



Writ Petition No.11158 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Writ Petition No.11158 of 2023

and

W.M.P.No.11013 of 2023

Arulmigu Siva-Vishnu Bakthargal Seva Sabha,
represented by its Secretary,
Mr.Adikesavan
S/o.Duraisamy Pillai

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
represented by its Secretary,
Department of Tourism, Culture &
Religious Endowments,
Secretariat, Chennai - 600 009.
- 2.The Commissioner,
Hindu Religious & Charitable Endowment,
119, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.
- 3.The Assistant Commissioner,
Hindu Religious & Charitable Endowment
Department, Chennai District.



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4.The Executive Officer,
Arulmigu Sakthi Vinayagar Thirukoil,
K.K.Nagar, Chennai - 600 078.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for bringing up the entire records relating to the proceedings in Se.Mu.Na.Ka.No.3314/2022/AA.2 dated 21.09.2022 from the file of the third respondent herein and quash the same as illegal, without jurisdiction and in violation of the rights conferred under Article 26 of the Constitution of India and to forbear the fourth respondent herein from functioning as fit person of Siva-Vishnu temple, which is a denominational in character.

For Petitioner : Mr.J.Ravikumar

For Respondents : Mr.S.Yaswanth
Additional Government Pleader

ORDER

This writ petition has been filed by the Arulmigu Siva-Vishnu Bakthargal Seva Sabha, represented by its Secretary assailing the order passed by the third respondent in Se.Mu.Na.Ka.No.3314/2022/AA.2, dated 21.09.2022 appointing a fit person u/s.49(1) of the Tamil Nadu Hindu



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Religious and Charitable Endowments Act, 1959 [hereinafter referred to as 'the Act'] to administer the temple.

2. The case of the petitioner is that the Seva Sabha is a society registered under the Tamil Nadu Societies Registration Act, 1975. This sabha had established Siva-Vishnu temple and they had also performed K.umbhabhishekam in the year 2008. According to the petitioner, the temple is a denominational temple and they are tracing their right under Article 26 of the Constitution of India.

3. The grievance of the petitioner is that the third respondent through the impugned proceedings dated 21.09.2022, based on certain allegations, straight away proceeded to appoint a fit person to take over the administration of the temple. Aggrieved by the same, the present writ petition has been filed before this Court.



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4. Heard Mr.J.Ravikumar, learned counsel for petitioner and Mr.S.Yaswanth, learned Additional Government Pleader, appearing for respondents.

5. Learned counsel for petitioner primarily attacked the impugned proceedings of the third respondent on the ground that it was passed in violation of principles of natural justice without putting the petitioner on notice.

6. *Per contra*, learned Additional Government Pleader appearing on behalf of respondents submitted that the petitioner has a right of statutory appeal and without exhausting the same, the present writ petition is not maintainable. Learned Additional Government Pleader further submitted that after the administration of the temple was taken over, various steps have been taken by the Hindu Religious and Charitable Endowments department [hereinafter referred to as 'HR & CE department'] to conduct the Kumbhabhishekam and at this length of time, the writ petition has been



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filed only with a view to stop the efforts taken by the HR & CE department.

Learned Additional Government Pleader further submitted that the appointment of a fit person is only a temporary measure and ultimately, steps will be taken to appoint non-hereditary trustees at which point of time, it will be open to the members of the petitioner sabha to participate and become non-hereditary trustees. Accordingly, learned Additional Government Pleader sought for dismissal of the writ petition.

7. The third respondent has proceeded to exercise the powers u/s.49 of the Act for appointment of a fit person by virtue of the impugned proceedings dated 21.09.2022. The power to appoint a fit person vests in the Assistant Commissioner, as per Section 49 of the Act, which can be exercised on two contingencies. The first contingency is that the institution must be a religious institution as defined u/s.6(18) of the Act. The second contingency is that the Assistant Commissioner must be satisfied of any mal-administration of the religious institution by the existing trustees. Before proceeding further to appoint a fit person, the interested persons



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must be put on notice and their explanation must be sought for and only thereafter, the fit person can be appointed. The law on this issue was dealt with in detail by the Honourable First Bench of this Court in ***Sri Ram Samaj v. The Commissioner, Hindu Religious & Charitable Endowments Department, Chennai and others [CDJ 2022 MHC 1993]***.

8. In the present case, a bare reading of the impugned proceedings of the third respondent dated 21.09.2022 shows that the petitioner was not put on notice and the Assistant Commissioner had straight away acted upon the complaint received by him with regard to the mal-administration of the temple and had proceeded to appoint a fit person. This procedure adopted by the third respondent is clearly in violation of principles of natural justice. The petitioner ought to have been given an opportunity to come up with their explanation with regard to the allegations made against the Seva Sabha and only thereafter, a decision should have been taken by third respondent. On this simple ground, the impugned proceedings of the third respondent is liable to be interfered with by this Court.



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9. Insofar as the submission made by learned Additional Government Pleader on the alternative remedy of appeal available to the petitioner, it is now well settled that where an order has been passed in violation of principles of natural justice, the availability of alternative remedy cannot come in the way of the Court exercising its jurisdiction under Article 226 of the Constitution of India. Hence, in spite of the availability of alternative remedy, this Court proceeds to exercise its writ jurisdiction on the ground of violation of principles of natural justice.

10. In the instant case, unfortunately the petitioner has approached this Court with a delay of seven months. In the mean time, the HR & CE department has proceeded further to take various steps to conduct the 'thirupani'. The same is evident from the written instructions that have been given by the fit person to learned Additional Government Pleader. In view of the same, this process should not be stopped at this stage and this should continue. The present *status-quo* must be maintained at least till a final decision is taken by the third respondent after the explanation is given by



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the petitioner. This Court will fix a time limit for the third respondent to take a decision after getting the explanation from the petitioner. It will also be open to the petitioner to file an appropriate application u/s.63(a) of the Act to take away the subject temple from the ambit of religious institution. The appointment of a fit person can only be a temporary arrangement. Ultimately, the Assistant Commissioner must take steps to appoint non-hereditary trustees to manage the affairs of the temple. If the Assistant Commissioner takes steps to appoint the non-hereditary trustee, it is open to the members belonging to the petitioner sabha to make their application and get themselves appointed as non-hereditary trustees also. It goes without saying that it is only an option that can be considered by the petitioner sabha.

11. In the light of the above discussion, the impugned proceedings of the third respondent Se.Mu.Na.Ka.No.3314/2022/AA.2 dated 21.09.2022 is hereby quashed. The petitioner is aware of the allegations with regard to mal-administration made against them through the impugned order that was



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served on them. Hence, it is left open to the petitioner to straight away give their explanation/reply to the third respondent within a period of ten (10) days from the date of receipt of a copy of this order. The third respondent is directed to consider the same and take a decision within a period of four (4) weeks from the date of receipt of the explanation/reply from the petitioner. Till then, the present *status-quo* shall be maintained.

In the result, this writ petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

12.04.2023

Index : Yes/No
Speaking Order / Non Speaking Order
Neutral Citation: Yes/No
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N. ANAND VENKATESH, J

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To

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Department of Tourism, Culture &
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Secretariat, Chennai - 600 009.
- 2.The Commissioner,
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