



W.P.No.13102 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2023

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.13102 of 2023  
and WMP Nos.12868 and 12869 of 2023

V.Visweswaran

...Petitioner

Vs

1. The Commissioner,  
Hindu Religious and Charitable Endowments  
Department,  
Uthamar Gandhi Salai,  
Nungambakkam, Chennai 600 034

2. The Joint Commissioner,  
Hindu Religious and Charitable Endowments  
Department,  
Room No.1,2, New Commercial complex,  
Cotton Market Complex,  
Palladam Road, Tirupur - 641 604

...Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the impugned order dated 29.03.2023 passed in MP No.1/2022 in RP No.221 /2022 D2 on the file of the 1<sup>st</sup> respondent and quash the said impugned order as illegal, unjust, arbitrary



W.P.No.13102 of 2023

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and contrary to law.

For Petitioner : Mr.E.Omprakash  
Senior Counsel

For Respondents : Mr.S.Yashwanth  
Additional Government  
Advocate

### **ORDER**

This writ petition has been filed challenging the impugned order passed by the 1<sup>st</sup> respondent in MP No.1 of 2022 in RP No.221/2022/D2 dated 29.03.2023, wherein the interim stay granted in favour of the petitioner was vacated and the application was dismissed and a further direction was given to the Joint Commissioner to continue the process of appointment of trustees as per the notification.

2. The case of the petitioner is that Arulmigu Natrayasamy Temple at Mettupalayam Village in Kangayam Taluk, Tirupur District, is an ancient temple and persons belonging to the Kongu Vellala Gounder Community played a



W.P.No.13102 of 2023

WEB COPY

major role in the development and also in the management of the temple. A Maha Kumbhabhisegam was also performed for the Rajagopuram of the temple by the said community people in the year 2019. This temple has been under the control of the HR&CE Department and it is administered by the Executive Officer with the full co-operation of the people belonging to the Kongu Vellala Gounder Community.

3. The temple in question is a listed temple and all of a sudden, a notification came to be issued by the Joint Commissioner through paper publication dated 24.04.2022 and steps were taken to appoint non-hereditary trustees for the temple. Immediately after the notification was issued, the petitioner made some enquiries and ascertained the fact that the temple is governed by a modified scheme of the year 1938. On going through the modified scheme, it was found that there was inconsistency between the scheme and the provisions of the Act.



W.P.No.13102 of 2023

WEB COPY

4. In view of the above, an application was filed on 03.09.2022 before the 2<sup>nd</sup> respondent under Section 64(5) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, (hereinafter called as the Act) for cancellation of the scheme framed in the year 1938.

5. The petitioner also filed a revision petition before the 1<sup>st</sup> respondent to strike down the paper notification dated 24.04.2022 and in the meantime, to stay the operation of the notification. Initially, the 1<sup>st</sup> respondent was pleased to grant an order of stay of the notification on 21.09.2022. When the application came up for hearing on 29.03.2023, the 1<sup>st</sup> respondent proceeded to vacate the stay and dismissed the stay application. The 1<sup>st</sup> respondent also further directed the Joint Commissioner to continue the process of appointment of trustees in accordance with law. Aggrieved by the same, the present writ petition has been filed before this Court.



W.P.No.13102 of 2023

WEB COPY

6. Heard Mr.E.Omprakash, learned Senior counsel for the petitioner and Mr.S.Yashwanth, learned Additional Government Pleader for respondents.

7. The main contention that was raised by the learned Senior counsel appearing on behalf of the petitioner was that the existing scheme viz., the 1938 modified scheme is repugnant to Section 64(2) of the Act as it had not taken into consideration the interest of the Kongu Vellala Gounder community for whose benefit the temple was established. The learned Senior counsel further pointed out that the modified scheme was in-complete since out of the five trustees to whom the administration will vest there was only a mention about two trustees to be appointed from the family of Aandi and the scheme was completely silent about the remaining three trustees. It was further contended by the learned senior counsel that the



W.P.No.13102 of 2023

WEB COPY

scheme had fixed the tenure of the trustees as five years and whereas, the Act has fixed the maximum tenure only as two years. It was further contended that the existing scheme was repugnant to Section 55 of the HR&CE Act since the servants of the temple cannot act as the trustees and admittedly, the two members who are serving as pujaris in the temples are being made as the trustees which also goes against the very scheme of the Act. In view of the same, the learned senior counsel concluded his arguments by submitting that the scheme that was framed under the erstwhile Act is repugnant to the provisions of the new Act and hence, to that extent the scheme must be considered to be void by operation of Section 118 of the Act.

8. Per contra the learned Additional Government Pleader appearing on behalf of the respondents submitted that the trustees were always appointed to the temple as per the existing scheme. The last such appointment was also made accordingly and the tenure came to an end in the year 2007. Till



W.P.No.13102 of 2023

WEB COPY

then, out of five trustees, two were appointed from the Andi Family, two were appointed from the Kongu Vellala Gounder community and one was appointed from the Scheduled caste Community. After the year 2007, the temple was under the control of the Executive officer. A decision was taken to appoint non-hereditary trustees in all those temples which are under the control of the Executive officer and the subject temple also fell within the scope of the said decision. It was therefore submitted that selection of the trustees will be in accordance with the existing scheme and the application made by the petitioner for the cancellation / modification of the existing scheme is already under the consideration of the Joint Commissioner and subject to the final order, the future appointment of the trustees for the temple will be undertaken. The learned Additional Government Pleader submitted that the 1<sup>st</sup> respondent had taken all these factors into consideration and had taken a decision to vacate the stay and directed the joint commissioner to proceed further with the notification.



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W.P.No.13102 of 2023

9. This Court has carefully considered the submissions made on either side and also perused the materials available before this Court.

10. There is no dispute with regard to the fact that the subject temple as such is governed by the modified scheme which was brought into force by the Board's order No.548 dated 18.03.1938. The relevant clause which deals with the appointment of Trustees is extracted hereunder :-

*2. The Administration of Shri. Nattarayaswami Temple, Mettupalayam, Dharmapuram Taluk, Coimbatore District shall vest in five trustees appointed by the Board two of whom shall be chosen from among the members of the families of Andi Trustees. The Trustees shall hold office for a period of five years from the date of appointment. The non*



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W.P.No.13102 of 2023

*hereditary trustees appointed by the Board shall be liable to be removed from office for good and sufficient cause and the Board's order in this respect shall be final, such trustees shall hold office for a period of five years from the date of appointment.*

11. The learned Senior counsel appearing on behalf of the petitioner had attacked the above clause on various grounds. It is on these grounds an application has now been filed before the Joint Commissioner for cancellation / modification of the scheme and it is pending. In view of the same, it is not necessary for this Court to go into the validity / legality of the terms of the scheme qua the present enactment. That is not within the scope of this writ petition.

12. The fact remains that the trustees were appointed in line with the modified scheme till the year 2007. Till then, no body had questioned the appointment of trustees. It seems that



W.P.No.13102 of 2023

from 2008 onwards the temple was under the control of the Executive officer and the persons belonging to the Kongu vellala Gounder Community had participated in the administration by co-operating with the executive officer. This status had continued for nearly 15 years. When the Joint Commissioner took steps to appoint non-hereditary trustees for the subject temple and other temples, it was not to the liking of the persons belonging to the Kongu vellala Gounder Community. Hence, they have filed an application before the Joint Commissioner seeking for cancellation / modification of the existing scheme.

13. The Revision petition has been filed before the 1<sup>st</sup> respondent questioning the notification issued by the Joint Commissioner and the petitioner had sought for stay of the notification. Even though a stay was granted initially, the same was vacated subsequently. The 1<sup>st</sup> respondent has come to a conclusion that for the present, the temple is governed by a scheme and the appointment of the trustees should happen in



W.P.No.13102 of 2023

WEB COPY

line with the scheme and as and when the existing scheme is cancelled or modified, the same will come into effect and thereafter, the trustees can be appointed in line with the modified scheme. Such a decision taken by the 1<sup>st</sup> respondent, by no stretch can be held to be illegal. The 1<sup>st</sup> respondent has properly applied his mind in coming to such a conclusion.

14. The petitioner cannot insist that the temple must be administered only by the Executive officer and only those persons belonging to the Kongu Vellala Gounder Community will participate in the administration of the temple. Such insistence cannot be made till the earlier scheme is in force. As to how the five trustees are going to be appointed, it has already been clarified that two will be from the Aandi Community, two persons will be from the Kongu Vellala Gounder community and one will be from the scheduled caste community. This arrangement should continue till the existing scheme is modified or cancelled. Appointment of an executive officer or a fit person is more a



W.P.No.13102 of 2023

WEB COPY

temporary measure and it cannot be allowed to go on continuously for ever. That is the reason why there is insistence that non hereditary trustees must be appointed to the temples to administer the same.

15. In the light of the above discussion, this Court does not find any ground to interfere with the impugned order passed by the 1<sup>st</sup> respondent. It is made clear that the 2<sup>nd</sup> respondent can proceed further with the notification for the appointment of the non-hereditary trustees. The application that has been submitted by the petitioner before the 2<sup>nd</sup> respondent seeking for the cancellation / modification of the scheme shall be dealt with on its own merits and in accordance with law and a decision shall be taken by the 2<sup>nd</sup> respondent within a period of three months from the date of receipt of a copy of this order. Once a final decision is taken in the application filed by the petitioner, the appointment of the trustees shall be only in accordance with such a final decision taken by the Joint Commissioner. While



W.P.No.13102 of 2023

WEB COPY

appointing the non-hereditary trustees, it shall be made clear even in the proceedings of appointment that it will be subject to the final result of the application filed by the petitioner seeking for the modification / cancellation of the existing scheme. If this clarity is given, it will sufficiently take care of the grievance that was expressed by the petitioner.

16. In the result, this writ petition is dismissed in the above terms. No costs. Consequently, the connected miscellaneous petitions are closed.

**26.04.2023**

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Index : Yes/No

Internet : Yes /No

Neutral Citation : Yes /No



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To



W.P.No.13102 of 2023

N.ANAND VENKATESH., J  
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W.P.No.13102 of 2023  
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