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W.P. No. 30409 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2024

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

W.P. No. 30409 of 2024

and

W.M.P. Nos. 33078 and 33080 of 2024

Selvaraj

... Petitioner

-VS-

1. The Secretary to the Government of Tamil Nadu
Hindu Religious Charitable and Endowment Department
Fort St. George, Chennai – 600009.
2. The Commissioner
Hindu Religious Charitable and Endowment Department
Uthamar Gandhi Salai
Nungambakkam, Chennai – 600034.
3. The Joint Commissioner
Hindu Religious Charitable and Endowment Department
R.K.Mutt Road
Mylapore, Chennai – 600004.
4. The Assistant Commissioner
Hindu Religious Charitable and Endowment Department
Padi, Chennai.
5. The Executive Officer
Arulmigu Karaneeswarar Koil
Saidapet, Chennai – 600015.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus calling for the



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records of the third respondent vide impugned order bearing No.VI(1)/444/2003 published in the Tamil Nadu Government gazette dated 17.09.2003 and quash the same and direct HR & CE to permit the Sengundar Community people to conduct election and elect the Trustee as per the scheme decree dated 23.04.1924 passed in O.S. No. 43 of 1919.

For Petitioner : Mr. L.Dhamodharan

For Respondents : Mr. N.R.R.Arun Natarajan
Special Government Pleader (HR & CE)

ORDER

This writ petition has been filed challenging the order bearing No.VI(1)/444/2003 published in the Tamil Nadu Government gazette dated 17.09.2003 and directing HR & CE to permit the Sengundar Community people to conduct election and elect the Trustee as per the scheme decree dated 23.04.1924 passed in O.S. No. 43 of 1919.

2. The learned counsel for the petitioner would submit that the petitioner, the then Elected Trustee of Arulmigu Karaneeswarar Koil, Saidapet, Chennai – 600015 is a denomination Temple and belonged to Sengunthar community. The competent Civil Court framed a Scheme Decree dated 23.04.1924 in O.S. No. 43 of 1919 for the administration of the Temple and its properties.



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3. The third respondent in contravention of the Scheme Decree exercised the power conferred under Section 64 of the Hindu Religious and Charitable Endowment Act, 1959, and modified the Scheme Decree that the Temple has to be administered by the Non-Hereditary Trustee. The Non-Hereditary Trustee appointment has become a political one and the petitioner challenged the appointment by way of Writ Petition in W.P. No. 13171 of 2023 before this Court. The Division Bench of this Court by its order in W.A. No. 2252 of 2022 set aside the order. As per the judgment, in the event of modification only under Section 92 of the Code of Civil Procedure before the competent civil court, and the Joint Commissioner has not vested with the power to modify the Scheme passed by the competent Civil Court under Section 64 of the HR & CE Act. Challenging on the sole ground, the present Writ Petition is filed.

4. The learned counsel appearing for the petitioner submits that once the Scheme decree is framed by the Competent Court and the same cannot be modified by the Joint Commissioner by exercising power under Section 64 of the HR & CE Act. The power is available only with the Competent Civil Court to modify the Scheme Decree contrary to the same the Joint Commissioner



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modified the Scheme, which is impermissible. Accordingly, the learned counsel for the petitioner relied on the decision of the Hon'ble Apex Court in ***R.Murali -vs- Kanyaka P.Devasthanam & Charities*** reported in (2005) 6 SCC 166. In view of the above, he prays for allowing the Writ Petition.

6. Per contra, the learned Special Government Pleader appearing for the respondents submitted that the decision relied upon by the learned counsel for the petitioner is applicable only for declaratory relief and permanent injunction granted by the Competent Civil Court and that cannot be modified by the Joint Commissioner. However, the Scheme Decree granted in terms of Section 92 of the CPC can be modified under Section 64 that the issue arose in the writ petition settled by the Apex Court in the case of the ***T.Lakshmikumara Thathachariar -vs- Commissioner, H.R.C.E. and Others*** reported in (1998) 6 SCC 643. Accordingly, he prays for dismissal of the writ petition.

7. Heard Mr.L.Dhamodharan, learned counsel for the petitioner and Mr.N.R.R.Arun Natarajan, learned Special Government Pleader appearing for the respondents and perused the materials placed on record, apart from the pleadings of the parties.



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8. The issue that has arisen in the present writ petition is that whether the Scheme Decree granted under Section 92 of CPC modified by the Joint Commissioner is valid or not?

9. Though the learned counsel appearing for the petitioner submits that the Division Bench of this Court as well as the Hon'ble Apex Court making it clear that the declaratory relief and permanent injunction granted by the Competent Civil Court and that cannot be modified by the Commissioner. However, when the Scheme is framed under Section 92 of the CPC, that can be modified by the relevant decision of the Hon'ble Apex Court in ***T.Lakshmikumara Thathachariar -vs- Commissioner, H.R.C.E. and Others*** reported in (1998) 6 SCC 643 as follows:-

“14. The interpretation put in this judgment on Section 118(2)(a) in the context of Section 65 does not appear to be correct. In order to correctly analyse the provisions of Section 64(5)(a) in the context of Section 118(2)(a), it is necessary to analyse the two sections. Section 118 is a section dealing with repeals and savings. Under sub-section (1), the said Act of 1951 is repealed. Under sub-section (2) notwithstanding such repeal, certain things are saved. Under clause (a) of sub-section (2), the following are saved:



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(1) Rules, notifications, certificates issued or deemed to be issued under the Act of 1951.

(2) Orders passed or deemed to be passed under the Act of 1951.

(3) Decisions made or deemed to be made under the Act of 1951.

(4) Proceedings or action taken or deemed to be taken under the Act of 1951.

(5) Schemes settled or deemed to be settled under the Act of 1951, and

(6) Things done by:

(a) the Government;

(b) the Commissioner;

(c) the Joint Commissioner;

(d) the Deputy Commissioner;

(e) the Assistant Commissioner; and

(f) the Area Committee or deemed to be done by these authorities under the Act of 1951.

These are all now deemed to be done under the Act of 1959 and these are deemed to have been done by the appropriate authority under the Act of 1959. Thus all these actions under the Act of 1951 are saved by virtue of Section 118(2)(a). Thus, schemes settled or deemed to be settled under the Act of 1951 are expressly saved. In this context, if one looks at Section 64(5)(a) which deals with the power of the Joint Commissioner or the Deputy Commissioner to modify or cancel schemes in



force, the Joint Commissioner or the Deputy Commissioner has been given the power to modify or cancel the following schemes:

- (1) a scheme settled under Section 64(1) (the Act of 1959);*
- (2) a scheme settled or modified by the Board under the Act of 1927;*
- (3) a scheme deemed to be settled under the Act of 1927;*
- (4) a scheme settled or modified by the Joint Commissioner, Deputy Commissioner or Commissioner under the Act of 1959;*
- (5) a scheme settled or modified by the court in a suit under Section 70(1) or in appeal under Section 70(2) of the Act of 1959; and*
- (6) a scheme deemed to be settled or modified by the court under Section 118(2)(a).*

Therefore, under Section 64(5), apart from the schemes framed under the current Act of 1959, the scheme settled by the Board as well as by the court under the Act of 1927 or deemed to be so settled are covered by Section 64(5)(a). Similarly, schemes which are settled or deemed to be settled under the Act of 1951 are covered by the last part of Section 64(5). The reference in the last part of Section 64(5)(a) to Section 118(2)(a) is for the purpose of including in Section 64(5)(a) all those schemes settled or deemed to be settled under the Act of 1951 and saved by Section 118(2)(a). In Section 64(5)(a), the words “by the court” have a reference to schemes which were settled or



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deemed to be settled or modified by the court under the Act of 1951. In respect of schemes deemed to be settled by the court under the Act of 1951, the reference is clearly to the schemes covered by Section 103(d) of the Act of 1951. All those schemes which were so settled or modified or deemed to be so settled or modified by the court under Section 103(d) of the Act of 1951, are now covered and validated under Section 118(2)(a). These schemes so validated and continued under the Act of 1959 can also be modified under Section 64(5)(a) of the Act of 1959.

*15. Therefore, under Section 64(5)(a), all schemes in force deemed to have been settled or modified by the court under the Act of 1951 and covered by clause (a) of sub-section (2) of Section 118, are subject to modification or cancellation under the provisions of Section 64(5)(a). The decision of the Madras High Court in the case of **O.Radhakrishnan -vs- Manickam [(1974) 2 MLJ 179]** does not give, in this context, a correct interpretation of law. The scheme in the present case can be modified under Section 64(5)(a) of the said Act of 1959. What is more, it was expressly so held in the case of this very scheme by the Madras High Court in the case of **R. Thatha Desika Thathachariar v. Dy. Commr., H.R.E. [(1970) 2 MLJ 475]***

16. It is next contended that the provisions of Section 64(5) are an attempt by the legislature to nullify orders of the court in the form of schemes framed by the court under earlier



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legislations and, therefore, Section 64(5) must be considered as unconstitutional being an attempt to set aside or modify a decree of the court. The High Court has rightly held that this is not a case of passing a legislation in order to nullify the interpretation of law given in the judgment of a court of law. The schemes which were framed by the courts under earlier legislation were schemes which were capable of modification or cancellation in accordance with law even under the legislation under which such schemes were framed. While repealing the earlier legislation when the new legislation came into force, the power to modify and cancel such schemes was expressly transferred under the new legislation to the authorities specified therein. Under the present legislation of 1959, the authority which has the power so to modify the scheme is the Deputy Commissioner or Joint Commissioner. We do not see any attempt to set aside any decree of the Court by legislation in the present case.”

In view of the law laid down by the Hon'ble Apex Court in respect of the very same issue, this writ petition is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

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Index: Yes/No

NCC: Yes/No

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M.DHANDAPANI, J.

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