



WEB COPY

W.P.(MD) No.9338 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **09.02.2022**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P. (MD) No.9338 of 2015

and

W.M.P. (MD) No.1 of 2015

M.Eswarapillai

/vs./

... Petitioner

1.The Commissioner,
HR & CE Department,
Nungambakkam High Road,
Chennai.

2.The Joint Commissioner,
HR & CE Department,
Tirunelveli -2.

3.The Fit Person/Inspector,
HR & CE Department,
Thuckalay,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records in impugned notice in M.P. No.3/2013/A2 dated 10.06.2013 on the file of the 2nd respondent and quash the same as illegal, ultra vires.

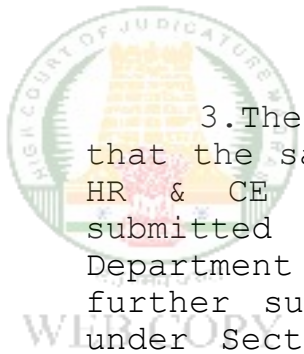
For Petitioner : Mr.S.Ramesh

For Respondents : Mr.P.Subbaraj
Special Government Pleader

ORDER

The petitioner has filed a miscellaneous petition in M.P.No.3 of 2013 under Section 101 of the Tamil Nadu HR & CE Act 22/1959, challenging the impugned notice in M.P.No.3/2013/A2 dated 10.06.2013.

2.It is the specific case of the petitioner that an application under Section 63(a) of the HR & CE Act 22/1959 was filed earlier by V.Narayana Pillai, Sree Narayana Thambi and C.Gopalakrishnan Nair in O.A.No.5 of 1987 for declaration that the petition mentioned temple is not a public religious institution as defined under the aforesaid Act.



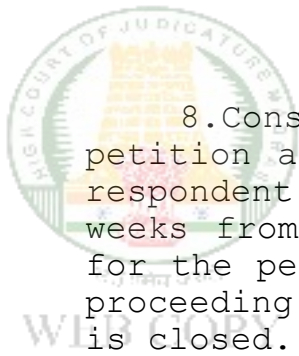
3.The learned counsel appearing for the petitioner submits that the said application was dismissed by the Deputy Commissioner, HR & CE Admn Department, vide order dated 15.02.1993. It is submitted that thereafter no steps were taken by the HR & CE Department for appointing a fit person. The learned counsel would further submit that the respondents however filed an application under Section 101 of the Tamil Nadu HR & CE Act 22/1959. It is submitted that the said order was without jurisdiction, as no fit person has been appointed under Section 49 of the aforesaid Act.

4.The learned counsel for the petitioner submits that under these circumstances, the petitioner moved I.A.No.1 of 2015 in M.P.No.3 of 2013 questioning the jurisdiction of the 3rd respondent as a fit person. The said petition in I.A.No.1 of 2015 in M.P.No.3 of 2013 has been now disposed of by the 2nd respondent, vide order dated 20.05.2015. It is further submitted that the order disposing the said petition filed in I.A.No.1 of 2015 in M.P.No.3 of 2013 was bad in law inasmuch as the 3rd respondent herein was never appointed as a fit person and that the temple was not a public religious institution.

5.Opposing the prayer in the present writ petition, the learned Special Government Pleader appearing for the respondents would submit that the writ petition filed by the petitioner was misconceived inasmuch as the Deputy Commissioner, HR & CE Admn Department, vide order dated 15.02.1993 in O.A.No.5 of 1987, while dismissing the application filed under Section 63(a) of the HR & CE Act 22/1959 by the three persons, namely, V.Narayana Pillai, Sree Narayana Thambi and C.Gopalakrishnan Nair, has clearly come to a conclusion that the Arulmigu Thumbavila Amman Temple is a public religious institution. It is submitted that the petitioner has an alternate remedy before the 1st respondent under Section 21 of the said Act and therefore, the writ petition is misconceived.

6.I have heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents.

7.The Miscellaneous Application filed by the petitioner in I.A.No.1 of 2015 in M.P.No.3 of 2013 has been disposed of. Under Section 49 (1) of the Tamil Nadu HR & CE Act, the power is vested with the Assistant Commissioner to appoint trustees and fit persons. Therefore, it is not open to the petitioner to question the locus of the 3rd respondent to act as a fit person, particularly in the light of the order passed in O.A.No.5 of 1987 dated 15.02.1993. That being the case, there is no merit in this writ petition. That apart, it is noticed that in M.P.No.3 of 2013, the petitioner has filed a detailed counter dated 18.09.2013. The said counter is also supplemented with an affidavit of the petitioner and thereafter, the petitioner has filed an application in I.A.No.1 of 2015 under Section 151 of the Code of Civil Procedure.



8.Considering the above, I am inclined to dismiss this writ petition and accordingly, it stands dismissed, by directing the 2nd respondent to pass orders in M.P.No.3 of 2013 within a period of 8 weeks from the date of receipt of a copy of this order. The right for the petitioner is subject to the final outcome of the aforesaid proceeding. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

mm

To:

- 1.The Commissioner,
HR & CE Department,
Nungambakkam High Road,
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- 3.The Fit Person/Inspector,
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+1 CC to M/s.V.RAGHAVACHARI, Advocate (SR-5115[F] dated 09/02/2022)

+1 CC to M/s.SPL GP (SR-5313[F] dated 10/02/2022)

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