IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.01.2020

DELIVERED ON : 12.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.23096 of 2013
&
M.P.No.1 of 2012

H.H.Sankaracharya Swamigal Kanchi Kamakodi Peetam
Hereditary Trustee,
Sri Viswanatha Swamy Devasthanam,
Melavanjur,
Thirumalairaya Pattinam,
Pondicherry .. Petitioner

vs.

1.The Govt. of Tamil Nadu,
Rep. by its Secretary,
Tourishm, Culture and Charitable Endowments Dept.
Fort St. George,
Chennai – 600 009.

2.The Commissioner,
Hindu Religious & Charitable Endowments Department,
Nungambakkam High Road,
Chennai – 600 034.

3.The Asst. Commissioner,
Hindu Religious & Charitable Endowments Department,
Nagapattinam. ...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for writ of certiorarified calling for the records of the 1st respondent which culminated in the impugned order dated 16.05.2013 in G.O.(Ms) No.91, quash the same and forbear the respondents from taking any action against Sri Viswanathaswami Devasthanam, Melavanjur, Thirumalairayar Pattinam, Pondicherry.

For Petitioner : Mr.Sriram,
for M/s.A.S.Kailasam and Asso.

For Respondents : Mr.R.Venkatesan,
Government Advocate

## ORDER

This writ petition has been filed challenging the order of the first respondent dated 16.05.2013 in G.O.Ms.No.91 and to forbear the respondents from taking any action against Sri Viswanathaswami Devasthanam, Melavanjur, Thirumalairayar Pattinam, Pondicherry.

2. It is the case of the petitioner that the petitioner is a hereditary trustee of Sri Viswanathaswami Devasthanam, Melavanjur, Thirumalairayar Pattinam (hereinafter referred to as "the temple"). According to him, the said temple is dedicated to Lord Shiva and the presiding deities are Viswanatha Swamy and Visalakshi Amman. According to him, the said temple is located in the Union Territory of Pondicherry. According to the petitioner, the temple owns wet and dry lands in Pondicherry and also at Panangudi Vattam, Nagapattinam District within the state of Tamil Nadu.

3. According to the petitioner, the said temple is a private temple. It is their case that general public do not have a right to worship in the temple. According to him, the temple does not come within the purview of Hindu Religious and Charitable Endowment Department. According to the petitioner, the third respondent which does not have jurisdiction and control over the temple, attempted to exercise jurisdiction over the Temple.

4. According to the petitioner, after Tsunami in the month of December 2004, some of the lands belonging to the Temple were sold for the benefit of Tsunami victims. It is the case of the petitioner that the third respondent issued a notice dated 29.11.2006 to show cause as to why a fit person should not be appointed for the temple for which a reply was given.

5. According to the petitioner, without considering the said reply, the third respondent passed an order dated 27.04.2007 under Section 49 (1) of the Tamil Nadu Hindu Religious and Charitable Endowment Act 1959 appointing a fit person for the temple which was challenged by the petitioner before the second respondent in R.P.No.32 of 2007. According to the petitioner, the second respondent dismissed R.P.No.32 of 2007 on an erroneous application of law. Aggrieved by the dismissal of R.P.No.32 of 2007, the petitioner filed a review before the first respondent. According to the petitioner, they

received a notice for hearing in the review application dated 19.10.2012. Thereafter, the matter was adjourned to 31.01.2013. It is the case of the petitioner that on 31.01.2013, the matter was argued before the first respondent and orders were reserved. According to the petitioner, subsequently they did not receive any notification or communication of the order and only on 13.07.2017, to their shock and surprise, they received a copy of the order dated 16.05.2013 passed by the first respondent.

6. According to the petitioner, the order dated 16.05.2013 even though passed by the first respondent was communicated to the petitioner only by the second respondent. According to the petitioner, the first respondent has violated the principles of natural justice before passing the impugned order dated 16.05.2013. Aggrieved by the order of the first respondent, this writ petition has been filed.

7. The main grounds for challenge in this writ petition are

(a) The hearing which took place before the first respondent on 31.01.2013 was by a particular incumbent, who was subsequently shifted and the impugned order has been passed by the present incumbent who has not heard the matter at all.

(b) The findings of the first respondent in the impugned order relating to interpretation of section 6(20) of the Hindu Religious and Charitable Endowment Act is misconceived, since the question of appointment of a Fit person would arise only in the absence of a Trustee for the Temple.

(c) A fit person cannot be appointed in respect of property alone under Section 6 (20) of the Hindu Religious and Charitable Endowment Act.

(d) When there is a hereditary trustee for a temple, there is no power to appoint a fit person for the temple.

(e) The provisions of Tamil Nadu Hindu Religious and Charitable Endowment Act applies only to institutions located within the state of Tamil Nadu and not for institutions which are located outside the state of Tamil Nadu.

Under the aforementioned circumstances, this Writ petition has been filed.



8. A counter affidavit has been filed by the first respondent wherein they have stated as follows:

(a) Personal hearing was afforded to the petitioner before passing of the impugned order by the first respondent. According to the first respondent, the submissions of the learned counsel for the petitioner were heard and only after considering the same, the impugned order has been passed. Therefore, according to the first respondent, the principles of natural justice have not been violated.

(b) The explanation to Section 6(20) of Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 enables the appointment of a fit person in respect of a property situated within the State of Tamil Nadu even if the temple is located outside the State of TamilNadu.

(c) Since the public religious worship is admitted and no contra evidence has been produced to prove that the temple is a private temple, the certificate issued by the authorities of Pondicherry Government will not confirm that the temple is a private temple.

(d) Earlier, the proceedings were initiated by the third respondent to bring the Temple under the control of Hindu Religious and Charitable Endowments Department in proceedings dated 12.06.2006 which was challenged by the very same petitioner before the second respondent in R.P.No.2 of 1994. The said R.P. was dismissed by the Commissioner by order dated 25.10.1994. In that order, it was clearly stated that in the absence of a clear and specific declaration, describing the temple in question as a 'private temple', the petitioner is bound to render true and proper accounts of income of the properties situated in the state of Tamil Nadu. The petitioner has not preferred any appeal against the said R.P.No.2 of 1994 and hence, the said order has attained finality. Further, the very same petitioner approached the second respondent for the sale of land situated in Panangudi Village and permission was accorded by the Commissioner in proceedings Sale No.2/2006/VI dated 27.05.2007.

(e) There were numerous complaints about the misuse of the properties belonging to the temple by the power agent of the petitioner and hence, the Fit person was appointed only to prevent irregularities and mismanagement.

(f) The petitioner was not declared as a hereditary trustee under Section 47 and 49 which should be read with Section 6(20) and Section 49 of the Act which empowers the Assistant Commissioner to appoint trustees and fit persons. There is no distinction between appointment of fit person and non-hereditary trustee under Section 47 and 49 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959.

(g) The Assistant Commissioner has exercised the powers only in accordance with Section 14(2) read with Section 6(20) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

(h) If there is no property for any temple, there will be no necessity for appointment of a Fit person by the authorities under the Act.

The impugned order has been passed in accordance with law and passed with due application of mind.

9. Heard Mr.A.K.Sriram, learned counsel for the petitioner and Mr.R.Balaramesh, learned Government Advocate for the respondents.

Discussion:

10. The petitioner claims to be a hereditary trustee of the temple. Under the impugned order, the third respondent has appointed a fit person under Section 49 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 which has been upheld by the second respondent as well as by the first respondent. Even though the petitioner has taken a consistent stand before the authorities that he is a hereditary trustee and that a fit person cannot be appointed when there is a hereditary trustee, the respective respondents while passing the impugned orders have not considered the said contention and has not given a finding as to how a fit person can be appointed under Section 49 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 when the hereditary trustee is still in existence. A trustee can be suspended, removed or dismissed only in accordance with Section 53 of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Section 53 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 reads as follows:

> 53. Power to suspend, remove or dismiss trustees.—(1) In this section, the expression, "appropriate authority" shall, unless the context otherwise requires, means—
>
> (a) in respect of any trustee of any religious institution included in the list published under clause (iii) of section 46, the Government;
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> (b) in respect of any trustee of any religious institution included in the list published under clause (ii) of section 46, the Commissioner;
>
> (c) in respect of any trustee of any religious institution included in the list published under clause (i) of section 46 and in respect of any hereditary trustee of any religious institution not included in the list published under the said section 46, the Joint or the Joint / Deputy

Commissioner.

(d) in respect of any non-hereditary trustee of any religious institution not included in the list published under section 46 the Assistant Commissioner.

(1-A) Notwithstanding anything contained in sub-section (1) for the purpose of this section, the Government shall also by the appropriate authority in respect of any trustee of any religious institution.

(2) the appropriate authority may suspend, remove or dismiss any trustee, if he—

(a) ceases to profess the Hindu religion ; or

(b) fails to discharge the duties and perform the functions of a trustee in accordance with the provisions of this Act or the rules made thereunder ; or

(c) disobeys the lawful orders issued under the provisions of this Act or the rules made thereunder by the Government, 4[* * * * * *] the Commissioner, or the Joint Commissioner or Deputy Commissioner or the Assistant Commissioner ; or

(d) continuously neglects his duty or commits any malfeasance, misfeasance or breach of trust, in respect of the trust ; or

(e) misappropriates or deals improperly with the properties of the religious institution or endowment; or

(f) is of unsound mind or is suffering from other mental defect or infirmity which would render him unfit to perform the functions and discharge the duties of a trustee or is suffering from leprosy or other loathsome disease ; or

(g) is sentenced by a criminal Court for an offence involving moral delinquency, such sentence not having been reversed or the offence pardoned ; or

(h) is an undischarged insolvent ; or

(i) is interested in a subsisting lease of any property of, or contract made with or any work being done for, the religious institutions or endowment;

(ii) is in arrears or default of any kind due by him to the religious institution ; or endowment;

(j) acts adversely to the interest of any religious institution or endowment.

(jj) wilfully fails to pay the contribution payable under sub-section (1) of section 92 or the further sum payable under sub-section (2) of section 92 within the time allowed by or under clause (b) of sub-section (2) of section 94 ; or

(k) absents himself from three consecutive meetings of the trustees

Explanation.—A meeting adjourned for want of quorum shall be deemed to be a meeting for the purposes of this clauses; or

(l) in the case of a Chairman of the Board of Trustees or a Managing or Executive trustee, refuses or delays to, or does not, hand over charge to his successor. (3) When it is proposed to take action under sub-section (2), the appropriate authority shall frame charges against the trustee concerned and give him an opportunity of meeting such charges, of testing the evidence adduced against him and of adducing evidence in his favour ; and the order of suspension, removal or dismissal shall state the charges framed against the trustee, his explanation and the finding on each charge with reasons therefor.

(4) Pending the disposal of the charges framed against the trustee, the appropriate authority may place the trustee under suspension and appoint a fit person to discharge the duties and perform the functions of the trustee.

(5) A trustee who is aggrieved by an order passed under sub-section (2), may within one month from the date of the receipt by him of the order of suspension, removal or dismissal, appeal against the order—

(i) where the order has been passed by the Commissioner, to the Government;

(ii) where the order has been passed by the Joint Commissioner or Deputy Commissioner, to the Commissioner]; and

(iii) where the order has been passed by the Assistant Commissioner, to the Joint /Deputy Commissioner.

(5-A) A Trustee who is aggrieved by an order passed by the Government under sub-section (2) may, within ninety days form the date of the receipt of such order by him, appeal against such order to the High Court.

> (6) A hereditary trustee aggrieved by an order passed by the Commissioner or the Government under sub-section (5) may, within ninety days from the date of the receipt of such order by him, institute a suit in the Court against such order."

11. It is not known as seen from the impugned orders as to whether any order was passed for removal of either the petitioner or other trustees of the Temple under Section 53 of the Act. There is also no reference in any of the impugned orders as to who was in management of the temple and what is the exact nature of irregularities committed by the persons who were in the management prior to the initiation of proceedings under Section 49 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 for appointment of a fit person. Excepting for stating that there were financial irregularities committed by the management of the temple, the details of the alleged irregularities have not been disclosed in any of the impugned orders. In fact, in the impugned order passed by the third respondent appointing a fit person under Section 49 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the third respondent has observed that the petitioner did not give any explanation to the show cause notice within the stipulated period of 30 days and hence, the explanation given by the petitioner to the show cause notice after the period of 30 days is not acceptable.

12. The details of the irregularities committed by the petitioner in the management of the temple has also not been disclosed in the impugned order of the third respondent, There must be sound and valid reasons for appointment of a fit person under section 49 of the Tamil Nadu Hindu Religious and Charitable Endowments act, 1959. In the case on hand, the reason for coming to the conclusion that the temple is mismanaged, is not supported by any evidence. Only when the petitioner has been intimated about the nature of irregularities committed by him, he will be in a position to defend the same by disproving the contention of the respondents through oral and documentary evidence. In the case on hand, as seen from the impugned orders, the specific details of the irregularities committed by the management of the temple has not been furnished to the petitioner.

13. It is the case of the respondents that the temple is a public temple. There is no finding given by the authorities under the impugned orders with regard to the claim made by the petitioner that the subject temple is a private temple and not a public temple, though it is observed that the dismissal of the proceedings filed by the petitioner in R.P.No.2 of 1994 on 25.10.1994 will lead to the conclusion that the subject temple is a public temple. It is not be seen from the impugned orders as to whether the petitioner was given an opportunity to defend the contention of the respondents with regards to the aforesaid order dated 25.10.1994. By total non application of mind, the impugned orders have been passed.

14. With regard to the contention of the petitioner that a fit person cannot be appointed in respect of properties which are situated in the State of Tamil Nadu whereas the temple is located at Pondicherry, the explanation to Section 6(20) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 makes it clear that a fit person can be appointed under Section 49 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 if the properties belonging to the temple are located in Tamil Nadu, though the temple is situated outside the State of Tamil Nadu. Section 6(20) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 reads as follows:

> "(20)" temple" means a place by whatever designation known, used as a place of public religious worship, and dedicated to, or for the benefit of, or used as of right by, the Hindu community or any section thereof, as a place of public religious worship;
>
> Explanation.-Where a temple situated outside the State has properties situated within the State, control shall be exercised over the temple in accordance with the provisions of this Act, in so far as the properties of the temple situated within the State are concerned;"

15. Section 49 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 reads as follows:

> 49. Power of Assistant Commissioner to appoint trustees and fit persons.—(1) In the case of any religious institution which is not included in the list published under section 46 and is not a religious institution notified or deemed to have been notified under Chapter VI of this Act, the Assistant Commissioner shall have the same power to appoint trustees including fit persons or constitute a Board of Trustees and is vested in the Government, the

Commissioner or the Joint / Deputy Commissioner in the case of a religious institution referred to in clause (a) of sub-section (1) or in sub-section (2), as the case may be, of section 47 :

Provided that the Board of Trustees constituted under this sub-section shall consist of three persons appointed by the Assistant Commissioner from among the panel of names of persons sent by the District Committee concerned under sub-section (4) of Section 7-A, of whom one shall be a member of the Scheduled Castes or Scheduled Tribes and another one shall be a woman.

Provided further that in addition to the trustees appointed by the Assistant Commissioner under this sub-section, the Government may nominate two persons who are qualified for appointment as trustees under this act as members of the said Board of Trustees, having regard to the following matters, namely:—

(a) the interest of the public generally ;

(b) the income and the properties of the religious institution ;

(c) the number of worshippers and importance of the religious institutions as a pilgrim center ; and

(d) such other matters as may be prescribed : Provided also that notwithstanding anything aforesaid in this sub-section, the Assistant Commissioner may, in the case of any such religious institution which has no hereditary trustee, appoint a single trustee.

(2) The provisions of sub-sections (3) and (4) of section 47 and of section 48 shall apply to the trustee or trustees appointed, or the Board of Trustees constituted by the Assistant Commissioner as they apply to the trustee or trustees appointed, or the Board of Trustees constituted, under section 47.

Section 49 read with Section 6(20) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 enables the third respondent to appoint a fit person for the properties of the temple situated within the State of Tamil Nadu.

16. The very purpose of the explanation to Section 6(20) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 will be defeated, if the contention of the learned counsel for the petitioner that a fit person cannot be appointed for the properties situated in Tamil Nadu is to be accepted as only the State of Tamil Nadu will be in a better position to have

supervisory control over the properties of the Temple situated in Tamil Nadu. Further, if the contention of the learned counsel for the petitioner is to be accepted, there was no necessity for the legislature to give an explanation to the term temple under Section 6(20) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The explanation given under Section 6(20) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 with regard to the definition of the temple is to overcome difficulties of Hindu Religious and Charitable Endowments Department to exercise control, when the temple owns properties all over the country. Therefore, this Court is of the considered view that the appointment of a fit person for the properties located at Tamil Nadu alone is not an erroneous order as it has been passed only in accordance with explanation to Section 6 (20) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

17. However, as stated earlier, the respondents have not passed a speaking order with supporting evidence to establish that (a)the management of the temple have committed financial irregularities, (b) the subject temple is a public temple, (c) no explanation given as to how the petitioner ceases to be a trustee of the temple to enable the respondents to appoint a fit person under Section 49 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

18. For the above mentioned three reasons, this Court is of the considered view that the impugned orders passed by the third respondents violates the principles of natural justice and has not followed the due procedure contemplated under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

19. In the result, the impugned orders are quashed and the matter is remanded back to the third respondent for fresh consideration and the third respondent shall pass final orders under Section 49 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 after affording sufficient opportunity to the petitioner including granting him the right of personal hearing and after considering all the objections raised by the petitioner within a period of four months from the date of receipt of a copy of this Order.

20. With the aforesaid directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary,
Tourishm, Culture and Charitable Endowments Dept.
Fort St. George,
Chennai - 600 009.

2.The Commissioner,
Hindu Religious & Charitable Endowments Department,
Nungambakkam High Road,
Chennai - 600 034.

3.The Asst. Commissioner,
Hindu Religious & Charitable Endowments Department,
Nagapattinam.

+1 cc to Spl Government Pleader (HR AND CE) Sr.12002No.
+1cc to Mr.A.K.Sriram , Advocate SR.No. 11236

W.P.No.23096 of 2013

A.SK(11/03/2020)