



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.01.2017

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Writ Petition (MD) No.2980 of 2011

and

M.P(MD)No.3 of 2011

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- 1.Muthiah Velar
- 2.R.Subramania Velar
- 3.R.Muthukrishna Velar
- 4.R.Sukumar Subramanian
- 5.A.S.R.Subramani
- 6.R.Krishnamoorthy
- 7.I.Chellam

... Petitioners

Vs.

- 1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungambakkam High Road,
Chennai 600 034.

- 2.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Madurai.

- 3.The Fit Person,
Arulmigu Ayyanar Temple,
Ponmeni at Arulmighu Anjaneyaswamy Temple,
Simmakkal, Madurai 625 001.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records relating to the impugned order dated 01.02.2011 bearing No.R.P.No.22/2006 D2 passed by the first respondent against the order dated 07.02.2006 bearing proceeding Na.Ka.No.4161/2000/Aa2 made by the second respondent and quash the same.

For Petitioners : Mr.T.Srinivasaraghavan

For Respondents 1&2 : Mr.T.R.Janarthanam,
Additional Government Pleader.

For 3rd Respondent : No appearance

ORDER

By an order dated 07.02.2006, passed by the second respondent, a fit person was appointed to manage Arulmighu Ayyanar Temple at Ponmeni Village, Madurai which order came to be confirmed by the first respondent in R.P.No.22 of 2006, dated 01.02.2011. Both the orders are impugned in the present writ petition.



2. Heard Mr.T.Srinivasaraghavan, learned counsel appearing for the petitioner and Mr.T.R.Janarthanam, learned Additional Government Pleader appearing for the respondents 1 and 2.

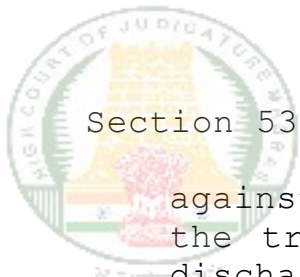
3. The petitioners herein are the hereditary trustees of Arulmighu Ayyanar Temple at Ponmeni Village, Madurai. The trusteeship of the said temple was declared to be hereditary in O.A.No.40/1976. On a perusal of the said order, it is seen that the temple is an ancient one created by a then grant which was confirmed in the year 1864. The tenure of the grant was permanent and tax free. The grantee at the time of confirmation of the grant was one Subramania Velar and the petitioners herein are his hereditary descendents. The grant is a religious endowment in the possession and enjoyment of the grantee's descendents. The right of management of the temple and the right of enjoyment of the properties vested with the temple or the rights of the petitioners which are hereditary in nature. The petitioners in O.A.No.40 of 1976 and their family members were declared to be the holders of the office of the trusteeship of the suit temple hereditarily. In view of certain interference by a third party, the petitioners herein had filed O.S.No.1206 of 2005 before the District Munsif Court at Madurai and an order of injunction came to be passed. The aggrieved third party had given a complaint to the respondents against the trustees, based on which the second respondent herein had framed charges of mismanagement. Based on the charges, the hereditary trustees have been placed under ad-interim suspension pending enquiry under the said charges. By way of temporary measure, a fit person was appointed under Section 53 (4) of the Hindu Religious and Charitable Endowments Act, 1959 (for brevity, the Act) pending the finality of the charges. The action of the appointment of a fit person is questioned in the present writ petition.

4. Learned counsel appearing for the petitioner submitted that the office of the trusteeship of the temple is hereditary in nature and therefore, the third respondent could not have appointed as fit person when there are successors of legal heirs to the hereditary trustees. According to him, the impugned orders were passed without taking note of the hereditary nature of trusteeship and that the second respondent ought not to have suspended a trustee when there was no sufficient and compelling reason in view of the flimsy charges.

5. In this context, it would be appropriate to observe that the charges framed against the trustees are pending enquiry and that the legality of the charges can only be determined after a full fledged enquiry by the appropriate authority. I have taken cognizance of the fact that those charges were framed way back in 2006.

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

6. With regard to the submission made by the learned counsel for the petitioners, it would be appropriate to refer to



Section 53(4) of the Act which reads as under:-

"53(4) Pending the disposal of the charges framed against the trustee, the appropriate authority may place the trustee under suspension and appoint a fit person to discharge the duties and perform the functions of the trustee".

7. Relying on Section 53(4), the learned Additional Government Pleader submitted that whenever a hereditary trustee is placed under suspension pending enquiry on certain charges, a fit person can be appointed by invoking under Section 53(4) of the Act. He would further submit that Section 53(4) does not warrant conclusion that there should be proved charges against the trustee before a fit person could be appointed.

8. It would also be relevant to refer to Section 54(2) of the Act.

"54. Filling up of vacancies in the offices of hereditary trustee:-

(1).....

(2) When a temporary vacancy occurs in such an office by reason of suspension of the hereditary trustee under sub-section (2) of Section 53, the next in the line of succession shall be entitled to succeed and perform the functions of the trustee until his disability ceases."

9. In the present case, the petitioners were suspended by the second respondent by invoking Section 53(2) of the Act. Section 54 deals with filling up of vacancies in the office of hereditary trustee. By virtue of the suspension order passed under Section 53(2), there arose a temporary vacancy and as provided in Section 54(2), the next in the line of succession shall be entitled to succeed and perform the functions of the trustee. Hence, relying on Section 53(4) alone and submitting that the vacancy created under suspension should be filled by appointment of a fit person cannot be countenanced.

10. In this regard, the same issue came up for consideration before a Division Bench of this Court in a judgment reported in 2016 1 LW 340 (C. Andiappan and others Vs. The Joint Commissioner, Tamil Nadu), the Hon'ble Division Bench, had held that the suspension of hereditary trustee is not a bar for considering the claims of persons next in the line of succession to the office of trusteeship which is extracted hereunder:-

"42. From all the above decisions, it appears that this Court has consistently taken the view that the suspension of a hereditary trustee 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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11. In view of the same, the impugned orders passed by the second respondent appointing the fit person and as confirmed by the first respondent are quashed. Consequently, the appropriate authority shall appoint the next in the line of succession among the petitioners or among the family of the founder as the trustee/trustees within one week from the date of receipt of a copy of this order. There shall be a further direction to the competent authority to proceed with the enquiry into the charges framed against the petitioners and pass orders within a period of three months from the date of receipt of copy of this order.

12. With the above observation, the writ petition stands allowed. No costs. Consequently, M.P(MD)No.3 of 2011 is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungambakkam High Road,
Chennai 600 034.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Madurai.

+1cc to K.Govindarajan, Advocate, sr no 2372

sms

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