

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2016

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.515 of 2011

and

M.P.No.1 of 2011

Venugopal

Petitioner

Vs.

1.The Joint Commissioner,  
Hindu Religious and Charitable Endowment,  
Coimbatore.

2.The Executive Officer,  
Arulmigu Marriyamman and  
Vinayagar Thirukovil,  
Tamil Nadu Hindu Religious Charitable and Endowment  
Sulakkal, Pllachi Taluk,  
Coimbatore District. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records from the file of the 1st respondent made in Se.Mu.Na.Ka.No.11677/10/B1 dated 07.12.2010 and from the 2nd respondent in Ref:Na.Ka.No.NIL dated 27.12.2010 and quash the same.

For Petitioner : Mr.S.Arjun  
For Respondents : Mr.R.P.Prathap

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O R D E R

Heard Mr.S.Arjun, learned counsel for the petitioner; and Mr.R.P.Prathap Singh, learned counsel appearing for the respondents; and with their consent, the writ petition is taken up for final disposal.

2.The petitioner, in this writ petition, seeks for issuance of a writ of Certiorari, calling for the records from the file of the 1st respondent made in Se.Mu.Na.Ka.No.11677/10/B1 dated 07.12.2010 and from the 2nd respondent in Ref:Na.Ka.No.NIL dated 27.12.2010 and quash the same.

3. The learned counsel for the petitioner would submit that the petitioner's mother had executed a will dated 14.10.1996 and thereby bequeathing the right of hereditary ship in favour of the petitioner and his brother Mr.D.Balasubramaniam. The petitioner's mother was hereditary trustee and she was doing daily Poojas and Archanas for the past 30 years. The petitioner's brother Mr.D.Balasubramaniam had given consent to perform poojas and to do the day to day administration of the temple. The petitioner's mother had given a letter dated 18.04.2006 to the Assistant Commissioner for appointing the petitioner as Hereditary Trustee. Thereafter, the petitioner's mother Mrs.Subbulakshmiammal died on 11.06.2010. As per the will and the consent letter of petitioner's brother said Balasubramaniam, the petitioner is entitled the trustee of the temple "Arulmigu Vinayagar Thirukoil". The petitioner filed an application before the Joint Commissioner/1st respondent herein. The respondent passed order under Section 54 (1) of the Tamil Nadu Hindu Religious and Charitable Endowment Act on 20.07.2010 by appointing the Executive Officer as fit person. Aggrieved by the said order, the petitioner has filed the present Writ Petition before this Court.

4. The learned counsel for the respondent by contenting that the properties are not leased out by way of public auction and the income derived from the lands are used to meet out their personal expenses so far. In settlement proceedings, ryotwari patta was granted to the temple in S.R.No.137/67 dated 24.3.67 by the Settlement Tahsildar. In the said will dated 14.10.1996, Smt.Subbulakshmiammal had bequeathed the temple lands as if it belonged to her and after her life time, the properties to be belonged to her sons. Smt.Subbulakshmiammal had already incorporated her name in the pattas and chittas in the revenue records instead of in the name of said temple. This adverse action against the temple had been warranted for the appointment of fit person by the first respondent. Hence, the application for recording his succession was not accepted by the first respondent. Therefore, the impugned order passed by the department is only to set right the defects made by the petitioner's mother hereditary trustee. Therefore, the Writ petition filed by the petitioner is liable to be dismissed.

5. By considering the facts and circumstances of this case, the petitioner being aggrieved by the order passed by the Joint Commissioner, Hindu Religious & Charitable Endowments Department, there is alternative remedy to file an appeal before Hindu Religious &

Charitable Endowments Department under Section 54(3). The petitioner can file an appeal to the Commissioner of Hindu Religious & Charitable Endowments Department. Therefore, the Writ Petition is not maintainable.

6. The learned counsel for the respondent would contend that the said factum of fact is a disputed fact and the same shall be decided only before the appellate authority. Hence, the Writ Petition is disposed of with a direction to the petitioner to file an appeal before the Commissioner, Hindu Religious & Charitable Endowments Department within three weeks from the date of receipt of a copy of this order. Thereafter, the first respondent/Joint Commissioner shall consider and pass appropriate orders in the said appeal within a period of twelve weeks from the date of receipt of a copy of this order. In the meanwhile, the order of status quo already granted by this Court is continued till the disposal of the appeal.

7. The writ petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Joint Commissioner,  
Hindu Religious and Charitable Endowment,  
Coimbatore.

2. The Executive Officer,  
Arulmigu Marriyamman and  
Vinayagar Thirukovil,  
Tamil Nadu Hindu Religious Charitable and Endowment  
Sulakkal, Pllachi Taluk,  
Coimbatore District.

+1cc to Mr. Parthasarathy, Advocate, S.R.No.73717

RK(CO)

RS(12/01/2017)

W.P.No.1865/2011



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