

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.6542 of 2009

S.B.Gandhi

...Petitioner

vs.

1. The Principal Secretary / Commissioner,
Hindu Religious Charitable Endowment
(HR & CE) Department,
Nungambakkam High Road,
Chennai - 34.

2. Arulmighu Veera Anjaneya Swami Temple
represented by its Hereditary Trustee,
Mrs.Nippani Arundhathi Karnan.

...Respondents

Prayer:

Petition filed under section 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the first respondent made in RP No.2 of 2009 dated 25.02.2009 and quash the same.

For Petitioner : Mr.K.Chandrasekaran

For Respondents : Mr.S.Kandasamy for R1
Special Government Pleader
Mr.W.C.Thiruvengadam for R2

O R D E R

Heard Mr.K.Chandrasekaran, learned counsel appearing for the petitioner, Mr.S.Kandasamy, learned Special Government Pleader appearing for the first respondent and Mr.W.C.Thiruvengadam, learned counsel appearing for the second respondent. With the consent of both sides, this writ petition is taken up for final disposal.

2.This writ petition has been listed before this Court pursuant to the order passed by the Hon'ble First Bench of this Court dated 23.02.2015.

3.The petitioner has filed this writ petition challenging the order passed by the Commissioner, Hindu Religious and Charitable Endowment dated 25.02.2009. The said order was passed in a revision petition filed by the second respondent in RP No.2 of 2009 challenging the order dated 11.12.2008 passed by the Assistant Commissioner, Hindu Religious and Charitable Endowment, Tiruvellore appointing a fit person to the temple under Section 49(1) of the Act.

4.The said revision petition was allowed and the first respondent held that in the light of the decree in O.P.No.62 of 1939 passed by the District Court, Chengleput, there is statutory declaration declaring the suit Temple as private Temple and therefore, the order of the Assistant Commissioner appointing a fit person to the Temple is without jurisdiction and accordingly, revision petition is allowed.

5.It is to be noted that the order passed by the Assistant Commissioner, Hindu Religious and Charitable Endowment, Tiruvellore dated 11.12.2008 was not at the instance of the writ petitioner or any other public. But, it appears to be an action suo motto taken by the Assistant Commissioner. The first respondent was fully justified in holding that as long as the decree passed in O.P.No.62 of 1939 has not been reversed or modified. The Department has no jurisdiction to appoint a person.

6.It is pointed out by the learned counsel appearing for the second respondent that the present attempt of the petitioner who is a villager is a belated attempt to challenge the impugned order passed by the Commissioner.

7.It is submitted that the issue whether a private Temple has acquired a public character could be decided only by the competent forum which power has now been conferred on the Joint Commissioner of that area in terms of Section 63A of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959. By virtue of the said power, the Joint Commissioner has power to enquire and decide whether a institution is a religious institution and such other matters. Therefore, if at all, the petitioner has any grievance, then the only remedy available to the petitioner is to approach the jurisdiction Joint Commissioner by invoking powers under Section 63 of the Tamil Nadu Hindu Religious and Charitable Endowment Act.

8.The learned counsel appearing for the petitioner submitted that the Commissioner, Hindu Religious and Charitable Endowment Department, in the counter affidavit filed in this writ petition has taken a stand that the Temple is a public Temple.

9.In any event the stand taken in the counter affidavit itself cannot be a basis of a decision. If the petitioner contends that the character of the Temple has changed from a private Temple to that of a Public Temple, that has to be established in the manner known to law. Undoubtedly, the Joint Commissioner, Hindu Religious and Charitable Endowment has sufficient jurisdiction to go into that question. Therefore, the question of setting aside the impugned proceedings does not arise and this writ petition is dismissed.

10.However, it is open to the petitioner to approach the Joint Commissioner, Hindu Religious and Charitable Endowment, Vellore by filing appropriate application under Section 63 of the Tamil Nadu Hindu Religious and Charitable Endowment Act and establish as to how the character of the private Temple has changed into public Temple. If such an application is filed, the Joint Commissioner shall enquire into the such application, after notice to all the parties including the second respondent and members of the family which is said to be in administration of the Temple and pass orders on merits and in accordance with law.

11.This writ petition is dismissed with the above observation.
No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

The Principal Secretary / Commissioner,
Hindu Religious Charitable Endowment
(HR & CE) Department,
Nungambakkam High Road, Chennai - 34.

1 CC to Mr.K.Chandrasekaran, Advocate SR.No. 11886

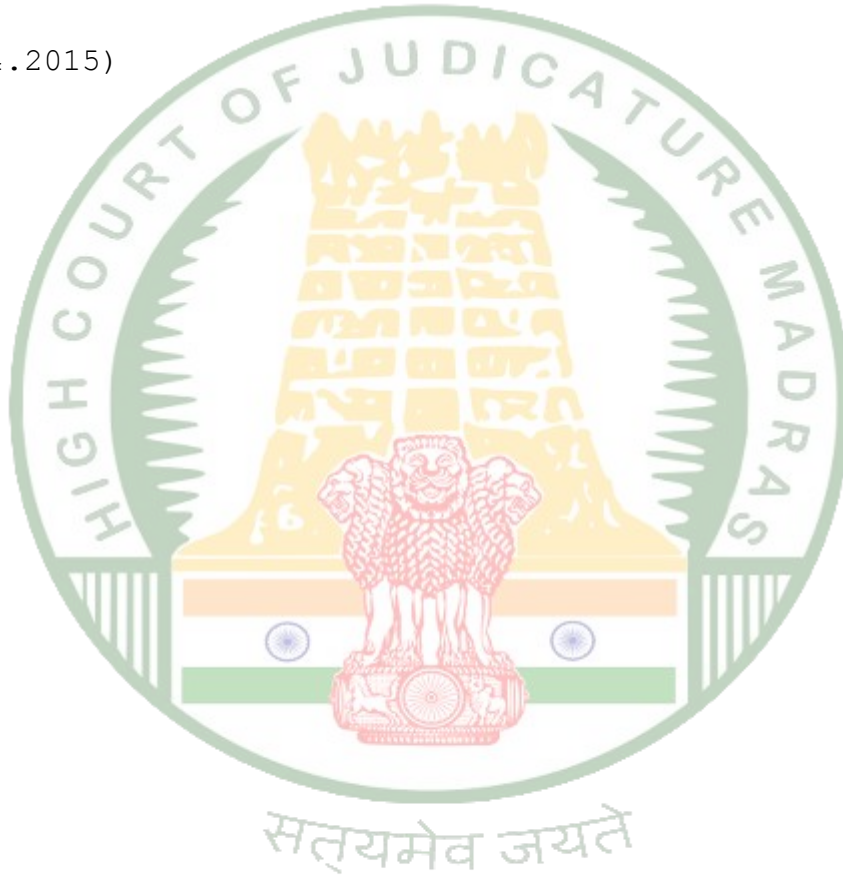
1 CC to Mr.W.C.Thiruvengadam, Advocate SR.No. 11592

1 CC to the Government Pleader, SR.No. 11674

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CNR (CO)

PSI (07.04.2015)



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