

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 23.07.2015

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.21549 of 2015
and
M.P.Nos.1 and 2 of 2015

P.Vijayan ... Petitioner
Versus

1 The Joint Commissioner
The Hindu Religious and Charitable
Endowments Department Nungambakkam
Chennai-34.

2 The Assistant Commissioner
The Hindu Religious and Charitable
Endowments Department Nungambakkam
Chennai-34.

3 The Administrative Officer
Arulmigu Varadharaja Manavala Magaamuni
Temple No.38 Varadha Muthaiappan Street
Chennai-1. ... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a writ of Certiorari, calling for the records pertaining to the impugned order of the 3rd respondent dated 19/06/2015 and quash the same.

For Petitioner : Mr.Sankar Ramasamy

For Respondents : Mr.M.L.Mahendran
Government Advocate (HR&CE)

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O R D E R

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

2. The petitioner claims that he is the hereditary trustee of Sri Patchaiamman Mannatheeswarar Temple, situated at Door No.54, Acharappan Street, Chennai -1 and according to him, the said temple was founded by his ancestors and they have been the poojaris and hereditary trustees of the temple and his family members alone have been administering the temple for more than 150 years. The petitioner would further state that the grandmother of the

petitioner as well as father of the petitioner have filed O.S.No.2872 of 1964 on the file of the Court of VI Additional City Civil Judge, Chennai against the Commissioner, HR&CE (Administration) Department, Madras and five other private persons, praying for declaration that they are the hereditary trustees of the suit temple and for setting aside the order of Commissioner dated 06.07.1964. The said suit after contest came to be decreed on 17.12.1966 and a challenge was also made to the said decree in A.S.No.359 of 1967 and it was also dismissed by this Court vide judgment dated 04.10.1971 and thereafter, no further challenge has been made and it has become final.

3. The grievance expressed by the petitioner is that without putting the petitioner on notice and without affording any opportunity whatsoever, the 3rd respondent has been appointed as the Fit Person and hence, came forward to file this writ petition.

4. The learned counsel appearing for the petitioner has drawn the attention of this Court to the impugned order and would submit that the impugned order, no where refers to the issuance of notice before appointing the Fit person and hence, prays for interference.

5. Per contra, Mr.M.L.Mahendran, learned Government Advocate (HR&CE) appearing on behalf of the respondents, would submit that as per the proceedings of the 2nd respondent dated 29.09.2014, the order appointing Thakkar/Fit person was communicated to the petitioner and the person in charge of the temple has received it and thereafter, the present impugned order came to be passed, calling upon the petitioner to handover the administration of the temple in favour of the 3rd respondent/fit person.

6. It is the further submission of the learned Government Advocate appearing for the respondents that the father of petitioner is no more and therefore, the petitioner ought to have filed an application to declare him as a hereditary trustee of the temple and since, he has failed to do so, he cannot claim him to be the hereditary trustee of the temple and prays for dismissal of the writ petition.

7. This Court, had carefully considered the rival submissions and perused the materials placed before it.

8. As rightly pointed out by the learned counsel appearing for the petitioner, a suit in O.S.No.2872 of 1964, filed by his grandmother as well as his father, on the file of the learned VI Assistant City Civil Judge, Chennai, praying for declaration that they are the hereditary trustees with consequential prayer to set aside the order passed by the Commissioner of HR&CE dated 06.07.1964, came to be decreed on 17.12.1966 and the challenge made to the said judgment and decree in the form of an appeal in A.S.No.359 of 1967 was also dismissed on 14.10.1971 and it has

become final.

9. Though, it is contended by the learned Government Advocate (HR&CE), that a separate application is necessary to declare that the petitioner is a hereditary trustee of the temple, Section 54 of the Tamilnadu Hindu Religious and Charitable Endowments Act, does not say so. However, this Court is not inclined to go into that question for the present, for the reason that the impugned order, nowhere refers to the issuance of the prior notice to the petitioner pointing out any irregularities and the impugned order is ex facie in violation of principles of natural justice and on that sole ground, it warrants interference.

10. In the result, the writ petition is partly allowed and the impugned order dated 19.06.2015, is set aside and the matter is once again remanded to the 2nd respondent for fresh adjudication and the 2nd respondent shall put the petitioner on notice and after giving him an opportunity for personal hearing, shall adjudicate the case on merits and in accordance with law, and pass order as expeditiously as possible. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

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To

- 1 The Joint Commissioner
The Hindu Religious and Charitable
Endowments Department Nungambakkam
Chennai-34.
 - 2 The Assistant Commissioner
The Hindu Religious and Charitable
Endowments Department Nungambakkam
Chennai-34.
 - 3 The Administrative Officer
Arulmigu Varadharaja Manavala Magaamuni
Temple No.38 Varadha Muthaiappan Street
Chennai-1.
- 1 cc to Government Pleader.Sr.No.37574
1 ccto Mr. Sankar Ramasamy, Advocate Sr.No.37316

W.P.No.21549 of 2015

sv (co) pmk.28.7.2015