

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.3540 of 2016

Shanmugam

... Petitioner

Vs.

1.The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Villupuram.

2.The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Vellore.

3.The Assistant Commissioner,
Hindu Religious and Charitable
Endowment Department
Villupuram.

4.The Inspector,
Hindu Religious and Charitable
Endowment Department,
Villupuram.

5.S.Velmurugan,
S/o.Sadayan,
T.Kosapalayam,
Gingee Salai, Anniyur Post,
Vikravandi Taluk,
Villupuram District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, to direct the 2nd respondent to dispose of O.A.No.8 of 2012 (Na.Ka.No.4238/2015/A1) pending on his file, within a period fixed by this Court.

For Petitioner : Mr.N.Suresh

For respondents : Mr.P.Sanjay Gandhi, AGP (For R1 to R4)

ORDER

This writ petition has been filed by the petitioner praying for issuance of a Writ of Mandamus directing the 2nd respondent to dispose of O.A.No.8 of 2012 (Na.Ka.No.4238/2015/A1) pending on his file, within a time frame.

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

2-1.One Muthu Kounder was looking after the administration of the temples viz., Arulmigu Ayyanar Pidari Mariamman and Kamatchi Amman Temples, at Kosapalayam Village, Thirukunam, Villupuram Taluk and he was the trustee and poojari of the said temples. His sons Kuppu Kounder and Subbaraya Kounder succeeded as hereditary trustees and poojaris of the temples. Kuppu Kounder died leaving his only son Ayyasamy, who also died issue less. Subbaraya Kounder died leaving his two sons viz., Arunachala Kounder and Muthu Kounder. The said Arunachala Kounder died leaving his two sons viz., Kuppusamy Kounder and Subbarayalu Kounder. Muthu Kounder died leaving his sons Ponnusamy Kounder and Manicka Kounder. Subbarayalu Kounder died leaving his only son Loganathan. Since the said Kuppusamy Kounder became old and weak and could not run the administration of the temples, the petitioner herein being his son took up the administration of the Temples and has been looking after the administration of the temples. Kuppusamy Kounder died in the year 1994. The office of the trusteeship of the said temples is hereditary in nature and the petitioner has been performing the hereditary trusteeship for all these years.

2-2.Originally, on 01.04.1985 one Ramalingam was appointed as Fit Person by the Assistant Commissioner, HR & CE Department, Cuddalore by his proceedings in 3350/85/A5. As against the said order passed by the Assistant Commissioner, the petitioner herein preferred a revision petition before the Deputy Commissioner, HR & CE Department, Trichy and the learned Deputy Commissioner in R.P.15/1986, after hearing both sides, had set aside the order passed by the Assistant Commissioner and in the said order, a clear finding was rendered to the effect that the petitioner herein is in complete management of the temple. Subsequently, the said Ramalingam filed a writ petition in W.P.No.5200 of 1987 and on 31.07.1987, this Court dismissed the said writ petition. Aggrieved over the same, the said Ramalingam preferred appeal in Writ Appeal No.1247 of 1987

before the Division Bench of this Court and on 13.08.1987, the Division Bench dismissed the writ appeal confirming the orders passed in the writ petition on 31.07.1987. Thus, the authorities of the HR & CE Department and this Court have clearly recognized the petitioner's right as hereditary trustee for all these years and his administration of the temples.

2-3.While so, the petitioner filed O.A.No.47 of 1986 under Section 63(b) of the HR & CE Act for declaration that the office of the Trusteeship of the said Temples is hereditary and to declare that the petitioner is the hereditary trustee of the temple. Originally, the said Original Application was filed before the Deputy Commissioner, HR & CE Department, Trichirapalli; thereafter, the same was transferred to the file of the Joint Commissioner, HR & CE Department, Mayiladuthurai and renumbered as O.A.No.48 of 1987. Thereafter, after nearly 25 years, the said OA was transferred to the file of the Joint Commissioner, HR & CE Department, Villupuram and renumbered as O.A.No.8/2012. The 1st respondent herein took up the said O.A.No.8 of 2012 for hearing and unfortunately without taking into consideration any of the orders passed by the Deputy Commissioner, HR & CE in R.P.15/1986 and the orders passed by this Court, simply dismissed the application without any reasons.

2-4.Challenging the said order, originally, the petitioner herein filed W.P.No.535/2015 to forebear the respondents from interfering in the management and administration of the said Temples. In the said writ petition, this Court found that the Fair order copy in O.A.No.8 of 2012 dated 01.07.2014 was not even furnished to the petitioner and hence, directed the 1st respondent to furnish the certified copy of the Fair order in O.A.No.8 of 2012 dated 01.07.2014 within a period of three weeks from the date of the receipt of the copy of the order and this Court had ordered status quo to be maintained.

2-5.Thereafter, the 1st respondent passed an order in O.A.No.8 of 2012 dated 12.03.2015. Challenging the said order, the petitioner filed W.P.No.7960 of 2015. On 24.03.2015 after finding that the 1st respondent had not passed the order on 01.07.2014 and the order has been passed only on 12.03.2015, which caused strictures against the 1st respondent, this Court set aside the order dated 12.03.2015 and directed the Commissioner, HR & CE Department to assign the original application to some other Joint Commissioner to hear the same and to pass orders on merits in accordance with law. Thereafter, the matter was assigned to the 2nd respondent in Vellore. The petitioner is living in Villupuram District in a

remote village. The then Joint Commissioner Mr.R.Senthilvelavan has now been transferred from Villupuram and the office of the 1st respondent is now being occupied by another officer. In any event, the 2nd respondent has now been assigned in the matter as per the order passed by the Commissioner, HR & CE Department.

2-6. In the meantime, the 5th respondent herein filed a review application in Review Application No.264/2015 seeking to review the order dated 24.03.2015 made in W.P.No.7960 of 2015. This Court on 19.11.2015 had passed an order modifying the paragraph 13 of the original order dated 24.03.2015; thereby it was modified to the effect that _

"writ petition is allowed with the above directions and it is open to the parties to adjudicate their rights in O.A.No.8/2012 and the party, who is in management and administration of the Temple shall continue, subject to the orders that may be passed by the Joint Commissioner in O.A.No.8 of 2012. In the result the Revision Application is allowed".

This Court had not modified the direction given to the Joint Commissioner to dispose of O.A.No.8 of 2012 and substantive portion of the order in the writ petition was not modified by this Court in the Review Petition. In fact, what was modified was in respect of the portion which restrains the right of the management and administration of the Temple. This Court in the Review Application has clearly adumbrated the submissions made on the petitioner's side that the petitioner is in possession and management of the temple and as such, it was held in the review order that the party who is in management and administration of the temple shall continue subject to the orders that may be passed by the Joint Commissioner in O.A.No.8 of 2012.

2-7. After the order was passed by this Court on 19.11.2015, the 2nd respondent is postponing the matter in O.A.No.8 of 2012 without any reason. Hence, the petitioner has come forward with the present petition before this Court.

3. The main grievance of the petitioner in this writ petition is that in spite of the order passed by this Court dated 19.11.2015, the 2nd respondent is postponing O.A.No.8 of 2015 without hearing the same. Hence, the petitioner sought for a direction to the 2nd respondent to dispose of O.A.No.8 of 2015 within a time limit.

4.Heard the learned counsel for the petitioner and the learned Additional Government Pleader and perused the materials available on record.

5.Considering the limited scope of the prayer sought for by the petitioner in this writ petition, without going into the merits of the claim of the petitioner, this Court directs the 2nd respondent to consider and dispose of O.A.No.8 of 2015, by affording opportunity of personal hearing to all the necessary parties, within a period of six weeks from the date of receipt of a copy of this order. It is made clear that this Court is not expressing any opinion on the claim made by the petitioner.

With the above direction, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1.The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Villupuram.

2.The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Vellore.

3.The Assistant Commissioner,
Hindu Religious and Charitable
Endowment Department
Villupuram.

4.The Inspector,
Hindu Religious and Charitable
Endowment Department,
Villupuram.

+1cc to Mr.N.Suresh, Advocate, S.R.No.6245
+1cc to the Government Pleader, S.R.No.6439

W.P.No.3540 of 2016

cnr (CO)
srg (04/02/2016)



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