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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.07.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD)No.6685 of 2023
and
W.M.P(MD)Nos. 6314 &6316 of 2023

Kalirajan

... Petitioner

Vs.

1. The Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungambakkam,
Chennai.

2. The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Madurai.

3. G.Elankannan

4. V.Nagaraj

5. N.Radhakrishnan

6. V.Solaisamy

7. G.Nallasamy

8. Kovilpulikuthi Swami Kumbidum Nadar
Thayathigal Sangam,
through its President, S.Jawahar.

... Respondents

[R8 is impleaded vide Order of this Court, dated 22.06.2023]



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Certiorarified Mandamus***, to call for the records pertaining to the impugned order passed by the 1st respondent through his proceedings A.P.No.12 and 21/2020/D2, dated 02.02.2023 to quash the same as illegal and consequentially to rehear the same on the file of 1st respondent.

For Petitioner : Mr.C.Karthik

For Respondents : Mr.S.P.Maharajan,
Special Government Pleader, for R-1 & R-2

Mr.C.Madhavan, for R-3 to R-6

Mr.G.Ramanathan, for R-8

ORDER

This writ petition is filed for ***Writ of Certiorarified Mandamus*** to quash the impugned order, dated 02.02.2023.

2. Heard Mr.C.Karthik, learned Counsel appearing for the Petitioner and Mr.S.P.Maharajan, learned Special Government Pleader appearing for the respondent Nos.1 & 2 and Mr.C.Madhavan, learned counsel appearing for R-3 to R-6 and Mr.G.Ramanathan, learned counsel appearing for R-8.



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3. The brief facts as stated in the affidavit is that Shri Arulmigu Vaalagurunathaswamy Angala Eswari Thirukovil was established by 12 persons called as '**Palayakararkal**'. Initially it was managed by the said 12 Palayakararkal thereafter, five Palayakararkal made themselves reclusive and left the temple administration 300 years before. Thereafter the other 7 Palayakararkal are continuing in administration and management of the said temple and the petitioner is one among the said 7 Palayakararkal. The petitioner and the other persons have filed a petition under 64 of Hindu Religious and Charitable Endowment Act, to frame a scheme with respect to the management of the temple against the Executive Officer and a Sangam, before the Joint Commissioner, Sivagangai in O.A.No.20 of 2012 and then it was transferred to the Joint Commissioner, Madurai and the said case was renumbered as O.S.No. 3 of 2018. The Joint Commissioner, Madurai after considering the claim of the petitioner and the respondents Nos.3 to 7 have framed a scheme. Aggrieved over the said scheme, the respondents 3 to 7 have preferred an appeal before the Commissioner. The Commissioner has perused the documents and passed the impugned order. Through the impugned order, the matter was remitted back to the Joint Commissioner for reconsideration. Aggrieved by the same, the petitioner is before this Court.



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4. The contention of the petitioner is that the Joint Commissioner has correctly granted Trusteeship to 5 members, since under Section 47 of Hindu Religious and Charitable Endowment Act, restricts the Trustees to five and the relevant portion of

“(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”

When the provisions states that Board of Trustees shall be not less than 3 and not more than 5, but the Commissioner had held “since there are 7 Palayakararkal, if the administration is granted to all the 7 Palayakkararkal it will be beneficial to the temple administration” which is against the provisions. Therefore, this Court is of the considered opinion that the reasoning cited by the Commissioner is not in accordance with Section 47 of HR&CE Act and the order passed by the Commissioner ought to be interfered with.

5. However, the Commissioner has rendered a finding that the Joint Commissioner has not considered Ex.R.15 & Ex.R.16 phamplet printed during Kumbhabisekam would reveal that the 4th Appellant and Mr.Govindaraja Naicker and members of the various other community were part of the management committee. If the issue was considered by the Joint Commissioner,



they should also be given a representation to the committee. Even, if they are considered, they cannot be granted management since already 7 Palayakarargal are available, among that 7, only 5 can be granted representation in the committee. Both the Joint Commissioner as well as the Commissioner have failed to consider the management should be on rotation basis. Therefore, it should be on rotation basis only. To this extent the matter is remitted back to the Joint Commissioner for reconsideration.

6. However until the petition is considered the temple cannot function without Board of Trustees. Moreover, the scheme is already published. Therefore, this Court is of the considered opinion that Board of Trustees consisting of five Palayakarargal shall be in the management for the period of two years and the same shall be constituted within a period of two weeks from the date of receipt of the copy of the order. In the meanwhile, the Joint Commissioner shall consider the case based on the remand order and the parties shall adhere to the outcome of the case. It is made clear that the present management shall complete their two years term and the same shall not be disturbed in between. The Joint Commissioner shall consider the case within a period of 4 months, from the date of receipt of a copy of the order.



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7. With these observations and direction, this Writ Petition is disposed of. No Costs. Consequently, W.M.P(MD)No.6314 of 2023 is allowed and W.M.P(MD)No.6316 of 2023 is closed.

21.07.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No

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To

1. The Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungambakkam,
Chennai.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Madurai.



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S.SRIMATHY, J.

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