IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.Nos.22062, 22065, 22066 and 22067 of 2023
and
W.M.P.Nos.21442, 21443, 21450, 21451, 21453,
21455, 21452 and 21454 of 2023

Harshan ... Petitioner in all WPs

vs.

1.The Commissioner,
Hindu Religious & Charitable Endowments Department,
119, Uthamar Gandhi Road,
Nungambakkam, Chennai-34.

2.The Joint Commissioner,
Hindu Religious & Charitable Endowments Department,
Commercial Taxes Office Complex,
Balasundaram Road,
Coimbatore – 18.

3.Shantha Sababathi

4.V.S.Arul

5.Priya Rajkumar

6.Arvind Sababathi ... Respondents in all WPs

PRAYER in W.P.No.22062 of 2023: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to quash the proceedings Pro.R.C.No.12861/2022 B1 Dt. 02.05.2023 passed by the 2nd Respondent with respect to Perumalswamy Temple, Vettaikaranpudur, Anamalai Taluk, Coimbatore District as illegal and void and direct the 2nd Respondent to properly re-conduct enquiry with respect to the application of the 3rd Respondent under Section 54 (1) of the HR & CE Act after hearing objections filed by the Petitioner and other concerned persons and issue a speaking order.

PRAYER in W.P.No.22065 of 2023: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to quash the proceedings Pro.R.C.No.12865/2022 B1 Dt. 02.05.2023 passed by the 2nd Respondent with respect to Arulmigu Vettaikkaraswamy Temple, Vettaikaranpudur, Anamalai Taluk, Coimbatore District as illegal and void and direct the 2nd Respondent to properly re-conduct enquiry with respect to the application of the 3rd Respondent under Section 54 (1) of the HR & CE Act after hearing objections filed by the Petitioner and other concerned persons and issue a speaking order.

PRAYER in W.P.No.22066 of 2023: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to quash the proceedings Pro.R.C.No.12863/2022 B1 Dt. 02.05.2023 passed by the 2nd Respondent with respect to Arulmigu Vettaikkaraswamy Temple, Vettaikaranpudur, Anamalai Taluk, Coimbatore

District as illegal and void and direct the 2nd Respondent to properly re-conduct enquiry with respect to the application of the 3rd Respondent under Section 54 (1) of the HR & CE Act after hearing objections filed by the Petitioner and other concerned persons and issue a speaking order.

PRAYER in W.P.No.22067 of 2023: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to quash the proceedings Pro.R.C.No.12866/2022 B1 Dt. 02.05.2023 passed by the 2nd Respondent with respect to Arulmigu Deivakula Kaliamman Temple, Vettaikaranpudur, Anamalai Taluk, Coimbatore District as illegal and void and direct the 2nd Respondent to properly re-conduct enquiry with respect to the application of the 3rd Respondent under Section 54 (1) of the HR & CE Act after hearing objections filed by the Petitioner and other concerned persons and issue a speaking order.

For Petitioner : Mr.M.Karthikeyan
(in all WPs)

For R1 and R2 : Mr.N.R.R.Arun Natarajan
Special Government Pleader (HR & CE)
(in all WPs)

COMMON ORDER

These writ petitions are filed by the writ petitioner challenging the order passed by the 2nd respondent recognising the 3rd respondent herein as Hereditary Trustee of Arulmighu Perumalsamy Thirukoil, Arulmighu

Vetaikaransamy Thirukoil, Arulmigu Theivagulamkaliamman Koil and Arulmigu Mariamman Thirukoil situated at Anaimalai, Pollachi.

2. According to the writ petitioner, his Great Grandfather late V.K.Palanisamy Gounder functioned as Hereditary Trustee of the above said temples originally. After his death, the petitioner's Grandfather late V.P.Sababathy Gounder had taken over as Hereditary Trustee and discharged his function as Hereditary Trustee. The Grandfather of the petitioner namely late V.P.Sababathy passed away on 15.07.2021.

3. The 3rd respondent herein, namely wife of late V.P.Sababathy Gounder and Paternal Grandmother of the petitioner, filed an application seeking her recognition as Hereditary Trustee under Section 54(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as 'HR and CE Act' for brevity). She also produced Legal Heir Certificate before the 2nd respondent to show that there were four surviving legal heirs to said V.P.Sababathy Gounder on the date of his death namely his wife-3rd respondent herein, two sons-4th and 6th respondents herein and one daughter-5th respondent herein.

4. The 3rd respondent also produced 'No Objection Certificate' from other three legal heirs of the deceased Hereditary Trustee giving no objection for recognition of the 3rd respondent as a succeeding Hereditary Trustee. The above said other legal heirs of the deceased Hereditary Trustee namely the respondents 4 to 6 appeared before the 2nd respondent and deposed that they had no objection for recognizing the 3rd respondent as Hereditary Trustee of the above said temples. Aggrieved by the said order, the petitioner herein, who is the grandson of the 3rd respondent has filed this writ petition.

5. The learned counsel appearing for the petitioner mainly assailed the impugned order on the ground that the impugned order was passed by the 2nd respondent without hearing him. It is the case of the petitioner that the impugned order passed by the 2nd respondent is a clear violation of natural justice principles. The learned counsel further submitted that there has been mismanagement and misappropriation of funds by the 3rd respondent and the same has not been taken into consideration by the 2nd respondent. The learned counsel also submitted that inspite of directions issued by this Court in earlier writ petition to hear the petitioner, the 2nd

respondent has not issued notice to this petitioner and afforded him an opportunity before passing the impugned order.

6. Mr.N.R.R.Arun Natarajan, learned Special Government Pleader (HR & CE) takes notice for the respondents 1 and 2.

7. It is settled law that the succession to the office of the Hereditary Trusteeship is by operation of law. The moment Hereditary Trustee dies, the next person in the line of succession is entitled to step into the shoes of the deceased trustee and manage the affairs of the temple. The order passed under Section 54(1) of HR and CE Act is only a formal one recognizing the succeeding Hereditary Trustee by operation of law.

8. It would be appropriate to refer to the judgment of this Court in ***N.Muthuvali vs. The Joint Commissioner*** reported in ***2002 (5) CTC 31*** in this regard. The relevant observation reads as follows:-

> *"6. Section 54 of the Tamil Nadu Hindu Religions and Charitable Endowments Act, deals with filling up of vacancies for the post of hereditary trustee, according to which, when a*

permanent vacancy occurs in the office of the hereditary trustee of a religious institution, the next in the line of succession shall be entitled to succeed to the office.

7. This Court, in Prem Anand v. The Commissioner, H.R. & C.E. reported in MANU/TN/0583/1989 : 1990 (1) LW 144, interpreting Section 54 of the Act, has held as follows:

"A fit person had been appointed earlier when the proceedings were pending as against the petitioner's father. The petitioner had applied to the first respondent that he being the person entitled to succeed his father as hereditary trustee, should be appointed and no fit person should be appointed in that place. The first respondent passed an order on 15.3.1989 to the effect that the appointment of fit person was only a temporary measure which would not impinge on the right of the petitioner to succeed when the permanent vacancy arises under S. 54(1) of the Act. The petitioner was, therefore, requested to wait till the enquiry against his father was over. After the enquiry was over and the petitioner's father was removed by order of the first respondent on 24.7.1989, the petitioner sought for a direction from the first respondent to the fit person to hand over charge to the petitioner herein as the next hereditary trustee. The petitioner received an order from the first respondent on 22.8.1999 that he should apply to the Deputy Commissioner for appropriate orders under S. 54(1) of the Act as the Deputy Commissioner is the competent

Authority. The petitioner sent a reply through his advocate on 1.9.1989 inviting the attention of the first respondent to the position that there is no necessity for making any application for the succeeding hereditary trustee and that succession is automatic as recognised by the provisions of the Act. According to the petitioner, there is no reply so far to the said communication.

Under S. 54 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, when a permanent vacancy occurs in the office of the hereditary trustee of a religious institution, the next in the line of succession shall be entitled to succeed to the office. There is no necessity, whatever, for the next hereditary trustee to make an application for being appointed under the Act."

9. In other words, the order recognizing a succeeding trustee as Hereditary Trustee of the temple is only clarificatory in nature. In the case on hand, after the death of deceased Hereditary Trustee, two of his heirs namely 3rd respondent-wife of the deceased and the 4th respondent son of the deceased filed an application under Section 54 (1) of the HR and CE Act seeking their recognition as succeeding Hereditary Trustee. The 4th respondent appeared to have withdrawn his petition leaving it in favuor of

his mother-3rd respondent herein.

10. Admittedly, the last deceased trustee namely V.P.Sababathy Gounder died leaving behind four surviving legal heirs namely his wife and children-respondents 3 to 6. All the other heirs of the deceased trustee namely the respondents 4 to 6 have given no objection for recognition of the 3rd respondent as a Hereditary Trustee. In an enquiry conducted under Section 54(1) of the HR and CE Act all of them appeared before the 2nd respondent and expressed their no objection for recognition of 3rd respondent. In these circumstances, the 2nd respondent is justified in passing the order recognising the 3rd respondent as a Hereditary Trustee.

11. The petitioner herein is a Grandson (son of the son of 3rd respondent). During the life time of his father namely 4th respondent, the petitioner herein has no right to claim Hereditary Trusteeship. It is not a case of the petitioner that the Hereditary Trusteeship of the above mentioned temples are governed by rule of Male Primogeniture.

12. It is pertinent to note that the petitioner herein filed a civil suit in

O.S.No.214 of 2022 on the file of the Additional District Munsif, Pollachi seeking a declaration that the 5th respondent herein is the Hereditary Trustee of the above said four temples. The 5th respondent is daughter of the deceased trustee. However, the 5th respondent herself appeared before the 2nd respondent and expressed her no objection for recognition of her mother as a Hereditary Trustee.

13. The petitioner herein is not a surviving legal heir of the deceased Hereditary Trustee, when his father is alive. Therefore, he has no right to claim Hereditary Trusteeship of the above said temples during his father's life time. In such circumstances, the petitioner has no role to play in an enquiry under Section 54(1) of the TN HR and CE Act, wherein a formal order is passed recognising the succeeder to the Hereditary Trustee. In case of dispute among the legal heirs of the deceased, the 2nd respondent cannot pass any order and it is for the parties to work out their remedy before the Civil Court.

14. In the case on hand, there is no dispute among the legal heirs of

the deceased. There was a consensus among the legal heirs to recognise one among them namely 3rd respondent as a successor Hereditary Trustee of the temples. In such circumstances, failure to hear the petitioner, who is not a legal heir of the deceased trustee (when petitioner's father is alive) cannot be termed as violation of nature justice principles.

15. The learned counsel for the petitioner also said that this Court directed the 2nd respondent to hear the petitioner in W.P.No.18227 of 2022 by order dated 22.07.2022. The said writ petition was filed by the respondents 3 and 4 challenging the certain audit objections made against them. While disposing of the writ petition incidently this Court directed the 2nd respondent to dispose of the application filed by the 3rd respondent after hearing all the legal heirs of deceased trustee including the petitioner.

16. As discussed earlier, failure to hear the petitioner herein will not cause any prejudice to his right in law. He is not a legal heir of deceased trustee, when his father is alive.

17. The case of the petitioner is full of contradictions. He averred in

his affidavit as if, he discharged Hereditary Trusteeship after death of deceased Hereditary Trustee. In fact he claimed to have discharged functions of trusteeship even during life time of deceased trustee. If that be so, absolutely there is no necessity for him to file a suit for declaration that his paternal aunt namely 5th respondent is the Hereditary Trustee of the temple. The petitioner fully aware after death of last trustee, he cannot claim trusteeship as he is not surviving legal heir as per law. Only because of that reason in order to set up rival claim against 3rd respondent filed suit in O.S.No.214 of 2022 on the file of District Munsif, Pollachi for declaration that 5th respondent is the Hereditary Trustee. Hence, it is clear petitioner aware he cannot claim trusteeship after death of last hereditary trustee. Therefore, even if a notice is issued to the petitioner and he was allowed to putforth his case, legally he cannot make a claim to trusteeship as he is not a surviving legal heir of deceased trustee. Hence, failure to hear petitioner has not caused any prejudice to him. Therefore, on that ground impugned order need not be set aside and remanded back. It would be appropriate to refer to decision of Apex Court in ***M/s.Dharampal Satyapal Ltd., vs. Deputy Commissioner of Central Excise*** in ***Civil Appeal Nos.4458-4459 of 2015*** reported in ***2015 (8) SCC 519*** wherein, it was held that in case of infraction of principles of natural justice, Court has to see further whether issue of notice would have an impact on final out come. The relevant observation reads as follows:-

> *"36. Keeping in view the aforesaid principles in mind, even when we find that there is an infraction of principles of natural justice, we have to address a further question as to whether any purpose would be served in remitting the case to the authority to make fresh demand of amount recoverable, only after issuing notice to show cause to the appellant. In the facts of the present case, we find that such an exercise would be totally futile having regard to the law laid down by this Court in* ***R.C. Tobacco*** *(supra)."*

In the case on hand, even if notice is issued to petitioner, his presence will not have any effect on final out come due to the discussion made above.

18. As far as the allegations of misappropriation made by the petitioner is concerned, it is always open to the petitioner to approach the Competent Authority namely the 2nd respondent to take appropriate action against the 3rd respondent, who is discharging functions of Hereditary Trustee. If the petitioner make any representation to the 2nd respondent with

regard to the alleged misappropriation of funds of the temple, the 2nd respondent shall consider the same and take appropriate action against the erring trustee in accordance with law.

19. With the above said observations, the writ petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

26.07.2023

Index : Yes/No
Speaking order:Yes/No
Neutral Citation:Yes/No
dm

To

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119, Uthamar Gandhi Road,
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S.SOUNTHAR, J.

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