



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.01.2022

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THE HON'BLE MR. JUSTICE M.SUNDAR

W.P(MD)No.1666 of 2022

and W.M.P. (MD)No.1470 & 1471 of 2022

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P.Sivasankaran Pillai

... Petitioner

-Vs-

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

2.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Madurai.

3.The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Virudhunagar.

4.P.Pon Venkatesh Kumar

5.K.Vairamuthu

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari calling for the records relating to the impugned proceedings in Se.Mu.Na.Ka.No.8872/2021/A1, dated 06.01.2022 issued by the 2nd respondent and quash the same as illegal.

For Petitioner : Mr.VR.Shanmuganathan

For Respondents : Mr.M.Lingadurai,
Special Government Pleader for R1 to R3

Mr.M.Vallinayagam, Senior Counsel,
instructed by Mr.P.Athomoolapandian,
for Mr.P.Arun Jayatram for R4 & R5

O R D E R

Captioned matter pertains to a public temple which goes by the name 'Arulmighu Sivasubramania Swamy Temple, situate in Sivanthipatti, Mamasapuram, Srivilliputhur Taluk, Virudhunagar District' (hereinafter 'said temple' for the sake of convenience and clarity.



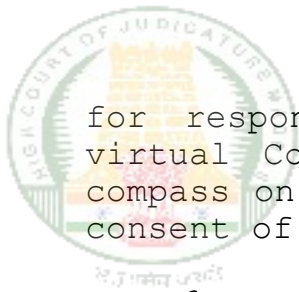
2. Said temple is the nucleus of the captioned main writ petition and appointment of non-hereditary trustees to said temple and challenge to the same is the central theme of the lis in the captioned writ petition.

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3. Mr.V.R.Shanmuganathan, learned counsel on record for writ petitioner submitted that in and by an 'order dated 06.01.2022 bearing reference 'செ.மு.ந.க.எண்'.8872/2021/ஆ1' (hereinafter 'impugned order' for the sake of convenience and clarity) made by the second respondent, respondents 4 and 5 (private respondents) have been appointed as non hereditary trustees of said temple. Learned counsel submitted that this order is bad in law owing to very many reasons (there will be elaboration on this infra) and therefore the captioned writ petition has been filed, is his further say.

4. Learned counsel for writ petitioner set out facts and short facts shorn of elaboration or in other words facts that are imperative for appreciating this order are that said temple is a public temple; that a scheme was framed for the said temple vide a decree dated 28.08.1923 made in O.S.No.34 of 1922 on the file of the Additional Sub Judge's Court of Ramnad at Madura ('said scheme', 'said suit' and 'said civil Court' for the sake of convenience and clarity); that vide said scheme, a board of trustees numbering three are to be appointed qua said temple (one hereditary trustee and two non-hereditary trustees); that writ petitioner's father (late Puthiyavan Pillai) filed an application in I.A.No.603 of 1984 in said suit *inter alia* with a prayer for appointment of two persons as trustees from a particular community; that this application came to be allowed in and by an order dated 13.07.1994 made by said civil Court; that the writ petitioner was recorded as a hereditary trustee qua said temple in and by an order dated 23.08.1996 made by the then Deputy Commissioner of 'Tamil Nadu Hindu Religious and Charitable Endowment Department' [hereinafter 'TN HR&CE Dept.' for the sake of convenience and clarity] under the provisions of 'The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act No.22 of 1959)' [hereinafter 'TN HR&CE Act' for the sake of brevity, convenience and clarity] ; that under such circumstances, the second respondent by the impugned order has appointed respondents 4 and 5 (private respondents) as non-hereditary trustees; that the impugned order is bad in law *inter alia* as the second respondent lacks jurisdiction and as transparent procedure has not been followed are the primary grounds on which captioned writ petition is predicated.

5. Mr.M.Lingadurai, learned Special Government Pleader, who has joined this virtual Court accepted notice on behalf of respondents 1 to 3 (official respondents), Mr.P.Arun Jayatram, learned counsel accepted notice on behalf of respondents 4 and 5 (private respondents) and Mr.M.Vallinayagam, learned Senior Advocate instructed by Mr.P.Athimoolapandian on behalf of counsel on record



for respondents 4 and 5 (private respondents) are before this virtual Court and owing to the nature of the matter and narrow compass on which it turns, main writ petition was taken up with the consent of all the learned counsel.

6. Notwithstanding very many averments in the writ affidavit and notwithstanding very many grounds raised in the writ affidavit, learned counsel for writ petitioner, in his campaign against the impugned order made pointed submissions and a summation of the same are as follows:

a) said temple being a non-listed temple, the second respondent does not have jurisdiction to appoint non-hereditary trustees and the non-hereditary trustees if at all should have been appointed only by the third respondent (Assistant Commissioner of TN HR&CE Dept.);

b) a transparent procedure for appointment of non-hereditary trustees has not been followed;

c) respondents 4 and 5, who have now been appointed as non-hereditary trustees vide the impugned order do not belong to the community from which they should hail from for being entitled for appointment as non-hereditary trustees, the community certificates have not been correctly verified and therefore, their appointments are bad in law.

7. In response to the above argument, learned Special Government Pleader made submissions a summation of which is as follows:

a) it cannot be gainsaid that the second respondent does not have jurisdiction as the decree made by the said civil Court way back in 1923 continues to operate in the light of Section 118 (2)(b)(i) of TN HR&CE Act and therefore, the authority under TN HR&CE Act appointing non-hereditary trustees is not alien to the scheme of the statute;

b) advertent to a notice dated 27.03.2003 issued by the third respondent (Assistant Commissioner) calling for applications (page 64 of typed set of papers) it was submitted that adequate publicity was given and it cannot be gainsaid that transparent procedure has not been followed;

c) the report of the jurisdictional Inspector has been thoroughly examined and the appointment has been made only after examination of the jurisdictional Inspector of TN HR&CE Dept., who has submitted the report after making local inquiry.



8. Mr.M.Vallinayagam, learned Senior Counsel appearing on behalf of the counsel on record for the private respondents (respondents 4 and 5) made submissions, a summation of which is as follows:

a) the writ petitioner cannot place reliance on order dated 13.07.1994 made in I.A.No.603 of 1984 in O.S.No.34 of 1922 on the file of said civil Court as there is a clear bar in the light of Section 108 read with Section 118 (2) (b)(i) of TN HR&CE Act [the sequitur submission is, application if any should have been made only before an appropriate authority under the corresponding provision of TNHR&CE Act];

b) the writ petitioner cannot make a complaint about the appointment of non-hereditary trustees as he is not aggrieved by in any manner by the appointment and it was emphasized that the writ petitioner has already been recorded as a hereditary trustee (as already alluded to supra) and he is not in any manner dislodged by such appointments.

9. By way of reply to the submissions made by the learned State Counsel and learned Senior Counsel, learned counsel for writ petitioner reiterated his submissions made in the opening arguments.

10. This Court carefully considered the aforementioned rival submissions, analyzed the same in the context of the case file placed before this Court. This exercise leads this Court to the conclusion that the impugned order cannot be interfered with in writ jurisdiction. The discussion and dispositive reasoning i.e., reasons for such a considered view are as follows:

a) at the out set, it has to be made clear that the order dated 13.07.1994 made in I.A.No.603 of 1984 in O.S.No.34 of 1922 by the said civil Court is clearly a nullity as it is hit by Section 108 of TN HR&CE Act. The buttressing legal aspect qua this order being a complete nullity is paragraph 4 of the said order as rightly pointed out by learned State Counsel. Paragraph 4 of the said order of said civil Court reads as follows:

“மனுதாரர் இந்து சமய அற நிலைய ஆட்சித் துறை துணை ஆணையாளர் முன்பாக தன்னை அறங்காவலராக நியமிக்கக் கோரி மனு கொடுத்தார். துணை ஆணையாளர் அந்த மனுவினைத் தள்ளுபடி செய்து விட்டார். அதன் மீது மனுதாரர் இந்து சமய அறநிலைய ஆட்சித் துறை ஆணையாளருக்கு மேல்முறையீடு செய்திருந்தார். அந்த மேல்முறையீடும் தள்ளுபடி செய்யப்பட்டு விட்டது. அதன் பிறகு இந்த மனுவினை இந்நீதிமன்றத்தில் தாக்கல் செய்துள்ளார்.”



A perusal of paragraph 4 (extracted and reproduced supra) makes it clear that the writ petitioner's father who was well aware that he has to approach only the appropriate authority under the corresponding provision of TN HR&CE Act, has done so, unsuccessfully carried the matter up to Commissioner and thereafter filed an application before said civil Court. To be noted, as against this order of Commissioner TN HR&CE Dept. also there are two more tiers of appeal {suit under Section 70 and appeal to High Court under Section 70(2)}. Be that as it may, the said civil Court ought not to have entertained the application. In any event in the light of Section 108 of TN HR&CE Act, it is very clear that this order dated 13.07.1994 made in I.A.No.603 of 1984 in in O.S.No.34 of 1922 is a nullity;

b) as a continuation of the above reason, this Court reminds itself that in a long line of authorities this Court has repeatedly held that the TN HR&CE Act is a self contained Code and an illustrative but not exhaustive list of this line of case laws is as follows:

(i) In *R.Lakshmi Narasimha Bhattar v. The Commissioner, HR&CE case*, reported in 2011 SCC On Line Mad 2474, while inter-alia dealing with a honour (during 'Viswaroopa Dharsanam' in Arulmigu Aranganatha Swamy Thirukovil Srirangam, Trichy) and while referring to earlier orders vide Chapter V inquiry proceedings after holding that remedy is by way of statutory revision under Section 21, a learned Single Judge held that TNHR&CE Act is a self contained code. Most relevant portions are contained in paragraphs 25 and 27 and the same read as follows:

Relevant portion in paragraph 25:

'...Ultimately, if at all the petitioner's grievance to establish an honour attached to his office if any held it can be gone into only by instituting a proceedings under Section 63(e) of the TN HR&CE Act followed by a suit under Section 70(1) and a further appeal to this court under section 70(2) of the Act. Merely accusing the Joint Commissioner cum Executive Officer as biased or contending that the remedy by way of revision need not be availed since the Joint Commissioner cum Executive Officer has no jurisdiction to pass orders cannot be countenanced by this court.



Paragraph 27:

27. In fact the petitioner's hereditary right to receive honour is seriously under challenge by the temple management by relying upon the Tamil Nadu Act 2/1971 and also the allegation was that Rengesa Prohida service is done only by temple servants and hereditary succession over such Kaingaryams is not recognised under law. The so-called custom pleaded was also broken many times and reading of Panchangam was done by other families. All the more reasons, the petitioner has to only approach the authority under the Act and cannot bypass the Act. The Act is the self contained code. Only after exhausting all the remedies, a statutory appeal to this court is available over the action of the authorities. Under these circumstances, W.P.(MD) Nos. 9202 and 9263 of 2011 are also liable to be rejected.'

(Underlining made by this Court for ease of reference)

As there are long line of authorities as alluded to supra for the proposition that TN HR&CE Act is a self contained Code, this Court deems it appropriate to give a list of case laws alone in order to avoid this order becoming verbose, which is as follows:

(ii) order dated 21.06.2016 in W.P(MD) No.10840 of 2016 vide V.Subramanian v. The Joint Commissioner, HR&CE Department case [Paragraph 7];

(iii) Palanichamy v. The Commissioner, HR&CE Department case, reported in 2016 SCC OnLine Mad 21977 [Paragraph 30];

(iv) M/s. Temple Worshippers Society v. Government of Tamil Nadu reported in 2017 SCC OnLine Mad 7178 [Paragraph 5(i)];

(v) order dated 09.11.2021 in W.P.(MD) No.20109 of 2021 vide R.S.Mani v. The Joint Commissioner [Paragraph 11]; (v) order dated 26.04.2019 made in W.P(MD) No.10392 of 2019 reported in 2019 SCC OnLine Mad 10975 (C.Rajamohan Vs. Commissioner and another) [Paragraph 2].'

c) before proceeding further, as part of this discussion and dispositive reasoning it is made clear that what would now govern the said temple is the decree originally made way back in 1923 viz., decree dated 28.08.1983 in O.S.No.34 of 1922 on the file of



said civil Court. This is owing to the operation of Section 118(2) of TN HR&CE Act. This is also owing to the position that there is no disputation or disagreement that there is nothing repugnant in this scheme qua TN HR&CE Act;

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d) This takes this discussion to the impugned order. The first point argued by learned counsel for writ petitioner is on jurisdiction. The said temple is a scheme temple. This means that it is now governed by a corresponding provision under TN HR&CE Act. In other words, said decree made by said civil Court way back in 1923 now becomes a scheme settled by the Joint Commissioner, TN HR&CE Dept., within the meaning of Section 64(1) of TN HR&CE Act. Now that it is a scheme temple and governed by this scheme, the question is who should make appointments in accordance with the scheme. The scheme, as already alluded to supra talks about three trustees (one hereditary trustee and two non-hereditary trustees). A hereditary trustee has to be recorded under TN HR&CE Act and that has been duly done. The writ petitioner has been recorded as hereditary trustee, post demise of writ petitioner's father on 16.11.1995 (to be noted, this Court is informed in the hearing that the date of demise of writ petitioner is 16.11.1995). As far as the non-hereditary trustees are concerned, the provisions governing the appointments are Sections 47 and 49 of TN HR&CE Act depending on which slot a given temple falls qua Section 46 of TN HR&CE Act. In the case on hand, this court is informed that said temple is a non-listed temple. If it is a non-listed temple, the provision is Section 49 of TN HR&CE Act. Section 49 of TN HR&CE Act has to be read in conjunction with Section 47(1)(a) and Section 47(2) of TN HR&CE Act. Therefore the authority who should appoint non-hereditary trustees is 'appropriate authority' under corresponding provision of TN HR&CE Act within the meaning of Section 118(2). If it is a non-listed temple it is the third respondent. However, in the case on hand, the appointment has been made by the second respondent who is a higher authority. Law on the point is clear that when powers are vested with a particular authority in a hierarchy of officers, if the power is exercised by a higher authority in the hierarchy, the same by itself may not in all given circumstances become a ground for dislodging an impugned order. A long line of authorities in this regard support the proposition that a higher authority in the hierarchy can make an order and that by itself

<https://hcservices.ecourts.gov.in/hcservices> become a ground to dislodge an order;



e) Be that as it may, in the light of the order which this Court now proposes to make, the question as to whether said temple continues to be a non-listed temple is left open. The reason is there is a specific set of rules which goes by the name 'The Manner of Publication of the List of Religious Institutions (other than Maths or 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. This is a set of rules wherein a temple can move from one list to the other depending on the income. Therefore, these are all matters of record and facts which have to be gone into in a quasi judicial legal drill;

f) This takes us to the next argument pertaining to the procedure not being followed. The procedure for appointment of non-hereditary trustees if at all that be so is adumbrated in Section 7-A of TN HR&CE Act but in the light of sub-section (5) Section 7-A, the same is not applicable to scheme temples. In the case on hand, there is no disputation or disagreement that said temple is a scheme temple and therefore, the procedure adumbrated in Section 7-A would not apply to said temple. This means that there is no specific procedure that has been adumbrated and more particularly there is no codified procedure that has been put in place qua appointment of non-hereditary trustee in cases of this nature, therefore the notices i.e., public notices issued by the TN HR&CE Dept. not once but twice, one dated 27.03.2003 and again on 10.01.2007 are good enough and they pass muster qua transparency point;

g) This takes us the discussion to the last point urged and that last point urged is that respondents 4 and 5 do not qualify to be appointed as non-hereditary trustees owing to not hailing from the community from which they should hail for the purpose of being entitled to be appointed as non-hereditary trustees in the light of the scheme that has been put in place. This turns heavily on facts. As the same turns heavily on facts, the matter gravitates towards alternate remedy. Alternate remedy qua impugned order is available to the writ petitioner by way of a statutory revision to the first respondent (Commissioner, TN HR&CE Dept.) under Section 21 of TN HR&CE Act. On alternate remedy, this Court makes it



clear that a) whether the writ petitioner is aggrieved by the impugned order b) limitation and c) the observations of this Court that the 13.07.1994 order is a nullity shall be borne in mind if the writ petitioner chooses to avail the alternate remedy and approach the Commissioner TN HR&CE Dept.;

h) On limitation, this Court also makes it clear that the law obtaining as of today is laid down in **Rukmani Ganesan's case [Ganesan, represented by its power agent G.Rukmani Ganesan Vs. Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments Board and others reported in (2019) 7 SCC 108]**. Rukmani Ganesan case will also apply when it comes to computation of limitation. As regards the submission turning on Section 118(2) of TN HR&CE Act, there is no difficulty in accepting the submission of learned Senior Counsel that the 1923 decree would not be saved as it is not repugnant to the TN HR&CE Act or the provisions thereunder;

i) As regards the argument of writ petitioner not being aggrieved by the impugned order it has already been delineated supra that this question is left open;

j) Before concluding on the question of appointment of trustees i.e., non-hereditary trustees under Sections 47 and 49 of TN HR&CE Act being made applicable to scheme temples, the case law / precedent is M.Krishnaraju Chetty case [**M.Krishnaraju Chetty Vs. The Commissioner of HR&CE Board**] cited by learned Senior Counsel. In identical circumstances (incidentally a decree made by a civil Court in the same year i.e., 1923) a Division Bench of this Court made it clear that the principle that the duty to fill up vacancies among trustees has been imposed on the authorities under the Act will apply even to the schemes framed by the High Court prior to the advent of the Act i.e., TN HR&CE Act. This is articulated in paragraph 4 of this order of Hon'ble Division Bench which reads as follows:

'4. Rajamannar, CJ., speaking for a Division Bench of this Court in Commissioner, Hindu Religious and Charitable Endowments v. Janakirama Ayyar (1957) 1 M.L.J. 249 : 70 L.W. 365 : I.L.R (1957) Mad. 756 : A.I.R. 1958 Mad. 79, while interpreting a provision which is an *pari materia* with Section 118 of the Act observed that-

'Section 103(e) (ii) of the Madras Hindu Religious and Charitable Endowment Act, 1951, clearly



provides that all powers conferred and all duties imposed on a Court by a scheme settled by a Court shall be deemed to have been conferred or imposed on the Area Committee or the Commissioner, as the case may be, that the power and duty of filling up vacancies among the resident trustees should be deemed to have been conferred or imposed on the Commissioner in that case after the passing of the Act and that the Court did not continue to be proper authority for that purpose.'

Though directly the question did not arise in that case as to what would happen to a scheme framed by the High Court, we have no hesitation in applying the above principle even to schemes framed by the High Court prior to the passing of the Act. In this view, therefore, there is a bar for the maintainability of this application and the appellant can only seek his redress before the statutory authorities nominated for the purpose. These provisions cannot be by-passed and we therefore agree with Sethuraman, J., and dismiss this appeal. There will be no order as to costs. The appellant is given two months time to take such steps as are necessary under the Act for filling up the present vacancy.'

11. In the light of the discussion, dispositive reasoning and the sequitur set out supra as mentioned earlier there is no ground to interfere qua impugned order in writ jurisdiction.

12. Ergo captioned writ petition is dismissed albeit preserving the rights of the writ petitioner to the limited extent qua a statutory revision under Section 21 of TN HR&CE Act as set out supra. Consequently, captioned WMPs also fail and the same are also dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar (AD I)

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Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

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To

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

2.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Madurai.

3.The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Virudhunagar.

+1 CC to M/s.SPL.GP (SR-3327[F] dated 01/02/2022)

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and W.M.P. (MD)Nos.1470 & 1471 of 2022
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MGJ(15.02.2022) 11P 5C