

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2021

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.21961 of 2018
and W.M.P.No.25752 of 2018

L.Devarajan

... Petitioner

Vs.

- 1.The Commissioner,
Hindu Religious and Charitable Endowments
Department, No.119,
Nungambakkam, Chennai - 34.
- 2.The Joint Commissioner,
Hindu Religious and Charitable Endowments
Department, Coimbatore Division,
Dr.Balasundaram Road, Coimbatore.
- 3.The Assistant Commissioner,
Office of the Assistant Commissioner,
Hindu Religious and Charitable Endowments
Department, Coimbatore Division,
Dr.Balasundaram Road, Coimbatore.
- 4.The Fit Person,
A/m.Veerabhadrasamy and Thoddammal
Temple Poochiyur,
N.S.N.Palayam, Coimbatore Taluk and
District, Also Executive Officer,
A/m.Hanumantharayswamy Temple,
Idukampalayam, Coimbatore.

...Respondents

Writ petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the entire records pertaining to the order dated 22.06.2018 of the third respondent made in Se.Mu.Na.Ka.No.3145/2018/A6 and notice dated 23.07.2018 of the fourth respondent and quash the same and direct the third respondent to make appointment of non-hereditary trustees to A/m.Veerabhadrasamy and Thoddammal Temple situated at Poochiyur, N.S.N.Palayam Post, Coimbatore North Taluk and Coimbatore District in lieu of the scheme framed in O.A.No.29/1996 and order of the Commissioner made in R.P.No.40/2009.

For Petitioner : Mr.V.Srikanth

For Respondents : Mr.N.R.R.Arun Natarajan,
Government Advocate for R1 to R3
Mr.R.Rajesh Vivekananthan for R4

ORDER

Mr.V.Srikanth, learned counsel for writ petitioner and Mr.NRR.Arun Natarajan, learned State counsel for respondents 1 to 3 and Mr.R.Rajesh Vivekananthan, learned counsel for fourth respondent are before this virtual Court.

2.Captioned writ petition pertains to Arulmigu Veerabadraswamy Doddammal Temple at Poochiyur, Narasimmanaickanplayam, Coimbatore Taluk and District (hereinafter referred as 'said temple' for the sake of convenience and clarity).

3.Learned counsel for writ petitioner submits that a Scheme has been settled for said temple qua O.A.No.29/96 B1 dated 12.07.2004 by the jurisdictional Joint Commissioner (hereinafter referred as 'said scheme' for the sake of convenience and clarity) and the same is operating. To be noted, said scheme is under Section 64 (1) of 'Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Act 22 of 1959)' (hereinafter 'TN HR & CE Act' for the sake of convenience and clarity).

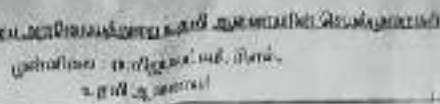
4.Suffice to say that under the said scheme, a Board of Non- Hereditary Trustees (not less than 3 and not more than 5 in number) are to be appointed by the appropriate authority under the TN HR & CE Act. There is no disputation or disagreement before this Court that the appropriate authority qua said temple is the third respondent (Assistant Commissioner as the said temple is an unlisted temple).

5.In the light of the trajectory the hearing has taken today and what had unfurled pending writ petition, it may not be necessary to dilate much on facts. Suffice to say that Non-Hereditary Trustees were earlier appointed and Board was constituted by the third respondent, this was carried to the first respondent, who set aside the same, which in turn was carried to this Court vide W.P.No.2572 of 2010, by the said time, the period of appointment had elapsed and the writ petition had become infructuous. To be noted, there was more than one writ petition as the matter was carried to this Court by the appointed Trustees as well as the State. The writ petitions came to be disposed of by order dated 30.08.2011.

6. When things stood above i.e., for the above facts settings, third respondent made an order dated 22.06.2018 bearing Se.Mu.Ka.No.3145/2018/A6 (hereinafter 'impugned order' for the sake of convenience and clarity) appointing a Fit Person for said temple. To be noted, another officer of the Tamil Nadu Hindu Religious and Charitable Endowments Department i.e., Executive Officer of Arulmigu Hanumantharaya Swamy Temple, Idugampalaam, Coimbatore was appointed as Fit Person. The Fit Person could not take charge as according to the Fit Person, one Mr.Selvaraj, who was in the temple denied her right to inspect the documents when she went over to the temple on 18.05.2018. This Court does not express any opinion on the same and it will suffice to extract paragraph 5 of the counter affidavit filed by the fourth respondent which reads as follows:

"5. I state that as per the direction of the 3rd respondent the Inspector of HR & CE inspected the temple on 18.05.2018. The land having an extent of 909.74 square meter comprised in S.No.353/10 and land having an extent of 1673.69 square meters are under the scheme of Land Acquisition for Athikadavu water project. One Mr.Selvaraj who was in the temple denied her right to inspect the documents and refused to produce documents and accounts. When she entered public, she came to know that the temple hall has been giving on rent and collecting a sum of Rs.5000/-. The Inspector submitted her report to safeguard the property and the amounts recommended for appointing Fit Person by submitting her report dated 30.05.2018. The said report confirmed that the petitioner or his men are not properly maintained by producing the accounts and other returns to the HR&CE Department."

7. It is made clear that no opinion is being expressed on the same as learned State counsel, on instructions, submits that three Non-Hereditary Trustees have since been appointed by the third respondent vide order dated 25.09.2020 bearing Na.Ka.No.3638/2019/A6 dated 25.09.2020. Learned State counsel produced a copy of the same from the official records of the third respondent. A scanned reproduction of the photocopy of the order dated 25.09.2020 is as follows:



Р.Д.И. № 3636/2019, от 25.09.2020

தேவநகரம், திருவாரூர் - 1950-ல் துவக்கி தமிழ்நாடு தீவிர மயம்
அறிமுகப்படுத்திய மட்டும் 1996-ல் அருள்மிகு
விபதிநோயிடு தோல் மருந்து திருத்தலாகிய
நாடுமேலாட்சிப்பாணியைப் போட்டு, ஐந்தாண்டுகள், தோலை
வந்திருக்கிற தோலை மட்டும் - உத்தரவு பிறப்பித்தல்
தோல் மருந்து

பராமுகர் 1. இலங்கை துணைநாயகர், மேலாங்கு துறைமுகம், 14 ஆவது மாலை, 28/06/2019/நா.08.02.2036.
2. துணைநாயகர், மேலாங்கு துறைமுகம், 14/08/2019/நா.14.08.2019.

சென்னை மாநகரம், சென்னை வடக்கு மட்டம் பள்ளி பூச்சிப்பு, பூச்சியுண்டான பருமன், அருளித்து விபத்தினால், மருமடம்மன் திருக்கோயில், சட்டப்பிடி, அருள் வித்தி, துணை சென்னை திருக்கோயில்களும்

[illegible]

1. திரு. ச. கங்காiah முதலியார், பிள்ளையார், சீமார

572. தெற்கு வீதி, புதுப்பாளையம் ரோடு, கோவை வட்டத்து, உட்பட்ட, கோவை மாவட்டம்

2. திரு. கோமுகநாதன் நாயகன்விருதுவார்

8. எலக்ட்ரானின் மூலக்கூறு நிறம் 1.24 nm. இவ்வலை எந்த நிறத்தில் உள்ளது?

3. திருமதி, எ.அனந்தா, 9/10 வீட்டுத்திண்டி

155. பாலாலை மாடுகளை, பாலாலை நாய்களை பாளையம் கோவை ஒட்டுக்கு வட்டம் போடல்
மாண்புமிகு

3. மத்தி 2ல் தி.க.க.ம். இயக்குநர் அலுவலகங்கள், அறுவடைவகைகள், குடிநீர் திட்டம், நெடுகலிதும் பாளையங்குடி முன்றல்கள் தாய்மூலம் வகைப்பாடுகள்

4. அங்காவல் இயந்திரங்கள் தேர்வுப் படித்து, தொடர்ந்து ஆணையர் உறுது உத்தரவு பெறப்படும் பின்புதான் ஆணை பிரயோகப்படுத்தும் என தெரிவிக்கப்படுகிறது.

5. அறங்காவல் இயக்குநரவைகள் தேர்தல் நட்சித நகரவல் தேர்ந்தெடுக்கப்பட்ட சென்னை அறங்காவல் தேர்தல் ஆரய தக்காளிதர்வலி தகவலிடய உளர் மேற்கண்ட திருத்தகோவல் பொறுப்புள்ள உடய ஒப்படைந்து அறல் விலகல் தெரிவிக்கக் கேட்டுக் கொள்ளப்படுகிறது.

(ஆ.) (அ) வினாக்கள் பற்றி உதவி ஆணையர்

1. உணவுப் பழக்க உதாரணம்.

29/9/2008

தலைவர் அவர்களே:

பெற்று

1. திரு. டி. கண்ணன் த/பெ. பங்குதாரன்
5/72, தெற்கு வீதி, புதுப்பாளையம் ரோடு, கோவை வடக்கு வட்டம், கோவை இலாபம்.
2. திரு. கே. மருதாசலம் த/பெ. பங்குதாரன்
8, சரணா நகர், பஞ்சா ஹில்ஸ் அருகில், கோவை தெற்கு வட்டம், கோவை இலாபம்.
3. திருமதி, வீ. சுவாமிநாதன் த/பெ. பங்குதாரன்
1751, பாபமலை பாதாளம், பாபமலை நாயக்கன் பாளையம் கோவை வடக்கு வட்டம், பாபமலை இலாபம்.

நகல் பணித்து சமர்ப்பிக்கப்படுகிறது

4. ஆணையர், இந்து சபா அறநிலையத்துறை சென்னை
5. இணை ஆணையர், இந்து சபா அறநிலையத்துறை கோவை - 16

நகல்

6. திரு. கார், பெரும் திருச்சோலி
(தெரு) சைவத்தாரன் த/பெ. பங்குதாரன் இலாபம் த/பெ. பங்குதாரன் இலாபம் த/பெ. பங்குதாரன் இலாபம்
7. ஆய்வர், இந்து சபா அறநிலையத்துறை, சென்னை
8. பி.கே.

8.The above draws curtains on the captioned writ petition.

9.Before concluding, for the purpose of completion of facts, this Court deems it appropriate to capture the submission of learned counsel for writ petitioner that Section 51 comes into play and that the claim of the writ petitioner should have been taken into account before appointment of Fit Person. Section 49 uses the expression 'Trustees including the Fit Person' whereas Section 51 talks only about 'appointment of Trustees'. In other words, 'including Fit Person' part of the expression is not there in Section 51. Therefore, Section 51 will not come to the aid of the writ petitioner in assailing the impugned order which is under Section 49. It may otherwise be available to the writ petitioner and this Court refrains itself from expressing any opinion on the same owing to the trajectory which the hearing has taken today.

10.Learned counsel for writ petitioner submits that the appointment of three Non-Hereditary Trustees qua said temple vide aforementioned 25.09.2020 order is a revelation for him and his right to assail the same may please be preserved.

11.Captioned writ petition is disposed of preserving the right of the writ petitioner to assail the aforementioned order dated 25.02.2020, if there is a provision in law and if the writ petitioner chooses to do so. No costs. Consequently, connected WMP is disposed of as closed.

s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

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To

- 1.The Commissioner,
Hindu Religious and Charitable Endowments Department, No.119,
Nungambakkam, Chennai - 34.
- 2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Coimbatore Division, Dr.Balasundaram Road, Coimbatore.
- 3.The Assistant Commissioner,
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4. The Fit Person,
A/m.Veerabhadrasamy and Thoddammal
Temple Poochiyur,
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W.P.No.21961 of 2018

PCH(CO)
SP(01/11/2021)