IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.12822 of 2020
and
W.M.P.No.15839 of 2020

S.Somasundaram,
Managing Trustee of
A/M Kumbeswarar Koil,
Kurinjipadi,
Kurinjipadi Taluk,
Cuddalore District. .. Petitioner

Vs.

The Commissioner,
Hindu Religious and
Charitable Endowments Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai - 600 034. .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, call for the records and quash the demand notices in Ka.No.64915/2019/E2 dated 06.11.2019 and in Ka.No.66974/2019/E2 dated 14.11.2019 issued by the respondent and consequently forbear the respondent or subordinates from interfering in the management of petitioner temple.

For Petitioner : Mr.D.Baskar

For Respondent : Mr.S.Yashwanth
Additional Government Pleader

O R D E R

The petitioner is challenging the demand notices issued by the respondent under Section 92 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

2.According to the petitioner, he is the managing trustee of Arulmighu Kumbeswarar Koil, Kurinjipadi, Kurinjipadi Taluk, Cuddalore District. The said temple is a private temple belonging to the people of Sengundha Mudaliar Community of three streets of Kurinjipadi and it is not a public temple. The said temple is not under the control of the respondent and hence, provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as the 'Act') are not applicable to the Arulmighu Kumbeswarar Koil, Kurinjipadi, Kurinjipadi Taluk, Cuddalore District. The respondent is not having any control over the management of the temple and not rendering any service to the said temple. In such circumstances, the respondent issued two demand notices dated 06.11.2019 & 14.11.2019 to the petitioner temple, claiming contribution amount and audit fees. Even though audit is conducted by the auditors of the respondent Department and fees being paid to them, no receipt is issued to the temple corresponding to Section 76 of Act XIX of 1951. The Hon'ble Apex Court has struck down Section 76 of Old Act as 'ultra-vires'. In view of the same, notices issued by the respondent under Section 92 of the Act is not maintainable. It is the further case of the petitioner that temple is in existence for more than 150 years and for the first time, after several decades, the respondent issued the present notices, which are not maintainable.

3.It is the further case of the petitioner that a scheme was framed in O.S.No.28 of 1914 to the effect that the petitioner temple belongs to the Sengundha Mudaliar Community and trustees can be appointed only from Sengundha Mudaliar Community, residing from the three streets. In view of the interference by the respondent by appointing a Fit Person, the persons belonging to Sengundha Mudaliar Community filed suit in O.S.No.10 of 1988 before the Sub Court, Cuddalore. By the judgment and decree dated 09.01.1991, the Trial Court granted declaration that the temple is a denominational temple that only people of Mudaliar Community of three streets could be appointed as trustees and rejected the relief of permanent injunction. Challenging the said judgment and decree dated 09.01.1991, the plaintiffs in O.S.No.10 of 1988 filed appeal in A.S.No.239 of 1989 before the District Court, Cuddalore and the said appeal was also dismissed. Against the said order of dismissal, Second Appeal in S.A.No.1742 of 1992 was filed before this Court. This Court, by the judgment dated 16.04.2003, set aside the declaration that the temple is a denominational temple and also declared that the temple belongs to people of Sengundha Mudaliar Community of three streets. Further, this Court confirmed the decree passed in O.S.No.28 of 1914 that the temple belongs to the people of Sengundha Mudaliar Community of Pazhantheru (Old Street) and the HR & CE department can appoint trustees only from the Sengundha Mudaliar Community of the three streets. The judgment and decree in S.A.No.1742 of 1992 did not give any right to the respondent over the affairs of the Arulmighu Kumbeswarar Koil, Kurinjipadi, Kurinjipadi Taluk, Cuddalore District. The respondent cannot demand and collect audit fees and contribution from the temple. Hence, the petitioner has come out with the present Writ Petition, challenging the said demand notices.

4.The respondent filed counter affidavit and denied all the averments made in the affidavit.

5.Mr.S.Yashwanth, learned Additional Government Pleader appearing for the respondent contended that the temple is not a private temple and it is a public religious institution. As per Section 23 of the act, provisions of Section 1(3) of the Act is applicable to the petitioner temple. It is the case of the respondent that general public worship in the temple and it is not restricted to the people of Sengundha Mudaliar Community alone. In the scheme framed in O.S.No.28 of 1914, it has been specifically held that Arulmighu Kumbeswarar Koil, Kurinjipadi, Kurinjipadi Taluk, Cuddalore District is a public temple and the trustees must maintain accounts and submit to the department periodically. The temple accounts have been audited by the Audit Wing from Fasli 1389 to 1427. Arulmighu Kumbeswarar Koil, Kurinjipadi, Kurinjipadi Taluk, Cuddalore District is a public temple under Section 46(1) of the Act and it is a public religious institution and judgment and decree in S.A.No.1742 of 1992 gives right to the trustees appointed by the HR & CE department from three streets of Sengundha Mudaliar Community to administer and manage the affairs of the temple, subject to provisions of the Act. The accounts of the temple have been subjected to audit by the auditors from the HR & CE Department. There was some illegal contribution by the trustees and amounts received by the Trustees were not properly accounted for. The Trustees, without any permission from the respondent, borrowed huge amount as loan. The Joint Commissioner, Villupuram in proceedings bearing R.C.No.4272/2020/E2 dated 08.09.2020, directed the petitioner to appear for enquiry on 19.09.2020 with regard to the said illegality. In view of the same, the petitioner has come out with the present Writ Petition. As per Section 46(1) of the Act, a publication was effected declaring that Arulmighu Kumbeswarar Koil, Kurinjipadi, Kurinjipadi Taluk, Cuddalore District is a public temple and Trustees were paid amount as per the payment made under Section 92 of the Act till Fasli year 1428 (2018-2019) and the respondent also issued receipt for the said payment. Section 92 of the Act was challenged before this Court in W.P.No.3203 of 1970 and the same was dismissed. Challenging the said order of dismissal in W.P.No.3203 of 1970, Writ Appeal in W.A.No.389 of 1974 was filed before this Court and this Court, by the order dated 23.09.1974, dismissed the said Writ Appeal. C.A.No.1010 of 1975 filed against the judgment in W.A.No.389 of 1974 before the Hon'ble Apex Court was also dismissed on 30.08.1990, confirming the validity of Section 92 of the Act. In view of the same, Section 92 is valid and petitioner is bound by the same and prayed for dismissal of the Writ Petition.

6.Heard the learned counsel appearing for the petitioner as well as the learned Additional Government Pleader appearing for the respondent and perused the entire materials on record.

7.From the materials on record, it is seen that the petitioner is challenging the demand notices dated 06.11.2019 and 14.11.2019, issued by the respondent under Section 92 of the Act. The Court can interfere with a notice only when the said notice is issued by the person having no jurisdiction or notice is malafide. When a person is alleging malafide, the official who is acting in a malafide manner must be impleaded in his individual capacity. In the present case, it is not the case of the petitioner that the respondent is acting in a malafide manner. But, it is the case of the petitioner that the petitioner temple is a private temple and it is not a public temple. Therefore, provisions of the Act is not applicable. On the other hand, it is the case of the respondent that in the scheme decree framed in O.S.No.28 of 1914, it has been held that the petitioner temple is a public temple. The respondent has contended that publication has been effected under Section 46(1) of the Act, declaring Arulmighu Kumbeswarar Koil, Kurinjipadi, Kurinjipadi Taluk, Cuddalore District as a public temple. Further, it is the case of the respondent that general public are worshipping in the said temple and it is not restricted to the people of the Sengundha Mudaliar Community alone. According to the respondent, audits are conducted regularly by the HR & CE Department and petitioner is paying contribution from Fasli 1389 to 1427 (upto 2018 - 2019) and also paying audit fees. These averments are not denied by the petitioner. It is the further case of the petitioner that Section 92 of the present Act is corresponding to Section 76 of Old Act and Section 76 of the Old Act has been struck down by the Hon'ble Apex Court. On the other hand, the respondent has furnished the details to show that validity of Section 92 of the present Act has been confirmed by this Court as well as by the Hon'ble Apex Court. In view of the confirmation of the validity of Section 92 of the Act, the contention of the petitioner that Section 92 of the Act is not valid and it is not applicable to the Arulmighu Kumbeswarar Koil, Kurinjipadi, Kurinjipadi Taluk, Cuddalore District is without merits. For the above reasons, the Writ Petition is liable to be dismissed as devoid of merits.

8.Accordingly, the Writ Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

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To

The Commissioner,
Hindu Religious and
Charitable Endowments Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai - 600 034.

+1cc to Mr.D.Baskar, Advocate SR.No.19700

+1cc to Government Pleader SR.No.20072



MG(CO)
GMY(12/04/2022)