



W.P.(MD) No.18331 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.06.2023

CORAM

THE HONOURABLE Ms.JUSTICE P.T.ASHA

**W.P.(MD) No.18331 of 2022
and
W.M.P.(MD) No.13350 of 2022**

T.Deepan

... Petitioner

/vs./

**1.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai 600 034.**

**2.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Mullippadi, Seelapadi (Post),
Dindigul.**

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the order Na.Ka.No.2737/2021/Aa1. Dated 06.07.2022 passed by the 2nd respondent and quash the same and consequently direct the 1st and 2nd



W.P.(MD) No.18331 of 2022

respondents to permit the petitioner to succeed to the office of the Hereditary Trustee of Arulmigu Suyambu Saneeswara Bhagavan Thirukoil, Kuchanur, Theni District in the place of petitioner's father i.e. Mr.M.M.Thirumalaimuthu, Hereditary Trustee (Under suspension from 27.03.2011) till his suspension ceases, as per Sec.54(2) of HR and CE Act 1959, within a time limit to be fixed by this Court.

For Petitioner : Mr.Vallinayagam Senior Counsel for
Mr.T.Sakthikumaran

For Respondents : Mr.P.Subbaraj
Special Government Pleader

ORDER

The above writ petition is filed for the issue of a Writ of Certiorarified Mandamus calling for the records relating to the order in Na.Ka.No. 2737/2021/Aa1 dated 06.07.2022 passed by the second respondent, quashing the same and directing the respondents 1 and 2 to permit the petitioner to succeed to the office of the hereditary yrustee of Arulmigu Suyambu Saneeswara Bhagavan Thirukoil, Kuchanur, Theni District in the place of his father, Mr.M.M.Thirumalaimuthu till his suspension ceases, as per Section 54(2) of Hindu Religious and Charitable Endowments Act, 1959 (*herein after referred to as Act*).



W.P.(MD) No.18331 of 2022

WEB COPY

2.The facts briefly set out are as follows:-

3.The factual matrix of the case in a nutshell is stated here. The Arulmighu Suyambu Saneeswara Bhagavan Thirukoil at Kuchanur, Theni District, according to the petitioner, was established by his forefathers as early as in the year 1926 and it is an “excepted temple” as per the HR & CE Board. Thereafter, few other shrines, namely Thirumalai Kumaran Sannidhi, Lada Sannidhi, Saptha Kannimar Nagaraja Koil, Sonai Karuppanasamy Koil and Muthu Vinayagar Koil were established over the years within this temple precincts.

4.It is the case of the petitioner that the petitioner's grandfather, P.M.Muthupillai was earlier declared as hereditary trustee followed by his father, M.M.Thirumalai Muthu by orders of the Department dated 12.09.1994. During the relevant point of time, the petitioner was helping his father in performing the poojas as per the resolution dated 10.11.2010. The Board on 25.03.2003 under the guise of assisting the hereditary trustees had appointed an Executive Officer. The Executive Officer took over the exclusive management of the finances and did not



W.P.(MD) No.18331 of 2022

permit the hereditary trustees to perform their duties. This was questioned and thereafter, by an order dated 27.03.2011, the first respondent had suspended all the hereditary trustees, which included the petitioner's father by framing 21 charges and the Executive Officer of another temple was appointed as the Fit Person of this temple. All of this was only an interim arrangement. However, this has continued for more than a decade now.

5.It is the contention of the petitioner that the first respondent, by an order dated 02.12.2014, had revoked the suspension and treated the suspension period as punishment period. The petitioner would submit that with a view to prevent the hereditary trustee from taking charge of the temple, the Fit Person has induced one Rajaram to file a writ petition before the Principal Seat in W.P.No.33237 of 2014 and an order has been passed directing the Government to dispose of the appeal within a period of two months. The petitioner's father had filed a revision petition before the Government on 08.03.2015 and the Government had passed G.O.Ms.No.75, Religious Endowments Department, dated 11.06.2019 and set aside the order dated 02.12.2014 of the first respondent and directed to conduct a special audit and complete the same within a period of 3 months. This was



W.P.(MD) No.18331 of 2022

WEB COPY

challenged by the petitioner's father in W.P.(MD) No.17729 of 2019 and the same was directed to be posted along with W.P.No.33237 of 2014 before the Principal Seat.

6.Meanwhile, pursuant to the audit conducted by the Department, all of which done without hearing the hereditary trustees, a report dated 10.02.2020 was submitted showing that all the charges had been proved. Based on the said report, the first respondent had issued the show cause notice dated 10.08.2020 calling for an explanation from the petitioner's father without providing the related documents.

7.Under these circumstances the petitioner had filed an application on 11.12.2020 to appoint him as Poojari. The same was however rejected by referring to the amendment to Section 55(2) of the Act. The said order contained a remark that the petitioner could claim hereditary trusteeship as per Section 54(1) of the Act.

8.Pursuant to this, on 17.01.2022, the petitioner had moved an application



W.P.(MD) No.18331 of 2022

to permit him to succeed to the office of the hereditary trustees as per Section 54(1) of the Act. Since no order was passed, the petitioner had filed W.P.(MD) No.2673 of 2022 seeking directions to dispose of the representation, which was ordered on 10.02.2022. The second respondent was directed to consider the representation in the light of Section 54(2) of the Act and since no order was passed, the petitioner had filed Cont.P.(MD) No.2673 of 2022 and immediately thereafter, the second respondent without hearing the petitioner had passed the impugned order rejecting his claim. Therefore, the present writ petition.

9.A counter statement has been filed by the second respondent, wherein the second respondent would submit that the hereditary trustees including the petitioner's father had created forged special dharsan tickets and misappropriated huge amounts. That apart, they were created a Trust in the name of the temple and collected huge amounts. 21 charges were framed against the trustees, which included the petitioner's father and they were suspended by the order of the first respondent dated 27.03.2011 and in the very same order, the fourth respondent was appointed as the Fit Person. The reason given for rejecting the petitioner's request has been set out in paragraph No.11 as follows:-



W.P.(MD) No.18331 of 2022

WEB COPY

“11. It is submitted that the petitioner and his father, namely M.M.Thirumalaimuthu assaulted the Executive Officer of the temple, therefore the Executive Officer has given a complaint against the petitioner and others in Crime No.341/2012 under Sections 294(b), 323, 506(i) of IPC on the file of the Chinnamanur Police Station. I further submit that the petitioner along with his father, he has done various mischief in the temple. He acted against the interest of the temple, he had suffered disqualification for appointment of Hereditary Trustee.”

10.Heard the learned counsels on either side.

11.The entire issue now placed for the consideration of this Court revolves around the petitioner's right under Section 54(1) of the Act to succeed to the office of the hereditary trusteeship, where a temporary vacancy has occurred on account of the suspension of the petitioner's father. To appreciate the contention, it is necessary to consider the provisions of Section 54(2) of the Act. Section 54(2) of the Act would read as follows:-



W.P.(MD) No.18331 of 2022

WEB COPY

“54.2. When a temporary vacancy occurs in such an office by reason of suspension of the hereditary trustee under sub-section (2) of section 53, the next in the line of succession shall be entitled to succeed and perform the functions of the trustee until his disability ceases.”

12.From the reading of the impugned order and the counter, it is seen that the only reason for rejecting the petitioner's request was that he and his father had assaulted the Executive Officer of the temple. The petitioner has filed an additional typed set of papers today enclosing the closure report dated 20.08.2022, wherein the Sub-Inspector of Police, Chinnamanur Police Station, Theni District, where the crime is said to have been registered, has stated as follows:-

“திரு.தீபன், த/பெ.திருமலைமுத்து, பூசாரிபிள்ளை தெரு, குச்சனுார், உத்தமபாளையம் TK, தேனி மாவட்டம், என்பவர் சம்பந்தமாக சின்னமனுார் காவல் நிலைய பதிவேடுகளை பார்வையிட்டதில் மேற்படியாருக்கு எதிராக எந்தவிதமான குற்றவழக்குகள் அல்லது ஏனைய வழக்குகள் ஏதும் புலன் விசாரணையிலோ அல்லது நீதிமன்ற விசாரணையிலோ நிலுவையில் இல்லை என்பதை தெரிவித்துக் கொள்கிறேன்.”



W.P.(MD) No.18331 of 2022

WEB COPY

13. A mere reading of this certificate would clearly show that the reason for rejection is a created one. Further, in the case of ***C. Andiappan and others Vs. The Joint Commissioner, Tamil Nadu Hindu Religious and Charitable Endowment Board and others*** reported in **2016 1 CTC 9**, the Hon'ble Division Bench of this Court has held as follows:-

“59. Therefore, in fine, the last contention of Mr. M. Vallinayagam, learned senior counsel for the appellants, that the appointment of the fit person was illegal and that the next in the line of succession should have been appointed, merits acceptance. Interestingly, none of the seven charges framed against any of the appellants allege that they ever failed to perform the mandagapadi in a befitting manner. Therefore, the obligations created under the document of the year 1921, creating an endowment, appear to have been fulfilled all these years by the descendents of the founder of the endowment. It is only when there is any laxity on the part of the trustees in the performance of these obligations that their complete removal from the scene, if at all it is legally possible, can be resorted to.

60. Therefore, the writ appeals are allowed and the common order of the learned Judge is set aside. The writ petitions filed by the appellants would stand partly allowed to the following effect:

(i) The order placing the trustees under suspension and



W.P.(MD) No.18331 of 2022

WEB COPY

framing charges against them is upheld. The competent authority is directed to proceed with the enquiry into the charges and pass final orders within a period of three months from the date of receipt of a copy of this order.

(ii) The order of appointment of fit person is set aside. The appropriate authority shall appoint the next in the line of succession in the family of the founder as the trustee/trustees, within a period of one week from the date of receipt of a copy of this order.”

14. Therefore, taking into consideration the provisions of Section 54(2) of the Act and the judgment of the Division Bench of this Court reported in **2016 1 CTC 9**, the Writ Petition is allowed. The impugned order passed by the second respondent in Na.Ka.No.2737/2021/Aa1 dated 06.07.2022 is set aside. The second respondent is directed to appoint the petitioner as Hereditary Trustee in the place of his father, M.M.Thirumalai Muthu. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

13.06.2023



W.P.(MD) No.18331 of 2022

WEB COPY

To

- 1.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai 600 034.
- 2.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Mullippadi, Seelapadi (Post),
Dindigul.



WEB COPY



W.P.(MD) No.18331 of 2022

P.T.ASHA, J.

mm

W.P.(MD) No.18331 of 2022

13.06.2023