



WEB COPY

W.P. (MD) Nos. 6465 and 6466 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. (MD) Nos. 6465 and 6466 of 2013

and

M.P. (MD) Nos. 2, 2, 3 and 3 of 2013

1.S.P.Mariappan

2.S.Senthilkumar

... Petitioners in both W.Ps.,

/vs./

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

2.The Joint Commissioner,
Hindu Religious and Charitable Endowments,
Tuticorin.

3.The Assistant Commissioner,
Hindu Religious and Charitable Endowments,
Tuticorin.

... Respondents in both W.Ps.,

PRAYER in W.P. (MD) No. 6465 of 2013: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records in Sa.Mu.Na.Ka.No. 1312/2013-2/A3 dated 15.03.2013 on the file of 3rd respondent with regard to Perumal Temple situated at Tharuvaikulam Village, Otapidaram Taluk, Tuticorin District and quash the same as illegal, unconstitutional, and ultra vires and for consequential reliefs.

PRAYER in W.P. (MD) No. 6466 of 2013: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records in Sa.Mu.Na.Ka.No. 1312/2013-1/A3 dated 15.03.2013 on the file of 3rd respondent with regard to Pathrakaliyamman Temple situated at Tharuvaikulam Village, Otapidaram Taluk, Tuticorin District and quash the same as illegal, unconstitutional, and ultra vires and for consequential reliefs.

For Petitioners
in both W.Ps.,

: M/s.P.Manimegalai for
Mr.V.Raghavachari

For Respondents
in both W.Ps.,

: Mr.P.Subbaraj
Special Government Pleader



COMMON ORDER

By this common order both the writ petitions are disposed of.

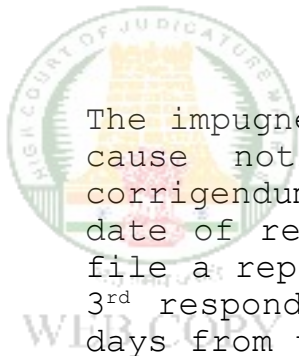
2. In these writ petitions, the petitioners have challenged the impugned order dated 15.03.2013 of the 3rd respondent in respect of two temples called Perumal Temple and the Pathrakaliamman Temple situated at Tharuvaikulam Village, Otapidaram Taluk, Tuticorin District.

3. By the impugned order, the 3rd respondent has appointed a Fit Person under Section 49(1) of the HR & CE Act, 1959. The only reason stated in the impugned notice is that the Fit Person has been appointed for better administration of the aforesaid temple. The law and the subject has been settled by this Court in paragraph No.12 and 13 of the judgment of this Court in the case of **P.R.Thirupathy and others Vs. The Commissioner, HR & CE, Chennai and another** reported in **2015 Writ L.R.479**, which reads as under:-

"12. Further, the order appointing a fit person should be a speaking order and disclose reasons as to why the authority namely, Assistant Commissioner, was of the opinion that the affairs of the temple were not conducted in accordance with the provisions of the Act and there was a need for immediate appointment of a fit person. In the impugned order, there is a reference to a report of the Inspector, H.R.&C.E., Bhavani, dated 24.06.2013. The contents of the report have not been referred to in the impugned order nor does the impugned order state that the report was the basis for appointment of the fit person. It may not be necessary for the Assistant Commissioner to pass an elaborate order, but the order should speak for itself and give reasons as to why in the opinion of the Assistant Commissioner, the power under Section 49(1) of the Act was exercisable. In the absence of reasons for appointment of the fit person, the impugned order has to be necessarily held to be a non-speaking order and therefore, an order passed in violation of the principles of natural justice.

13. It may be true that the petitioner had participated in the opening of the hundial along with the fit person and had knowledge of his appointment. In my view that by itself will not validate the impugned order nor the inherent defects therein would stand cure."

4. Since the impugned order has been passed without giving an opportunity of hearing to the petitioner before proceeding to appoint the Fit Person and since the impugned order is bereft of any details giving a reason for better administration of the temple, I am inclined to quash the impugned order and remit the case back to the 3rd respondent to pass fresh orders. It is needless to state that before passing such orders, the petitioner shall also be heard.



The impugned order, which stands quashed, shall be treated as a show cause notice. Liberty is given to the respondents to issue corrigendum to the said notice, within a period of 60 days from the date of receipt of a copy of this order. The petitioner shall also file a reply to the same within a period of 30 days thereafter. The 3rd respondent shall pass appropriate orders within a period of 30 days from the date of receipt of such reply from the petitioner. The entire exercise shall be completed within a period of 120 days from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

mm

To

- 1.The Commissioner,
Hindu Religious and Charitable Endowments
Nungambakkam High Road,
Chennai.
- 2.The Joint Commissioner,
Hindu Religious and Charitable Endowments,
Tuticorin.
- 3.The Assistant Commissioner,
Hindu Religious and Charitable Endowments,
Tuticorin.

+1 CC to M/s.V. RAGHAVACHARI, Advocate (SR-17591[F] dated 08/04/2022)

+1 CC to M/s.SPL.GP (SR-17230[F] dated 07/04/2022)

W.P. (MD) Nos. 6465 and 6466 of 2013
06.04.2022

RK(20/04/2022) 3P 6C