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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.20242 of 2020
and WMP.No.25025 of 2020

T.P.Anbarasu

...Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai-600 034.

2.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai-600 034.

3.The Executive Officer,
Arulmigu Thirumeni Amman Thirukkoil,
Anna Nagar, Chennai.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari calling for the records pertaining to the proceedings in Na.Ka.No.4440/2020/A2 dated 21.12.2020 of the 2nd Respondent and quash the same.

For Petitioner : Mr.Anbazhagan
for Mr.A.E.Ravichandran

For Respondents: Mr.NRR.Arun Natarajan, (for R1 & R2)
Government Advocate

Mr.A.K.Sriram, (for R3)
for M/s.A.S.Kailasam Associates

O R D E R

Heard Mr.Anbazhagan, learned counsel for the petitioner, Mr.NRR.Arun Natarajan, learned Government Advocate for official respondents i.e. HR&CE Department/R1 & R2 and Mr.A.K.Sriram, learned counsel for the Executive Officer of the Arulmigu Thirumeni Amman Thirukkoil, Chennai/R3.



2. The petitioner has challenged an order passed by R2 appointing R3 as a fit person by order dated 21.12.2020. The petitioner was appointed as a trustee of Arulmigu Kadambadi Amman Thirukoil (temple/temple in question) as early as in 1995 (proceedings dated 13.02.1995) and is serving as part of the Board of trustees. The tenure of the Board was for a period of three years, till 1998.

3. The position as contemplated under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (in short 'Act') is that upon expiry of the tenure of the Board, applications should be called for, for constitution of a new Board of trustees. Unfortunately, this has not been done in the present case and the petitioner has been permitted to continue for a long period of 22 years till passing of the present order.

4. The trigger for passing of the impugned order is a complaint filed by the Kadambadi Residents Welfare Association (KRWA) on 23.11.2020 raising serious allegations in regard to mis-management of the affairs of the temple, collection of funds ostensibly for the use of the temple, though spent elsewhere, and other such allegations.

5. In the counter filed, according to para-4, there was an enquiry initiated by the Inspector, HR&CE Department on the complaint received from the KRWA on 04.12.2020. The Inspector, HR&CE appears to have concurred with the allegations made by the association stating that there were various action of omission and commission by the petitioner. The petitioner has, in the writ affidavit, stated that no notice was issued prior to the formulation of the report and that the same was generated behind his back. It is based on the aforesaid report that the impugned order has come to be passed.

6. Additionally, the petitioner would assail the impugned order on the grounds that (i) no notice was issued to him prior to passing of the impugned order and; (ii) he has been serving on the Board of trustees since 1995 and there is no ostensible reason for the Department to disturb him. He would thus pray that the impugned order appointing the fit person is to be set aside and he be permitted to continue as part of the Board.

7. Per contra, learned counsels appearing for the official respondents as well as the Executive Officer would draw my attention to the provisions of Sections 47 and 49 of the Act, which provide for the appointment of trustees and fit persons for a period of three years, upon expiry of which, the Board is to be imbued with new constituents.



8. There is no requirement for a notice be issued to the exiting board members. There is thus, a strong expectation, though belied in this case, that the authorities would be prompt in bring into existence the new Board. The respondents rely on a decision of Justice R.Subbiah in Sozhia Maruthuva Mandagapadi Kattalai Trust Rep. by its Chairman, Board of Trustee A.Sornavel vs. The Joint Commissioner, HR&CE Department, Madurai and another in WP(MD)No.15699 of 2015 wherein, a similar plea for issuance of notice prior to appointment of fit person was rejected on the ground that statute does not provide for the same. Argument one, on the respect of issuance of notice, is rejected.

9. The petitioner has relied upon a decision of Justice R.Mahadevan in the case of Arulmigu Angala Eswari Amman Temple, Virudhunagar rep. by the President of Temple Administrative Committee Vs. The Commissioner, Hindu Religious & Charitable Endowment Department, Chennai & Others (CDJ 2015 MHC 7791). In that case, there was no existing committee that was sought to be displaced by the fit person appointed and the fit person was himself appointed for the first time to bring order to the management of the temple. The facts are thus distinguishable. In this case, technically, it cannot be said that there was an intrusion in the management of the temple since the committee has itself ceased to exist in 1998.

10. No doubt, there has been great deal of negligence on the part of the respondents in permitting the petitioner to continue for 22 years without bringing into play the provisions for appointment of trustees successively. However, this, by itself cannot vest a right upon the petitioner to continue in management. Argument two is also rejected.

11. It is brought to my notice that an enquiry has been initiated pending writ petition into the allegations made by the KRNA. A notice dated 16.06.2021 has been issued listing the enquiry on 23.06.2021, on which date the petitioner had sought an adjournment on the ground that he was be unwell. Let the enquiry continue and be completed within a period of twelve (12) weeks from today.

12. The interim protection granted to the petitioner is vacated and R3 directed to take charge of the affairs of the temple forthwith. The provisions of Sections 47 and 49 of the Act make it apparent that the appointment of fit person is only an interim measure, pending constitution of the Board. Thus, upon completion of enquiry, the process of constitution of the Board of trustees shall commence forthwith and be completed within a period of sixteen (16) weeks thereafter. The timelines stipulated shall be strictly adhered to.



13. This writ petition is dismissed. Connected miscellaneous petition is also closed. No costs.

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Sd/-
Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

vs

To

- 1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai-600 034.
- 2.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai-600 034.
- 3.The Executive Officer,
Arulmigu Thirumeni Amman Thirukkoil,
Anna Nagar, Chennai.

+1cc to Mr.A.S.Kailasam & Associates, Advocate Sr.29558
+1cc to Mr.A.E Ravichandran, Advocate Sr.29518

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srg 20/07/2021