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W.P.(MD) No.549 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.01.2024

CORAM:

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P.(MD) No.549 of 2013
and
M.P.(MD) Nos.1 & 2 of 2013**

K.Paulraj

... Petitioner

-vs-

- 1.The Commissioner
Hindu Religious & Charitable Endowment Board
Chennai-34
- 2.The Assistant Commissioner
Hindu Religious & Charitable Endowment Board
Tirunelveli
- 3.The Inspector
Hindu Religious & Charitable Endowment Board
Sankarankovil
Tirunelveli District

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records of the first respondent in his proceedings Ne.Mu.No.38033/2012/E2, dated 14.08.2012, based on the second respondent proceedings Na.Ka.No.3190/2012/E1, dated 05.07.2012, quash the same and directing the respondents to pass appropriate order to hand over the administration of the Arulmigu Thirumoola Vinayagar Temple, Seranthamaram Village, Sankarankovil Taluk, Tirunelveli District.

For Petitioner : Mr.R.T.Arivukumar

For Respondents : Mr.P.Thilakkumar
Government Advocate for R1 & R2
No appearance for R3

ORDER

[Order of the Court was made by D.KRISHNAKUMAR, J.]

The order dated 14.08.2012, passed by the first respondent, bringing Arulmigu Thirumoola Vinayagar Temple, Senthamaram Village, Sankarankovil Taluk, Tirunelveli District, under the control of the Hindu Religious and Charitable Endowments Department, is under challenge in this writ petition.



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2. According to the petitioner, one Sundaram Asari established the subject Temple and consecrated the idol in the sanctum sanctorum of the Temple. Sundaram Asari had four sons, namely, Ganapathy Asari, Palani Asari, Meenakshi Sundaram Asari and Arunachalam Asari. Properties were acquired for the said Temple by the descendants of the said Sundaram Asari. The said Temple was under the exclusive control of the said Sundaram Asari and thereafter, it was under the control of his sons. Subsequently, the brothers of the said Sundaram Asari, namely, Kadarkaraiandi Asari, Both Kannu Asari, Chidambaram Asari, Palani Asari, Appadurai Asari and Shunmuga Sundaram Asari were the custodians of the said Temple. The petitioner is the son of the said Kadarkaraiandi Asari, brother of the said Sundaram Asari. He is the sole Trustee and administering the said Temple. While that being so, the first respondent, by the impugned proceedings, has brought the said Temple under the control of the Hindu Religious and Charitable Endowments Department, without providing any opportunity of hearing to the petitioner. Therefore, according to the petitioner, the impugned order is in violation of the principles of natural justice.



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3. The second respondent has filed a counter affidavit, wherein he has stated that one P.S.G.Jayaraj made a complaint that the petitioner sold the properties belonging to the said Temple by creating forged documents, which has resulted in bringing the said Temple under the control of the H.R. & C.E.Department by the first respondent. Further, pursuant to the order passed by the first respondent, the fit person has also taken charge of the said Temple as early as on 09.11.2012

4. Learned Government Pleader appearing for the respondents 1 & 2 submitted that as against the impugned order passed by the first respondent, the petitioner is having efficacious alternative remedy of review before the Government, under Section 114-A of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (for brevity, “the Act”). When such efficacious alternative remedy of review is available, the petitioner has to exhaust the said remedy and therefore, the writ petition is liable to be dismissed.



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5. At this juncture, it would be relevant to refer Section 114-A of the Act, which reads as follows:

“114-A. Power of Government to review.-(1) The Government may either on their own motion or on application by any person aggrieved by an order of the Government under this Act under item (iii) of clause (a) or the second proviso to clause (a) of sub-section (1) of Section 47 or the second proviso to sub-section (1) of Section 49, review any such order.-

(a) on the basis of the discovery of new and important facts-

(i) which were not then within the knowledge of the Government when the order was made; or

(ii) which, after the exercise of due diligence, were not then within the knowledge of the applicant or could not be produced by him when the order was made.

(b) on the basis of some mistake or error apparent on the face of the record; or

*(c) for any other sufficient reason,
and pass such order thereon as they think fit:”*

6. In view of the above position, when the petitioner is having effective alternative remedy of review, he has to necessarily exhaust the said remedy. Therefore, the petitioner is at liberty to file a review under Section 114-A of the Act and raise all the points before the Government, within a period of two weeks from the date of receipt of a copy of this order. On filing such review, the Reviewing Authority / Government shall consider the same



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and pass orders on merits and in accordance with law, within a period of four weeks thereafter.

7. With the above direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

[D.K.K., J.]

[R.V., J.]

04.01.2024

(2/3)

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

krk

To:

1.The Commissioner,
Hindu Religious & Charitable Endowment Board,
Chennai-34.

2.The Assistant Commissioner,
Hindu Religious & Charitable Endowment Board,
Tirunelveli.



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