IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.3743 of 2023
and
W.M.P.Nos.3817 to 3819 of 2023

Arulmighu Mannadheeswarar Pachaiamman Temple,
Tirumullaivoyal,
Rep. by its Trustee,
S.Sundaramurthy,
No.14, Kulakarai Street,
Tirumullaivoyal,
Chennai – 600 062. .. Petitioner

-vs-

1.The Principal Secretary and Secretary to Government,
Religious Endowments, Tourism and Culture Department,
Government of Tamil Nadu,
Fort St. George,
Chennai – 600 009.

2.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungambakkam, Chennai – 600 034.

3.The Joint Commissioner,
Zone-1, Chennai,
Hindu Religious and Charitable Endowment Department,
Padi, Chennai – 600 050.

4.Fir Person/Executive Officer,
Arulmighu Masilamaneeswarar Temple,
Tirumullaivoyal,
Chennai – 600 062. .. Respondents

Prayer: Petition filed under Article 226 of Constitution of India to issue a Writ of Certiorari calling for the records relating to the order dated 02.02.2023 passed in Na.Ka.No.9587/2009/E, on the file of the 3rd respondent herein and quash the same.

For Petitioner : Ms.G.Sumitra

For RR-1 to 3 : Mr.N.R.R. Arun Natarajan
Special Government Pleader (HR & CE)

For R-4 : Mr.A.K.Sriram, Senior Counsel
Assisted by Mr.A.S.Kailasam

ORDER

This writ petition has been filed challenging the order passed by the third respondent in Na.Ka.No.9587/2009/E dated 02.02.2023.

2. The case of the writ petitioner is that the Arulmighu Mannadheeswarar Pachaiamman Temple is an ancient temple and is more than 300 years old. The petitioner's forefathers had installed the idol and constructed the temple some 300 years ago. The administration of the temple all along has been carried on by the ancestors of the petitioner and till date the management and day-to-day affairs is carried on by the present Trustees. Even in a suit in O.S.No.516 of 1889, it has been held that the temple is being administered by petitioner's ancestors from the year 1890 onwards. The petitioner's ancestors Govinda Pillai and Sadanandha Pillai were in management of the temple and there are other suits in O.S.Nos.344 of 1923 and 184 of 1929, which have also crystallised the rights of the petitioner's ancestors to administer the said temple.

3. It is the contention of the petitioner that he is continuing in possession and administering the management of the temple. Earlier occasion, the second respondent has passed an order dated 12.01.2009

appointing a Fit Person till the trustees are appointed. The same was challenged before this Court in W.P.Nos.809 and 1587 of 2009 and the writ petitions were disposed of by this Court. Now the impugned order has been passed by the third respondent appointing a Fit Person.

4. Learned counsel mainly submitted that the temple has been declared under Section 46(iii) of the Tamil Nadu Hindu Religious and Charitable Endowment Act. In such a case, the Fit Person can be appointed only by the Government/first respondent and not by the other respondents. Therefore, the impugned order passed by the third respondent/Joint Commissioner appointing a Fit Person has to be set aside.

5. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents 1 to 3 as well as learned Senior Counsel appearing for the fourth respondent.

6. According to the first respondent, the Fit Person was originally appointed on 12.01.2009. When the same was challenged before this Court, this Court has not interfered with the impugned order and observed that the order could not be enforced till the appeal filed by the petitioner for claiming hereditary trusteeship is disposed of. Now the impugned order has been passed directing the Fit Person to take charge. Therefore, his contention that the question of Section 46 (iii) of the Act will not apply. When the fit person was appointed in the year 2009, the temple fall within the ambit of Section 46(ii) of the HR & CE Act. Therefore, the impugned order cannot be challenged in this writ petition.

7. Learned Senior Counsel appearing for the 4th respondent submitted that the petitioner's ancestors had already filed the petition before the authorities for claiming hereditary trusteeship in the year 1970. The petitioner's father is also a party. The above application has been dismissed and once again the petitioner had filed a similar application with the

authorities. It is also dismissed. Now merely on the basis of the statutory suit filed as against the orders of the authorities under Section 63 and Appeal under Section 69 of the H.R. & C.E. Act, the appointment of the Fit Person made in the year 2009 cannot be challenged in this writ petition.

8. I have perused the entire materials. The main contention of the learned counsel for the petitioner is that the income of the temple is more than Rs.10 lakhs per annum, which is fall under Section 46(iii) of the H.R. & C.E. Act. Therefore, his main contention is that only the Government/first respondent is competent to appoint a Trustee or a Fit Person, whereas the appointment of Fit Person by the third respondent/Joint Commissioner is not valid under the eye of law, particularly, when the suit is already pending challenging the orders passed under Section 69 of the H.R. & C.E. Act. Hence, seeks to set aside the impugned order.

9. I have perused the entire order. The fit person was appointed originally on 12.01.2009 vide proceedings in Se.Ku.Na.Ka.No.74058/08/A1 till the trustees are appointed. The same has been challenged before this Court in W.P.Nos.809 and 1587 of 2009. This Court, by order dated 22.04.2009, disposed the writ petitions and observed as follows:

> *"5. The question whether the petitioners are the hereditary Trustees of the Temple or whether new Trustees are to be appointed is a matter to be decided by the Commissioner, Hindu Religious and Charitable Endowments Administration Department, in the appeal pending before him. Without disposing of the appeal, in my considered opinion, it is not at all proper on the part of the first respondent to hold that the petitioners are not the hereditary Trustees and then to appoint a Fit Person. Thus in my considered opinion, the impugned order suffers from serious infirmity.*
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> *6. In view of the above, both the writ petitions are disposed of on the following terms:*
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> *(i) The first respondent is directed to dispose of the appeal filed by the petitioners dated*

12.12.2008 within a period of three months from today;

(ii) Until the appeal is disposed of, the impugned order shall not be enforced by the respondents."

10. The very order of this Court, makes it very clear that the order appointing a Fit Person was not interfered. Whereas it is only postponed till the appeal filed by the petitioner is disposed of. It is admitted by both sides that the application filed for claiming hereditary trusteeship by the petitioner is rejected by the authorities under Section 63 of the H.R. & C.E. Act, as against which the appeal filed under Section 69 of the H.R. & C.E. Act is also dismissed. Now it appears that statutory suit has been filed under Section 70 of the H.R. & C.E. Act, before the Subordinate Judge, Poonamallee. Therefore, as on date there is no hereditary trustee legally recognised under the statute. It is relevant to note that O.A.No.8 of 2006 filed by the petitioner's brother before the authorities was dismissed. On a perusal of the

same, it is clear that similar application filed for claiming hereditary right before the authorities as early as in the year 1970 in O.A.No.34 of 1970, wherein the 4th petitioner in that O.A. was none other than the father of the present petitioner. The said O.A. has been dismissed. Therefore, the rights of the father to claim hereditary trusteeship has already been rejected and reached finality. Now the petitioner being the son of one of the petitioners therein, who lost a legal battle in the earlier round of litigation, has filed a similar claim, which is also rightly rejected in the opinion of this Court.

11. In such view of the matter, the impugned order is only with regard to the implementation of the appointment order of Fit Person in the year 2009. At the relevant point of time the income of the temple is below Rs.10 lakhs, which is not disputed. The income has been increased above Rs.10 lakhs only as per the list published on 14.06.2013. In such view of the matter taking advantage of the subsequent income and the provisions of law

deals with appointment of Fit Person under Section 46 of H.R. & C.E. Act, the petitioner cannot challenge the earlier order in this writ petition.

12. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

09.02.2023

Index : Yes/no
Speaking order : Yes/No
rsi

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