

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.08.2019

CORAM

THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.No.36919 of 2015

and

M.P.No.1 of 2015

C.Aruljothi

.. Petitioner

Vs

1. The fit person,
Arulmighu Thoppur Mariamman Temple,
Office at the Executive Officer,
Arulmighu Kondathu Kaliyamman Temple,
Pariyur, Gobi Taluk,
Erode District.

2. The Joint Commissioner,
O/o.Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Fort St. George,
Chennai - 600 009.

3. The Assistant Commissioner,
HR & CE Department,
First Floor, Ex Servicemen Buildings,
Gandhiji Road, Erode - 4.

4. N.K.C.Ravi

..Respondents

(R4- impleaded as per order
dated 26.08.2019)

PRAYER:- Writ Petition filed under Article 226 of the
Constitution of India, seeking for a Writ of Certiorarified
Mandamus, calling for the records pertaining to the impugned
order passed by the second respondent in proceedings
Na.Ka.No.1020/2014/A5 dated 30.09.2015 and to quash the same.

For Petitioner : Ms.V.S.Usharani

For Respondents: Mr.M.Maharaja
Special Government Pleader
(HR & CE)

ORDER

Appointment of the fit person of Arulmighu Thoppoor Mariamman Temple at Nagarpalayam Village, Gobi Taluk, Erode District is under challenge in this writ petition.

2. According to the petitioner, the temple is in existence for more than 100 years and the said temple was constructed by their ancestors, who belong to Nadar community. The petitioner has been in the Management of Temple about eight years and the entire Management and the expenses of the temple are borne out by the Nadar Community.

3. The learned counsel appearing for the petitioner by placing reliance upon the decision of this Court in the case of P.Krishnamoorthy and others Vs. Commissioner, Hindu Religious and Charitable Endowments Department, Nungambakkam.[(2016) 7 MLJ 794] would submit that the appointment of the 3rd respondent as a Fit Person, without notice to the petitioner is illegal, hence, it is liable to be set aside.

4. Per contra, Mr.Maharaja, learned Special Government Pleader appearing on behalf of the respondents would argue that in the Peace Committee Meeting, the petitioner himself appeared before the Tahsildar and gave approval for appointment of the Fit Person and hence the petitioner cannot be permitted to challenge the order of appointment.

5. Mr.C.Anbarasu, learned counsel for the 4th respondent would contend that the petitioner is the Dharmagartha of the temple and it is being run by him. It is alleged that the petitioner collected a sum of Rs.5,000/- from the villagers, but issued receipt only for Rs.500/-. Hence the entire villagers represented before the authorities bringing to their knowledge in respect of the above action done by the petitioner. Stating so, the learned counsel prayed for dismissal of the writ petition.

6. Heard both sides perused the materials available on record.

7. In the case on hand, it is not in dispute that the petitioner has been in management of Arulmighu Thoppur Mariamman Temple. However, the 3rd respondent, without issuing notice and conducting an enquiry appointed a Fit Person to the temple.

8. The Division Bench of this Court in the case of N.Sivasubramanian Vs The Government of Tamil Nadu, rep. by its Secretary, Hindu Religious and Charitable Endowment Department, Fort St. George, Chennai - 600 009 & others reported in (2006) 2

CTC 49 held that before appointing an Executive Officer, as contemplated in the statute, notice is mandatory, since such orders result in civil consequences. In this regard, it is relevant to refer paragraph 15 of the above said decision.

" In the case on hand the second respondent without giving notice to the petitioner or to other trustees straight away issued the impugned order appointing the 5th respondent as Executive Officer vesting all the powers of the trustees, which action has got civil consequences. As held by the Apex Court in the decision cited supra, when the rights of the parties are likely to be affected by virtue of his action in appointing the Executive Officer, it is incumbent on the part of the second respondent to issue notice to them, for the compliance of principles of natural justice. Therefore, we hold that the failure on the part of the second respondent in not issuing notice to the petitioner as well as other trustees vitiates the impugned order dated 17.03.2005."

9. The same view also has been taken by the learned Single Judge in the case of P.Krishnamoorthy cited supra.

10. The learned Special Government Pleader would submit that the petitioner has filed an application before the Joint Commissioner to frame a scheme and the same is pending.

11. In view of the above submission and in the light of the decision of this Court cited Supra, in my considered opinion that the impugned proceedings is liable to be set aside. Accordingly, the order impugned in the writ petition is quashed and the matter is remanded back to the 3rd respondent to pass orders afresh after providing ample opportunity to the petitioner and the proposed respondent on merits and in accordance with law.

12. With these observations, the writ petition stands allowed. Consequently, connected miscellaneous petition is closed.

kmm

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

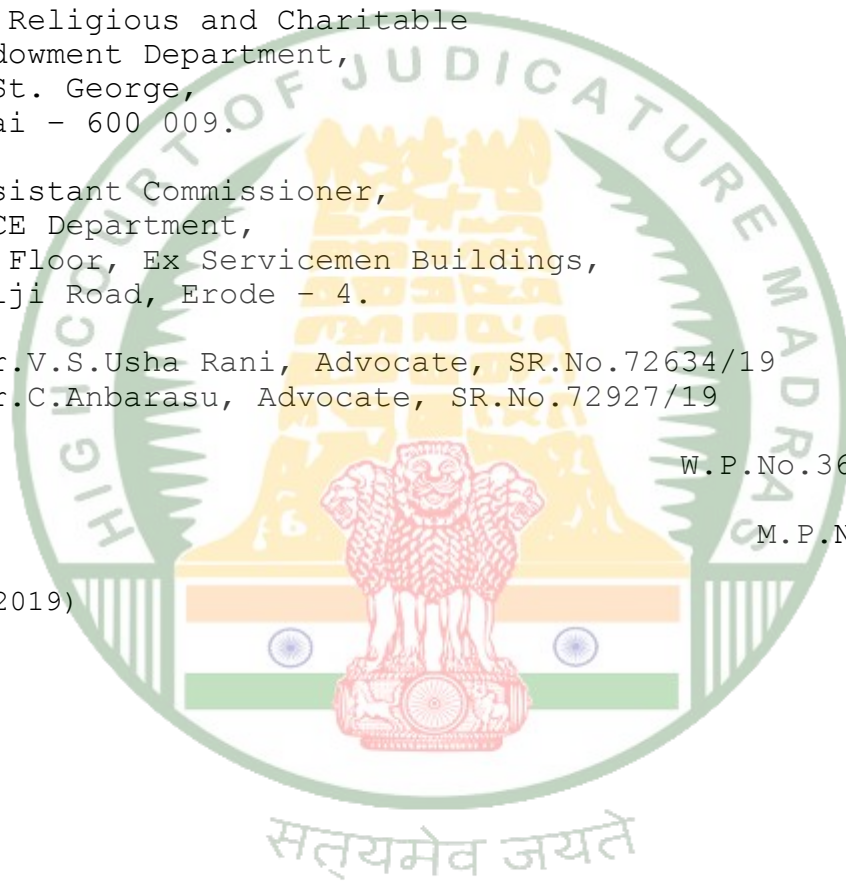
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+1cc to Mr.V.S.Usha Rani, Advocate, SR.No.72634/19

+1cc to Mr.C.Anbarasu, Advocate, SR.No.72927/19

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Kak(05/11/2019)



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