

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.01.2019

CORAM :

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WA.No.2806/2018
and
CMP.No.23336/2018

R.Vasantha

...Appellant / Writ Petitioner

Vs

- 1 The Joint Commissioner
Hindu Religious & Charitable
Endowments Department
Coimbatore 641 018.
- 2 The Assistant Commissioner /
Executive Officer,
Arulmighu Vanabadrakali Amman Temple
Thekkampatti, Mettupalayam Taluk
Coimbatore District.
- 3 R.Govindaraj
- 4 T.Pandurangan
- 5 N.Shanmugasundaram
- 6 P.Dhridayamani
- 7 K.Rengaraju
- 8 R.Kumaraswami
- 9 K.Kaali

R.Patti [Died]

...Respondents / Respondents

Prayer:- Writ Appeal filed under Clause 15 of the Letter
Patent against the order dated 08.10.2018 made in
WP.No.20356/2018.

WP.No.20356/2018:- Writ of Certiorari calling for the
records relating to the order dated 27.06.2018 passed in
O.A.No.5 of 1996(Old O.A.No.37 of 1995) on the file of the first
respondent and to quash the same.

For Appellant : Mr.S.Subbiah, Senior Counsel for
Ms.Elizabeth Ravi

For RR 1 & 2 : Mr.M.Maharaja, Spl.GP [HR&CE]

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.,]

By consent, the writ appeal is taken up for final disposal and is disposed of by this judgment. Mr.M.Maharajan, learned Special Government Pleader [HR&CE] accepts notice on behalf of the respondents 1 and 2.

2 The appellant is the writ petitioner herein and she originally filed RP.No.4/2003-D2 under section 21 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 [in short 'the Act'], challenging the order of the Joint Commissioner, HR&CE, Administration Department, Coimbatore, dated 20.01.2003 in dismissing MP.No.16/2002 filed under section 54[1] of the Act. According to her, one Thasa Naicker was the Founder-cum-Hereditary Trustee till his life time in respect of Arulmighu Vanabadhrakaliamman Temple, Thekkampatti, Mettupalayam Taluk, Coimbatore District and after his demise, his son, viz., Thiru T.Rangaswamy, functioned as the Hereditary Trustee and he was succeeded by his son, viz., Thiru.R.Govindaraj - the last holder of the office and his succession was also recorded under section 54[1] of the Act by the Joint Commissioner / Deputy Commissioner, Coimbatore vide order dated 09.11.1992 in MP.No.3/1992. Thiru R.Govindaraj, was removed from the post of Hereditary Trustee alleging mismanagement and irregularity in the administration of the temple vide proceedings of the Deputy Commissioner, HR&CE, Coimbatore, dated 22.03.2000 and he filed an Appeal in AP.No.13/2000 before the Commissioner, HR&CE, Chennai and the appellant/writ petitioner had also filed an appeal in AP.No.34/2000 to recognise her succession to Hereditary Trusteeship in the place of Thiru R.Govindaraj. The Commissioner, HR&CE, vide common order dated 12.03.2002, had dismissed the appeal filed by Thiru R.Govindaraj, in AP.No.13/2000 and allowed the appeal filed by the appellant/writ petitioner in AP.No.34/2000 and remanded the matter back with a direction to complete the enquiry regarding the succession of the appellant/writ petitioner and pass appropriate orders in accordance with law. On remand, the Joint Commissioner, HR&CE, Coimbatore, had dismissed MP.NO.16/2002 filed by the appellant/writ petitioner and aggrieved by the same, she filed the above said Revision before the Commissioner, HR&CE, Chennai-34, and the Commissioner vide order dated 20.01.2005 in D.Dis.RP.No.4/2003, has set aside the order dated 28.01.2003

made in MP.No.16/2002 by the Joint Commissioner, HR&CE, Coimbatore, and allowed the Revision and declared that the appellant/writ petitioner is entitled for succession to the Hereditary Trusteeship as the legal heir of the deceased Rangaswamy Naicker in the permanent vacancy caused by Thiru R.Govindaraj-the last holder of the office. The Department, aggrieved by the same, filed an Appeal before the Tamil Development, Culture and Charitable Endowments Department and the said Administration Department, vide G.O. [Standing] No.66 dated 17.02.2006, has dismissed the said Appeal and thereby, confirmed the above said order of the Commissioner dated 20.01.2005 and no further challenge has been made and it has become final.

3.The Joint Commissioner, HR&CE, has Suo Motu taken up a review petition in OA.No.5/1996 [Old Petition No.37/1995], in which the appellant/writ petitioner was arrayed as the 2nd respondent and has passed an order under section 64[1] and section 64[2][b] of the Act, appointing Non-Hereditary Trustees, not less than three and not more than five, to function along with the Hereditary Trustee and making a challenge to the said order, the appellant/writ petitioner filed WP.No.9624/2011 and it was disposed of on 15.04.2013, by directing the 1st respondent herein, to dispose of the Suo Motu proceedings in OA.No.5/1996 on merits and in accordance with law, after hearing the appellant/writ petitioner and interested parties. The appellant/writ petitioner aggrieved by the said order, filed WA.No.1094/2016 and vide judgment dated 24.07.2018, a Division Bench of this Court, had taken note of the fact that a scheme has been framed for the temple by the Joint Commissioner, vide order dated 27.06.2018 and in the light of the said development, had observed that nothing remains for further adjudication and however, granted liberty to the appellant/writ petitioner to challenge the said proceedings dated 27.06.2018 if she is still aggrieved. The appellant/writ petitioner, in terms of the liberty granted by this Court vide Judgment dated 24.07.2018 in WA.No.1094/2018, filed WP.No.20356/2018 and it was entertained.

4.The learned Single Judge has taken note of the submission made by the learned Special Government Pleader [HR&CE], on instructions that the impugned order is a non-speaking order and failed to deal with the provisions of the Act and has remanded the matter to the 1st respondent herein, viz., the Joint Commissioner, HR&CE, Coimbatore, with a further direction to pass appropriate orders, after affording an opportunity of hearing to the appellant/writ petitioner and the respondents 3 to 10 therein as well as any of the interested parties, within a period of eight weeks from the date of receipt of a copy of the said order and disposed of the said writ petition accordingly vide impugned order dated 08.10.2018. The appellant/writ

petitioner, aggrieved by the said order, has filed the present writ appeal.

5. Mr.S.Subbiah, learned Senior Counsel assisted by Ms.Elizabeth Ravi, learned counsel appearing for the appellant/writ petitioner has invited the attention of this Court to the proceedings of the Commissioner, HR&CE, dated 20.01.2005 in RP.No.4/2003-D2 as well as to G.O. [Standing] No.66, dated 17.02.2006, passed by the Department of Tamil Development, Culture and Charitable Endowments and would submit that in the light of both orders, the position of the appellant/writ petitioner as the Hereditary Trustee, has become final and in the absence of any allegation as to the mismanagement and mal-administration of the temple, the 1st respondent herein ought not to have passed such an order and the learned Single Judge has failed to take note of the above cited orders and therefore, prays for interference.

6. Per contra, Mr.M.Maharaja, learned Special Government Pleader[HR&CE] appearing for the respondents 1 and 2 would submit that on remand, it is obligatory on the part of the 1st respondent herein, to take into consideration, the above cited two orders also and the learned Judge did not go into the merits of the case and merely remanded the matter and as such, the appellant/writ petitioner cannot be the person said to be aggrieved by the said order and prays for dismissal of the writ appeal.

7. This Court has carefully considered the rival submissions and also perused the materials placed before it.

8. The order of the Commissioner, HR&CE, Chennai, dated 20.01.2005, in RP.No.4/2003-D2 has confirmed G.O. [Standing] No.66 dated 17.02.2006 passed by the Department of Tamil Development, Culture and Charitable Endowment, and the same would reveal the fact that the appellant/writ petitioner has been recognized as the Hereditary Trustee of Arulmighu Vanabadhrakali Amman Temple. However, the 1st respondent, by a cryptic order, has appointed the Non Hereditary Trustees to function along with the Hereditary Trustee and the said order did not contain any reasons. It is to be pointed out at this juncture, that the office of the Hereditary Trusteeship involves some civil right and if the powers of the Hereditary Trustees are said to be diluted by appointing Non Hereditary Trustees, proper and sufficient reasons should have been given and admittedly, the 1st respondent did not give any reasons. When WP.No.20356/2018 came up for hearing, it was conceded by the learned Special Government Pleader [HR&CE] on instructions, that since the said order does not deal with the provisions of the HR&CE Act, it is a fit and proper case to be remanded back to

the Joint Commissioner and accordingly, the learned Judge has remanded the matter to the Joint Commissioner.

9. This Court, also agrees with the reasons assigned by the learned Single Judge for remanding the matter once again to the 1st respondent. However, the 1st respondent herein while dealing with the matter after remand, shall take into consideration, the order of the Commissioner, HR&CE, Chennai-34, dated 20.01.2005 made in RP.No.4/2003-D2 as well as G.O. [Standing] No.66, Tamil Development, Culture and Charitable Endowment Department, dated 17.02.2006 and after putting the appellant/writ petitioner as well as the private respondents on notice, shall afford them an opportunity of personal hearing and thereafter, consider and dispose of the Suo Motu OA.No.5/1996 on merits and in accordance with law and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order and communicate the decision taken, to the appellant/writ petitioner as well as to the private respondents herein.

10. In the result, the writ appeal is dismissed, confirming the order dated 08.10.2018 made in WP.No.20356/2018, subject to above observations. No costs. Consequently, connected miscellaneous petition is also dismissed.

AP

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1 The Joint Commissioner
Hindu Religious & Charitable
Endowments Department
Coimbatore 641 018.

2 The Assistant Commissioner /
Executive Officer,
Arulmighu Vanabadrakali Amman Temple
Thekkampatti, Mettupalayam Taluk
Coimbatore District.

+1cc to M/s.Elizabeth Ravi, Advocate, S.R.No.259

+1cc to the Government Pleader, S.R.No.961

WA.No.2806/2018