BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.A.(MD)Nos.1900 and 1933 of 2023
and
C.M.P.(MD)Nos.14560 and 15031 of 2023

S.Raman ...Appellant in both appeals

Vs.

1.Selvaraj Servai
2.Karuppaiah Servai

3.The Commissioner,
Hindu Religious and Charitable Endowment Department (HR & CE),
Nungambakkam, Chennai

4.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department (HR and CE)
Thanjavur.

5.The Assistant Commissioner,
Tamilnadu Hindu Religious and Charitable Endowment Department (HR and CE),
Pudukkottai.

6.The Thakkar / the Executive Officer,
Arulmighusri Poorana Puskala Samedha Senbagasastha Ayyanar Kovil,

Rep.By R.Muthukumaran,
S/o.Ramalingam,
Nallamalsamuthiram Village.

7.K.S.Periyasamy
8.S.Sathan
9.Vellaiyanpoosari ...Respondents in W.A.(MD)No.1900/2023

1.V.A.Karuppaiya

2.The Commissioner,
Hindu Religious and Charitable Endowment
Department (HR & CE),
Nungambakkam, Chennai

3.The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department (HR and CE)
Thanjavur.

4.The Assistant Commissioner,
Tamilnadu Hindu Religious and Charitable
Endowment Department (HR and CE),
Pudukkottai.

5.The Thakkar / The Executive Officer,
Arulmighusri Poorana Puskala Samedha
Senbagasastha Ayyanar Kovil,
Rep.By R.Muthukumaran,
S/o.Ramalingam,
Nallamalsamuthiram Village,
Thirumayam Taluk,
Pudukottai District.

6.Vellaiyanpoosari ...Respondents in W.A.(MD)No.1933/2023

COMMON PRAYER: Appeals filed under Clause 15 of Letters patent, against the common order dated 27.07.2023 made in WP(MD) No.28048 of 2022 and WP(MD) No.7678 of 2023 dated 27.07.2023 on the file of this Court.

For Appellant : Mr.Vallinayagam
Senior Counsel
for Mr.K.Vigneshkumar
(in both appeals)

In W.A.(MD)No.1900 of 2023:

For R3 to R5 : Mr.D.Sasikumar
Government Advocate

For R6 : Mr.S.Madhavan

For R9 : Ms.J.Anandhavalli

In W.A.(MD)No.1933 of 2023:

For R1 : Ms.J.Anandhavalli

For R2 to R4 : Mr.D.Sasikumar
Government Advocate

For R5 : Mr.G.Madhavan

COMMON JUDGMENT

(Judgment of the Court was made by ***V.LAKSHMINARAYANAN, J.***)

W.A.(MD)No.1900 and 1933 of 2023 are preferred against the common order dated 27.07.2023 made in W.P.(MD)No.28048 of 2022 and 7678 of 2023.

2.W.P.(MD)No.7678 of 2023 was filed by one Mr.V.A.Karuppaiya seeking for a writ of certiorari to quash the order passed by the second respondent dated 07.12.2021, by which a fit person had been appointed to Arulmigu Sri Poorna Puskala Samedha Senbaga Sastha Ayyanar Kovil along with Parikara Deivangal (hereinafter referred to as 'the temple' for the sake of brevity). The temple is situated in Nallammal Samuthiram Revenue Village, Thirumayam Taluk, Pudukkottai District.

3.The grandfather of V.A.Karuppaiya, namely Vellaiadakkalam Poosari filed O.A.No.166 of 1955 claiming that the temple is a private temple and in the alternative to appoint him as a Hereditary Trustee. The then Deputy Commissioner, Hindu religious and Charitable Endowments Department (hereinafter referred to as 'the Department' for the sake of brevity), Thanjavur by order dated 26.03.1956 rejected the claim of the grandfather of V.A.Karuppaiya that it was a private temple but granted the relief that Vellaiadaikalam Poosari was the Hereditary Trustee. The grandfather of V.A.Karuppaiya passed away and his son Adaikkalam Poosari succeeded to the office of the Hereditary Trustee. On the death of Adaikkalam Poosari, V.A.Karuppaiya became the Hereditary Trustee.

4.The brother of V.A.Karuppaiya, namely one Vellaiyan Poosari filed an application to recognize him as a Hereditary Trustee. This application was rejected by the Department and he had preferred an appeal before the Commissioner and the same is also stated to be pending. In the meantime, since V.A.Karuppaiya was caught up with his age, the Department decided to appoint a fit person and the petitioner had challenged the same. The learned Single Judge took note of the fact that under the provisions of the Hindu Religious and Charitable Endowments Act (hereinafter referred to as 'the Act' for the sake of brevity), when there is a Hereditary Trustee, fit person cannot be appointed as a course and also took into consideration the fact that V.A.Karuppaiya had decided that in case he is not able to manage the temple, he is going to take the assistance of his brothers to manage the temple. Hence, he had chosen to question the order of appointment of a fit person and the said order is on appeal.

5.It is a settled position of law that where there is a Hereditary Trustee, the Department does not have right to appoint a fit person unless the requirements of the statute /the Act are complied with. If the Hereditary Trustee is suffering from disqualification, the next in line of the succession to the said Hereditary

Trustee should be preferred to take over the charge. An appointment of a fit person will operate only against the Hereditary Trustee suffering disqualification and when no other person is available.

6.In the case on hand, V.A.Karuppaiya had been recognized as a Hereditary Trustee and he is in active management of the temple. In case, the Department had felt that V.A.Karuppaiya is suffering from any disqualification, it could have only chosen other family members, who did not suffer from such disqualification. Therefore, no interference can be made to the view taken by the learned Single Judge and therefore **W.A.(MD)No.1933 of 2023** is liable to be dismissed and accordingly, it is **dismissed**.

7.As far as W.A.(MD)No.1900 of 2023 is concerned, the petitioner is a third party to the temple and stating that he has faith in the temple, he had offered a sum of Rs.1 crore for the renovation work of the temple, which according to him is dilapidated. He therefore, wants the management to include him in the Thirupani committee, so as to help the Hereditary Trustees to renovate and repair the temple. Formation of a Thiruppani committee is governed by the Rules framed in G.O.No.1837 of 1961, dated 10.07.1964. The Statutory Rules are titled as

"Management and Preservation of Properties of Religious Institutions Rules". The relevant Rules are Rule 53 and Rule 54, which are extracted hereunder:

"53. Formation of Thiruppani Committees. - In the case of temples requiring renovation or "Thiruppani" works and in need of donations from the public, Thiruppani Committee shall be formed for each such temple for the purpose.

54. Thiruppani Committee Members and Secretary. - [(1) The Thiruppani Committee shall consist of the trustees of the temple as ex-officio members and <u>such other members who maybe co-opted by the trustees</u>. The formation of the Committee and the names of its members shall be reported-

(a) in respect of religious institutions not published under section 46 of the Act, to the Assistant Commissioner having jurisdiction;
(b) in respect of religious institutions published under section 46(i) and section 46(ii) of the Act, to the Joint Commissioner having jurisdiction;
(c) in respect of the religious institutions published under section 46(iii) of the Act, where the income of the institution does not exceed Rs. 50,00,000 to the Commissioner;
(d) in respect of religious institutions published under section 46(iii) of the Act, where the income of the institution exceeds Rs. 50,00,000 to the Government, for approval.]

(2)The members shall elect one among themselves as President of the Committee.

(3)The Executive Officer of the temple, or in his absence, the trustee of the temple, if there is only one trustee or the Chairman, Board of Trustees, as the case may be, shall be the Secretary and Treasurer and Member of the

Committee. In special cases, any other member of the Committee may be elected by the Committee as Treasurer subject to the approval of the appropriate authority. The Treasurer shall attend to the correspondence and maintenance of accounts relating to the collection of donations, etc., and expenditure incurred out of them.

[(4)The Government in respect of religious institutions published under section 46(iii) of the Act, where the income of the institution exceeds Rs. 50,00,000 and the Commissioner in all other cases, may suspend or remove from office any members of the Thiruppani Committee including a member of the Tiruppani Committee for sufficient cause after giving him an opportunity of showing cause against such removal and after considering his explanation.]"

8.A Thiruppani committee shall consist of the trustees of the temple and such persons as the trustees of the temple have decided to ***'co-opt'***. Therefore, it is upto the trustees to decide as to who should be made as a member of the Thiruppani committee. It is pertaining to note that the petitioner was originally an atheist and he filed an affidavit before this Court now, stating that he has faith in the temple. Whether the petitioner must be included as a member of the Thiruppani committee or not is entirely the discretion of the trustees and for that purpose, a mandamus cannot be issued.

9.For the reasons stated above, the order of the learned Single Judge does not warrant any interference. Accordingly, **W.A.(MD)No.1900 of 2023** stands **dismissed**. No costs. Consequently, connected miscellaneous petition are closed.

(S.M.S., J.) & (V.L.N., J.)
02.11.2023

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

ta

To
1.The Commissioner,
Hindu Religious and Charitable Endowment Department (HR & CE),
Nungambakkam, Chennai

2.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department (HR and CE)
Thanjavur.

3.The Assistant Commissioner,
Tamilnadu Hindu Religious and Charitable Endowment Department (HR and CE),
Pudukkottai.

S.M.SUBRAMANIAM, J.

AND

V.LAKSHMINARAYANAN, J.

ta

W.A.(MD)Nos.1900 and 1933 of 2023

02.11.2023