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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2021

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.17131 & 15556 of 2020

and

WMP. Nos.21189, 21944, 19417, 19418, 24890 of 2020

and 2555 & 2565 of 2021

Mr.K.Devarajan

.... Petitioner in W.P. No.17131 of 2020

Shenbagamaa Devi Sri Annamaar Temple
represented by Mr.N.Arumugam,
S/o.Mr.Natesan, Chief Priest of Shenbagamaa Devi
Sri Annamaar Temple, No.4-A, Lakshmipuram,
(Opposite to Government Boys Higher Secondary School)
Salem Main Road, Mallasamuthiram Village & Post,
Thiruchengode Taluk, Namakkal District.

.... Petitioner in W.P. No.15556 of 2020

Vs.

1. The Assistant Commissioner,
Hindu Religious and Charitable Endowments,
Namakkal.
2. Mr.R.S.Venkatesh,
The Assistant Commissioner,
Hindu Religious and Charitable Endowments,
Tiruppur.
3. The Executive Officer,
Mariamman Chellandiammal Temple,
Rasipuram, Namakkal District.
4. R.Raja
R1& R2 cause title Amended vide order dated 09/03/2021 made
in WMP No.4742/2021 in WP No.17131/2020.

... Respondents in W.P. No.17131 of 2020



- 1.The Commissioner,
Hindu Religious & Charitable Endowment Board,
Nungambakkam, Chennai.
- 2.The Joint Commissioner,
Hindu Religious & Charitable Endowment Board,
Salem.
- 3.The Assistant Commissioner,
Hindu Religious and Charitable Endowment Board,
Collectorate, Namakkal.
- 4.Inspector,
Arulmigu Annamaarswami Thirukoil,
Shanbagamaadevi Village,
Thiruchengode Taluk,
Namakkal District.
- 5.The Thakkar/Fit Person,
Arulmigu Annamaarswami Thirukoil,
Shanbagamaadevi Village,
Thiruchengode Taluk,
Namakkal District.

6. C.R.Raja

..... Respondents in W.P. No.15556 of 2020

Prayer in W.P. No.17131 of 2020:

Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari to call for the records relating to the impugned order dated 04.02.2019 in Se Mu Nada Na.Ka.No.3011/2013/A6 passed by the 1st respondent and quash the same.

Prayer in W.P. No.15556 of 2020:

Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari to quash the Tender Notice dated 17.10.2020 issued by the 4th and 5th respondent in respect to lease the petitioner's temple's 29 coconut trees.

For Petitioner : Mr.K.Shanmugakani
in W.P. No.17131 of 2020
Mr.R.Sathish Kumar
W.P. No.15556 of 2020



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For Respondents : Mr.R.Venkatesh,
Government Advocate

for R1 & R2 in W.P. No.17131 of 2020
for R1 to R4 in W.P. No.15556 of 2020
Mr.T.S.Vijaya Raghavan
for R3 in W.P. No.17131 of 2020
for R5 in W.P. No.15556 of 2020
Mr.C.Dharmaraj,
for R4 in W.P. No.17131 of 2020
for R6 in W.P. No.1556 of 2020

C O M M O N O R D E R

These writ petitions are heard together and a common order is passed since most of the parties, as well as the grievances expressed and the issues that arise are also substantially common.

2. The challenge in W.P. No.15556 of 2020 is to a tender notice dated 17.10.2020 issued by the 4th and 5th respondents, that is Inspector and Thakkar/Fit Person, Arulmigu Annamaarswami Thirukoil, Shanbagamaadevi Village, Thiruchengode Taluk, Namakkal District (Temple) in regard to the lease of 29 coconut trees admittedly belonging to the temple.

3. The prayer in W.P. No.17131 of 2021 is for a Certiorari calling for and quashing an order dated 04.02.2019 passed by the first respondent/the Assistant Commissioner of the Hindu Religious and Charitable Endowments Department, appointing a fit person for the Temple, in terms of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (in short 'Act').

4. Heard Mr.R.Sathish Kumar, learned counsel for the petitioner in W.P. No.15556 of 200 and Mr.Shanmugakani, learned counsel the petitioner in W.P. No.17131 of 2020, Mr.R.Venkatesh, learned Government Advocate for the official respondents, Mr.T.S.Vijaya Raghavan, learned counsel for the Thakkar and Mr.C.Dharmaraj, learned counsel for Mr.C.R.Rajah, arrayed as respondent in both writ petitions.

5. Straightaway, I may state that there are serious disputes arising on facts in regard to the constitution and the management of the temple in question. The status of the temple, as to whether it is a community temple or not, is itself in dispute. A writ petition was filed by C.R.Rajah in W.P. No.30789 of 2013 seeking a mandamus directing the officials of the Hindu Religious and Endowment Department to exercise their powers and enquire into mismanagement of the temple in question, recover the valuables of the temple, prevent unauthorized and illegal collection of money and articles in the name of the



temple and property, account for the same and appoint a Fit Person to manage and carry out renovation work and perform the kumbabishekam.

6. When the aforesaid writ petition had come up for disposal on 22.03.2019, it was reported that a Fit Officer has been appointed who had taken charge on 25.02.2019 and hence the writ petition was withdrawn and closed.

7. The present writ petition in W.P. No.17131 of 2020 challenging the appointment of fit person has come to be filed after the elapse of more than one and half years from the date of his appointment. Be that as it may, this fact may not be relevant for the reason that the petitioner in W.P. No.15556 of 2020 who has challenged the tender notice has filed a Revision Application in terms of Section 21 of the Act, challenging the appointment of fit person.

8. Only C.R.Rajah has been arrayed as respondent in that revision petition. It would thus suffice, as far as appointment of fit person and Thakkar is concerned to issue a direction to the Joint Commissioner, HR & CE, Erode before whom the petition is pending, to dispose the same after hearing both petitioners before me as well as the other parties both to the revision petition and pass a speaking order within a period of eight (8) weeks from today. With this, the challenge to order dated 04.02.2019 stands decided. (see note)*

9. Coming to the challenge to the tender notice, the main ground on which the challenge is adduced, is that the proper procedure, as set out under the relevant rules for floating of tender and calling for bids, has not been followed in this case. Learned counsel would point out that the publication of the tender notice is on 17.10.2020 calling for bids to be submitted on 28.10.2020 and thus the period of 15 days as prescribed under the Tamil Nadu Transparency in Tenders Act, 1998 (in short 'Tender Transparency Act') has not been followed.

10. In deciding this issue, one would take into account not only the provisions of the Tender Transparency Act but also two other regulations issued in the context of the HR & CE enactment itself being the Religious Institutions (Lease of Immovable Properties Rules, 1963 (1963 Rules) and the Management in Preservation of Properties of Religious Institution Rules, dated 10.07.1964 (1964 Rules).

11. As far as the 1963 Rules are concerned, they provide specifically for the procedure to be followed in the lease



of immovable properties and the rights belonging to a religious institutions, by public auction.

12. Regulation 4 is relevant to the present matter and reads thus:

'4. Auction notice.- (1) The notice of auction of all leases shall be published, at least 15 days before the date fixed for auction, by affixture-

(a) on the notice board or, in the case of a specific endowment, on the notice board or front door of the religious institution to which the specific endowment is attached;

(b) on the notice board of the office of the Municipal Council or the Corporation of [Chennai] or the Panchayat or the Panchayat Union or the village chavadi in the places where the properties are situate; and

(c) on the notice board of the office of the Assistant Commissioner having jurisdiction over the area in which the properties are situate.

(2) The executive authority shall also give publicity to the notice in the language of the locality, by circulating or distributing copies thereof or announcing its content by beat of tom tom in the area or by publishing it in a newspaper in the language of the locality having circulation in the area.

(3) Where the auction is conducted by the Executive Officer, a copy of the auction notice shall also be sent to the trustees at least 3 days before the date fixed for auction.'

13. A perusal would reveal that a 15 day period has been fixed for notice of auction of all leases, prior to the date fixed for auction and the mode is by specific demarcated methodologies. Thus the intent is clear to the effect that notice should be issued 15 days before the date fixed for auction, as well as in a manner that would ensure the widest circulation.

14. The 1964 Rules address the mode of management in preservation of properties and also provide for the calling of tenders, in Regulation 18. This Regulation is general in nature and reads as follows:

'18. Tenders to be called for.-(1) Tenders should, invariably, be called for when the amount involved in



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a particular contract is Rs. 10,000 or more. This rule does not admit of a major work being split into parts, of each costing less than Rs. 10,000 and each part being given out on contract without calling for tenders.

(2) In all cases where works are to be executed or supplies are to be made by contract, tenders shall be invited -

(a) by publication of advertisement in one or more daily newspapers having circulation in the area in which the institution is situate; or

(b) by publication of notice in the form shown in Annexure-II in the language of the locality, by affixture -

(i) on the notice board of the Panchayat Office or if there be no panchayat, of the village chavadi; and

(ii) on the notice board of the office of the Assistant Commissioner having jurisdiction over the area in which the institution is situate.

Such advertisement shall contain information as to when and where and to whom the tenders are to be submitted and when and where and by whom they are to be opened.

(3) In the case of works costing Rs. 50,000 (fifty thousand) or more, notices inviting tenders shall, invariably, be published in one or two important newspapers;

(4) The tenderers shall have free access to contract documents.'

Admittedly, Regulation 18 does not provide for a minimum time period to be maintained between notice and auction.

15. The Tender Transparency Act, a more recent enactment, provides in Rule 20, that the minimum time to be afforded for submission of tenders is, for tenders upto an amount Rupees two crores in value, 15 days and for tenders in excess thereof, 30 days. There can thus be no dispute that, both under the Tender Transparency Act which applies, under Section 1, to the State of Tamil Nadu, and in Section 4, mandates that no tenders shall be invited or accepted by any authorities .except in accordance with the procedure stipulated thereunder, as well as in the 1963 Rules, notice of 15 days is mandatory.



16. In the present case, the period sets out falls short of 15 days and hence the same is held not to be in accordance with the provisions of applicable rules and regulations. The auction notice is thus quashed.

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17. Pending disposal of the Revision Petition and subject to its result, the Executive Officer shall manage the affairs of the temples as well as its assets.

18. These writ petitions are disposed in the aforesaid terms. Connected Miscellaneous Petitions are also closed. No costs.

* Note: Post-bifurcation in December 2020, Revision Petition No.2 of 2019 would now have to be heard by the Joint Commissioner, sitting at Erode. Memo dated 17.04.2021 is filed to this effect by the counsel for the petitioner in W.P.No.15556 of 2020 and the same is taken note of.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

RKP

To

1. The Assistant Commissioner,
Hindu Religious and Charitable Endowments,
Namakkal.
2. The Executive Officer,
Mariamman Chellandiammal Temple,
Rasipuram, Namakkal District.
3. The Commissioner,
Hindu Religious & Charitable Endowment Board,
Nungambakkam, Chennai.
4. The Joint Commissioner,
Hindu Religious & Charitable Endowment Board,
Salem.



5. The Assistant Commissioner,
Hindu Religious and Charitable Endowment Board,
Collectorate, Namakkal.

6. THE Inspector,
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7. The Thakkar/Fit Person,
Arulmigu Annamaarswami Thirukoil,
Shanbagamaadevi Village,
Thiruchengode Taluk,
Namakkal District.

8. The Joint Commissioner,
Hindu Religious & Charitable Endowment Board,
Erode.

+1cc to the Government Pleader, S.R.No.23771

+1cc to Mr.K. Shanmugakani, Advocate, S.R.No. 23696

+2cc to Mr.R.R.N Legal, Advocate, S.R.No.23509, 23508

+1cc to Mr.T.S. Vijaya Ragavan, Advocate, S.R.No.23628

+1cc to Mr.Vijayakumar, Advocate, S.R.No.23513

W.P. Nos.17131 & 15556 of 2020
and
WMP. Nos.21189, 21944, 19417, 19418, 24890 of 2020
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SSI (CO)

CT(15/07/2021)