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Writ Petition No.19844 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.03.2023

PRONOUNCED ON : 08.06.2023

Coram:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Writ Petition No.19844 of 2013

T.N.Sivasubramaniam

.... Petitioner

Vs.

1. The Commissioner,
Hindu Religious & Charitable Endowment
(Admn.) Department,
Nungambakkam High Road,
Chennai – 34.

2. The Joint commissioner,
Hindu Religious & Charitable Endowment
Department, Trichy.

3. N.Sivadevan

.... Respondents

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 1st respondent herein relating to his order in his proceedings dated 18.12.2012 made in A.P.No.71 of 2011/D2, quash the same and direct the respondents 1 and 2 herein to recognize the petitioner as co-trustee in the office of the hereditary trusteeship of A/m.Malaiyamman Temple, Thottakurichi Village, Karur Taluk and District.

<https://www.mhc.tn.gov.in/judis>



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For Petitioner: : Mrs.G.Sumitra
For Respondents : Mr.K.Karthikeyan (For R1 & R2)
Government Advocate (HR&CE)
Mr.V.Srikanth (For R3)

ORDER

Petitioner has filed this writ petition, to quash the proceedings of the 1st respondent in A.P.No.71 of 2011/D2 dated 18.12.2012 and to appoint him as a Co-Trustee in the office of the hereditary trusteeship of A/m.Malaiyamman Temple, Thottakurichi Village, Karur Taluk and District.

2. The facts leading to the filing of the above case are as under:

(a) One T.M.Nallasamy Gounder, the father of the writ petitioner as well as the 3rd respondent filed a petition in OA No.25 of 1964 before the Deputy Commissioner, HR&CE, Tanjore, under Section 63 (b) of the Tamil Nadu HR&CE Act, 1959 (Tamil Nadu Act 22 of 1959), for a declaration that he is the Hereditary Trustee of the Arul Mighu Malaiyamman Mariyammal Temple at Thottakurichi Village, Karur Taluk and Karur District. The said application was dismissed by the Deputy Commissioner, Tanjore in his order dated 30.09.1965.

(b) As against the said order, he filed an appeal in A.P.No.9 of 1966 before the Commissioner, HR&CE (A) Department, Madras and the said



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appeal was allowed on 11.07.1966 by the Commissioner, HR&CE, Madras and the said T.M.Nallasamy Gounder, the father of the writ petitioner and the 3rd respondent herein, was managing the temple as Hereditary Trustee.

(c) According to the petitioner, after his father's death on 20.09.2005, the post became vacant and hence, he made requests to the official respondents to recognise him as Co-Trustee along with the 3rd respondent and also alleged malpractice in the management of the temple.

3. The 3rd respondent filed counter affidavit and typed set of papers have been filed relating to the proceedings before the official respondents.

4. Heard the learned counsel appearing on either side and perused the materials available on record.

5. From the orders passed by the official respondents, it is seen that the petitioner's father T.M.Nallasamy Gounder was declared to hold the office of the trusteeship of the above said temple as Hereditary Trustee by the Commissioner in order dated 11.07.1966 in AP No.9 of 1996, which is passed

under Section 69(1) of the Act. The case has emerged in view of the application



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filed by the father of the petitioner in OA No.25 of 1964, which was rejected on 30.09.1965 under Section 63(b) of the Act. Aggrieved against the said order, the said T.M.Nallasamy has preferred the above stated AP, whereby he was appointed. When he was in his advanced age, he filed an application before the Joint Commissioner, HR&CE seeking permission to appoint his eldest son, the 3rd respondent herein, who is the next in the line of succession as the Hereditary Trustree and the other legal heirs and also the wife of the said T.M.Nallasamy have filed no objection, for appointing him. Accordingly, it appears that the Joint Commissioner has passed an order in Rc No.6948/2001 dated 26.06.2002 under Section 54(1) of the Act, recording the name of T.M.Sivadevan, the 3rd respondent herein, as the next in line of succession to hold office. On 20.09.2005, the said T.M.Nalluswamy died.

6. From the records, I find that six years after the death of his father, the present petitioner T.N.Sivasubramanian has filed AP 71/2011/D2 before the Commissioner, HR&CE, to appoint him as a co-trustee under Section 54(1) of the Act.

7. After going through the orders passed by the Joint Commissioner and Commissioner, HR&CE, I find that both the official respondents have



rejected the claim of the petitioner on the ground that on the request of T.M.Nallasamy during his life time, the 3rd respondent was appointed, for which his wife and the other younger sons have given no objection, for appointing the 3rd respondent and hence, on the death of T.M.Nallasamy, no permanent vacancy arose for consideration and therefore, the request of the petitioner to appoint him as Co-Trustee, was rejected.

8. From the typed set of papers filed by the 3rd respondent, the consent given by the legal heirs of the T.M.Nallasamy, to appoint the 3rd respondent as hereditary trustee dated 03.10.2000; consent given by the wife of T.M.Nallasamy, to appoint the 3rd respondent as a hereditary trustee on 02.02.2001; proceedings of the 2nd respondent thereby appointing the 3rd respondent as Hereditary Trustee based upon the consent affidavits attested by the notary public, given by all the legal heirs of T.M.Nallasamy, as early as on 26.06.2002, were perused.

9. Based upon the said consent letters and the requisition made by T.M.Nallasamy himself to appoint the 3rd respondent as the hereditary trustee, necessary order has been passed as early as on 26.02.2002 whereby

T.N Sivasubramanain S/o. T.M.Nallasamy, has been appointed as hereditary



trustee and the same is recorded in the Register maintained at the office of the HR&CE and such exercise has been completed under Section 54(1) of the Act.

10. Now, the petitioner who is another son of the deceased erstwhile hereditary trustee viz., T.M.Nallasamy wants to be appointed as a Co-Trustee and also challenges the order passed in appointing the 3rd respondent as hereditary trustee. The petitioner has also given a consent affidavit for appointing the 3rd respondent and on perusal of the consent affidavit, he has not reserved any right of his line of succession, to succeed as a hereditary trustee.

11. Further, the order appointing the 3rd respondent under Section 54(1) of the Act was passed by the competent authority viz., the Joint Commissioner as early as on 26.06.2002 and he has preferred an appeal only in the year 2011 and the said appeal was dismissed on 11.05.2011 and further appeal to the Commissioner was also dismissed on 18.12.2022.

12. When the order of appointment, appointing the 3rd respondent as a hereditary trustee was passed based upon the consent affidavits attested by the notary public given by the younger sons of T.M.Nallasamy and also by his wife and such an order appointing the 3rd respondent was passed as early as on



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26.06.2002 and when petitioner's father died on 20.09.2005, the appeal to the Commissioner has been filed six years belatedly and no reason was assigned for the same.

13. After perusing Section 54 of the Act, when a permanent vacancy occurs in the office of the hereditary trustee of a religious institutions, the next in the line of succession shall be entitled to succeed to the office.

14. In the instant case, on the factual position as narrated supra, while the hereditary trustee was in his advanced age, at that time, on his representation, the 2nd respondent has passed an order appointing the 3rd respondent as hereditary trustee as early as on 26.06.2002 and hence, as rightly observed by the official respondents, no vacancy arose and hence, I find that there is no merit in this case and accordingly, the writ petition stands dismissed.

No Costs.

08.06.2023

Index : Yes/No
Speaking order / Non-speaking order
Neutral Citation: Yes/No.
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RMT.TEEKAA RAMAN,J

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To

1. The Commissioner,
Hindu Religious & Charitable Endowment
(Admn.) Department,
Nungambakkam High Road,
Chennai – 34.

2. The Joint commissioner,
Hindu Religious & Charitable Endowment
Department,
Trichy.

Pre-delivery order in
Writ Petition No.19844 of 2013

08.06.2023