



W.P.(MD)No.14200 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.12.2022

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.(MD)No.14200 of 2011

and

M.P.(MD)No.2 of 2011

T.Ramesh Babu

... Petitioner

-vs-

1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam, Chennai.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
K.K.Nagar, Madurai-20.

3.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
K.K.Nagar, Madurai-20.

4.The Executive Officer,
A/m. Kalamega Perumal Thirukkivil,
Thirumogur, Madurai-625 107.

...Respondents

Prayer:- Writ Petition filed under Article 226 of the constitution of India, to issue a writ of Certiorari, to call for the records in pursuant to the impugned order passed by the third respondent in proceedings Se.Mu.Na.Ka.No.7160/2006.Aa2, dated 09.03.2009 and confirmed by the



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second respondent in R.P.No.4 of 2009, dated 18.10.2011 and quash the same.

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For Petitioner : Mr. N.S.Karthikeyan
For R1 to R3 : Mr. P.Subbaraj,
Special Government Pleader
For R4 : Mr. S.Manohar

ORDER

Heard Mr. N.S.Karthikeyan, Learned Counsel for the Petitioner, Mr. P.Subbaraj, Learned Special Government Pleader for the First to Third Respondents, Mr. S.Manohar, Learned Counsel for the Fourth Respondent and perused the materials placed on record, apart from the pleadings of the Petitioner.

2. The appointment of the Fourth Respondent as a Fit Person of the Arulmigu Devaparai B0aladhandayuthapani and Arulmigu Prathiyangaradevi Temple, under Section 49 of the Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as 'the Act' for short) is impeached in this Writ Petition.



3. It is brought to notice that the Writ Petition in W.P (MD) No. 1960 of 2009, challenging the same order was disposed by this Court by order dated 17.03.2009, directing the Petitioner to avail the statutory remedy under Section 21-A of the Act and when such revision was filed, the Joint Commissioner by order dated 18.10.2011 in R.P.No.4 of 2009 has confirmed the order passed by the Third Respondent, which is assailed in this Writ Petition.

4. It is borne out from the judgment and decree dated 25.08.2022 in the suit in O.S. No. 82 of 2010 filed by the Petitioner before the I Additional Subordinate Court, Madurai that the Temple of Arulmigu Devaparai Baladhandayuthapani and Arulmigu Prathiyangaradevi has been declared as denominational Temple belonging to the Sourashtra Brahmin Community of Madurai and the authorities under the Act have been restrained from interfering with the rights of the Petitioner as hereditary trustee of the said Temple. It would also assume significance that Section 107 of the Act reads as follows:-

“ 107. Act not to affect rights under Article 26 of the



Constitution: *Nothing contained in this Act shall, save as otherwise provided in section 106 and in clause (2) of Article 25 of the Constitution, be deemed to confer any power or impose any duty in contravention of the rights conferred on any religious denomination or any section thereof by article 26 of the Constitution.”*

In view of the aforesaid declaration made by the civil court coupled with the relevant statutory provision quoted supra, the impugned order appointing a Fit Person under Section 49 of the Act, which cannot be sustained, is set aside.

5. Learned Special Government Pleader appearing for the First to Third Respondents, on instructions, states that it is proposed to prefer appeal against the said judgment and decree passed in the aforesaid suit before the Appellate Court. It is made clear that setting aside of the impugned order shall not impede the rights of the concerned authorities to pass fresh orders depending upon the outcome of the said appeal intended to be filed in the matter.



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6. In the result, the Writ Petition is ordered on the aforesaid terms.

Consequently, connected Miscellaneous Petition is closed. No costs.

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Index : Yes/No

Note: Issue order copy by 23.01.2023.

To

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Nungambakkam, Chennai.
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K.K.Nagar, Madurai-20.
- 3.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
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P.D.AUDIKESAVALU,J.

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