



WEB COPY



Writ Petition No.13531 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.13531 of 2023

and

W.M.P.No.13203 of 2023

P.Seetharaman Gounder
S/o.P.Perumal

... Petitioner

Vs.

1.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Villupuram - 605 602.

2.The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Villupuram - 605 602.

3.The Fit Person/E.O.,
Arulmighu Draupathi Amman Kovil Thirukovil
Draupathi Amman Kovil Street,
Melpathi, Villupuram - 605 103.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the entire records pertaining to the order dated 11.04.2023 of the second respondent made in Se.Mu.Na.Ka.No.1154/2023/A1 in appointing Fit Person and quash the same and consequently, quash the notice of the third respondent dated 17.04.2023 to handover charge of the temple.



WEB COPY



Writ Petition No.13531 of 2023

For Petitioner : Mr.Karthikeyan, Senior Counsel
for Ms.A.Jagadeeswari

For Respondents : Mr.K.Karthikeyan
Government Advocate (HR&CE)

ORDER

Considering the limited issue involved in this writ petition and on concurrence given by either side, the main writ petition is taken up for final hearing.

2. This writ petition has been filed assailing the order passed by the second respondent dated 11.04.2023 appointing a fit person for Arulmighu Draupathi Amman Thirukovil at Villupuram District and the consequential notice issued by the third respondent dated 17.04.2023 directing the petitioner to hand over the charge of the temple to the fit person.

3. Heard Mr.Karthikeyan, learned Senior Counsel appearing for petitioner and Mr.K.Karthikeyan, learned Government Advocate (HR&CE), appearing for respondents.

4. The case of the petitioner is that Arulmighu Draupathi



Writ Petition No.13531 of 2023

Amman Thirukovil belongs to Vanniya Gounder community at Melpathi village. According to the petitioner, the temple is a denominational temple. The trustees of the temple are elected by the people belonging to the said community and the petitioner was also elected along with five others in a meeting held in the year 2019.

5. The grievance of the petitioner is that the third respondent served the impugned notice dated 17.04.2023 and demanded to hand over the charge of the temple to the fit person. At that point of time, the petitioner came to know that such a notice was issued by the third respondent pursuant to the order passed by the second respondent through impugned proceedings dated 11.04.2023 wherein the fit person was appointed u/s.49(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 [hereinafter referred to as 'the Act']. Aggrieved by the same, the present writ petition has been filed before this Court.

6. The main issue that was canvassed by learned Senior Counsel appearing on behalf of the petitioner is that the second respondent proceeded to appoint the fit person without issuing any notice



and without affording any opportunity to the trustees of the temple. For this purpose, learned Senior Counsel brought to the notice of this Court Section 49 of the Act and pointed out the procedure to be followed before appointing a fit person for the temple.

7. The appointment of a fit person can be exercised under two contingencies. The first contingency is that the institution must be a religious institution and the second contingency is that the concerned authority must be satisfied that there is some mal-administration in the religious institution by the existing trustees. Before proceeding further to appoint a fit person, the interested persons must be put on notice and their explanation must be sought for and only thereafter, the fit person can be appointed.

8. This Court has repeatedly held that appointment of a fit person u/s.49(1) of the Act should take place only after issuing notice to the existing trustees. Useful reference can be made to the judgment of 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]***.

9. In the instant case, the second respondent was aware of the



fact that the temple was under the administration and control of the trustees. Hence, if the second respondent is satisfied that the contingencies u/s.49 of the Act have been fulfilled, the minimum requirement that ought to have been followed is that the second respondent should have issued a show cause notice, called for an explanation and thereafter, proceeded further to pass orders. Since this procedure has not been followed, the impugned proceedings dated 11.04.2023 of the second respondent requires the interference of this Court. As a consequence, the subsequent notice issued by the third respondent dated 17.04.2023 must also fail.

10. In the light of the above discussion, the impugned notice dated 11.04.2023 issued by the second respondent shall be treated as a showcause notice. The petitioner is directed to give his explanation to the proceedings dated 11.04.2023 within a period of four (4) weeks from the date of receipt of a copy of this order. On receipt of the explanation, it is left open to the second respondent to consider the explanation after affording an opportunity to the parties concerned and thereafter, shall take a decision. In view of the same, the subsequent notice issued by the third respondent dated 17.04.2023 is hereby set aside.



WEB COPY



Writ Petition No.13531 of 2023

N.ANAND VENKATESH, J

gm

In the result, this writ petition is allowed in the above terms.

No costs. Consequently, connected miscellaneous petition is closed.

28.04.2023

Neutral Citation: Yes/No

Index: yes/no

Speaking Order/Non-Speaking Order

gm

To

1.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Villupuram - 605 602.

2.The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Villupuram - 605 602.

3.The Fit Person/E.O.,
Arulmighu Draupathi Amman Kovil Thirukovil
Draupathi Amman Kovil Street,
Melpathi, Villupuram - 605 103.

Writ Petition No.13531 of 2023