IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :13.12.2019
Pronounced on :20.12.2019

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No.28960 of 2019
and
W.M.P.No.28708 of 2019
and
W.M.P.Nos.30348 and 30944 of 2019

Arulmigu Vengeeswarar Alagar Perumal and
Nagathamman Devasthanam,
Represented by its Hereditary Trustee,
P.Chamundeeswari.
.. Petitioner

..Vs..

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

2. The Assistant Commissioner / Executive Officer,
Arulmigu Vengeeswarar Alagar Perumal and
Nagathamman Devasthanam,
Office at: Arulmigu Vadapalani Andavar Temple,
Vadapalani, Chennai - 600 026.
.. Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certorarified Mandamus, calling for the records of the 1st respondent pertaining to his order dated 06.09.2019 in his proceedings bearing No.Che.Mu.Na.Ka.No.51122/2016/L5 and quash the same and consequently forebear the respondents from interfering with the petitioner's administration of the Arulmighu Vengeeswarar Alagar Perumal and Nagathamman Devasthanam.

For Petitioner : Mr.P.L.Narayanan
For respondents : Mr.M.Maharaja,
Spl. Govt. Pleader, HR & CE

O R D E R

W.P.No.28960 of 2019:

This Writ Petition has been filed in the nature of Certiorarified Mandamus calling for the records of the 1st respondent, the Commissioner, Hindu Religious and Charitable Endowment Board, Chennai, relating to order dated 06.09.2019 in proceedings bearing No.Che.Mu.Na.Ka.No.51122/2016/L5 and quash the same and consequently forbear the respondents from interfering with the petitioner's administration of the Arulmighu Vengeeswarar Alagar Perumal and Nagathamman Devasthanam.

2. In the affidavit filed in support of the writ petition, the petitioner, P.Chamundeeswari W/o. Prem Ananth claimed that she was the hereditary trustee of the Arulmighu Vengeeswarar Alagar Perumal and Nagathamman Devasthanam at Vadapalani in Chennai. She claimed that the temple is an excepted temple and has been in existence prior to 1800. She further claimed that her ancesters were in management as hereditary trustees from generation to generation. She further claimed that neither the Government nor any public ever exercised any right over the management or the administration of the said temple. She further claimed that the administration had been carried out in accordance with the provisions of the Hindu Religious and Charitable Endowment Act, 1959.

3. In her affidavit, she further stated that on 26.04.2017, the 1st respondent had issued a show cause notice levelling eleven charges. She sent a reply on 16.05.2017 meeting each one of the charges. She claimed that personal hearing was not granted to her. It was stated that the respondents did not pass any orders for nearly two years. Thereafter, on 27.05.2019, the 1st respondent sent a letter to the statutory auditor seeking clarifications and it was claimed that they were only a repetition of the allegations in the show cause notice. It was stated that on 25.06.2019, she submitted her reply with respect to each one of the points raised in the letter.

4. The impugned order dated 06.09.2019 had been passed by the 1st respondent and in the said order he had maintained the allegations that the temple assets were not yielding any proper income, that there was irregular transfer of the assets which must be set right and there must be resort to proper legal proceedings. By the said order, the 1st respondent had further stated that the petitioner should jointly function along with the Executive Officer in the management of the temple.

5. It was further stated that immediately on the passing of the said order, the Executive Officer also taken control of the accounts and the temple records maintained by the Devasathanam including cheque books and had also occupied the office space.

6. The petitioner claimed that in her capacity as hereditary trustee she had filed C.S.No.1514 of 1991 on the file of this Court with respect to illegal trespass by the officials. It was stated that the appointment of Executive Officer was invalid, since Rule 3 of the Executive Officer's Rules, 2015 which has been stated in G.O.Ms.No.260, Tourism, Culture and Religious Endowments (RE4-2), dated 06.11.2015, contemplated that the 1st respondent should have to conduct an enquiry before appointing an Executive Officer. It was further stated that the 1st respondent had no power to appoint an Executive Officer under Section 45(1) of the HR & CE Act and such power vested only with the Government under Section 53(a) of the Act. It was also stated that a show cause notice was mandatory before invoking the provisions under Section 45(1) of the HR & CE Act. It was under these circumstances, that the Writ Petition was filed in the nature of Certiorarified Mandamus to quash the order of the 1st respondent dated 06.09.2019.

7. A counter affidavit had filed by the Deputy Commissioner / Executive Officer of the Arulmigu Vengeeswarar Alagar Perumal and Nagathamman Devasthanam, Vadapalani, Chennai, stating that the petitioner, P.Chamundeeswari had not obtained any order/declaration from the department to function as hereditary trustee. It was stated that the husband of the petitioner and his father had both been dismissed by the department on grounds of misconduct and misappropriation of temple funds. They were removed from the post as hereditary trustees of the said temple. They were not allowed to participate in the affairs of the management of the said temple. It had been stated that Section 54(1) of the HR & CE Act clearly enumerates the procedure for recording the next in line for the succession for the office of the hereditary trustee. It was stated that the petitioner had not clarified whether there were any other legal representatives and at any rate, since the erstwhile hereditary trustee had been dismissed, the board had to sanction the appointment of a hereditary trustee. It was further stated that the appointment of the Executive Officer under Section 45(i) of the Act was passed after following the principles of natural justice by issuing show cause notice and by carefully perusing the same and then passing an order substantiated by reasons.

8. It was further stated that the Joint Commissioner had submitted a report in Na.Ka.No.10433/2016/E2 giving the reasons

for appointment of an Executive Officer under Section 45(1) of the Act and further recommending that the Depurty Commissioner / Executive Officer of A/m Vadapalani Andavar Temple can be appointed as Executive Officer. With respect to the allegations which were enquired and were the basis for appointment of Special Officer of the Section 45(1) of the Act, it had been mentioned that the records pertaining to the lands and properties belonging to the temple were not properly maintained. It was also stated that there was no jewel appraisement and no proper records have been maintained by the temple. It was further stated that a fixed deposit for a sum of Rs.18,45,028/- had been withdrawn by the writ petitioner without obtaining any permission from the Commissioner. It had been further stated that the de-facto trustee had initiated several legal proceedings and had also simultaneously taken the funds of the temple towards the expenses of those legal proceedings. There were several related charges mentioned in the writ petition. It was stated that further defects were found in the maintenance of immovable properties. It was therefore stated that the impugned order had to be upheld and it was stated that the Writ Petition should be dismissed.

9. Heard arguments advanced by Mr.P.L.Narayanan, learned counsel for the petitioner and Mr.M.Maharaja, learned Special Government Pleader, HR and CE for respondents.

10. It is the contention of Mr.P.L.Narayanan, learned counsel for the petitioner that the post of hereditary trustee was filled on the dismissal of the erstwhile hereditary trustee, G.Prem Ananth. Thereafter, since a vacancy had arisen, his wife P.Chamundeeswari, had stepped into his shoes and had also claimed the post of hereditary trustee. As a matter of fact, learned counsel stated that there was no requirement to seek permission from the respondents for such assumption of hereditary trusteeship.

11. In this connection, the learned counsel also drew the attention of this Court to a judgment of a learned Single Judge reported in 1990 1 LW 144, Prem Anand V. The Commissioner, Hindu Religious and Charitable Endowments Madras and Another, wherein, it had been held as follows:

> "2. Under S.54 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, when a permanent vacancy occurs in the office of the hereditary trustee of a religious institution, the next in the line of succession shall be entitled to succeed to the office. There is no necessity, whatever, for the next hereditary trustee to make an application for being appointed under the Act.

In this case, the petitioner had to approach the first respondent, because a fit person, was already in charge of the administration of the temple. As the first respondent had appointed the fit person, the petitioner sought a direction to the fit person from the first respondent to hand over charge to the petitioner as he has become the hereditary trustee. The first respondent ought to have issued such a direction. On the other hand, the first respondent directed the petitioner to go to the Deputy Commissioner which is unwarranted by the provisions of the Act."

12. The learned counsel also relied on the judgment reported in 2016-5-LW-896, Saravana Pandian V. The Government of Tamilnadu and Ors., wherein, a learned Single Judge had, while relying on two earlier judgments of this Court had stated as follows:

15. The Learned Counsel for the Petitioner to fortify her contention that the Petitioner (being one of the Hereditary Trustees under suspension on the date of impugned orer dated 12.05.2016) admittedly was not served with notice, relies on the Division Bench decision of this Court in K. Ekambaram v. Commissioner Hr&ce Of Administration Department Etc. reported in 1995 (2) L.W. 213, wherein it is observed as under:—

"It is not possible to hold that Section 45 (1) of the Tamil Nadu HR & CE Act excludes the application of principle of natural justice when an Executive Officer is to be appointed on the ground of failure of trustees in performing the functions, and action against trustees cannot be taken or they cannot be deprived of their without affording an opportunity to explain the allegations made against them, depriving of the right vested in them as trustees."

16. The Learned Counsel for the Petitioner also cites the decision in Commr. H.R. & C. Endowments (admn.) Department v. K. Jothiramalingam reported in (1986) 99 L.W. 600; AIR 1985 Madras 341, wherein it is inter alia observed and held as follows:—

"… The power vested in the Commissioner under S. 45(1) to appoint an Executive Officer to manage the temple being a very drastic one, it has to be exercised cautiously, reasonably and fairly as the exercise of such power may even

> result in the effective elimination of the hereditary trustee from management and administration of the temple. Therefore, though S. 45(1) by its terms does not contemplate any notice or enquiry before exercising the power of appointing an Executive Officer, the principles of natural justice require that the hereditary trustee who is in actual control, management and day to day administration of the temple should be given notice and opportunity to show cause against the appointment of an Executive Officer by the Commissioner under S. 45(1) resulting virtually in his displacement and the appointment of the Executive Officer should be made after being satisfied that the institution has not been properly managed by the hereditary trustee and the administration requires to be toned up or improved and the appointment of an Executive officer is justified to secure such better administration. Therefore, the failure to give notice to the hereditary trustee to show cause against the appointment of an Executive Officer under S. 45 (1) would render the appointment, invalid.…"

> 19. The Learned Counsel for the Petitioner projects an argument that the State Government had framed the Rule for appointment of an Executive Officer of a temple after the Judgment of the Hon'ble Supreme Court between Dr. Subramanian Swamy v. State of Tamil Nadu in Civil Appeal No. 10620 of 2013 with Civil Appeal Nos. 10621 & 10622 of 2013, dated 06.01.2014 (—reported in 2014-2-L.W. 401), wherein it was categorically held that without the Rules, exercise of power under Section 45(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, cannot be exercised.

13. The learned counsel pointed out that the petitioner had replied to each and every one of the charges stated in the show cause notice and that the respondent had not taken any action for a period of two years and only thereafter, had they issued the impugned order. It was stated that the impugned order cannot stand, since it had proceeded on the ground that Tmt.P.Chamundeeswari had self appointed herself as hereditary trustee overlooking the fact that under Section 54 of the Act, she can assume the said office by herself in her capacity as legal representative of erstwhile hereditary trustee, G.Prem Ananth. The learned counsel therefore stated that the impugned order can never stand the scrutiny of this Court and therefore

sought the Writ Petition to be allowed.

14. Mr.M.Maharaja, learned Special Government Pleader, HR and CE for the respondent, on the other hand supported the impugned order of the respondents and stated that the petitioner herein is guilty of very serious charges of misappropriation of funds of the temple and of maladministration of the lands of the temple. It was further pointed out that the petitioner had given a reply to the show cause notice and each and every one of the allegations raised by the petitioner had also been answered in the impugned order. It was stated that the petitioner had indulged herself in large scale maladministration of the lands of the temple and in misappropriation of the golden jewellery items of the idol and had also committed several acts to the detriment of the interests of the temple. It was stated that under these circumstances, the respondents had thought it necessary to appoint an Executive Officer to function along with the petitioner to maintain the temple in a proper manner.

15. I have carefully considered the rival arguments advanced.

16. The husband of the petitioner, G.Prem Ananth was the immediate earlier hereditary trustee of the Arulmigu Vengeeswarar Alagar Perumal and Nagathamman Devasthanam. However, he was removed from office owing to serious charges of maladministration and misappropriation. Thereafter, the petitioner, being his wife had suo motu assumed charge as hereditary trustee. This act has been seriously questioned by the respondents, who claimed that permission must be obtained from them before a hereditary trustee can take charge.

17. With respect to the judgment reported in 1990 1 LW 144, Prem Anand V. The Commissioner, Hindu Religious and Charitable Endowments Madras and Another, which was relied on by the petitioner, it must be respectfully pointed out that in the said case there were no rival contestants for the post of hereditary trustee. It was a case of a son stepping into the shoes of his father, even though the said father had also been removed from the office.

18. The present case is distinguishable on facts. The petitioner has not disclosed whether she has any children and if there were children, then it would only be proper that the respondents were to conduct an enquiry and then decide upon the suitability of the person to hold the office of the hereditary trustee. The petitioner having assumed the said office by herself, unfortunately, is also charged with having committed several acts of misappropriation of the gold and other jewellery items and also the cash of the temple. She had also continued with serious acts of misappropriation of maladministration of the lands of the temple. A reading of the impugned order shows

the extent of damage that has been caused to the interest of the temple by the acts of the petitioner herein.

19. Section 54 of the Hindu Religious and Charitable Endowments Act, 1959 is as follows:

> "Sec.54. Filling up of vacancies in the offices of hereditary trustee.—(1) When a permanent vacancy occurs in the office of the hereditary trustee of a religious institution, the next in the line of succession shall be entitled to succeed to the office.
>
> (2) When a temporary vacancy occurs in such an office by reason of suspension of the hereditary trustee under sub-section (2) of section 53, the next in the line of succession shall be entitled to succeed and perform the functions of the trustee until his disability ceases.
>
> (3) When a permanent or temporary vacancy occurs in such an office and there is a dispute respecting the right of succession to the office, or when such vacancy cannot be filled up immediately, or when a hereditary trustee is a minor and has no guardian fit and willing to act as such or there is a dispute respecting the person who is entitled to act as guardian ; or when a hereditary trustee is by reason of unsoundness of mind or other mental or physical defect or infirmity unfit for performing the functions of the trustee, 1[the Joint Commissioner or the Deputy Commissioner, as the case may be,] may appoint a fit person to perform the functions of the trustee of the institution until the disability of the hereditary trustee ceases or another hereditary trustee succeeds to the office or for such shorter term as 1[the Joint Commissioner or the Deputy Commissioner as the case may be], may direct.
>
> Explanation.—In making any appointment under this sub-section, 1[the Joint Commissioner or the Deputy Commissioner as the case may be], shall have due regard to the claims of the members of the family, if any, entitled to the succession.
>
> (4) Any person aggrieved by an order of 1[the Joint Commissioner or the Deputy Commissioner, as the case may be], under sub-

section (3) may, within one month from the date of receipt of the order by him, appeal against the order to the Commissioner.

(5) Nothing in this section shall be deemed to affect anything contained in the 2 [Tamil Nadu] Court of Wards Act, 1902 (2 [Tamil Nadu] Act I of 1902)."

20. A plain reading of the section shows that when a permanent vacancy occurs in the office of the hereditary trustee of a religious institution, the next in the line of succession shall be entitled to succeed to the office. The words used by the legislature are "entitled to succeed to the office".

21. In the present case, there has been no appointment or recognition of the petitioner herein as the hereditary trustee. Her husband was removed from office. She took over the office immediately by herself. That act of her has neither been recognized nor sanctioned nor approved by the respondent. There is no statement made whether there were any contesting claimants to the post. Even assuming that there were no contesting claimants, still the petitioner herein only had a right to be entitled to succeed to the office and cannot therefore claim that having taken the office, it must be assumed that the respondents have approved her status. She cannot also claim that it was not necessary for the respondents to approve her action in declaring herself as the hereditary trustee.

22. With respect to the judgment reported in 1990 1 LW 144, Prem Anand V. The Commissioner, Hindu Religious and Charitable Endowments Madras and Another, it is seen that even in that case, it had been observed that the Commissioner, Hindu Religious and Charitable Endowments, had appointed a fit person, and the petitioner therein had sought a direction to the said fit person must handover charge as he had become the hereditary trustee. It was stated that the Commissioner, Hindu Religious and Charitable Endowments Department, should have issued such a direction. In that case, there was no dispute that he was the eldest son of the prior trustee. The facts in the present case, though relates to the very same family are different and distinguishable.

23. In the instant case, the petitioner herein had simply walked into the office of the hereditary trustee. But, her entitlement should be declared by the competent authorities. She had not even sought a direction for such entitlement. Therefore, the said judgment is distinguishable on facts, even though it relates to the husband of the petitioner herein. Consequently, I hold that the continuance in office of the writ petitioner has to be prevented and prohibited.

24. It is also seen that the respondents had issued a show cause notice and the reply of the petitioner had been carefully considered by the respondents point by point. The respondents have only stated that an Executive Officer has to be appointed to act along with the petitioner. This effectively means that they have not removed her, but they have only sought her participation in the Management along with the officials of the respondents.

25. A perusal of the charges shows that very serious charges of misappropriation and maladministration have been levelled against the petitioner herein. Even though Section 45 of the Act does not contemplate an enquiry, still in this case, adequate opportunity had been granted to the petitioner by issuing a show cause notice and examining her reply. The petitioner had not chosen to seek an opportunity to be heard personally. There was no necessity for the respondents also to the travel the extra mile and give her an opportunity of being heard. They had answered each one of the points raised as explanations to the charges in the show cause notice.

26. With respect to the judgment reported in 2016-5-LW-896, Saravana Pandian V. The Government of Tamilnadu and Ors, it is seen that the respondents have actually, very consciously, appointed an Executive Officer to function along with the present petitioner.

27. In a writ seeking to quash an order, the Court will have to examine whether the order has been passed by an officer competent to pass the order, then examine whether principles of natural justice has been violated, then examine whether the order was passed with prejudice and bias and finally examine whether the same is perverse or shocking to the mind of the Court. In the present case, on careful examination, I hold that the order sought to be impugned does not suffer from any such infirmity.

28. I have no reason to differ from the reasonings of the respondents and accordingly, the Writ Petition fails and the same is dismissed. No costs.

W.M.P.Nos.30348 and 30944 of 2019 in W.P.No.28960 of 2019:

29. Both these writ miscellaneous petitions have been filed by the third parties to the writ petition seeking to implead themselves as a Party respondents in the Writ Petition.

30. The writ petition had been filed in the nature of Certiorarified Mandamus. This is an exercise to be undertaken on the basis of the order passed and on the basis of the records and on the basis of the arguments advanced by the petitioner and the respondents. In a proceedings of this nature, third parties can have no say whatsoever. Consequently, both the Writ Miscellaneous Petitions are dismissed.

31. In the result, W.P.No.28960 of 2019 and W.M.P.Nos. 30348 and 30944 of 2019 are all dismissed. No costs. Consequently, connected writ miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

smv
To

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

2. The Assistant Commissioner / Executive Officer,
   Arulmigu Vengeeswarar Alagar Perumal and
   Nagathamman Devasthanam,
   Office at: Arulmigu Vadapalani Andavar Temple,
   Vadapalani, Chennai - 600 026.

+1 CC to The Govt. Pleader sr 106622.
+1 CC to Mr.P.L.Narayanan, Advocate sr 106181.
+1 CC to Mr.M.Sashidhar Sivakumar, Advocate sr 106169.

W.P.No.28960 of 2019
and
W.M.P.No.28708 of 2019
and
W.M.P.Nos.30348 and 30944 of 2019

SV(CO)
SP(08/01/2020)