



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.[MD]Nos.8130 and 8684 of 2014

and

M.P(MD) .Nos.1 to 3 of 2021

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W.P(MD) .No.8130 of 2014

E.Murali Manohar

: Petitioner

Vs.

1. The Assistant Commissioner,
Tamil Nadu Hindu Religious & Charitable
Endowment Board,
Madurai.

2. The Inspector cum Special Officer,
Madurai South,
Tamil Nadu Hindu Religious & Charitable
Endowment Board,
Madurai.

3.V.Vijaya Ramachandran

: Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned order made by the second respondent in his proceedings in Na.Ka.80/2014 dated 30.04.2014 and quash the same as illegal and consequently forbear the respondents from in anyway interfering with the petitioner's right in administration of the Sri Arulmigu Theerthawari Sri Irulappa Swamy Temple, Madurai.

W.P(MD) .No.8684 of 2014

E.Murali Manohar

: Petitioner

Vs.

1.The Commissioner,
Tamil Nadu Hindu Religious & Charitable
Endowment Board,
Chennai.

2. The Assistant Commissioner,
Tamil Nadu Hindu Religious & Charitable
Endowment Board,
Madurai.



3. The Inspector cum Fit Person,
Madurai South,
Tamil Nadu Hindu Religious & Charitable
Endowment Board,
Madurai.

4. V.Vijaya Ramachandran

: Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned order made by the second respondent in his proceedings in Sa.Mu.Na.Ka.3192/11/Aa2 dated 11.01.2013 and the impugned proceedings of the first respondent in Nee.Mu.No.15618/2013/E1, dated 01.04.2013 and quash the same as illegal and consequently forbear the respondents from in anyway interfering with the petitioner's right to administration of the Sri Arulmigu Theerthawari Sri Irulappa Swamy Temple, Madurai.

For Petitioner	: Mr.Mahaboob Athiff (in both W.Ps)
For Respondents	: Mr.M.Lingadurai, Special Government Pleader, for R1 and R2 No Appearance for R3 in W.P(MD).No.8130 of 2014 No Appearance for R4 in W.P(MD).No.8684 of 2014

O R D E R

This common order will govern the captioned two writ petitions and the captioned miscellaneous petitions (MPs) therein.

2. Captioned writ petitions pertain to 'Arulmigu Thirthavari Sri Irullappa Swami Thirukovil' situate at Palanganatham in Madurai South Taluk, Madurai District (hereinafter be referred to as 'said Temple' for the sake of convenience and clarity).

3. Appointment of a Fit person to said Temple by the jurisdictional Assistant Commissioner of the 'Tamil Nadu Hindu Religious & Charitable Endowments Department' which shall hereinafter be referred to as 'TNHR&CE Dept' for the sake of convenience and clarity is the trigger for the captioned writ petitions.

4. Captioned writ petitions are more than seven years old in this Court. In this order, 'W.P(MD).No.8130 of 2014' shall be referred to as 'senior W.P' and 'W.P(MD).No.8684 of 2014' shall be



referred to as 'junior W.P' for the sake of convenience and clarity. Senior W.P was filed on 06.05.2014 and junior W.P was filed on 02.06.2014. In the junior W.P an interim order has been granted on 03.06.2014 and in deference to the interim order the aforementioned order appointing Fit person i.e., 'order dated 11.01.2013 bearing reference Sa.Mu.Na.Ka.3192/11/Aa2' (hereinafter referred to as 'first impugned order' for the sake of convenience and clarity) and 'order dated 01.04.2013 bearing reference Nee.Mu.No.15618/2013/E1' (hereinafter referred to as 'second impugned order') made by the jurisdictional Joint Commissioner of TNHR&CE Dept have been kept in abeyance or in other words have not been acted upon for half a decade and two years (7 years) now.

5. An individual who claims that he is entitled to be in administration of said Temple has filed the captioned writ petitions. Senior W.P was filed assailing an 'order dated 30.04.2014 bearing reference Na.Ka.80/2014' made by the jurisdictional Inspector of TNHR&CE Dept (hereinafter referred to as 'third impugned order' for the sake of convenience and clarity) vide which the jurisdictional Inspector of TNHR&CE Dept had called upon the writ petitioner to handover details of immovable property, bank accounts of said Temple to a Fit person. To be noted, vide first impugned order, the jurisdictional Assistant Commissioner-TNHR&CE Dept had appointed a Fit Person qua said Temple which was followed by the second impugned order vide which the jurisdictional Joint Commissioner-TNHR&CE Dept at Chennai had made orders noticing that said Temple is included as No.305 in a list of small temples.

6. In the hearing today Mr.Mahaboob Athiff of M/s.Ajmal Associates (Law Firm) on behalf of writ petitioner in both the captioned main writ petitions and Mr.M.Lingadurai, learned Special Government Pleader assisted by Mr.T.Amjadkhan, learned Government Advocate on behalf of official respondents (respondents 1 and 2 in senior W.P and respondents 1 to 3 in junior W.P) are before me. In today's hearing also the third respondent in senior W.P and fourth respondent in junior W.P (private respondent) is not before me though this private respondent has entered appearance through a counsel and name of the counsel is duly shown in the cause list. Private respondent is more in the nature of an informant and therefore at the highest a formal party. In this view of the matter as private respondent was not there before this Court in the previous listing also, I proceed with the cases on hand.

7. Learned counsel for writ petitioner very fairly submitted that a decision in the junior W.P will decide the fate of the senior W.P also. Therefore, I had the junior W.P heard out which in any case is dovetailed with the senior W.P and is inextricably intertwined with the factual matrix qua senior W.P.

8. Assailing the first impugned order and second impugned order which are impugned orders in junior W.P, learned counsel for writ



petitioner made three submissions and they are as follows:

(i) The writ petitioner was not put on prior notice before the first impugned order appointing Fit Person was made;

(ii) The first impugned order talks about a report of the jurisdictional Inspector but the writ petitioner was not favoured with a copy of the same; and

(iii) The above are violation of principles of natural justice (NJP).

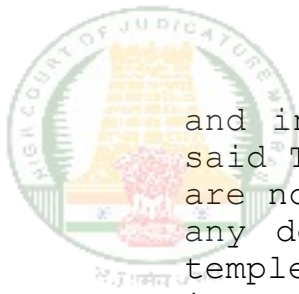
9. In response to the above submission, learned Special Government Pleader, adverting to the detailed common counter-affidavit filed on behalf of respondents submitted that the case of the writ petitioner is predicated on the premise that the said Temple is a private temple but there is no declaration to this effect the said Temple is not a private temple and therefore the appointment of Fit Person under Section 49 of 'the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959)' [hereinafter be referred to as 'TNHR&CE Act' for the sake of brevity] is in order, it deserves to be sustained and the writ petitioner who merely claims that he has a right to be in administration qua said Temple cannot insist on prior notice.

10. In response to the above submissions, learned counsel for writ petitioner submitted that there is no disputation that the writ petitioner is in administration as even the first impugned order refers to the writ petitioner as “நடைமுறை நிர்வாகி” and writ petitioner is the second noticee in the first impugned order.

11. I carefully considered the rival pleadings, the competing arguments on either side and the records that were placed before me (to be noted, learned State counsel were assisted by the Suit Inspector of TNHR&CE Dept). On a careful analysis of the arguments, case file and the records, I am of the considered view that the prayer of the writ petitioner in junior W.P cannot be acceded to and as a sequitur the senior W.P becomes a non starter. Reasons are as follows:

a) The entire pleadings of the writ petitioner in both the writ petitions are predicated on the premise that the writ petitioner has a right. It is not a question of the writ petitioner being in administration, it is a question of whether writ petitioner has right to be in administration. If the writ petitioner has a right to be in administration, the same should be recognized either under the TNHR&CE Act or it should have been taken out of the sweep of the TNHR&CE Act by a manner known to law;

b) A careful perusal of the pleadings bring to light that the burden of the song qua the writ petitioner is two-fold and it is rather intriguing as to how such a two-fold plea is being taken. In one breath the writ petitioner says the said Temple is a denominational temple



and in the same breath the writ petitioner also says the said Temple is a private temple. However, both these pleas are not supported by any shred of paper. Therefore, absent any declaration that the said Temple is denominational temple (traceable to under Section 107 of TNHR&CE Act read in conjunction with Article 25(2) of the Constitution of India) or a declaration that the said Temple is a private temple, said temple clearly comes within the sweep of Sub-section (3) of Section 1 of TNHR&CE Act. Only other exclusion is exemption by the Government under Section 4 and that is also absent in the case on hand;

(c) 'Temple' is defined vide Section 6(20) of TNHR&CE Act and 'religious institution' is defined under Section 6(18) of TNHR&CE Act. A careful perusal of these two definitions will bring to light that Temple is a religious institution within the meaning of Section 6(18) and therefore, a temple would *per se* come within the sweep of Section 1(3) of TNHR&CE Act. Law is well settled that there is a presumption *qua* public temple and it is for the protagonists of petitions of the nature on hand to demonstrate to the Court that the petitioner or the religious institution concerned is outside the sweep of TNHR&CE Act. I do not propose to dilate further on such elucidation as I propose to leave open a window to the writ petitioner to approach the authorities under Chapter V of TNHR&CE Act or by way of alternate remedy, the details of which will be set out elsewhere *infra* in this order. The argument predicated on prior notice and copy of the report of the Inspector and NJP violation may arise if the writ petitioner had been recognized as a Trustee in one manner or the other either under the TNHR&CE Act or as already alluded to *supra*, the said Temple should have been taken out of the sweep of the TNHR&CE Act in one manner or the other known to law. The records placed before me bring to light that said Temple is situate in land admeasuring 135 square meters or thereabouts comprised in old S.No.170 vide 18D/A in Madurai Town, Madurai South Taluk (Block 45, Ward XXII) in Madurai District. This land as per the Town Survey Register (TSR) is a Government poramboke land. This by itself is a strong pointer against the contention of the writ petitioner that said Temple is a private temple. To be noted, this is on a demurer, as already alluded to *supra* there is no shred of document on the part of the writ petitioner to demonstrate that said Temple is a private temple or that it is a denominational temple;

(d) The writ petitioner had alternate remedy *qua* the impugned orders i.e., first impugned order and second impugned order *inter alia* under Section 21-A, more particularly 21-A Sub-section (5) and Section 21 of TNHR&CE Act. These are statutory revisions but the writ



petitioner has not chosen to avail the alternate remedy. It may well have been prudent on the part of the writ petitioner to have availed the statutory alternate remedy as the matter turns largely on certain factual disputations. It is still open to writ petitioner but subject to limitation and Section 14 of Limitation Act if the chronological trajectory enures to the benefit of the writ petitioner in this regard.

12. Having set out the reasons i.e., having set out the dispositive reasoning for not acceding to the prayers of the writ petitioner, I now proceed to write the other operative portion/parts of this order.

13. The above observations have been made for the limited purpose of disposal of captioned writ petitions. Therefore, if the writ petitioner chooses to avail the alternate remedy or if the writ petitioner chooses to approach the authorities concerned under the TNHR&CE Act, more particularly in accordance with Chapter V of TNHR&CE Act captioned inquiry, it is well open to quasi-judicial adjudication authority under Chapter V of the TNHR&CE Act to deal with such pleas on their own merits and in accordance with law untrammelled by observations made in this order. The same will apply to alternate remedy. However, alternate remedy will be subject to limitation as indicated elsewhere supra in this order. The question of limitation qua alternate remedy has to be decided by the authorities concerned. It will suffice to say that it is open to the writ petitioner to take recourse to Section 14 of the Limitation Act, 1963 but that again will be a decision or a call which the revisional authority may have to take.

14. In the light of the narrative, discussion and dispositive reasoning set out supra, all three captioned writ petitions fail and are dismissed *albeit* preserving the rights of the writ petitioner to the limited extent indicated supra in this order. Consequently, captioned MPs also fail and they are also dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

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/ /2021

Sub Assistant Registrar (CS)

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To

1. The Commissioner,
Tamil Nadu Hindu Religious & Charitable
Endowment Board,
Chennai.
2. The Assistant Commissioner,
Tamil Nadu Hindu Religious & Charitable
Endowment Board,
Madurai.
3. The Inspector cum Special Officer,
Madurai South,
Tamil Nadu Hindu Religious & Charitable
Endowment Board,
Madurai.

+1 CC to M/s.SPL GP (SR-38333[F] dated 13/12/2021)

W.P.[MD]Nos.8130 and 8684 of 2014

10.12.2021

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