

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.03.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.7960 of 2015 and M.P.No.1 of 2015

Shanmugam

... Petitioner

vs.

1. The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Villupuram.

2. The Assistant Commissioner
Hindu Religious and Charitable
Endowment Department,
Villupuram.

3. The Inspector
Hindu Religious and Charitable
Endowment Department,
Villupuram.

4. M.Kothandapani

5. A.Pazhani

6. A.Ramalingam

7. R.Sambasivam

8. R.Viswanathan

9. S.Sundaram

10.G.Renganathan

11.K.Sadiyan

12.M.Konori Gounder

13.Pichai Gounder

14.A.Mannankatti

15.M.Kannan

16.A.Annadurai

17.A.Kannan

18.N.Anandan

19.S.Velmurugan

20.M.Pandurangan

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a issuance of Writ of Certiorarified Mandamus to call for the records of the 1st respondent in O.A.No.8 of 2012/Old O.A.No.48/87 order dated 01.07.2014 and annexure order dated 12.03.2015 in O.A.No.8 of 2012 in O.A.48/87 by the 2nd respondent and quash the same forbearing the respondents or their officers or their Sub-ordinates from interfering in the petitioner's management and administration of the Temples Arulmigu Ayyanar, Pidari, Mariamman and Kamatchi Amman Temples, Kosapalayam Village, Villupuram Taluk.

For Petitioner : Mr.N.Suresh

For Respondents : Mr.R.Vijayakumar for R1 to R3
Additional Government Pleader

No Appearance for R4 to R20

O R D E R

Heard Mr.N.Suresh, learned counsel appearing for the petitioner and Mr.R.Vijayakumar, learned Additional Government Pleader appearing for the respondents and perused the materials placed on record. With the consent on either side, the Writ Petition itself is taken up for final disposal at the admission stage.

2. The petitioner has challenged the order passed by the 1st respondent dated 12.03.2015 purported to be order passed in O.A.No.8 of 2012 (Old No.48/87) and to forbear the respondents from interfering with the petitioner's management and administration of the temple in question and that the trusteeship is hereditary in nature and the hereditary trustees have been performing their duties all the years.

3. It is stated that on 01.04.1985, one Ramalingam was appointed as fit person by the Assistant Commissioner HR and CE Department, Cuddalore. The petitioner preferred Revision before Deputy Commissioner, HR&CE Department, Trichy and the same was taken on file as R.P.No.15 of 1986. The said Revision was allowed and the order appointing the fit person was set aside. Thereafter, the fit person filed a Writ Petition before this Court in W.P.No.5200 of 1987 and on 31.07.1987, the said Writ Petition was also dismissed.

4. The petitioner states that he continues to be in management of the temple. Thereafter, Writ Appeal was filed before the Hon'ble Division Bench in W.A.No.1247 of 1987 and the Writ Appeal was also

dismissed on 13.08.1987. Thereafter, the petitioner filed O.A.No.47 of 1986 under Section 63 (b) of the HR & CE Act for declaring office of the trusteeship of the temple as hereditary and to declare the petitioner as hereditary trustee of the temple. The said application was initially filed before the Deputy Commissioner, HR and CE Department, Tirchirapalli, which was transferred to Joint Commissioner, HR and CE Department, Mayiladuthurai and renumbered as O.A.No.48 of 1987. The said Original Application was pending for nearly 25 years and subsequently transferred to the 1st respondent and re-numbered as O.A.No.8 of 2012.

5.The grievance of the petitioner is that the 1st respondent without hearing the parties, arbitrarily dismissed the Original Application by an order dated 01.07.2014. The petitioner approached this Court by filing Writ Petition in W.P.No.535 of 2015 for a direction upon the respondents 1 to 3 not to interfere with his management and administration of the temple. The said writ petition was disposed of by this Court by an order dated 09.01.2015 and the order reads as follows:-

"Heard Mr.N.Suresh, learned counsel for the petitioner and Mr.S.Kandasamy, learned Special Government Pleader [HR&CE] appearing for the respondents and with their consent, the writ petition is taken for disposal at the admission stage.

2.The petitioner seeks for issuance of a writ of mandamus forbearing the respondents or their officers or their subordinates from interfering in the petitioner's management and administration of the Temples Arulmigu Ayyanar, Pidari, Mariamman and Kamatchi Amman Temples, Kosapalayam Village, Villupuram Taluk.

3.According to the petitioner, his application filed before the Joint Commissioner, Hindu Religious and Charitable Endowment Department, in OA.No.8/12 [Old OA.No.48/87] was dismissed by the order dated 01.07.2014. However, the fair order has not been communicated to the petitioner and only the decreetal order has been communicated. Challenging the said decreetal order, the petitioner preferred an appeal to the Commissioner, Hindu Religious and Charitable Endowment Department, on 23.12.2014 in Serial No.67997. It appears that the appeal petition was returned since the fair order has not been enclosed, vide Return Memo dated 03.12.2014. The petitioner

has applied for the certified copy of the fair order before the 1st respondent.

4. In the light of the above, there will be a direction to the 1st respondent to furnish the certified copy of the fair order in O.A.No.8/2012 dated 01.07.2014 to the petitioner within a period of three weeks from the date of receipt of a copy of this order. On receipt of the said order, the petitioner shall represent the appeal before the Commissioner, Hindu Religious and Charitable Endowment Department and if the appeal is otherwise in order, the Commissioner shall entertain the same and along with the appeal petition, it is open to the petitioner to file an application for interim order and till the Commissioner, Hindu Religious and Charitable Endowment Department decides the interim application in the appeal, the Status Quo prevailing as on date, shall be maintained.

5. The writ petition is disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed"

6. From the above order, it is seen that this Court issued the above direction on the ground that order dated 01.07.2014 in O.A.No.8 of 2014 furnished to the petitioner was a decreetal order and not a fair order. Thereafter, accepting the submission made by the respondents that it is a decreetal order, a direction was issued to furnish a certified copy of the fair order dated 01.07.2014 in O.A.No.8 of 2012 within a period of three weeks, liberty was granted to the petitioner to file appeal before the Commissioner of HR and CE Department and liberty was also granted to the petitioner to file Interim Application before the Commissioner and till the Interim Application is considered, status quo was directed to be maintained.

7. After the Writ Petition was disposed of with the aforementioned direction, the 1st respondent passed an order dated 12.03.2015 purporting to be an order in O.A.No.8 of 2012. Now, the petitioner challenges the order in this Writ Petition by contending that fair order could not have passed on a different date, since according to the 1st respondent, O.A.No.8 of 2012 was dismissed on 01.07.2014 and therefore, the fair order has to be on the same date and cannot be a date after about nine months.

8. On this being brought to the notice, this Court, was of the prima facie view that if the mistake pointed out by the petitioner is true, then, it is a very serious matter. Therefore, while issuing notice, following observations were made by this Court in its order dated 20.03.2015:-

Mr.M.L.Mahendran, learned Government Advocate accepts notice for the respondents.

2. The petitioner has challenged the impugned order on the ground that OA.No.8/2012 was said to have been dismissed by the Joint Commissioner, HR&CE, Villupuram, by the order dated 01.07.2014. The petitioner came before this Court contended that it is a non-speaking order. It was submitted that the order is a decretal order and the fair order would be furnished. Therefore, the earlier writ petition filed by the petitioner in WP.No.535/2015 was disposed of on 09.01.2015, by passing the following order:-

"4. In the light of the above, there will be a direction to the 1st respondent to furnish the certified copy of the fair order in OA.No.8/2012 dated 01.07.2014 to the petitioner within a period of three weeks from the date of receipt of a copy of this order. On receipt of the said order, the petitioner shall represent the appeal before the Commissioner, Hindu Religious and Charitable Endowment Department and if the appeal is otherwise in order, the Commissioner shall entertain the same and along with the appeal petition, it is open to the petitioner to file an application for interim order and till the Commissioner, Hindu Religious and Charitable Endowment Department decides the interim application in the appeal, the Status Quo prevailing as on date, shall be maintained."

3. In this writ petition, the order impugned is dated 12.03.2015 and it is stated as on 01.07.2014, there was no speaking order passed and the order dated 01.07.2014 was a one line order.

4. In this regard, the Joint Commissioner, Hindu Religious and Charitable Endowment Board, Villupuram,

is hereby directed to explain as to whether the submission made by the petitioner is correct.

5.Post on 24.03.2015 at the end of the motion list".

9.Today, the 1st respondent is present in this Court and the original files have been placed before this Court. The learned Additional Government Pleader on instructions from the 1st respondent submitted that there is no order dated 01.07.2014 and the order has been passed only on 12.03.2015.

10. Thus, there is a serious error committed by the 1st respondent and it is evidently clear that the 1st respondent without assigning any reasons passed the order dated 01.07.2014, which is a single line order and subsequently after the Court issued a direction in the earlier writ petition on 09.01.2015 (supra) has now passed a fresh order and has stated that Original Application was dismissed on such reasons.

11. The manner in which the 1st respondent has dealt with the matter has to be deprecated and would warrant disciplinary action. This issue has to be taken very serious note by the Commissioner, HR and CE Department, since the 1st respondent appears to have passed subsequent order and seeks to justify his action in dismissing O.A.No.8 of 2012 on 01.07.2014. Hence this issue is left open to the discretion of the Commissioner HR and CE Department, to take appropriate action in this regard against the 1st respondent.

12.For all the above reasons, the impugned order dated 12.03.2015 is held to be un-sustainable in law and consequently the same is set aside. In the light of the fact that O.A.No.8 of 2012 has been dismissed by a non-speaking order dated 01.07.2014, the same is also set aside and O.A.No.8 of 2012 is restored to the file of the 1st respondent. Since the officer, who passed the order dated 01.07.2014 as well as 12.03.2015 is the same person and this Court does not appreciate the manner in which the 1st respondent has passed the order, the said Joint Commissioner, namely, Mr.R.Senthilvelan, B.Sc., B.L., cannot hear and adjudicate O.A.No.8 of 2012. The Commissioner HR and CE Department, is directed assign the Original Application to some other Joint Commissioner, to be hear the same and pass orders on merits and in accordance with law.

13.In the result, the Writ Petition is allowed with the above directions and the respondents are restrained from interfering with the petitioner's Management and Administration of the temple.

Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Villupuram.
2. The Assistant Commissioner
Hindu Religious and Charitable
Endowment Department,
Villupuram.
3. The Inspector
Hindu Religious and Charitable
Endowment Department,
Villupuram.

+1cc to Mr.N.Suresh, Advocate, S.R.No.16493
+1cc to the Special Government Pleader, S.R.No.16888

W.P.No.7960 of 2015
and
M.P.No.1 of 2015

BVR(CO)
CA(06/04/2015)

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