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W.P.No.14278 of 2022
and W.M.P.No.13510 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2022

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.No.14278 of 2022
and W.M.P.No.13510 of 2022

P.G.Santhaprakash

... Petitioner

Vs.

1.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Erode.

2.P.S.S.Santhappan

3.The Executive Officer,
Arulmighu Gurunathasamy Thirukoil,
Pudupalayam,
Anthiyur-638 501,
Erode District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of Writ of Certiorari, Call for the records of the 1st respondent herein in I.A.No.58 of 2021 in M.P.No.66 of 2021 dated 29.04.2022, quash the same.

For Petitioner : Mr.S.V.Karthikeyan

For R1 & R3 : Mr.K.Karthikeyan
Govt.Advocate (HR & CE)

For R2 : M/s.V.Rajeswari



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ORDER

The Writ Petition is filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari and to quash the impugned order passed by the 1st respondent / the Joint Commissioner, in dismissing the I.A.No.58 of 2021 in M.P.No.66 of 2021 dated 29.04.2022 filed by the petitioner.

2.The brief facts leading to filing of the above writ petition are as under:

It is admitted that the temple Arulmighu Gurunathasamy Temple, Anthiyur is a public temple. It is also stated by the petitioner that in the application filed under Section 84(1)(b) of the Madras Hindu Religious Endowments Act, 1926, (Act II of 1927) for a declaration to declare the Trusteeship as Hereditary and the Board of Commissioners for Hindu Religious Endowments, Madras vide its order No.4361 dated 08.08.1950, declared the grandfather of the petitioner one P.G.Santhappa Poojari as Hereditary Trustee of the temple.

It is the case of the petitioner that the said P.G.Santhappa Poojari



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died on 04.09.1973 and his son P.S.Santhappan filed an application in M.P.No.16 of 2006, under Section 54(1) of the HR & CE Act, 1959. It is his further case that the application was allowed on 21.02.2007 as the other legal heirs of Late P.G.Santhappa Poojari had no objection. It is admitted that P.S.Santhappan died on 12.07.2021. The 2nd respondent in the writ petition, who is the only son of P.S.Santhappan, filed an application in M.P.No.66 of 2021 under Section 54(i) of the HR & CE Act, 1959 (hereinafter referred to as Act) to appoint himself as the Hereditary Trustee in the vacancy due to the death of P.S.Santhappan. The said application is pending.

It is the case of the petitioner that he is also entitled to be appointed as Hereditary Trustee as the legal heir of the original Hereditary Trustee. Therefore, the petitioner filed an application in I.A.No.58 of 2021 in O.A.No.66 of 2021 to implead himself as party respondent in the application filed by the 2nd respondent in M.P.No.66 of 2021. The same was dismissed vide impugned order dated 29.04.2022 on the ground that the petitioner has not alleged any disqualification against the 2nd respondent who is the petitioner in M.P.No.66 of 2021. Challenging the same, the

above writ petition is filed.



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3.The 1st respondent filed a counter affidavit justifying the order and contended before this Court that the petitioner has alternate remedy of filing appeal before the Commissioner under Section 54(4) of the HR & CE, Act, 1959. It is also stated that the petitioner can also file a Revision under Section 21 of Tamil Nadu HR & CE Act. Since the statutory remedy available to the petitioner was not exhausted, the learned counsel for the 1st respondent submitted that the writ petition is not maintainable.

4.Learned counsel for the 2nd respondent submitted that the petitioner's father had earlier given no objection to the appointment of father of the 2nd respondent as Hereditary Trustee. Having admitted the exclusive right of the father of the 2nd respondent, it is not open to the petitioner to challenge the order of the Joint Commissioner, the 1st respondent herein.

5.The issue whether the petitioner or the 2nd respondent should be appointed as Hereditary Trustee is not within the exclusive jurisdiction of the 1st respondent. While Section 63(b) of the Act talks about the power and jurisdiction to decide a dispute whether a trustee holds or held office as a hereditary trustee. However if there is a rival claim to the office, the question who should be appointed as hereditary trustee of the religious



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institution, does not fall within the exclusive jurisdiction of the Joint Commissioner and therefore Civil Suit is competent. My view is also supported by the judgment of a Division Bench of this Court in the case reported in ***(1968) 1 MLJ 119 (A.Krishnaswami Raja vs. Krishna Raja and another Prem Anand V. The Commissioner, Hindu Religious and Charitable Endowments, Madras and another)***. Wherein it is held as follows;

“3.The jurisdiction of the Deputy Commissioner under Section 57(6) is confined to a decision whether a trustee holds or held office as a hereditary trustee. In other words, the Deputy, Commissioner can only decide as to the status of the office of the trusteeship, namely, whether it is hereditary. He is not competent to go into the further question as to which of the competing claimants is a hereditary trustee or whether both are joint hereditary trustees. That is a matter not covered by Section 57 of the Act and has to be decided only by a separate suit.

6.The above position is reiterated by this Court in several precedents of this Court. The position is not different under 1959 Act. Therefore, this Court is of the view that the impugned order dismissing the application filed by the petitioner before the 1st respondent cannot be



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assailed. However, it is open to the petitioner to establish his independent right to be appointed as hereditary trustee exclusively or along with anyone holding position as of Hereditary Trustee. However liberty of the petitioner is reserved to approach the Civil Court to establish his right. As pointed out by the division bench, the Civil Court may consider the issue without being influenced the order of the 1st respondent with regard to the right of 2nd respondent.

7.This Writ Petition stands dismissed accordingly. Consequently, the connected miscellaneous petition is closed. No costs.

23.09.2022

Index : Yes / No

Index : Yes / No

Speaking / Non Speaking

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To

1.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Erode.

2.The Executive Officer,
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Pudupalayam,
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S.S.SUNDAR, J.

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