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W.A.(MD) No.368 of 2022
& W.P(MD)No.12921 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.(MD) No.368 of 2022
and
C.M.P.(MD)No.3742 of 2022
and
W.P.(MD)No.12921 of 2022
and
W.M.P.(MD)No.9175 of 2022

W.A.(MD)No.368 of 2022

R.V.S.Veeramani @ V.Mani

... Appellant / Writ Petitioner

-vs-

- 1.The Additional Chief Secretary,
Tourism, Culture and Religious
Endowments (RE3-1) Department,
Secretariate, Chennai-600 009.
- 2.The Commissioner,
H.R and C.E (Admn.) Department,
Chennai-600 034.
- 3.The Joint Commissioner,
H.R. and C.E. (Admn.) Department,
Tiruchirappalli.
- 4.R.Varadarajan

... Respondents/Respondents



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W.A.(MD) No.368 of 2022
& W.P(MD)No.12921 of 2022

PRAYER: Writ Appeal has been filed under Clause 15 of Letters Patent to set aside the order, dated 08.04.2022 made in W.P.(MD)No.4042 of 2020 on the file of this Court.

For Appellant : Mr.S. Parthasarathy
Senior Advocate, and
K.Govindarajan
for Mr.B.Ponnupandi

For R1 to R3 : Mr.S.P.Maharajan
Special Government Pleader

W.P.(MD)No.12921 of 2022

R.V.S.Veeramani @ V.Mani

... Petitioner

-vs-

1.The Additional Chief Secretary,
Tourism, Culture and Religious
Endowments (RE3-1) Department,
Secretariate, Chennai-600 009.

2.The Commissioner,
H.R and C.E (Admn.) Department,
Chennai-600 034.

3.The Joint Commissioner,
H.R. and C.E. (Admn.) Department,
Tiruchirappalli.

4.R.Varadarajan

... Respondents

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PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the proceedings of the third respondent made in Na.Ka.No.4214/2020/A4, dated 07.06.2022 and quash the same.

For Petitioner : Mr.K.Govindarajan
for Mr.B.Ponnupandi

For R1 to R3 : Mr.S.P.Maharajan
Special Government Pleader

J U D G M E N T

[Judgment of the Court was made by D.BHARATHA CHAKRAVARTHY, J.]

A. The Writ Appeal & The Writ Petition:

1. This Writ Appeal is directed against the order of the learned Single Judge dated 08.04.2022 made in W.P.(MD)No.4042 of 2020 in and by which the learned Single Judge had dismissed the writ petition filed by the appellant.

1.2 In the writ petition, the appellant had challenged the order of the first respondent namely the Additional Chief Secretary, Tourism, Cultures and Religious Endowments (RE3-1) Department, Secretariat, Chennai, dated



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19.02.2020 in G.O(Permanent)No.56 and the consequential order of the third respondent, namely, the Joint Commissioner in Na.Ka.No.8733/18/Aa1, dated 24.02.2020.

1.3. By the said orders, in a revision preferred by the appellant against the order of the second respondent namely, the Commissioner of HR & CE (Admn.) Department, Chennai-34 in partly allowing the appeal and remanding the matter back to the third respondent, the first respondent himself had granted the relief in favour of the fourth respondent by directing he also be appointed as an Additional Hereditary Trustee. Thereafter, a consequential order dated 07.06.2022 was also passed by the Joint Commissioner of HR & CE (Admn.) Department regarding the details of the joint trusteeship which is impugned in Na.Ka.No.4214/2020/A4. Against which, the appellant had filed W.P.(MD)No.12921 of 2022. The said order is only a consequential order and it depends upon the decision of this Court in the above writ appeal and as such the said writ petition is also tagged along with the writ appeal and both the matters are taken up together and are disposed of by this Common Judgment.



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B. Facts in Brief:

2. The brief facts leading to the filing of the writ appeal are that Arulmigu Marriamman Temple situated at Manapparai Town, Trichy District is under the administration of Hereditary Trustee. The appellant's grandfather one Rajagopal Naidu was declared as the Hereditary Trustee of the Temple by the judgment of the learned Subordinate Court, Trichy in O.S.No.97 of 1963. The said Rajagopal Naidu died in the year 1984 leaving behind two sons namely, Veerasamy and Varadarajan . The said Varadarajan, who is the fourth respondent herein got into Government service and therefore, he gave 'No Objection Certificate' and consent in favour of his brother Veerasamy to be appointed as Hereditary Trustee.

2.1 Pursuant thereto by a specific order passed under Section 63(b) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 after due adjudication in O.A.No.20 of 1986, the appellant's father and the brother of the fourth respondent Varadarajan, namely, Veerasamy was held to be the Hereditary Trustee in view of the earlier decision in the suit and it was held that the appointment could be made under Section 54 of the Act. As a matter of fact, it is specifically held that the devolution of trusteeship passed



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on to the legal heirs in an unbroken line of succession and as such the said Veerasamy is entitled to the declaration as sought for. Pursuant to which, the said Veerasamy was functioning as the sole Hereditary Trustee.

2.2. Whilesso after his retirement from government service, the fourth respondent filed a revision petition before the third respondent in R.C.No. 10421 of 2001 to declare him as the Hereditary Trustee of the temple. The said revision was dismissed by order dated 07.07.2004. Against the said order, a further revision was preferred on the file of the second respondent, namely, the Commissioner, in R.P.No.205 of 2004. The said R.P.No.205 of 2004 was dismissed by order dated 14.09.2005. The relevant portion of the said order reads as hereunder:

“But the right to hold office can only be in accordance with the law of succession. Unless it is joint right. I, therefore, see no illegality in the impugned order passed by the Joint Commissioner, HR & CE Admn. Department, Trichy and it is hereby confirmed. If at all the petitioner intends to make a rival claim to hold office as Joint Hereditary Trustee along with the respondent herein, he may file a regular suit before the competent Civil Court having jurisdiction, if so advised. In fine, the Revision Petition be and is hereby dismissed.”



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2.3 Challenging the same, the fourth respondent filed writ petition in W.P.(MD) No.39570 of 2005. Whiles on 27.11.2010, the father of the appellant Veerasamy, the sole Hereditary Trustee died. On 08.12.2010, the fourth respondent once again filed a fresh petition before the third respondent to appoint him as the Hereditary trustee. The appellant also filed an application to appoint him as the Hereditary Trustee. On 24.04.2011, two separate orders were passed by the third respondent in the applications. The application filed by the appellant was allowed appointing him as the Hereditary Trustee as he was next in line of succession of the deceased Hereditary Trustee Veerasamy. By another order, the claim of the fourth respondent was rejected on the ground that any rival claim as to the Hereditary Trusteeship can be made only before the competent civil Court and it is not within the remit of the third respondent to decide such rival claim.

2.4 Immediately thereof, the fourth respondent also filed a suit in O.S.No.362 of 2011 to declare himself as the Hereditary Trustee. At the same time, the fourth respondent also filed two appeals in A.P.Nos.7 of 2013 and 8 of 2013 against the orders of the third respondent. By two distinct orders, the second respondent dismissed A.P.No.7 of 2013 filed against the appointment



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of the appellant as Hereditary Trustee with a direction to the fourth respondent to approach the civil Court.

2.5 As far as the order passed rejecting the claim of the fourth respondent, A.P.No.8 of 2013 was partly allowed by remanding the matter back to the Joint Commissioner, the third respondent to consider the case afresh. It is useful to extract Paragraph No.3 of the said order, which reads as hereunder:

“3. I heard Thiru E.Ganesh, Counsel for the petitioner and perused the relevant records. The appellant's elder brother R.Veerasingam was recognized as Hereditary Trustee of the temples with the consent of the appellant and other legal heirs of Rajagopal Naidu. However, the right of the petitioner has not been extinguished in view of the consent given him in favour of his elder brother but the succession to the office shall be decided in accordance with Hindu Succession Act. The Joint Commissioner without consider the claim of the appellant as per the Hindu Succession Act rejected the claim of the appellant.”

2.6 Thereafter, once again the third respondent decided the issue and rejected the case of the fourth respondent by an order dated 29.07.2013 and the relevant portion of the order reads as under:



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“ஆனால் அவ்வாறு செய்யப்படவில்லை. இந்நிலையில் திரு.ஆர்.வரதராஜனை இத்திருக்கோயிலுக்கு பரம்பரை அறங்காவலர் வாரிசுதாரராக பதிவு செய்வதால் இத்திருக்கோயிலுக்கு பலன் ஏதுமில்லை. நிர்வாகத்தில் சிக்கல்கள் ஏற்பட வாய்ப்புகள் உள்ளன. ஒரு திருக்கோயிலின் அறங்காவலர் உரிமை பரம்பரை தன்மை உடையது என்பதை மட்டுமே இணை ஆணையரால் முடிவு செய்ய இயலும் பரம்பரை அறங்காவலர் வாரிசுரிமை குறித்து பிரச்சனை ஏற்படின் அதனை சிவில் நீதிமன்றத்தின் மூலமே தீர்த்துக்கொள்ள இயலும். எனவே, ஆணையர் R.P.204/2004 நாள்.09.09.05 மற்றும் ஆணையர் A.P.8/2013 பி2 நாள் 28.02.2013 ஆகிய குறிப்புகளில் உத்திரவிட்டபடி திரு.ஆர்.வரதராஜன் தனது கோரிக்கை தொடர்பாக சம்மந்தப்பட்ட சிவில் நீதிமன்றத்தில் வழக்கு தாக்கல் செய்து பரிகாரம் தேடிக்கொள்ள அறிவுறுத்தப்பட்டு இம்மனு முடிவு செய்யப்படுகிறது.”

2.7 Once again, the fourth respondent filed an appeal to the Commissioner. In the appeal, once again, the second respondent partly allowed the appeal and remanded the matter back. While so remanding, the second respondent also directed the fourth respondent to withdraw the writ petition and the suit which was filed and pending. It is useful to extract the order passed by the second respondent which reads as hereunder:



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“ In view of the above order, this forum while disposing the A.P.8 of 2013 filed by the petitioner, directed the Joint Commissioner to decide the petitioner's claim in accordance with Hindu Succession Act. But the Joint Commissioner failed to do so.

Therefore, the impugned order suffers from infirmity as stated above and liable to be set aside. Accordingly, the order dated 29.07.2013 of the Joint Commissioner, Trichy is hereby set aside and the matter is remitted back to the Joint Commissioner, Trichy for fresh disposal. The Joint Commissioner, Trichy is directed to decide the claim of the appellant in accordance with the Hindu Succession Act, if the appeallant files an undertaking affidavit to withdraw the pending writ petition and O.S. filed by him. With the above direction the Appeal Petition is disposed of.”

2.8 Aggrieved by the fact that inspite of the considered decisions of the Joint Commissioner, the second respondent remanded the matter repeatedly, the appellant filed a revision petition before the first respondent Government stating that such a remand was unwarranted. While considering the revision against the remand order, by G.O.No.56, dated 19.02.2020, the



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first respondent set aside the order of the second respondent dated 18.08.2014, but however directed that the fourth respondent also be appointed as Hereditary Trustee. After discussing the facts and the previous proceedings and the submissions made on either side, the reasons are mentioned in paragraph Nos.15 and 16 which are extracted as hereunder:

“15. சீராய்வு மனுவில் தெரிவிக்கப்பட்ட காரணங்கள், நேரடி விசாரணையின் போது சீராய்வு மனுதாரர் திரு.ஆர்.வீ.எஸ்.வீரமணி என்கிற வீ.மணி தரப்பில் எடுத்துரைக்கப்பட்ட வாதம், எதிர்மனுதாரர் திரு.இரா.வரதராஜன் தரப்பில் எடுத்துரைக்கப்பட்ட வாதம் மற்றும் சமர்ப்பிக்கப்பட்ட எழுத்துபூர்வ பாதம் ஆகியவற்றை தொடர்புடைய மூல ஆவணங்களின் அடிப்படையில் இந்நேர்வு ஆய்வு செய்யப்பட்டது. திருச்சி சார்பு நீதிமன்றத்தில் தாக்கல் செய்யப்பட்ட O.S.No.97 of 1963 வழக்கில் இத்திருக்கோயிலுக்கு திரு.ராஜகோபால் நாயுடு என்பவர் பரம்பரை அறங்காவலர் என விளம்புகை செய்யப்பட்டார். திரு.ராஜகோபால் நாயுடு அவர்கள் மறைவிற்குபின் இவரது வாரிசுதாரர்களின் இசைவுடன் அவரது மூத்த மகன் திரு.இரா.வீராசாமி நாயுடு என்பவர் பரம்பரை அறங்காவலராக நியமிக்கப்பட்டுள்ளார். திரு.இரா.வரதராஜன் அவர்கள் அரசுப் பணியிலிருந்து காரணத்தால் அவரது மூத்த சகோதரர் திரு.இரா.வீராசாமி நாயுடு அவர்களை பரம்பரை அறங்காவலராக நியமிப்பதற்கு இசைவு தெரிவித்துள்ளார். அரசுப் பணியிலிருந்து ஓய்வு பெற்ற பின் திரு.ராஜகோபால் நாயுடுவின் வாரிசுதாரர் என்கிற அடிப்படையில் தன்னையும் பரம்பரை அறங்காவலராக நியமனம் செய்ய வேண்டும் எனக் கோரியுள்ளார்.

16. மேற்கண்ட சூழ்நிலையில், திரு.ஆர்.வீ.எஸ்.வீரமணி என்கிற வீரமணி என்பவர் இந்து சமய அறநிலைக்கொடைகள் சட்டம் 1959, சட்டப்பிரிவு 114-ன் கீழ் அரசிடம் தாக்கல் செய்யப்பட்ட சீராய்வு மனுவினை மேற்காணும் வாதுரை, எதிர்வாதுரை மற்றும் ஆவணங்களின் அடிப்படையில் அரசு சுயமாகவும், கவனமுடனும் பரிசீலனை செய்தது. பரிசீலனைக்குப் பின்னர், திருச்சி மாவட்டம், மணப்பாறை நகர் மற்றும் வட்டம், அருள்மிகு மாரியம்மன் திருக்கோயிலுக்கு



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பரம்பரை அறங்காவலர் வாரிசுரிமை தொடர்பாக இந்து சமய அறநிலைக்கொடைகள் சட்டம் 1959, சட்டப்பிரிவு 54(4)-ன் கீழ் இந்து சமய அறநிலையத்துறை ஆணையர் ஆர்.பி.எண்.31/2013 நாள் 18.08.2014-ல் பிறப்பிக்கப்பட்ட உத்தரவை ரத்து செய்து, இத்திருக்கோயிலுக்கு ஏற்கனவே பரம்பரை அறங்காவலராக உள்ள திரு.ஆர்.வீ.எஸ்.வீரமணி என்கிற வீரமணி என்பவருடன் இணைந்து செயல்பட திரு.இரா.வரதராஜன் என்பவரையும் பரம்பரை அறங்காவலராக நியமனம் செய்து அரசு ஆணையிடுகிறது.□

Consequent to the said direction, another order was passed by the third respondent dated 24.02.2020 by implementing the said order.

C. The Writ Petition and Findings:

3. Challenging the above said G.O.Ms.No.56 dated 19.02.2020 and the order dated 24.02.2020, the writ petition in W.P(MD)No.4042 of 2020 was filed. The writ petition was resisted by the official respondents as well as the fourth respondent.

3.1 The learned Single Judge by the order dated 05.04.2022 held that the third respondent/Joint Commissioner had no power to decide the *inter se* dispute as to who can succeed to the office of the Hereditary Trustee and that the same should have been relegated only to the civil Court. The learned Single Judge held that the order of the Government holding that the



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fourth respondent can be made as co-hereditary trustee cannot be said to be beyond the scope of the appeal petition filed by the appellant. The learned Single Judge held that both the appellant as well as the fourth respondent have a fair chance to succeed to the office of the Hereditary Trustee and the issue is required to be resolved by filing a civil suit. By holding so, the learned Single Judge dismissed the writ petition upholding the order of the first respondent.

3.2 The findings of the learned Single Judge in Paragraph Nos.47 to 50 are extracted hereunder for ready reference:

“47. If the office of the Hereditary Trustee is vested with only one person from the family, the next in line of succession was entitled to succeed and not the person who had chance to succeed earlier. The order of the respondent holding that the fourth respondent can be made as Co-Hereditary cannot be said to be beyond the scope of the appeal / petition filed by the petitioner challenging the order of the second respondent Commissioner.

48. Thus, a reading of the above Judgment makes it clear that the third respondent Joint Commissioner has no power to decide the inter se dispute as to who is the succeed to the office of the Hereditary Trustee. If there are rival claims to the office of the Hereditary Trustee, it is for the authorities either to ask the parties to move Civil Court to have their rights decided and declared or appoint



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a fit person or allow both the parties to function as Co-Hereditary Trustees. In the present case, there is no allegation of mismanagement. Therefore, there is no necessity to appoint a fit person.

49. Power under Section 114 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 is wide. It cannot be said that the said power was exercised incorrectly by the first respondent Additional Chief Secretary.

50. Both the petitioner and the fourth respondent have a fair chance to succeed to the office of the Hereditary Trustee. On the demise of the petitioner's father and the fourth respondent's elder brother, the dispute between the petitioner and the fourth respondent is required to be resolved in the manner in which the issue was resolved on an earlier occasion, i.e. by filing a Civil Suit. Therefore, I do not find any reasons to interfere with the impugned order of the first respondent."

3.3. Aggrieved by the same, the present appeal is filed.

D. The Submissions:

4. Heard *Mr.S. Parthasarathy*, the learned Senior Counsel appearing for the appellant as well as the petitioner in both the cases and *Mr.S.P.Maharajan*, the learned Special Government Pleader appearing for the



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respondents 1 to 3 in both the cases and *Mr.G.Prabhu Rajadurai*, the learned counsel appearing for the fourth respondent in both the cases.

4.1 *Mr.S. Parthasarathy*, the learned Senior Counsel, taking this Court through the events as above, firstly would submit that the right of the petitioner to become hereditary trustee stood crystallized by the order dated 09.09.2005. He would submit that even though the right of the fourth respondent cannot be treated as extinguished, vis-a-vis, the temple when he claimed co-hereditary trusteeship, the same stood rejected and the hereditary trusteeship of Veerasamy stood confirmed. Thus when Veerasamy died, as per the scheme framed, the person who is next in the line of succession alone is entitled to be appointed as Hereditary trustee and accordingly, the appellant was appointed as Hereditary Trustee. The challenge to the appellant's appointment as Hereditary Trustee was also upheld and the matter has attained finality. However, when the said matter has attained finality, and in respect of the claim of the fourth respondent to appoint himself as the Hereditary Trustee when an order has been passed in A.P.No.8 of 2013 remanding the matter back to the Joint Commissioner and the Joint



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Commissioner has categorically held that any counter claim or contentious claim in respect of the Hereditary Trusteeship can be made only by filing a civil suit, by the second remand order dated 18.08.2014, the Commissioner failed to consider his own earlier order dated 09.09.2005, wherein he himself has directed the said Varadarajan to approach the civil Court and that when the fourth respondent/Varadarajan has already approached the Civil Court, he has directed him to withdraw the suit as well as the writ petition and once again remanded the matter. Even if the appellant had again gone back to the third respondent, no order appointing the fourth respondent could have been passed. In that view of the matter aggrieved by the repeated remands when the revision is preferred, beyond the scope of the revision, without adducing any reason whatsoever, the first respondent simply directed that the fourth respondent be appointed as a Co-Hereditary Trustee. Absolutely, no reason whatsoever is given explaining any suggestion or rule by which, the claim of the fourth respondent is allowed. Therefore, the learned Senior Counsel would pray that the learned Single Judge ought to have allowed the writ petition.

4.2 *Mr.S.P.Maharajan*, the learned Special Government Pleader appearing for the HR & CE would submit that the learned Single Judge



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himself has held that the first respondent has exercised his power under Section 114 of the Act which is wide enough to pass such orders.

4.3 *Mr.Prabhu Rajadurai*, the learned Senior Counsel appearing for the fourth respondent would submit that even as per the order dated 09.09.2005 it has been categorically held that the right of the fourth respondent has not extinguished by the consent given by him. The concept of appointing Hereditary Trustee by next in line of succession has a special meaning and it does not mean that the son of the deceased Veerasamy alone to be appointed. In that view of the matter when two persons claimed Hereditary Trusteeship as in line of succession after the death of the father of the appellant and brother of the fourth respondent in the year 2010, the third respondent ought to have relegated the parties to the civil Court and ought not to have appointed the appellant as the Hereditary Trustee. In that view of the matter, the order passed by the Commissioner of HR & CE remanding the matter back cannot be faulted with.

4.4 *Mr. Prabhu Rajadurai*, the learned counsel would submit that the suit and the writ petition was withdrawn only on account of the order of



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remand passed by the second respondent. Therefore, in the facts and circumstances of the case, when the fourth respondent who does not have any other legal heir is only praying that he also be allowed to be a Co-Trustee till his lifetime, no exception whatsoever can be taken in respect of the order passed by the first respondent Government in permitting him to be a Co-Trustee. As a matter of fact, the fourth respondent has offered that he will be a nominal Co-Trustee and will not even interfere the day to day administration is also rejected by the appellant. In that view of the matter, he would submit that when the learned Single Judge has refused to interfere with the order passed by the first respondent, this Court need not interfere and the appeal be dismissed.

4.5 The learned counsel would rely upon an order of the learned Single Judge in W.P(MD)No.7997 of 2018, dated 22.02.2019 for the proposition that when there is a genuine rival claim, the authority should divorce himself of the jurisdiction and relegate the parties to civil Court. The learned counsel also relied upon the Judgment of the Hon'ble Supreme Court in ***V.S.Thiagaraja Mudaliar Vs. Bava C. Chokkappa Mudaliar and others***¹ for the proposition that the parties have to be relegated only to the civil Court.

¹ (1974) 2 SCC 58



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He also relied upon the Judgment of this Court in ***Chettimai C.Nanjappa Chettiar (deceased by L.R.) Vs. S.N.Kuppuswami Chettiar***², whereunder a learned Single of this Court has held that if a person barter his right to be appointed to the office of the Hereditary Trustee for no value for the time being, it would be of no consequence and he will be entitled to insist and claim his right as a successor, ignoring such release or relinquishment.

E. The Discussion & Findings:

5. We have considered the rival submissions made on either side and perused the material records of the case.

5.1 The question that arises for consideration in the appeal is that whether or not the order of the Government, the first respondent herein in appointing the fourth respondent as Co-Hereditary Trustee in the revision petition filed by the appellant against the order of remand is sustainable?

5.2 Firstly, the right of the appellant and the fourth respondent's family members to be appointed as Hereditary Trustees to the temple got crystallized in O.S.No.97 of 1963. Pursuant to the decree of the civil Court, the

² 1985 (2) MLJ 154



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grandfather of the appellant namely Rajagopal Naidu was appointed as the Hereditary Trustee. When he died in the year 1984, in an application filed under Section 63(b) of the Tamil Nadu Hindu Religious and Charitable Endowments Act 1959 by order dated 18.07.1986 in O.A.No.20 of 1986, the father of the appellant namely Veerasamy was declared as the Hereditary Trustee. When the fourth respondent reclaimed the Hereditary Trusteeship from the said Veerasamy, after a period of 17 years after he gave the consent on account of his choosing the Government service over the trusteeship in the temple, it is categorically held that the office of the trusteeship was not jointly held. It was further held that when the temple is managed by the sole hereditary trusteeship and when the fourth respondent brother has been so declared, the fourth respondent who is making a rival claim as against his own consent after a lapse of 17 years can seek his remedy only through a competent civil Court and not by any other process. It must be seen that the fourth respondent did not file any civil suit on the other hand chose to challenge the said order by way of writ petition it was also ultimately withdrawn by him and thus, the said order had become final.

5.3 Further, after the death of the father of the appellant, the fourth



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respondent once again staked his claim by filing proceedings before the third respondent. The third respondent independently dealt with the claim of the appellant and recognized him as Hereditary Trustee since after the death of the said Veerasamy, the person next in line of succession namely, the appellant was entitled to succeed as the other legal heirs of the said Veerasamy, has given consent in his favour and as such recognized and declared him to be the official trustee. In that view of the matter, when it is only the appellant who is making a rival claim was relegated to approach the civil Court.

5.4 As a matter of fact, the learned Senior Counsel appearing for the fourth respondent relied upon the order of the learned Single Judge in **P.Durai Raj case** [W.P.(MD)No.7997 of 2018] and even the relevant portion of the order of the learned Single Judge in Paragraph No.8 reads as follows:

“8.....Mere raising of rival claim by itself, will not denude the authority of its jurisdiction to decide the matter. It is quite possible in some cases a rank stranger or inter-loper may set up a rival claim that he is also a hereditary trustee. Hence, in the very nature of things the authority will have to see if there is a bona fide dispute with regard to the claim over hereditary trusteeship that involves taking of evidence, documents will have



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to be marked and only thereafter, the authority can come to a decision as to whether there is any rival claim. Once the authority comes to the conclusion that there is a rival claim, he will have to divorce himself of the jurisdiction to decide the matter further and relegate the parties to go before the Civil Court.”

5.5 Thus it can be seen that when already the authorities have decided the issue and directed the fourth respondent herein to approach the civil Court, once again without any *bona fide* whatsoever the issue has been raised. The retirement of the fourth respondent from government service will only entitled him to pension and the release from the rigours of Rule 11 of the Fundamental Rules requiring his full time at the disposal of the government, but will not in any manner automatically set at naught the findings of the statutory authorities and bring all issues at large so as to make it a bonafide issue. In that view of the matter, just because the fourth respondent has raised the issue of hereditary trusteeship once again upon the death of his brother, the appellant cannot be relegated to the civil Court, when otherwise is the person next in line of succession to be recognized as a Hereditary Trustee after his father Veerasamy.

5.6 It is further to be noted that it is the case of the fourth



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respondent that 'next in line of succession' is an issue to be determined not simply by legal heirship and that the claim of the fourth respondent and the appellant amounts to rival claim and that it has to be decided only by the Civil Court. He had also filed O.S.No.362 of 2011 before the civil Court. At the same time, he kept on filing appeals to the authorities while the suit was pending. Therefore, the fourth respondent cannot be permitted to approbate and reprobate when he contends that the matter has to be decided by the Civil Court. Ultimately he also withdrew the civil suit though on the direction of the remand order. If the matter is within the jurisdiction of the third respondent namely Joint Commissioner then the decision of the Joint Commissioner in appointing the appellant alone as the Hereditary Trustee and rejecting the case of the fourth respondent is to be held as correct. If it is the contention of the fourth respondent that the third respondent has no jurisdiction at all and that the matter has to be decided by the civil Court then his action of pursuing the departmental appeals and withdrawing the civil suit, stares on his face and therefore, he cannot be permitted to raise such a contention. In that view of the matter, when twice the appointment of the appellant as Hereditary Trustee has been upheld and repeatedly it became final, the order of remand passed by the Commissioner is unsustainable.



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5.7 When the commissioner himself has categorically held that it is a case of sole hereditary trusteeship and any claim would amount to rival claim and that can be made only by way of filing a civil suit by his own order dated 09.09.2005, the repeated remands made by the Commissioner especially by the order dated 18.08.2014 was incorrect in law.

5.8 Accordingly, when the appellant filed an appeal questioning the order of remand, without upholding or rejecting the claim of the appellant, even while setting aside the order of the remand, the first respondent, out of the blue, had simply said that the fourth respondent can also be appointed as a Co-Hereditary Trustee. The first respondent had not given any reason whatsoever and the only reasoning contained in paragraph Nos.15 and 16 are extracted above. The first respondent totally ignored the checkered history of the Hereditary Trusteeship being determined in O.S.No.97 of 1963 upto the filing of the suit by the fourth respondent herein.



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5.9 Secondly, the question whether there can be Co-Trusteeship or sole Hereditary Trustee was certainly beyond the purview of the revision which was before the Government and has been inter-parties decided as sole trusteeship.

5.10 Thirdly, when in respect of such rival claims when the law has been very clearly laid down that when the Board or Commissioner had no jurisdiction, there was no question of resolving the said issue by the first respondent Government in the revision arising out of such decision. It is useful to extract Paragraph No.19 of the Judgment of the Hon'ble Supreme Court of India in **V.S.Thiagaraja Mudaliar (cited supra)** :

“ Thus, when the matter has to be decided by the ordinary civil Court of the land, there is no question of rendering a decision in a revision arising out of the order of the Commissioner. “

5.11 In that view of the matter, the first respondent had no jurisdiction whatsoever and went beyond the jurisdiction under Section 114 of



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the Tamil Nadu Hindu Religious and Charitable Endowments Act,1959 in appointing the fourth respondent as co-hereditary trustee.

5.12 In that view of the matter, we see that while the learned Single Judge acknowledged that the matter be decided by the civil Court, at the same time, the learned Single Judge held that passing such an order was not beyond the powers of the first respondent Government which in our opinion are diametrically opposite to each other and having rendered a categorical finding that the issue has to be gone into only by the civil Court, the learned Single Judge ought not to have dismissed the writ petition by upholding the order of the first respondent and accordingly we have no other option than to interfere with the Judgment of the learned Single Judge.

5.13 The Hon'ble Supreme Court of India, in ***Union of India & Others -Vs- N.Murugesan, (2022 2 SCC 25)*** explained the concept of 'approbate and reprobate' more specifically in paragraphs 26 and 27. The relevant portion of paragraph 26 reads as under :

“ 26.These phrases are borrowed from the Scots law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold.



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The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. “

5.14. The conduct of the fourth respondent has along been the same. When the office of the hereditary trusteeship fell vacant, he gave consent that his brother could be appointed. After 17 years, he staked claim again to the office. By the Order dated 09/09/2005, it is held that the temple is managed by sole hereditary trustee. It was recorded that it was not his claim that that the trusteeship was jointly held. In that view of the matter, when the eldest male member was appointed and when he as not suffered any disqualification, the claim of the petitioner was rejected. It was categorically held that it claim at best would only be rival claim to be made only to the Civil Court. However, the fourth respondent did not file any civil suit. On the other hand, leaving his claim of joint trusteeship, once again staked claim as next in line of sucession, when the vacancy arose on account of the death of Veerasamy. When the case was rejected, he filed a civil suit claim on the pretext that it is his rival claim. At the same breadth he kept on filing departmental appeals on the grounds that his consent will not amount to extinguishment of right and that his claim should be considered on the principles of line of sucession. Once again when



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the second remand is made, he withdrew the writ petition where he wanted he challenged the decision that there can only be sole trusteeship and he also withdrew the suit where his contention was that of a rival claimant. Even if the Joint Commissioner had to pass orders on the second remand, he was bound by the order dated 09/09/2005 of the Commissioner and could not have held that it is a joint hereditary trusteeship. Having obtained an order of remand, it was again contended before the first respondent government that it is a joint trusteeship, based on which the impugned order is passed. Thus, it may be seen that the fourth respondent was continuously approbating and reprobating. As such, we have no hesitation in rejecting his claim.

F. The Result:

6. In view thereof:

- (i) the Writ Appeal stands allowed;
- (ii) The order of the learned Single Judge dated 08.04.2022 in W.P(MD)No.4042 of 2020 is set aside;
- (iii) The Writ Petition in W.P.(MD)No.4042 of 2020 is allowed quashing the order of the first respondent dated 19.02.2020 appointing the fourth respondent as Joint Hereditary



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Trustee;

- (iv) In view of the Writ Appeal being allowed, the consequential order which is impugned in W.P.(MD).12921 of 2022 cannot stand and accordingly the said writ petition also stands allowed;
- (v) No costs. Consequently, connected miscellaneous petitions are closed.

[S.S.S.R., J.]

[D.B.C., J.]

04.09.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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To:

1.The Additional Chief Secretary,
Tourism, Culture and Religious
Endowments (RE3-1) Department,
Secretariate, Chennai-600 009.

2.The Commissioner,
H.R and C.E (Admn.) Department,
Chennai-600 034.



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3.The Joint Commissioner,
H.R. and C.E. (Admn.) Department,
Tiruchirappalli.



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S.S.SUNDAR, J.
and
D.BHARATHA CHAKRAVARTHY, J.

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and
C.M.P.(MD)No.3742 of 2022
and
W.P.(MD)No.12921 of 2022
and
W.M.P.(MD)No.9175 of 2022

04.09.2023