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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 22.02.2018

CORAM:

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

W.A(MD)No. 954 of 2011
and
M.P(MD)Nos.2 and 3 of 2011

K.Kannan

..Appellant/ Petitioner

Vs.

1.The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Thiruvananthapuram Road,
Palayamkottai,
Tirunelveli District.

2.The Executive Officer,
Arulmigu Kasiviswanathar Thirukkivil,
Tenkasi,
Tirunelveli District.

3.T.Venkatraman

.. Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent,
to set aside the order passed by this Court in W.P.(MD)No.14802 of
2010, dated 06.04.2011.

Prayer in WP(MD). 14802/ 2010 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court to issue a Writ of
Certiorari, calling for the Impugned Order of the 2nd respondent
dated 22/07/2010 and to quash the same.

For Appellant
For Respondents

: Mr.S.Veeranasamy
: Mr.A.K.Baskara Pandian
Special Government Pleader for R.1

Mr.K.Mahendran for R.2

No appearance for R.3

JUDGMENT

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

The writ petitioner is the appellant and according to him, he is the President of "Tamil Matha Pirappu Tiruvilaku Poojai Committee" of Arulmighu Kulalvaimozhi Mangai Sametha Kulasekaranathar Thirukovil, Tenkasi, which comes under the control of the first respondent. The petitioner would state that the said society is a registered society, registered under the provisions of the Tamil Nadu Societies Registration Act, 1925 and Rules framed thereunder. The petitioner Sangam/Society submitted a representation to the second respondent on 07.06.2010, seeking permission to conduct "Thiruvizhaku Poojai" on the first day of every month and "Thiruvadhurai Tiruvizha".

2. The Board of Trustees of Arulmighu Kulalvaimozhi Mangai Sametha Kulasekaranathar Thirukovil, Tenkasi, has favourably considered the said request and passed a resolution on 08.07.2010, permitting the said Society to conduct the said Pooja, subject to certain conditions. However, vide resolution dated 22.07.2010, the Board of Trustees of the said temple has taken into consideration an yet another application dated 13.07.2010 submitted by the third respondent herein and took a decision to conduct the Pooja by the temple themselves and challenging the legality of the same, the petitioner has filed the writ petition in W.P.(MD)No.14802 of 2010.

3. The writ petition was entertained. The learned Judge upon hearing the rival submissions, observed that the impugned order is only a resolution passed by the trustee committee and in the impugned order, it has also been pointed out that in view of the dispute between the writ petitioner and the third respondent, a fair decision has been taken by the temple to conduct the said Pooja by themselves and therefore, the writ petitioner cannot have any grievance and stating the said reasons, has dismissed the writ petition vide impugned order dated 06.04.2011 and challenging the legality of the said order, the writ petitioner has filed this appeal.

4. Mr.S.Veeranasamy, learned Counsel appearing for the appellant/writ petitioner, has invited the attention of this Court to Section 49-B of the Tamil Nadu Hindu Religious Charitable and Endowment Act, 1959 (in short "HR & CE Act") and would submit that though the Board of Trustees has power to reinstate or recall the earlier resolution, it should be submitted to the jurisdictional HR & CE official, who has to consider and pass orders and admittedly, the said exercise has not been done and hence, prays for interference.

5. Per contra, Mr.A.K.Baskarapandian, learned Special Government Pleader appearing for the first respondent would submit



that it is only a resolution and as such, the appellant/writ petitioner cannot have any enforceable right to implement the same and the learned Judge has taken note of the factual aspects and rightly reached the conclusion to dismiss the writ petition and prays for dismissal of this writ appeal.

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6. Mr.K.Mahadevan, learned Standing Counsel appearing for the second respondent would submit that since the third respondent has also submitted an application/representation to conduct the same Poojas, apprehending difficulty and some problem, the Temple administration took a fair and conscious decision to conduct the said Pooja by themselves and it cannot be interfered with for the reason that the discretion has been exercised in a fair and proper manner and prays for dismissal of the writ appeal.

7. This Court has considered the rival submissions and perused the materials placed on record.

8. It is relevant to extract Section 49-B of the HR & CE Act, which reads thus:

"49-B. Power of Executive Officer and Chairman of Board of Trustees not to implement order or resolution of the trustees or Board of Trustees in certain cases:- (1) Where an Executive Officer or a Chairman of Board of Trustees considers that an order or resolution passed by a trustee or the Board of Trustees -

(a) has not been passed in accordance with law;

(b) is in excess or abuse of the powers conferred on the trustee or the Board of Trustees by or under this Act, or by any other law;

(c) if implemented, is likely to cause financial loss to the institution or endowment, danger to human life, health or safety, or is likely to lead to a riot or breach of peace ; or

(d) is not beneficial to the institution or endowment;

the Executive Officer or the Chairman of Board of Trustees, as the case may be, may, without implementing such order or resolution, place the matter before the trustee or Board of Trustees along with a note pointing out the objections to the order or resolution and request the trustee or the Board of Trustees to re-consider the order or resolution.

(2) The Executive Officer or the Chairman of Board of Trustees shall forthwith submit a report of the action taken by him under sub-section (1) to the Commissioner, Joint Commissioner, Deputy Commissioner or Assistant Commissioner, as the case may be.

(3)(a) Where the order or resolution is placed for re-consideration under sub-section (1), the trustee or the Board of Trustees shall re-consider the order or resolution having due regard to the objections contained in the note



and pass such further order or resolution as he or it may deem fit. A copy of every such further order or resolution shall be sent forthwith to the Commissioner, Joint Commissioner, Deputy Commissioner or the Assistant Commissioner, as the case may be, who may pass such order as he deems fit.

(b) Where after the expiry of sixty days from the date on which the order or resolution was placed for re-consideration under sub-section (1), the trustee or the Board of Trustees fails to pass further order or resolution as required under clause (a), the Commissioner, Joint Commissioner, Deputy Commissioner or the Assistant Commissioner, as the case may be, may pass such order as he deems fit.

(c) Every order passed by the Commissioner, Joint Commissioner, Deputy Commissioner or the Assistant Commissioner, as the case may be, under clause (a) or clause (b) shall be final and binding on the trustee or Board of Trustees and the Executive Officer."

9. No doubt, the Board of Trustees of the second respondent temple is entitled to pass a resolution reinstating or recalling the earlier resolution. But, as per Sub-Section (3)(a) of Section 49-B of the HR & CE Act, such a resolution has to be sent forth to the Commissioner, Joint Commissioner, Deputy Commissioner or the Assistant Commissioner, as the case maybe, who may pass such order as they deem fit. As rightly pointed out by the learned Counsel appearing for the appellant/writ petitioner, the said provision has not been complied with. It is also a well settled position of law that when the statute prescribes a thing to be done in a particular manner, it should be done in that way and not in any other way and admittedly, the official respondents did not carry out the said exercise in accordance with the said provision and hence, on this sole ground, the impugned resolution passed by the second respondent warrants interference.

10. In the result, this writ appeal is partly allowed and the order dated 06.04.2011 passed in W.P.(MD)No.14802 of 2010 is set aside and the resolution of the second respondent dated 22.07.2010, is also set aside and the petitioner Society/Sangam is at liberty to submit a fresh representation to the second respondent, within a period of two weeks from the date of receipt of a copy of this order and upon receipt of the same, the second respondent is directed to consider the said representation on merits and in accordance with law and pass orders within a further period of two weeks thereafter and communicate the decision taken to the appellant/writ petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CSII)



To

WEB COPY

The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Thiruvananthapuram Road,
Palayamkottai,
Tirunelveli District.

+One cc to The Special Government Pleader, SR.No.50771

+One cc to M/s.K.Mahendran, Advocate, SR.No.50529

+One cc to M/s.S.Veeranasamy, Advocate, SR.No.50528

gk/rmi

RL/5C/5P/SKN/RSK/SAR1/2/3/2018

JUDGMENT MADE IN
W.A(MD)No. 954 of 2011
and
M.P(MD)Nos.2 and 3 of 2011

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