

IN THE HIGH COURT OF JUDICIATURE AT MADRAS

RESERVED ON : 03-03-2016

PRONOUNCED ON : 22.03.2016

CORAM :

The Honourable Mr. Justice R. SUBBIAH

Writ Petition No. 27866 of 2014
and
M.P. No. 1 of 2014

B. Rajeshwaran .. Petitioner

Versus

1. The Commissioner
Hindu Religious and Charitable Endowments
Nungambakkam High Road
Chennai - 600 034
2. The Joint Commissioner
Hindu Religious and Charitable Endowments
Tiruchirapalli - 6
3. The Fit Person
Arulmighu Bragadheeswarar Temple
Peruvalanallur
Lalgudi Taluk
Tiruchirapalli District .. Respondents

Writ Petition filed under Article 226 of The Constitution of India praying for issuing a Writ of Certiorarified Mandamus calling for the records of the first respondent in his Suo Motu Revision No.1 of 2014 D2 dated 15.09.2014 and quash the same and consequently forbearing the respondents from interfering with the rights of the petitioner to function as hereditary trustee of Arulmighu Bragadheeswarar Thirukoil, Peruvalanallur Village, Lalgudi Taluk, Tiruchirapalli District.

For Petitioner : Mr. R. Muthukumarasamy,
Senior Advocate
for Mr. M. Sivavarthan

For Respondent : Mrs. Rita Chandrasekaran
Special Government Pleader
(HR & CE) for RR! and 2

ORDER

The petitioner has filed this writ petition questioning the correctness of the order dated 15.09.2014 passed in Suo Motu Revision No.1 of 2014 D2 by the first respondent and consequently to forbear the respondents from interfering with the rights of the petitioner to function as hereditary trustee of Arulmighu Bragadheeswarar Thirukoil, Peruvalanallur Village, Lalgudi Taluk, Tiruchirapalli District.

2. The facts which led to the institution of this writ petition and which are essential for disposal of this writ petition are as follows:-

(i) According to the petitioner, his forefathers were the hereditary trustee of Arulmighu Bragadheeswarar Thirukoil, Peruvalanallur Village, Lalgudi Taluk, Tiruchirapalli District. In the year 1932, the management and affairs of the temple were looked after by the petitioner's great grand father Mr. P.B.K. Raja Chidambaram Reddiyar as hereditary trustee. Thereafter, the petitioner's grand father Mr. R. Chandrasekara Reddiar was managing the affairs of the said temple as it's hereditary trustee. During the year 1985, when the HR & CE Department attempted to appoint outsiders as Trustees of the temple, the petitioner's grand father filed O.A. No. 70 of 1985 under Section 63 (a) of The Hindu Religious and Charitable Endowments (HR & CE) Act before the Assistant Commissioner of Tiruchirapalli and it was dismissed on 04.09.1991. As against the same, the petitioner's grand father filed a statutory appeal before the first respondent in A.P. No. 4 of 1992. During the pendency of the appeal, the petitioner's grand father died on 15.04.1992. Thereafter, the first respondent dismissed the appeal on 24.02.1994. As against the order dated 24.02.1994, the petitioner's father filed a suit in O.S. No. 859 of 1994 on the file of Subordinate Judge, Tiruchirapalli under Section 70 of the Act. The learned Subordinate Judge, Tiruchirapalli by a judgment and decree dated 15.10.2003, set aside the order dated 24.02.1994 of the first respondent inter alia declared the petitioner's father as a Hereditary Trustee of the temple. Aggrieved by the same, the Department has filed A.S. No. 41 of 2005 before this Court and the same is pending before the Madurai Bench of this Court without granting any interim stay.

(ii) When the petitioner's father was looking after the affairs of the temple in question, the second respondent passed an order dated 03.02.2011, suspending him from Trusteeship for alleged mismanagement of the temple funds and appointed the third respondent/Fit Person to manage the affairs of the temple. Challenging the same, the petitioner's father filed WP (MD) No.

1929 of 2011 before the Madurai Bench of this Court questioning the correctness of the order dated 03.02.2011 passed by the second respondent. By order dated 27.03.2012, this Court directed the petitioner to file a statutory appeal to the first respondent and on receipt of the same, the first respondent was directed to dispose of the said appeal in accordance with law. Accordingly, the petitioner's father filed an appeal in A.P. No. 16 of 2012 against the order of suspension dated 03.02.2011. The appeal was disposed of by the first respondent directing the second respondent to conduct an enquiry and to pass final orders. Thereafter, the second respondent conducted an enquiry and passed the order dated 11.07.2013 revoking the order of suspension. In the said order dated 11.07.2013, the second respondent directed the third respondent/Fit person to handover the charges to the petitioner's father. Accordingly, the third respondent handed over the charges to the petitioner's father on 15.07.2013 and the petitioner's father has also taken charge as hereditary trustee of the temple.

(iii) After revocation of suspension, the petitioner's father, due to his old age, expressed his desire to nominate the petitioner as the hereditary trustee of the temple. In this context, the petitioner submitted an application to the second respondent under Section 54 (1) of the Act which was taken on file as M.P. No. 5 of 2013. Along with the application, the petitioner has enclosed the letter of unwillingness given by his father to continue as hereditary trustee. The second respondent, on consideration of all the materials placed on record, passed an order dated 28.10.2013 recording the petitioner, in the line of succession, as regular hereditary trustee of the temple. On the basis of the order dated 28.10.2013, the petitioner has also taken over the charge of the temple on 19.12.2013, which was also intimated to the second respondent.

(iv) While the facts are so, the first respondent, exercised his suo motu powers conferred under the Act and issued a show cause notice dated 20.01.2014 to the petitioner in S.M.R. No. 32 of 2013 calling upon the petitioner to show cause as to why the order dated 11.07.2013 passed by the second respondent, revoking the order of suspension passed against his father, be not cancelled. Challenging the same, the petitioner has filed WP No. 3538 of 2014 before this Court. Thereafter, the first respondent also issued a notice exercising his suo motu powers in S.M.R. No. 1 of 2014 calling upon the petitioner to show cause as to why the order dated 28.10.2013, recognising the petitioner as regular hereditary trustee of the temple, be not cancelled. The said order of the first respondent was also subjected to challenge before this Court in WP No. 5923 of 2014. As there was no interim stay granted in the above two WP Nos. 3538 and 5923 of 2014, the first respondent proceeded with the

enquiry in which the petitioner and his father have filed counter affidavits through their counsel. However, the first respondent, without considering any of the grounds raised in the counter affidavits, passed the impugned order dated 15.09.2014 by setting aside the order dated 28.10.2013 recognising the petitioner as hereditary trustee on the ground that by reason of revocation of suspension against the petitioner's father, even though there is a vacancy of hereditary trustee there is no permanent vacancy. Therefore, according to the first respondent, the second respondent ought to have passed orders under Section 54 (2) of the Act and not under Section 54 (1) of the Act especially when A.S. No. 41 of 2015 pending before this Court is a bar. Challenging the same, the present writ petition is filed.

3. Mr. Muthukumarasamy, learned Senior counsel appearing for the petitioner would contend that no doubt, in exercise of Section 21 of the Act, the first respondent has ample powers to modify or vary an order passed by the second respondent. However, the impugned order passed by the first respondent is contrary to Section 54 (1) and (2) of the Act. While Section 54 (1) of the Act contemplates filling up permanent vacancy in the office of the hereditary trustee by appointing a person who is next in the line of succession, Section 54 (2) contemplates that a temporary vacancy occurs in such office by reason of suspension of the hereditary trustee. In this case, the order of suspension passed against the petitioner's father was revoked and thereafter the petitioner's father has expressing his unwillingness to continue the hereditary trusteeship. Therefore, the petitioner, who is in the next line of succession, was appointed as a hereditary trustee in the place of his father. Such appointment of the petitioner was made in a permanent vacancy by reason of unwillingness expressed by the petitioner's father. In essence, the order appointing the petitioner is in compliance of Section 54 (1) of the Act and the observations made by the first respondent as if the second respondent ought to have appointed the petitioner in compliance with Section 54 (2) and not as contemplated under Section 54 (1) of the Act does not arise. The learned senior counsel for the petitioner would vehemently contend that when the permanent post held by the petitioner's father became vacant, the second respondent is justified in appointing the petitioner in adherence to Section 54 (1) of the Act. In such a situation, the first respondent erred in holding that the vacancy arose due to the unwillingness expressed by the petitioner's father has to be construed as a temporary vacancy. The learned senior counsel for the petitioner therefore prayed this Court to allow this writ petition as prayed for.

4. On the contrary, the learned Special Government Pleader appearing for the respondents 1 and 2, relying on the counter affidavit of the first respondent, would contend that the temple in question is under the control of the HR & CE Department. However, the petitioner's grandfather filed OA No. 70 of 1985 under Section 63 (b) of the Act and it was dismissed on 04.09.1991 against which A.P. No. 4 of 1992 was filed which was also dismissed by the first respondent. As against the same, the petitioner's father filed a suit before the Subordinate Judge, Trichy in O.S. No. 859 of 1994 and it was decreed on 15.10.2003. As against the decree and judgment passed in the suit, the department has filed A.S. No. 41 of 2005 and it is pending before this Court. During the pendency of the aforesaid proceedings, the father of the petitioner was suspended on 03.02.2011 for certain irregularities. The allegations against the petitioner's father is that he had alienated the lands belonged to the temple without any authority of law. Challenging the order of suspension, the petitioner's father filed WP (MD) No. 1929 of 2014 before this Court and it was disposed of with a direction to file a statutory appeal before the first respondent. Accordingly, a statutory appeal was filed in AP No. 16 of 2012 and it was dismissed with a direction to the second respondent to dispose of the disciplinary proceedings. However, the second respondent, without properly conducting an enquiry, has revoked the order of suspension on 11.07.2013. According to the learned Special Government Pleader, there was no permanent vacancy in the office of the Hereditary Trustee, however, the second respondent recorded the petitioner as permanent hereditary trustee in the place of his father under Section 54 (1) of the Act. When there is no permanent vacancy of hereditary trustee is in existence, invocation of Section 54 (1) of the Act by the second respondent is contrary to the Act and Rules. In such circumstances, the first respondent has exercised his suo motu powers and issued a show cause notice in SMR 1 of 2014 on 11.02.2014 and proceeded to examine the validity of the order dated 28.10.2013 passed by the second respondent revoking the order of suspension against the petitioner's father. In the suo motu proceedings, the petitioner and his father were given opportunity adequately and they have also filed a detailed counter. Thereafter, the first respondent has passed the order dated 15.09.2014 cancelling the order dated 28.10.2013 of the second respondent, revoking the order of suspension passed against the petitioner's father. The first respondent has passed the order dated 15.09.2014 on the ground that if really the petitioner's father has resigned the post of hereditary trustee or he wants to quit his office as trustee, he has to send his resignation letter to the first respondent as has been contemplated under Section 28 (2) (b) (iii) of the Act. In the absence of compliance of such

procedure, the first respondent is justified in passing the order, which is impugned in this writ petition. Undoubtedly, the first respondent can invoke suo motu powers conferred under Section 21 of the Act to modify, vary or cancel any order passed by the officers subordinate to him. In exercise of such powers, the first respondent, in order to ensure that the irregularity committed by the second respondent is set at naught, has passed the order dated 15.09.2014 and it does not calls for any interference by this Court.

5. I heard the learned Senior counsel for the petitioner and the learned Special Government Pleader appearing for the respondents 1 and 2. I had perused the material records place for consideration by both sides.

6. On perusal of the above factual aspects, it is evident that the question as to whether Arulmighu Bragadheeswarar Temple, Peruvalanallur in Lalgudi Taluk, Tiruchirapalli District belongs to the Department or the private temple of the petitioner and his forefathers is the subject matter of the appeal in A.S. No. 41 of 2005 and the same is pending before the Madurai Bench of this Court. The said appeal suit has been filed by the department questioning the correctness of the judgment and decree dated 15.10.2003 passed in O.S. No. 859 of 1994 by the learned Subordinate Judge, Tiruchirapalli.

7. The petitioner's father claims to be the hereditary trustee of the temple in question on the strength of the declaratory decree and judgment dated 15.10.2003 passed in O.S. No. 859 of 1994 by the learned Subordinate Judge, Tiruchirapalli. Admittedly, against the said judgment and decree dated 15.10.2003 passed in O.S. No. 859 of 1994, an appeal is pending in A.S. No. 41 of 2005 before this Court. During the pendency of this appeal, the second respondent suspended the petitioner's father from his hereditary trusteeship purportedly on the ground that he has alienated the lands belonging to the temple without any authority of law and committed mismanagement of the temple properties. According to the petitioner, his father re-conveyed or re-settled the lands to the temple and there is no encumbrance exists as on date. Therefore, when the claim of the petitioner's father for revocation of suspension order came up for consideration, the second respondent revoked the order of suspension. Thereafter, the third respondent, who was appointed as Fit Person of the temple, has also handed over the charges of the temple to the petitioner's father on 15.07.2013. After taking charge as hereditary trustee of the temple, the petitioner's father expressed his unwillingness to act as a hereditary trustee by citing his age. Therefore, in his place, the petitioner was appointed as hereditary trustee and it was also recognised by the second respondent. In such view of the matter, the

petitioner submitted an application in MP No. 5 of 2013 to the second respondent to nominate him as the hereditary trustee by enclosing the letter of unwillingness of his father. On the basis of such application, an inspection was carried out by the Inspector, HR & CE and a report was submitted to the second respondent. On being satisfied with the report and on the basis of the letter of unwillingness given by the petitioner's father, the petitioner was appointed as a hereditary trustee on 28.10.2013 by the second respondent. From the said date, the petitioner performed his duties as hereditary trustee. While so, the first respondent, in exercise of suo motu powers, passed the impugned order on 15.09.2014 concluding that there is no permanent vacancy in the office of the hereditary trustee of the temple in question and therefore, the invocation of Section 54 (i) of the Act by the second respondent is illegal. According to the first respondent, the second respondent ought to have invoked Section 54 (ii) of the Act while appointing the petitioner, which relates to filling up a temporary vacancy.

8. As mentioned above, the question as to whether the temple in coming within the purview of the department or it is a private temple established by the petitioner and his forefathers has to be adjudicated by this Court in A.S. No. 41 of 2005. The said appeal was filed by the Department as against the decree and judgment passed by the learned Subordinate Judge, Tiruchirapalli in O.S. No. 859 of 1994 filed by the petitioner's father. In the said judgment, the trial court has declared that the temple in question was established by the petitioner and his forefathers and therefore, it cannot be brought within the purview of HR & CE Department. In such circumstances, it cannot be said that there is no permanent vacancy of hereditary trustee existing in the temple in question especially in the circumstances where the petitioner's father expressed his unwillingness to continue as hereditary trustee. Therefore, even assuming for a moment, ultimately if the order of suspension against the petitioner's father is revoked, the place of hereditary trustee is going to be vacant since petitioner's father has expressed his unwillingness to continue as a hereditary trustee. In such circumstances, I do not find any error to interfere with the order passed by the second respondent under Section 54 (1) of the Act. The contention of the first respondent cannot be accepted, since the proceedings against the father of the petitioner was pending earlier and subsequently it was revoked. On revocation, the petitioner's father held the post of regular hereditary trustee. Thereafter, the petitioner's father, citing his ill health has expressed his unwillingness to continue as regular trustee and therefore, in his place, the petitioner, who is in the next line of succession, was appointed as hereditary trustee, meaning thereby the petitioner has been appointed in a regular permanent vacancy held by his father. In such circumstances, the second

respondent is right in appointing the petitioner in exercise of jurisdiction conferred under Section 54 (i) of the Act and it needs no interference of this Court. In this context, useful reference can be made to the judgment of the Division Bench of this Court in (C. Andiappan vs. The Joint Commissioner, Tamil Nadu HR & CE Board and others) reported in (2016 (1) CTC 9) wherein it was held as follows:-

"59. Therefore, in fine, the last contention of Mr. M. Vallinayagam, learned Senior counsel for the appellants, that the appointment of the Fit Person was illegal and that the next in the line of succession should have been appointed, merits acceptance. Interestingly, none of the seven charges framed against any one of the Appellants allege that they ever failed to perform the Mandagapadi in a befitting manner. Therefore, the obligations created under the document of the year 1921, creating an endowment, appear to have been fulfilled in all these years by the descendants of the founder of the Endowment. It is only when there is any laxity on the part of the Trustees in the performance of these obligations that their complete removal from the scene, if at all it is legally possible can be resorted to.

60. Therefore, the Writ Appeals are allowed and the Common Order of the learned Judge is set aside. The Writ Petitions filed by the appellants would stand partly allowed to the following effect:

(i) The order placing the Trustees under suspension and framing charges against them is upheld. The Competent Authority is directed to proceed with the enquiry into the charges and pass Final Orders within a period of three months from the date of receipt of a copy of this order

(ii) The order of appointment of Fit Person is set aside. The appropriate authority shall appoint the next in the line of succession in the family of the founder as the Trustee/Trustees, within a period of one week from the date of receipt of a copy of this order

(iii) No order as to costs. Connected Miscellaneous Petitions are closed.

9. In the light of what is stated above as well as the judgment of the Division Bench of this Court, I hold that the first respondent has erroneously invoked his suo motu powers conferred under Section 21 of the Act and set aside the well considered order passed by the second respondent in exercise of powers under Section 54 (1) of the Act.

10. In the result, the order dated 15.09.2014 passed in Sua Motu Revision No. 1 of 2014 D2 on the file of the first respondent is set aside. The writ petition is allowed as prayed for. No costs. Consequently, connected MP No. 1 of 2014 is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner,
Hindu Religious and Charitable Endowments,
Nungambakkam High Road,
Chennai - 600 034.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowments,
Tiruchirapalli - 6.
3. The Fit Person,
Arulmighu Bragadheeswarar Temple,
Peruvalanallur,
Lalgudi Taluk,
Tiruchirapalli District.

+1cc to Mr.M.Sivavarthan, Advocate, S.R.No.18292
+1cc to the Government Pleader, S.R.No.18940

सत्यमेव जयते

WP No. 27866 of 2014

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