IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 05.12.2022

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.1919 of 2021
and W.M.P.No.2168 of 2021

1. Mr.A. Thanikachalam
2. Mr.A. Vinayakam ... Petitioners

vs.

1. State of Tamilnadu
   Rep.by: Its Secretary to Government
   Tourism, Culture and Religious Endowments (RE III-1) Department
   Fort St. George, Chennai 600009.

2. The Commissioner,
   Hindu Religious and Charitable Endowments Department,
   Chennai-600030.

3. The Joint Commissioner,
   Hindu Religious and Charitable Endowments Department,
   Chennai 600030.

4. B.Vedachalam

5. The Fit Person/Executive Officer,
   Arulmigu Adipureeswarar and
   Adikesava Perumal Thirukoil,
   Cidadripet, Chennai. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the order dated 21.12.2020 in G.O.Ms.No.182 of the 1st Respondent herein and orders dated 03.09.2020 of the 2nd Respondent in Rc.No.34972/2020 dated 15.06.2020 in AP No.84 of 2018 of the 2nd Respondent and proceedings Se.Mu.Na.Ka.No.1034/20-19/A1 dated 10.09.2020 of the 3rd Respondent, quash the same and consequently direct the Respondents 1 to 3 to direct the petitioners to continue as Hereditary Trustees of Arulmigu Arkeeswarar Temple, Pammal, Chennai 600075.

For Petitioner : Mrs.A.L. Ganthimathi

For Respondents : Mr. N.R.R. Arun Natarajan,
Special Govt. Pleader (HR & CE)
[for R1 to R3 & R5]

Mr.V. Chandrakanthan [for R4]

O R D E R

This Writ Petitions has been filed to quash the G.O.Ms.No.182 of the 1st Respondent dated 21.12.2020; Order of the 2nd Respondent in RC.No.34972/2020 dated 03.09.2020; also the Order of the 2nd Respondent AP No.84 of 2018 dated 15.06.2020; and proceedings in Se.Mu.Na.Ka.No.1034/20-19/A1 dated 10.09.2020 of the 3rd Respondent, and consequently direct the Respondents 1 to 3 to direct the petitioners to continue as Hereditary Trustees of Arulmigu Arkeeswarar Temple, Pammal, Chennai 600075.

2. The brief facts leading to file this Writ Petition is as follows:

2.a. The Petitioners are the sons of Late V. Anandan who are the Hereditary Trustees of Arulmigu Arkeeswarar Temple, Pammal, Chennai 600075. Originally by order dated 29.10.1974 of the Deputy Commissioner, Chennai in O.A.No.48 of 1973, appointed the following as Hereditary Trustees of the temple of the 4th Respondent (1) V. Babu Mudaliar (2) V. Anandan Mudaliar (3) V. Seshan Mudaliar (4) V. Velayudham Mudaliar (5) V. Mohan Mudaliar and (6) V. Palanivel Mudaliar.

2.b. Out of the above 6 Hereditary Trustees, one of the Trustees V.Babu Mudaliar died and the 4th Respondent herein was appointed as hereditary trustee. The other three trustees by name Seshan, Velayudham and Mohan also died. Thereafter, Anandan and Palanivel were administering the temple as trustees. Later, one of the trustees viz. V. Anandan Mudaliar died on 26.09.2015 leaving behind six children. The Petitioners who are the two sons, with no objection of other legal heirs, have filed an application before the Joint Commissioner, HR & CE under section 54 (1) of the Tamilnadu Hindu Religious and Charitable Endowments Act 1959 seeking to record their succession as Hereditary Trustees of the Temple and filed the application in M.P. No. 3 of 2017 under section 54 (1) of the Tamilnadu Hindu Religious Charitable and Endowments Act 1959 to record their succession as Hereditary Trustees, before the 3rd Respondent.

2.c. The 3rd Respondent by order dated 06.11.2018 had allowed the application and ordered that the Petitioners are entitled to succeed the office of the Hereditary Trusteeship and recorded the Petitioners as Hereditary Trustees. As against which an appeal was filed by the 4th respondent in A.P. No 84 of 2018 before the Commissioner/2nd Respondent alleging that the Petitioners have not acted in the interest of the temple, they had misappropriated the properties of the temple etc., The 2nd Respondent herein by order dated 15.06.2020 finding that there are no charges or any allegations with regard to misappropriation. However found that the 3rd Respondent without conducting any enquiry or taking any pain to ascertain the qualifications or disqualifications of the Petitioners, passed the order.

Hence set aside the order of the 3rd Respondent and remitted back the matter to the 3rd Respondent to enquire and decide the specific allegations made against the Petitioners by the 4th respondent and their qualifications or disqualifications as per section 26 of the Act. Despite such order, no enquiry has been conducted by the Joint Commissioner. However, the 3rd Respondent by an order dated 26.08.2020, had directed the Petitioners to handover the charges to the 4th respondent in respect of the temple. Aggrieved against the order of the 3rd Respondent, the Petitioners filed Appeal under section 26 (5) of the HR & CE Act before the 1st Respondent.

2.d. In the appeal the 1st Respondent granted interim stay. Hence, it is the contention that there is no order disqualifying the Petitioners and there is only an order of remand by the 2nd Respondent and hence the orders of the 3rd Respondent directing the Petitioners to handover charges of the temple is totally arbitrary and unjust. Pursuant to the said appeal, the 2nd Respondent on a perusal of the said order dated 03.09.2020, granted an interim stay of the order of the 3rd Respondent dated 26.08.2020. However, directed the 3rd Respondent to appoint a fit person to the temple. Pursuant to such orders a fit person who is the 5th Respondent has also been appointed. But the charges are still with the Petitioners. Hence, the Petitioners filed a review before the 1st Respondent under section 114 (1) of the Tamilnadu HR & CE Act stating that the orders appointing a fit person is totally unjust and unsustainable in law. The 1st Respondent by order dated 21.12.2020 in G.O. (Ms.) No. 182 dismissed the revision of the Petitioners without going into the merits of the appeal. Hence, the same is challenged in the writ petition on the ground that the Order of the 1st Respondent is totally arbitrary, unjust and without any application of mind.

3. 4th Respondent filed a counter stating that the Petitioners had indulged in the illegal activities claiming as Trustees. The 2nd Respondent in pursuant of the Orders passed in A.P.No.84 of 2018 dated 15.06.2020 was pleased to issue order on 26.08.2020 directing the Petitioners to handover the charge to the 4th Respondent. Against the said Order the Petitioners filed an Appeal under Section 26(5) of the Tamil Nadu Religious and Endowment Act before the 2nd Respondent in RC.No.34972 of 2020. The 2nd Respondent by Order dated 03.09.2020 granted interim stay of handing over charge of

the temple immediately. Further on application made by the Petitioners, the 2nd Respondent passed another Order dated 03.09.2020 and transferred all connected records pertaining to M.P.No.3/2017 filed by the Petitioners under Section 54(1) of the Tamil Nadu H.R.&C.E. Act, to the Joint Commissioner (Education) for further inquiry as per order in A.P.No.84 of 2018 dated 15.06.2020. Therefore, it is the contention that the Petitioners without establishing their right of appointment as Hereditary Trustees had approached the 1st Respondent u/s 114(1) of the Tamil Nadu H.R.& C.E. Act to set aside the order dated 03.09.2020 by filing revision and the same has been rejected. Hence it is his contention that the writ petition has to be dismissed.

4.a. In the Counter filed by the 5th Respondent/Fit Person he admitted that in O.A.No.48 of 1973 vide order dated 29.10.1974 the Hereditary Trustees were appointed, six persons had been recognized as Hereditary trustees. After the death of V. Velayutha Mudaliar, other two persons viz., V. Ananthan Mudaliar and V.Palanivel Mudaliar were functioning as hereditary Trustees. Out of them, one V. Anandhan Mudaliar as a senior was functioning as Managing HereditaryTtrustee of the said temple and he also died on 26.09.2015 and as a result, the surviving V Palanivel Mudaliar was the only recognised hereditary trustee, who was looking after the administration of the said temple.

4.b. After the death of Babu mudaliar in the year 2012, his son B.Vedhachalam, the 4th respondent, claimed trusteeship in the year 2014, in the permanent vacancy occurred due to the death of his father and after enquiry, his name was recorded as hereditary trustee u/r sec 54(1) of the TNHRCE Act, in the place of his father vide the orders of the then Joint Commissioner, Chennai in R.C No 3443/2014A1 dated 19.09.2016. But V. Palanivel Mudaliar who was acting as a sole recognised hereditary trustee, did not allow the 4th respondent to function as a co-trustee in spite of his statutory recognition.

4.c. V.Palanivel Mudaliar with the aid of legal heirs of the other trustees indulged in malfeasance and misfeasance resulting maladministration in the said temple and misappropriated the amount. Therefore, the 4th Respondent has sent a complaint to the TNHRCE authorities which culminated a disciplinary action against V. Palanivel Mudahar under sec 53(1) of TNHRCE Act and after enquiry V. Palanivel Mudaliar hereditary Trustee was dismissed from the hereditary Trusteeship vide Orders of the then Joint Commissioner Chennai in his Pro.R.C.No.3364-1/2017dated 31.12.2018. In the meanwhile the petitioners claimed the trusteeship by means of an application which was allowed vide orders of the Joint Commissioner in M.P.No.3/2017 dated 26.11.2018. Thereby, the petitioners were recorded as Hereditary Trustees of the said temple in the place of their father V.Anadan Mudaliar who expired on 26.09.2015. Even at that time only the petitioners took over the administration of the said temple excluding the 4th respondent who had already got a statutory recognition vide orders dated 19.09.2016.

4.d. As against the order passed in M.P.3/2017 an appeal in A.P.No.84/2018 was filed by the 4th Respondent. In the appeal an order appointing Petitioners as hereditary trustees was set aside and the matter has been remanded back to the Joint commissioner to decide the matter in terms of sec 26 of the TNHRCE Act.

4.e. Pursuant to the Order setting aside the appointment of the Petitioner, the Joint Commissioner passed an order directing the petitioners to hand over charge of the said temple to the other trustee B.Vedhachalam/4th Respondent herein vide order dated 26.08.2020 in M.P.No.3/2017 which was challenged by the petitioners before the Commissioner and the Commissioner while passing an order of interim stay against the impugned order, also directed the 3rd Respondent to appoint Fit Person to the said temple vide his orders dated 03.09.2020 in R.C.No.34972/2020 D2. He has also passed another order, transferring the proceedings before the Joint Commissioner Chennai in M.P.3 of 2017 to the Joint Commissioner (Education) Chennai for further enquiry.

4.f. In the meanwhile, a proceedings initiated against the 4th respondent in a separate proceedings and he was placed under suspension under sec 53(2) of the TNHRCE Act vide orders of the Joint Commissioner Chennai in her Pro.R.C.No.1034/2019 dated 10.09.2020. Under such circumstances, the Executive Officer of Arulmigu Athipuriswarar and Athikesavaperumal temple, Chindhadripet Chennai 600 002 has been appointed as ex officio Fit Person of the said temple in the same order. Therefore her contention is that the Petitioners have held in mismanagement of the temple property as trustees and the arrear accrued on the account of site tenants for the year ending up to 2019 is about Rs.71,28,074/-. The fair rent has not been implemented even from 2001 onwards resulting a heavy loss to the temple. The total administration is not in consonance of the Act and Rules. In the meantime, misconstruing the fact, number of tenants are trying to get patta in their names for the temple land from the revenue authorities and it has become necessary to temple administration to give proper representation to the revenue authorities stating that patta for the temple lands should not be granted to private parties.

4.g. It is also contended that against the Order of the Commissioner in R.C.No.34972/2020 D2, dated 03.09.2020 the petitioners preferred a review petition under 114(1) of the TNHR&CE Act which was numbered as R.P.110/2020 and dismissed vide orders in G.O. (Ms) No 182 T.C&R.E Dept dated 21.12.2020. Hence, the petitioners have preferred this writ petition.

5. Learned Counsel appearing for the Petitioners would submit that the impugned order is contrary to law and when the 2nd Respondent has appointed the Petitioners as Hereditary Trustees. In the appeal the same has been set aside only on the ground that the enquiry contemplated under section 26 of the HR & CE Act has not been properly made and directed the 3rd Respondent to conduct an enquiry as to the qualification or disqualification of the petitioner. In the meanwhile the 3rd Respondent directed the Petitioners to hand over the charges to the 4th Respondents which is also challenged in the appeal. In the appeal, interim stay was granted by the Commissioner. While granting interim stay, he has also directed the 3rd Respondent to appoint a Fit Person to the temple immediately. As the Petitioners were incharge of the temple, the charges have not been handed over. The Petitioners filed review before the 1st Respondent under Section 114 (1) of the Tamilnadu HR & CE Act, as against the appointment of Fit Person. The review was also dismissed by order dated 21.12.2020 in G.O.Ms.No.182. The order of the 1st Respondent is contrary to law and result of non application of mind. When the order appointing the petitioners has been set aside only on the ground that there

was no proper enquiry of qualification or disqualification, the Joint Commissioner ought to have conducted enquiry and appointed the Petitioners. There were no charges proved against the petitioners to disqualify them being appointed. Before such order being passed, Fit Person has been appointed. Therefore, when the matter is pending for appointment of hereditary trustee, the question of appointing the Fit Person does not arise at all. Therefore, the impugned order is liable to be set aside.

6. Whereas the learned counsel appearing for the 5th Respondent submitted that there are serious allegations against the petitioners and the petitioners have not been recognized as the Hereditary Trustees. Therefore any consequential orders directing the petitioners to hand over the charges to the 4th Respondent does not suffer from any infirmity. At any event, it is the contention of the learned counsel for the 5th Respondent as there were some proceedings also initiated against the 4th Respondent and he was also suspended, to maintain the temple property the Fit Person has been appointed. Hence, as long as the order setting aside the their appointments has not been challenged. The petitioners cannot challenge the same in this

writ petition along with other proceedings. Hence submitted that the writ petition is not maintainable.

7. I have perused the entire records. The Writ Petition not only challenges the order of 1st Respondent passed in G.O.Ms.No.182 dated 21.12.2020 but also the other orders passed by the 2nd and 3rd Respondents. The relief is innocuously couched as if only the G.O. has been challenged. But the fact remains that all the previous orders prior to the Government Order sought to be quashed by this writ petition.

8. Be that as it may. The writ petitioners claiming hereditaryship though their father V. Anandan Mudaliar who was originally appointed by one among the six hereditary trustees on 29.10.1974 in O.A.No.48 of 1973. After the death of their father, the petitioners have moved an application in M.P.No.3 of 2017 under Section 54(1) of the T.N.H.R.C.E.Act, 1959 before the 3rd Respondent. The 3rd Respondent by his order dated 26.11.2018 allowed their application and recognized them as Hereditary Trustees. It is also to be noted that the 4th Respondent is the son of one of the Hereditary

Trustees V. Babu Mudaliar. He was also recognised as Hereditary Trustee by order dated 19.09.2016 in R.C No 3443/2014/A1. So, the 4th Respondent filed an appeal challenging the order recognising the petitioners as Hereditary Trustees in A.P.No.84/2018, before the 2nd Respondent. The 2nd Respondent has set aside the order of appointment of the Petitioners and remanded the matter to the 3rd Respondent by order dated 15.06.2020 and directed the 3rd Respondent to conduct the enquiry as to the qualification or disqualification suffered, if any, in terms of Section 26 of the Act.

9. Consequent upon the said order setting aside the order of appointment of the Petitioners, the 3rd Respondent has passed an order directing the Petitioners who were in-charge of the temple to handover the Administration to the 4th Respondent, which was also challenged by the Petitioners in Appeal before the 2nd Respondent. However, the 2nd Respondent has granted interim stay to handing over possession. While passing interim order in R.C.No.34972/2020 dated 03.09.2020, 2nd Respondent has also directed the 3rd Respondent to appoint a Fit Person to the temple immediately. It is relevant to note that the order passed in

A.P.No.84 of 2020 dated 15.06.2020 setting aside the appointment of the Petitioners has not been challenged. However, the 3rd Respondent has not decided anything and it appears that the matter is still pending with the 3rd Respondent to conduct proper enquiry as directed by the 2nd Respondent.

10. Be that as it may. To challenge the order setting aside of the appointment of Petitioners as Hereditary Trustees, a revision petition has also been filed, the same was dismissed vide G.O.Ms.No.182 of the 1st Respondent dated 21.12.2020. From the records it could be seen that though the 4th Respondent was also recognised as Hereditary Trustee in the year 2016, disciplinary proceedings were also initiated against him and he was also placed under suspension under Section 53(2) of the TNHR&CE Act vide order dated 10.09.2020. The Fit Person/Executive Officer, who was appointed in pursuant to the orders of the Commissioner took charge of the temple on 12.10.2020. From the above facts, it is very clear that as on date neither the Petitioners nor the 4th Respondent are recognized as Hereditary Trustee. In such being the position, the appointment of Fit Person/Executive Officer/5th Respondent to manage the affairs of temple

cannot be found fault with.

11. The counter filed by the 5th Respondent clearly shows that there is alleged maladministration in the temple as the temple properties have not been properly maintained and the rents have not been collected and fair rents were not also implemented. That apart the third parties in the temple properties were also obtained patta in their favour. If the Fit Person is not appointed and have a control over the management and administration, same will lead to severe consequences. The ultimate beneficiaries will be the third parties and the looser will be the temple and its properties. Therefore, mere appointing a fit person to manage the administration of the temple when there is dispute between the Hereditary Trustees cannot be found fault with. This Court do not find any infirmity in the appointment of the Fit Person to lookafter the management and affairs of the temple.

12. The very appointment of the Petitioners was set aside in the Appeal. Though the matter has been remanded, once their appointments have been set aside, they are no longer in service as Hereditary Trustees till

the original authority passes order appointing them. In such a view of the matter, when the Fit Person has been appointed for preserving the temple and its properties, the same cannot be challenged unless the right of the petitioners have been crystallised. The impugned order challenged in the writ petition does not suffer any illegality or infirmity to interfere with.

13. In such a view of the matter, this Court do not find any merits in the writ petition. Accordingly the writ petition is dismissed. However, there shall be a direction to the 3rd Respondent to decide the application which was remanded by the 2nd Respondent to conduct an enquiry as to the qualification or disqualification of the petitioners for appointing them as Hereditary Trustees and decide the above issue on its own merits within a period of four (4) months from the date of receipt of copy of this Order.

14. With the above observation this writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

05.12.2022

Speaking/Non speaking order
Index : Yes/No
Internet : Yes/No
ggs
Copy to:

1. The Secretary to Government
   Tourism, Culture and Religious Endowments (RE III-1) Department
   Fort St. George, Chennai 600009.

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N.SATHISH KUMAR, J.

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and W.M.P.No.2168 of 2021

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