



WEB COPY



WP.No.6638 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2023

CORAM

THE HONOURABLE MR. JUSTICE N.SATHISH KUIMAR

WP.No.6638 of 2023
and W.M.P.Nos.6705 & 6707 of 2023

P.G.Santhaprakash

.. Petitioner

Versus

1.The Joint Commissioner
Hindu Religious and Charitable
Endowments Department
Erode

2.P.S.S.Santhappan

3.The Executive Officer
Arulmighu Gurunathasamy Thirukoil
Pudupalayam
Anthiyur – 638 201
Erode District.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the first respondent herein in Miscellaneous Petition No.66/2021/Aa1/dated 15.02.2023 and quash the same.

For Petitioners : Mr.S.V.Karthikeyan

For Respondents : Mr.M.Rajendran for R1
Additional Government Pleader
Mrs.V.Rajeswari for R2



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ORDER

This writ petition is filed challenging the records of the first respondent herein in Miscellaneous Petition No.66/2021/Aa1/dated 15.02.2023 and quash the same.

2. It is the case of the writ petitioner that Mr.P.G.Santhappa Poojari, petitioner's grandfather, was originally appointed as Hereditary Trustee to the Arulmighu Gurunathsamy Temple situated at Anthiyur, vide Board's Order No.4361 dated 08.08.1950 and subsequently, he died on 04.09.1973. His son, who is the father of the second respondent namely Mr.P.S.Santhappan, filed an application under Section 54(1) of the HR&CE Act, 1959 for appointment of hereditary trustee of the temple. Since, the other legal heirs had no objections, the application was allowed on 21.02.2007. The said Mr.P.S.Santhappan died on 12.04.2021, and after his demise, the second respondent, who is the only son of Mr.P.S.Santhappan filed an application in M.P.No.66 of 2021 under Section 54(1) to appoint himself as the Hereditary Trustee.

3. The petitioner is the cousin of the second respondent had filed application in I.A.No.58 of 2021 in M.P.No.66 of 2021 and the said I.A.No.58 of 2021 was dismissed by order dated 29.04.2022. Challenging the same, the petitioner filed a writ petition in W.P.No.14278 of 2022 and the same was



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dismissed on 23.09.2022 observing the first respondent is not competent to decide the issue and granted liberty to approach the appropriate Civil Court.

Therefore, the petitioner filed a suit in O.S. No.575 of 2022 on the file of Sub-Court, Bhavani to declare his right as hereditary trustee. When the suit was pending, the impugned order has been passed appointing the second respondent as the hereditary trustee. Hence, this petition.

4. It is the main contention of the learned counsel for the petitioner that when the order has been passed by the Court in W.P.No.14278 of 2022 vide Order dated 23.09.2022 has clearly held that the Joint Commissioner cannot decide the dispute between the hereditary trustees. Accordingly, it was directed to approach the Civil Court. Pursuant to such directions, the petitioner already filed a suit in O.S.No. 575 of 2022, before Sub-Court, Bhavani which is pending. At this stage, once again, the impugned order has been passed appointing the second respondent as the hereditary trustees. Such view of the matter, the second respondent ought not to have been appointed as the Hereditary Trustee, which is contrary to the findings of this Court. Hence, submitted that the Order requires to be interfered.

5. Mr. N.R.R.Arun Natarajan, learned Special Government Pleader takes



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notice for the first respondent and Mrs.V.Rajeswari, learned counsel takes notice for the second respondent.

6. At this stage, this Court is of the view that the second respondent was appointed as Hereditary Trustee only after the permanent vacancy arose 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. It is relevant to note that this Court in W.P.No. 113291 of 1989 has held as follows:

“...3. 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 petition sought a direction to the fit person from the first respondent to hand over charge to the petitioner as he became the hereditary trustee. The first respondent ought to have issued such a direction. On the other hand, the first respondent directed to the petitioner to go to the Deputy Commissioner which is unwarranted by the provisions of this Act.”

7. Admittedly, the second respondent's father namely Mr.P.S.Santhappa was appointed as Hereditary Trustee on 21.02.2007. The petitioner's father and other legal heirs had no objections and thereafter, it appears that after the death of Mr.P.S.Santhappa, who was appointed as Hereditary Trustee, his only son,



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namely the second respondent who is in the first line of succession had filed the application to appoint him as the hereditary trustee in M.P.No.66 of 2021 under Section 54(1) of the HR & CE Act, 1959, which was opposed by the petitioner, who is the cousin of the second respondent, by filing an intervening application. However, the same was rejected by Joint Commissioner by an Order dated 29.04.2022.

8. The said rejection was challenged by the petitioner herein by way of writ petition in W.P. No. 14278 of 2022. In the above writ petition, this Court has clearly held that since the petitioner has raised the dispute over the appointment of hereditary trustee, such dispute cannot be decided by the Joint Commissioner and granted liberty to the petitioner to establish his right in Civil Court. The above observations has made in the context that the petitioner cannot resolve his dispute before the Joint Commissioner. Therefore, merely, because such observation made by this Court it does not mean that the authority have no power to exercise powers under Section 54(1) of the HR & CE Act.

9. Admittedly, the petitioner has filed the suit in O.S. No. 575 of 2022 on the file of Sub-Court, Bhavani, which is also pending. Such view of the



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matter, any appointment made by the first respondent is always subject to the result of the Civil Court.

10. Such view of the matter, I do not find any merits in this case. Accordingly, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

02.03.2023

dhk

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

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N.SATHISH KUMAR, J.



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