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W.P.No.13693 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2024

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.13693 of 2020
and WMP.No.17023 of 2020

1.T.Rajendran
2.A.Jayaprakash
3.K.A.Gowri Shankar

..... Petitioners

Vs.

1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai – 600 034.

2.The Joint Commissioner,
Salem Division,
O/o.Joint Commissioner,
Salem – 1.

3.The Executive Officer,
A/m.Prasanna Venkataramanaswamy Temple,
Pandamangalam, Paramathi Vellore Taluk,
Namakkal District.

..... Respondents



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PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the entire records pertaining to the order and annexure to order dated 09.08.2019 of the 1st respondent made in Se.Mu.Na.Ka.No.19785/19/L5 and quash the same.

For Petitioners : Mr.V.Srikanth

For Respondents :Mr.N.R.R.Arun Natarajan
Special Government Pleader
(HR and CE) for R1 to R3

ORDER

This writ petition is filed challenging the order passed by the first respondent appointing an Executive Officer to the temple called Arulmighu Vengarai Amman, Paramathivelur Taluk, Namakkal District.

2. The learned counsel appearing for the petitioners submits that the impugned order was passed by the first respondent based on the resolution passed by the Board of Trustees requesting the HR and CE Department to appoint the Executive Officer for the better administration of the temple. However, the Chairman of the Board of Trustees, subsequently addressed a letter to the first respondent and jurisdictional Joint Commissioner stating that the resolution was not passed by the board of



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trustees in accordance with law. Inspite of the said letter written by the Chairman, Board of Trustees to the respondent, no steps have been taken to cancel the appointment of Executive Officer to the subject temple. Therefore, the petitioners have come before this Court, challenging the appointment of Executive Officer.

3. The learned counsel for the petitioners by relying on Rule 3 of conditions for appointment of Executive Officer Rules in G.O.Ms.No. 260, dated 06.11.2015 submits that the impugned order does not stipulate any time limit for appointment of Executive Officer and hence the same is liable to be quashed. The learned counsel further submitted that the resolution passed by the Board of Trustees requesting the first respondent to appoint the Executive Officer was withdrawn by the letter addressed to the respondents by the Chairman of the Board of Trustees dated 28.06.2018 and the same has not been considered by the respondents.

4. The learned Special Government Pleader appearing for the respondents submits that the disciplinary proceedings were taken against the



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Hereditary Trustees/petitioners in the year 2017 and pending enquiry, the

Hereditary Trustees were placed under suspension by order passed by the jurisdictional Joint Commissioner dated 11.09.2020. Therefore, as on today, there is no trustees to look after the administration of the temple and in their place, a fit person has been appointed on 21.09.2020. The learned Special Government Pleader further submitted that though the petitioners relied on a letter addressed by the Managing Trustee of the Board of Trustees, till date, no resolution has been passed by the Board of Trustees cancelling the earlier resolution making a request for appointment of Executive Officer. Therefore, on the consent given by the petitioners, the impugned order has been passed, in such circumstances, the petitioners are not entitled to challenge the impugned order without cancelling the earlier resolution giving consent for appointment of the Executive Officer.

5. The learned Special Government Pleader further submits that as on today the petitioners are under suspension on the allegation of mis-management. Therefore, the continuation of Executive Officer is absolutely necessary to look after the affairs of the temple.



6. Though the learned Special Government Pleader relied on the suspension order passed against the petitioners, a perusal of the impugned order would suggest that the Executive Officer was appointed to the subject temple only on the basis of the consent given by the petitioners/ Hereditary Trustees and there is no reference about the alleged mis-management in the impugned order. Even, according to the case of the respondents, subsequently the petitioners were suspended. In such circumstances, the consent expressed by the suspended trustees cannot be relied on for continuing the appointment of the Executive Officer. Once the Hereditary Trustee is suspended the next person in the line of succession is entitled to the Hereditary Trusteeship.

7. Section 54 of the HR and 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 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



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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)."

8. A reading of Section 54(2) would make it clear whenever there is a temporary vacancy in the office of Hereditary Trustees by suspension of the Hereditary Trustee, the next person in the line of succession shall be entitled to succeed and perform the functions of the trustee until his disability ceases. The succession to office by next person in line of succession is automatic. In this regard reference may be had to decision of this Court in Prem Anand Vs. The Commissioner, HR and CE



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reported in 1990 (1) LW 144; N.Muthavali Vs. The Joint Commissioner,

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HR and CE reported in 2002 (5) CTC 31 and decision of Division Bench in

C.Andiappan Vs. The Joint Commissioner, HR and CE reported in 2016 (1)

CTC 9. In the case on hand, the petitioners who acted as Hereditary Trustees

are placed under suspension. Therefore, the next person in the line of

succession is entitled to act as Hereditary Trustee in the temporary vacancy

created by suspension of petitioners and if any such application is filed by

the next person in the line of succession, the same shall be considered by the

respondents in accordance with law. If the next person in the line of

succession express his willingness to act as a trustee by making an

application under Section 54(2) of HR and CE Act, the consent expressed by

the suspended trustees will automatically get superseded and as a necessary

consequence, the first respondent shall recall the impugned order, appointing

an Executive Officer and also order appointing fit person to enable the next

person in line of succession to take over the administration of the temple. It

is also pertinent to mention, a Hereditary Trustee cannot give a consent for

appointment of Executive Officer so as to prejudice the rights of next person

in line of succession. Any consent given by him is valid only during his life



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time or during his continuance in office. The right to succeed to trusteeship available to next person in line of succession is a vested right acquired by him by virtue of his birth and the same cannot be defeated by previous trustees agreeing for appointment of executive officer.

9. As far as present case is concerned, the petitioners, Hereditary Trustees passed a resolution agreeing for appointment of Executive Officer. Though it was stated that resolution was subsequently cancelled, no material has been placed before this Court to show that a valid resolution was passed by Hereditary Trustees withdrawing their consent for appointment of Executive Officer. A letter by Chairman of board of trustees will not amount to withdrawal of consent in the absence of formal resolution by Board of Hereditary Trustees. It is not in dispute, now petitioners are placed under suspension. Hence, relief sought for in the writ petition cannot be granted to them. In the light of the above discussion, the writ petition is disposed of with a direction to the respondents 1 and 2 to consider the request, if any, made by the next person in line of succession and make necessary orders for handing over the administration of the temple to the next person in line of succession within a period of eight weeks from the



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date of application, if any.

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10. The learned Special Government Pleader also submits that as on date, the jurisdictional Joint Commissioner for the said temple is Joint Commissioner, Erode, after bifurcation of the Erode District. The said statement is recorded. The Registry is directed to mark the copy of his order to Joint Commissioner, HR and CE, Erode.

11. Accordingly, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

12.11.2024

Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
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To

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Copy to:

The Joint Commissioner,
HR and CE, Erode.



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S.SOUNTHAR, J.

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12.11.2024
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