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W.P.No.14566 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2024

CORAM

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

W.P.No.14566 of 2014

1. P.Shankar
2. M.K.Palani
3. K.H.Gajendran

...Petitioners

Vs.

1. The Commissioner,
HR & CE Department,
Nungambakkam High Road, Madras – 600 034.
2. The Joint Commissioner,
HR & CE Administration Department,
Nungambakkam High Road, Madras – 600 034.
3. The Assistant Commissioner,
HR & CE Department,
Nungambakkam High Road, Madras – 600 034.
4. A/m. Avathutha Chidambara Swami Madam and
Sundara Vinayagar Devasthanam, Rep. by its Fit Person,
Having Office at No.48, Mulla Sahib Street,
Chennai – 600 079.

...Respondents



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Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records pertaining to R.P.No.88 of 2013 D 2 dated 10.03.2014 signed on 16.04.2014 on the file of the 1st respondent and quash the same as illegal, incompetent and ultravires.

For Petitioners : Mr.R.Jayaprakash

For Respondents : Mr.K.Karthikeyan, GA, for R1 to R3
: Mr.D.Ramalingam, for R4

ORDER

This Writ petition has been filed seeking quashment of the order of the 1st respondent dated 10.03.2014 made in R.P.No.88 of 2013 D 2.

2. It is the case of the petitioners, as evidenced from the affidavit filed in support of the writ petition, based on which the learned counsel for the petitioners submits that, the petitioners are the legal heirs of late Thiruvengada Mudaliar, the original founder and trustee of the Thiruvengada Mudaliar charities. However, contrary to the scheme decree, fit person was appointed under Section 49(1) the Hindu Religious & Charitable Endowments Act in the year 1988 and thereby, the petitioners filed an application in A.No,594 of 2005 in C.S.No.709 of 198 (scheme



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decree suit), however, the same was rejected on the ground that without challenging the appointment of fit person, filing the application is not sustainable. Thereby, challenging the appointment of fit person, the petitioners preferred a revision in R.P.No.88 of 2013 D2 (RC 178/2012 D2) before the 1st respondent, however, the same was dismissed by the 1st respondent, vide impugned order. Though the petitioners have proved that they are the direct legal heirs of the original trustee and they are entitled to be appointed as the trustees of the trust, particularly, when there is no allegation with regard to committing of malpractice by the petitioners, however, the 1st respondent failed to consider the same, while passing the present impugned order and necessarily the same has to be interfered with. Further, no notice was issued to the petitioners and no reason was assigned before appointing the fit person. The major grievance of the petitioners is that, the person who was appointed as the fit person has decided the validity of the said appointment by sitting as the Revisional Authority and dismissed the claim of the petitioners, which is non est in law and in stark violation of principles of natural justice. Accordingly, he prayed for appropriate orders.



5. It is not in dispute that with regard to mismanagement of the properties and sale thereof, civil suit was filed and resultantly, fit person had come to the appointed as early as in the year 1988. However, the said appointment of fit person was not challenged by the petitioners at the earliest point of time and only in the year 2013, the same was challenged, though the petitioners have impleaded themselves as party defendants in the suit.

6. The Division Bench of this Court in the case of ***P.R.Thirupathy and others Vs. the Commissioner and others*** reported in **2015-3-L.W.106** held as hereunder:

“The order impugned in this Writ Petition, dated 18.09.2013, has been passed under [Section 49\(1\)](#) of the Act. The said provision confers power on the Assistant Commissioner, H.R.& C.E., to appoint trustees and and fit persons, in the case of any religious institution, which is not included in the list published under [Section 46](#) of the Act and is not a religious institution notified or deemed to have been notified under [Chapter VI of the Act](#) (notified religious institutions). The Assistant Commissioner shall have the same power to appoint trustees including fit persons. The distinction between the power exercisable by the Commissioner, H.R.&C.E., under Section 45 and the power exercisable by the Assistant Commissioner under Section 49(1) is that the Commissioner in exercise of the powers conferred under Section 45 is entitled to appoint Executive Officers for any Religious institutions other than a math or a specific endowment attached to the math. The power vested with the Assistant Commissioner H.R.,&C.E., under Section 49(1) is a power



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to appoint fit persons. The appointment of a fit person is for a temporary period to tide over certain difficulties or contingencies if in the opinion of the Assistant Commissioner, appointment of a fit person is warranted. Similarly in terms of Section 53(4) pending the disposal of the charges framed against the trustees, the appropriate authority may place the trustee under suspension and appoint a fit person to discharge the duties and perform the functions of the trustee. This power is also in the nature of an interim arrangement. Similarly is the power vested with the Joint Commissioner or the Deputy Commissioner as the case may be to appoint a fit person to perform the functions of the trustee of the institution until disability of the hereditary trustee seizes or another trustee succeeds to the office or for such shorter term as the authority may direct by exercising power under [Section 54\(2\)](#) of the Act. Similarly, under [Section 64\(4\)](#) of the Act, pending the settlement of a scheme for an institution, the Joint Commissioner or the Deputy Commissioner, as the case may be, may appoint a fit person to perform all or any of the functions of the trustee thereof and define his powers and duties. Thus, the power to appoint fit person and the nature of duties and responsibilities entrusted to him under the various provisions of the Act, namely, Sections 49(1), 53(4), 54(2) and 64(1) are all powers exercisable for appointment of fit persons as an interim measure. The statute does not provide for issuing a notice to the hereditary trustees/trustees prior to appointment of a fit person.

9. The Hon'ble Division Bench in the case of [Commissioner, Hindu Religious & Charitable Endowments \(Administration\) Dept., Madras vs. K.Jothiramalingam & Anr.](#), (supra), while considering the correctness of appointment of an Executive Officer under Section 45(1) to manage the affairs of the temple held that the power vested with the Commissioner under the said provision is a very drastic one, it has to be exercised cautiously, reasonably and fairly, as the exercise of such power may even result in the effective elimination of the hereditary trustee from the management and administration of the temple. Therefore, it was held that though Section 45(1) by its terms does not contemplate any notice or enquiry before exercising the power of appointing an Executive Officer, the principles of natural justice require that the hereditary trustee who is in actual control, management and day to day administration of the temple should be given notice and opportunity



to show cause against the appointment of an Executive Officer by the Commissioner under Section 45(1) and appointment of an Executive Officer should be made after being satisfied that the institution has not been properly managed by the hereditary trustee and the administration requires to be toned up or improved and the appointment of an Executive Officer is justified to secure such better administration.

10. It is true that the power under [Section 45\(1\)](#) of the Act, as held by the Hon'ble Division Bench is a drastic power. However, the power exercisable under Section 49(1) is only for the purpose of an interim arrangement. Therefore, the rigour of the provision is not to the extent of the power conferred under Section 45(1). Nevertheless, while exercising power under Section 49(1) cannot be made in a whimsical manner, but the authority should be satisfied that in the interest of the temple and the public, a fit person is required to be appointed to protect the temple, its properties, its income and other matters.

11. In the case of S.S.Chinnaswamy Gounder vs. The Assistant Commissioner, H.R.,&C.E., reported in 1990 W.L.R., 163, it was held that where a fit person was appointed, whose term was co-extensive with the appointment of a new Board of Trustees, and where in the meanwhile, he was to be replaced by another fit person, the principles of natural justice require that he be given an opportunity.

12. Further, the order appointing a fit person should be a speaking order and disclose reasons as to why the authority namely, Assistant Commissioner, was of the opinion that the affairs of the temple were not conducted in accordance with the provisions of the Act and there was a need for immediate appointment of a fit person. In the impugned order, there is a reference to a report of the Inspector, H.R.&C.E., Bhavani, dated 24.06.2013. The contents of the report have not been referred to in the impugned order nor does the impugned order state that the report was the basis for appointment of the fit person. It may not be necessary for the Assistant Commissioner to pass an elaborate order, but the order should speak for itself and give reasons as to why in the opinion of the Assistant Commissioner, the power under [Section 49\(1\)](#) of the Act was exercisable. In the absence of reasons for appointment of the fit person, the impugned order has to be necessarily held to be a



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non-speaking order and therefore, an order passed in violation of the principles of natural justice.

13. It may be true that the petitioner had participated in the opening of the hundial along with the fit person and had knowledge of his appointment. In my view that by itself will not validate the impugned order nor the inherent defects therein would stand cure.

14. As noticed above, the Hon'ble Division Bench in the case of S.S.Chinnaswamy Gounder vs. The Assistant Commissioner, H.R.,&C.E., (supra), was considering the correctness of an order removing the fit person, who was appointed in the place of the Board of Trustees and his appointment was co-terminus with the period of the trustee. However, he was removed from office and replaced by another fit person. While considering the correctness of the said order, it was pointed out the rule of audi alteram partem had to be observed and it is no longer a moot question that the principles of natural justice have to be read into even the statutes where civil rights are involved.

15. It is to be further pointed out that the impugned order was not communicated to the petitioners and in the counter affidavit filed by the third respondent, it has been stated that the copy of the order was also sent to the person in management by post and it is not necessary to send the same to the Writ Petitioner stating that they are not trustees as claimed by them. The averment made in the counter affidavit of the third respondent is vague, as it does not state the date of despatch whether it was sent by registered post or not and other details. Therefore, the contentions of the third respondent that the copy of the order was sent to the person in management by post is held to be not substantiated. Though the third respondent takes a stand that the petitioner need not be provided with the copy, it is not known under what circumstances the signature of the petitioner and others were obtained by the fit person, when the hundial was opened on 28.10.2013. The learned Special Government Pleader appearing for the respondent submitted that though the term of office of the trustee is over, they are still continuing. In such circumstances, the petitioners ought to have been heard in the matter after issuing notice to them, since such procedure had not been followed, it has to be necessarily held that the impugned order has been passed in violation of principles of natural justice. Though the petitioner would contend that the temple is a denomination temple, established



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and maintained by the people belonging to a particular community, the third respondent has denied the contention and submitted that the H.R.,&C.E., department has been appointing non-hereditary trustees belonging to other community to the temple from time to time and the trustees are appointed in accordance with the stipulation under [Section 47](#) of the Act. In the light of the above stand taken by the parties, this issue cannot be adjudicated in this Writ Petition and it is for the petitioners to work out their remedies under the Act in the manner known to law.

16. In the light of the above reasoning, it is held that the impugned order is vitiated on the ground of violation of principles of natural justice and accordingly, the same is liable to be set aside and hereby set aside and the matter is remanded to the third respondent for fresh consideration and the third respondent shall issue show cause notice to the petitioners and other (trustees), call for their objections, hear the parties in person and thereafter, pass a reasoned order on merits and in accordance with law. The above directions shall be complied with, within a period of eight weeks from the date of receipt of a copy of this order.”

7. It is to be pointed out that the plea of the petitioners that they are not aware of the appointment of fit person cannot be countenanced for the reason that they had already impleaded themselves in the suit and such being the case, what prevented the petitioners from challenging the appointment of fit person has not been spelt out by the petitioners. When the petitioners have kept silent for more than a decade and half and the properties of the temple were managed by the fit person, who had been appointed, which was pursuant to the mismanagement alleged, the



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petitioners cannot now come and challenge the appointment of fit person, as the present petition is hit by delay and laches on the part of the petitioners.

8. The ignorance claimed by the petitioners cannot be accepted as the petitioners have already impleaded themselves in the suit and, therefore, nothing prevented the petitioners from challenging the appointment of fit person. Rightly appreciating all the above, the revision petition had come to be dismissed, which decision cannot be said to be erroneous.

9. Further, the plea of the petitioners that the fit person who is in office had decided the revision petition, which is violation of principles of natural justice also cannot be accepted for the reason that by efflux of time of more than a decade and a half, there would have been number of changes of fit person and the person, who was holding fort in the affairs of the temple and who is the authority has decided the revision, which act cannot be said to be erroneous and, therefore, the plea of violation of principles of natural justice cannot be countenanced.



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WEB COPY 10. For the reasons aforesaid, this Writ petition stands dismissed. No costs.

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NCC : Yes/ No
Speaking Order : Yes/ No
Index : Yes/ No

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