

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2015

Date of Reserving the Order	Date of Pronouncing the Order
05.03.2015	19.03.2015

Coram

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

W.P. No.365 of 2014

- 1.P.R.Thirupathy
- 2.G.Moorthy
- 3.K.Gopalasamy
- 4.P.Krishnan
- 5.A.Sivasankaran
- 6.S.L.Arumugam
- 7.S.L.Pandurangan
- 8.P.Peramalingam
- 9.P.Seerangan
- 10.S.Narayanan
- 11.S.P.Ayyannan

.... Petitioners

Vs

1. The Commissioner,
Hindu Religious & Charitable Endowment,
Nungambakkam High Road,
Chennai - 600 034.

2. The Joint Commissioner,
Hindu Religious & Charitable Endowment,
Administration,
Coimbatore,
Coimbatore District.

3. The Assistant Commissioner,
Hindu Religious & Charitable Endowment,
Erode, Erode District.

4. The Fit Person,
Arulmighu Kariaperumal Temple,
Paruvachi Village,
Bhavani Taluk, Erode District,
Office at: Executive Officer,
Arulmighu Pathira Kaliyamman Temple,
Anthiyur, Erode District.

5.S.P.Shanmugam
6.M.Thesurigurajan
7.K.Sriramachandran
8.C.R.Perumalsamy
9.S.M.Munusamy
10.R.Thiruvencatasamy
11.Perumal Gounder
12.Balasubramaniam
13.A.Ayyasamy
14.G.Jayabalan
15.Ganesan
16.S.P.Murugesan
17.Marasamy
18.A.M.Krishnakumar
19.A.S.Sivakumar
20.P.Subramaniam
21.R.Karthkeyan
22.A.Narayanan
23.P.Prakaswam
24.P.Soundararajan
25.C.Rajagopal
26.R.Chinnappan
27.M.Nagaraj
28.T.M.Ramasamy
29.R.Karunnakaram
30.KPV.Kumarasamy
31.A.Thirunavukarasu
32.S.Soundararajan
33.K.M.Kalyanasundaram
34.P.K.Nachimuthu

... Respondents

R5 to R34 impleaded as per order dated 12.09.2014 in M.P.No.2 of 2014.

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, to call for the records of the impugned order made in Nada. Na.Ka.No.2995/2013/A3, dated 18.09.2013, passed by the third respondent herein, which was communicated in Ci.Pa.No.70/2013, dated 13.12.2013, under the Right to Information Act and quash the same.

For petitioner .. Mr.A.R.L.Sundaresan Senior Counsel
for Mr.M.R.Jothimanian

For Respondents .. Mr.S.Kandasamy Spl.,G.P., for RR1
to 4

Mr.P.Immanuel for RR5 to R34
O R D E R

The petitioners claim to be trustees of Arulmighu Kariaperumal Temple, Paruvachi Village, Chembulichampalayam Post, Bhavani Taluk, Erode District, and the first petitioner is the hereditary trustee.

2. The petitioners would state that the said temple is an ancient temple constructed about 500 years ago by a group of persons belonging to particular community to which they belong. It is stated that the deity is worshipped by the said community as their Kuladeivam. It is further stated that the temple is a denomination temple in character and the temple was maintained by the forefathers of the petitioners and the petitioners 1 to 4 are the Dharmakarthas of the temple. It is further stated that a person belonging to another community is said to have interfered with the administration of the temple maintained by the ancestors of the petitioners, which necessitated their ancestor had filed a Suit in O.S.No.1185 of 1921, before the District Munsif Court, Gobichettipalayam and it is stated that a decree was passed on 18.09.1923, by which the petitioners' claimed the temple belongs to a particular community and managed by the said community from generation. The petitioners would further state that during February 2013, the temple was renovated and the cost of renovation was met with the contributions from the people belonging to the petitioners' community and the officials of the Hindu Religious and Charitable Endowment Department also participated in the Kumbabishegam. Further, it is submitted that the third respondent, Assistant Commissioner, HR&CE, Erode, is supervising the temple from 1995 and the petitioners have maintained the accounts of the temple as advised by the third respondent. Whiles, the third respondent passed an order on 18.09.2013, appointing the fourth respondent as fit person of the temple in exercise of the powers conferred under Section 49(1) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 (hereinafter referred to as the 'Act'). The petitioners would further state that the said order was not communicated to the petitioners and the petitioners sought for information under the Right to Information Act (RTI Act) and thereafter, only were informed about the said order. It is stated that the order has been passed in violation of provisions of the Act, illegal, arbitrary and in violation of principles of natural justice. Further, it is stated that the impugned order does not assign any reason for appointing the fit person, when the petitioners are properly managing the temple under the supervision of the third respondent. The said order dated 18.09.2013, which according to the

petitioners was communicated to them only on 13.12.2013, is impugned in the Writ Petition.

3. The learned Senior counsel appearing for the petitioners after referring to the factual details as stated above, submitted that the third respondent without issuing notice to the administrators of the temple, passed the impugned order and the order was neither communicated to the first petitioner, hereditary trustee or to any one of the other trustees. Further, it is submitted that the third respondent does not have jurisdiction to appoint a fit person, since the temple is a denomination temple, established, maintained and managed exclusively by a particular community people. Therefore, it is submitted that notice ought to have been issued to the persons, who are administering the temple. Further, it is submitted that there is a reference to a report of the Inspector, HR & CE, Bhavani, dated 24.06.2013, which has not been furnished to the petitioners and the impugned order does not assign any reason as to why a fit person has to be appointed. Therefore, it is submitted that the impugned order is clearly in violation of the principles of natural justice. In support of his contentions, the learned Senior counsel referred to the decision of the Hon'ble Division Bench of this Court in the case of Commissioner, Hindu Religious & Charitable Endowments (Administration) Dept., Madras vs. K.Jothiramalingam & Anr., reported in AIR 1985 Madras 341, and the decision of this Court in the cases of Solamuthuraja vs. The Commissioner, Hindu Religious & Charitable Endowment Board, reported in 2010 (2) CTC 289; P.Rathinavelu vs. The Commissioner, Hindu Religious & Charitable Endowment in W.P.No.28206 of 2010, dated 22.12.2010; and A/m.Athanooramman Podarayasamy, vs. Assistant Commissioner H.R.,&C.E., (Admn.,) & Ors., in W.P.No.22466 of 2011, dated 31.07.2012.

4. The learned Special Government Pleader appearing for the respondents 1 to 4, by referring to the counter affidavit filed by the respondents 3 and 4 submitted that the temple is receiving financial assistance from the H.R.&C.E., Department for pooja to be performed and non-hereditary trustees were appointed to the said temple by the department from 1995 onwards and those non-hereditary trustees belong to various communities. It is further submitted that among the five non-hereditary trustees, one trustee is a lady and one other trustee belongs to the Schedule Caste community and these appointments were made in terms of Section 47 of the Act. Further, it is submitted that the Kumbabishegam was performed by a committee on 01.02.2013, and the invitation which was printed for the occasion, does not show that it was performed by a particular community. The allegation that the temple is a denomination temple has been denied by the respondents 3 and 4 and it is submitted that the petitioners without obtaining a valid declaration to the said effect from the competent Civil Court, cannot claim the temple to be a denomination temple. Therefore, it is submitted that the temple is a public temple. The allegation made by the first petitioner that he is

managing the affairs of the temple as Dharmakarthas, has also been denied by the third respondent. Further, it is submitted that it was brought to the knowledge of the third respondent that the temple was not administered properly and therefore, to safeguard the interest of the public religious institution and to streamline the administration, fit person was appointed and the third respondent is competent to appoint a fit person to a non-listed temple under Section 49(1) of the Act. Further, in the counter affidavit, the third respondent would state that the copy of the order, appointing fit person, was sent to the person in management by post and it is not necessary to send the same to the Writ Petitioners, as they are not trustees as claimed by them and it is not known, who had received the copy of the order which was communicated. At the same time, when an application was made under the RTI Act, the copy of the order was furnished. Further, it is submitted that the fourth respondent has assumed charge on 10.10.2013, since there was nobody to handover charge to the fourth respondent.

5. Further, it is stated that after the fit person assumed charge, a temporary hundial was installed on 12.10.2013 in the presence of several villagers and during the hundial opening held on the same day, public were permitted to take part in the proceedings and some of the Writ Petitioners also affixed their signatures. In this regard, the relevant documents were produced in the typed set of papers. Further, it is submitted that a sum of Rs.38181/- was one day collection. Further, it is submitted that the hundial which was found in the temple was sealed on 22.06.2013, by the Inspector, H.R., & C.E., department, Bhavani Division and was opened on 28.10.2013, in which the villagers also participated. Therefore, it is submitted that the petitioners were aware of all these facts and have challenged the order after a lapse of four months. Further, it is submitted that the interim order of status-quo granted by this Court on 07.01.2014, is sought to be misused by the petitioners by representing as if, they have obtained an order of interim stay. The learned Special Government Pleader referred to various provisions of the Act wherein, there is a reference to "fit person" and in this regard reference was made to Section 49(1), 53, 54 and 64(1) of the Act. With the above submissions, the learned Special Government Pleader sought to sustain the impugned order.

6. In reply, the learned Senior counsel appearing for the petitioner submitted that there is no distinction made under Section 49 of the Act, between hereditary and non-hereditary trustees and even in respect of the earlier orders, there was no such distinction. In any event, the respondents could not have appointed a fit person without hearing the petitioners, who were trustees in management of the temple and the impugned order also does not assign reasons as to why there was a necessity for appointment of a fit person.

7. Heard the learned counsels appearing on either side and

perused the materials placed on record.

8. The order impugned in this Writ Petition, dated 18.09.2013, has been passed under Section 49(1) of the Act. The said provision confers power on the Assistant Commissioner, H.R. & C.E., to appoint trustees and fit persons, in the case of any religious institution, which is not included in the list published under Section 46 of the Act and is not a religious institution notified or deemed to have been notified under Chapter VI of the Act (notified religious institutions). The Assistant Commissioner shall have the same power to appoint trustees including fit persons. The distinction between the power exercisable by the Commissioner, H.R. & C.E., under Section 45 and the power exercisable by the Assistant Commissioner under Section 49(1) is that the Commissioner in exercise of the powers conferred under Section 45 is entitled to appoint Executive Officers for any Religious institutions other than a math or a specific endowment attached to the math. The power vested with the Assistant Commissioner H.R., & C.E., under Section 49 (1) is a power to appoint fit persons. The appointment of a fit person is for a temporary period to tide over certain difficulties or contingencies if in the opinion of the Assistant Commissioner, appointment of a fit person is warranted. Similarly in terms of Section 53(4) pending the disposal of the charges framed against the trustees, "the appropriate authority" may place the trustee under suspension and appoint a fit person to discharge the duties and perform the functions of the trustee". This power is also in the nature of an interim arrangement. Similarly is the power vested with the Joint Commissioner or the Deputy Commissioner as the case may be to appoint a fit person to perform the functions of the trustee of the institution until disability of the hereditary trustee seizes or another trustee succeeds to the office or for such shorter term as the authority may direct by exercising power under Section 54(2) of the Act. Similarly, under Section 64(4) of the Act, pending the settlement of a scheme for an institution, the Joint Commissioner or the Deputy Commissioner, as the case may be, may appoint a fit person to perform all or any of the functions of the trustee thereof and define his powers and duties. Thus, the power to appoint fit person and the nature of duties and responsibilities entrusted to him under the various provisions of the Act, namely, Sections 49(1), 53(4), 54 (2) and 64(1) are all powers exercisable for appointment of fit persons as an interim measure. The statute does not provide for issuing a notice to the hereditary trustees/trustees prior to appointment of a fit person.

9. The Hon'ble Division Bench in the case of Commissioner, Hindu Religious & Charitable Endowments (Administration) Dept., Madras vs. K.Jothiramalingam & Anr., (supra), while considering the correctness of appointment of an Executive Officer under Section 45(1) to manage the affairs of the temple held that the power vested with the Commissioner under the said provision is a very drastic one, it has

to be exercised cautiously, reasonably and fairly, as the exercise of such power may even result in the effective elimination of the hereditary trustee from the management and administration of the temple. Therefore, it was held that though Section 45(1) by its terms does not contemplate any notice or enquiry before exercising the power of appointing an Executive Officer, the principles of natural justice require that the hereditary trustee who is in actual control, management and day to day administration of the temple should be given notice and opportunity to show cause against the appointment of an Executive Officer by the Commissioner under Section 45(1) and appointment of an Executive Officer should be made after being satisfied that the institution has not been properly managed by the hereditary trustee and the administration requires to be toned up or improved and the appointment of an Executive Officer is justified to secure such better administration.

10. It is true that the power under Section 45(1) of the Act, as held by the Hon'ble Division Bench is a drastic power. However, the power exercisable under Section 49(1) is only for the purpose of an interim arrangement. Therefore, the rigour of the provision is not to the extent of the power conferred under Section 45(1). Nevertheless, while exercising power under Section 49(1) cannot be made in a whimsical manner, but the authority should be satisfied that in the interest of the temple and the public, a fit person is required to be appointed to protect the temple, its properties, its income and other matters.

11. In the case of S.S.Chinnaswamy Gounder vs. The Assistant Commissioner, H.R., & C.E., reported in 1990 W.L.R., 163, it was held that where a fit person was appointed, whose term was co-extensive with the appointment of a new Board of Trustees, and where in the meanwhile, he was to be replaced by another fit person, the principles of natural justice require that he be given an opportunity.

12. Further, the order appointing a fit person should be a speaking order and disclose reasons as to why the authority namely, Assistant Commissioner, was of the opinion that the affairs of the temple were not conducted in accordance with the provisions of the Act and there was a need for immediate appointment of a fit person. In the impugned order, there is a reference to a report of the Inspector, H.R. & C.E., Bhavani, dated 24.06.2013. The contents of the report have not been referred to in the impugned order nor does the impugned order state that the report was the basis for appointment of the fit person. It may not be necessary for the Assistant Commissioner to pass an elaborate order, but the order should speak for itself and give reasons as to why in the opinion of the Assistant Commissioner, the power under Section 49(1) of the Act was exercisable. In the absence of reasons for appointment of the fit person, the impugned order has to be necessarily held to be a

non-speaking order and therefore, an order passed in violation of the principles of natural justice.

13. It may be true that the petitioner had participated in the opening of the hundi along with the fit person and had knowledge of his appointment. In my view that by itself will not validate the impugned order nor the inherent defects therein would stand cured.

14. As noticed above, the Hon'ble Division Bench in the case of S.S.Chinnaswamy Gounder vs. The Assistant Commissioner, H.R., & C.E., (supra), was considering the correctness of an order removing the fit person, who was appointed in the place of the Board of Trustees and his appointment was co-terminus with the period of the trustee. However, he was removed from office and replaced by another fit person. While considering the correctness of the said order, it was pointed out the rule of audi alteram partem had to be observed and it is no longer a moot question that the principles of natural justice have to be read into even the statutes where civil rights are involved.

15. It is to be further pointed out that the impugned order was not communicated to the petitioners and in the counter affidavit filed by the third respondent, it has been stated that the copy of the order was also sent to the person in management by post and it is not necessary to send the same to the Writ Petitioner stating that they are not trustees as claimed by them. The averment made in the counter affidavit of the third respondent is vague, as it does not state the date of despatch whether it was sent by registered post or not and other details. Therefore, the contentions of the third respondent that the copy of the order was sent to the person in management by post is held to be not substantiated. Though the third respondent takes a stand that the petitioner need not be provided with the copy, it is not known under what circumstances the signature of the petitioner and others were obtained by the fit person, when the hundi was opened on 28.10.2013. The learned Special Government Pleader appearing for the respondent submitted that though the term of office of the trustee is over, they are still continuing. In such circumstances, the petitioners ought to have been heard in the matter after issuing notice to them, since such procedure had not been followed, it has to be necessarily held that the impugned order has been passed in violation of principles of natural justice. Though the petitioner would contend that the temple is a denomination temple, established and maintained by the people belonging to a particular community, the third respondent has denied the contention and submitted that the H.R., & C.E., department has been appointing non-hereditary trustees belonging to other community to the temple from time to time and the trustees are appointed in accordance with the stipulation under Section 47 of the Act. In the light of the above stand taken by the parties, this issue cannot be adjudicated in this Writ Petition and it is for the petitioners to work out their

remedies under the Act in the manner known to law.

16. In the light of the above reasoning, it is held that the impugned order is vitiated on the ground of violation of principles of natural justice and accordingly, the same is liable to be set aside and hereby set aside and the matter is remanded to the third respondent for fresh consideration and the third respondent shall issue show cause notice to the petitioners and other (trustees), call for their objections, hear the parties in person and thereafter, pass a reasoned order on merits and in accordance with law. The above directions shall be complied with, within a period of eight weeks from the date of receipt of a copy of this order.

17. At the time when the Writ Petition was entertained, an interim order of status-quo was granted on 07.01.2014, which was extended on 08.08.2014. However, when the interim order was subsequently made absolute on 13.11.2014, it was stated that the order of stay granted on 07.01.2014 and extended on 08.08.2014, was made absolute. This appears to be an inadvertent mistake because this Court initially on 07.01.2014, did not grant an order of interim stay, but granted only an order of status-quo. Therefore, whatever is the status-quo prevailing as on date shall be maintained till the above direction is complied with by the third respondent. It is made clear that there shall not be any structural alteration of any of the properties of the temple, the hundi shall not be opened and no other transactions pertaining to any of the properties both the moveable and immovable properties of the temple shall not be undertaken in the meantime.

With the above directions, the Writ Petition is allowed and the impugned order is set aside. No costs.

Sd/-

Asst. Registrar

Dt: 24/3/2015

/true copy/

Sub Asst. Registrar.

To

1. The Commissioner,
Hindu Religious & Charitable Endowment,
Nungambakkam High Road,
Chennai - 600 034.

WEB COPY

2. The Joint Commissioner,
Hindu Religious & Charitable Endowment,
Administration,
Coimbatore,
Coimbatore District.

3. The Assistant Commissioner,
Hindu Religious & Charitable Endowment,
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Arulmighu Pathira Kaliyamman Temple,
Anthiyur, Erode District.

+ 1 cc to Mr.P.Immanuvel, Advocate SR 16021

+ 1 cc to Mr.M.R.Jothimanian, Advocate SR 15779

+ 1 cc to Govt.Pleader SR 15953

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W.P. No.365 of 2014



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