

BEFORE THE COMMISSIONER, H.R. & C.E.ADMN.DEPARTMENT, CHENNAI-34.

Friday the 19th day of August, Two thousand and Sixteen.

Present: Dr.M.Veera Shanmugha Moni,
Commissioner.

A.P. 3 and 4/2016 D2

Between

1. V.V.R.Venkatachallam
2. V.Hamsavalli
3. S.Sasirekha
4. R.Vijayalakshmi
5. K.A.R.Ravichandran
6. R.A.V.Arumugam
7. V.V.Rajendran
8. R.Nalini
9. R.V.Sivakumar
10. V.Dhandapani Ayya

...Appellants in A.P.3/2016

...Appellant in A.P.4/2016

And

1. The Joint Commissioner,
HR&CE Admn.Department, Madurai.
2. The Fit person/ Executive Officer,
Arulmigu Dhandayuthapaniswamy
Temple, Palani, Dindigul.

.... Respondents in both
Appeal Petitions.

In the matter of Arulmigu Dhandayuthapaniswamy Mutt,
Palani, Dindigul.

The above Appeal Petitions filed under Section 69(1) of the Tamil Nadu H.R. & C.E. Act, 1959 (Tamil Nadu Act 22 of 1959) against the order dated 13.11.2015 of the Joint Commissioner, Madurai in dismissing the O.A.No.13/2002 passed under Section 63(a) of the Act.

Common Annexure to Order in R.Dis.A.P.3 and 4 /2016 D2
dated: 19.08.2016

The above Appeal Petitions came up for final hearing before me on 5.8.2016 in the presence of Thiru.N.Sathyamoorthi Counsel for the appellants, M/s.R.Karthikeyan, Counsel for the 2nd respondent. Upon hearing their arguments and having perused the connected records and the matter having stood over for consideration till this day, the following order is passed.

ORDER

The above appeal petition filed under Section 69(1) of the Act against the order dated 13.11.2015 passed by the Joint Commissioner, Madurai in O.A.13/2002 filed under Section 63(a) of the Act.

2. The appellants contended that the appellant in A.P.4/2016 has filed the petition under Section 63(a) of the HR&CE Act 22/1959 for a declaration that Sri Dhanadpani Swamigal Madam situated in Adivaram, Palani in T.S.No.998 and T.S.999 measuring about 1 Acre and 35 cents is not a mutt as defined under Section 6(13) of the Act and declare that it is a private mutt not coming under provision of HR&CE Act as contemplated under Section 63(a) of the Act. The 1st respondent while passing the impugned order has framed 3 issues which is as follows:

1.இந்த மனுவை தாக்கல் செய்வதற்கு மனுதாரர் திரு.தண்டபாணி அய்யாவிடமிருந்து உரிமை உள்ளதா? 2. பழனி அடிவாரம் T.S.No.998 and T.S.999 இல் கட்டுப்பட்ட 1 ஏக்கர் 35 சென்டில் உள்ள தண்டபாணி சாமிகள் மடம் ஒரு பொது சமய நிறுவனமா? 3. பழனி அடிவாரம் T.S.No.998 and T.S.999 1 ஏக்கர் 35 சென்டில் உள்ள தண்டபாணி சாமிகள் மடம் இந்து அறநிலைய துறை சட்டப்பிரிவு 63(a)-ன் கீழ் தனியார் மடம் என்று விளம்புகை செய்யத்தக்கதா?. **The findings of 1st respondent in respect of issue No.1 of the impugned order is not just and correct. The 1st respondent has stated that the appellant and the legal heirs of kuppusamy Maniakarar have sold 1 Acre and 35 cents to V.V.R.Venkatachallam and his family members. Further the said property has been handed over to the said V.V.R.Venkatachallam and his family members. Therefore the petitioner is not in possession of the said property. Neither the 1st respondent, nor the 2nd respondent have taken any steps to implead the said V.V.R.Venkatachallam and his family members to be the party of the said proceedings. Without deciding the main issue whether the said Mutt is a private Mutt or not? and whether it is attracted the provisions of the HR&CE Act or not?, the first respondent ought to have come to a conclusion that the appellant herein**

has no locus standi to file the petition under Section 63(a). The 1st respondent has not property understood the tenor of the basic document தர்மசாஸனம் dated 26.4.1888 which deals with the property in question was executed by one Kuppusamy Maniakarar to Murugadass Ayya at Dhandapani Swamigal who is a devotee of Lord Muruga and the founder of the said Mutt. If a careful reading the said deed “26.4.1888 பழனி செந்தில் நாயகம் பிள்ளை அவர்களின் குமாரர் முருகுதாசு என்று விளங்குகின்ற தண்டபாணி சுவாமிகளுக்கு பழனியாண்டி மனியக்காரர் குமாரர் முன்சீப் வேலை செய்யும் ஜீவனமுள்ள குப்புசாமி மனியக்காரர் எழுதிக் கொடுத்த தர்ம சாசனம்----- அடியில் கண்ட தோட்ட நிலத்தில் தாங்கள் கட்டியிருக்கிற மடத்தின் தர்மத்திற்காக மேற்படி அடியில் கண்ட ரூ.100/- பொறுமானமான தோட்டம் நிலத்தையும் அதிலிருக்கிற விருச்ச சாதிகள் சகிதமாய் தங்கள் வசம் விட்டிருப்பதை மேற்படி மடத்தின் தர்மத்திற்காக மேற்படி நிலத்தில் வேண்டி பயிர் செய்து கொண்டு தாங்களும் தங்களுடைய சிஷ்யர்களுமாக மேற்படி நிலத்தின் கிஸ்தியை சர்க்காருக்கு செலுத்திக்கொண்டும் பயிர் செய்து கொள்ளவும் மேற்படி நிலத்தை பொருத்து எனக்காவது என் வாரிசுகளுக்காவது, தங்களுக்காவது தங்கள் வாரிசுகளுக்காவது பாத்தியமில்லை என்று எழுதிக்கொடுத்த தர்மசாசனம்”. **By reading the contention of the said deed one has to understand that it is a matter between the two parties mentioned therein. It has to be stated herein that there is no other condition was specified in the said deed. When there is a no other specific condition against the parties. Further the said 1st respondent has also stated in the impugned order at Page No.5 which is as follows:** “மனுச் சொத்து சம்மந்தமாக வண்ணச்சரபம் அருள்மிகு தண்டபாணி சுவாமிகள் மடத்தின் தலைவர் என்ற முறையில் தி.சே.முருகுதாஸ் அய்யா (சுவாமி) கோவை நகர டாக்டர் செங்காளியப்ப கவுண்டர் மகனும் டாக்டர் ஷண்முகசுந்தரம் மனைவியுமான சுசீலா என்பவருக்கு 7.12.1966 அன்று ஒரு உரிமை பத்திரம் எழுதி கொடுத்துள்ளார்” **By reading the statements on the 1st respondent in the said order he has accepted that the Madathipathi Murugadass Ayyaswamy has got a right a execute a deed viz., உரிமை பத்திரம்”.** **The 1st respondent ought to have seen that in the litigation between Senthil**

Nayagam Pillai, the then Dharma Kartha of Murugadass swamigal @Dhandapaniswamigal Trust and one Chellappa pillai in the year 1940 on the file of Sub Judge, Dindigul, the Learned Sub Judge has elaborately discussed about the tenor of the said Dharma Saasanam and has taken the view which is as follows: "It has been incorporated at Page No.7 of the said Judgment as per Ex 11 the beneficiaries are both Swamy and his disciples and hence if it is considered to be a Trust it can be called only a Private Trust. In fact the Learned Advocate for the defendants stressed only the question that it is a pure Deed of Gift and not that it was public trust created by means of the document, beneficiaries are very limited and as such, I have to accept the plaintiffs case that it is only a Private Trust". Therefore the said judgment has clearly exposes the character of Institution as Dhandapani Swamigal Madam is only a Private Trust. This order of the Sub Court, Dindigul passed in O.S.1 of 1940 has become final, since no appeal was filed nor did any one challenge that order. Admittedly the two suits were between two private individuals. In one case viz., O.S.No.1/1940 the 1st respondent has stated in the impugned order that the findings of the said Judgment will not binding the others except the two parties of the suit. The same authority viz., the 1st respondent has taken a contra view and relied upon the Commissioner's report in O.S.No.307 of 1981. It is not justified on the part of 1st respondent to blow hot and cold, while deciding the issues involved in the said O.A. Therefore the findings of the 1st respondent in this regard is not sustainable in law and liable to be set aside by the Hon'ble Court. The 1st respondent ought to have seen that the 2nd respondent has not let in evidence as DW1 in the trial of the said O.A. In the impugned order it has been stated as follows: "மனுதாரர் தீர்ப்பு சான்றவனமாக மா.சா.1 முதல் 5 வரை தாக்கல் செய்துள்ளார். தன்னையும் ஒரு சாட்சியாக விசாரித்துள்ளார் மற்றும் பிற சாட்சிகளையும் முன்னிலைபடுத்தியுள்ளார்" From the above statement shown in the impugned order it can be inferred that the

petitioner and his witnesses were alone examined in the trial of the said Original Application. But the 2nd respondent has not been examined and he has not deposed before the first respondent and he has not marked any documents. For proper adjudication of the said Original Application. It is absolutely necessary as per the civil procedure code which is also applicable and followed in the Trial proceedings before the quasi-Judicial authorities of HR&CE Department. When it is not followed during the course of trial conducted before the 1st respondent in the above said Original Application, the same is not sustainable in law. The 1st respondent ought to have seen that in the plaint in O.S.No.346/2000 the 2nd respondent has stated as follows: “1941ம் வருஷத்தில் தனியார் டிரஸ்ட்டாக இருந்த வழக்கு சொத்து காலப்போக்கில் கோவில் பொதுமக்கள் தங்கியும் வழிப்பட்டு வந்த பொது டிரஸ்ட்டாக உருமாரிவிட்டது.” The 2nd respondent himself admitted that it was private trust and subsequently it has been changed as Public Trust. Therefore the 2nd respondent himself admitted the findings of the Learned Sub Judge in the Judgment passed in O.S.No.1/1940. The Private Trust cannot be changed into Public Trust as stated by the 2nd respondent. The 1st respondent ought to have seen that the founder of the said Madam was Murugadoss swamy @ Dhandapaniswamy. After his death his son Selvanayagam Pillai became the Madathipathi of the said Madam, and it has been found in the cause title of the O.S.No.1/1940 Sub Court, Dindigul. After his death his son Murugadoss Swamigal, son of Selvanayagam Pillai became the Trustee of the Madam. After his death, his son the appellant became the Madathipathi of the said Madam. While so, the 1st respondent has stated in the impugned order”. மனுதாரர் தான் தான் மடாதிபதி என்பதற்கு எவ்வித ஆவணமும் முன்னிலைப்படுத்தவில்லை. மேற்படி மடத்திற்கு எவ்வாறு மடாதிபதிகள் நியமிக்கப்படுவார்கள்? தான் எவ்வாறு மடாதிபதியாக நியமிக்கப்பட்டேன் என்பதற்கான எந்தவித ஆவணமும் தாக்கல் செய்யவில்லை”. The 1st respondent failed to consider that the institute was heritable and the right of heirs upheld in

the subsequent suit. The factum of the private character is proved by records. This aspect has not been properly considered by the 1st respondent. The Department has issued a notice on 7.2.1981 to the then Madathipathi and after the reply no further action was taken by the department which goes to show that the department has decided that it is only a private family trust and thereby dropped their proceedings. The original founder was not an ascetic, but Grahastar and therefore he was neither a saint nor Sanyasi but only a strong devotee a Lord Muruga. The said Mutt is a private Trust and not a Kattalai or Endowment. Therefore Section 6(18), 6(19) and 6(20) of the Act are not applicable to this case. The Trust never comes under the HR&CE Department. It is not a Religious charity and not the endowment. The Mutt is question being a very old structure made of mud had automatically fallen down due to heavy rain and the pressure. The 1st respondent ought to have seen that there is no income for the properties and unable to maintain the Mutt without any sources of income and the appellant could not save the property from the encroacher, rowdy elements and some of the political persons and other rival groups, he and the heirs of Kuppusamy Maniakarar have sold the property to the 3rd parties. The heirs of the Kuppusamy Maniakarar has been added as parties in the sale proceedings to avoid any further litigation in respect of the said property. Being a private trust the appellant has got a right to sell the property and the HR&CE Department have no right to interfere in the Private Trust which is not coming under the purview of HR&CE Act. The revenue records shows the names of the purchasers as the owners of the said property and they are paying all necessary taxes to authorities concerned etc.

3. In the counter affidavit the 2nd respondent has stated that the original founder of the Mutt was one Murugadass Ayya@ Dhandapani Swamigal. It is stated that from the age of six, he exhibited precious religious inclination and was considered to be a very holy man, very

religious and was a great devotee of Lord Muruga and his philosophy revolved around Lord Muruga. He had renounced the world and had severed his connection with the members of his natural family. He had a large number of disciples and settled at Palani. He is reputed to have composed nearly a lakh of holy songs on Lord Muruga. He had established the Mutt at Palani only for carrying on his work of spreading his philosophy, giving religious instructions and thereby benefiting large number of disciples gathered from public. The members of the public had been participating in the Vel pooja and in the worship at the Dhandayuthapani Swamy Temple in the property. The property in which the Mutt is situate was originally purchased by one Kuppusamy maniyakarar from Veerapathirammal and the same has been endowed under Registered Dharmasasanam deed by the above Kuppusamy Maniyakarar to Murugadasa Pillai on account of devotions on his religious activities vide a Registered Trust deed dated 26.4.1988. One of the devotees started constructing rooms at the property and he died left it incomplete, after which his daughter Smt.Suseela Shanmugasundaram completed the construction work in the place of her father. It is to be noted that there is a power deed executed by Murugadass Ayya to one Smt. Suseela Shanmugasundaram, who completed the construction made in the property, which reveals that the said mutt and rooms are dedicated to the devotees coming to Palani temple, to stay there for rent, for a period not exceeding one week and the income so derived was for the utilization and maintenance of the Mutt. After the demise of Murugadasa Swamigal, the appellant Dhandapani Ayya looked after the affairs of the Mutt. The appellant suppressed the above Dharmasasanam deed and got a judgment and decree in O.S.No.1/40 before the Sub-Court, Dindigul, that the Mutt is a private trust, peculiarly neither the HR&CE Department nor the officials of the temple were parties in the suit. The appellant has un-authorizedly sold the property of about an extent of 1.35 acres to 14 persons

including the appellants in A.P.4/2016 during the month of January and April 1999 and the purchasers demolished the pre-existing structures, hence the Mutt is not existing now, which is evident from the Advocate Commissioner's report filed in O.S.346/1999, District Munsif Court, Palani, which is a suit filed by the Executive Officer of Palani Temple, against the demolition of the buildings in the capacity of fit person. At present the property is vested with the purchaser V.V.R.Venkatachalam the 1st appellant in Appeal No.3/2016 and the appellant, A.P.No.4/2016, Dhandapani Ayya has no connection to the property. In order to legalize his sale, in favour of 14 persons, the appellant contends that the Mutt is a private trust and he is authorized to execute the sale. In such a situation the locus standi of the appellant Dhandapani Ayya in the capacity of the Madathipathi is questionable in law, when he is not the owner of the Trust property in question and there is no mutt in that property as on date. It is to be noted that in the trust deed dated 26.4.1888, the property is endowed to the Mutt and it is specifically mentioned in the said deed that neither the donor in the deed namely Kuppusamy Maniakarar or his legal heirs and the donee Dhandapani Swamigal or his legal heirs could have claim over the property. Under such circumstances, the property being donated for public purpose by the donor the appellant Dhandapani Ayya who is not even a Madathipathi cannot claim any personal right over the property nor could alienate the same. The power deed dated 21.5.1888 executed by Murugadasa swamigal in favour of Chockalingam pillai, it was only a deed empowering Chockalingam Pillai to look after the property while Dhandapani Swamigal was away on holy trip and also to continue the works started by Dhandapani Swamigal which was done after the death of Dhandapani Swamigal by the above said Chockalingam Pillai. The findings rendered in a suit in O.S.1/1940 filed by the then Dharmakartha Murugadas Swamiga, in respect of the nature of the Trust is a private Trust is concerned, it is contended that the question that

arose for discussion was in respect of vacating and handing over possession of the properties and not the nature of the Trust on the Mutt and that the findings in the said suit would operate only between the parties to the said suit and it was not a finding applicable to the Trust of the Mutt in general about the nature of the Mutt. There was no income for the properties and the Mutt was unable to maintain the same and could not save the property from encroachers are all defined as false. The appellant without any documents or records in his name has high handedly sold the property to the appellants in A.P.No.3/2016 who seem to have created records that they are paid necessary taxes to the authorities which would not give any right to the illegal purchasers. The appellants in A.P.3/2016 are only subsequent purchasers from the appellant in A.P.4/2016 and they can't claim any rights as the Madathipathi of the Mutt and therefore their appeal are also liable to be dismissed as being baseless and devoid of merits. The real intention of the original donor was to promote the religious activities of Dhandayuthapani Swamikal and the subsequent trustees had put up constructions in the Mutt for the betterment of the devotees coming to the temple by foot and therefore the entire object and reasons of the erstwhile trustees of the Mutt were only to see that the property of the Mutt cannot be treated as a private trust not be alienated to land grabbing sharks.

4. I heard Thiru.N.Sathiyamoorthi, Counsel for the appellants in both the appeal petitions, M/s.R.Karthikeyan, Counsel for the 2nd respondent and perused the relevant records.

5. The appellants in A.P.3/2016 had filed I.A.20/2003 before the Joint Commissioner to implead them as respondent in O.A.13/2002 filed by the appellant in A.P.4/2016. The said petition was dismissed by the Joint Commissioner by order dated 10.12.2003. They did not choose to file any appeal against the said order. Now they have filed this appeal petition against the final order passed in the said Original Application by

suppressing the above facts. Hence they have no locus standi to maintain the appeal petition. Accordingly the appeal petition in A.P. 3/2016 is hereby dismissed.

6. The counsel for the appellant has contended that

(i) In O.S.1/1940 it was held as private Trust

(ii) The properties were sold even before taking over of the Mutt by the department.

7. The counsel for the 2nd respondent has contended that

(i) The order passed in O.S.1/1940 would not bind the department, as the department is not a party to the said proceedings.

(ii) As per the recital of Dharma Sasanam, the properties are inalienable.

(iii) There is a temple inside the Mutt.

(iv) The Mutt was intended for the stay of the devotees visiting the temple.

7. In the O.A.3/2002, the Joint Commissioner has framed 3 issues. The Joint Commissioner has held the suit institution as public Mutt by dismissing the Original Application filed by the appellant after elaborate discussion supported by evidences.

8. The suit property is a Mutt founded by one Murugadasa alias Dhandapani Swamigal. One Kuppusamy Maniyakkarrar endowed property in favour of Mutt vide Registered Dharmasasanam dated 26.4.1888. In the said deed it was clearly stated that “.....மேற்படி நிலத்தை பராதீனப்படுத்த எனக்காவது, என் வாரிகளுக்காவது, தங்களுக்காவது, தங்கள் வாரிகளுக்காவது பாத்தியம் இல்லை என்று என்னால் எழுதிக்கொடுத்த தர்மசாசனம்” But against the tenor of Dharmasasanam, the appellant had sold the property to 14 persons including the appellants in A.P.3/2016.

8. The appellant mainly relied upon the Judgment made in O.S.1/1940. In which it was observed “*Ex II is styled as Dharma Sasanam which may be translated as a gift deed or a deed of*

charity. After stating how he got title to the property, the executants (Maniagaran) says that he hands over possession of one acre 35 cents of land for the purpose of dharma or charity of the Mutt which has been built on the land by the Swami himself. It authorizes the Swami and his disciples to cultivate the land for the matam charity. It enjoins the swami to pay kist and to enjoy the land for ever. It restricts the right of alienation both the executant himself and by the swami and his disciples and heirs. The argument on the side of the plaintiff is that as the matam charity had already been established even before this document and that, as the property was handed over to the swami and his disciples for the charity purposes, it must be construed as a trust deed. The defendants contention is that, as under this document no specific charitable purpose is mentioned, it is a mere gift deed and nothing else. Plaintiffs evidence is that the Mutt was established for doing velayuda Pooja, as a place for lecturing and giving instructions to his disciples, and also as a place of feeding the disciples. It is true that this evidence is not of much value as interpreting the mind of the swami when the matam was built, for he must have been a baby in arms at the time. But, added to the other evidence and the admission in the case, we have to accept it to be substantially correct. Defendant's side admits that the swami was a Guru under in whom disciples learnt religious lessons, defendant's grand father, chockalingam, himself being one of the ardent disciples. Ramanandaswami of Coimbatore, a great sanyasi and author of a religious treatise, is a disciple of the swami. Several other disciples, including PW 1 and 2 swears that the swami was doing pooja for the vel in the Mutt. EX C1 is a letter by the swami to Chockalingam in which he requests the latter to perform visagam and Maheswara Pooja (otherwise called Guru Pooja) according to his ability. We see from Ex.WW (reply notice

given by the defendant) that, besides offering worship to the swami's photo, pooja for the vel also being performed in the Mutt. Vel is the emblem of Lord Subramania, the reigning deity in the palani temple. The Learned advocate for the defendant elicited in the cross examination of PW1 that, when a disciple is initiated in the mantram called shadakshram, the Guru gives him Vel. I do not see how this is detrimental to plaintiffs case. It is to be noted that ExII recognize that the Mutt was already existing, having been built by the swami and that is specifically denies right of alienation both to the executants and the executes. Hence, from these circumstances, we can gather that a Mutt charity was already existing and that the property was endowed to this charity. The mere non-mention of the purpose of the charity, cannot make the documents a private gift even though P.W.1 and 2 in their evidence call it gift”.

So, it is clear that the Mutt was inexistence even before the endowment of the said property, pooja also performed to the Vel in the Mutt.

9. Though in the said Judgment, it was held that it is only a private Trust on the ground that the beneficiary are very limited, subsequent developments made in the said Mutt has to be considered to decide the nature of the Mutt. In the power deed executed by Murugadasa Ayya to one Smt. Suseela Shanmugha Sundaram, it was stated as follows:

“மதுரை மாவட்டம், பழனி தாலுகா, பழனி அடிவாரம் வண்ணச்சரபம் அருள்மிகு தண்டாயுதபாணி சுவாமிகள் மடத்தைச் சேர்ந்த அடியிற்கண்ட இடத்தில் அருள்மிகு தண்டாயுதபாணி சுவாமிகள் மாணவர் பரம்பரையினரான, கோவை மாவட்டம், சிரவணபுரம் கௌமார மடாலயத்தில் தலைவர் தவத்திரு.சுந்தரம் சுவாமிகள் விருப்பத்திற்கிணங்க தங்கள் தந்தையார் ஸ்ரீதண்டபாணி கடவுளுக்கு ஒரு திருக்கோயில் நிறுவவும், பழனிக்கு வழிபடவரும் அன்பர்கள் தங்குவதற்குத் தன் மனைவியின் ரூபகார்த்தமாகக் கட்டிடம்

கட்டவும் எண்ணிய காரணத்தினால் நான்கு அறைகளும் ஸ்ரீதண்டபாணி கடவுள் திருவுரு அமைந்த கோயிலும், கட்டத் தொடங்கினார்கள். இந்நிகழ்ச்சி முடிவதற்குள் அவர்கள் முருகனடி சேர்ந்தார்கள். அதன் பிறகு அவர்களால் தொடங்கப்பெற்ற அப்பணியைத் தாங்கள் தொடர்ந்து கட்டி நிறைவு செய்துள்ளீர்கள். இந்த மடத்தில் அருள்மிகு தண்டாயுதபாணி சுவாமிகள் செய்து வந்த நிலையான வேற் பூஜையும், ஸ்ரீதண்டாணிக் கடவுளுக்குரிய வழிபாடும் நன்கு நடைபெற யாதும் எனக்குப் பிறகுவரும் மடாலய தலைவர்களும் நல்ல முறையில் ஏற்பாடு செய்து வருவோம். இதன் அடியிற்கண்ட நான்கு அறைகள் கொண்ட கட்டிடம் 1. மத்திய உறால் 2. ஸ்ரீதண்டபாணிக் கோயில் 3. ஆகிய கட்டிடங்களைக் கட்டிக் கொடுத்ததற்குப் பிரதி பிரயோஜனமாக 1வது லக்கமிட்டட கட்டிடங்களைப் பொறுத்து இதனடியிற் கண்ட பாத்தியங்களைக் கொடுத்திருக்கிறேன். மேற்கண்ட 1 லக்கமிட்ட கட்டிடங்களில் உங்கள் குடும்பத்தினரோ, உறவினர்களோ, நண்பர்களோ பழனிக்கு வரும் காலத்தில் தங்கிக்கொள்ள பாத்தியமுண்டு. மேலே சொல்லியபடி உங்கள் குடும்பத்தார் வந்து தங்கும் அறைகள் போக மற்ற அறைகளை நாட்கணக்கில் வாடகைக்குக் கொடுத்து வரும் வாடகையைக் கொண்டு மேற்படி ஸ்ரீதண்டபாணிக் கடவுள் திருக்கோயிலில் நிரந்தரமாகத் தின பூஜை அன்ன நைவேத்தியம், விளக்கு முதலியன வைத்து பராமரித்து வருவேன்.

இதனடியிற் கண்ட கட்டிடங்களைப் பழனிக்கு யாத்திரையாக வரும் அடியவர்கள் ஒரு வாரத்திற்கு மேற்படாத நாட்கணக்கில் தங்குவதற்கு மட்டும் பயன்படுத்த லாமேயன்றி மற்றபடி குடியிருப்புக்கோ, மாத வாடகை, வருட வாடகைக்கோ, கொடுப்பதில்லை. கோயில் பராமரிப்பு, கட்டிடங்களின் ரிப்பேர் செலவு இவைகள் போக தொகை மிச்சமிருந்தால், அஃது அருள்மிகு தண்டபாணிசுவாமிகள் மடத்திற்குப் பாத்தியமாகும்.”

It is evident from the above recitals the property was intended for the use of the devotees visiting to the Palani temple.

10. Even in the Advocate Commissioner's report filed in O.S.346/1999, DMC Palani, it was reported that there was a temple and a Hundial. Further in the order dated 15.3.2002 made in W.P.13196/1999 filed by the appellant herein challenging the appointment of fit person, the Hon'ble High Court has observed that “..... All these factors clearly show that existence of Dhandapaniswamy

Temple and Lord Muruga's status in the institution in question, hence the contention of Mr.W.C.Thiruvengadam with reference to the above referred to be rejected. As a matter of fact, with reference to the specific averments regarding temple is being demolished and alienation of the immovable properties etc., the petitioner has not filed reply affidavit controverting those specific averments. Apart from this, as rightly observed, after the passing of the Tamil Nadu Act 22/1959, it is for the petitioner to get a declaration under the provisions of the Act. Admittedly, no such order or effort was taken in exclusion of the provisions of the Act".

All the above facts will clearly establish that there was a temple inside the Mutt which was worshipped by the public.

11. The appellants counsel contended that the properties were sold even before taking over by the department. As the appellants had acted against the intention of testator and sold the property that compels the department to intervene in the affairs of the Mutt in order to safeguard the properties of the Mutt. The appellant himself admits that the building constructed in the property was demolished by the subsequent purchasers. The counsel for the appellant relied upon the judgment passed by this forum in another case. In the said case, the temple was not dedicated to the General public and it is not used as a place of public religious worship by the Hindu community as of right. But in the case of the appellant, the founder of the Mutt had used the Mutt to propagate his philosophy, giving religious discourses to the disciples and also performed pooja to the Vel kept in the Mutt. Further, the building constructed in the said land was intended for the stay of devotees visiting the Palani temple. Further, as contended by the respondents, the suit in O.S.1/1940 was not for deciding the character of the Mutt but recovery of possession of the property only. Therefore, it is clear that the Mutt is established for the benefit of the devotees who visit the temple and therefore the Mutt is public in nature.

Therefore for the foregoing reasons stated supra, I find no reasons to interfere with the impugned order and it is liable to be confirmed. Accordingly the order dated 13.11.2015 of the Joint Commissioner, Madurai made in O.A.13/2002 is hereby confirmed and the appeal petition is dismissed as devoid of merit.

/typed to dictation/

**Sd./- M.Veera Shanmugha Moni
Commissioner**

/t.c.f.b.o./

Superintendent