



W.P.No.22006 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.22006 of 2022

A.Aruchamy

... Petitioner

.Vs.

1.The Joint Commissioner
Hindu Religious Charitable &
Endowments Department
Balasundaram Road
Coimbatore-600 018.

2.The Assistant Commissioner
Hindu Religious & Charitable
Endowment Department
Kovai.

3.The Fit Person
A/m. Angala Parameshwariamman Temple
Light House Road (Kennedy Theatre behind)
Venkatakrisna Road Junction
R.S.Puram
Coimbatore-641 002.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records pertaining to the proceedings of the 2nd respondent dated 01.02.2022 in Na.Ka.No.1918/2015/A6 appointing fit person and further taken charge in suo-moto by the 3rd respondent in the pursuance of the said order.



W.P.No.22006 of 2022

For Petitioner

Mrs.V.S.Usharani

For Respondents

Mr.K.Karthikeyan
Government Advocate
for R1 and R2

Mr.R.Sanjay
for R3

ORDER

This writ petition has been filed challenging the proceedings of the 2nd respondent in Na.Ka.No.1918/2015/A6, dated 01.02.2022, appointing a fit person to run the administration of Angala Parameshwariamman Temple at Coimbatore District.

2.The case of the petitioner is that the subject Temple was founded by the ancestors of the petitioner and it was always administered only by the family belonging to the petitioner. The father of the petitioner had formed a Trust in order to run the Temple in the year 2004 and the Trust Deed was also registered. Subsequently, supplementary Trust Deeds were also executed and registered. The further case of the petitioner is that after the lifetime of his father, he was inducted as a Trustee and he along with the other Trustees are in administration of the Temple and they are regularly performing the festivals and daily poojas.



W.P.No.22006 of 2022

3.The grievance of the petitioner is that through the impugned proceedings dated 01.02.2022, the 2nd respondent straightaway proceeded to appoint a fit person to take over the administration and management of the Temple. According to the petitioner, this order was passed without affording any opportunity and hence, suffers from violation of principles of natural justice and consequently, the proceedings of the 2nd respondent has been put to challenge in this writ petition.

4.The 3rd respondent has filed a counter affidavit. The 3rd respondent has taken a stand that the Trust Deed based on which the petitioner is claiming his right has been declared null and void by a competent Civil Court in O.S.No.1567 of 2009, through judgment and decree dated 16.06.2015. In view of the same, the claim made by the petitioner that he is the Trustee has been denied by the 3rd respondent. The further stand taken by the 3rd respondent is that a notice dated 28.09.2021, was sent calling for an explanation on various charges and there was no response or explanation and hence, a fit person was appointed to run the affairs of the Temple. The 3rd respondent has further stated that even on an earlier occasion through proceedings dated 15.12.2021, a fit person was appointed and this was not put to challenge. Subsequently, through the impugned proceedings dated 01.02.2022 a subsequent fit person was appointed and that alone has been put to challenge in this writ petition. The 3rd respondent has also questioned the maintainability of the writ petition on the ground the petitioner has an alternative remedy to approach the Commissioner of HR & CE by way of filing a Revision Petition. On these grounds, the 3rd respondent has sought for the dismissal of the writ petition.



W.P.No.22006 of 2022

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5.Heard Mrs.V.S.Usharani, learned counsel for the petitioner, Mr.K.Karthikeyan, learned Government Advocate for R1 and R2 and Mr.R.Sanjay, learned counsel for R3.

6.The main crux of the argument of the learned counsel for the petitioner is that the fit person has been appointed for the Temple without issuing any notice and without affording any opportunity to the petitioner and other Trustees, who were administering the Temple. It was therefore contended that the impugned proceedings of the 2nd respondent is liable to be interfered on this ground alone. To substantiate this submission, the learned counsel relied upon the following judgements:

(a) Sri Devi Ellamman Paripalana Sangam v. The Assistant Commissioner, HR & CE Board and Others reported in MANU/TN/4714/2010.

(b) P.Seethalakshmi v. The Joint Commissioner, Tamil Nadu HR & CE Department & Ors reported in MANU/TN/0785/2018.

7.The learned counsel for the petitioner further contended that during the pendency of this writ petition, the respondents were directed to verify as to who is in the administration of the Temple and based on the response, this Court passed an order on 30.09.2022, by giving a positive direction to the respondents to hand over the charge to the petitioner. In view of the same, it was submitted that the petitioner is continuing to be in administration



W.P.No.22006 of 2022

WEB COPY

and control of the Temple. The learned counsel for the petitioner further submitted that the petitioner has already taken steps to frame a scheme for the Temple and the same is pending before the concerned authority and while so, a hasty decision was taken by the 2nd respondent to appoint a fit person to the Temple.

8.This Court has to first ascertain the basis on which the petitioner has approached this Court challenging the proceedings of the 2nd respondent appointing a fit person. It is pellucid from the pleadings that the petitioner is claiming the right only as a Trustee and based on the Trust Deed dated 28.04.2004, which was registered as Document No.1246 of 2004. According to the petitioner, subsequently supplementary Trust Deeds were also executed. In view of the same, it must be seen whether the petitioner can maintain this writ petition in his capacity as the Trustee.

9.The Trust Deed dated 28.04.2004 became a subject matter of challenge in O.S.No.1567 of 2009 in a suit filed by one Radhakrishnan before the II Additional District Munsif Court, Coimbatore. The first defendant in that suit was the father of the petitioner and two other Trustees were also made as defendants apart from the Assistant Commissioner of HR & CE Department. The suit was decreed ex parte through judgment and decree dated 16.6.2015 and the Trust Deed dated 28.04.2004 and the amended trust deed dated 20.01.2006 standing in the name of the defendants were declared as null and void. There was a consequential relief that was granted by the Civil Court to the effect that the



W.P.No.22006 of 2022

Trustees are restrained from performing the poojas in any manner in their capacity as Trustees.

10.The learned counsel for the petitioner submitted that the decree was obtained behind the back of the father of the petitioner without issuing any proper notice and hence, the *ex parte* decree is not binding.

11.It was further contended that the petitioner was also not aware of the decree that was passed in the suit.

12.The submission made by the learned counsel for the petitioner does not stand the test of law. It is now too well settled that even an *ex parte* decree is as good as a contested decree till it is reversed or set aside by a competent Court. Useful reference can be made to the judgment of the Apex Court in **Saroja .v Chinnusamy (died) by LRS and Another** reported in **(2007) 5 CTC 233**. In that case, the Apex Court held that even an *ex parte* decree will operate as *res judicata* against whom the decree was passed unless this decree is challenged in the manner known to law and the person concerned is able to prove before the Court that the decree is non-est or it has been obtained by fraud. The Apex Court in **Rajinder Kumar .v. Kuldeep Singh and Others** reported in **(2014) 2 MLJ 496** held that an *ex parte* decree is valid and it is binding on the parties for all purposes and the parties will be relegated back to the original position only if the *ex parte* decree is set aside.



W.P.No.22006 of 2022

13. In the light of the settled position of law, it is too late in the day for the petitioner to raise a contention that the decree passed by the Civil Court is only an ex parte decree and hence, not binding. This decree was passed against the father of the petitioner, who was the first defendant and no steps have been taken till date to question the ex parte decree passed and hence, this decree is valid and binding for all purposes and the petitioner being the son of K.Arumugam, who was the first defendant in the suit, is also equally bound by the decree and the petitioner cannot be permitted to wriggle out of the decree passed by the Civil Court.

14. In view of the above finding, the very locus standi of the petitioner to question the impugned proceedings of the 2nd respondent, becomes very shaky. The petitioner cannot question the impugned proceedings of the 2nd respondent appointing a fit person on the ground that no notice was given to the petitioner since the petitioner no longer holds the position of a Trustee and there is no occasion for serving any notice to the petitioner before the fit person was appointed.

15. It is quite apparent from the records that there is a serious dispute as among the Trustees and to cap it all, the original Trust Deed itself has been held to be null and void. In such confused state of affairs, it is more appropriate for the department to manage the affairs of the Temple effectively only through a fit person. The learned Government Advocate appearing on behalf of the respondents submitted that a notice was already issued by the



W.P.No.22006 of 2022

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Department dated 28.09.2021 questioning the authority of the persons who were attempting to take over the administration of the Temple and the petitioner and others did not respond to this notice. The learned counsel for the petitioner submitted that this notice was not received by the petitioner. It is not necessary for this Court to go into this issue. If really any maladministration had taken place by persons who do not have any authority to administer the Temple, it is independently left open to the respondents to initiate proceedings by issuing appropriate notice and taking a decision in accordance with law.

16.It is made clear that till the ex parte decree passed in O.S.No.1567 of 2009, is set aside in the manner known to law, the petitioner cannot claim any right in his capacity as a Trustee since there is no trust in existence by virtue of the Trust Deed itself being declared as null and void.

17.The interim order already passed by this Court directing the respondents to hand over charge to the petitioner, cannot be treated as a precedent and the interim order can never bind the Court while deciding the case finally. Therefore, merely because the charge was handed over to the petitioner by virtue of an interim order, that does not create any vested right in the petitioner and it is always subject to the final result in the writ petition.



W.P.No.22006 of 2022

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18. In the light of the above discussion, this Court does not find any ground to interfere with the impugned proceedings in Na.Ka.No.1918/2015/A6, dated 01.02.2022, of the 2nd respondent and accordingly, this writ petition stands dismissed. No costs.

22.06.2023
2/3

KP

Internet : Yes/No
Index : Yes/No
Neutral Citation : Yes/No

To

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Coimbatore-600 018.

2. The Assistant Commissioner
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W.P.No.22006 of 2022

N.ANAND VENKATESH, J.

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W.P.No.22006 of 2022

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