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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 21.08.2017

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
W.P(MD)No.17771 of 2016

and

W.M.P(MD)Nos.12810 of 2016 and 11837 of 2017

S.Kathiresan Poojari

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
represented by its
Secretary,
Hindu Religious & Charitable Endowments Department,
Fort St. George, Chennai - 600 009.
 - 2.The Commissioner,
Hindu Religious & Charitable Endowments Board,
Nungambakkam, Chennai - 600 034.
 - 3.The Joint Commissioner,
Hindu Religious & Charitable Endowment Board,
Sivagangai, Sivagangai District.
 - 4.The Executive Officer/Assistant Commissioner,
Arulmighu Irukkangudi Mariamman Temple,
Irukkangudi Post,
Sattur Taluk, Virudhunagar District.
 - 5.S.R.M.Ramamurthy,
Hereditary Trustee,
Arulmighu Irukkangudi Mariamman Temple,
Irukkangudi Post,
Sattur Taluk,
Virudhunagar District.
- ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus directing the respondents to suspend the fifth respondent as the Chairman of the Board of Trustees from the Arulmighu Irukkangudi Mariamman Temple, Irukkangudi, Sattur Taluk, Virudhunagar District.

For Petitioner

: Mr.M.Ajmal Khan,
Senior Counsel for
Mr.M.V.Venkataseshan

For Respondents

: Mr.J.Gunaseelan Muthiah,
Government Advocate for R.1 to R.5



Mr.R.Shanmugasundaram,
Senior Counsel for
Mr.D.Ramalingam
[for impleading petitioners
in W.M.P(MD)No.11837 of 2017]

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O R D E R

This writ petition has been filed seeking a writ of Mandamus directing the respondents to suspend the fifth respondent as the Chairman of the Board of Trustees from the Arulmighu Irukkangudi Mariamman Temple, Irukkangudi, Sattur Taluk, Virudhunagar District.

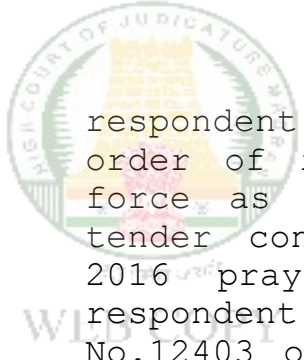
2. According to the petitioner, he is one of the hereditary trustees of Arulmighu Irukkangudi Mariamman Temple, Irukkangudi, Sattur Taluk, Virudhunagar District. He claimed that the said temple is hereditarily managed by his family. A scheme was framed in O.A.No.160 of 1934 by the Commissioner, Hindu Religious and Charitable Endowments Department, Chennai, vide proceedings dated 04.05.1935, in terms of which, the temple as well as its properties were directed to be administered and managed by the hereditary trustees those who were elected from the members of the ancestors' families. As of now, there are 10 hereditary trustees and out of them, one will be elected as the Chairman of the Board of Trustees as per Section 48 of the Hindu Religious and Charitable Endowments Act, 1958 (hereinafter referred to as 'the Act'). The term of office of the elected Chairman will be 3 years and thereafter, it has been fixed as 2 years as per the amendment made to Section 48 of the Act.

3. Further, the petitioner averred that on 20.02.2014, the election for the post of Chairman of the Board of Trustees was conducted and the fifth respondent was elected and the same was intimated to the fourth respondent, who, in turn, forwarded the same to the respondents 1 and 2 for approval. The first respondent approved the election of the fifth respondent as the Chairman of the Board of Trustees for the period between 07.03.2014 and 06.03.2016, vide G.O.No.59, dated 18.06.2014. Thus, the tenure of the fifth respondent came to an end by 06.03.2016. However, the fifth respondent continues to hold the post of Chairman of Board of Trustees and indulge in mismanagement and maladministration of the temple.

4. It is also alleged that on 07.07.2016, the tonsured hairs of the devotees were stolen and on investigation, it was found that the fifth respondent abetted the said offence and accordingly, he was arrested on 13.07.2016 and remanded to judicial custody and thereafter, released on bail on 18.08.2016.

<https://hcservices.ecourts.gov.in/hcservices/>

5. The petitioner filed W.P(MD)No.9247 of 2016 seeking to forbear the official respondents therein from permitting the fifth



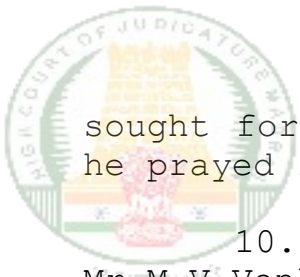
respondent herein in signing the cheques of the temple and an order of injunction has been granted and the same is still in force as of now. Alleging that the fifth respondent violated tender conditions, the petitioner also filed W.P(MD)No.1802 of 2016 praying to take appropriate action against the fifth respondent. He also filed one another writ petition in W.P(MD) No.12403 of 2016 seeking appropriate directions to take over the assets of the temple. All the above said writ petitions are pending as on date.

6. In the meantime, the petitioner made a representation dated 26.07.2016 to the first respondent to suspend the fifth respondent under Section 53 of the Act. Since the same has not been considered by the first respondent so far, the present writ petition is filed.

7. In the counter filed by the third respondent, it is, among other things, contended that the administration of the temple is governed by a Board of Hereditary Trustees as per the scheme framed in O.A.No.160 of 1934, dated 04.05.1935 and later, it was modified in O.A.No.9 of 1955, dated 31.05.1955 appointing an Executive Officer in the cadre of Assistant Commissioner under Section 45(1) of the Act. In the election held on 20.02.2014, the fifth respondent was elected as the Chairman of the Board of Trustees and the first respondent approved his appointment vide G.O.No.59, dated 18.06.2014 and the term of office of the Chairman of the Board of Trustees is 2 years from 07.03.2014. On 07.07.2016, the tonsured hairs of devotees were stolen and based on the complaint lodged by the fourth respondent, a case in Cr.No.153 of 2016 was registered on 08.07.2016 on the file of Irukkangudi Police Station and the fifth respondent was arrested on 13.07.2016 and remanded to judicial custody for 15 days and the said case is under investigation. The fourth respondent sent a detailed report to the second respondent through the third respondent. Since the temple is included in the list published under Section 46(iii) of the Act, the first respondent is the competent authority to initiate appropriate disciplinary action against the erring hereditary trustees of the temple. Further, it is stated that since the tenure of the fifth respondent came to an end, he had been prevented from operating the accounts of the temple and hence, he could not indulge in any maladministration of the day-to-day affairs of the temple. Thus, the third respondent prayed for the dismissal of this writ petition.

8. The fourth respondent also filed the counter affidavit in line with the averments made in the counter affidavit filed by the third respondent.

<https://hcservices.ecourts.gov.in/Hcservices> On the fifth respondent filed a detailed counter affidavit denying the allegations made by the petitioner, he stated that since his term of office was already over, the relief



sought for in the writ petition has become infructuous and hence, he prayed for the dismissal of this writ petition.

10. Mr.M.Ajmal Khan, learned Senior Counsel appearing for Mr.M.V.Venkataseshan, learned Counsel for the petitioner made the following submissions:

10.1. The petitioner is one of the hereditary trustees of Arulmighu Irukkangudi Mariamman Temple, Irukkangudi, Sattur Taluk, Virudhunagar District;

10.2. The said temple is managed by the hereditary trustees as per the scheme framed in O.A.No.160 of 1934 by the Commissioner, Hindu Religious and Charitable Endowments Department, Chennai, vide proceedings dated 04.05.1935;

10.3. As of now, there are 10 hereditary trustees and out of them, one will be elected as the Chairman of the Board of Trustees as per Section 48 of the Act;

10.4. On 20.02.2014, the fifth respondent was elected as the Chairman of the Board of Trustees and his appointment was approved by the first respondent vide G.O.No.59, dated 18.06.2014 and his term of office came to end by 06.03.2016;

10.5. It is the main contention of the petitioner that though the fifth respondent ceased to function as the Chairman of the Board of Trustees, he continues to act as the Chairman of the Board of Trustees, which ultimately, led to several irregularities and maladministration of the day-to-day affairs of the temple;

10.6. Further, the fifth respondent was arrested on 13.07.2016 in connection with the theft of tonsured hairs of devotees and thereafter, he was released on bail on 18.08.2016;

10.7. Though the petitioner made a representation dated 26.07.2016 to the first respondent seeking appropriate action against the fifth respondent, no action has been taken so far;

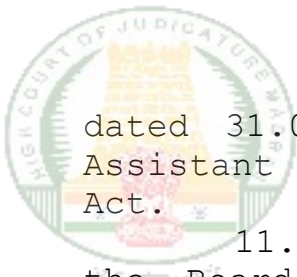
10.8. The fourth respondent has also recommended to suspend the fifth respondent for the misappropriation of funds of the temple, by proceedings dated 11.01.2012;

10.9. It is also pertinent to note that the fourth respondent, by proceedings dated 16.06.2016, has already directed the fifth respondent to hand over the keys and properties of the temple; and

10.10. However, the fifth respondent continues to hold the post of Chairman of the Board of Trustees, which, ultimately affects the interest of the temple and hence, the petitioner prays for appropriate direction to the first respondent to suspend the fifth respondent forthwith.

11. Per contra, Mr.J.Gunaseelan Muthiah, learned Government Advocate appearing for the respondents 1 to 3 made the following submissions:

<https://hcservices.ecourts.gov.in/hcservices> 11. The temple is administered by a Board of Hereditary Trustees in terms of the scheme framed in O.A.No.160 of 1934, dated 04.05.1935, which was later modified in O.A.No.9 of 1955,



dated 31.05.1955 whereby an Executive Officer in the cadre of Assistant Commissioner was appointed as per Section 45(1) of the Act.

11.2. The fifth respondent got elected as the Chairman of the Board of Trustees on 20.02.2014 and his appointment was approved by the first respondent in G.O.No.59, dated 18.06.2014;

11.3. The term of office of the Chairman of the Board of Trustees is 2 years from 07.03.2014;

11.4. Based on the complaint lodged by the fourth respondent alleging that on 07.07.2016, the tonsured hairs of the devotees of the temple were stolen, a case in Cr.No.153 of 2016 came to be registered on 08.07.2016 by Irukangudi Police Station;

11.5. Consequently, the fifth respondent was arrested on 13.07.2016 and remanded to judicial custody for 15 days and the said case is under investigation;

11.6. Meanwhile, the fourth respondent submitted a detailed report to the second respondent through the third respondent;

11.7. It is also asserted that the tenure of the fifth respondent came to an end by 06.03.2016 and thus, he had been prevented from operating the accounts of the temple; and

11.8. The temple is included in the list published under Section 46(iii) of the Act and therefore, the first respondent is the competent authority to initiate appropriate disciplinary action against the erring hereditary trustees of the temple.

12. Whereas Mr.N.Dilip Kumar, learned Counsel for the fifth respondent contended that the tenure of the fifth respondent had already come to an end by 06.03.2016 and hence, the relief sought for by the petitioner in this writ petition has become infructuous and therefore, he prays for the dismissal of this writ petition.

13. Mr.R.Shanmugasundaram, learned Senior Counsel appearing for Mr.D.Ramalingam, learned Counsel appearing for the proposed respondents 6 to 10, made the following submissions:

13.1. The post of Chairman of the Board of Trustees fell vacant from 06.03.2016 on completion of the term of office by the fifth respondent and the fifth respondent had already handed over the charges including cheque signing authority to the Executive Officer of the temple;

13.2. It is the prime contention of the proposed respondents that the removal or suspension of a hereditary trustee can be done only under Section 53 of the Act and the first respondent is the competent authority to exercise such powers;

13.3. The petitioner, without availing alternative remedy before the first respondent for redressal of his grievance, has approached this Court by filing the present writ petition and hence, this writ petition is not at all maintainable;

13.4. Since the post of Chairman of the Board of Trustees expired on the expiry of the term of office of the fifth respondent, the day-to-day affairs as well as the administration of the temple came to a standstill; and



13.5. Therefore, the proposed respondents prayed for appropriate directions to the third respondent to conduct the election for the post of Chairman of the Board of Trustees.

14. Heard the submissions of Mr.M.Ajmal Khan, learned Senior Counsel appearing for Mr.M.V.Venkataseshan, learned Counsel for the petitioner; Mr.J.Gunaseelan Muthiah, learned Government Advocate appearing for the respondents 1 to 3; Mr.P.Mahendran, learned Counsel for the fourth respondent and Mr.N.Dilip Kumar, learned Counsel for the fifth respondent and perused the materials available on record.

15. Though this Court is not inclined to implead the petitioners in W.M.P(MD)No.11837 of 2017 as party respondents to this writ petition, has considered the submissions of Mr.R.Shanmugasundaram, learned Senior Counsel appearing on behalf of Mr.D.Ramalingam, learned Counsel for the proposed parties.

16. On a thorough scrutiny of the materials placed before this Court, the following could be culled out for consideration:

16.1. The administration of Arulmighu Irukkangudi Mariamman Temple, Irukkangudi, Sattur Taluk, Virudhunagar District, is governed by a scheme framed in O.A.No.160 of 1934 by the Commissioner, Hindu Religious and Charitable Endowments Department, Chennai, vide proceedings dated 04.05.1935;

16.2. According to the said scheme, the temple as well as its properties are being administered and managed by the hereditary trustees those who were elected from the members of the ancestors' families;

16.3. As per Section 48 of the Act, out of 10 hereditary trustees, one will be elected as the Chairman of the Board of Trustees;

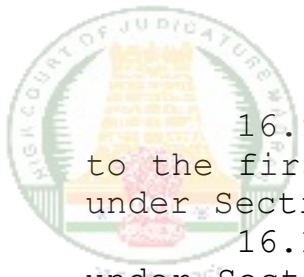
16.4. The term of office of the elected Chairman will be 3 years and thereafter, it has been re-fixed as 2 years as per the amendment made to Section 48 of the Act;

16.5. In the election held on 20.02.2014, the fifth respondent was elected as the Chairman of the Board of Trustees and the first respondent approved the election of the fifth respondent as the Chairman of the Board of Trustees for the period between 07.03.2014 and 06.03.2016, vide G.O.No.59, dated 18.06.2014 and the term of office of the fifth respondent came to an end on 06.03.2016;

16.6. As of now, the fifth respondent is no more the Chairman of the Board of Trustees of the temple;

16.7. However, it is alleged that the fifth respondent continues to hold the post of Chairman of Board of Trustees and indulge in mismanagement and maladministration of the temple;

16.8. Several allegations regarding misappropriation of funds as well as maladministration of the temple were made against the fifth respondent;



16.9. The petitioner made a representation dated 26.07.2016 to the first respondent seeking suspension of the fifth respondent under Section 53 of the Act;

16.10. Since the temple is included in the list published under Section 46(iii) of the Act, the first respondent who is the competent authority has to take appropriate disciplinary action against the erring hereditary trustees of the temple; and

16.11. It is claimed by the official respondents that since the term of office of the fifth respondent came to an end, he had already been prevented from operating the accounts of the temple.

17. It is relevant to extract hereunder Section 53(2) of the Act for ready reference:

"53. Powers to suspend, remove or dismiss trustees.-

(1) *****

(2) The appropriate authority may suspend, remove or dismiss any trustee of a religious institution, if he -

(a) ceases to profess the Hindu religion; or

(b) fails to discharge the duties and perform the functions of a trustee in accordance with the provisions of this Act or the rules made thereunder; or

(c) disobeys the lawful orders issued under the provisions of this Act or the rules made thereunder by the Government, the Commissioner or Joint Commissioner or Deputy Commissioner or the Assistant Commissioner; or

(d) continuously neglects his duty or commits any malfeasance, misfeasance or breach of trust, in respect of the trust; or

(e) misappropriates or deals improperly with the properties of the religious institution or endowment; or

*****"

18. This Court, considering the peculiar facts and circumstances of the case as well as taking into consideration the provisions of Section 53(2) of the Act, however, without going into the merits of the rival contentions raised in this writ petition, directs the first respondent - Secretary to the Government, Hindu Religious and Charitable Endowments Department, Fort St. George, Chennai - 600 009, who is the competent authority under Section 53 of the Act, to consider the claim of the petitioner in the light of the representation made by the petitioner dated 26.07.2016 and pass appropriate orders on merits and in accordance with law, after affording due opportunity of hearing to the petitioner as well as the fifth respondent, within a period of eight weeks from the date of receipt of a copy of this



order. The petitioner as well as the fifth respondent are permitted to submit all the relevant documents in support of their claims to the first respondent forthwith.

19. In the result,
- (i) W.P(MD)No.17771 of 2016 is disposed of as above;
 - (ii) Consequently, W.M.P(MD)No.12810 of 2016 is closed;
 - (iii) In view of the order passed in W.P(MD)No.17771 of 2016, W.M.P(MD)No.11837 of 2017 is also closed; and
 - (iv) There shall be no order as to costs.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

- 1.The Secretary to
Government of Tamil Nadu,
Hindu Religious & Charitable Endowments Department,
Fort St. George,
Chennai - 600 009.
- 2.The Commissioner,
Hindu Religious & Charitable Endowments Board,
Nungambakkam,
Chennai - 600 034.
- 3.The Joint Commissioner,
Hindu Religious & Charitable Endowment Board,
Sivagangai,
Sivagangai District.

+1cc to M/S.N.Dilip Kumar, Advocate SR.No. 73756
+5cc to M/S.M.V.Venkataseshan, Advocate SR.No. 73931
+1cc to M/S.P.Mahendran, Advocate SR.No. 73807
+1cc to M/S.S.D.Ramalingam, Advocate SR.No. 73536
+1cc to Special Government Pleader, SR.No. 74233

W.P (MD)No.17771 of 2016
and
W.M.P (MD) Nos.12810 of 2016 and 11837 of 2017
21.08.2017

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