BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 28.03.2019
CORAM:
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)Nos.16847 and 4203 of 2018 and
W.P.(MD)No.17246 of 2016
and
W.M.P.(MD)Nos.14874, 4350 and 4351 of 2018
12511 12512 and of 2016

W.P.(MD)No.16847 of 2018

Sri Ramakrishna Tapovonam
represented by its Secretary
Swamy Sathyananda,
Thirupparaitturai-639 115,
Tiruchirappalli District. ... Petitioner

Vs

1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai-34.

2.The Assistant Commissioner,
Hindu Religious and Charitable Endowment Department,
Dindigul.

3.Thakkar, Shri Ramakrishnar Thapovanam,
Chinnamanur,
Arulmighu Gowmariamman Thirukovil,
Veerapandi, Theni.

4.The Sub-Registrar,
Chinnamanur,
Theni District.

5.Swamy Athmananda,
Disciple of Srimath Swami Chithbavananda,
Sri Sarada Niketan College,
Dakshinesvaram, Kanavaipudur,
Kadayampatti Taluk,
Kanavaipudur,
Salem-636354. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to the impugned order passed by the second respondent in Se.Mu.Na.Ka.No.1743/2015/A3 dated 27.08.2015 passed by the second respondent and quash the same.

For Petitioner : Mr.T.Antony Arul Raj

For R1 & R2 : Mr.M.Rajarajan
Government Advocate

For R3 : Mr.C.Gunaseela Rupan

For R4 : Mr.M.Murugan,

For R5 : Mr.ARL.Sundaresan
Senior Counsel
for Mr.M.P.Senthil

W.P.(MD)No.4203 of 2018

Swamy Athmananda,
Disciple of Srimath Swami Chithbavananda,
Sri Sarada Niketan College,
Dakshinesvaram, Kanavaipudur,
Kadayampatti Taluk,
Kanavaipudur,
Salem-636354. ... Petitioner

Vs

1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai-34.

2.The Assistant Commissioner,
Hindu Religious and Charitable Endowment Department,
Dindigul.

3.The Executive Officer,
O/o.Thakkar, Shri Ramakrishnar Thapovanam,
Chinnamanur,
Arulmighu Gowmariamman Thirukovil,
Veerapandi, Theni.

4.The Sub-Registrar,
Chinnamanur,
Theni District.

5.Shri Ramakrishna Thapovanam,

represented by its Secretary,
Tirupparaitturai,

Trichy District. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to the impugned order passed by the second respondent in Se.Mu.Na.Ka.No.1743/2015/A3 dated 27.08.2015 and the consequential proceedings of the third respondent dated 28.06.2017 and quash the same.

For Petitioner : Mr.ARL.Sundaresan
Senior Counsel
for Mr.M.P.Senthil

For R1 & R2 : Mr.M.Rajarajan
Government Advocate

For R3 : Mr.C.Gunaseela Rupan

For R4 : Mr.M.Murugan,

For R5 : Mr.Antony Arulraj

W.P.(MD)No.17246 of 2016

D.Prasad ... Petitioner

Vs

1.The Commissioner,
Hindu Religious and Charitable Endowments Board,
Chennai.

2.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Board,
Dindigul,
Dindigul District.

3.K.V.Rajagopal ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to the impugned proceedings of the second respondent in SEMU Na.Ka.No.1743/2015/A-3 dated 27.08.2015 and quash the same as illegal.

For Petitioner : Mr.M.Mahaboob Athiff
for Ajmal Associates

For R1 & R2 : Mr.M.Rajarajan
Government Advocate

For R3 : Mr.T.Chandrasekaran

ORDER

In all these three petitions, the order dated 27.08.2015 passed by the Assistant Commissioner, Hindu Religious and Charitable Endowment Department, Dindigul, appointing a fit person for the subject property comprised in Chinnamanur and the consequential communication dated 28.06.2017 issued by the fit person to the Sub Registrar, Chinnamanur are under challenge.

2.Even according to the Hindu Religious and Charitable Endowments Department, the property in question belongs to Shri Ramakrishna Tapovanam, Tirupparaitturai, Trichy District. It is beyond dispute that Ramakrishna Tapovanam is a society registered under the Societies Registration Act, 1860. (Registration No.2/1943-1944). The second respondent herein will have jurisdiction only over the religious and charitable endowments as per Section 1(3) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The Act applies to all Hindu Public Religious institutions and endowments, including the incorporated Dewaswoms and unincorporated Dewaswoms. A registered society will not fall within the scope of the definition of a Hindu Public Religious Institutions. Section 6(18) of the Act defines a religious institution. It reads as follows:

> *"6(18)- Religious Institution means a math, temple or specific endowment"*

3.The learned counsel appearing for the Tapovanam draws my attention to the objects set out in its memorandum of association. The objects read as under:

> *"Objects:*
>
> *a)to impart and spread ideas of spirituality and soul-culture as propounded by Sri Ramakrishna and Swami Vivekananda and work for the all-round upliftment of the general public.*
>
> *b)to impart and promote the practice of self-culture in its universal basis.*
>
> *c)to train self-sacrificing young men without distinction of caste, creed or religion for a disciplined dedicated life.*
>
> *d)to afford facilities for periodical retreats or Antaryogas to aspirants aiming at self-perfection.*
>
> *e)to promote brotherhood among all sections of people.*
>
> *f)to start and run educational and technical institutions.*
>
> *g)to take up the management of the aforesaid "Sri Ramakrishna Tapovanam"which at present stands in the name of the Ramakrishna Mission, Belur Math, Howrah District, West Bengal and also to take up the management of Sri*

Ramakrishna Asharam, Five Falls, Courtallam, which at present vests with Swami Chidbhavananda.

h)to start and run branches of the Tapovanam wherever possible.

i)to affiliate and accept societies and institutions running on similar lines.

j)to print and publish and distribute gratuitously or at nominal price or at cost price, journals, periodicals, books and leaflets that the Association may think desirable for the promotion of its objects.

k)to administer medical aid to the poor

l)to carry on any other philanthropic and charitable activity which the association is capable of doing and which is not inconsistent with the above-mentioned objects.

m)to give financial assistance to cultural and educational institutions for the promotion of their activities on a larger scale and in deserving cases.

n)to start and run agriculture and dairy farms for the use of the educational and medical institutions owned by Sri Ramakrishna Tapovanam.

o)to promote the social economics welfare of, or the uplift of the public in any rural area and to train persons for implementing programmes of rural development."

A reading of the above would clearly indicate that the objects of the Tapovanam are rather universal in nature and not confined to Hindu religion.

4.As pointed out by the learned Senior Counsel, the Act would apply only in the case of Hindu Public Religious Institution. The prefix "Hindu" has to be given significance in this case. This expression came up for consideration before the Madras High Court in the decision reported in *2013 (1) LW 950* in the case of *Nithyananda Dhyanapeetam Thiruvannamalai Branch, Adi Annamalai, Thiruvannamalai District, represented by its Manager, Dr.Sri Nithya Pranananda Vs.The Commissioner, HR & CE and others*. After considering the objections of the writ petitioner therein, it was observed as follows:

"31.The petitioner trust is not a Hindu religious charity. It is a public charitable trust with an intention to propagate Yoga and mediation worldwide. They are having an universal meditation centre where people belonging to all religions are participating in the Yoga and meditation programs and they do meditations. The Lingams were placed only for the purpose of private worship of people who participate in Yoga and meditation. The public are allowed to come for listening to the religious discourse (satsang) by Sri Nithyananda Swami mostly on the full moon day and other specified days. The dhyanapeedam is not a place of

worship exclusively for the persons belonging to Hindu community or a section thereof. The people belonging to all religions including Christian and Muslims are common beneficiaries of the trust. The trust makes no restriction or discrimination on the basis of religion, caste or community. In order to help people who visit the Peedam, the trust provides for Annadanam. Even it is also not restricted to any particular sect or group.

32.It must be noted that Article 25 of the Constitution guarantees to every person the freedom of conscience and free profession, practice and propagation of religion. However, the said right is subject to public order, health and morality. It does not prevent the State from making laws regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice. But in this case, the Tamil Nadu HR & CE Act which is referable to restrictions found under Article 25, is confined only to the institution covered by the provisions of the said Act. Therefore, unless it is proved that it comes within any one of the definitions under the Tamil Nadu HR & CE Act, more particularly in the present case, the definition under Section 2(18), the question of the department issuing a notice to person or body, who are not covered by the Act, will not arise. The stand of the respondents was that the premises of the petitioner trust is a " religious institution" in terms of section 6(18). As noted already, the trust is neither math nor temple. Therefore, it is incumbent upon the respondents to prove that it was a specific endowment covered by the said Act."

5.The Hon'ble Division Bench in the decision reported in *73 LW 794* in the case of *The State of Madras by the Secretary, Revenue Department, Maduras and another Vs. The Urumu Seshachalam Chettiar Charities, Tiruchirapalli, by its Board of Trustees and others* held as follows:

"We are in respectful agreement with Balakrishna Aiyar J. when he stated that the word "Hindu" should be accorded the same significance in relation to both religious and charitable endowments in construing the scope of the Act and its provisions."

6.Respectfully, following the principles laid down in the aforesaid decisions, I come to the conclusion that Ramakrishna Tapovanam is not a "Hindu Religious Institution" within the meaning of Section 1(3) of the Tamil Nadu Hindu Religious and Charitable Endowments Act. Once this conclusion is arrived at, it must necessarily follow that the second respondent herein will not have the jurisdiction to appoint a fit person.

7.In this view of the matter, the orders impugned in these writ petitions stand quashed. As regards the inter-se/ disputes among the parties, it is for them to resolve them elsewhere.

8.Accordingly, this writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To
1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai-34.

2.The Assistant Commissioner,
Hindu Religious and Charitable Endowment Department,
Dindigul.
+1cc to Mr.T.Antony Arul Raj, Advocate, SR.No. 57631
+1cc to Mr.M.P.Senthil, Advocate, SR.No. 57712
+1cc to M/s.Special Government Pleader,SR.No. 57747 ,57753

W.P.(MD)Nos.16847 and 4203 of 2018 and
W.P.(MD)No.17246 of 2016
28.03.2019

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KK/SAR/22.04.2019/ 7P- 6C