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W.A.No.3100 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2024

CORAM

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
AND**

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.A.No.3100 of 2021

and

C.M.P.No.21536 of 2021

Arulmighu Angalaparameswari Thirukovil,
Kulakkarai, Vadapalani,
Represented by its Fit Person,
Chennai – 600 026.

... Appellant

Vs.

1.Arulmighu Angala Parameswari Aalaya Committee,
Represented by its Secretary,
R.Vinayagam,
Kulakkarai, Vadapalani,
Chennai – 600 026.

2.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Nungambakkam High Road,
Madras 600 034.

3.The Assistant Commissioner,
H.R and C.E,
Nungambakkam High Road,
Madras 600 034.

... Respondents



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Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order of the learned Judge made in W.P.No.2916 of 2016 dated 13.07.2021.

For Appellant	: Mrs.G.Sumitra
For R1	: Mr.R.Jaya Prakash
For R2 & R3	: Mr.N.R.R.Arun Natarajan Special Government Pleader [For H.R.&.C.E]

J U D G M E N T

[Judgment was delivered by **S.M.SUBRAMANIAM, J.**]

The writ order dated 13.07.2021 passed in W.P.No.2916 of 2016 is under challenge in the present writ appeal.

2. The 3rd respondent / Temple in the writ petition is the appellant before us. The 1st respondent instituted writ petition challenging the appointment of a fit person under Section 49 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 by the Assistant Commissioner, Hindu Religious and Charitable Endowment Department, Nungambakkam High Road, Chennai in R.P.No.80 of 2015 D2 dated 06.11.2015.



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3. The sole issue crop up in the present *lis* would be, under Section 49 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, whether the Assistant Commissioner is empowered to appoint a fit person only if any mismanagement is identified or where no trustee is recognised and for maintenance of temple.

4. Section 49 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, reads as under;

“49. Power of [Assistant Commissioner] to appoint trustees and fit persons.—(1) In the case of any religious institution which is not included in the list published under section 46 and is not a religious institution notified or deemed to have been notified under Chapter VI of this Act, the 1[Assistant Commissioner] shall have the same power to appoint trustees including fit persons or constitute a Board of Trustees and is vested in 2[the Government, the Commissioner or the Joint / Deputy Commissioner] in the case of a religious institution referred to in clause (a) of sub-section (1) or in sub-section (2), as the case may be, of section 47 :

Provided that the Board of Trustees



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constituted under this sub-section shall consist of three persons appointed by the Assistant Commissioner of whom one shall be member of the Scheduled Caste or Scheduled Tribe and another one shall be a woman.

Provided further that in addition to the trustees appointed by the Assistant Commissioner under this sub-section, the Government may nominate two persons who are qualified for appointment as trustees under this act as members of the said Board of Trustees, having regard to the following matters, namely:—

(a) the interest of the public generally ;

(b) the income and the properties of the religious institution ;

(c) the number of worshippers and importance of the religious institution as a pilgrim center ; and

(d) such other matters as may be prescribed :

Provided also that notwithstanding anything aforesaid in this sub-section, the Assistant Commissioner, may in the case of any such religious institution which has no hereditary trustee, appoint a single trustee].

(2) The provisions of sub-sections (3) and (4) of section 47 and of section 48 shall apply to the



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trustee or trustees appointed, or the Board of Trustees constituted, by I[the Assistant Commissioner] as they apply to the trustee or trustees appointed, or the Board of Trustees constituted, under section 47.”

5. There is no condition stipulated under the above provision. Section 49 stipulates that a trustee is to be appointed to maintain the temple. In the absence of trustee, a fit person can be appointed by the Assistant Commissioner. Therefore, it is not necessary that a fit person is to be appointed only in the event of mismanagement. Even in other circumstances, where there is no possibility of recognising any trustee under the Act, then a fit person can be appointed.

6. In respect of appellant / Temple one Late Mr.S.Kuppusamy, Late Mr.P.Muthukrishnan filed O.A.No.51 of 1987 claiming hereditary trusteeship that was dismissed by the authority. The appeal filed before the Commissioner was rejected in A.P.No.22 of 1996 dated 30.06.2008. Since the claim of trusteeship was not accepted by the department, fit person was appointed under Section 49 of the Act.



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7. The Writ Court proceeded on the basis that a fit person can be appointed, only if any mismanagement is identified and in such circumstances, prior notice is to be issued to the trustees. The Writ Court has not considered the circumstances, where no trustee is recognised by the authorities competent under the Act. No doubt in the event of hereditary trustee managing the temple and if any mismanagement is traced out, then the Assistant Commissioner is empowered to appoint a fit person by issuing show cause notice to the trustees and by framing charges.

8. In other words before appointing a fit person, an opportunity is to be afforded to the hereditary trustees, who all are recognised under the provisions of the Act. In the event of no hereditary trustee, then the department is empowered to appoint a fit person under Section 49 of the Act.

9. Since no trustee is available to look after the management, question of issuance of show cause notice would not arise at all. Therefore, the second circumstances as narrated above has not been considered by the Writ Court. The Writ Court proceeded only on the basis that the fit person can be appointed only in the event of mismanagement by the hereditary trustee. However, the said circumstances had not arose in this case, since the claim of



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the trusteeship itself had been rejected by the department and up held by the Commissioner under the provisions of the Act.

10. Thus, there was no impediment to appoint a fit person under Section 49 of the Act. Section 49 of the Act has not restricted the appointment of a fit person only in the event of mismanagement. In the absence of any express prohibition, there is no impediment to appoint a fit person under Section 49 of the Act. Therefore, we are convinced with the grounds raised in this regard by the appellant / Temple.

11. It is brought to the notice of this Court that by virtue of the impugned writ order one Saba has taken charge of the administration of the temple. However, the Department has not recognised the said Saba to administer the temple. That being so, the Assistant Commissioner, Hindu Religious and Charitable Endowment Department is directed to appoint a fit person and take over the charge of the temple and to conduct the affairs of the temple in the manner contemplated under the provisions of the Hindu Religious and Charitable Endowments Acts and Rules. The fit person is at liberty to seek the assistance of the Jurisdictional Police, if necessary for taking charge of the Temple.



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WEB COPY12. With the above directions, the writ order dated 13.07.2021 passed in W.P.No.2916 of 2016 is set aside and the Writ Appeal stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

[S.M.S., J.] [C.K., J.]
12.07.2024

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Index : Yes
Speaking order
Neutral Citation : Yes



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To

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