



W.P. (MD) No. 29273 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.01.2023

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. (MD) No. 29273 of 2022

and

W.M.P. (MD) Nos. 23234 and 23235 of 2022

K.S.Rajavel

... Petitioner

-VS-

1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai-600 034.

2.The Executive Officer,
Arulmigu Boologanathaswamy Thirukoil,
East Boulevard Road, Tiruchirappalli-620 002.

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in his proceedings in Na.Ka.No.27825/98-1/L1, dated 29.09.1998, to quash the same and consequently to quash the letter dated 01.12.2022 of the second respondent.

For Petitioner : Mr. KS.Vamsidhar

For R1 : Mr. T.Villavan Kothai
Additional Government Pleader

For R2 : Ms. S.Devasena



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ORDER

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Heard Mr. KS.Vamsidhar, Learned Counsel appearing for the Petitioner, Mr. T.Villavan Kothai, Learned Counsel appearing for the First Respondent and Ms. S.Devasena, Learned Counsel appearing for the Second Respondent and perused the materials placed on record apart from the pleadings of the parties.

2. The Petitioner challenges the proceedings in Na.Ka.No.27825/98-1/L1, dated 29.09.1998 passed by the Second Respondent seeking to implement the order dated 29.09.1998 passed by the First Respondent appointing the Executive Officer for the Second Respondent Temple under Section 45 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as 'the Act' for the sake of brevity).

3. It is represented by the Learned Counsel for the Petitioner that the order dated 29.09.1998 passed by the First Respondent has not been delivered to the Petitioner earlier and a copy of the same only has been furnished along with the proceedings dated 01.12.2022 passed by the Second Respondent. Hence, this Court during the earlier hearing had called upon the First Respondent to



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produce the proof for having sent the order dated 29.09.1998 to the Petitioner, but the same has not been produced till date.

4. It is further informed that prior to the order dated 10.12.2022, the Petitioner was called upon to submit his objection by 09.12.2022 and in furtherance thereto the Petitioner had submitted his objection on 08.12.2022 by registered post and the same has been received by the Second Respondent on 10.12.2022, for which the acknowledgment card has been produced. It is further submitted that even without considering the objection raised by the Petitioner, the Second Respondent has taken charge of the Temple on 09.12.2022.

5. It is the further contention of the Petitioner that the continuance of the Fourth Respondent as the Executive Officer of the Temple of the Fourth Respondent beyond five years cannot be sustained in law. In support thereof, reliance is placed on the decision of the Hon'ble Supreme Court of India in **Dr. Subramanian Swamy -vs- State of Tamil Nadu and others** [(2014) 5 SCC 75], in which the following observations have been made:-

“49. We would also like to bring on record that various instances whereby acts of mismanagement/maladministration/misappropriation alleged to have been committed by Podhu



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Dikshitars have been brought to our notice. We have not gone into those issues since we have come to the conclusion that the power under the 1959 Act for appointment of an Executive Officer could not have been exercised in the absence of any prescription of circumstances/conditions in which such an appointment may be made. More so, the order of appointment of the Executive Officer does not disclose as for what reasons and under what circumstances his appointment was necessitated. Even otherwise, the order in which no period of its operation is prescribed, is not sustainable being ex facie arbitrary, illegal and unjust.”

It is brought to notice that after that authoritative pronouncement, the Government of Tamil Nadu in the exercise of powers conferred by clause (i) of sub-section (2) of section 116 read with section 43-A and sub-section (1) of section 45 of the Act framed Conditions for Appointment of Executive Officers Rules, 2015 (hereinafter referred to as 'the Rules' for short) which provides that the period of appointment of the Executive Officer for a Religious Institution cannot exceed five years at a time.

6. Having regard to the fact that the order dated 29.09.1998 had not been delivered to the Petitioner and the aforesaid legal position that an order of appointment of Executive Officer cannot be exceeded for more than five years, the impugned order has been beyond five years from the date of the said order as well as the date on which the aforesaid Rules have come into force, the



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continuation of the Executive Officer of the Temple of the Fourth Respondent in terms of the impugned order cannot be countenanced and hence, the same is set aside. It is made clear that the order dated 29.09.1998 passed by the First Respondent shall cease to be in force with immediate effect from the date of receipt of the copy of this order by the Second Respondent.

7. The impugned action of the Second Respondent taking of the charge of the temple is set aside and the Second Respondent shall restore the charge of the Temple to the Petitioner with immediate effect. However, it is made clear that if they have any other grievance, the concerned parties are not precluded from working out their rights, in the manner recognized by law.

In fine, this Writ Petition is ordered on the aforesaid terms. Consequently connected Miscellaneous Petitions are closed. No costs.

24.01.2023

NCC : Yes/No

Index: Yes/No

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Note: Issue order copy by 03.03.2023.



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P.D. AUDIKESAVALU, J.

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To

- 1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai-600 034.
- 2.The Executive Officer,
Arulmigu Boologanathaswamy Thirukoil,
East Boulevard Road, Tiruchirappalli-620 002.

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