



W.P.(MD)No.21102 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.09.2024

CORAM

THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.21102 of 2024

and

W.M.P.(MD)No.17877 of 2024

Andal

... Petitioner

Vs.

- 1.The Commissioner,
Hindu Religious and Charitable Endowments,
Nungampakkam High Road,
Chennai-34.
- 2.The Joint Commissioner,
Hindu Religious and Charitable Endowments,
Dindigul Region, Dindigul District.
- 3.The Assistant Commissioner,
Hindu Religious and Charitable Endowments,
Dindigul Region, Dindigul District.
- 4.The Inspector,
Hindu Religious and Charitable Endowments,
Aatoor, Dindigul District.
- 5.The Executive Officer,
Arulmigu Natarajar Temple,
Nilakottai Circle,
Dindigul District.

... Respondents



W.P.(MD)No.21102 of 2024

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order in Se.Mu.Na.Ka.No.6557/2024-1/Aa1 dated 17.08.2024 and the consequential impugned order in Se.Mu.Na.Ka.No.6557/2024-2 /Aa1 dated 17.08.2024 on the file of second respondent and quash the same as illegal.

For Petitioner : Mr.T.Lajapathi Roy,
Senior Counsel,
for Mr.S.Rajasekar

For Respondents : Mr.K.S.Selvaganesan,
Additional Government Pleader

ORDER

The present Writ Petition is filed challenging the impugned proceedings dated 17.08.2024 whereby the petitioner, who is the hereditary trustee of Arulmigu Kathir Narasinga Perumal Temple, was suspended invoking Section 53(4) of the Hindu Religious and Charitable Endowments Act

2. It is submitted by the learned counsel for the petitioner that a charge memo was issued against the petitioner alleging non-maintenance of accounts, encroachment being permitted and collection of rental by the petitioner in his



capacity as hereditary trustee and utilizing the same for his personal use. That some of the lands have been encroached by the members of the petitioner's family. The above charges are stated to be under consideration. The respondent authority has in the meanwhile invoked Section 53(4) of the Act and suspended the petitioner and consequentially, the Executive Officer was appointed as fit person. It is this order, which is the subject matter of challenge.

3. It is submitted by the learned counsel for the petitioner that assuming that the petitioner is guilty of wrong doing, the petitioner temple being administered by hereditary trustees, the petitioner's next in line of succession would have right to be appointed and that right cannot be denied only on the premise that the hereditary trustee was found to be involved in acts warranting action under Section 53 of the Act. In this regard, reliance was sought to be placed on the decision of the Division Bench of this Court **(2016) 1 CTC 9** in the case of **Andiappan Vs. The Joint Commissioner and Ors** and the relevant portion is extracted hereunder:-

57. But, that is not the case with a fit person. A fit person cannot be expected to spend money out of his pocket to perform the kattalai. Therefore, if the wishes of the founder of a specific endowment are to be honoured, it is necessary that the rule of next in the line of succession statutorily recognised, has to be



WEB COPY

followed. This is perhaps the reason why this Court has consistently taken the view that even in cases where the parents were guilty of some wrong doing, the children were not disqualified from being appointed as trustees.

4. It was thus submitted placing reliance upon the above judgement, the impugned proceedings whereby the Executive Officer of the temple was appointed as Fit Person without exhausting the next in line of succession is contrary to the express provisions contained in 54(2) of the Act and decision of the Division Bench of this Court.

5. To the contrary, the learned counsel for the respondent would submit placing reliance upon the judgment of the Division Bench of this Court in W.A. (MD)No.318 of 2017, that the question of appointing next in line of succession would arise only when there is a vacancy, temporary or permanent, which in turn would arise only on completion of enquiry. Presently, the enquiry is in progress and the suspension is traceable to Section 53(4) of the Act. There is no vacancy to invoke Section 53(2). In support thereof reliance was placed on the following judgments:-

a.The Commissioner, HR&CE and Others Vs. Muthiah Velar and others in W.A.(MD)No.318 of 2017 dated 25.09.2018



“13. When Section 53 (4) specifically provides for the appointment of the fit person pending disposal of the charges framed, the appointment of the trustees from the line of succession shall not arise. The learned single Judge misdirected himself by applying the provisions of Section 54(2) instead of Section 53(4), either permanent vacancy or temporary caused on account of suspension under Section 53(2) will entitle the next person to succeed. The suspension in the instant case is only pending charges. In the event the writ petitioners come out clean out of the charges, it is always open to them to continue with their trusteeship. It is only in the interregnum, the fit person has been appointed to administer the temple. The power of appointment of a fit person under Section 53(4) is a special provision covering a specific contingency”.

b. Mr.K. Manikanda Mudaliar v. The Deputy Commissioner. H.R. & C.E.

Department, Salem, W.P. No. 12810 of 1990 dated 21.08.1990.

“4. On a consideration of these rival submissions, it is seen that while Section 53(2) deals with the power of the appropriate authority to impose punishment on a trustee any order of suspension as a substantive punishment is imposed, it will disable the hereditary trustee to discharge his duties by reason of that disability by way of suspension and hence there is a duty cast upon the prescribed authority to consider the claims of the next line of succession to succeed to the office of that disabled hereditary trustee to perform the functions of the



WEB COPY

trustee until his disability ceases.

5. In a case where pending enquiry into certain charges if a trustee is placed under suspension, then, that ad interim suspension is governed by the provisions of Section 53(4) of the Act which enables the competent authority to appoint a fit person to discharge the duties of that trustee who is under ad interim suspension.

6. Here is a case where the petitioner who was a hereditary trustee was placed under ad interim suspension pending enquiry into certain charges and therefore Section 53(4) alone would be attracted and not Section 53(2) of the Act. Under Section 53(4) of the Act, a fit person could be appointed pending enquiry into the charges framed against the hereditary trustee and the claim of the next in line of succession need not be considered at that stage. Hence the writ petition is dismissed.”

c. Mr.V.Ariyamuthu v. The District Temple Administration Committee,
Tiruchirapalli in W.P.No.10951 of 1995 dated 04.03.1997:

"7. When Sub-section (4) of Section 53 provides for appointment of a fit person, as already held above, the provisions of Section 54(1) and (2) cannot be relied upon nor it could be pressed into service. In my considered view, as no vacancy had arisen, it is not for the 1st respondent to pass order under Sub-section (4) or (2) of Section 54. As of present the writ petitioner has no right at all. When it is found that the statute



WEB COPY

*provides that a particular thing has to be done in a particular manner it has to be done in that manner and no other manner is permissible. In this case, Section 53 provides for filling up vacancy either temporary or permanent in the office of the Hereditary Trustee and such a contingency provided for in Section 53 cannot be read into Section 54. It has been held in *Martin Burn Limited v. Calcutta Corporation A.I.R. 1996 S.C. 529 : (1996) 1 S.C.R. 543* as follows:*

"A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. A statute must of course be given effect."

6. The learned counsel for the respondent would also place reliance upon the judgment of this Court in the case of *A.Chidambaram Vs. The Joint Commissioner, HR & CE and others* in W.P.(MD)No.2198 of 2015 dated 30.09.2015 wherein it was held that the suspension does not result in post becoming vacant and it was further found that it is important to ensure transparency, accountability and fairness in the enquiry proceedings, thus the next line of succession cannot be appointed as Fit Person during the pendency of the charges.



7. A reading of the above judgments would show that the submission of the learned counsel for the petitioner that the impugned proceedings, whereby the Executive Officer of the temple was appointed as Fit Person without exhausting the next in line of succession, is contrary to the express provisions contained in 54(2) of the Act and thus cannot be sustained. Section 53 provides for the power to suspend/remove or dismiss the trustees and Sub-section (4) to Section 53 provides for placing a trustee under suspension pending the disposal of charges framed against such trustee. Importantly, Section 53 also enables the appropriate authority to impose by way of punishment amongst others, suspension of a trustee, if he is found guilty of commission or omission of any of the acts enumerated in Clause (2) of Section 53. The relevant provision is extracted hereunder:

“53. Powers to suspend, remove or dismiss trustees.

(1)....

(2)The appropriate authority may suspend, remove or dismiss any trustee of a religious institution, if he-

(a)ceases to profess the Hindu religion; or

(b)fails to discharge the duties and perform the functions of a trustee in accordance with the provisions of this Act or the rules made thereunder; or

(c)disobeys the lawful orders issued under the provisions of this Act or the rules made thereunder by [the Government] [Substituted by Tamil Nadu Act 39 of 1996.], the Commissioner [or Joint Commissioner or Deputy



Commissioner] [Substituted for the words 'or Deputy Commissioner' by section 8 of the Tamil Nadu Hindu Religious Charitable Endowments (Amendment) Act, 1995 (Tamil Nadu Act 38 of 1995).] or the Assistant Commissioner; or

(d)continuously neglects his duty or commits any malfeasance, misfeasance or breach of trust, in respect of the trust; or

(e)misappropriates or deals improperly with the properties of [the religious institution or endowment] [Substituted for 'the institution' by Act No. 26 of 2013, dated 8.11.2013.]; or

(f)is of unsound mind or is suffering from other 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 other loathsome disease; or

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

(h)is an undischarged insolvent; or

(i)[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; [Substituted by Act No. 26 of 2013, dated 8.11.2013.]

(ii)is in arrears or default of any kind due by him to any religious institution or endowment;]

(j)[acts adversely to the interest of any religious institution or endowment.] [Substituted by Act No. 26 of 2013, dated 8.11.2013.]

(jj)[willfully fails to pay the contribution payable under sub-section (1) of section 92 or the further sum payable under sub-section (2) of section 92 within the time allowed by or under clause (b) of sub-section (2) of section 94; or] [Inserted by Tamil Nadu Act 19 of 1968.]

(k)absents himself from three consecutive meetings of the trustees.Explanation. - A meeting adjourned for want of quorum shall be deemed to be a meeting for the purpose of this clause; or

(l)in the case of a Chairman of the Board of trustees or a Managing or Executive trustee, refuses or delays to, or does not, hand over charge to his successor.



(3)

(4) Pending the disposal for the charges framed against the trustee, the appropriate authority may place the trustee under suspension and appoint a fit person to discharge the duties and perform the functions of the trustee.”

7.1. It may now be relevant to extract Sub-section (2) of Section 54, which reads as follows:

“When a temporary vacancy occurs in such an office by reason of the suspension of the hereditary trustee under sub-section (2) of section 53, the next in the line of succession shall be entitled to succeed and perform the functions of the trustee until his disability ceases. ”

A reading of the above provision would show that a temporary vacancy which occurs by reason of suspension of the hereditary trustee under Sub-section (2) of Section 53 may entitle the next in line of succession to succeed. From a reading of the above provision, it is clear that the suspension of the trustee must be by way of a punishment for the commission or omission of the actions set out/enumerated in Section 53(2) of the Act, while a suspension pending enquiry of the charges is made invoking Section 53(4) and thus, reliance on Sub-Section (2) of Section 54 is wholly misplaced.

8. In view thereof, this Court finds that Section 54(2) of the Act does not



W.P.(MD)No.21102 of 2024

get attracted during the pendency of the enquiry of the charges, but, only on completion of the enquiry. However, in the present case, the stage at which Section 53(4) has been invoked, is pendency of the enquiry and therefore, one cannot look at Section 54(2) to appoint the next in line of succession.

9. It was submitted by the learned counsel for the respondent that enquiry against the petitioner would be completed within a period of three months.

10. In view thereof, the respondent authority shall complete the enquiry, within a period of three months from the date of receipt of a copy of this order, after affording a reasonable opportunity of hearing to the petitioner and any other interested parties/stake holders.

11. In the result, this writ petition stands disposed of. There shall be no orders as to costs. Consequently, connected miscellaneous petition is closed.

09.09.2024

Index : Yes / No
Internet : Yes/ No
gns



W.P.(MD)No.21102 of 2024

To:

1. The Commissioner,
Hindu Religious and Charitable Endowments,
Nungampakkam High Road,
Chennai-34.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowments,
Dindigul Region, Dindigul District.
3. The Assistant Commissioner,
Hindu Religious and Charitable Endowments,
Dindigul Region, Dindigul District.
4. The Inspector,
Hindu Religious and Charitable Endowments,
Aatoor, Dindigul District.
5. The Executive Officer,
Arulmigu Natarajar Temple,
Nilakottai Circle,
Dindigul District.



WEB COPY



W.P.(MD)No.21102 of 2024

MOHAMMED SHAFFIQ, J.

gns

W.P.(MD)No.21102 of 2024

09.09.2024