BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Order Reserved on : 17.11.2016

Order Pronounced on : 23.12.2016

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Writ Petition (MD)No.9831 of 2016
and
WMP.(MD).No.7765 of 2016

VR.Suyamprakasam
Hereditary Trustee,
Arulmigu Suyampirakasa Eeswar Thiru Kovil,
Iluppagudi, Karaikudi Taluk,
Sivagangai District. ... Petitioner

vs.

1.The Commissioner,
Hindu Religious and Charitable Endowments,
Chennai - 600 034.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowments,
Sivagangai.

3.The Executive Officer,
Arulmigu Kopudainayagi Amman Thiru Kovil,
Karaikudi Town,
Sivagangai District.

4.L.Shanmugam Chettiar
(R-4 is impleaded vide this Court by
order dated 17.10.2016 in WMP
(MD) No.8394 of 2016) ... Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of certiorarified mandamus, to call for the records relating to the impunged order made in Se.Mu.Na.Ka.No.5763/2015/A2 dated 19.05.2016 passed by the first respondent and quash the same.

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

For Respondents : Mr.V.R.Shanmuganathan
Spl. Govt. Pleader for R1 and R2

Mr.C.Gunaseelarupan
For R-3
Mr.Srinivasa Raghavan for
Mr.AN.Ramanathan
for R-4.

ORDER

This writ petition has been filed challenging the order passed by the first respondent/the Commissioner, Hindu Religious and Charitable Endowments, Chennai suspending the petitioner from the Office of Hereditary Trusteeship and also appointing the 3rd respondent as Fit Person for Arulmigu Suyampirakasa Easwar Thiru Kovil, Iluppagudi, Karaikudi Taluk, in Sivagangai District.

2. The case of the petitioner in brief is as follows:-

The petitioner is Hereditary Trustee of one Arulmigu Suyampirakasa Easwar Thiru Kovil, Iluppagudi, Karaikudi Taluk in Sivagangai District. The above temple is administered in terms of a scheme framed by this Court in APP.No.492, 743 and 491 of 1951, dated 05.05.1954 and amended by Deputy Commissioner, Hindu Religious and Charitable Endowment Department in OA.No.44/1962 dated 21.11.1966 and Commissioner, HR & CE in AP.No.71 of 1967. As per the scheme, the temple is to be managed by one hereditary trustee and two non hereditary trustees. Earlier one Sevuga Chettiar was the hereditary trustee till 2010. Subsequently, following his resignation, the petitioner was unanimously elected as trustee as per the scheme and he was appointed as hereditary trustee from the month of August, 2010. Now, by the impugned order dated 19.05.2016, the first respondent suspended the petitioner from Office of Hereditary Trusteeship and also appointed a fit person for the temple. The temple has been administered by various hereditary trustees for the past 50 years and the petitioner took over the charge only in the month of August, 2010. Hence, the petitioner cannot be made liable for any misleads committed by the earlier hereditary trustees. It is also a settled law that when the administration is in the hands of the hereditary trustee, he can be replaced only by another hereditary trustee and there is no justification for placing the administration at the hands of a fit person. The temple belongs to Nagarathar community and it is a denominational in character. Therefore, the administration of such institution cannot be placed in the hands of a fit person, which is violative of fundamental rights guaranteed under Article 26 of Constitution of India.

3. The first respondent filed a counter affidavit contending that the temple was managed by the petitioner in the capacity of Hereditary Trustee and two non-hereditary trustees posts are now vacant. When the Audit reports and office records for the Fasli 1417 of the temple were perused by the subordinates of the first respondent, it was found that the Hereditary Trustees have been managing the temple for the past 50 years. During the

above period, the immovable properties belonging to the temple were alienated and encroached by third parties, but the temple had not taken any steps to redeem the lands and lease out the properties by way of public action as per the provision of the Act, the hereditary trustee also not taken any steps to fix fair rent, hence he caused loss of income in crores of rupees to the Deity of the temple. In the above circumstances, the second respondent, namely, the Joint Commissioner, HR & CE, Sivagangai submitted the detailed report to the first respondent and recommended to initiate appropriate disciplinary proceedings under Sub Sections (b)(c)(d) and (e) of Section 53(2) of the Tamil Nadu Hindu Religious and Charitable Endowment Department Act against the petitioner, who is the hereditary trustee in the chair. Based on the report submitted by the second respondent, and after perusing the relevant records, the first respondent came to a conclusion that it is just and necessary to initiate disciplinary proceedings as against the petitioner under Section 53(3) of the HR & CE Act and as many as 19 charges were framed against the petitioner which are grave in nature. For example, an extent of 125 acres of cashew nut Thoppu in Paravoyal village, belongs to the temple, out of which, 40 acres of land was leased out only for Rs.25,000/- for Fasli 1419, subsequently, it was not leased out anybody and no reason was given for non leasing of the above property from fasli 1420. In respect of house sites in Karaikudi Town, out of 2220 house sites, only 1481 house sites have been given for lease and remaining 739 house sites have been encroached by third parties. In the above said 1481 house sites, fair rent was fixed for 1292 tenants which was not implemented, likewise, there are various allegations against the hereditary trustees for causing loss to the Deity. Since all the charges are grave in nature, the petitioner was is placed under suspension pending enquiry into charges under Section 53(4) of the HR & CE Act. As an interim arrangement, the Executive Officer of Arulmigu Koppudainayagi Amman Temple, Karaikudi Town was appointed as an official fit person. impunged order was passed only for better management of the temple. Now, another order has been issued by the Department appointing an Executive Officer under Section 45 (i) of the HAR & CE Act. The Executive Officer also taken charge on 03.06.2016. Since the impunged order has been passed only for the better management of the temple there is no irregularity or illegality in the order impugned in the writ petition.

4. The learned counsel appearing for the petitioner would contend that there is no necessity to suspend the petitioner pending charges, and the charges are not relates to any misappropriation, but only relates to inefficiency in administration. The charges are related to more than 50 years of administration of the temple and this petitioner assumed charge only in the year, 2010, and he cannot exclusively made liable for the same, and it does not warrants any suspension. Apart from that as per the scheme, and under Section 54 of the HR & CE Act, in

case of any vacancy arises in the office of hereditary trustee, only the next in line of succession of the hereditary trustee shall be entitled to succeed, since the petitioner placed under suspension, as per the scheme, as the next in line of succession, any one of his family members necessarily be appointed as hereditary trustee and a fit person can not be appointed. The learned counsel appearing for the petitioner further contended that before passing the impunged order no notice has been issued to the petitioner and no enquiry was conducted and hence the order has been passed in violation of principles of natural justice.

5. Per contra, the learned counsel appearing for the respondents 1 to 3 would contend that serious charges are levelled against the petitioner regarding mismanagement of the temple and pending enquiry the first respondent has power to suspend the petitioner under Section 53(4) of the HR & CE Act, this Court in number cases held that when a fit person was appointed under Section 53(4) of the HR & CE Act, the provision of Section 54 of the Act will not coming to play and the petitioner cannot claim any right to appoint next in line of succession in the event of petitioner being suspended. The learned counsel appearing for the respondents 1 to 3 further contended that it is only an interim suspension pending enquiry under Section 53(4) of the HR & CE Act, and hence no notice is required and he sought for dismissal of the writ petition.

6. I have considered the rival submissions and perused the records carefully.

7. As per scheme framed for the administration of temple, the Board of Trustees consisting of one hereditary trustee, representing one A.R.L. family of Devakottai, and two non-hereditary trustees have to be appointed by the Area Committee, Ramanathapuram District, from among the non-A.R.L., Iluppakudi Nagarathars of the 33 villages owing allegiance to the temple. The said non-hereditary trustees shall hold office for five years each from the date of their appointment and shall be liable for re-election or re-appointment. Now the petitioner is functioning as hereditary trustee and the term of two non-hereditary trustees expires in the year 2013 itself, even though the non hereditary trustees were elected in the year 2013, as per the scheme, and it was also sent to the second respondent for approval in the year 2013, so far no non-hereditary trustees were appointed. In the above circumstances, now the first respondent passed the impunged order suspending the petitioner from the post of hereditary trustee and also appointed a third respondent as a fit person in the place of petitioner, pending enquiry into some charges. In the impunged order as many as 19 charges were framed and the petitioner was also directed to give reply within a period of 15 days from the date of receipt of a copy of that order, and that the petitioner was suspended only pending enquiry under Section 53(4) of the HR & CE Act.

8. Now the contention of the learned counsel appearing for the petitioner is that by the suspension of the petitioner from hereditary trustee post, a vacancy has been arose and the vacancy should be filled up only by appointing a next in line of succession as per Section 54(2) of the HR & CE Act, and the first respondent has no power to appoint a fit person under Section 53 (4) of the HR & CE Act. In support of his contention, the learned counsel appearing for the petitioner would rely upon the Division Bench Judgment of this Court reported in 1966 (1) MLJ 228 in PANDIAN JAMINDARINI Vs. DEPUTY COMMISSIONER, HIDU RELIGIOUS AND CHARITABLE ENDOWMENT and another Division Bench judgment of this Court reported in 2016(1) CTC 9 in C.PANDIAN AND OTHERS Vs. THE JOINT COMMISSIONER, TAMIL NADU HINDU RELIGIOUS AND CHARITABLE ENDOWMENT BOARD AND OTHERS.

9. The Division Bench Judgment reported in 1966 (1) MLJ 228,(supra) it has been held that the power of the HR & CE Department appoint a fit person under Section 53(4) of the Act is special provision and the suspension pending in enquiry will not fall within the ambit of Section 54 of the Act, in view of the principle that special provisions exclude the general provision and the statutory provisions does not require that when appointing a fit person, the claim of the members of the trustees family should be taken into account. However, considering the nature of the Office of the Hereditary Trustee under general law, the authority while appointing a fit person to have due regard the claim of the members of the hereditary trustee. But, in the above case, the claim of the next in line of succession was considered and rejected. In the above circumstances, the Division Bench ultimately dismissed the appeal.

10. The above Division Bench judgment was subsequently considered by a Single Judge of this Court in a Judgment reported in 1998 (1) MLJ 365 in M.C.KARTHIKEYAN Vs. THE JOINT COMMISSIONER, HINDU RELIGIOUS AND CHARITABLE ENDOWMENT (ADMN) DEPARTMENT, COIMBATORE, wherein it has been held that when Sub Section 53(4) of the HR & CE Act provides for appointment of a fit person, the provision of Section 54(1) and (2) cannot be relied upon nor it could be pressed in to service. In the above judgment, the learned Single Judge also referred another judgment of this Court in (W.P.No.12810 of 1990) N.K.MANIKANDA MUDALIAR Vs. THE DEPUTY COMMISSIONER, H.R. & C.E. DEPARTMENT, SALEM, wherein it was held that when a hereditary trustee has been placed under ad interim suspension pending enquiry into certain charges, the provisions of Section 53(4) of the Act alone would be attracted and no right can be claimed under Section 54(2) of the Act. Under Section 53(4) of the Act, a fit person could be appointed pending enquiry into the charges framed against the hereditary trustee and the claim of the next in line of succession need not be considered at that stage.

11. The latest Division Bench judgment of this Court in C.ANDIAPPAN AND OTHERS Vs. THE JOINT COMMISSIONER, TAMIL NADU HINDU RELIGIOUS AND CHARITABLE ENDOWMENT BOARD AND OTHERS, reported in 2016 (1) CTC 9 also considered some other judgment of this Court including the Division Bench Judgment reported in 1966 (1) MLJ 228, and it has held as follows:-

> "42. From all the above decisions, it appears that this Court has consistently taken the view that the suspension of a Hereditary Trustees is not a bar for considering the claims of persons next in the line of succession to the office of trusteeship. The logic behind the aforesaid view is perhaps our traditional belief that sinners and saints need not necessarily beget sinners and saints, respectively. Hindu mythology has it that most of demons (asuras) were born only to great Rishis. The converse is also proved by the case of Prahlad born to Hiranyakasipu.
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> 43. Moreover, atleast in respect of appointment of Fit Persons to Endowments of this nature, the contention of the Appellants cannot be rejected so easily. This can be understood better by having a look at the nature of the Endowment in question."

ultimately the Division Bench considering the nature of endowment in that case that it is a "Kattalai" to perform specific service perpetually and a fit person cannot spent money out of his packet to perform his Kattalai and therefore, if the wishes of the founder of a specific endowment are to be honoured, it is necessary that the rule of next in the line of succession to be considered in the event of a vacancy in the office of hereditary trustee. In the above circumstances, the said judgment is relied upon by the petitioner are not applicable to the facts of this case. Hence, I am of the considered view that the claim of the petitioner can not be considered at this stage, and the contention of the learned counsel appearing for the petitioner is rejected.

12. So far as the next contention of the learned counsel appearing for the petitioner regarding the issuance of notices before passing the order of suspension, it is only an interim suspension pending enquiry, the petitioner was directed to file his objection for the charges levelled against him and there is no necessity to issue any notice before passing interim order of suspension pending enquiry. A Division Bench judgment reported in 2016 (1) CTC 9 in C.ANDIAPPAN AND OTHERS Vs. THE JOINT COMMISSIONER, TAMIL NADU HINDU RELIGIOUS AND CHARITABLE ENDOWMENT BOARD AND OTHERS, referred earlier, has held as follows:-

> "36. It is true that shebaits right or the right to the office of Trusteeship is recognised in India to be akin to the right to property. But, there is a small distinction between the right to property and the right to the office of

Trusteeship. The right to property includes within it, the right to transfer the property for a consideration. An office of trusteeship cannot be transferred for a monetary consideration. Moreover, the right to property does not depend upon how one manages or mismanages the property. But, the right to the office of Trusteeship depends upon the proper management and administration of the property of the Trust. "A Trustee of a Public Charitable or Religious Endowment, forfeits his right to hold the office, the moment he commits an act that belies the Trust reposed in him. Therefore, the rigours placed upon the office of trusteeship are much more. Hence we are of the considered view that the observance of the Principles of Natural Justice before slapping an Order of Suspension on a hereditary trustee under Section 53(4) of the Act pending enquiry into grave charges, is neither feasible nor required." Therefore, the third contention of the learned senior counsel for the appellants is also rejected."

13. In another Judgment of this Court reported in 2010 (1) CWC 881 in V.VADIVELU Vs. THE JOINT COMMISSIONER, H.R. & CE., DEPARTMENT, VILLUPURAM, wherein it was held that it is only suspension pending enquiry and no notice is required at this stage and only passing final orders under Section 53(3) of the Act, notice is required.

14. Regarding the last contention of the learned counsel for the petitioner is that the charges are not grave in nature and there is no charge of misappropriation and the charges are only relating to mismanagement, which were also relates to 50 years prior to appointment of the petitioners as hereditary trustees and the petitioner cannot be made liable for that hence no suspension is necessary. The above said argument also cannot be accepted at this stage. As many as 19 charges were levelled against the petitioner and enquiry is also pending, whether the charges are valid or not could be decided only during the enquiry, and it cannot be decided at this stage. In the circumstances, I find no infirmity or illegality in the order passed by the first respondent.

15. In the result, the writ petition is dismissed. However, the charges were issued in May,2016, the first respondent is directed to proceed with the enquiry and pass final orders within a period of two months from the date of receipt of a copy

of this order. No costs. Consequently, connected M.P. is closed.

Sd/
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar.

To

1.The Commissioner,
Hindu Religious and Charitable Endowments,
Chennai - 600 034.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowments,
Sivagangai.

3.The Executive Officer,
Arulmigu Kopudainayagi Amman Thiru Kovil,
Karaikudi Town,
Sivagangai District.

+1CC to M/S. An.Ramanathan, Advocate, SR.No. 83359

Order in

W.P.(MD)No.9831 of 2016
DATED: 23.12.2016

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AM/SS3/SAR-1/03.01.2017/8P/5C