

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 06.11.2019

Judgment pronounced on : 13.11.2019

Coram

The Honourable Mr. Justice R. Subbiah
and
The Honourable Mrs. Justice T. Krishnavalli

Original Side Appeal Nos. 133 and 135 of 2019

O.S.A. No. 133 of 2019

1. Chennai Sri Kalikambal Kamateswara Devasthanam
No.212, Thambu Chetty Street
Chennai - 600 001
represented by its Managing Trustee
Mr. Murthy Achari

2. K. Murthy Achari
3. D. Yuvaraj
4. R. Rajendra Kumar Achari
5. P. Panchatram Achari
6. N.S. Annamalai Achari

(Respondents 2 to 6 Trustee of Chennai Sri
Kalikambal Kamateswara Devasthanam
at No.212, Thambu Chetty Street
Chennai - 600 001)

.. Appellants

Versus

1. J.V. Mani Achari

2. The State of Tamil Nadu
represented by its Secretary to Government
Tourism, Culture and Endowments Department
Fort St. George, Chennai - 600 009

3. The Commissioner
Hindu Religious & Charitable Endowment Department
Nungambakkam, Chennai - 600 034

4. The Joint Commissioner
Chennai Circle
Hindu Religious & Charitable Endowment Department
Nungambakkam, Chennai - 600 034 .. Respondents

O.S.A. No. 135 of 2019

1. The State of Tamil Nadu
represented by its Secretary to Government
Tourism, Culture and Endowments Department
Fort St. George, Chennai - 600 009
2. The Commissioner
Hindu Religious & Charitable Endowment Department
Nungambakkam, Chennai - 600 034
3. The Joint Commissioner
Chennai Circle
Hindu Religious & Charitable Endowment Department
Nungambakkam, Chennai - 600 034 .. Appellants

Versus

1. J.V. Mani Achari
2. Chennai Sri Kalikambal Kamateswara Devasthanam
represented by its Managing Trustee
Mr. Murthy Achari
No.212, Thambu Chetty Street
Chennai - 600 001
3. K. Murthy Achari
4. D. Yuvaraj
5. R. Rajendra Kumar Achari
6. P. Panchatram Achari
7. N.S. Annamalai Achari .. Respondents

Appeals filed under under XXXVI Rule 9 of the Original Side Rules read with Clause 15 of the Letters Patent against the Order and Decreetal Order dated 24.04.2019 passed in Application No. 3021 of 2019 in C.S. No. 62 of 1933.

O.S.A. No. 133 of 2019

For Appellant : Mr. Ar.L. Sundaresan,
Senior Advocate
for Mr. A.S. Kailasam

For Respondent : Mr. B. Kumar, Senior Advocate
for Mr. M.K. Subramanian for R1
in both the appeals

O.S.A. No. 135 of 2019

For Appellant : Mr. P.H. Aravindh Pandian
Additional Advocate General - II
assisted by Mr. M. Maharaja
Special Government Pleader

For Respondent : Mr. B. Kumar, Senior Advocate
for Mr. M.K. Subramanian for R1
in both the appeals

Mr. Ar.L. Sundaresan,
Senior Advocate
for Mr. A.S. Kailasam for 2 to 7

COMMON JUDGMENT

R. SUBBIAH, J

Both these inter-court appeals are directed against the order dated 24.04.2019 passed by the learned single Judge in Application No. 3021 of 2019 in C.S. No. 62 of 1933.

2. While O.S.A. No. 133 of 2019 is filed by the respondents 1 to 6 in Application No. 3021 of 2019, O.S.A. No. 135 of 2019 is filed by the Government/respondents 7 to 9 thereon.

3. Application No. 3021 of 2019 has been filed by the first respondent in both these appeals by name J.V. Mani Achari. He has filed the said Application No. 3021 of 2019 for issuing appropriate direction to the respondents 7 to 9 therein to conduct election for the post of Trustee of Sri Kalikambal Kamateswara Devasthanam as per the Scheme Decree dated 25.09.1935 passed by this Court in C.S. No. 62 of 1933. According to the applicant/first respondent in these appeals, The Chennai Sri Kalikambal Kamateswara Devasthanam is a religious denominational temple which belongs to the Vishwakarma community and the administration and management of the temple vests with the Board of Trustees. He also placed reliance on the scheme decree passed by this Court on 25.09.1935 in C.S. No. 62 of 1933. As per clause (4) of the Scheme Decree, every Trustee appointed shall hold office for a period of three years from the date of his appointment and he shall be eligible for re-appointment. As regards the mode of election of the Board of Trustees, by placing reliance on the scheme decree, it was contended by the first respondent herein that the Board of Trustees shall have a tenure of three years and the Trustees shall be elected by direct election through ballot and the electoral college will consist of Viswakarma male members who

should have registered his or her name in the list of devotees which shall be opened for registration between 1st April and 30th September of every accounting/financial year and the list of devotees/voters shall expire at the end of financial year viz., 31st March of the succeeding year. The said method as contemplated under the Scheme Decree, according to the first respondent, had been adopted and the Devasthanam is continuously managed by the Trust Board elected from time to time.

4. While so, an amendment was brought in to Section 47 (3) of The Hindu Religious and Charitable Endowments (HR & CE) Act by Tamil Nadu Amendment Act 12 of 2010 with effect from 03.02.2010 by which the term of office of the Hereditary as well as Non-Hereditary Trustee was fixed as two years instead of three years. In such circumstances, the election to the Board of Trustees of the Devasthanam was conducted in May 2016 and the term of office of the Board of Trustees expired even during April 2018. While approving the election of the Board of Trustees during May 2016, the Government issued G.O. Ms. No.48, Tourism, Culture and Religious Endowments Department dated 04.03.2016 restricting the period of office of the Trustees for two years from the date on which the Managing Trustee was elected. Challenging the same, WP No. 10652 of 2018 has been filed by five elected Trustees. By order dated 27.04.2018 passed in WP No. 10652 of 2018, this Court directed the petitioners therein to submit a representation to the Commissioner, HR & CE Department. Accordingly, a representation dated 07.05.2018 was submitted, however, it was rejected by the Commissioner, HR & CE Department by an order dated 04.09.2018 refusing to permit the Trustees to continue in office for a period of three years as per the Scheme Decree. Challenging the same, another writ petition being WP No. 24060 of 2018 by Murthy Achari and four others was filed in which interim stay was granted for conducting election for the next term. The interim order was subsequently extended on 13.11.2018. Subsequently, yet another writ petition was filed namely WP No. 4751 of 2019 by a devotee by name V.R. Velu Achari challenging the very same order dated 04.09.2018 of the Commissioner, HR & CE Department. In WP No. 4751 of 2019, this Court granted an interim order on 19.02.2019 to the effect that the election can go on as per the scheme decree and the new office bearers can assume office. In spite of such order, the election was not held immediately.

5. The grievance expressed by the applicant/first respondent in the Original Application before the learned single Judge is to the effect that the official respondents are attempting to conduct election on the basis of the electoral roll prepared last year between 1st April and 30th September 2018. The said voter list lapsed by 31.03.2019 and therefore, if at all, election has to be held, it has to take place only

based on fresh voters list to be prepared by registering the names of the devotees between 1st April and 30th September 2019. If election is conducted without resorting to such an exercise, it will be in breach of the terms and conditions of the scheme decree. It is in those circumstances, the aforesaid Application No. 3021 of 2019 was filed by the applicant before the learned single Judge.

6. The learned single Judge, after hearing the counsel for both sides, passed the following order:-

38. Considering all these aspects, this Court is inclined to pass the following order:-

"(1) That the present Trustees, namely respondents 2 to 6 shall not continue in the office of Trustees, including the Managing Trustee, any more, of Sri Kalikambal Kamateswara Devasthanam, Chennai. Therefore, they shall be cased to be in office forthwith.

(2) In order to administer the Devasthanam, Mr. M. Baskar, Advocate, residing at No.27, Kamaraj Avenue II Street, Adyar, Chennai - 600 020, is hereby appointed as "Fit Person" and along with him, an officer not below the rank of Assistant Commissioner of HR & CE Department to be sponsored by the 8th respondent i.e., Commissioner of HR & CE Department, is appointed as an "Additional Fit Person"

(3) The Fit Person and Additional Fit Person shall administer the aforesaid Devasthanam till the next elected Board takes office.

(4) While administering the Devasthanam, Fit Person can take decisions, of course with consultation and consent of the Additional Fit Person, who shall not normally put any embargo in taking a decision by the Fit Person for the smooth conduct of the administration of the Devasthanam, having in mind the interest of the devotees and safety and security of the properties of the Devasthanam/Deity. This Court expects both the Fit Person as well as the Additional Fit Person, shall, as far as possible, try to take decisions and resolve the issues come before them for resolvment by taking an unanimous decision

(5) The Fit Person and Additional Fit Person shall ensure that, the register of worshippers, which has already been opened from 01.04.2019, is kept open till 30.09.2019 and whoever, worshippers with eligibility as per the scheme decree makes registration, that shall be taken care of and all such registration shall be taken place strictly till

30.09.2019 only. Thereafter, the final list of worshippers i.e., Register of worshippers shall be released by the Fit Person and Additional Fit Person, which shall be taken as approved list for the purpose of forming the electoral college to participate in the election process to vote and elect the next Trust Board

(6) The Official respondents, especially the 8th respondent shall ensure that the election notification shall be issued on or before 2nd week of October 2019 and election shall be conducted before 15th November 2019 and any rate, the newly elected Trust Board including the Managing Trustee shall be in a position to take office on or before 30.11.2019.

(7) Once the elected Board, including the Managing Trustee is ready to take office, the Fit Person and Additional Fit Person shall forthwith hand over the administration of the Devasthanam to the newly elected Board with all documents and rendition of accounts."

7. Assailing the aforesaid order passed by the learned single Judge, these Original Side Appeals are filed by the appellants.

8. Mr. Ar.L. Sundaresan, learned Senior counsel appearing for the appellants in O.S.A. No. 133 of 2019, who are respondents 1 to 6 in O.A. No. 3021 of 2019 before the learned single Judge, would contend that the directions issued by the learned single Judge, to appoint an additional fit person, goes beyond scope of the prayer sought for in O.A. No. 3021 of 2019. The learned single Judge failed to consider that there is no provision under the Act to appoint an Additional Fit Person. Even assuming that an Additional Fit Person can be appointed, such a person should have been selected from among the Viswakarma Community, who were all along managing the affairs of the temple. In this context, the learned Senior counsel for the appellant relied on the decision of the Division Bench of this Court in the case of (P. Shankar and others versus The Advocate General, High Court, Madras - 600 104) reported in 2011-5-Law Weekly 798 wherein it was held that in the matter of appointment of Fit Person, preference shall be given to the descendants of the Founder Trustee and appointment of any other person will be in derogation of the Scheme Decree.

9. Notwithstanding such submission, it is submitted by the learned Senior counsel that already the Fit Person appointed by this Court is functioning as on date, hence, the direction issued for appointment of additional fit person is contrary to

the Statute and therefore the parties may be directed to maintain status quo till the election to the Board is conducted. It is also submitted that the devotees/voters list who have registered their names during the period between 1st April 2019 and 30th September 2019 has been prepared and therefore, election may be directed to be conducted with the present Fit Person, however, this Court can observe that such appointment cannot be taken as precedent in future.

10. Mr. P.H. Aravindh Pandian, learned Additional Advocate General appearing for the appellants in O.S.A. No. 135 of 2019 would vehemently contend that the learned single Judge erred in appointing a Fit Person to the temple. By placing reliance on Section 47 (1) (c) of the HR & CE Act, the learned Additional Advocate General would contend that it is the prerogative of the Government to appoint a Fit Person to the temple and the learned single Judge ought to have only issued direction to the Government to appoint a competent person as a Fit Person to the temple, instead of appointing an Advocate as a Fit Person. The learned Additional Advocate General also would contend that the jurisdiction to appoint a Fit Person is vested with the Government as per Section 47 of the Act, while so, the learned single Judge ought not to have appointed a Fit Person. As regards conduct of election to the Board of Trustees, the learned Additional Advocate General would contend that hitherto it was the Government who had conducted the election to the Board of Trustees of the temple in question, including issuing notification for the election. In order to substantiate the same, the learned Additional Advocate General has also produced the original files for perusal of this Court. Therefore, the learned Additional Advocate General would contend that the Government may be permitted to appoint a Fit Person as contemplated under Section 47 (1) (c) of the Act to administer the day to day affairs of the temple till the election is conducted and till the newly elected Trustees assume office of the Board. If a Fit Person is permitted to be appointed by the Government, such Fit Person will be in a position to over see the preparation of voter list for the election of Trustees as well as the process of election. The learned Additional Advocate General therefore prayed for allowing the appeal and to issue appropriate direction to conduct election to the Board of Trustees within a specified time limit.

11. By way of reply, the learned Senior counsel appearing for the appellants in O.S.A. No. 133 of 2019 would contend that all along the Board of Trustees alone are conducting the election and the Government has no role to play, except nominating an Election Officer to observe the election process.

12. On the above contention, we have heard the learned counsel for the contesting first respondent in these appeals and perused the records.

13. The appointment of a Fit Person and Additional Fit Person by the learned single Judge is assailed in these appeals on the ground that there is no provision under the HR & CE Act to do so besides it is the government which is vested with the powers to appoint a Fit Person to administer the day to day management of the temple. In this context, the learned Senior counsel for the appellant in O.S.A. No. 133 of 2019 as well as the learned Additional Advocate General for the appellant in O.S.A. No. 135 of 2019 relied on Section 47 of the HR & CE Act. Section 47 of the HR & CE Act deals with Trustees and their number and term of offices. The proviso to Sub-section (1) (c) of Section 47 specifically contemplates that "Provided that the Government, the Commissioner, or the Joint Commissioner or the Deputy Commissioner, as the case may, pending the constitution of such Board of Trustees, under this sub-section, appoint a fit person to perform the functions of the Board. Therefore, it is clear that Section 47 (1) (c) of the Act empowers the Government through the Commissioner, Joint Commissioner or the Deputy Commissioner to appoint a Fit Person to perform the duties and functions of the Board of Trustees. When the Statutory provision is clear and explicit that it vests power with the Government to appoint a Fit Person, such appointment by the learned single Judge is contrary to Section 47 (1) (c) of the Act.

14. Mr. Ar.L. Sundaresan, learned Senior counsel prayed this Court to direct the parties to maintain status quo till the election is conducted, meaning thereby to permit the Fit Person to continue to perform his duties till the election is over. We are not in a position to accept the same. When the appointment of Fit Person is contrary to Section 47 of the Act, the Fit Person appointed by this Court cannot be permitted to continue to perform his duties any further. When a Statute prescribes a particular act to be done in a particular manner, it should be done only in that manner and not in any other manner. We therefore set aside the order of the learned single Judge with an observation that it is for the Government to appoint a Fit Person to the temple in question. In so far as election to the Board of Trustees is concerned, it is seen from the records that hitherto election was conducted only by the Government. It is needless to mention that the Government may conduct the election to the temple in question in such a manner election has been conducted in the past.

15. In the result, we allow both the Original Side appeals by setting aside the order dated 24.04.2019 passed in Application No. 3021 of 2019 in C.S. No. 62 of 1933. No costs. Consequently, connected miscellaneous petitions are closed. The connected WP Nos. 24060 of 2018 and 4751 of 2019 are directed to be posted before the concerned Court after two weeks.

Sd/-
Assistant Registrar(CO)

// True Copy//

rsh Sub Assistant Registrar

Copy to: The Sub Assistant Registrar(OS),
High Court, Madras.

The Section Officer/Posting Clerk,
Writ Section,
High Court, Madras-104.

+2cc to Mr.M.K.Subramani, Advocate, SR.No.98486 & 98487.
+1cc to Government Pleader, SR.No.94257 & 94258.

GNR (CO)
CSR: 12.03.2020

Common Judgment
in OSA Nos. 133 & 135 of 2019

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