



W.A.(MD)No.32 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 20.07.2023

CORAM

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**
and
THE HONOURABLE **MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.A.(MD) No.32 of 2022
and C.M.P. (MD) No.621 of 2022

S.Gopalasubramaniam

... Appellant

Vs.

1.The Assistant Commissioner,
Hindu Religious and Charitable Endowment Department,
Tirunelveli,
Tirunelveli District.

2.The Executive Officer,
Arulmighu Ilanjikumarar Thirukovil,
Ilanji,
Tenkasi,
Tenkasi District.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent, to set aside the order passed by this Court in W.P.(MD)No.21481 of 2021, dated 06.12.2021.

For Appellant

: Mr.VR.Shanmuganathan
M/s.Adith Narayan Vijayaraghavan



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For 1st Respondent : Mr.S.P.Maharajan
Special Government Pleader

For 2nd Respondent : Mr.Muthu Geethaiyan

* * *

J U D G M E N T

(Judgment of the Court was delivered by **S.S.SUNDAR, J.**)

This Writ Appeal is directed against the order of the learned Single Judge of this Court dated 06.12.2021, dismissing the Writ Petition filed by the appellant in W.P.(MD) No.21481 of 2021.

2. The brief facts that are necessary for disposal of the Writ Appeal are as follows:-

The petitioner filed the Writ Petition in W.P.(MD) No.21481 of 2021, challenging the order appointing a Fit Person in respect of Arulmighu Kulathur Ayyan Sastha Temple, which is a non-listed village Temple. The petitioner has stated in the Writ Petition that he is the Administrative Trustee of Arulmighu Kulathur Ayyan Sastha Temple. It appears that it is one of the oldest temple in the locality and that persons of reputable character and reputation are holding office as Administrative Trustee.



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3. Based on the report of the Inspector, HR & CE, Tenkasi South, the Assistant Commissioner, who is the first respondent herein, passed the order dated 21.11.2020, appointing the second respondent as the Fit Person of Arulmighu Kulathur Ayyan Sastha Temple. Following the order dated 21.11.2020, the second respondent issued a communication dated 09.12.2020, directing the petitioner to handover the charge of Administration of the Temple. There was a subsequent communication dated 23.12.2020 from the second respondent that in case of failure, coercive action will be taken under Section 101 of Tamil Nadu Hindu Religious and charitable Endowments Act, 1951 (hereinafter referred to as “H.R. & C.E. Act”).

4. The appellant filed the Writ Petition, challenging the order of the 1st respondent on several grounds. It should be noted that the appellant even though treated the impugned order as a show cause notice, the impugned order is not a show cause notice, but an order appointing the Fit Person in exercise of power under Section 49 of the H.R. & C.E. Act.



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5. One of the ground raised by the petitioner is that the impugned order is in violation of principles of natural justice. Since some allegations are made against the appellant about his failure to remove encroachment and about the temple tank, the appellant further referred to the steps he had taken to redeem the temple tank from P.W.D. Department and the action taken by him regarding the removal of encroachment.

6. The learned Single Judge of this Court after referring to the fact that the Temple is a public temple and that the appellant was not appointed as a Trustee in respect of the Arulmighu Kulathur Ayyan Sastha Temple by H.R. & C.E. department, observed that the appellant is only the acting Trustee. Stating that there is an alternative remedy of approaching the revisional authority in terms of Section 21-A or Section 21 of H.R. & C.E. Act, the learned Single Judge has held that the proper remedy available to the appellant is to approach the revisional authority under the Act. Though the appellant has raised a ground that the first respondent has not applied his mind, the learned Judge observed that non-application of mind is not a ground to entertain the Writ Petition, when there is an alternative remedy.



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7. The learned Single Judge also dealt with the question as to whether a show cause notice is necessary before passing an order under Section 49(1) of H.R. & C.E. Act. Learned Judge after referring to Section 47(1)(a) and 47(2) of H.R. & C.E. Act, made a distinction between the Temples fall under Section 47(2) and the Temples fall under Section 47(1)(a) of H.R. & C.E. Act and observed that the requirement of issuing notice to hereditary Trustees as contemplated under Section 47(2) does not apply to Section 47(1)(a) of H.R. & C.E. Act. Since the appellant is not a hereditary trustee and no proceedings under Section 63(b) of H.R. & C.E. is shown appointing the appellant as a hereditary trustee, the learned Judge held that prior notice is not required to be issued by the Assistant Commissioner when he appoints a Fit Person in respect of a non-listed temple.

8. Further, the learned Judge also proceeded to discuss the case on merits and found that the appellant failed to take action for removal of encroachment under Section 78 of H.R. & C.E. Act and failed to protect the fishery right in the tank which belongs to the Temple.



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9. Challenging the order of the learned Judge, dismissing the

Writ Petition, the above appeal is filed by the appellant / writ petitioner.

10. The question as to whether a show cause notice is required before passing an order under Section 49 of H.R. & C.E. Act is considered by this Court in several cases and it has been consistently held, except in few cases that a show cause notice is mandatory before initiating action under Section 49 of H.R. & C.E. Act, especially, when power under Section 49 is exercised based on allegations of irregularities or mis-management as against the person, who is in charge of the Temple as Trustee.

11. This Court is unable to accept the reasonings of the learned Single Judge on the requirement of show cause notice before passing an order appointing a Fit Person in respect of a non-listed temple.

12. It is to be noted that power under Section 47(1)(a) and Section 47(2) can be invoked in respect of any religious institution, included in the list published under Section 46 H.R. & C.E. Act. Section 47(1)(a) applies to a case where the Temple has no hereditary trustee and



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when the power is exercised to constitute a Board of trustees. Section 47(2) applies to a religious institution, included in the list published under Section 46 of H.R. & C.E. having a hereditary trustee or trustees, where power is required to be exercised to appoint non-hereditary trustees when the affairs of the institution are not likely to be properly managed by the hereditary trustee or trustees. Section 47(1)(a) of H.R. & C.E. Act confers the power on the Joint Commissioner / Deputy Commissioner, Commissioner and the Government to constitute a Board of Trustees depending upon the income of the Temple based on which a Temple is classified.

13. When the power under Section 47(1)(a) is sought to be exercised to constitute a Board of Trustees, the Government or the Commissioner or the Joint Commissioner or the Deputy Commissioner as the case may be, pending the constitution of such Board of Trustees, appoint a fit person to perform the functions of the Board of Trustees.

14. Under Section 47(2), as pointed out earlier the power is given to the Government, the Commissioner or the Joint / Deputy



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Commissioner to appoint a non-hereditary trustee or such number of non-hereditary trustees when the affairs of the institution are not properly managed by the hereditary trustee or trustees as the case may be. However, under Section 47(1)(a), the Joint Commissioner / Deputy Commissioner, Commissioner and the Government as the case may be, enjoys the power to constitute a Board of Trustees, in respect of all the three classes of Temples, having regard to (a) the interest of public, (b) income and the properties of religious institution (c) the number of worshippers and importance of the religious institution as a pilgrim centre etc. Under Section 47(1)(a), it is not necessary that there is mismanagement before taking action.

15. Under Section 49 of H.R. & C.E. Act, the Assistant Commissioner shall have the same power as it is given to the other authorities under Section 47 of the Act, to appoint trustees including fit person or constitute a Board of Trustees in the case of any religious institution which is not included in the list published under section 46 of H.R. & C.E. Act and is not a religious institution notified or deemed to have been notified under Chapter VI of this Act.



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16. In the present case, the Assistant Commissioner has invoked the power under Section 49 of H.R. & C.E. Act to appoint a Fit Person in respect of a religious institution, which is not included in the list published under Section 46 of H.R. & C.E. Act on the allegation that the properties of the institution are not properly managed by the appellant.

17. The appellant claimed that he is the Administrative Trustee of the Temple. From the impugned order itself, this Court finds recognition without a doubt as to the status of the appellant as the trustee of Arulmighu Kulathur Ayyan Sastha Temple. The term 'trustee' is defined under Section 6(22) of H.R. & C.E. Act, which reads as follows:-

“ 'trustee' means any person or body by whatever designation known in whom or in which the administration of a religious institution is vested and includes any person or body who or which is liable as if such person or body were a trustee;”



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18. The power of appointing a Fit Person can be exercised by the Assistant Commissioner as per Section 49 of H.R. & C.E. Act only upon a specific allegation of mal-administration of the institution by the existing trustee, as in the present case, the Assistant Commissioner exercised his power available to the Government or Commissioner or Deputy Commissioner under Section 47(2) of H.R. & C.E. Act. Hence, before passing the order Section 49 of H.R. & C.E. Act, appointing a Fit Person, there must be a show cause notice by referring to the allegation of mis-management or reason that prompted the Assistant Commissioner to initiate action under Section 49 of H.R. & C.E. Act. It is to be noted that Section 54 of Act do not permit the Assistant Commissioner to invoke the power to appoint a fit person in respect of any temple which is under the administration or management of a hereditary trustee.

19. From a conjoint reading and harmonious construction of Section 47(2) and Section 49 read with Section 54 of H.R. & C.E. Act it can be legitimately inferred that power can be exercised to appoint a trustee or fit person only when a religious institution is not properly managed by the trustees in office. When the temple is having trustee in



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office, order cannot be passed without issuing any show cause notice to the person in charge of the affairs and administration of the Temple. The Act cannot be interpreted to confer unfettered or absolute power on the Assistant Commissioner to interfere with the administration of a Temple by a trustee unless the appointment of fit person is required to secure better administration for the Temple. When the power can be exercised only depending upon a few circumstances, the Assistant Commissioner before initiating action should satisfy himself after holding enquiry that the allegations against the existing trustee is established that it is necessary in the interest of securing a better administration by appointing a fit person or trustee or trustees or constitute a Board of Trustees.

20. In this State, there are thousands of public temples, which are maintained by a single trustee or poojari cum trustee at the will, wish and pleasure of the worshiping public. The temple is specifically defined as a place of worship dedicated to public and the person, who is in charge of the affairs and administration of the temple holds his position in trust. A defacto trustee is liable as a trustee in office. In other words, the trustee is accountable for all his acts. Natural justice is based on equitable



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principles and human values. “Audi alteram partem” means that no man should be condemned unheard. Whenever a person invested with authority to decide matters involving civil consequences, principles of natural justice should be followed. Therefore, every person who is managing the affairs of the temple in trust for the benefit of public is entitled to be heard before any action is initiated under Section 49 of the H.R. & C.E. Act. Therefore, it cannot be said that a person, who is not a hereditary trustee but only a defacto trustee is not a person aggrieved when his right or status or privilege or his right to office is interfered with on the allegations of mal-administration or irregularities.

21. Even if Section 49 does not refer to observance of principles of natural justice, as it is held in several judicial precedents, the principles of natural justice are to be read into the provision of Section 49 of H.R. & C.E. Act. Therefore, the impugned order in the present case appointing a Fit Person in respect of the Temple which is in the administration of the first respondent is in violation of principles of natural justice and that the order is liable to be interfered on that short ground.



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22. The availability of alternative remedy is not always a bar to maintain the Writ Petition. Since we have already held that the impugned order is in violation of principles of natural justice, Writ Petition is maintainable. Therefore, for the reasons stated, this Court is unable to sustain the order of learned Single Judge, dismissing the Writ Petition, giving liberty to the appellant to avail the alternative remedy.

23. In the result, the Writ Appeal is allowed. The impugned order dated 21.11.2020, appointing the Fit Person and the consequential orders issued by the second respondent are quashed. However, it is open to the first respondent to initiate fresh proceedings under Section 49 of the H.R. & C.E. Act after issuing show cause notice to the appellant and affording a reasonable opportunity to the appellant. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

[S.S.S.R., J.] [D.B.C., J.]
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NCC : Yes / No
Index : Yes / No
sj



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S.S.SUNDAR, J.

and

D.BHARATHA CHAKRAVARTHY, J.

sj

To

- 1.The Assistant Commissioner,
Hindu Religious and Charitable Endowment Department,
Tirunelveli,
Tirunelveli District.

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