



WP(MD)No.17887/2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.17887/2014 &
MP(MD)No.2/2014

M.Karuppuraja

...Petitioner

Vs

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

2.The Executive Officer / Thakkar,
Arulmighu Vettudaiyar Kaliamman Thirukovil,
Ariyakurichi, Sivagangai Taluk,
Sivagangai District.

3.The Joint Commissioner,
Hindu Religious and Charitable Endowment,
Sivagangai District.

...Respondents

(The third respondent is impleaded vide Court order dated 17.03.2023 in WP(MD)No.17887/2014)

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the impugned order passed by the first respondent in Se.Mu.Na.Ka.No.3537/2012/A7 dated 09.12.2012 and the consequential order passed by the 2nd respondent dated 27.10.2014 and quash the same as illegal.



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For Petitioner : Mr.M.Kannan

For Respondents : Mr.G.V.Vairam Santhosh
Additional Government Pleader
for R1 & R3

Mr.P.Mahendran for R2

ORDER

This writ petition is filed as against the orders of the first respondent dated 09.12.2012 and the consequential communication of the second respondent dated 27.10.2014.

2. By the order dated 09.12.2012, the first respondent, the Assistant Commissioner (HR & CE), Paramakudi, Ramnad District appointed the second respondent as a Fit Person / Executive Officer for Arulmighu Sundaramahalingaswamy, Angalaeswari, Santhana Karuppasamy Thirukovil at Palaiyanur Village, Thiruppachethi via Thiruppuvanam Taluk, Sivagangai District.



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3. The case of the petitioner is that the Temple at Palaiyanur village was established 400 years back by his ancestor one Periya Santhanathevar and the descendants of Periya Santhanathevar are continuing to worship the Temple as a family Temple. There is no Undiyal, no collection of money or donation from the public. Kodimaram and Praharam are not present in the Temple. Whiles, the first respondent by the order impugned in this writ petition, has appointed the second respondent as a Fit Person without assigning any reasons or without providing any opportunity of hearing to the petitioner's side and therefore, the same is challenged in this writ petition.

4. The learned counsel appearing for the petitioner submits that this Temple is a family Temple established by the ancestor of the petitioner and title can be derived from a Will dated 31.12.1919 and a decree of the year 1896 in OS.No.584/1896 on the file of the Principal District Munsif Court, Manamadurai. An attempt was made by the third respondent to take possession of the property and hence suit was filed in the year 1896. In that suit, the petitioner's great grandfather one Ramasamythevar was the 17th defendant, wherein, an averment has been



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made that he is the Trustee, who is administering the Temple at that relevant point of time. Since the petitioner is the grandson of the said Ramasamythevar, they are administering the Temple without any Undiyal or collection of money or donation. They have not also erected Kodimaram in the Temple. According to him, it is only a family Temple and it is worshiped by the descendants of Periya Santhanathevar. Whiles, this impugned order has been passed without assigning any reasons and without providing any opportunity to the petitioner's side. This Court while entertaining this writ petition, has granted an interim order and till date this petitioner is administering the Temple without any complaint.

5. The learned counsel appearing for the second respondent submits that the Temple is a very old one, situated in the Government land. The Temple is having some properties to itself. The averment of the learned counsel for the petitioner that there is no Kodimaram is wrong and Kodimaram is erected in the Temple. He also circulated a photograph showing the availability of Kodimaram in the Temple. According to him, all community people are worshiping the Temple and it is a public Temple as defined under Section 1 (3) of the Tamil Nadu



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Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred as 'the Act'). Therefore, the first respondent is having every power to appoint a Trustee and Fit Person as per Section 49 of the Act and there is no reason to interfere with the order.

6. This Court considered the rival submissions and perused the materials available on record.

7. Section 1 (3) of the Act defines that the Act applies to all the Hindu Public Religious Institutions and Endowments including the incorporated Devaswoms and Unincorporated Devaswoms. Any religious institution which is not included in the list of Temples as provided under Section 46 of the Act are not notified under Chapter VI of this Act. The Assistant Commissioner of the HR & CE Department is having every power to appoint Trustees including Fit Persons in the interest of public under Section 49 of the Act. The impugned notice appears to have been passed under Section 49 of the Act and based on the impugned order dated 09.12.2012, subsequent communication has been given by the second respondent / Fit Person to hand over the charges. In a similar circumstance, the Division Bench of this Court in *WA.No.*



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1057/2022 in the case of Sri Ram Samaj and the Commissioner, HR & CE Department and others has held as follows:

"27. The power to appoint a fit person vests in the Assistant Commissioner, as per Section 49, which can be exercised on two contingencies. First, the institution must be a religious institution and second, upon satisfaction of any mal-administration of the institution by the existing trustees. It may be seen in the instant case that while appointing a fit person, the Assistant Commissioner himself has attempted to proclaim and decided that the institution is a religious institution. When the fourth respondent filed a complaint that the institution is a religious institution, the appellant having denied the same, it was necessary that the matter should have been taken up first by the Joint Commissioner/Deputy Commissioner under Section 63 for determining whether the institution is a religious institution or not. The same has to be done by following due procedure, that is, recording evidence and thereafter, pronouncing a decision under Section 63 of the Act. If any party is aggrieved,



they can file an appeal and thereafter, a suit, but without following the said procedure, straight away, the second respondent has assumed jurisdiction and appointed a fit person in an illegal manner. As a matter of fact, the learned Single Judge of this Court in the case of R.Shanmugasundram Vs. Commissioner of HR & CE (1991 2 MLJ 582), had specifically held that power under Section 49 to appoint a fit person cannot be exercised before determination of the issue under Section 63 of the Act of 1959. The aforesaid judgment is applicable to this case.

28. The second procedural violation is that before passing the order under Section 49 of the Act of 1959 appointing a fit person, except to record that a show cause notice was sent, reference of the allegation of mismanagement has not been given. Thus, there was neither any specific allegation of mal-administration nor any recording of subjective satisfaction. Further, such allegations should be specifically made in the show cause notice and hearing on such allegations should have been made before



appointing of a fit person.

29. Therefore, we find reason to cause interference in the order passed by the learned Single Judge, who ought not to have dismissed the writ petition without addressing the issues on merit, when challenge to the order was alleging violation of the principles of natural justice and non-observance of procedure in passing the order. Ignoring the aforesaid, the writ petition was dismissed on the ground of availability of alternative remedy and involvement of question of facts, whereas challenge was on the ground of non-compliance of procedure given under Section 63 of the Act of 1959 and Chapters V and VI thereof. It is even bit by the judgment of the Supreme Court in the case of Durga Enterprises (P) Ltd. vs. Principal Secretary, Govt. of U.P., reported at (2004) 13 SCC 665. There also, the writ petition was dismissed on the ground of availability of alternative remedy after keeping the matter pending for a long period of 13 years. It was held that the High Court having entertained the writ petition and the pleadings by the parties were complete,



ought to have decided the case on merit instead of relegating the parties to take the alternative remedy. We are not further entering into the issue that only on account of availability of alternative remedy, the jurisdiction of this Court under Article 226 of the Constitution of India is not barred rather in view of the judgment of the Apex Court in the case of Whirlpool Corporation (supra), the writ petition can be entertained despite the availability of alternative remedy. It is more so when procedure given under the Act of 1959 was not applied."

In this case also, it appears that the respondents without conducting any enquiry or ascertaining any facts, have issued the impugned order and hence, it ought to be set aside. However, on the request of the learned counsel for the second respondent, this Court is inclined to dispose of this writ petition with certain directions.

8. In view of the orders of the Division Bench (*cited supra*), this Court *suo motu* impleads the Joint Commissioner, Hindu Religious and Charitable Endowment, Sivagangai District, as third respondent in this



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writ petition. Mr.G.V.Vairam Santhosh, learned Additional Government Pleader is directed to take notice for the impleaded third respondent.

9. This writ petition is disposed of with the following directions:

(i) The impleaded third respondent, the Joint Commissioner, Hindu Religious and Charitable Endowment, Sivagangai District shall cause a notice to the petitioner under Section 63 of the Act within a period of four weeks from the date of receipt of a copy of this order.

(ii) On receipt of such notice, the petitioner shall appear before the Joint Commissioner, Hindu Religious and Charitable Endowment, Sivagangai District and produce all the relevant records.

(iii) The Joint Commissioner, Hindu Religious and Charitable Endowment, Sivagangai District shall also conduct a personal visit on the Temple and verify the accounts, if any, and pass an order within a period of six months from the date of notice.



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(iv) The petitioner is expected to co-operate with the proceedings of the Joint Commissioner, Hindu Religious and Charitable Endowment, Sivagangai District.

10. There shall be no order as to costs. Consequently the connected Miscellaneous Petition is closed.

17.03.2023

NCC: Yes / No
Index :Yes / No
Speaking Order : Yes / No

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To

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Endowment Department,
Paramakudi, Ramnad District.
- 2.The Executive Officer / Thakkar,
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B.PUGALENDHI, J.

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