



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

WEB COPY

W.P. (MD) No. 7997 of 2018

and

W.M.P (MD) .Nos. 7593 and 16625 of 2018

P.Durairaj

... Petitioner

Vs

1.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department, Madurai.

2.P.V.S.Gopalakrishnan

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the impugned order of the first respondent in I.A.No.1 of 2018 in O.A.No.1 of 2016 dated 28.02.2018 and quash the same as illegal and consequently direct the first respondent to drop all further proceedings in O.A.No.1 of 2016.

For Petitioner : Mr.M.Kannan

For R1 : Mr.R.Sethuraman
Special Government Pleader

For R2 : Mr.S.Manohar

ORDER

Heard the learned counsel on either side.

2. The subject matter pertains to Arulmighu Kariaperumal Temple, Kumttranpatti Village, Kottampatti Post, Melur Taluk. The second respondent herein filed an application under Section 63(b) of the Tamil Nadu Hindu Religious and Charitable Endowment Act and got himself declared as the hereditary trustee. This order dated 12.05.2017 in O.A.No.1 of 2016 was obtained behind the back of the writ petitioner. According to the writ petitioner, he has been recorded as the hereditary trustee of the temple in question. He therefore, filed W.P(MD).No.14166 of 2017 challenging the said order dated 12.05.2017. This Court, by order dated 18.09.2017, set aside the order made in O.A.No.1 of 2016 dated 12.05.2017 and remanded the matter to the file of the first respondent in the following terms:-



"5. Accordingly, this petition is allowed. The impugned order is set aside and the matter is remitted to the first respondent, who in turn shall give notice to the petitioner as well as the second respondent and pass appropriate orders on its own merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order, after affording due opportunity of hearing to them and any of the interested parties. No costs. Consequently, connected Miscellaneous Petitions are closed."

3. After the remand, the petitioner herein filed I.A.No.1 of 2018 calling upon the first respondent to rule on the issue of jurisdiction as the preliminary issue. The said interlocutory application was dismissed by order dated 28.02.2018 by the first respondent. The same is questioned in this writ petition.

4. The learned counsel appearing for the writ petitioner submitted that when once the matter was remanded to the file of the first respondent, it was open to the writ petitioner herein to file an application for raising a preliminary issue. He relied on the decision of the Hon'ble Supreme Court reported in (1974) 2 SCC 58 in the case of **V.S.Thiagaraja Mudaliar Vs. Bava C.Chokkappa Mudaliar and Brahadeeswaran Shanmugha Sundram Vs. Bava C.Chokkappa Mudaliar**. The learned counsel contended that the first respondent lacks the jurisdiction to go into the question of rival claims. In paragraph No.18, the Hon'ble Supreme Court held as follows:-

"18. While it may well be that the Board before exercising its jurisdiction to determine the character of the trusteeship-hereditary or other may have to decide tentatively whether the petitioner is a stranger without any *locus standi* or the heir to the last trustee, in this case even that provisional finding on a collateral fact is uncalled for since the issue it had to decide-hereditary trusteeship-was admitted by both sides. We make it clear that after having got the entire proceedings dismissed as without jurisdiction on the ground that no dispute regarding the hereditary nature of the trusteeship at all arose it is not open to the contestant Thiagaraja Mudaliar to resile from that stand in other proceedings. It is also obvious that our judgment is based on the Act as it was and cannot preclude action, if available, under any new or other enactment. "

5. The learned counsel pointed out that as on date, there are rival claims one by the second respondent and the other by the writ petitioner and that therefore, on the very face of it, the first respondent was obliged to relegate the parties to go before the Civil Court.

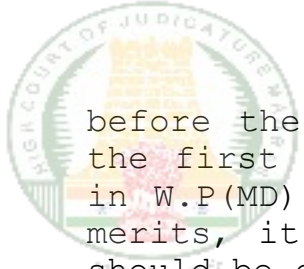


6. This is all the most because according to both the parties, the Office of trusteeship of the subject temple is hereditary in nature.

7. This Court posed a specific question to the learned Special Government Pleader appearing for the first respondent as to whether the department is recognizing the Office in question as hereditary in nature. The categorical answer given by the learned Special Government Pleader is that the issue is yet to be determined.

8. The second respondent herein in O.A.No.1 of 2018 has prayed for declaring him as the hereditary trustee of the subject temple. As per Section 63(b) of Tamil Nadu Hindu Religious and Charitable Endowments Act, the competent authority shall have powers to enquire into and decide whether the trustee holds or held Office as hereditary trustee. Therefore, the scope of enquiry before the first respondent is obviously confined to what is set out in Section 63(b) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. It is true that as per Rule 20 of the Holding of the Enquiry Rules, the provisions of the Code of Civil Procedure, 1908 will apply as far as practicable to such enquiries. In the present case, the writ petitioner set up a rival claim. But, merely because the contending parties agree on the nature of the office, it would not on that account become hereditary. Apart from the private parties, the department is also having a stake. Mere raising of rival claim by itself, will not denude the authority of its jurisdiction to decide the matter. It is quite possible in some cases a rank stranger or inter-loper may set up a rival claim that he is also a hereditary trustee. Hence, in the very nature of things the authority will have to see if there is a *bona fide* dispute with regard to the claim over hereditary trusteeship that involves taking of evidence, documents will have to be marked and only thereafter, the authority can come to a decision as to whether there is any rival claim. Once the authority comes to the conclusion that there is a rival claim, he will have to divorce himself of the jurisdiction to decide the matter further and relegate the parties to go before the Civil Court.

9. There cannot be a trial within the trial likewise there cannot be an enquiry within the enquiry. The authority will have to take up all the issues at one go and decide. In this case, this Court by order dated 18.09.2017 made in W.P(MD).No.14166 of 2017 directed the first respondent to hear the second respondent and the writ petitioner and dispose of the Original side Application on merits. Therefore, the writ petitioner ought to have filed his counter in O.A.No.1 of 2016 and adduced his evidence. The first respondent would have framed the necessary issues and dispose of the Original side Application on merits and in accordance with law. But the writ petitioner appears to be unwilling to face the enquiry on merits and that probably let him to file IA.No.1 of 2018 calling upon the first respondent to give ruling on his jurisdiction. I have no doubt in my mind that there is no enough material adduced



before the first respondent to render such a ruling. That apart, the first respondent has rightly observed that when the High Court in W.P(MD).No.14166 of 2017 directed for disposal of the matter on merits, it obviously meant that the main Original Side Application should be disposed of. I find no ground to interfere.

10. The Writ Petition is dismissed, accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

/ True Copy /

Sub Assistant Registrar(CS)

rmk

To

The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Madurai.

+1 CC to M/s.SPL GP (SR-49528[F] dated 25/02/2019)
+1 CC to M/s.M.KANNAN, Advocate (SR-49671[F] dated 26/02/2019)
+1 CC to M/s.S.MANO HAR, Advocate (SR-49920[F] dated 26/02/2019)

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