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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2022

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

W.P.No. 39531 of 2015
and M.P.Nos.1 & 2 of 2015

1.R.Kulandaivelu
2.S.Nallathambi
3.K.Siva Rao
All are Trustees of A/m.Thirupurasundari
Sametha Arulmigu Muktheeswarar temple
Kadambatur Village

4.A.Palanivelu
5.R.Pranthaman
6.M.Selvaraji
All are now nominated as the non-hereditary
trustees of A/m.Thirupurasundari Sametha,
Arulmigu Muktheeswarar temple
Kadambatur Village, Tiruvallur District
(P4 to P6 substituted in the place of P1 to P3
vide Order dated 19.08.2021 made in
W.M.P.No.15955/2021 in W.P.No.39531/2015 by ASMJ)

.. Petitioners

Versus

1.The Joint Commissioner
Hindu Religious and Charitable
Endowment Department
Vellore
Vellore District

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2.The Assistant Commissioner
Hindu Religious and Charitable
Endowment Department
Tiruvallur
Tiruvallur District

3.The Executive Officer
A/M.Thirupuranthagaswamy Thirukovil
Koovam Village as
The Thakkar
A/M.Muktheeswarar Thirukovil
Kadambur Village
Tiruvallur District. .. Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order made in Se.Mu.Na.Ka.No.6362/2015/E1 dated 27.08.2015 passed by the first respondent and the order in Na.Ka.No.804/2014/A2 dated 30.09.2015 passed by the second respondent quash the same, and consequently direct the second respondent to pass an order approving the petitioners' names as the Non-Hereditary Trustees as per the Resolution dated 18.05.2014 passed by Thindaimandala Athi Saiva Vellalas of Kadambathur Village in compliance with the Scheme dated 21.12.2003 made in O.A.No.14 of 1996 passed by the first respondent.

For Petitioner : Mr.N.Manokaran

For Respondents : Mr.N.R.R.Arun Natarajan for R1 & R2
Special Government Pleader (HR&CE)

Ms.G.Vaishali
for Mr.K.V.Dhanapalan for R3

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ORDER

This writ petition is filed challenging the order made in Se.Mu.Na.Ka.No.6362/2015/E1 dated 27.08.2015 passed by the first respondent and the order in Na.Ka.No.804/2014/A2 dated 30.09.2015 passed by the second respondent, quash them and consequently direct the second respondent to pass an order approving the petitioners' names as the Non-Hereditary Trustees as per the Resolution dated 18.05.2014 passed by Thindaimandala Athi Saiva Vellalas of Kadambathur Village in compliance with the Scheme dated 21.12.2003 made in O.A.No.14 of 1996 passed by the first respondent.

2. The case of the petitioner is that a scheme was settled in respect of the Arulmigu Thirupurasundari Sametha Arulmigu Muktheeswarar temple in Kadambatur Village at Tiruvallur District and as per the scheme, the temple affairs shall be administered by the Board of Trustees comprising not less than 3 and not more than five in number to be appointed by the appropriate authority under the provisions of the Tamil Nadu Hindu Religious and Charitable EndowmentsAct, 1959 (Amended Act 39 of 1956) and as amended from to time and rules made thereunder. The period of

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trustees will commence from the date of elections of managing trustee, or the Chairman, Board of Trustees as the case may be. As per the scheme, the temple has been administered by the Non-Hereditary Trustees, wherein, the second respondent sent a communication in Na.Ka.No.1803/2014/Aa2 dated 05.01.2015 seeking the Inspector, HR & CE Department to submit a report. The Inspector filed a report as if the temple is administered by the petitioner 1 to 3 herein. The first respondent by the impugned order has appointed the third respondent-Executive Officer as the fit person to the subject temple and the same is challenged solely on the ground that when the temple was administered by the petitioners/Non hereditary trustees, the third respondent/Executive Officer cannot be appointed as a fit person.

3. It is the contention on the side of the Respondent Department that when the temple is presently administered by the fit persons, one R.Kulandaivelu, S.Nallathambi being the petitioners 1 and 2 along with one Arunachalam who were appointed as the Non-hereditary trustees, they are illegally been in the office beyond the period allowed as per the Scheme and the Act. Post the demise of the above said Arunachalam on 23.04.2014, who is one of the non-hereditary trustee, a new Board of Trustees has to be

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constituted. Accordingly, the Inspector, HR & CE Department was appointed for obtaining the report and inspection were conducted and a report was submitted to the second respondent citing various discrepancies and deficiencies in the administration of temple. Hence, the first respondent passed the impugned order appointing the third respondent-Executive Officer as the fit person. Based on that order, the third respondent-Executive Officer is functioning as the fit person of the temple taking care of the collection of rents, lease of temple lands for public auction till date. Hence, oppose this writ petition.

4. The learned counsel for the petitioner's prime contention in allowing this writ petition was on the ground of jurisdiction of the first respondent-Joint Commissioner, particularly, when the temple was in their administration. He also brought to the notice of this Court that a W.M.P.No.15955/2021 in W.P.No.39531 of 2015 was filed before this Court to substitute the newly elected trustees, pending this writ petition. The same is ordered vide Order dated 19.08.2021. Hence, according to him, under Section 49 of Hindu Religious & Charitable Endowments Act that only the Assistant Commissioner-second respondent is alone empowered to

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appoint a fit person, whereas, the fit person was appointed by the Joint Commissioner-first respondent, particularly, when the temple is covered by the Scheme. Therefore, seeks to allow this writ petition.

5. The learned Special Government Pleader (HR&CE) submitted that though the power to appoint the fit person under Section 49 of the Act lies with the second respondent-Assistant Commissioner, whereas, in this case, the first respondent-Joint Commissioner has appointed the fit person taking note of the fact that period of trustees/petitioners holding office had expired. Therefore, submitted that the impugned Order cannot be quashed, whereas, Mr.N.Manokaran, the learned counsel for the petitioner submitted that the trustees have been elected as per the scheme and they are in charge of the temple.

6. Now, the issue arises is with regard to the appointment of fit person under Section 49 of the Hindu Religious & Charitable Endowments Act.

7. Admittedly, it is an undisputed fact that the temple is a non-listed temple. The scheme is also settled in respect of the temple. The scheme

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settled is also published the Thiruvallur District Gazette on 01.07.2005, which would read as follows:

> *1.This scheme shall come into force from the date of publications in the District Gazette or Tamil Nadu Government Gazette.*
>
> *2.The administration of Arulmigu Muktheeswarar Temple, Kadambatur, Thiruvallur Taluk, Chengalpattu-MGR District, and its properties movable and immovable which belongs to or have been or hereafter be given, dedicated or endowed thereto and acquired for the temple in general, or any one, or more of the deities in particular do and shall vest in the respective deities.*
>
> *3. The temple Arulmigu Muktheeswarar Temple, Kadambatur, Thiruvallur Taluk shall be administered by a Board of non-hereditary trustees and not less than three and not more than five in number to be appointed by the appropriate authority under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Amended Act 39 of 1956) and as amended from to time and rules made thereunder. The period of appointment of trustees will commence from the date of elections of managing trustee, or the Chairman, Board of Trustees as the case may be.*
>
> *4.The Administration and affairs of the temple namely Arulmigu Muktheeswarar Temple, Kadambathur Village, Tiruvallur Taluk, Chengalpattu-MGR district shall be carried on subject to the provisions of the scheme vested in a board of non-hereditary trustees consisting not less than three or not more than five in number to be constituted by the competent authority in accordance with the provisions of the Act, 22 of 1959 as amended by the Act 39/96 from among the members of*

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Thondaimandala Athi Saiva Vellalas of Kadambatur Village, Thiruvallur Taluk, provided that they do no suffer from any of the disqualifications mentioned in section 26 of the Hindu Religious and Charitable Endowments Act as amended from time to time.

5.If any doubt or difficulties arises in the matter of implementation of any of the provisions of the Act, rules and scheme clause, such matters shall be reported to the appropriate authority whose decision shall be final.

6.Save in so far as expressly provided for herein the provision of the Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959) as amended by Act 39/96 and rules framed thereunder as may be amended from time to time shall apply to the management and administration of temple.

8. The above makes it very clear that the temple shall be administered by the non-hereditary trustees not less than three and not more than five in number to be constituted among the Thondaimandala Athi Saiva Vellalas of Kadambatur Village, Thiruvallur Taluk, provided that they do no suffer from any of the disqualifications mentioned in section 26 of the Hindu Religious and Charitable Endowments Act as amended from time to time. Section 47(3) of the Act stipulate that the period of three years have been amended to two year.

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9. Section 50 of the Act overrides the Scheme notwithstanding that the scheme, if any, settled, or deemed under this Act to have been settled, the power to appoint the fit persons or trustees under Section 47 and 49 is very much available to the authorities. Therefore, as per the Act, the authorities has to appoint the trustees in terms of the Scheme settled. Instead doing so, a fit person namely the third respondent is directly appointed under Section 49 of the Act. Section 49 of the Act empowers only the Assistant Commissioner-second respondent to appoint trustees, fit persons or constitute Board of Trustees in respect of non listed temple.

10. On perusal of the impugned order, it would indicate that despite the resolution passed by the Trustees on 11.09.2014 to appoint a new trustee in the place of Mr.J.Arunachalam, who had died, the first respondent-Joint Commissioner has appointed a fit person namely third respondent. Though the authorities have power under the Act to appoint the trustees as per the Scheme, they ought to have followed the scheme and appointed the trustees. Rather, the Joint Commissioner has straight away appointed a fit person under Section 49 when such power is vested only with the Assistant Commissioner.

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11. It is relevant to note that in an Order of this Court reported in *(2015) 3 Law Weekly 106* in the case of *P.R.Thirupathy and others Vs. The Commissioner, Hindu Religious & Charitable Endowment and others,* this Court has held as follows:

> *"...8. The order impugned in this Writ Petition, dated 18.09.2013, has been passed under Section 49(1) of the Act. The said provision confers power on the Assistant Commissioner, HR&CE., to the appoint trustees and fit persons, in the case of any religious institution, which is not included in the list published under Section 46 of the Act and is not a religious institution notified or deemed to have been notified under Chapter VI of the Act (notified religious institutions). The Assistant Commissioner shall have the same power to appoint trustees including fit persons. The distinction between the power exercisable by the Commissioner, H.R.&C.E., under Section 45 and the power exercisable by the Assistant Commissioner under Secton 49(1) is a power to appoint fit persons. The temporary period of tide over certain difficulties or contingencies if in the opinion of the Assistant Commissioner, appointment of a fit person is warranted. Similarly, in terms of Section 53(4) pending the disposal of the charges framed against the trustees, "the appropriate authority" may place the trustee under suspension and appoint a fit person to discharge the duties and perform the functions of the trustee". This power is also in the nature of an interim arrangement. Similarly is the power vested with the Joint Commissioner or the Deputy Commissioner as the case may be to appoint a fit person to perform the functions of the trustee of the institution until disability of the hereditary trustee seizes or another trustee succeeds to the office or for such shorter term as the authority may direct by exercising power under Section 54(2) of the Act. Similarly, under Section 64(4) of the Act, pending the settlement of a scheme for an institution, the Joint Commissioner or the Deputy Commissioner, as the case may be, may appoint a fit person to perform all or any of the functions of the trustee thereof and define his powers and duties.*

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Thus, the power to appoint fit person and the nature of duties and responsibilities entrusted to him under the various provisions of the Act, namely, Sections 49(1), 53(4), 54(2) and 64(1) are all powers exercisable for appointment of fit persons as an interim measure. The statute does not provide for issuing a notice to the hereditary trustees prior to appointment of a fit person.

Therefore, the appointment of the person is only an interim arrangement and the same cannot be forever particularly, when the Scheme is settled and the administration vests with the trustees.

12. Such view of the matter, the impugned Orders in Se.Mu.Na.Ka.No.6362/2015/E1 dated 27.08.2015 passed by the first respondent and Na.Ka.No.804/2014/A2 dated 30.09.2015 passed by the second respondent is set aside and the respondent officials is directed to appoint the trustees as per the Scheme by following proper procedure.

13. In the above terms, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

15.12.2022

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Speaking Order : Yes / No

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Hindu Religious and Charitable
Endowment Department
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3.The Executive Officer
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N.SATHISH KUMAR, J.

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