

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.V.ASHA

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

WP(C) .No. 2365 of 2014 (U)

PETITIONER:

R.MURALEEDHARAN AGED 58 YEARS
S/O.GOVINDAN NAIR, RESIDING AT SUDHARMA
THIRUTHIYAD, P.O.PUTHIYARA, KOZHIKODE.

BY ADVS.SRI.V.V.SURENDRAN
SRI.P.A.HARISH

RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY
REVENUE (DEVASWOM) DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695 001.

2. THE MALABAR DEVASWOM BOARD
REPRESENTED BY ITS PRESIDENT, HOUSE FED COMPLEX
ERANHIPALAM P.O., KOZHIKODE-673 006.

3. THE COMMISSIONER
MALABAR DEVASWOM BOARD, HOUSE FED COMPLEX
ERANHIPALAM P.O., KOZHIKODE-673 006.

4. T.P.RADHAKRISHNAN
S/O.KUNHIKRISHNAN NAIR, POOZHUKOTH HOUSE, THIRUTHIYAD
P.O.PUTHIYARA, KOZHIKODE-673 004.

SRI.M.A.FAYAZ, SR.GOVERNMENT PLEADER
R4 BY ADV. SRI.P.NARAYANAN
R4 BY ADV. SRI.M.P.ASHOK KUMAR
R2 & 3 BY ADV. SRI.KRISHNAKUMAR.S, SC, MALABAR
DEVASWOM BOARD
R BY SRI.V.KRISHNA MENON, SC, MALABAR DEVASWOM BOARD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
27.10.2015, ALONG WITH WPC. 14735/2014, WPC. 23294/2014, THE COURT
ON 11.11.2015 DELIVERED THE FOLLOWING:

RKC

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APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1. A TRUE COPY OF THE ORDER DATED 13/7/2012 PASSED BY THE
3RD RESPONDENT

EXHIBIT P2. A TRUE COPY OF THE REQUEST MADE BY THE PETITIONER TO THE
EXECUTIVE OFFICER DATED 21/7/2012.

EXHIBIT P3. A TRUE COPY OF THE LETTER DATED 24/7/2012 ISSUED BY THE
EXECUTIVE OFFICER TO THE PETITIONER

EXHIBIT P4. A TRUE COPY OF THE MEMORANDUM OF REVISION.

EXHIBIT P5. A TRUE COPY OF THE AFFIDAVIT AND PETITION

EXHIBIT P6. A TRUE COPY OF THE NOTICE ISSUED BY THE 1ST RESPONDENT
DATED 16/8/2013.

RESPONDENTS' EXHIBITS: NIL

RKC

TRUE COPY

PA TO JUDGE

**ANTONY DOMINIC &
P.V.ASHA, JJ.**

.....
**W.P.(C).Nos.2365, 14735 &
23294 of 2014**
.....

Dated this the 11th day of November, 2015

JUDGMENT

Asha, J.

These three writ petitions relating to appointment of non hereditary trustees in Sree Azhakodi Devi Maha Temple, Kozhikkode, (hereinafter referred to as 'the temple') were heard together and are being disposed of by this common judgment. The parties and documents referred to herein are as described in W.P.(C) 23294 of 2014, unless otherwise specified.

2. In W.P.(C) No.23294 of 2014 the petitioner is challenging Ext.P8 order issued by the Commissioner of Malabar Devaswom Board on 16.7.2014 permitting the non hereditary trustees to continue beyond 2 years of the order appointing them, saying that they could take charge only from 2.4.2014 onwards, despite the stipulations in Ext.P1 order that their appointment was to take effect from the date of the order ie. from 13.7.2012. The 6th respondent therein is one of the non-hereditary trustees appointed as per Ext.P1 and a beneficiary of Ext.P8 order of the

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Commissioner. In Ext.P6 order passed by Government on 3.6.2014, in a revision petition filed by the petitioner, the appointment of 6th respondent was set aside, as he was found disqualified for such appointment, being a Police Officer. The 6th respondent has challenged that order in W.P.(C) No.14735 of 2014. This court has passed an interim order staying further proceedings based on the order Ext.P6 passed by Government. W.P.(C) No.2365 of 2014 was filed by the 6th respondent at a time when the revision petition filed by the petitioner was pending before Government, where an interim order was passed against the functioning of the 6th respondent, in order to get the disposal of the revision petition expedited.

3. The petitioner claims to be an ardent devotee of the Temple. Respondents 4 to 6 were appointed as non-hereditary trustees of the temple as per Ext.P1 order dated 13.7.2012, by the Commissioner of Malabar Devaswom Board under section 39 (2) of the Madras Hindu Religious and Charitable Endowments Act, 1951 (herein after referred to as 'HR&CE Act') for a period of 5 years from the date of the order. Section 39(3) underwent an

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amendment by Act 2 of 2014 with retrospective effect from 10.11.2012, by which the tenure of appointment of non-hereditary trustees have been reduced from 5 years to 2 years. It is the contention of the petitioner that going by Ext.P1 read with section 39(3) as amended, respondents 4 to 6 were not entitled to continue beyond 13.7.2014 and the order Ext.P8 passed by the Commissioner allowing them to continue is liable to be set aside. Section 7 and 8 of Act 2 of 2014, amending the HR&CE Act read as follows:

"7: Amendment of Section 39-In subsection (3) of Section 39 of the Principal Act, for the words "five years" the words "two years" shall be substituted.

8: Special provisions relating to the existing members of the Area Committee and non-hereditary trustees.- Notwithstanding anything contained in the principal Act, the Chairman and the members of the Area Committee and the non-hereditary trustees in office as on 10th November, 2012 the date of commencement of the Madras Hindu Religious and Charitable Endowments (Amendment) Ordinance, 2012 (59 of 2012), shall cease to hold office as such Chairman and members of the Area Committee or the non-

hereditary trustees, as the case may be , on the said date”.

Thus Section 39(3) as amended reads as follows:

“(3) Every trustee appointed under sub-section (1) and subject to the result of an application, if any, filed under sub-section (4) every non-hereditary trustee appointed under sub-section (2) shall hold office for a term of [two years, unless in the meanwhile the trustee is removed or dismissed or his resignation is accepted by the Commissioner or he otherwise ceases to be a trustee.”

4. Act 2 of 2014 was published in gazette extra-ordinary dated 03.02.2014 and it came into force with effect from 12.11.2012. According to Section 8, the non hereditary trustees in office as on 10.11.2012 shall cease to hold office as such on the said date of amendment. The petitioner has got a further case that the 6th respondent was a Police Officer serving in Nadakkav Police Station, Kozhikode at the time when he was appointed as a non hereditary trustee as per Ext.P1. A non hereditary trustee is expected to devote major part of his time to look after the affairs of the temple and to concentrate in the management of the temple and temple properties. Going by the provisions contained in the Kerala Police Act, 2011 a Police

Officer is not allowed to get involved in religious matters. Petitioner had therefore approached the Government by filing Ext.P4 revision petition under section 99 of the HR&CE Act pointing out that the 6th respondent is disqualified for appointment as non hereditary trustee, being a Police Officer, who is expected to be on official duty on whole time basis. It was also stated that he was the Secretary of Navarathri Akhosha Committee of the Temple for the year 2008. Certain allegations as to misappropriation of funds were also raised against him. After hearing all the parties, the Government disposed of the revision petition by Ext.P6 order on 3.6.2014, in which it was found that the 6th respondent being a Police Officer was prohibited from becoming an office bearer in social, religious and scientific organisation as per section 86 (e) of the Kerala Police Act. It was further found that section 82 of the Police Act mandates that a Police Officer shall not undertake or engage in any profession or employment other than that of a Police Officer. The Government, relying on the judgment in W.P.(C) No.6131 of 2003 found that busy professionals shall not be appointed as

temple trustees and therefore Government set aside the appointment of the 6th respondent as non hereditary trustee and directed the Commissioner to take steps to fill up the vacancy in accordance with the provisions of the Act. It is thereafter that the Commissioner has issued Ext.P8 order on 16.7.2014 allowing non hereditary trustees to continue.

5. 6th respondent has filed W.P.(C) No.14735 of 2014 challenging Ext.P5 order passed by the Government in the revision petition filed by the petitioner in W.P.(C) No.23294 of 2014 and this Court has stayed operation of Ext.P5 order.

6. According to the the 6th respondent a revision does not lie before the Government at the instance of a third party who was not even an applicant for the post of non hereditary trustee. As far as the allegations regarding misappropriation are concerned, it is pointed out that out of the alleged 75 receipt books printed, the Executive Officer had furnished only 60 receipt books and he is not liable for the non-receipt or production of the remaining 15 receipt books and no action can be taken against him on that ground. Regarding the disqualification with reference

to the provisions contained in the Kerala Police Act, the contention of the 6th respondent is that there is no provision under the Police Act which prohibits the Police Officers from becoming non hereditary trustees, pointing out that he has not become the office bearer of a social, cultural, religious or scientific organisation and that none of his superior officers have restrained him from holding the post. It is also pointed out that functioning as non hereditary trustee does not affect his performance as Police Officer. It is further stated that he has since been retired and now it is only a question of about 6-8 months for expiry of the term of appointment.

7. We heard the learned counsel appearing on either side and considered the rival contentions.

8. The 6th respondent is now continuing as non-hereditary trustee on the basis of Ext.P8 order passed by the Commissioner, as well as the interim order passed in the Writ Petition filed by him challenging Ext.P6 order passed by Government.

9. One of the questions to be examined is whether a revision petition by a 3rd party can be entertained by Government

under Section 99 of HR & CE Act, which reads as follows:

"99.(1) State Government may call for and examine the record of the Board or Commissioner or any Deputy or Assistant Commissioner, or any Area Committee or of any trustee in respect of any proceeding, not being a proceeding in respect of which a suit or an appeal to a Court is provided by this Act, to satisfy themselves as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order passed therein; and, If, in any case, it appears to the State Government that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, they may pass orders accordingly: Provided that the State Government shall not pass any order prejudicial to any party unless he has had a reasonable opportunity of making his representations.

(2) The State Government may stay the execution of any such decision or order, pending the exercise of their powers under sub-section (1) in respect thereof."

10. On an examination of Section 99, it is seen that State Government is empowered to examine the correctness, legality or propriety of any decision of the Board or the Commissioner or the subordinate officers. That power can be exercised either suo

moto or otherwise and is not seen in any way restricted to be invoked at the instance of any particular party. We are unable to find any embargo for Government in entertaining a revision petition filed by a third party.

11. The next question to be considered is whether the 6th respondent was disqualified for appointment as non hereditary trustee while functioning as a member of disciplined force as held by Government in Ext P6 order. Sections 86 (1) (e) and 89 of the Kerala Police Act reads as follows:

"86: Disqualification for appointment as a police officer- (1) No person shall be eligible for appointment as a police officer or shall have the right to continue in employment as a police officer if that person

(a) xxxx

xxxxxx

(e) is an office bearer of any social, religious, cultural or scientific organisation and is not prepared to give up or terminate such position even after instructions from government, State Police Chief or the District police chief

X x x x

89:Police officers be always on duty.- Every Police officer, except on leave or specifically exempted or under suspension, shall for all purposes of this Act,

*be liable at all times to discharge duties and and
be deployed as a Police officer in any part of India
as may be decided by the State Police Chief."*

12. An official in the Police force cannot be expected to devote time for religious activities, functioning as non hereditary trustees. A non hereditary trustee is to manage the affairs of the religious institution devoting his whole time. In this view, the contention of the 6th respondent that he will be able to perform the duties of the Police Officer as well as that of non hereditary trustee without any hindrance to the duties attached to either of the posts cannot be correct. As per section 86 (1)(e) of the Kerala Police Act, no person shall be eligible for appointment as a Police Officer or shall have the right to continue in employment as a Police Officer if that person, is an office bearer of any social, religious, cultural or scientific organization and is not prepared to give up or terminate such position even after instructions from Government, State Police Chief or the District Police Chief. Even otherwise a Police Officer cannot be expected to get involved in the affairs/activities of a particular religion.

13. In the above circumstances, we do not find any reason

to interfere with the order Ext.P6 passed by Government, in its revisional jurisdiction under Section 99 of the Act, after looking into the responsibilities of Police Officials and those of non-hereditary trustees with reference to the provisions in the Police Act as well as the orders issued by HR &CE. Going by the provisions of the Police Act as well as the orders issued by HR & CE, we are of the view that the appointment of Police Officers as non-hereditary trustees and hence in the religious activities are not liable to be encouraged. Therefore we do not find any illegality either in entertaining the revision petition or in passing the impugned order.

14. Now the next question to be considered is the authority of the Commissioner to issue Ext.P8 order, by which respondents 4 to 6 are permitted to continue beyond 2 years from the date of their order of appointment. In this context it is relevant to note that the Commissioner passed order Ext.P8 on 16.7.2014, permitting continuance of the non hereditary trustees including the 6th respondent, at a time when Government had issued Ext.P6 order on 3.6.2014 setting aside the appointment of the 6th

respondent, bypassing the order passed by Government. On that ground itself we find that the action of the Commissioner in allowing extension/continuance of at least the 6th respondent as a non hereditary trustee was beyond his authority. It appears that respondents 4 and 5 are not interested in continuing as non-hereditary trustees; there is no appearance for them and there is no counter affidavit by them. Moreover it is seen that there was no impediment for them to take charge consequent to their appointment as per Ext.P1, whereas in the case of 6th respondent, there was a stay order passed by Government against his functioning. When Ext.P1 order provides for their appointment for a fixed period starting from the date of the order, there is no reason for permitting them beyond the period stipulated in the order. As far as 6th respondent is concerned, his appointment is already set aside. The question of competence of Commissioner to issue an order like Ex.P8, therefore becomes academic. Therefore it is not necessary to go into those questions. It is therefore declared that the respondents do not have any right to continue beyond 13.7.2014 that is the date of

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expiry of two years from Ext.P1 order.

Under the above circumstances:

1. W.P.(C) No.23294 of 2014 is allowed and W.P.(C) No.14735 of 2014 is dismissed.
2. The only direction sought in W.P.(C) No.2365 of 2014 was for a direction to expedite the disposal of Ext.P4 application. Ext.P4 application has culminated in the order Ext.P6 already referred to and set aside as above. No orders are necessary in that writ petition and the same is closed.

**ANTONY DOMINIC,
JUDGE.**

**P.V.ASHA,
JUDGE.**

rkc