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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	19.07.2021
Pronounced On	23.07.2021

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.A.No.1651 of 2018

(Through Video Conferencing)

His Holiness Kasiviswanatha Pandara Sannidhi,
Adheena Head of Thiruvavaduthurai Adheenam,
Mayiladuthurai Taluk, Nagapattinam District.

... Appellant/Petitioner

Vs.

1.State of Tamil Nadu,
Represented by the Secretary,
Hindu Religious and Charitable Endowments
Department,
Fort St. George, Chennai.

2.The Commissioner,
Hindu Religious and Charitable Endowments
Department,
Chennai.

3.The Assistant Commissioner,
Hindu Religious and Charitable Endowments
Department,
Kumbakonam.

4.Sri Meenakshisundara Thambiran,
Kattalai Thambiran
at Thiruvidadaimaruthur Temple,
now self-declared as Head of
Thiruvavaduthirai Adheenam,
Mayiladuthurai Taluk,
Nagapattinam District.

... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent, to set
aside the order dated 05.06.2018 passed by the learned Single
Judge in W.P.No.31714 of 2012.



Prayer in W.P.No.31714 of 2012: Praying for issuance of Writ of Mandamus, to forbear the respondents from in anyway hindering or preventing the petitioner from functioning as the Head of Thiruvavaduthurai Adheenam.

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For Appellant

: Mr.S.Manuraj

For First to Third Respondents : Mr.D.Ravichandar, G.A.

For Fourth Respondent

: Mr.B.Kumar,
Senior Counsel.
for Mr.K.Chandrasekaran

J U D G M E N T

C.SARAVANAN, J.

This Writ Appeal has been filed against the impugned order dated 05.06.2018 passed by the learned Single Judge in W.P.No.31714 of 2012. By the impugned order, the learned Single Judge has dismissed the writ petition filed by the appellant to forbear the respondents from anyway hindering or preventing the appellant from functioning as the head of "Thiruvavaduthurai Adheenam".

2. The case of the appellant is that the appellant was appointed as a Junior Pandara Sannadhi on 24.03.1997 but was unceremoniously removed and now, the fourth respondent has been appointed as the Senior Pandara Sannadhi. It is submitted that the appellant had sent representation dated 20.11.2012. However, without considering the same, the first to third respondents have appointed the fourth respondent Sri Meenakshisundarara Thambiran as Senior Pandara Sannadhi.

3. The learned counsel for the appellant submitted that the Junior Pandara Sannadhi can be removed under Section 59 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as T.N.H.R & C.E. Act, 1959), but, in this case, such procedure has not been adopted.

4. It is further submitted that as per scheme decree in O.S.No.46 of 1933, it is desirable that the Pandara Sannadhi should nominate a Junior Pandara Sannadhi and duly install him with appropriate ceremonies with the least practicable delay. If a Pandara Sannadhi died without having installed a Junior Pandara Sannathi, the Thambiran in the Tirukkuttam shall elect as a Pandara Sannadhi. It is submitted that this procedure also has not been given a go by.



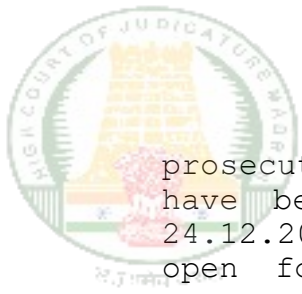
5. It is further submitted that the appellant was appointed on 24.03.1997 and since the Senior Pandara Sannadhi died, the appellant was to be appointed as Senior Pandara Sannadhi as his successor or in the alternative, a proper selection should have been made as per the scheme decree. It is further submitted that though the appellant had sent representation as early as 20.11.2012, the respondents have not considered the same.

6. It is therefore submitted that the impugned order of the learned Single Judge is liable to be interfered with by directing the respondents to consider the appellant's representation dated 20.11.2012.

7. Defending the impugned order of the learned Single Judge, Mr.B.Kumar, the learned senior counsel appearing for the fourth respondent submitted that the appellant was involved in a criminal case for offences of conspiracy and attempt to murder Adheenakartha with the help of anti social elements and he was prosecuted before the Assistant Sessions Judges Court, Mayiladuthurai in S.C.No.286/2002 on 22.12.2003.

8. It is further submitted that the said decision of the Assistant Sessions Judges Court, Mayiladuthurai in S.C.No.286/2002 was appealed before the Principal Sessions Judges Court, Nagapattinam in C.A.No.4 of 2004 and that the Principal Sessions Judges Court, Nagapattinam, by a Judgment dated 18.03.2005 dismissed the appeal filed by the appellant. The learned senior counsel for the first to third respondents submits that on further revision in CrI.Rc.No.1252 of 2005, this Court in the exercise of power under Section 397 read with 401 of Cr.P.C. merely acquitted the appellant on 01.08.2011 by giving him benefit of doubt. The learned senior counsel further submitted that only after the order was passed on 01.08.2011 in CrI.Rc.No.1252 of 2005, the appellant sent a representation before the second respondent.

9. It is further submitted that the appellant had filed O.S.No.343 of 2002, before the Court of the Principal District Munsif, Mayiladuthurai, to declare the removal of the appellant from the post of Junior Pandara Sannadhi (Junior Adheenakartha) of Thiruvavaduthurai Adheenam and Mutt by virtue of communication dated 24.07.2002 by a Senior Pandara Sannadhi (Senior Adheenakartha), i.e. Seervalar Seer Sivaprakasa Pandara Sannathi, as not legal, valid and binding upon the appellant and to restrain the Senior Pandara Sannadhi from in any way interfering with the post of Junior Pandara Sannadhi (Junior Adheenakartha) of the appellant by appointing any other person in his place. The learned senior counsel further submitted that in the said suit, the written statement was also filed by the defendant therein. The said suit was dismissed for non-



prosecution on 24.12.2003. It is further submitted that no steps have been taken to restore the suit that was dismissed on 24.12.2003. Therefore, having opted to file suit, it was not open for the appellant to re-agitate the issue by sending representation on 20.11.2012 merely because of a partly favourable order was passed in CrI.Rc.No.1252 of 2005 on 01.08.2011.

10. We have heard the learned counsel for the appellant, the learned Government Advocate appearing for the first to third respondents and the learned senior counsel for fourth respondent. We have also perused the impugned order of the learned Single Judge.

11. The learned Single Judge has noted the views of the Hon'ble Supreme Court in A.K.Kaul and Another Vs. Union of India and Another, (1995) 4 SCC 73, wherein, in paragraph 12, the Court held as under:-

"12. It is, therefore, necessary to deal with this question in the instant case., We may, in this context, point out that a distinction has to be made between judicial review and justiciability of a particular action. In a written constitution the powers of the various organs of the State, are limited by the provisions of the Constitution. The extent of those limitations on the powers has to be determined on an interpretation of the relevant provisions of the Constitution. Since the task of interpreting the provisions of the Constitution is entrusted to the Judiciary, it is vested with the power to test the validity of an action of every authority functioning under the Constitution on the touch stone of the constitution in order to ensure that the authority exercising the power conferred by the constitution does not transgress the limitations placed by the Constitutions on exercise of that power. This power of judicial review is, therefore, implicit in a written constitution and unless expressly excluded by a provision of the Constitution, the power of judicial review is available in respect of exercise of powers under any of the provisions of the Constitution. Justiciability relates to a particular field falling within the purview of the power of judicial review. On account of want of judicially manageable standards, there may be matters which are not susceptible to the judicial process. In other words, during the course of exercise of the power of judicial review it may be found that there are certain aspects of the



exercise of that power which are not susceptible to judicial process on account of want of judicially manageable standards and are, therefore, not justiciable."

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12. Noting the same, the learned Single Judge has concluded that all matters pertaining to appointment of Pandara Sannadhi (Madathipathi) arose out of the scope of the T.N.H.R. & C.E. Act.

13. In our view, the appellant having opted to agitate his rights at an earlier point of time in O.S.No.343 of 2002 before the Court of Principal District Munsif, Mayiladuthurai to declare his removal from the post of Junior Pandara Sannadhi (Junior Adheenakarhar) of Thiruvavaduthurai Adheenam and Mutt by virtue of communication dated 24.07.2002 by a Senior Pandara Sannadhi (Senior Adheenakarhar), i.e. Seervalar Sree Sivaprakasa Pandara Sannathi, as not legal, valid and binding and to restrain the Senior Pandara Sannadhi from in any way interfering with the post of Junior Pandara Sannadhi (Junior Adheenakarhar) by appointing any other person in his place is precluded from re-agitating the same. Further, having allowed the said suit to be dismissed for default, the remedy that was available to the appellant was to restore the suit under Order 9 Rule 9 of Civil Procedure Code, 1908. The appellant is precluded from initiating a fresh suit or proceduring for the same remedy.

14. That apart, this is fit case for the court to refuse to exercise its power of judicial review in favour of the appellant owing to the involvement of the appellant in the alleged crime for conspiracy and attempt to murder the Senior Pandara Sannadhi (the Senior Adheenakarhar) who had earlier appointed the appellant as Junior Pandara Sannadhi (Junior Adheenakarhar) of Thiruvavaduthurai Adheenam and Mutt, in which, he was convicted. Though the appellant was acquitted vide order dated 01.08.2011 in CrI.Rc.No.1252 of 2005 by giving him benefit of doubt, the prayer of the appellant for considering the representation dated 20.11.2012 is long after the alleged cause of action. Therefore, we do not find any merits in the present Writ Appeal.

15. In the result, this Writ Appeal is dismissed. No cost.

Sd/-

Deputy Registrar (CS)

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Sub Assistant Registrar



To.

1. The Secretary,
State of Tamil Nadu,
Hindu Religious and Charitable Endowments Department,
Fort St. George, Chennai.
2. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai.
3. The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Kumbakonam.

+1cc to M/s.S.Manuraj, Advocate (SR.NO.35391)

W.A.No.1651 of 2018

SJ (CO)
PR (12/08/2021)