



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.02.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

WP (MD) No.2159 of 2018

and

WMP (MD) Nos.2414 and 2415 of 2018

D.Ram Priya

... Petitioner

Vs.

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

2.The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
4, West Chithirai Street,
Madurai - 625 001.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the impugned order of the 2nd respondent in Na.Ka.No.10609/2015/A1-1 dated 15.02.2016 and quash the same and consequently direct the respondents to allow the petitioner to act as hereditary trustee of Arulmighu Malaimel Vaithyanathaswamy Temple, Vadakarai, Periyakulam.

For Petitioner

: Mr.S.Satheesh Kumar

For Respondents

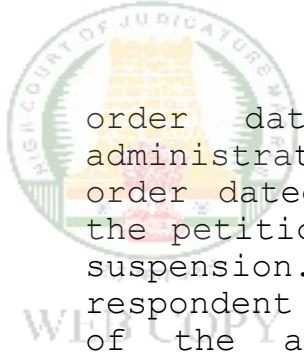
: Mrs.J.Padmavathi Devi

Special Government Pleader

ORDER

This writ petition has been filed challenging the enquiry notice issued by the second respondent/Joint Commissioner, Hindu Religious and Charitable Endowment Department, Madurai, cancelling the earlier order passed by him on 27.11.2014 appointing the petitioner as a hereditary trustee of Arulmighu Malaimel Vaithyanathaswamy Temple, Vadakarai.

2.According to the petitioner, she is one of the hereditary trustees of the above said temple. Originally, her father by name Venkata Ramabathran was the hereditary trustee and after his demise in the year 1978, the petitioner's mother was appointed as a hereditary trustee. Later on, the petitioner and her sisters were appointed as hereditary trustees by the second respondent by the

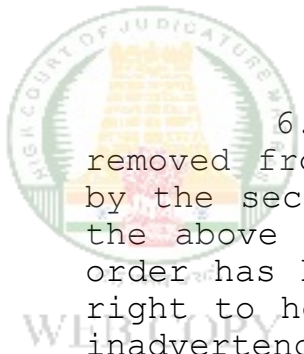


order dated 01.03.1988, and they were looking after the administration of the temple. Earlier, the first respondent, by his order dated 15.01.2011, initiated disciplinary proceedings against the petitioner's sister viz., Manohari Rajaram and placed her under suspension. Thereafter, by an order dated 27.11.2014, the second respondent permitted the petitioner to act as a hereditary trustee of the above temple by virtue of the petitioner's earlier appointment dated 01.03.1988. Subsequently, by the impugned order dated 15.02.2016, the second respondent has set aside the earlier order passed by his predecessor on 27.11.2014, on the ground that, already the petitioner has been removed from the post of hereditaryship, based on the proceedings issued by the Deputy Commissioner, HR & CE, Madurai on 11.11.1991 and that order has become final, and without considering the above said fact, once again, the petitioner has been appointed as hereditary trustee. Challenging the said impugned order, this writ petition has been filed.

3.The learned counsel appearing for the petitioner has vehemently contended that the second respondent has no power or authority to cancel his predecessor's order. Earlier, as per the order passed by the Joint Commissioner dated 27.11.2014, the petitioner has been appointed as a hereditary trustee. Without filing any appeal under Section 69(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as " the Act") or by any suo motu revision under Section 69(2) of the Act by the Commissioner, HR & CE, the second respondent cannot review his own order, for which, he has no power or jurisdiction. The learned counsel further submitted that if the second respondent has any objection regarding the order, appointing the petitioner as a hereditary trustee, it could be reviewed only by the Commissioner, HR & CE, and the second respondent has absolutely no power to review his own order and therefore, the order has been passed without any jurisdiction and the same is liable to be set aside.

4.I have considered the submissions made by the learned counsel appearing for the petitioner and perused the entire materials available on record carefully.

5.From the perusal of the records, it could be seen that the petitioner has been removed from the post of hereditary trustee of the said temple by the Deputy Commissioner, HR & CE, Madurai vide his order dated 11.11.1991. Without knowing the order, removing the petitioner from the post of hereditary trustee, earlier the Joint Commissioner has passed the order dated 27.11.2014, permitting the petitioner to act as a hereditary trustee of the said temple. After coming to know the fact that already the petitioner has been removed from the post of hereditary trustee, now, the present Joint Commissioner, after issuing notice to the petitioner and conducting enquiry, after considering her objections, passed the impugned



6.It is an admitted fact that the petitioner has been removed from the post of hereditary trustee on some irregularities by the second respondent by the order dated 11.11.1991, itself and the above said order was not challenged by the petitioner and the order has become final. In view of the same, the petitioner has no right to hold the post of hereditary trustee. But only due to some inadvertence, earlier, the petitioner was permitted to continue as a hereditary trustee. After coming to know about the earlier order dated 11.11.1991, now the second respondent has issued notice to the petitioner and after conducting enquiry and also after giving an opportunity of hearing to the petitioner, passed the impugned order.

7.It is the contention of the petitioner that the second respondent has no power to review his own order and even assuming that the order has been passed erroneously, it is only the first respondent, appellate authority has power to rectify the same. But, the above contention cannot be countenanced for the simple reason that the petitioner has already been removed from the post of hereditary trustee, but the second respondent due to inadvertence permitted the petitioner to function as a hereditary trustee, and after coming to know about the fact, the second respondent has cancelled the earlier order that too after conducting enquiry and giving an opportunity to the petitioner and it is well within the power of the second respondent to rescind the earlier order and there is no necessity to file an appeal before the Commissioner under Section 69 of the Act. That apart, even though the impugned order has been passed as early as on 15.02.2016, now, the present writ petition has been filed after a lapse of two years. The reason for the delay is also not explained by the petitioner. On the ground of laches also, this writ petition is liable to be dismissed.

8.In view of the discussion made earlier, I find no merit in the writ petition and the same is dismissed accordingly. No costs. Consequently, WMP(MD)Nos.2414 and 2415 of 2018 are closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

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

2.The Joint Commissioner, Hindu Religious and Charitable
Endowment Department, 4, West Chithirai Street, Madurai- 625 001.

+1CC to Mr.S.Satheesh Kumar, Advocate, SR.No. 46628

+1CC to the Special Government Pleader SR.No.46917

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

WP(MD)No.2159 of 2018

mj

AM/SV MMS/SAR 4/14.03.2018/3P/5C