

**DALAM MAHKAMAH RAYUAN MALAYSIA, PUTRAJAYA
(BIDANGKUASA RAYUAN)
RAYUAN SIVIL NO. P-01(NCVC)(A)-279-05/2021**

ANTARA

SEKAR A/L KANDASAMY

**[NO. K/P: 600201-08-5741] PENERUSI KUIL
SERI MANGALANAYAGI AMMAN BUKIT
TENGAH, SEBERANG PERAI TENGAH,
JALAN BUKIT TENGAH, 14000, BUKIT
MERTAJAM, PULAU PINANG [NO.
PENDAFTARAN PPM-006-07-02111982] DAN
JUGA BAGI AHLI-AHLI PERTUBUHAN
TERSEBUT**

... PERAYU

DAN

- 1. LEMBAGA WAKAF HINDU PULAU
PINANG**
- 2. SURENTHARAN A/L RAMADAS,
SETIAUSAHA LEMBAGA WAKAF
HINDU PULAU PINANG**
- 3. PENGARAH PERTUBUHAN JABATAN PENDAFTAR
PERTUBUHAN MALAYSIA CAWANGAN PULAU PINANG**

... RESPONDEN-RESPONDEN

**[Dalam Mahkamah Tinggi Malaya Di Pulau Pinang
Saman Pemula No: PA-24NCvC-13-01/2020]**

Antara

**Sekar A/L Kandasamy [No. K/P: 600201-08-5741]
Pengerusi Kuil Seri Mangalanayagi Amman Bukit
Tengah, Seberang Perai Tengah, Jalan Bukit Tengah,
14000, Bukit Mertajam, Pulau Pinang
[No. Pendaftaran PPM-006-07-02111982] Dan juga
bagi Ahli-Ahli Pertubuhan tersebut**



... Plaintiff

Dan

1. Lembaga Wakaf Hindu Pulau Pinang
2. Surentharan A/L Ramadas, Setiausaha Lembaga Wakaf Hindu Pulau Pinang
3. Pengarah Pertubuhan Jabatan Pendaftar Pertubuhan Malaysia Cawangan Pulau Pinang

... Defendan-Defendan]

CORAM:

YAACOB BIN HAJI MD SAM, JCA
S. NANTHA BALAN, JCA
MOHD NAZLAN BIN MOHD GHAZALI, JCA

GROUND OF JUDGMENT

Introduction

- [1] This is an appeal by Sekar A/L Kandasamy (“**the Plaintiff**”) against the decision of the Learned Judicial Commissioner (“**JC**”) of the High Court dated 11 May 2021 dismissing Originating Summons No. PA-24NCvC-13-01/2020 (“**OS13**”) with costs. The decision of the High Court is reported as [2021] 1 LNS 1337. The subject matter of the appeal before us is a 100 years old Hindu temple now known as *Kuil Sri Mangalanayagi Amman Bukit Tengah* (“**the Temple**”). The Plaintiff is the ex-chairman of a society known as *Pertubuhan Sri Mangalanayagi Amman Bukit Tengah, Seberang Perai Tengah* (Pendaftaran No. PPM-006-07-02111982) (“**the Society**”).



- [2] The First Respondent is a body corporate established under s. 3(3), Hindu Endowments Ordinance 1906 (“**1906 Ordinance**”) having perpetual succession and a common seal. The Second Respondent is the Secretary of the First Respondent. The Third Respondent is the Registrar of Societies (Penang Branch).

Allegation of Mismanagement/Defalcation of Monies

- [3] On 11 February 1982, the Society was registered with the Registrar of Societies (“**Third Respondent**”) pursuant to s.7 of the Societies Act 1966. Upon its registration the Society assumed the responsibility of administering and managing the affairs of the Temple. Several parties made allegations and complaints, including police reports, pertaining to mismanagement of the Temple and defalcation of the Temple funds. There were various other complaints in relation to the failure of the elected Committee of the Society to hold the Annual General Meeting (“**AGM**”) for several years, the missing funds, re-election of the Plaintiff as the Chairman of the Society and the Committee members involved in the missing funds, the non-presentation of the Statement of Accounts for 2017 during the 2018 AGM, failure to give proper notice of the AGM and the appointment of the Plaintiff to be in charge of the construction and improvement works for the “*Kumbabhishegam*” (consecration) ceremony which is to be held every 12 years which would involve a significant amount of money without deliberating the appointment through an Emergency General Meeting (“**EGM**”).



Deregistration of the Society

- [4] Based on the several complaints alluded to above, the Third Respondent acted and exercised powers under s.13 (1)(c)(iv) of the Societies Act 1966 and cancelled the Society's registration. The cancellation of registration of the Society took effect on 7 August 2019.
- [5] The Plaintiff filed an appeal to the Minister of Home Affairs (s.18 of the Societies Act 1966) against the deregistration of the Society. The Plaintiff's appeal was subsequently rejected by way of the Minister of Home Affairs' letter dated 7 August 2020. It may be noted here that the rejection of the Society's appeal was after OS 13 was filed.

The Governor's Order – First Respondent to take over the Temple

- [6] Under s.4 of the Hindu Endowments Ordinance 1906 ("**1906 Ordinance**"), the Governor of the State of Pulau Pinang (Tuan Yang Terutama Yang di-Pertua Negeri Pulau Pinang) ("**TYT**") may order that any Hindu endowment within the State of Penang be administered by the First Respondent if the endowment has been mismanaged, or if it would be otherwise to the advantage of any endowment that the same should be administered by the First Respondent.
- [7] The First Respondent regards the Temple as an endowment. Under s. s.2 of the 1906 Ordinance, an endowment is defined as: "*any endowment in land or money given or to be given for the support of any... Hindu temple, or... Hindu Shrine or school or other... Hindu pious, religious, charitable or beneficial purpose*".



- [8] However, the Plaintiff does not agree that the Temple falls within the definition of endowment per the 1906 Ordinance. The JC ruled that the Temple was within the definition of endowment. (See: paragraph [43] to [47] of the JC's grounds of judgment.)
- [9] At any rate, to continue with the narrative, the First Respondent came to know that despite the deregistration of the Society, the committee of the Temple under the stewardship of the Plaintiff had continued to collect donations and had made alterations and renovations to the Temple as if there had been no deregistration. Thus, despite the deregistration of the Society, as far as the Plaintiff and his other committee members were concerned, it was "business as usual" in terms of administration and management of the Temple. As such, the First Respondent proposed to the TYT that the First Respondent should take over the administration and management of the Temple.
- [10] On 19 December 2019 the TYT ordered the First Respondent to take over the administration and management of the Temple. It is important to emphasize here that it was the TYT, and not the First Respondent who is the decision maker in respect of the take-over of the administration and management of the Temple. The decision of the TYT addressed to the YB. Setiausaha Kerajaan (State Secretary) reads as follows:

Ruj. Kami : PSUKPP.KP.100-2/2/49 Jld 3 (10)
Tarikh :

Yang Berhormat Dato',

Cadangan mengambil alih Pengurusan kuil Sri Mangalanayagi Amman, Bukit Tengah oleh Lembaga Wakaf Hindu Negeri Pulau Pinang selaras dengan Seksyen 4 Ordinan Wakaf-Wakaf Hindu [Ordinan 17 Tahun 1905]:



Diluluskan

-Sgd-

[T.Y.T. TUN DATO' SERI UTAMA (DR.) HAJI ABDUL RAHMAN
BIN HAJI ABBAS]
YANG DIPERTUA NEGERI

Tarikh: 19/12/2019

[11] The First Respondent issued a letter dated 27 December 2019 to the Temple and notified the Plaintiff of the TYT's order and of the take-over of the administration and management of the Temple. The letter reads as follows:

Ruj. Kami : LWHN/PP/01 SJ 380
Tarikh : 27 December 2019

MR. Sekar
C/O Kull Sri Mangalanayagi Amman,
Jalan Besar, Bukit Tengah,
14000 Bukit Mertajam

Dear Sir,

RE: KUIL SRI MANGALANAYAGI AMMAN, BUKIT TENGAH

We refer to the above matter and hereby give notice that the temple has come under the jurisdiction and management of the Penang Hindu Endowments Board (PHEB) effective 19th December 2019.

The above is pursuant to a State Order, and the current committee which is headed by you is automatically null and void and does not have any legal authority to administer or manage the affairs of the temple. A copy of the State order is attached for your easy reference.

It is also pertinent to mention that the Registrar of Societies (ROS) has deregistered the society administering the temple headed by you in August 2019 and there is also no registration of any new society or reinstatement of the old deregistered society.

Be as it may, even in the event the society is reinstated by ROS, the society has ceased to have any authority to administer / manage the affairs of the temple any further.

Under the circumstances, we hereby request your goodself to deliver the following to us within fourteen (14) days from the date of this letter.

- Issued documents and titles
- Statement of Accounts for the year 2019 together with bank statement
- Particulars of cash in hand and
- Documents and files of properties



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**Note : Serial number will be used to verify the originality of this document via eFILING portal

The Board needs your co-operation in this matter to ensure a smooth and orderly management transfer.

We look forward to your early response.

Thank you.

"CEKAP, AKAUNTABILITI, TELUS"
"BERKHIDMAT UNTUK NEGARA"

Saya yang menurut perintah,

Dato' M. RAMACHANDRAN
Executive Director

- c.c.
- i. YB. Prof Dr. P. Ramasamy
Chairman, PHEB
 - ii. Puan Rajaletchumy
Setiausaha, Persatuan Penganut (yang dibatalkan) No.
18, Jalan Pinang 3, Taman Pinang, Juru, Seberang Perai
Tengah, 14000 Bukit Mertajam.
 - iii. Tuan Pengarah
Jabatan Pendaftaran Pertubuhan, Negeri Pulau Pinang.
 - iv. Tuan Pengarah
Jabatan Insolvensi Negeri Pulau Pinang.
 - v. YDH Tuan Ketua Polis Daerah
Ibu Pejabat Polis Diraja Malaysia Bandar Perda, Bukit
Mertajam.

Filing of OS13

[12] On 6 January 2020, the Plaintiff filed OS13. The prayers sought in OS13 (with emphasis added) are as follows:

1. Bahawa kebenaran diberikan kepada Plaintiff untuk memfailkan Prosiding ini melalui Saman Pemula.
2. Untuk satu **pengistiharaan bahawa keputusan Defendan Ketiga pada 07-08-2019 dibawah Seksyen 13 (1) (c) (iv) untuk membatalkan pertubuhan** Kuil Sri Mangalanayagi Amman Bukit Tengah, Seberang Perai Tengah, Jalan Bukit Tengah, 14000, Bukit Mertajam, Pulau Pinang [No Pendaftaran: PPM-006-07 02111982] **adalah tidak berasas dan dibuat mala fida.**



3. Untuk suatu **pengistiharaan bahawa Defendan Pertama dan Defendan Kedua tidak boleh menggunakan Seksyen 2,4 & 5 Ordinan Lembaga Wakaf Hindu 1906** atas alasan bahawa Kuil tersebut sebagai suatu Endowment dan untuk mengambil alih Kuil tersebut dan hartanah Kuil sedangkan Pertubuhan Kuil Seri Mangalanayagi Amman Bukit Tengah, Seberang Perai Tengah, Jalan Bukit Tengah, 14000, Bukit Mertajam, Pulau Pinang [No Pendaftaran: PPM-006-07 02111982] adalah suatu pertubuhan yang di daftar di bawah Akta Pertubuhan 1966 yang menyebabkan Seksyen 17(A) (B) dan lain-lain Seksyen di bawah Akta Pertubuhan 1966 mengatasi (supersed) Ordinan Lembaga Wakaf Hindu 1906 memandangkan Ordinan tersebut adalah satu undang-undang sebelum Merdeka dan lebih lanjut lagi Pertubuhan Kuil tersebut tidak jatuh dibawah ertikata Endowment di bawah Ordinan Lembaga Wakaf Hindu 1906 dan lebih lanjut lagi pembatalan pertubuhan oleh Defendna [sic] Ketiga kini dirayu kepada Menteri Dalam Negeri dan sehingga satu keputusan dibuat status quo Pertubuhan Kuil tersebut masih kekal.
- 4.(a) Untuk satu pengistiharaan bahawa **tindakan Defendan Ketiga melalui Pengarah atau Pegawai memberi laluan kepada Defendan Pertama** (Lembaga Wakaf Hindu Pulau Pinang) untuk mengambilalih Kuil Seri Mangalanayagi Amman Bukit Tengah, Seberang Perai Tengah, Jalan Bukit Tengah, 14000, Bukit Mertajam, Pulau Pinang [No Pendaftaran: PPM-006-07-02111982] **adalah salah dan terbatal dan bertentangan kepada Seksyen 17A dan 17(B) Akta Pertubuhan 1966.**
- 5(b) Untuk suatu pengistiharaan bahawa **keputusan Defendan Ketiga bagi pembatalan Pertubuhan Kuil di bawah Seksyen 13 (1) (c) (iv) adalah salah dan bertentangan kepada undang-undang.**
- 6(c) Untuk suatu pengistiharaan bahawa perbuatan dan tindakan Defendan Pertama dan Defendan Kedua yang memasuki secara paksaan dengan melompat pagar dan memotong manga pintu (steel gate) Kuil tersebut adalah satu kesalahan disisi undang-undang kerana memterceroboh dan masuk ke halaman Kuil secara paksaan
7. Untuk suatu pengisytiharan bahawa keputusan Defendan-Defendan Pertama dan Kedua Ke 2 dan Ke 3 bahawa segala pentadbiran/pengurusan berkaitan Kuil Seri Mangalanayagi Amman Bukit Tengah, Seberang Perai Tengah, Jalan Bukit Tengah, 14000, Bukit Mertajam, Pulau Pinang [No Pendaftaran: PPM-006-07-02111982] diletak di bawah tanggungjawab Defendan Pertama [Lembaga Wakaf Hindu Negeri Pulau Pinang] adalah terbatal dan bertentangan kepada Seksyen 17, 17A dan 17B dan 18 Akta Pertubuhan 1966.



8. Untuk suatu pengistiharan bahawa Plaintiff dan Ahli-Ahli Persatuan adalah berhak untuk mengurus Pertubuhan Kuil Seri Mangalanayagi Amman Bukit Tengah, Seberang Perai Tengah, Jalan Bukit Tengah, 14000, Bukit Mertajam, Pulau Pinang [No Pendaftaran: PPM-006-07-02111982] menurut Seksyen 17, 17A dan 17B Akta Pertubuhan 1966 yang harus di patuhi sehingga keputusan muktamad oleh Menteri Dalam Negeri merayu dan atau keputusan Mahkamah Yang Mulia ini.
9. Untuk satu pengistiharan bahawa penubuhan Defendan Pertama [Lembaga Wakaf Hindu Pulau Pinang dan perlantikan Defendan Kedua sebagai Setiausaha Pesuruhjaya-Pesuruhjaya Lembaga Wakaf menurut Ordinan Lembaga Wakaf Hindu 1906 adalah di bawah Kawalan Kerajaan Persekutuan dan bukannya Kerajaan Negeri Pulau Pinang sedangkan Ordinan Lembaga Wakaf Hindu 1906 adalah suatu Ordinan undang-undang sebelum Merdeka dan apa-apa perlantikan melalui Majlis Mesyuarat Negeri Pulau Pinang yang diketuai oleh Ketua Menteri Pulau Pinang adalah salah dan terbatal.
10. Untuk satu pengistiharan bahawa percubaan rampasan Kuil Seri Mangalanayagi Amman Bukit Tengah, Seberang Perai Tengah, Jalan Bukit Tengah, 14000, Bukit Mertajam, Pulau Pinang [No Pendaftaran: PPM-006-07-02111982] oleh Pengerusi Defendan Pertama dan Setiausaha Lembaga Wakaf Hindu Pulau Pinang Ahli Jawatankuasa Defendan Pertama seolah-olah dibawah Sek 2,4 dan 5 Ordinan Lembaga Wakaf Hindu 1906 adalah salah dan buruk disisi undang-undang yang bertentangan kepada perlembagaan persekutuan sedangkan bahawa Hartanah dan Bangunan Kuil tersebut bukanlah suatu Endowment dalam erti kata Sek 2 dan 4 Ordinan tersebut.
11. Untuk satu pengistiharaan bahawa Defendan Pertama yang merupakan Lembaga Wakaf Hindu Pulau Pinang adalah satu lembaga yang ditubuhkan di bawah Ordinan Lembaga Wakaf Hindu 1906 adalah suatu Lembaga Wakaf di bawah kelolaan Kerajaan Persekutuan sedangkan Ordinan Lembaga Wakaf Hindu adalah suatu Ordinan sebelum merdeka dan menjadi yangnya dalam kawalan Kerajaan Persekutuan.
12. Untuk suatu Pengistiharaan bahawa Defendan Pertama dan Defendan Kedua tidak ada apa-apa hak atau kuasa untuk mengambil Hartanah dan pengurusan Pertubuhan Kuil tersebut dan apa-apa pengambilan Kuil tersebut Defendan Pertama adalah tidak sah dan adalah terbatal.



13. Untuk suatu Injunksi Ad Interim bahawa Defendan Pertama dan Defendan Kedua atau ejen-ejen dan/atau wakil-wakil mereka dihalang melalui satu injunksi untuk menghalang mereka daripada buat apa-apa paksaan terhadap Pertubuhan Plaintiff untuk menyerah pengurusan/pentadbiran Kuil Seri Mangalanayagi Amman Bukit Tengah, Seberang Perai Tengah, Jalan Bukit Tengah, 14000, Bukit Mertajam, Pulau Pinang [No Pendaftaran: PPM-006-07 02111982] daripada ambil harta serta wang milikan Pertubuhan Plaintiff daripada mengurus, menganjur apa-apa aktiviti, serta mentadir [*sic*] Kuil Sri Mangalanayagi Amman Bukit Tengah, Seberang Perai Tengah, Jalan Bukit Tengah, 14000, Bukit Mertajam, Pulau Pinang [No Pendaftaran: PPM-006-07-02111982]
- 14.(a) Untuk satu deklarasi bahawa Defendan Pertama, Kedua dan Ketiga telah gagal mempertimbangkan kedudukan dan kepentingan Ahli Jawatankuasa Pertubuhan Kuil Seri Mangalanayagi Amman Bukit Tengah, Seberang Perai Tengah, Jalan Bukit Tengah, 14000, Bukit Mertajam, Pulau Pinang [No Pendaftaran: PPM-006-07-02111982] dengan gagal mematuhi Skesyen [*sic*] 16, 17, 17A dan 17B dan Seksyen 18 Akta Pertubuhan 1966
- (b) Untuk satu Pengistiharaan bahawa keputusan Defendan Ketiga dengan memberi surat kebenaran kepada Defendan Pertama bagi mengambil Hartanah serta Bangunan Kuil Seri Mangalanayagi Amman Bukit Tengah, Seberang Perai Tengah, Jalan Bukit Tengah, 14000, Bukit Mertajam, Pulau Pinang [No Pendaftaran: PPM-006-07-02111982] adalah bertentangan kepada Sek 17 dan 17(B) dan 18 Akta Pertubuhan 1966.
15. Untuk satu Injunksi terhadap Pengerusi serta Pesuruhjaya Lembaga Defendan Pertama [Lembaga Wakaf Hindu Pulau Pinang] atau orang-orang di bawahnya di halang daripada mengurus/menjalankan aktiviti di Kuil Seri Mangalanayagi Amman Bukit Tengah, Seberang Perai Tengah, Jalan Bukit Tengah, 14000, Bukit Mertajam, Pulau Pinang [No Pendaftaran: PPM-006-07-02111982] dan bahawa Plaintiff serta AJK Persatuan Kuil tersebut dibenarkan mengurus/mentadbir Kuil tersebut sehingga keputusan Menteri Dalam Negeri atas rayuan Plaintiff dan juga Ketua Pengarah Insolvensi Malaysia dimuktamadkan.



16. Untuk satu Injunksi bahawa Defendan Pertama atau orang-orang dibawahnya atau Pengerusi/Ahli-Ahli Lembaga Wakaf Hindu Pulau Pinang dilarang melalui satu injunksi daripada menyebarkan Notis Pengambilan alih Kuil Seri Mangalanayagi Amman Bukit Tengah, Seberang Perai Tengah, Jalan Bukit Tengah, 14000, Bukit Mertajam, Pulau Pinang [No Pendaftaran: PPM-006-07 02111982] daripada disebarkan kepada orang ramai dan bahawa apa-apa notis secara bertulis atau secara lisan boleh dianggap sebagai tidak betul dan tidak sah.
17. Untuk satu Perintah bahawa sekiranya Rayuan Plaintiff ke Menteri Hal Ehwal Malaysia di tolak maka Ketua Pengarah Insolvensi hendaklah bertindak di bawah Seksyen 17B Akta Pertubuhan 1966 yang mempunyai kuasa untuk memberi kebenaran untuk menubuhkan suatu Pertubuhan dengan narna terdekat sama serta menjalankan serta menguruskan Kuil Seri Mangalanayagi Amman Bukit Tengah, Seberang, Perai Tengah, Jalan Bukit Tengah, 14000, Bukit Mertajam, Pulau Pinang [No Pendaftaran: PPM-006-07-02111982] dengan menggantikan pentadbiran yang lama bagi tujuan seperti yang termaktub dalam Perlembagaan Pertubuhan Kuil tersebut dan juga mengadakan aktiviti-aktiviti keagamaan Hindu selaras dengan Seksyen 17B Akta Pertubuhan 1966.
18. Untuk satu Perintah bahawa Defendan-Defendan membayar kerugian yang ditimpa oleh Plaintiff dan Ahli-Ahli Pertubuhan atas menyalahgunakan kuasa dengan menghalang Plaintiff dan Ahli-Ahli Pertubuhan daripada mengurus dan mengendalikan kuil tersebut dan atas menyusahkan Plaintiff dan Ahli-Ahli Pertubuhan.
19. Untuk satu pengistiharaan bahawa Defendan Pertama dan Kedua tiada apa apa penderian undang-undnag (locus standi) untuk mengambil alih Kuil Seri Mangalanayagi Amman Bukit Tengah, Seberang Perai Tengah, Jalan Bukit Tengah, 14000, Bukit Mertajam, Pulau Pinang [No Pendaftaran: PPM-006-07 02111982] dan harta tanah dan wang-wang milikan Kuil tersebut melainkan Ketua Pengarah Insolvensi menurut Seksyen 17B Akta Pertubuhan 1966.
20. Kos;
21. Lain-lain relif dan/atau perintah atau selanjutnya yang difikirkan wajar dan adil oleh Mahkamah yang Mulia ini.



Factual Matrix

[13] The background facts, per the JC's grounds of judgment are as follows:

[5] The plaintiff is the immediate ex-chairman of the Deregistered Society which had its registration cancelled through the Cancellation Order dated 07/08/2019, issued by the 3rd defendant i.e., the Director of the Registrar of Societies.

[6] The 1st defendant is a body corporate established under Section 3(3), Hindu Endowments Ordinance 1906 ("1906 Ordinance") having perpetual succession and a common seal with the 2nd defendant as its secretary.

[7] By virtue of Section 4 of the 1906 Ordinance, the Governor (T.Y.T Yang di-Pertua Negeri Pulau Pinang) ("TYT") may order that any Hindu endowment within the State of Penang to be administered by the 1st defendant if the endowment has been mismanaged or if it would be otherwise to the advantage of any endowment that the same should be administered by the 1st defendant.

[8] The dispute herein, in so far as the 1st and 2nd defendants are concerned, relates to the administration and management of a Hindu temple now known as "Kuil Sri Mangalanayagi Amman Bukit Tengah" ("Temple"). It is undisputed by the parties that the Temple has been in existence for more than 100 years.

[9] The Deregistered Society was registered on 11/02/1982 and assumed the responsibility of administering and managing the affairs of the Temple since then.

[10] From the historic nature of the Temple, the Temple is a public temple. The Temple which was established long before the formation of the Deregistered Society, does not belong to any private individual or any private entity, including the Deregistered Society.

[11] The public participation in the membership of the Deregistered Society, as provided in the constitution of the Deregistered Society, clearly indicates the public nature of the Temple.

[12] In 2018 it was made known to the 1st defendant that there were serious mismanagement issues, including but not limited to, allegations of misappropriation of Temple funds by the Committee Members of the Deregistered Society.



[13] Discrepancies in the Statement of Accounts prompted the auditors, S. Nagalingam a/l Subbiah and Karuppayah Chelliah, to lodge police report dated 16/03/2019 to notify the police, inter alia, of the missing Temple funds and that the Treasurer, Mr Mogan had admitted to the wrong doing and will settle the missing funds.

[14] Subsequently, a Settlement Agreement dated 11/11/2018 ("Settlement Agreement") was entered between the Deregistered Society and the Committee Members who were serving during the period when the funds of the Temple were misappropriated, including the plaintiff.

[15] Under the terms of the Settlement Agreement, amongst others, the plaintiff and the Committee Members jointly and severally admitted responsibility for the sum of RM96,574.58 and had jointly and severally undertaken to repay the said sum within 2 years from 04/02/2018 and in the interim they shall pay RM 1,000.00 on a monthly basis commencing from 31/03/2018.

[16] Thus, when granting an interim order dated 09/06/2020 (enclosure 32), I had ordered the plaintiff to furnish the current audited accounts of the Deregistered Society to the 1st and 2nd defendants.

[17] Subsequent thereto, the plaintiff served unaudited Statements of Account for the years 2018 and 2019 and exhibited the same in an Additional Affidavit (enclosure 33).

[18] From the said Statement of Account for the years 2018 and 2019, it is evident that, the plaintiff did not settle the full missing funds of the Temple and a sum of RM 82,870.58 was still outstanding.

[19] As a result, in granting the Ad-Interim Injunction Order dated 15/07/2020, I had directed the plaintiff to deposit the sum of RM82,870.58 with the plaintiff's solicitors into an interest-bearing account.

[20] In view of the serious mismanagement of the Temple's affairs, registered members of the Deregistered Society had written various letters to the 1st defendant informing the same and requested the 1st defendant to take over the management and administration of the Temple.



[21] Meanwhile, a Complaint Letter dated 01/08/2018 was sent to the 3rd defendant, inter alia, about the failure of the elected Committee of the Deregistered Society to hold the Annual General Meeting ("AGM") for several years, the missing funds, re-election of the plaintiff as the Chairman of the Deregistered Society and the Committee members involved in the missing funds, the non-presentation of the Statement of Account for year 2017 during the 2018 AGM, failure to give proper notice of the AGM and the appointment of the plaintiff to be in charge of the construction and improvement works for the "Kumbabhishegam" ceremony held every 12 years which would involve a significant amount of money without deliberating the appointment through an Emergency General Meeting.

[22] In light of all the above, the concerned Registered Members of the Deregistered Society lodged police reports and wrote to the 1st defendant on several occasions to plead for assistance to save the Temple.

[23] Additionally, in view of the seriousness of the mismanagement of the Temple, on 26/05/2019, the registered members of the Deregistered Society organized an event entitled "Majlis Penerangan Penyelewengan Dalam Pengurusan Kuil" to discuss inter alia, the issues relating to the missing Temple funds, failure to convene AGM, discrepancies in the Financial Statement and the construction and improvement works. The representatives of the 1st defendant were invited as observers and guests.

[24] Thereafter, in or around August 2019, the 1st defendant came to know about the cancellation of the registration of the Deregistered Society which came into effect through the Cancellation Order of the 3rd defendant dated 07/08/2019.

[25] Despite the deregistration, the 1st Defendant was informed by the registered members of the Deregistered Society that the Deregistered Society under the direction of the plaintiff continued to collect donations from the public and the construction and improvement works were being carried out as usual by the ex-Committee Members.

[26] Thus, the 1st defendant reported these issues afflicting the Temple to the TYT and proposed that the 1st defendant takes over the administration and management of the Temple in accordance with Section 4, of the 1906 Ordinance.

[27] Thereafter, by the Order of the TYT dated 19/12/2019 ("Order of the TYT"), the TYT ordered and consented to the taking over of the Temple by the 1st defendant.



[28] In the meantime, the plaintiff filed an appeal to the Minister of Home Affairs against the deregistration of the Deregistered Society.

[29] And it is pertinent to note that the plaintiff's appeal has since been rejected by way of the Ministry of Home Affairs letter dated 07/08/2020.

Dismissal of OS13 - High Court's Reasons

[14] The JC's findings and reasons for dismissing OS13 in so far as they relate to the issues raised in this appeal, are as follows:

Findings

[30] Having considered all the relevant cause papers and the submissions of the parties, both written and oral, together with the authorities cited, I am satisfied and find that the plaintiff's application in enclosure 1 is without merit, for the reasons explained hereinafter.

[31] It is observed that several of the plaintiff's prayers are defective as they refer to the 1st defendant intending to take over the Deregistered Society. However, as explained earlier, the Temple exists separately from the Deregistered Society since 1900s and it is the administration and management of the Temple and not the Deregistered Society that the 1st defendant is ordered and empowered to take over by the Order of the TYT.

[32] Nevertheless, on the supposition, that the plaintiff's references to the "Society" in the prayers are attributed to the Temple, I will now deal with the plaintiff's application in enclosure 1.

Whether the Plaintiff's Challenges Should have been Initiated by way of Judicial Review

[33] In respect of the plaintiff's prayers challenging the Order of the TYT, for reasons best known to the plaintiff, the TYT was not named as a party in the Originating Summons.

[34] Likewise, neither was the State Government of Penang named as a party, as the TYT acts under the advice of the State Executive Council ie, Governor in Council - See section 4 of the 1906 Ordinance.



[35] In *Ahmad Jefri bin Mohd Jahri @ Md Johari v. Pengarah Kebudayaan & Kesenian Johor & Ors* [2010] 5 CLJ 865; [2010] 3 MLJ 145, James Foong FCJ delivering the judgment of the Federal Court, at paragraph 21, held

[21] In view of this, let us begin by first asking ourselves a preliminary question: is the appellant's complaint or grievance amenable for judicial review (before even considering whether the procedure adopted by him is appropriate). If his complaint is not amenable for judicial review then he can commence his action by writ or originating summons; there is no issue on the process. So first we have to determine the parameter of matters amenable for judicial review. It is widely accepted that not every decision made by an authoritative body is suitable for judicial review. To qualify there must be sufficient public law element in the decision made. For this, it is necessary to examine both the source of the power and the nature of the decision made; whether the decision was made under a statutory power (see para 61 *Halsbury's Laws of England* (4th Ed, 2001 Reissue) Vol 1(1). To illustrate this, we will refer to a number of authorities involving dismissal from service by an authority.

And further at paragraph 61, stated,

[61] We observed that a challenge on the use of appropriate procedure is very much fact based. Thus, it is necessary for a judge when deciding on such matter to first ascertain whether there is a public law element in the dispute. If the claim for infringement is based solely on substantive principles of public law then the appropriate process should be by way of O. 53 of the RHC. If it is a mixture of public and private law then the court must ascertain which of the two is more predominant. If it has substantial public law element then the procedure under O. 53 of the RHC must be adopted. Otherwise it may be set aside on ground that it abuses the court's process. But if the matter is under private law though concerning a public authority, the mode to commence such action under O. 53 of the RHC is not suitable. Aside from this, there could be other circumstances like the kind in *YAB Dato' Dr Zambry*. Much depends on the facts of the case. But generally the court should be circumspect in allowing a matter which should be by way of O. 53 of the RHC to proceed in another form. To say that it is opened to any applicant seeking judicial review to elect any mode he prefers, as implied in *Kuching Waterfront*, would, in our considered opinion, be rendering O. 53 of the RHC redundant. This is certainly not the intention of the drafters of this rule who had a purpose in mind. When the purpose of this rule is in the interest of good administration then this rule must be adhered to except in the limited and exceptional circumstances discussed.

[Emphasis added]



[36] Thus, applying the principles laid down in *Ahmad Jefri bin Mohd Jahri* (supra), I hold that any challenge of the Order of the TYT, is a challenge in the realm of public law in view of the nature of the Order of the TYT and the public nature of the Temple. It is important to note that the Order of the TYT was given pursuant to section 4 of the 1906 Ordinance for the advantage of the public Temple.

[37] In so far as the alleged unlawful take-over of Temple is concerned, there is little, or no private law involved as the plaintiff or Deregistered Society or any of its Committee Members do not own the Temple and do not have any private interest in the Temple.

[38] Further, there are numerous complaints of mismanagement of the Temple and misappropriation of Temple funds to the tune of RM96,574.58 by the Deregistered Society under the leadership of the plaintiff which have not been sufficiently rebutted or explained through the plaintiff's affidavit evidence. The said amount of RM96,574.58 does not belong to the plaintiff, the Deregistered Society nor its Committee Members and was to be held on trust for the benefit of the Temple and the Hindu devotees i.e., **the public**.

[39] Hence, in view of the public interest element, the plaintiff's challenge of the Order of the TYT, must be commenced by way of an application for judicial review under Order 53, Rules of Court 2012 ("ROC 2012").

[40] Failure to initiate his challenge by way of an application for Judicial Review amounts to an abuse of process, as the plaintiff is avoiding the stringent requirements under the judicial review process, especially the requirements for leave under Order 53, ROC 2012.

[41] The above reason and the failure to name the TYT or the State Government of Penang (State Executive Council) as a party, renders the plaintiff's Originating Summons against the 1st and 2nd defendants defective and therefore must be dismissed.



Our Decision

- [15] It is clear from the prayers sought in OS13 that the Plaintiff is seeking to impugn the deregistration of the Society by the Third Respondent and the TYT's decision *vis-à-vis* the takeover of the Temple by the First Respondent. In pith and substance, the prayers sought in OS13 are targeted at the validity of the deregistration of the Society via the Third Respondent's decision dated 7 August 2019, and the First Respondent's takeover of the administration and management of the Temple per the TYT's decision dated 19 December 2019.
- [16] In so far as the latter decision is concerned, the decision maker, i.e. the TYT is not before the Court. The JC opined that the State Government of Penang ought to have been named as a party, as the TYT acts under the advice of the State Executive Council i.e., Governor in Council – (s.4 of the 1906 Ordinance). We agree with the JC's ruling in this regard. It is trite that declarations may not be made against parties who are not before the Court. As it stands, the prayers sought in the OS *vis-à-vis* the decision of the TYT offend the principle that was established by the House of Lords in the seminal case of *London Passenger Transport Board v Moscrop* [1942] AC 332; [1942] 1 All ER 97 HL ("*Moscrop*") (per Viscount Maugham) that declarations ought not to be granted against parties who are not before the Court and who may be affected by the orders.



- [17] In *Majumder v Attorney-General of Sarawak* [1967] 1 MLJ 101 (FC) the Federal Court referred to *Moscrop* and said that “*The courts should not make declarations which concern persons interested but not joined as parties.*”. Hence, since the TYT is not named as a party to OS13, the decision of the TYT cannot be impugned.
- [18] In any event, the real issue is that both these decisions where the Plaintiff seeks to impugn, are only amenable to challenge through Judicial Review and not via declaratory orders as per OS13 that was filed on 6 January 2020. In this respect, we agree with the Judicial Commissioner in that both these decisions are matters which are within the realm of public law and not private law. Indeed, counsel for the Plaintiff conceded that the decision makers in respect of both the impugned decisions are public authorities exercising powers under statute. There is therefore no private law element in respect of both these impugned decisions.
- [19] Before us counsel for the Plaintiff sought to justify the application via OS13 rather than through a Judicial Review application under Order 53 of the Rules of Court 2012. He said that the First Respondent employed high-handed tactics to take over the Temple. As such, the Temple was compelled to seek relief on an urgent basis and it was due to the exigency of the situation that the OS was filed. However, it was pointed out to counsel that the Order 53 procedure is a “one-stop” adjectival remedy for public law decisions which are being challenged and that the Plaintiff in the instant appeal could have filed an application under Order 53 of the Rules of Court 2012 together with a certificate of urgency and sought to obtain leave, stay of the impugned decisions and/or an injunction to restrain implementation of the said decisions.



- [20] Hence, even though there might have been an urgency of sorts, the Plaintiff could have, but did not invoke the appropriate procedure for seeking relief.
- [21] Based on the principle enunciated by the Federal Court in the case of *Ahmad Jefri bin Mohd Jahri @ Md Johari v. Pengarah Kebudayaan & Kesenian Johor & Ors* [2010] 5 CLJ 865; [2010] 3 MLJ 145 (FC) (“*Ahmad Jefri*”), it is our conclusion that the allegations raised in OS13 are complaints in regards to alleged infringement of rights in public law, and not private law. Consequently, the proper procedure would have been for the Plaintiff to have challenged these decisions via Judicial Review under Order 53 Rules of Court 2012. It is obvious that OS13 is an attempt at circumventing the Judicial Review procedure under Order 53 of the Rules of Court 2012. In the circumstances we find OS13 to be a manifestation of an abuse of process.
- [22] Quite apart from the failure to challenge the impugned decisions via Order 53 of the Rules of Court 2012, we find that OS13 is to an extent, premature. This is because the Plaintiff had appealed to the Minister of Home Affairs (s.18 of the Societies Act 1966) against the decision of the Third Respondent to cancel the Society’s registration.
- [23] As mentioned earlier, on 7 August 2020, the Minister of Home Affairs rejected the appeal and the Plaintiff then initiated Judicial Review proceedings via Penang High Court No. PA-25-66-11/2020 (“**the JR application**”) against the Minister's decision. Counsel for the Plaintiff informed us that the JR application has since been dismissed.



[24] Thus, the Third Respondent's decision to cancel the registration of the Society under s.13 (1)(c)(iv) of the Societies Act 1966 was not a final decision and the Plaintiff was entitled to and did in fact appeal (unsuccessfully) to the Minister of Home Affairs. Thus, to that extent the prayers in OS13 which sought to challenge the Third Respondent's decision dated 7 August 2019 was "premature". (See: paragraph [81] in *Kaneka Paste Polymers Sdn Bhd v. Director General of Industrial Relations & Ors* [2005] 1 LNS 276; [2005] 7 MLJ 132).

[25] For completeness, we should add and highlight that one of the Plaintiff's major complaints in OS13 was that the First Respondent could not lawfully "take-over" the administration and management of the Temple pursuant to the TYT's order because of the operation of s.17 (1) (a) of the Societies Act 1966 upon the de-registration of the Society. Under s.17(1)(a) of the Societies Act 1966, upon the cancellation of the registration of a registered society under any provision of the Societies Act 1966, the property of the society shall forthwith vest in the Director General of Insolvency ("DGI"). But the JC dismissed this argument. The JC opined that the Plaintiff could not raise any complaint in regards s.17 (1) (a) of the Societies Act 1966 as the DGI was not even before the Court.

Reliefs Sought on behalf of the Director General of Insolvency

[52] In *Dato' Jaffar Bin Mohd Ali v. Jastera Berhad* (No Sykt 78053-H) [2000] 8 CLJ 106; [1999] 4 MLRH 805, Low Bing Hop J (as His Lordship then was), held,

"The 3rd prayer sought by the Plaintiffs is to restrain Defendants No. 2 to 6 from excluding Plaintiff No. 2 and Tan from acting as Directors of Defendant No. 1. It is an established fact that Plaintiff No. 2 has not attended the last 10 successive directors' meetings while Tan has not attended the last 7 successive directors' meetings.



Tan is not a party to this suit and he has not applied to this Court for any injunctive relief. That being the case, it is neither necessary nor proper for this Court to consider any injunctive relief in his favour. **Our Courts do not function as busy bodies and it has never been the business of our Courts to give an order in favour of or against any person or persons who are non- parties or strangers to the cases before our Courts."**

[Emphasis added]

[53] Similarly in this instance, without the Director General of Insolvency ("DGI") being named as a party to this Originating Summons, the plaintiff cannot seek reliefs on behalf of the DGI which involves the DGI.

[54] The plaintiff also cannot seek for an order to compel the DGI to set up a new society nor seek orders relating to **sections 17 and 17A, SA 1966** on behalf of the DGI, without including the DGI in this Originating Summons.

[55] Moreover, the DGI cannot on his own volition establish a new society pursuant to **section 17B, SA 1966**, as **section 17B** does not confer such powers to the DGI.

[56] Section 17B, SA 1966 only allows the DGI to vest the property of a deregistered society to a new society which must be established and registered in the usual manner by the 3rd defendant pursuant to an application under **section 6, SA 1966**.

[57] Hence, I am unable to agree with the submissions of Mr N. Ahilan, the learned counsel for the plaintiff that the 1st defendant cannot take over the management and administration of the Temple simply because the Deregistered Society is deregistered. The plaintiff's said argument is fundamentally misconceived in law.

[58] The taking over of the management and administration of the Temple as an endowment is pursuant to the **1906 Ordinance** and regardless of the status of the Deregistered Society. Therefore, the taking over of the Temple is a separate matter altogether from the deregistration of the Deregistered Society.

[59] Further, since the Order of the TYT has never been quashed or revoked, it remains effective and the 1st defendant is empowered to take over the administration and management of the Temple pursuant to the provisions of the **1906 Ordinance**.



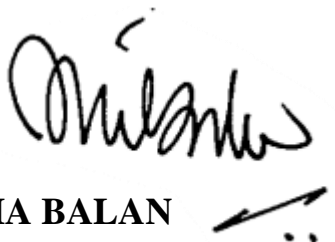
- [26] In any event, these are questions or issues which ought to be taken up in a Judicial Review application. As it stands, by not pursuing a Judicial Review via Order 53 of the Rules of Court 2012, the Plaintiff has not even crossed the threshold and cannot ventilate these issues via OS13.
- [27] Thus, even assuming (without concluding) that there are merits in OS13, it is our conclusion that by failing to take the matter up via Order 53 of the Rules of Court 2012, the Plaintiff has effectively squandered the opportunity to ventilate these issues via a Judicial Review application.
- [28] Having considered the matter carefully, and having due regard to the comprehensive written submissions and the extensive oral clarification before us, we find that there is no appealable error to warrant any appellate interference in this case.
- [29] In our view the learned JC, having considered all the evidence, was fully entitled to reach his evaluative judgement as per the grounds of judgment.

Result

- [30] Although the Plaintiff criticised the JC's approach and reasoning, we are not persuaded that the JC's approach was erroneous, the reasoning flawed or the conclusions wrong.



[31] In the circumstances, for the reasons stated above we find no merits in the appeal and it is hereby dismissed with a single order of costs of RM5,000.00 to be paid to the First and Second Respondents (subject to allocator), and costs of RM 5,000.00 to the Third Respondent (without allocator).



S. NANTHA BALAN

Judge

Court of Appeal,

Putrajaya, Malaysia

Date: 29 August 2022

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Legislation

Section 7 Societies Act 1966
Section 13 (1)(c)(iv) Societies Act 1966
Section 18 Societies Act 1966
Section 2 Hindu Endowments Ordinance 1906
Section 3 (3) Hindu Endowments Ordinance 1906
Section 4 Hindu Endowments Ordinance 1906
Order 53 Rules of Court 2012

Cases

Ahmad Jefri bin Mohd Jahri @ Md Johari v. Pengarah Kebudayaan & Kesenian
Johor & Ors [2010] 5 CLJ 865; [2010] 3 MLJ 145 (FC)
Kaneka Paste Polymers Sdn Bhd v. Director General of Industrial Relations &
Ors [2005] 1 LNS 276; [2005] 7 MLJ 132
London Passenger Transport Board v Moscrop [1942] AC 332; [1942] 1 All ER
97 HL
Majumder v Attorney-General of Sarawak [1967] 1 MLJ 101 (FC)

