

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2015

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P. No. 21922 of 2013

&
MP. No.1 of 2013

S.Venkatachalam ...Petitioner

Vs.

1. The Commissioner,
HR & CE Department,
Nungampakkam, Chennai.

2. The Joint Commissioner,
HR & CE Department,
Erode.

3. The Executive Officer,
Arulmighu Subramaniaswamy Thirukovil,
Chennimalai
as Thakkar of A/M Mahaliamman Thirukovil,
Chenniavalasu, Perundurai Taluk,
Erode District.

4. N.Ayyappasamy. ...Respondents

PRAYER: This petition is filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the proceeding in Na.Ka. 2539/13/Ad dated 12.7.13 records pertaining to the impugned issued by the 2nd respondent and quash the same and consequently forbear the respondents from in any manner interfering with the petitioner's day to day affairs in the administration of A/M Mahaliamman Thirukovil, Chennivalasu Village, Erode District, by considering the petitioner's representation dated 20.07.2013.

For Petitioner	:	Mr.N.Manokaran,
For Respondents 1 to 3	:	Mr.P.Sanjay Gandhi, Addl. Government Pleader
For Respondent No. 4	:	Mr.R.Jayaprakash,

ORDER

The petitioner, who was the person in-charge of the temple at the time of passing the impugned order has come forward to challenge the order passed by the 2nd respondent in NaKa. No. 2539/2013/Ad, dated 12.07.2013, under Section 49(1) of the Hindu Religious and Endowments Act, by way of filing the writ petition before this Court.

2. Heard the learned counsel for the petitioner, the learned Additional Government Pleader for the respondent Nos. 1 to 3 and the learned counsel for the respondent No. 4.

3. Learned counsel for the petitioner submitted that the order impugned suffers from two vices. One, there is no indication about the reasons assigned and second, it has been passed at the instance of the respondent No. 4. In support of his contention, learned counsel for the petitioner has placed reliance upon the decision in the case of P.R.Thirupathy Vs. The Commissioner, H.R & C.E., reported in 2015 (4) CTC 755.

4. Learned Additional Government Pleader for the respondent Nos. 1 to 3 submitted that the remedy is available under Section 21 of the Act. He further submitted that possession has been taken over from the petitioner. The petitioner has also participated in the inquiry. Therefore, no interference required in the present case.

5. Learned counsel for the respondent No. 4 submitted that the petitioner has filed a comprehensive suit, seeking to declare the temple as denomination temple therefore, no interference is required in the present case.

6. Considering the above submissions, this Court is of the view that the temple in question is a public temple coming under the purview of the Hindu Religious and Charitable Endowments Act as it stands today. Merely because the petitioner was in management earlier, it cannot be said that he is entitled to continue in the said temple forever. The petitioner was admittedly heard by the respondent No. 2 before passing the impugned order. The power under Section 49(1) of the Act is meant to be used only for temporary purposes.

7. Perusal of the typed set of papers filed by the Learned Additional Government Pleader, would show that no daily Puja was held at the temple before passing of the impugned order. Therefore, the decision was taken in the interest of administration, to have daily Puja so as to avoid possible disputes between different communities, apart from protecting the property. Hence, considering the above facts, this Court is not inclined to allow this writ petition.

8. The position relied upon by the learned counsel for the petitioner in the case of P.R.Thirupathy (Supra) has to be seen on the facts of the case involved therein. In the present case, more than two years have elapsed since passing of the impugned order. As it is only a temporary measure, the proper course for the petitioner is to work out the remedy known to law so as to claim and establish his right, instead of challenging the order dated 12.07.2013, which is temporary injunction.

9. Accordingly, the present writ petition is disposed of with liberty to the petitioner to work out the remedy in the manner known to law. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner,
HR & CE Department,
Nungampakkam, Chennai.
2. The Joint Commissioner,
HR & CE Department,
Erode.
3. The Executive Officer,
Arulmighu Subramaniaswamy Thirukovil,
Chenniavalasu, Perundurai Taluk,
Erode District.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.69083
+1cc to Mr.R.Jayaprakash, Advocate, S.R.No.69187
+1cc to the Government Pleader, S.R.No.69263

W.P.No. 21922 of 2013

rsy(CO)
srg(06/01/2016)