



W.P.(MD) No.21582 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	DELIVERED ON
19.11.2024	19.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD) No.21582 of 2023
and W.M.P.(MD).No.17995 & 22874 of 2023

N.Krishnan

... Petitioner

/vs./

1.The Deputy Commissioner,
HR & CE Administration Department,
Sivagangai.

2.The Assistant Commissioner,
HR & CE Department,
Sivagangai.

3.S.Narayanan

4.M.Mahalakshmi

5.A.Chinnathambi

... Respondents

RR3 to 5 are impleaded vide Court order dated 29.09.2023 in WMP(MD) No. 19952 of 2023

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records relating to the second respondent in his proceedings செ.மு.ந.க.எண்.2287/2023/A5, dated



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04.08.2023 appointing three persons as non hereditary trustees for the petitioner's temple Arulmigu Thandeeswarar Ayyanar Temple situated at Keelarangiam village, Thiruppuvanam Taluk, Sivagangai District and quash the same.

For Petitioner : Mr.PT.S.Narendravasan

For Respondents : Mr.P.Subbaraj Spl G.P., for R1 & R2

Mr.VR.Shanmuganathan for RR3 to 5

ORDER

The present Writ Petition had been filed challenging the appointment of non-hereditary Trustees in respect of Arulmigu Thandeeswarar Ayyanar Temple (hereinafter referred to as 'Temple') at Keelarangiam Village, Thiruppuvanam Taluk, Sivagangai District.

2. The learned counsel appearing for the petitioner would submit that the petitioner is the Trustee of the Temple. He would submit that his ancestor one Thandi Thevar and his daughter constructed a temple in the year 1963 with the funds belonging to them. Son-in-law of Thandi Thevar one Mr.N.M.Muthiah was the hereditary Trustee of the Temple. The villagers of Keelarangiam would



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assemble to select four additional Trustees to maintain and administer the Temple along with the Hereditary Trustee N.M.Muthiah as descendants of the founder Thandi Thevar. After the life time of N.M.Muthiah, his son Dr.Raja Muthiah became the Hereditary Trustee to maintain and administer the Temple along with four other Trustees selected by the villagers. When an attempt was made by the second respondent herein to appoint a fit person, the then Trustees invoking the power under the Act had taken an application for framing a scheme for better management of the Temple. The first respondent after considering the claim of the Trustees had framed a scheme on 24.06.1994, which was also confirmed, but however the same had not been published in the Gazette till date. Even though, the scheme had not been published in the District Gazette, the hereditary Trustee and the other Trustees were appointed to the Temple as per the scheme. In spite of the said scheme, the second respondent in its proceedings dated 20.05.2023, had called for applications for appointment of non hereditary Trustees to the Temple. The Trustees of the Temple were not aware of the such proceedings initiated by the second respondent. He would further submit that the second respondent again attempted to appoint a fit person and on knowing the same, a legal notice had



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been issued to the second respondent calling upon him not to violate the scheme that had been framed in respect of the Temple in O.A.NO.15 of 1993. Without replying to the same, the second respondent in his proceedings dated 04.08.2023, had appointed a three non hereditary Trustees for the Temple, which was also not within the knowledge of the petitioner. Only on an RTI application, the petitioner had come to know about the appointment of non hereditary Trustees. He would further submit that one of the non hereditary Trustees appointed by the second respondent is also involved in a criminal case in Crime No. 1 of 2007 and therefore, his appointment itself is hit by Section 26 of the H.R & C.E. Act. He would further submit that the process of appointment was not notified as required under law. There was no proper public notice of such appointment. Therefore, he would submit that the order appointing the non hereditary Trustees would have to be set aside.

3. The learned Special Government Pleader appearing for the respondents on instructions would submit that it is true that the scheme had been framed, but the appointment of the Trustees to the Temple was not made as per the scheme and the scheme has not been published in the District Gazette. Only when the



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same is published in the District Gazette, the scheme would be deemed to come into force. He would further submit that even as early as in the year 1999 one Mr.Ramachandran, S/o Thandi Thevar was appointed as a non hereditary Trustee to the Temple. By proceedings dated 28.04.2014, a fit person was also appointed to the Temple, who had been functioning till 2023. He had also submitted that steps have been taken to publish the said scheme in the Gazette.

4. Mr.V.R.Shanmuganathan, learned counsel appearing for the respondents 3 to 5 would submit that the petitioner had not come to Court with clean hands and would submit that he had suppressed various materials facts. He would further submit that the Temple belongs to four villagers namely Keelarangiyam, Keelarangiyam Colony, Kudathupatti and Sambakulam and the Temple had been administered and managed by the funds contributed by the four villagers. He would further submit that when dispute arose between the four villagers, a Suit in O.S.No.166 of 1992 in representative capacity had been filed by the villagers of Keelarangiyam, Keelarangiyam Colony and Sambakulam against the villagers of Kudathupatti. In the said Suit, a categorical finding had been given by the Civil Court that there was no proof as



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regards to the establishment of the Temple by Thandi Thevar and the Suit had also been dismissed. Against which, an Appeal Suit in A.S.No.80 of 1995 was filed and the same had also been dismissed. Suppressing the pendency of the Suit, an OA had been filed for framing of the scheme in which the petitioner and the other Trustees had not impleaded any of the parties including the villagers along with whom they had initiated the Suit. He would submit that the scheme had not been published in the District Gazette and therefore, the same would not bind. That apart, he would submit that the Temple had never been in management of the Trustees as claimed by the petitioner. As even in the year 2015, a fit person was appointed to the Temple, who had managed till the appointment of the respondents, which is impugned in the Writ Petition. He would further submit that appropriate steps would be taken by the respondents for challenging the scheme framed by the first respondent. Therefore, he would pray this Court to dismiss this Writ Petition.

5. I have heard the submissions made by the learned counsels appearing on either side and perused the materials placed on record.



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6.The primordial contention of the petitioner is that a scheme had been framed by the first respondent, which is in force and hence, the order passed by the second respondent would not be sustainable. But on the other hand, it is the contention of the respondent, the scheme had not been published as prescribed under Section 64(6) of the H.R.&C.E., Act and therefore, the scheme had not come into force and it is not binding. The official respondents have also submitted that the scheme is yet to be published and the steps are being taken for publication of the scheme. Hence, this Court is inclined to first deal with the issue as to whether the scheme made in O.A.No.15 of 1993, dated 07.10.1994, framed by the first respondent is in force. Section 64 of the H.R.&C.E. Act empowers the Joint Commissioner or Deputy Commissioner to settle the schemes. Before settling the scheme, the authority shall consult the Trustees and the persons having interest and thereafter, he shall frame a scheme, Sub-section (6) of Section 64 mandates that a scheme framed under the said Section shall be published in the prescribed manner and on such publication shall, subject to the provisions of Sections 69 & 70 be binding on the Trustee, the Executive Officer and persons having interest. Admittedly, in the present



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case, the scheme had not been published and hence, the scheme cannot be said to be in force. Therefore, the contention raised by the learned counsel appearing for the petitioner that the second respondent did not have authority to appoint non-hereditary Trustees to the Temple is not sustainable.

7.It is the further contention of the petitioner that the Temple has been maintained and Administered by the hereditary Trustees and four additional Trustees, who are appointed by the villages of Keelarangiam. The then Trustees had filed O.A.No.15 of 1993 before the first respondent and by order dated 07.10.1994, the first respondent are also framed a scheme. A perusal of the said order would indicate that the said Trustees had not included any of the parties of the Villagers as the respondents. They had proceeded on the basis that the villagers of Keelarangiam alone had the right to worship the deities and that the petitioners alone have the right to manage the administration of the Trustee. However, on the contra, the learned counsel appearing for the fourth respondent had placed a judgment and decree of the District Munsif Court, Manamadurai in O.S.No.166 of 1992 before this court. The said Suit had been filed on representative capacity by the villagers of Keelarangiam, Sambakulam,



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Keelarangiam Colony, against the villagers of Kudathupatti. The Suit had been filed for an injunction restraining the villagers of Kudathupatti from in any manner interfering with the rights of the plaintiffs therein, who belong to three villagers. A reading of the said judgment would further indicate that the plaintiffs therein had also pleaded that in respect of the temple that the festival during the month of Aani would be conducted by the villagers of Keelarangiam, Keelarangiam Udkadai Kudathupatti Kudieruppu, Sambakulam and Keekarangiam colony and that the villagers of Kudathupatti had raised objections with regard to the conduct of festival while conducting of festival in the 9th year. Hence, they had filed the Suit. The said Suit came to be dismissed by concluding that the villagers belonging to four villagers have been worshipping the deity and the nature of the temple was a public temple. Against which the plaintiffs therein had also filed an Appeal Suit in A.S.No.80 of 1995 on the file of the Principal District Court, Sivagangai and the said Appeal Suit also came to be dismissed.

8. It is to be noted that the Suit had been initiated in the year 1992 and the O.A., under Section 64 had been instituted in the year 1993. When that



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being so, there has been a clear suppression of facts by the Trustees of the Temple, when they had approached the first respondent.

9. Be that as it may, the same had not been published in the Gazette till date. It is for the parties to work out the remedies, if the same is published.

10. In view of the aforesaid findings, I do not find any infirmity in the order impugned in this Writ Petition and accordingly, the Writ Petition is dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes / No
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K.KUMARESH BABU, J.

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To

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