

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	15/02/2018
Delivered on	19/02/2018

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P.No.35295 of 2013 &
M.P.No.1 of 2013

Sri Adhi Parasakthi Amman Baktha

Sabha (Regd. No.117 of 2004)

Rep. by its Secretary,
T.Prasad,

No.1, First Main Road,
Jai Nagar, Arumbakkam,
Chennai - 600 004.

.. Petitioner

Vs.

1.The Assistant Commissioner,
Hindu Religious and Charitable Endowments
Department,
Uthamar Gandhi Salai,
Nungambakkam, Chennai - 600 034.

2.The Commissioner,
Hindu Religious and Charitable Endowments
Department,
Uthamar Gandhi Salai,
Nungambakkam, Chennai - 600 034.

3.The Executive Officer,
Arulmighu Ekambareswarar Thirukkoil,
Aminjikarai, Chennai - 600 029.

4.L.Lakshminarayanan

.. Respondents

(R-4 impleaded as per Order dated 11.12.2015
in M.P.No.1 of 2014 in W.P.No.35295 of 2013)

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India praying for issuance of a Writ of
Certiorari, to call for the records in proceedings
No.Che.Mu.Na.Ka.No.2961/2013/A1, dated 18.12.2013 on the file of
the first respondent and quash the same.

For Petitioner : Mr.S.Sadasahram

For Respondents : Mr.M.Maharaja
Special Government Pleader
(HR & CE) for R-1 and R-2

Mr.S.D.Ramalingam for R-3

Mr.V.Ragavachari
For Mr.P.Sidharthan for R-4

O R D E R

Heard Mr.S.Sadasahram, learned counsel for the petitioner; Mr.M.Maharaja, learned Special Government Pleader (HR & CE) for the respondents 1 and 2; Mr.S.D.Ramalingam, learned counsel for the third respondent and Mr.V.Ragavachari, learned counsel, representing Mr.P.Sidharthan, learned counsel for the fourth respondent and perused the records.

2. The petitioner-Sabha has come up with the present Writ Petition challenging the order of the first respondent dated 18.12.2013 passed in Reference No.Che.Mu.Na.Ka.No.2961/2013/A1, in and by which, the third respondent, Executive Officer of Arulmighu Ekambareswarar Temple, Aminjikai, Chennai, was appointed as Thakkar of Sri Arulmighu Adhi Parasakthi Amman Temple.

3. The case of the petitioner is that the petitioner-Sabha was formed in the year 1998 for the purpose of developing and administering Sri Arulmighu Adhi Parasakthi Amman Thirukkoil. The Temple was constructed and consecrated by the petitioner-Sabha out of the funds of the members of the Sabha and also from the donations offered by the public. Earlier, on 11.07.1994, Sri Arulmighu Adhi Parasakthi Amman Baktha Sabha was formed and the said Sabha came to be dissolved in the year 1998 and thereafter, the petitioner-Sabha was formed in the year 1998.

4. The petitioner would claim that in the year 2000, after constructing the Temple of Adhi Parasakthi Amman, Kumbabhishekam was conducted. Then, in the year 2003, Rajagopuram was constructed and Kumbabhishekam was performed. However, the Sabha was registered only in the year 2004 and as per the Bye-laws, the Temple is being administered by the petitioner-Sabha. While so, the first respondent, by referring the proceedings of the second respondent dated 17.10.2013, issued a show cause notice dated 30.10.2013 under Section 49(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred as "the Act") to show cause why a fit person should not be appointed for the Temple, for which, the

petitioner-Sabha sent suitable replies dated 13.11.2013, 20.11.2013. Subsequently, instead of conducting an enquiry and providing opportunity to the petitioner, the fit person was appointed. It is the case of the petitioner that the petitioner-Sabha is the Hereditary Trustee, so, fit person cannot be appointed under Section 49(1) of the Act.

5. In the counter affidavit filed by the first respondent, it is stated that the Temple is a public Temple and it was brought to the knowledge of the first respondent about the improper management of the Temple by some persons claiming themselves as Hereditary Trustees and after conducting discreet enquiry, a show cause notice was issued to the petitioner-Sabha and after considering their reply, the fit person was appointed by invoking the powers confined under Section 49(1) of the Act. It is further stated that the petitioner is having an alternative remedy of filing an appeal under Section 21 of the Act. Hence, the Writ Petition is not maintainable.

6. The first respondent further stated that the said Adhi Parasakthi Amman Temple is worshipped by all Hindu Community in and around the area and the devotees from other States. The Temple was constructed in the land belonged to the Chennai Corporation by collecting donations from the public. So, the Temple is a public one and by mere conducting Thiruppani would not confer any right on the petitioner to administer the Temple. In the Bye-law of the petitioner-Sabha nothing has been mentioned about the construction of the Temple. It is further stated that the petitioner has not approached the Competent Authority seeking declaring as a Hereditary Trustee under Section 63(b) of the Act.

7. The third respondent has filed a separate counter stating that the petitioner-Sabha was administering the Temple and subsequent to the appointment of a fit person of the Temple, the third respondent has assumed charge and taken the inventory of the stone statues inside the Temple as well as Utsava Idol and other brass items used for the poojas and the electrical items and gold items under the control of Archagar H.Pasupathi on 26.12.2013, in the presence of witnesses. The Archagar also signed in the inventory conforming handing over of the charges. After taking over charge, when the third respondent tried to install the Departmental Hundial, the Secretary of the petitioner-Sabha and their counsel prevented them from installing the same and the petitioner has taken the keys of the Temple from the Archagar. The specific case of the third respondent is that the petitioner has not obtained any Declaration under Section 63(b) of the Act and therefore, they cannot claim to be a Hereditary Trustee and hence, the Writ Petition filed as such, is not maintainable.

8. In the reply, the petitioner has stated that the petitioner-Sabha being the founder of the Temple and its capacity as a Hereditary Trustee has been administering the affairs of the Temple to the satisfaction of the public. This Court, by an order dated 30.12.2013 appointed an Advocate Commissioner to find out, who is in possession and in charge of the Temple Administration. The Report of the Advocate Commissioner would show that the petitioner-Sabha has been holding the charge and administering the affairs of the Temple. Therefore, the first respondent has got no right to interfere in the affairs of the petitioner-Sabha administering the Temple in question.

9. The learned counsel for the petitioner, while reiterating the case of the petitioner further added that admittedly before passing the order, the first respondent has not provided personal hearing and on that sold ground, the order is liable to be set aside. It is further contended that appreciation letters issued by the reputed persons in the Society would show that administration of the Temple by the petitioner-Sabha is in order.

10. The learned Special Government Pleader for the respondents 1 and 2 submitted that the petitioner-Sabha cannot claim to be a Hereditary Trustee in the light of the decision of the Hon'ble Supreme Court in (2004) 6 SCC 497 [Commissioner, Hindu Religious and Charitable Endowments (Admn) V. Vedantha Sthapna Sabha]. It is further contended that admittedly the Temple in question was constructed not in the land of the petitioner-Sabha, and the fund of the petitioner. So, the first respondent has got powers to pass appropriate orders. It is further submitted that the Temple was constructed long back, but the petitioner-Sabha was formed only in the year 2004 and therefore, the petitioner cannot claim to be the founder of the Temple and the object of the Sabha is also different.

11. The learned counsel for the third respondent contended that pursuant to the order of the first respondent dated 18.12.2013, the third respondent has taken charge and administration of the Temple on 26.12.2013. Thereafter, the petitioner has barged into the Temple and taken administration by force. So, the petitioner is not entitled for any indulgence of this Court. It is further submitted that the Temple is a very famous and huge donations have been offered, but they have been misappropriated by the petitioner-Sabha. The learned counsel further submitted that two shops have been constructed in the Temple premises, which were let out for Rs.10,000/- per month each, but in the Income Tax Returns, the rental income for the period from 01.04.2015 to 31.03.2016 was shown as Rs.73,500/-. In the typed-set filed by the third respondent, the statement

given by one of the tenants has been enclosed and photographs to show that the third respondent has taken the administration of the Temple on 26.12.2013.

12. In the instant case, the first respondent issued a show cause notice dated 28.10.2013 for appointment of a fit person under Section 49(1) of the Act seeking explanation from the petitioner. The petitioner was also directed to submit accounts for the three fasli years. In the reply dated 28.10.2013, it has been stated that as per the Resolution passed in the General Body dated 20.11.2013, the petitioner sought permission of the first respondent to administer the Temple. After considering the reply of the petitioner, the first respondent has appointed the fit person.

13. The only grievance of the petitioner is that the first respondent has not provided an opportunity of hearing and the impugned order came to be passed in violation of the principles of natural justice.

14. This Writ Petition has been filed on the basis that the petitioner is a Hereditary Trustee of the Temple in question. Indisputably, the petitioner has not so far approached the Competent Authority under Section 63 of the Act. It is not in dispute that the Temple has been constructed in the land belonging to the Chennai Corporation. It is to be noted that in the affidavit filed in support of the Writ Petition, the petitioner has admitted that the Temple was constructed by receiving donations from the general public and also from the members of the Sabha.

15. perusal of the typed-set would show that the petitioner-Sabha was registered only on 03.05.2004, while the Temple was constructed long back. Bye-law of petitioner reveals that the object of the petitioner-Sabha is not for construction of the Temple and administer the same, but it was formed for performing some poojas in the Temple. The materials produced by the fourth respondent proves that the administration of the Temple was taken over by the third respondent on 26.12.2013, however, when the Advocate Commissioner inspected the Temple on 03.01.2014, it seems that the Secretary and Office Bearers of the Sabha stated that the fit person has not taken charge of the Temple and the keys were forcibly taken from the Archagar-Pasupathi.

16. It is to be noted that inventories taken by the third respondent and gold jewels are under the control of the third respondent are not in dispute. The discussions made supra, establishes that pursuant to the order of first respondent, the third respondent has taken charge of the Temple, but later by force, the petitioner-Sabha has entered into the Temple and now

administering the same.

17. When a similar issue came up for consideration, the Hon'ble Supreme Court in (2004) 6 SCC 497 [Commissioner, Hindu Religious and Charitable Endowments (Admn) V. Vedantha Sthapna Sabha] has held as follows:-

"14. A bare reading of the definition of "hereditary trustee" brings into focus three important aspects i.e. first, a trustee of a religious institution the succession to which is devolved by hereditary right; the second category is that succession can be regulated by usage and the third category is where succession relating to the office of trustee is specifically provided for by the founder and that too so long as the scheme of such succession is in force. In contrast to the criteria engrafted in Section 6(22), the definition in Section 6(11) lays special and specific emphasis on the succession to the office of trustee of a religious institution devolving by any one of the three methods or manner envisaged therein. So far as the case on hand is concerned, the statutory authorities specially constituted under the Act have held the temple to be for all the worshipping Hindu public and not confined to the members of the Sabha only having regard to the manner in which funds were collected and the manner in which the public invitations and declarations have been made and day-to-day administration of the temple is being carried on from inception. Though there has been an application for declaration of the office of trustee of the religious institution to be a hereditary one, no application under Section 63(a) for a declaration as to whether the temple in question is a religious institution used as a place of public religious worship and dedicated to or for the benefit of or used as of right by the Hindu community or section thereof was filed. Even after specific findings by the statutory authorities as to the character of the institution conspicuous omission in this regard disentitled the respondent Sabha to incidentally or vaguely project that it is for the members of the Sabha only. Once it is a religious institution within the meaning of the Act, the provisions of the Act have full force and effect and the claim of the nature, unless substantiated as provided for under the statute cannot be countenanced on certain assertions made which were besides such statutory provisions.

18. Following the above said decision, in (2010) 3 MLJ 634

[Arulmigh Makaliyamman Sangam v. M.Muthiah], this Court has held as follows:-

"11. During the course of hearing of the appeal, the learned counsel for both sides fairly submitted that in the latest decision of the Honourable Supreme Court in Commissioner, Hindu Religious and Charitable Endowments (Admn) V. Vedantha Sthapna Sabha [AIR 2004 SC 3634], it was held that no trust or society can be called as a Hereditary Trustee inasmuch as line of succession does not devolve upon from one person to another. Similarly, a society or trust cannot be itself sold or transformed or changed from one person to another. Further, if there is any right of interest of the Society over the institution, such a right or interest has got to be declared by the authorities contemplated under Section 63 of the HR & CE Act. In this case as found from the records and as admitted in the pleadings, the third defendant Society was not the originally founder of the Temple. The third defendant has only later taken over the temple and administered the day to day affairs of the Temple."

19. In AIR 2001 SC 3389 [M.S.V.Raja and another Vs. Seeni Thevar and others], the Hon'ble Supreme Court held that in the absence of other evidence as to who founded or established the Temple, the fact that the Temple has been built on poromboke land is a circumstance pointing in favour of Temple being a public Temple.

20. It is evident from the records that the petitioner-Sabha is not the Founder of the Temple and it was constructed in the land belonging to the Chennai Corporation by collecting donations from the public and the petitioner has not so far been declared as a Hereditary Trustee under Section 63(b) of the Act. So, it cannot be described as Private Temple.

21. Therefore, in my considered opinion, the principles laid down in the above decisions would squarely apply to the facts of this case and the petitioner-Sabha has no legal basis to claim as hereditary trustee to resist appointment of a fit person.

22. It has to be now seen that whether any prejudice was caused to the petitioner in the alleged violation of principles of natural justice. It is settled law that the principles of natural justice cannot be applied in a straight jacket formula and it was intended to give procedural fairness. The facts narrated above would establish that even if, the petitioner was provided an opportunity of fair hearing, would serve no purpose and the result would be the same. Therefore, the order impugned in this Writ Petition cannot be struck down on the ground of

violation of principles of natural justice. My view is supported by the decisions of the Hon'ble Supreme Court reported in [(2015) 8 SCC 519] (Dharampal Satyapal LTD v. CCE), wherein, it has been held as follows:-

"39. We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasising that the principles of natural justice cannot be applied in straitjacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of procedural fairness, accuracy of outcome leading to general social goals, etc. Nevertheless, there may be situations wherein for some reason—perhaps because the evidence against the individual is thought to be utterly compelling—it is felt that a fair hearing "would make no difference"—meaning that a hearing would not change the ultimate conclusion reached by the decision-maker—then no legal duty to supply a hearing arises. Such an approach was endorsed by Lord Wilberforce in *Malloch v. Aberdeen Corpn.* [(1971) 1 WLR 1578 : (1971) 2 All ER 1278 (HL)] , who said that: (WLR p. 1595 : All ER p. 1294)

"... A breach of procedure ... cannot give [rise to] a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain."

Relying on these comments, Brandon L.J. opined in *Cinamond v. British Airports Authority* [(1980) 1 WLR 582 : (1980) 2 All ER 368 (CA)] that: (WLR p. 593 : All ER p. 377)

"... no one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing."

In such situations, fair procedures appear to serve no purpose since the "right" result can be secured without according such treatment to the individual.

23. In *Union of India v. Amrik Singh* [(1991)) 1 SCC 654], the Hon'ble Supreme Court held as follows:-

"7. From the above discussion it emerges that in cases of special enactments like Army Act, all the principles of natural justice cannot be imported. The same ratio applies to a petition under Section 117(2) of the Act also. We may also point out here that Chapter XIII consisting of Rules 167 to 169 of the BSF Rules deals with petitions filed under Section 117 of the Act. Even in them there is nothing to indicate

that a hearing has to be given before disposal of a petition."

24. In that view, I do not find any merit in this Writ Petition. The Writ Petition fails and the same is dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

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Sub Assistant Registrar

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To

- 1.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Uthamar Gandhi Salai,
Nungambakkam, Chennai - 600 034.
- 2.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Uthamar Gandhi Salai,
Nungambakkam, Chennai - 600 034.
- 3.The Executive Officer,
Arulmighu Ekambareswarar Thirukkoil,
Aminjikarai, Chennai - 600 029.

+1cc to Mr.S.D.Ramalingam, Advocate, S.R.No.12446
+1cc to Mr.S.Sadasharam, Advocate, S.R.No.12558
+1cc to Mr.P.Sidharthan, Advocate, S.R.No.12774
+1cc to the Government Pleader, S.R.No.12911

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RRK (20/03/2018)

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