IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.22568 of 2007
and
M.P.No.1 of 2007

R.Vasantha ... Petitioner

Vs.

The Joint Commissioner,
Hindu Religious & Endowment Department,
Coimbatore - 641 018. ... Respondent

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the proceedings dated 04.06.2007 in Na.Ka.No.11084/2006/B1 on the file of the Joint Commissioner, Hindu Religious & Endowment Department, Coimbatore - 641 018, the respondent herein and to quash the same.

For Petitioner : Mr.A.V.Arun

For Respondent : Mr.M.Maharaja
Special Government Pleader

O R D E R

The petitioner has filed this writ petition challenging the order dated 04.06.2007, whereby a charge memo was issued by the respondent.

2. The case of the petitioner is that the petitioner is a hereditary trustee of Arulmighu Vana Badra Kaliamman Temple, Devikottam, Nellithurai, Coimbatore District, which is listed under Section 46(iii) of the Tamilnadu Hindu Religious and Charitable Endowments Act, (herein after referred to as Act). Based on the temple income, the said temple falls within the jurisdiction of the Government for the purpose of disciplinary action, if any complaints with regard to the maintenance of the accounts. The said temple is a well known temple in the locality and lot of devotees visited the temple for worship. The office of the trustees of the temple is hereditary, initially the petitioner's father T.Rengasamy Naicker was the hereditary

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trustee of the temple and after the death of his father, the petitioner's brother R.Govindaraj succeeded to the office and was functioning as hereditary trustee of the temple from 26.02.1993.

3. Subsequently, the HR & CE, authorities initiated certain proceedings against his brother and the same is pending before the Government with regard to the super session of the office of the hereditary trustee. On his super session, the fit person was appointed without recognising him as the person available next in line of succession to the office. When the next succession of hereditary trustee is available there is no need for appointment by any authority. However, the authorities have not recognized the petitioner as hereditary trustee, thereafter the petitioner initiated legal proceedings by claiming office of the hereditary trustee as the person next in line of succession to his brother.

4. However, the Joint Commissioner, HR & CE, Coimbatore, rejected his claim. On appeal, the Commissioner, HR & CE, allowed this appeal on 20.01.2005 and recognized him as the hereditary trustee available in line of succession to the temple.

5. The Executive Officer of the temple, challenged the above said order. However, the said order was clarified by the Executive Officer who is a sub-ordinate of the Commissioner, preferred a revision under Section 114(1) of the said Act before the Secretary to the Government, Tamil Development, Hindu Religious Department. However, the Government by its order dated 17.02.2006, dismissed the revision preferred by the Executive Officer, subsequent to which the petitioner to succeed to the office of the hereditary trustee of the temple, after the above said prolonged litigation in the line of succession. Thereafter, the petitioner assumed charge as hereditary trustee and he discharged his duties as per the custom and usage of the temple and also within ambit of the provisions of the said Act.

6. Thereafter, there was some litigation with regard to the appointment of the servants of the temple and the said proceedings were challenged by the petitioner before this Court by way of a Writ Petition. While pendency of the above said proceedings the respondent issued a Charge memo for purported to exercise the powers conferred on him under Section 53(2) of the Act. The charge memo framing 13 charges against the petitioner to submit his explanation and appear before an enquiry on 03.07.2007. Challenging the said Charge memo the present writ petition is filed. On the ground the respondent has no jurisdiction to issue a Charge memo when the religious institution is included in the list, under Section 46(iii), the Government alone has power to conduct the enquiry.

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7. The learned counsel for the petitioner would submit that the Joint Commissioner has no power to issue show cause notice where the religious institution listed under Section 46(iii) of the Act. However, the Joint Commissioner has power to issue notice only under Section 53(1)(c) of the Act, if the religious institution is listed under Section 46(i) of the Act.

8. The learned Special Government Pleader appeared on behalf of the State did not controvert the legal position.

9. In the present case admittedly, the religious institution is included in the list published under Section 46(iii) of the Act, the Government alone have power to issue notice under Section 53(1)(a) of the Act.

10. It is useful to extract Sections 53(1)(a), (b) and (c) of the Act, reads as follows:-

> "53. Power to suspend, remove or dismiss trustees :- (1) In this section, the expression "appropriate authority" shall, unless the context otherwise requires, means-
>
> [1][(a) in respect of any trustee of any religious institution included in the list published under clause (iii) of Section 46, [2][the Government];
>
> [3][(b) in respect of any trustee of any religious institution included in the list published under clause (ii) of Section 46, the Commissioner;
>
> (c) in respect of any trustee of any religious institution included in the list published under clause (i) of Section 46 and in respect of any hereditary trustee of any religious institution not included in the list published under the said Section 46, [the Joint / Deputy Commissioner]."

11. On perusal of the above provision, it is made clear when the religious institution is listed under Section 46(iii) of the Act, only the Government have power to issue notice under Section 53(1)(a). In view of above, I am inclined to set aside the order passed by the Joint Commissioner. Accordingly, the impugned order passed by the Joint Commissioner is set aside. However, liberty is granted to the Government to issue fresh notice, if so necessary, under Section 53(1)(a) of the Act, within a period of four weeks from the date of receipt of a copy of this order.

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12. In the result, the writ petition is allowed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

dh

To

The Joint Commissioner,
Hindu Religious & Endowment Department,
Coimbatore - 641 018.

+ 1 cc to MR. A.V. Arun, Advocate Sr.56945
+ 1 cc to Government Pleader Sr.52021

W.P.No.22568 of 2007
and
M.P.No.1 of 2007

(CS-V)
EU(14/09/2018)

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