

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 15.06.2022
CORAM:

THE HONOURABLE MR.JUSTICE C. SARAVANAN

W.P.No.12620 of 2022
AND WMP.Nos.12063 & 64 of 2022

J. Annamalai ... Petitioner

..Vs..

1. The Commissioner,
Hindu Religious and Charitable
Endowments Department,
119, Uthamar Gandhi Salai,
Nungambakkam, Chennai 600 034.
2. The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Collectorate Campus, Villupuram,
Villupuram District.
3. The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Collectorate Campus, Villupuram,
Villupuram District.
4. The Executive Officer,
Arulmighu Lakshmi Narasimhasamy Thirukoil,
Parikkal Village, Ulundurpet Taluk,
Villupuram District.

5. R. Srinivasan ... Respondents

Prayer:- This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records relating to the impugned order of the first respondent in R.P.No.108/2020 D2 dated 27.04.2022 confirming the order of the second respondent in Na.Ka.No.8017/2019/B2 dated 18.12.2019 and that of the third respondent in Na.Ka.No.2544/2019/B1 dated 20.06.2019 and quash the said orders.

For Petitioner : Mr.J.Lakshminarayanan
For Respondent : Mr.K.Karthikeyan
Govt.Advocate for R1 to R3
Mr.S.Sithirai Anandam for R4

ORDER

This writ petition has been filed to call for the records relating to the impugned order of the first respondent in R.P.No.108/2020 D2 dated 27.04.2022 confirming the order of the second respondent in Na.Ka.No.8017/2019/B2 dated 18.12.2019 and that of the third respondent in Na.Ka.No.2544/2019/B1 dated 20.06.2019 and quash the said orders.

2. The learned counsel for the petitioner submitted that the petitioner is aggrieved by the impugned order of the first respondent in R.P.No.108/2020 (D2) dated 27.04.2022 confirming the order of the second respondent in Na.Ka.No.8017/2019/B2 dated 18.12.2019 and that of the third respondent in Na.Ka.No.2544/2019/B1 dated 20.06.2019. The specific case of the petitioner appears to be that the third respondent by the third mentioned order had appointed a fit person based on the complaint given by the 5th respondent which was challenged by the petitioner before the second respondent under Section 21 (A) of the HR&CE Act, 1959 and by order dated 18.12.2019 referred supra confirmed the same and further appeal/revision before the Commissioner has now been rejected. During the interregnum period, the petitioner appears to have been filed two writ petitions. The argument of the learned counsel for the petitioner appears to be based on a recent decision passed by the First bench of this Court in W.A.No.1057 of 2022 dated 27.04.2022 and the relevant paragraphs are extracted as below:-

23. In the instant case, the impugned order has been passed not based on any material collected by the respondents, but in reference to the reply to the show cause notice by the appellant. It is despite the procedure given under Sections 63 and 110 of the Act of 1959. The aforesaid cannot be ignored more so when, on earlier occasion, on a similar complaint given by the same person, an Inspector was appointed to cause enquiry into the matter and after his enquiry and a report thereupon, the matter was dropped. Why the same procedure was not applied in the case could not be clarified.

24. Sections 63 and 110 of the Act of 1959 are reproduced hereunder:

"63. Joint Commissioner or Deputy Commissioner to decide certain disputes and matters.- Subject to the rights of suit or appeal hereinafter provided, the Joint Commissioner or the Deputy Commissioner, as the case may be, shall have power to inquire into and decide the following disputes and matters:-

- (a) whether an institution is a religious institution;
- (b) whether a trustee holds or held office as a hereditary trustee;
- (c) whether any property or money is a religious

endowment;

(d) whether any property or money is a specific endowment;

(e) whether any person is entitled, by custom or otherwise, to any honour, emolument or perquisite in any religious institution and what the established usage of a religious institution is in regard to any other matter;

(f) whether any institution or endowment is wholly or partly of a religious or secular character ; and whether any property or money has been given wholly or partly for religious or secular uses ; and

(g) where any property or money has been given for the support of an institution which is partly of a religious and partly of a secular character, or the performance of any service or charity connected with such an institution or the performance of a charity which is partly of a religious and partly of a secular character or where any property or money given is appropriated partly to religious and partly to secular uses, as to what portion of such property or money shall be allocated to religious uses."

"110. Procedure and powers at inquiries under Chapters V and VI.

(1) Where a Commissioner or a Joint Commissioner or a Deputy Commissioner makes an inquiry or hears an appeal under at inquiries Chapter V or Chapter VI, the inquiry shall be made and the appeal shall be heard, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (Central Act V of 1908) to the trial of suits or the hearing of appeals, as the case may be.

(2) The provisions of the Indian Evidence Act, 1872 (Central Act I of 1872), and the Indian Oaths Act, 1873 (Central Act X of 1873), shall apply to such inquiries and appeals.

(3) The Commissioner or a Joint Commissioner or a Deputy Commissioner holding such an inquiry or hearing such an appeal shall be deemed to be a person acting judicially within the meaning of the Judicial Officers Protection Act, 1850, (Central Act XVIII of 1850)."

The procedure given therein has not been followed by the respondents.

25. The learned Advocate General was candid in making a statement that while appointing a Fit Person, care has been taken not to disturb the educational activities of the society.

Thus, it becomes clear that society was created not only to run the mandapam, but for other activities and thereby it was incumbent on

the respondents to refer to the object of the society and after analysing other activities, to

take a proper decision as to whether the society or part of it will fall in the definition of 'Temple' so as to give effect to the impugned order. The care aforesaid has not been

taken in the matter and what we find is that the impugned order has been passed without recording a finding that the appellant society falls in the definition of the 'Temple' given under Section 6(20) of the Act of 1959, but only referring that it satisfies with the ingredients of the definition of 'Temple' without recording a definite finding on that. In absence of declaring the appellant society to be

falling in the definition of 'Temple', the further exercise to appoint a Fit Person could not have been undertaken because, the provision of the Act of 1959 can be applied

only when the appellant falls in the definition of 'Temple' or comes under the purview of the Act of 1959.

26. The question as to whether an institution is a religious institution or not, the Act of 1959 is a self contained Code. Chapter-V, specifically deals with inquiries. Under Section 63, the Joint Commissioner or Deputy Commissioner as the case may be, have the powers to enquire into and decide whether the institution is a religious institution or not. Any person aggrieved by the decision is entitled to file an appeal to the Commissioner under Section 69 of the Act and any person aggrieved by the order of the Commissioner is entitled to file a suit under Section 70 of the Act. Section 110 of the Act provides that where a Commissioner or a Joint Commissioner or a Deputy Commissioner makes an enquiry or hears an appeal under Chapter - V or Chapter - VI, enquiry shall be made and the appeal shall be heard, as nearly as may be, in accordance with the procedure applicable under Code of Civil Procedure to the Trial of suits or hearing of the appeal as the case may be. Provisions of the Indian Evidence Act and Indian Oaths Act shall apply to such enquiries and appeal. Further, the Commissioner or Joint Commissioner or Deputy Commissioner holding such enquiry or hearing such appeal shall be deemed to be a person acting judicially within the meaning of the Judicial Officers Protection Act, 1850.

27. The power to appoint a fit person vests in the Assistant Commissioner, as per Section 49, which can be exercised on two contingencies. First, the institution must be a religious institution and second, upon satisfaction of any mal-administration of the institution by the existing trustees. It may be seen in the instant case that while appointing a fit person, the Assistant Commissioner himself has attempted to proclaim and decided that the institution is a religious institution. When the fourth respondent filed a complaint that the institution is a religious institution, the appellant having denied the same, it was necessary that the matter should have been taken up first by the Joint Commissioner/Deputy Commissioner under Section 63 for determining whether the institution is a religious institution or not. The same has to be done by following due procedure, that is, recording evidence and thereafter, pronouncing a decision under Section 63 of the Act. If any party is aggrieved, they can file an appeal and thereafter, a suit, but without following the said procedure, straight away, the second respondent has assumed jurisdiction and appointed a fit person in an illegal manner. As a matter of fact, the learned Single Judge of this Court in the case of R. Shanmugasundram Vs. Commissioner of HR & CE (1991 2 MLJ 582), had specifically held that power under Section 49 to appoint a fit person cannot be exercised before determination of the issue under Section 63 of the Act of 1959. The aforesaid judgment is applicable to this case.

28. The second procedural violation is that before passing the order under Section 49 of the Act of 1959 appointing a fit person, except to record that a show cause notice was sent, reference of the allegation of mismanagement has not been given. Thus, there was neither any specific allegation of mal-administration nor any recording of subjective satisfaction. Further, such allegations should be specifically made in the show cause notice and hearing on such allegations should have been made before appointing of a fit person.

29. Therefore, we find reason to cause interference in the order passed by the learned Single Judge, who ought not to have dismissed the writ petition without addressing the issues on merit, when challenge to the order was alleging violation of the principles of natural justice and non-observance of procedure in passing the order. Ignoring the aforesaid, the writ petition was dismissed on the ground of availability of alternative remedy and involvement of

question of facts, whereas challenge was on the ground of non-compliance of procedure given under Section 63 of the Act of 1959 and Chapters V and VI thereof. It is even bit by the judgment of the Supreme Court in the case of Durga Enterprises (P) Ltd. vs.

Principal Secretary, Govt. of U.P., reported at (2004) 13 SCC 665. There also, the writ petition was dismissed on the ground of availability of alternative remedy after keeping the matter pending for a long period of 13 years. It was held that the High Court having entertained the writ petition and the pleadings by the parties were complete, ought to have decided the case on merit instead of relegating the parties to take the alternative remedy. We are not further entering into the issue that only on account of availability of alternative remedy, the jurisdiction of this Court under Article 226 of the Constitution of India is not barred rather in view of the

judgment of the Apex Court in the case of Whirlpool Corporation (supra), the writ petition can be entertained despite the availability of alternative remedy. It is more so when procedure given under the Act of 1959 was not applied.

30. Accordingly, for all the reasons given above, we cause interference in the impugned order dated 17.03.2022 of the learned Single Judge so also the order dated 31.12.2013 passed by the respondent department. It is, however, with liberty to the department to proceed in the matter afresh in accordance with the provisions of law. The appellant would be at liberty to prove their case by bringing the material and evidence, if fresh action is taken, and after completion of the aforesaid procedure, which may be after taking into consideration the power given to the department under Section 110 of the Act of 1959, to pass a speaking order.

31. With the aforesaid, the writ appeal is allowed, with a direction to the department to immediately hand over the possession of the mandapam and even all the records to the appellant. The appellant is directed to maintain the accounts, which should be duly audited.

3. He further submitted that the petitioner has filed a petition under Section 63(a) of the HR&CE Act, 1959 which has been numbered as OA.No.1 of 2021 and is pending before the Joint Commissioner, HR&CE Department, Villupuram district namely the second respondent and therefore in the light of the above order of the First bench of this Court impugned proceedings has to be quashed. That apart it is submitted that right from the beginning it is the specific case of the petitioner that the petitioner is not coming within the purview of the HR&CE Act and therefore the appointment of the fit person is contrary to law and the scheme of the HR&CE Act, 1959. Therefore it is prayed that the writ petition may be allowed.

4. Opposing the prayer and submissions made by the learned counsel for the petitioner, the learned Government Advocate appearing for the respondents 1 to 3 submitted that there is no

merits in the present writ petition. The land was allotted to Ramalingasami Madam (Choultry) for conducting Pooja and festivals of Ramalingasamigal under Section 4 of the Madras Endowments and Estate Regulation VII Act, 1817. The alienation was made by the Government of Tamil Nadu in favour of the Secretary for the time being. The Samarasa Sanmarga Sangam, Villupuram was used as the site of Ramalingasami Madam (for conducting Pooja and Festivals of Ramalinga Samigal). Further he submitted that the petitioner who assumed the control of the said Madam altered the character of the Madam by registering the Trust in the year 2016. It is submitted that without doubt, the said institution is a "religious institution" within the meaning of Section 6(13) of the HR & CE Act, 1959 and therefore there is no merits in the present writ petition.

5. Heard both sides and perused the materials available on record.

6. The issue has been pending with the authorities right from 2016 when the complaint was given by the fifth respondent a fit person was appointed pursuant to the notice issued by the Assistant Commissioner HR&CE dated 03.11.2017 to which the petitioner appears to have given an explanation on 09.06.2018. The request of the petitioner was rejected by the third respondent by impugned proceedings dated 20.06.2019 which has been confirmed by the second respondent in a revision petition and further affirmed by the first respondent in its impugned order proceedings dated 27.04.2022. The petitioner has now filed OA No.1 of 2021 before the second respondent under Section 63 (a) of the Act. Prima facie it appears that the said institution for which the petitioner is the trustee is enjoying the land that was alienated by the Government in the year 1947 is a religious institution within the meaning of Section 6 (13) of the HR & CE Act, 1959. OA.No.1 of 2021 filed by the petitioner under Section 63(a) of the HR&CE Act is pending before the second respondent. Considering the fact that a fit person controls the institution since 20.06.2019, I am inclined to dispose of the writ petition by directing the Joint Commissioner, HR&CE Department, Villupuram District to pass appropriate orders in OA.No.1 of 2021. It is needless to state that the petitioner shall be heard and any observation touching the merits of the matter in this order will have no bearing when the matter is to be decided on merits only. The second respondent is hereby directed to dispose of the OA.No.1 of 2021 without getting influenced by any observation of the merits of the case. Suffice to state that OA.No.1 of 2021 shall be disposed of as expeditiously preferably within a period of two months from the date of receipt of a copy of this order. Status quo as on date shall continue.

7. With the above observation and direction the writ petition is disposed of. No costs. Consequently connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

dpq

To,

1. The Commissioner,
Hindu Religious and Charitable
Endowments Department,
119, Uthamar Gandhi Salai,
Nungambakkam, Chennai 600 034.
2. The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Collectorate Campus, Villupuram,
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4. The Executive Officer,
Arulmighu Lakshmi Narasimhasamy Thirukoil,
Parikkal Village, Ulundurpet Taluk,
Villupuram District.

+1 cc to Mr.J.Lakshminarayanan, Advocate Sr.NO. 36098
+1 cc to Mr.S.Sithirai Anandam , Advocate Sr.NO. 36653
+1 cc to Spl.Government Pleader Sr.NO.36802

W.P.No.12620 of 2022

skm(CO)

A.SK(15/07/2022)