

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2016

CORAM:

THE HON'BLE MR.JUSTICE R.SUBBIAH

W.P.No.28479 of 2013
and
M.P.Nos.1 & 2 of 2013

K.B.Punniyakotti

... Petitioner

Vs.

1. The Secretary,
Hindu Religious & Charitable Endowments Department,
Secretariat, Chennai-600 009.
2. The Commissioner,
Hindu Religious & Charitable Endowments Board,
Nungambakkam, Chennai-600 034.
3. The Joint Commissioner (Enquiry),
Hindu Religious & Charitable Endowments Board,
Nungambakkam, Chennai-600 034. ... Respondents

Prayer: Writ Petition has been filed under Article 226 of The Constitution of India praying for issuance of a Writ of Certiorari, to call for the records from the file of the second respondent in respect of the impugned order dated 07.12.2012 bearing Che.Mu.Na.Ka.No.6826/2012/A1 passed by the 2nd respondent and to quash the same.

For Petitioner : Mr.T.V.Ramanujam, Senior Counsel,
For Mr.C.Jagadish

For Respondents : Mr.K.V.Dhanapalan,
Additional Government Pleader
(HR & CE)

ORDER

This writ petition has been filed by the petitioner challenging the order 07.12.2012 bearing Che.Mu.Na.Ka.No.6826/2012/A1 passed by the 2nd respondent, framing charges against the petitioner as well as appointing the Executive Officer as Fit Person of the Temple namely Arulthirai Sivasubramaniya Swami Temple at Saidapet.

2.In the affidavit filed in support of this writ petition, it has been averred by the petitioner as follows:-

2-1.The temple namely Arulthiru Sivasubramaniya Swami Temple at Saidapet belongs to Sengundhar Community members living in 13 streets in Saidapet, Chennai. In fact, a scheme had already been framed on 28.10.1968 by the Hindu Religious & Charitable Endowments Board (in short HR & CE Board) for the purpose of administering the said temple by the Sengundhar community members. Accordingly, so far the temple is being administered as per the scheme framed thereon.

2-2.The properties belong to the said temple are donated only to the said Sengundhar Community members. There is an association namely Arulthiru Sivasubramania Swami Tthirukoil Sengundhar Kottam, Sengundhar Sabai at Saidapet, Chennai, which is a registered one, having Reg.No.429/2002. The Sengundhar Sabai used to elect five respectable persons from amongst its members and those five respectable persons used to be appointed as the Trustees of the said temple by the Board. Accordingly, one S.D.Chnadraserkar and two others were appointed as Trustees by the 2nd respondent at the instance of the Sengundhar Sabai as per order dated 23.02.2005 for a period of three years and two others trustees were nominated by the 2nd respondents by its order dated 04.04.2005. As such, the said five trustees should function till 12.05.2008.

2-3.In the meanwhile, the Tamil Nadu Government passed an Ordinance, which became as Act 15 of 2006, wherein the Government reduced the period of office of the Trustees from three years to one year. In view of the same, the said S.D.Chandraserkar and four other Trustees surrendered their Trusteeship by their letter dated 23.08.2006, pursuant to the meeting of the Board of Trustees of the temple held on 21.08.2006. Thereafter, the petitioner was appointed as a Fit Person of the temple by order dated 20.01.2007 vide proceedings Na.Ka.No.53908/2006/A1 by the Commissioner, H.R. & C.E. Board, and accordingly, the petitioner has been continuing with the said post till date. Subsequently, the said S.D.Chandraserkar filed a writ petition bearing W.P.No.4799 of 2007 before this Court, challenging the validity of the order dated 20.01.2007 passed by the Commissioner, H.R. & C.E. (Admn) Department, under which the petitioner was appointed as the Fit Person of the said temple. But, the said writ petition was dismissed by this Court on 29.07.2010. While dismissing the said writ petition, this Court has not given any direction with regard to the appointment of trustees to the temple. Despite the same, the 1st respondent has passed an order vide G.O.(Pa).No.92 dated 24.02.2011 and the subsequently order dated 25.02.2011 vide Na.Ka.No.78225/2010/A-2 was passed by the 2nd respondent,

whereby the trustees to the temple were appointed in violation to Section 47(iii) of the H.R. & C.E. Act, against which, the petitioner filed a writ petition in W.P.No.6295 of 2011 and obtained an order of interim stay from this Court. Subsequently, the said writ petition in W.P.No.6295 of 2011 was disposed of on 22.12.2011, by setting aside the impugned orders therein and this Court has also directed the respondents to appoint one amongst the three members of non-hereditary trustees of the board of directors from the community of Scheduled Castes or Scheduled Tribes. This Court has also directed the respondents to appoint a women candidate. Against the said order in W.P.No.6295 of 2011, the third respondent in the said writ petition viz., one K.M.Murthy had preferred an appeal in W.A.No.503 of 2012 and the same is still pending; but, no stay has been granted in the said writ appeal.

2-4.Hence, as the Fit Person of the temple, the petitioner filed a suit in O.S.No.1831 of 2010 on the file of the XV Assistant City Civil Court, Chennai, against the said Sabai and 11 others, and he also obtained an order of interim injunction. Having enraged by the said order of injunction, some set of persons claiming themselves to be the office bearers of the said Sabai made several false and fictitious allegations as against the petitioner. Based upon the same, the 2nd respondent herein has passed the impugned order dated 07.12.2012, framing charges against the petitioner. By the impugned order, the Executive Officer of the temple has been appointed as Fit Person of the temple and the petitioner herein has been directed to handover the administration of the temple to the said Fit Person. Further, pursuant to the impugned order passed by the 2nd respondent, the suit in O.S.No.1831 of 2010 filed by the petitioner was dismissed the learned XV Assistant City Civil Court, Chennai, on the basis of the memo filed on behalf of the defendants in that suit. Hence, the petitioner has filed the present writ petition for the relief as stated supra.

3.When the matter came up on 09.12.2013, this Court has passed an interim order of status quo.

4.But, the Executive Officer A.Ramesh, who has been appointed as Fit Person of the Temple by the impugned order passed by the 2nd respondent, has filed a Status Report stating that pursuant to his appointment as Fit Person, he requested the petitioner herein on 07.12.2012 to handover the charges of the temple. After seeing the temple office being locked on 08.12.2012 and as the petitioner resisted to handover the charges of the temple, the Executive Officer A.Ramesh assumed the charges of the Temple on 08.12.2012 and submitted a report to the 3rd respondent herein along with the list of charges. Subsequently, he filed an application under Section 101 of the

HR & CE Act, before the Joint Commissioner, HR & CE Administration Department, Chennai, requesting to issue necessary certificate required under Section 101 of the said Act, for proceeding with the matter before the learned Judicial Magistrate. Accordingly, the Joint Commissioner, HR & CE Dept has passed orders in proceeding Rc.No.8707/2012/A1, dated 31.12.2012. Subsequently, he preferred a petition in Crl.M.P.No.164 of 2013 on the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai, which was subsequently transferred to the XI Metropolitan Magistrate, and numbered as Crl.M.P.No.4888 of 2013 and the learned Magistrate also passed orders on 17.10.2013, appointing an Advocate Commissioner to take inventory of the articles in the locked room of the temple and to submit a report. Further, a direction was also issued by the learned XI Metropolitan Magistrate, Saidapet, Chennai, stating that after making an inventory, key has to be handed over to the Fit Person. Now, in view of the interim order of status quo passed by this Court in this writ petition, the order passed by the learned XI Metropolitan Magistrate, Saidapet, could not be implemented. Further, according to the Executive Officer A.Ramesh (Fit Person as appointed by the 2nd respondent through the impugned order) has already assumed charges of the temple and the petitioner herein is not continuing as Fit Persons of the temple.

5. But, according to the petitioner, the petitioner has not handed over the charge to the said Executive Officer and the petitioner is continuing as Fit Person of the temple.

6. Today, though several contentions were raised, at the time of arguing the matter, the learned senior counsel appearing for the petitioner submitted that as against the impugned order, the petitioner is prepared to file revision before the 1st respondent under Section 114 of the HR & CE Act. Further, till such revision is disposed of by the 1st respondent, he sought for a direction to the respondents to maintain status quo.

7. The learned Additional Government Pleader has also made his submissions.

8. Heard both sides and perused the materials available on record.

9. Though several contentions were raised on either side, I am of the opinion that this Court cannot conduct any roving enquiry on the disputed questions of fact involved, in this writ petition under Article 226 of the Constitution of India. Since the petitioner expressed his intention to file revision against the impugned order, this Court is constrained to pass the following order_

The petitioner is directed to file a revision before the 1st respondent within a period of two weeks from the date of receipt of a copy of this order and the 1st respondent is directed to dispose of the same within a period of three months thereafter. Till such time, parties are directed to maintain status quo as on date. It is made clear that this order of status quo will not prevent the respondents to proceed with the order passed by the learned XI Metropolitan Magistrate, Saidapet, in CrI.M.P.No.4888 of 2013 on 17.10.2013.

With the above terms, this writ petition is disposed of. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Hindu Religious & Charitable Endowments Department,
Secretariat, Chennai-600 009.
2. The Commissioner,
Hindu Religious & Charitable Endowments Board,
Nungambakkam, Chennai-600 034.
3. The Joint Commissioner (Enquiry),
Hindu Religious & Charitable Endowments Board,
Nungambakkam, Chennai-600 034.

+1cc to Mr.C.Jagadish, Advocate, S.R.No.11330
+1cc to the Government Pleader, S.R.No.11443

W.P.No.28479 of 2013
and
M.P.Nos.1 & 2 of 2013

SNS (CO)
CA(14/03/2016)