

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.11388 of 2015
and
M.P.Nos.1 to 3 of 2015

A/M Patha Karupparayan Temple,
Muththannampalayam Village,
Dharapuram Road, Kovilvazhi,
Tiruppur Taluk & District
Rep. by K.Ponnusamy Gounder
as Defacto Managing Trustee ... Petitioner

- Vs -

1. The Joint Commissioner,
Hindu Religion & Charitable Endowment Department,
Coimbatore Division,
Office of the Joint Commissioner, Coimbatore.
2. The Assistant Commissioner,
Hindu Religion & Charitable Endowment Dept. (Admn.),
Tirupur.
3. Fit Person,
A/M Patha Karupparayan Temple,
Muththannampalayam Village,
Dharapuram Road, Kovilvazhi,
Tiruppur Taluk & District.

Also the Executive Officer
A/M Angalamman Temple,
Muththannampalayam Village,
Tiruppur Taluk & District. .. Respondents

Prayer:- Writ Petition has been filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order dated 19.02.2015 bearing Na.Ka.No.396/2015/A2 passed by the 2nd respondent and quash the same and consequently forbear the respondents herein from in any way interfering with the peaceful management of the temple affairs of A/M Patha Karupparayan Temple, Muththannampalayam Village, by the petitioner.

Petitioner : Mr.V.P.Karthikeyan
For Respondents : Mr.M.L.Mahendran
Government Advocate (HR & CE)

O R D E R

By consent, the writ petition is take up for final disposal.

2. The petitioner claims that he is the founder Trustee of A/M Pathakarupparayan Temple situated in eastern portion of S.F.No.56 of Muthannanpalayam Village, Dharapuram Road, Kovil Vazhi, Tirupur Taluk. The petitioner claims that he is the Dharmakartha of the said temple. The petitioner further claims that originally there was no structure for the said temple and it was only under a 'vilva tree' which was worshipped by the petitioner and his family members and they are managing the affairs of the temple as hereditary trustees. The petitioner submits that he filed a petition under Section 63(b) of the HR & CE Act to the first respondent to declare them as hereditary trustees and the same is pending adjudication. The grievance of the petitioner is that by the impugned proceedings dated 19.02.2015, the second respondent has appointed the third respondent as the Fit Person under Section 49 of the above said Act without assigning any reason and hence the petitioner has came forward to file this petition.

3. The learned counsel appearing for the petitioner draw the attention of this Court to an order of this Court in V.Muthukrishnan Vs. The Commissioner reported in 2014 Writ LR 735, wherein, this Court in similar facts and circumstances, has set aside the order as it was a non-speaking one and the petitioner would submit that the said decision squarely applies to the facts and circumstances of this case and prays for similar relief.

4. Per contra, Mr.M.L.Mahendran, the learned Government Advocate accepting notice for the respondents would submit that the third respondent has already taken charge and unless and until the application filed by the petitioner under Section 63 (b) of the HR & CE Act is decided, he cannot claim any right.

5. This Court considered the rival submissions and also perused the records placed before it.

6. In the decision in V.Muthukrishnan Vs. The Commissioner (cited supra) this Court has held in paragraphs 12 to 14 as follows:

"12. Firstly, I would like to refer to the judgment referred to by the learned

Senior Counsel appearing for the petitioner, i.e., CDJ 2012 MHC 3783 (cited supra), wherein a learned single Judge, while disposing of a similar petition, appointing a fit person, has held as follows:-

"9. The contention of the learned counsel is that there were allegations of mismanagement of funds by the Trust. Therefore, it was felt necessary to appoint a fit person under Section 49 for the better management of the temple.

10. The reading of Section 49 shows, that Joint Commissioner could exercise powers under Section 49, in the interest of public generally, keeping in view the income and the properties of religious institution, taking in view the number of worshippers and importance of religious institution as a pilgrim centre or any other matter as may be proscribed. However, the reading of impugned order does not show any reason as stipulated, to appoint the fit person vide impugned order. The contention of learned counsel for respondent No.1 that appointment has been made as there were allegation of misuse of funds, cannot be accepted. It is well settled law that a quasi judicial order should be self speaking order giving reasons for passing of the order. The defect in order cannot be cured by filing counter to justify the order.

11. The impugned order is a non-speaking order as it does not disclose any ground as per Section 49 for appointing a fit person. The impugned order thus is

contrary to provisions of statute, the alternative remedy of appeal therefore cannot be a bar to maintainability of this writ."

13. A perusal of the above judgment would show that in an identical case where a fit person was appointed to manage the affairs of the temple without disclosing any reason, this Court had interfered with it by setting aside the same on the ground that it is a non speaking order. So, also in the impugned order herein, excepting stating that due to administrative reasons the fit person was appointed, nothing else has been stated. Therefore, in my considered opinion, it is also a non speaking order as it does not disclose the ground under Section 49 for appointing the fit person. Therefore, the writ petition is also to be allowed on the same lines.

14. In the result, the impugned order in this writ petition dated 10.8.2011, passed by the third respondent is set aside. No costs. Consequently, connected miscellaneous petitions are closed."

7. A perusal of the impugned order would disclose that the said order is not in consonance with the second proviso to Section 49 of the HR & CE Act and the order is a non-speaking one, which warrants interference.

8. In the result, the writ petition is partly allowed and the impugned order dated 19.02.2015 is set aside and the matter is once again remanded to the second respondent for fresh adjudication in terms of Section 49 of the HR & CE Act. Before deciding the issue, the second respondent is directed to provide the petitioner an opportunity of personal hearing and pass orders in accordance with law, as expeditiously as possible and not later than four weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner. Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-
Asst.Registrar (CS V)

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Sub Asst. Registrar

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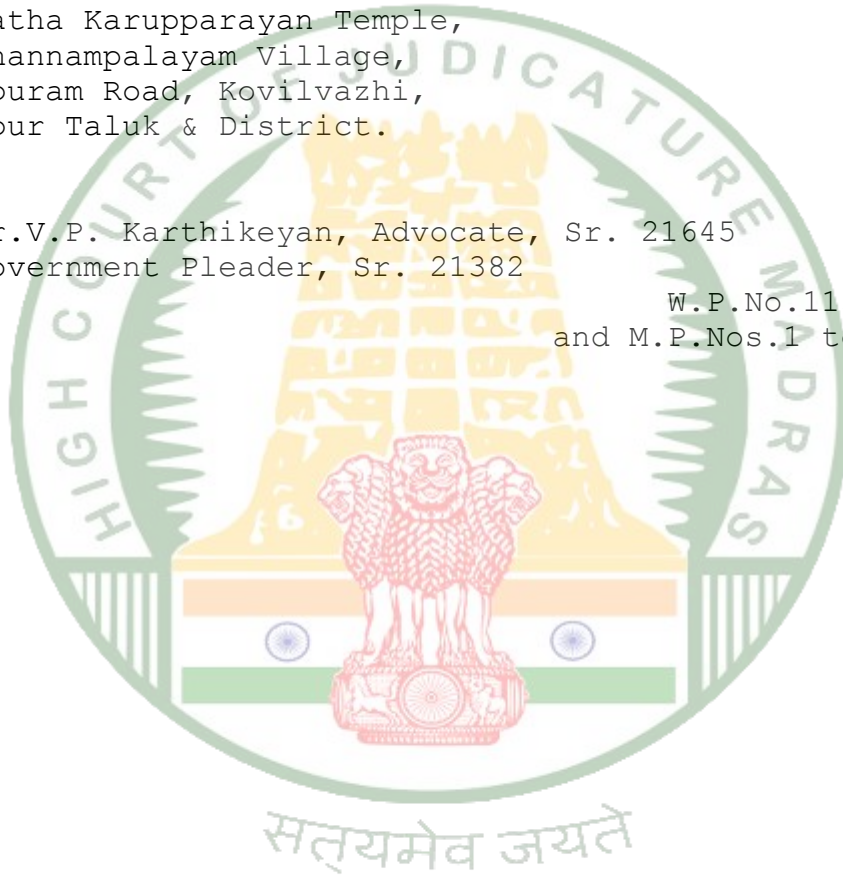
To

1. The Joint Commissioner,
Hindu Religion & Charitable Endowment Department,
Coimbatore Division,
Office of the Joint Commissioner, Coimbatore.
2. The Assistant Commissioner,
Hindu Religion & Charitable Endowment Dept. (Admn.),
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3. Fit Person,
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Muththannampalayam Village,
Dharapuram Road, Kovilvazhi,
Tiruppur Taluk & District.

1 cc to Mr.V.P. Karthikeyan, Advocate, Sr. 21645
1 cc to Government Pleader, Sr. 21382

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