BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 16.03.2021
CORAM:
THE HONOURABLE MR.JUSTICE **M.M.SUNDRESH**
AND
THE HONOURABLE MRS.JUSTICE **S.ANANTHI**

W.A.(MD)Nos.860 of 2020 & 294 of 2021
and
W.P.(MD)No.16416 of 2020

W.A.(MD)No.860 of 2020:

The Executive Officer / Fit Person,
Sri Dhandayuthapani Swami Temple,
Palani : Appellant

Vs.

1.T.R.Ramesh

2.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai.

3.The Secretary to Government,
Hindu Religious and Charitable Endowments Department,
Secretariat, Chennai.

4.P.Sudalaimani

5.T.Balaji Krishnaswami : Respondents

[R.4 & R.5 are impleaded vide order dated 04.02.2021 made in CMP.(MD)No.5412 & 5931 of 2020 in W.A.(MD)No.860 of 2020]

W.A.(MD)No.294 of 2021:

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

2.The Secretary to Government,
Hindu Religious and Charitable Endowments Department,
Secretariat, Chennai. : Appellants

Vs.

1.T.R.Ramesh

2.The Executive Officer / Fit Person,
Sri Dhandayuthapani Swami Temple,
Palani. : Respondents

COMMON PRAYER in W.A.(MD)Nos.860 of 2020 & 294 of 2021: Writ Appeals filed under Clause 15 of the Letters Patent as against the order dated 22.09.2020 made in W.P.(MD)No.10903 of 2020.

Prayer in WP(MD). 10903 of 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorari, calling for records pertaining to the impugned Tender Notice bearing R.C.No. 805/2020/Civil, dated 20.08.2020, on the file of the 2nd respondent and quash the same.

W.P.(MD)No.16416 of 2020:

T.R.Ramesh : Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by Additional Chief Secretary,
Department of Tourism, Culture and Religious Endowments Department,
Secretariat, Fort St.George,
Chennai - 600 009.

2.The Principal Secretary & Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam,
Chennai - 600 034.

3.The Executive Officer / Fit Person,
Sri Dhandayuthapani Swami Temple,
Palani - 624 601. : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus calling for the records of the impugned Government Order in G.O.No.2349, Revenue (W1) Department, dated 13.07.1966 passed by the first respondent, State of Tamil Nadu and quash the same as violative of Articles 25, 26, 29(1) and 31-A(1)(b) of the Constitution of India and consequently direct the respondents 1 & 2 to hand over the administration to the Trustees appointed with due qualification and belonging to the Sampradaya or Sect the Temple belongs to and pass such further or other orders.

For Appellant in W.A.(MD)No.860 of 2020	:	Mr.A.L.Somayaji, Special Senior Counsel for State of Tamil Nadu, Assisted by Mr.V.R.Shanmuganathan
For Appellant in W.A.(MD)No.294 of 2021	:	Mr.K.P.Narayanakumar, Special Government Pleader
For Petitioner in W.P.(MD)No.16416 of 2020	:	Mr.V.Raghavachari for Mr.Parthasarathy
For Respondents in W.A.(MD)No.860 of 2020	:	Mr.V.Raghavachari for Mr.Parthasarathy for R.1 Mr.K.P.Narayanakumar, Special Government Pleader for RR.2 & 3 Mrs.L.Victoria Gowri for R.4 Mr.M.Karthikeya Venkitachalapathy for R.5
For Respondents in W.A.(MD)No.294 of 2021	:	Mr.V.Raghavachari for Mr.Parthasarathy for R.1 Mr.K.P.Narayanakumar, Special Government Pleader for R.2
For Respondents in W.P.(MD)No.16416 of 2020	:	Mr.K.P.Krishnadoss, Special Government Pleader for R.1 Mr.K.P.Narayanakumar, Special Government Pleader for R.2 & R.3

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<u>COMMON ORDER</u>

(Order of the Court was made by **M.M.SUNDRESH, J.)**

After hearing the learned Counsel at length, we reserved orders. Thereafter, the learned Counsel appearing for the appellants produced a copy of the Government Order passed in G.O.No.41, Tourism, Culture and Endowments Department, dated 26.02.2021, appointing the Board of Trustees.

2. In the writ appeals, the issue is with respect to the tender called for by the Fit Person, who is also acting as the Executive Officer in the interest of the administration of the Temple. This was challenged on the primary ground that the Temple administration cannot run through the functioning of the Fit Person, who acts as

the Executive Officer, without appointing the Board of Trustees.

3. We also noted the fact that the aforesaid practice has been going on for years. We are dealing with a case where the temple is not a denomination temple nor there is a hereditary trustee. Therefore, there can be only two options on the administration of the Temple. Option one is to administer it with the Executive Officer cum Fit Person and the other is through the Board of Trustees. Even if we agree with the contentions of the writ petitioner in W.P.(MD)No.10903 of 2020, which led these two appeals, the consequence will be the management by the Board of Trustees. That situation has got remedied by the passing of the Government Order and we are not concerned with its veracity, inasmuch as it is not put into challenge. Since the Board of Trustees have been appointed, nothing survives in the writ appeals and they are accordingly disposed of, leaving it open to the Board of Trustees to proceed further in accordance with law, by taking over the administration from the Fit Person.

4. Here comes the larger issue. The intention of the writ petitioner in W.P.(MD)No.10903 of 2020 and the petitioner in W.P.(MD)No.16416 of 2020 is not only to curtail the ongoing practice of administration being done by the Fit Person and the Executive Officer in the place of Board of Trustees, but also to facilitate a better mechanism which is not only for the management of the Temples but also the appointment of Trustees.

5. On this, we sought for the suggestions from the learned Counsel appearing for the parties, apart from asking others and their views. The reason for doing so is that we find numerous cases pertaining to the management of the Temples, including the property assets, particularly the immovable properties. This results in spate of litigations affecting the proper functioning of the Temples. Notwithstanding the huge properties owned by them, the Temples are found it very difficult to manage the day-today functioning. Secondly, the scheme of the Act, *prima facie*, indicates the pervasive control of the administration of the State. The management also lacks an element of expertise, apart from the numen in the religious practice. We find that Section 7(A) of the HR & CE Act though provides for constitution of the District Committee with the persons who have knowledge and expertise in the field of religion, the same is missing for the Temples coming under Clause (3) of Section 46 of the Act, which are obviously bigger in nature, augmenting higher income and dealing with large extent of properties both movable and immovable. Suffice it to state that these temples attract large number of devotees and therefore, the need is much more with respect to not only the appointment of trustees, but also the management.

6. Accordingly, the following issues are raised after hearing the respective learned Counsel appearing for the parties:-

(i) On a conjoint reading of Section 87 (3) & (4) with Section 92 of the HR & CE Act, is there a need for an external audit?

(ii) Is the need becomes more, in view of the provisions contained in Section 80(G) of the Income Tax Act, particularly with respect to the object being achieved?

(iii) Are the property details among the other functions of the temple require to be uploaded with all requisite particulars, with specific reference to Section 29 of the Act, by which the Property Register is required to be maintained mandatorily?

(iv) Is the order passed in an earlier occasion by the Division Bench in W.P.(MD)No.3699 of 2019 dated 17.02.2021 would cover all aspects pertaining to the Temples, including specific endowments and the projects undertaken by the Temples?

(v) Do a better mechanism is required for the appointment of Board of Trustees with respect to the Temples coming under Clause (3) of Section 46 of the Act?

(vi) What are the other qualifications that are required for the trustees, such as knowledge in the field of religion, expertise in administration and management of finance?

(vii) Is there a specific enactment required to constitute a separate Board as has been done in the State of Kerala, with clear rules pertaining to not only the rights and duties, but also the payment of salaries and other perks for the employees and trustees?

(viii) Is the Temple management is entitled to invoke only Sections 78 & 79 of the HR & CE Act to remove the eviction as against the filing of a suit?

(ix) Is the practice of appointing Government Servants and allowing their salaries and other perks to be drawn from the income of the temple has to be continued or dispensed with?

(x) Can an approach of corporate management be adopted towards the management of the Temples?

(xi) Can the Court issue certain directions in the absence of adequate provisions under the Act with respect to the appointment of the Board of Trustees, particularly for Temples coming under Clause (3) of Section 46 of the Act?

(xii) Is there any need for appointment of a committee of experts, including the Hon'ble Retired Judges of this Court to go into all these issues, to enquire into the office of the Board of Trustees and the role played by the Government apart from the management and administration.

7. The learned Counsel appearing for the respective parties are requested to address this Court on the aforesaid issues by **26.03.2021.**

8. In fine, the writ appeals stand disposed of. There shall be no order as to costs. Pending miscellaneous petitions, if any, with respect to the writ appeals stand closed.

9. Registry is to list the writ petition in W.P.(MD)No.16416 of 2020 on **26.03.2021**, for further hearing.

Sd/-
Assistant Registrar (CS I)

// True Copy //

/ /2021
Sub Assistant Registrar(CS)

gk

To

1.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Department of Tourism, Culture and Religious Endowments Department,
Secretariat, Fort St.George,
Chennai – 600 009.

2.The Secretary to Government,
Hindu Religious and Charitable Endowments Department,
Secretariat, Chennai.

3.The Principal Secretary & Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam,
Chennai – 600 034.

4.The Executive Officer/Fit Person,
Sri Dhandayuthapani Swami Temple, Palani.

Copy to:
The Section Officer,
Writ Section,
Madurai Bench of Madras High Court,
Madurai.

+2 CC to M/s.V.R.SHANMUGANATHAN, Advocate (SR-11762[F] ,11763)

W.A.(MD)Nos.860 of 2020 & 294 of 2021
and
W.P.(MD)No.16416 of 2020
16.03.2021

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