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W.P.No.371 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.11.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P No.371 of 2020 and
W.M.P.No.419 of 2020

K.V.Chalapathy

...Petitioner

Vs.

1. The Principal Secretary/Commissioner
HR & CE Admn. Department
Chennai-600 034.

2. The Joint Commissioner
HR & CE Department
Vellore.

3. D.Bharath Kumar

.Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the common order dated 04.11.2019 passed in R.P.No. 98 of 2017, on the file of the 1st respondent and to quash the same.

For Petitioner : Mr.K.Jayaraman
For Respondents 1 &2 : Mr.N.R.R.Arun Natarajan
Special Government Pleader (HR & CE)



W.P.No.371 of 2016

ORDER

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The writ petition is filed challenging the order passed by the 1st respondent setting aside the order passed by the 2nd respondent recognising the petitioner as a hereditary trustee of Arulmigu Varadhanarayana Swami temple at Pallipattu Town, Tiruvallur District and remanding the above matter to the file of 2nd respondent with direction to conduct a fresh enquiry with regard to the allegations of mis-conduct made against the petitioner by the 3rd respondent.

2. The learned counsel for the petitioner submits that Arulmigu Varadhanarayana Swami temple was administered by his father as hereditary trustee and he died on 14.12.2013. The petitioner in his capacity as next person in line of succession filed an application before the 2nd respondent for formally recording him as hereditary trustee of the temple. The 2nd respondent passed an order on 02.09.2016 recording him as a hereditary trustee. The said order was challenged by the 3rd respondent before the 1st respondent on the ground that petitioner committed certain irregularities by alienation of the



temple's property and therefore, the 1st respondent set aside the order passed by the 2nd respondent and remitted the matter to 2nd respondent to go into the allegations made by the 3rd respondent. The learned counsel submits that power under Section 54(1) of HR &CE Act is administrative one and the 2nd respondent cannot go into the allegations made by the 3rd respondent in the enquiry contemplated under Section 54(1) of HR & CE Act. The learned counsel further submits that on death of hereditary trustee, the petitioner, in his capacity as next person in line of succession, is entitled to succeed to the trusteeship automatically even without any order by the respondents. In this regard, the learned counsel for the petitioner relied on the judgment of this Court in the case of ***Prem Anand Vs The Commissioner, HR &CE Department, Madras and Others*** reported in ***1990 1L.W. 144***.

3. Mr.N.R.R.Arun Natarajan, the learned Special Government Pleader appearing for the respondents 1 and 2 would submit that 3rd respondent made serious allegations against the petitioner regarding alienation of the temple's properties. Therefore, the 1st respondent set aside the order passed by the 2nd respondent recognising the petitioner as a hereditary trustee and remitted the



matter with direction to conduct enquiry with regard to the allegation. The learned Special Government Pleader, by taking this Court to Section 26 of HR & CE Act, submits that the Joint Commissioner can always go into the question whether the trustee suffered any disqualification as mentioned under Section 26 of HR & CE Act. The learned Special Government Pleader further submits that after death of petitioner's father, in order to take care of the administration of the temple, a fit person was appointed earlier on 17.12.2013 by the order of the 2nd respondent.

4. The order passed under Section 54(1) of HR & CE Act is administrative in nature. On the death of hereditary trustee, the next person in line of succession is entitled to succeed to the hereditary trusteeship of the temple automatically. In other words, the order passed by the HR & CE Department formally recognising the next person in line of succession as a hereditary trustee cannot be equated with appointment of hereditary trustee. The next person in line of succession is entitled to succeed to office of trusteeship by virtue of his civil status. It is not as if he succeeds to the office by order passed under Section 54(1) of HR & CE Act. The said order only



formally records the name of succeeding trustee in the official records of department. The next person in line of succession succeeds to the office by operation of law immediately on death of the original trustee. The order passed by the Joint Commissioner under Section 54(1) is a formal order and the same shall be treated as administrative one.

5. Section 54 of HR & CE Act reads as follows:-

54. Filing up of vacancies in the office of hereditary trustee.

(1)When a permanent vacancy occurs in the office of the hereditary trustee of a religious institution, the next in the line of succession shall be entitled to succeed to the office.

(2)When a temporary vacancy occurs in such an office by reason of the suspension of the hereditary trustee under sub-section (2) of section 53, the next in the line of succession shall be entitled to succeed and perform the functions of the trustee until his disability ceases.

(3)When a permanent or temporary vacancy occurs in such an office and there is a dispute respecting the right of succession to the office, or

When such vacancy cannot be filled up immediately, or when a hereditary trustee is a minor and has no guardian fit and willing to act as such or there is a dispute respecting the person who is entitled to act as guardian, or

When a hereditary trustee is by reason of



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unsoundness of mind 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,] [Substituted for the expression 'the Deputy Commissioner' by section 9 of the Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1995 (Tamil Nadu Act 38 of 1995).] 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 [the Joint Commissioner or the Deputy Commissioner, as the case may be,] [Substituted for 'the Deputy Commissioner' by Tamil Nadu Act 38 of 1995.] may direct.

Explanation. - In making any appointment under this sub-section, [the Joint Commissioner or the Deputy Commissioner, as the case may be,] [Substituted for the expression 'the Deputy Commissioner' by section 9 of the Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1995 (Tamil Nadu Act 38 of 1995).] shall have due regard to the claims of members of the family, if any, entitled to the succession.

(4) Any person aggrieved by an order of [the Joint Commissioner or the Deputy Commissioner, as the case may be] [Substituted for the expression 'the Deputy Commissioner' by section 9 of the Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1995 (Tamil Nadu Act 38 of 1995).], under sub-section (3) may, within one month from the date of the receipt of the order by him, appeal against the order to the Commissioner.



(5) Nothing in this section shall be deemed to affect anything contained in the [Tamil Nadu] [Substituted for the word 'Madras' by the Tamil Nadu Adaptation of Laws Order, 1969, as amended by the Tamil Nadu Adaptation of Laws (Second Amendment) Order, 1969.] Court of Wards Act, 1902 ([Tamil Nadu] [Substituted for the word 'Madras' by the Tamil Nadu Adaptation of Laws Order, 1969, as amended by the Tamil Nadu Adaptation of Laws (Second Amendment) Order, 1969.] Act I of 1902).

6. A reading of above provision would make it clear that next person in line of succession is entitled to succeed to the office as a matter of right and no formal orders from the respondents' department is necessary for the purpose of succession. Only under certain contingencies mentioned under Section 54(3), the 2nd respondent is entitled to exercise his power to appoint fit person. The contingencies mentioned under Section 54(3) of HR & CE Act are not present in this case. In this regard, it would be appropriate to refer to the observation of this Court in ***Prem Anand Vs The Commissioner, HR & CE Department, Madras and Others*** reported in ***1990 1L.W. 144***.

“2. Under Section 54 of Tamil Nadu Hindu Religious and Charitable Endowments Act, when a



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permanent vacancy occurs in the office of the hereditary trustee of a religious institution, the next in the line of succession shall be entitled to succeed to the office. There is no necessity, whatever, for the next hereditary trustee to make an application for being appointed under the Act. In this case, the petitioner had to approach the first respondent, because a fit person, was already in charge of the administration of the temple. As the first respondent had appointed the fit person, the petitioner sought a direction to the fit person from the first respondent to hand over charge to the petitioner as he has become the hereditary trustee. The first respondent ought to have issued such a direction. On the other hand, the first respondent directed the petitioner to go to the Deputy Commissioner which is unwarranted by the provisions of the Act.

The view in ***Prem Anand Case*** was followed in ***N.Muthuvalli vs. The Joint Commissioner, HR&CE and Others*** reported in **2002(5) CTC 31**.

7. Therefore, the 1st respondent committed an error in setting aside the order passed by the 2nd respondent recognising the petitioner as a hereditary



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trustee and remanding the matter to Additional Joint Commissioner with direction to conduct enquiry into the allegations made against the petitioner. If there are allegations against the petitioner, it is always open to the 2nd respondent to initiate a disciplinary proceedings against him in accordance with law and after affording reasonable opportunity to the petitioner, he can pass appropriate orders in the disciplinary proceedings. However, the power under Section 54(1) which is administrative in nature cannot be converted into a quasi judicial proceedings and the 2nd respondent is not entitled to go into the allegations against the trustee treating it as a disciplinary proceedings. Therefore, the impugned order passed by the 1st respondent is liable to be set aside and the order passed by the 2nd respondent recognising the petitioner as a hereditary trustee is restored.

8. As submitted by the learned Special Government Pleader for the respondents 1 and 2, in the peculiar facts of this case, after death of petitioner's father, a fit person was appointed to the temple as early as 17.12.2013 and he has been continuing the administration till date. In these circumstances, this Court feels it would be appropriate to continue the fit person for some more



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time till the 2nd respondent go into the question of allegations raised by the 3rd respondent against the petitioner. Therefore, the fit person appointed by the 2nd respondent on 17.12.2013 is allowed to continue with the administration for twelve more weeks and the 2nd respondent is directed to consider the various allegations made against the petitioner by giving reasonable opportunity to him and pass final orders on its' own merits within a period of twelve weeks from the date of receipt of copy of this order. If the allegations made against the petitioner are found to be untrue, the 2nd respondent shall immediately hand over the administration of the temple to the petitioner on expiry of the period of twelve(12) weeks. On the other hand, if the allegations are found to be true, it is always open to the 2nd respondent to proceed in accordance with law.

9. With the above observations, this writ petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes
Internet : Yes
Speaking Order
Neutral Citation Case : Yes

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S.SOUNTHAR, J.
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