



W.P.(MD) No.9631 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.04.2024

CORAM:

THE HONOURABLE MS.JUSTICE B.PUGALENDHI

W.P.(MD) No.9631 of 2014

in

W.M.P(MD).Nos.1 and 2 of 2014 and 22492 of 2023

K.Rajaram

... Petitioner

Vs.

1.The Secretary,
Government of Tamil Nadu,
Tamil Development, Endowments and
Information Department,
Secretariat, Fort. St. George,
Chennai-600 009.

2.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Utthamar Gandhi Salai,
Nungambakkam,
Chennai-600 034.

3.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Madurai.



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4.The Executive Officer,
Arulmighu Swayambu
Saneeswara Bhagavan Thirukovil,
Kuchanur,
Uthamapalayam Taluk,
Theni District.

5.The Fit Person/Thakkar,
Arulmighu Swayambu
Saneeswara Bhagavan Thirukovil,
Kuchanur,
Uthamapalayan Taluk,
Theni District.

6.K.Sethuraman

... Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the impugned order passed by the third respondent in Se.Mu.Na.ka.No.8668/2007/A1 dated 06.03.2009 confirmed by the second respondent's in his proceeding in R.P.No.21/2009 D2 dated 15.03.2010 and further confirmed by the first respondent in G.O.Ms.No. 410 dated 05.12.2012 and quash the same as devoid of merits and consequently, direct the the respondents 1 to 3 to appoint the petitioner as a Hereditary Trustee for the branch of D.Karuppiah in Arulmighu Swayambu Saneeswara Bhagavan Thirukovil, Kuchanur, Uthamapalayam Taluk, Theni District.



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For Petitioner : Mr.M.Kannan
For R1 to R5 : Mr.P.Subbu Raj
Special Government Pleader
For R6 : Mr.N.Sathish Babu

ORDER

This writ petition is filed challenging the orders passed by the third respondent in Se.Mu.Na.ka.No.8668/2007/A1 dated 06.03.2009 confirmed by the second respondent's in his proceeding in R.P.No. 21/2009 D2 dated 15.03.2010 and by the first respondent in G.O.Ms.No. 410 dated 05.12.2012 and for a consequential direction to the respondents 1 to 3 to appoint the petitioner as a Hereditary Trustee for the branch of D.Karuppiyah in Arulmighu Swayambu Saneeswara Bhagavan Thirukovil, Kuchanur, Uthamapalayam Taluk, Theni District.

2. The petitioner is the son of one D.Karuppiyah Pillai, who was the Hereditary Trustee of Arulmighu Swayambu Saneeswara Bhagavan Thirukovil, Kuchanur, Theni District (hereinafter, it is called as 'temple'). The Deputy Commissioner in O.A.No.1 of 1986 has appointed six persons as Hereditary Trustees for the temple and the petitioner's father, namely, D.Karrupaiah Pillai was one among them. D.Karuppiyah Pillai



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died on 28.10.2007, leaving behind his legal heirs, namely, K.Sethuraman/6th respondent, Jayaraman, K.Rajaraman, D.K.Rahuraman and one Meenakshi. In the place of D.Karuppiah Pillai, the third respondent vide proceeding in Se.Mu.Na.Ka.No.8668/2007/A1, dated 06.03.2009 appointed K.Sethuraman/6th respondent as the Hereditary Trustee. As against the said order, the petitioner has filed the revision before the second respondent in R.P.No.21 of 2009 and the same was dismissed vide order dated 15.03.2010. Therefore, the petitioner has approached the first respondent/Government and the first respondent has also rejected his request vide G.O(Ms)No.410 dated 05.12.2012 and therefore, this Writ Petition has been filed.

3. The learned counsel for the petitioner has made his submission as follows :

(i) The 6th respondent was appointed as Hereditary Trustee on the basis of primogeniture without following the settled principles of law regarding the Hindu Succession Act. There is no rule of primogeniture in vogue in India, after the enactment of the Hindu Succession Act, 1956



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and the earlier Hereditary Trustees have been appointed in O.A.No.01 of 1986 dated 25.01.1988 from the junior members of the family.

(ii) The 6th respondent was working as a Manager in a Co-operative Society, wherein he indulged in misappropriation of Co-operative funds by manipulating the records and he was prosecuted by CSCID before the learned Judicial Magistrate Court No.III, Madurai in C.C.Nos.17, 18, 19, 20, 21, 22 and 29 of 2007 for the offences under Sections 408 and 477 (A) of IPC. He was found guilty and he paid the entire misappropriated amount together with interest and therefore, the trial Court released him on probation under Section 4(i) of the Probation of Offenders Act, 1958 and further, he was directed to pay a sum of Rs.2,000/- as costs for the litigation expenses for his prosecution.

(iii) The 6th respondent's involvement in misappropriation of funds in the Co-operative Society and order of the Court have been brought to the knowledge of the authorities, however the respondents 1 to 3 have allowed the 6th respondent to continue as the Hereditary Trustee. The Probation of Offenders Act permits letting of an accused who is found



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guilty, on due admonition only, if there is no previous conviction proved.

Therefore, the 6th respondent is not entitled to get the benefit under the Probation of Offenders Act when he was found guilty in seven cases.

(iv) As per the provisions under Section 26(1)(g) of the Act if the offence is pardoned, it is not a disqualification for being appointed as Trustees cannot be taken to mean that it will include the plural. The word 'pardoned' refers to the provision of the Probation of Offenders Act, which permits pardoning only if no previous conviction is proved. The object behind the provision of the Probation of Offenders Act read with Section 26 of the Tamil Nadu Hindu Religious and Charitable Endowment Act and the requirement of protecting the Trust properties will be rendered nugatory, if the 6th respondent who has been convicted in seven criminal cases of embezzlement of public fund, is permitted to occupy a public office of Hereditary Trusteeship involving huge public funds.

(v) The 6th respondent has not changed his attitude and even after his appointment as a Hereditary Trustee, the 6th respondent along with the



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other Trustees has swindled the Trust funds and in this regard charge memo was issued by the department to him and he was also suspended. These charges were proved in the enquiry, however he has been allowed to continue as a Hereditary Trustee by treating the suspension period as punishment for those serious charges.

4. The learned counsel for the fourth respondent/ Executive Officer submitted that the 6th respondent was appointed as a Hereditary Trustee on the basis that he is the senior family member of the deceased D.Karruppaiah Pillai and the order was passed after providing opportunity to the other legal heirs of the deceased D.Karruppaiah Pillai.

(ii) He further submitted that several complaints were received against the administration of the temple by the trustees. Therefore, the Joint Commissioner (Headquarters) had inspected the temple on 17.07.2010 and had submitted an inspection report, which states that there were several deficiencies in the administration of the temple by the trustees. Due to the same, the temple had incurred heavy revenue loss. The accounts of the temple were also not properly maintained. The



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activities of the trustees defamed the name of the temple. The trustees are functioning in two groups and they are preventing the Executive Officer from performing his duties as per law. Complaints were also received by the Commissioner/2nd respondent herein during his direct inspection on 18.12.2010. The third respondent herein had recommended to initiate action against the trustees under the Tamil Nadu Hindu Religious and Charitable Endowments Act by his proceedings dated 18.12.2010 and 18.01.2011. In these circumstances, by proceedings dated 27.03.2011, the second respondent herein had issued charge memo as against the trustees under Section 53(4) of Tamil Nadu Hindu Religious and Charitable Endowments Act.

(iii) He further submitted that the dispute is relating to the appointment of hereditary trustee in the vacancy, which arose due to the death of the petitioner's father, namely, D.Karruppiah Pillai on 28.10.2007, in which, the 6th respondent has been appointed as hereditary trustee by proceedings dated 06.03.2009 by the third respondent, on the basis of the order of the Deputy Commissioner, Hindu Religious and Charitable Endowments Department passed in O.A.No.01 of 1986 on



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25.01.1998 in an application filed under Section 53(b) of the HR & CE Act, 1959 as well as in O.A.No.47 of 1986 filed under Section 64(1) HR & CE Act, 1959 seeking to frame a scheme and by considering the 6th respondent as senior male member of the deceased D.Karruppiah Pillai family. He further submitted the 6th respondent was appointed as trustee, after giving notice and after hearing all the legal heirs of the deceased Karuppaiah Pillai.

(iv) He further submitted that the trustees including the 6th respondent herein were suspended under Section 53(4) of the Hindu Religious and Charitable Endowments Act since the charges were grave in nature and by the same proceedings, the Executive Officer of Arulmigu Gowmary Amman Temple, Veerapandi, Theni District was appointed as Fit Person for the temple. The second respondent herein by proceedings dated 02.12.2014 had held that all the charges framed against the trustees were proved and that the period of suspension was directed to be treated as punishment and several conditions were imposed in the above proceedings in the interest of the temple.

(v) He further submitted that the petitioner herein had submitted an application dated 02.10.2013 before the 3rd respondent herein to



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appoint him as Trustee of the temple under Section 54 of the Act by stating that there is a vacancy caused due to the suspension of the 6th respondent, namely, Sethuraman and the same was rejected by the Joint Commissioner on 28.01.2024 and he had also filed an appeal before the Commissioner.

(vi) The Government vide G.O(Ms).No.75 dated 11.06.2019 has issued a direction to the Commissioner of Hindu Religious and Charitable Endowments Department to conduct special audit regarding the income and expenditure account during the period of administration by the Hereditary Trustees against whom charges were framed, within a period of three months. After conducting the special audit HR & CE Department has filed a detailed report dated 10.02.2020, based on which, the second respondent has issued a show cause notice dated 10.08.2020 to the trustees.

5. The learned counsel for the 6th respondent submitted his case as under :-



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(i) Arulmigu Swayambu Saneeswara Bhagavan Thirukovil, Kuchanur, Uthamapalayam Taluk, Theni District, is an exempted temple and the hereditary trustees are used to be appointed for the administration of the temple as per the order passed in O.A.No.1 of 1988 by the Deputy Commissioner of Madurai. As per the above said order, the senior male members of the 4 branches of the family have to be appointed as trustees of the said temple. Accordingly, the 6th respondent was appointed as he is the eldest son of the deceased Karuppiyah Pillai.

(ii). He further states that the main contention of the petitioner is that the 6th respondent was found guilty of a criminal case and prosecuted before the learned Judicial Magistrate No.3, Madurai, in C.C.Nos.17, 18, 19, 20, 21, 22 and 29 of 2007, these proceedings were initiated after the date of the 6th respondent's retirement from the Co-operative Society Department. The above said cases ended in acquittal on 29.12.2008 and the 6th respondent was let on probation in all the cases under Section 4 (1) of the Probation of offenders Act. Therefore, Section 26(1) (g) of the Act could have no adverse effect against the 6th respondent's appointment as hereditary trustee in the said temple. The Hon'ble Supreme Court and



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this Court on several occasions have held that letting a person from criminal case under the Probation of Offenders Act would not at all be considered as conviction.

6. This Court considered the rival submissions made and also perused the the materials placed on record.

7. The petitioner is the younger brother of the 6th respondent and both are sons of the deceased D.Karupiah Pillai, who was a hereditary trustee of the temple. He died on 28.10.2007. Thereafter, the 6th respondent was appointed as hereditary trustee by the third respondent that he is the eldest son of the deceased K.Karupiah Pillai by following the rule of primogeniture. The challenge by the petitioner before the second respondent and before the first respondent were rejected. Therefore, the present Writ Petition has been filed.

8. The petitioner has filed this writ petition mainly on two grounds that there cannot be any appointment of hereditary trustee by following the rule of primogeniture and the 6th respondent was found guilty in



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seven criminal cases. In support of this contention, the learned counsel for the petitioner relied upon the judgment of Hon'ble Supreme Court reported in **(2008) 15 SCC 517** in the case of **S.Padmamma and others Vs. S.Ramakrishna Beddy and others** and the relevant paragraphs reported are extracted as under :-

“ 18. Right of inheritance and succession is a statutory right. A right in a property which is vested in terms of the provisions of the Hindu Succession Act cannot be taken away, except in terms of provisions of another statute, which would have an overriding effect. Such special statute should be a complete code. It shall ordinarily be a later statute. Ordinarily again it must contain a non obstante clause.

19. Law of Primogeniture is no longer applicable in India. Such a provision may be held to be unconstitutional being hit by Article 14 of the Constitution.”

9. The Hon'ble Supreme Court has held that law of primogeniture is no longer applicable in India in view of the Hindu Succession Act. The same was held as unconstitutional and against Article 14 of the



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Constitution of India. Therefore, the 6th respondent's appointment as the trustee by applying the law Primogeniture on account of the demise of Karupiah Pillai is not correct and it needs to be revisited. Apart from that the 6th respondent is not having the required qualification for being appointed a trustee as contemplated under the Act.

10. The qualification and disqualification of the trustees are stated in Sections 25A and 26 of the Hindu Religious and Charitable Endowments Act, 1959 and the same are extracted as under :

“ [25-A. Qualifications of trustees. A person shall be qualified for being appointed as, and for being, a trustee of any religious institution or endowment-

(a) if he has faith in God;

(b) If he possesses good conduct and reputation and commands respect in the locality in which the religious institution or endowment is situated;

(c) If he has sufficient time and interest to attend to the affairs of the religious institution or endowment; and

(d) if he possesses such other merits incidental thereto.]



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26. Disqualification of trustees.—*(1) A person shall be disqualified for being appointed as, and for being, a trustee of any religious institution or endowment,*

(a) if he does not profess the Hindu religion ;

(b) if he is not a citizen of India];

(c) except in the case of a hereditary trustee, if he is less than twenty-five years of age.

(d) if he is an undercharged insolvent ;

(e) if he is of unsound mind or is suffering from mental defect or infirmity which would render him unfit to perform the functions and discharge the duties of a trustee or is suffering from leprosy or any other loathsome disease ;

(f) if he has been removed or dismissed from service under the Central Government or any State Government or any local authority];



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(g) if he has been sentenced by a criminal court for an offence involving moral delinquency, such sentence not having been reversed or the offence pardoned;

(h) if he has acted adverse to the interest of any religious institution or endowment ;

(i) if he is in arrears of any kind due by him to any religious institution or endowment.

(1-A) A person shall be disqualified for being appointed as, and for being, a trustee of a religious institution or endowment.-

(a) if he is interested in a subsisting lease of any property of, or contract made with or any work being done for the religious institution or endowment.

(b) if he is employed as a paid legal practitioner on behalf of or against the religious institution or endowment.

(2) If a trustee

(a) becomes subject to any of the disqualifications mentioned in subsection (1) or sub-section (1-A); or



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2[(b) resigns his seat by writing under his hand addressed

(i) in the case of trustee appointed by the Assistant Commissioner, to the Assistant Commissioner

(ii) in the case of trustee appointed by the Joint/Deputy Commissioner, to the Joint / Deputy Commissioner ; and

(iii) in any other case, to the Commissioner, his seat shall thereupon become vacant.]

(3) If any question arises as to whether a trustee has become subject to any of the disqualifications mentioned in sub-section (1), the question shall be referred for the decision of 3[the Joint / Deputy Commissioner.]

(4) If a hereditary trustee becomes subject to any of the disqualifications mentioned in sub-section (1), 1[the Joint Commissioner or the Deputy Commissioner, as the case may be], may supercede the trustee.



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2[(5) Any person affected by an order of the Joint / Deputy Commissioner under sub-section (3) or sub-section (4) may, within one month from the date of receipt of the order by him, appeal, against the order to the Commissioner.]

(6) The trustee of a religious institution for which a Board of Trustees has been constituted shall cease to hold office if he absents himself from three consecutive meetings of such Board of Trustees within a period of two months :

Provided that when a person who has ceased to be a trustee by reason of such absence applies for restoration within one month from the date of the last of the three meetings, the Board of Trustees may, at the meeting next after the receipt of such application, restore him to his office of trustee; but a trustee shall not be so restored more than once during his term of office.”

11. Before this appointment as trustee, the 6th respondent worked as the Branch Manager of MDCC Bank, Bodinayakkanur and he was prosecuted for misappropriation of the Society funds and the details of the cases lodged against the 6th respondent are recorded as follows :-



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Sl.No	Case No.	Penal Sections	Amount Misappropriated
1.	C.C.No.17 of 2007	408 & 477 (A) of Indian Penal Code	Rs.1,40,600/-
2.	C.C.No.18 of 2007	408 & 477 (A) of Indian Penal Code	Rs.80,992/-
3.	C.C.No.19 of 2007	408 & 477 (A) of Indian Penal Code	Rs.47,800/-
4	C.C.No.20 of 2007	408 & 477 (A) of Indian Penal Code	Rs.3,38,750/-
5	C.C.No.21 of 2007	408 & 477 (A) of Indian Penal Code	Rs.1,68,050/-
6	C.C.No.22 of 2007	408 & 477 (A) of Indian Penal Code	Rs.12,310/-
7	C.C.No.19 of 2007	408 & 477 (A) of Indian Penal Code	Rs.5,97,500/-
Total			Rs.13,86,002/-

12. In all these Cases, the trial Court found him guilty in all the above seven cases, the 6th respondent has admitted his guilt and paid the misappropriated amount, however shown some leniency by letting him free under the Probation Of Offenders Act. However, he was imposed



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with cost of Rs.2,000/- in each case for the prosecution initiated against him by applying section 5 of the Probation of Offenders Act.

13. As per the counter affidavit filed by the Executive Officer, it appears that even as a trustee, the 6th respondent has indulged in similar irregularities in the administration of the temple as a trustee, for which, separate proceedings were initiated by the Department and the trustees were suspended under Section 54 of the HR & CE Act. On enquiry these charges framed against him were also found proved but concluded with lenient punishment. It appears that the trustees are still indulging in mischief and therefore, the first respondent has directed the Department to conduct a special audit regarding the income and expenditure account during the period of administration by the hereditary trustees and a re-enquiry was also ordered. Based on this special audit report, a show cause notice was issued by the Department against the 6th respondent.

14. The 6th respondent when worked as Manager in a Co-operative Society, committed misappropriation for which seven criminal cases were registered against him. The cases were registered after an enquiry



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under Section 81 of the Co-operative Society Act. The cases were registered in the year 2006 and the police found materials and filed final report in the year 2007. During the trial, when he was questioned on the charges framed against him, he denied the charges and pleaded that he is an innocent. However, after he was found guilty by the trial Court he has paid the misappropriated amount with interest in the year 2008.

15. Perusal of the orders of the learned Judicial Magistrate, there is no reference about the mandatory report under Section 4(2) of the Probation of Offenders Act. The learned Judicial Magistrate is not justified in extending the benefits under Probation of Offenders Act to a person who had been found guilty in seven cases.

16. The basic qualification for a trustee is that he must be a person of good character and the person possesses of good conduct and reputation. The available materials disclose that the 6th respondent was found guilty in seven cases where he was released on Probation of Offenders Act. As per Section 12 of the Act, there cannot be any disqualification attached to the conviction under Section 4(1) of the



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Probation of Offenders Act. However this will not absolve him as a man of good character. The 6th respondent not only found guilty for the misdeeds in the Co-operative Society also as a trustee.

17. The disqualification which is attached due to the conviction of offence, cannot be applied for a conduct of person. In the judgment of the Hon'ble Supreme Court in the case reported in **(1998) 2SCC 383** in the case of ***Harichand Vs. Director of School Education***, it is held as follows:

“ In our view, Section 12 of the Probation of Offenders act would apply only in respect of a disqualification that goes with a conviction under the law which provides for the offence and its punishment. That is the plain meaning of the words “ disqualification, if any, attaching to a conviction of an offence under such law” therein. Where the law that provides for an offence and its punishment also stipulates a disqualification, a person convicted of the offence but released on probation does not, by reason of Section 12, suffer the disqualification. It cannot be held that, by reason of Section 12, a conviction for an offence should not be taken into account for the purposes of dismissal of the person convicted from government service.”



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18. The 6th respondent who worked as a Manager in the Co-operative Society has committed breach of trust and misappropriated the society funds, evaded the repayment for more than 10 years during the enquiry and trial, he has repaid the misappropriated amount together with interest only when he was about to be sentenced. He has also indulged in further malpractices of misappropriation as a Hereditary Trustee for which, charge memo was issued and also was found guilty for those charges.

19. In view of the above discussions, the impugned orders are liable to be set aside. Accordingly, this Writ petition is allowed. No Costs. Consequently, the connected Miscellaneous Petitions are also closed.

22.04.2024

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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Note: Issue order copy on 23.04.2024.



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- To
- 1.The Secretary,
Government of Tamil Nadu,
Tamil Development, Endowments and
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Secretariat, Fort. St. George,
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 - 2.The Commissioner,
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Dated: 22.04.2024