IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.18616 of 2023
and W.M.P No.17864 of 2023

C.Manivannan Petitioner

vs.

1.The Commissioner,
Tamil nadu Hindu Religious and Charitable Endowments Department,
Nungambakkam,
Chennai – 600 034.

2.The Joint Commissioner,
Tamil nadu Hindu Religious and Charitable Endowments Department,
No.130, R.K.Mutt Road,
Mylapore, Chennai – 600 004.

3.The Assistant Commissioner,
Tamil nadu Hindu Religious and Charitable Endowments Department,
No.130, R.K.Mutt Road,
Mylapore, Chennai – 600 004.

4.The Executive Officer,
Arulmigu Siddi Buddi Vinayagar and Sundareswarar Temple,
Royapettah, Chennai – 600 014. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, call for the connected records of the 3rd respondent, Assistant Commissioner, HR & CE Department, Chennai-34 dated 27.09.2022 in his proceeding Se.Mu.Na.Ka.No.1182/2022/A2 appointing fit person to A/m. Kadumbadi Amman @ Kadumbadi Chinnamman Temple situated at 213, Bharathi Salai, (Phycrofts Road), Royapettah, Chennai – 600 014 and quash the same and further direct the 2nd respondent the Joint Commissioner to record the petitioner as the hereditary trustee of the said temple.

For Petitioners : Mr.C.Manivannan
Party-in-Person

For Respondents : Mr.N.R.R.Arun Natarajan
Special Government Pleader

ORDER

This writ petition has been filed challenging the proceeding of the 3rd respondent dated 27.09.2022, appointing a fit person to administer Sri Kadumbadi Amman @ Kadumbadi Chinnamman Temple situated at 213, Bharathi Salai, (Phycrofts Road), Royapettah, Chennai – 600 014.

2.The husband of one of the legal heir of Late Mani Chettiyar has filed this writ petition and he appeared in-person and argued this case.

3.The case of the petitioner is that one Umapathi Chettiyar was declared as the hereditary trustee of the subject temple under Section 63 (b) of the Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as "the Act") by an order passed by the Deputy Commission of HR & CE Department in O.A.No.23 of 1978. The said Umapathi Chettiyar continued to hold the position as the hereditary trustee till his death on 09.03.2003.

4.The further case of the petitioner is that the said Umapathi Chettiyar did not leave behind any legal heirs and in view of the same, one Mani Chettiyar, who is his brother succeeded to the office in terms of Section 54(1) of the Act. Even on an earlier occasion, an Executive Officer was appointed for the temple by the Joint Commissioner of HR & CE Department by an order dated 01.12.2003. This order became a subject matter of challenge before the Commissioner filed by Mani Chettiyar and the Commissioner of HR & CE Department set aside the order passed by the Joint Commissioner through proceedings dated 14.07.2004 in A.P.No.2004 D2.

5.The temple was administered by the said Mani Chettiyar till his demise on 14.02.2018. The legal heirs of Mani Chettiyar filed an application under Section 63(a) of the Act to declare as the legal heirs of the said Mani Chettiyar.

6.The grievance of the petitioner is that through the impugned proceedings dated 27.09.2022, the Assistant Commissioner has appointed a fit person/thakkar for the subject temple under Section 49(1) of the Act. Aggrieved by the same, the present writ petition has been filed before this Court.

7.Heard Mr.C.Manivannan, petitioner (party-in-person) and Mr.N.R.R.Arun Natarajan, learned Special Government Pleader appearing on behalf of the respondents.

8.The petitioner appearing in-person submitted that the appointment of a fit person by the Department is *per se* illegal, since the temple is already administered by a hereditary trustee and the legal heirs of Mani Chettiyar will automatically hold the office of the hereditary trustee. In view of the same, there is no question of appointment of a fit person to administer the temple. It was further submitted that a petition has already been filed before the concerned authority to declare the temple as a private temple and the same is pending before the Commissioner of HR & CE Department.

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

10.It is quite evident from the records that originally the above said Umapathy Chettiyar was declared as a hereditary trustee under Section 63(b) of the Act and he was administering the temple in that capacity till his demise on 09.03.2003. Thereafter, his brother started administering the temple. In the meantime, an Executive Officer was appointed by the Joint Commissioner through proceedings dated 01.12.2003. This came to be challenged by the said Mani Chettiyar and the Commissioner of HR & CE Department through order passed in A.P.No.3 of 2004 D2, dated 14.07.2004, allowed the appeal in the following terms:

> *4.From the impugned order it appears that the Joint Commissioner ha not issued any notice to the members of the family of the deceased hereditary trustee. Section 54(3) of the Act requires that in making any appointment under this sub-section, the Joint Commissioner shall have due regard to the claims of the members of the family, if any, entitled to the succession. Further as reported in the Case Law 1990-I L.W. P.144 & 145 there is no necessity whatever for the next hereditary trustee to make an application for being appointed under the Act. In the circumstances the impugned order is liable to be set aside and is accordingly set aside. The Appeal Petition be and is hereby allowed.*

11.What is evident from the above order is that members of the family of the deceased hereditary trustee were not issued any notice and hence, the Commissioner by taking note of the settled position of law, came to a conclusion that before the appointment of the Executive Officer, the due claims made by the members of the family ought to have been considered. In view of the same, it was held that the impugned order passed by the Joint Commissioner appointing the Executive Officer was liable to be interfered. This order does not actually recognize that Mani Chettiyar was the hereditary trustee of the temple and it merely says that the next hereditary trustee must make an application for appointing them as the hereditary trustee and they should have been heard and before that, the Executive Officer ought not to have been appointed. That does not really give a seal of approval declaring Mani Chettiyar as the hereditary trustee of the temple.

12.It is also apparent from the records that the legal heirs of Mani Chettiyar had infact filed an application under Section 54(1) of the Act before the Joint Commissioner in M.P.No.02 of 2018 for appointing them as the hereditary trustee. This application came to be dismissed by the Joint Commissioner through proceedings dated 12.08.2022. There is absolutely nothing available on record to show that this order has been put to challenge and in any case, this order is yet to be interfered in the manner known to law.

13.It is under these circumstances, the Assistant Commissioner through proceedings dated 27.09.2022 has proceeded to appoint a fit person to administer the temple. This decision had to be taken by the Assistant

Commissioner in view of the fact that there were several complaints given against the administration of the properties belonging to the temple and till date, there was no one who has been declared to the hereditary trustee of the temple. Till the order passed by the Joint Commissioner in M.P.No.2 of 2018, dated 12.08.2022, is interfered or reversed in the manner known to law, no one else can be recognized as the hereditary trustee of the temple. Hence, the decision taken by the Assistant Commissioner to appoint a fit person/thakkar for administering the temple cannot be faulted and this Court does not find any ground to interfere with the same.

14.Accordingly, this writ petition stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

26.06.2023

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Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
ssr

N. ANAND VENKATESH, J.
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