

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.32408 of 2016

& W.M.P.Nos.28109 & 28110 of 2016

S.Muthu

.. Petitioner

versus

1.The Secretary to Government,
Commercial Taxes and Religious Endowments,
Fort St. George,
Chennai 600 009.

2.The Commissioner,
Hindu Religious & Charitable Endowments
Uttamar Gandhi Road,
Nungambakkam,
Chennai 600 034.

3.Vijaya/The Fit Person

4.The Joint Commissioner,
Hindu Religious & Charitable Endowments,
Uttamar Gandhi Road, Nungambakkam,
Chennai 600 034.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the entire records pertaining in ref.No.30979/2016/L 5/11.08.2016 signed on 16.08.2016 and affixed on 18.08.2016 in the notice board of Sri Muthukumarasamy Devasthanam @ Kandha Kottam 6 and the Corrigendum in ref.No.30979/2016/L 5/23.08.2016 affixed in the notice board of Sri Muthukumarasmy Devasthanam @ Kandha Kottam on 23.08.2016 both passed by the 2nd respondents and quash the same thereby administer the 3rd respondent temple as per the Scheme Degree passed in C.S.No.117 of 1907 dated 12.01.1990 and 25.10.1990.

For Petitioner : Mr.K.Mohanamurali

For Respondents : Mr.M.Maharaja, SPG[for R1, R2 & R4]
Mr.A.R.L.Sundaresan, SC
for Mr.R.Bharanidharan[for R3]

O R D E R

Heard both sides.

2. In this Writ Petition, the petitioner challenges the proceedings issued by the second respondent dated 16.08.2016 and the corrigendum, dated 23.08.2016, and administer the third respondent temple, as per the Scheme Degrees passed in C.S.No.117 of 1907, dated 12.01.1990 and 25.10.1990.

3. The petitioner seeks to set-aside the proceedings dated 11.08.2016, which, in fact is a notice issued by the second respondent. The second respondent has issued notice and fixed the date of hearing as 12.09.2016 and directed the parties to submit their objections. The petitioner admittedly has submitted his objections which has been received by the office of the second respondent on 07.09.2016.

4. The learned Special Government Pleader appearing for respondents 1, 2 and 4, on instructions, submitted that the petitioner, through their counsel, has filed objections pursuant to the impugned notice on 07.09.2016, before the second respondent and the case has been adjourned, only at the instance of the petitioner, for the production of additional documents.

5. The learned counsel for the petitioner raised two contentions for setting-aside the impugned notice. The first contention is that the action of the second respondent in issuing the notice for election proposal, to select an Executive Officer for the third respondent / temple without reference to the direction of the Hon'ble Division Bench in Writ appeals 1636, 1586, 1587 of 2015, dated 16.08.2016, is illegal and arbitrary. The second contention is that the temple has to be administered as per the scheme formulated and for which purpose, the learned counsel has drawn the attention of this court to the judgment of the Hon'ble Division Bench of this Court in O.S.A. No.108 of 1987, dated 21.02.1994.

6. With regard to the first contention raised by the petitioner, it is seen that a batch of cases, in W.P.No.27522 of 2014 etc., was filed by the petitioner and others, questioning an undated proceedings, which were issued by the Joint Commissioner and the present petitioner, in this Writ Petition, is the petitioner in W.P.No.27681 of 2014, which writ petition is one among the Writ Petitions in the said batch. In the said Writ Petition, viz., W.P.No.27681 of 2014 the petitioner prays for the issuance of Writ of Certiorarified Mandamus to quash the proceedings of the second respondent therein, dated 22.12.2013 and consequential election notification issued by the third respondent therein and to appoint a Retired Judge of this Court to conduct the election for the Board of Trustees of the respondent temple which is popularly known as "Kandha Kottam"

7. The said batch of Writ Petitions was disposed of by a Common Order dated 02.09.2015 and the operative portion of the order reads

as follows:

".....4. Hence, keeping the Writ Petitions pending, a direction is issued to the Joint Commissioner of Hindu Religious and Charitable Endowment Department, Chennai-34 to dispose of O.A.No.3 of 1999. All the petitioners are at liberty to give their objections before the said Joint Commissioner within a period of four weeks from the date of receipt of a copy of this order and the Joint Commissioner after considering the same shall pass appropriate orders within a period of four weeks, thereafter. Post the matters after eight weeks."

8.As against the said order, the petitioner and others had preferred a Writ Appeal and while the writ appeal was pending, an order was passed, which appears to be in the nature of interim order dated 10.02.2016, in a Suo Moto proceedings initiated by the Joint Commissioner, HR & CE, Chennai in O.A.No.3 of 1999. As against the said order, the petitioner has filed an appeal before the Commissioner, Hindu Religious and Charitable Endowments, in A.P. No.20 of 2016 and the appeal is pending.

9.At this stage, the Hon'ble Division Bench heard the Writ Appeals and disposed of the same, vide common judgment dated 16.08.2016, by issuing the following directions:

".....5. In the light of the above, we dispose of these writ appeals with liberty to the appellants / writ petitioners to place the order passed by the Joint Commissioner and to raise all their contentions before the learned Single Judge. It is also submitted by the learned Additional Advocate General for the respondents 1 & 2 that some of the writ petitioners or the trustees have also filed appeals before the Commissioner against the order passed by the Joint Commissioner. In our opinion, this fact may also be emphasised before the learned Single Judge by the writ petitioners and the learned Single Judge would take care of the situation and pass appropriate orders regarding the time limit and other necessary orders with regard to the conduct of the election, either as provided under the Scheme framed by this Court or as per the provisions of the Hindu Religious and Charitable Endowments Act, as the case may be, after hearing the parties concerned..."

10. The contention of the learned Counsel for the petitioner is that since the Writ Petition has been pending on the file of the learned Single Judge, the second respondent, who had injuncted from proceeding further initially, pursuant to the impugned notice, there is no hurry in the matter. However, it is sought to be contended that the orders to be passed in the earlier writ petition filed by the petitioner will have an impact on the proceedings before the second respondent which has been initiated suo-motu.

11. After hearing the learned counsel for a considerable length of time and after perusing the materials available on record, this Court is convinced that the proceedings, which is now pending before the second respondent, Commissioner, HR & CE, pertains to the proposal to appoint an Executive Officer for the third respondent / temple and the said proceedings have no impact on the proceedings, which was the subject matter of the Writ Petition and which has been directed to decide afresh by the Hon'ble Division Bench. That apart, the petitioner, having subjected himself to the jurisdiction of the second respondent and having raised objections and advanced arguments on 09.09.2016, which is stated to have proceeded for more than two hours, at this juncture, the petitioner thought it fit to challenge the impugned notice issued by the second respondent. Since pursuant to the impugned notice, objections have been raised by the petitioner and the matter is seized of, by the second respondent. The challenge to the impugned notice has to be necessarily fail.

12. With the above observation, the Writ Petition stands dismissed. However, this dismissal order will not have any impact on the outcome of the appeal in A.P.No.20/2016 pending on the file of the second respondent. Consequently, connected W.M.Ps. are closed. No costs.

-sd/-

Assistant Registrar

/ TRUE COPY /

Sub-Assistant Registrar

pvs

To

1.The Secretary to Government,
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Chennai 600 009.

2.The Commissioner,
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3.The Joint Commissioner,
Hindu Religious & Charitable Endowments,
Uttamar Gandhi Road, Nungambakkam,
Chennai 600 034.

+1 cc to MR.R.BHARANIDHARAN, Advocate SR.NO. 52573

+1 cc to MR.K.MOHANAMURALI , Advocate SR.NO. 52479

+1 cc to the Government pleader SR.NO. 52664

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PD : 18/10/2016

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