



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:28.08.2018

CORAM :

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
and
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

Writ Appeal (MD) No.702 of 2018

and

C.M.P (MD) No.4026 of 2018

D.Ram Priya

... Appellant/Writ 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/Respondents

Writ Appeal filed under Clause 15 of the Letters Patent
against the order dated 06.02.2018 made in W.P.(MD)No.2159 of 2018
on the file of this Court.

Prayer in WP (MD) No. 2159/ 2018 :

Writ Petition is filed under Article 226 of the Constitution
of India, praying this Court 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, Vadakaai, Periyakulam.

For Appellant : Mr.S.Satheesh Kumar

For Respondents : Mr.Aayiram K.Selvakumar,
Additional Government Pleader.

**JUDGMENT**

**(Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA, J)**

The above writ appeal is directed against the order passed in W.P(MD)No.2159 of 2018, dated 06.02.2018, wherein the notice of enquiry issued by the second respondent/Joint Commissioner, HR & CE Department, Madurai cancelling the earlier order passed by him on 27.11.2014 appointing the appellant as hereditary trustee of Arulmigu Malaimel Vaithyanathaswamy Temple, (hereinafter referred as 'the temple'), Vadakarai, was challenged.

2.The appellant is one of the daughters of Late Venkata Rama Bathran who was a Zamindar of Periyakulam. The appellant's father was the hereditary trustee of the temple. After his demise, the mother of the appellant succeeded as a hereditary trustee and even during her life time, the appellant and her sisters were appointed as trustees by the second respondent vide order dated Mu.Mu.24475/86, dated 01.03.1988.

3.It is stated by the appellant that the first respondent in his order in Na.Ka.No.30750/2010, dated 15.01.2011 has taken disciplinary action against the sister of the appellant one Manohari Rajaram and suspended her hereditary trusteeship. On 30.10.2012, the appellant gave a representation to the respondents to enable her to function as a hereditary trustee. As there was no response, the appellant has filed a writ petition in W.P(MD)No.8358 of 2013 seeking direction to the second respondent to permit her to function as a hereditary trustee of the temple. This Court has also directed the first respondent to consider her representation dated 30.10.2012. The second respondent vide proceedings in Na.Ka.No.4269/2003/A1, dated 27.11.2014, referring to the earlier appointment made on 01.03.1988 permitted her to act as a hereditary trustee. While so, it is stated that the Joint Commissioner, HR & CE, the second respondent herein has passed an order on 15.02.2016, setting aside the earlier order passed by his predecessor by referring the order passed by the Deputy Commissioner, HR & CE, in Se.Mu.Na.Ka.22436/88E1, dated 11.11.1991. The said order was challenged by the appellant contending that the same is without jurisdiction and therefore, the same is liable to be set aside. The learned single Judge dismissed the writ petition holding that 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. Aggrieved by the same, the present writ appeal has been filed.

4.The learned counsel appearing for the appellant vehemently contended that the second respondent did not have any power to revise his own order suo motu. It is only the first respondent Commissioner who has got powers under Section 69(2) of the Tamil Nadu Hindu Religious and Charitable and Endowments Act, 1959 (hereinafter referred to as 'the Act') to revise or review any order suo motu.



5. The learned Additional Government Pleader was directed to produce original records and the same was produced. A perusal of the records would show that the appellant was removed from the post of hereditary trusteeship vide proceedings in Se.Mu.Na.Ka.22436/88E1, dated 11.11.1991. There was no challenge to that order and the same had become final. The second respondent without advertent to the said order had permitted the appellant to be a trustee by an order dated 27.11.2014. After verification and coming to know the fact that the appellant was removed from hereditary trusteeship as early as on 11.11.1991, the second respondent had removed her from the post of trustee by withdrawing his own order. In fact, notice was also issued to the appellant and only after enquiry and considering her objections, the impugned order came to be passed.

6. It is the contention of the appellant that the order dated 11.11.1991 was never communicated to her and there are irregularities in the same. However, the records produced by the respondents would go to show that the said order was communicated by a registered post with acknowledgment due and the appellant herself had received the same.

7. As stated earlier, the appellant had not challenged the said order and allowed it to become final. Though it was claimed that she has been continuing as the trustee of the temple, despite the said order, it would only be an illegal act without any authority.

8. The next contention of the appellant is that the second respondent has no power to revise his own order even assuming that the said order passed without reference to the previous order inadvertently. In such circumstances, it is only the first respondent who has power to modify or review the order. The order of the second respondent does not suffer from any material irregularity. As it was done without reference to the earlier order, the appellant cannot be aggrieved by the same as she has already been removed from the post of hereditary trusteeship as early as in the year 1991 and it is not her case that she was holding the post and by virtue of the order of the second respondent, she was removed from the same. The appellant cannot be allowed to take advantage of her own mistake for not challenging the earlier order. Even the cancellation of the order dated 27.11.2014, is passed only after due notice and enquiry and giving an opportunity to the appellant. The learned single Judge has also given a finding that there is sufficient delay on the part of the appellant having preferred the writ petition itself two years after passing of the second respondent and in the affidavit, no sufficient cause or explanation for the delay has been given. Therefore, the writ appeal does not merit any consideration in the absence of explanation for the delay and laches.



9. In the light of the above discussions, the writ appeal is dismissed. No costs. Consequently, C.M.P(MD)No.4026 of 2018 is closed.

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Sd/-

Assistant Registrar(CS-I)

Sub Assistant Registrar(CS-I)

To

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