



W.P(MD)No.22398 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.09.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.22398 of 2023
and
W.M.P.(MD).No.18659 of 2023

Kottanatham Hindu Nadar Uravinmurai,
Represented by its President,
Kottanatham,
Vilathikulam Taluk,
Thoothukudi District.

... Petitioner

Vs.

1.The Assistant Commissioner,
The Hindu Religious and Charitable
Endowments Department,
Officer of the Assistant Commissioner,
of HR & CE Department,
Thoothukudi-628 003.

2.The Executive Officer,
Arulmighu Meenakshi Sundareswar
Thirukovil,
Vilathikulam Town & Taluk,
Thoothukudi District.
(Wrongly shown as Thakkar of Arulmighu
Muniyasamy Temple, Kottanatham)

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records related to the impugned proceedings of the Assistant Commissioner of HR and CE department, the dated 16/12/2002 in proceedings in Na.Ka.no.4808/02-6 A1 and quash the same.

For Petitioner : Mr.N.Dilip Kumar

For Respondents : Mr.R.Ragavendran,
Government Advocate

ORDER

This Writ Petition is filed for Writ of Certiorari, challenging the impugned proceedings dated 16.12.2002. Through the said proceedings, the respondents have initiated action to appoint the Fit Person to the present temple.

2. The contention of the petitioner is that even though the respondent have passed an order as early as 2002, none took charge. Moreover, the said impugned proceedings was not served to the petitioner. It is only a paper order and the said order was not acted upon. The further contention of the petitioner is that the petitioner temple is a denomination temple. In fact, when the



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petitioner started conducting some festival, the official respondents interfered with the festivals. Therefore, the petitioner had already filed W.P.(MD).No. 13365 of 2023. This Court, vide order, dated 17.07.2023 directed the petitioner to file appropriate applications under Section 63 before the Joint Commissioner of HR & CE Department to recognize their rights.

3. However, the claim of the petitioner is that if it is a denomination temple, HR & CE Department is not having jurisdiction and the only remedy is to file a suit.

4. The Hindu Religious & Charitable Endowment Act, 1959 has narrated the situations where and when the fit persons shall be appointed. Under section 49 the Assistant Commissioner has power to appoint fit person and the provision is extracted hereunder:

2[49. Power of 3[Assistant Commissioner] to appoint trustees and fit persons.—(1) In the case of any religious institution which is not included in the list published under section 46 and is not a religious institution notified or deemed to have been notified under Chapter VI of this Act, the 1[Assistant Commissioner] shall have the same power to appoint trustees including fit persons or constitute a Board of



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Trustees and is vested in 2[the Government, the Commissioner or the Joint / Deputy Commissioner] in the case of a religious institution referred to in clause (a) of sub-section (1) or in sub-section (2), as the case may be, of section 47:

3[Provided that the Board of Trustees constituted under this sub-section shall consist of three persons appointed by the Assistant Commissioner of whom one shall be member of the Scheduled Caste or Scheduled Tribe and another one shall be a woman.

Provided further that in addition to the trustees appointed by the Assistant Commissioner under this sub-section, the Government may nominate two persons who are qualified for appointment as trustees under this act as members of the said Board of Trustees, having regard to the following matters, namely:—

- (a) the interest of the public generally ;*
- (b) the income and the properties of the religious institution ;*
- (c) the number of worshippers and importance of the religious institution as a pilgrim center ; and*
- (d) such other matters as may be prescribed : Provided also that notwithstanding anything aforesaid in this sub-section, the Assistant Commissioner, may in the case of any such religious institution which has no hereditary trustee, appoint a single trustee].*

(2) The provisions of sub-sections (3) and (4) of section 47 and of section 48 shall apply to the trustee or trustees appointed, or the Board of Trustees constituted, by 1[the Assistant Commissioner] as



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5. The power to appoint a fit person vests in the Assistant Commissioner, as per Section 49. The power shall be exercised on two contingencies, firstly the institution must be a religious institution and secondly, on satisfaction of any mal-administration of the institution by the existing trustees. In the present case while appointing a fit person, the Assistant Commissioner has not issued any notice, not conducted any enquiry. The Assistant Commissioner has to conduct the enquiry 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. The Hon'ble High 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 respondent ought to issue show cause notice specifically alleging mal-administration and call for objections, record evidence and then conduct enquiry, thereafter pass orders. Thus, there was neither any



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specific allegation of mal-administration nor any recording of subjective satisfaction. Hence the appointment of fit person is illegal and the impugned order is quashed.

6. Further the petitioner is directed to file a suit within a period of four weeks (4) from the date of receipt of a copy of this order and also sought for interim injunction for appointing a fit person. The respondents shall not further precipitate the issue.

7. With these observations and directions this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

13.09.2023
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NCC : Yes/No
Index : Yes / No
Internet : Yes/ No

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S.SRIMATHY, J.

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