

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2017

CORAM :

The Hon'ble Mr.JUSTICE M.SUNDAR

W.P. No.2779 of 2010

and

M.P.No.1 of 2010

1.Dr.A.Palaniswami
2.R.Gunasekaran
3.A.K.Natarajan
4.L.M.Ponnusamy
5.M.Subramanian
6.N.Maruthachalam Chettiar... Petitioners

Vs.

1. The Commissioner,
HR & CE Department (Administration),
Nungambakkam,
Chennai-600 034.
2. The Joint Commissioner,
HR & CE Department (Administration),
Coimbatore-641 018.
3. The Executive Officer,
Arulmigu Mariamman Temple,
Gandhipuram,
Coimbatore-641 012. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari calling for the records from the first respondent with reference to his order made in A.P.No.15/2007/D2 dated 18.12.2009 and quash the same.

For Petitioner : Mr.S.Kumaran
for Mr.R.T.Doraisamy

For Respondents: Mr.M.Maharaja, Spl.G.P. and
Mr.M.Elumalai, GA for RR1 and 2

No appearance for R-3

ORDER

Subject matter of this writ petition arises under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22/1959) (hereinafter referred to as 'TNHR&CE Act' for brevity).

2. Mr.S.Kumaran, learned counsel representing Mr.R.T.Doraisamy learned counsel on record for the petitioners is present and he argued the case.

3. On behalf of respondents 1 and 2, learned Special Government Pleader Mr.M.Maharaja and learned Government Advocate Mr.M.Elumalai are present and they made submissions on behalf of the said respondents. On behalf of the third respondent, namely, Executive Officer, Arulmigu Mariamman Temple, Gandhipuram, Coimbatore, Mr.P.L.Sathish Kumar has entered appearance, but none is present in Court when the matter was called. Though the role of the Executive Officer is limited in a case of this nature, such a casual approach is a clear reflection of poor responsibility levels on the part of the Executive Officer and his counsel as every idol is a minor and the Executive Officer is the most proximate custodia legis.

4. By consent of both the above said counsel, namely, counsel for the petitioner Mr.S.Kumaran and the above said State counsel, the main writ petition itself is taken up for disposal.

5. The entire matter falls on a very narrow compass.

6. Writ petitioners are six in number. Six writ petitioners herein along with one Mr.V.R.Vellingiri (seven in all) filed a petition before the second respondent before me, i.e., Joint Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments Department (hereinafter referred to as 'TNHR&CE Department', for brevity), Coimbatore. This petition was under Section 64(1) of the TNHR&CE Act with a prayer for framing a scheme for a temple, namely, Arulmigu Sri Kaattu Vinayagar Temple, Ohm Ganesh Nagar, Vadavalli Post, Coimbatore District (hereinafter referred to as the 'said temple' for the sake of brevity and clarity).

7. The parties herein are referred to by their ranks herein in this writ petition for clarity.

8. The case of the writ petitioners before the Joint Commissioner (second respondent before me) was that the said temple was established in 1994 when Ohm Ganesh Nagar colony came into existence. It is not in dispute that the said temple is situate in S.F.No.64 of Vadavalli village in an extent of 15

cents. Prior to establishment of the said temple, the residents of the said colony founded a trust in the name and style of 'Arulmigu Kaattu Vinayagar Trust' vide Trust Deed dated 21.11.1994 and registered the same as document No.292/1994 in the office of the jurisdictional registering authority. It is the case of the petitioners that the founders of the trust along with residents of Ohm Ganesh Nagar colony constructed the said temple and performed Kumbabhishekam on 19.1.1997. Thus, the said temple was for all practical purposes founded by the residents of Ohm Ganesh Nagar colony for their exclusive worship only. There were no respondents in the petition before the Joint Commissioner under section 64(1) of the TNHR&CE Act.

9. The petitioners marked four exhibits, Exs.A.1 to A.4 and examined two witnesses, P.W.1 and P.W.2.

10. After a detailed analysis of the depositions and exhibits, i.e., oral and documentary evidence, the original authority, namely, jurisdictional Joint Commissioner (who is respondent No.2 before me) came to the conclusion that the petitioners are not entitled to framing of a scheme under Section 64(1) of the TNHR&CE Act, as prayed for, particularly in the light of the fact that the land in which the said temple is situate, namely, S.F.No.64 in Vadavalli village, admeasuring 15 cents thereabout is the government land and the revenue classification for the said land is Government poramboke.

11. More over, the Joint Commissioner has also observed and noted the fact that the trust is of recent origin and there is no plea to the effect that it is a denominational temple. Ultimately, the Joint Commissioner dismissed the Section 64(1) petition being O.A.No.36 / 2000 B1 , by an order dated 19.1.2005.

12. Aggrieved, the writ petitioners preferred an appeal before the first respondent before me, namely, the Commissioner, TNHR&CE Department under Section 69 of the TNHR&CE Act. This being Chapter V proceeding (Chapter V of TNHR&CE Act), it is a statutory appeal to the first respondent appellate authority under Section 69 of the TNHR&CE Act.

13. The statutory appellate authority, namely, the Commissioner, TNHR&CE Department (first respondent before me), after hearing both sides and after examining the records before the original authority, confirmed the order of the original authority and dismissed the statutory appeal in and by an order dated 18.12.2009. This order has been called in question in this writ petition. This order dated 18.12.2009 has been made by the first respondent in a statutory appeal as stated supra and the statutory appeal is A.P.No.15/2007/D.2

14. Mr.S.Kumaran, learned counsel appearing for the writ petitioners would contend that the appellate authority has not taken into account the fact that the said temple was built by the founders of the Trust and residents of the Ohm Ganesh Nagar colony and that is meant for their worship. However, there is no plea touching upon the said temple being denominational temple, much less any plea that it is a private temple.

15. However, learned appellate authority has also noticed the fact that the said temple has been constructed in public land, namely, Government poramboke in S.F.No.64 in Vadavalli village.

16. Learned appellate authority has also taken into account three determinants that are required in cases of this nature. Three determinants required are as follows :

- (i)The said temple should have been founded by the trust;
- (ii)The said temple should have been established by the said trust;
- (iii)The said temple should be managed and maintained by the said trust.

17. The appellate authority, on examining the records before the original authority, came to the conclusion that the above determinants have not been duly established and proved in a manner known to law by letting in oral and documentary evidence.

18. The above order of the Appellate Authority, as stated supra, has been called in question in the writ petition before me and therefore, is hereinafter referred to as the 'impugned order' for the sake of convenience and clarity.

19. Learned counsel for the writ petitioners would contend that the impugned order suffers from illegality and infirmity, because it had not taken into account the fact that the said temple is meant for worship by the residents of the colony.

20. Resisting such submissions, the above said learned State counsel would submit that there is no documentary or oral evidence even buttressing the same, much less proving the same.

21. A perusal of the order of the original authority and the impugned order would reveal that such submissions on behalf of the learned State counsel deserve to be sustained, particularly in the light of the fact that the documents filed by the petitioners before the original authority are merely copies of trust deed, copies of receipt for payment of

electricity charges, chitta and agangal, etc., and nothing more.

22. Therefore, owing to all that have been stated supra, I have no hesitation in coming to the conclusion that the impugned order does not call for interference in writ jurisdiction under Article 226 of the Constitution of India (hereinafter referred to as 'COI' for brevity).

23. Having said that, it is noticed that a remedy by way of a statutory suit is available for the writ petitioners for assailing the impugned order herein. This is vide section 70 of the TNHR&CE Act. Section 70 of the TNHR&CE Act reads as follows :

"70.Suits and appeals.--(1) Any party aggrieved by an order passed by the Commissioner--

(i) under sub-section (1) or sub-section (2) of section 69, and relating to any of the matters specified in section 63, section 64 or section 67; or

(ii) under section 63, section 64, or section 67 read with sub-section (1)(a), (2) or (4)(a) of section 22 or under section 65;

may, within ninety days from the date of the receipt of such order by him, institute a suit in the Court against such order and the Court may modify or cancel such order, but it shall have no power to stay the order of the Commissioner pending the disposal of the suit.

(2) Any party aggrieved by a decree of the Court under sub-section (1), may, within ninety days from the date of the decree, appeal to the High Court."

24. A bare perusal of the said provision would show that the petitioners should file such a suit within 90 days from the date of receipt of a copy of the impugned order. In the instant case, the impugned order is dated 18.12.2009 and the instant writ petition has been filed in this court on 8.2.2010. Therefore, the writ petition has been filed within 90 days from the date of the impugned order.

25. Under such circumstances, learned counsel for the writ petitioners would request this court to grant leave to file a suit if his clients so desire.

26. Considering the peculiar and unique facts and circumstances of this case, such leave is granted. If the petitioners choose to file a statutory suit under Section 70 of the TNHR&CE Act, assailing the impugned order, it is open to them to canvass before the civil court that they are entitled to

the benefit of Section 14 of the Limitation Act. If they do so, the civil court shall decide the issue on merits.

27. Further more, it is noticed that when this writ petition was filed, it was admitted and Rule Nisi was issued on 1.4.2010. At the time of admission and issue of Rule Nisi, this court has passed an interim order of status quo in this writ petition.

28. In the light of the disposal of this writ petition, the said interim order would come to an end. In other words, the interim order dated 1.4.2010 would stop operating on disposal of this writ petition by this order. Therefore, besides the above said plea of Section 14 of the Limitation Act, it is also open to the petitioners, if they so choose, to seek an appropriate interim order before the civil court. If that course is adopted, namely, Section 14 application and a plea for an interim order are made, they shall be considered on merits by the civil court uninfluenced by / untrammelled by anything that is said in this order. In other words, the civil court shall decide the main matter without being swayed by the contents of this order. The contents of this order are for a limited purpose of disposing of this writ petition under Article 226 of the COI, assailing the impugned order.

29. With the above observations and leave, the writ petition stands disposed of. Considering the nature of the matter and trajectory of the litigation, the parties are left to bear their respects costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vvk

To

1. The Commissioner,
HR & CE Department (Administration),
Nungambakkam,
Chennai-600 034.

2. The Joint Commissioner,
HR & CE Department (Administration),
Coimbatore-641 018.

3. The Executive Officer,
Arulmigu Mariamman Temple,
Gandhipuram,
Coimbatore-641 012.

+lcc to Mr.R.T.Doraisamy, Advocate, S.R.No.45563

+lcc to the Government Pleader, S.R.No.46062

W.P.No.2779 of 2010

KS (CO)
CS/20/07/17



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