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W.P.No.11502 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2024

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.11502 of 2024
and W.M.P.No.12612 of 2024

R.Mohan

... Petitioner

Versus

1.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Erode, Erode District.

2.The Assistant Commissioner,
(Additional Charge),
Hindu Religious and Charitable
Endowments Department,
Namakkal, Namakkal District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the entire records pertaining to the impugned order made in A.Thi.Mu.No.6002/2023/Aa1, dated 28.08.2023 passed by the 1st respondent and quash the same and consequently, direct the 1st respondent to accept and number the petition dated 11.07.2023 filed under Section 63



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(A) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and decide the matter in merits as per the directions issued by this Court in order dated 09.06.2023 in W.P.No.17169 of 2023.

For Petitioner :: Mr.C.C.Nelson Britto

For Respondents :: Mr.N.R.R.Arun Natarajan
Special Government Pleader

* * * * *

ORDER

This Writ Petition is filed challenging the impugned order passed by the 1st respondent in A.Thi.Mu.No.6002/2023/Aa1 dated 28.08.2023 and further for a direction to the 1st respondent to consider the petition dated 11.07.2023 filed under Section 63 (A) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, (hereinafter referred to as, 'the Act' in short) on the basis of the order passed by this Court on 09.06.2023 in W.P.No.17169 of 2023.

2(i). The case of the petitioner is that they are the resident of Avathipalayam, Kaliyanur Amani Village, Namakkal District and the Poojari of A/m.Periya Karuppannaswamy Temple, Periya Padugaikadu,



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Avathipalayam, Kaliyanur Amani Village. The said temple was constructed and worshiped by the villagers for more than 200 years, which has been constructed by the ancestors of the petitioner and situated in patta land measuring 5 cents. The temple is also owning lands measuring 0.28.05 Hrs., in S.F.No.96/2A, 0.96.0 Hrs., in S.F.No.96/2C and 0.22.5 Hrs., in S.F.No.107/3A. The property has been issued with Patta No.3 by the authorities concerned. The temple and land stands in the name of A/m.Periya Karuppannaswamy Temple, which was enjoyed, administered and performed poojas by one Palaniappa Gounder, Thangaraju, Venkatachalam and Ramasamy. While so, one Balasubramaniam, Rajendran and Raju had raised certain disputes in respect of the affairs of the temple and therefore, the said S.Palaniappa Gounder and 3 others filed O.S.No.1063 of 1987 before the District Munsif Court, Tiruchengode against the said Balasubramaniam and 2 others for the relief of declaration that the temple belongs to the family of the plaintiffs and to grant permanent injunction restraining the defendants and their men and servants from interfering with the affairs and administration of the temple and enjoyment of the temple lands. The suit was filed in the year 1987. The defendants failed to defend the suit and they were called absent and set ex-parte.



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Learned District Munsif had passed a judgment on 19.06.1989 by granting declaration and permanent injunction as prayed for and the decree had obtained finality and 3rd plaintiff in O.S. No.1036 of 1987 filed O.S.No.324 of 1990 and the father along with very same 3rd plaintiff S.O.Venkatachalam filed O.S.No.352 of 1991 against one V.Kumarasamy, son of the said S.O.Venkatachalam for the relief of permanent injunction. Both the suits were dismissed on 11.11.1998. In the mean time, the above said 4 persons approached the Assistant Commissioner, Settlement Scheme, Dharapuram to get patta. Accordingly, the Assistant Commissioner had passed an order in Na.Ka.No.2029/1996/Aa2 dated 15.07.1996 by granting joint patta in the name of O.Venkatachala Gounder, R.Mohan, the petitioner herein, S.Thangaraj and S.P.Balasubramaniam by order dated 09.03.1963 made in S.R.No.134/1959, passed by the Settlement Tahsildar, Salem, who had already granted patta under Section 8 (2)(i) of the Act 30 of 1963 for the said temple. Pursuant to the said orders passed by the Assistant Commissioner of Settlement Office, Dharapuram, the Tahsildar, Tiruchengode granted Patta No.3 for the above said lands. The said V.Kumarasamy, the 3rd plaintiff had executed a general release deed dated 28.09.1988 in favour of his father, S.O.Venkatachalam by relinquishing his



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rights. However, V.Kumarasamy had continued to create unwarranted pinpricks to the other three branches by interfering with the poojas. Against the suit in O.S.No.1063 of 1987 filed by father S.O.Venkatachalam and 3 others, V.Kumarasamy again filed O.S.No.146 of 2010 before the Additional District Munsif Court, Tiruchengode, seeking for the relief of permanent injunction against the petitioner and other 3 branches. The suit was decreed on 12.08.2014. The petitioner's appeal in A.S.No.25 of 2014 filed before the Sub Court at Tiruchengode was dismissed on 29.01.2021. Aggrieved against the same, the defendants 2, 4 to 9 and 12, including the petitioner have filed S.A.No.916 of 2021, which was admitted on 26.10.2021.

2(ii). In the meanwhile, the 2nd respondent has passed an order dated 18.04.2023 in Na.Ka.No.947-83/2023/A6 by inviting applications to appoint Non-Hereditary Trustees for the temple as the petitioner being the poojari of the A/m.Periya Karuppannaswamy Temple, Padugaikadu, his father late Ramasamy and 3 others filed O.S.No.1063 of 1987 and obtained a decree of declaration that the temple belongs to their family consisting of 4 branches and they are the persons having right which is protected under



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Article 26 (1) of the Constitution. The petitioner's family is consisting of 4 branches and maintaining the affairs and administration of the temple. The said V.Kumarsamy had managed to get the Non-Hereditary Trusteeship for a period of 3 years and after the release deed dated 28.09.1988, all these rights will not have any effect on the petitioner. An order has been passed on 18.04.2023 by the authorities and the petitioner has issued a legal notice dated 22.05.2023 to the 2nd respondent to recall the said impugned notice and the notice of such nature to appoint the Non-Hereditary Trustees is impermissible as Civil Court has granted declaration in O.S.No.1063 of 1987. Till now, the character of the temple has not been decided as per the Act. The petitioner filed Writ Petition immediately in W.P.No.17169 of 2023 and the Court was pleased to pass an order in order to balance the rights of the petitioner and also the Department, issuing certain directions. Accordingly, the Court had passed direction as follows:

“(a)the petitioner is directed to file an application u/s.63(a) of the Act before the Joint Commissioner having jurisdiction to entertain the application and it is left open to the petitioner to claim for the right of religious denomination by putting forth all the materials before the



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concerned authority. This application shall be made within a period of two (2) weeks from the date of receipt of a copy of this order;

(b)The Joint Commissioner, on receipt of the application from the petitioner, shall proceed further to deal with the same on its own merits and in accordance with law after affording an opportunity to all the interested parties and a final order shall be passed in the application within a period of three (3) months from the date of filing of the application by the petitioner;

(c)It is left open to the petitioner to submit an application for being considered for appointment as a non-hereditary trustee and this application shall be submitted by the petitioner within a period of two(2) weeks from today. The application submitted by the petitioner shall also be entertained and shall be considered at the time of appointment of the non-hereditary trustees to the said temple. It is made abundantly clear that the submission of application by the petitioner will be without prejudice to



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the rights of the petitioner to claim for the right of religious denomination to the subject temple and the submission of the application should never be put against the petitioner and others while dealing with the application filed u/s.63(a) of the Act; and

(d)The appointment of non-hereditary trustee to the subject temple will be subject to the final decision that is arrived at in the application filed u/s.63(a) of the Act.”

Accordingly, the petitioner filed a petition dated 11.07.2023 on 24.07.2023 under Section 63 (A) of the Act before the 1st respondent. The 1st respondent, without considering the same on merits, has passed an impugned order dated 28.08.2023, sent it through post which is received on 13.09.2023. The respondents returned the petition filed by the petitioner, which has been challenged before this Writ Petition.

2(iii). According to them, the 1st respondent without even numbering the paper and taking on merits, simply stated that the Executing Officer was appointed as Thakkar, unmindful of the order passed by this Court in



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W.P.No.17169 of 2023 and the declaration in O.S.No.1063 of 1987.

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3. The petitioner's claim was tested by the learned Special Government Pleader appearing for the respondents, who would submit that the petitioner has not approached this Court with necessary particulars and he has also not made the said Fit Person/Thakkar as party to the proceedings and all those documents which have been produced by the petitioner herein are all only among the private individuals and they have not made the Hindu Religious and Charitable Endowments department as a party to the said dispute and also, when they seek declaration under 63(A) of the Act, appropriate documents has to be produced. It is seen from the said documents produced by the petitioner that patta has been mutated in their name, but subsequently, when the Department has sought for mutation and the said lands have been brought under the name of the temple and the Fit Person being appointed, necessarily he has to be heard and pleaded that the petitioner can approach the authorities once again after impleading the Fit Person as a party and the same can be considered.

4. Heard both sides and perused the entire materials available on



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record.

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5. On going through the averments, it is seen that the petitioner, if at all he has any right over the property, he has to approach the competent authority under Section 63(A) of the Act viz., Joint Commissioner or Deputy Commissioner, by impleading the necessary parties who can defend themselves when the matter will be decided by the said authority. Section 63 of the Act is extracted hereunder for further reference:-

***“63. [Joint Commissioner or Deputy Commissioner]
[Substituted by Tamil Nadu Act 38 of 1995.] to decide
certain disputes and matters.***

*- Subject to the rights of suit or appeal hereinafter
provided, [the Joint Commissioner or the Deputy
Commissioner, as the case may be,] [Substituted by Tamil
Nadu Act 38 of 1995.] shall have power to inquire into
and decide the following disputes and matters:-*

(a) whether an institution is religious institution;

*(b) whether a trustee holds or held office as a hereditary
trustee;*

(c) whether any property or money is a religious



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endowment;

(d)whether any property or money is a specific endowment;

(e)whether any person is entitled, by custom or otherwise, to any honour, emolument or perquisite in any religious institution; and what the established usage of a religious institution is in regard to any other matter;”

The 1st respondent has to consider the same and pass orders after giving reasonable opportunities to all the parties concerned within a period of sixteen weeks from the date of receipt of a copy of this order.

6. With the above direction, the Writ Petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

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V.BHAVANI SUBBAROYAN, J.

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To

- 1.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Erode, Erode District.
- 2.The Assistant Commissioner,
(Additional Charge),
Hindu Religious and Charitable
Endowments Department,
Namakkal, Namakkal District.

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and
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