



WP(MD)No.15819 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.15819 of 2023
and
WMP(MD)No.15508 of 2023

B.Ramu

.. Petitioner

v.

1.The District Collector,
Thanjavur District,
Thanjavur.

2.The Revenue Divisional Officer,
Kumbakonam,
Thanjavur District.

3.The Record of Tenancy Right Officer cum Tahsildar,
Kumbakonam,
Thanjavur District.

4.Chakrabani

5.Shanmugam

6.Vijeyandran

.. Respondents 1 to 6



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7.Sri Lakshmi Narashima Swamy Pooja Dharmam Private Trust
@ Sri Lakshmi Narashima Swamy Private Trust,
Kumbakonam,
By its Hereditary Family Co-Trustees
P.Prashanth Rao
by General Power Agent
P.Pranesh Rao

8.Sri Lakshmi Narashima Swamy Pooja Dharmam Private Trust
@ Sri Lakshmi Narashima Swamy Private Trust,
Kumbakonam,
By its Hereditary Family Co-Trustees
P.Pranesh Rao

.. Respondents 7 & 8 /
Impleading Petitioners

[Respondents 7 & 8 impleaded vide order dated 08.03.2024]

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus directing the third respondent to dispose of the petition in R.T.R.P.No.2 of 2003 on the file of the third respondent within a stipulated time limit, by considering the petitioner's representation dated 05.06.2023.



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For Petitioner

: Mr.J.Barathan
for Mr.G.Gomathisankar

For Respondents

: Mr.P.T.Thiraviam,
Government Advocate
for R.1 to R.3

Mr.R.Prakash
for R.4 to R.6

For Respondents 7 & 8
/ Impleading Petitioners

: Mr.T.S.R.Venkataramana
Senior Counsel
for Mr.Adithiyan Viswanathan

ORDER

This writ petition is filed by the petitioner, namely, Ramu, in the capacity of the Trustee of Sri Lakshmi Narasimha Swami Private Trust, for a mandamus directing the third respondent / The Record of Tenancy Right Officer cum Tashildar to dispose the petition in R.T.R.P.No.2 of 2003, by considering his representation dated 05.06.2023.

2.According to the petitioner, he is the Trustee of Sri Lakshmi Narasimha Swamy Private Trust situated in No.29, 30, Mela Mettu Street, Kumbakonam. The said Trust was founded by one K.R.Ragunatha Rao and



K.R.Ramachandra Rao by a registered Trust Deed dated 26.11.1954. As per the Trust Deed, the existing Trustees have to nominate the next successor Trustee. Accordingly, on 20.04.1965, one of the founder Trustees, namely, K.R.Ramachandra Rao, had appointed his nephew S.Devaji Rao as the successor Trustee, through a registered Will dated 20.04.1965. Later, the said S.Devaji Rao nominated his son, D.Renga Rao, through a Will dated 30.08.1969.

3.After holding office for sometime, D.Renga Rao relinquished his Trusteeship and nominated one Sathyapramotha Theerthar, Madathipathi of Utharadi Mutt at Bangalore to be the next Trustee, through a registered deed dated 23.03.1996. On 23.09.2004, the then Madathipathi of Utharadi Mutt, Sathyathma Theerthar, has again re-nominated D.Renga Rao as the Trustee. Thereafter, D.Renga Rao had nominated one L.Srinivasan as the Trustee on 14.06.2007. The said L.Srinivasan has again nominated Sathyatma Theerthar, Madathipathi of Uthardi Mutt as the Trustee, who, in turn, has nominated the writ petitioner and his son as the subsequent Trustees on 07.01.2021.



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4.The case of the petitioner is that after assuming office as the Trustee, he found that that there is a petition in R.T.R.P.No.2 of 2003 with respect to certain Trust properties and the same is pending without any process. Therefore, in order to safe guard the properties of the Trust, the writ petitioner has made a representation to the third respondent on 05.06.2023 and has filed this writ petition for a mandamus to dispose of the petition in R.T.R.P.No.2 of 2003 within a stipulated time limit.

5.During the course of hearing, an impleading petition in WMP(MD)No.15508 of 2023 has been filed claiming that the impleading petitioners / proposed respondents 7 & 8 are the Hereditary Trustees of Sri Lakshmi Narashimha Swamy Pooja Dharmam Private Trust and that the writ petitioner is a fraudulent person.

6.The case of the impleading petitioners is as follows:-

6.1.Their forefathers, K.R.Ragunatha Rao and K.R.Ramachandra Rao, have established more than 16 Trusts during their life time and Sri Lakshmi



Narashima Swamy Pooja Dharmam Private Trust @ Sri Lakshmi

Narashima Swamy Private Trust is one of the Trusts created by them and it is the prime Trust. This Trust is created for the family members and the family is worshiping the family deity, Sri Lakshmi Narashimha Swamy, in the house itself.

6.2.As per the Trust Settlement Deed dated 26.11.1954, the property of the Trust cannot be alienated at all. The object of the Trust is to do pooja to the family deity. The existing Trustee has to nominate the next successor Trustee and that the Trustees should be among the family members. If any of the existing Trustees fail to nominate the subsequent Trustees, it is for the Government to appoint any one of the family members of the Trust as the competent Trustee.

6.3.However, the then Trustee, D.Renga Rao, has nominated the Pontiff of Utharadi Mutt as the next successive Trustee, who is an outsider and who is no way connected with their family. By realizing the mistake, the Pontiff of Utharadi Mutt has re-nominated D.Renga Rao as the Trustee,



by a deed dated 23.09.2004, with a rider that D.Renga Rao should nominate only the family members as the subsequent Trustees.

6.4.In the meantime, the present writ petitioner Ramu wanted to purchase certain portions of the Trust properties, which are the subject matter in the R.T.R. Proceedings and approached the then trustee D.Renga Rao. Since the property of the Trust cannot be alienated, D.Renga Rao has filed a Trust Original Petition before the Principal District Court, Thanjavur, in O.P.No.154 of 2004 and the Court, by order dated 09.06.2007, dismissed the petition with a direction not to alienate the Trust property in contravention to the Trust Deed dated 26.11.1954.

6.5.A suit was filed by one Prakash in O.S.No.406 of 2005 before the I Additional District Munisif Court, Kumbakonam, as against the then Trustee, D.Renga Rao, not to alienate any Trust properties. In that suit, during the cross examination, D.Renga Rao himself had admitted that this writ petitioner (Ramu) is not their family member and that Ramu cannot hold Trusteeship. A letter of undertaking dated 23.09.2004 given by



D.Renga Rao had also been recorded before the Principal District Munsif Court in Ex.A6 stating that he will not alienate the Trust properties and will nominate his grandsons alone as the succeeding Trustees. In the said undertaking letter dated 23.09.2004, this writ petitioner Ramu had endorsed as a witness. In this suit, D.Renga Rao also filed a memo dated 18.06.2007 that his petition seeking permission to alienate the property in Trust O.P.No.154 of 2004 was rejected and that he will not alienate the properties of the Trust. By recording this memo, this suit filed in O.S.No. 406 of 2005 was dismissed on 29.04.2008.

6.6.Even though there are specific orders by the Court that the Trust properties cannot be alienated and that the family members alone can be nominated as the Trustees, by influencing the old age of D.Renga Rao, the writ petitioner Ramu, who wanted to purchase the Trust properties, had induced him to nominate one L.Srinivasan as the subsequent Trustee on 14.06.2007. The said L.Srinivasan is none other than a Benami of the writ petitioner Ramu. Using this Trust nomination deed, L.Srinivasan has alienated some of the Trust properties, as against the orders of the Court, in



favour of one Balasubramanian, who is a relative of the writ petitioner Ramu and thereafter, nominated 1008 Sathyatma Theerthar (Pontiff of Utharadi Mutt) as the next Trustee.

6.7.This 1008 Sathyatma Theerthar (Pontiff of Utharadi Mutt) has again nominated the grandchildren of D.Renga Rao, the impleading petitioners herein, as the Trustees by a nomination deed dated 24.07.2017. Therefore, as on date, the impleading petitioners, who are the family members of the Trust, are the Hereditary Trustees of Sri Lakshmi Narashimha Swamy Pooja Dharmam Private Trust.

6.8.In the meantime, one Babu, relative of the writ petitioner herein, has filed a writ petition before this Court in WP(MD)No.7837 of 2017 for a mandamus restraining the Sub Registrar from registering any Trust deed relating to this Trust. This writ petition was dismissed as withdrawn on 26.04.2017. Again, the said Babu has filed another writ petition for the very same relief in WP(MD)No.9253 of 2017, wherein, a Division Bench of this Court, by order dated 17.05.2017, has directed the District Collector to



conduct an enquiry. The present writ petitioner Ramu has also filed a writ petition in WP(MD)No.18252 of 2017 for a mandamus not to register the nomination deed dated 24.07.2017 and to cancel the same. The impleading petitioners are party to the said writ petition and this Court, by order dated 14.03.2018, directed the District Collector to conclude the enquiry, as directed in WP(MD)No.9253 of 2017, as expeditiously as possible.

6.9. Accordingly, the District Collector has conducted the enquiry and by order dated 31.07.2018, in Na.Ka.No.C-2/2-14-17, the District Collector held that being a family Trust, the family members of the Trust alone can be the Trustees, i.e., the impleading petitioners.

6.10. As against the order of the District Collector, Babu and one K.Vishwanathan filed a suit before the Principal Subordinate Court, Kumbakonam, in O.S.No.331 of 2019 for a declaration to declare the order passed by the District Collector dated 31.07.2018 as null and void and also to restrain the defendants from registering the nomination of Trust deed



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dated 24.07.2017. Pending this suit, a bogus deed has been created as if 1008 Sathyatma Theertha (Pontiff) had nominated this writ petitioner as the Trustee and that this nomination deed had been registered in the State of Telangana on 07.01.2021.

6.11. Even though this document dated 07.01.2021 has been titled as a Trust Deed, it is only a Power of Attorney deed as per the endorsement made by the Sub-Registrar in the deed itself. This document was not produced by the writ petitioner before this Court in order to avoid any kind of enquiry. After obtaining this Power of Attorney deed, styled as Trust deed, the suit in O.S.No.331 of 2019 was withdrawn by filing a memo. Thus, the writ petitioner has circumvented the order of the District Collector.

6.12. Suppressing all these materials, the writ petitioner has filed this writ petition, without impleading the necessary parties. The intention of the writ petitioner is to get himself recognized as the Trustee of Sri Lakshmi



Narasimha Swamy Private Trust, by this Court, under the guise of seeking a direction for early disposal of R.T.R. proceedings. From the very beginning, the writ petitioner wanted to purchase the property of the Trust from the then Trustee D.Renga Rao and it was denied by the Courts time and again. Now, the very same writ petitioner is attempting to manage the entire Trust under the guise of Trusteeship, despite the fact that he does not belong to their family.

Therefore, the impleading petitioners prayed for appropriate orders.

7.Since some serious allegations have been made as against the writ petitioner, this Court, by order dated 07.08.2023, sought the response from the writ petitioner. Accordingly, a counter affidavit to the impleading petition along with an additional typedset of papers and synopsis were filed by the writ petitioner.

8.The sum and substance of the arguments advanced by the writ petitioner are as follows:-



8.1.At the outset, the writ petitioner disputed that the impleading petitioners are not necessary parties to this writ petition.

8.2.The Trust is a private Trust. In the Trust deed dated 26.11.1954, there is no condition that the successive Trustees should be nominated only from the family members of the founders. The Trustee is at liberty to nominate the successive Trustee. If any existing Trustee fails to nominate the successive Trustee, then it is for the Government to nominate any one competent person from the founder's family members. However, the then existing Trustee D.Renga Rao has nominated L.Srinivasan on 14.06.2007, as Trustee and therefore, the matter rests there.

8.3.L.Srinivasan has nominated 1008 Sathyatma Theertha (Pontiff of Utharadi Mutt) as the Trustee on 13.07.2009. This Sathyatma Theertha has nominated this writ petitioner and his son Prabhu as the successor Trustees on 07.01.2021.



8.4. On 13.04.2005, D.Renga Rao, then Trustee, has executed a registered Will that after his demise, the Trust has to be managed by Sathyatma Theertha (Pontiff of Utharadi Mutt) alone and not by his family members. However, as against this Will dated 13.04.2005, the impleading petitioners, who are the sons of D.Renga Rao's daughter, have managed to obtain a Trust nomination deed from the 1008 Sathyatma Theertha nominating them as the Trustees by a nomination deed dated 24.07.2017. Therefore, the writ petitioner and his cousin, Babu, have filed writ petitions, wherein, this Court has directed the District Collector to conduct an enquiry. Even though, the District Collector on 31.07.2018 has passed an adverse order, it became otiose since the Joint Sub Registrar No.1, Kumbakonam, has rightly refused to register the nomination deed dated 24.07.2017 and returned the same to these impleading petitioners on 06.12.2018.

8.5. It is claimed by the impleading petitioners that on 05.06.2008, D.Renga Rao has executed two registered trust deeds of Request of nomination, one in favour of his two grandsons, ie., the impleading



petitioners and another in favour of his wife and daughter, namely, Uma Sankari. Since the then Trustee D.Renga Rao has already nominated L.Srinivasan as the Trustee on 14.06.2007 itself, the subsequent Trust deeds of request of nomination executed by him are invalid.

8.6.Further, one Mr.Prakash, an Advocate, who is the son-in-law of D.Renga Rao, has filed a suit in O.S.No.406 of 2005 before the Principal Additional District Munisif Court, Kumbakonam, against D.Renga Rao for a permanent injunction restraining him from alienating the Trust properties. In the suit, D.Renga Rao has deposed that Mr.Prakash had threatened him and the suit was finally dismissed on 29.04.2008.

8.7.The impleading petitioners had given a police complaint as against the Pontiff of Utharadi Mutt on 20.10.2009 and an FIR was registered in Crime No.22 of 2009. By showing the Pontiff as an accused, the impleading petitioners threatened him and managed to obtain a Trust nomination deed from the Pontiff on 24.07.2017 and are trying to register it.



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8.8. In the suit filed as against the order of the District Collector dated 31.07.2018 and the Trust nomination deed in favour of the impleading petitioners in O.S.No.331 of 2019, the fifth defendant / 1008 Sathyatma Theertha (Pontiff) assured in the written statement that he will not appoint the impleading petitioners or their family members as Trustees. Considering this written statement coupled with the refusal slip issued by the Joint Sub Registrar to register the Trust nomination deed dated 24.07.2017, they withdrew the suit in O.S.No.331 of 2019.

8.9. The respondents 4 to 6 herein / alleged tenants have filed a suit in O.S.No.334 of 2002 as against one Raja @ Pattabiraman for a bare injunction. The suit is still pending. In the suit, the impleading petitioners herein have substituted themselves as the Trustees of Sri Lakshmi Narashimha Swamy Private Trust, behind the back of the writ petitioner. Just because they are substituted as Trustees in the said suit, the impleading petitioners cannot be considered as the Trustees of the above



mentioned Trust. Neither the writ petitioner nor the real nominated Trustees at that point of time were arrayed as parties to this suit in O.S.No. 334 of 2002.

9.Learned Government Advocate, by relying on the written instructions given by the third respondent/ Tashildar, submitted that the petition in R.T.R.P.No 2 of 2003 has been filed by four persons to register themselves as Cultivating Tenants for the properties situated in Town Survey No.21, Punjai, to an extent of 39,443 Sq.ft. The petitioners in R.T.R proceedings claimed that their ancestors were cultivating the land as cultivating tenants and as legal heirs, they are having the legal right to cultivate the land as hereditary tenants. However, the second defendant in the petition namely Mr.Raja @ Pattabiraman has stated that he has purchased the property to an extent of 11,496 Sq.ft on 26.02.2002. As against the said Raja @ Pattabiraman, the petitioners in R.T.R proceedings have already filed a suit in O.S.No 334 of 2002 before the Munisif Court, Kumbakonam, seeking permanent injunction. The suit is still pending.



Since civil disputes are pending between the parties, the R.T.R. proceedings could not be finalized.

10.Learned Counsel for the respondents 4 to 6 submitted that their ancestors were cultivating the lands as tenants and being the legal heirs, they are also cultivating the lands. In order to record them as hereditary Cultivating Tenants, they have filed R.T.R.P.No 2 of 2003. While so, one Raja @ Pattabiraman is said to have purchased certain properties of the Trust [including the subject property in R.T.R. proceedings]. It is a private family Trust and as per the conditions of the Trust deed, the Trust properties should not be alienated. However, a third party, who is no way connected with the family, is claiming title over the same. Therefore, they have already filed a suit in O.S.No.334 of 2002 seeking permanent injunction and the same is still pending. Without deciding the suit, the R.T.R proceedings cannot be finalized.

11.Heard the learned Counsel appearing for the respective parties.



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12.This writ petition has been filed by the petitioner only for a limited relief for a direction to conclude the proceedings in R.T.R.P.No.2 of 2003 within a stipulated time limit. The contention of the writ petitioner is that since he is the Trustee of Sri Lakshmi Narashimha Swamy Private Trust, as per the Trust nomination deed dated 07.01.2021, he has to protect the Trust properties from the alleged tenants who have filed the R.T.R. petition in the year 2003 and to contest the same.

13.However, the impleading petitioners came to the picture and claimed that they are the Hereditary Trustees of Sri Lakshmi Narashima Swamy Private Trust. According to them, this Trust has been established with the sole object of performing poojas to the family deity, which is still being worshipped in the house of the impleading petitioners. According to them, the writ petitioner wanted to purchase certain property of the Trust, which are the subject property in R.T.R. proceedings, from the then Trustee D.Renga Rao. In fact, they further claim that the writ petitioner has already



alienated certain subject properties with the help of L.Srinivasan and one Raja @ Pattabiraman.

14.The third respondent / Tashildar has taken a stand that since civil suits are pending between the parties, the R.T.R. proceedings could not be completed.

15.Having considered the rival submissions made by the respective parties and on perusing the materials placed on record, this Court is of the view that the impleading petitioners are necessary parties to the litigation, for more than one reasons.

16.All the parties to this writ petition admitted that the subject Trust is a private Trust. The Deputy Commissioner of Hindu Religious and Charitable Endowments Department, Mayiladuthurai, by his proceedings in O.A.No.74 of 1990 dated 25.02.1996 had also confirmed that it is a private Trust and not a religious institution coming under the purview of the Tamil



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Nadu Hindu Religious and Charitable Endowments Act. There is no separate Temple for the Trust and the deity is being worshipped in the house itself.

17.The subject Trust was established by K.R.Ragunatha Rao and K.R.Ramachandra Rao, through a registered Trust deed dated 26.11.1954 in Doc.No.1676/1954. Subsequent to the Trust deed, one of the founding fathers, K.R.Ramachandra Rao, has made a registered Will dated 20.04.1965 nominating the successor Trustees for all of the 16 Trusts. Through that Will, S.Devaji Rao was appointed as the successor Trustee for Sri Lakshmi Narashimha Swami Private Trust [subject Trust]. Further in that registered Will, it has been mentioned that in case of refusal or the death of S.Devaji Rao, his son D.Renga Rao has to function as the Trustee. The entire character of the Trust originated from these two written and registered legal instruments. The relevant paragraphs of these two legal instruments are extracted as under:-

“இதனடியில் A ஷெடியூலில் விவரிக்கப்பட்டிருக்கிறதும் எங்களுக்கு பூர்வீக பாத்தியமாய் நாங்கள் சர்வ சுதந்திரத்துடன் அனுபவித்து வருகிற கிரகத்தில் வெகு



நீண்ட காலமாகவும் பல தலைமுறைகளாகவும் எங்கள் குலதெய்வமான ஸ்ரீ லக்ஷ்மி நரசிம்ஹ விக்கிரஹம் வைக்கப்பட்டு பின்னும் இதனடியில் B செடியூலில் விவரித்திருக்கிற படிக்குள்ள இதர மூர்த்திகளும் சாளக்கிராமங்களும் வைத்து, எங்கள் முன்னோர்கள் பாரம்பரியமாக பூஜை நெய் வேத்யங்களுடன் மத்வ சம்பிரதாயப்படி ஆராதித்து இப்பால் நாங்களும் ஆராதித்து வருகிறோம். எங்கள் பரம்பரை அனுஷ்டானபடி மேற்படி விக்ரஹங்களுக்கு நித்தியபடி பூஜை நெய்வேத்தியம் வகையறா நாங்கள் நடத்தி வருவதோடு கூட ஏற்படியாக ஸ்ரீ நரசிம்ம ஜெயந்தி, நவராத்திரி சாரதா நவராத்திரி, அளந்த சதுர்த்தசி, மாதாந்திர துவாதசிகள் முதலிய விசேஷ பூஜை நாட்களில் மேற்படி கிரகத்தில் விசேஷ பூஜை நெய்வேத்தியங்களும் அன்னதானங்களும் பரம்பரையாய் நாளது வரையில் நடந்து வருகிறது.

... ..

(2) இந்த தர்மமானது எங்கள் குடும்ப *Private* டிரஸ்டே தவிர *Public* டிரஸ்ட் அல்ல.

... ..

(5) எந்த டிரஸ்டியாவது தனக்கு பின் வரவேண்டிய டிரஸ்டியை நியமிக்கத் தவறிவிட்டால் எங்கள் குடும்பத்தை சேர்ந்தவர்களில் தகுதியுள்ள ஒரு நபரை கவர்மெண்டார் நியமிக்க வேண்டியது."

18.From the above, it is clear that the object of the Trust is to perform Poojas to the family deities by their family members. There is a condition in the Trust deed that in case if any subsequent Trustee fails to nominate the successor Trustee, it is for the Government to nominate any one competent person as a successor only from the family members. Further, in the



subsequent Will, the then existing Trustee has nominated only the family members as the subsequent Trustees. Therefore, from the plain reading of these legal instruments, it can be understood that the Trust was created for the purpose of performing Poojas to the family deities by the family members of the Trust and intention of the founders is that anyone person among the family members is to be nominated as the Trustee, generation after generation, in order to protect the family deities and the properties attached thereto.

19. After the creation of Trust deed dated 26.11.1954, the then Trustees nominated their family members as successor Trustees until D.Renga Rao. After D.Renga Rao took over the Office, he nominated one Sathyapramotha Theertha (then Pontiff of Utrathi Mutt, Bangalore) on 23.03.1996. The Pontiff had once again re-nominated D.Renga Rao as the Trustee, by a registered nomination deed dated 23.09.2004, with a condition that D.Renga Rao should not nominate any outsider, other than the family members, as Trustee. The relevant portion is extracted as under:-



"11. This is declared and recognized private Trust and no third party or any body else including the relatives of the founder can question or has any right to interfere with the day today or general administration of the Trustee. Shree. D.Renga Rao shall nominate his family member only, as his successor Trustee. He shall not nominate any other person outside his family as Trustee and without my concurrence. Further he shall not alienate the properties of the trust to any other third parties except with my concurrence and with the permission of competent court."

20. On the same day, ie., on 23.09.2004, D.Renga Rao has made a registered letter of undertaking that he will nominate only his grandsons as Trustees when they attain majority and until then, his Daughter will act as a Guardian. Interestingly, in this letter of undertaking, the writ petitioner Ramu has endorsed as a witness. However, as against the above, D.Renga Rao has nominated L.Srinivasan as the successor Trustee on 14.06.2007.

21. This Court has perused both the Trust deed dated 26.11.1954, the very first document and the Trust nomination deed dated 14.06.2007



executed by D.Renga Rao in favour of L.Srinivasan. The document number of Trust deed dated 26.11.1954 is No.1676/1954, which is the parent document. However, in the nomination deed executed by D.Renga Rao to L.Srinivasan dated 14.06.2007, a different document [No.877/1954 dated 26.11.1954] was shown as the parent document instead of Doc.No. 1676/1954, dated 26.11.1954.

22.It appears that based on this document, L.Srinivasan took charge and sold 18166 Sq.ft of the Trust property to one Balasubramanian on 29.05.2008, who is none other than a relative of the writ petitioner, as against the Trust conditions. Therefore, it is clear that there was some acquittance between L.Srinivasan and Ramu. In fact, the impleading petitioners claim that L.Srinivasan is the benami of Ramu.

23.After alienation of some Trust properties, this L.Srinivasan has once again nominated 1008 Sathyathma Theerthar as a Trustee on 13.07.2009, who, in turn, has nominated the impleading petitioners as



Trustees on 05.07.2017 and confirmed the same through a Trustee Nomination deed dated 24.07.2017. Admittedly, it is an unregistered instrument. After executing this document, the said Sathyathma Theertha has also executed another registered document on 07.01.2021 handing over the Trusteeship to the writ petitioner and his son. However, neither the nomination deed dated 24.07.2017 was cancelled nor there is any reference as to this document dated 24.07.2017 in the document dated 07.01.2021.

24. In fact, though the registered document dated 07.01.2021 is titled and styled as that of a Trust Nomination Deed, the Sub-Registrar who attested the document has recorded it as that of a Power of Attorney Document.

25. Be that as it may, neither the writ petitioner Ramu nor L. Srinivasan or the Pontiff are the family members of the founding fathers of the Trust and as such, their claim as Trustees to the Trust is in the hanging. However, this Court is not inclined to observe anything in this regard, inasmuch



being a private religious Trust and founded for the benefit of family members, the remedy available to the parties with regard to Trusteeship is to file a suit as provided under Section 9 of the Code of Civil Procedure, 1908.

26.D.Renga Rao has filed a Trust Original Petition in No.154/2004 before the Principal District Court, Thanjavur seeking permission to sell some properties of the Trust. The learned Principal District Judge, by order dated 09.06.2007, rejected the request holding that the act of D.Renga Rao is not for the benefit of the Trust. It has also been recorded by the Court that the writ petitioner herein / Ramu wanted to purchase the Trust property. Therefore, it is clear that the writ petitioner Ramu, who is now claiming to be the Trustee, wanted to purchase the Trust property in the year 2004.

27.Pending the Trust Original Petition filed by D.Renga Rao, his son-in-law one Prakash has filed a suit against D.Renga Rao in O.S.No.406 of 2005 for permanent injunction restraining him from alienating the Trust



property. In that suit, D.Renga Rao has filed a memo on 18.06.2007 that he will not alienate the Trust property without the permission of the competent civil Court.

28.On a cursory look, it is seen that the Trust Original Petition was dismissed on 09.06.2007. D.Renga Rao has filed this memo in O.S.No.406 of 2005 on 18.06.2007. In between the span of 9 days, D.Renga Rao has nominated L.Srinivasan as a Trustee on 14.06.2007. This conduct of the impleading petitioners' grandfather, D.Renga Rao, does not impress upon this Court. His interest appears not to protect the Trust and its properties, as intended by the founding fathers of the Trust.

29.During his lifetime, D.Renga Rao has made a Will dated 13.04.2005 that after his demise, the Trusteeship should not be handed over to his family members and it should be handed over only to the Pontiff. However, on 05.06.2008, he has executed two request nomination deeds and nominated his grandchildren, wife and daughter as the successor



Trustees. The writ petitioner claims that as on the date of these nomination deeds dated 05.06.2008, D.Renga Rao seized to be the Trustee in view of the nomination deed dated 14.06.2007 executed in favour of L.Srinivasan.

30.However, on a closer look, it appears that of these two deeds dated 05.06.2008, in one document, D.Renga Rao requested L.Srinivasan to relinquish the Trusteeship. Therefore, it could not be stated that these documents dated 05.06.2008 were executed behind the back by any *mala fide*. On the other hand, 1008 Sathyatma Theertha has nominated the impleading petitioners as Trustees through a Trustee Nomination deed dated 24.07.2017. After executing this document, 1008 Sathyathma Theertha (Pontiff) has executed another registered document on 07.01.2021 handing over the Trusteeship to the writ petitioner and his son. However, there is no reference as to the document dated 24.07.2017 in this document dated 07.01.2021, nor the document dated 24.07.2017 has been explicitly cancelled by the Pontiff.



31.It appears that the writ petitioner has submitted a representation before the District Collector that the Trusteeship executed by 1008 Saththyatma Theertha in favour of the impleading petitioners dated 24.07.2017 is as against the Will executed by the then Trustee, D.Renga Rao dated 13.04.2005 and also filed writ petitions. On the directions of this Court in WP(MD)No.9253 of 2017, dated 17.05.2017 and WP(MD)No.18252 of 2017, dated 23.02.2018, the District Collector has conducted an enquiry and observed that even though D.Rengao Rao has executed a Will dated 13.04.2005 as against the handing over of Trusteeship to his family members, the very same D.Renga Rao, during his lifetime, has reversed the same by way of two nomination deeds dated 05.06.2008. Therefore, the District Collector by order dated 31.07.2018, has rejected the petition.

32.Challenging the findings of the District Collector, Babu has filed a writ petition in WP(MD)No.17932 of 2018, wherein, this Court has directed the parties to work out their remedy before the civil Court. Thereafter the said Babu along with one K.Vishwanathan, have filed a suit before the



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Principal Subordinate Judge, Kumbakonam in O.S.No.331 of 2019 challenging the order of District Collector dated 31.07.2018 and for restraining the defendants not to register the Trust nomination deed dated 24.07.2017.

33. Pending this civil suit, the 1008 Sathyatma Theertha is said to have executed the Trust nomination deed dated 07.01.2021 in favour of the writ petitioner Ramu and his son. In the meantime, Babu has filed a memo before the civil Court stating that he is not pressing the suit in O.S.No.331 of 2019, in view of the undertaking given by Sathyatma Theertha that he would not nominate the impleading petitioners or their family members as the Trustees and on the ground that the Sub Registrar on 06.12.2018 has refused to register the document dated 24.07.2017. Recording this memo, the trial Court has dismissed the suit as not pressed on 15.03.2021.

34. Without testing the veracity or the validity of the nomination deed dated 24.07.2017, the suit in O.S.No.331 of 2019 was withdrawn. Therefore, the order of District Collector is still in force and as on date, there is no



adverse order restraining the impleading petitioners from registering the nomination deed dated 24.07.2017.

35. Apart from the above, the writ petitioner B.Ramu claims that he became the Trustee by virtue of the Trust Nomination Deed dated 07.01.2021. However, in the writ petition filed by him in W.P(MD)No.18252 of 2017, he claimed that he is the former Trustee of Sri Lakshmi Narashimha Swamy Trust. It is not known as the basis under which such a claim has been made before the Court in the year 2017, when he claims to be the Trustee from the year 2021.

36. A Trust is created by the founders with a noble object. Indian Law has recognized various types of Trusts. The object of the Trust varies depending upon the purpose for which it has been formed. In certain type of Trusts, along with a noble purpose, certain conditions must be stipulated in order to protect the properties of the Trust from alienation and to prevent the properties of the Trust from land grabbers, encroachers etc.



Dedication of the property to religious or charitable purpose may be partial or complete. In order to ascertain whether it is partial or not, the intention of the founders has to be found. This position has been discussed in detail by the Constitution Bench of the Hon'ble Apex Court in *Menakuru Dasaratharami Reddi v. Duddukuru Subba Rao* reported in AIR 1957 SC 797 and the relevant paragraphs are extracted as under:-

"5. ... The principles of Hindu Law applicable to the consideration of questions of dedication of property to charity are well settled. Dedication to charity need not necessarily be by instrument or grant. It can be established by cogent and satisfactory evidence of conduct of the parties and user of the property which show the extinction of the private secular character of the property and its complete dedication to charity. On the other hand, in many cases Courts have to deal with grants or gifts showing dedication of property to charity. Now it is clear that dedication of a property to religious or charitable purposes may be either complete or partial. If the dedication is complete, a trust in favour of public religious charity is created. If the dedication is partial, a trust in favour of the charity is not created but a charge in favour of the charity is attached to, and follows, the property which retains its original private and secular character. Whether or not dedication is complete would



naturally be a question of fact to be determined in each case in the light of the material terms used in the document. ***In such cases it is always a matter of ascertaining the true intention of the parties; it is obvious that such intention must be gathered on a fair and reasonable construction of the document considered as a whole.*** The use of the word "trust" or "trustee" is no doubt of some help in determining such intention; but the mere use of such words cannot be treated as decisive of the matter. Is the private title over the property intended to be completely extinguished ? Is the title in regard to the property intended to be completely transferred to the charity ? The answer to these questions can be found not by concentrating on the significance of the use of the word "trustee" or "trust" along but by gathering the true intent of the document considered as a whole."

37. Further while determining whether Bihar Hindu Religious Trusts Act (1 of 1951) applies to both public as well as private trusts, the Hon'ble Apex Court in ***Mahant Ram Saroop Dasji v. S P Sahi*** reported in 1959 ***Supp (2) SCR 583*** had differentiated public and private charity as follows:-

"6. ... it is necessary to state first the distinction in Hindu law between religious endowments which are public and those which are private. To put it briefly, the essential distinction is that in a public



trust the beneficial interest is vested in an uncertain and fluctuating body of persons, either the public at large or some considerable portion of it answering a particular description; in a private trust the beneficiaries are definite and ascertained individuals or who within a definite time can be definitely ascertained. The fact that the uncertain and fluctuating body of persons is a Section of the public following a particular religious faith or is only a sect of persons of a certain religious persuasion would not make any difference in the matter and would not make the trust a private trust."

38.As for as this subject Trust [Sri Lakshmi Narashimha Swamy Pooja Dharmam] is concerned, it is a religious private Trust founded by two founding fathers from Madhwa Brahmin Community. These Madhwa Brahmins follows Dvaita Philosophy propounded by Madhwacharya who lived around thirteenth century. In the Trust Deed dated 26.11.1954, a condition has been mentioned that the successor Trustees should do the poojas to the deities as per the rituals of this particular sect. With this condition, a charge is created in the properties of the Trust, preventing alienation of the Trust properties. Thus, as discussed supra, the intention of the founding fathers is that the successive Trustees should be nominated



from and among the family members alone. Even the family members does not have any authority to alienate the Trust properties, since it is charged with deities being worshiped in the house itself. In the case of any exemplary need, the Trustee should get permission from the competent Court for any alienation of the Trust properties.

39. For the foregoing reasonings and discussions and considering the fact that the impleading petitioners are the family members of the founding fathers, this Court is of the view that the impleading petitioners are necessary parties and they are accordingly, impleaded.

40. Insofar as the relief sought for in this writ petition with regard to early disposal of R.T.R.P.No.2 of 2003 is concerned, admittedly, a suit in O.S.No.334 of 2002 is pending as against one Raja [purchaser of some Trust properties, which are the subject matter of R.T.R.P.No.2 of 2003]. Since the competent civil Court has already taken cognizance of the matter, this Court is not inclined to issue any positive direction in this regard.



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41. Therefore, the civil Court is directed to dispose of the suit in O.S.No.334 of 2002 as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order.

42. It is open to the parties to approach the competent civil Court to redress their grievance with regard to the Trusteeship of the Trust. The observations made by this Court in this writ petition are only *prima facie* and are made for the purpose of deciding the impleading petition. The civil Court, in the event if any such suit is filed, is expected to decide the same on its own merits and in accordance with law.

With the above observations and directions, the writ petition stands disposed of and the writ miscellaneous petition stands allowed. No costs.

Index : Yes / No
NCC : Yes / No
Internet : Yes
gk

08.03.2024



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Note:

Mark a copy of this order to
The District Munsif,
Kumbakonam.

To

- 1.The District Collector,
Thanjavur District,
Thanjavur.
- 2.The Revenue Divisional Officer,
Kumbakonam,
Thanjavur District.
- 3.The Record of Tenancy Right Officer cum Tahsildar,
Kumbakonam,
Thanjavur District.



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B.PUGALENDHI, J.

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