In the High Court of Judicature at Madras

Dated: 18-7-2016

Coram

The Hon'ble Mr.Justice M.Jaichandren

W.P. No.25362 of 2015

1. Vada Thirunageswaram senguntha
and Kamakshi Amman Worshippers
Welfare Society Rep. by its President
T.P.K.Ganesan,
17/B, Sadaiyadeeswar Koil Street,
Kundrathur, Chennai-600 069.

2. T.P.K.Ganesan
17/B, Sadiyadeeswarar Koil Street,
Kundrathur, Chennai-600 069. .. Petitioners.

Versus

1. Government of Tamil Nadu
reptd. by its Secretary,
Tourism and Religious Endowments Department,
Fort St. George, Chennai 600 009.

2. The Commissioner,
Hindu Religious and Charitable Endowments Department,
122, Nungambakkam High Road, Nungambakkam,
Chennai-600 034.

3. The Executive Officer/Assistant Commissioner
Sri Nageswaraswamy Temple,
Thirunageswaram, Kundrathur
Sriperumpudur Taluk,
Kanchipuram District 600 069. .. Respondents.

Prayer: Petition filed under Article 226 of the Constitution of India, praying for a Writ of Mandamus, to forbear the respondents herein from in any manner interfering with the rights of the petitioner Society in respect of the temple of Sri Thirunageswaram, Kundrathur Village.

For petitioner : Mr.M.Vaidyanathan

For respondents: Mr.K.V.Dhanapalan
Additional Government Pleader
HR & CE (R1 & R2)
Mr.P.V.Arul Phazam Nee (R3)

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O R D E R

Heard the learned counsels appearing on behalf of the petitioners, as well as the respondents.

2. This Writ Petition has been filed praying that this Court may be pleased to issue a Writ of Mandamus to forbear the respondents from interfering with the rights of the first petitioner Society, in respect of Sri Nageswaraswamy Temple, Thirunageswaram, Kundrathur Village, Sriperumpudur Taluk, Kanchipuram District, in any manner, and to pass further orders, as this Court may deem fit and proper.

3. This Writ Petition has been filed by T.K.Ganesan, claiming to be the President of Vada Thirunageswaram Senguntha and Kamakshi Amman Worshippers Welfare Society. It has been claimed that the first petitioner Society has over 1000 members, residing in Kundrathur. This Writ Petition has been filed questioning the authority and powers of respondents 1 to 3 herein, in interfering in the religious affairs pertaining to Sri Thirunageswaram Temple, Kundrathur, Kanchipuram District and in the administration of the temple, through an Executive Officer.

4. It has been stated that the respondents have been acting in a manner contrary to the various provisions of law, including the provisions contained in the Tamil Nadu Temple Entry Authorisation Act, 1947, the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, The Ancient Monuments and Archaeological Sites and remains Act, 1958 and the Management and Preservation of Properties of Religious Institutions Rules, 1964 and Articles 25,26, 29 and 31A(1)(b) of the Constitution of India.

5. It has been stated that the Senguntha Mudhaliar Community in Kundrathur Town has been maintaining and administering the Kundrathur Sri Thirunageswaram Temple (hereinafter referred to as `the temple'). It has been stated that the second petitioner, who is said to be the President of the first petitioner Society, is residing in Kundrathur and that he belongs to Senguntha Mudhaliar community. The temple is a denominational temple, belonging to the religious denomination of Senguntha Mudhaliars of Thondai Mandamalam, in Kundrathur Village. The religious denomination of Senguntha Mudhaliars of Thondai Mandalam, in Kundrathur, is a sub-sect of the Tamil Saivite Denomination. The second petitioner is a regular worshipper of Sri Kamakshi Ambal Sameta Sri Nageswaraswamy - the presiding deity of the temple. He is a descendant in the long line of Senguntha Mudhaliars of Thondai Mandalam, who have been ardent worshippers of the deities in the said temple.

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6. It has also been stated that the community of Senguntha Mudhaliars of Thondai Mandalam, in Kundrathur village, meets all the necessary conditions of a religious denomination, as defined by the Hon'ble Supreme Court, in its judgment, in The Commissioner, Hindu Religious Endowments, Madras Vs. Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282. They have a common faith in the deity of Sri Thirunageswaram Temple and they have Saint Sekkizhar as their ancestral Guru and benefactor. The denomination has a common organisation known as Sengunthar Mahasabha . The temple has been administered by the denomination of Thondai Mandalam Senguntha Mudhaliars, for many centuries, through the Trustees belonging to the religious denomination. The rights of the religious denomination is protected by Articles 25 and 26 of the Constitution of India. While so, the respondents have been attempting to interfere with the rights of the religious denomination, by invoking the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, (hereinafter referred to as `the Act'). Interference in the administration of the secular affairs of the religious institution, run by a religious denomination, is barred by Section 107 of the Act. The fact that the rights relating to the management of the temple is vested with the community of Senguntha Mudhaliars of Thondai Mandalam, residing in Kundrathur Village, has been recognised in the judicial proceedings made by the District Court, Chingleput District, in O.P.No.294 of 1942, which had been filed by the erstwhile trustees of the temple. The said decision had been upheld by the High Court of Madras, in its decision, made in C.R.P.No.1831 of 1944.

7. It has also been stated that, by an order, dated 5.6.1981, made in O.A.No.65 of 1980, the Deputy Commissioner, Hindu Religious and Charitable Endowments Department had confirmed a Scheme, under Section 64(1) of the Act, providing, inter alia, that the administration of the affairs of the temple shall vest in a Board of Trustees to be exclusively appointed from the permanent resident Senguntha Mudhaliars, residing in Kundrathur village. While so, by an order, dated 15.7.1994, the Commissioner, Hindu Religious and Charitable Endowments Department, had appointed an Executive Officer for the temple, under Section 45(1) of the Act. The said order did not cite any instances of mismanagement. The order did not mention the period for which it would be in operation. Challenging the said order, Writ Petitions had been filed before the High Court, in W.P.No.13210 of 1994 and W.P.No.24426 of 1995. As the interim stay orders passed in the said writ petitions had been vacated, a Writ Appeal had been filed, in Writ Appeal No.1324 of 1994. A Division Bench of this court had allowed the Writ Appeal setting aside the impugned order appointing an Executive Officer, on the ground of violation of the principles of natural justice. Liberty had been given to the Commissioner to proceed with the

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matter, in accordance with law in the light of the observations made in the said order. However, the Commissioner, who was incharge at the time of the passing of the order and his successors, had not acted in accordance with the order passed by the High Court. Contrary to the order passed by this court, Executive Officers have been appointed for administering the temple and its properties. They have been interfering with the religious aspects of the temple as well, illegally, contrary to the provisions of law. In such circumstances, the petitioners have preferred the present Writ Petition before this court, invoking the writ jurisdiction, under Article 226 of the Constitution of India.

8. In the counter affidavit filed on behalf of the third respondent it has been stated that the allegations made by the petitioners, in the affidavit filed in support of the Writ Petition, have been denied. The locus standi of the petitioners to file the Writ Petition has also been questioned. It has been further stated that in the year, 1994, an Executive Officer had been appointed by the Hindu Religious and Charitable Endowments Department and the said appointment had been challenged by the erstwhile trustees of the temple, in W.P.No.13210 of 1994. In the Writ Appeal preferred by the Trustees, in W.A.No.1324 of 1994, challenging the vacation of the interim order, a Division Bench of this court had issued certain directions, in its order, dated 7.9.1995. Thereafter, an Executive Officer had been appointed by the Commissioner, Hindu Religious and Charitable Endowments Department, by an order, dated 30.11.1996. Thereafter, 15 different Executive Officers had been appointed, under Section 45(1) of the Act. The appointment of the Executive Officers were in consonance with the directions issued by this court. There is no illegality in such appointments, as alleged by the petitioners. The appointment of an Executive Officer for a temple is conferred, under Section 45 of the Act. As per the decision of the Supreme Court, made in Dr.Subramanian Swamy and another Vs. State of Tamil Nadu and Others, 2014(1) CTC 763, it has been made clear that the government shall frame rules in accordance with Section 45(1) of the Act. Pursuant to the said order, rules had been framed and notified, in G.O.Ms.No.238, dated 6.11.2015.

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9. It has been further stated that the administration of the temple is vested with the Trust Board and the respondent temple is covered by the Scheme framed in the year, 1991. As per the said Scheme, the Trustees have to be appointed by the Commissioner, by invoking Section 47 of the Act. After the framing of the scheme, the Trust Board had been constituted by the Government of Tamilnadu, as per the provisions of Section 47 of the Act. Till the year, 2011, the Trust Board had been nominated by the Government of Tamilnadu, in accordance with the Scheme. A Fit Person had been appointed by invoking Section 47

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of the Act. As on date, the Fit Person is administering the temple, in accordance with the provisions of the Act and the Rules framed thereunder. The Executive Officer is not interfering with the religious activities of the temple, as alleged by the petitioners. He has been confining his activities only with the administration of the temple and its properties. However, a Fit Person can interfere with the religious activities of the temple, as well as in the administration of the Trust.

10. It has been pointed out that none of the erstwhile trustees of the temple or the elected members of the Sengunthar Mahasabha had questioned the appointment of the Fit Person or the Executive Officer. The first petitioner society is in no way concerned with the administration of the temple and they have no right over the same. As such, the Writ petition filed by the petitioner is devoid of merits and therefore, it is liable to be dismissed.

11. With regard to the objection raised by the respondents that the Writ Petition is not maintainable, as the petitioners do not have the locus standi to file the Writ Petition, praying for a Writ of Mandamus, the learned counsel appearing on behalf of the petitioners had submitted that any one can question the maladministration or mismanagement of a temple, especially, a worshipper of the deities of the said temple. A person having interest in the temple has been defined, under Section 6(15) of the Act. He had relied on the decision of a Division Bench of this Court, reported in K.Ekambaram and another Vs. Commissioner HR & CE of Administration Department etc., 1995-2-L.W. 213, in support of his contention. He had further submitted that for an Executive Officer or a Fit Person to be appointed, in respect of a temple, there should be maladministration of the temple, based on which such appointments could be made by the authorities concerned, in accordance with the provisions of the Act. Further, there should be specific claims with regard to such maladministration or mismanagement and their details should be set out, clearly. The period for which a Fit Person or an Executive Officer is appointed should also be specified. Even if such appointments have to be made, they should be made only for a limited period. Further, at the time of the appointment of the Executive Officer for the temple in question no rules had been framed, as per the directions issued by the supreme court, in Dr.Subramanian Swamy and another Vs. State of Tamil Nadu and Others, 2014(1) CTC 763.

12. It has been stated that the petitioner is an erstwhile trustee of the temple. Instead of pointing out, in specific terms, the mismanagement or maladministration of the temple in question, the proceedings of the Commissioner, Hindu Religious and Charitable Endowments Department, Chennai, dated 15.7.1994,

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states that the Commissioner has satisfied that the appointment of an Executive Officer for the temple will pave the way for better administration, in exercise of the powers vested with him, under Section 45(1) of the Act. The said proceedings of the Commissioner, Hindu Religious and Charitable Endowments Department, Chennai, is vague in nature. Therefore, the appointment of the Executive Officer by the Commissioner, by his proceedings, dated 15.7.1994, is arbitrary and illegal and therefore, this court had been pleased to quash the same and to direct the Commissioner, Hindu Religious and Charitable Endowments Department, Chennai, to redo the exercise of making an appointment, by following the principles of natural justice. Further, the directions issued by this court, in W.A.No.1324 of 1994, had not been followed, till date. All subsequent appointments, said to have been made, if any, by the authorities concerned, are illegal and void. It had also been pointed out that the Government of Tamilnadu had framed, the Conditions for Appointment of Executive Officers Rules, 2015, recently. The framing of such rules cannot have retrospective effect and therefore, any appointments made by the Commissioner, Hindu Religious and Charitable Endowments Department, Chennai, contrary to the framing of the rules, would be contrary to the decision of the Supreme Court in Dr.Subramanian Swamy and another Vs. State of Tamil Nadu and Others, 2014(1) CTC 763.

13. Per contra, the learned counsels appearing on behalf of the respondents had stated that the Commissioner, Hindu Religious and Charitable Endowments Department, Chennai, has the power, under Section 45(1) of the Act, to appoint an Executive Officer for any religious institution. The Executive Officer, so appointed, shall exercise such powers and discharge such duties, as may be assigned by the Commissioner. The Commissioner had appointed the Executive Officer, by his proceedings, dated 15.7.1994, and a number of other Executive Officers have been appointed after the quashing of the said proceedings, by following the directions issued by this court.

14. It has been further stated that the Hindu Religious and Charitable Endowments Department, Chennai, had framed a Scheme for the administration of the temple in question. The said Scheme had not been framed, under Section 92 of the Civil Procedure Code, 1908. The Scheme framed by the Department is still in force. In paragraph 5 of the order passed by the Division Bench of this Court, in W.A.No.1324 of 1994, this court had reserved the liberty to the Commissioner to proceed in the matter of appointment of an Executive Officer, in accordance with law, in the light of the observations made thereunder. Therefore, the subsequent appointments of the Executive Officers and the Fit Persons, by the Commissioner, Hindu Religious and Charitable Endowments Department, Chennai, in respect of the administration of the temple, is in accordance with the

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decisions of the courts of law and the provisions of the Act. There is no irregularity or illegality in the passing of such orders.

15. It has been further stated that the Assistant Commissioner, Kancheepuram, who had been appointed as the Fit Person of the temple had not been made a party to the present writ petition. Further, the elected body of the Sengunthar Mudhaliars of Thondai Mandamalam, in Kundrathur Village, known as Sengunthar Mahasabha, which proposes the Trustees for the temple, had not been made a party to the present Writ Petition. No election had been held by the electoral body for the nomination of the Trustees, by Sengunthar Mahasabha, till date.

16. A fit person had been appointed for the temple in question, during the year, 2011. Till such time, the temple had been administered by a Board of trustees. While so, the petitioners have not been in a position to spell out their rights regarding the administration of the temple in question, clearly. It has not been shown as to how the functioning of the Executive Officer or the Fit Person, appointed by the Commissioner Hindu Religious and Charitable Endowments Department, Chennai, is interfering with the rights of the petitioners. No specific provision of law had been quoted in the writ petition, based on which the petitioners are claiming their rights. Thus, it is clear that the present Writ Petition filed by the petitioners is devoid of merits and therefore, it is liable to be dismissed, in limine.

17. Considering the averments made by the learned counsels appearing on behalf of the parties concerned and on a perusal of the records available, this court is of the considered view that the petitioners have not made out a case in their favour for this court to issue a Writ of Mandamus to direct the respondents, to refrain from interfering with the rights of the petitioners in the administration of the temple. The petitioners have not been in a position to show that they have certain vested rights, as per the order passed by the District Court, Chingleput District, on 25.8.1954, in O.P.NO.294 of 1942, or in accordance with the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, and the Rules framed thereunder.

18. Even though clause 15 of Section 6 of the Act defines the "person having interest" in a temple as a person who is entitled to attend or partake is in the habit of attending the performance of worship or service in the temple, or who is entitled to partake or is in the habit of partaking in the benefit of the distribution of gifts there at and the said definition having been confirmed by this court in the decision, in V.Thiagarajan, President, HIndu Baktha Jana sabha Vs. State,

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(2012) 1 CWC 22, this court is of the view that the petitioners have failed to show that their rights, with regard to the administration of the temple in question, is being interfered with by the respondents, as alleged in the affidavit filed in support of the writ petition.

19. It is not in dispute that the Commissioner, Hindu Religious and Charitable Endowments Department, is vested with the power to appoint Executive Officers, in respect of religious institutions, if he is satisfied that the temple had not been properly administered or that there has been misuse of authority, by the trustees of the temple, as held in Venkatesan Vs. Commissioner, HR & CE, (2009) 1 MLJ 145.

20. Further, it has not been shown that the elected body, namely, Sengunthar Mahasaba, consisting of Senguntha Mudhaliars of the area concerned have nominated the persons for being appointed as Trustees of the temple in question. Even otherwise, the petitioners had not challenged the subsequent orders passed by the Commissioner, Hindu Religious and Charitable Endowments Department, Chennai, appointing a number of Executive Officers, after the order passed by this court, on 6.1.1995, in W.A.No.1324 of 1994. The petitioners have approached this court, by filing the present writ petition, after a long and unexplained delay, to establish their rights, if any. In such circumstances, this court finds it proper to dismiss the writ petition, as it is devoid of merits. Hence, it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

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To

1. The Secretary,
Government of Tamil Nadu
Tourism and Religious Endowments Department,
Fort St. George, Chennai 600 009.

2. The Commissioner,
Hindu Religious and Charitable Endowments Department,
122, Nungambakkam High Road, Nungambakkam,
Chennai-600 034.

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3. The Executive Officer/Assistant Commissioner
Sri Nageswaraswamy Temple,
Thirunageswaram, Kundrathur
Sriperumpudur Taluk,
Kanchipuram District 600 069.

1 cc to Mr.M.Vaidyanathan, Advocate, sr.40661
1 cc to Mr.P.V.Arulphazhamnee, Advocate, sr.40129
1 cc to The Government Pleader, sr.40222

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