



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.06.2016

CORAM:

WEB COPY

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.P. (MD) No.11550 of 2016

and

W.M.P. (MD) No.8838 of 2016

S.Karuthapandi

... Petitioner

Vs.

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

2.The Fit Person,
13 Per Vagaiyar Sozhiya Maaruthuva Kattalai,
Meenakshinayakkanpatti,
Dindigul District. ... Respondents

Prayer: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned notice made in Notice O.A.No.17/2016/C1 dated 01.06.2016 issued by the 1st respondent and quash the same.

For Petitioner : Mr.G.R.Swaminathan,
Senior Counsel for
Mr.T.Antony Arul Raj

For Respondents : Mr.V.R.Shanmuganathan, for R1
Mr.G.Muthu Geethaiyan for R2

ORDER

Heard both sides.

2.By consent, the main Writ petition itself is taken up for final hearing.

3.The learned counsel for the petitioner submits that in the impugned notice in O.A.No.17/2016/C1, dated 01.06.2016, it is mentioned as follows:

"Order in O.A.25/1989 dt.26.11.1993 the Joint
Trustee of the temple has decided to cancel the above scheme by
the mismanagement of the Former Trustees. Hence an



enquiry into the above matter will be held by the Joint Commissioner, H.R. & C.E. Department, Madurai - I at his office at Door No.1, West Chithiral Street, Madurai at 3.00 p.m., on 29.06.2016 (Wednesday).

The respondents and other persons having interest in the above matter also hereby required to appear either in person or have duly authorised on the above said date time and place and adduce their evidence in support of their contention.

In default of appearance as aforesaid the decision will be made exparte."

4. Further in the impugned notice, the respondent and other persons having interest in the above matter, etc., were required to appear either in person or by duly authorized person on the aforesaid date, time and place and to adduce their evidence in support of their contention.

5. The main contention on behalf of the petitioner is that the impugned notice is not quite in tune with the ingredients of Section 64(5) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 also that it further represented that without consulting the trustee, the scheme cannot be modified nor the decision to modify be taken.

6. The grievance of the petitioner is that the impugned notice dated 01.06.2016 issued by the Joint Commissioner, H.R.&C.E. Board, Madurai, suffers from prejudice because of the reason that the Joint Commissioner in first paragraph of the impugned notice dated 01.06.2016 had decided to cancel the above scheme by the mismanagement of the former trustee and therefore, it is represented on behalf of the petitioner that the impugned notice is to be set aside by this Court in the interest of justice.

7. Per contra, it is the submission of the learned Additional Government Pleader for the 1st respondent that the Joint Commissioner, H.R. & C.E. Department, Madurai had only issued the impugned notice dated 01.06.2016 and just because the words '...the Joint Commissioner has decide to cancel the above scheme by the mismanagement of the former trustees' were employed. It cannot be construed by any stretch imagination that the Joint Commissioner H.R. & C.E. Board had decided the matter in a predetermined fashion. In fact a complete reading of the contents of notice dated 01.06.2016 issued by the Joint Commissioner, H.R. & C.E. Board unerringly point out that the petitioner was required to appear either in person or through his representative on 29.06.2016 at 3.00 p.m. As such the said impugned notice does not suffer from any vice prejudice or infirmity in the eye of law.

8. At this stage, the learned counsel for the 2nd respondent <https://hcservices.hcservices.gov.in/hcservices/> proper person in the Writ petition is not arrayed by the petitioner as one of the respondent and in reality, the



Executive Officer of the trust ought to have been impleaded by the petitioner in the Writ petition, as such, the non joinder of proper or necessary party is fatal to the Writ petition.

9.It is also the case of the 2nd respondent that in previous proceedings in W.P.(MD)No.3007 of 2016 between A.Sornavel Vs. The Secretary to Government, H.R. & C.E. Department, Chennai, the Executive Officer of the Kattalai was shown as 4th respondent.

10.On a careful consideration of respective contentions and also this Court on going through the contents of the notice dated 01.06.2016 is of the considered view that though the Joint Commissioner of H.R. & C.E. Department, in the impugned notice dated 01.06.2016 had employed the word '...has decide to cancel the above scheme by the mismanagement of the former trustees', really speaking, it has created an impression on the mind of the petitioner that the Joint Commissioner had in a predetermined manner had decided to cancel the scheme in question by the mismanagement of the former trustee.

11.In this connection, it is not out of place for this Court to make a pertinent mention that ordinarily the spirit, tenor and the entire contents of the impugned notice will have to be looked into and a clear cut meaning is to be gathered as that of a prudent and reasonable man would do in a given case. Of course, based on the facts and circumstances, of a given case which float on a surface.

12.In any event considering the words employed at first paragraph of the impugned notice, this Court is of the considered view that the words employed had apparently caused a prejudice in the mind of the petitioner. As such, this Court to clear the midst, shroud and cloud and also to keep the things and to set right the things in a proper manner in the interest of justice directs the Joint Commissioner, H.R. & C.E. Department, Madurai to issue a fresh notice by giving a fresh date of hearing and also specifying the time requiring the concerned persons, having interest in the scheme matter to appear either in person or through agents at a particular point of time and place and to adduce evidence to project their claim in the manner known to law and in accordance with law.

13.With the aforesaid observation and direction, the Writ petition stands disposed of. No costs. Consequently, connected W.M.P.is closed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar



nbj

To

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

WEB COPY

2.The Fit Person,
13 Per Vagaiyar Sozhiya Maaruthuva Kattalai,
Meenakshinayakkanpatti,
Dindigul District.

+1CC to Mr.T.Antony Arul Raj, Advocate Sr.No.33706
+1CC to Spl.Government Pleader Sr.No.33908
+1CC to Mr.A.K.Baskara Pandian, Advocate Sr.No.33689

GJM/AAL/MPA/6.7.16-4p-6c

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