



AS No.547 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-02-2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

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R.Dhandapani

.. Appellant

vs.

- 1.The Commissioner,
Hindu Religious and Charitable Endowments
Department,
Uttamar Gandhi Salai,
Chennai – 600 034.
- 2.The Joint Commissioner,
Hindu Religious and Charitable Endowments
Department,
Dr.Balasundaram Road,
Coimbatore-18.
- 3.Arulmigu Chinnamman and Periamman Temple,
Represented by Fit Person, appointed under Section



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54(3) of the Tamil Hindu Religious and Charitable
Endowments Act,
Annur,
Coimbatore.

.. Respondents

PRAYER : This Appeal Suit is filed under Section 70 (2) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, against the judgment and decree dated 07.02.2019 passed by the learned I Additional Sub Judge, Sub Court, Coimbatore in OS No.635 of 2012.

For Appellant : Mr.V.G.Suresh Kumar

For Respondents-1 and 2 : Mr.M.Bindran,
Additional Government Pleader
(HR&CE).

For Respondent-3 : Ms.V.S.Usha Rani

J U D G M E N T

The present Appeal Suit has been instituted against the judgment and decree dated 07.02.2019 passed by the learned I Additional Sub Judge, Sub Court, Coimbatore in OS No.635 of 2012.



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2. The appellant is the plaintiff and the respondents are the defendants in the suit.

3. The appellant/plaintiff instituted the suit to set aside the order dated 04.01.2010 passed by the Joint Commissioner, Hindu Religious and Charitable Endowments Department (HR&CE) dismissing the plaintiff from Trusteeship and confirmed by the Commissioner, HR&CE Department by an order dated 03.05.2011 in AP No.24 of 2010.

4. The plaint averments state that the plaintiff was the Hereditary Trustee of two Temples dedicated to Arulmigu Periamman and Chinnamman Temples at Annur Village. As per order dated 26.12.1975 passed in OA No.3 of 1975, Nanja Pandaram, Ranga Pandaram and Mara Pandaram were declared as Hereditary Trustees of the said Temples by the Deputy Commissioner of Hindu Religious and Charitable Endowments Department, Coimbatore. The said Mara Pandaram died on 29.12.1996.

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Further one of Trustee Ranga Pandaram died on 23.02.1991 and thereafter, the plaintiff, being the eldest son, entitled to succeed his father and accordingly, filed an application before the second defendant in MP No.13 of 1995 by declaring the plaintiff as the successor to his father late Mr.Ranga Pandaram and after enquiry, the plaintiff was declared as Hereditary Trustee. Another Trustee Nanja Pandaram also died on 23.01.2001 and thereafter, the plaintiff was the only Trustee managing the affairs of the temples as a Trustee. After nearly four years, the second defendant issued an order date 08.02.2005, suspending the plaintiff from the Trusteeship of the Temples based on certain charges.

5. The plaintiff filed a writ petition in WP No.9563 of 2005, seeking a direction to the second defendant to enquire and pass orders with reference to the charges levelled against the plaintiff. The second defendant did not take any steps for the disposal of the enquiry as per the directions of the High Court of Madras. No show cause notice was issued to the plaintiff and on receipt of explanation, the second defendant passed an order on



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04.01.2010 dismissing the plaintiff from the Hereditary Trusteeship under Section 53(1)(c) of the Hindu Religious and Charitable Endowments Act (hereinafter referred to as the 'HR&CE Act', in short). Aggrieved by the said order, the plaintiff filed an appeal before the first defendant in AP No.24 of 2010 and the Appellate Authority passed an order on 03.05.2011, which was not communicated to the plaintiff. The first defendant confirmed the order of dismissal passed by the Joint Commissioner of Hindu Religious and Charitable Endowments Department.

6. The charges 1 and 2 levelled against the plaintiff are in respect of the proceedings initiated by Settlement Tahsildar under Section 4 of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963. However, during the relevant period, the plaintiff was not a Trustee. The appellant/plaintiff in the plaint narrated by stating that the charges levelled against the him are untenable. The third defendant filed written statement denying the plaint averments.



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7. The plaintiff was originally functioning as the Trustee of the Temples after the death of his father Nanja Pandaram as per the order passed in MP No.13 of 1995 from 10.12.2004. The plaintiff was not looking after the properties properly and he was acting against the interest of the Temples. Thus he was suspended from Trusteeship by the Joint Commissioner in order dated 08.02.2005 by framing seven charges.

8. The charge No.1 relates to the obtaining patta in respect of the Temples' Inam lands. The charge No.2 relates to the fact that Hereditary Trustee had illegally obtained patta to the said lands in his name against the interest of the Temples from the Inam Settlement Tahsildar. The charge No.3 relating to legal proceedings taken by one Mr.M.P.Subramaniam before the Sub Collector, Tiruppur, which were not disclosed by the Hereditary Trustee to the Department. The charge No.4 relating to the conduct of the Hereditary Trustee in arguing the case against the interest of the Temples. The charge No.5 is relating to the failure of the Hereditary Trustee to disclose the acquisition of the Temples' land to an extent of 64



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cents. The charge No.6 is relating to the Hereditary Trustee's failure to maintain proper accounts and charge No.7 is relating to the failure of the Hereditary Trustee to prepare and maintain the Property Register etc.

9. The Joint Commissioner of HR&CE Department not accepting the explanation given by the plaintiff and issued an order of dismissal. As against the said dismissal, the plaintiff preferred an appeal, which was also rejected.

10. The defendants have stated that the Inam lands were granted to Arulmigu Chinnamman Temple and Periyammam Temple for the maintenance of the Temples as Devathayam Inam lands. Further Arulmigu Chinnamman and Arulmigu Periyamman Temples were granted the lands in SF Nos.83/1 etc., of Annur Village as Inam lands. As per Madras Minor Inam (Abolition and Conversion into Ryotwari) Act, 1963, the predecessors of the plaintiff applied to Gobichettipalayam Settlement Tahsildar for getting patta in their favour and the Tahsildar granted conditional patta to the



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predecessors of the plaintiff Mr.Dhandapani in order dated 17.12.1966 and the said Mr.Dhandapani was functioning as the Trustee of the Temples.

Since the service holders did not act as per the condition under which they got patta from the Tahsildar on 17.12.1966, the Revenue Divisional Officer cancelled the patta. Thus they failed to safeguard the interest of the Temples.

11. Based on the pleadings, the Trial Court framed the following issues:-

(1) Whether the plaintiff is entitled for the relief of cancelling the order dated 04.01.2010 passed by the Joint Commissioner, Hindu Religious and Charitable Endowments Department as prayed for ?

(2) To what relief ?

12. On the side of the plaintiff, PW-1 was examined as a witness and Exs.A-1 to A-4 were marked as documents. On the side of the defendants, DW-1 was examined as a witness and Exs.B-1 to B-3 were marked as documents.



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13. Regarding Issue No.1, the Trial Court considered the nature of the charges levelled against the plaintiff, who was holding the post of Hereditary Trustee. It is an admitted fact that the plaintiff filed WP No.9563 of 2005 and the High Court of Madras directed the second defendant/Joint Commissioner of HR&CE Department to dispose of the disciplinary proceedings initiated against the plaintiff, within three months from 14.10.2008.

14. Perusal of Ex.A-2 document, which is an order passed by the second defendant/Joint Commissioner of HR&CE Department, the charges levelled against the plaintiff and the reply given by the plaintiff on 30.11.2009 was considered. Subsequently, Ex.A-2 order dated 04.01.2010 was passed.

15. The Trial Court found that there is no whisper about the conduct of an enquiry in the order dated 04.01.2010 Ex.A-2, the Joint



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Commissioner of HR&CE Department considered the reply given by the plaintiff and passed an order without conducting an enquiry after affording an opportunity to the plaintiff.

16. In this regard, the Trial Court arrived a conclusion that an enquiry is mandatory and the principles of natural justice is to be followed while conducting an enquiry into the charges levelled against the plaintiff.

17. An opportunity to submit the documents and evidences is to be afforded to the charged Hereditary Trustee, which was not provided as per the orders passed by the second defendant in Ex.A-2 document. Even under the provisions of the HR&CE Act, such an enquiry is mandatory and thus the respondents 1 and 2 have failed to pass an order in compliance with the provisions of the HR&CE Act. Accordingly, the Trial Court found that the order in Ex.A-2 document was passed without conducting an enquiry as contemplated under the provisions of the HR&CE Act, by affording an opportunity to the plaintiff and accordingly concluded that the order is to be



set aside.

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18. In view of the fact that Issue No.1 was decided in favour of the plaintiff, Issue No.2 also held in favour of the plaintiff and accordingly the Trial Court set aside the order passed by the defendants 1 and 2 and directed the defendants 1 and 2 to conduct an enquiry as contemplated under the provisions of the HR&CE Act and thereafter, decided the issues on merits and in accordance with law.

19. No doubt, the charges against the Hereditary Trustee are to be enquired into based on the documents and evidences and by affording an opportunity to the charged Hereditary Trustee. The decision taken merely based on the explanation would be insufficient to rebut the allegations set out in the charge memorandum is to be provided to the plaintiff, enabling him to prove his innocence or otherwise. Thus the rule of natural justice requires that an opportunity not only to submit an explanation, but also by conducting an enquiry for the purpose of establishing the innocence or



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otherwise through documents and evidences. However, in the present Appeal Suit, the appellant could establish that no such opportunity was afforded to him for submitting the documents and evidences, which resulted in violation of principles of natural justice.

20. The learned counsel for the appellant mainly contended that the Ryotwari patta was granted more than three decades before and therefore, the appellant/plaintiff cannot be held liable for any such inactions. That apart, such closed issues cannot be reopened after several years, so as to initiate disciplinary action against the plaintiff, who was appointed long after the issuance of patta to the Hereditary Trustee. However, whether the involvement of the plaintiff or otherwise or inactions or omissions are all to be enquired into with reference to the documents and evidences and based on the charges framed.

21. This Court cannot form an opinion merely based on the time gap and exonerate the Hereditary Trustee from the allegations. No suit



against the charge memo is entertainable in a routine manner. The suit

against a charge memo may be entertained only if the charges are issued by an Incompetent Authority having no jurisdiction or otherwise, a mala fide allegation raised against the officials concerned are proved. Under the provisions of the HR&CE Act, the Competent Authority is empowered to frame charges and suspend the Hereditary Trustee and conduct an enquiry and pass appropriate orders on merits and in accordance with law. While-so the Courts cannot adjudicate the charges on merits when the charges are under challenge in the suit. All such merits are to be adjudicated with reference to the documents and evidences before the Competent Authority and only after reaching finality under the provisions of the HR&CE Act, the suit would be entertainable against the final orders passed by the Competent Authorities.

22. In the present case, the plaintiff had given an explanation, which was considered and a final order was passed without conducting an enquiry. The appellant preferred an appeal and the said appeal was also



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rejected. Thus the plaintiff instituted the suit. Therefore, the suit is entertainable.

23. The Trial Court considered all these factors and arrived a conclusion that a fresh enquiry is to be conducted with reference to the allegations set out against the plaintiff.

24. The contention of the appellant that the allegations pertain to several years back alone cannot be ground to grant an exoneration by this Court and even under those circumstances, an enquiry is certainly warranted, which is to be conducted by affording an opportunity to the appellant/plaintiff.

25. The principles in the matter of conduct of enquiry were considered by the Trial Court in a right perspective. However, the mode of conduct of enquiry stipulated by the Trial Court becomes unnecessary. Thus this Court do not find any infirmity in respect of the decision arrived by the



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Trial Court for the purpose of conducting a de nova enquiry by affording an opportunity to the appellant/plaintiff.

26. Accordingly, the judgment and decree dated 07.02.2019 passed by the learned I Additional Sub Judge, Sub Court, Coimbatore in OS No.635 of 2012 stands confirmed. The second defendant is directed to conduct de nova enquiry from the point of charges and conduct an enquiry by affording an opportunity to the appellant/plaintiff to submit his documents and evidences and thereafter pass final orders on merits and in accordance with law as expeditiously as possible, preferably within a period of four months from the date of receipt of a copy of this order. The appellant/plaintiff shall cooperate for the early disposal of the enquiry. In the event of non-cooperation, the appellant/plaintiff is not entitled to seek any relief merely on the ground of delay in disposal of the disciplinary proceedings.



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27. Accordingly, the judgment and decree dated 07.02.2019

passed by the learned I Additional Sub Judge, Sub Court, Coimbatore in OS No.635 of 2012 stands confirmed. Consequently, the present Appeal Suit is dismissed. However, there shall be no order as to costs.

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Speaking Order/Non-Speaking Order.

Neutral Citation : Yes/No.

Internet : Yes/No.

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S.M.SUBRAMANIAM, J.

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