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A.Nos.4015 & 4016/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	08.03.2023
Pronounced on	29.03.2023

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

Application Nos.4015 & 4016 of 2022
in
C.S.No.146 of 1933

1. Arul Migu Sri Anjeneyar Swamy
Devasthanam,Rep. by its Secretary
K.Kannabiran
- 2.R.V.N.Damani President
- 3.K.Kannabiran-Hon.Secretary
- 4.Lala Sasilendra Kumar Hon.Treasurer
- 5.Labh Karan Sethiya Trustee ... Applicants/ Trustees in both applications

Vs.

1. The Joint Commissioner,
Hindu Religious Endorsement Board,
Chennai Madalam (1),
Uthamar Gandhi Salai,
Chennai-600 034.
2. P.Shanmugam,
The Fit Person,
Arul Migu Sri Anjeneyar Swamy
Devasthanam,



A.Nos.4015 & 4016/2022

No.2, Angalamman Kovil Street,
Pattalam Sulai,
Chennai 600 012.

... Respondents/ Fit Person in both applications

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Prayer in Application No.4015/2022:- Application filed under Order XIV Rule 8 of O.S. Rules read with Section 151 of CPC, to direct the 2nd respondent to handover the possession of the 64 idols and other assets of the temple to petitioner, from whom the possession has been taken on 12.07.2022 in contravention to the scheme framed by this Court in C.S.No.146 of 1933 dated 11.12.1934.

Prayer in Application No.4016/2022:- Application filed under Order XIV Rule 8 of O.S. Rules read with Section 151 of CPC, to declare that the proceedings in SE.Mu.Na.3622/22/A1 dated 04.02.2022, and consequently appointing the 2nd respondent as Fit person of the temple as null and void, as the same is against the scheme framed by this Hon'ble court in C.S.No.146 of 1933 dated 11.12.1934.

In both applications,

For Applicants : Mr.A.Thiagarajan, Senior Advocate
for M/s.A.Vinuprasha

For Respondent-1 : Mr.P.Harish,
Government Advocate

For Respondent-2 : Mr.A.Sriharn , Senior Advocate
for M/s.A.S.Kailasam & Associates



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A.Nos.4015 & 4016/2022

COMMON ORDER

The Application in 4015/2022 has been filed by the applicant to direct the 2nd respondent to handover the possession of the 64 idols and other assets of the temple to petitioner, from whom the possession has been taken on 12.07.2022 in contravention to the scheme framed by this Court in C.S.No.146 of 1933 dated 11.12.1934 and another Application in 4016/2022 has been filed to declare that the proceedings in SE.Mu.Na.3622/22/A1 dated 04.02.2022, and consequently appointing the 2nd respondent as Fit person of the temple as null and void, as the same is against the scheme framed by this Hon'ble Court in C.S.No.146 of 1933 dated 11.12.1934.

2.Heard Mr.A.Thiagarajan, learned Senior Counsel for M/s.A.Vinuprasha, learned counsel appearing for the applicants/plaintiffs and Mr.P.Harish, learned Government Advocate for the first respondent and Mr.A.Sriram, learned Senior Counsel for M/s.A.S.Kailasam & Associates appearing for the second respondent/defendant.

3. The avernments of the plaint in brief, as hereunder:

The plaint has been preferred by Arul Migu Sri Anjeneyar Swamy Devasthanam, represented by its Secretary who is the first applicant herein

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and the other applicants are the Trustees and office bearers of the Trust. The petition mentioned property is administrated and maintained as per the scheme framed by the High Court in C.S.No.146 of 1933. The properties of devasthanam and mutt are vested in the board of 5 trustees selected from the following caste and communities in Madras;

1. One Trustee from the Lala community
2. One Trustee from the Marwadi community
3. One Trustee from the Naidu community
4. One Trustee from the Mudalair community
5. One Trustee from the Byradi Sadhu community.

3.1. As per the scheme, the trustees have to hold their office until their retirement or death. On the retirement of the trustee, the other trustees shall co opt another trustee of the caste or the community of the retiring trustee. The board of trustees shall select from among themselves a president, a treasurer and a secretary. The trustees shall be honourary trustees without any remuneration. One of the trustees is permitted to reside inside the temple premises and the board of trustees shall meet once in a month at temple premises. The income of the trust shall be used for payment of rent and other expenses. The balance of 2/3 of the income will be spent for daily pooja, worship and festival. The remaining 1/3rd income shall be



spent for feeding the Bhairagis and saadhu's, who are boarding and lodging at the mutt.

3.2. As per the scheme, the trustees shall maintain the temple and the accounts also to be monitored periodically. The first respondent initiated a proceeding in SE.Mu.Na.3622/22/A1 dated 04.02.2022 and observed that the Anjeneyar temple was not a declared temple under Section 46 of the Tamil Nadu Hindu Religious & Charitable Endowments Act-1959. The temple is to be administered only by four trustees. As the second respondent had been appointed as a Fit person through an order dated 04.02.2022, he had taken over the administration on 12.07.2022. The proceedings dated 04.02.2022 and the consequential communication dated 07.07.2022 is *per se* illegal, arbitrary and against the principles of natural justice and the proceedings are against the judgment and decree passed by framing a scheme in C.S.No.146/1933.

3.3. Even without giving notice to the trustees the orders have been passed. Since the High Court has appointed the board of trustees, the first respondent cannot suspend their actions. The second respondent had taken control and possession of 64 idols and 17 assets of the temple, without getting any prior concurrence from the High Court. The second respondent is



bound to return back the idols and other assets of the temple to the applicants. Hence these petitions have been filed to declare the proceedings of the first respondent in SE.Mu.Na.3622/22/A1 dated 04.02.2022 and consequential appointment of the second respondent as a Fit person of the temple is null and void and to return the 64 idols and 17 assets of the temple to the applicants.

4. The counter affidavit filed by the first respondent is in brief:

The applications filed by the applicants are not maintainable in view of the coming into force of the Tamil Nadu Hindu Religious and Charitable Endowments Act-1959, hereinafter referred to as the Act. The scheme decree has been passed in C.S.No.146/1933 under Section 92 of the Code of Civil Procedure and hence the present relief cannot be maintained in view of the Act.

4.1. The scheme decree has worked by its way out and they are directly contrary to the Act and hence the scheme decree itself has become void. Since the order appointing a Fit Person has been passed under Section 47(1)(c) proviso, any aggrieved person can file a revision petition under Section 21 and a further revision under Section 114 of the Act. Section 108 of the Act operates as a bar to the present applications. The applicants are



trying to do something indirectly which cannot be done by them directly.

The composition of Board of trustees of the subject Temple should be in accordance with Section 47(1)(c) of the Act.

4.2. The applicants are in effect relying upon clause (3) of the scheme decree dated 11.12.1934. In effect the temple is brought under the ambit of hereditary trusteeship by ensuring that no outsider can come into the fold of Trustees. No declaration has been obtained in respect of the Hereditary trusteeship either under the Act-1951 or the Act-1959. Since the present applications are on a different cause of action and the present relief cannot be claimed as an interim relief in the scheme suit, which had a different cause of action; the Hindu Religious and Charitable Endowments Department was not a party to the decree and hence that will not bind the first respondent; the law on the point of the powers to modify the scheme made by the High Court in accordance with the Act has already been settled by the Hon'ble Supreme Court and hence the applications should be dismissed.

5. The second respondent has filed a counter but it has contained the similar contentions raised by the first respondent in his counter.

6. Mr.A.Thiagarajan, learned senior counsel appearing for the



applicants submitted that the first applicant's temple is not a scheduled Temple and hence the impugned order cannot be passed by the first respondent. A scheme decree has been passed by the High Court is still in force. As per Section 71 of the Act, Notice has to be sent to the trustees and all other persons are interested, to show cause why the institution should not be notified and that can be done only if there is a reason to believe that there is some mismanagement. The applicant's temple was not listed in accordance with Section 46 of the Act. By passing the impugned order the first respondent cannot suspend the trustees, who have been appointed by the High Court by virtue of a decree passed in a scheme suit filed in C.S.No.146/1933. The learned counsel for the applicants cited the decision of the learned Single Judge of this Court held in **WP.No.20210 of 2013** in ***M.Rajamanikkam Vs. The District Collector, Thiruvannamalai and others***. It is wrong on the part of the first respondent to state that notice is not required because the scheme decree is void. While Section 71 of the Act speaks about the procedure and Section 46 speaks about the conditions, but the above procedures were not followed by the respondents.

7. Mr.P.Harish, learned Government Advocate for the first respondent submitted that the scheme suit in C.S.No.146/1933 at its best could have



been filed only in accordance with Section 96 CPC. The scheme decree would state that the trustees shall act until the death or resignation and that would only perpetuate the Hereditary Trusteeship. Since the Hindu Religious and Charitable Endowments Department is not a party to the above proceedings, the decree will not bind the Hindu Religious and Charitable Endowments Department. After coming into force of the Tamil Nadu Hindu Religious and Charitable Endowments Act-1959, the decree scheme will lose its validity, in view of the repugnancy contemplated under Section 118(2)(b) of the Act. The scheme decree is not inconsistent with Section 47(1)(c) proviso.

7.1. As per Section 5(e) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, Sections 92 & 93 of Code of Civil Procedure shall cease to apply to Hindu Religious Institutions and Endowments. The position of law on this has already been settled by the Hon'ble Supreme Court. Obviously this scheme suit ought to have been filed under Section 92 of the Code of Civil Procedure and hence it is not applicable to the Hindu Religious Institutions. If the order is passed under Section 47 of the Act, the aggrieved has the right to file application for representation in accordance with Section 21 by question the correctness or legality of the order passed.



The aggrieved has also got the remedy under Section 114 for Revision and under Section 14(a) for Review. Since the self contained Hindu Religious and Charitable Endowments Act, provides the appellate remedy, the application for the relief of declaration cannot be filed. In fact, it has exceeded the scope of scheme decree itself. If the application is allowed the appointment of trustees under the scheme will have a seal of approval though it is contrary to Section 47(1)(c). In view of Section 118 of the Tamil Nadu Hind Religious and Charitable Endowments Act, the scheme decree passed under Section 92 CPC in respect of Hindu Religious Institutions has worked out itself and ceased to exist now. The impugned order does not speak about mismanagement but it only speaks about Section 47(1)(c) and hence Sections 71,74 and 75 are not applicable to the present situation. The order has been passed within the power of the first respondent under Section 64 of the Act.

7.2. The judgement referred to by the learned senior counsel for the applicants speaks about the irregularity and mismanagement applicable to Section 71. Since the order has been issued under Section 47(1)(c) proviso, the grounds raised in applications are not maintainable. The scheme Court has got no jurisdiction outside the authority of the order passed under the



Act and in any case the temple itself cannot be an aggrieved person but only the trustees. But the application has been filed by the temple and that itself is not maintainable, hence the applications are liable to be dismissed.

8. The applicants temple is being managed as per the scheme decree framed by the Hon'ble High Court in C.S.No.146/1933. As per the scheme decree the properties of the applicants temple devastahanam and mutt would be vested in the board of five members comprising of five different communities namely Lala community, Marwadi community, Naidu community, Mudalair community and Byradi Sadhu community. The applicants temple was being managed by the trustees in accordance with the terms of the scheme decree. The first respondent/joint commissioner had issued a proceedings dated 04.02.2022 by appointing the second respondent as a fit person to manage the temple. According to the applicants the said action taken by the first respondent is against the principles of natural justice and it is in violation of the scheme decree passed by the High Court. The proceedings dated 04.02.2022 of the first respondent would show that the first respondent had admitted the fact that the applicant's temple is not a scheduled one. So in view of the said fact the learned counsel for the applicants submitted that the impugned order cannot be passed in respect of



the applicant's temple. The attention of this Court was drawn to Section 71

is as under:

“71. Issue of notice to show cause why institution should not be notified.—

(1) Notwithstanding that a religious institution is governed by a scheme settled or deemed to have been settled under this Act, where the Commissioner has reason to believe that such institution is being mismanaged and is satisfied that in the interest of its administration, it is necessary to take proceedings under this chapter, the Commissioner may, by notice published in the prescribed manner, call upon the trustee and all other persons having interest to show causes why such institution should not be notified to be subject to the provisions of this Chapter.

(2) Such notice shall state the reasons for the action proposed and specify a reasonable time not being less than one month from the date of the issue of the notice for showing such cause.

(3) The trustee or any person having interest may thereupon prefer any objection he may wish to make to the issue of a notification as proposed.

(4) Such objection shall be in writing and shall reach the Commissioner before the expiry of the time specified in the notice aforesaid or within such further time as may be granted by the Commissioner. “

9. According to the above provision, a show cause notice has to be issued before notifying an religious institutions in accordance with the Act.

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So the above provisions on the face of it would show that the procedural mandates which have to be observed by the first respondent while initiating any action to notify the temple under the Act. Admittedly the temple is not a notified one.

10. The learned counsel for the applicants submitted that there is no mismanagement reported and there is no allegations of mismanagement against the Board of Trustees in managing the Temple. Even the first respondent did not state that the management of the temple was being mismanaged. The very object of issuing the impugned proceedings under Section 47(1)(c) of the Act by appointing a fit person is because of the non compliance of the conditions laid down therein. In this context, it is relevant to read Section 47(1)(c) along with the proviso is as under:

“47. Trustees and their number and term of offices.—

(1)

(c) every Board of Trustees constituted under clause (a) or clause (b) shall consist of not less than three and not more than five persons, of whom one shall be a member of the Scheduled Castes or Scheduled Tribes and another one shall be a woman :

Provided that the Government, the Commissioner, the Joint Commissioner or the Deputy Commissioner, as the case may be, may, pending the constitution of such Board of Trustees



under this sub-section, appoint a fit person to perform the functions of the Board of Trustees. “

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11.According to the said proviso, the board of trustees should be consisted of not less than three and not more than five and out of four, one should be a member of Scheduled Caste or Scheduled Tribes and another shall be a woman. But in the given case, the combination of the trustees do not indicate the said representation shown in the provision. So it is claimed by the learned counsel for the first respondent, the procedure contemplated under Section 71 is not needed to initiate action.

12. The specific contention of the learned counsel for the applicants is that the temple is not listed under Section 46 of the Act. Even though the learned counsel for the second respondent submitted that the impugned order has been passed in accordance with Section 47(1)(c), it was not asserted that the applicant's institution has been listed and published in accordance with Section 46 of the Act. Even though the first respondent is empowered to appoint a fit person, the said power can be exercised only if the religious institution is included in the list published under Section 46. The opening words of Section 47 itself would read '*where the religious*

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institution included in the list published under Section 46'. Section 46 of the Act reads as under:

“46. Commissioner to publish list of certain institutions.

—The Commissioner shall publish, in the prescribed manner, a list of the religious institutions whose annual income, as calculated for the purposes of the levy of contribution under sub-section (1) of section 92,—

(i) is not less than ten thousand rupees but is less than two lakh rupees ;

(ii) is not less than two lakh rupees but is less than ten lakh rupees ;

(iii) is not less than ten lakhs rupees, and may, from time to time, modify such list in the prescribed manner :

Provided that the Commissioner shall not remove any institution from such list unless its annual income calculated as aforesaid has fallen below ten thousand rupees for three consecutive years:

Provided further that if the annual income of any such institution calculated as aforesaid has—

(a) exceeded the limits specified in clause (i) and (ii); or (b) fallen below the limits specified in clause (ii) or clause (iii), for three consecutive years, the Commissioner may alter the classification assigned to such institution in the list and enter the same under the appropriate classification in the said list].

”

13.Admittedly the applicants temple has not been listed under Section 46 of the Act. There is no disagreement that Section 5 (e) says that Sections



92 and 93 CPC do not apply to the Hindu Religious Institutions and Endowments. Similarly there can not be any quarrel about the applicability of Section 118(2)(b) of the Act also and it is extracted hereunder:

Section 118. Repeals and savings.—

(1)

(2) Notwithstanding the repeal of the said Act by sub-section

(1)—

(a)

(b) (i) if any provision contained in any scheme settled or deemed to have been settled under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1926 (Tamil Nadu Act II of 1927), including a scheme settled under section 92 of the Code of Civil Procedure, 1908 (Central Act V of 1908), and in force immediately before the 30th September 1951 is repugnant to any provision contained in this Act or the rules made thereunder, the latter provision shall prevail, and the former provision shall, to the extent of the repugnancy, be void ;

(ii) all powers conferred and all duties imposed by such scheme on any Court or Judge or any other person or body of persons not being a trustee or trustees or an honorary officer or servant of the religious institution or endowment, shall be exercised and discharged by the Commissioner, the Joint Commissioner or Deputy Commissioner [* * *] or the Assistant Commissioner, as the case may be, in accordance with the provisions of this Act; “

14.It has been already stated that the combination of the Board of Trustees of the applicants temple, as devised by the scheme decree is not compatible to the combination contemplated under Section 47(1)(c). But the first respondent has not opted to follow the due procedure contemplated



under Section 46 in order to get the applicants temple to fit into the Section 47(1)(c) before issuing the impugned order.

15. Section 47 gives power to the first respondent only if the annual income of the temple is more than Rs.2 lakhs and less than Rs.10 lakhs and the same is published. Only after the fulfilment of the conditions contemplated under Section 46, the procedure contemplated under Section 71 notification would come into play. Even in that case two essential requirements should be shown to be present:

- (i) there is reason to believe that the institution is being mismanagement and
- (ii) in the interest of its administration it is necessary to take such action.

16. In this regard it is relevant to cite the judgement referred by the learned counsel for the applicants held in the case of the ***M.Rajamanikkam Vs. The District Collector, Thiruvanamalai and Ors*** in **WP.No.20210 of 2013** dated 07.11.2022. In the said order the learned Judge of this Court has held as under:

“10.Be that as it may. It is relevant to note that under Section 63 of the HR&CE Act, the Joint Commissioner or Deputy Commissioner has power to conduct enquiry and decide certain disputes and matters. Section 71 of the Act in



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Chapter VI deals with issuance of notice to show cause to declare as to why the institution / temple should not be notified under the Act. The power has been conferred to the Commissioner. If he believes that such institution is being mismanaged and satisfy that in the interest of its administration, it is necessary to take proceedings under this Chapter, the Commissioner, may publish notice in the prescribed manner, call upon the trustee and all other persons having interest to show cause as to why such institution should not be notified to be subject to the provisions of this Chapter. Such notice shall state the reasons for the action proposed and specify a reasonable time not being less than one month from the date of the issue of the notice for showing such cause. On receipt of such show cause notice, they can prefer any objection, they may wish to make to the issue of a notification as proposed. Thereafter, considering the objections if any, order can be passed under Section 72 of the Act.

11. Combined reading of Section 71 and 72 of the HR & CE Act, 1959 makes it clear that notice calling upon the trustee and all other persons having interest, is mandatory before taking action under Chapter VI of the Act, particularly, notifying of institution under the Act. On a perusal of entire records produced by the respondents would go to show that the impugned order has been passed only based on the report of the V.A.O and some statements said to have been recorded from the 6th respondent. There



is no materials whatsoever is available on record to show that notices have been issued to all the persons and to the Managing Trustee as mandatory under Section 71 of the HR&CE Act. Before passing of the impugned order, neither show cause notices have been issued nor enquiry has been conducted and only on the basis of report sent by the V.A.O, the impugned order came to be passed mechanically. It is also relevant to note that the 6th respondent who has executed the Trust Deed in his name, claiming the temple property, was certified as the Managing person of the temple by V.A.O. Such being the position, relying only on the statements of the 6th respondent without following the due procedures as contemplated under the Act, the impugned order came to be passed, which is not sustainable under the law and the same is liable to be set aside. “

17. However the learned counsel for the first respondent submitted that for the purpose of taking action under Section 47(1)(c), there need not be any findings about the irregularities and mismanagement and hence the applicants temple cannot find shelter under the said conditions. But the fact remains that the applicants temple has not been listed and published in terms of Section 46(2). In order to attract the attention of the first respondent to pass the impugned order for not being compatible to Section 47(1)(c) proviso, the essential requirements of Section 46(1) and Section 71 ought to have been complied. Even in the absence of compliance of Section 71



procedure, at least it should be shown that Section 46 has been complied.

18. There is no second thought that after coming into force of the Act, the scheme decree would have lost its validity in view of the superseding impact of Section 118 (2)(b) of the Act. But on the face of it, the impugned order shows that the procedure contemplated under Section 46 has not been followed. Under such circumstances, the first respondent could not have gone to the next step of appointing a fit person. Since the second respondent did not follow the due procedure and issued the impugned order, it is liable to be set aside. However it will not forbear the H.R&C.E to bring the applicant's temple into its fold for having the Board of Trustees not in accordance with Section 47(1)(c).

19. All that which required is to publish the temple in accordance with Section 46 of the Act and then take actions in accordance with the proviso to Section 47(1)(c) or Section 71 of the Act, whichever is applicable. Since the order issued by the first respondent is a premature one, it is liable to be set aside. It is true that the applicants have got avenues of revision and review under the special Act itself. But in this case, before assuming jurisdiction the requirement of Section 46 has not been complied and hence there cannot be any change in the temple management and it sticks to the scheme decree.



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Hence the applicants have filed this application just to safeguard the exiting management done in accordance into the scheme decree. Hence the trustees appointed through scheme decree can continue the management of the temple until the temple is published under Section 46 or notified under Section 71.

In the result, these Applications are **allowed**. The 2nd respondent is directed to handover the possession of the 64 idols and other assets of the temple to the petitioner, from whom the possession has been taken on 12.07.2022 in contravention to the scheme framed by this Court in C.S.No.146 of 1933 dated 11.12.1934 and the proceedings in SE.Mu.Na.3622/22/A1 dated 04.02.2022 passed by the first respondent is set aside.

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R.N.MANJULA, J.

jrs

To
The Joint Commissioner,
Hindu Religious Endorsement Board,
Chennai Madalam (1),
Uthamar Gandhi Salai,
Chennai-600 034.

Application Nos.4015 & 4016 of 2022
in
C.S.No.146 of 1933

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