

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.13642 of 2020

&

W.M.P.Nos.16943 and 16946 of 2020

Karunakaran

...Petitioner

Vs.

1. The Commissioner,
HR & CE Department,
119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai.
2. The Joint Commissioner,
Department of HR & CE,
Kottai Mariamman Temple,
Salem - 636 001.
3. The Assistant Commissioner,
Department of HR & CE,
Kottai Mariamman Temple,
Salem - 636 001.
4. The Inspector,
Department of HR & CE,
Omalur,
Salem - 636 455.

...Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the second respondent dated 16.07.2020 made in Na.Ka.No.14400/2019/AA4 and to quash the same, consequently direct the respondents to hand over the administration and management of the temple to the petitioner viz. Arulmigu Mannarsamy Pachaiyamman Temple, situate in S.No.11/4, Pethampatti Village, Murungampatti Village, Salem District.

For Petitioner : Mr.C.Prabakaran

For Respondents: Mr.S.Yashwanth
Additional Government Pleader

ORDER

This writ petition has been filed for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the second respondent dated 16.07.2020 made in Na.Ka.No.14400/2019/AA4 and to quash the same, consequently direct the respondents to hand over the administration and management of the temple to the petitioner viz. Arulmigu Mannarsamy Pachaiyamman Temple, situate in S.No.11/4, Pethampatti Village, Murungampatti Village, Salem District.

2.The petitioner has challenged the impugned order dated 16.07.2020 bearing reference Na.Ka.No.14400/2019/AA4 of the second respondent herein/The Joint Commissioner whereby the Assistant Commissioner has been directed to take steps to appoint a fit person under Section 47 and 49 of the HR & CE Act, 1959, after issuing proper notice to the petitioner.

3.Instead of replying to the Show Cause Notice for appointing a "fit person", the petitioner has directly approached this Court and has challenged the Impugned Communication addressed to the Assistant Commissioner with the copy mark to the petitioner. The Impugned Notice is pursuant to an order of this Court dated 09.12.2019 in W.P.No.34163 of 2019 filed by the petitioner himself for a mandamus to direct the respondents to consider the petitioner's representation dated 02.11.2019 which was allowed by this Court.

4.It is a specific case of the petitioner that the temple in question Arulmigu Mannarsamy Pachaiyamman Temple, situated in S.No.11/4, Pethampatti Village, Murungampatti Village, Salem District is a temple which is managed by the members of the community and that only the members of the community are entitled to manage the affairs of the temple and that the HR & CE Department has no rights to interfere with the day to day management of the said temple.

5.It is submitted that this Court being convinced with the case of the petitioner and had also ordered status quo on 25.09.2020.

6.That apart, it is submitted that the petition under Section 63(b) of the HR & CE Act, 1959 is pending before the second respondent herein/The Joint Commissioner. However, pending disposal of the aforesaid application, the Impugned Notice has been issued. Therefore, it is submitted that the impugned proceedings directing the Assistant Commissioner to take steps to appoint a "fit person" under Section Section 47 and 49 of the HR & CE Act, 1959 is without jurisdiction.

7.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

8.The petitioner has an alternate remedy before the Commissioner, HR & CE Department under Section 21 of the HR & CE Act, 1959 by way of Revision. That apart, there are several disputed question of facts which cannot be decided in a summary proceedings in a writ petition under Article 226 of the Constitution of India.

9.Under these circumstances, I am inclined to dismiss this writ petition by giving liberty to the respondents to act in furtherance of the Impugned Communication for appointing a "fit person" by issuing a appropriate Show Cause Notice to the petitioner.

10.It is open for the petitioner to reply to the Show Cause Notice to be issued. As and when such Show Cause Notice is issued by the Assistant Commissioner, HR & CE Department, rights of the petitioner shall be determined by the Assistant Commissioner, HR & CE Department.

11.Before such an order is passed, the petitioner's application filed under Section 63(b) of the HR & CE Act, 1959 which is said to be pending since 2009 before the second respondent is directed to be dispose the same after examining the merits and in accordance with law after hearing the petitioner. This exercise shall be carried out by the second respondent within a period of twelve weeks from the date of receipt of a copy of this order.

12.In view of the above, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

rgm

To

1. The Commissioner,
HR & CE Department,
119, Uthamar Gandhi Salai,
Nungambakkam, Chennai.

2. The Joint Commissioner,
Department of HR & CE,
Kottai Mariamman Temple,
Salem - 636 001.
3. The Assistant Commissioner,
Department of HR & CE,
Kottai Mariamman Temple,
Salem - 636 001.
4. The Inspector,
Department of HR & CE,
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Salem - 636 455.

+1cc to M/s.C.Prabakaran, Advocate, S.R.No.42222

+1cc to the Government Pleader, S.R.No.42509

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&
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PL(CO)
RGA(26/07/2022)