



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.12.2021

CORAM

THE HON'BLE MR. JUSTICE M.SUNDAR

W.P(MD)No.21481 of 2021

and W.M.P.(MD)No.18047 of 2021

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Mr.S.Gopalasubramaniam,
The Administrative Trustee
Arulmighu Kulathur Ayyan Sastha Temple,
Sundarapandiapuram Village,
Tenkasi Taluk,
Tenkasi District.

... Petitioner

Vs.

1.The Assistant Commissioner,
Hindu Religious and Charitable
Endowment Department,
Tirunelveli,
Tirunelveli District.

2.The Executive Officer,
Arulmighu Ilanjikumarar Thirukovil,
Ilanji, Tenkasi,
Tenkasi District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari calling for the records relating to show cause notice bearing Se.Mu.Na.Ka.No.5573/2020/E1 dated 21.11.2020 passed by the 1st respondent and to quash the same as arbitrary.

For Petitioner : Mr.V.Raghavachari for
Mr.Adith Narayan Vijayaraghavan

For Respondents : Mr.T.Amjadkhan,
Govt. Advocate for R1
Mr.M.Muthugeethayan for R2

O R D E R

In the captioned main writ petition, an 'order dated 21.11.2020, bearing reference செ.மு.ந.க.எண்.5573/2020/இ1 made by the first respondent' (hereinafter 'impugned order' for the sake of convenience and clarity) has been called in question.

2. The writ petitioner who has styled himself as Administrative Trustee of 'Arulmighu Kulathur Ayyan Sastha Temple situate in Sundarapandiapuram Village, Tenkasi Taluk, Tenkasi District'



(hereinafter 'said temple' for the sake of convenience and clarity) has filed the captioned writ petition.

3. Short facts shorn of elaboration are that said temple is a public temple; that writ petitioner has styled himself as Administrative Trustee; that said temple is a non-listed temple qua 'The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act No.22 of 1959)' [hereinafter 'TN HR & CE Act' for the sake of brevity, convenience and clarity]; that the writ petitioner had earlier filed another writ petition in this Court being W.P.(MD)No.12123 of 2020 regarding auction of fishery rights in a tank in Sundarapandiapuram Village (said tank) by PWD (Public Works Department); that according to the writ petitioner, said tank belongs to said temple; that in the earlier writ petition, an interim order was granted on 18.09.2020 stating that the auction can go on but the tender process shall not be finalised and the impugned tender process should abide by the out come of that writ petition; that the earlier writ petition is pending; that thereafter, the impugned order came to be made by the first respondent; that vide the impugned order a Fit person has been appointed for said temple and that assailing the impugned order, captioned writ petition has been filed.

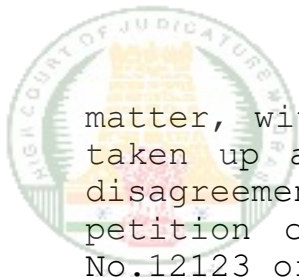
4. After narrating the aforementioned facts, Mr.V.Raghavachari, learned counsel appearing on behalf of Mr.Adith Narayan Vijayaraghavan, counsel on record for writ petitioner, notwithstanding very many averments in the writ affidavit and notwithstanding several grounds raised in the writ affidavit made focused submissions in his campaign against the impugned order and a summation of learned counsel's submissions are as follows:

a) There is complete non-application of mind qua impugned order as it proceeds on the basis that the aforementioned earlier writ petition i.e., W.P.(MD) No.12123 of 2020 has been filed by another person, though it has been filed by the writ petitioner;

b) The writ petitioner has not been put on notice prior to the impugned order and

c) The writ petitioner has taken all efforts to protect the fishery rights in the said tank belonging to said temple but that has been taken amiss by the first respondent.

5. Mr.T.Amjadkhan, learned Government Advocate accepted notice on behalf of first respondent and Mr.M.Muthugeethayan, learned private counsel accepted notice on behalf of second respondent i.e., Executive Officer of another temple viz., Arulmighu Ilanjikumarar Thirukovil, who has been appointed as Fit person of said temple qua



matter, with the consent of all the counsel, main writ petition was taken up and heard out. To be noted there is no disputation or disagreement as between aforementioned counsel that captioned writ petition can be heard out *dehors* aforementioned earlier W.P.(MD) No.12123 of 2020 which is pending.

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6. In response to the submissions made by learned counsel for writ petitioner (in his campaign against the impugned order) learned State Counsel and learned Private Counsel for first and second respondents respectively made submissions, a summation of which is as follows:

i) it cannot be gainsaid that the impugned order is vitiated by non-application of mind as the writ petitioner continuously tried to encroach said temple's land;

ii) The question of prior notice will not arise as the statute does not contemplate this and more importantly writ petitioner is self styled Administrative Trustee of said temple which is admittedly a non-listed temple;

iii) Being a public temple, the first respondent has a duty to protect the properties of said temple and therefore, the purported efforts taken by the writ petitioner to protect the temple properties cannot be a ground to assail the impugned order.

7. In reply, learned counsel appearing on behalf of the counsel on record for writ petitioner pointed out that the writ petitioner has sent a detailed response dated 08.11.2021 to the respondents, this is in response to the impugned order but the same has not been considered.

8. I carefully considered the rival submissions. I am not inclined to interfere with the impugned order and the reasons are as follows:

a) As would be evident from the narrative thus far, the said temple is indisputably a public temple. Therefore, sub-section (3) of Section 1 of TN HR&CE Act operates. Admittedly, there is no exemption under Section 4 of TN HR & CE Act. Further, admittedly, there is nothing to demonstrate that the writ petitioner was appointed as Trustee qua said temple under TN HR&CE Act. In other words, writ petitioner is only acting (self styled) as Administrative Trustee;

b) The impugned order is clearly revisable and statutory revisions have been provided in TN HR&CE Act. I venture to say revisions in plural as assailing the impugned order can either be under Section 21-A or



there is an effective efficacious alternate remedy. The writ petitioner has not availed this alternate remedy, though the impugned order came to be made more than one year ago i.e., on 21.11.2020 to be precise. This Court has repeatedly held in a long line of case laws that TN HR & CE Act is a self-contained code. This itself draws the curtains on the matter but as other arguments were made, the same are also being dealt with infra;

c) The first point of non-application of mind cannot be a ground to interfere on the teeth of alternate remedy. A careful perusal of the impugned order makes it clear that it is an arguable matter as it clearly says that the earlier writ petition was filed by Gopalasubramaiaam and it further goes on to say that Gopalasubramaniam has said he does not know anything about the said temple now. This by itself cannot be conclusively construed as non-application of mind, may be it is not happily worded;

d) The second point on prior notice, turns on Section 49(1) r/w Section 47(1)(a) of TN HR&CE Act. The impugned order says the said temple is a non-listed temple under Section 49(1) of TN HR & CE Act, which is obviously an error in mentioning the provision of law. This should read as Section 46 as Section 46 deals with the Commissioner's powers to publish list of institutions and therefore, the said temple not having been published in the list would fall under the non-listed category qua Section 46 of TN HR&CE Act. Be that as it may, as long as an authority has power mere quoting of a wrong provision will neither denude the authority of its power nor vitiate the order. Therefore, I construe the impugned order to have been made under Section 49(1) and said temple is a non-listed temple qua Section 46 of TN HR & CE Act which is learned State Counsel's say. If it is an order made under Section 49(1), the said temple being a non-listed temple, it comes within the sweep of Section 47(1)(a). To be noted, Section 49(1) deals with two types of situations. One is temples falling under Section 47(2) and the other is temples falling under Section 47(1)(a). A careful perusal of Section 49(1) read with Section 47(1)(a) makes it clear that the concept of putting the hereditary trustee on notice, which is ingrained in Section 47(2) does not apply to Section 47(1)(a). As already alluded to supra in the case on hand writ petitioner is admittedly not a hereditary trustee, there is no proceedings under Section 63(b) of TN HR&CE Act

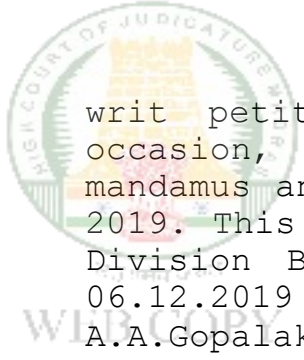


petitioner has been appointed as a trustee qua said temple under the TN HR&CE Act and writ petitioner has styled himself as Administrative Trustee. This is an admitted position as already alluded to supra. Therefore, this argument of prior notice also falls flat on its face and in my considered view this is a non-starter;

e) As regards the efforts said to have been taken by the writ petitioner, a careful perusal of the writ affidavit and more particularly paragraph 9 of the writ affidavit at page 3, makes it clear that the writ petitioner talks about revenue authorities and says the revenue authorities did not execute eviction proceedings due to a representation by the occupiers saying that they have to manufacture earthen utensil for their livelihood. There is a mention about C.M.P.No.12600 of 2004 and an order dated 23.07.2009. This order has not been placed before me and the main case number has also not been furnished as part of the case file. However, the law is very clear that if lands belong to a public temple, Section 78 of TN HR&CE Act is available and Section 78 has not been kick-started. Therefore, this argument of the writ petitioner nearly on the ground that he had earlier filed a writ petition when the fishery right in said tank belonging to the said temple were auctioned by the PWD does not come to the aid of writ petitioner in his campaign against the challenge to the impugned order; and

f) I notice that one year has elapsed qua impugned order and the first respondent has sent as many as three reminders dated 09.12.2020, 23.12.2020 and 22.10.2021, calling upon him to handover possession but the writ petitioner has not yielded. This by itself demonstrates that the writ petitioner is more concerned about his self styled status as Administrative Trustee of said temple rather than yielding to the statute as the Fit Person will be able to initiate proceedings only if the records are handed over. In this regard, in addition to the summation of submission made above, one other submission made by the learned State Counsel is significant and that is regarding the locus of the writ petitioner. From the narrative thus far, it is clear that the writ petitioner is self styled and he has no locus really to say that he is legally entitled qua administration of said temple.

9. In the light of all the reasons given above, I am convinced that there is absolutely no ground to interfere in writ jurisdiction of the court. This is no doubt a certiorari prayer of the



writ petitioner assailing the impugned order. On an earlier occasion, in a certiorari by a writ petitioner I had issued a mandamus and that is vide order dated 01.08.2019 in W.P.No.22634 of 2019. This matter was carried to Hon'ble Division Bench and Hon'ble Division Bench sustained this aspect of order vide order dated 06.12.2019 in W.A.No.4073 of 2019. This approach was taken based on A.A.Gopalakrishnan's case [**A.A.Gopalakrishnan v. Cochin Devaswom Board and Ors.**,] reported in (2007) 7 SCC 482, wherein Hon'ble Supreme Court has made it clear that it is the duty of this Court to protect temple properties. This Court is *parens patriae* qua temple properties more so public temples. Law is also well settled that presiding deity is construed to be a minor and this Court is is the guardian. Therefore, I deem it appropriate to say that the writ petitioner will do well to hand over all the records and the administration of the said temple forthwith to the Fit person pursuant to the impugned order. The Fit person should also take charge and forthwith take efforts to retrieve the temple properties if the allegations of encroachment are true. With regard to the earlier writ petition also, it is open to the Fit person to either substitute himself or add himself as a co-petitioner, so that the said tank as a water body is protected and the said temple property is also protected.

10. Ergo, captioned writ petition fails and the same is dismissed albeit with a directive as set out in this order supra. Consequently, connected W.M.P. is also dismissed. I refrain myself from imposing costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsm

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 Assistant Commissioner,
Hindu Religious and Charitable
Endowment Department,
Tirunelveli,
Tirunelveli District.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Executive Officer,
Arulmighu Ilanjikumarar Thirukovil,
Ilanji, Tenkasi,
Tenkasi District.

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+1 CC to M/s.S.ADITH NARAYAN VIJAYARAGHAVAN, Advocate (SR-37631[F] dated 07/12/2021)

+1 CC to M/s.M.MUTHUGEETHAYAN, Advocate (SR-37384[F] dated 06/12/2021)

+1 CC to M/s.SPL GP (SR-37600[F] dated 07/12/2021)

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RK(04/01/2021) 7P/6C