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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2019

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THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.NO.10052 OF 2018

AND

W.M.P.NO.12010 OF 2018

V.R.Somasundaram

... Petitioner

-vs-

1. The Commissioner,
Hindu Religious and Charitable Endowment Board,
No. 119, Uttamar Gandhi Salai,
Nungambakkam,
Chennai - 600 034.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowment Board,
No. 119, Uttamar Gandhi Salai,
Nungambakkam,
Chennai - 600 034.
3. The Executive Officer,
Raman Chetty Kattalai,
C/o. Arulmigu Maruntheeswarar Thirukovil,
Thiruvannamiyur,
Chennai - 600 041.

... Respondents

Prayer:-

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records of the First Respondent culminating in the order dated 14.11.2017 passed by the First Respondent in A.P. 16/2017 and direct the First Respondent to appoint the Petitioner as Hereditary Trustee in Raman Chettiar Kattalai/Trust and quash the same.

For Petitioner : Mr.M.Aravind Subramaniam
For Respondents: Mr.M.Maharaja,
Special Government Pleader (HR & CE)
(for R1 and R2)
Mr.A.K.Sriram for
M/s.A.S.Kailasam Associates (for R3)



O R D E R

Heard Mr. M. Aravind Subramaniam, Learned Counsel for the Petitioner, Mr. M. Maharaja, Learned Special Government Pleader (HR & CE) appearing for the First and Second Respondents and Mr. A.K. Sriram, Learned Counsel appearing for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner had filed an application in under Section 54(3) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as the 'Act' for brevity), before the Second Respondent to appoint him as Hereditary Trustee in Raman Chettiar Kattalai Trust, but the same was rejected by order dated 20.03.2017 in Na. Ka. No. 12675/2016/A1, and the appeal preferred by him under Section 54 (4) of the Act before the First Respondent has been dismissed by order dated 14.11.2017 in A.P. No. 16/2017 D2. Aggrieved thereby, the Petitioner has filed this Writ Petition challenging the same.

3. Learned Counsel for the Respondents point out that the father of the Petitioner, viz., S.M.C. Veerappan Chettiar, had initiated proceedings in O.A. No. 7/84 under Section 63(b) of the Act before the Deputy Commissioner, Hindu Religious and Charitable Endowments Administration Department, in which his claim for hereditary trusteeship was rejected by order dated 30.10.1985 in O.A. No. 7/84 passed by the Deputy Commissioner. It is further contended that the said S.M.C. Veerappan Chettiar had preferred an appeal against that order in A.P. No. 28/1986 before the First Respondent, which was dismissed by the order dated 30.10.1985 confirming the same, and that has attained finality as it had not been questioned in any further proceedings in the manner recognized by law at any time thereafter, and as such, the Petitioner, who claims hereditary rights only through his father, is bound by that adjudication and cannot re-agitate the matter.

4. However, Learned Counsel for the Petitioner seeks to differentiate that the aforesaid proceedings had been initiated under Section 63(b) of the Act, while the present proceedings arise under Section 54(3) of the Act.

5. It could be noticed on a reading of the aforesaid statutory provisions that the proceedings under Section 63(b) of the Act are wider in scope and would encompass proceedings under Section 54(3) of the Act as well. In such circumstances, the Petitioner cannot re-agitate the same claim under the guise of another provision of the statute for the same right, which has



already been negatived. Apart from the aforesaid reason, the First Respondent has elaborately dealt with the contentions raised by the Petitioner in the impugned order, which reads as follows:-

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14. Sec 6(11) of the Act read as follows:- "Hereditary trustee" means the trustee of a religious institution, the succession to whose office devolves by hereditary right or is regulated by usage or is specifically provided for by the founder, so long as such scheme of succession is in force". The person who claims hereditary right should satisfy any one of the limbs provided u/s. 6(11) of the Act. In this case, the administration of the trust was not vested with the family of the appellants for more than 3 generations uninterruptedly. From the year 1984 onwards, the administration was vested with the Fit person appointed by the department. The appellant has failed to prove that the trust has been managed by his family for more than 3 generations without any interference. Secondly, the succession to the office of the Trusteeship was not regulated by usage. Thirdly, the founder does not provide any scheme of succession in the Trust deed. It was not proved by the appellant with cogent evidence under which limb he is claiming hereditary Trusteeship.

15. Further, the Joint Commissioner along is the competent authority to decide whether the office of the trustee is hereditary or non-hereditary u/s. 63(b) of the TN HR & CE Act 1959. Accordingly the office of the Trusteeship of the said Kattalai has been declared as non-hereditary u/s. 63(b) of the Act by the Deputy Commissioner, Chennai in O.A. No. 7/1984 in the year 1985 itself. Hence, the judgements relied upon by the appellant did not apply to his case.

16. Further, the appellant herein had applied for the appointment of Trustee, pursuant to the notification issued u/s. 57 of the Act by the Joint Commissioner has called for application from the qualified persons for the appointment of Trustees to the said Trust as per the scheme settled in O.A. No. 107/1981 dated 29.01.1983. As claimed by the appellant, if the office of the trusteeship is hereditary, then the appellant would have filed an application u/s. 54(1) of the Act to record his succession. As per the death certificate produced by the appellant, his father Thiru.S.M.C.Veerappan died on 17.11.1991, but the appellant did not file any application u/s. 54(1) of



the Act to record his succession after the death of his father in the year 1991. But he was appointed in the year 2015 as Non-Hereditary Trustee as per the provisions of the scheme only.

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17. Further, the Original Scheme settled in the year 1941 or the modified scheme, does not contain provision making the trusteeship hereditary. Further, lastly the scheme was modified in the year 1983 only on the petition filed by the appellant's father, he filed the said petition without staking a claim to the Hereditary Trusteeship.

18. Further, the scheme provides for appointment of Trustees from the descendent of the donor. All the descendants of the donor are entitle for the appointment as Trustees and it is not restricted to one person or one family. If the descendants of the donor are more in number, the department has option to appoint any one of them as Trustee. But as claimed by the appellant if he is appointed as Hereditary Trustee, it will affect the accrued right of other descendants of the donor."

The Hon'ble Supreme Court of India in General Manager, Electrial Rengali Hydro Electric Project, Orissa -vs- Sri Giridhari Sahu (Judgment dated 12.09.2019 in Civil Appeal No. 8071 of 2010), after referring to earlier decisions, has succinctly explained the scope of the certiorari jurisdiction of the High Courts as follows:-

"29. On the conspectus of the decisions and material, we would hold as follows:

The jurisdiction to issue writ of certiorari is supervisory and not appellate. The Court considering a writ application of Certiorari will not don the cap of an Appellate Court. It will not reappreciate evidence. The Writ of Certiorari is intended to correct jurisdictional excesses. A writ of prohibition would issue when a Tribunal or authority has not yet concluded its proceedings. Once a decision is rendered by a body amenable to Certiorari jurisdiction, certiorari could be issued when a jurisdictional error is clearly established. The jurisdictional error may be from failure to observe the limits of its jurisdiction. It may arise from the procedure adopted by the body after validly assuming jurisdiction. It may act in violation of principles of natural justice. The body whose decision which



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comes under attack may decide a collateral fact which is also a jurisdictional fact and assume jurisdiction. Such a finding of fact is not immune from being interfered with by a Writ of Certiorari. As far as the finding of fact which is one within the jurisdiction of the court, it is ordinarily a matter 'off bounds' for the writ court. This is for the reason that a body which has jurisdiction to decide the matter has the jurisdiction to decide it correctly or wrongly. It would become a mere error and that too an error of fact. However, gross it may amount to, it does not amount to an error of law. An error of law which becomes vulnerable to judicial scrutiny by way of Certiorari must also one which is apparent on the face of the record. As held by this Court in Hari Vishnu Kamath v. Ahmed Ishaque (AIR 1955 SC 233), as to what constitutes an error apparent on the face of the record, is a matter to be decided by the court on the facts of each case. A finding of fact which is not supported by any evidence would be perverse and in fact would constitute an error of law enabling the writ court to interfere. It is also to be noticed that if the overwhelming weight of the evidence does not support the finding, it would render the decision amendable to certiorari jurisdiction. This would be the same as a finding which is wholly unwarranted by the evidence which is what this Court has laid down M/s. Perry and Co. Ltd. v. P.C. Pal, Judge of the Second Industrial Tribunal, Calcutta and others (AIR 1970 SC 1334)."

On a reading of the cogent reasons assigned by the First Respondent in the impugned order viz-a-viz the parameters laid down for interference in the exercise of discretionary power of judicial review under Article 226 of the Constitution, coupled with the facts of this case, it is evident that none of the contentions raised on behalf of the Petitioner impeaching the orders passed by the First and Second Respondents, could be countenanced, and this Court does not find any acceptable ground to interfere with the same.

6. In the result, the Writ Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vjt



To

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Thiruvannamiyur,
Chennai - 600 041.

+1cc to Mr.M.Aravind Subramaniam, Advocate, S.R.No.99648
+1cc to M/s.A.S.Kailasam Associates, Advocate, S.R.No.99306
+1cc to the Government Pleader, S.R.No.100111

W.P.No.10052 of 2018

BS (CO)
CS/09/01/2020