



WEB COPY

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 20.07.2023**

**CORAM**

**THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

**W.P(MD)No.15733 of 2023**

**and**

**W.M.P(MD)Nos. 13177 & 13817 of 2023**

M.Vinothkumar

... Petitioner

**Vs.**

1. The Commissioner,  
Hindu Religious and Charitable Endowments Department,  
Chennai.

2. The Joint Commissioner,  
Hindu Religious and Charitable Endowments Department,  
Trichirappalli.

3. Selvam

... Respondents

**PRAYER** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a *Writ of Certiorari*, to call for the records pertaining to the impugned order, dated 25.05.2023 in Na.Ka.No. 3964/2023/Aa4 passed by the 2<sup>nd</sup> respondent and quash the same as illegal, incompetent and without jurisdiction.

For Petitioner : M/s.H.Lakshmi Shankar

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

For R-3 : Mr.V.R.Shanmuganathan



## **ORDER**

WEB COPY

This writ petition is filed for *Writ of Certiorari* to quash the impugned order, dated 25.05.2023 passed by the 2<sup>nd</sup> respondent.

2. Heard M/s.H.Lakshmi Shankar, learned Counsel appearing for the Petitioner and Mr.S.P.Maharajan, learned Special Government Pleader appearing for the respondent Nos.1 & 2 and Mr.V.R.Shanmuganathan, learned counsel appearing for the 3<sup>rd</sup> respondent.

3. The petitioner and the 3<sup>rd</sup> respondent are tracing their rights from pre-independence era. Through the impugned order, the 2<sup>nd</sup> respondent has granted the hereditary trusteeship rights on rotation basis to the petitioner as well as the 3<sup>rd</sup> respondent. Aggrieved by the said rotation system, the present writ petition is filed.

4. One Karuma Gounder was having Hereditary trusteeship. He married four wives, but had no issues. However, for the purpose of this case only two wives namely Chinnammal and Ponnammal are necessary. After the demise of the Karuma Gounder, the Ponnammal and Chinnammal had filed O.A.No.80 of 1981 under section 63(b) of the Act and got declaration that the Trusteeship is hereditary and they are holding the office. The Ponnammal died



in the year 1992 and after her death the said Chinnammal being the surviving Hereditary Trustee continued until her death on 01.07.2001. The said Chinnammal had executed a registered will on 01.07.1992 and as per the Will Muthu Veeralakappan was bequeathed the right of Trusteeship. After her demise, the Will came into effect and the said Muthu Veeralakappan was holding Hereditary Trusteeship and the same is recorded through the proceedings dated 30.06.2005. The said Muthu Veeralakappan had filed S.O.P.No.2 of 2002 on the file of Munsif Court, Manapparai and obtained succession certificate on 20.08.2002. At this point of time the said Duraisamy @ Chinna Gounder was alive and he did not object to the same. In the meanwhile, the 3<sup>rd</sup> respondent's brother D.Rajendran had challenged the order is S.O.P.No.2 of 2002 in C.M.P.(MD)No.10183 of 2021 in C.R.P.(MD)SRNo. 13644 of 2021 after a delay of 20 years and the same was dismissed. Thereafter the said Muthu Veeralakappan died on 18.12.2019. After his demise his son, the petitioner herein was given the said right on 27.10.2020. The same was put to challenge by the 3<sup>rd</sup> respondent and her siblings under Section 54(1) of the HR&CE Act in A.P.No.45 of 2020 and the same is pending.

5. According to the 3<sup>rd</sup> respondent, the said Karuma Gounder adopted one Duraisamy Gounder @ Chinna Gounder through Adoption Deed



and has executed Will in favour of the said Duraisamy Gounder @ Chinna Gounder. The contention of the petitioner is that the alleged Adoption Deed and Will were considered in O.S.No.84 of 1950 and the Civil Court has held the Adoption deed as well as the Will are not true. The said Duraisamy Gounder @ Chinna Gounder has not preferred appeal and the same has attained finality. Hence, the 3<sup>rd</sup> respondent being the daughter of the said Duraisamy Gounder @ Chinna Gounder will not get any right at all.

6. The further contention of the petitioner is that pending the appeal in A.P.No.45 of 2020, the 3<sup>rd</sup> respondent had filed an application under section 54(1) of the Act with a false claim that the said Duraisamy @ Chinna Goundar is the son of Ponnammal and has rights of Trusteeship. The respondents had allowed the application vide the impugned order. Also, respondents had hurriedly allowed the A.P.No.45 of 2020 vide order dated 09.01.2023 and entertained the claim of the 3<sup>rd</sup> respondent and granted the rights in rotation. The petitioner has preferred an appeal in A.No.16 of 2023 against the order dated 09.01.2023.

7. After hearing the rival submissions this Court has given its anxious consideration. On perusing the order dated 09.01.2023 it is seen that the order has not referred any of the facts stated in paragraphs 4 and 5 supra.



Moreover, the order has not taken into consideration of any facts stated in the affidavit filed by the same petitioner in A.P.No.45 of 2020. In the A.P.No.45 of 2020 the claim of the 3<sup>rd</sup> respondent is based on the adoption deed, but as rightly pointed out by the petitioner the said adoption deed was considered in the suit filed in O.S.No.84 of 1950. Therefore, this Court is of the considered opinion that the order dated 09.01.2023 is total non-application of mind and passed without perusing any of the documents. In fact, the 3<sup>rd</sup> respondent has not filed the petition dated 14.12.2022 with clean hands and hence the order dated 09.01.2023 is liable to be quashed. Moreover, before considering the said petition the respondents have not issued any notice to the petitioner and hence the same is violative of principles of natural justice. By taking all these facts into consideration, this Court is of the considered opinion that the order dated 09.01.2023 is liable to be set aside. However, the petitioner has filed A.P.No.16 of 2023 against the order dated 09.01.2023 and as on date the same is pending.

8. In the present writ petition the petitioner has challenged the subsequent order dated 25.05.2023, which was passed based on the 3<sup>rd</sup> respondent petition dated 24.04.2023. The impugned order dated 25.05.2023 is passed without notice and without granting opportunity to the petitioner and hence the same is liable to be quashed and the same is quashed.



**9.** Even though the petitioner has filed this writ petition challenging the order dated 25.05.2023, this Court is of the considered opinion that in order to do overall justice, the order dated 09.01.2023 ought to be quashed. Hence this Court is quashing the order dated 09.01.2023 and 25.05.2023. If the Appeal filed in A.P.No.45 of 2020 is considered both the petitioner and the 3<sup>rd</sup> respondents rights can be considered. Therefore, the respondent is directed to consider the A.P.No.45 of 2020 with the period of period of 4 months, from the date of receipt of a copy of the order. The rights of the parties shall be determined based on the outcome of the appeal in A.P.No.45 of 2020.

**10.** With these observations and direction, this Writ Petition is allowed. No Costs. Consequently, connected miscellaneous petitions are closed.

**20.07.2023**

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



WEB COPY

To

1. The Commissioner,  
Hindu Religious and Charitable Endowments Department,  
Chennai.
2. The Joint Commissioner,  
Hindu Religious and Charitable Endowments Department,  
Trichirappalli.



WEB COPY



**S.SRIMATHY, J.**

ksa

**W.P.(MD).No.15733 of 2023**

**20.07.2023**