



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.01.2022

CORAM

THE HON'BLE MR. JUSTICE M.SUNDAR

W.P(MD)No.496 of 2022

and

W.M.P. (MD)No.386 of 2022

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Arulmighu Kasi Vishwanathar Temple and
Madhavaperumal Temple rep. by its
Hereditary Trustee T.Vijayaraja,
S/o.Late. K.S.Thiruvarasu Pillai
Old No.28, New No.166, Koodapalli North Street,
Mahavaperumal Kovil Village,
Manachanallur Taluk,
Trichy District.

... Petitioner

Vs.

1.The Commissioner,
Hindu Religious and
Charitable Endowments Department,
119, Uthamar Gandhi Road,
Nungambakkam Highway Road,
Nungambakkam, Chennai - 600 034.

2.The Joint Commissioner,
Hindu Religious and
Charitable Endowments Department,
Srinivasa Nagar, Thiruvanaikoil,
Tiruchy - 625 002.

3.The Executive Officer,
Arulmigu Matrurai Varadheeswara Thirukovil,
Manachanallur Taluk,
Trichy District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, calling for the records pertaining to the proceedings issued by the 2nd respondent in Na.Ka.No.12860/2021/Aa.1 dated 20.09.2021 and quash the same as illegal and unconstitutional.

For Petitioner : Mr.C.Gangai Amaran

For Respondents : Mr.T.Amjalkhan,
Government Advocate for
Mr.C.Satheesh,
Government Advocate for R1 & R2
Dr.C.Guhaseelarupan for R3



O R D E R

'Arulmighu Kasi Vishwanathar and Madhavaperumal Temple situate in Koodapalli North Street, Madhavaperumal Kovil Village, Manachanallur Taluk, Trichy District' (hereinafter 'said temple' for the sake of convenience and clarity) is the nucleus of the captioned main writ petition, proceedings against hereditary trustee of the said temple under Section 53 of 'The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959)' (hereinafter 'TN HR&CE Act' for the sake of brevity, convenience and clarity), suspension of hereditary trustee under Section 53(4) of TN HR&CE Act / appointment of Fit Person and challenge to the same is the central theme of the captioned writ petition.

2. The deponent of the writ affidavit Mr.T.Vijayaraja, Son of Late.K.S.Thiruvarasu Pillai is a hereditary trustee of said temple having been so recorded along with four others vide order dated 07.12.1998 bearing reference செ.மு.ந.க.9987/98 M4 made by the second respondent.

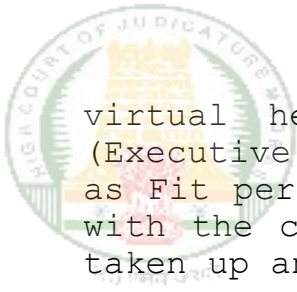
3. In the aforesaid backdrop, certain charges were framed against aforementioned individual (Mr.T.Vijayaraja) [six charges to be precise], the charges include alleged alienation of immovable properties of said temple bypassing Section 34 of TN HR&CE Act, pending enquiry into this charges, this individual (Mr.T.Vijayaraja) has been suspended and Fit person has been appointed under Section 53(4) of TN HR&CE Act by an order made by the second respondent being 'order dated 20.09.2021 bearing reference ந.க.எண்.12860/2016/ஆ1' (hereinafter 'impugned order' for the sake of brevity, convenience and clarity).

4. Notwithstanding very many averments in the writ affidavit and notwithstanding very many grounds raised in the writ affidavit, Mr.C.Gangai Amaran, learned counsel for writ petitioner in his campaign against the impugned order made two pointed submissions and they are as follows:

a) before the impugned order suspending Mr.T.Vijayaraja was made, he was not given an opportunity and therefore, impugned order is liable to be dislodged;

b) there is an alternate remedy available qua impugned order under Section 53(5) of TN HR&CE Act but that is not a bar for interference in writ jurisdiction. The allegation against Mr.T.Vijayaraja are unfounded and Mr.T.Vijayaraja is not guilty of the alleged charges.

5. Mr.T.Amjadkhan, learned Government Advocate, who is before this virtual Court submitted that Mr.C.Satheesh, learned Government Advocate accepts notice on behalf of respondents 1 and 2. Mr.C.Satheesh, learned private counsel, who joined this



virtual hearing accepted notice on behalf of third respondent (Executive Officer of another public temple, who has been appointed as Fit person qua said temple). Owing to the short point involved, with the consent of all the learned counsel main writ petition was taken up and heard out.

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6. In response to the arguments of learned counsel for writ petitioner captured and set out supra, learned State Counsel submitted as follows:

a) this is a case of suspension pending enquiry and appointment of Fit person under Section 53(4) of TN HR&CE Act and therefore, prior opportunity and consequent NJP (Natural Justice Principle) violation point issue does not arise;

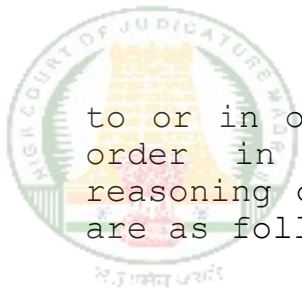
b) alternate remedy is certainly available to the writ petitioner, the same is efficacious;

c) the allegations are serious as it includes to alienation of immovable properties of said temple *inter alia* by way of collusive legal proceedings.

7. Learned private counsel, who accepted notice on behalf of third respondent submitted that post impugned order, Executive Officer of 'Arulmighu Matrurai Varadheeswarar Thirukovil, situate in Manachanallur Taluk, Trichy District' ('another temple' for the sake of brevity and convenience) has been appointed as Fit person of said temple in place of Executive Officer of Arulmighu Sundaraneshwarar (wrongly spelt/mentioned as 'சுத்தரத்னேஸ்வரர்' in impugned order) in Uttathur, Manachanallur Taluk, Trichy District, who was appointed as Fit person qua said temple vide impugned order. This Court is informed that such appointment is vide proceedings of second respondent dated 20.10.2021. There is no disputation about this and the writ petitioner accepts this position. To be noted, writ petitioner has arrayed only this Executive Officer i.e, Executive Officer of Arulmighu Matrurai Varadheeswarar Thirukovil as third respondent and writ petitioner has also sent a representation to the same Executive Officer, which is dated 29.12.2021 and it is at page 85 of typed set of papers. Therefore impugned order is treated as one appointing Executive Officer of another temple as Fit Person qua said temple.

8. Be that as it may, learned State Counsel for respondents 1 and 2 and learned private counsel for Fit person of said temple submit in one voice that the appointed Fit person i.e., third respondent has assumed charge qua said temple on 29.12.2021.

9. The rival submissions have been considered by this Court in the light of the case file and after analysis of the rival submissions and the case file before this Court, this Court is convinced that the prayer of the writ petitioner cannot be acceded



to or in other words, there is no ground to interfere qua impugned order in writ jurisdiction. The discussion and dispositive reasoning or in other words, the reasons for such a considered view are as follows:

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a) at the outset, this Court is of the view that the description of the writ petitioner itself is erroneous. The individual Mr.T.Vijayaraja (Son of Late K.S.Thiruvarasu Pillai) is not writ petitioner. As per the cause title 'Arulmighu Kasi Vishwanathar Temple and Madhavaperumal Temple, represented by its hereditary trustee T.Vijayaraja' is the writ petitioner. Though the writ petition deserves to be dismissed on this technical ground in this case, this Court refrains from taking this course owing to the facts and circumstances of the case on hand (without the same serving as a precedent). This is not hyper technical. This is relevant for two reasons. One is, the technical aspect of the matter and the other is, the case of the writ petitioner himself that he has been suspended vide the impugned order. Post suspension, the writ petitioner cannot describe himself as hereditary trustee of said temple. Therefore, from hereon any reference to writ petitioner will be construed as reference to T.Vijayaraja (Son of Late K.S.Thiruvarasu Pillai) for the sake of convenience;

b) As already alluded to supra, without dislodging the writ petitioner on the aforementioned technical ground, leaving open aforementioned issue this Court shall deal with the other arguments;

c) the first argument which is sheet anchor submission of the writ petitioner is, the writ petitioner has not been given an opportunity before the order of suspension was made. An attempt was made to place reliance of sub-section (3) of Section 53 of TN HR&CE Act. This is clearly misplaced. Sub-section (3) of Section 53 of TN HR&CE Act will apply only in cases of suspension by way of punishment under Section 53(2) of TN HR&CE Act. If it is a suspension by way of punishment under Section 53(2), a procedure has been laid down vide a set of Rules captioned 'The punishment of Office-Holders and Servants of Religious Institutions (other than Maths and Specific Endowments Attached thereto) Rules' (hereinafter 'said Rules' for the sake of convenience and clarity). Said Rules is a piece of subordinate legislation made by the delegate Government under Section 116(2) of TN HR&CE Act, which is a rule making power. It is not necessary to dilate further



on this as said rules pertain to giving an opportunity to the writ petitioner suspension by way of a punishment under Section 53(2) of TN HR&CE Act. In the case on hand, it is suspension pending disposal of charges framed against the trustee and appointment of Fit person under Section 53(4) of TN HR&CE Act. This puts an end to first and paramount / sheet anchor argument of the writ petitioner;

d) The next point turns on alternate remedy. The writ petitioner counsel says that alternate remedy is under Section 53(5) of TN HR&CE Act. This is incorrect. The appeal provided under Section 53(5) of TN HR&CE Act will apply only in cases of suspension by way of punishment under Section 53(2) of TN HR&CE Act. However, the impugned order is revisable under Section 21 of TN HR&CE Act. In this view of the matter there is an alternate remedy. Though alternate remedy rule is not an absolute rule and it is

only a rule of discretion, in the case on hand, TN HR&CE Act is a self-contained code and therefore, the alternate remedy cannot be bypassed. However in this case, without expressing any opinion on the alternate remedy question, I am dealing with the challenge to the impugned order on merits. That draws the curtains on the alternate remedy argument;

e) The next argument made by learned counsel for writ petitioner turns on the allegation i.e, charges being unfounded and the writ petitioner not being guilty. This turns on merits of the matter. This applies to the arguments of the State Counsel also. This Court refrains itself from going into the merits of the matter qua charges against the writ petitioner as that is a matter which is subject matter of enquiry. Any view in this order qua merits of the charges against the writ petitioner will impact the enquiry. Therefore no view is expressed. Let the enquiry proceed on its own merits and in accordance with law;

f) The next point which needs to be considered is a suit which the writ petitioner has filed. The writ petitioner has filed a suit in O.S.No.150 of 2021 on the file of Subordinate Judge's Court, Lalgudi. The writ petitioner has very fairly not suppressed the filing of the suit and copy of the plaint itself has been placed before this Court (pages 74 to 84 of the typed set of papers). A perusal of the plaint brings to light that the prayer is *inter alia* for permanent



from interfering with the peaceful possession and enjoyment of the suit properties and other reliefs. In this suit, the second respondent and the third respondent (third respondent described as Executive Officer of Arulmighu Sundaraneshwarar Temple and he has been arrayed as defendant No.2) have been added as parties. Plaint averments also bring to light that the matter is inextricably dovetailed with the allegations and the enquiry. The suit may well be hit by Section 108 of TN HR&CE Act. Owing to the narrow compass of the captioned writ petition, the facts and circumstances involved and considering the language in which the prayer in the civil suit is couched, I refrain myself from expressing any opinion on that and leave this question open for the jurisdictional Civil Court. The jurisdictional Civil Court shall decide the question of bar of civil suit under Section 108 of TN HR&CE Act if raised by defendants 1 and 2 in the suit.

g) There is yet another factor of relevance. In the synopsis / dates and events, after paragraph 14 there is paragraph (g). Learned counsel for writ petitioner submits that this is a typographical error and requests that paragraph '(g)' may please be read as paragraph '15'. I do so. In paragraph 15, it has been averred as follows:

'15. It is submitted that admittedly the said temple is declared as a private temple and it is not a public temple.'

On being pointed out about above averment and on also being pointed out that if it is a private temple, the question of office of trustee of said temple being declared as hereditary and thereafter the writ petitioner being recorded as hereditary trustee vide 07.02.1988 proceedings referred to supra does not arise, learned counsel for writ petitioner fairly submitted that there is no declaration that said temple is a private temple. This puts an end to this argument. This Court also finds that in ground (h), there is a reference to **K.Ekambaram and another Vs. Commissioner HR & CE of Administration Department etc.**, reported in **1995(2) L.W.213** and **The Commissioner of HR & CE Endowments (Admn.) Department Vs. K.Jothiramalingam** reported in **AIR 1985 Madras 341**. These case laws were not pressed into service.

(h) Learned counsel for writ petitioner at the hearing fairly submitted that he is not pressing into service aforementioned two case laws. Therefore under the normal circumstances, this Court would not have embarked upon the exercise of a discussion on this



aspect of the matter. However, considering the nature of the matter on hand, this Court deems it appropriate to set out a short discussion on these two case laws. *K.Ekambaram's* case reported in 1995 (2) L.W.213 rendered by a Hon'ble Division Bench of this Court is clearly and completely distinguishable on facts as it pertains to appointment of a Executive Officer under Section 45 of TNHR&CE Act unlike appointment of a Fit Person as in the case on hand. To be noted, appointment of Fit Person is a temporary, transitory measure as opposed to appointment of Executive Officer under Section 45 of TNHR&CE Act. There is one more reason why *K.Ekambaram's* case is not applicable (distinguishable on facts) as that was a case where appointed trustees who were appointed in accordance with TNHR&CE Act were in office unlike case on hand where hereditary trustee has been suspended pending enquiry qua charges and Fit Person has been appointed under Section 53(4) owing to this temporary vacuum. Likewise, *K.Jothiramalingam's* case reported in AIR 1985 Madras 341 (this Court has looked up the equivalent in SCC Online i.e., 1984 SCC Online Mad 274) is also clearly and completely distinguishable on facts as that is also a case of appointment of Executive Officer under Section 45 of TNHR&CE Act. It was not a case where the trustees in office were suspended. Therefore, both the case laws being clearly and completely distinguishable on facts do not come to the aid of writ petitioner in the case on hand which is a case of temporary/transitory appointment of a Fit Person, qua hereditary trustee who has been placed under suspension pending enquiry into charges i.e., owing to six charges pertaining to which enquiry is underway.

10. In the light of the discussion and dispositive reasoning i.e., reasons adumbrated supra, captioned writ petition fails.

11. Ergo, captioned writ petition is dismissed. Consequently, captioned WMP is also dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar(T&P)

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/ /2022

Sub Assistant Registrar(CS)



1.The Commissioner,
Hindu Religious and
Charitable Endowments Department,
119, Uthamar Gandhi Road,
Nungambakkam Highway Road,
Nungambakkam, Chennai - 600 034.

2.The Joint Commissioner,
Hindu Religious and
Charitable Endowments Department,
Srinivasa Nagar, Thiruvanaikoil,
Tiruchy - 625 002.

+1 CC to M/s.C.GUHASEELARUPAN, Advocate (SR-1606[F] dated
12/01/2022)

+1 CC to M/s.SPL.GP (SR-1680[F] dated 19/01/2022)

W.P(MD) No.496 of 2022
and W.M.P. (MD) No.386 of 2022
12.01.2022

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