



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.15417 of 2021
and
W.M.P.No.16315 of 2021

K.Balakrishnan

.. Petitioner

Vs.

1.The Joint Commissioner
Hindu Religious and Charitable Endowments Department,
Chennai Division-I,
Padi, Chennai 600 050.

2.The Executive Officer,
Arulmighu Kalyana Venkatesa Perumal Temple,
Edapalayam, Park Town,
Chennai 600 003.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Consitution of India, to issue a Writ of Certiorari, calling for entire records pertaining to the order dated 05.05.2021 in Se.Mu.Na.Ka.No.0298/2019/E1 passed by the 1st respondent and consequent notice dated 21.06.2021 of the 2nd respondent and quash the same.

For Petitioner : Mr.V.Srikanth

For Respondents: Mr.N.R.R.Arun Natarajan
(Government Advocate)

O R D E R

The order dated 05.05.2021 passed by the 1st respondent, appointing a Fit Person, is under challenge in the present Writ Petition.

2.The petitioner states that he is a fit person at Arulmighu Kalyana Venkatesa Perumal Temple, Chennai - 3. The said temple is a public religious institution within the meaning of Section 6(18) and 6(20) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter, referred to as 'the Act'). The petitioner states that Kalyanakulathor, a section of Hindus,



which is a distinct community, founded the above temple for worship. The petitioner claims that he belongs to the said community. The Kalyanakulathor community is a sub-sect of Mangala community and the same was reflected in "Census of India" relate back to the year 1891.

3.The learned counsel for the petitioner strenuously contended that the order impugned was passed without affording any opportunity to the writ petitioner to place the facts before the Joint Commissioner at the time of hearing of the Original Application No.3/2019, filed by five persons viz., S.Sudhakar, M.Siva, S.Vinoth, V.Balaji and S.Jayaraman. The said Application No.3/2019 filed by those five applicants were dismissed for default on 05.05.2021 and on that day, the petitioner was not heard by the Joint Commissioner, nor any notice was issued to the learned counsel who filed Vakalat on behalf of the 2nd respondent. At the outset, it is contended that they had no knowledge of the date of hearing and without even informing the respondents, the matter was taken up for hearing and dismissed for default.

4.The learned counsel for the petitioner further clarified that they are not aggrieved from and out of the said order of dismissal for default, however, they have not been given an opportunity to place the facts before the Joint Commissioner. Being respondents in Original Application, the petitioner may not have any grievance regarding the dismissal of the application. However, he was deprived of an opportunity to present certain facts before the Joint Commissioner.

5.The learned counsel for the petitioner further reiterated that without stopping with the order of dismissal for default, the 1st respondent has gone to the extent of removing the petitioner from the post of Fit Person and appointed the Executive Officer as Fit Person of the temple. Thus, the petitioner is aggrieved and filed the present Writ Petition.

6.It is contended that the petitioner was functioning dedicatedly and protecting the interest of the temple in all respects. The petitioner was continuously taking steps to remove the encroachment and served for the development of the temple activities. This being the factum, he was removed from the post of Fit Person, without any valid reason and therefore, the order impugned is untenable. Even notice was not issued to the petitioner before passing the impugned order. It is contended that without any valid reason, the petitioner has been disturbed unnecessarily and therefore, the said order is to be set aside.

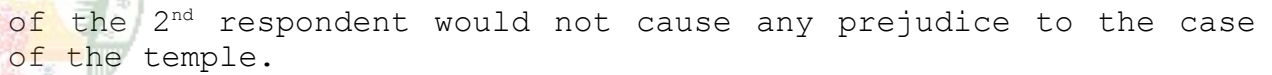
7.The learned Government Counsel appearing on behalf of the respondents disputed the said contention by stating that the



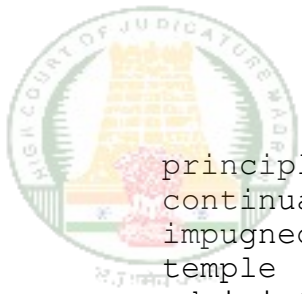
order impugned is passed in the interest of the temple and in accordance with the provisions of the Act. A revision would lie against the said order under Section 21 of the Act and further, before the Government, under Section 114 of the Act. When the petitioner is having ample opportunity to redress his grievances by filing a revision petition before the Commissioner and thereafter, before the Government, there is no need to entertain the present Writ Petition, as the disputed facts are to be adjudicated with reference to the documents and evidences made available.

8.The learned Government Counsel appearing on behalf of the respondents further drawn the attention of this Court with reference to the recordings made in the impugned order, which states that five persons filed an Original Application No.3 of 2019, under Section 64(5) of the Act and the enquiry was posted on 05.05.2021. On that day, the 1st respondent in O.A.No.3 of 2019, who is the Executive Officer, as well as the learned counsel for the Executive Officer were present, however, the 2nd respondent in the said application, who is the Fit Person, as well as his counsel were not present. Such a recording made by the Joint Commissioner, though was seriously objected by the learned counsel for the petitioner, the learned Government Counsel for the respondents reiterated that the non-appearance has not caused any prejudice to the interest of the respondents in the Original Application and the case was defended by the Executive Officer and their Counsel on behalf of the temple. In the said Original Application No.3 of 2019, the petitioner was not impleaded in his personal capacity and he was impleaded in his capacity as a Fit Person and therefore, the Executive Officer and the learned counsel appearing on behalf of the Executive Officer defended their case on behalf of the respondents and more specifically, the temple. Both the Executive Officer as well as the Fit Person were representing the temple and were acting in the interest of the temple and as far as the Original Application in O.A.No.3 of 2019 is concerned, it was filed by five persons.

9.This Court is of the considered opinion that the learned counsel appearing for the petitioner also contended that the petitioner has no grievance against the order passed by the Joint Commissioner in Original Application. However, the recording of the fact that the none appeared for the petitioner is the concern of the petitioner. This Court is of the considered opinion that non-appearance of the 2nd respondent in Original Application would not cause an adverse impact on the 2nd respondent and further, the Executive Officer and the learned counsel appearing on behalf of the Executive Officer also was representing the temple and defended the case before the Joint Commissioner, in the said application. Thus, the non-appearance



11.As far as the appointment of Fit Person is concerned, Section 47 (1) (c) enumerates that every Board of Trustees constituted under Clause (a) or Clause (b) shall consist of not less than three or not more than five persons, of whom one shall be member of the Scheduled Castes or Scheduled Tribes; and another one shall be a women, provided that the Government, the Commissioner, Joint Commissioner or the Deputy Commissioner, as the case may be, may, pending the constitution of such Board of Trustees under this sub-section, appoint a Fit Person to perform the functions of the Board of Trustees. Therefore, the appointment of a Fit Person shall be undertaken by the authority competent in the interest of the temple administration. Fit Persons are appointed in order to protect the temple administration and if at all any grievances arise, the person aggrieved is at liberty to approach the Commissioner under Section 21 or under Section 114 of the Act, before the Government. The merits of the appointment with reference to the facts cannot be adjudicated by the High Court in a writ proceedings. It is an administrative action initiated by invoking the powers conferred under the provisions of the Act. Thus, complete adjudication of facts is required from the hands of the competent authorities. Further, the appointment of a Fit Person cannot be claimed as a matter of right. No doubt, in the present case, the petitioner claims that he was removed without any notice. Under this circumstances, what prompted the authorities to appoint the Executive Officer as a Fit Person is to be gone into and an adjudication is imminent and such an adjudication is to be done with reference to the records as well as the defense, if any made by the petitioner, who was holding the post of Fit Person of the said temple. This being the



principles to be followed, this Court cannot allow the continuance of the petitioner as a Fit Person, as the order impugned categorically states that the Executive Officer of the temple is appointed as a Fit Person in the interest of temple administration and therefore, the petitioner is at liberty to approach the competent revisional authorities under Sections 21 and 114 of the Act, for redressal of his grievances.

With these observations, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

- 1.The Joint Commissioner
Hindu Religious and Charitable Endowments Department,
Chennai Division-I,
Padi, Chennai 600 050.
- 2.The Executive Officer,
Arulmighu Kalyana Venkatesa Perumal Temple,
Edapalayam, Park Town,
Chennai 600 003.

+1cc to Mr.V.Srikanth, Advocate, S.R.No.36495

W.P.No.15417 of 2021

NK(CO)
SB(23/08/2021)