

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2018

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THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.9235 of 2011

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M.P.No.1 of 2011

N.Muthaiyan

.. Petitioner

versus

1. The Commissioner,  
Hindu Religious and Charitable Endowments  
(Admn) Department,  
Nungambakkam,  
Chennai-34.
  2. The Joint Commissioner,  
Hindu Religious and Charitable Endowments  
(Admn) Department,  
Villupuram.
  3. The Executive Officer,  
A/m. Thillai Govindaraja perumal Temple  
situated at Kallakurichi and now appointed  
as Fit Person in A/m.Pudhupattu Mariamman Temple  
situated at Nallathoor Village,  
Kallakurichi Taluk,  
Villupuram District.
- .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the records relating to the impugned order of the Joint Commissioner, HR & CE, Villupuram issued in Nada.Na.Ka.No.1457/2011-2-E2 dated 30.03.2011 in appointing the 3<sup>rd</sup> respondent herein as Fit person in A/m.Pudhupattu Mariamman temple, situated at Nallathoor village, Kallakurichi Taluk, Villupuram District and quash the same.

For Petitioner : Mr.M.Rukmangathan for  
mr.W.C. Thiruvengadam

For Respondents : Mr.M.Maharaja  
Spl. Government Pleader for R1&R2  
Mr.N.Sathyamoorthy for R3

ORDER

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

The petitioner has approached this Court, seeking the following relief:

"To issue Writ of Certiorari, calling for the records relating to the impugned order of the Joint Commissioner, HR & CE, Villupuram issued in Nada.Na.Ka.No.1457/2011-2-E2 dated 30.03.2011 in appointing the 3<sup>rd</sup> respondent herein as Fit person in A/m.Pudhupattu Mariamman Temple, situated at Nallathoor Village, Kallakurichi Taluk, Villupuram District and quash the same. ."

2. The petitioner is aggrieved by the appointment of the third respondent as a fit person vide proceedings of the second respondent, dated 30.03.2011. According to him, the suit was also filed in the Sub Court, Kallakurichi, for determining of the character of the temple and pending finalisation of the same, a fit person came to be appointed, which according the learned counsel, is contrary to various orders passed by this Court as well as the Hon'ble Supreme Court of India.

3. When the matter was taken up for arguments, the learned counsel appearing for the respondent/Department would submit that as against the order passed by the second respondent, a statutory appeal would lie under Section 21 of the HR & CE Act before the first respondent. According to her, without exhausting the statutory remedy available, the petitioner has approached this Court.

4. Considering the submissions made on behalf of the petitioner and the respondents, this Court is of the considered view that when a statutory remedy is available, before exhausting the same, the writ petition cannot be entertained, except in compelling circumstances. No such circumstance exists in the present case for which, the writ petition can be entertained. It is open to the petitioner to approach the appellate authority under Section 21 of HR & CE Act before the first respondent and urge whatever objections he has, as against the appointment of the third respondent as a fit person. He can also inform the first respondent about the pendency of the suit in O.S.No.27 of 2007 on the file of the Sub Court, Kallakurichi.

5. In view of the same, the petitioner is directed to approach the first respondent by filing an appeal under Section 21 of the HR & CE Act, within a period of two weeks from the date of receipt of a copy of this order and on such appeal being filed, the first respondent is directed to dispose of the same on merits and in accordance with law, within a period of eight weeks thereafter. Since the litigation is pending before this Court for some time, the delay in filing the appeal may be condoned for the purpose of determination of the appeal as prescribed under Section 21 of HR & CE Act.

6. With the above direction, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

-sd/-

Assistant Registrar

/ TRUE COPY /

Sub-Assistant Registrar

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To

1. The Commissioner,  
Hindu Religious and Charitable Endowments  
(Admn) Department,  
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Chennai-34.
2. The Joint Commissioner,  
Hindu Religious and Charitable Endowments  
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3. The Executive Officer,  
A/m. Thillai Govindaraja perumal Temple  
situated at Kallakurichi and now appointed  
as Fit Person in A/m.Pudhupattu Mariamman Temple  
situated at Nallathoor Village,  
Kallakurichi Taluk,  
Villupuram District.

+1 cc to MR.W.C.THIRUVENGADAM Advocate SR.NO. 7070  
+1 cc to MR.N.SATHIA MOORTHY Advocate SR.NO. 7558  
+1 cc to Government Plader SR.NO. 7697

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RD 17/02/2018