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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2022

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THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

W.P. No.17877 of 2016 and
W.M.P.Nos.15570 & 15571 of 2016

Bysani Madhava Chetty's Charity Fund
Having its Office at
No.27, General Muthiah Mudali Street,
Chennai - 79

Rep. By its Hony. Secretary

... Petitioner

Vs

1.The Commissioner,
Hindu Religious & Charitable
Endowment (Admn) Dept.,
Nungambakkam, Chennai -34.

2.The Joint Commissioner,
Hindu Religious & Charitable
Endowment (Admn) Dept.,
Nungambakkam, Chennai - 34.

3.The Assistant Commissioner,
Hindu Religious and Charitable Endowment Dept.,
Chennai - 34.

4.The Executive Officer,
A/M.Byragi Madum,
Thiruvengamudaiyan Venkatesa Perumal Temple,
General Muthiah Street, Chennai 600 007.

5.P.Vijaya

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the 3rd respondent in connection with the order passed by him in his Proc.No.Se.Mu.Na.Ka.No.2161/2012/Aa2, dated 3.5.16 and quash the same and direct the respondents not to interfere with the petitioner Charitable and Endowment activities in any manner.

For Petitioner : Mr.Adithya Reddy

For Respondents : Mr.T.Chezhan
Additional Govt. Pleader
For R1 to R3 & R5

: Mr.S.Sithirai Anandam (For R4)



ORDER

The prayer sought for herein is for a writ of certiorarified mandamus to call for the records on the file of the 3rd respondent in connection with the order passed by him in his Proc.No.Se.Mu.Na.Ka. No.2161/2012/Aa2, dated 03.05.2016 and quash the same and direct the respondents not to interfere with the petitioner Charitable and Endowment activities in any manner.

2. The petitioner is a Trust formed by one Sri Bysani Madava Chettigaru by a Trust Deed dated 24.03.1891, which was registered as a Trust under the Societies Registration Act, 1860.

3. The main object of the Trust is to establish and maintain libraries of standard Sanskrit and vernacular works, establishment of institutions to lecture in Sanskrit, to open Examination Boards to hold Examinations, to create Training Schools and Colleges, to appoint teacher to hold discourses and deliver sermons on holy Texts, to encourage cultivation of Sacred Music, to render help in miscellaneous matters and to give relief to the needy Thengalai Hindu.

4. The Trust was administered by a Board of Trustees. While that being so, the Assistant Commissioner, H.R. & C.E. Department has passed an order on 03.05.2016 invoking Section 49 (1) of the H.R. & C.E. Act by appointing a fit person to the petitioner Trust. Challenging the same, the erstwhile Trustees filed this writ petition with the aforesaid prayer.

5. Heard Mr.Adithya Reddy, learned counsel appearing for the petitioner who raised a point that, insofar as the invocation of Section 49(1) of the H.R. & C.E. Act is concerned, those religious institutions or trusts which do not form part of the list of institutions published under Section 46 alone can be brought for the purpose of appointment of fit person.

6. In the case in hand, according to the learned counsel for the petitioner, the petitioner Trust is not fully the religious institution as apart from the purpose for which to do some charitable work on religious basis, the petitioner Trust also is having the object to do some secular activities to the upliftment of the people at large in the Society.

7. When that being the position, first of all, whether the institution or the property belongs to the institution having been dedicated for the purpose of secular activities or religious activities has to be identified and for the said purpose, an enquiry to be conducted thoroughly by the Joint



Commissioner concerned under Section 63 of the H.R. & C.E. Act.

8. In support of this contention, the learned counsel appearing for the petitioner has relied upon an order passed by the 1st respondent Commissioner, H.R. & C.E. Department dated 19.06.2012 made in A.P.No.44 of 2007, which was filed by the very same petitioner Trust against the order of Joint Commissioner on a different context where the Commissioner, H.R. & C.E. Department has held as follows:

"5.Since the Joint Commissioner has passed a well considered order, there is no reason to take any different view regarding the nature of the said charity. But, however, the property as a whole is of a composite nature also comprising of secular purposes, it is necessary to take necessary action as contemplated under Section 63(f) and 63(g) of the Act, for allocation of the properties mainly intended for secular purposes and the properties intended for religious purposes and amounts of expenditure to be apportioned for performance of religious charities from the said properties. So, it will be well within the jurisdiction of the Joint Commissioner to initiate appropriate proceedings, suo-motu, in accordance with Section 63(f) and (g) of the Act, so that the properties or the monies particularly intended for the Specific Endowment may be finally decided. If such proceedings are initiated the petitioner charity is expected to extend all co-operation to the Joint Commissioner by producing the required records in conducting the enquiry for taking a suitable decision. In view of the aforesaid reasons, the order passed by the Joint Commissioner in O.A.10/2000 dated 10.07.2007 is confirmed and the appeal petition be and is hereby dismissed."

9. Relying upon this holding of the learned Commissioner in the said order, the learned counsel for the petitioner would contend that, the Commissioner himself has come to a conclusion that, the property as a whole is of a composite nature also comprising of secular purposes, it is necessary to take necessary action as contemplated under Section 63(f) and 63(g) of the H.R. & C.E. Act, for allocation of the properties mainly intended for secular purposes and the properties intended for religious purposes, that exercise has to be first undertaken by the Joint Commissioner by exercising his power vested in him under Section 63 of the H.R. & C.E. Act.

10. Without resorting to such a procedure to conduct an enquiry and to identify the properties which are earmarked for secular purpose and also for religious purpose under Section 63



(f) and 63(g) of the Act, the present move made by the Assistant Commissioner to appoint a fit person to run the administration of the petitioner Trust is unlawful, he contended.

11. However, Mr.S.Sithirai Anandan, learned counsel appearing for the 4th respondent as well as Mr.T.Chezhan, learned Additional Government Pleader appearing for the H.R. & C.E. Department would contend that, as against the said order passed by the Commissioner dated 19.06.2012, the petitioner already filed a civil suit and it is pending and further proceedings also pending before this Court. When these proceedings are pending where conclusive decision is yet to be made, insofar as the issue raised by the petitioner as to whether the petitioner is fully a secular body or it is partly secular or partly religious and in that case, whether such an enquiry as contemplated under Section 63 of the H.R. & C.E. Act is necessarily to be undertaken or not, cannot be conclusively decided at this juncture. Therefore, based on that decision taken by the Commissioner, H.R. & C.E. Department vide his order dated 19.06.2012, the petitioner cannot take a shelter that, unless such an enquiry under Section 63 of the Act is conducted and decided by the Joint Commissioner, H.R. & C. E. Department, the fit person cannot be appointed through the impugned order, as it cannot be countenanced, they contended.

12. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

13. Though some appeal or suit has been filed against the order passed by the Commissioner, H.R. & C.E. Department dated 19.06.2012 made in A.P.No.44 of 2007, decision yet to come on the veracity of such findings given by the Commissioner, referred to above. Therefore, as on date, the finding given by the Commissioner, as has been extracted herein above, in paragraph 5 of the said order still holds good. When that being the position, the nature of the petitioner institution whether it is fully secular or partly religious or otherwise has to be decided, for which, a detailed enquiry has to be conducted by the Joint Commissioner concerned, by exercising his power vested in him under Section 63(f) and 63(g) of the H.R. & C.E. Act. The said attempt so far seems to have not been done by the Joint Commissioner. However, with regard to the appointment of fit person to the institution concerned through the impugned order, which is under challenge in this writ petition, this Court feels that since the appointment has been made sometime in 2016, for all these years, that fit person has been continuously administering the institution, at this juncture, such appointment need not be disturbed. But at the same time, once an enquiry is conducted and completed where if a conclusive



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decision come that what are all the properties that are for secular purposes and what are all the properties that are dedicated to the religious purposes or otherwise can only be decided by the Joint Commissioner on the conclusion of such enquiry and once such a decision come, depending upon the outcome of the decision, the appointment of fit person or otherwise can also be decided. In that case, the parties concerned can adjudicate that issue either to support or oppose the appointment of fit person at the petitioner institution only after the outcome of the decision to be made by the Joint Commissioner in the enquiry conducted under Section 63 of the H.R. & C.E. Act.

14. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

(i) That the impugned order for the time being is to be sustained, accordingly it is sustained.

(ii) However, the petitioner shall immediately refer the matter with regard to the decision to be taken, as to whether the property belongs to the petitioner institution is dedicated for religious purpose or secular purpose or for both, to the jurisdictional Joint Commissioner under Section 63(f) and (g) of the Act within a period of two weeks from the date of receipt of a copy of this order. Once such reference is made and a dispute is raised by filing a proper petition before the Joint Commissioner by the petitioner, the same shall be considered and decided by the Joint Commissioner concerned, of course after giving a reasonable opportunity of being heard to all the parties within a period of eight weeks thereafter.

(iii) It is needless to mention that, depending upon the outcome of the decision to be made by the Joint Commissioner under Section 63(f) and (g) of the Act, as indicated above, the parties can workout their remedy either supporting or opposing the appointment of fit person through the impugned order made by the Assistant Commissioner.

15. With these observations and directions, this Writ Petition is disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar



Sgl

To

1. The Commissioner,
Hindu Religious & Charitable
Endowment (Admn) Dept.,
Nungambakkam, Chennai -34.
2. The Joint Commissioner,
Hindu Religious & Charitable
Endowment (Admn) Dept.,
Nungambakkam, Chennai - 34.
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Hindu Religious and Charitable Endowment Dept.,
Chennai - 34.
4. The Executive Officer,
A/M. Byragi Madum,
Thiruvengamudaiyan Venkatesa Perumal Temple,
General Muthiah Street, Chennai 600 007.

+1cc to Mr. Adithya Reddy, Advocate, S.R.No.96

W.P. No.17877 of 2016

KV(CO)
SB(28/02/2022)