

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.5526 of 2012

and

M.P.No.1 of 2012

A.G.Mohan

... Petitioner

vs.

1.The Commissioner,

Hindu Religious and Charitable Endowments Department,
Uthamar Gandhi Salai,
Nungambakkam,
Chennai - 34.

2.The Assistant Commissioner,

Hindu Religious and Charitable Endowments Department,
Uthamar Gandhi Salai,
Nungambakkam,
Chennai - 34.

3.The Executive Officer,

Sri Chenna Malleeswarar,
Sri Chenna kesava Perumal Devasthanam,
85, Devaraj Mudali Street,
Chennai - 600 003.

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for writ of certiorari calling for the records of the third respondent dated 21.02.2012 and quash the same.

For Petitioner : Mr.N.Velmurugan

For Respondents 1 & 2: Mr.M.Maharaja
Special Government Pleader

For R-3 : No appearance

ORDER

This writ petition has been filed challenging the order dated 21.02.2012 passed by the third respondent nominating a fit person as per provisions of Section 49 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as "the Act, 1959").

2. According to the petitioner, his ancestors founded the temple and they were in management of the temple Sri Siddhi Vinayagar Bala Subramaniyan @ Manthirikkira Pillayar Thirukoil for nearly 100 years. It is the case of the petitioner that his father late Govindasamy filed a petition under Section 63(b) of the Act, 1959 before the Deputy Commissioner of Madras in O.A.No.98/80 for the statutory declaration of hereditary trusteeship. But it was dismissed on an erroneous application of law and facts. Aggrieved by the same, the petitioner's father late Govindasamy preferred an appeal A.P.No.29 of 1986 before the Commissioner, Hindu Religious and Charitable Endowments and the same was also dismissed. Aggrieved by the dismissal of A.P.No.29 of 1986, the petitioner's father late Govindasamy filed a suit O.S.No.10102 of 1989 before the VIII Assistant Judge, City Civil Court, Chennai and the same was also dismissed. Aggrieved over the same, the petitioner's father late Govindasamy preferred an appeal A.S.No.476 of 1993 before this Court and the same was also dismissed. According to the petitioner, a review application has also been filed against the dismissal of A.S.No.476 of 1993.

3. It is the case of the petitioner that without giving any notice, the third respondent issued the impugned order nominating a fit person under Section 49 of the Act. Aggrieved by the same, this writ petition has been filed.

4. Heard Mr.N.Velmurugan, learned counsel for the petitioner and Mr.M.Maharaja, learned Special Government Pleader for the respondents 1 and 2.

5. At the outset, the learned Special Government Pleader submitted that after the impugned order, the fit person has not taken charge. According to him, since a statutory appeal is available under Section 21(a) of the Act, 1959, the petitioner can even now approach the appellate authority challenging the impugned order.

6. The learned counsel for the petitioner has also fairly accepted to file an appeal, provided the period of limitation as

prescribed under the Act is extended by this Court to enable him to file an appeal.

7. This Court is of the considered view that since a fit person has not taken charge as per the impugned order, the appropriate legal recourse available to the petitioner is to file the statutory appeal under Section 21-A of the Act, 1959. However, Appeal under Section 21-A of the Act, 1959 as against the order passed by the third respondent will have to be filed within three months which the petitioner has not filed. In the case on hand, the petitioner has filed this writ petition within three months from the date of impugned order dated 21.02.2012 passed by the third respondent. Therefore only due to the filing of this writ petition, the petitioner has not filed the statutory appeal under Section 21-A of the Act, 1959. In such circumstances, in the interest of justice, the petitioner should be given sufficient time to enable him to prefer an appeal as against the order dated 21.02.2012 passed by the third respondent.

8. For the foregoing reasons, this Court directs the petitioner to file the statutory appeal under Section 21-A of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 as against the impugned order dated 21.02.2012 passed by the third respondent within a period of one month from the date of receipt of a copy of this order. On receipt of the appeal, the respondent shall pass final orders after giving sufficient opportunity to the petitioner to place all the submissions with regard to his contentions.

9. With the aforesaid directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Uthamar Gandhi Salai,
Nungambakkam,
Chennai - 34.

2.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Uthamar Gandhi Salai,
Nungambakkam,
Chennai - 34.

+1cc to Mr.N.Velmurugan, Advocate SR.102371

+1cc to the Spl Government Pleader(HR & CE) SR.162986

W.P.No.5526 of 2012

PA (CO)
CB(27/01/2020)