



WP.No.21533/2017

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

WP.No.21533/2017 & WMP.Nos.22518 & 22519/2017 & 38765/2018

Water Pandal Charities at
Neidavayal Village rep by its
Sole Trustee T.Mohan Sundaram
Chettiyar, No.28/56,
Manimeghalai Street
Madipakkam,
Chennai 600 091.

.. Petitioner

Vs.

- 1.The Government of Tamil Nadu
rep.by its Secretary
The Hindu Religious & Charitable
Endowments Department
Fort St George, Chennai 600 009.
- 2.The Commissioner
The Hindu Religious & Charitable
Endowments Department,
119, Uthamar Gandhi Salai
Nungambakkam, Chennai
Tamil Nadu 600 034.
- 3.The Assistant Commissioner
The Hindu Religious & Charitable
Endowments Department,



WP.No.21533/2017

WEB COPY

119, Uthamar Gandhi Salai
Nungambakkam, Chennai
Tamil Nadu 600 034.

4.The Tahsildar/Executive Officer
Arulmigh Kari KrishnaPerumal Thirukkoil
Thiru Aayar Padi, Ponneri Taluk
Thiruvallur District.

.. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records passed by the 3rd respondent in Se.Mu.Na.Ka.No.604/2015/A2 dated 08.03.2017 and quash the same.

For Petitioner	:	Mr.S.Angamuthu
For Respondents	:	Mr.K.Karthikeyan Government Advocate [HR&CE]

ORDER

(1) The petitioner challenges the order of the 3rd respondent dated 08.03.2017 appointing a Fit Person in respect of a religious charity known as Thanneer Pandhal in Neidavayal Village, with a prayer to quash the same.



WP.No.21533/2017

WEB COPY

- (2) The brief facts that are necessary for the disposal of this writ petition are as follows. An extent of about 14.08 acres of land was granted as Inam for the purpose of having a "Water Pandhal" to provide drinking water to the persons who are passing through Neidavayal Village.
- (3) It is the case of the petitioner that the Inam was granted in favour of the trust. As per the said Inam, the petitioner's grandfather took possession of the property. The income of which is meant for doing charity specified. It appears that after the death of the petitioner's grandfather, the property was taken by his legal heirs to perform charity.
- (4) It is also evident that a suit came to be filed in OS.No.137/1968 on the file of the Sub Court, Chengalpattu, by petitioner's mother for framing a scheme under Section 92 CPC and to remove the then Managing Trustee of "Thanneer Pandhal" charity. The said suit was decreed. Another suit filed by one P.Balasubramaniam Chetty against petitioner's mother was dismissed. The petitioner states that his mother was looking after the Charity and she executed a Will



WP.No.21533/2017

WEB COPY

dated 18.11.1985 bequeathing the property as well the Management of the Trust in favour of the petitioner. Therefore, it is the specific case of the petitioner that the property which is in the name of Neidavayal "Thanneer Pandhal" Chathiram represented by the petitioner, is in the enjoyment of the petitioner and the petitioner is doing the charity out of income from the properties which were endowed for the charity. It appears that there was another suit and proceedings by which the petitioner's possession was confirmed as the Managing Trustee of the charity.

- (5) While so, the 3rd respondent passed the order on 08.03.2017 by appointing the 4th respondent as Thakkar/Fit Person of the Trust. From the order of appointment, it is seen that no notice was given to anyone including the petitioner as the Trustee of the religious charity. Except stating that the order is passed in public interest to protect the properties, there is no reference to any incident or about the mismanagement or non performance of the religious charity. Immediately on coming to know of the 3rd respondent's order, the petitioner has submitted a representation pointing out that the



WP.No.21533/2017

WEB COPY

properties are in his management and that the order to appoint a Fit Person has to be withdrawn.

(6) This Court is unable to sustain the impugned order for obvious reasons. It is admitted that no prior notice was issued to the petitioner before passing the impugned order appointing a Fit Person or Thakkar for the religious charity. The petitioner appears to be the lineal descendent of the founder of the charity by donating valuable lands. The petitioner's possession and administration of Trust is not disputed and there is no indication in the impugned order as to who was in the Management of the Trust at the time of passing the impugned order. Therefore, this Court is of the view that the impugned order is passed in violation of the principles of natural justice and is without an application of mind.

(7) Section 49 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, though does not require a show cause notice being issued before passing an order, it is well settled that the principles of natural justice should be read into the statutory provisions to save the statutory provisions as otherwise it may be



WP.No.21533/2017

WEB COPY

declared as unconstitutional for violation of fundamental rights.

- (8) The learned counsel for the 3rd respondent has filed a counter affidavit making serious allegations against the petitioner for mismanagement of the Trust. The fact that a scheme framed in respect of the Management of the Trust in OS.No.137/1968 and OS.No.143/1969 is not in dispute. While describing the charity in the counter affidavit as a Choultry, it is stated by the 3rd respondent that the choultry was dilapidated and no renovation was done. It is further stated that the charity was stopped and the Trust has become defunct. It is also stated that the petitioner is residing at Madras and being a non-resident of the Village, the 3rd respondent raised a question as to how it is possible for the petitioner to perform the objects of the Trust. Various other allegations were also made in the counter affidavit.
- (9) From the counter affidavit, it is seen that no opportunity was given to the petitioner before passing the order. When serious allegations are made in the counter affidavit, it only supports the case of the petitioner that an opportunity of being heard should be provided to



WP.No.21533/2017

WEB COPY

the petitioner before passing any order. The order impugned is also bad as no valid reasons are given.

(10) It is well settled that an order should be supported by reasons. In the absence of any reasons for exercising the power, this Court is unable to justify the order merely because there is an observation in the order that the order is passed in public interest and to protect the property of the Trust. The 3rd respondent has given so many reasons in the counter affidavit. It is well settled that the order should contain reasons. After passing the order, it is not open to the 3rd respondent to file a counter affidavit improving their case by bringing more facts or reasons.

(11) The Hon'ble Supreme Court, in ***Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others*** reported in ***AIR 1978 SC 851***, has held as follows:-

"8."The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or



WP.No.21533/2017

WEB COPY

otherwise.

Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought, out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji (1) "Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to, do. Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. Orders are not like old wine becoming better as they grow older."

- (12) For the reasons stated above, this Court is unable to sustain the impugned order. Hence, the writ petition is **allowed** and the impugned order of the 3rd respondent dated 08.03.2017 is set aside. However, it is open to the 3rd respondent to initiate proceedings in



WP.No.21533/2017

WEB COPY

case he has reasons to believe that the Trust is not properly managed by the writ petitioner or there is misfeasance or malfeasance. It is made clear that no final order can be passed behind the back of the petitioner. The petitioner is entitled to be heard and the 3rd respondent, after issuing show cause notice, may pass final orders only after hearing the objections/representations of the petitioner and affording sufficient opportunity to the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

06.09.2022

AP

Internet : Yes



WP.No.21533/2017

WEB COPY

To

- 1.The Secretary
Government of Tamil Nadu
The Hindu Religious & Charitable
Endowments Department
Fort St George, Chennai 600 009.
- 2.The Commissioner
The Hindu Religious & Charitable
Endowments Department,
119, Uthamar Gandhi Salai
Nungambakkam, Chennai
Tamil Nadu 600 034.
- 3.The Assistant Commissioner
The Hindu Religious & Charitable
Endowments Department,
119, Uthamar Gandhi Salai
Nungambakkam, Chennai
Tamil Nadu 600 034.
- 4.The Tahsildar/Executive Officer
Arulmighu Kari Krishna Perumal Thirukkoil
Thiru Aayar Padi, Ponneri Taluk
Thiruvallur District.



WEB COPY



WP.No.21533/2017

S.S.SUNDAR, J.,

AP

WP.No.21533/2017

06.09.2022