

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2020

C O R A M

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.6260 of 2012

M.S.Tamilselvam Pillai and
P.Shanmugasundaram Pillai,
Rep by its
Trustees,

Arulmigu Nallamuthumariamman Thirukkoil,
South Street,
Vadaku Poigainalloor Village,
Nagapattinam District.

....Petitioner

Vs.

1. The Secretary to Government,
HR & CE Department,
Secretariat, Chennai.

2. The Commissioner,
HR & CE Department,
Chennai.

3. The Assistant Commissioner,
Hr & CE Department,
Nagapattinam.

4. The Executive Officer,
Arulmigu Annamalainathar Thirukoil,
Anthanapettai,
Nagapattinam District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a writ of Certiorarified Mandamus calling for the records of the third respondent in relation to his proceedings in Na.ka.No.739/2012/E2 dated 21.02.2012 and quash the same as illegal and without any authority of law and consequently forbear the respondents from interfering with the management and administration of the petitioner temple.

For Petitioner : Mrs.Chitra Sampath
For Respondents : Mrs.Jagatheeswari - R1 to R3

Govt. Advocate (HR & CE)
No appearance - R4

O R D E R

This writ petition has been filed challenging the order dated 21.02.2012 passed by the third respondent under Section 49 of the Tamil Nadu Hindu Religious and Charitable Endowments Department (hereinafter referred to as HR & CE Act) appointing a Fit Person for the temple viz., Nallamuthu Mariamman Temple at South Street, Vadakku Poigainalloor Village, Nagapattinam District.

2. According to the petitioner, the aforesaid temple is a denomination temple as per the provision of Section 107 of the Tamil Nadu HR & CE Act. According to the petitioner, the temple has also been declared as denominational temple pursuant to the judgment and decree passed in O.S.No.234 of 1980, on the file of the District Munsif Court, Nagapattinam, which was confirmed by this Court in S.A.No.22 of 1998 dated 27.08.1999. It is their case that in a denominational temple, the respondent does not have any legal right to appoint a Fit Person. Further, it is their case that even without any notice and without conducting any enquiry, after hearing the petitioner, the impugned order has been passed by the 3rd respondent for appointing a Fit Person. It is also denied by the petitioner that financial irregularities have been committed by them in the management of the above said temple.

3. According to the petitioner, since the impugned order has been passed without jurisdiction, they are entitled to file this writ petition without exhausting the statutory remedy to the appeal available under the Tamil Nadu HR & CE Act.

4. In the above mentioned circumstances, this writ petition has been filed, challenging the order dated 21.02.2012 passed by the third respondent.

5. A counter affidavit has been filed by the 3rd respondent stating that based on the complaint received from the villagers and another petition received from one Mr.Krishnan that financial irregularities have been committed by the temple, they have to take action under Section 49 of the Tamil Nadu HR & CE Act, by appointing a Fit Person under the impugned order. According to them, even though the aforesaid temple may be a denominational temple, in view of the financial irregularities committed under the management of the temple, they have a right to appoint a Fit Person under Section 49 of the Tamil Nadu HR & CE Act.

6. Heard Mrs.Chitra Sampath, learned Senior counsel for the petitioner and Mrs.Jagatheeswari, learned Government Advocate for the respondents 1 to 3. There is no appearance on behalf of 4th respondent.

7. The learned Senior counsel for the petitioner drew attention of this Court to the judgment and decree passed in O.S.No.234 of 1980, on the file of the District Munsif Court, Nagapattinam, which was confirmed by this Court in S.A.No.22 of 1998 dated 27.08.1999. According to her, the Court has declared Arulmigu Nalla Muthu Mariamman Temple as a denominational temple and hence, the HR & CE Department has got a supervisory control over the temple and they do not have any authority to appoint a Fit Person under Section 49 of the Tamil Nadu HR & CE Act.

8. It has also contended by the learned Senior Counsel that without any notice or furnishing a copy of the alleged complaint given by the villagers, the impugned order has been passed by the 3rd respondent. According to the learned Senior counsel for the petitioner, by total non-application of mind and without jurisdiction and by not-following the principles of natural justice, the impugned order has been passed.

9. The learned Senior counsel for the petitioner has also drew the attention of this Court to the judgment passed by the Hon'ble Division Bench of this Court in the case of the Assistant Commissioner, HR & CE Department, Trichy and others versus Arulmigu Balaguranthasamy Sametha Angala Parameswari Amman Thirukkivil, Trichy, in W.A.(MD) No.1190 of 2017, dated 18.01.2018 and in particular, she referred to paragraph Nos.11, 12 and 17 of the order and submitted that in case of a denominational temple, the HR & CE Department does not have authority under law to appoint a Fit Person.

10. Per contra, the learned counsel for the respondent would submit that only after hearing the petitioner, the impugned order has been passed and they have got the authority under Section 49 of the Tamil Nadu HR & CE Act, to appoint a Fit Person, in case the financial irregularities committed by the management of the temple. Since there are irregularities committed in the management of temple, the third respondent has rightly appointed a Fit Person under Section 49 of the Tamil Nadu HR & CE Act.

DISCUSSION:

11. As seen from the counter affidavit filed by the 3rd respondent that complaints were received that financial irregularities have been committed under the management of the aforesaid temple. But, in the impugned order, there is no discussion with regard to the mis-management committed by the

Trustees of the Temple. There is also no reference as to whether prior notice was given to the petitioner before concluding the enquiry under Section 49 of the Tamil Nadu HR & CE Act, which has resulted in the impugned order being passed by the 3rd respondent for appointment of a Fit Person. There is also no reference to the complaint, which is alleged to have been given by the villagers of the area where the temple is located and a copy of the complaint has also not been furnished by the petitioner.

12. From the above mentioned facts, this Court is of the considered view that the third respondent has violated the principles of natural justice before passing the impugned order against the petitioner. The third respondent has also not taken into consideration that the petitioner is a denominational temple and the 3rd respondent has also not taken into consideration of the judgment of this Court, dated 18.01.2018 passed in W.A.No.1190 of 2017 referred to supra, wherein the Hon'ble Division Bench has held that Section 49 of the Tamil Nadu HR & CE Act cannot be exercised in respect of a denominational temple. Admittedly, the subject temple is a denominational temple and hence, the 3rd respondent does not have power to appoint a Fit Person as per the decision of the Hon'ble Division Bench of this Court referred to Supra.

13. In the result, the Writ Petition is allowed. If at all the 3rd respondent finds that the Trustees of the Temple have committed financial irregularities or illegal irregularities in the management of the said temple, it is open to them that the 3rd respondent is take action in accordance with law.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

rli

To

1. The Secretary to Government,
HR & CE Department,
Secretariat, Chennai.
2. The Commissioner,
HR & CE Department,
Chennai.
3. The Assistant Commissioner,
Hr & CE Department,
Nagapattinam.

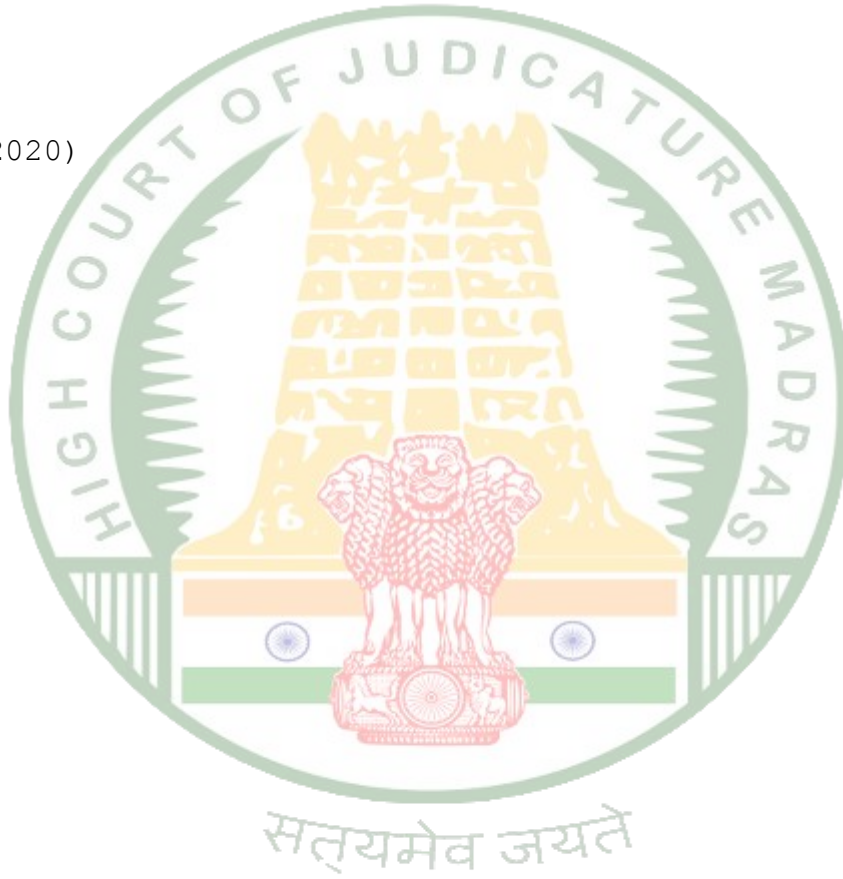
4. The Executive Officer,
Arulmigu Annamalai nathar Thirukoil,
Anthana pettai,
Naga pat tinam District.

+1 CC to Mr.T.S. Baskaran, Advocate sr 7844

+1 CC to The Special Govt. Pleader sr 8776.

W.P.No.6260 of 2012

RJI (CO)
SP(06/03/2020)



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