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W.A.No.2444 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2024

CORAM :

**THE HON'BLE MR.JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE K.RAJASEKAR**

W.A.No.2444 of 2022
and C.M.P.No.18919 of 2022

1. R.Shampath
2. K.Sridhar

.. Appellants

Versus

1. The Govt. of Tamilnadu,
By its Secretary,
HR & CE,
Fort St. George,
Chennai.
2. Hindu Religious and Charitable Endowments
Department,
By its Commissioner,
#119, Uthamar Gandhi Salai, Thousand Lights West,
Nungambakkam,
Chennai, Tamil Nadu - 600 034.

.. Respondents

Prayer : Writ Appeal under Clause 15 of the Letters Patent against the
judgment in W.P.No.18551 of 2022, dated 08.08.2022 by His Lordship

<https://www.mhc.tn.gov.in/judis>



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Hon'ble Mr.Justice C.Saravanan, insofar it relates to the observations in paragraph Nos.24 to 26 of the order.

For Appellants : Mr.J.Srinivasa Mohan

For Respondents : Mr.S.Ravichandran,
Additional Government Pleader

JUDGMENT

(Judgment of the Court was made by **S.S.SUNDAR, J.**)

This Writ Appeal is directed against the order of the learned Single Judge, dated 08.08.2022 in W.P.No.18551 of 2022. The grievance of the appellants appears to be focused on the observations of the learned Single Judge rather than the decision which is only to consider the representation of the appellants afresh in the light of the observations made in the order.

2. The appellants filed the Writ Petition challenging the order passed by the first respondent vide G.O.No.75, dated 05.08.2020 and to quash that



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portion of the said Government Order which relates to the tenure of the appointment of the appellants as Dharmakarthas, which according to the petitioner is in violation of Rule 14 of the Scheme Decree and consequently, to direct the first respondent to revise the tenure of appointment of the appellants Dharmakarthas for a period of five years in terms of the Scheme Decree.

3. The learned Judge, while deciding the Writ Petition, consciously made observations after referring to the relevant provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Sections 47, 50 and 118 of the Act reads as follows:-

"☐ **47. Trustees and their number and term of offices.**☐--(1) (a) Where a religious institution included in the list published under section 46 or in respect of which the Assistant Commissioner has no power to appoint trustees, has no hereditary trustee,☐---

(i) in cases falling under clause (i) of section 46,
the Joint Commissioner / Deputy Commissioner ;

(ii) in cases falling under clause (ii) of section 46,



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the Commissioner; and

(iii) in cases falling under clause (iii) of section 46, the Government, shall constitute a Board of Trustees:

[Provided that the Board of Trustees constituted under items (i) and (ii) of this clause shall, subject to the provisions of clause (c), consist of three persons appointed by the Joint Commissioner or the Deputy Commissioner or the Commissioner, as the case may be, from among the panel of names of persons sent by the District Committee concerned under sub-section (4) of section 7-A:]

Provided further that, in addition to the persons appointed by the Joint Commissioner / Deputy Commissioner or the Commissioner under items (i) or (ii) of this clause, as the case may be, 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 institutions;

(c) the number of worshipers and importance of the religious institutions as a pilgrim center ; and

(d) such other matters as may be prescribed.

(b) in respect of all the incorporated and unincorporated



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Devaswoms in the transferred territory, [the Government] shall constitute a single Board of Trustees ;

(c) every Board of Trustees constituted under clause (a) or clause (b) shall consist of not less than three and not more than five persons, of whom one shall be a member of the Scheduled Castes or Scheduled Tribes [and another one shall be a woman] :

Provided that [the Government, the Commissioner, the Joint Commissioner or the Deputy Commissioner], as the case may be, may, pending the constitution of such Board of Trustees under this sub-section, appoint a fit person to perform the functions of the Board of Trustees.

[.....]

(2) Where, in the case of an institution include in the list published under section 46 having a hereditary trustee or trustees, [the Government, the Commissioner or the Joint/Deputy Commissioner], after notice to such trustee or trustees and after such enquiry as [the Government, the Commissioner or the Joint/Deputy Commissioner], as the case may be, deems adequate, considers for reasons to be recorded, that the affairs of the institution are not, and are not likely to be, properly managed by the hereditary trustee or trustees, [the Government, the Commissioner or the Joint / Deputy Commissioner] may, by order, appoint a non-hereditary trustee or such number of non-hereditary



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trustees as may be considered necessary by [the Government, the Commissioner, or the Joint/Deputy Commissioner], as the case may be.

(3) Every trustee appointed under sub-section (1) and, subject to the result of an application, if any, filed under sub-section (4), every non-hereditary trustee appointed under sub-section (2) shall hold office for a term of [two years] unless in the meanwhile the trustee is removed or dismissed or his resignation is [accepted by the Government, the Commissioner or the Joint Commissioner / Deputy Commissioner, as the case may be], or he otherwise ceases to be a trustee.

Provided that every trustee who has completed a term of office of one year on the 16th day of July 2006 shall cease to hold office forthwith and every trustee who completes a term of office of one year after such date shall cease to hold office on such completion :

Provided further that every trustee who has not completed a term of office of one year on the date of commencement of the Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 2010 (Tamil Nadu Act 12 of 2010) shall continue to be the trustee for the period of two years from the date of his appointment.

(4) Where [the Government, the Commissioner or the Joint / Deputy Commissioner], by order, appoints a non-



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hereditary trustee or trustees, the hereditary trustee or trustees may, within thirty days of the receipt of the order, file an application to the Court to set aside or modify such order :

Provided that the Court shall have no power to stay the order of [the Government, the Commissioner or the Joint / Deputy Commissioner], as the case may be, pending the disposal of the application.□

□50Power under [sections 47, 49 and 49-A] to be exercisable notwithstanding provisions in scheme.□---

The power to appoint trustees under section 47 or section 49 [or section 49-A] shall be exercisable notwithstanding that the scheme, if any, settled, or deemed under this Act to have been settled for the institution contains provision to the contrary. □

□18. Repeals and savings.□---(1) The Madras Hindu Religious and Charitable Endowments Act, 1951 (Madras Act XIX of 1951) (hereinafter in this section referred to as the said Act) is hereby repealed.

(2) Notwithstanding the repeal of the said Act by sub-section (1)□

(a) all rules made, or deemed to have been made, notifications or certificates issued or deemed to have been issued, orders passed or deemed to have been passed, decisions made or deemed to have been made, proceedings



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or action taken or deemed to have been taken, schemes settled or deemed to have been settled and things done or deemed to have been done by the Government, the Commissioner, a Deputy Commissioner, an Area Committee or an Assistant Commissioner under the said Act, shall, in so far as they are not inconsistent with this Act, be deemed to have been made, issued, passed, taken, settled or done by the appropriate authority under the corresponding provisions of this Act, and shall have effect accordingly ;

(b) (i) if any provision contained in any scheme settled or deemed to have been settled under the Madras Hindu Religious and Charitable Endowments Act, 1926 (Madras Act II of 1927), including a scheme settled under section 92 of the Code of Civil Procedure, 1908 (Central Act V of 1908), and in force immediately before the 30th September 1951 is repugnant to any provision contained in this Act or the rules made thereunder, the latter provision shall prevail, and the former provision shall, to the extent of the repugnancy, be void ;

(ii) all powers conferred and all duties imposed by such scheme on any Court or Judge or any other person or body of persons not being a trustee or trustees or an honorary officer or servant of the religious institution or endowment, shall be exercised and discharged by the



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Commissioner, [Joint Commissioner, Deputy Commissioner] [. .] or the Assistant Commissioner, as the case may be, in accordance with the provisions of this Act;

(c) all orders made under section 67 of the Madras Hindu Religious Endowments Act, 1926 (Madras Act II of 1927) shall, notwithstanding that they are inconsistent with this Act, continue in force, but any such order may, at any time, be modified or cancelled by the [Joint Commissioner or the Deputy Commissioner, as the case may be], if it is an order made under sub-section (1) or sub-section (3) of that section and by the Commissioner if it is an order made under sub-section (4) or sub-section (5) of that section ; and any person aggrieved by any modification or cancellation made by the [Joint Commissioner or the Deputy Commissioner, as the case may be], may prefer an appeal to the Commissioner within such time as may be prescribed.

(3) The mention of particular matter in this section shall not be held to prejudice or affect the general application of sections 8 and 18 of the [Tamil Nadu] General Clauses Act, 1891 ([Tamil Nadu] Act I of 1891), with regard to the effect of repeals.□ "

4. Sub-section (3) of Section 47 authorises the Government to appoint



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non-hereditary trustee under sub-section (1) of 47 for a term of two years or until the trustee is removed or resign. However, the appellants claim that they are entitled to be in office for a period of five years as per the scheme. There is a conflict between the scheme and the provisions of the statute. Section 118(b)(i) says that any scheme settled or deemed to have been settled under the Madras Hindu Religious and Charitable Endowments Act, 1926 (Madras Act II of 1927), cannot override the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. In other words, any provision under the scheme which is repugnant to any of the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, to the extent of repugnancy, shall be treated as void.

5. The learned Judge, while directing the respondents to consider the representation of the appellants afresh, made a few observations that the appointment of the appellants should be in the manner sanctioned by the Act.

This Court has seen that the order impugned in the Writ Petition is an order



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perfectly in accordance with the provisions of the statute. It is by the order impugned, this Court has directed the respondents to consider afresh. This has now been taken advantage by the appellants to impugn the order to enable them to get over the statutory restrictions that disables non-hereditary trustee to remain in office beyond the period of two years as per the statute.

6. Therefore, this Court finds no bonafides in this litigation and accordingly, this Writ Appeal is dismissed. In view of the facts narrated above, this Court is also of the view that the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(S.S.S.R, J.)

(K.R.S, J.)

20.08.2024

Index : yes/no

Speaking order/Non-speaking order

Neutral Citation : yes/no

grs

To

1. The Secretary,

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Fort St. George,
Chennai.

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AND
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2. The Commissioner,
Hindu Religious and Charitable Endowments
Department,
#119, Uthamar Gandhi Salai, Thousand Lights West,
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