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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **06.12.2021**

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THE HON'BLE MR. JUSTICE M.SUNDAR

W.P(MD)No.23952 of 2016

and W.M.P.(MD)No.17283 of 2016

K.Muthukrishnan ... Petitioner

Vs.

1.The Assistant Commissioner,
Hindu Religious and Charitable Endowment,
Paramakudi, Ramnad District.

2.The Executive Officer / Fit Person,
Arulmighu Vettudayar Kaliamman Thirukoil,
Ariyakurichi, Kalayarkovil Taluk,
Sivagangai District.

(*)3.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Sivagangai. ... Respondents

(*)(R3 is suo motu impleaded as per order of this Court dated 06.12.2021 in WP(MD)No.23952 of 2016 and WMP(MD)No.17283 of 2016)

Prayer: Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of of Certiorarified Mandamus calling for the records relating to the impugned orders of 1st respondent in Se.Mu.Na.Ka.No.3537/2012/A8 dated 28.11.2016 and the consequential impugned communication of 2nd respondent dated 01.12.2016 directing the petitioner to hand over the temple A/m.Sri Gowri Vallava Vinayagar Temple, situated in Maravamangalam Village, Kalayarkovil Taluk, Sivagangai District, its administration and its properties, quash the same.

For Petitioner : Mr.V.S.Kumaraguru
For Respondents : Mr.C.Satheesh,
Govt. Advocate for R1 & R3
Mr.P.Mahendran for R2

O R D E R

This common order will govern the captioned main writ petition and captioned WMP therein.

2.Mr.V.S.Kumaraguru, learned counsel for writ petitioner, Mr.C.Satheesh, learned Government Advocate on behalf of the first

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respondent and Mr.P.Mahendran, learned private counsel for the second respondent (Executive Officer of a temple, who has been appointed as Fit person) are before me.

3.Subject matter of captioned main writ petition is 'Arulmighu Sri Gowri Vallaba Vinayagar Temple, situate in Maravamangalam Village, Kalayarkovil Taluk, Sivagangai District' (hereinafter 'said temple' for the sake of convenience and clarity). In and by order dated 28.11.2016 made by the first respondent, a Fit person has been appointed for said temple. To be noted, the Executive Officer of another temple viz., Executive Officer of Arulmigu Vettudayar Kaliamman Thirukoil has been appointed as Fit person of said temple.

4.Appointment of Fit person in the aforesaid manner vide 'order dated 28.11.2016 bearing reference செ.மு.நி.க.எண் .3537/2012/A8' (hereinafter 'impugned order' for the sake of convenience and clarity) has been made by the first respondent.

5.Pursuant to the aforementioned impugned order, the second respondent Executive Officer appointed as Fit person issued notice to the writ petitioner, directing the writ petitioner to hand over all responsibilities qua said temple to him. It is under these circumstances, the writ petitioner has come to this Court with the captioned main writ petition, which was filed in this Court on 12.12.2016. In less than a week from now captioned writ petition will be half a decade old in this Court.

6.Be that as it may, in his campaign against the impugned order, learned counsel for writ petitioner made three submissions and they are as follows:

a) prior show cause notice ie., show cause notice before the impugned order has not been issued (ground ii);
b) said temple is a private temple (ground iv); and
c) the impugned order is a non-speaking cryptic order (ground v).

7.In response to the above, learned State Counsel submitted that the impugned order has been made in exercise of powers under Section 49(1) of 'The Tamil Nadu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959)' (hereinafter 'TN HR&CE Act' for the sake of convenience and clarity). It has been made with the intention of retrieving the properties of said temple, this has been articulated in the impugned order itself in the penultimate paragraph and therefore, there is no ground to interfere with the impugned order. It is also pointed out that show cause notice is not contemplated under the statute i.e., TN HR&CE Act and it is also pointed out that it is incorrect to say that the impugned order is a non-speaking order.

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8.Mr.P.Mahendran, learned private counsel for the second respondent pointed out that there is no shred of document before this Court to demonstrate that said temple is a private temple. Learned counsel also pointed out that writ petitioner has filed a suit in O.S.No.118 of 2014 on the file of learned District Munsif's Court Sivagangai, pertaining to certain properties which are inam lands qua said temple and the same is pending. Learned counsel also submits that the second respondent has not been made a party and the second respondent is taking steps to implead himself in the said suit.

9.In response to the above, learned counsel for writ petitioner reiterated his opening submissions.

10.I carefully considered the rival submissions and all other aspects of the matter. I am not inclined to interfere with the impugned order i.e., impugned order dated 28.11.2016 appointing Fit person and communication from the Fit person dated 01.12.2016 calling upon the writ petitioner to hand over possession. The reasons are as follows:

a) the impugned order is revisable under TN HR&CE Act. The impugned order has been made by the Assistant Commissioner. There are two revisions i.e., two provisions providing for revisions under TN HR&CE Act. One is Section 21-A and the other is Section 21 of TN HR & CE Act. There is nothing to demonstrate that this alternate remedy is neither efficacious nor effective. As issues turn on facts and owing to the other facts and circumstance of this case this by itself draws the curtains on the captioned matter. However, as the writ petition has been pending for more than half a decade and arguments have been advanced on merits, I deem it appropriate to deal with the submissions which have been made. The first submission pertains to show cause notice. A careful perusal of Section 49(1) of TN HR & CE Act makes it clear that it is relatable to Sections 47 (1)(a) and 47(2) of TN HR & CE Act. In the case on hand, the said temple is admittedly a non-listed temple. Therefore, Section 47(1) (a) operates and this by itself douses the argument of prior show cause notice as statute does not provide for prior show cause notice. The impugned order has been made to retrieve the properties of said temple. An order under Section 49(1) of TN HR & CE Act in any event is a transitory arrangement and therefore, the writ petitioner cannot say that he is aggrieved by the impugned order. This is more so as the writ petitioner contends that he is a poosari in said temple;

b) The argument pertaining to said temple being a private temple is clearly a non-starter. It is no argument as there is no shred of paper in the case file to show any decree that the said temple is a private temple. There is one another aspect of the matter which completely flattens this argument. That aspect is admittedly the writ petitioner has filed an application under

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Section 63(b) of TN HR&CE Act, seeking declaration that the trusteeship of the office of said temple is a hereditary trustee and this means that writ petitioner has submitted himself to the scheme of the Statute and therefore, the writ petitioner cannot now be heard to gainsay that said temple is a private temple. To be noted, this is another way of looking at the matter;

c) This takes us to the third point i.e., argument that the impugned order is a non-speaking order. As already alluded to supra as pointed out by learned State Counsel, the penultimate para of the impugned order makes it clear that it has been made with the objective of retrieving the properties of said temple. This is good enough reason. More so Section 49(1) of TN HR & CE Act is a transitory provision and therefore, it cannot be gainsaid that the impugned order is a non-speaking order and therefore, I find no ground to interfere in the impugned order. Be that as it may as all public temples come within the sweep of TN HR & CE Act by operation of sub-section (3) of Section 1 of TN HR &CE Act the issue of assigning reasons is also a non starter;

d) This Court is informed that the writ petitioner is defiant in terms of handing over the affairs of said temple. This means that the second respondent has to resort to Section 101 of the TN HR&CE Act. It is well open to the second respondent to do so and I express no opinion on the same.

11.In the light of the discussion and dispositive reasoning thus far, as already alluded to supra, I am not inclined to interfere qua the impugned order and the sequitur is captioned writ petition fails and the same is dismissed.

12.Be that as it may, it is made clear that the aforementioned Section 63(b) {TN HR & CE Act} application can proceed in accordance with law on its own merits. For this purpose, I deem it appropriate to *suo motu* implead the jurisdictional Joint Commissioner i.e., Joint Commissioner, Sivagangai as third respondent. Mr.C.Satheesh, learned counsel accepts notice on behalf of the third respondent. There will be a directive to the third respondent to dispose of this Section 63(b) application filed by the writ petitioner i.e., O.A.No.2 of 2017 which is pending on his file, as expeditiously as his business would permit and in any event within three months from today i.e., on or before 06.03.2020. Likewise the suit will also proceed on its own merits and in accordance with law including rejection of plaint application if any / if filed before the District Munsif's Court concerned.

13.Registry to carry out necessary and consequential amendments in the case file as well as the order copy before uploading / issuing the copy of the order / despatching the same to parties concerned.

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14.Consequently, captioned WMP is also dismissed. I refrain myself from imposing costs.

Sd/-

Assistant Registrar (WRITS)

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/ /2022

Sub Assistant Registrar(CS)

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,
Paramakudi, Ramnad District.

2.The Executive Officer / Fit Person,
Arulmighu Vettudayar Kaliamman Thirukoil,
Ariyakurichi, Kalayarkovil Taluk,
Sivagangai District.

3.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Sivagangai.

+1 CC to M/s.V.S.KUMARAGURU, Advocate (SR-37474[F] dated 06/12/2021)
+1 CC to M/s.P.MAHENDRAN, Advocate (SR-37570[F] dated 07/12/2021)
+1 CC to M/s.SPL GP (SR-37616[F] dated 07/12/2021)

W.P(MD)No.23952 of 2016
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RS(28.01.2022) 5P-7C

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