



W.A.No.2252 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.03.2023

DATE OF DECISION : 20.04.2023

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.No.2252 of 2022

S.Sarveshwaran Achari .. Appellant

v.

1. The State of Tamil Nadu
rep by its Secretary to Government
Tourism, Culture and Endowment Department
Fort St.George, Chennai 600 009
2. The Commissioner
Hindu Religious and Charitable Endowments Department
No.119, Uthamar Gandhi Salai
Nungambakkam, Chennai 600 034
3. The Joint Commissioner
Hindu Religious and Charitable Endowments Department
Chennai Division-I
Yadhaval Street, Padi, Chennai 600 050 .. Respondents



W.A.No.2252 of 2022

Appeal filed under Clause 15 of the Letters Patent, against the order dated 23.09.2022 passed in W.P.No.25803 of 2022.

For Appellant :: Mr.R.Singaravelan
Senior Counsel assisted by
Mr.T.S.Rajamohan

For Respondents :: Mr.R.Shunmugasundaram
Advocate General assisted by
Mr.N.R.R.Arun Natarajan
Special Government Pleader

JUDGMENT

The Hon'ble Acting Chief Justice

This writ appeal has been directed against the impugned order dated 23.09.2022 passed by the learned single Judge in Writ Petition No.25803 of 2022, dismissing the writ petition filed by the appellant/writ petitioner on a challenge to the G.O.Ms.No.103, Tourism, Culture and Religious Endowments Department dated 23.09.2020 reducing the term of office of the non-hereditary trustees from three years to two years.

2. Mr.R.Singaravelan, learned Senior Counsel appearing for the appellant/writ petitioner argued that Arulmighu Sri Kalikambal



W.A.No.2252 of 2022

WEB COPY

Kamadeswarar Temple is one of the ancient temples in the State constructed even prior to 16th Century B.C., because the Great Maratha Warrior Chatrapathi Sivaji Maharaj visited this temple and offered his prayers to the Goddess on 03.10.1677 during his Dakshin Digvijaya campaigns in South Indian region. This temple is also identified with Viswakarma community people and absolutely dedicated to the said family only. Moreover, Arulmighu Kalikambal Kamadeswarar Temple is a denominational temple declared under the Scheme Suit, C.S.No.654 of 1926 dated 08.08.1927 and the Scheme framed in the said suit was re-framed by formulating a fresh scheme in its place, vide judgment and decree dated 25.09.1935 passed in C.S.No.62 of 1933 by the High Court of Madras. As per the said Scheme Decree dated 25.09.1935, the management and administration of the temple exclusively vest with the Hindu Vishwakarma community people alone. The Scheme Decree clearly mentions the manner and administration of the day to day activities of the temple. It also deals with the mode of conduct of election, qualification of members who wish to contest elections, besides the tenure of office etc. When Clause-5 of the Scheme Decree spells out the



W.A.No.2252 of 2022

WEB COPY

tenure of office of trustees for three years, the said period of three years cannot be reduced to two years by the impugned G.O.Ms.No.103 dated 23.09.2020, as the temple is a denominational temple declared under the Scheme Decree dated 25.09.1935 in C.S.No.62 of 1933 and that the management and administration of the temple exclusively vest with the Hindu Vishwakarma community people. Therefore, in view of Section 107 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (for short, “the Act”), Section 47 of the Act cannot be pressed into service, in the absence of any complaint either under Section 106 of the Act or Article 25(2) of the Constitution of India, as it is a denominational temple protected by Article 26 of the Constitution of India, for the simple reason that the scheme in respect of a denominational temple can be modified only by resorting to civil remedy to modify or re-frame the scheme settled by the competent civil Court under Section 92 of the Code of Civil Procedure. In the case on hand, when the scheme was settled by this Court in C.S.No.62 of 1933 on 25.09.1935, as per the Scheme Decree, when the tenure of trustees is three years and not two years, the ratio laid down by the Hon'ble



W.A.No.2252 of 2022

WEB COPY

Apex Court in *R.Murali and others v. Kanyaka P.Devasthanam and Charities and others*, (2005) 6 SCC 166 would squarely apply to the present case. The judgment says, he pleaded, that the institution of religious denomination of Arya Vysya community is protected under Article 26 of the Constitution of India from interference in its administration by the authorities under the Act, because the right guaranteed under Article 26 of the Constitution of India has been expressly protected under Section 107 of the Act by making inapplicable the other provisions of the Act including Section 64 to institutions of religious and charitable nature of religious denominations. Arguing further, the learned Senior Counsel submitted that the impugned Government Order passed without following the procedure contemplated under Section 64(5) of the Act is liable to be set aside. Concluding his arguments, it is argued that when the G.O.Ms.No.103 dated 23.09.2020 was issued during the Corona virus pandemic situation, when the State and Central Governments have issued advisories to the public at large that they shall wear face masks mandatorily in all public places, due to the fear of Corona virus, the trustees elected could not challenge the



W.A.No.2252 of 2022

WEB COPY

Government Order immediately. But the learned single Judge, finding fault with the filing of the writ petition challenging the said Government Order, has erroneously held that the trustees cannot challenge the Government Order impugned at the fag end of their tenure. This finding of the learned single Judge is contrary to the admitted pandemic situation prohibiting the people not to come out of their homes during the Corona virus pandemic situation. Moreover, in some of the places, the Court proceedings were also held through video conferencing mode. This aspect has been completely overlooked by the learned single Judge. Therefore, the impugned order is liable to go, the learned Senior Counsel pleaded.

3. A detailed counter affidavit has been filed by the second respondent. Mr.R.Shunmugasundaram, learned Advocate General appearing for the respondents argued that when the Board of Trustees of Arulmighu Sri Kalikambal Kamadeswarar Devasthanam shall have a tenure of three years from the date of election, by virtue of Section 47(3) of the Act, the term of office of non-hereditary trustees was reduced from three years to



W.A.No.2252 of 2022

WEB COPY

two years. But the implementation of the Scheme was kept in abeyance for few years due to the pendency of litigations challenging both 2008 and 2010 amendment Acts on reducing their term of office under Section 47(3) of the Act. When the election to the Board of Trustees to the said Devasthanam took place in the year 2012, the first respondent passed G.O.Ms.No.173 dated 03.07.2012 fixing the term of office as three years, instead of two years, granting them the benefit of pendency of the litigations on the validity of such amendment. When this Court has upheld the validity of the amendment to Section 47(3), the same was implemented effectively. Therefore, when the said Devasthanam Board was again elected and constituted in May 2016, the first respondent passed G.O.Ms.No.48, Tourism, Culture and Religious Endowments Department dated 04.03.2016 restricting the period of newly elected Trust Board for two years. This was questioned in Writ Petition No.10652 of 2018. The learned single Judge passed an order on 27.04.2018 directing the petitioners therein to give a fresh representation to the second respondent with a further direction to consider the same and pass appropriate orders. Accordingly, a fresh



W.A.No.2252 of 2022

WEB COPY

representation dated 07.05.2018 was given by the Board of Trustees to the first respondent, who has, vide order dated 04.09.2018 in Na.Ka.No.2491/2018/A1, reiterated the legal position that the period of the Trust Board shall be only for two years, which is in fine tune with Section 47(3) of the Act, because Section 50 will prevail and override if anything runs contrary to the said Scheme. Two more writ petitions, namely, W.P.Nos.24060 of 2018 and 4751 of 2019 were also filed by the trustees and devotee against the order dated 04.09.2018. In the meanwhile, another devotee filed Application No.3021 of 2019 in the Scheme Decree, C.S.No.62 of 1933 to conduct elections for trusteeship for the year 2019. This Court, by order dated 24.04.2019 in A.No.3021 of 2019 in C.S.No.62 of 1933, appointed Fit Person and Additional Fit Person to continue the affairs till such time the elected Board including the Managing Trustee have been elected and ready to take office. This was questioned in O.S.A.Nos.133 and 135 of 2019 before the Division Bench of this Court and the same was set aside directing the Government to conduct election to the temple in question. In the meanwhile, the tenure of the existing trustees



W.A.No.2252 of 2022

WEB COPY

got expired. Only thereafter, in February 2020, election was conducted and five non-hereditary trustees were appointed with a tenure of two years. By giving a representation dated 09.06.2021, the trustees of the Board sought for one more year and thereafter filed W.P.No.7725 of 2022 for a mandamus to consider their representation and also to modify the G.O.Ms.No.103 dated 23.09.2020. The said writ petition was disposed of on 30.03.2022 with a direction to the respondents to consider the same. The appellant/writ petitioner also filed W.P.No.25803 of 2022 for issuance of a writ of certiorarified mandamus, calling for the records of the respondents, particularly that of the second respondent in G.O.Ms.No.103 dated 23.09.2020 and quash the same as illegal, ultra vires and without jurisdiction and contravention to the scheme decree passed in C.S.No.62 of 1933 dated 25.09.1935 and consequently direct the respondents to confirm the tenure of 3 years for the elected board of Trustees who are holding office in Chennai Sri Kalikambal Kamadeswarar Devasthanam at No.212, Thambu Chetty Street, Chennai-600 001, for 3 years as fixed by scheme decree passed in C.S.No.62 of 1933 dated 25.09.1935 and accordingly



W.A.No.2252 of 2022

permit the present Board of Trustees to continue to hold and discharge their office until 01.10.2023. The learned single Judge, appreciating the legal position, has rightly dismissed the writ petition. When the third respondent had also issued a notice dated 12.09.2022 in R.C.No.3082/2022/A1 inviting their consent for modification of the Scheme Decree as framed in C.S.No.62 of 1933, that does not require any interference. Therefore, the writ appeal should go, the learned Advocate General pleaded.

4. Heard both sides.

5. Chennai Arulmighu Sri Kalikambal Kamadeswar Temple is a religious denomination temple belonging to Hindu Vishwakarma community people and the administration and management of the temple vest with the Board of Trustees to be constituted by way of election in the manner prescribed by this Court in the Scheme Decree dated 25.09.1935 framed in C.S.No.62 of 1933. As per the said decree, there must be five trustees in the Board and among them, one can be the Managing Trustee to



W.A.No.2252 of 2022

WEB COPY

be elected and appointed and the Board of Trustees shall have a tenure of three years, prior to the amendment to Section 47(3) of the Act. Moreover, the Scheme Decree says that the trustees shall be elected by direct election through balloting and the electoral college would consist of Viswakarma male members having residence at Chennai and such other qualifications as prescribed in the scheme. When the Scheme Decree had been adopted by the Devasthanam and managed by the Trust Board elected from time to time, by way of an amendment to Section 47(3) of the Act, the term of office of non-hereditary trustees was reduced from three years to two years, giving rise to the present litigation.

6. Now the short question involved in the appeal is whether, by exercising the power under Section 47(3) of the Act and by virtue of Section 50, which will override and prevail over the Scheme if any contrary to the Scheme, the term of office of the non-hereditary trustees can be reduced from three years to two years, on the basis of G.O.Ms.No.103, Tourism, Culture and Religious Endowments Department dated 23.09.2020?



W.A.No.2252 of 2022

WEB COPY

7. Once the Chennai Sri Kalikambal Kamadeswarar Temple is a denomination temple, it is relevant to refer to Section 107 of the Act, which is extracted as follows:-

“107. Act not to affect rights under Article 26 of the Constitution.— Nothing contained in this Act shall, save as otherwise provided in section 106 and in clause (2) of Article 25 of the Constitution, be deemed to confer any power or impose any duty in contravention of the rights conferred on any religious denomination or any section thereof by Article 26 of the Constitution.”

Before dealing with Section 107 of the Act, it is also relevant to refer to Articles 25 & 26 of the Constitution of India, which are extracted as under:-

“25. Freedom of conscience and free profession, practice and propagation of religion..- (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the



WEB COPY



W.A.No.2252 of 2022

right freely to profess, practice and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law --

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I: The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II: In sub clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.



WEB COPY



W.A.No.2252 of 2022

26. Freedom to manage religious affairs...--Subject to public order, morality and health, every religious denomination or any section thereof shall have the right

- (a) to establish and maintain institutions for religious and charitable purposes;
- (b) to manage its own affairs in matters of religion;
- (c) to own and acquire movable and immovable property; and
- (d) to administer such property in accordance with law.”

8. When Section 107 of the Act shows that nothing contained in the Act shall, save as otherwise provided in section 106 and in clause (2) of Article 25 of the Constitution, be deemed to confer any power or impose any duty in contravention of the rights conferred on any religious denomination or any section thereof by Article 26 of the Constitution coupled with the freedom guaranteed to every religious denomination to practice and establish and maintain religious institutions under Articles 25 & 26 of the Constitution of India, since the temple in question is governed



WEB COPY

by the Scheme Decree, the scheme in respect of a denomination temple can be modified only by resorting to the civil Court under Section 92 of the Code of Civil Procedure. Admittedly, the Scheme, in the case on hand, was settled by the Scheme Decree dated 25.09.1935 in C.S.No.62 of 1933. As per the said Scheme Decree, the tenure of trustees is three years and not two years. Therefore, the respondents can approach the same Court, which has passed the Scheme Decree for modifying or re-framing the Scheme Decree. As it has not been done, the same has been put to challenge.

9. In similar circumstances, an identical issue came up before the Hon'ble Apex Court in *R.Murali and others v. Kanyaka P.Devasthanam and Charities and others*, (2005) 6 SCC 166 : 2005 SCC OnLine SC 1080, wherein the Apex Court has held as follows:-

“19. As a result of the decree of declaration that the Institution is a religious denomination of the Arya Vysya community, it had protection under Article 26 of the Constitution from interference in its administration by the Authorities under the Tamil Nadu Act. This right guaranteed under



WEB COPY



W.A.No.2252 of 2022

Article 26 of the Constitution has been expressly protected under Section 107 of the Tamil Nadu Act by making inapplicable the other provisions of the Act including Section 64 to institutions of religious and charitable nature of religious denominations.

20. Our conclusion is that on grounds both of existence of a decree of declaration and injunction granted by the City Civil Court in the year 1976 in the suit instituted by the respondents themselves and the mixed character of the Institution of “religious denomination” as religious and charitable with protection of Article 26 and Section 107 of the Tamil Nadu Act, it is not open to the present appellants to approach the Authorities under Section 64 of the Tamil Nadu Act for modification or reframing the scheme of the administration of the Trust. As the decree of declaration and injunction is operative against the Authorities under the Tamil Nadu Act, the civil court alone could have been approached by obtaining leave under Section 92 CPC for seeking



W.A.No.2252 of 2022

modification or reframing of scheme of administration of the Trust.

21. For the aforesaid reasons, the impugned order of the Division Bench of the High Court deserves to be set aside and that of the learned Single Judge restored. In the result, this appeal succeeds and is allowed. The impugned order of the Division Bench dated 23-12-2003 is set aside. The order of the learned Single Judge dated 2-9-2003 is restored. Respondents 2 to 7 shall individually and collectively, without using funds of the Institution, pay full costs incurred in this appeal to the appellants.”

10. In the light of the above ratio laid down by the Hon'ble Apex Court that by virtue of Section 107 of the Act read with Article 26(d) of the Constitution of India, Section 64 is not applicable to the denomination temple and the only course open to the respondents is to approach the civil Court to modify the scheme under Section 92 of the Code of Civil Procedure and therefore the Government cannot even resort to Section 64 of



W.A.No.2252 of 2022

the Act, this aspect has been completely overlooked by the learned single Judge. Therefore, the impugned order is set aside and the writ appeal stands allowed giving liberty to the respondents to approach the civil Court concerned for modification of the Scheme Decree. Consequently, C.M.P.Nos.17155 & 17156 of 2022 are closed. There shall be no order as to costs.

Speaking order

(T.R.,A.C.J.) (D.B.C.,J.)

Index : yes

20.04.2023

Neutral Citation : yes

ss

To

1. The Secretary to Government
Tourism, Culture and Endowment Department
Fort St.George
Chennai 600 009

2. The Commissioner
Hindu Religious and Charitable Endowments Department
No.119, Uthamar Gandhi Salai
Nungambakkam
Chennai 600 034



W.A.No.2252 of 2022

WEB COPY

3. The Joint Commissioner
Hindu Religious and Charitable Endowments Department
Chennai Division-I
Yadhaval Street, Padi
Chennai 600 050



WEB COPY



W.A.No.2252 of 2022

THE HON'BLE ACTING CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY,J.

SS

Judgment in
W.A.No.2252 of 2022

20.04.2023