BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.04.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD).Nos.18440 and 18441 of 2018
and
W.M.P(MD)Nos.7417 of 2019
and 16326 to 16331 of 2018

W.P(MD)No.18440 of 2018:

S.Sivakumar ... Petitioner

Vs.

1.The Joint Commissioner,
Hindu Religious and Charitable
Endowments (Admn.) Department,
Trichy.

2.The Assistant Commissioner,
Hindu Religious and Charitable
Endowments (Admn.) Department,
Trichy.

3.The Executive Officer,
Arulmigu Nallandavar Temple,
Manapparai,
Trichy District. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to impugned order passed by the second respondent in Se.Mu.Na.Ka.1698/2013 A5, dated, 21.06.2013 in respect of Arulmigu Ayyanar Temple, Inam Kulathur, Srirangam Taluk, Trichy District, quash the same as illegal.

W.P(MD)No.18441 of 2018:

S.Sivakumar ... Petitioner

Vs.

1.The Joint Commissioner,
Hindu Religious and Charitable
Endowments (Admn.) Department,
Trichy.

2.The Assistant Commissioner,
Hindu Religious and Charitable
Endowments (Admn.) Department,
Trichy.

3.The Executive Officer,
Arulmigu Nallandavar Temple,
Manapparai,
Trichy District. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to impugned order passed by the second respondent in Se.Mu.Na.Ka.1699/2013 A5, dated, 21.06.2013 in respect of Arulmigu Mariamman Vinayagar Temple, Inam Kulathur, Srirangam Taluk, Trichy District, quash the same as illegal.

For Petitioner: M/s.J.Anandhavalli

For Respondents: Mr.P.T.Thiraviam
Government Advocate
for R1 and R2
M/s.S.Devasena
for R3

ORDER

Heard the learned counsel for the petitioner, the learned Government Advocate for the respondents 1 and 2 and the learned counsel for the third respondent.

2. In these writ petitions, the petitioner has challenged the impugned order passed by the second respondent Assistant Commissioner on 21.06.2013, appointing the third respondent as the fit person for the respective temples, namely, "Arulmigu Ayyanar Temple" and "Arulmigu Mariamman Vinayagar Temple".

3. The specific case of the petitioner is that in so far as Ayyanar Temple is concerned, the petitioner's father has earlier filed a suit in O.S.No.403 of 1991 against the order passed by the Commissioner in C.C.No.793/26/90, dated, 15.04.1991, which affirmed the order of the Joint Commissioner in O.A.No.31 of 1981 filed by the petitioner's father under Section 63 (b) of the Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred as the Act) to declare the petitioner's father as a hereditary trustee. It is submitted that though the Joint Commissioner and the Commissioner had rejected the request of the petitioner's father, the Civil Court

in O.S.No.403 of 1991 not only declared the rights of the petitioner's father under Section 63 (b) of the Act, but also passed an order, restraining the official respondents from interfering with the affairs of the Ayyanar Temple. As far as the Mariyamman Temple is concerned, which is subject matter of the other writ petition in W.P.No.18441 of 2018, it is submitted that the earlier attempt to appoint the fit person was challenged by the petitioner's father in W.P(MD)No.16259 of 1990 and that the said writ petition was allowed by quashing the order, dated, 03.09.1990 made in Na.Ka.No.10086/90-1/A6 in appointing the second respondent therein as a fit person.

4. The learned counsel for the petitioner submits that though the impugned orders were passed on 21.06.2013, they were never in operation and the fit person never took charge of the temple and therefore, the petitioner was also under the impression that the petitioner continued as a hereditary trustee. It is further submitted that all of a sudden, without any provocation, the third respondent forcefully took over the temple key and the right to administration and control over the temple of the petitioner have been curtailed. It is under these circumstances, the petitioner has filed these writ petitions in the year 2018 in respect of the orders passed on 21.06.2013. That apart, it is submitted that after the impugned orders were passed, the third respondent had also issued a letter on 17.10.2013, asking the petitioner to hand over the control and possession of the temple, to which, the petitioner had replied through a counsel and that no further action was taken.

5. The learned counsel for the petitioner further submits that even at the time of conduct of Kumbabishekam for the respective temples in 2014, the third respondent had also called upon the petitioner to come for a joint meeting and that itself indicates that the petitioner was in control of the respective temples as a hereditary trustee and that the resolution also came to be passed by the petitioner as a hereditary trustee on 09.03.2014. It is therefore submitted that the impugned orders have to go. The learned counsel for the petitioner submits that the impugned orders are also bereft of details and have been passed in violation of principles of natural justice and therefore on this count also, the impugned order has to go. The learned counsel for the petitioner submits that before passing of an impugned order, no notice was issued to the petitioner.

6. That apart, the learned counsel for the petitioner also submits that in so far as the Mariyammal Temple is concerned, followed by W.P.No.18441 of 2018, O.A.No.9 of 1991 is pending under Section 63(b) of the Act as it is enlighten from reading the order in W.P.No.16259 of 1990. It is therefore prayed that these writ petitions to be allowed.

7. Opposing the prayer, the learned counsel for the official respondents submits that there is no dispute that the temple was under a control of The Hindu Religious and Charitable Endowments Department and the impugned order appointing the third respondent as a fit person was communicated with the petitioner.

8. After the aforesaid orders were passed in respect of the respective temples, the third respondent also issued a letter to the petitioner to hand over the possession and control of the respective temples. It is submitted that the petitioner merely issued a legal notice, dated, 24.10.2013. However, it does not mean that the control was not taken over by the third respondent.

9. It is further submitted that prior to the conduct of Kumbabishegam, a notice was issued not only to the petitioner but also to the other village heads. Therefore, it would not mean that issuance of letter, dated 24.02.2014 to the petitioner meant that the petitioner was in control of the temple. It is submitted that the fact that the letter was issued by the third respondent itself indicates that the third respondent was in control and administration of the temple and the petitioner was merely invited along with other village heads.

10. The learned Government Advocate for the respondents 1 and 2 and also the third respondent submits that the Kumbabishekam was conducted by the The Hindu Religious and Charitable Endowments Department, though an attempt has been made to indicate as if the Kumbabishegam was conducted by the petitioner.

11. I have considered the arguments advanced by the learned counsel for the petitioner, the learned Government Advocate for the respondents 1 and 2 and the learned counsel for the third respondents.

12. The impugned order, dated, 21.06.2013, appointing the third respondent as a fit person is based on a report of the Inspector, dated 22.05.2013, bearing reference copy as ஆய்வாளர், திருச்சி (கிழக்கு) உ.மு.எண்.63/2013, நாள் 22.05.2013 and ஆய்வாளர், திருச்சி (கிழக்கு) உ.மு.எண்.64/2013, நாள் 22.05.2013. The impugned order has not given any reasons. However, the facts on record indicates that the petitioner merely replied to the same when an attempt was made by the third respondent, asking the petitioner to hand over the administration and control of the respective temples. The fact of the matter is that the impugned orders dated 21.06.2013 is an appealable order before the Joint Commissioner which can be revised under Section 21 (A) of the Act. As per the aforesaid provisions, every application to Joint

Commissioner or Deputy Commissioner can exercise a power under the aforesaid Act, if the same is preferred within 3 months from the date of decision or order communicated to the applicant. The petitioner has not exercised the option within a period 3 months from the date of receipt of a copy of this aforesaid impugned order, dated, 21.06.2013. Though the impugned orders are bereft of any reasons, it cannot be explained by way of counter affidavit.

13. Considering the above, I am inclined to dispose these writ petitions by permitting the petitioner to file a statutory revision petition before the Joint Commissioner within a period of 60 days from the date of receipt of this order. The second respondent Assistant Commissioner is directed to furnish the copy of the Inspector's report to the petitioner within a period of 15 days from the date of receipt of copy of this order. All the issues as to whether the powers are exercised properly or not, whether the circumstances justify the appointment of fit person can be canvassed by the petitioner in the aforesaid proceedings under Section 21 (A) of the Act. It is expected that the Joint Commissioner will dispose the same within a period of 6 months from the date of filing of the aforesaid application. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Joint Commissioner,
Hindu Religious and Charitable
Endowments (Admn.) Department, Trichy.

2.The Assistant Commissioner,
Hindu Religious and Charitable
Endowments (Admn.) Department, Trichy.

+2 CC to M/s.J. ANANDHAVALLI, Advocate (SR-22013 & 22014[F] dated 28/04/2022)
+1 CC to M/s.SPL. GP (SR-22999[F] dated 29/04/2022)

W.P.(MD).Nos.18440 and 18441 of 2018
27.04.2022

SG(CO)
TR(25.05.2022) 5P 6C