BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.10015 of 2023
and
W.M.P.(MD)Nos.8787 and 8789 of 2023

Sree Sooravalli Subbaier Charities,
Rep. by its Hereditary Trustee,
M.S.Sankaran @ M.S.Sankar. ... Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Chennai.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Madurai.

3.The Deputy Commissioner / Executive Officer,
Arulmigu Meenkashi Sundareswarar Thirukoil,
Madurai.

4.Arulmigu Subramaniaswamy Temple,
Tirupparankundam, Madurai,
Through its Deputy Commissioner /
Executive Officer. ... Respondents

(R4 is impleaded vide order dated 18.12.2023 in W.M.P.(MD)No.25994 of 2023 in W.P.(MD)No. 10015 of 2023 by GRSJ).

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for records leading to pass the impugned order of the 3rd respondent in Na.Ka.3634/2022/E6 though dated 15.04.2023 posted on 18.04.2023 and served on the petitioner only on 19.04.2023, quash the same and consequently direct the 3rd respondent to permit the petitioner to do the Mandagapadi, Abhishekam and Archana to the deities as per the terms of the scheme decree and as it was done for the period of past 90 years from the date of scheme decree.

For Petitioner : Mr.T.V.Ramanujam, Senior Counsel,
For Mr.N.C.Ashok Kumarn.

For Respondents : Mr.P.Subburaj,
Spl. Government Pleader for R1 & R2.
Mr.VR.Shanmuganathan for R3.
Mr.S.Manoharan for R4.

ORDER

The petitioner applied to the third respondent for conducting the petition mentioned mandagapadi. The petitioner's request was rejected vide order dated 15.04.2023. Challenging the same, this writ petition came to be filed.

2.When the matter was taken up for admission, a learned Judge of this Court passed the following interim order dated 25.04.2023:-

The petitioner has prayed for injunction restraining the respondents from preventing the hereditary trustee of the petitioner trust for performing Archanas, Abishekam and Mandagapadi, as per the terms of the scheme decree dated 06.09.1934 passed in O.S.No.13 of 1932 on the file of Subordinate Court, Madurai, as it was done for the period of past 90 years from the date of scheme decree, pending disposal of the writ petition.

2. The following facts are required for considering the request for granting an interim injunction:-

(i) The petitioner would submit that he is the hereditary trustee of Sree Sooravali Subbier Charities, which is governed by the scheme decree dated 06.09.1934 passed in O.S.No.13 of 1932 on the file of the Additional Sub Court, Madurai. Two of the main objects of the charity are:-

(a) to perform Archanas on certain days in Sree Meenakshi Sundarareswara Temple at Madurai and in Subramania Swamy Temple at Thirupurakundram;

(b) to perform two Mandagapadi celebration during Chitra Festival on Thirukalyana day during Aadi Mulaikottu Festival on the 8th day, every year.

(ii) The petitioner would further submit that at the time of passing the scheme decree, agricultural lands owned by the trust were let out to several cultivating tenants, who were carrying on paddy cultivation. The rents that have been paid by these tenants were utilized for performing the charities. Over the period of time, the cultivation of these lands were impossible due to lack of irrigation source. That apart, some portions of the trust properties were also taken under the Minor Inam Abolition Act and certain lands were also acquired under Land Acquisition Act. The compensation received for the acquisition of land has also been deposited into the credit of the scheme suit. Meanwhile, since the income of the trust had come down, the trust had decided to sell the trust lands and in keeping the scheme decree, the Trust had moved the learned Additional Subordinate Judge, Madurai, for seeking permission to sell the trust properties. The Subordinate Judge had fixed the sale price and the sale proceeds were deposited directly to the credit of scheme suit, which was later invested into a Nationalized Bank.

(iii) While so, it appears that the second respondent had issued a notice dated 04.09.2018 in M.P.No.4350 of 2018, styled as a notice under Section 53 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, alleging that the properties, which were earmarked for religious charity have been alienated without the permission of the

Department and directed the Department to take over the charities. This was followed by an order dated 19.11.2018, in and by which, the second respondent had held that the charges framed against the petitioner have been proved and therefore, he was removed from the post of hereditary trustee and this order was challenged by the petitioner in A.P.No.4 of 2019 on the file of the Commissioner, HR&CE Department, Chennai. The Commissioner, by its order dated 05.09.2022 has set aside the order passed by the Joint Commissioner, HR&CE Department, Madurai, dated 19.11.2018 and remitted the matter back to the Joint Commissioner for holding de-nova enquiry. While passing the said order, the Commissioner observed that while dismissing the trustee from the Office, the Joint Commissioner had failed to consider the next in the line of succession entitled to succeed the Office under Section 54 of the Act, which is mandatory, as the removal is the major punishment.

(iv) After making this observation, the impugned order of the Joint Commissioner had been set aside. Therefore, it is clearly evident that by his order, the first respondent herein has set aside the order in toto including the removal of the petitioner. After this order, the second respondent has resumed the enquiry and issued a notice of enquiry, which has been challenged by the petitioner in W.P(MD) No.8643 of 2023 and the proceedings have been stayed by this Court.

In the light of the order of the Commissioner, HR & CE Department, Chennai, dated 05.09.2022, there can be no impediment or obstruction to the hereditary trustee of the petitioner's trust performing the Archanas, Abishekam and Mandagapadi.

3. Therefore, there shall be an order of interim injunction restraining the respondents from preventing the hereditary trustee of the petitioner trust for performing Archanas, Abishekam and Mandagapadi as per the terms of the scheme decree dated 06.09.1934 passed in O.S.No.13 of 1932 on the file of Subordinate Court, Madurai. It is made clear that this is only an interim measure for this year and shall be subject to the ultimate result of this writ petition in W.P(MD) No.8643 of 2023. It is also made clear that the petitioner is only permitted to perform Archanas, Abishekam and Mandagapadi and he shall ensure that he shall not exercise any further rights.

4. Post the matter on 07.06.2023 along with W.P(MD)No.8643 of 2023."

3.Challenging the same, the temple filed W.A.(MD)No.626 of 2023. The interim order passed by the learned Single Judge was suspended vide order dated 28.04.2024. The writ appeal was finally dismissed as infructuous on 14.06.2024.

4.The petitioner had already filed W.P.(MD)No.8643 of 2023 for the relief of declaration. The said writ petition was allowed by me on 21.06.2024. The declaration as sought for by the petitioner was issued because of the order dated 28.06.2023 passed by the Hon'ble Division Bench in W.P.(MD)No.22681 of 2018. For the same reasons, the impugned order is set aside the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

21.06.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Chennai.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Madurai.

G.R.SWAMINATHAN, J.

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W.P(MD)No.10015 of 2023

21.06.2024