



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 23.06.2017

CORAM:

THE HONOURABLE MS.INDIRA BANERJEE, CHIEF JUSTICE
and
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WEB COPY

W.A. (MD) Nos.774 & 775 of 2017
and
C.M.P. (MD) No.5586 & 5587 of 2017

W.A. (MD) No.774 of 2017:

A.S.A.Sampath ... Appellant

-vs-

1.The Commissioner
Hindu Religious and Charitable Endowments
(Administration) Department
Nungambakkam
Chennai - 34

2.The Joint Commissioner
HR & CE Department
Sivaganga

3.The Assistant Commissioner
HR & CE Department
Paramakudi

4.The Administrative Trustee
A/M Kailasanathaswamy Matrum
Nithyakalani Thirukoil
Ilayathakudi
Sivaganga District

5.The Inspector
Hindu Religious Charitable Endowments Department
Tirapattur I
Sivaganga District

6.Rama Vinaitheerthaan

7.Muthupalaniappan

8.K.Rajaswaminathan ... Respondents

<https://hcservices.equip.gov.in/hcservices/> Reserved under Clause 15 of Letters Patent, to set aside the order dated 28.04.2017 in W.P.(MD).No.21041 of 2016, on the file of this Court.



Prayer in WP(MD). 21041/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus or any other appropriate Writ, Order or Direction particularly in the nature of writ of certiorarified mandamus to call for the records of the 1st Respondent herein in Se.Mu.Na.Ka.No.4885/2016/A2 dated 20.10.2016 and quash the same in so far as it relates to appointment of the respondents 6 to 8 as Non-hereditary trustee in Arulmigu Kailasanathaswamy Matrum Nithyakalyani Thirukoil at Elayathakudi and direct the 1st Respondent to appoint the petitioner as non-hereditary trustee in the same temple.

For Appellant : Mr.AR.L.Sundaresen
Senior Counsel
for Mr.Arun Swaminathan

For Respondents :Mr.V.R.Shanmuganathan
Spl. Govt. Pleader for R1 to R5
Mr.T.Mohan for Mr.M.Sureskumar for R6 to R8

W.A. (MD) No.775 of 2017:

VR.RM.Veerappan ... Appellant
-vs-

1.A.S.A.Sampath

2.The Commissioner
Hindu Religious and Charitable Endowments
(Administration) Department
Nungambakkam
Chennai - 34

3.The Joint Commissioner
HR & CE Department
Sivaganga

<https://hcservices.ecourts.gov.in/hcservices/>
4.The Assistant Commissioner
HR & CE Department
Paramakudi



5.The Inspector
Hindu Religious Charitable Endowments Department
Tirapattur I
Sivaganga District

6.Rama Vinaitheerthan

7.Muthu Palaniappan

8.K.Rajaswaminathan ... Respondents

Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 28.04.2017 in W.P.(MD).No.21041 of 2016, on the file of this Court.

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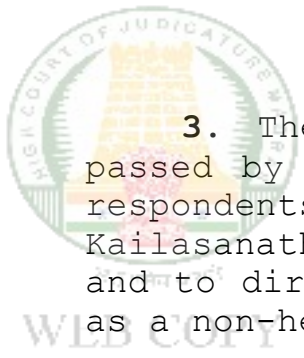
For Appellant : Mr.K.N.Govardhanan

For Respondents : Mr.AR.L.Sundaresen
Senior Counsel
for Mr.Arun Swaminathan for R1
Mr.V.R.Shanmuganathan
Spl. Govt. Pleader for R2 to R5
Mr.T.Mohan for R6 to R8

C O M M O N J U D G M E N T

These writ appeals are directed against the order, dated 28.04.2017, in W.P.(MD) No.21041 of 2016, filed by the appellant in W.A.(MD) No.774 of 2017. The other appeal, namely, W.A.(MD) No.775 of 2017 is at the instance of the fourth respondent in the writ petition.

2. For the purpose of disposal of these writ appeals, we take W.A.(MD) No.774 of 2017 as a lead case as it is by the writ



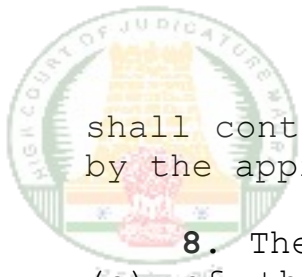
3. The said writ petition was filed challenging the order passed by the first respondent, dated 20.10.2016, appointing the respondents 6 to 8 as non-hereditary trustees of Arulmigu Kailasanathaswamy Matrum Nithyakalyani Thirukoil at Elayathakudi and to direct the first respondent to appoint the writ petitioner as a non-hereditary trustee of the said Temple.

4. The appellant's case is that the said Temple is being administered in accordance with the Scheme, which was settled by this Court in Appeal No.72 of 1923 and C.R.P.No.258 of 1923 and the Trustees of the Temple are to be appointed from among the Karaikarar family i.e., hereditary trustee, every one of the agnatic groups comprising the lineal male descendants of four persons. The non-Karaikarars or the non-hereditary trustees are appointed by the first respondent as per Section 47(1)(a)(ii) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter, referred to as "the Act") subject to the condition that such appointment shall be from anyone of the "Vaguppu" or "Pirivu" of the Nagarathar community.

5. The appellant's contention is that, for the appointment to the post of non-hereditary trustee the upper age limit of 65 years has been fixed as per the Scheme framed by the Court, dated 01.12.1923, which cannot be overlooked or violated. Further, any clause of the Scheme, which runs contra to the provisions of the Act, the Scheme will prevail and it must be enforced. In support of such contention, reliance was placed on the decision of the Honourable Supreme Court in **T.Lakshmikumara Thathachariar v. Commissioner, H.R.C.E.**, reported in (1998) 6 SCC 643.

6. Further, it is submitted that unless an application is filed before the Joint Commissioner to modify the Scheme and bring it in tune with the provisions of the Act, the appointment of the Trustee, who is aged more than 65 years is not permissible. It is further submitted that the age restriction specified in the Scheme and the amendment to the Act, which removed the age restriction, is not a case of repugnancy of the provisions of the Act, but it is a case of inconsistency and the stipulation under the Scheme would prevail. Further, it is submitted that the appellant has been a non-hereditary trustee of the Temple earlier and when the second respondent submitted his recommendation, there is no reason assigned as to why the respondents 6 to 8 were preferred and why the appellant had been denied the appointment. Therefore, it is submitted that the impugned order in the writ petition ought to have been set aside, but the learned Single Judge erroneously dismissed the writ petition.

7. It is further submitted that Section 118(2)(c) of the Act would stand attracted in the case on hand and though the age restriction is inconsistent with the provisions of the Act, it



shall continue to remain in force till it is modified or cancelled by the appropriate authority in terms of the above provisions.

8. The case of the respondents 6 to 8 is that Section 118(2) (c) of the Act would not stand attracted to the facts of the present case as the order is not an order under Section 67 of the Act, but Section 118(2) (b) (i) alone would be attracted and it is a case of repugnancy and therefore, the learned Single Judge was right in rejecting the prayer sought for by the appellant. Further, it is submitted that if the proposition advanced by the appellant is accepted, then all Schemes, which are in force prior to the amendment of the Act, are required to be reviewed and this will result in an anomalous situation.

9. With regard to the aspect regarding non-consideration of the comparative merits and demerits, it is submitted that the authority recommending the names of the trustees to the first respondent, does not record any opinion on the candidates as it may operate as a disqualification for being considered in future and cause prejudice to the candidates. Thus, it is reiterated that the learned Single Judge was right in holding that the age restriction as stipulated in the Scheme framed for the administration of the Temple is repugnant to the provisions of the Act and therefore, the order passed by the first respondent appointing the respondents 6 to 8 as non-hereditary trustees calls for no interference.

10. Further, it is submitted that the appellant has already been a non-hereditary trustee for two terms of three years each and appears to claim certain vested interest, which he is not entitled to and this is evident from the fact that he sought for re-nomination without inviting applications and considering the other candidates.

11. The appellant in W.A.(MD) No.775 of 2017 is the fourth respondent in the writ petition and seeks to contend that the antecedent of the respondents 6 to 8 is far from appreciable and in this regard, he referred to an article, which appeared in a Tamil magazine during 2013. It is further submitted that on account of the said allegation, the respondents 6 to 8 are not qualified to be appointed as trustees under Section 25(a) (b) and suffer from disqualification under Section 26(i) (b) of the Act.

12. Heard Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the appellant in W.A.(MD) No.774 of 2017, Mr.K.N.Govardhanan, learned counsel appearing for the appellant in W.A.(MD) No.775 of 2017, Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the respondents 1 to 5, Mr.T.Mohan, learned counsel appearing for the respondents 6 to 8 and carefully perused the materials placed on record.



13. First we propose to deal with W.A.(MD) No.775 of 2017. The appellant is the fourth respondent in the writ petition. Record of the proceedings show that the fourth respondent / appellant did not file counter affidavit in the writ petition nor raised a specific stand as regards the allegations against the respondents 6 to 8. Thus, we find that the fourth respondent has come up with this appeal and with the allegations contained therein for the first time, which was never pleaded nor canvassed before the Writ Court. Thus, we cannot entertain this appeal filed by the fourth respondent in the writ petition more so when his case is solely pitched upon an article, which appeared in a Tamil magazine during 2013 making certain allegations against the respondents. Thus, the appeal at the instance of the fourth respondent in the writ petition is misconceived and deserves to be dismissed.

14. Moving on to W.A.(MD) No.774 of 2017 filed by the writ petitioner, we find that the writ petitioner had been a non-hereditary trustee for two terms of three years each and now, he sought for renominating him as a non-hereditary trustee. A non-hereditary trustee has no vested right to continue in office. The conduct of the appellant probablises that he wants to continue for ever. This cannot be appreciated more so in the light of the provisions of the Act as well as the other stipulations in the Scheme framed by this Court in the year 1926.

15. Be that as it may, we need to test the correctness of the submissions made by the learned Senior Counsel appearing for the appellant. The first issue to be considered is whether it is the case of repugnancy or inconsistency between the Scheme framed by this Court in the year 1926 of the provisions of the Act.

16. The H.R.&C.E.Act was enacted in the year 1959 to amend and consolidate the law relating to the administration and governance of Hindu Religious and Charitable Institutions and Endowments in the State of Tamil Nadu and it came into force in the year 1959. The Scheme, which was framed by this Court for the administration of the Temple in question was done during 1926. Prior to the present enactment, the earlier enactment, which governed the administration of the Temples was Madras Hindu Religious and Charitable Endowments Act, 1951, (Madras Act XIX of 1951). The said Act was repealed and Section 118 of the present Act provides for repeals and savings. In terms of Sub-Section (2) of Section 118 of the Act notwithstanding the repeal of 1951 Act by sub-section (1) of Section 118, if any provision contained in any scheme settled or deemed to have been settled under the 1926 Act including a scheme settled under Section 92 of the Code of Civil Procedure and inforce immediately before the 30th September 1951 is repugnant to any provision contained in the Act (1951 Act) or the rules made thereunder, the latter provision shall prevail and the former provision shall , to the extent of the repugnancy, be void.

17. In **Meyyappa Velar v. Tamil Nadu Temple Administration Board, Madras**, reported in 1995 (2) LW 238 : 1995 (1) MLJ 435, it was held that when the scheme framed by the Court under section 92 of the Code of Civil Procedure is inconsistent with the provisions of the Act, then the provisions of the Act, will prevail.

18. In the instant case, under the Scheme there is an age restriction for the non-hereditary trustees, to be appointed and the maximum age is 65 years. However, the age restriction, which was in the Act has been amended and as of now, there is no upper age limit for a person being appointed as a non-hereditary trustee. Thus, it is clear that the age restriction contained in the scheme is inconsistent to the provisions of the Act and therefore, the provisions of the Act would prevail. We do not find any merit in the contention raised by the learned Senior Counsel that the scheme requires to be modified and reference to Section 118(2)(c) of the Act is not tenable.

19. As rightly mentioned by the learned counsel appearing for the respondents 6 to 8, the provision, which will stand attracted to the facts and circumstances of the case is Section 118(2)(b) and by applying the same, the Scheme insofar as it restricts the upper age limit as 65 years for being considered for the appointment as hereditary trustee shall to that extent be repugnant to the Act. Therefore, the findings rendered by the learned Single Judge are proper.

20. With regard to the decision in the case of **T.Lakshmikumara Thathachariar** (cited supra) referred to by the learned Senior Counsel for the appellant, we find that the case arose out of an order passed by the Deputy Commissioner under Section 64(5) of the Act holding that he had jurisdiction to modify the Scheme. While analyzing the correctness of the said decision, the Honourable Supreme Court affirmed the view taken by the High Court. On facts, the said decision is clearly distinguishable and cannot be applied to the case on hand.

21. With regard to the contention raised by the learned Senior Counsel for the appellant that the comparative merits and demerits were not spelt out in the recommendation of the second respondent or specifically recorded by the first respondent, we opine that it would not be conducive for the persons, who seek to get themselves nominated as non-hereditary trustees or the persons, who are nominated as non-hereditary trustees to expect such findings by the authority as it would impede the process of selection and it would work as detrimental to the candidate, who has not been nominated as well as to a candidate, who has been nominated. The appellant has not alleged any disqualification suffered by the respondents 6 to 8 in terms of the provisions of the Act and his only plea to non-suit the trustees appointed is on the ground of age. We find that the appellant as on date is aged about 62 years and if the argument advanced by him is allowed to stand, it may affect him in the next three years. The purpose of appointment of non-hereditary trustee from among the persons in the locality, who



have good standing and reputation is with a view to ensure better administration of the Temple. In the instant case, the Scheme provides for a particular section of a community to be nominated as non-hereditary trustees. The appellant has been a trustee for two terms of three years each and it would sound on his part to give way for others to have a role to play in the so called sacred duty of managing a place of worship.

22. For all the above reasons, we find no merits in the appeals and they are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

/ True Copy /

Sub Assistant Registrar(C.S.)

To:

- 1.The Commissioner,
Hindu Religious and Charitable Endowments
(Administration) Department,
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- 3.The Assistant Commissioner,
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Paramakudi.
- 4.The Inspector,
Hindu Religious Charitable Endowments Department,
Tirapattur I, Sivaganga District.

+2cc to M/S.K.PRABHAKAR, Advocate SR.Nos.61834&61833

+1cc to M/S.R.MURALI, Advocate SR.No.62013

krk

MAS/KP/SAR2:05.07.2017:8P-8C

COMMON JUDGMENT IN
W.A.(MD) Nos.774 & 775 of 2017
and
C.M.P.(MD) No.5586 & 5587 of 2017
23.06.2017