BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.01.2023

PRONOUNCED ON : 12.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.A(MD).No.525 of 2022
and
CMP(MD).No.4681 of 2022

N.Sivalingam
Chairman
Old Ayakudi Pandiya Vellalar Thanneer
Pandal Madam Trust, Palani
Dindigul District ...Appellant/Petitioner

Vs

1.The Commissioner
Hindu Religious and Charitable Endowments Board
Office of the Hindu Religious and Charitable Endowments Board
Nungambakkam, Chennai -34

2.The Joint Commissioner
Hindu Religious and Charitable Endowments Board
Madurai

3.The Inspector
Hindu Religious and Charitable Endowments Board
Palani, Dindigul District

4.The Executive Officer
Arulmighu Idumban Thirukoil
Old Ayakudi, Palani, Dindigl District 624 601

5.The Executive Officer
Arulmighu Thandayuthapani Thirukoil
Palani, Dindigul District 624 601 ...Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 24.03.2022 passed in WP(MD).No.16832 of 2020.

For Appellant	: Mr.G.Prabhurajadurai
For R1 to R3	: Mr.P.Subbaraj Special Government Pleader
For R4	: Mr.A.K.Baskarapandian
For R5	: Mr.K.Govindarajan

JUDGMENT

(Made by **R.VIJAYAKUMAR,J.**)

The writ petitioner is the appellant.

2.The present writ petition has been filed seeking a mandamus directing the fourth respondent to hand over the keys and belongings of old Ayakudy Pandiya Vellalar Thanneer Pandal Mutt Trust, Palani to the Trust attached to Arulmighu Dhandayuthapani Devasthanam, Palani as per the proceedings of the second respondent dated 16.09.2020.

3.Factual Background:

(i).According to the petitioner, the Mutt was constructed in the year 1870 by old Ayakudy Pandiya Vellalar Thanneer Pandal Mutt Trust, Palani attached to the temple premises of Arulmighu Dhandayuthapani Devasthanam, Palani. The Trust was engaged in rendering several services in the temple premises. In the year 2011, there were some disputes within the Trust and the management and control of the Trust was taken over by a Fit Person appointed by the second respondent herein on 31.10.2011. While the Fit Person was holding office, he had handed over the keys of the Mutt premises to the fifth respondent temple namely Arulmighu Dhandayuthapani Swamy Temple, Palani.

(ii).The issue relating to the dispute within the Trust was resolved by way of Secret Election conducted on 12.08.2020. Thereafter, the Fit Person was removed and the Trust was handed over to the elected trustees by an order of the second respondent dated 16.09.2020. Thereafter, the Managing Trustee had addressed a communication to the respondents 4 and 5 to hand over the keys of the Mutt to the Trust on 13.10.2020. However, there was no response from the respondents 4 and 5 herein. Hence, a writ petition was filed seeking mandamus directing the fourth respondent/Fit Person to hand over the keys and the belongings to the Trust. The writ Court, after considering the submissions made on either side, had passed an order on 24.03.2022 rejecting the prayer of the petitioner on the ground that the issue relates to title dispute and the same cannot be decided under Articles 226 of the Constitution of India. Challenging the said order, the present writ appeal has been filed.

4.Contentions of the learned Counsel appearing for the appellant/writ petitioner/:

(i).The Mutt building was constructed and possessed by the petitioner Trust from the year 1870 onwards in the hillock which is covered under Survey No.862. The said survey number is classified as a Government poramboke as per the revenue records. Hence, the temple authorities cannot make a claim over the building which is located in a Government poramboke and constructed by the petitioner Trust.

(ii). When a Fit Person is appointed to take care of a Trust, he is expected to protect the interest of the Trust and he cannot hand over the keys of the Mutt building to the fifth respondent temple. The second respondent by way of an internal communication dated 25.09.2019 has directed the Fit Person to hand over the keys to the fifth respondent. The second respondent has no jurisdiction whatsoever to pass such an order by way of an internal communication when the elected trustees are not in office.

(iii).When the Fit Person is removed and administration is restored to the elected trustees, the Fit Person is expected to hand over the possession of the Mutt building also. The Fit Person cannot contend that the he had handed over the possession of the Mutt premises to the fifth respondent temple while he was officiating as a Fit Person.

(iv). As per the order of the second respondent dated 16.09.2020, the Board of Elected trustees has been approved and the Fit Person has been directed to hand over the entire administration to the elected Trustees. The Fit Person was further directed to send a report relating to handing over and taking over of the administration of the Trust. This order is sought to be implemented by way of a writ petition. When the second respondent has directed the Fit Person to hand over the entire administration, it includes the possession of the Mutt building also.

(v).The Property Register of the fifth respondent temple does not disclose the Mutt building and therefore, it is clear that the Mutt building does not belong to the temple, but it belongs to the petitioner Trust.

(vi). It is an admitted fact that the Mutt building was constructed by the petitioner Trust and possession was with the petitioner Trust till a dispute arose among the trustees in the year 2011. The Fit Person has taken charge in the year 2011 and possession continued to be with the Fit Person till an order was passed by the second respondent on 25.09.2019. Hence, admittedly the Trust alone was having possession of the Mutt building. Therefore, the order of the writ Court that there is a title dispute with regard to the building is not factually correct. Hence, he prayed for allowing the writ appeal.

5.Contentions of the learned counsel appearing for the fifth respondent:

(i) Arulmighu Dhandayuthapani Swami Temple, Palani, is located in a hillock which is covered in Survey No.862. Though it is referred to as Sarkar poramboke, remarks column clearly pointed out that the entire survey number is in possession of the temple. Hence, the contention of the petitioner Trust that the land in which the building is located is a Sakar poramboke is not legally sustainable. If this contention is accepted, so many other persons, are likely to put up construction in the hillock under the guise, that it is a Sarkar poramboke.

(ii).The Property Register of the Trust discloses only two agricultural lands as their properties. The Mutt building is not shown as one of their properties in the Property Register.

(iii).The order dated 16.09.2020 passed by the second respondent has merely directed the fourth respondent to hand over administration of the Trust and there is no direction to hand over possession of the Mutt building to the petitioner Trust.

(iv).The Trust is a specific endowment for providing water to the devotees of Arulmighu Dhandayuthapani Swami Temple, Palani. The temple has created infrastructure in the premises for supply of water around all corners of the temple. Hence, this specific endowment has become redundant. However, the petitioner Trust can continue to discharge its function under the scheme decree.

(v).The building is located adjacent to the temple. It belongs to the temple and rightly the possession has to be retained only by the temple. At present, the said premises is being utilised by the temple for providing Prasatham to the donors of Thangaratham every day.

(vi).The ownership of the building and possession of the building are in dispute and hence, the present writ petition for a mandamus to hand over the keys of the building is not maintainable and the petitioner trust has to take recourse only to the Civil Court. Hence, he prayed for sustaining the order of the writ Court.

6.We have carefully considered the submissions made on either side and perused the records.

7.The following facts are not in dispute:

(i).The petitioner Trust is a specific endowment attached to Arulmighu Dhandayuthapani Swami Temple, Palani for performing certain services. The endowment is governed by a scheme framed by the Deputy Commissioner of HR & CE in O.A.No.93 of 1976 dated 04.07.1977.

(ii).The Mutt building, which is in dispute, is located adjacent to the temple premises on the hillock in Survey No.862. A perusal of the revenue records indicates that it is a Government poramboke, but the possession is with the fifth respondent temple.

(iii).Due to internal dispute in the Trust, the fourth respondent was appointed as a Fit Person to administer the Trust by an order of the second respondent dated 31.10.2011.

(iv).By order dated 25.09.2019, the second respondent has directed the fourth respondent to hand over the keys of the Mutt building to the fifth respondent.

(v).By order dated 20.07.2020, the second respondent has approved the election of new trustees to the petitioner Trust and by order dated 16.09.2020, the second respondent has directed the fourth respondent to hand over the administration of the trust to the newly elected office bearers.

8. A perusal of the order dated 16.09.2020 clearly discloses that the second respondent has only directed the Fit Person to hand over the administration of the Trust to the petitioner and has not passed any orders to hand over the possession of the Mutt building or to return the keys to the elected trustees.

9.A perusal of the handing over and taking over charge certificate indicates that the Fit Person has handed over the files relating to the handing over of keys to the fifth respondent herein. Therefore, it is clear that only the files relating to the handing over of the keys by the Fit Person to the fifth respondent temple were handed over to the petitioner and not the keys.

10.The petitioner claims that the Mutt building was constructed by the old Ayakudi Pandiya Vellalar Thanneer Pandal Mutt Trust and it was in their exclusive possession till a Fit Person was appointed. On the other hand, the learned counsel appearing for the fifth respondent temple contends that the Mutt building is located in Survey No.862 which is in possession of the temple. The fifth respondent further contends that the Property Register of the petitioner Trust does not disclose the dispute that the Mutt building is their own property. This contradictory plea indicates that there is a serious dispute with regard to the title of the building and possession of the said building.

11.The second respondent by his order dated 25.09.2019 has directed the Fit Person to hand over the keys to the fifth respondent temple. Though the petitioner Trust contends that the second respondent has no jurisdiction to pass such an order, the said order has not been put to challenge. Without challenging the said order, the writ petitioner seeking mandamus to hand over the keys is not maintainable. It is an admitted case that the keys of the Mutt building are with the fifth respondent temple. However, the prayer has been sought for as against the fourth respondent/Fit Person to hand over the keys to the petitioner Trust. The fourth respondent is not having the keys with him and he has handed over the same to the fifth respondent pursuant to the order of the second respondent dated 25.09.2019. When there is no prayer as against the fifth respondent temple, the present writ petition is not maintainable.

12.The writ petition has been filed to implement the order the second respondent dated 16.09.2020 under which the second respondent has directed the Fit Person to hand over the administration of the Trust to the elected trustees. A careful perusal of the said order clearly indicates that there was no direction by the second respondent to hand over possession of the Mutt building or keys to the elected trustees. Therefore, implementing the said order would not result in handing over of the possession of the Mutt building or keys to the petitioner Trust. The learned counsel for the petitioner/appellant is not able to point out any portion of the order which is yet to be implemented much less handing over of the keys. Therefore, the prayer for a mandamus based upon the order of the second respondent dated 16.09.2020 has no legal basis whatsoever.

13.Clause 3 of the Scheme Decree passed by the Deputy Commissioner of Hindu Religious and Charitable Endowment Department in O.A.No.93 of 1976 dated 04.07.1977 clearly indicates that all the endowments and properties both movable and immovable which have been or may hereafter be purchased are dedicated to the endowments do and shall vest in the aforesaid deity. Therefore, it is clear that the Mutt building has also got vested with the deity namely Arulmighu Dhandayuthapani Swami Temple, Palani.

14.In the light of the above facts, it is clear that the learned Single Judge has passed the order after careful consideration of all factual and legal position. We do not find any illegality or infirmity in the said order warranting interference. The Writ Appeal is devoid of merits and the same stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(D.K.K.J.,) **(R.V.J.,)**

12 .01.2023

NCC : yes/no
Index :yes/no
Internet :yes/no
msa

To

1.The Commissioner
Hindu Religious and Charitable Endowments Board
Office of the Hindu Religious and Charitable Endowments Board
Nungambakkam, Chennai -34

2.The Joint Commissioner
Hindu Religious and Charitable Endowments Board
Madurai

3.The Inspector
Hindu Religious and Charitable Endowments Board
Palani, Dindigul District

D.KRISHNAKUMAR, J.
AND
R.VIJAYAKUMAR,J.

msa

Pre-delivery Judgment made in
W.A(MD).No.525 of 2022
and
CMP(MD).No.4681 of 2022

12.01.2023