IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :07.11.2022

CORAM:

THE HON'BLE **MR.JUSTICE N.SATHISH KUMAR**

W.P.No.20210 of 2013
and M.P.Nos.1 to 3 of 2013

M.Rajamanikkam
Dharmakartha
Arulmigu Sithathur Amman Koil
Sengamandi Village
Cheiyyar Taluk, Thiruvannamalai District ... Petitioner

Vs.

1.The District Collector
Thiruvannamalai District
Thiruvannamalai

2.The Commissioner
Hindu Religious and Charitable Endowment Board
Uttamar Gandhi Salai
Nungambakkam, Chennai 600 034

3.The Joint Commissioner, (Head Office)
Hindu Religious and Charitable Endowment Board
Uttamar Gandhi Salai
Nungambakkam, Chennai 600 034

4.The Assistant Commissioner
Office of the Assistant Commissioner
Hindu Religious and Charitable Endowment Board
Thiruvannamalai

5.The Executive Officer
Arulmigu Lakshmi Narasimmasami Thirukoil
Aavaniyapuram, Thiruvannamalai

6.K.Muthu ... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records in order passed in Ni.Mu.No.42026/2012/E4 dated 14.09.2012 on the file of the 2nd respondent and the consequential order in Na.Ka.No.1697 /2012/A1 dated 06.12.2012 on the file of the 4th respondent and quash the same and all further proceedings done in furtherance thereof and direct the respondents 2 to 5 not to interfere with the worship and administration of the petitioner temple by the public's representatives.

For Petitioner : Dr.A.Thiyagarajan
Senior Counsel
for M/s.S.Ramesh Kumar

For Respondents : Mr.D.Gopal
Govt. Advocate for R1

Mr.N.R.N.Arun Natarajan
Special G.P. (HR & CE) for R2-R4

Mr.K.Karthikeyan
Govt. Advocate for R5

No Appearance for R6

ORDER

This Writ Petition is filed under Article 226 of Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records in order passed in Ni.Mu.No.42026/2012/E4 dated 14.09.2012 on the file of the 2nd respondent and the consequential order in Na.Ka.No.1697 /2012/A1 dated 06.12.2012 on the file of the 4th respondent and quash the same and all further proceedings done in furtherance thereof and direct the respondents 2 to 5 not to interfere with the worship and administration of the petitioner temple by the public's representatives.

2.It is the case of the writ petitioner that the temple was in existence for more than 100 years and the temple is being worshiped by the people surrounding the place and people throughout the State visits the temple. Since the temple building was deteriorated, the devotees have decided to construct new Mandapam and Gopuram for the temple and resurrected the temple. Since there was no Hundi in temple, the temple is managed by the public and the members selected by the public and the temple does not come under the purview of the Hindu Religious and Charitable Endowment Board. The temple was given patta for the lands and electricity connection and the same is paid in the name of temple Dharmakartha. When that being the case, the respondent officials visited the temple without causing any notice to the petitioner temple and found that there was no Hundi and the affairs of the temple are being managed by the public. Thereafter, the 6th respondent registered a Trust Deed as if the temple is owned by his family and it is his family property. When the public came to know about the fraudulent registration of the Trust Deed in his favour, the 6th respondent voluntarily cancelled the Trust Deed. The petitioner temple is vigilant about the fraudulent acts and taking care of the temple affairs for the benefit of the public.

3.When that being the position, the petitioner temple was shocked to receive the pamphlet of the respondent Board taking over the temple. The petitioner temple was neither served with any notice nor furnished with a copy of such order. The respondent Board has issued such pamphlets without following due procedures contemplated under law.

Therefore, the petitioner filed a Suit in O.S.No.66 of 2013 on the file of the Principal District Munsif Court, Cheiyyar and the same was withdrawn. During the course of the civil suit, the petitioner came to know that the 2nd respondent's order dated 14.09.2012 (Impugned Order) has listed the petitioner temple within the purview of the Board, based on a report of the 4th respondent dated 03.06.2012. Neither the order dated 14.09.2012 nor the report dated 03.06.2012 was served on the petitioner temple. Hence, challenging the impugned order which was passed without any enquiry and no opportunity was also given to the petitioner temple, the present writ petition is filed.

4.The counter affidavit has been filed by the 2nd respondent. In the counter it has been stated that as admitted by the petitioner, the temple is worshiped by the public and administered by the representatives selected by the public and devotees and the Mandapam and Gopuram were also constructed from the funds collected from the public. Therefore, as per Section 1(3) of the TNHR&CE Act, 1959, the provisions of Act applies to all Hindu Public Religious Institution and the temple being a public temple, it has been brought under the purview of the TNHR&CE Act, 1959. It is further stated in the counter that various paid sevas are performed in the temple. The temple owns land and getting income from Hundial, sale of seva tickets, vehicle entry fee etc. and rental income from lands. The temple has been maintained from the above said income and donation received from the public, but the accounts are not maintained properly for the income derived from the temple. Further, the temple being a public temple, administration should be vested with legally constituted Trust Board as per the provisions of the HR & CE Act, 1959. Hence, a fit person has been appointed to look after the administration for the interregnum period till the constitution of Trust Board, as per the provisions of the Act. Before taking over the temple by the authorities, proper notice was issued to the 6th respondent herein who was managing the temple as certified by the V.A.O, Pudukottai and the Panchayat President Pudukottai. The inspector HR&CE Department has conducted detailed enquiry and obtained statement from the 6th respondent and poojari of the temple and submitted a report. After considering all the above facts, the temple has been brought under the purview of the Department. As per Section 71 and 72 of the HR&CE Act, it applies to temples which are governed by scheme of Administration settled under the Act. But there is no scheme of administration settled to the suit temple. Hence publishing of notification as laid down under Section 72 of the Act does not arise. Hundials have been installed in the temple and approximately Rs.3 lakhs per annum has been received as income from the Hundials. The temple also owns 1.36 Hector punja lands and 0.20 Hector Nanja lands and also one Kalyana Mandapam. Considering all the above facts, the temple has been brought under the purview of the HR & CE Department. Accordingly, prays for dismissal of the above writ petition.

5.The counter affidavit filed by the 3rd respondent / the Joint Commissioner, HR&CE Board, stated that the temple owns 0.20 Hectare of Nanja land and 1 ectare 36.50 Ares of Punja land. The temple is also conducting paid sevas and through sale of seva tickets, vehicle entry fees and derives income apart from one kalyana mandapam. The temple building was renovated by the devotees out of public funds, donations and contributions for performing kumbabhishegam by the general public. There are totally four Hundials in the temple and the annual income of the temple is Rs.12 lakhs. On finding various irregularities and mismanagement, the 4th respondent has passed an impugned order. Based on the report of the inspector, Cheyyar Division, the 4th respondent had given a detailed report to the 2nd respondent on 03.08.2012 and the 2nd respondent passed an order in Ni.Mu.No.42026/23012/E4 dated 14.09.2012 including the temple viz. Arulmigu Sithathur Mari Amman Thirukoil, Chengampondi Village, Cheyyar Taluk, Thiruvannamalai in the temple list page no.87, serial no.9 of 2012. Since the temple is a public temple, as per the provision of HR&CE Act, 1959, the administration should be vested only with the legally constituted Trust Board. When the fit person took charge of the temple, he found four Hundials in the temple and the petitioner had also signed in the charge list dated 11.03.2013. The accounts of the temple was not properly maintained and various irregularities and mismanagement took place. Once the administration was taken over by the HR&CE Department, the accounts are maintained properly, general facilities like Annadanam scheme introduced, toilets and bathroom constructed at the cost of Rs.25 lakhs, the opening and closing time of the temple is properly followed and four times poojas are being conducted in the temple. According to the respondent Department, proper notice has been issued to the person who was managing the temple and certified by the Village Administrative Officer, enquiry was also conducted. Accordingly, prays for dismissal of the above writ petition.

6.Learned Senior Counsel appearing for the petitioner would submit that the impugned order was passed without any enquiry as contemplated under the Act and also to the reference relied upon. The respondent Department at no point of time conducted the alleged enquiry and without following the procedure under Section 71 of the HR &CE Act, the impugned order has been passed, which is not sustainable in the eye of law. Accordingly, prays for quashing of the impugned order.

7.Whereas, the learned counsel for the respondent Board would submit that proper enquiry has been conducted by the Village

Administrative Officer and he has given a certificate stating that the 6th respondent is the person, who was managing the temple. Thereafter only the notice was served and the impugned order came to be passed and opposed the writ petition.

8.Heard the learned Senior Counsel appearing for the petitioner and the learned counsel appearing for the respondent Board. Perused the materials.

9.This Court on a perusal of the impugned order, had directed the respondents to produce all the relevant records and perused the entire records. The impugned order has been passed as if the letter was sent to the Assistant Commissioner, Tiruvannamalai in Na.Ka.No.1697/2012/A1 dated 03.08.2012. The other documents produced before this Court by the respondents do not refer the said Na.Ka.No.1697 /2012/A1 dated 06.12.2012 on the file of the 4th respondent anywhere. Whereas the Na.Ka.No.1697/2012/A1 dated 04.10.2012 alone was passed for passing such order. Na.Ka.No. referred in the impugned order does not find place in the records produced by the respondents.

10.Be that as it may. It is relevant to note that under Section 63 of the HR&CE Act, the Joint Commissioner or Deputy Commissioner has power to conduct enquiry and decide certain disputes and matters. Section 71 of the Act in Chapter VI deals with issuance of notice to show cause to declare as to why the institution / temple should not be notified under the Act. The power has been conferred to the Commissioner. If he believes that such institution is being mismanaged and satisfy that in the interest of its administration, it is necessary to take proceedings under this Chapter, the Commissioner, may publish notice in the prescribed manner, call upon the trustee and all other persons having interest to show cause as to why such institution should not be notified to be subject to the provisions of this Chapter. Such notice shall state the reasons for the action proposed and specify a reasonable time not being less than one month from the date of the issue of the notice for showing such cause. On receipt of such show cause notice, they can prefer any objection, they may wish to make to the issue of a notification as proposed. Thereafter, considering the objections if any, order can be passed under Section 72 of the Act.

11.Combined reading of Section 71 and 72 of the HR & CE Act, 1959 makes it clear that notice calling upon the trustee and all other persons having interest, is mandatory before taking action under Chapter VI of the Act, particularly, notifying of institution under the Act. On a perusal of entire records produced by the respondents would go to show that the impugned order has been passed only based on the report of the V.A.O and some statements said to have been recorded from the 6th respondent. There is no materials whatsoever is available on record to show that notices have been issued to all the persons and to the Managing Trustee as mandatory under Section 71 of the HR&CE Act. Before passing of the impugned order, neither show cause notices have been issued nor enquiry has been conducted and only on the basis of report sent by the V.A.O, the impugned order came to be passed mechanically. It is also relevant to note that the 6th respondent who has executed the Trust Deed in his name, claiming the temple property, was certified as the Managing person of the temple by V.A.O. Such being the position, relying only on the statements of the 6th respondent without following the due procedures as contemplated under the Act, the impugned order came to be passed, which is not sustainable under the law and the same is liable to be set aside.

12.This Writ Petition stands allowed accordingly. It is well open to the respondent Department to take action against the petitioner temple as per law duly following all the procedures set out under Section 71 of the HR&CE Act, by issuing necessary notices to all the persons interested in the temple and decide the issue afresh. Such exercise shall be completed within a period of six (6) months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed. No costs.

07.11.2022

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Index: yes / no Internet: yes / no

N.SATHISH KUMAR, J.

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