

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 06-11-2017

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.25776 of 2012 &
M.P.No.1 & 2 of 2012

The Administrator/President,
Arya Kshatriya Rajakula Nandhavana
Madalaya Paripalana Sangam,
Tiruvannamalai. Petitioner

versus

1. The Commissioner,
Department of Hindu Religious &
Charitable Endowments,
Nungambakkam,
Chennai-34.

2. The Assistant Commissioner,
Department of Hindu Religious &
Charitable Endowments,
Tiruvannamalai.

3. Joint Commissioner,
Hindu Religious & Charitable Endowment,
Villupuram.

4. Fit Person/Executive Officer,
Arulmigu Kamachi Amman Thirukovil,
Thirumanjana Gopura Street,
Tiruvannamalai.

Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, to call for the records in Letter No.240/2012/A1/dated 24.8.2012 on the file of the 2nd respondent and quash the same.

For Petitioner : Mr.G.Rajan

For Respondents: Mr.M.Maharajan, Spl.G.P.

ORDER

The present writ petition has been filed, seeking for the following relief:

"To issue of Writ of Certiorari, to call for the records in Letter No.240/2012/A1/dated 24.8.2012 on the file of the 2nd respondent and quash the same."

2. The petitioner is a registered society and the members of the society are belonging to Arya Kula Kshatriya Community. The petitioner society, in order to uplift their community people and for welfare of the community, the members had purchased the properties and the said properties were managed by the forefathers belonging to the said community. After a passage of some time, the erstwhile members of the community felt that it is not possible to manage the affairs of the properties belonging to the society and therefore, they had decided to form a society and get it registered under the Tamil Nadu Societies Registration Act, 1974. Accordingly, pursuant to the decision, they formed the society and got the same registered under the provisions of the Tamil Nadu Societies Registration Act, 1974. After registration, the society has been managing the properties belonging to the community.

3. One of the properties in question, was the property comprised in T.S.No.1646/1, Door No.34/116, Chinna Kadai Street, Tiruvannamalai District admeasuring an extent of 6160 sq.ft. In the said property, a choultry was put up for the benefit and charity of the community people. The property is located close to Sri Arunachaleswarar temple, Tiruvannamalai, which temple was frequented by the members belonging to the community for which the society was founded and whenever such visit takes place, the choultry provided the pilgrims free accommodation and other amenities.

4. While matters stood thus, it appears that one person who was allowed to stay in the property as a Watchman, had staked claim of ownership of the property which led to filing of a Original Suit in O.S.No.1143 of 1994 on the file of the Principal District Munsif, Tiruvannamalai. The said suit was dismissed which was reversed by the appellate Court in A.S.No.94 of 2001. Against the same, a second appeal in S.A.No.1973 of 2002 was filed, which came to allowed in favour of the petitioner society. There was also another suit filed by the petitioner society in O.S.No.239 of 2003 on the file of the District Munsif Court, Thiruvannamalai for declaration and recovery of possession which was rightly decreed by the trial Court. However, the same was reversed in A.S.No.19 of 2008 by

the Sub Court, Tiruvannamalai and against which, a second appeal was filed in S.A.No.869 of 2009 on the file of this Court and the said appeal was finally allowed on 20.4.2011. According to the petitioner, both appeals were allowed by a common decree and judgment. Therefore, the contest by the third party as against the property belonging to the society, was negated.

5. According to the petitioner, the person who was unsuccessful before the civil litigation, claiming ownership, had set up some other persons to obstruct the enjoyment and possession of the property by the society and in order to create problems for the society, number of representations appeared to have been submitted to the respondents authorities against the management of the property by the society. The second respondent/department, at the instance of the third party, had issued a show cause notice dated 6.2.2012 stating that the property in question belongs to the temple and directed the petitioner to submit their explanation within 15 days. According to the notice, the property had come under the purview of the respondent department and therefore, the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (in short, 'the Act') would be enforced. In response to the said show cause notice, a detailed explanation was given through their advocate on 23.2.2012. However, the petitioner was directed to appear in person in the office of the second respondent with relevant documents for personal enquiry on 12.3.2012. According to the petitioner, the letter directing the petitioner to appear on 12.3.2012 was in fact received by the petitioner only on 14.3.2012. Therefore, on receipt of the notice, the petitioner approached on 16.3.2012, however, they were informed that the respondent would meet them only on 21.3.2012. According to the petitioner, thereafter, nothing was heard from the respondents. While so, the second respondent by proceedings dated 24.08.2012, had appointed a Fit person, namely, the 4th respondent under Section 49 of the Act, 1959. The said proceedings are put to challenge in this writ petition.

6. When the matter was taken up for hearing, the learned counsel appearing for the petitioner would submit that the provisions of the Act, 1959 provide for procedure to be followed in respect of appointment of Fit persons to charitable trust, like the petitioner society herein. According to him, the said procedure has not been followed in the present case when the impugned order dated 24.8.2012 came to be issued. He would submit that when the earlier show cause notice dated 5.3.2012 and the personal enquiry was fixed on 12.3.2012, the said notice having received by the petitioner only on 14.3.2012, the petitioner was unable to attend the personal enquiry fixed on 12.3.2012. This fact when was made known to the second respondent, was not disputed, however, the second respondent

without affording any opportunity to the petitioner, appears to have issued impugned proceedings unilaterally.

7. Upon notice, Mr.M.Maharajan, learned Special Govt.Pleader entered appearance for the respondents and made his submissions to the effect that reasonable opportunity had been given to the petitioner, but they had not chosen to appear and therefore, the impugned proceedings were passed, appointing 4th respondent as Fit person for the petitioner society.

8. This Court has heard the rival submissions and perused the pleadings and documents placed on record.

9. It appears from the impugned proceedings that the second respondent had not appreciated the claim of the petitioner in a proper perspective, particularly when civil litigation was pending for several years between the petitioner society and the third party, which litigation has ended in favour of the petitioner society. While that being the case, the sudden action by the second respondent when the civil litigation had attained the finality in favour of the petitioner society without following the proper procedure as contemplated in the Act, cannot be countenanced both in law and on facts. The learned counsel for the petitioner would draw the attention of this Court to Section 3 of the Act, 1959, which provides the procedure to be followed in making appointment of Fit person in respect of charitable endowment. The said procedure as envisaged under the Act, has not been followed admittedly. Moreover, it is seen that while appointing Fit person, no reasons had been spelt out in the order. The impugned order does not disclose any detailed consideration of the petitioner's claim vis-a-vis third party. Such being the case, the impugned order cannot be justified in law and the same was passed contrary to the provisions of the Act, 1959.

10. In view of the above, this Court has no hesitation to allow the Writ Petition by setting aside the impugned

proceedings. Accordingly, the Writ Petition is allowed and the impugned Letter No.240/2012/A1 dated 24.8.2012 issued by the second respondent is set aside. The matter is remanded to the second respondent for fresh consideration of the petitioner's claim vis-a-vis the assertion of the respondents/department by following due provisions of the Act, 1959 in its letter and spirit. The second respondent/department is directed to afford an opportunity of personal hearing to the petitioner, receive all the materials if any being placed by the petitioner in support of their claim and thereafter proceed to pass appropriate orders in accordance with law and on merits. This direction shall be complied with by the second respondent or any

other competent authority as the case may be, under the provisions of the Act, 1959 by passing final orders within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected MPs are also closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

1. The Commissioner,
Department of Hindu Religious &
Charitable Endowments,
Nungambakkam,
Chennai-34.
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Thirumanjana Gopura Street
Tiruvannamalai.

+ 1 cc to M/s.G.Rajan, Advocate,SR.78354

W.P.No.25776 of 2012

MN (CO)
NR 15/11/2017

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