IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.22926 & 214 of 2014

and MP.No.1 of 2014

Sri Varasiddhi Vinayagar Sath Sangam
Rep. by its Secretary
No.E-96A, 3rd Avenue, Besant Nagar,
Chennai-90.
..Petitioner in W.P.No.22926 of 2014

Sri Varasiddhi Vinayagar Sathsangam,
Represented by its Secretary
K.Narayanan
...Petitioner in W.P.No.214 of 2014

Vs.

1.The Commissioner
Hindu Religious and Charitable Endowments
Admn. Department Nungambakkam
Chennai-34.
...R1 in both WPs

2.The Addl. Commissioner (Enquiry)
Hindu Religious and Charitable
Endowments Admn. Department Nungambakkam
Chennai-34.
... R2 in W.P.No.22926 of 2014

3.The Joint Commissioner
Hindu Religious and Charitable Endowments
Admn. Department Nungambakkam,
Chennai-34.
...R3 in W.P.No.22926 of 2014 and R2 in W.P.No.214 of 2014

4.The Asst. Commissioner
Hindu Religious and Charitable Endowments
Admn. Department Nungambakkam,
Chennai-34.
...R4 in W.P.No.22926 of 2014 and R3 in W.P.No.214 of 2014

5.The Executive Officer
Sri Varasiddhi Vinayagar Temple
Besant Nagar, Chennai-90.
... R5 in W.P.No.22926 of 2014

6.The Fit Person/Executive officer,
A/m. Mahalakshmi Tirukoil,
Besant Nagar, Chennai-90
...R4 in W.P.No.214 of 2014

Prayer in W.P.No.22926 of 2014: Writ Petitions filed under Article 226 of the Constitution of India praying to Writ of certorari calling for the records of the First Respondent herein culminating with the impugned order bearing PRO. RC No.70534/2014 L5 dated 10.1.2014 passed by the First Respondent and quash the same.

Prayer in W.P.No.214 of 2014: Writ Petitions filed under Article 226 of the Constitution of India praying to Writ of certorari calling for the records relating to the impugned order passed by the 4th respondent herein dated 17.12.2013 without having any number and quash the same.

For Petitioner : Mr.Niranjan Rajagopalan
(W.P.No.22926 of 2014)
Mr.M.Vaidyanathan
(W.P.No.214 of 2014)

For Respondents : Mr.NRR.Arun Natrajan
Government Advocate
(for R1 to R4 in W.P.No.22926 of 2014)
(for R1 to R3 in W.P.No.214 of 2014)
Mr.R.Bharanidaran
(for R5 in W.P.No.22926 of 2014)
Mr.K. Ashok Kumar
for R4 in W.P.No.214 of 2014)

COMMON ORDER

Learned counsel for the petitioner states that the prayer in W.P.No.214 of 2014 has become infructuous and recording the same the aforesaid writ petition is dismissed.

2. The petitioner in W.P.No.22926 of 2014 is the Sri Varasiddhi Vinayagar Sath Sangam that challenges order dated 10.01.2014 passed by R1/the Commissioner, Hindu Religious and Charitable Endowments Department (HR & CE) appointing an Executive Officer (EO) for administration of the Shri Varasiddhi Vinayagar temple at Besant Nagar, Chennai (temple in question)

in terms of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (in short 'Act').

3. The petitioner is the founder of the temple in question. The temple was constructed in the year 1983 belonging to the Sangam, ad-measuring 425 sq. meters, and purchased from the Tamil Nadu Housing Board.

4. An application filed under Section 63-A of the Act in O.A.No.52 of 1980 for a declaration that Shri Varasiddhi Vinayagar Temple situated at Besant Nagar is not a religious institution coming under the Act, came to be dismissed by the Deputy Commissioner, HR & CE. As against the aforesaid order of dismissal, an appeal in A.P.No.107 of 1987 came to be filed before the Commissioner, HR & CE, that was also dismissed. A statutory suit in terms of Section 70(1) was filed in O.S.No.3988 of 1990 before the V Assistant City Civil Court, Madras City Civil Court Chennai, which was also dismissed on dated 25.01.1994.

5. The Sangam as well as the Commissioner HR&CE filed an appeal and cross appeal respectively in A.Nos.1280 and 1395 of 1994 respectively, challenging the judgement of the City Civil Court, before this Court. This Court concluded that the temple in question is a public temple. At paragraph 279 of the order, the Court records that the temple however, stood on land that belonged to the Sangam and thus, the Sangam was entitled to some amount of compensation or remedy in this regard.

6. The HR&CE Department was thus directed to find out what the individual as well as collective contribution of the members of the Sangam was towards the purchase of the land to compensate the members accordingly. The exercise was to be completed within two months.

7. In lieu of the compensation that was ordered by this Court, the Sangam, at the time of framing of the scheme, sought inclusion of a clause whereunder the administration of the temple would be by non-hereditary trustees to be appointed from amongst Sangam members, along with a fit person to be appointed by the HR & CE Department.

8. A Scheme thus come to be formulated on 28.01.2009 in O.A.No.1 of 2009 which provides, at clause no.3, for the constitution of a board of trustees comprising five non-hereditary trustees. At Clause 5, the scheme provides additionally, for the appointment of an E.O. in terms of Section 45 (1) of the Act. The relevant portion of the Scheme is extracted below:

1……………
2……………..
3. The administration of the above said temple shall be carried out by a board of non hereditary trustees not less than three and not more than five, to be constituted by the competent authority in accordance with the provisions of the Tamil Nadu HR&CE Act 22/1959, amended from time to time and rules framed thereunder.

4. The appointment of non hereditary trustees shall be among the panel consisting of not less than five qualified members duly selected and recommended by "SRI VARA SIDDHI VINAYAGAR SATH SANGAM" as per the provisions of the Tamil Nadu HR&CE Act 22/1959 as amended from time to time and rules framed thereunder.

5. The competent authority under the provisions of the above said Act shall have power to appoint an Executive Officer under Section 45(1) of the above said Act for the temple in question.

6) If any doubt or difficulty arises in the matter of implementation of any of the provisions of the Act, Scheme, Clause such matters will be reported to the appropriate authority and whose decision will be final.

9. The question that arises in this writ petition is as regards the justification for such appointment, and if found to be justified, the tenure of the appointment.

10. The State, in G.O.Ms.No.260 dated 06.11.2015, has framed rules for appointment of Eos and their tenure has been set at a maximum of five years. The Rules, as relevant to the issue arising in this matter are as follows:

……

3. Where the Commissioner either suo-motu or upon the report received from the Joint Commissioner or Deputy Commissioner or Assistant Commissioner having jurisdiction, considers it necessary,-

(i) that in the interest of and ensuring better, proper and efficient administration and management of any religious institution; or

(ii) that he has reason to believe that there is persistent default in administering the affairs of any religious institution in accordance with the provisions of the Act and the rules framed thereunder; or

(iii) that there is irregularities, malfeasance, misfeasance or breach of trust; or

(iv) that there is malpractice, maladministration, mismanagement in any religious institution; or

(v) that there is misappropriation of or improper dealing with the funds and the properties of the religious institution; or

(vi) that there is gross neglect of any duty on the part of the trustee; or

(vii) that there is willful disobedience of the lawful orders issued under the provisions of the Act by the authorities under the Act or by the trustee; or

(viii) that if the trustee opts for the appointment of an executive officer to assist him in the better administration and development of the religious institution; or

(ix) that any scheme settled or deemed to have been settled to any religious institution under the provisions of the Act contains a clause as such; or

(x) for any other reason,

the Commissioner may, after holding such inquiry as he may consider it necessary and expedient, in the interest of such religious institution, by order, appoint an Executive Officer for such religious institution, for such period or periods as may be specified by the Commissioner in the order not exceeding a period of five years at a time.

11. The E.O. appointed for the temple on 10.01.2014 has, admittedly, been functioning till date and I had, in my order passed on 07.07.2021, held that his tenure is long past the period stipulated under the Rules. In fact, I had noted that with the elapsing of the tenure of the E.O., he becomes functus officio and the writ petition is itself rendered infructuous.

12. The procedure for constitution of the Board of trustees going forward, shall be that the Sangam shall make its recommendations for non-hereditary trustees as expeditiously as

possible and appointments shall be made by the Joint Commissioner/R3 within a period of four weeks from date of receipt of the recommendations from the Sangam. The present arrangement shall continue till such time the exercise, as aforesaid, is completed.

13. The appointment of a permanent EO is not contemplated under Section 45 and is contrary to G.O. dated 06.11.2015 as well as the judgment of the Hon'ble Supreme Court in the case of Dr.Subramanian Swamy and Another Vs. The State of Tamil Nadu and Others ((2014 5 SCC 75), wherein the Hon'ble Supreme Court observed as follows:

> 63.2. At the time of issuing the order of appointment of Executive Officer, the Podhu Dikshitars were given full opportunity of hearing and the powers and duties of the Executive Officer as defined by the Commissioner would show that the religious affairs have not been touched at all and the trustees and the Executive Officers are jointly managing the temple. The Podhu Dikshitars have not been divested of the properties and it was not the intention of the State Government to remove the trustees altogether, rather the Executive Officers function alongwith the trustees;
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> 63.3. In any event, the Podhu Dikshitars are trustees in the temple and they have not been divested of their properties. The Executive Officer is only collaborating with the trustees in administering the properties. Their religious activities have not been touched. Neither the powers of the trustees have been suspended nor the Executive Officers have been vested with their powers and the Executive Officers only assist the trustees in management of the temple. It was not the intention to remove the trustees altogether, nor the order of appointment of the Executive Officer suspends the scheme already framed way back in 1939.
>
> 64. Be that as it may, the case is required to be considered in light of the submissions made on behalf of the State of Tamil Nadu and particularly in view of the written submissions filed on behalf of the State.
>
> 65. Even if the management of a temple is taken over to remedy the evil, the management must be handed over to the person concerned immediately after the evil stands remedied. Continuation thereafter would

tantamount to usurpation of their proprietary rights or violation of the fundamental rights guaranteed by the Constitution in favour of the persons deprived. Therefore, taking over of the management in such circumstances must be for a limited period. Thus, such expropriatory order requires to be considered strictly as it infringes fundamental rights of the citizens and would amount to divesting them of their legitimate rights to manage and administer the temple for an indefinite period. We are of the view that the impugned order is liable to be set aside for failure to prescribe the duration for which it will be in force.

66.Super-session of rights of administration cannot be of a permanent enduring nature. Its life has to be reasonably fixed so as to be co-terminus with the removal of the consequences of maladministration. The reason is that the objective to take over the management and administration is not the removal and replacement of the existing administration but to rectify and stump out the consequences of maladministration. Power to regulate does not mean power to supersede the administration for indefinite period.

67. Regulate is defined as to direct; to direct by rule or restriction; to direct or manage according to the certain standards, to restrain or restrict. The word `regulate' is difficult to define as having any precise meaning. It is a word of broad import, having a broad meaning and may be very comprehensive in scope. Thus, it may mean to control or to subject to governing principles. Regulate has different set of meaning and must take its colour from the context in which it is used having regard to the purpose and object of the legislation. The word `regulate' is elastic enough to include issuance of directions etc. (Vide: K. Ramanathan v. State of Tamil Nadu & Anr., AIR 1985 SC 660; and Balmer Lawrie & Company Limited & Ors. Partha Sarathi Sen Roy & Ors., (2013) 8 SCC 345)

68. Even otherwise it is not permissible for the State/Statutory Authorities to supersede the administration by adopting any oblique/circuitous method. In Sant Lal Gupta & Ors. v. Modern Coop. Group Housing Society Ltd. & Ors., (2010) 13 SCC 336, this Court held:

> "21.It is a settled proposition of law that what cannot be done directly, is not permissible to be done obliquely, meaning thereby, whatever is prohibited by law to be done, cannot legally be effected by an indirect and circuitous contrivance on the principle of "quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud". An authority cannot be permitted to evade a law by "shift or contrivance".

(See also: Jagir Singh v. Ranbir Singh, AIR 1979 SC 381; A.P. Diary Dev. Corporation federation v. B. Narsimha Reddy & Ors. AIR 2011 SC 3298; and State of Tamil Nadu & Ors. v. K. Shyam Sunder & Ors. AIR 2011 SC 3470).

14. The ratio of the judgment as extracted above makes it clear that the purpose of exercise of power under Section 45 is not a mechanism to provide for unilateral takeover. Such power can be exercised only if, as a pre-condition, instances of mismanagement/mal administration are found, the management at that juncture called upon, furnish an explanation and their submissions taken into consideration and found to be of no substance.

15. The Hon'ble Supreme Court has settled the position that divesting of powers of an existing management would be ex-proprietary and an infringement of the Fundamental Rights of the citizens. Thus, such an act cannot therefore be countenanced. Rightly so, the Rules framed for appointment of Executive Officers also is restrictive of the powers and the tenure of the Executive Officer and the period of five years mentioned therein is, at the most the outer margin within which the affairs of the Temple must be streamlined and brought back to regularity. Once that is done, the State should stepped out the way, watching over from the sidelines in its capacity as the authority vesting overall supervision to ensure that instances of mismanagement did not recur.

16. The fact that the petitioner is a public temple collecting public money in the Hundials does not, by itself, for interference by the HR&CE Department, except if the Department has sufficient evidence of mis-management or mal-administration. In fact, Section 23 of the Act specifically provides for such an exigency and the proviso thereto stipulates that notice has to be given to the person in charge along with complete particulars of the allegations that are levelled against persons in management prior to any attempt at taking over of the management of the temple.

17. Writ Petition No. 22926 of 2014 is disposed as above. Connected miscellaneous petition is closed. No costs.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

Ska/sl

To

1.The Commissioner
Hindu Religious and Charitable Endowments
Admn. Department Nungambakkam
Chennai-34.

2.The Addl. Commissioner (Enquiry)
Hindu Religious and Charitable
Endowments Admn. Department Nungambakkam
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3.The Joint Commissioner
Hindu Religious and Charitable Endowments
Admn. Department Nungambakkam,
Chennai-34.

4.The Asst. Commissioner
Hindu Religious and Charitable Endowments
Admn. Department Nungambakkam, Chennai-34.

5.The Executive Officer
Sri Varasiddhi Vinayagar Temple
Besant Nagar, Chennai-90.

6.The Fit Person/Executive officer,
A/m. Mahalakshmi Tirukoil,
Besant Nagar, Chennai-90.

+1cc to K.Ashok Kumar, Advocate Sr No.32483
+1cc to G.R.Associates, Sr No.32447
+1cc to the Government Pleader Sr No.32989

W.P. No.22926 & 214 of 2014
and
MP.No.1 of 2014

JP (CO)
PR (01/11/2021