



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:25.02.2020
CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P(MD)Nos.8330 of 2019 and 478 of 2020
and
W.M.P. (MD) Nos.6522 to 6524 of 2019, 1761,
360, 362 & 363 of 2020

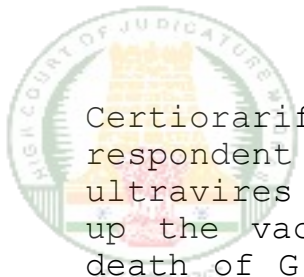
Padmavathy ... Petitioner in W.P(MD)No.8330 of 2019
Thangaraj ... Petitioner in W.P(MD)No.478 of 2020

Vs.

- 1) The Commissioner,
Tamil Nadu Hindu Religious and Charitable
Endowment Department,
Nungambakkam,
Chennai. ... R-1 in W.P.(MD)No.8330 of 2019
- 2) The Joint Commissioner,
Tamil Nadu Hindu Religious and Charitable
Endowment Department,
Madurai. ... R-2 in W.P.(MD)No.8330 of 2019&
R-1 in WP(MD)No.478 of 2020
- 3) The Managing Trustee,
Arulmigu Kottai Mariamman Temple,
Dindigul. ... R-2 in W.P(MD)No.478 of 2020
and R-3 in W.P(MD)No.8330 of 2019
- 4) S.M.D.R.Kamalanathan ... R-4 in W.P.(MD)No.8330 of 2019

PRAYER in W.P. (MD) No.8330 of 2019 : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent dated 03.09.2018 in proceedings Na.Ka.No.11515/2017/A1 quash the same as the same is arbitrary ultravires in excess of jurisdiction power and in violation of the Judgment and Decrees dated 04.08.1971 and 06.03.1978 made in O.S.No.55 of 1969 and A.S.No.48 of 1975 respectively and consequentially direct the respondents 2 & 3 to conduct the process of appointment of hereditary trusteeship in a fair, transparent manner in respect of the vacancy due to the death of S.M.D.R.Sundararajan at Arulmigu Kottai Mariamman Temple, Dindigul.

PRAYER in W.P. (MD) No.478 of 2020: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of



Certiorarified Mandamus, to call for the records of the 2nd respondent dated 18.12.2019 quash the same as the same is arbitrary, ultravires and consequentially direct the respondents 1 & 2 to fill up the vacancy in the office of trusteeship occurred due to the death of G.Gopalan at Arulmigu Kottaimariamman temple, Dindigul in strict consonance with the judgment and decree passed in O.S.no.55/1969 and A.S.no.48/1975 dated 4/8/1971 and 6/3/1978 respectively.

In both cases:

For Petitioner : Mr.R.G.Shankar Ganesh
For RR 1 & 2 in : Mr.VR.Shanmuganathan,
W.P.(MD) No. Special Government Pleader
No.8330 of 2019
& R-1 in W.P.(MD)
No.478 of 2020

For R2 in W.P.(MD) : Mr.S.Manohar
No.478 of 2020 &
R3 in W.P.(MD)
No.8330 of 2019

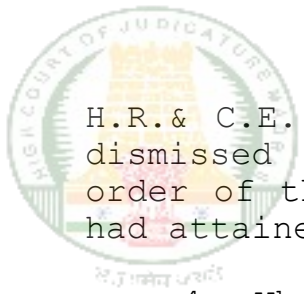
For R4 in W.P.(MD) : Mr.Marees Kumar
No.8330 of 2019 For M/s.Ajmal Associates

C O M M O N O R D E R

Since the issue involved in both the cases are one and the same, they are disposed of by this common order.

2. The third respondent is the Temple, functioning under the control and supervision of the second respondent. It is stated by the petitioner that there is a Custom and Usage in respect of the appointment of Trustees for life time and the same comes under the definition of Hereditary Trusteeship, as defined under Section 6(11) of Act 22 of 1959. These writ petitions are filed by the villagers, who claim that as per Custom, they are also entitled to be elected as trustees.

3. It is alleged that the Hindu Religious and Charitable Endowments Department (hereinafter referred as 'H.R.& C.E.'), has chosen to adopt a different mode for appointment of Trustees to the Temple. Therefore, challenging the same, O.S.No.50 of 1965 was filed before the then Deputy Commissioner, H.R.& C.E., Madurai and it was dismissed on 16.02.1967. Aggrieved over the same, an appeal in A.P.No.19/67 was filed before the Commissioner, H.R.& C.E. and the same was dismissed by an order dated 24.05.1969. Thereafter, O.S.No.55 of 1969 was filed on the file of Subordinate Court, Dindigul which was allowed on 04.08.1971. In an appeal preferred by



H.R.& C.E. in A.S.No.48 of 1975, it is stated that the appeal was dismissed by judgment and decree dated 06.03.1978 confirming the order of the trial Court. As there was no appeal, the said decree had attained its finality.

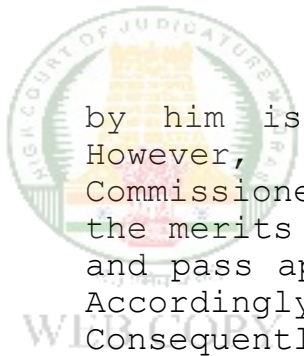
4. When one of the hereditary trustees died, the petitioner herein in W.P.(MD) No.8330 of 2019 chose to make an application to the third respondent to follow the Procedure and Customs prevailing in the Temple and to appoint the petitioner in W.P.(MD) No.8330 of 2019 as a Trustee. The petitioner had also pointed out that, though Trusteeship is hereditary, it is unnecessary that a person has to be a legal heir. This can be done even as per the Custom. Now, the petition has been filed challenging the impugned order dated 03.09.2018 passed in Na.Ka.No.11515 of 2017/Aal by the Joint Commissioner, who is the second respondent, wherein one S.M.D.R.Kamalanathan is appointed as a Hereditary Trustee.

5. Aggrieved by the order of the Joint Commissioner, H.R.& C.E., the petitioner had already preferred a complaint before the Commissioner on 29.01.2019. Needless to say, as usual, the same was also kept pending and no order was passed. Similarly, the petitioner in W.P.(MD) No.478 of 2020 also has challenged the notice issued by the 2nd respondent calling for an enquiry for the appointment of Hereditary Trustee. The petitioner in W.P.(MD) No.8330 of 2019 has also preferred a complaint before the Commissioner requesting for an audience and to pass orders based on her application. As both the petitions are challenging only the appointment of the fifth respondent as Hereditary Trustee, it is to be decided by the Authority.

6. So far as the petitioner in W.P.(MD) No.8330 of 2019 is concerned, since he has already preferred a complaint before the Commissioner, the first respondent herein, the Commissioner is directed to take up the complaint immediately and issue notice to the petitioner and after affording an opportunity of personal hearing, to pass appropriate orders.

7. It is open to the petitioner to file additional grounds challenging the order of appointment of the fifth respondent which may also be considered by the first respondent. Consequently, the petitioner in W.P.(MD) No.478 of 2020 has challenged only the notice announcing the selection of Hereditary Trustee by the second respondent. If at all, the petitioner is aggrieved, the same has to be challenged before the second respondent namely, the Joint Commissioner. Therefore, liberty is given to the petitioner in W.P.(MD) No.478 of 2020 to challenge the said notice only before the Joint Commissioner, H.R.& C.E., who on receipt of the same, shall consider the same and pass appropriate orders in expedition.

8. The learned counsel for the petitioner in W.P.(MD) No.8330 of 2019 has submitted that there may be a delay if the complaint given



by him is treated as an Appeal along with additional grounds. However, the learned counsel appearing on behalf of the Commissioner, is directed to inform the Commissioner not to go into the merits of the case, without sticking on to the question of delay and pass appropriate orders, in order to give quietus to the issue. Accordingly, these writ petitions stand disposed of. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To:

1) The Commissioner,
Tamil Nadu Hindu Religious and Charitable
Endowment Department,
Nungambakkam,
Chennai.

2) The Joint Commissioner,
Tamil Nadu Hindu Religious and Charitable
Endowment Department,
Madurai.

+2 CC to Mr.R.G.SHANKAR GANESH, Advocate SR-8189, 8188

+2 CC to Mr.S.MANO HAR, Advocate (SR-8290, 8291

+1.CC. To M/s.Ajmal Associates, Advocate in SR No.8311

Common Order made in
W.P (MD) Nos.8330 of 2019
and 478 of 2020
Dated:25.02.2020

MK (18.03.2020) 4P 8C