



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.[MD]No.20966 of 2021

and

W.M.P.[MD]No.17565 of 2021

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R.Udhayakannan

... Petitioner

Vs.

1.The Assistant Commissioner,
Hindu Religious & Charitable Endowments
Administration Department,
Door No.6-2-1, T.B.N. Road,
Palanichettipatti,
Theni, Theni District.
Pin Code : 625 531.

2.The Executive Officer,
Arulmigu Sundaramahalingasamy Temple,
Sathuragiri, Peraiyur Taluk,
Madurai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records of the impugned order of the first respondent in her proceedings Se.Mu.Na.KA.No.1438/2021 A2 dated 29.10.2021 and the consequential notice issued by the second respondent dated 08.11.2021 to the petitioner and quash the same as illegal.

For Petitioner : Mr.C.Guhaseelarupan

For Respondent No.1 : Mr.S.R.A.Ramachandran
Additional Government Pleader

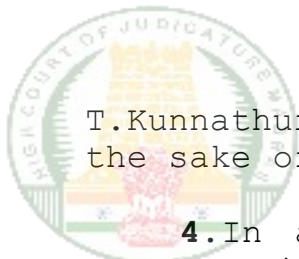
For Respondent No.2 : Mr.S.Manohar

O R D E R

Captioned main writ petition has been filed assailing an order dated 29.10.2021 bearing Reference ~~Se.Mu.Na.KA.No.1438/2021 A2~~ made by the first respondent ['impugned order' for the sake of convenience and clarity].

2.Mr.C.Guhaseelarupan, learned Counsel on record for the writ petitioner, adverting to the impugned order submits that the same has been made under Section 49(1) of 'the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959)' {hereinafter 'TN HR & CE Act' for the sake of brevity}.

3.The temple which forms subject matter of captioned writ petition goes by the name 'Arulmigu Vinayagar Temple' situate at



T.Kunnathur, Peraiyur Taluk, Madurai [hereinafter 'said temple' for the sake of convenience and clarity].

4.In and by the impugned order Executive Officer of another temple viz., 'Arulmigu Sundara Mahalingam Temple' situate at Sathuragiri, Peraiyur Taluk, Madurai District has been appointed as Fit Person of said temple. Writ petitioner has filed the captioned writ petition saying that he has been in management of the said temple, Kumbabishekam was performed on 12.09.2016 by local populace / citizenry from a particular community and the impugned order has been made without notice or enquiry, more so, when there is no allegation of mismanagement against the writ petitioner.

5.What is of utmost significance is, there is a categoric averment in the writ affidavit more particularly in paragraph No.3 which says that the said temple is a public temple. The relevant portion of paragraph No.3 reads as follows:

'3. Though the temple is public in nature, our community people only managing the above temple right from the beginning.'

[Extracted and reproduced as such]

6.Absent misappropriation the impugned order has been made is learned counsel's further say.

7.Mr.S.R.A.Ramachandran, learned Additional Government Pleader accepts notice on behalf of first respondent and Mr.S.Manohar, learned private Counsel accepts notice on behalf of second respondent [Executive Officer of the said temple].

8.Owing to the narrow compass and acute legal angle on which the captioned matter turns, main writ petition was taken up with the consent of all the aforementioned learned Counsel.

9.Learned Counsel for writ petitioner notwithstanding very many averments in the writ affidavit and several grounds raised in the writ affidavit assailed the impugned order on grounds a summation of which is as follows:

a) The Assistant Audit Officer of the Tamil Nadu Hindu Religious & Charitable Endowments Department [hereinafter 'TN HR & CE Dept.,' for the sake of convenience and clarity] has been regularly auditing the accounts of the said temple and the attention of this Court was drawn to pages 1 to 9 of the typed set of papers in this regard.

b) The impugned order talks about eight shops belonging to said temple but even according to the lease rent fixation, it is only five shops. In this



regard, page No.15 of the typed set of papers and proceedings dated 01.08.2017 made by Joint Commissioner of TN HR & CE Dept., was shown to this Court.

c) The impugned order talks about the report of an Inspector ie., Inspector of TN HR & CE Dept., but the writ petitioner has not been favoured with a copy of the same.

d) There was no notice or enquiry prior to the impugned order.

10. Learned State Counsel and learned private Counsel for respondents 1 & 2 respectively made submissions and summation of same is as follows:

a) That the said temple is subject to audit by TN HR & CE Dept., by itself indisputably demonstrates that said temple is a public temple and Section 49 powers are available to the first respondent. In any event writ petitioner admits that said temple is a public temple.

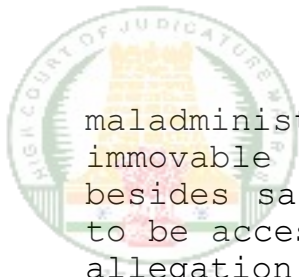
b) The lease rent fixation is one aspect of the matter and that may not come in the way of the impugned order being operated.

c) Regarding third and fourth points, Section 49 (1) is only a transitory provision and the impugned order itself makes it clear that Fit Person has been appointed until nomination / appointment of trustees.

11. In reply, learned Counsel for writ petitioner reiterated the opening submissions that were made.

12. I carefully considered the rival submissions. I now embark upon the exercise of discussing the same and giving my dispositive reasoning infra.

13. As already alluded to supra, writ petitioner himself has admitted in the writ affidavit that said temple is managed only by the people of the community to which the writ petitioner belongs but it is a public temple. The straight and simple point in this regard is sub-section 3 of Section 1 read in conjunction with Section 4 of the TN HR & CE Act. There is no exemption under said Act but there is an admission that said temple is a public temple. Therefore, powers to appoint Fit Person under Section 49(1) is available to the Assistant Commissioner ie., first respondent and therefore, there cannot be any disputation on this aspect of the matter. The impugned order does not talk about any misadministration or



maladministration and it only mentions that said temple does have immovable property ie., shops and thus it is generating income besides saying that the details need to be uploaded in the website to be accessible to general public. This cannot be categorized as an allegation against the writ petitioner.

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14. Absent allegations against the writ petitioner, the argument that the writ petitioner ought to have been put on notice does not hold water. As already alluded to supra, the said temple is admittedly a public temple. It is not only a public temple but it is a non-listed temple qua TN HR & CE Act. It is also under the control of TN HR & CE Dept., more so as the regular audit has been continuously conducted by the department. Section 49(1) is a transitory provision enabling the Assistant Commissioner to appoint Fit Person pending nomination / appointment of trustees. This Court is informed that nomination / appointment of trustees is under way and it is now being done for certain grade of temples and it will be done in a phased manner. Therefore, this Court finds no merit in challenge to the impugned order more so as it is a transitory provision.

15. There is one other reason as to why I am not inclined to interfere qua the impugned order. The impugned order is revisable under two provisions viz., Section 21-A and Section 21 of TN HR & CE Act. Under Section 21-A a revision lies to the jurisdictional Joint Commissioner and under Section 21 a revision lies to the Commissioner of the TN HR & CE Dept., sitting at 119, Uthamar Gandhi Road, Nungambakkam, Chennai - 600 034. In other words, the Commissioner of TN HR & CE Dept., is the revisional authority. A careful perusal of Section 21 and Section 21-A of the Act makes it clear that out of the two legal routes available, when an entity or person seeking revision takes Section 21-A statutory route, Section 21 route will be obliterated. In the instant case, admittedly, the writ petitioner has not chosen either. Therefore, there is an alternate remedy and this is another reason why I refrain myself from interfering qua the impugned order. To be noted, no reason has been articulated in the writ affidavit as to why the alternate remedy has not been availed. On the contrary, there is an averment in paragraph No.8 of the writ affidavit which says that the writ petitioner is left with no other effective efficacious speedy remedy except to invoke the extraordinary jurisdiction of this Court. This is not happily worded as it reads as follows:

'8. ... Under the above said circumstances having left with any other effective efficacious speedy remedy except to invoke the extraordinary jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India for the issuance of Writ of Certiorari for the following among other'

[Extracted and reproduced as such]



16.This Court has repeatedly held that TN HR & CE Act is a self-contained Code. If the writ petitioner chooses to avail alternate remedy and file a revision either under Section 21 or under Section 21-A, subject to limitation and subject to pre-condition if any, the jurisdictional Joint Commissioner or the Commissioner as the case may be shall examine the revision on its own merits and in accordance with law uninfluenced by the observations made in this order as these observations are for the limited purpose of the disposal of the captioned writ petition.

17.TN HR & CE Dept., will do well to complete the exercise of appointment of trustees qua said temple as expeditiously as possible. Owing to this observation, Registry shall send a copy of this order to the Secretary, Tourism, Culture and Religious Endowments Department, Fort St. George, Chennai and the Commissioner, 119, Uthamar Gandhi Road, Nungambakkam, Chennai also.

18.In the light of a discussion and dispositive reasoning set out supra, captioned writ petition fails and the same is dismissed. Consequently, captioned Writ Miscellaneous Petition is also dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar (AE)

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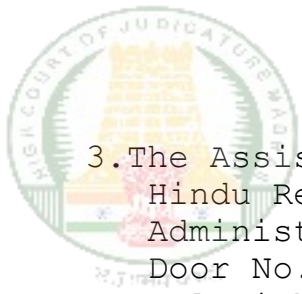
Sub Assistant Registrar(CS)

MR

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Secretary,
Tourism, Culture and Religious Endowments Department,
Fort St. George, Chennai.
- 2.The Commissioner,
119, Uthamar Gandhi Road,
Nungambakkam, Chennai.



3.The Assistant Commissioner,
Hindu Religious & Charitable Endowments
Administration Department,
Door No.6-2-1, T.B.N. Road,
Palanichettipatti, Theni, Theni District.
Pin Code : 625 531.

+2 CC to M/s.C. GUHASEELARUPAN, Advocate (SR-35621[F] dated
24/11/2021)

+1 CC to M/s.S. MANOHAR, Advocate (SR-35813[F] dated 25/11/2021)

+1 CC to M/s.SPL GP (SR-35870[F] dated 25/11/2021)

W.P.[MD]No.20966 of 2021
24.11.2021

MGJ(14.12.2021) 6P 8C