



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 24.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.A(MD)No.234 of 2015
and
M.P(MD)No.1 of 2015
against WP(MD). 5144/ 2012

Prathaba K.Govindaraj Naicker

.. Appellant/
Petitioner

Vs.

1.The Joint Commissioner, H.R. & C.E.,
Office of the Joint Commissioner,
H.R. & C.E., Thanjavur District.

2.The Executive Officer,
Arulmighu Keerthieswaraswami Temple,
Sodamangalam, Papanasam Taluk,
Tanjore District.

3.The Fit Person (Thakkar),
Arulmighu Azhakiya Nachiamman Thirukoil,
Manojiyappachavadi, Aiyampettai (Post),
Papanasam Taluk, Tanjore District.

4.Ayyampettai Manojiyappa Chavadi
Sri Azhakiya Nachiamman Temple
by Hereditary Trustee, Purushothaman Poosari,
Manojiyappa Chavadi, Ayyampettai (Post),
Papanasam Taluk, Tanjore District.

.. Respondents/
Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order, dated 09.01.2015, passed in W.P(MD)No.5144 of 2012, by the learned Single Judge.

Prayer in WP(MD). 5144/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari , to call for the records relating to the impugned Orders of the first respondent made in his proceedings in Say.Mu.Mo.Mu.No.17395/2011/E2/ dated 18.11.2011 and quash the same as illegal and unsustainable .



For Respondent No.1 : Mr.A.K.Baskarapandian,
Special Government Pleader.

For Respondent No.3 : Mr.V.Chandrasekar

For Respondent No.4 : Mr.T.R.Subramanian

For Respondent No.2 : No appearance

J U D G M E N T

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.]

The writ petitioner is the appellant and aggrieved by the impugned order, dated 09.01.2015, in and by which, the writ petition, came to be disposed of, with certain directions, he has filed this writ appeal.

2.The facts leading to the filing of this writ appeal, as had been narrated in detail and in extenso in the impugned order, which is the subject matter of challenge in the writ petition and hence, it is unnecessary to restate the facts once again, except to narrate the relevant facts, for the purpose of disposal of this writ appeal:

(i)One Rathinam Poosari claimed to be the Hereditary Trustee of Sri Alagianachiamman Temple, Manojiappa Chavadi, Ayyampettai, has filed Original Suit No.155 of 1969 on the file of the Court of District Munsif at Tiruvaiyaru, against Lakshmi Ammal and Prathaba Krishnaswami Naicker [father of the appellant] and five others, praying for redemption. The suit went on trial and the Trial Court, in paragraph No.12 of the Judgment, has recorded the findings as follows:

"... I find that the plaintiff has failed to prove that he is the trustee of Alagiyachiamman temple. ... It is not probable to believe that the second defendant and his predecessors were the hereditary trustee of the plaint temple under Exs.B.1 to B.2, the second defendant was described as the Managing trustee of the temple. ... I find that the power to enquire into and decide the dispute with regard to hereditary trusteeship is vested with the Deputy Commissioner under Section 63(b) of the Madras Hindu Religious and Charitable Endowment Act of 1959 and therefore, I am of the opinion that this Court has no jurisdiction to decide the question of hereditary trusteeship and therefore, I direct the parties to establish their claim in respect of the hereditary trusteeship in the appropriate forum".

(ii)The Trial Court, vide Judgment, dated 27.07.1972, has dismissed the suit. The plaintiff, aggrieved by the dismissal of the suit, filed Appeal Suit No.141 of 1973, on the file of the Court of Subordinate Judge at Thanjavur. The Lower Appellate Court has formulated the following points for determination:



- "(i)Has the Civil Court no jurisdiction to try the suit?
(ii)Is the plaintiff hereditary trustee of the temple?
(iii)Is the plaintiff entitled to redeem the suit othi?"

(iii)The Lower Appellate Court, in paragraph No.10, of the Judgment, observed, as follows:

"... It is therefore clear that the second defendant has been paying kist for that temple lands in his capacity as trustee of the temple. The documentary evidence produced by the plaintiff does not show that poosaris were ever described as the hereditary trustees of the temple. ... It would thus be seen from the above discussion, that the second defendant has been functioning as the trustee of the temple and that the materials on record only show that the plaintiff and his ancestors had only acted as poosaris. ... The materials on record on the other hand show that the second defendant has been managing as the trustee. My finding under this point therefore, is that the plaintiff is not the hereditary trustee of the temple".

The Lower Appellate Court, vide Judgment and decree, dated 07.12.1973, has dismissed the appeal and confirmed the Judgment and decree passed by the Trial Court and it is brought to the knowledge of this Court that no further challenge has been made to the said Judgment and decree and it has become final.

(iv)The son of the second defendant in the said suit, namely, Prathapakrishnaswami Naicker, has filed W.P(MD)No.5144 of 2012, challenging the order of the first respondent, dated 18.11.2011, in and by which, the Fit Person, namely, the third respondent, has been appointed under Section 54(3) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

(v)The writ petitioner in respect of his case, has mainly placed reliance upon the above said findings rendered by the Civil Court.

(vi)The learned Judge after taking note of the materials placed and the rival submissions, found that as O.A.No.151 of 1973 was filed during pendency of the appeal [A.S.No.141 of 1973], the plaintiff as the applicant before the Deputy Commissioner, ought to have impleaded other rival claimants for effectively deciding the issue by the competent authority and therefore, directed the competent authority, i.e., Joint Commissioner or Deputy Commissioner, as the case may be, to decide the issue relating to Hereditary Trusteeship in the presence of the petitioner and the fourth respondent and till then, opined that the temple be headed by the fit person, namely, the third respondent appointed by the first respondent herein. The learned Single Judge also having note of the fact that the condition of the temple and the urgent need to perform Thirupani/Kumbabishekam, in paragraph No.14 of the order, has also



directed the first respondent to constitute a Committee, comprising of the officials as well as the appellant/writ petitioner and one Purushothaman - fourth respondent and it is brought to the knowledge of this Court that Kumbabishekam has also been performed.

3.The only issue to be decided is whether the Joint Commissioner can hold enquiry as to the matter of Hereditary Trustee in the light of the power conferred under Section 63(b) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959?

4.The learned Judge while disposing of the writ petition with the observation, has taken into consideration of the fact that original application in O.A.No.151 of 1973 came to be filed during pendency of the said appeal and therefore, thought fit to direct the Joint Commissioner or Deputy Commissioner, as the case may be, to decide the issue relating to Hereditary Trusteeship, in the presence of the petitioner and the fourth respondent. In the considered opinion of this Court, the said order, in the facts and circumstances, is not only passed on the basis of equity, but also with regard to the position of law, in terms of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and this Court finds no infirmity in the said findings.

5.Since the learned Judge did not indicate as to the filing of applications under Section 63(b) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, by the appellant/writ petitioner as well as by the fourth respondent, this Court grants opportunity to the appellant/writ petitioner as well as to the fourth respondent to file separate petitions under Section 63(b) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, to declare as Hereditary Trustee, along with relevant and authenticated documents, within a period of six weeks from the date of receipt of a copy of this order to the first respondent and upon receipt of the said applications, the first respondent, shall entertain the same, if the papers are otherwise in order, and thereafter, after providing an opportunity of personal hearing to the appellant/writ petitioner as well as to the fourth respondent, either by themselves or through the counsel, shall decide the applications, on merits and in accordance with law and pass appropriate orders, within a further period of ten weeks, thereafter and communicate the decision taken, to the appellant/writ petitioner as well as to the fourth respondent.

6.In the result, this writ appeal is dismissed, confirming the order, dated 09.01.2015, made in W.P(MD)No.5144 of 2012, by the learned Single Judge, subject to above observations. No costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar (CSIII)

/True Copy/

Sub-Assistant Registrar



To

The Joint Commissioner, H.R. & C.E.,
Office of the Joint Commissioner,
H.R. & C.E., Thanjavur District.

+One cc to Mr.V.Chandrasekar, Advocate, SR.No.43898

+One cc to Mr.R.Govindaraj, Advocate, SR.No.43886

+One cc to the Special Government Pleader, SR.No.44538

+One cc to Mr.T.R.Subramanian, Advocate, SR.No.43795

smn

RL/6C/5P/KK/SAR1/15/2/2018

JUDGMENT MADE IN
W.A (MD) No.234 of 2015
and
M.P (MD) No.1 of 2015

24.01.2018