



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.05.2016

Pronounced on : 06.06.2016

CORAM

The Hon'ble Mr. Justice M.V.MURALIDARAN

WP(MD).No.9178 of 2016

and

WMP.Nos.7317 and 7318 of 2016

K.S.P.Sethu

...Petitioner

Vs.

1.The Principal Secretary to the Government,
Tourism Culture and
Hindu Religious and Charitable Endowment Department,
St. George Fort,
Chennai - 9.

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

3.The Commissioner of Police,
Office of the Commissioner of Police,
Madurai City.

4.The Inspector of Police,
Karimedu Police Station (Law and Order),
Karimedu,
Madurai City.

5.M.Rameshwaran

6.S.Mayilsamy

7.M.Shanmugam

8.M.Kumaresan

9.G.Selvanayagam

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records pertaining to the Impugned Order passed by the first Respondent in Government Order (Pa) No.44, dated 04.03.2016 and quash the same as illegal.

For Petitioner : Mr.B.Thanga Aravindh

For Respondents :Mr.V.K.Shanmuganathan (for R1 to R4)
Special Government Pleader

Mr.R.Subramanian (for R5)
for Mr.R.J.Karthick

**ORDER**

The petitioner has filed the above writ petition to call for the records pertaining to the Impugned Order passed by the first Respondent in Government Order (Pa) No.44, dated 04.03.2016 and quash the same as illegal.

2. Heard the submissions of Mr.Thanga Aravindh, learned counsel for the petitioner, Mr.V.R.Shanmuganathan, learned Special Government Pleader for the respondents 1 to 4 and Mr.R.Subramanian for Mr.R.J.Karthick, learned counsel for the fifth respondent, who is also sustaining the other respondents.

3.The challenge in the present writ petition is to the order passed by the first respondent in G.O.(Pa).No.44, Tourism, Culture and Hindu Religious and Charitable Endowment Department dated 04.03.2015. The petitioner claims to be the hereditary Karuppasamy Arulaadi to the Arulmigu Pudukottai Vellaianman temple and it is his case that the Temple is a very old temple and functioning under the control of the first respondent Department and since there were some issues regarding the improper Election of the trustees of the temple, a Scheme Suit in O.A.No.17 of 2008 was filed before the second respondent and the second respondent by order dated 28.04.2009 has stated that in the interest of proper and better administration of the institution, the Scheme that has already been confirmed in O.A.No.24 of 1993 dated 28.03.2001 is to be modified and accordingly modified the Scheme wherein it is stated that the temple and its properties shall be administered by a board of trustees consisting a minimum of three members and not exceeding five members who shall be selected from the respective six Arulaadigal families or their vagaiyaras in rotation living in the ten villages stipulated under the Scheme from the Madurai, Virudhunagar and Sivagangai Districts. It has also been indicated in the said order that the trustees shall be appointed by the appropriate authority for a period of one year subject to the provisions of the Act and such trustees shall among themselves elect a managing trustee and in the event there is no unanimity, the competent authority may appoint the managing trustee.

4.It is the case of the petitioner that the impugned order dated 04.03.2016 has been passed by the first respondent solely based on the letter dated 15.02.2016 of the Commissioner, Hindu Religious and Charitable Endowment Department. It is being urged that the Election of the trustees who are the 5th to 9th respondents before this Court has happened allegedly on 25.10.2015 in the General Body Meeting that is alleged to have been conducted in the temple premises.

5.The case of the petitioner is that the said meeting that was supposed to have been conducted on 25.10.2015 wherein the trustees have been elected has not been conducted at all and the petitioner and other Arulaadis who are interested have not participated in the said meeting and the alleged proceedings of the General Body is fabricated and forged.

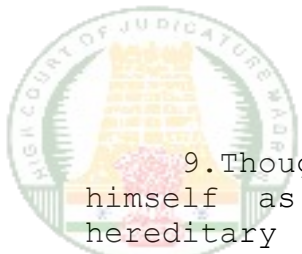
6. At this juncture, one technical aspect that has to be considered is whether this allegation which is a disputed question of fact can be agitated under Article 226 of the Constitution of India in a Writ



Petition before this Court. It is well settled that a disputed question of fact cannot be agitated under Article 226 of the Constitution of India and it is only proper to relegate the parties to a Civil Court for appropriate relief but the Supreme Court in a number of decisions including **ABL International Ltd. and Anr. v. Export Credit Guarantee Corporation Ltd. (2004) 3 SCC 553**, has held that there is no universal rule that forbids a Writ Court from entertaining a Writ Petition under Article 226 of the Constitution of India even if the issue involves a disputed question of fact and the Court has also clarified that what facts were in dispute and what were admitted could only be determined after a reply is filed by the respondents. So, to put it simply, if a factual issue is raised in a Writ Petition and the same is disputed by the respondent in its reply, then the same could be stated to be a disputed question of fact and the Writ Court, only in exceptional circumstances, would interfere in such matters in the interests of justice. But if a factual issue is raised in a Writ Petition and the same is not disputed by the Respondent, then there can be no bar on this Court to entertain the Writ Petition.

7. In the instant case, when the Writ Petition came up for admission on 11.05.2016, notice was ordered to the respondents and a reply has been filed by the fifth respondent also. In the counter affidavit filed by the fifth respondent, the allegation of the petitioner that he had not participated in the meeting along with other Arulaadis has not been disputed. In fact, to justify their stand, it has been stated in the counter that as a representative of Karuppasamy Arulaadi Vagaiyara, the sixth respondent has participated in the meeting and he was also elected as one among the trustees. There is no whisper in the counter affidavit as to when the notice of the General Body Meeting was given, whether all the Arulaadis of the 10 villages which shall be considered for appointment of trustees have participated or not. To enquire in detail about the matter, the original files have also been produced by the respondents and a perusal of the files also discloses that no proper notice was issued for the conduct of the meeting and the stand of the petitioner does not appear to be imaginary. It cannot be forgotten that for management of a temple, it is always advisable that the trustees shall be elected in a fair and a just manner since they are entrusted with the maintenance of the temple and temple properties which is a very sacred duty.

8. As from the facts, it could be seen there are rival claims to appointment and many groups of persons are interested in getting appointed as trustees. But, however, the same shall be done only in accordance with law and by duly following the principles of natural justice. There is no convincing proof to establish that the meeting was properly conducted on 25.10.2015 and based on the decision that has been arrived at the meeting, the first and second respondents have come to a conclusion and accordingly accepted the decision that was taken in the meeting. This Court is of the view that the meeting was not conducted in accordance with law and even in the counter affidavit filed by the fifth respondent, the allegations raised by the writ petitioner are not convincingly rebutted.



9. Though a stand has been taken that the petitioner has described himself as a hereditary trustee as per the scheme, there is no hereditary trustee, the fact that the meeting has not been conducted properly cannot be disputed. Hence, the impugned order which is totally based on the said meeting cannot have the legal basis for being sustained. Hence, there shall be a fresh meeting conducted for the Election of the trustees strictly in accordance with the order passed in O.A.No.24 of 1993 and the modified order passed in O.A.No.17 of 2008 and the said meeting shall be conducted within a period of two weeks from today and the second respondent is directed to nominate a responsible officer not below the rank of Assistant Commissioner for overseeing the meeting.

10. The proceedings of the meeting shall properly be recorded and it shall be ensured that proper notice is given to all parties concerned who are entitled to participate in the meeting. Accordingly, the impugned order dated 04.03.2016 is set aside and it is hereby directed that the trustees shall be elected in accordance with the new meeting and the first respondent after following the due procedure shall appoint the trustees.

11. Accordingly, the writ petition is allowed with the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/
Assistant Registrar(CS-II)

/TRUE COPY/

Sub Assistant Registrar

To

1. The Principal Secretary to the Government,
Tourism Culture and
Hindu Religious and Charitable Endowment Department,
St. George Fort, Chennai - 9.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Madurai - 1.
3. The Commissioner of Police,
Office of the Commissioner of Police, Madurai City.
4. The Inspector of Police,
Karimedu Police Station (Law and Order), Karimedu, Madurai City.

+2ccs to M/S.B.Thanga Aravindh, Advocate in SR.No.28235

+1cc to M/S.R.J.Karthick, Advocate in SR.No.28469

ORDER MADE IN
WP (MD) .No.9178 of 2016
and WMP.Nos.7317 and 7318 of 2016
06.06.2016