BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved On	*Judgment Pronounced On*
20.12.2023	***09.01.2024***

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No. 16770 of 2023
and
W.M.P(MD)No. 14001 of 2023

1. R.Vengatesh
2. R.Thirumalaisamy
3. Rameshbabu
4. Raghunath Prabhu
5. V.Arun Kumar ... Petitioners

vs.

1. The Commissioner,
   Hindu Religious and Charitable
   Endowments Department (HR & CE),
   No.119, Uthamar Gandhi Road,
   Chennai – 34.

2. The Joint Commissioner,
   Hindu Religious and Charitable
   Endowments Department (HR & CE),
   Dindigul District, Dindigul.

3. The Joint Commissioner/Executive Officer,
   Arulmigu Dhandayuthapani Temple,
   Palani,
   Dindigul District.

4. The Assistant Commissioner,
   Hindu Religious and Charitable
   Endowments Department (HR & CE),
   Dindigul District,
   Dindigul. ... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Certiorari,*** calling for the records relating to the impugned order passed by the 1st respondent in his proceedings Se.Mu.Na.Ka.No.79494/2021-3/Z1 dated 20.11.2021 and quash the same.

For Petitioners : Mr.B.Saravanan, Senior Counsel, for
Mr.D.Kirubakaran

For Respondents : Mr.S.P.Maharajan,
Special Government Pleader, for R-1, 2 & 4

Mr.R.Bharanidaran, for R-3

ORDER

This writ petition is filed to quash the impugned order, dated 20.11.2021 passed by the 1st respondent in his proceedings Se.Mu.Na.Ka.No. 79494/2021-3/Z1.

2. The brief facts as stated in the affidavit is that the 1st petitioner, namely Vengatesh is one of the Trustee/Administrator/Archaka of Arulmigu Kathir Narasingha Perumal Temple, which is an old temple and was constructed 300 years ago. The settlement Tahsildar II, Madurai through proceedings in S.R.No.40/K.I. Act PLN/67, dated 12.05.1967 has stated that the Inam lands in S.Nos.75/1 (1.98, 269) (1.85), 354/2(19.79), 366(6.32), 375(6.31) confined in T.D.No.41 of village Periyakottai, is the grant made for the support of the pagoda of Sri Kathir Narasinga Perumal Kovil. However, the said lands were notified and taken over by the Government on 15.02.1965 abolishing the minor Inam character by the Act 30 of 1963. The proceedings further states that nobody applied for the Patta no enquiry was taken up under Rule 9(3) of the Hindu Religious and Charitable Endowments Act [*hereinafter referred as 'the HR&CE Act'*], hence, notices of enquiry were served on the occupants of the Inam lands and they have appeared also heard. Accordingly, Patta was granted in favour of the temple through its Archakas namely, P.S.Ramanarasinga Iyengar, Thirumalai Samy Iyengar, Gopalakrishna Iyengar, Venkataramana Iyengar in respect of S.Nos.75, 354/2PRO, 366/1PRO and 375 in Periyakottai Village, Oddanchatram Taluk, Dindigul District. Now the Patta has been transferred in the name of the Legal heirs of the aforesaid Trustees/Administors/Archakas namely,

a. Ragunath Prabhu in Patta No.1375 in respect of S.Nos. 354/2G, 366/1A and 374

b. Narasimma Bharathi. Ragunath Prabhu, Ramesh Babu in Patta No.733 in respect of S.No.354/2E.

c. Narasimma Bharathi, Ragunath Prabhu, Ramesh Babu in patta No.618 in respect of No.264/2F

d. Kalyanasundaran, Venkatesh in Patta No. 1224 in respect of S.No.354/2L

e. Ramesh Babu in Patta No. 1376 in respect of S.No.354/28 and 2D

f. Ramesh Babu and Ramanujan in Patta No.864 in respect of S.No.375/2

g. Venkatraman in Patta No.485 in respect of S.No.354/2I

h. Rengarajan in Patta No. 1394 in respect of No.354/2K

i. Venkatraman in Patta No. 1392 in respect of No.354/2N

j. Venkatraman, Parthasarathy in Patta No.628 in respect of S.No.375/1

k. Dhanalakshmi in Patta No.1377 in respect of S.No.354/2M

l. Pichammal, Arun Kumar in Patta No.682 in respect of S.No. 354/20

m. Venkatraman, Venkatesh Iyengar, Dhanalakshmi, Kalyanasundaram, Venkatesh, Rangarajam in Patta No.708 in respect of S.No.354/2J,

n. Arun Kumar in Patta No.1420 in S.No.354/2H,

o. Narasimmabharathi in Patta No.1391 in respect of S.No. 354/2A, 354/2C, 366/1C

3. The petitioners further state that from the time immemorial the said temple was managed by the petitioners' ancestors and even as on date the temple has managed by the Legal heirs of the aforesaid Archakas and the temple is not under the control of the Hindu Religious and Charitable Endowments Department. The petitioners being the legal heir of the above said Venkataramana Iyengar has been managing the temple and doing the Poojas along with seven other Trustees/Administrators/Archakas who are all the legal heirs of the aforesaid original Archakas. The day-to-day affairs including Poojas and annual temple festivals are conducted by the petitioners and other trustees. The petitioners came to know that the administration of several temples in Dindigul District was taken over by the HR&CE Department. Hence in order to ascertain whether the petitioners' temple was also taken over by HR&CE, one V.Karthick son of Venkatraman had submitted a petition under RTI Act and sought information for 10 questions.

4. The 4th respondent, vide proceedings, dated 04.04.2022 furnished wrong information for the 1st question that the aforesaid temple was taken over by the HR&CE Department by Board Order No.804, dated 25.02.1941. Hence, the said Karthik has filed a writ petition in W.P.(MD)No.28253 of 2022 for a Writ of Mandamus, not to interfere in the temple under priority category as per G.O.Ms.No.804 dated 25.02.1941 and the petitioner to get appointment under priority category. The said writ petition was dismissed as withdrawn, vide Order, dated 15.12.2022 by pointing out that the copy of G.O.Ms.No.804 was not been included in the typed set of papers and liberty was granted to file a fresh writ petition along with the said G.O.Ms.No.804. Again, the said Karthik has submitted a representation under RTI Act to furnish the said copy. The Board order discloses the fact that the proceedings relating to the temple namely, Kadir Narasingha Perumal Temple, Periyakottai, **Dindigul Taluk**, Madurai District which is declared as "exempted temple", but the said temple is situated in a different village. And the said declared temple has nothing to do with the present Arulmigu Kathir Narasingha Perumal Temple, situated at Periyakottai Village, **Ottanchattram Taluk**, Dindigul District. Therefore, the 4th respondent has furnished wrong information under RTI Act which is referring to some other temple situated in Dindigul District.

5. In the meanwhile, the 1st petitioner has received an enquiry summons from the District Revenue Officer, Dindigul, vide proceedings, dated 12.05.2023, directing the petitioners to appear on 18.05.2023 for enquiry on the issue relating to grant of Patta in favour of private individuals settlement scheme in respect of land situated in S.Nos.75, 269/1, 2, 3, 354/2A, 2B, 2C, 2D, 2E, 2F, 2G, 2H, 2I, 2J, 2K, 2L, 2M, 2N, 20, 366/1A, 1B, 1C, 375/1, 2 Periyakottai Village, Ottanchatram Taluk, Dindigul District and for transferring of patta in the name of the temple. The petitioners had appeared before the District Revenue Officer and explained that the temple is a private temple and hence the question of transfer of Patta in the name of the temple does not arise. However, during the course of enquiry on 18.05.2023, it was informed that the 1st respondent, vide proceedings Se.Mu.Na.Ka.No.79494/2021-3/Z1, dated 20.11.2021 had annexed the temple to 3rd respondent temple namely, Arulmigu Dhandayuthapani Temple, Pazhani. Based on this proceeding, the 3rd respondent appears to have requested in proceedings, dated 02.12.2022 for cancelation of Patta and transfer of Patta in the name of the temple, which had culminated in the enquiry summon, dated 12.05.2023. Thereafter only, the 1st petitioner came to know about the existence of the impugned order passed by the 1st respondent, dated 20.11.2021, at the time of enquiry, dated 18.05.2023.

6. The 1st respondent vide, proceedings, dated 20.11.2021 had annexed the Arulmigu Narasingha Perumal Temple, Periyakottai, Ottanchatram Taluk, Dindigul District with the 3rd respondent Palani temple. The impugned order reads that totally 44,000 temples are under the control of the HR&CE Department, in which more than 35 thousand temples are having less than Rs. 5,000/- as annual revenue. In which, most of the temples are 100 years old temple. The impugned order further reads that most of the temples are not maintained properly, in view of poor income and many temples are in dilapidated condition. Hence, a sum of Rs.1,000/-is paid to such temples as Assistance to conduct Pooja. The impugned order further reads that it is not possible for the department to protect the heritage temples and to maintain the same and to create revenue through the aforesaid temples. Therefore, in order to protect the aforesaid temples, the surplus funds of other temples have been utilized for maintaining the temples generating low revenue by invoking Section 36 of the HR&CE Act. The surplus funds have been used for the temples covered under Section 66 of the HR&CE Act. The impugned order further states that the surplus funds had been used for maintenance of other temples, pursuant to the Order passed by this Court in W.P.No.574 of 2015 (wrongly mentioned in the affidavit as 754), dated 07.06.2021. The order further states as per Section 23 of the HR&CE Act, the 1st respondent has got authority to pass an order to administrate the temple and endowments. Therefore, in view of the recommendation made by the 2nd respondent vide proceedings, dated 02.11.2021 the present temple is annexed with Arulmigu Thandayuthapani Swamy Thirukkovil, Pazhani with several conditions.

7. Hence the contention of the petitioners is that the said impugned order, dated 20.11.2021 is illegal and arbitrary since there is violation of principles of natural justice and liable to be quashed. The said impugned order was passed without issuing any notice to the petitioners who are managing the temple hereditarily for the past 300 years and hence the proceeding is illegal. The 1st respondent has passed the order by invoking powers under Section 23 of the HR&CE Act, but the section provides that the administration of all temples including specific endowments attached there shall be subject to the general superintendence and control of the Commissioner and such superintendence and control shall include the powers to pass any orders which may be deemed necessary to ensure that such temples and endowments are properly administered and that their income is duly appropriated for the purpose for which they were founded or exist. Though the 1st respondent is vested with the power of superintendent over the temples and endowments, the administration of the temple shall not be taken over except wherever it is necessary to ensure proper administration of temple and further to ensure that the income is duly appropriated.

8. Whereas, a mere reading of the impugned order would clearly indicate that there is no allegation of maladministration of temple or the income is misappropriated for the purpose other than for which they were founded. In the absence of such allegations, which are condition precedent to invoke powers under Section 23 of the HR & CE Act, it is not open to the 1st respondent to pass the impugned order, hence, the impugned order is not only illegal but the same is without jurisdiction and passing of the impugned order is amounting to abuse of process of law. Moreover, the Commissioner shall not pass order prejudicial to the temple unless the trustees concerned has reasonable opportunity for making their representations. Despite a specific provision to issue notice to the trustees, the 1st respondent had chosen to pass the impugned order, dated 20.11.2021 without putting the petitioners on notice and hence, the impugned order is violating of principles of natural justice. Further the impugned order is vague, there is no specific allegations against the trustees. Infact the temple is being maintained properly by the trustees and poojas are performed regularly. Hence, the petitioners pray to quash the impugned order and allow the writ petition.

9. The respondents submitted that the impugned order was passed based on the directions issued by this Court in *Suo Motu* writ petition in W.P.(MD)No.574 of 2015, vide order dated 07.06.2021, wherein it is directed as follows:

> *"The funds of the temples shall first be utilized for the maintenance of temples, conducting temple festivals, payment to its staff including the archakas, oduvars, musicians, folklore and drama artists. In case of surplus funds, the same shall be utilized for attending the repair and maintenance of other temples in the state as specified under the HR & CE Act and the Rules framed there under and for propaganda of the tenets of all or any of the religious institutions under HR & CE Act".*

Based on such directions, the Commissioner HR&CE had directed the Joint Commissioners and the Assistant Commissioners to submit a report regarding the various temples in Tamil Nadu. The Joint Commissioner, Dindigul, vide proceedings in Na.Ka.No.11887/2021/A4, dated 02.11.2021 has furnished a report. After perusing the said report, the present impugned order dated 20.11.2021 was passed. It has been stated in the impugned order that 35,000 temples in Tamil Nadu is having income below Rs.5,000/-. Therefore, in order to protect the temple and to regulate the lands belonging to the temple the present impugned order is passed. In the impugned order, it has been specifically stated under Section 23 of the HR & CE Act, the power is granted to the Commissioner and by invoking the said powers the present impugned order is passed. The Commissioner has also passed general order and it is applicable to all temples. The present impugned order was passed based on the report of the Joint Commissioner, Dindigul, dated 02.11.2021, hence there is no illegality in the present impugned order. Hence, the respondents pray to dismiss the writ petition.

10. The Learned Counsel appearing for the 3rd respondent submitted that the disputed temple situates in Dindigul District, therefore, in order to maintain the said temple which is categorized as temple which is generating income below Rs.5,000/-, therefore, the said temple is attached to the Arulmigu Thandayuthapani temple, in order to provide monetary support and maintain the said temple and there is no illegality in the impugned order. Since the Arulmigu Dhandayuthapani Temple is generating more revenue and the said revenue will be utilized for maintaining in the present temple.

11. Heard Mr.B.Saravanan, the Learned Senior Counsel for Mr.D.Kirubakaran, appearing for the petitioners, Mr.S.P.Maharajan, the Learned Special Government Pleader, appearing for the respondents 1, 2 & 4, Mr.R.Bharanidaran, the Learned Counsel appearing for the 3rd respondent and perused the material documents available on record.

12. The first contention of the petitioners is that the Joint Commissioner had submitted a report on 02.11.2021 about the temple in question, but the Joint Commissioner had not issued any notice or conducted any enquiry before submitted the said report. Based on the report the Commissioner had passed the impugned order dated 20.11.2021 thereby annexed the temple in question with Pazhani temple. The Commissioner before passing the impugned order dated 20.11.2021 had not issued any notice to the petitioners. For which the Learned Senior Counsel appearing for the petitioners relied on the contents of the impugned order and submitted the impugned order only states the statistics of the temples in Tamil Nadu and the temples which is receiving lesser income are treated as sub–temples to the main temple which is generating more income. To arrive at such conclusion the present temple is receiving income below Rs. 5,000/-, the respondents ought to have conducted audit, has not issued any notice to conduct any audit and has not directed the petitioners to submit the records pertaining to the temple. On perusal of the impugned order, it is clear that there is no reference to any notice, audit report and any proceedings to declare the temple's income. The respondents have not conducted any enquiry or audit. Therefore, this Court is of the considered opinion that the impugned order is violative of principles of natural justice.

13. According to the petitioners the temple is in existence for more than 300 years and the petitioners' ancestors were administering the temple. Subsequently the petitioners being the legal heirs are administering and managing the temple. Absolutely there is no allegation of maladministration or misappropriation before taking over the management of the temple. In such circumstances, the impugned order bringing the temple as a sub-temple of the 3rd respondent is unnecessary and clearly interfering in the trustees' rights, in turn interfering in the fundamental rights of the managing the temple. In several cases the courts have repeatedly held that the respondents are having only superintendence power over the temples and they cannot take over the administration of the temples. Further the HR&CE Act, 1959 does not contemplate unguided or unbridled functioning. The legislature only intended to regulate and control any incidence of maladministration and not a complete replacement of HR&CE Department in the place of Trustees to administer the Temple. Moreover, in the present case the temple is earning income which is sufficient to conduct pujas for all three times a day and for the entire year. In other words, the temple is not in such state to take monetary support from Pazhani temple for conducting puja and to protect the temple and it is self-sufficient. Therefore, in the present case the impugned order treating the temple in question as sub-temple is unnecessary and the same is liable to be set aside.

14. The entire contention of the respondents is that the Commissioner had issued a general order based on the direction of the Hon'ble Division Bench passed in a Suo Motu W.P.(MD)No.574 of 2015 vide order 07.06.2021. In the said case the Hon'ble Division Bench has issued 75 directions to the HR&CE Department and in the Direction No. 24, the Hon'ble Division Bench has held as under:

"TEMPLE FUNDS

(24) The funds of the temples shall first be utilized for the maintenance of temples, conducting temple festivals, payment to its staff including the archakas, oduvars, musicians, folklore and drama artiste. In case of surplus funds, the same shall be utilized for attending the repair

and maintenance of other temples in the state as specified under the HR&CE Act and the Rules framed there under and for propaganda of the tenets of all or any of the religious institutions under the HR&CE Act.

Based on this direction the respondents have passed the impugned order, thereby the Pazhani Temple's excess funds can be utilized to protect and manage the temple in question. But when the present temple is having sufficient funds to protect and maintain itself, then it is unnecessary to annex the present temple with the Pazhani temple.

15. Further in the same judgment under clause 54 to 57 the Hon'ble Division Bench had held that the Trustees are the appropriate person to administer and manage the temples and the HR&CE Department are bound to appoint the trustees where ever trustees are not there. The HR&CE is only having limited power of overall supervision. The relevant portion of the judgment is extracted hereunder:

"TRUSTEE

(54) The HR&CE Department shall file a report before this Court within a period of eight (8) weeks listing out the number of temples without

Trustees, the duration of such vacancy, the particulars of the persons appointed as "Fit Person" and the steps taken by the Department to appoint trustees.

(55) If no hereditary trustees stake claim, then steps must be taken to appoint non-hereditary trustees. The non-hereditary trustees must be from the religious denomination, to which the temple belongs to, without the political background.

(56) Stringent rules on the conduct, character, interest and knowledge on both religious affairs as well as administrative abilities of the trustees, must be enacted to ensure that the right person is appointed to manage the religious affairs of the temples.

(57) Keeping in mind that the overall administration shall be with the HR&CE Department, the authorities shall supervise the affairs of the religious institutions ensuring that the HR&CE Act is strictly complying with by the trustees and taking necessary remedial steps for which they are paid an annual contribution as specified under Section 92."

From this it is evident that the HR&CE Department cannot administer the temple, but has only supervisor power. In other words, the trustees cannot be replaced by the HR&CE department. Wherever the temples are not having Trustees and it is not been administrated properly then the respondents shall appoint Trustees. But the HR&CE cannot take over the management of the temple. Therefore the respondents have exceeded the power granted under the Act and also the directions issued by the High Court.

16. Moreover the Commissioner HR&CE had issued a general direction to comply with the directions of the High Court. The Joint Commissioner had not initiated any proceedings by issuing any notice and hence the impugned proceeding is violative of principles of natural justice. In the present case, the temple is having proper management and there are hereditary trustees who are managing the temple as well as the properties of the temple, there is no allegation of mismanagement and maladministration and in such circumstances the impugned order treating the temple in question as a sub-temple of the 3rd respondent is unnecessary, unwarranted. Therefore, the impugned order is liable to be quashed.

17. At this juncture, the Learned Counsel appearing for the respondent department submitted that the temple is collecting money through Hundial and therefore the collections ought to be audited or supervised. Further submitted that the temple is not having any scheme and the petitioners have not filed any petition where a scheme that could be formulated. But the Learned Senior Counsel appearing for the petitioners submitted there is no Hundial in the temple. And also submitted that the Poojaries are entitled to plate collections. As far as scheme is concerned, the petitioners also submitted that there is a proposed scheme to the temple and the same ought to be considered and approved by the appropriate authority. Therefore, this Court is of the considered opinion that the proposed scheme by the Trustees of the temple may be considered by the respondents. The petitioners shall submit the proposed scheme within a period of four weeks from the date of receipt of the copy of the order and the respondents shall consider the same within eight weeks from the date of receipt of the proposed scheme from the petitioners.

18. For the reasons stated supra the impugned order is quashed and the Writ Petition is allowed. No Costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No

Internet : Yes

09.01.2024

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To

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   Hindu Religious and Charitable
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S.SRIMATHY, J

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Order made in
W.P.(MD)No.16770 of 2023

09.01.2024