



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2019

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 26066 of 2019

B. Ramesh

... Petitioner

-Vs-

1. The Commissioner,
Hindu Religious and Charitable
Endowment Board,
Uthamar Gandhi Salai,
Nungambakkam, Chennai - 600 034.

2. The Joint Commissioner,
Hindu Religious and Charitable
Endowment Board,
Sathuvachari,
RTO Road, Vellore - 632 009.

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India for issuing a Writ of Mandamus, directing the Respondents to take into consideration and pass orders on the petitions dated 28.07.2017 and 24.01.2019 submitted by the Petitioner for the prevention of unlawful convening or dealing with the properties of the Arulmighu Amaratheeswarar Temple at Sirukkalathur and Ramanatheeswar Temple at Kavanoor and also to appoint trustees to administer the temples properties.

For Petitioner : Mr. B. Sivaraman

For Respondents: Mr. M. Maharaja
Special Government Pleader

O R D E R

This Writ Petition has been filed for a direction to the Respondents to take into consideration and pass orders on the petitions dated 28.07.2017 and 24.01.2019 submitted by the Petitioner for the prevention of unlawful convening or dealing with the properties of the Arulmighu Amaratheeswarar Temple at Sirukkalathur and Ramanatheeswar Temple at Kavanoor and also to appoint Trustees to administer the properties of the Temples.



2. In the representation dated 28.07.2017, the Petitioner has sought for the following relief:-

"The objector hereby submits that immediate suitable order may be passed by rejecting the application, if any submitted by Balasekaran for his appointments as a Trustee and at the same time severe Penal action may be taken against him and other culprits and initiate necessary action to safe guard the temple and his properties."

In the representation dated 24.01.2019, the Petitioner has made the following claim:-

"The Petitioner therefore prays that this representation submitted by the Petitioner and Co-other members of his community may be taken into consideration to constitute the Board of Trustees wherein the Petitioner may be appointed as the Executive Trustee to render and skilfully discharge their services to the twin temples in the interest and welfare of the Devotees and Worshippers and contributions and members of the community and also in the administration of the valuable properties of the temple."

Having regard to the aforesaid claims made by the Petitioner, the Second Respondent has filed a detailed Counter Affidavit, in which the contentions of the Petitioner have been examined and answered as follows:-

"3. It is submitted that Arulmigu Amaraapatheeswarar and Ramanatheeswarar Temple, situated at Sirukalathur and Kavanoor Village, Kundrathur post, Chennai - 600 069 are "Public Temples" as defined under Section 6(20) of the Hindu Religious & Charitable Endowment Act, 1959 (Tamil Nadu Act XXII of 1959 (hereinafter called as the "HR & CE Act") and hence, it attracts operation of all the provisions of the said Act in respect of the administration of the temple. The administration of the temples are vested in the Trust Board to be constituted in accordance with the provisions made in scheme settled by in O.A. 7/2001 dated 14.08.2007 in an Application filed under Section 64(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act 22 of 1959, by the then Joint Commissioner, HR & CE Department Vellore. However, as of now pending appointment of Non-hereditary trustees for constituting Trust Board of the temple, the Inspector, HR & CE Department, Sriperumpudur is appointed and functioning as the Fit Person along with an Executive Officer appointed under Section 45 (1) of the Tamil Nadu HR & CE Act, 1959. The Temple falls under administrative jurisdiction of the Assistant Commissioner, HR & CE



WEB COPY

Department Kancheepuram, and is a non-listed public religious Institution which is not published under the category of temples categorized under Section 46 of the "HR & CE Act".

4. It is submitted that this Temple is getting income from various sources like lease income from landed properties, Hundial proceeds, and other religious services, and is assessed for an annual income of Rs.6086/- (For Fasli 1426). It is submitted that eventhough the temple owns several immovable properties comprising Nanja and Punja lands proper income could not be derived since they were let on rental lease for several favoured persons by the then trustees without complying to the provisions of the Tamil Nadu HR & CE Act 1959 (Tamil Nadu Act XXII of 1959) and the Rules framed thereunder. These illegal occupants are not paying any rent or damages for use and occupation to the temple and remains elusive for which necessary action is being taken as contemplated under Section 78 of the "HR & CE Act".

5. I deny the averments contained in paragraph 2 to 10 of the affidavit regarding the claim that the temples are denominational temples, since these temples are purely public temples except for a Scheme of administration settled in favour of Kondakatti Saiva Vellala Mudaliars of the villages Sirukalathur and Kavanoor Village. The existing scheme provisions suggests only for appoint of trustees from Kondakatti Saiva Vellala Mudaliars comprising of two Villages viz., Sirukalathur and Kavanoor Village and accordingly trustees were appointed lastly by the Assistant Commissioner, HR & CE Department Kancheepuram in his office proceedings Na.Ka.No.294/2008/Aa3 dated 31.08.2007 and their term of office expired by efflux of time and in lieu the Inspector, HR & CE Department, Sriperumpudur is appointed as fit-person as an make shift arrangement pending appointment of regular trustees. So it is evident that the department had previously exercised its power of appointment of trustees in accordance with the existing scheme provisions and claims of certain persons belonging to this particular community in whose favour a scheme was settled shall alone be considered by the appointing authorities. But the power to make the appointment always vested with the authorities under the statute and it is for them to decide when trustees shall be appointed.

6. with regard to the averments raised in paragraph 11 to 14 of the affidavit it is submitted that the previous trustees had misused their appointment to the



WEB COPY

office as trustees risking the temple properties worth crores of rupees to fall in the hands of encroachers who still remains in the temple property without paying any rent for years together. This only attributed to non-augmentation of proper income to the temple, owing to the facts narrated above the continuance of fit - person was necessitated pending constitution of a new trust board which will be done in due course at an appropriate time.

7. With regard to the averments raised in paragraph 15 to 17 of the affidavit it is submitted that no doubt due regards will be given to the claim of the petitioner and other members hailing from the families of the said Kondakatti Saiva Vellala Mudaliars of the villages Sirukalathur and Kavanoor Village who are eligible and entitled to be appointed as non-hereditary trustee to the temple in question. The H.R. & C.E Department have Act Provisions under Section 25-A 'Qualification of Trustees' and Section 26 'Disqualification of Trustees' as such all the aspirants will be the screened by proper enquiry procedures as contemplated under the Tamil Nadu H.R. & C.E Act. The objective of the appointment of Fit-person which was done was purely temporary and purported to usher transparency in governance and run the administrative affairs of the temples with the parameters of the Tamil Nadu H.R. & C.E Act, and rules framed thereunder.

8. It is submitted that the H.R. & C.E Department has duty and moral responsibility to set right the administration of the every public temple under its administrative control within the parameters of the Tamil Nadu H.R. & C.E Act. The temple in question is a victim of maladministration at the hands of their own community members and the petitioner's is one among them who were dealing temple properties in a manner unknown to law all these years. In fact the petitioner's father viz., M.Balasubramanian had alienated Punja lands to the extent of 15.22 Acres in favour of one M.Govindasamy Pillai against which the Executive Officer of the temple had filed a suit before D.M.C Sriperumpudhur in O.S.130/2011 and another person viz Smt.Muthulakshmi encroached the temple land of an area 7500 square feet comprised in S.No. 504 against whom the Executive Officer of the temple had filed a suit before D.M.C Sriperumpudhur in O.S.156/2016 and pending enquiry. So, the administrative damage done already is yet to be fully repaired that is why the department had chosen to appoint fit person as interim arrangement pending constitution of the new board of



WEB COPY

trustees. Handing over the temple administration as of now to the unsafe hands will further cause irreparable damage to the administrative system of the temple and endanger to the administrative system of the temple, besides scuttle the on going litigations and administrative processes. The previous trustees did not discharge their duties as specified under Sections 27 and 28 of the Tamil Nadu H.R. & C.E. Department.

9. It is submitted that the Petitioner have filed this Writ Petition out of confused thoughts only to enforce his own whims. The averments by itself goes to show a never ending story of misadministration in the temple by the previous trustees including his father who were no other than his own community members. At the same time for non-appointment of trustees he is also finding fault with the existing appointment of Fit Person done as a noble gesture and proper prospective by the H.R. & C.E. Department. The trusteeship of a temple is not a service under the state and nobody has any right to say that he ought to be appointed as trustee when no such notification inviting applications has been published by the authorities of the H.R. & C.E. Department. Hence it is a matter entirely for the department to consider as to when non hereditary trustees have to be appointed in lieu of the existing Fit-person. As and when the situation improves it is for the H.R. & C.E. Department to take necessary steps for the appointment of non-hereditary trustees strictly adhering to the scheme provisions and the Tamil Nadu Hindu Religious Endowments Act and Rules framed there under. It is clear that the petitioner has tried to create legal disturbances by way of this petition just to bail out the wrong doings of his father and other previous trustees who were no other than his own community members with clear intention to scuttle the administration processes taken by the Department to retrieve the valuable properties of the temple and encroachers who continue to remain elusive.

10. It is submitted that as of now there is no intention by the departmental authorities to keep permanently the temple under the headship of the Fit Person or to deactivate the present scheme provision. So, it is assured that claims of eligible persons belonging to Kondakatti Saiva Vellala Mudaliars of the villages Sirukalathur and Kavanoor Village in whose favour a scheme was settled shall be given due regard by the appointing authorities by virtue of the provisions made under Section 51 of the Tamil Nadu Hindu Religious and Charitable Endowments Act 22 of 1959. There being a specific provision in the Tamil



WEB COPY

Nadu Hindu Religious Endowments Act namely Section 49, for appointment of trustees to this non-listed public temple and the power to make the appointment always vested with the authorities under the statute. So there is a bar for the maintainability of this Writ Petition and the petitioner can only seek their interest before the competent statutory authorities appointed for this purpose under the provisions of Tamil Nadu H.R. & C.E. Act 1959 as and when notice issued inviting applications for appointment of trustees is published.

11. I am to state that only because of the bad state of administrative affairs of the temple the appointment of Fit Person was necessitated. So, by way of this Writ Petition the petitioner wants to revert the temple administration to bad state of olden days which cannot be allowed in the interest of temple and public at large.

12. I am further advised to state that in the above said circumstances if the new trustees are appointed in lieu of the existing fit-person the entire administration will be jeopardized and the temple will be put to severe hardship and there is likelihood the temple falling again under wrong hands permanently without any accountability. As of now there is no immediate or urgent administrative exigency prevailing in the temple administration for the appointment of non-hereditary trustees, since the purpose of the appointment of fit-person is yet to be completed and encroachers are still holding on to the valuable temple properties. Moreover the fit-person will have to continue to discharge his duties because of the ongoing litigations at various statutory forums.

13. This respondent humbly wants to submit that the trusteeship of a public temple is only honorary and not a service under the state and nobody has a right to say that he ought to be appointed as trustee when no such notification inviting applications has been published by the authorities of the H.R. & C.E. Department. Hence, it is a matter entirely for the department to consider as to when non-hereditary trustees have to be appointed in lieu of the existing Fit-person. As and when the situation improves it is for the H.R. & C.E. Department to take necessary steps for the appointment of non-hereditary trustees strictly adhering to the scheme provisions and the Tamil Nadu Hindu Religious Endowments Act and Rules framed therein. As of now there are no vacuum remains in the temple trust board since it is filled by the appointment of Fit-Person owing to the pathetic administrative status of the temple. It is the privilege of the HR & CE Department



WEB COPY

is selecting or constituting the Board of trustees by filling up the vacancies which is purely an administrative exercise does not call for interference under Art. 226 of the Constitution of India unless an allegation of mala-fide is made and made out. As such the claim of the petitioner is not in accordance with law, and he had no enforceable right to pressurise this respondent to make appointment of trustees by sending representations."

3. In this context, it would be useful to refer to the dictum laid down by the Hon'ble Supreme Court of India in Director of Settlements, A.P. -vs- M.R. Apparao [(2002) 4 SCC 638], in which it has been held as follows:-

"17.One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. "Mandamus" means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition (Kalyan Singhv. State of U.P. [AIR 1962 SC 1183]). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law...."

Applying the aforesaid principles to the facts of this case, viz-a-viz the cogent reasons assigned by the Respondents in the Counter Affidavit for refusing to accede to the claims made by the Petitioner, there does not appear to be any justification for this Court to direct the Respondents to dispose the



representations dated 28.07.2017 and 24.01.2019 made by the Petitioner as sought in the Writ Petition.

4. In the result, the Writ Petition is dismissed. No costs.

WEB COPY

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

maya/vjt

To

1. The Commissioner,
Hindu Religious and Charitable
Endowment Board,
Uthamar Gandhi Salai,
Nungambakkam, Chennai - 600 034.

2. The Joint Commissioner,
Hindu Religious and Charitable
Endowment Board,
Sathuvachari,
RTO Road, Vellore - 632 009.

+1 CC to Mr.B. Sivaraman, Advocate sr 90826.

+1 CC to Spl. Govt. Pleader sr 92154.

W.P. No. 26066 of 2019

VGI(CO)
SP(09/01/2020)