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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

WRIT PETITION NO.13947 OF 2019

R.Thulasingam ... Petitioner

.Vs.

1. The Commissioner,
   HR and CE Board,
   Nungambakkam,
   Chennai - 600 034.

2. The Joint Commissioner,
   HR and CE Board,
   Sathuvachari,
   Vellore – 9.

3. The Executive Officer
   Aulmighu Azheeyavara Vinayagar Thirukoil
   and other Temples Devasthanam,
   Kuthambakkam,
   Tirunelveli District. ... Respondents

PRAYER:-

Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the 1st respondent to relieve the 3rd respondent from administration of the denomination temple in the light of the judgment rendered in Civil Appeal No.10620 of 2013 Dr.Subramanian versus State of Tamil Nadu and others.

For Petitioner : Mr.R.Chandrasudan

For R1 and R2 : Mr.K.Karthikeyan
Government Advocate

For R3 : Mr.A.K.Sriram
For M/s.A.S.Kailasam
& Associates

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O R D E R

Writ Petition is filed for a direction to the 1st respondent to relieve the 3rd respondent from administration of the denominational temple in the light of the judgment rendered in Civil Appeal No.10620 of 2013 in [Dr.Subramanian Swamy versus State of Tamil Nadu and others].

2. Arulmighu Azheeyavara Vinayagar Thirukoil, Thirupurantheeswarar Thirukoil, Kaliyugaraya Perumal Thirukoil, Thurayathamman Thirukoil, Sri Mari Ellamman Thirukoil, Sri Pidari Thuraiyathamman and Sri Dharmaraja Thirukoil are denominational temples of Udayar Thuluva Vellalar community. The people belonging to the said community alone have right to be the trustees and manage the temples. This has been affirmed in O.S.No.427 of 1886, A.S.No.267 of 1888 and Second Appeal No.687 of 1889. Sanjeevi Mudaliyar, grand father of petitioner was the Hereditary Trustee of the said temples and he was managing the temples. The respondents have no right to interfere with the administration of the temples. The petitioner's grand father and two others filed O.S.No.216 of 1973 before the District Munsif Court, Poonamallee, for declaration that the temples of Sri Azheeyavara Vinayagar, Sri Thirupurantheeswarar, Sri Kaliyugaraya Perumal, Sri Mari Ellamman, Sri Pidari Thurayathamman and Sri Dharmaraja at Kuthambakkam village are denominational institutions of the petitioner's community, the said temples are entitled to be managed only by the members of their community and their descendants and for a permanent injunction restraining the respondents from either directly or through his subordinates the Assistant Commissioner, H.R. and C.E., Kancheepuram, interfering with the management of the said temples by the members of the petitioner's community by appointing any strangers thereto. The said suit was decreed on 20.08.1981. As per the said decree, the respondents have no right to appoint any trustees from other community except the petitioner's community. Similarly, the respondents have no right to interfere with the administration of the temples. Sanjeevi Mudaliyar, grand father of the petitioner died on 19.06.1980. After the death of Sanjeevi Mudaliyar and due to old age of his wife viz., Krishnaveni, grand mother of the petitioner, the petitioner is looking after the affairs of the temples on behalf of his grand mother.

2(i). While so, certain vested interested persons claiming to be the trustees leased out the properties of the temples and utilised the rental amount for their personal use. In such circumstances, the petitioner made a representation to the 1st respondent to invoke his power under Section 45 of the Hindu Religious and Charitable Endowments Act (hereinafter referred to

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as the H.R. and C.E. Act) and appoint Executive Officer as temporary measure. According to the petitioner, considering his request, the 1st respondent by the proceedings dated 13.02.2010 appointed a Fit person, the 3rd respondent for managing the temple. The 3rd respondent, in collusion with land grabbers is acting against the petitioner. Hence, the petitioner has come out with the present Writ Petition for the relief sought for above.

3. The learned counsel appearing for the petitioner submitted that at no point of time, the petitioner's community waived their right to be in the management of the temples. The 3rd respondent was appointed only on temporary measure and he cannot continue as Executive Officer permanently and manage the temple and prayed for allowing the Writ Petition in the light of the judgment of the Hon'ble Apex Court reported in (2014) 5 SCC 75 [Dr.Subramanian Swamy versus State of Tamil Nadu and others].

4. The learned Government Advocate appearing for the respondents 1 and 2 and the learned counsel appearing for the 3rd respondent separately submitted that Department had appointed Trustee only from and out of Udayar Thuluva Vellalar community. The respondents have not violated the judgment of the Hon'ble Apex Court reported in (2014) 5 SCC 75 [Dr.Subramanian Swamy versus State of Tamil Nadu and others] and the decree passed in the suit O.S.No.216 of 1973. Originally, the respondents appointed a Fit Person by the proceedings dated 13.02.2010, the same was challenged in Writ Petition No.4297 of 2010. While the said Writ Petition was pending, the respondents appointed Trustee to the temple. In view of the same, the said Writ Petition was dismissed. Subsequently, in order to safeguard the temple, the then persons in the management of the temple submitted application on 10.08.2010 before the 2nd respondent with a request to appoint an Executive Officer to assist them in the administration of the temple. Considering the then persons in the management, 1st respondent by the proceedings dated 05.12.2010 appointed 3rd respondent as an Executive Officer under Section 45(1) of the H.R. and C.E. Act. The 3rd respondent/Executive Officer was appointed to safe guard the property of the temple. The 3rd respondent/Executive Officer is functioning with effect from 27.12.2010 along with Non-Hereditary Trustees, who are appointed for the temple as per the judgment passed in O.S.No.216 of 1973 by the District Munsif Court, Poonamallee. The 3rd respondent was appointed under Section 45(1) of the H.R. and C.E. Act, the said appointment was not challenged by the petitioner or any other persons belonging to their community. When appointment of Executive officer is not challenged, the petitioner is not entitled to maintain the relief now sought for in the present Writ Petition.

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4(i). The learned counsel appearing for the 3rd respondent further submitted that as per the judgment made in O.S.No.216 of 1973, three trustees are appointed from Udayar Thuluva Vellalar community and they are managing the religious activities. The 3rd respondent/Executive Officer appointed by the H.R. and C.E. Department is regulating the secular activities without interfering with the religious activities and relied on paragraph 33 of the judgment of the Hon'ble Apex Court reported in 2014 (5) SCC 75 cited supra.

4(ii). The learned counsel appearing for the 3rd respondent further submitted that in pursuant to the judgment reported in 2014 (5) SCC 75 cited supra, the State Government has prescribed Rules and the same have been published in Part III Section 1(a) of the Tamil Nadu Gazette Extraordinary dated 06.11.2015 [G.O.(Ms)No.260, TC & RE (RE-4-2) Department]. In view of the same, the appointment prior to the Rules will be ratified and prayed for dismissal of the Writ Petition.

5. Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents 1 and 2 and the learned counsel appearing for the 3rd respondent and perused the entire materials on record.

6. The claim of the petitioner is that Arulmighu Azheeyavara Vinayagar Thirukoil, Thirupurantheeswarar Thirukoil, Kaliyugaraya Perumal Thirukoil, Thurayathamman Thirukoil, Sri Mari Ellamman Thirukoil, Sri Pidari Thuraiyathamman and Sri Dharmaraja Thirukoil are denominational temples of Udayar Thuluva Vellalar community and the persons belonging to the said community alone are entitled to manage the temple and the same is not disputed by the respondents. Similarly, the contention of the respondents that Non-Hereditary Trustees were appointed only among the said community is not denied by the petitioner. It is also not in dispute that some vested interest persons leased out the property of the temples and utilised the rental income for their personal use. In such circumstances, the petitioner and their community people requested the 1st respondent to appoint an Executive Officer to assist the Trustees in the administration of the temple. From the averments made in the affidavit, it is seen that the 1st respondent considering the request of the petitioner and their community people, appointed 3rd respondent as Executive Officer as per Section 45(1) of the H.R. and C.E. Act. There is nothing on record to substantiate the contention of the petitioner that Executive Officer was appointed as a temporary measure. From the order dated 05.12.2010 appointing Executive Officer, it is seen that Executive Officer is appointed to safe guard the properties of the temple and assist the Trustees. So long as said order of the 1st respondent is in force, the petitioner is not entitled to the relief sought for

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in the present Writ Petition. The contention of the respondents that Executive Officer was appointed at the request of the Trustees is not denied by the petitioner. Appointment of Executive Officer is not challenged by the petitioner. The said appointment is in force till today. In view of the above, the petitioner is not entitled for the relief now sought for in the present Writ Petition.

7. For the above reasons, the Writ Petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner,
HR and CE Board,
Nungambakkam,
Chennai - 600 034.

2. The Joint Commissioner,
HR and CE Board,
Sathuvachari,
Vellore - 9.

3. The Executive Officer,
Aulmighu Azheeyavara Vinayagar Thirukoil
and other Temples Devasthanam,
Kuthambakkam,
Tirunelveli District.

+1cc to Mr.P.Kamal, Advocate, S.R.No.28832
+1cc to M/s.A.S.Kailasam & Associates, Advocate, S.R.No.28292
+1cc to the Government Pleader, S.R.Nos.28707 & 29785

W.P.NO.13947 OF 2019

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