IN THE HIGH COURT OF JUDICATURE AT MADRAS
Orders Reserved on : 27..11..2019
Orders Pronounced on : 20..12..2019
CORAM
THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.20784 of 2010

Sri-la-Sri Sathya Gnana Mahadeva
Desika Paramachariya Swamigal,
Adheenakarthar of Velakurichi Adheenam
and Hereditary Trustee of
Sri.Utharapatheeswaraswami Temple,
at Tiruchangattangudi,
Nagapattinam District &
Sri.Mehanathaswami Temple,
at Tirumeyachur, Tiruvarur District.

... Petitioner

-Versus-

The Commissioner,
Hindu Religious and Charitable Endowment
Department (Admn.,),
119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai 600 034.

... Respondent

Petition filed under Article 227 of the Constitution of India, praying to Writ of Certiorarified Mandamus calling for the records relating to the order of the respondent made in Na.Ka.No.14498/2010/H1, dated 20.08.2010 and to quash the same as far as the opening of second Account concerned and thereby direct the respondent to follow the scheme in toto.

For Petitioner : Mr.A.R.Nixon

For Respondent(s) : Mr.M.Maharaja,
Spl. Government Pleader
(HR & CE)

ORDER

This writ petition challenges the order passed by the respondent - Commissioner, Hindu Religious and Charitable Endowment Department (Administration), Chennai, directing the petitioner to open and operate a second bank account for Sri

Utharapatheeswaraswami Temple at Thiruchengattangudi and Sri Meganathaswami Temple at Thirumeyachur as per Rule 7 of The Collection of Income and the Incurring of Expenditure Rules.

2. The brief facts leading to the filing of this writ petition are as follows:- The petitioner is the hereditary trustee of Sri Utharapatheeswaraswami Temple at Thiruchengattangudi and Sri Meganathaswami Temple at Thirumeyachur. The above temples have been governed by an amended scheme dated 23.01.1935 made in O.S.No.7 of 1933 on the file of the learned District Judge, Nagapattinam. Under the scheme, the administration of the devasthanam shall vest in the board of trustees consisting of a hereditary trustee, who shall hold the office for life and trustees to be appointed by the board and one of the trustees shall be nominated by the board as Managing Trustee. The petitioner's grand father was originally the hereditary trustee. After his demise, the father of the petitioner was recognized as the hereditary trustee. After the demise of the father of the petitioner, being the eldest son, the request of the petitioner to permit him to hold the hereditary office has been accepted by the respondent and he has become the hereditary trustee.

3. It is the further case of the petitioner that initially the treasurer of the devasthanam was appointed by the board on monthly salary with certain conditions thereafter, the Executive Officer has been appointed to function in the place of the treasurer to act and discharge the functions of the treasurer. The Managing Trustee shall have the general power of supervision and control over the treasurer as per clause 11 of the scheme decree. The treasurer have to keep the true and proper accounts of all incomes and expenditures of the devasthanam.

4. While so, earlier, the respondent department, had sent a letter to the petitioner requiring him to open a second account for Meganathaswami temple at Thirumeyachur and Sri Utharapatheeswaraswami Temple at Thiruchengattangudi, Nagapattinam District for which the petitioner had issued a reply stating that there is no provision for the opening of the second account under the scheme decree. The grievance of the petitioner is that without considering his reply, the respondent by way of impugned order directed him to open a second bank account which is not only against the scheme decree but is also without power. Hence, this writ petition.

5. The respondent filed a detailed counter affidavit inter alia contending that the two temples referred to in the petition are Hindu Public Institutions which come under the administration and supervisory control of the respondent

department and have been included in the list published under Section 46 of the The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 [in short "the HR & CE Act"] and the petitioner has been functioning as the hereditary trustee of the above said religious institutions. The original scheme was framed in the year 1913 in O.S.Nos.28, 29 and 60 of 1913, which was subsequently amended by way of order dated 23.04.1935 and further amended by order dated 23.01.1935 in O.S.No.7 of 1933 on the file of the learned District Judge, Nagapattinam. Under the scheme, the treasurer should be appointed on a monthly salary and he is empowered to collect all rents and offerings, presents and other incomes whatsoever of the devasthanam. The treasure alone is empowered to make all payments on behalf of the devasthanam and he shall keep true and proper accounts of all incomes and expenditure of the devasthanam which is subject to the inspection by the trustees. The treasurer shall four months prior to the commencement of the fasli year, prepare and submit budget of the estimate receipts and expenditure for the ensuing year to the Managing Trustee.

6. It is further submitted by the respondent that now under Section 116(2)(x) of the HR & CE Act, necessary rules viz., The Collection of Income and the Incurring of Expenditure Rules have been framed. As per Rule 7 of the Rules, a second account should be opened int he name of the Executive Officer and the amounts required for expenditure shall be transferred from the first account to the second account. The amount to be operated in the second account shall not exceed the limit fixed by the Commissioner, Joint Commissioner, Deputy Commissioner or Assistant Commissioner, as the case may be, and such limit shall not exceed the one-twelfth of the annual expenditure of the temple. If one-twelfth of the annual expenditure of the temple is spent on festivals, further expenditure not exceeding one-twelfth of the annual expenditure of the temple maybe operated. Pursuant to the above rule only, the impugned order has been passed directing the petitioner to open a second account for the purpose of maintaining the expenditure account.

7. It is also stated by the respondent that after the HR & CE Act, came into being, as per section 118(2)(b)(i) and (ii) of the Act, any scheme settled under the earlier Act, viz., Madras Act II of 1927, which is repugnant to any provisions contained in the HR & CE Act [Tamil Nadu Act XXII of 1959] and the rules made thereunder, later provisions alone shall prevail and the former provisions shall to the extent of repugnance may be void. That apart, under Section 27of the Act, all the trustees of the religious institutions shall be bound to obey all the lawful orders issued under the provisions of the Act by the Government or Commissioner, etc. The petitioner, who is the Head of a Math and Ex Officio hereditary trustee of the temples, has been

recognized and being permitted by the court as per scheme decree, is only to contribute spiritual obligations and act as an Advisor to the management of the temples alone. The petitioner cannot be a sharer in the income of the temples. That apart, when the petitioner has not objected to the opening of the second account for one another temple government under the very same scheme, now, it is not open to him to raise objection for the opening of the second account. Challenge to the direction for opening of a second account is not legally sustainable and the writ petition is liable only to be dismissed.

8. I have heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondent and also perused the records carefully.

9. The petitioner who has been holding the hereditary office of the temple challenged the order of the respondent directing to open a second account for the two temples referred to supra mainly on the ground that the order has been passed against the scheme decree. Under the scheme the respondent had no power to direct the petitioner to open a second bank account and the petitioner alone is empowered to operate and manage the accounts of the temples. According to the petitioner, scheme alone would prevail over the statutory provisions and the temples should be managed as per the scheme.

10. Before considering the rival contentions, it would be useful to refer the relevant provisions of the scheme relating to the management of income and expenditure of the temples. The relevant provisions of the Scheme viz., 11 to 16 read as follows:-

> "11. The Managing Trustee shall have a general power of supervision and control over the Treasurer. He shall have power to suspend the Treasurer for any sufficient grounds subject to the approval of the Board, and pending investigation into his conduct.
>
> 12. The Board shall have power to fine, suspend or dismiss the Treasurer, and such orders of the Board shall be final.
>
> 13. All rents, offerings, presents and other incomes whatsoever of the Devasthanam shall be received only by the Treasurer.
>
> Provided that this rule shall not apply to any offerings or presents, which any employee of the temple is entitled to receive for his own benefit.

14. The Treasurer shall make all payments on behalf of the Devasthanam and must obtain vouchers for all such disbursements.

14-A The Treasurers shall have not power to disburse more than Rs.10/- of the temple money at a time or dispose of temple paddy or articles without the previous sanction of all the Trustees, or a majority of them, or the Managing Trustee and he shall get proper Vouchers therefor.

15. There shall be two locks for every room, chest or box containing jewels or other articles of value belonging to the Devasthanam, and the Treasurer shall be in charge of the key of one of such locks, the other being in charge of the Managing Trustee.

16. The Treasurer shall keep true and proper accounts of all incomes and expenditure of the Devasthanam. He shall allow inspection thereof to the Trustee at any time. Any worshipers or other person interested in the Devasthanam may inspect the accounts on payment of a fee of Re.1/- for each year's accounts and on obtaining the permission of the Managing Trustee in writing or the order of the Board."

11. Under the scheme, the treasurer is empowered to receive rents and offerings, presents and other incomes whatsoever of the devasthanam. Under clause 11 of the scheme, the Managing Trustee only have the general power of supervision and control over the treasurer.

12. From a careful reading of the above provisions, it would be explicitly clear that the treasure alone empowered to maintain the income and expenditure account of the temples and the Managing Trustee shall have only a general power of supervision and control over the treasurer and not on the income and expenditure of the temples.

13. The learned counsel appearing for the petitioner placing reliance heavily upon certain provisions in the Rules framed by the respondent in the year 1949 based upon the powers conferred under clause 33 of the scheme would contend that as per rule 19,

the Managing Trustee is empowered to operate the account. Rule 19 empowers the treasurer to retain a sum up to rupees three hundred only and any sum over and above rupees three hundred shall be deposited in the name of the deity in the bank approved by the board. Under this rule, the Managing Trustee alone is empowered to operate the bank account. The relevant rule framed under the scheme is extracted here below for reference:-

> "19. The treasurer shall not at any time retain more than Rs.300/- his control or custody. All sums over and above the said sum shall be deposited in the name of the deity in an approved bank or in such other bank as maybe specifically approved by the board. The Managing Trustee shall be person competent to operate on the bank account."

14. Even under the above rule, the Managing Trustee is only permitted to operate the bank account which was maintained by the treasurer and there is no prohibition for opening of a second account. That apart, in the considered opinion of this court, the very rules which were framed under clause 33 of the scheme is not in consonance with the main scheme which empower the treasurer alone to operate the account and the Managing Trustee has been authorized only to supervise the treasurer.

15. Be that as it may, now, the impugned order has been passed pursuant to rule 7 of The Collection of Income and the Incurring of Expenditure Rules which reads as follows:-

> "7. Accounting collections without delay.- (a) All receipts shall be deposited in the first account to be operated jointly by the Chairman, Board of Trustees and the Executive Officer concerned. The cheque book and pass book shall be in the custody of the Executive Officer.
>
> (b) A second account shall be opened in the name of the Executive Officer and the amounts required for expenditure shall be transferred from the first account to the second account. The amount to be operated in the second account shall not exceed the limit fixed by the Commissioner, Joint Commissioner, Deputy Commissioner or Assistant Commissioner, as the case may be, and such limit shall not exceed one-twelfth of the annual expenditure of the temple. If one-twelfth of the annual expenditure of the temple is spent on festivals, further expenditure not exceeding

one-twelfth of the annual expenditure of the temple may be operated."

16. Even assuming that the scheme prohibits the opening of a second account in the name of the Executive Officer (Treasure), as per Section 118(2)(b)(i) & (ii) of the HR & CE Act , the rules made under the Act alone would prevail over the scheme, therefore, it is not open to the petitioner to contend that the order impugned in this writ petition has been passed against the scheme and without jurisdiction. The order impugning in this writ petition directing the Executive Officer and the petitioner to open a second account is in accordance with law and the same would no way cause any prejudice to the petitioner and the petitioner cannot resist the order for opening of a second account. In the above circumstances, this court does not find any illegality or irregularity in the order of the respondent and the writ petition is devoid of merits and the same is only liable to be dismissed.

In the result, this writ petition is dismissed and the order of the respondent stands confirmed. No costs.

Sd/-
Assistant Registrar(CS-III)

// True Copy//

Sub Assistant Registrar

kmk

To

1. The Commissioner, H.R & C.E. Department (Administration),
No.119, Uthamar Gandhi Salai,
Nungambakkam, Chennai 600 034.

+1cc to Mr.A.R.Nixon, Advocate, SR.No.106009.
+1cc to Government Pleader, SR.No.106615.

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SV(CO)
CSR: 20.01.2020