



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.10.2019

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THE HONOURABLE **MR.JUSTICE M.GOVINDARAJ**

W.P. (MD) No.23321 of 2017

and

W.M.P. (MD) Nos.19679 to 19681 of 2017

1.P.Palanichamy

2.P.Nagappan

... Petitioners

vs.

1.The Joint Commissioner

Hindu Religious & Charitable Endowment Department,
Tiruchirappalli.

2.The Executive Officer,

A/m.Rathanagiriswarar Thirukoil

Ayyarmalai, Kulithalai Taluk,

Karur District

Holiding office as Fit Person

A/m.Karuppasamy Thirukoil,

Sukkampatti, Kadavur Taluk,

Karur District.

3.V.Ganesan

4.P.Thiruvvel

5.P.Kaliayappan

... Respondents

PRAYER : Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the second respondent dated 22.03.2017 and quash the same and consequently forbear the respondents, their men and agents from in any manner interfering with the hereditary poojariship of petitioners in A/m.Karuppasamy Thirukoil, Sukkampatti, Kadavur Taluk, Karur District declared in O.A.No.185 of 1969 (CBE) on the file of Deputy Commissioner (Judicial) Hindu Religious & Charitable Endowments (Administration) Dept., Madras-34, dated 18.02.1972.

For Petitioner : Mr.M.Vallinayagan
Senior Counsel,

for M/s.K.Appadurai

For R1 : Mr.VR.Shanmuganathan,
Special Government Pleader



For R2

: Mr.P.Athimoolapandian

For R3 to R5

: Mr.T.Antony Arulraj

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ORDER

This Writ Petition has been filed to quash the proceedings, dated 22.03.2017 on the file of the second respondent.

2. As per the impugned order, one Ganesan was appointed as poojari of Karuppasamy Temple, Jegathabi Village. According to the petitioners, their father viz., Periyasamy, obtained an order in O.A.No.185 of 1969 by the Deputy Commissioner (Judicial) HR & CE (Admn) Department dated 18.02.1972 recognizing him as Hereditary Trustee and with the strength of that order, he conducted poojariship and aggrieved over the same father of the private respondents herein have filed a suit in O.S.No.7 of 2000 for permanent injunction. The trial Court after framing suitable issues, has decided in favour of petitioners father on 28.11.2003 that the respondents do not have any right over the temple and held that the said Periyasamy is entitled to function as Hereditary Trustee. Thereafter, it was taken on appeal and the Appellate Court had also confirmed the decree of the Trial Court and declared that the muchalikka- Ex.A2 entered between the parties as invalid document and not acted upon. Thereafter, it appears that the respondents filed O.A. before the Joint Commissioner of Hindu Religious & Charitable Endowments Department in O.A.No.9 of 2001, in which, the first respondent has conferred the poojariship rights in favour of the respondents also vide order dated 28.11.2013. This decision of the poojariship was made based on the muchalikka, which was rejected as invalid document by the Civil Court. The said order passed by the first respondent in O.A.No.9 of 2001, dated 28.11.2013 is under appeal before the Commissioner of the Hindu Religious & Charitable Endowments Department. During the pendency of the appeal, the Fit Person was appointed in the year 2011 and he appointed poojaries to all group of Temples. The petitioners were appointed as Pattakara poojari of these temples. While so, the Fit Person has again appointed the third respondent as poojari, vide its proceedings, dated 22.03.2017.

3. According to the petitioners, the Civil Court has already declared them as Hereditary Trustees of the Temple. In that view of the matter, the Civil Court rejected the contention of all the respondents to conduct poojas by claiming hereditary right. While so, appointment of the third respondent to perform Poojas is illegal and without jurisdiction. An appeal with regard to challenging of O.A.No.9 of 2001 is still pending, while so, the Fit Person has no jurisdiction to pass such order. Since the petitioners are



successors of the Hereditary Trustee, without giving notice to them, no Poojari can be appointed and therefore, the learned counsel for the petitioners seek to set aside the impugned order.

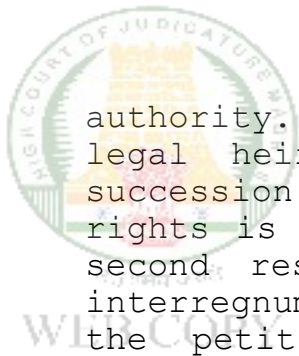
4.The learned counsel appearing for the official respondents vehemently contended that as long as the order of the Joint Commissioner in O.A.No.9 of 2001 remains intact and that a Fit person has been appointed in the year 2011, the petitioners are not entitled to any relief. As per the Section 55 of the Hindu Religious & Charitable Endowment Act, the Fit Person has power to appoint poojari. As long as the order passed by the Joint Commissioner is not set aside, the action of the Fit person in terms of O.A.No.9 of 2001 cannot be questioned.

5.The learned counsel appearing for the private respondents would contend that the Joint Commissioner has conferred the poojariship on the respondents only after considering the Civil Court judgment and on the basis of customary rights. Hence it cannot be questioned by the petitioners. Since the order of the Joint Commissioner has already attained finality, the petitioner cannot challenge the same.

6. Heard the learned counsel on either side.

7. Admittedly, the Civil Court has declared the right to the Hereditary Trusteeship in favour of the petitioners family as conferred by the Deputy Commissioner, Hindu Religious & Charitable Endowments Department vide order in O.A.No.185 of 1969, in favour of the petitioners' father. But it only remains as to the recognition of the petitioners as Hereditary Trustees. While the matter stood thus, the unsuccessful plaintiffs in O.S.No.7 of 2000 have filed an application before the first respondent in O.A.No.9 of 2001 in which the private respondents were conferred with poojariship rights to the group of temples. During the pendency, in the year 2001, the first respondent appointed the second respondent as fit person of A/m.Karuppasamy Temple, Sukkampatti. The second respondent has appointed the third respondent as poojari to Karuppasamy temple, which is under challenge now. From the perusal of the Civil Court decree in O.S.No.7/2000 dated 28.11.2003 as confirmed in A.S.No.2 of 2004 dated 31.03.2004, it is crystal clear that the petitioners father was declared as Hereditary trustee. The said decree is in force till date. The first respondent is not competent to prevail over the decree. Any order passed by the official respondent contrary to the Civil court decree is not enforceable. Curiously, the order in O.A.No.9 of 2001 dated 28.11.2013 came to be passed relying on a document which was declared as an invalid document and rejected as one not acted upon as held by the Civil court in its decree. It is also pertinent to state that the very same applicants predecessors were parties to the suit also. Be that as it may, now the said order is pending appeal before the Commissioner of HR & CE

<https://hcmis.elections.gov.in/inter> services of appeal has to be dealt with by the said appellate



authority. In the present circumstances, the petitioners are the legal heirs of the hereditary trustees and next in line of succession. As such they have vested rights and recognising their rights is only an administrative function. Till such time only the second respondent can function as Fit person. But during the interregnum period action shall not be taken affecting the rights of the petitioners and unsettle the settled things. The second respondent must have taken decision only after giving notice to the petitioners. In so far as the action of the second respondent appointing the third respondent without notice to the petitioner is illegal, invalid and violative of principles of natural justice.

7. In view of the above discussions, the impugned order passed by the second respondent in his proceedings dated 22.03.2017 is set aside. A direction is issued to the Commissioner Hr & CE to decide the appeal filed by the petitioners as expeditiously as possible in order to give quietus to the issues between contesting parties.

8. In fine the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)

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To

The Joint Commissioner
Hindu Religious & Charitable Endowment Department,
Tiruchirappalli.

+1 CC to M/s.T.ANTONY ARUL RAJ, Advocate (SR-91825[F] dated 15/10/2019)

+1 CC to M/s.K.APPADURAI, Advocate (SR-92266[F] dated 16/10/2019)

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KK/SAR/07.01.2020/4P-4C/