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Writ Petition No.10011 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.03.2023

PRONOUNCED ON : 06.06.2023

Coram:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Writ Petition No.10011 of 2013

and

M.P.No.1 of 2013

Mr.K.K.Umapathy

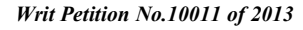
.... Petitioner

Vs.

1. The Joint Commissioner,
Hindu Religious Charitable and
Endowment Department,
Balasundaram Road, Coimbatore – 18.

2. Chandramathi Respondents
[R2-impleaded as per order of this Court [KKSJ] dated 01.08.2013 made in MP
No.2 of 2013 in W.P.No.10011 of 2013]

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondent pertaining to the impugned order in Se.Mu.Na.Ka.No.471/2013/A1, dated 08.03.2013 issued by the respondent, quash the same and direct the respondent not to interfere in the functioning of the petitioner as hereditary trustee of the Shri Veleeswaraswamy Temple, situate in Kurichi Village, Coimbatore District.



For Respondents : Mr.K.Karthikeyan (For R1)
Government Advocate (HR&CE)
Mrs.V.S.Usha Rani (For R2)

The writ petition is filed seeking a direction to call for the records pertaining to appointment of Fit Person for Sri Valeeswaraswamy Temple dated 08.03.2013, situated in Kurinji Village, Coimbatore.

2. Initially the writ petition is filed against the department alone and subsequently, as per the orders dated 01.08.2013 made in MP No.2 of 2013 in W.P.No.10011 of 2013, the 2nd respondent got impleaded and filed the counter statement.

3. The writ petitioner herein is claiming himself as a 'hereditary trustee' succeeding his deceased father Kandasubramania Gurukkal and while so, it is alleged in the petition that the department /1st respondent, has appointed the 2nd respondent herein as a fit person, who is also the Executive Officer of the temple.



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4. The writ petition proceeds on the basis that Shri Valeeswaraswamy Temple, is situated in Kurichi Village, at Coimbatore Taluk. This is an 'excepted temple' and the petitioner's father Kandasubramania Gurukkal is the hereditary trustee of the said temple. The petitioner's father died on 07.10.1973 and he claimed benefit under Section 64 of the Tamil Nadu Hindu Religious and Charitable Endowments Act (in short, '*HR&CE Act*'). When a permanent vacancy occur in the office of the hereditary trustee of a religious institution, the next line of succession, shall be entitled to succeed to the office and hence, the petitioner has sent an application on 17.11.2011 and received a reply dated 08.03.2013 (signed on 11.03.2013) stating that the petitioner did not get a declaration as the 'Hereditary Trustee' and therefore, there arises a need for appointing a Fit Person to the temple and the said reply is impugned in this writ petition.

5. Though certain narration of history of land which are covered under the Madras Inams (Abolition and Conversion to Ryotwari) Act, 1963 has been dealt with, the same is not relevant for the consideration of the writ petition.



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6. The Joint Commissioner, HR&CE, the official respondent viz., 1st respondent in his counter has stated as under:-

a) Arulmigu Valeeswaraswamy Temple situated at Kurichi Village of Coimbatore Taluk in Coimbatore District is a non-listed temple coming under the purview of the Assistant Commissioner, Coimbatore.

b) One Kandasubramania Gurukkal had filed a suit before the District Judge of Coimbatore in O.P.No.45 of 1942, against the HR&CE Board's order under Sec.84(2) of Act 2 of 1927, as that of a public temple in which it had been decreed as 'an excepted temple', on the ground that the trusteeship vested hereditarily.

c) The temple has owned Devadayam Inam lands in Kurichi Village, through T.D.177, in S.F.368, 427/1 and 449 respectively with an extent of 0.38 acres, 0.5 acres, 3.73 acres and 4.46 acres, which all are wet lands. During settlement enquiry, patta of these lands was granted in favour of the temple under Section 8(2)(ii) of the Act 30/1963 vide Gobichettipalayam Settlement Thasildar S.R.No.649/1968 dated 24.09.1968.



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d) The Co-brothers of the petitioner herein preferred an appeal in CMA No.92/1974 before the Inam Tribunal, Coimbatore against the order of the Settlement Thasildar, impleading the Settlement Thasildar and the petitioner herein only, surreptitiously omitting the department, as respondents. On 30.08.1974, the tribunal set aside the order of the Settlement Thasildar and granted patta to the appellants and the 2nd respondent (the petitioner herein) under Section 8(1) of the 30/63.

e) It is found that the petitioner herein has also not yet recorded himself as the legal heir of the deceased hereditary Trustee-Kandasubramania Gurukkal. As an interim arrangement to the temple administration, the 1st respondent herein/the Joint Commissioner appointed the Executive Officer of Coimbatore, Kottai Arulmigu Sangameswarar Temple, as the Fit Person, vide his Pro.R.C.470/13/B1/dated 08.03.2013 within the power vested with him under Sec.54 (3). Aggrieved over the same, the writ petition has been filed by the petitioner herein.

7. The newly impleaded 2nd respondent also filed a counter alleging

<https://www.mhcn.org.in> that since there are several allegations against the petitioner acting adverse to



the interest of the temple and also there is strong allegation that he had sold an extent of 0.15.5 hectares lands, belonged to the temple, which necessitated the 1st respondent to appoint her as a Fit Person, in the larger interest of the temple and to safe guard the remaining lands of the temple.

8. As stated supra, title to the above land is under dispute as could be seen from the counter affidavit of the 1st respondent. According to the 1st respondent, formerly, the patta for lands was issued to the temple under Section 8(2) (ii) of the Act 30/63. But later on due to surreptitious appeal by the petitioner herein and his Co-brothers without impleading the 1st respondent without the knowledge of the department, concealed the facts before the Inam Tribunal, the patta had been converted into one u/s 8(1) of the Act 30/63, which is utterly a fraudulent action of the petitioner and also against the interest of the temple.

9. In other words, according to the department, initially patta was given to the temple under section 8(2)(ii) of the Tamil Nadu Act (Act 30 of 1963). But on appeal, by the cousin of the petitioner, it was converted into one under Section 8(1) of the Tamil Nadu Act, (Act 30 of 1963). Certain reasons have been assigned for non-impleading the temple as a party and according to



the 1st respondent, it is a collusive action of the petitioner herein along with his cousin brothers.

10. After perusing the typed set of papers and also hearing the arguments of both parties, I find that one Kandasubramania Gurukkal had filed a suit before the District Judge of Coimbatore in O.P.No.45 of 1942, against the HR&CE Board's order under Sec.84(2) of Act 2 of 1927, as that of a public temple in which it had been decreed as 'an excepted temple', on the ground that the trusteeship is vested hereditarily. Thereafter, Kandasubramania Gurukkal, the father of the petitioner herein was appointed as a hereditary trustee, as the temple is an 'excepted temple' and the 'trusteeship is vested hereditarily'. The said Kandasubramania Gurukkal died on 07.10.1973. The petitioner is the son of the said deceased hereditary trustee.

11. Before advertng to the other issues, on the legal side it remains to be stated that in the decision reported in **1990 (1) LW 144** (*Prem Anand Vs. The Commissioner, HR&CE*), this Court has held that under Section 54 of the HR&CE Act, when the permanent vacancy occurs in the office of hereditary trustee, in such event, the person next in the line of succession, shall be entitled

to succeed and there is no need to apply for being appointed under the Act. The



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relevant portion is extracted hereunder.

“Under S. 54 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, when a permanent vacancy occurs in the office of the hereditary trustee of a religious institution, the next in the line of succession shall be entitled to succeed to the office. There is no necessity, whatever, for the next hereditary trustee to make an application for being appointed under the Act. In this case, the petitioner had to approach the first respondent, because a fit person, was already in charge of the administration of the temple. As the first respondent had appointed the fit person, the petitioner sought a direction to the fit person from the first respondent to hand over charge to the petitioner as he has become the hereditary trustee. The first respondent ought to have issued such a direction. On the other hand, the first respondent directed the petitioner to go to the Deputy Commissioner which is unwarranted by the provisions of the Act.

12. In yet another decision in ***K.Ekambaram and another Vs. The Commissioner, HR and CE, Administration Department, Uthamar Gandhi Road, Madras – 600 024 and three others***, reported in 1995(2) LW 213, the Division Bench of this Court has held that failure to follow the principles of natural justice, the impugned order therein stands quashed.

13. In ***N.Muthuvalli Vs The Joint Commissioner, HR&CE Administrative Department, Palayamkottai, Tirunelveli-2 and three others***, reported in 2002 (5) CTC 31, this Court has repealed the contention that the person next in line should make an application for being appointed as hereditary trustee, on the basis of the decision in 1990 (1) LW 144- ***Prem***



Anand's case cited supra and also held as follows:

“6. Section 54 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, deals with filling up of vacancies for the post of hereditary trustee, according to which, when a permanent vacancy occurs in the office of the hereditary trustee of a religious institution, the next in the line of succession shall be entitled to succeed to the office.

“8. Since the explanation to Section 54(3) of the Act contemplates that the Joint Commissioner and the Deputy Commissioner *shall have due regard to the claim of the members of the family, if any, entitled to succeed to the office of hereditary trustee*, a Division Bench of this Court, by order dated 19.10.1994 made in W.A.No.440 of 1994 and W.P.No.20075 of 1993, following the decision in ***Prem Anand vs. The Commissioner, H.R.&C.E.***, reported in 1990 (1) LW 144, held that in the absence of rival claimants, the next member of the family need not get a declaration that he is a hereditary trustee.”

14. In the decision reported in **2010 (2) CTC 289** [*Solamuthuraja Vs. The Commissioner, Hindu Religious and Charitable Endowment Board, Nungambakkam High Road, Chennai & 2 others*], this Court has emphasized the issuance of show cause notice even though statute does not impose any such requirement. In the said case, by the impugned order, the 1st respondent therein has appointed the Executive Officer, as the Fit Person on the ground of administrative reason. However this Court has set aside the said order.



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15. In the instant case no show cause notice was issued to the petitioner herein before appointing the 2nd respondent, who is already working as an Executive Officer, as a Fit Person of the temple.

16. Admittedly, the nature and character of the temple is 'excepted temple' as defined under Section 84(2) of the Tamil Nadu Act (Act 2 of 1927). Admittedly, Kandasubramania Gurukkal has succeeded in his OP No.45 of 1942 and he was appointed as the 'hereditary trustee' and the said Kandasubramania Gurukkal died on 07.10.1973. The petitioner being the next person in line of succession, he is entitled to succeed the hereditary trusteeship and in view of the judicial pronouncement cited supra, there is no separate application for him, to be appointed and further without issuing show cause notice to the petitioner, the impugned order is passed. Therefore, I have no hesitation to grant the relief as prayed for by the petitioner.

17. Further, in the counter affidavit, the religious institution has alleged that initially the Settlement Tahsildar has granted the special patta under the Inam Abolition Act in the name of the temple and the cousin brother of the petitioner herein has filed CMA against the said order without



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impleading the 1st respondent and the enquiry was not properly conducted whereby patta has been granted to the petitioner herein under Section 8(1) of the Tamil Nadu Act, 30/63.

18. Be that as it may, I am not expressing any opinion about the title of the temple regarding the alleged land and part of the land which has been disposed of by the petitioner. Absolutely, there is no material placed before this Court in support of the alleged claim of title over the said property. Hence, it is always open to the religious institution to take necessary action, if there is any violation in selling the land and if the religious institution has title over the property.

19. In the result, it is ordered as follows:-

(i) The Writ petition is allowed. No Costs.

(ii) The Impugned order dated 08.03.2013, passed by the 1st respondent in Se.Mu.Na.Ka.No.470/2013/A1, is set aside.

(iii) It is open to the 1st respondent/HR&CE, to issue show cause notice before appointing any person as a Fit Person.



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(iv) It is also left open to the 1st respondent/HR&CE, if they find any improper alienation of land as alleged in the counter, to take action in accordance with law against the petitioner.

(v) The interim order of status quo made in MP.No.1 of 2013 in WP No.10011 of 2013 vide order dated 12.04.2013, is hereby made absolute.

06.06.2023

Index : Yes/No
Speaking order / Non-speaking order
Neutral Citation: Yes/No.
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To

The Joint Commissioner,
Hindu Religious Charitable and
Endowment Department,
Balasundaram Road, Coimbatore – 18.



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Writ Petition No.10011 of 2013

RMT.TEEKAA RAMAN,J

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Pre-delivery order in
Writ Petition No.10011 of 2013

06.06.2023