

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.02.2015

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.22092 of 2014
and
M.P.No.2 of 2014

K.Seshan

...Petitioner

Vs.

1. The Commissioner,
Hindu Religious and Charitable Endowment Dept.,
Nungambakkam, Chennai - 34.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowment Dept.,
Vellore, Vellore District.
3. The Assistant Commissioner,
Hindu Religious and Charitable Endowment Dept.,
Kancheepuram, Kancheepuram District.
4. The Executive Officer,
Arulmighu Mari Chinnamman Thirukoil,
West Kulakkarai Street,
Kadamabadi Village and Post,
Thirukazhukundram Taluk,
Kancheepuram District.
5. K.N.Kuppusamy,
(R-5 impleaded, as per order passed today
in M.P.No.1 of 2015 of this W.P.)

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for the records on the file of the second respondent, relating to the order, issued in Se.Mu.Na.Ka.No.8464/2013/E1, dated 03.07.2014, and to quash the same and to permit the petitioner to continue as hereditary trustee of the Arulmighu Mari Chinnamman Thirukoil, situate at Kadamabadi Village and post, Thirukazhukundram Taluk, Kancheepuram District.

For Petitioner : Mr.R.Chandrasekaran

For Respondents -1to 4 : Mr.S.Kandasamy
Special Government Pleader
for H.R.& C.E.

For Respondent - 5 : Mr.M.Sundar for
M/s.K.Ashok Kumar & Associates

O R D E R

Heard Mr.R.Chandrasekaran, learned counsel appearing for the petitioner, Mr.S.Kandasamy, learned Special Government Pleader, for respondents 1 to 4, and Mr.M.Sundar, learned counsel appearing for newly impleaded fifth respondent.

2. The order impugned in this Writ Petition is to the order, removing the petitioner from the post of Trusteeship. The allegation against the petitioner is that, he has encroached on the land, belonged to the fourth respondent-Temple by putting up some permanent incipient structures and using the Temple land as a parking place for his Tractor. Hence, proceedings have been initiated against him under Section 78 of the Hindu Religious and Charitable Endowment Act (H.R.& C.E. Act) and on notice being issued, it is admitted that the petitioner has removed the encroachment.

3. Further allegation against the petitioner is that, because, the petitioner himself, being a trustee of the Temple himself, was an encroacher, there were other persons, who encroached upon the Temple land, embolden by the attitude of the petitioner. It appears that, action is being initiated against those encroachers, and in this regard, the petitioner has co-operated with the fifth respondent, by signing the resolution to take action against other encroachments. In this context, the petitioner would rely upon the report, dated 16.04.2014, submitted by the fifth respondent/Inspector of H.R.& C.E.,. It is stated in the said report that encroachment has been removed and the land is free from encroachment. But the fact remains that there are encroachments. Encroachment would not only mean by putting up permanent incipient structure, but is being permanently used as shed or pavilion. In all fairness, the petitioner, being co-trustee of the fourth respondent-Temple, ought not to have utilized the Temple land for his personal purpose, by taking advantage of his post in hand. Therefore, this Court will not appreciate the conduct of the petitioner in putting up some permanent incipient structures. Further undisputed fact is that, after notice was issued against the petitioner, under Section 78 of H.R.&C.E. Act, encroachment was removed, which is confirmed by the Inspector of H.R.& C.E. , by his report, dated 16.04.2014.

4. In the background of these facts, the only thing that requires to be considered is, Whether the petitioner should be removed from the Trusteeship or not? Undoubtedly, the Joint Commissioner, viz., the second respondent herein, is entitled to impose proper punishment and pass appropriate orders, commensurate with the allegation, which has been established against the petitioner/Trustee, thereby, disqualifying the petitioner from holding the post of Trusteeship. But, on a perusal of the impugned order, it is seen that the reasons assigned by the Joint Commissioner for imposing the penalty of removal from Trusteeship were not sound reasons. The allegations/charge against the Trustee does not give a cause for imposing the maximum punishment of removal from the Trusteeship.

5. Therefore, this Court is of the considered view that the matter requires to be re-considered by the Joint Commissioner to find out as to whether the petitioner should at all be removed from the post of Trusteeship, in the light of the abovesaid allegations made against him.

6. Therefore, the Writ Petition is allowed, the impugned order is set aside and the matter is remanded to the second respondent/Joint Commissioner for fresh consideration after hearing the petitioner in person and orders shall be passed in this regard within a period of three weeks from the date of receipt of a copy of this order. Consequently, connected M.P. is closed. No costs.

Sd/-

Assistant Registrar

Dated:20.2.15

True Copy

Sub Assistant Registrar

To

1. The Commissioner,
Hindu Religious and Charitable Endowment Dept.,
Nungambakkam, Chennai - 34.
2. The Joint Commissioner,
The Hindu Religious and Charitable Endowment Dept.,
Vellore, Vellore District.
3. The Assistant Commissioner,
Hindu Religious and Charitable Endowment Dept.,
Kancheepuram, Kancheepuram District.

4. The Executive Officer,
Arulmighu Mari Chinnamman Thirukoil,
West Kulakkarai Street,
Kadamabadi Village and Post,
Thirukazhukundram Taluk,
Kancheepuram District.

+1 cc to Mr.K.Ashok Kumar, Advocate,SR.7110

+1 cc to Mr.R.Chandrasekaran, Advocate,SR.6459

+1 cc to Government Pleader,SR.6774.

mg(co)
krd 20/2

Writ Petition.No.22092 of 2014



WEB COPY