BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	06.04.2022
Pronounced On	22.04.2022

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.(MD) No.23015 of 2019
and
W.M.P. (MD) Nos.19760 & 19761 of 2019

1.Suresh Kumar, S/o.Avinashi Pandaram
2.R.Subramani
3.K.Thangavel
4.A.Perumal
5.S.Ramasamy
6.Ponnusamy, S/o.Subbah Pandaram
7.S.Krishnan
8.C.Sekar
9.G.Vijay Kumar
10.C.Parthiban
11.P.Chidambaram
12.Gunasekaran, S/o.Potti Pandaram ... Petitioners

Vs.

1.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Karur Town, Karur District.

2.The Fit Person/Inspector,
Hindu Religious and Charitable Endowments Department,
Arulmigu Vanniamman Temple,
Minnampalli Village,
Karur Taluk, Karur District. ... Respondents

Prayer:- Writ Petition filed for issuance of a Writ of Certiorari, to call for the entire records pertaining to the impugned order passed by the first respondent in Se.Mu.Na.Ka.No.79/2012/A1, dated 13.06.2013, and quash the same.

For Petitioners : Ms.J.Anandhavalli
For R1 : Mr.P.Subbaraj
Special Government Pleader
For R2 : Mr.P.Athimoolapandian

ORDER

The petitioners have challenged the impugned order dated 13.06.2013 of the first respondent appointing the second respondent as a Fit Person under Section 49(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 in respect of Arulmigu Vanniamman Temple, Minampalli, Karur District, until regular Non-Hereditary Trustees are appointed.

2.It is the specific case of the petitioners that a petition under Section 63(b) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 in O.A.No.13 of 2010 is pending before the Joint Commissioner, Hindu Religious and Charitable Endowments Department, Trichy, since 2010 at the behest of the petitioner. It is submitted that without orders being passed in O.A.No.13 of 2010 under Section 63(b) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the second respondent has been appointed as a Fit Person by the first respondent. It is submitted that the subject temple is not governed by the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. It is further submitted that the impugned order has been passed appointing the second respondent as a Fit Person without due notice to the petitioners and therefore, on this count also, the impugned order is liable to be quashed.

3.The learned counsel for the petitioners submits that the official respondent and the second respondent/Fit Person have taken diametrically opposite stand. On the one hand, they are stating that the temple is registered as service inam lands but have invoked the power under Section 49 of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. It is submitted that Section 49 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 applies only in the case of a religious institution which is not included in the list published under Section 46 and is not a religious institution notified or deemed to have been notified under Chapter VI of this Act. It is only that under those circumstances, Assistant Commissioner can exercise power to appoint trustees including fit persons or constitute a Board of Trustees.

4.It is submitted that power is vested only with the Government, the Commissioner or the Joint/Deputy Commissioner in the case of the religious institution referred to in clause (a) of sub-section (1) or in sub-section (2), as the case may be, of the Section 47. It is submitted that if the case of the official respondent is that the temple is a listed temple, then only, under Section 47(1)(c) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the temple should not have Hereditary Trustees, whereas in this case, all the petitioners are the Hereditary Trustees and Poojaris of the temple and therefore, neither Section 47 nor Section 49 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 are applicable.

5.It is submitted that as per Section 49(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the power to appoint Trustees including the Fit Persons or to constitute a Board of Trustees, is vested with the first respondent Assistant Commissioner only where a religious institution is not a listed institution and is not a religious institution notified or deemed to have been notified under Chapter VI Section 71 of the Act. It is therefore submitted that it is only under those circumstances, the Assistant Commissioner is also given power to appoint single Trustee if the religious institution does not have Hereditary Trustee.

6.It is submitted that only the concerned authorities can invoke Section 47 of the Act. It is also submitted that proviso to Section 47(1)(c) of the Act cannot be applied by the first respondent as the said proviso is applicable pending constitution of Board of Trustees under the said Section. Section 49 of the Act does not vest with the power with the first respondent for appointment of a Fit Person pending constitution of Board of Trustees, unlike that of Section 47 of the Act. It is therefore submitted that the impugned order of the first respondent is without jurisdiction.

7.It is further submitted that in the order dated 31.08.2008, the first respondent has appointed Non-Hereditary Trustees invoking his power under Section 49 of the Act stating that there is a scheme for the temple and in the present impugned order, the first respondent has stated that the institution is a listed institution. It is also stated that as per the order dated 31.08.2008, there is a scheme framed for the institution / temple as per the order of the Joint Commissioner, and even in such case, the first respondent cannot invoke Section 49(1) of the Act and even the other authorities cannot invoke Section 47 of the Act.

8.It is submitted that the character of the institution is being altered by the first respondent to suit his convenience to appoint Non-Hereditary Trustees with an intention to take the land of the temple out from the petitioners. It is further submitted that the Non-Hereditary Trustees appointed resigned in the year 2011. It is submitted that during their tenure, though they have not taken the administration, they approached the Tahsildar for transfer of patta of land of the petitioners and against the said order of the Tahsildar, an appeal is pending challenge before the Revenue Divisional Officer, Trichy.

9.It is submitted that Section 64 of the Act contemplates framing of scheme for religious institution and pending framing of scheme, Section 64(4) of the Act provides for appointment of Fit Person that too by the Joint Commissioner.

10.The learned counsel for the petitioner relied on the following decisions:-

(i) **G.Venkatesan Vs. Commissioner, Hindu Religious and Charitable Endowments, Chennai**, (2009) 1 MLJ 145.

(ii) **R.Valliammal and Another Vs. The Area Committee for Madras City**, 1962 (1) MLJ 320.

11.The learned Special Government Pleader for the first respondent and the learned counsel for the second respondent/Fit Person submitted that the patta which stood in the name of the petitioners have been transferred back to the temple. Earlier, the petitioners had challenged the appointment of non-hereditary trustees by the Assistant Commissioner, first respondent herein by an order dated 31.08.2008, vide proceedings bearing reference Chu.Mu.Na.Ka.No.1022/0/8/A1 and vide order dated 10.10.2008, passed by the Government in G.O.(Pa) EN 638.

12.It is further submitted that the petitioners had filed W.P.(MD).No.8770 of 2009 challenging the above orders. The said writ petition came to be dismissed as infructuous, vide order dated 22.02.2018, as the non-hereditary trustees who were appointed had already resigned. Relevant portion of the said order reads as follows:-

> *''2.Today, when the matter is taken up for hearing, the learned Special Government Pleader appearing for the respondents 1 to 5 submitted that the respondents 6 to 10 appointed as non-hereditary trustees have resigned their post and the 4th Respondent has been appointed as fit person of the said temple and also produced the order passed by the Assistant Commissioner, HR and CE (Administration), Karur District to that effect.*
>
> *3. Considering the fact that already the non-hereditary trustees resigned their post, nothing remains for further adjudication in the writ petition. Accordingly, this writ petition is dismissed as infructuous. No costs. Consequently, connected miscellaneous petitions are closed.''*

13.It is submitted that subsequent proceedings were initiated to transfer the patta, also came to be challenged by the petitioners in W.P.(MD)No.8931 of 2010 wherein patta given by the Headquarters Tahsildar, Karur to the petitioners was cancelled by the Tahsildar, vide order dated 03.10.2009, and that the writ petition came to be disposed of by an order, dated 12.04.2019, pursuant to a memo filed by the non-hereditary trustees to the effect that they had handed over the charge to the official respondents and hence the temple was necessary party to represent suitably by impleading official in favour of the temple under the HR and CE Act, 1959. However, the Court remanded back the case to the Tahsildar for fresh consideration within a period of eight weeks. It is submitted that after the said order was passed by this court on 12.04.2019, notices were issued to the petitioners by the Tahsildar to appear for enquiry. However, the petitioners failed to participate in the aforesaid proceedings, thus, an order, which came to be passed by the Tahsildar on 09.08.2019. It is submitted that the petitioners are in appeal before the Revenue Divisional Officer and same is pending.

14.The learned counsel for the second respondent further submits that the petitioners have an alternate remedy before the Joint Commissioner under Section 21 A of the Act. It is therefore submitted that the writ petition is liable to be dismissed. It is further submitted that the writ petition is also liable to be dismissed on account of laches as there is an enormous delay in filing the writ petition in the year 2019 in respect of the order which came to be passed on 13.06.2013 by the first respondent Assistant Commissioner.

15.The learned counsel for the petitioners interjected and submitted that it is only in the course of proceedings in W.P (MD) No.8931 of 2020 and in W.P (MD) No.8770 of 2009, vide order dated 12.04.2019 and 22.02.2018, respectively, the petitioners came to know that the second respondent had been appointed as a fit person and therefore, the petitioners have approached this Court at the earliest point of time. It is further submitted that the impugned orders have been passed behind the back of the petitioners.

16.It is further submitted that the petitioners still continue to discharge the function of Poojaris in the said temple. It is submitted that the petitioners have approached this Court at the earliest point of time from the date of order. It is submitted that there is no delay in approaching this Court as the petitioners have approached this Court immediately after they came to know that the impugned order has been passed on 13.06.2013.

17.As far as the alternative remedy is concerned, the learned counsel for the petitioners submits that the impugned order appointing the second respondent as a fit person in the year 2013 was passed behind the back of the petitioners and that the petitioners were not informed about the same and therefore, the writ petition is devoid of merits.

18.I have considered the arguments advanced by the learned counsel for the petitioners and the learned Special Government Pleader for the first respondent and the learned counsel for the second respondent.

19.There is no doubt that the subject temple namely, Arulmigu Vanniamman Temple, Minampalli, Karur District, is an unlisted temple. In the case of any religious institution which is not included in the list published under Section 46 of the Act and is not a religious institution notified or deemed to have been notified under Chapter VI of the Act, the Assistant Commissioner shall have the same power to appoint ''Trustees'' including a **''Fit Person''** or **constitute a ''Board of Trustees''.** The Assistant Commissioner is vested with the same power as is vested with the Government, the Commissioner or the Joint / Deputy Commissioner in the case of a religious institution referred to in Clause (a) of Sub-Section (1) or in Sub-Section (2), as the case may be, of Section 47 of the Act. Section 49 of the Hindu Religious and Charitable Endowments Act, 1959 reads as under:-

> *''**49. Power of Assistant Commissioner to appoint trustees and fit persons.**—(1) In the case of any religious institution which is not included in the list published under section 46 and is not a religious institution notified or deemed to have been notified under Chapter VI of this Act, the Assistant Commissioner shall have the same power to appoint trustees including fit persons or constitute a Board of Trustees and is vested in the Government, the Commissioner or the Joint / Deputy Commissioner in the case of a religious institution referred to in clause (a) of sub-section (1) or in sub-section (2), as the case may be, of section 47:*
>
> *Provided that the Board of Trustees constituted under this sub-section shall consist of three persons appointed by the Assistant Commissioner of whom one shall be member of the Scheduled Caste or Scheduled Tribe and another one shall be a woman. Provided further that in addition to the trustees appointed by the Assistant Commissioner under this sub-section, the Government may nominate two persons who are qualified for appointment as trustees under this act as members of the said Board of Trustees, having regard to the following matters, namely:—*
>
> *(a) the interest of the public generally;*
>
> *(b) the income and the properties of the religious institution;*
>
> *(c) the number of worshippers and importance of the religious institution as a pilgrim center; and*
>
> *(d) such other matters as may be prescribed:*
>
> *Provided also that notwithstanding anything aforesaid in this sub-section, the Assistant Commissioner, may in the case of any such religious institution which has no hereditary trustee, appoint a single trustee.*
>
> *(2) The provisions of sub-sections (3) and (4) of section 47 and of section 48 shall apply to the trustee or trustees appointed, or the Board of Trustees constituted, by the Assistant Commissioner as they apply to the trustee or trustees appointed, or the Board of Trustees constituted, under section 47.''*

20.Section 47 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 applies to a situation where a religious institution is included in the list published under Section 46 of the Act or in respect of which the Assistant Commissioner has no power to appoint trustees, has no hereditary trustee, the following persons can constitute a Board of Trustees:-

(i) in cases falling under clause (i) of Section 46, the Joint Commissioner / Deputy Commissioner;

(ii) in cases falling under clause (ii) of Section 46, the Commissioner; and

(iii) in cases falling under clause (iii) of Section 46, the Government.

21.Therefore, there is no scope for confusing the powers vested under Section 47 with the above mentioned Officers and the powers vested with the Assistant Commissioner. An Assistant Commissioner has similar power that is vested with these Officers under Section 47 of the H.R. & C.E. Act in case unlisted temples.

22.Interpretation placed by the learned counsel for the petitioners that the first respondent Assistant Commissioner has no power to appoint a Fit Person under Section 49 of the Act cannot be countenanced as Section 49 of the Act is intended to cover the situation of a religious institution which is not listed under Section 46 of the Act or is not a religious institution notified or deemed to have been notified under Chapter VI of the Act.

23.There is no merit in the challenge to the appointment of the second respondent Fit Person vide impugned order. It is noticed that O.A.No.13 of 2010 filed by the petitioners under Section 63(b) of the Act is said to be pending before the Joint Commissioner. Pending such recognition of the petitioners by the Joint Commissioner, the petitioners have no *locus standi* to challenge the appointment of the second respondent Fit Person. Therefore, there is no merit in the present Writ Petition.

24.Under these circumstances, the present Writ Petition is liable to be dismissed. It is dismissed accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (Protocol)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Karur Town, Karur District.

+1 CC to M/s.J. ANANDHAVALLI, Advocate (SR-20593[F] dated 22/04/2022)

+1 CC to M/s.SPL.GP. (SR-21465[F] dated 26/04/2022)

Order made in
W.P.(MD) No.23015 of 2019
22.04.2022

BK(CO)
GC(03.06.2022) 8P 4C