



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.01.2020

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)Nos.3380 and 3475 of 2016

and

W.M.P. (MD)Nos.2974 and 3074 of 2016 and

W.M.P. (MD)No.18637 and of 2019

W.P. (MD)No.3380 of 2016

The Executive Officer,
Arulmigu Kaliyamman Temple,
Batlagundu,
Dindigul District.

... Petitioner

-VS-

1.The District Collector,
Dindigul District, Dindigul.

2.The Superintendent of Police,
Dindigul.

3.The Deputy Superintendent of Police,
Nilakottai.

4.The Inspector of Police,
Nilakottai Police Station,
Nilakottai.

5.The Tahsildar,
Nilakottai,
Dindigul District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents 4 and 5 to grant protection to the petitioner for taking over charge of the Arulmigu Kaliyamman Temple, situated at Nilakottai, Dindigul District.

For Petitioners : Mr.S.Manohar

For R1 and R2 : Mr.V.R.Shanmuganathan



W.P. (MD)No.3475 of 2016

A.Suseendhiran

... Petitioner

Vs

1.The Joint Commissioner,
The Hindu Religious and Charitable Endowment,
Madurai.

2.The Fit Person,
A/m.Mariamman Temple,
Nilakkottai Town and Taluk,
Dindigul District.

Now working as
The Executive Officer,
A/m.Kaliamman Thirukkoil,
Vathalagundu,
Dindigul District.

3.Pandiarajan

4.Suresh Babu

5.Karumalai Pandian

6.O.S.N.M.Narayanan

7.S.Muthu Nadar

8.C.Rathinasami Nadar,

9.S.Nagasundaram

10.N.Madhavarajan

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of certiorari calling for the records of the first respondent in ref. Se.Mu.Na.Ka.No.456/16/Aa1 dated 04.02.2016 and quash the same.

For Petitioner: Mr.V.K.Vijayaragavan

For R1 : Mr.V.R.Shanmuganathan
Special Government Pleader

For R2 : Mr.M.Muthukeethayaian

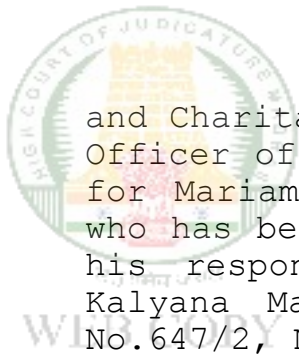
For R3 to R5 : No appearance

For R6 to R10 : Mr.J.Barathan

O R D E R

In W.P.(MD)No.3475 of 2016, the challenge is to the order dated 04.02.2016 passed by the Joint Commissioner, Hindu Religious

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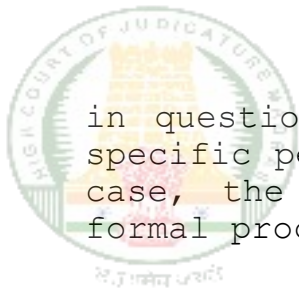
and Charitable Endowments (HR&CE), Madurai, appointing the Executive Officer of Arulmigu Kaaliyamman Temple, Batlagundu as the fit person for Mariamman Temple, Nilakkottai. The writ petitioner Suseendran who has been described as the incumbent trustee was relieved of all his responsibilities. A direction was given for taking over a Kalyana Mandapam being run in the 24 cents of land in Survey No.647/2, Nilakkottai.

2.The learned counsel for the petitioner even while reiterating all the contentions set out in the affidavit filed in support of this writ petition, primarily focussed on the fact that the impugned order has been passed in utter violation of the principles of natural justice. He pointed out that the temple in question is an excepted temple. He drew my attention to the order dated 14.12.1927 made in O.S.No.618 of 1927 by the Board of Commissioners for Hindu Religious Endowments. According to him, 39 cents of land were purchased by the community (Nadar Uravin murai, Nilakkottai) more than a century back and in the said 39 cents of land a temple was constructed over an extent of 15 cents. According to him, the remaining 24 cents very much belong to the community. He, therefore, submitted that the department may not be justified in categorizing the land belonging to the community as that of the temple.

3.It appears that proceedings were initiated by some of the members of the community seeking a relief of declaration in this regard. Since it was pointed out that the petitioner cannot represent the community as well as the temple at the same time, the petitioner chose to step down in favour of one Suresh Babu. Suresh Babu has been impleaded as party in the present writ proceedings also.

4.The learned Special Government Pleader on the other hand contended that the impugned order has been passed under Section 64 (4) of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (herein after referred to as 'Act') and that it does not contemplate issuance of any prior notice. He called upon this Court to note that the language of Section 53(4) and that of Section 64(4) are almost similar. It has been held on reference to a third Judge in a decision reported in **2020 (1) CTC 187** in the case of **V.K.Pandian Vs the State of Tamil nadu** that no prior notice or opportunity of hearing of the trustee is necessary before passing an order under Section 53(4) of the Act. He wants this Court to hold on analogical reasoning that no notice is required before appointing a fit person under Section 64(4) of the Act.

5.According to him, the petitioner herein had acted adversely to the interest of the temple and that therefore in view of the serious allegations made against him, this Court may not be pleased to interfere with the impugned order. His pointed contention is that eventhough, the office of trustee of the temple



in question has been recognized as hereditary in nature, still no specific person has been formally recognized as a trustee. In any case, the petitioner herein namely Suseendran is not having any formal proceedings issued in his favour.

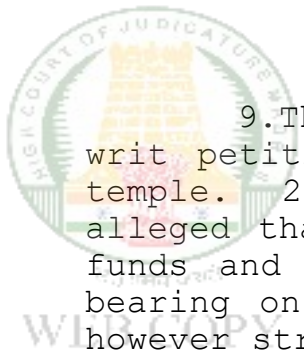
6.I carefully considered the rival contentions and also perused the materials on record. Certain facts are not in dispute. The temple in question namely Arulmighu Mariamman Temple, Nilakkottai, Dindigul District is an excepted temple. The petitioner Suseendran along with others filed a petition under Section 64(1) of the Act for forming a scheme. The said O.A.No.18 of 2003 filed by the petitioner along with others appears to have suffered a dismissal for default. It is stated that an application has been filed for its restoration. Thereafter, the rivals of the writ petitioner filed O.A.No.4 of 2015 before the Joint Commissioner, HR&CE, Madurai, seeking formulation of scheme of administration for the temple. There is nothing on record to indicate that the impugned order was passed in the said O.A.No.4 of 2015. It appears that more like an exercise of suo motu jurisdiction by the Joint Commissioner, HR&CE, Madurai. Now the question that arises for my consideration is whether prior notice should have been given to the person in management. The order *ex facie* indicates that Suseendran was in management of the affairs when the order was passed. That is why, Suseendran was formally relieved from the affairs by the impugned order. Section 64(4) of the Act reads as follows:

"64.Power to Joint Commissioner or Deputy Commissioner to settle schemes--

(4)Pending the settlement of a scheme for an institution, the Joint Commissioner or the Deputy Commissioner may appoint a fit person to perform all or any of the functions of the trustee thereof and define his powers and duties."

7.It is true that the statutory provision does not specifically refer to issuance of any notice. But then, Section 64 (4) read as a whole does not exclude the application of the principles of natural justice. When the principles of natural justice have not been expressly or even implidely excluded, it is only just and proper that any Court of law reads the requirements of principles of natural justice into the statutory provision.

8.I am not persuaded by the submission that the learned Third Judge in the decision reported in **2020 (1) CTC 187** while considering Section 53(4) held that for passing an order under the said provision, there is no need to offer an opportunity of hearing to the trustee concerned. Section 53(4) pertains to suspension of trustees pending disposal of the charges framed against the trustee. A decision rendered in a such a context will not have any application while construing Section 64(4) of the Act.



9.The impugned order has serious civil consequences for the writ petitioner. 1) It displaces him from the management of the temple. 2) It seriously stigmatizes him. The first respondent had alleged that Suseendran had indulged in misappropriation of temple funds and also illegally alienated its property. It has serious bearing on his reputation. The learned Government Advocate would however strongly contend that such findings are well founded.

10.I am not on the correctness of the said finding. I am more on the legality of rendering such finding without first putting the aggrieved individual on notice. I hold that before passing an order under Section 64(4) of the Act, the incumbent trustee will have to be necessarily put on notice and at least summarily heard. Ofcourse, the position would be different if none is in management. In such a case, obviously there is no question of issuing any notice. But such is not the case here. The impugned order itself concedes that Suseendran is in management of the affairs of the temple.

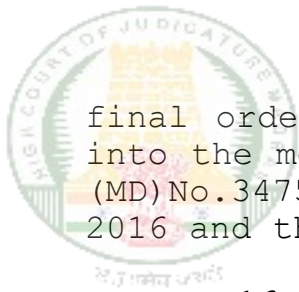
11.The impugned order dated 04.02.2016, is set aside only on the ground of violation of principles of natural justice. In this view of the matter, the impugned order is set aside and W.P.(MD) No.3475 of 2016 is allowed and the matter is remitted to the file of the first respondent to pass orders afresh and in accordance with law.

12.Ofcourse, I cannot lose sight of the fact that the proceedings are pending between the community members on one hand and the temple on the other. The learned Government Advocate is absolutely right in contending that the community persons themselves cannot represent the temple in such litigation concerning the property of the temple.

13.Therefore, the concerned Court or authority will see to it that the the department represents the temple. The writ petitioners herein namely Suseendran and Suresh Babu do not have any objection for adopting such a course of action. If the community is on the plaintiff side, the community members arrayed on the defendant side cannot represent the temple. Ofcourse, they can continue to be defendants and also project their version and defence. But the temple / idol will be represented by the HR & CE Department.

14.The learned counsel for the petitioners states that during the interregnum period, he has relinquished his position in favour of one Suresh Babu and that an application was filed to this effect. The application made by Suseendran relinquishing his position in favour of Suresh Babu, was allowed by the Commissioner, HR&CE also.

<https://hcservices.ecourts.gov.in/> 15.The status quo prevailing as on date, will continue till



final orders are passed by the first respondent. I have not gone into the merits of the matter. In view of the order passed in W.P.(MD)No.3475 of 2016, no orders are necessary in W.P.(MD)No.3380 of 2016 and the same is closed.

16.The learned Special Government Pleader brings to my notice that an interim order was passed to that effect that Suseendran, the petitioner herein will not commit any further alienation of the temple property. The said injunction is made absolute. Accordingly, W.P.(MD)No.3475 of 2016 stands allowed and W.P.(MD)No.3380 of 2016 stands closed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

- 1.The District Collector, Dindigul District, Dindigul.
- 2.The Superintendent of Police, Dindigul.
- 3.The Deputy Superintendent of Police, Nilakottai.
- 4.The Inspector of Police,
Nilakottai Police Station, Nilakottai.
- 5.The Tahsildar, Nilakottai, Dindigul District.
- 6.The Joint Commissioner,
The Hindu Religious and Charitable Endowment, Madurai.
- 7.The Fit Person,
A/m.Mariamman Temple,
Nilakkottai Town and Taluk,
Dindigul District.
Now working as --
The Executive Officer,
A/m.Kaliamman Thirukkoil,
Vathalagundu,
Dindigul District.



+1 CC to M/s.V.K.VIJAYARAGAVAN, Advocate (SR-4502[F] dated 03/02/2020)

+1 cc to Mr. T.R.JEYAPALAM, Advocate SR.No.4279

+1 cc to Mr.A.K.BASKARA PANDIAN , Advocate SR.No.3978

W.P. (MD) Nos.3380 and 3475 of 2016
30.01.2020

KM/ (20.02.2020) 7P 11C