

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21.02.2018

C O R A M

THE HON'BLE Mr.JUSTICE K. RAVICHANDRABAABU

W.P.No.244 of 2017

and

WMP No.259 of 2017

Arulmigu Parasuramalingeswarar Temple,
Religious and Public Charitable Trust,
Rep. by its Secretary,
Mr.N.Purushothaman,
No.4/18, PE Koil tank Street,
Ayanavaram,
Chennai 600 023.Petitioner

vs

- 1.The Secretary to Government,
Tourism, Culture and HR & CE Department,
Fort St.George,
Chennai 600 009.
- 2.The Commissioner,
Hindu Religious and Charitable Endowments
Administration Department,
Nungambakkam High Road,
Chennai 600 034.
- 3.The Joint Commissioner,
Hindu Religious and Charitable Endowments
Administration Department,
119, Uttamar Gandhi Road,
Chennai-600 034.
- 4.The Executive Officer,
Arulmigu Parasuramlingeswarar Temple,
No.16, PE Koil Main Street,
Ayanavaram,
Chennai 600 023.
- 5.Arulmigu Parasuramlingeswarar Public Charitable Trust,
Rep. by Member K.Gopalan,
No.1, PE Koil Kulakarai Street,
Ayanapuram,
Chennai 600 023.Respondents

Prayer:Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records relating to the second respondent's proceeding made in Na.Ka.No.35441 of 2016/A-1 dated 18.08.2016 and quash the same and direct the official respondents to appoint the trustees as recommended by the petitioners' trust in the fourth respondent temple within the time stipulated by this Court.

For petitioners : Mr.M.Muthappan
For Respondents : Mr.M.Maharaja for R1 to R3
Special Government Pleader
Mr.S.D.Ramalingam for R4
Mr.C.Dharmaraj for R5

O R D E R

This writ petition is filed challenging the order of the second respondent dated 18.08.2016, wherein and whereby the claim of the petitioner for appointing the Board of Trustees from amongst the members of the petitioner trust was rejected on the reason that under the same name and style, two trusts are functioning and unless it is decided by the competent Civil Court as to which trust is having right to get appointment for the Board of trustees, the Department cannot make appointment, as requested by the petitioner.

2.The case of the petitioner in short is as follows:

The petitioner trust was formed and registered as early as on 31.05.1996. A scheme was approved on 03.06.1998, wherein the administration and affairs of the temple by name Arulmighu Parasuramalingeswarar temple, Ayanavaram, Chennai-23, was directed to be carried out by a Board of Non-hereditary trustees to be constituted by the competent Authority from amongst the members of the Arulmighu Parasuramalingeswarar Temple Religious and Public Charitable Trust, Ayanavaram, Chennai-23. The petitioner trust, having been formed earlier to the said scheme, is entitled to get the appointment of the Board of Trustees from amongst the members of the petitioner trust. The fifth respondent trust was found only on 07.09.2009 and therefore, merely because the fifth respondent is also having the same name, they cannot make any claim and consequently, the Department cannot deny the appointment to the petitioner.

3.On the other hand, it is contended by the fifth respondent as follows:

One Gajendran was the founder trustee of the Trust, which was established and registered on 31.05.1996, where one Purusothaman, who is representing the petitioner trust as Secretary, was also holding the office of the trust. Thereafter, dispute arose with regard to mismanagement of the trust and consequently, the said Purusothaman was removed from the membership of the trust and accordingly, the trust was reconstituted by executing another Trust Deed on 07.09.2009. In effect, the original trust established on 31.05.1996, is continuing as the fifth respondent herein, however by executing a fresh Trust Deed dated 07.09.2009, wherein all the facts and circumstances warranting the execution of the fresh Trust Deed were explained. Therefore, the fifth respondent alone is the original trust, which is entitled to get the appointment to the Board of trustees.

4.Learned counsel appearing for the official respondents submitted that since there is rival dispute between the parties in respect of the appointment of the trustees, the impugned order was rightly passed, driving the parties to agitate before the competent Civil Court.

5.Heard Mr.M.Muthappan, learned counsel for the petitioner, Mr.M.Maharaja, learned Special Government Pleader appearing for the respondents 1 to 3, Mr.S.D.Ramalingam, learned counsel for the fourth respondent and Mr.C.Dharmaraj, learned counsel for the fifth respondent.

6.There is no dispute to the fact that the petitioner and the fifth respondent are having same name of a trust. The petitioner claims that it is the trust, which was formed in the year 1996, is entitled to get appointment whereas the fifth respondent claims that they are the original trust formed in the year 1996 and reconstituted in the year 2009, by executing a new Trust Deed after expelling the said Purusothaman from the trust.

7.Perusal of the Trust Deed dated 07.09.2009, more particularly, the recitals made therein warranting the reconstituting the trust and renaming the same, would certainly indicate that there is rival dispute between the parties within the same trust, which make them to have two trusts under the same name and style. Certainly this would have caused confusion in the mind of the Department to find out who are the right persons to be appointed to the Board. Therefore, as rightly stated in the impugned order, it is for the parties to agitate the matter before the Civil Court and establish their right to get their appointment to the Board, as provided under the Scheme

formulated in the year 1998. Therefore, I find no reason to interfere with the order passed by the second respondent. Accordingly, the writ petition fails and the same is dismissed, without expressing any view on the rival claims made by the parties, as it is for them to work out their remedy before the Civil Court. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government,
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 - 2.The Commissioner,
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No.16, PE Koil Main Street,
Ayanavaram,
Chennai 600 023.
- +1 cc to Mr.C.Dharmaraj Advocate sr 13368
+1 cc to Mr.M.Muthappan Advocate sr 13541
+1 cc to SD.Ramalingam Advocate sr 13583

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