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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2021

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A.NO.1353 OF 2021

AND

C.M.P.NO.8456 OF 2021

C.Balaji

.. Appellant/Petitioner

Vs.

1. The Commissioner,
H.R. & C.E. (Admn.) Department,
Nungambakkam High Road,
Chennai-600 034.
2. The Joint Commissioner,
Tamil Nadu Hindu Religious and
Charitable Endowments Department,
I Floor, R.T.O. Salai,
Sathuvachari, Vellore-632 009.

.. Respondents/Respondents

Prayer : Writ Appeal filed under Clause 15 of Letters Patent against the order dated 11.12.2020 in W.P.No.9025 of 2011.

Prayer in W.P.No.9025 of 2011 & M.P.No.1 of 2011:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorari to call for the records relating to the impugned order of the Commissioner H.R. & C.E. Chennai passed in A.P.No.26/2002 dated 01.03.2011 in so far it relates to the dismissal of the Hereditary Trustee in office made by the Joint Commissioner H.R. & C.E. Vellore in his proceedings in Se.Mu.Na.Ka.No.1827/99/E1 dated 01.07.2002 and quash the same.

For Appellant : Mr.D.Rajagopal

For Respondents : Mr.C.Jayaprakash
State Government Counsel



J U D G E M E N T

PUSHPA SATHYANARAYANA, J.

This is an intra-court appeal filed by the petitioner questioning dismissal of his W.P.No.9025 of 2011 vide order dated 11.12.2020.

2. The short facts projected by the appellant run infra :

2.1. The appellant/writ petitioner was the Hereditary Trustee of Arulmighu Pachaivannar and Pavalavannar Temple in Kancheepuram (in short "the Temple"). The appellant/writ petitioner was suspended by the second respondent under Section 53 of the Hindu Religious and Charitable Endowments Act, 1959 (in short "HRCE Act"), vide order dated 21.01.2002 pending enquiry on certain serious charges and he was directed to handover charges of the temple to the Executive Officer, Kumarakottam Arulmighu Subramaniasami Temple, Kancheepuram, who was appointed as Fit Person for the said temple. The appellant/writ petitioner filed a review petition against the said order before the first respondent herein - Commissioner, HRCE, who in turn, disposed of the same on 19.02.2002, directing him to co-operate for the enquiry.

2.2. Thereafter, the writ petitioner submitted his written statement of defence through his advocate on 26.02.2002 and upon perusal of the same, the second respondent passed an order on 01.07.2002 holding that 15 out of 16 charges were proved against the appellant and again directing him to handover charges of the temple to the Executive Officer, Kumarakottam Arulmighu Subramaniasami Temple, Kancheepuram. In the meanwhile, the appellant submitted a request on 08.04.2002 under Section 51(1) (k) of the Act seeking for appointment of his wife, being the next legal heir, as the Hereditary Trustee, for which, he was directed to take out an appropriate application. A petition taken to that effect by the wife of the appellant was seeking the line of succession was recorded by the second respondent in the order dated 30.10.2003.

2.3. However, the appellant/writ petitioner unsuccessfully questioned the order dated 01.07.2002 before this Court in W.P.No.31118 of 2002, as the said writ petition was disposed of granting liberty to him to prefer appeal, which was directed to be entertained without reference to limitation. Thus, the appeal under Section 53(5) of the Act came to be filed before the first respondent.

2.4. The first respondent passed the order dated 01.03.2011 partly allowing the appeal, and thereby setting aside the



appointment of Fit Person, while upholding the appointment of the wife of the appellant as the Hereditary Trustee.

2.5. The appellant filed the writ petition on the premise that the first respondent having partly allowed his appeal ought to have reinstated him as Hereditary Trustee and the writ Court dismissed the said petition leading to the filing of the instant appeal.

3. Heard the learned counsel on either side and perused the materials placed before this Court.

4. The undisputed fact remains that the appellant/writ petitioner was suspended from the Hereditary Trusteeship and later his wife succeeded him and that excepting one charge, all the other charges levelled against him held to be proved, the appeal filed against which order was partly allowed, which was sought to be impugned unsuccessfully in the writ petition.

5. The primordial contention of the learned counsel for the appellant/ writ petitioner is that the first respondent failed to appreciate each and every charge individually, and in fact, the said authority did not give any finding at all on the charges, but merely partly allowed the appeal, which order is non est in the eye of law. But the writ Court without going into those aspects contrary to the impugned order, held that the appellate authority had rendered a clear finding to the effect that the charges framed against the writ petitioner were based on irregularities in the matter of unauthorizedly constructing shops, demolishing the wall of the temple and letting the shops out on rent and also treating the encroachers as tenants and taking certain activities without sanction or approval of the Department.

6. When this Court put a specific question as to what are all the documents relied upon by the appellant / writ petitioner with respect to the charges framed against him, learned counsel for the appellant submitted that there are no documentary evidence, excepting his own testimony, which being the interested testimony cannot be solely relied upon. The first authority, namely, Joint Commissioner-the second respondent herein considered the explanation of the appellant for all the charges and disbelieved the same.

7. It is not the case of the appellant/writ petitioner either that he had adduced sufficient documentary evidence in support of his case and that the Joint Commissioner did not consider them or considered them not in their proper perspective. The explanation given by the appellant / writ



petitioner was considered by the Joint Commissioner and they were rejected as devoid of any merits. The explanation given by the appellant - Hereditary Trustee was rejected on the ground that he had dealt with the charges and gave annoying answers.

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8. Admittedly, the wife of the appellant took over the Hereditary Trusteeship and the Fit Person appointed by the HRCE authorities never allowed to assume the role. In such backdrop, it is ironical that the appellant has grievance that he was not reinstated, when he miserably failed to produce any documentary evidence to plead ignorance of the charges levelled against him.

9. In such backdrop, we do not find any merit in this appeal and the same is liable to be dismissed. Accordingly, the Writ Appeal is dismissed confirming the order of the learned Single Judge. However, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner,
H.R. & C.E. (Admn.) Department,
Nungambakkam High Road,
Chennai-600 034.
2. The Joint Commissioner,
Tamil Nadu Hindu Religious and
Charitable Endowments Department,
I Floor, R.T.O. Salai,
Sathuvachari, Vellore-632 009.

+1cc to M/s.D.Rajagopal, Advocate, S.R.No.59240

W.A.No.1353 of 2021

VSN-II (CO)
RLP (29/12/2021)