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W.P.(MD)Nos.28048 of 2022 and 7678 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.07.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.28048 of 2022 and 7678 of 2023
and
W.M.P.(MD)Nos.22126 of 2022, 7142, 7143,
9097, 9121, 9157 and 14756 of 2023

W.P.(MD)No.28048 of 2022:

1.Selvaraj Servai
2.Karuppaiah Servai

... Petitioners

vs.

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



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- 2.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department (HR & CE),
Tanjore.
- 3.The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department (HR & CE),
Pudukkottai.
- 4.The Thakkar/The Executive Officer,
Arulmigu Sri Poorana Puskala Samedha,
Senbagasatha Ayyanar Kovil,
represented by R.Muthukumaran.
- 5.S.Raman
- 6.K.S.Periyasamy
- 7.S.Sathan
- 8.Vellaiyan Poosari

... Respondents

***(R4 is impleaded, vide Court order, dated
24.01.2023, in W.M.P.(MD)No.1379 of
2023 in W.P.(MD)No.28048 of 2022)***

***(R5 is impleaded, vide Court order, dated
24.01.2023, in W.M.P.(MD)No.661 of
2023 in W.P.(MD)No.28048 of 2022)***



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***(R6 and R7 impleaded, vide Court order, dated
24.01.2023, in W.M.P.(MD)No.674 of
2023 in W.P.(MD)No.28048 of 2022)***

***(R8 is impleaded, vide Court order, dated
28.06.2023, in W.M.P.(MD)No.9074 of
2023 in W.P.(MD)No.28048 of 2022)***

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to directing respondents 1 to 3 to constitute the Thiruppani Committee consisting the representatives of the three villages and renovate the temple of Arulmighu Sri.Poorana Pushkala Samedha Senbagha Sathan Ayyanar Temple with parigaraha Deivangal situated in S.No.73 of Nallammal Samuthiram Revenue Village, Thirumayam Taluka, Pudukkottai District, without changing any archaeological features and perform the Kumbabishekam.

For Petitioner	: Mr.K.Baalasundharam Senior Counsel for Mr.R.Paranjothi
For R1 to 3	: Mr.R.Ragavendran Government Advocate



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For R4 : Mr.G.Mathavan
For R5 : Mr.S.Madhavan
For R6 and 7 : Mr.E.Balasubramanian
For R8 : Mr.A.V.Arun

W.P.(MD)No.7678 of 2023:

V.A.Karuppaiya

... Petitioner

vs.

- 1.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Nungambakkam, Chennai-600 034.
- 2.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Thanjavur.
- 3.The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Pudukkottai.



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4.The Thakkar/The Executive Officer,
Arulmigu Sri Poorana Puskala Samedha,
Senbaga Satha Ayyanar Kovil,
represented by R.Muthukumaran.

5.Vellaiyan Poosari

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the impugned order passed by the 2nd respondent in Se.Mu.Na.Ka,No. 7222/2021/A3, dated 07.12.2021 and to quash the same.

For Petitioner	: M/s.J.Anandhavalli
For R1 to 3	: Mr.R.Ragavendran Government Advocate
For R4	: Mr.G.Mathavan
For R5	: Mr.A.V.Arun



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COMMON ORDER

The writ petition in W.P.(MD)No.7678 of 2023 is filed by V.A.Karuppaiya for writ of Certiorari, to quash the impugned order passed by the 2nd respondent, dated 07.12.2021. Through the impugned order the respondents have appointed fit person.

2. The writ petition in W.P.(MD)No.28048 of 2022 is filed Writ of Mandamus, to directing respondents 1 to 3 to constitute the Thiruppani Committee consisting the representatives of the three villages and renovate the temple of Arulmighu Sri Poorana Pushkala Samedha Senbagha Sathan Ayyanar Temple with parigaraha Deivangal situated in S.No.73 of Nallammal Samuthiram Revenue Village, Thirumayam Taluka, Pudukkottai District, without changing any archaeological



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features and perform the Kumbabishekam.

3. The 2nd respondent Joint Commissioner in W.P.(MD)No.7678 of 2023 appointed a fit person who is arrayed as 4th respondent in W.P. (MD)No.7678 of 2023. The contention of the writ petitioner V.A.Karuppaiya in W.P.(MD)No.7678 of 2023 is that the V.A.Karuppaiya's family had constructed the temple, hence O.A.No.166 of 1955 was filed to this effect claiming right over the temple as private temple as well as claiming Hereditary Trusteeship. After considering the said application, the Deputy Commissioner of Hindu Religious and Charitable Endowments Department, Thanjavur, vide order, dated 26.03.1956, has passed an order recognizing the V.A.Karuppaiya's grandfather namely Sri Vellaiadakkalam Poosari as Hereditary Trustee,



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but denied the right that it is private temple. After the demise of the V.A.Karuppaiya's grandfather, the V.A.Karuppaiya's father namely Adaikkalam Poosari was recognized as Hereditary Trustee. After the demise of the Adaikkalam Poosari on 19.04.1985, the V.A.Karuppaiya was continuing as Hereditary Poosari. However, due to his old age, he was not able to maintain the temple.

4. Therefore, through the 5th respondent Vellaiyan Poosari, who is the V.A.Karuppaiya's brother has submitted an application to recognize him Hereditary Trustee. The said application was dismissed, vide order, dated 24.02.2023. Aggrieved over the same, he has filed a petition before the Commissioner of HR & CE Department and the same is pending.



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5. In the meanwhile, Selvaraj Servai and Karuppaiah Servai filed a writ petition in W.P.(MD)No.28048 of 2022, with the prayer for issuance of a Mandamus, to directing respondents 1 to 3 to constitute Thiruppani Committee consisting the representatives of the three villages and renovate the temple of Arulmighu Sri.Poorana Pushkala Samedha Senbagha Sathan Ayyanar Temple with parigaraha Deivangal situated in S.No.73 of Nallammal Samuthiram Revenue Village, Thirumayam Taluka, Pudukkottai District, without changing any archaeological features and perform the Kumbabishekam.

6. It is an admitted fact that the temple is not maintained properly, it is in bad condition and all the parties accept that the temple has to be renovated. But the question is who has to renovate and who



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can participate in the renovation work. One S.Raman had filed an impleading petition impleading himself as a party and offered one Crore rupees to renovate the temple. However, there is an objection to his contribution stating that he is an atheist. But the said S.Raman has filed an affidavit before this Court stating that he is not an atheist and he is still stand by his offer of granting rupees one crore. Thereafter, K.S.Periyasamy and S.Sathan, claiming themselves as devotees has impleaded themselves as parties in W.P.(MD)No.28048 of 2022 and their claim is to renovate the temple without misappropriation and mismanagement. This Court has impleaded the above said S.Raman, K.S.Periyasamy and S.Sathan through various orders in W.P.(MD)No. 28048 of 2022.



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7. The contention of the said V.A.Karuppaiya is that W.P.(MD) No.28048 of 2022, was filed without impleading the Hereditary Trustees. On perusal of the records, it is seen that the said V.A.Karuppaiya or his family members were not impleaded as parties. It is based on the Vellainyan Poosari application in W.M.P.(MD)No.14756 of 2023 the Hereditary Trustee was impleaded in the writ petition. Therefore, this Court is of the considered opinion that the writ petition in W.P.(MD)No. 28048 of 2022 ought to have been filed impleading the hereditary trustees. Hence, the writ petition filed without impleading the necessary parties is bad in law. However, since the prayer is only to constitute Thiruppani Committee, this Court is accepting the prayer to that limited extent and the Thiruppani Committee will be constituted with certain directions. With this observation the W.P.(MD)No.28048 of 2022 is



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disposed of.

8. As far as W.P.(MD)No.7678 of 2023 is concerned there is no conflict between V.A.Karuppaiya, the writ petitioner and the 5th respondent Vellayan Poosari. There is no dispute between the family members of the Hereditary Trustees. There is no allegation of mismanagement or misappropriation against the V.A.Karuppaiya and his family. The only allegation is that the temple building is not maintained properly, it has not been renovated and the building needs repairing. Based on this allegation the HR&CE is trying to appoint fit person in W.P.(MD)No. 7678 of 2023, which is challenged by the Hereditary Trustees in the present writ petition in W.P.(MD)No. 7678 of 2023.



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9. The learned Counsel for the writ petitioner V.A.Karuppaiya relied on Section 54(1) of HR & CE Act and submitted that the Hereditary Trusteeship is automatic and the relevant portion is extracted here under:

“When permanent vacancy occurs in the office of the hereditary trustee of the religious institution, the next in line of the succession shall be entitled to succeed the office.”

However, the learned Government Advocate submitted that the said recognition is not automatic because in proviso, it is stated that when a Hereditary Trustee is with unsoundness of mind or unfit for performing functions of the trustees, then the HR & CE Department, is having power to appoint a fit person. The relevant portion of the provision is extracted hereunder:

“when a hereditary trustee is by reason of unsoundness of mind



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or other mental or physical defect or infirmity unfit for performing the functions of the trustee,

the Joint Commissioner or the Deputy Commissioner, as the case may be, may appoint a fit person to perform the functions of the trustee of the institution until the disability of the hereditary trustee ceases or another hereditary trustee succeeds to the office or for such shorter term as I[the Joint Commissioner or the Deputy Commissioner as the case may be], may direct.

10. In the affidavit, the writ petitioner V.A.Karuppaiya has stated that due to his old age his health is not in good condition and hence he is not able to manage and for this reason he is intended to transfer his right to his brother namely Vellaiyan Poosari, the 5th respondent herein. As per the aforesaid proviso, of course the Joint Commissioner has power to appoint a fit person, but such power is



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qualified with a condition. The Joint Commissioner can appoint a fit person for such shorter term until the disability of the hereditary trustee ceases or another hereditary trustee succeeds to the office. In the present case the said Vellaiyan Poosari is ready to inherit the Hereditary Trusteeship and has submitted an application to recognize his assumption of Hereditary Trusteeship. In such circumstances the respondents cannot appoint fit person and the respondents are bound to recognize the Hereditary Trusteeship Vellaiyan Poosari. The respondents have kept the Vellaiyan Poosariship petition pending, but has appointed the fit person, which is against the provisions. Not only against the provisions but it is affecting the rights of the Vellaiyan Poosari, who is arrayed as 5th respondent in the present writ petition.



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11. It is seen from the records that the petitioner V.A.Karuppaiya is having three brothers and two sisters. Now, all the four brothers claim that they will manage the temple properly and administer the same since their Hereditary Trusteeship is recognized by the HR & CE Department. Therefore, this Court is of the considered opinion that the family is entitled to continue the hereditary trusteeship and now they have involved themselves and inclined to renovate the temple.

12. It is seen from the records that the hereditary trustee along with the three villages would conduct festival and other temple functions. Therefore, the writ petitioner V.A.Karuppaiya and his family members as Hereditary Trusteeship holders shall form a Thiruppani Committee to renovate the temple and along with the villagers belonging to



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Nambooranipatti, Kovilpatti and Mavadipatti. The renovation shall take place within a period of one year. The petitioner shall prepare a list of Committee Members and submit the same to the Assistant Commissioner of HR & CE Department and the Assistant Commissioner shall approve the same.

13. The impleading petitions filed by K.V.Kannan, V.K.Shanmuganathan and S.Raman in W.M.P.(MD)No.9097 of 2023, W.M.P.(MD)No.9121 and W.M.P.(MD)No.9157 of 2023 in W.P.(MD)No. 7678 of 2023 respectively are dismissed.

14. The Committee shall decide all issues including to receive donations or to decline to receive donations. It is made clear that if any person is donating money or other articles are not entitled to claim



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management rights in the temple. Since this Court has allowed the customary practice of forming committee along with the three village, the impugned order of appointing the fit person is quashed.

15. With the above said directions and observations, the interim order passed by this Court, dated 23.03.2023, in W.P.(MD)No.28048 of 2022 is modified by this final order passed in the writ petition and the W.P.(MD)No. 28048 of 2022 is disposed of. The W.P.(MD)No. 7678 of 2023 is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

16. Before parting with the judgment, this Court records the following. As stated by Mahatma Gandhi villages are heart of our



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country, the villages ought to be allowed to carry on their functions on their own, otherwise the villagers would be forced to leave the villages and it would lead to urbanization. This is applicable to the management of village temples as well. The powers and rights of the villages cannot be curtailed by appointing a fit person. Admittedly the fit person would be alien to the said village. In Panchayat Raj system the rights and powers would percolate to the villages. Likewise, the rights and powers of villages ought to be allowed to percolate to villages in the case of temple administration also. If any mistakes are committed, then it can be rectified by peace committee meeting, chance to rectify the mistakes. Not by straight away appointing a fit person. On the other hand, if any fit person is appointed, who is alien to the place would have other unwanted effects. In the present case now of renovation work is handed over to the



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said Hereditary Trustees along with the three villages and they would carry out their responsibility and conduct festival with euphoria. The next generation also would participate and would train to discharge the responsibility. On the other hand, if it is handed over to the fit person, the fit person would carry out, the hereditary trustee and the entire three villages would witness it without any contribution from their side, which would have the devil's mind effect on them. The government should act as "mother" and entrust the responsibility to its "children", rather than handing it over to the 3rd party.

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

27.07.2023

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To

- 1.The Commissioner,
Hindu Religious and Charitable
Endowments Department (HR & CE),
Nungambakkam, Chennai.
- 2.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department (HR & CE),
Tanjore.
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S.SRIMATHY, J

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