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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2021

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THE HO NOURABLE DR.JUSTICE ANITA SUMANTH

W.P. NO.13624 OF 2015
AND
MP. NOS.1 & 2 OF 2015

Shanmugam

...Petitioner

Vs.

1. The Commissioner,
   Hindu Religious & Charitable Endowment Board,
   Chennai -34.

2. The Executive Officer,
   Arulmighu Sivasubramaniyasamy Temple,
   Kumarasamy Pettai, Dharmapuri District.

3. The Joint Commissioner,
   HR & CE Administration,
   Kottai Mariamman Kovil campus,
   Salem 636 001.

4. The Commissioner, Dharmapuri Municipality,
   Dharmapuri.

[R4 is impleaded as per order dated 03/09/2015 in M.P.3/2015 in WP.No.13624 of 2015]

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus to call for the records in tender No.3/2015, T.Ni, dated 25.02.2015, on the file of the 2nd respondent, which published in 'Dina Poomi' on 27.02.2015 and quash the same as illegal, incompetent and unconsitutional and further direct the 3rd respondent to appoint hereditary trustees to the Arulmighu

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Sivasubramaniya Swamy Thirukoil, Kumarasamypettai, Dharmapuri and District.

For Petitioners: Ms.Mitranisha for
Mr.V.Raghavachari

For Respondents: Mr.NRR.Arun Natarajan,
Government Advocate for R1 to R3
Ms.Srijayanthi
Standing Counsel for R4

O R D E R

Heard Ms.Mitranisha, learned counsel for the petitioner, Mr.NRR.Arun Natarajan, learned Government Advocate for the official respondents/R1 to R3 and Ms.Srijayanthi, learned Standing Counsel for R4.

2. The challenge is to a tender floated by the Executive Officer/R2 calling for bids for setting up of a shelter for two wheelers and four wheelers in Arulmigu Siva Subramanya Swamy Temple, Kumarasamypettai, Dharmapuri District (temple/temple in question). A Scheme was framed in O.A. No.187 of 1976 on 07.02.1977 which, at Clause No.(4) thereof, declares that the temple is a denominational temple, managed by the Sengunda Mudaliar Community. Clause (3) provides for selection of non-hereditary trustees from among the community, numbering not less than 3 and not more than 5 for a period of three years.

3. According to the petitioner, the last board of trustees comprising persons from the community served till the year 2008, after which, the community appears to have been clamoring for fresh elections and appointments. However, the counter, at paragraph No.6 states that the tenure of the appointment of trustees, last appointed, came to an end in the year 2010. A fit person was appointed on 12.07.2009. As per the status report dated 12.07.2021, an Executive Officer (EO) was also appointed on 07.01.1991 as per the provisions of Section 47 of the Hindu Religious and Charitable Endowments Act, 1959 (in short 'Act'), functioning till date.

4. The appointment of an EO is only an interim measure to hold and guide the reins of management for the period in-

between the tenures of two Boards. This is a settled position as per the judgment of the Supreme Court in the case of Dr.Subramanian Swamy Vs. State of Tamil Nadu and others ((2014) 5 SCC 75). Thus, it would be generally appropriate that no major decisions affecting the long-term interests of the temple should be taken by the Executive Officer during this period. The relevant portion of the judgment is extracted below:

> '63.2. At the time of issuing the order of appointment of Executive Officer, the Podhu Dikshitars were given full opportunity of hearing and the powers and duties of the Executive Officer as defined by the Commissioner would show that the religious affairs have not been touched at all and the trustees and the Executive Officers are jointly managing the temple. The Podhu Dikshitars have not been divested of the properties and it was not the intention of the State Government to remove the trustees altogether, rather the Executive Officers function alongwith the trustees;
>
> 63.3. In any event, the Podhu Dikshitars are trustees in the temple and they have not been divested of their properties. The Executive Officer is only collaborating with the trustees in administering the properties. Their religious activities have not been touched. Neither the powers of the trustees have been suspended nor the Executive Officers have been vested with their powers and the Executive Officers only assist the trustees in management of the temple. It was not the intention to remove the trustees altogether, nor the order of appointment of the Executive Officer suspends the scheme already framed way back in 1939.
>
> 64. Be that as it may, the case is required to be considered in light of the submissions made on behalf of the State of Tamil Nadu and particularly in view of the written submissions filed on behalf of the State.

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65. Even if the management of a temple is taken over to remedy the evil, the management must be handed over to the person concerned immediately after the evil stands remedied. Continuation thereafter would tantamount to usurpation of their proprietary rights or violation of the fundamental rights guaranteed by the Constitution in favour of the persons deprived. Therefore, taking over of the management in such circumstances must be for a limited period. Thus, such expropriatory order requires to be considered strictly as it infringes fundamental rights of the citizens and would amount to divesting them of their legitimate rights to manage and administer the temple for an indefinite period. We are of the view that the impugned order is liable to be set aside for failure to prescribe the duration for which it will be in force.

66. Supersession of rights of administration cannot be of a permanent enduring nature. Its life has to be reasonably fixed so as to be co-terminus with the removal of the consequences of maladministration. The reason is that the objective to take over the management and administration is not the removal and replacement of the existing administration but to rectify and stump out the consequences of maladministration. Power to regulate does not mean power to supersede the administration for indefinite period.

67. “Regulate” is defined as to direct; to direct by rule or restriction; to direct or manage according to the certain standards, to restrain or restrict. The word `regulate is difficult to define as having any precise meaning. It is a word of broad import, having a broad meaning and may be very comprehensive in scope. Thus, it may mean to control or to subject to governing principles. Regulate has different set of meaning and must take its colour from the context in

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which it is used having regard to the purpose and object of the legislation. The word `regulate is elastic enough to include issuance of directions etc. (Vide: K. Ramanathan v. State of Tamil Nadu & Anr., AIR 1985 SC 660; and Balmer Lawrie & Company Limited & Ors. Partha Sarathi Sen Roy & Ors., (2013) 8 SCC 345)

68. Even otherwise it is not permissible for the State/Statutory Authorities to supersede the administration by adopting any oblique/circuitous method. In Sant Lal Gupta & Ors. v. Modern Coop. Group Housing Society Ltd. & Ors., (2010) 13 SCC 336, this Court held:

“21. It is a settled proposition of law that what cannot be done directly, is not permissible to be done obliquely, meaning thereby, whatever is prohibited by law to be done, cannot legally be effected by an indirect and circuitous contrivance on the principle of quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud. An authority cannot be permitted to evade a law by shift or contrivance.
(See also: Jagir Singh v. Ranbir Singh, A.P. Diary Dev. Corpn. Federation v. B. Narsimha Reddy and State of Tamil Nadu & Ors. v. K.Shyam Sunder)

69. We would also like to bring on the record that various instances whereby acts of mismanagement/maladministration/ misappropriation alleged to have been committed by Podhu Dikshitars have been brought to our notice. We have not gone into those issues since we have come to the conclusion that the power under the Act 1959 for appointment of an Executive Officer could not have been exercised in the absence of any prescription of circumstances/ conditions in which such an appointment may be made. More so, the order of appointment of the Executive Officer does not disclose as for what reasons and under what circumstances his appointment was necessitated. Even otherwise, the order in which

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no period of its operation is prescribed, is not sustainable being ex facie arbitrary, illegal and unjust.'

5. Thus, the power to appoint an EO is only an interim measure and should not be used as an alternate route to take over the reins of management of a temple. In the present case, the EO has been functioning from 1991 till date and unilaterally, despite requests from the petitioner for constitution of the Board of trustees as per the governing scheme.

6. Clauses 3 & 4 of the governing Scheme reads thus:-

> '3.The temple of Sri Sivasubramanyasamy, shall be administered by non-hereditary trustees not less than three and not more than five in number to be appointed by the appropriate authority under the provisions of the H.R. & C.E. Act, 1959.
>
> 4.The proper authority under the provisions of the H.R. C.E. Act shall appoint persons belonging to senguntha Mudaliar community as trustees provided they do not suffer from say of disqualifications mentioned in the Act.'

7. A direction is thus issued to R3 to commence the process of constitution of the Board of trustees as per Scheme dated 07.02.1977, expeditiously, to be completed in terms of Clauses 3 and 4 of the Scheme within a period of sixteen (16) weeks from today.

8. Bearing in mind, the purpose of appointment of an EO, the issuance of the impugned tender notification could well have been avoided. However R2 would state that permission of the Commissioner has been obtained prior to the issuance of the Notification and the parking facility also generates considerable revenue to the temple. The Executive Officer has also taken a decision to construct a ticket room measuring 207 sq.ft. in the vicinity of the parking area after obtaining approval from the Joint Commissioner.

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9. Moreover, the conduct of Surasamahra festival is not disturbed since, at the time of the celebration, the parking lot is vacated and the entire space is utilised for purposes of the festival only. This objection of the petitioner has thus, been met.

10. The Executive Officer has in status report dated 12.07.2021 stated as follows:

> 1. I am the second respondent herein and I am well acquainted with the fact of the case.
>
> 2. I submit that I am the Executive Officer of Arulmigu Sivasubaramaniasamy Temple, Kumarasamy Pettai, Dharmapuri. The temple owns a property measuring about 30,000 sq.ft in Survey No.31, Block No.'C' and Ward No.11 in Dharmapuri and the property is situated in Nachiyappa Gounder Street, Dharmapuri. I submit that the said property is used for the purpose of two wheeler and other vehicles parking facility run by temple administration from the year 2015, after getting the permission of the Commissioner, HR & CE Dept., Chennai vide Se.Mu.Nada.Na.Ka.No.13137/2014/Y.6 dated 30.01.2015.
>
> 3. I submit that the said parking lot is fetching considerable revenue to the temple and the details are given below:

1426	Rs.9,16,800/-
1427	Rs.11,67,110/-
1428	Rs.20,25,055/-
1429	Rs.14,94,950/- nd
1430 so far	Rs.8,20,750/-

> Therefore, there is good revenue collection for the temple by this parking purpose. There is no disturbance to the devotees by this vehicle parking lot. At time of surasamahra festival the parking lot is vacated and entire vacant parking space is used for conducting surasamhara festival. The last five years the surasamhara festival is conducted without fail.

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4. I submit that the Executive Officer of the temple to decided to construct a small ticket room measuring about 207 sq.feet in the above said place and the temple authority got the approval from the Joint commissioner, H.R. & C.E., Salem in proceeding no Mu.Mu.No.6151/2020/A2 dated 05.01.2021. The ticket room construction in 30 feet away from the Vinayagar temple and does not disrupt the temple activities. The ticket room was constructed after getting the approval from the Joint commissioner, H.R. & C.E, Salem and the construction is 75% complete. The photographs showing the construction of the ticket room is enclosed here with.

5. It is relevant to state that a Fit Person for the temple was appointed on 12.07.2009, from 07.01.1991, an Executive Officer was appointed to the temple and the Executive Officer is in management of the temple, as on date.

In the above facts and circumstances, it is humbly prayed before this Hon'ble Court may be pleased to accept the status report and pass appropriate order and thus render justice.

11. Though, the appointment of the fit person and EO in the present case is contrary to statutory intent and the provision as well as the judgment of the Supreme Court in the case of Dr.Subramanian Swamy (supra), the management of the parking lot and ticketing facility are not disturbed as they are stated to be in the best interests of the temple. The challenge to the tender notification is rejected.

12. Status quo as on date shall be maintained in regard to all construction activities in the temple till the process of election is completed, as directed as per paragraph 7 of the order.

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13. This Writ Petition is disposed as above. Connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

rkp/ska

To

1. The Commissioner,
   Hindu Religious & Charitable Endowment Board,
   Chennai -34.

2. The Executive Officer,
   Arulmighu Sivasubramaniyasamy Temple,
   Kumarasamy Pettai, Dharmapuri District.

3. The Joint Commissioner,
   HR & CE Administration,
   Kottai Mariamman Kovil campus,
   Salem 636 001.

4. The Commissioner,
   Dharmapuri Municipality,
   Dharmapuri.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.32259

+1cc to Ms.A.Srijayanthi, Advocate, S.R.No.32161

+1cc to the Government Pleader, S.R.No.32987

W.P. No.13624 of 2015 and
MP. Nos.1 & 2 of 2015

RSV(CO)
RLP(10/11/2021)

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