

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.28832 of 2019
and
W.M.P.No.28573 of 2019

N.Mahendran

.. Petitioner

-vs-

- 1.The Commissioner,
Hindu Religious and Charitable Endowments,
119, Uthamar Gandhi Salai,
Nungambakkam High Road, Chennai-34.
- 2.The Joint Commissioner,
Hindu Religious and Charitable Endowments,
Dr.Balasundaram Road,
Coimbatore-18.
- 3.The Fit Person/Assistant Commissioner,
Arulmigu Aranganathaswami Thirukoil,
Karamadai, Coimbatore District-641 114.
- 4.The Executive Officer,
Arulmigu Aranganathaswami Thirukoil,
Karamadai, Coimbatore District-641 114. .. Respondents

Petition under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records in the order bearing Na.Ka.No.1A/6-5/1429, dated 17.09.2019 passed by respondent no.4 and quash the same.

For Petitioner : Mr.M.Radhakrishnan
For Respondents : Mr.M.Maharaja,
Special Government Pleader
For HR & CE

O R D E R

The petitioner has filed this writ petition challenging the order of the 4th respondent, dated 17.09.2019 and to quash the same.

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

3.With consent, this writ petition is taken up for final disposal.

4.The case of the petitioner is that he was working as an Accountant in the 3rd respondent-Temple and was issued with a show cause notice dated 26.07.2019 by the 4th respondent, to show cause as to why the temporary hundi of the temple was not opened at the place as ordered by the 2nd respondent. The petitioner replied to the show cause notice on 19.08.2019. Thereafter, the 4th respondent passed the suspension order dated 17.09.2019, by invoking the power under Section 56(1) of the Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as "the Act") placing the petitioner under suspension on the ground that without permission, the temporary hundi was opened. Challenging the order of suspension, dated 17.09.2019, the present writ petition has been filed.

5.Mr.M.Radhakrishnan, learned counsel for the petitioner would submit that as per Section 56(1) of the Act, the competent authority alone can suspend the petitioner. In the present case, the 4th respondent, who is not a Fit Person, took disciplinary action against the petitioner. The Fit Person is the 3rd respondent. Instead of the 3rd respondent, the 4th respondent passed the impugned order. Hence, prays for allowing the writ petition.

6.Mr.M.Maharaja, learned Special Government Pleader would submit that this Court may set aside the order of suspension and remand the matter back to the competent authority for appropriate orders.

7.A perusal of Section 56 of the Act makes it clear that all office-holders and servants attached to a religious institution be controlled by the trustee and the trustee may, after following the prescribed procedure, if any, fine, suspend, remove or dismiss any of them for breach of trust. Section 56(1) of the Act reads as follows:-

"Section 56:- Punishment of office-holders and servants in religious institutions - (1) All office-holders and servants attached to a religious institution or in receipt of any emolument or perquisite therefrom shall be controlled by the trustee and the trustee may, after following the prescribed procedure, if any, fine, suspend, remove or dismiss any of them for breach of trust, incapacity, disobedience of orders, neglect of duty, misconduct or other sufficient cause."

8. Undoubtedly, the 4th respondent is the Executive Officer. Under Section 47 of the Act, the 3rd respondent only can perform the functions of the Board of Trustees of a religious institution like 3rd respondent-Temple. In this case, instead of the 3rd respondent, the 4th respondent issued show cause notice, which is unsustainable one. For better appreciation, Section 47 of the Act is quoted hereinbelow:-

"Section 47. Trustees and their number and term of officers. - (1) [(a) Where a religious institution included in the list published under Section 46 or in respect of which the Assistant Commissioner has no power to appoint trustees, has no hereditary trustee, (i) in cases falling under clause (i) of Section 46, the Joint Commissioner/Deputy Commissioner; (ii) in cases falling under clause (ii) of section 46, the Commissioner; and (iii) in cases falling under clause (iii) of section 46, the Government, shall constitute a Board of Trustees."

9. Accordingly, this writ petition is allowed, the impugned order passed by the 4th respondent is set aside. It is made clear that this order will not stand on the way of the 3rd respondent to take disciplinary action against the petitioner.

10. Writ petition is allowed with the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS III)

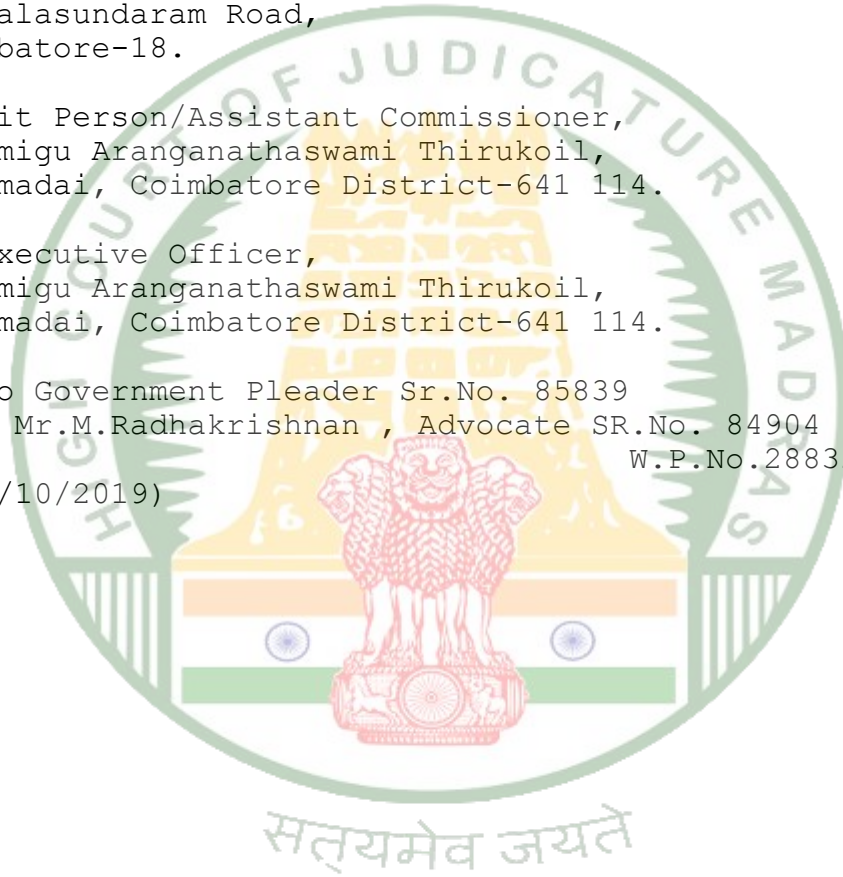
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Sub Assistant Registrar

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To

- 1.The Commissioner,
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 - 4.The Executive Officer,
Arulmigu Aranganathaswami Thirukoil,
Karamadai, Coimbatore District-641 114.
- +1 cc to Government Pleader Sr.No. 85839
+1cc to Mr.M.Radhakrishnan , Advocate SR.No. 84904
W.P.No.28832 of 2019
A.SK(14/10/2019)



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