



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 21.02.2018
PRONOUNCED ON: 28.02.2018
CORAM :

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

WEB COPY

Writ Petition (MD) No.980 of 2018
and
W.M.P (MD) No.1027 of 2018

P.Sivaji Poosari

... Petitioner

Vs.

1.The Joint Commissioner,
Hindu Religious and
Charitable Endowment (Admn) Department,
B-1 Road, Ellis Nagar,
Madurai 625 016.

2.Pandiyammal

3.P.Jaya

4.P.Pandeeswari

5.P.Chandra

6.P.Valli

7.P.Veeramali

8.T.Poongodi

9.T.Pandeeswari

10.T.Priya

11.T.Samayan

12.T.Sankar

13.P.Manikandan Poosari

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records relating to M.P.No.122 of 2017 on the file of the 1st respondent herein and quash the same.

For Petitioner : Mr.V.Sitharanjandas

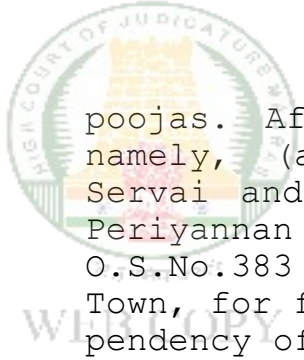
For 1st Respondent : Mr.M.Rajarajan,
Government Advocate.

For 2nd Respondent : Ms.J.Anandhavalli

For Respondents 3-12 : Mr.V.Nagarajan

ORDER

The grievance of the petitioner in this writ petition is that he is a hereditary trustee of one Arulmighu Pandi Muneeswarar Temple, at Madurai. According to the petitioner, originally, the temple was established by one Pandi Kodangi, after his demise, his son one Periyasamy was acting as trustee of the temple and performing poojas. The said Periyasamy died leaving behind two sons namely, Pandian @ Botha Possari and Periyannan @ Mahamuni Poosari. Since they were minors at the time of his father's death, their mother Valliammal was in administration of the temple as their guardian. Thereafter, after attaining majority, they were conducting



poojas. After the death of Pandian @ Botha Poosari, his sons namely, (a) Veeramalai, (b) Sangan, (c) Ponnan Servai (d) Kodangi Servai and (e) Pandian Servai become trustees along with the said Periyannan @ Mahamuni Poojari. They have also filed a suit in O.S.No.383 of 1973 on the file of the District Munsif Court, Madurai Town, for framing scheme for the said temple. During the pendency of the said suit, one of the legal heirs of the Pandian @ Botha Poosari namely, Ponnan Servai died in the year 1971, and his legal heirs were impleaded as parties in the suit whereas the mother of the petitioner, the widow of Ponnan Servai and the second respondent herein who is the daughter of Ponnan Servai and the sister of the petitioner was appointed as guardian for the minors legal heirs of Ponnan Servai. However, the second respondent, at any point of time, did not claim hereditary trusteeship in the place of their father Ponnan Servai. Thereafter, on the application filed by the petitioner to recognise him as a hereditary trustee, the Deputy Commissioner, HR & CE Department, Madurai by a proceedings dated 09.12.1983, recognised him as a hereditary trustee after obtaining necessary consent from other the male heirs of Ponnan Servai. Thereafter, in the year 1983, he was elected as managing trustee of the temple. Subsequently, in the year 2007, the second respondent has filed an application before the Joint Commissioner, HR & CE Department, the first respondent herein to declare her as one of the hereditary trustees along with her brothers and also for sharing the service to the temple. But the first respondent dismissed the application directing her to approach the Civil Court under Section 64 (1) of the Hindu Religious and Charitable Endowments Act, 1959 (in short, 'the Act'). Being aggrieved over the same, the second respondent filed an appeal before the Commissioner, HR & CE Department, against the portion of the order rejecting her request to appoint her as hereditary trustee and the petitioner also filed a revision against the very same order so far as permitting the second respondent to approach the authorities under Section 64 (1) of the Act for participating in the affairs and management of the temple. But the Commissioner allowed the appeal filed by the second respondent and dismissed the revision filed by the petitioner by an order dated 03.04.2009.

2. Challenging the order passed by the Commissioner, HR & CE, the petitioner herein filed two writ petitions before this Court in W.P(MD)No.4364 of 2009 dismissing the revision filed by the petitioner and W.P(MD)No.4365 of 2009 allowing the appeal filed by the second respondent recognising her as the legal heir of Ponnan Servai. This Court by an order dated 10.02.2012 allowed both the writ petitions and set aside the order passed by the Commissioner.

3. Challenging the order passed in W.P(MD)No.4365 of 2009, the second respondent filed writ appeal in W.A.(MD)No.251 of 2012. The said writ appeal was also dismissed by a Division Bench of this Court on 05.07.2012 and thereafter, the second respondent approached the Hon'ble Supreme Court by filing S.L.P (C)Nos.33112 and 33113 of 2012 and the Hon'ble Supreme Court has also dismissed the S.L.P, by an order dated 09.11.2012.



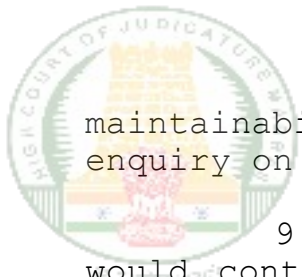
4. In view of the above orders passed by this Court as well as the Hon'ble Supreme Court, the claim of the petitioner to appoint her as hereditary trustee along with other legal heirs of Ponnai Servai has been negatived. That being the position, now the second respondent filed another miscellaneous petition before the first respondent on 23.11.2016 to set aside the order passed by the first respondent dated 09.12.1983 namely, recognising the petitioner as hereditary trustee of the temple. It is further stated by the petitioner that earlier the first respondent has returned the above said miscellaneous petition even without numbering it on the ground that if the petitioner wants to set aside the order passed by the first respondent, dated 09.12.1983, she can only file an appeal before the Commissioner and already, the above order has been challenged by the second respondent before the Commissioner, HR & CE which was allowed on 03.04.2009 and that order was set aside by this Court which was also confirmed by the Hon'ble Supreme Court. In the said circumstances, the second respondent cannot maintain the present application after a long time.

5. Not being satisfied with the above order of the first respondent returning the application, the second respondent earlier filed a writ petition before this Court in W.P(MD)No.11695 of 2011 and this Court by an order dated 23.11.2016 has disposed of the said writ petition directing the the second respondent to re-present the petition along with the order passed by the authorities and on such re-presentation, the same shall be considered and appropriate orders should be passed on merits in accordance with law.

6. Now, the grievance of the petitioner is that after re-presenting the papers by the second respondent, the first respondent without considering the maintainability of the application filed by the second respondent, numbered the application and issued notice to the parties directing them to appear for enquiry. Challenging the same, the present writ petition has been filed.

7. Heard Mr.V.Sitharajandas, learned counsel appearing for the petitioner, Mr.M.Rajaraman, learned Government Advocate appearing for the first respondent, Ms.J.Anandhavalli, learned counsel appearing for the second respondent and Mr.V.Nagarajan, learned counsel appearing for the respondents 3 to 12.

8. Learned counsel appearing for the petitioner would contend that earlier, the first respondent has returned the papers questioning the maintainability of the application. When the above order was challenged before this Court, this Court only directed the second respondent to re-present the papers and on such re-presentation, the first respondent was directed to consider the maintainability of the application and after deciding the maintainability alone, the first respondent can number the application and issue notice to the parties for enquiry. But without considering the maintainability of the application, the first respondent has taken the application on his file and now issued notice to the parties for enquiry which is against the orders passed by this Court. Learned counsel appearing for the petitioner would submit that the first respondent may be directed to hear the



maintainability of the application first instead of conducting enquiry on merit in the application filed by the second respondent.

9.Learned counsel appearing for the second respondent would contend that earlier when the first respondent returned the petitioner's application, the second respondent challenged the above said order order and this Court directed the second respondent to re-present the application and also directed the first respondent to consider the same and pass appropriate orders, on merits and in accordance with this law. She would further contend that this Court never directed the first respondent to decide the maintainability of the application as a preliminary issue and the order passed by this Court is very clear that the first respondent was only directed to consider the matter and pass appropriate orders on merits and in accordance with law and therefore, there is no ambiguity in the order passed by this Court. She would further contend that without numbering the application, the first respondent cannot hear the application filed by the second respondent. In the said circumstances, the first respondent has rightly numbered the application and now, notice has been issued to the parties to appear for enquiry and if at all, the petitioner has any grievance, it is always open to him to raise objections before the enquiry and he cannot maintain the writ petition.

10.Learned Government Advocate appearing for the first respondent would submit that only as per the orders passed by this Court, the first respondent now issued notice to the parties for enquiry and after hearing the parties, suitable orders will be passed on merits and in accordance with law, as directed by this Court.

11.I have considered the rival submissions made on either side and perused the entire materials available on record carefully.

12.Before considering the rival contention of the parties, it would be useful to refer the order passed by this Court in W.P (MD)No.11695 of 2017, dated 10.10.2017. The relevant portion of the order reads as follows:-

"5.According to the learned counsel appearing for the petitioner, the 2nd respondent, instead of considering the claim of the petitioner on merits, has simply returned the petition without even passing any order on the same, which submission is not stoutly refuted by the learned Special Government Pleader appearing for the respondents 1 and 2.

6.Under such circumstances, this petition is disposed of directing the petitioner to represent the petition along with a copy of this order as well as the original order impugned herein and on such representation within a period of three weeks from today and on such representation being filed, the same shall be considered and appropriate orders passed on merits and in accordance with law as expeditiously as possible, thereafter. No costs. Consequently, connected W.M.P(MD)No.9016 of 2017 is closed. In view of the above order passed, W.M.P(MD)No.9361 of 2017



filed for impleading the Executive Officer as party respondent to this writ petition is not warranted and the same is accordingly closed."

13. From the perusal of the order passed by this Court, it could be seen that the second respondent has come to this Court challenging the order passed by the first respondent returning her application on the ground of maintainability, with the grievance that the first respondent, without considering her claim on merit, has simply returned the application. In the said circumstances, this Court directed the second respondent to re-present the application and directed the first respondent to pass appropriate orders on merits and consider the application. But this Court did not specifically give any direction to the first respondent to decide the issue regarding the maintainability of the application as a preliminary issue.

14. From the perusal of the application filed by the second respondent, the application is filed to set aside the earlier order passed by the Deputy Commissioner, dated 09.12.1983. (at that time only, the Deputy Commissioner has power to consider the application under Section 54(1) of the Act. Subsequently, in the year 1995, the above provision has been amended and the Joint Commissioner also given power to consider the application). The above order was already challenged by the second respondent before the Commissioner, HR & CE which was allowed in her favour. But the said order of the Commissioner was set aside by this Court by an order dated 10.02.2012 holding that the second respondent is not legally entitled to the claim made by her. The said order was also confirmed by the Division Bench of this Court and ultimately, the Special Leave Petition in S.L.P(Civil)Nos.33112-33113 of 2012, filed by the second respondent before the Supreme Court was also dismissed. The relevant portion of the order passed by the Supreme Court reads as follows:-

"Having heard learned counsel for the parties, we are not satisfied that this is a matter which requires intervention of this Court, since the petitioner had remained silent for about forty years as to her claim to trusteeship of the temple."

15. In the above circumstances, earlier the first respondent has returned the application filed by the second respondent questioning the maintainability on the ground that if the second respondent has any grievance against the order passed by the then Deputy Commissioner, only an appeal lies before the Commissioner and she cannot maintain the application before the first respondent and this Court also rejected the claim of the second respondent earlier. However, when the order was challenged, this Court directed the second respondent to re-present the application and also directed the first respondent to consider the application and pass appropriate orders, on merits and in accordance with law. Pursuant to the order passed by this Court, now, the first respondent has

taken the matter on file and issued notice to the parties to appear for enquiry.

16. Now that the first respondent only taken the matter on file and issued notice to the parties for enquiry, merely by taking the application on file, it cannot be construed that the first respondent has decided the issue in favour of the second respondent. The first respondent has only issued notice to the parties for filing their objections. If at all, the petitioner has any grievance regarding the maintainability of the application, it is always open to him to raise such objection during the enquiry and if any such objection is raised, the first respondent is directed to decide the same as the preliminary issue. If the first respondent is satisfied that the petition is maintainable, then he can proceed with the enquiry and pass appropriate orders, on merits and in accordance with law. In the event of the first respondent coming to the conclusion that the petition is not maintainable, it is always open to him to pass appropriate orders on the maintainability of the application.

17. It is made clear that the observations made in this order are only for a limited purpose of disposing of this writ petition. The first respondent is directed to decide the issue on its own merit and in accordance with law, uninfluenced by any of the observation made in this order.

18. With the above direction, the writ petition is disposed of. No costs. Consequently, W.M.P(MD)No.1027 of 2018 is closed.

Sd/-

Assistant Registrar(CSIII)

/True Copy/

Sub-Assistant Registrar

To

The Joint Commissioner,
Hindu Religious and
Charitable Endowment (Admn) Department,
B-1 Road, Ellis Nagar, Madurai 625 016.

+One cc to Mr.V.Sitharanjandas, Advocate, SR.No.51721

+One cc to M/s.J.Anandhavalli, Advocate, SR.No.51860

sms

RL/4C/6P/KKR/SAR2/9/3/2018

Order made in
Writ Petition (MD) No.980 of 2018
and
W.M.P(MD)No.1027 of 2018
28.02.2018