



W.P.(MD) No.17678 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

**W.P.(MD) No.17678 of 2024
and
W.M.P.(MD) Nos.15170 and 15171 of 2024**

1.Rajendran @ Raja

2.R.Jayakumar

3.M.Karthikeyan

... Petitioners

/vs./

1.The Joint Commissioner,
Hindu Religious and Charitable Endowments Board,
Madurai.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Board,
Dindigul.

3.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Board,
Dindigul.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to the impugned



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Notice issued by the 3rd respondent vide his proceedings in Na.Ka.No. 2839/2024/A2 dated 24.06.2024 and quash the same as illegal and for other reliefs.

For Petitioners : Mr.G.Prabhu Rajadurai for
Mr.J.Lawrance

For Respondents : Mr.P.Subbaraj
Special Government Pleader

ORDER

The petitioners have filed this writ petition for a Writ of Certiorari to quash the notice issued by the third respondent dated 24.06.2024 bearing Ref. Na.Ka.No.2839/2024/A2.

2.The attempt of the HR & CE Department to take control of the temple has been thwarted atleast thrice. Earlier, the Deputy Commissioner had appointed a Fit Person on 03.10.2012. It was the subject matter of a challenge before this Court in W.P.(MD) Nos.15572 and 15573 of 2012. The Court had intervened and passed an order on 04.08.2014 holding that the Deputy Commissioner was incompetent to appoint the Fit Person.



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3. Thereafter, the Assistant Commissioner had proceeded to appoint the Fit Person for the temple on 09.12.2014. This was also resisted in W.P.(MD) No. 21459 of 2014. By an order dated 21.01.2015, this Court had come to the rescue of the petitioner therein by holding that the appointment was in violation of principles of natural justice. Thereafter, two other writ petitions came to be filed in W.P.(MD) No.5477 of 2020 by one A.Kuppusamy Raja and in W.P.(MD) No. 6599 of 2015 by the petitioner herein and others. The said two writ petitions have been filed for the following relief:

S.No.	Writ Petition	Prayer
1	W.P.(MD) No.5477 of 2020	Directing the 3rd respondent to consider the petitioners representation dt. 17.12.2019 on the basis of the proceedings of the 1st respondent vide Na.Ka.No. 75122/2019/A2 dt. 31.12.2019 and dt. 12.02.2020 and to pass suitable orders.
2	W.P.(MD) No.6599 of 2015	To issue a Writ of Certiorari, calling for the records relating to the proceedings of the impugned Notice in Na.Ka.NO. 2003/2012/A2 dated 07.04.2015 on the file of the 1st Respondent and quash the same and pass such further or other or orders.

4. It appears that an interim order was secured by the respective petitioners in the above mentioned two writ petitions. However, in the light of the subsequent development, namely the impugned notice of the third respondent bearing



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Ref.Na.Ka.No.2839/2024/A2 dated 24.06.2024, the above mentioned two writ petitions were dismissed as infructuous, based on the submissions made by the learned counsel for the petitioner on 04.07.2024.

5.Arguing the case on behalf of the petitioner, the learned counsel for the petitioner submits that the subject temple, namely Arulmigu Chinnamuthalamman Temple at Ayyampalayam, Authoor Taluk, Dindigul District is a temple, which was developed by the members of three communities, namely Rajam, Kailamaviliamn Vellar and Sattaim.

6.The learned counsel for the petitioner would submit that these communities are known as Rajus, Kallar, Maviliyar, Kallar Nattamai and Pillaimar. It is submitted that in respect of this temple, there is a Scheme that was framed by the Deputy Commissioner of HR & CE in O.A.No.37 of 1990 and that as per the scheme in O.A.No.37 of 1990 dated 21.05.1992, the subject temple is to be administered by 3 persons and not exceeding 4 in number chosen by the competent authority from the said community.



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7.It is submitted that such trustee shall elect one among themselves as Chairman of the Board of the trustee as per the provisions of the Act and the period of the trustee shall be 3 years from the date of election of the Chairman to the Board of trustee.

8.The learned counsel for the petitioner would submit that although the aforesaid scheme has been framed in O.A.No.37 of 1990, the temple was being administered peacefully by the family members of the petitioner, as the petitioners' father was himself the petitioner in O.A.No.37 of 1990.

9.It is submitted that all along the temple has been under the control of the family and therefore, the attempt of the third respondent/Assistant Commissioner vide the impugned Notification dated 24.06.2024 bearing Ref.Na.Ka.No. 2839/2024/A2 giving an impression that the Board shall be constituted with the persons apart from the hereditary that the appointment will be non hereditary is in violation of the Scheme framed by the Deputy Commissioner of HR & CE in O.A.No.37 of 1990, vide order dated 21.05.1992. It is therefore submitted that the impugned Notification is liable to be quashed.



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10. That apart, it is submitted that no applications have been received from any of the members of the community and the attempt of the HR & CE Department to induct the persons from any other community would be in violation of the Scheme framed by the Deputy Commissioner under Section 64 of the HR & CE Act, 1959 in O.A.No.37 of 1990 vide order dated 21.05.1992.

11. The learned counsel for the petitioner would submit that the petitioner has also filed an application dated 26.07.2024, ie., after the impugned notice of the third respondent under Section 63(b) of the Act for declaration that the petitioner is the hereditary trustee and the same is pending before the Joint Commissioner.

12. The learned counsel for the petitioner would draw an attention to a recent judgment of this Court rendered in W.P.(MD) No.14793 of 2018 and batch (*M.Arunachalam Vs. The Commissioner and others*) dated 28.12.2023. It is submitted that the ratio adopted therein would apply to the facts of this case. In this connection, a reference was made to para 22 from the said decision, which



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“22. In order to analysis further it can be seen “conversely whether the right can be considered as non-hereditary trustee”. The definition as per the [section 6\(14\)](#) is “non-hereditary trustee” means who is not a hereditary trustee. While comparing the hereditary and non-hereditary trustees, it can state that no rights are attached to claim the post of non-hereditary trustee, but some rights are attached to claim the post of hereditary rights. In the present case, admittedly the ARA family has some rights to claim the post of trustee and hence it can be bring under the category of hereditary trustee rather than under the category of non-hereditary trustee. It is pertinent to state herein that there can be only two types of trustees in the administration of temples and endowments, one hereditary trustee and other is non-hereditary trustee. Hence the trusteeship should either be brought under hereditary or non-hereditary and there cannot be a third category. Hence on this angle also the trusteeship granted to the ARA family ought to be brought under the category of “hereditary trustee”. Therefore this Court is of the considered opinion that the said right can be categorised as “hereditary right of ARA family as a whole” and not hereditary right of an individual. The scheme further states that “He will hold office for life”, which means once any person from ARA family is appointed he will hold it until his life time. It is hereditary interest given to the family but life interest given to the individual. Therefore this Court is of the considered opinion that the right is a hereditary right to the family and the person appointed will hold office for life.”

13.It is therefore submitted that the petitioner is a hereditary trustee and therefore, the petitioner should be allowed to step in as the hereditary trustee and similarly, the others, who have to be appointed, also should be allowed to be



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declared as hereditary trustee.

14. *Prima facie* the challenge to the impugned notice dated 24.06.2024 bearing Ref.No. Ref.Na.Ka.No.2839/2024/A2 of the third respondent is unsustainable as the Department is proceeding in accordance with the Scheme framed in O.A.No.37 of 1990, which was ordered on 26.08.1991. Relevant Clause reads as under:

“The above mentioned institution Vim. Arulmighu Chinna Muthalammm Temple. Chinnan Ayyampalam Village, Dindigul Taluk, Anna District and its properties shall be administered by three persons and not exceeding four is number chosen by the competent authority from the Rajam, KailamaviliamnVellar, and Sattarm one from such community and appointed by the appropriate authority subject to the provisions of the Act. Such trustees shall elect one among themselves as chairman board of Trustees as per the provisions of the Act. The period of trustee shall be 3 years from the date of election of Chairman Board of Trustee.”

15. Be that as it may, it appears that the petitioner has also filed a petition under Section 63(b) of the Act and has also proposed to file an application for modification of the Scheme in O.A.No.37 of 1990.

16. Under these circumstances, I leave it open for the petitioner to pursue



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the remedy both under Section 63(b) and under Section 64 of the Act for modification of the Scheme in O.A.No.37 of 1990 dated 21.05.1992. The respondents shall pass appropriate orders as expeditiously as possible, preferably within a period of 4 months from the date of receipt of a copy of this order. Since the status of the petitioner is yet to be determined, the Department may appoint the Fit Person, so that the temple administration is taken over. This shall be strictly in accordance with law.

17.With the above directions, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Internet : Yes / No

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To

1.The Joint Commissioner,
Hindu Religious and Charitable Endowments Board,
Madurai.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Board,

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3.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Board,
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C.SARAVANAN, J.

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