BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 14.12.2023

DELIVERED ON : 11.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

WP(MD)No.23788 of 2023
and
WMP(MD)No.19964 of 2023

Arulmigu Aatkondanathaswamy Temple,
Iraniyoor,
Rep. by its Managing Trustee,
VR.Veerasekaran

: Petitioner

Vs.

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

2.The Executive Officer,
Arulmigu Muthumariamman Thirukovil,
Arulmigu Aatkondanathaswamy Temple, Iraniyoor i/c,
Karaikudi, Sivangai District. : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Mandamus forbearing the second respondent from interfering with the day-to-day management in the Arulmigu Aatkondanathaswamy Temple, Iraniyoor, in any manner, in accordance with the scheme of the Temple framed by the Board of HR & CE Department in O.A.No.206 of 1944.

For Petitioner : Mr.B.Saravanan,
Senior Counsel
Assisted by
Mr.RM.Arun Swaminathan

For Respondents : Mr.P.Subba Raj,
Special Government Pleader
for R.1

Mr.R.Shankar Ganesh for R.2

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ORDER

The petitioner, Managing Trustee of Arulmigu Aatkondanathaswamy Temple, Iraniyoor, Tirupattur Taluk, Sivagangai District, has approached this Court seeking a mandamus forbearing the second respondent from interfering with the day-to-day administration of the Temple.

2.According to the petitioner, Arulmigu Aatkondanathaswamy Temple is one among the nine Temples of Nagarathars and a scheme was framed for the administration of this Temple as early as in the year 1945 in O.A.No.206 of 1944. As per the scheme, the Temple has to be administered by five hereditary trustees from the family of hereditary trustees and five non-hereditary trustees to be elected from 20 groups of Eraniyur Nagarathars. The Managing Trustee would be elected from the 10 members of the Board and he is responsible for the performance of daily poojas and the annual festival, etc.

3.The case of the petitioner is that he was elected as the Managing Trustee by the Board of Members on 26.09.2021. They have also appointed one Ganana Sambantham as the Manager, as per the scheme, for the management of the Temple affairs. While so, the second respondent, in the capacity as the Executive Officer, is interfering with the day-to-day administration of the Temple.

4.Learned Senior Counsel appearing for the petitioner submitted that the management of the Temple is purely vested with the trustees and the trustees are elected as per the scheme framed in the year 1945 and the

Executive Officer is not having any role as per the scheme. However, by referring to the appointment of an Executive Officer in the year 1962, the second respondent is interfering with the administration of the Temple and it causes several inconvenience to the administration of the Temple. There is no allegation as against the trustees that there was any mal-administration, which warrants the appointment of an Executive Officer to the Temple.

5.He further submitted that the earlier order passed by the Deputy Commissioner appointing the Executive Officer in the year 1962 was made without any notice to the then trustees. Moreover, the Deputy Commissioner is not the authority to appoint an Executive Officer. If any Executive Officer has to be appointed, he can be appointed only by the competent authority, namely, the Commissioner, as per the provisions under the Conditions for Appointment of Executive Officer Rules, 2015. As per this Rules, an Executive Officer cannot be permitted to continue beyond a period of five years.

6.Learned Special Government Pleader appearing for the first respondent submitted that though the scheme is having the provision for appointment of five hereditary and five non-hereditary trustees, all the internal management has to be carried out by the directions of the Hindu Religious and Charitable Endowments Department, as per Clause 34 of the scheme. Clauses 18 to 20 of the scheme provide for appointment of Manager to carry out the day-to-day administration of the Temple. Accordingly, the Executive Officer has been appointed in the year 1962 for the Temple, as per the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

7.He further submitted that the Conditions for Appointment of Executive Officer Rules, 2015 [in short 'Rules'], is not relevant to this case, since the Executive Officer was appointed as early as in the year 1962 and as per Rule 10, this Rules cannot be applied as against the appointment of Officers who are holding the post immediately before the date of commencement of the Rules.

8.He further submitted that the previous trustee, one Karuppana Chettiyar, was indulged in misappropriation to the tune of Rs.25,94,527/-, which was later accounted for. Some of the idols of the Temple were found missing in the year 1948, for which, a complaint was lodged. During the investigation, it was found that the idols, which were missing from the Temple, is now available in a Museum at New York, USA. Therefore, the Executive Officer has been appointed. Moreover, the Executive Officers are appointed only to assist the trustees in the administration of the Temple and they are acting in accordance with the Act and Rules.

9.Learned Counsel appearing for the second respondent submitted that the scheme empowers the Hindu Religious and Charitable Endowments Department to issue necessary directions regarding the internal management of the Temple, as per Clause 34. Therefore, the Managing Trustee and the Board of Trustees cannot have an independent administration over the Temple and they are liable to act based on the directions of the Hindu Religious and Charitable Endowments Department. The Executive Officer was appointed for the better administration of the

Temple in the year 1962. Since the earlier appointment of Executive Officer was not challenged by the petitioner or by his ancestors, the same has been recognized for eight decades.

10.He further submitted that the petitioner had filed this writ petition for an omnibus prayer seeking a mandamus, without challenging the appointment of Executive Officer. Moreover, the order of appointment of the year 1962 cannot be challenged now in the year 2024 and if any such application is filed, it has to be dismissed for latches and delay.

11.With regard to the question of jurisdiction of the Deputy Commissioner, learned Counsel submitted that the appointment was made by the Deputy Commissioner as per Sub-Section 3 of Section 58 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1951 and the same is valid. As per the repeal and savings clause available u/s.118 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the acts done under the earlier Act, 1951, is validated.

12.This Court considered the rival submissions made by the respective Counsel and perused the materials placed on record.

13.The petitioner is the Managing Trustee of Arulmigu Aatkondanathaswamy Temple, Iraniyoor. A scheme was framed for the administration of the Temple in the year 1945. As per Clause 5 of the scheme, the Temple is to be administered by five hereditary trustees and five non-hereditary trustees. The hereditary trustees have to be selected from the family of hereditary trustees and the non-hereditary trustees have to be elected from the 20 groups of Eraniyur Nagarathars.

14.The respondents claim that the Executive Officer was appointed as per Clause 34 of the Scheme. By applying this clause, one Narasimharaghavan was appointed as the Executive Officer for the Temple by the Deputy Commissioner of Hindu Religious and Charitable Endowments Department, by order dated 03.08.1962, which was not challenged by the then trustees of the Temple at that relevant point of time. A perusal of the proceedings dated 03.08.1962 shows that it is specifically mentioned that this appointment was on a temporary basis and that it will not confer on him any right to the post and he is liable to be cancelled or removed, if found necessary. By this order, the said Narasimharaghavan was directed to replace one Meenakshisundaram.

15.The appointment of Executive Officer and their duties is provided u/s.45 of the Hindu Religious and Charitable Endowments Act, 1959 and the same is extracted as under:-

"45. Appointment and duties of Executive Officers.

(1) Notwithstanding anything contained in this Act, the Commissioner may appoint, subject to such conditions as may be prescribed, an executive officer for any religious institution other than a math or a specific endowment attached to a math.

(2) The executive officer shall exercise such powers and discharge such duties as may be assigned to him by the Commissioner.

Provided that only such powers and duties as appertain to the administration of the properties of the religious institution referred in subsection (1) shall be assigned to the executed officer.

(3) The Commissioner may define the powers and duties which may be exercised and discharged respectively by the executive officer and the trustee, if any, of any religious institution other than a math or a

specific endowment attached to a math.

(4) The Commissioner may, for good and sufficient cause, suspend, remove or dismiss the executive Officer."

16.The Conditions for Appointment of Executive Officer Rules, 2015, was introduced vide G.O.Ms.No.260, Tourism, Culture and Religious Endowments Department, dated 06.11.2015. As per Rule 3 of this Rules, the Commissioner either *suo-motu* or upon the report received from the Joint Commissioner or Deputy Commissioner or Assistant Commissioner having jurisdiction, can appoint Executive Officer on certain conditions.

Rule 3 is extracted as under:-

"3. Where the Commissioner either suo-motu or upon the report received from the Joint Commissioner or Deputy Commissioner or Assistant Commissioner having jurisdiction, considers it necessary,-

(i) that in the interest of and ensuring better, proper and efficient administration and management of any religious institution; or

(ii) that he has reason to believe that there is persistent default in administering the affairs of any religious institution in accordance with the provisions of the Act and the rules framed thereunder; or

(iii) that there is irregularities, malfeasance, misfeasance or breach of trust; or

(iv) that there is malpractice, maladministration, mismanagement in any religious institution; or

(v) that there is misappropriation of or improper dealing with the funds and the properties of the religious institution; or

(vi) that there is gross neglect of any duty on the part of the trustee; or

(vii) that there is willful disobedience of the lawful orders issued under the provisions of the Act by the authorities under the Act or by the trustee; or

(viii) that if the trustee opts for the appointment of an executive officer to assist him in the better administration and development of the religious institution; or

(ix) that any scheme settled or deemed to have been settled to any religious institution under the provisions of the Act contains a clause as such; or

(x) for any other reason, the Commissioner may, after holding such inquiry as he may consider it necessary and expedient, in the interest of such religious institution, by order, appoint an Executive Officer for such religious institution, for such period or periods as may be specified by the Commissioner in the order not exceeding a period of five years at a time."

17.This Executive Officer, who was appointed under Rule 3, is also expected to perform certain duties, as provided under Rule 4. The Executive Officer is expected to discharge the duties assigned to him by the Commissioner, as per Sub-Section 3 of Section 45 of the Hindu Religious and Charitable Endowments Act, 1959. As per this provision, at the time of appointment, the Commissioner has to define the powers and duties for which he was appointed.

18.The second respondent claims that he is functioning as the Executive Officer, pursuant to the orders of the Deputy Commissioner dated 03.08.1962, in and by which, one Narasimharaghavan was appointed as the Executive Officer. This Narasimharaghavan was appointed and posted as the Executive Officer to the Temple, on a temporary basis, without assigning any duties. This order was also passed by a Deputy Commissioner in the year 1962, after the introduction of the Hindu Religious and Charitable Endowments Act, 1959, as per which, the Commissioner alone can appoint an Executive Officer.

19.Clause 34 of the Scheme is extracted as under:-

"34.The Hindu Religious Endowments Board shall have power to issue directions from time to time in regard to the internal management of the temple."

20.As per this clause, the Department is entitled to issue directions regarding the internal management of the Temple. This does not mean that, by way of this clause, an Executive Officer can be appointed for the Temple without following the other requirements under the Hindu Religious and Charitable Endowments Act. No doubt, Clause 35 of the Scheme enables the Department to interpret the clauses. However, it does not mean that they can interpret to their convenience.

21.Admittedly, this is a scheme Temple and as per Clause 34 of the Scheme, directions can only be issued by the Department regarding the internal administration and the second respondent cannot continue as the Executive Officer, by referring the order of the then Deputy Commissioner dated 03.08.1962 appointing one Narasimharaghavan as the Executive Officer on a temporary basis.

For the foregoing reasonings and discussions, this writ petition is allowed. The respondents are not precluded in appointing Executive Officer to the Temple, if there is any violation or hindrance, however they shall do so by following the provisions available u/s.45 of the Act. The Trustees are expected to maintain the accounts in a proper manner with audit. The Department is having every right to monitor the accounts of the Temple and issue directions regarding the administration of the Temple. Wherever there is any mal-administration or misappropriation, the Department can enter into the administration of the Temple by passing necessary orders, after providing sufficient opportunity to the existing trustees. No costs. Consequently, connected miscellaneous petition is closed.

Internet : Yes **11.03.2024**
Index : Yes / No
NCC : Yes / No
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To

The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Sivagangai.

B.PUGALENDHI, J.

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