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Writ Petition No.17169 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2023

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.17169 of 2023
and
W.M.P.Nos.16345 & 16346 of 2023

R.Mohan
S/o.Late S.O.Ramasamy

...Petitioner

Vs

1.The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Salem, Salem District.

2.The Assistant Commissioner,
(Additional Charge),
Hindu Religious and Charitable
Endowment Department,
Namakkal, Namakkal District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned notice order dated 18.04.2023 made in Na.Ka.No.947/83/2023/A6 passed by the second respondent, quash the same and consequently, forbear the respondents from interfering with the



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affairs and administration of A/m.Padugaikadu Karuppannaswamy temple, Aavathipalayam, Kaliyanur Village, Komarapalayam Taluk, Namakkal District on merits.

For Petitioner : Mr.N.Manoharan

For Respondents : Mr.S.Yaswanth
Additional Government Pleader

ORDER

The impugned notice dated 18.04.2023 issued by the second respondent calling for applications for appointment of non-hereditary trustees for Padugai Periya Karuppannaswamy Temple at Komarapalayam Taluk, Namakkal District, has been put to challenge in the present writ petition.

2. Heard Mr.N.Manoharan, learned counsel for petitioner and Mr.S.Yaswanth, learned Additional Government Pleader appearing for respondents.

3. The case of the petitioner is that he is the poojari in the subject temple, which according to the petitioner is constructed and congregated 200



years ago by his ancestors. The further case of the petitioner is that one

Balasubramaniam and two others raised certain disputes with regard to the affairs of the temple and hence, a suit was filed in O.S.No.1036 of 1987 before the District Munsif Court, Tiruchengode, against them seeking for the relief of declaration that the temple belongs to a particular community and for consequential reliefs. The suit was decreed *ex parte* by judgment and order dated 19.06.1989. Therefore, according to the petitioner, the decree recognized the right of the family and thereby, the temple is claiming to be a denominational temple.

4. Thereafter, in the year 2010, yet another suit came to be filed by one Kumarasamy in O.S.No.146 of 2010 before the Additional District Munsif Court, Tiruchengode, for the relief of permanent injunction against the petitioner and others. The suit was decreed and the appeal filed against the decree passed in the suit was also dismissed and aggrieved by the same, S.A.No.916 of 2021 was filed before this Court and the same is pending.

5. The grievance of the petitioner is that the second respondent has issued the impugned notice dated 18.04.2023 inviting applications to



appoint non-hereditary trustees for the temple. It was contended that this step was taken by the Hindu Religious and Charitable Endowments Department [for brevity 'the Department'] disregarding the rights guaranteed under Article 26 of the Constitution of India and even without conducting a proper enquiry u/s.51 and Section 64(2) of the Hindu Religious and Charitable Endowments Act, 1959 [for brevity 'the Act'] to see if the concerned temple belongs to any religious denomination.

6. Learned Additional Government Pleader appearing on behalf of respondents submitted that the decree passed in the earlier suit filed in the year 1987 will not bind the the Department since the Department was not a party to the suit. It was further contended that even on an earlier occasion during the year 2000 and 2003, non-hereditary trustee was appointed and this was not challenged by the petitioner. That apart, from the year 2006 onwards, the temple is under the control of the fit person appointed by the Department. Learned Additional Government Pleader also brought to the notice of this Court the directions issued by the Division Bench for appointment of non-hereditary trustees in temples, which are under the control of the fit person for a long period of time. In view of the same,



learned Additional Government Pleader sought for the dismissal of the writ petition.

7. The petitioner is claiming that the subject temple belongs to a particular community and it is a religious denomination. Therefore, according to the petitioner, the Department ought not to have issued the notice calling for applications to appoint non-hereditary trustees to the subject temple. The Department has taken a very specific stand that right from the year 2006 onwards, the temple is under the control of a fit person appointed by the Department. That apart, this temple is a non-listed temple u/s.49(1) of the Act.

8. The present impasse can be resolved only if the petitioner makes a proper application before the Joint Commissioner u/s.63(a) of the Act and establishes that the temple in question is a religious denomination and it is not a religious institution, which would come under the control of the Department. Till this is done, the Department will not recognize the temple as a religious denomination and this is more so since the temple has been under the control of the fit person from the year 2006 onwards. It is also a



matter of fact that non-hereditary trustee was appointed on an earlier occasion and hence, this Court does not deem it fit to interfere with the impugned notice issued by the second respondent.

9. In order to balance the rights of the petitioner and others and also the Department, this Court deems it fit to issue certain directions. Accordingly, the following directions are issued:

- (a) the petitioner is directed to file an application u/s.63(a) of the Act before the Joint Commissioner having jurisdiction to entertain the application and it is left open to the petitioner to claim for the right of religious denomination by putting forth all the materials before the concerned authority. This application shall be made within a period of two (2) weeks from the date of receipt of a copy of this order;
- (b) The Joint Commissioner, on receipt of the application from the petitioner, shall proceed further to deal with the same on its own merits and in accordance with law after affording an opportunity to all the interested parties and a final order shall be passed in the application within a period of three (3) months from the date of filing of the application by the petitioner;



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- (c) It is left open to the petitioner to submit an application for being considered for appointment as a non-hereditary trustee and this application shall be submitted by the petitioner within a period of two(2) weeks from today. The application submitted by the petitioner shall also be entertained and shall be considered at the time of appointment of the non-hereditary trustees to the said temple. It is made abundantly clear that the submission of application by the petitioner will be without prejudice to the rights of the petitioner to claim for the right of religious denomination to the subject temple and the submission of the application should never be put against the petitioner and others while dealing with the application filed u/s.63(a) of the Act; and
- (d) The appointment of non-hereditary trustee to the subject temple will be subject to the final decision that is arrived at in the application filed u/s.63(a) of the Act.

This writ petition is disposed of with the above directions. It is made clear that these directions are issued to ensure that the affairs of the temple are being properly managed and ultimately, the rights of the parties will be



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decided only in the application that is filed u/s.63(a) of the Act. No costs.

Consequently, connected miscellaneous petitions are closed.

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Index : Yes/No

Speaking order:Yes/No

Neutral citation:Yes/No

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