

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	21/08/2018
Delivered on	11/10/2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.A.No.936 of 2014 &
M.P.No.1 of 2014

M.Radhakrishnan ... Appellant

vs.

1.The Commissioner,
Hindu Religious & Charitable Endowments
Admn. Department,
Uttamar Gandhi Salai,
Chennai - 600 034.

2.The Joint Commissioner,
Hindu Religious & Charitable Endowments
Department, Palayamkottai,
Tirunelveli District - 627 002.

3.The Executive Officer,
Arulmigu Gopalakrishnaswamy &
Allied Temples,
Krishnapuram Kadayanallur Municipality,
Tenkasi Taluk, Tirunelveli District.

4.K.P.Raman (Deceased)

5.R.Subramanian

6.K.G.Sankarasubramaniam

7.E.Sivakumar

8.D.Meena D.Bhattacharya

9.K.R.Swamynathan,
S/o.K.P.Ramar,
No.58, Gopala Krishnaswamy Koil Street,
Krishnapuram Post,
Tenkasi Taluk, Tirunelveli - 627 759. ... Respondents

(R-9 brought on record as LR's of the
deceased fourth respondent vide
order of this Court dated 04.01.2018 made
in C.M.P.No.19436 of 2017 in W.A.No.936 of 2014)

Writ Appeal filed under Clause 15 of the Letters Patent to
set aside the order dated 16.06.2014 passed by the learned
Single Judge in W.P.No.18874 of 2013 and consequently quash the
order dated 16.04.2013 made in R.C.No.54100 of 2012 D2 passed by
the first respondent remitting the order passed by the second
respondent in Na.Ka.No.13559/2010/A2, dated 16.05.2012 for fresh
consideration.

For Appellant : Mr.T.S.Vijaya Raghavan

For Respondents: Mr.Maharajan, Special Government Pleader
(HR & CE) for R1 and R2

M/s.A.S.Kailasam & Associates for R3

R-4 (Died)

Mr.G.Guru Swaminathan for R5, R6 & R8

Mr.V.Srikanth for R7

Mr.K.V.Subramanian, Senior Counsel
For M/s.K.V.Subramanian Associates
for R9

J U D G M E N T

K.KALYANASUNDARAM, J.

This Writ Appeal has been preferred against the order of the
learned Single Judge passed in W.P.No.18874 of 2013, dated
16.06.2014.

2. Heard Mr.T.S.Vijaya Raghavan, learned counsel for the
appellant; Mr.Maharajan, learned Special Government Pleader (HR
& CE) for the respondents 1 and 2; Mr.A.S.Kailasam, learned
counsel for the third respondent; Mr.G.Guru Swaminathan,

learned counsel for the respondents 5, 6 & 8; Mr.V.Srikanth, learned counsel for the seventh respondent; Mr.K.V.Subramanian, learned Senior Counsel for the ninth respondent and perused the materials placed before this Court.

3. Brief facts of the case are as follows:-

The writ petitioner along with four others filed applications before the second respondent dated 29.03.2010 and 08.06.2010 for appointing them as Hereditary Trustees for the Temples viz., Arulmigu Gopalakrishna Swamy, Arulmigu Vishwanatha Swamy and Arulmigu Anjaneya Swamy, situated at Krishnapuram in Tenkasi Taluk, Tirunelveli District on the ground that their predecessors were the Hereditary Trustees of the Temples, however, about 60 years ago, the Temples were brought under the control of the Hindu Religious and Charitable Endowments Board. Since Hereditary Trustees were not nominated, attempts are being made by ineligible persons to become Non-Hereditary Trustees of the Temple. The Joint Commissioner, HR & CE, Tirunelveli, by an order dated 16.05.2012 appointed the applicants as Hereditary Trustees. Aggrieved over the same, the fourth respondent-K.P.Raman preferred an appeal before the first respondent along with an application seeking leave, as he was not a party before the original authority / second respondent.

4. The case of the fourth respondent is that though the Office of the Trusteeship in the above mentioned Temples have been declared as 'Excepted Temples' under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 [herein after referred to as "the Act"], and thereupon the next line of succession was also recorded by the Authorities from time to time, but, at one stage, Hereditary Trustees did not enter into the management to carry on the affairs of the Temple for more than 20 years, which resulted in the Temples became unfit for worship. Hence, the fourth respondent being a retired school teacher took much interest in the Temples, spent his personal funds and renovated the Temples and managed the affairs of the Temples for more than 20 years and also performed Kumbabishegam in the year 1993 and 2007.

5. It is the specific case of the fourth respondent that if the Hereditary Trustees abandoned their office for more than 12 years, such persons are not entitled to function as Hereditary Trustees. The first respondent while disposing of the leave application of the fourth respondent, exercised powers under Section 21 of the Act, set aside the order of the Joint Commissioner and remanded the case for fresh consideration.

6. Assailing the order of the first respondent, the Writ Petition was filed by the appellant contending that the suo motu power was exercised without any necessity and it can be

exercised only sparingly. It is next contended that the fourth respondent has no locus standi to file an appeal under Section 54(4) of the Act, as he was not a Trustee of the Temple. However, the learned Single Judge having felt that the writ petitioner is entitled for an opportunity before exercise of the suo motu power under Section 21 of the Act, allowed the Writ Petition and remanded the case to the first respondent to pass orders after affording an opportunity. The order is under challenge in this Writ Appeal.

7. According to the learned counsel for the appellant, suo motu power under Section 21(1) of the Act can be exercised, when no appeal remedy is provided under the Act, hence the invocation of the power is unjustified and unwarranted. He further adds that the first respondent by applying the incorrect principles of law passed order in a prejudiced mind, hence, the appellant would not get remedy before the first respondent; that since the Board declared the Temples as "Excepted" in the year 1928 and succession in the office was recorded by the second respondent in the year 1961, 1979 and 1981, the issue cannot be reopened just like that without any justifiable and compelling reasons and that as the fourth respondent is a stranger, he has no right to prefer the appeal before the first respondent.

8. The following decisions have been relied upon by the learned counsel for the appellant in support of his contention that there cannot be any relinquishment of hereditary right and that the private respondents have no locus standi to file an appeal before the first respondent under Section 54(4) of the Act:-

(i) In 1985 2 MLJ 154 [Chettimal C. Nanjappa Chettiar (deceased) Vs. S.M.Kuppuswami Chettiar], in that case, neither the plaintiff nor his predecessors ever stood dissociated from the Management of the Temple and the Committee of Abhimanees got constituted to serve a particular purpose and exigency and held that succession as of right is available to the office of the Hereditary Trustee, release or relinquishment by the person for the time being in the Office of the Hereditary Trusteeship will be of no legal consequence and the person, who is entitled to succeed can insist and claim his right as successor ignoring such release or relinquishment.

(ii) The Division Bench of this Court in 2010 (1) CTC 147 [Dharma Paripalana Sabha Vs. The Commissioner, Hindu Religious & Charitable Endowments, Administration Department], has observed that Section 69(2) does not prescribe any time limit for exercise of suo motu power and such power can be exercised after long time only for justifiable and compelling reason.

(iii) In 2007 (1) CTC 844 [Siemens Limited vs. State of Maharashtra & Others], the Hon'ble Supreme Court observed that ordinarily no Writ Petition may be entertained questioning show cause notice unless the said notice is without jurisdiction and issued with pre-determination.

9. Per contra, the learned Special Government Pleader appearing for the Official respondents would argue that the predecessors of the appellant might have been the Hereditary Trustees of the Temples long ago, but for more than 30 years, the Office has been abandoned by them and hence, the appellant cannot claim to be the Hereditary Trustees of the Temple at this point of time. It is further stated that since the first respondent remanded the matter back to the second respondent, the entitlement of the appellant would be decided, after providing opportunity to all necessary parties.

10. The learned Senior Counsel for the private respondents, while reiterating the grounds raised in the appeal filed before the first respondent, would urge that the Board's order dated 25.10.1928 declares the Institution is to be "Excepted Temples", but unless it is declared under Section 9(5) of the Act as Hereditary, the appellant cannot claim as Hereditary Trustee under Section 9(5) of the Act. It is the submission of the learned Senior Counsel, the rights of the parties could be decided only after affording them ample opportunity and therefore cannot have any grievance in the order of remand.

11. In the case on hand, even according to the appellant though their forefathers were appointed as Hereditary Trustees, however indisputably for the past 60 years, the Temples have been under the control of HR & CE Department. A perusal of the grounds of appeal of the fourth respondent reveals that Temples were being administered by third parties for more than 20 years and they also performed Kumbabishegam in 1993 and 2007. Hence, we do not agree with the submission of the learned counsel for the appellant that when the Temples are administered by the Hereditary Trustees, the fourth respondent has no locus standi to file an appeal. As observed supra, it is specifically contended by the respondents that the Hereditary Trustees have abandoned the Office for more than 30 years and the Temples are being maintained by the Non Hereditary Trustees and performed Kumbabishegam. Though the applicants have alleged in the application filed before the second respondent that the third parties have been making attempts to become non-Hereditary Trustees, but they were not made as parties in the Writ Proceedings. Moreover, admittedly the Commissioner, HR & CE Department, who passed the impugned order is not holding the

office as on date, therefore, we find no substance in the contention that prejudice would be caused to the appellant if he is directed to appear before the first respondent.

12. It is not the case of the appellant that the Hereditary Trustees have been in the Office continuously since the Temple was constructed. The Commissioner taking note of the fact that the legal heirs of the Hereditary Trustees stayed away from the administration of the Temple for the past 30 years and following the judgment of the Division Bench in W.A.(MD)No.251 of 2012, set aside the order of the Joint Commissioner. In that judgment, the Division Bench of this Court has held that Article 107 of the Limitation Act prescribes period of 12 years to take possession of a Hereditary Office and since the writ petitioner in that case did not challenge the appointment of the Hereditary Trustee for more than the statutory period, she had no right to maintain the Writ Petition. We are of the opinion that the decisions cited by the learned counsel would not advance the case of the appellant and the private respondents are entitled to be heard before a final decision is taken on the application submitted for appointment of Hereditary Trustees.

13. For the foregoing reasons, we find no reason to interfere with the order of the learned Single Judge. In fine, the appeal fails and the same is dismissed. There is no order as to costs. Consequently, connected M.P. is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner,
Hindu Religious & Charitable Endowments
Admn. Department,
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Chennai - 600 034.

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Krishnapuram Kadayanallur Municipality,
Tenkasi Taluk, Tirunelveli District.

+1cc to the Special Government Pleader Sr.71368
+1cc to M/S.K.V.Subramanian, Advocate Sr.71321
+1cc to M/S.A.S.Kailasam & Associates, Advocate Sr.70816
+2cc to Mr.T.S.Vijaya Raghavan, Advocate Sr.70727

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srg 02/11/2018



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