and realisation and regular use of the revenue of the temple. In the absence of Board, the Special Officer shall have consultation regarding these matters with Kattalai Thambiran.

3. As far as the internal administration of the temple is concerned, the Thambiran shall have control over it along with other Members of the Board.

4. All the Members of the Administrative Board are responsible for the celebration of periodical religious ceremonies, with the recruitment and with the discipline of the personnel serving in the temple. In the absence of Board, the Special Officer shall have consultation regarding these matters with Kattalai Thambiran.

5. The practise of keeping one set of keys for shrines, safes of valuables and Hundials by Kattalai Thambiran shall continue.

6. The Administrative Board shall look after budgetary provisions, accounts, manage the properties, realisation and regular use of revenue of the temple. In the absence of Board, the Special Officer shall have consultation regarding these matters with Kattalai Thambiran.

7. Members of the Board are responsible for celebration of periodical religious ceremonies. In the absence of Board, the Special Officer shall conduct them with consultation of Kattalai Thambiran.

