BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.02.2022

CORAM

THE HONOURABLE MR. JUSTICE C.SARAVANAN

Writ Petition (MD) No.2955 of 2022

and

W.M.P.(MD)Nos.2590 to 2592 of 2022

S.Parimanam .. Petitioner

Versus

1.The Joint Commissioner,
Hindu Religious and Charitable Endowments
Administration Department,
Theppakualm Theru,
Neelagirishwarar Thoppu Thiruvankoil,
Tiruchirappalli - 620 005.

2.The Assistant Commissioner,
Hindu Religious and Charitable Endowments
Administration Department,
Theppakualm Theru,
Neelagirishwarar Thoppu Thiruvankoil,
Tiruchirappalli - 620 005.

3.The Inspector,
Hindu Religious and Charitable Endowments
Administration Department,
Theppakualm Theru,
Neelagirishwarar Thoppu Thiruvankoil,
Tiruchirappalli - 620 005.

4.The Fit Person,
59, Arulmighu Pillaiyar Temple,
Big Sowrastra Street,
Trichy Town.
[Now, serving as
The Executive Officer of Arulmighu Boologanathar Swamy Temple,
Keelaran Salai,Trichy.] .. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari, calling for the records of the impugned order passed by the second respondent herein in his proceedings in nr.K.e.f.vz;.6081/2021/m5, dated 21.01.2022 and the consequential impugned order passed by the fourth respondent herein in his letter, dated 02.02.2022 and quash the same as illegal.

For Petitioner	:	Mr.V.Meenakshisundaram
For R1 to R3	:	Mr.P.T.Thiraviam Government Advocate
For R4	:	Ms.S.Devasena

ORDER

The petitioner has challenged the order dated 21.01.2022, bearing Se.Mu.Na.Ka.No.6081/2021/A5, passed by the Joint Commissioner under Section 49 of the Hindu Religious and Charitable Endowments Act, 1959 [hereinafter referred to as ''the H.R. & C.E. Act''].

2.The petitioner has challenged the impugned order primarily on two grounds, that there is manifest violation of principles of natural justice, inasmuch as no notice was issued to the petitioner before the impugned order was passed. It is submitted that the impugned order has been passed appointing the fourth respondent as fit person, who is the Executive Officer of Arulmigu Boologanathar Swamy Temple, which came to the knowledge of the petitioner only after the fourth respondent informed the petitioner by a consequential intimation, dated 02.02.2022. It is submitted that the law on this aspect has been settled by the Division Bench of this Court in the context of Section 45 of the H.R. & C.E. Act, in **N.Sivasubramanian vs. Government of Tamil Nadu, Rep. by its Secretary** reported in **2006 (2) CTC 49 (DB).**

3.The learned counsel for the petitioner would therefore submit that above decision was followed by this Court even in the context of proceedings under Section 49 of the H.R. & C.E. Act. In this connection, the learned counsel for the petitioner placed reliance on the decision of this Court in **Sri Devi Ellamman Paripalana Sangam vs. The Assistant Commissioner, Hindu Religious and Charitable Endowments Board** reported in **2010 (2) CWC 915.** A specific reference was made to the ratio in Paragraphs 12 to 15, which read as under:-

> *''12.Under Section 49, any Religious Institution which is not a listed one, the Assistant Commissioner has power to appoint Trustee including fit persons. The said*

Section would show that the power of the Assistant Commissioner has got power to appoint Trustees and fit person. However, what is to be seen is while exercising the power under Section 49, whether the authority has followed due process of law in this case. The impugned order does not show as to whether any complaint was lodged by the third respondent any notice was given to the petitioner any enquiry was conducted and a report was submitted. Moreover, the Petitioner-Sangam is administering the Temple and copy of the order was also marked to the Petitioner-Sangam which states as follows:

""தற்போது நிர்வாகியாக செயல்பட்டு வரும் நபர், தங்களிடம் உள்ள பொறுப்புகளை மேற்படி திருக்கோயிலுக்கு நியமனம் செய்யப்பட்டுள்ள தக்கரிடம் ஒப்படைக்க கேட்டுக் கொள்ளப்படுகிறார்.

மேற்படி திருக்கோயிலின் தக்கார் பொறுப்புகளை தற்போது திருக்கோயிலின் நிர்வாகத்தை கவனித்து வருபவரிடமிருந்து ஏற்று அதன் பொறுப்பு பட்டியலுடன் அறிக்கை அனுப்ப தக்கார் கேட்டுக் கொள்ளப்படுகிறார்.""

13. In fact, Mr.T.Chandrasekar learned counsel for the Hindu Religious and Charitable Endowments Act submitted that there is no provision under Section 49(1) to issue notice before any order is passed. When a person is admittedly administering the Temple and a copy of the impugned order has been marked to the petitioner Temple the department cannot say that no notice is required to be given to the petitioner. Moreover the impugned order has taken away the right of the Petitioner-Sangam, to administer the Temple in violation of principles of natural justice. It is well settled position of law that before passing any order, affecting the rights of the parties, principles of natural of justice should be followed and the affected person is required to be given notice.

14. Section 49 is almost similar to Section 45 with regard to the appointment of the Executive Officer. A Division Bench of this Court in N.Sivasubramanian Vs. The Government of Tamil Nadu, represented by its Secretary and five others reported in 2006 (2) CTC 49 (DB) : 2007 (1) LW 72, while considering the appointment of Executive Officer under Section 45(1) of the Act, considered *the effect of the Section 45. Paragraphs 13 and 14 of the Division Bench judgment, are extracted as follows:*

''13. Here in this case, based on the complaint/representation given by the 6th respondent, the impugned order is passed at the instance of the 6th respondent, appointing 5th respondent as Executive Officer, but without issuing notice to the petitioner or other trustees. A perusal of the impugned order amply establishes the fact that the second respondent has not issued any notice to any of the trustees including the petitioner. The administration of the temples, particularly the denominational temples, by the trustee is a valuable right and the same cannot be lightly divested under the guise of exercising power under Section 45(1) of the HR & CE Act. The impugned order having civil consequences against the petitioner and other trustees, the second respondent is bound to give notice to the petitioner and other trustees and only after hearing their objections, if any, the Executive Officer can be appointed, if the explanation submitted by the trustees are not satisfied.

*14. The Honourable Supreme Court in the decision reported in **S.C. and Weaker Section Welfare Association (Regd.) v. State of Karnataka, AIR 1991 SC 1117**, in paragraph 15 held as under,*

"It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. If there is power to decide and determined to the prejudice of a person, duty to act judicially is implicit in the exercise of such power and the rule of natural justice operates in areas not covered by any law validly made. What particular rule of natural justice should apply to a given case must depend to an extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the body of persons appointed for that purpose. It is only where there is nothing in the statute to actually prohibit the giving of an opportunity to be heard, but on the other hand, the nature of the statutory duty imposed itself necessarily implied an obligation

to hear before deciding that the audi alteram partem rule could be imported... "

It has been held in the said Division Bench Judgment that Section 45 of the Act, even though empowers the second respondent to pass an order appointing an Executive Officer, that power has to be excised in terms of the policy of the Act and finally its was held that failure on the part of the Department in issuing notice to the petitioner therein as well as to other Trustees vitiated the impugned order.

15. Section 45 is similar to Section 49 of the Hindu Religious and Charitable Endowments Act, 1959. The facts in the judgment of Division Bench of this Court squarely applicable to the facts of the present case. Therefore, there is no hesitation for this Court to hold that in violation of principles of natural justice the impugned order has been passed.''

4.The learned counsel would therefore submit that as per above decision, the impugned order has to go. For the same reason, the learned counsel for the petitioner submits that the petitioner has not opted the alternate remedy under Section 21-A of the H.R. & C.E. Act. The learned counsel for the petitioner would therefore submit that Section 21-A of the H.R. & C.E. Act, is not an appellate remedy, but it is a power given to the Joint Commissioner to pass an order in a *suo motu* revision. At best, the aggrieved person can trigger the proceedings by bringing it to the notice of the Joint Commissioner to pass appropriate orders to revise the decision of the Assistant Commissioner under Section 49 of the H.R. & C.E. Act. It is, therefore, submitted that alternate remedy is not a efficacious remedy and hence, on this count also, the petitioner was entitled to file this Writ Petition.

5.The learned counsel for the petitioner would further submit that the power of appointing the fit person under Section 49 of the H.R. & C.E. Act is a drastic move, as it suspends the powers of the Administrator, who is in-charge of the Temple and since no notice was given to the petitioner before the above said order was passed, the impugned order and impugned communication are liable to be quashed.

6.The learned counsel for the petitioner would further submit that in the year 1988, the fourth respondent was appointed as a Fit Person by the then Assistant Commissioner when the petitioner's father was administering the Temple, vide communication bearing No.Se.Mu.Na.Ka.No.8377/88/A5, dated 08.06.1988. It is submitted that the petitioner's father filed a suit in O.S.No.1199 of 1988 before the District Munsif Court, Tiruchirappalli, and that the said suit was decreed *ex parte* by the Court on 10.03.1989. It is further submitted that the attempt to set aside the *ex parte* judgment and decree by the fourth respondent was unsuccessful and the application filed to set aside the *ex parte* judgment and decree was rejected.

7.It is submitted that in the year 2005, the petitioner filed an application under Section 63(a) of the H.R. & C.E. Act, as there was an attempt to disturb the possession and control of the Temple by the respondents. It is further submitted that the Joint Commissioner disposed O.A.No.47 of 2005 filed under Section 63(a) of the H.R. & C.E. Act, long after on 01.12.2021, against which, the petitioner has filed appeal before the Commissioner under Section 69 of the H.R. & C.E. Act.

8.It is submitted that whether the Temple in question namely, Arulmigu Pillaiyar Kovil is the religious institution or not and whether it is to be governed by the provisions of the H.R. & C.E. Act is to be tested now by the Commissioner in the above said appeal. The learned counsel for the petitioner, on instructions, would submit that the said appeal has been numbered and is likely to be heard by the Commissioner on 12.04.2022.

9.The learned Government Advocate for the respondents 1 to 3 submits that the pre-existing Temple was demolished by the petitioner and annexed for the purpose of construction of private residence of the petitioner and his family members and therefore, the impugned order cannot be disturbed. It is submitted that the decision to appoint fit person was therefore justified.

10.Opposing the prayer, the learned counsel for the fourth respondent would submit that the petitioner's father was appointed as non-hereditary Trustee on 09.03.1982 upto 08.03.1985 and thereafter, the fourth respondent was appointed as a fit person in the year 1988, vide order bearing No.Se.Mu.Na.Ka.No.8377/88/A5, dated 08.06.1988. It is submitted that an *ex parte* decree was secured by the petitioner's father from the District Munsif Court, Tiruchirappalli, in O.S.No.1199 of 2018 and therefore, the person, who was appointed as a fit person could not continue to administer the Temple.

11.The learned counsel for the fourth respondent would further submit that when the petitioner's father died, the petitioner and his family members ought to have brought the same to the knowledge of the respondents. Instead, the petitioner appears to have demolished the Temple and built a private residential complex and has encroached upon the Temple property for private use. This is contrary to the arrangements, which was initiated in the year 1988, for appointing the fourth respondent as a fit person. It is further submitted that the petitioner's father was appointed only as a non-hereditary Trustee and therefore, his legal heirs are not entitled to either usurp the Temple property or claim a right of a hereditary Trustee under Section 54 of the H.R. & C.E. Act.

12.The learned counsel for the fourth respondent would further submit that mere alteration of the entries in the revenue records subsequently, would not mean that the administration of the Temple property was to continue with the petitioner. It is submitted that the petitioner and his family members are rank encroachers and therefore, appropriate proceedings will be initiated under Section 78 of the H.R. & C.E. Act to evict the petitioner.

13.The learned counsel for the fourth respondent would submit that there are documents to suggest that tenants have entered into rental agreements with the Manager of the Temple and not with an individual or individuals from the petitioner's family.

14.The learned counsel for the fourth respondent also drawn the attention of this Court to the Adangal extract from the Town Survey Register, Tiruchirappalli Town survey number to show that there are entries showing that the property was shown as a property of the Temple and that if the property belong to the petitioner's family, there is no reason without altering the Patta or entry therein.

15.The learned counsel for the fourth respondent submits that the entry relating to the property in T.S.No.163, Old T.S.No.2332, for an extent of 0.0146 Acres also shows the name of the Temple, represented by its Manager, for the time being.

16.I have considered the arguments advanced by the learned counsel the appearing for the parties.

17.The impugned proceedings starts right from the order of the Joint Commissioner, dated 01.12.2021 under Section 63(a) of the H.R. & C.E. Act, in O.A.No.47 of 2005 which was filed by the petitioner way back on 14.09.2005. It same was disposed of only in 2021. Against which, an appeal is now pending before the Commissioner under Section 69 of the H.R. & C.E. Act. It is to be taken up for hearing on 12.04.2022.

18.The fact on record also indicates that the petitioner's father was appointed only as a non-hereditary Trustee for a period of three years between 09.03.1982 and 08.03.1985. Thereafter, the fourth respondent was appointed as fit person by the then Assistant Commissioner bearing No.Se.Mu.Na.Ka.No.8377/88/A5, dated 08.03.1988. Tthe petitioner's father therefore filed a Suit before the District Munsif Court, Tiruchirappalli, in O.S.No.1199 of 1988 notwithstanding the fact that there was a bar under Section 108 of the H.R. & C.E. Act. The suit was filed for a bare injunction only against the fourth respondent herein. The official respondents were however not made as parties to the said proceedings. Thus, the suit was decreed *ex parte* and the attempt to set aside the *ex parte* judgment and decree dated 10.03.1989 was unsuccessful in I.A.No.1816 of 1989 in O.S.No.1199 of 1988, as it was dismissed on 25.09.1991. All along, all through the period *i.e.,* from 09.03.1982 till the impugned order dated 21.01.2022 was passed by the first respondent and communicated to the petitioner by the fourth respondent on 02.02.2022, the Temple property stood under the de-facto control of the petitioner and his family members. As a person in-charge of the Temple, the petitioner and his family members appears to have encroached on the Temple property for their private benefit. All through the period, the income from the asset has been appropriated. The impugned order re-appointing the fourth respondent as a fit person is without notice to the petitioner.

19.The only question to be answered is whether the decision of the Division Bench of this Court rendered in the context of Section 45 of the H.R. & C.E. Act in **N.Sivasubramanian's case** [supra], which was followed in the context of Section 49 of the H.R. & C.E. Act by this Court in **Sri Devi Ellamman Paripalana Sangam's case** [supra], is to be followed in the present case or not.

20.Proceedings were initiated against the person in control, based on some private complaints and perhaps, it is in that context, the learned Judge of this Court considered the scope of Section 49 of the H.R. & C.E. Act on par with the powers vested with the Officers concerned under Section 45 of the H.R. & C.E. Act. However, the facts of the present case indicate that the petitioner had no right to continue or remain in control of the Temple property. The fact remains that the fourth respondent was appointed as a fit person in the year 1988, vide order dated 08.06.1988, bearing No.Se.Mu.Na.Ka.No.8377/88/A5 by the third respondent Assistant Commissioner. The said order was not under implementation due to the pendency of the intervening civil suit filed by the petitioner's father and *ex parte* decree. However, the petitioner himself approached the Joint Commissioner under Section 63(a) of the H.R. & C.E. Act and suffered an adverse order on 01.12.2021. That being the case, I do not find any merit in the present Writ Petition. Even if the respondents had to issue notice, no different decision could have been arrived at by the respondents. It would have been empty formality. Therefore, this Writ Petition is liable to be dismissed. In any event, the petitioner is in appeal. Therefore, the rights of the petitioner to continue in the Management of the Temple property will be subject to final outcome of the appeal filed by the petitioner under Section 69 of the H.R. & C.E. Act before the Commissioner which is likely to be heard on 12.04.2022 by the Commissioner.

21.This Writ Petition therefore stands dismissed with the above observation. The Commissioner may however decide the appeal of the petitioner uninfluenced by the observation in this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (WRITS)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Joint Commissioner,
Hindu Religious and Charitable Endowments
Administration Department,
Theppakualm Theru,
Neelagirishwarar Thoppu Thiruvankoil,
Tiruchirappalli - 620 005.

2.The Assistant Commissioner,
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+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-7322[F] dated 21/02/2022)

+1 CC to M/s.SPL GP (SR-7508[F] dated 21/02/2022)

+1 CC to M/s.S.DEVASENA, Advocate (SR-7395[F] dated 21/02/2022)

ORDER MADE IN
WP (MD) No.2955 of 2022
18.02.2022

PNK(12.03.2022) 9P 7C