

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.08.2016

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM

AND

THE HON'BLE MR.JUSTICE P.KALAIYARASAN

Writ Appeal No.400 of 2012 against W.P.No.417 of 2011

S.Kadambanathan

.. Appellant

Vs.

1. The Secretary (incharge) Tamil Development
Hindu Religious and Information Department
For St.George, Chennai 9
2. The Commissioner
Hindu Religious and Charitable Endowments Department
Chennai-34
3. The Deputy Commissioner
HR & CE Administration Department
Thanjavur, Thanjavur District
4. The Executive Officer
Arulmighu Viswanathasamy Temple
Pattukottai Town & Taluk
Thanjavur District

.. Respondents

Prayer in both Writ Appeals: WRIT APPEALS filed under Clause 15 of Letters Patent against the order dated 9.1.2012 passed in W.P.No.417 of 2011.

W.P.No.417 of 2011:

This Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus Calling for the records of the first respondent pertaining to the impugned order G.O.M.S.No.428 Tamil Development Hindu Religious Endowment and Information(HR-3.2), Department dated 10.11.2010 quash the same as illegal void and ultravires and direct the respondents 1 to 3 herein to remove

the fourth respondent from the post of execution officer of Arulmigu Viswanathasamy Thirukovil, Puthukottai Town & Taluk, Thanjavur District.

For Appellant : Mr.D.Rajagopal

For Respondents : Mr.M.Maharaja,
Special Government Pleader
(HR & CE)

COMMON JUDGMENT

(Judgment of the Court was delivered by
A.SELVAM, J)

Challenge in this Writ Appeal is to the order dated 9.1.2012 passed in W.P.No.417 of 2011 by the learned Single Judge of this Court.

2. The appellant herein, as petitioner, has filed W.P.No.417 of 2011 on the file of this Court under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed in G.O.(Ms.) No.428, Tamil Development, Religious Endowments and Information Department dated 10.11.2010 and to quash the same.

3. It is averred in the petition that the petitioner has been acting as hereditary trustee of Arulmighu Viswanathasamy Temple, Pattukottai and prior to him, his father by name G.Subramania Mudaliar has acted as hereditary trustee and managed the entire temple and its properties. After his demise, the petitioner has applied for getting the post of hereditary trustee before the Joint Commissioner of HR & CE Department, Thanjavur and accordingly, on 20.8.2004, he has been appointed as hereditary trustee. Now, the respondents have appointed an Executive Officer so as to have joint administration. Under the said circumstances, the petitioner has filed a petition so as to remove the Executive Officer, but the first respondent has passed the impugned order dated 10.11.2010 and thereby rejected the claim of the petitioner and in order to quash the same, the present writ petition has been filed.

4. The learned Single Judge, after considering the divergent contentions put forth on either side, has dismissed the Writ Petition by way of passing the impugned order and the same is being challenged in the present writ appeal.

5. The learned counsel appearing for the appellant/petitioner has repeatedly contended that the father of the appellant/petitioner viz, Subramania Mudaliar has acted as hereditary trustee of Arulmigu Viswanathaswamy Temple, Pattukottai and till his demise, he managed the temple as well as its properties and after his demise, the petitioner has been appointed in the same capacity and even without giving prior notice, on 6.9.1980, Hindu Religious and Charitable Endowment Department has appointed an Executive Officer for having joint administration over the temple and since prior notice has not been issued under section 45(1) of the Hindu Religious and Charitable Endowment Act, the petitioner has endeavoured to remove the Executive Officer, but the first respondent without considering the contentions put forth on the side of the appellant/petitioner has erroneously passed the order dated 10.11.2010 and in order to quash the same, the present writ petition has been filed, but the learned Single Judge, even without considering the contentions put forth on the side of the appellant/petitioner has erroneously dismissed the writ petition and therefore, the order passed by the learned Single Judge is liable to be set aside and the order passed by the first respondent dated 10.11.2010 is liable to be quashed.

6. In support of the arguments put forth on the side of the appellant/petitioner, the following decisions are relied upon:

(i) In 1999 Law Weekly page 600 (The Commissioner, Hindu Religious and Charitable Endowments (Administration) Department vs. K.Jothiramalingam, in paragraph No.9, Division Bench of this Court has held that

"9. On a due consideration of the matter, we are of the opinion that the decision in Nagarajan v. Commr. of H.R. and C.E. (Administration) would govern this case as well. But since the learned counsel for the appellant relied upon the decision in W.A. 101 of 1969 D/- 26-21969 (M. E. Appadurai Mudaliar v. Commr. of H.R. and C.E. Madras) and even prayed that the matter should be placed before a larger Bench, we are obliged to make a detailed reference to the basis on which it is rested. The limited question, which arose for decision, was, no doubt, with reference to the requirement under S.45 of the Act, of an enquiry as well as a finding, with reference to the acts of maladministration,

attributed to the hereditary trustee. But in considering whether the powers under S. 45(1) of the Act can be exercised by the Commissioner, it was held that an enquiry by the Commissioner or a finding arrived at that the hereditary trustee of the temple had not been properly managing the affairs of the temple is irrelevant. However, we find that those aspects have been merely touched upon while dismissing the writ appeal in limine purely from the standpoint of considering the appointment of an Executive Officer under S. 45 (1) of the Act, as being in the nature of a punishment imposed on a trustee or his being subjected to some disadvantage. Indeed, there is no reference therein to the infraction and interference with the rights of a hereditary trustee in matters relating to the day to day administration and management of the institution by the appointment of an Executive Officer under S. 45 (1) of the Act. That the matter had been viewed and considered as one of infliction of a punishment and the competence of the Commissioner to hear an appeal from an order imposing such punishment or disability, is evident from the following observations therein:-

"If the Commissioner had imposed a punishment, then, certainly, it may be a relevant factor that, in addition to the grounds on which he called for explanation from the trustee, he has added the other grounds for which, apparently, an explanation was not called for. If, as is alleged, there is an enquiry before the Deputy Commissioner for presumed acts of maladministration by the trustee, and, if, that enquiry results in the imposition of any punishment or disability, then the question whether the Commissioner could properly here and appeal from any such order, because of his present action or the views that he has now expressed, may be a question that arises for consideration of this Court in writ jurisdiction."

These observations clearly point out that the extent to which the wide powers of an Executive Officer appointed under S. 45(1) of the Act would interfere with the day to day administration and management of the institution by, the hereditary

trustee has not been adverted to. Ordinarily, in the case of hereditary Trustee in charge of an institution, he is clothed with plenary powers in the matter of the management as well as the administration of the temple in that he would be entitled to possession of all the properties and movables of the institution, to receive the income in cash and kind and in the shape of offerings, to make disbursements and incur expenditure, to draw up a budget, to exercise control over all office holders and servants and be in charge of the temple and responsible for the maintenance of the records, accounts, and registers, to see to the supply of provisions and stores and check the same and to see to the performance of the pooja festivals and other services, according to the usage and dhittam, to bring actions on behalf of the institution and represent the institution in actions brought against it and to allot work to the office holders and servants, etc. By the appointment of an Executive Officer under S. 45(1) of the Act, coupled with the conferment on him of all or almost all of the above powers, would be to relegate the hereditary trustee to the position of a nonentity. We ought not to be understood as saying that the Commissioner cannot exercise his powers under S. 45 (1) of the Act, in a case, where the institution is under the administration and management of a hereditary trustee. No doubt, the power under S. 45 of the Act can be and has also to be exercised by the Commissioner appropriately in such case. The power vested in the Commissioner under S. 45(1) of the Act, being a very drastic one, it has to be exercised cautiously, reasonably and fairly as the exercise of such power may even result in the effective elimination of the hereditary trustee from management and administration of the institution. Therefore, it is that natural justice and fair play require that the Commissioner should properly exercise the power under S. 45(1) of the Act, after being satisfied that the institution has not been properly managed and the then administration leaves much to be desired and requires to be toned up or improved and the appointment of an Executive Officer is justified to secure such better administration. This can be done only after communication to the hereditary trustee of the reasons, which, according to the Commissioner, justified the appointment of an Executive Officer and after calling for an explanation from him with reference to the

irregularities and maladministration and after considering the same. If after adhering to these requirements, the Commissioner still find that the interests of the institution would be served better only by the appointment of an Executive Officer, he may properly exercise the power under S. 45(1) of the Act. Though S. 45(1) of the Act, by its terms does not contemplate any notice or enquiry, it does not mean that the Commissioner, while exercising powers thereunder, can displace a hereditary trustee at his will and pleasure, throwing out even such hereditary trustees, who efficiently manage and administer the institution in their charge. We, therefore, agree with the decision in Nagarajan v. Commr. H. R. and C. E. (Administration), which dissents from the decision in M. E., Appadurai Mudaliar v. Commr., H. R. and C. E. Madras, W. A. 101 of 1969 dated 25-2-1969, and has held the field all these years without its correctness having been doubted by any other decision of this Court. We may also add that the learned counsel for the appellant has not pointed out how the decision of the Division Bench in Nagarajan v. Commr. H. R. and C. E. (Administration), is either inapplicable to this case or otherwise requires to be reconsidered. We may also point out that the decisions in G. Ramachandran v. Commr. H. R. and C. E. Madras, W. P. No. 4869 of 1968, and A. K. Parvatham v. Commr., H. R. and C. E. Madras, W. P. No. 5215 of 1976, holding that no notice to the hereditary trustee is necessary prior to the taking of action by the Commissioner under S. 45(1) of the Act proceed on the basis of the decision in M. E. Appadurai Mudaliar v. Commr. H. R. and C. E. Madras, W. A. 101 of 1969, dt. 26-2-1969 and were decided at a time when the decision in Nagarajan v. Commr. H. R. and C. E. (Administration), was unavailable and those decisions cannot, therefore, be considered to have been rightly decided. The reliance placed by the learned counsel for the respondent upon S. D. G. Pandarasannadhi v. Madras State, AIR 1965 SC 1683 is of no assistance to him; for, that decision was rendered on the basis and the circumstances which obtained in 1951, at a time when S. 45 of the Act was not there on the statute book. We are, therefore, clearly of the view, that the decision in Nagarajan v. Commr. H. R. and C. E. (Administration) would govern this case. There is no dispute here that the Commissioner exercised his powers under S. 45(1) of the Act by straightway appointing an Executive Officer without

issuing a notice to the respondent herein and after giving him an opportunity to show cause against such appointment. Under those circumstances, the order of the Commissioner deserved to be quashed and was rightly quashed also by the learned Judge. No case for interference with that order is made out. We, therefore, dismiss the writ appeal with the costs of the respondent."

(ii) In 2006 (2) CTC 49 (N.Sivasubramanian vs. the Government of Tamil Nadu), the Division Bench of this Court has held that before appointing an Executive Officer, prior notice must be given to the hereditary trustee.

7. From a cumulative reading of the decisions referred to supra, it is made clear that if a temple is being managed by a hereditary trustee and subsequently if the Department wants to appoint an Executive Officer, a prior notice must be given under section 45(1) of Hindu Religious and Charitable Endowment Act to the concerned hereditary trustee.

8. The learned counsel appearing for the respondents has contended that an Executive Officer has been appointed on 6.9.1980, whereas the petitioner has been appointed as hereditary trustee on 20.8.2004. Even on the date of appointment of Executive Officer, i.e. on 6.9.1980, the father of the petitioner has not acted as hereditary trustee. Under such circumstances, the question of giving prior notice under section 45(1) of Hindu Religious and Charitable Endowment Act does not arise and the learned Single Judge, after considering the overall circumstances available on record, has rightly dismissed the writ petition and therefore, the impugned order passed by the learned Single Judge does not call for any interference.

9. The specific relief sought in the writ petition is to quash the order dated 10.11.2010 passed by the first respondent in G.O.Ms.No.428.

10. It is seen from the records that on 6.9.1980, an Executive Officer has been appointed by the Commissioner of Hindu Religious and Charitable Endowment Department in the temple mentioned in the writ petition. It is also seen from the records that on the date of appointment of an Executive Officer, on 6.9.1980, nobody has acted as hereditary trustee in the temple mentioned in the petition.

11. It is an admitted fact that only on 20.8.2004, the appellant/petitioner has been appointed as hereditary trustee. Since the appointment of an Executive Officer is much earlier to the date of the appointment of the petitioner as hereditary

trustee, it is needless to say that prior notice under section 45(1) of the said Act does not arise.

12. As per the decisions referred to supra, a prior notice is very much essential before appointing an Executive Officer to an existing hereditary trustee. In the instant case, such a situation has not arisen. To put it in short, the situation in the present case is totally inverse.

13. It has already been pointed out that an Executive Officer has been appointed on 6.9.1980, whereas the appellant/petitioner has been appointed as hereditary trustee on 20.8.2004 and therefore, viewing from any angle, issuance of the notice under section 45(1) of the said Act does not arise in the present case.

14. The learned Single Judge, after considering the available materials on record, has rightly dismissed the writ petition. In view of the discussions made earlier, this Court has not found any attractive force in the contentions put forth on the side of the appellant/petitioner and altogether, the present Writ Appeal deserves to be dismissed.

In fine, the Writ Appeal is dismissed without cost. The order dated 9.1.2012 passed in Writ Petition No.417 of 2011 by the learned Single Judge of this Court is confirmed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

ajr

To

1. The Secretary (incharge) Tamil Development
Hindu Religious and Information Department
For St.George, Chennai 9.
2. The Commissioner
Hindu Religious and Charitable Endowments Department
Chennai-34.

3. The Deputy Commissioner
HR & CE Administration Department
Thanjavur, Thanjavur District.

4. The Executive Officer
Arulmighu Viswanathasamy Temple
Pattukottai Town & Taluk
Thanjavur District.

+lcc to Mr.D.Rajagopal, Advocate sr.46066
+lcc to the Government Pleader sr.45775

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