BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	26.06.2024
Pronounced on	24.07.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD)Nos.20945 and 23910 of 2023
and
W.M.P.(MD)Nos.17349, 17350, 20074, 21415 of 2023

W.P.(MD)No.20945 of 2023:-
K.S.Maheshwaran ... Petitioner

Vs.

1.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Thoothukudi.

2.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Thoothukudi.

3.The Executive Officer,
A/m. Mutharamman Thirukovil,
Kulasekaranpattinam, Thoothukudi District.

4.B.Kasilingam

5.V.Dhanapal ... Respondents

[R4 and R5 are impleaded vide order of this Court dated 03.01.2024 made in W.M.P.(MD)No.21414 of 2023 in W.P.(MD)No.20945 of 2023]

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order of the second respondent dated 31.07.2023 in Na.Ka.No. 2658/2023/Aa1 and the Notice of the second respondent dated 17.02.2023 in Na.Ka.No.3485/2021-143/Aa1 and the consequential letter of the third respondent dated 15.05.2023, quash the same and consequently, forbearing the respondents in any manner from interfering the management of Arulmigu Puliyadi Devi Sri Mariamman Thirukovil, Sathankulam, Thoothukudi District.

For Petitioner : Mr.G.Prabhu Rajadurai
for Mr.J.Parekh Kumar

For R1 to R3 : Mr.P.Subbaraj
Special Government Pleader

For R4 and R5 : Mr.T.Antony Arul Raj

<u>W.P.(MD)No.23910 of 2023</u>:-

K.S.Maheshwaran ... Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam High Road,
Chennai – 600 034.

2.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Thoothukudi.

3.The Executive Officer,
A/m. Mutharamman Thirukovil,
Kulasekaranpattinam, Thoothukudi District. ... Respondents

<u>Prayer</u>: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order of the second respondent dated 13.05.2004 in Na.Ka.No.

3985/03/Aa1, quash the same and consequently, forbearing the respondents in any manner from interfering the management of Arulmigu Puliyadi Devi Sri Mariamman Thirukovil, Sathankulam, Thoothukudi District.

For Petitioner : Mr.G.Prabhu Rajadurai
for Mr.J.Parekh Kumar

For Respondents : Mr.P.Subbaraj
Special Government Pleader

COMMON ORDER

In these two Writ Petitions, the petitioner has challenged the following impugned orders:-

S. No.	Writ Petition (MD)No.	Impugned order / Notice Date	Respondent
1	20945 / 2023	(i) 17.02.2023 (ii) 15.05.2023 (iii) 31.07.2023	(i) 2nd respondent / Joint Commissioner (ii) 3rd respondent / Executive Officer (iii) 2nd respondent / Joint Commissioner
2	23910 / 2023	13.05.2004	2nd respondent / Assistant Commissioner

2. In **W.P.(MD)No.23910 of 2023**, the petitioner has challenged the impugned order of the second respondent dated **13.05.2004,** whereby the second respondent has appointed the third respondent as a Fit Person.

3. The impugned notice dated **17.02.2023** issued by the second respondent in **W.P.(MD)No.20945 of 2023** is a notice inviting applications for

the post of Non-Hereditary Trustees. The impugned Letter dated **15.05.2023** in the same Writ Petition was issued by the third respondent to the Trustee of the Temple to hand over the charge within seven days to the third respondent, failing which, the third respondent has threatened to take control of the Temple. By an order dated **31.07.2023**, impugned in the same Writ Petition, the second respondent has called upon the Trustees to hand over the following documents:-

(i) Income and Expenditure Ledger maintained in the Temple

(ii) Bank Account Pass Book

(iii) Register of Jewels and Valuables

(iv) Documents relating to the Temple Lands

(v) Hundial Income and other documents

4. It is the case of the petitioner that after **W.P.(MD)No.20945 of 2023** was filed and on perusing the orders/notices impugned therein, the petitioner realized that the second respondent had earlier appointed the third respondent as a Fit Person on **13.05.2004**, which was neither acted upon nor implemented. In fact, it is submitted that the aforesaid order appointing the Fit Person on **13.05.2004** was never even communicated to the petitioner or to any of the members of the petitioner's clan, who have been managing Arulmigu Puliyadi

Devi Sri Mariamman Thirukovil viz., Temple at Sathankulam, Thoothukudi District.

5. It is the further case of the petitioner that the Temple in question, namely, Arulmigu Puliyadi Devi Sri Mariamman Thirukoil, Sathankulam, Thoothukudi District, is a denominational Temple, wherein only the members of a particular community from 450 Hindu Nadar Families offer their worship. It is submitted that the worship in the subject Temple is not open to any other communities or person.

6. It is submitted that the subject Temple is almost 400 years old and is administered and managed by the descendants from those 450 families of Hindu Nadar alone. It is submitted that all along, there has been no dispute regarding the management or allegation of any mismanagement in the affairs of the Temple.

7. However, strangely, on **17.02.2023**, applications were invited for appointing "Non-Hereditary Trustees" followed by a notice dated **15.05.2023**, alluding the notice dated **25.04.2023**, asking the petitioner to hand over the Trust to the Fit Person appointed as early as **13.05.2004**, namely, the Executive

Officer of Arulmighu Mutharamman Thirukoil, Kulasekaranpattinam, Thoothukudi District.

8. The learned counsel for the petitioner further submits that the impugned order/notice dated **31.07.2023**, calling upon the petitioner to come for an enquiry and to hand over the control of the Temple to the Fit Person is unwarranted, as a Fit Person can be appointed only under the circumstances specified in Sections 47, 49, 54(3), 53(4) and 64(4) of the Tamil Nadu Hindu Religious Charitable and Endowments Act, 1959 [hereinafter referred to as "the H.R. & C.E. Act"].

9. It is submitted that none of the circumstances specified in the above mentioned provisions were attracted for appointing the Fit Person and therefore, the impugned order, which is alleged to have been passed on **13.05.2004** by the Assistant Commissioner of H.R. & C.E. Department by appointing the Executive Officer of Arulmighu Mutharamman Thirukoil, Kulasekaranpattinam, Thoothukudi District, was *non est* in law.

10. The learned counsel for the petitioner has drawn attention to the decision of this Court rendered in **W.P.(MD)No.89 of 2021,** dated **23.01.2023**

(Krishnamoorthy Vs. The Assistant Commissioner, H.R. & C.E. Department, Tirunelveli and others).

11. A specific reference was made to Paragraph No.3 of the said decision, which reads as under:

> *"3. Inasmuch as the Respondents have not been able to establish that the Proceedings in Na.Ka.No.3965/2004/E1 dated 18.12.2006 passed by the First Respondent had been served on the Petitioner, it is not possible to accept the contention that the Fit Person appointed in that order is entitled to deal with the administration of the Temple, which is now under the control of the Petitioner. Consequently, the impugned order which cannot be sustained, is set aside. It is made clear that if any necessity arises, the concerned authorities are not precluded from taking any fresh action following the prescribed procedure in accordance with law and the Petitioner may resist the same by raising all contentions and that no view expressed by the Court on the merits of the controversy involved."*

12. The learned counsel for the petitioner further drew attention to the decision of this Court rendered in **W.P.(MD)No.21734 of 2023,** dated **11.09.2023** (Arulmigu Alathikaadu Ayyanar Temple Vs. The Assistant Commissioner, H.R. & C.E. Department, Sivagangai and another).

13. There, this Court referred to a decision of the Division Bench of this Court rendered on **07.06.2021** in ***Suo Motu*** **W.P.No.574 of 2015.** Pursuant to which, a Circular had been issued by the Commissioner of H.R.&C.E. Department to appoint Fit Person or Executive Officer in all the Temples.

14. It is submitted that none of the conditions specified therein are attracted to the facts of the case and that the order dated **13.05.2004** of the second respondent / Assistant Commissioner in **W.P.(MD)No.23910 of 2023** cannot be the basis for the impugned notices/orders in **W.P.(MD)No.23945 of 2023**.

15. A specific reference was made to the following passages summarizing the provisions of law in the context of appointment of the Fit Person, which reads as under:

> *"14.The aforesaid judgments, conclusively in unequivocal terms had laid down:*
>
> *(i) That the respondents should subjectively satisfy based on the evidence, facts and circumstances of the case that it is necessary to appoint Fit person or Executive Officer for the management of temple.*
>
> *(ii) That the respondents should issue notice to the existing management before appointing the Fit person or Executive Officer.*
>
> *(iii) That the respondents shall appoint the Fit person or Executive Officer for the limited period only*

> *and the tenure ought to be indicated in the appointment order of Fit person or Executive Officer.*
>
> *(iv) That the respondents should hand over the management to the temple at the earliest.*
>
> *(v) That the respondents may appoint Fit person or Executive Officer where ever there are no Trustees.*
>
> *(vi) That the respondents shall not artificially create a situation in order to usurp the management.*
>
> *15. In the present case, there is no allegation of misappropriation and mismanagement of temple and there is no subjective satisfaction to this effect. The respondents have not issued any prior notice for appointing the Fit person. The respondents have not mentioned any tenure for appointing the Fit person. Therefore the appointment of Fit person is illegal and the impugned order is quashed."*

16 .That apart, the learned counsel for the petitioner would submit that the functioning of the Temple has been going on without any allegations of mismanagement and that all of a sudden, the respondents 4 and 5, who have been subsequently impleaded in **W.P.(MD)No.20945 of 2023** vide order dated **03.01.2024**, who had earlier filed a Writ Petition before this Court in **W.P.(MD)No.18086 of 2023** to implead themselves as respondents in **O.A.No.20 of 2023** and had filed **W.P.(MD)No.12864 of 2023**, which appears to be the basis, on which the impugned proceeding commenced from February, 2022.

17. It is further submitted that since there is no Scheme in force, **O.A.No. 20 of 2023** has been filed under Section 64 of the H.R. & C.E. Act for framing

a Scheme for the Temple and therefore, pending such exercise, it is not necessary for the Fit Person to interfere with the day-to-day management of the Temple in question.

18. In the written submission, the petitioner has stated as follows:-

> *"(a) The impugned order passed by the 2nd and 3rd respondents suffers from illegality, irregularities and in excess of jurisdiction and against the Constitution.*
>
> *(b) The 2nd respondent has passed the impugned order dated **13.05.2004** without jurisdiction and without issuing notice to the then temple management and without making any enquiry and the same is against the principles of natural justice.*
>
> *(c) The impugned orders have been passed by the 2nd and 3rd respondents non-application of mind, when the petitioner's temple is belonging particular community people.*
>
> *(d) It is submitted that the above said temple namely Arulmigu Pulliyadi Devi Sri Mariamman Kovil is belonging to the 450 Hindu Nadars family residing at Santhankulam and their forefathers had established the above said temples and there is no Hundi and all the Poojas have been performed only tax collections from the above said 450 Hindu Nadars Family.*
>
> *(e) The petition to pass a scheme in O.A No.20 of 2023 is pending before the Joint Commissioner of H.R. & C.E., Thoothukudi.*
>
> *(f) The Competent Authority can be appointed a Fit person under Sections 47, 49, 53(4), 54(3) and 64(4) of the*

H.R. & C.E. Act after making proper enquiry and following the procedures laid thereon.

(g) Appointment of Fit person should be for the limited period and the tenure ought to be indicated in the order of appointment of fit person.

(h) The alleged order of appointment of fit person has been passed by the 2nd respondent, Assistant Commissioner, H.R. & C.E., Thoothukudi on 13.05.2004 without issuing prior notice or conducting enquiry and till such time the management of the temple are under the custody of the petitioner and his predecessor.

(i) In any event, the impugned orders of the 2nd and 3rd respondents are illegal, unsound and liable to be set aside by this Hon'ble High Court."

19. Opposing the prayer in these writ petitions, the learned counsel for the respondents 4 and 5 in **W.P.(MD)No.20945 of 2023** would submit that the petitioner has entered the scenario after the death of his father Late Mr.Senthilvel, who died in the year 2021.

20. It is submitted that there has been large scale irregularities committed by the petitioner and his family. There were also allegations regarding the collection of huge donations and only a part of the amount was accounted by the petitioner.

21. That apart, it is submitted that the petitioner's father Late.Senthilvel ensured that the H.R. & C.E. Department could not enter into the Temple despite the order dated **13.05.2004** of the second respondent/the Assistant Commissioner appointing the Fit Person. It is submitted that since there are large scale irregularities, it is a fit case for handing over the charges to the Fit Person though belatedly.

22. Opposing the prayer in these two writ petitions, the learned Special Government Pleader for the official respondents would submit that orders have been passed as early as **13.05.2004** based on the report of the Inspector of the H.R. & C.E. Department and taking note of the interests of the Temple. The impugned order dated **13.05.2004** was passed as large scale irregularities are being committed by the petitioner.

23. It is submitted that merely because the Fit Person could not take control of the Temple during the time of the petitioner's father, it would not *ipso facto* mean that the order cannot be implemented at this distant point of time, as the circumstances have once again emerged pursuant to the direction of this Court in **W.P.(MD)No.12864 of 2023** and therefore, the third mentioned impugned notice dated **31.07.2023** has been issued.

24. By way of rejoinder, the learned counsel for the petitioner would submit that the petitioner is willing to appear for an inquiry pursuant to the impugned notice dated **31.07.2023**. However, pending framing of the scheme in **O.A.No.20 of 2023**, the present management need not be disturbed.

25. I have considered the arguments advanced by the learned counsel for the parties.

26. The impugned orders/notices in **W.P.(MD)No.20945 of 2023** are in furtherance of the impugned order dated **13.05.2004** of the Assistant Commissioner of H.R. & C.E. Department, which has been impugned in **W.P.(MD)No.23910 of 2023**, appointing a Fit Person. Now, almost 19 years have gone by since then. The said order has not been implemented.

27. Therefore, the action proposed vide impugned orders/notices in **W.P.(MD)No.20945 of 2023** cannot be countenanced in the light of the decision of this Court rendered in the case of **Krishnamoorthy** Vs. **The Assistant Commissioner, H.R. & C.E. Department, Tirunelveli and others** [**W.P.(MD)No.89 of 2021**, decided on **23.01.2023**]. However, it appears that a report

was called for from the Inspector of H.R. & C.E. Department, who has given a report, which has impelled the respondents to pass/issue the impugned orders/notices.

28. Under these circumstances, these Writ Petitions are disposed by quashing the impugned order dated **13.05.2004** in **W.P.(MD)No.23910 of 2023**. Consequently, the impugned orders/notices in **W.P.(MD)No.20945 of 2023** are also liable to be quashed. They are accordingly quashed. However, liberty is given to the Assistant Commissioner of H.R. & C.E. Department to independently exercise the power under the H.R. & C.E. Act, for appointing a Fit Person taking note of the latest report of the Inspector of H.R. & C.E. Department. Needless to state, the petitioner shall be heard before fresh orders are passed.

29. These Writ Petitions stand disposed of with the above observations. No costs. Consequently, connected Miscellaneous Petitions are closed.

24.07.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No
Speaking Order / Non-Speaking Order

smn2/arb

To

1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam High Road,
Chennai – 600 034.

2.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Thoothukudi.

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

4.The Executive Officer,
A/m. Mutharamman Thirukovil,
Kulasekaranpattinam, Thoothukudi District.

C.SARAVANAN, J.

smn2/arb

Pre-delivery common order in
W.P.(MD)Nos.20945 and 23910 of 2023

24.07.2024