



W.A.No.485 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED :17.02.2025

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

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Sri Sankara Subramania Dharma Siva
Acharya Swamigal, Madathipathi,
Sri Thiruvallangadu Immudi Agora Dharma
Sivachariayar Arya Vysya Mutt,
Nerinjipettai, Bhavani Taluk,
Erode District.

... Appellant

Vs.

1.The Commissioner,
Hindu Religious & Charitable Endowment,
Administrative Department,
119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai – 600 034.

2.C.Balakrishnan

3.V.Ponnambalam

4.A.Srinivasan

5.G.Subash

6.K.Amirthalingam

7.A.Saravanan



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8.N.Srinivasan

... Respondents

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Prayer: Writ Appeal has been instituted under Clause 15 of the Letters Patent, against the order dated 24.01.2023 passed by this Court in W.P.No.30164 of 2016.

For Appellant : Mr.N.L.Rajah, Senior Counsel
for Mrs.S.Anuradha

For Respondents : Mr.N.R.R.Arun Natarajan
Special Government Pleader (HR&CE) (for R1)
Mr.T.S.Vijayaraghavan (for R2-8)

JUDGMENT

(Judgment of the Court was made by *S.M.SUBRAMANIAM, J.*)

The Writ Appeal on hand has been instituted to assail the order dated 24.01.2023 in W.P.No.30164 of 2016.

2. The Writ Petitioner is the appellant before this Court. The Writ was instituted challenging the proceedings of the Commissioner of the HR & CE, Chennai, in M.P.1/2015 (Rc.48321/2015) D2, dated 05.08.2016 under Section 59(1) of the Hindu Religious and Charitable Endowments Act (hereinafter referred to as the HR & CE Act).

3. The order issued under Section 59(1) of HR&CE Act is about grant



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of consent for institution of a Civil Suit by seven devotees of the writ Appellant

WEB COPY Sri Sankara Subramania Dharma Siva Acharya Swamigal Madathipathi.

4. Mr.N.L.Rajah, learned Senior Counsel appearing on behalf of the appellant would mainly contend that the Commissioner passed the order dated 05.08.2016 without affording any opportunity to the appellant. Thus, the order *per se* is in violation of the principles of natural justice. Any order passed under the HR & CE Act is to be issued only after affording opportunity to all the parties concerned. Thus, the Writ Court has committed an error in not considering the ground relating to principles of natural justice. Secondly, he contended that the Commissioner ought not to have granted consent in view of the fact that the Madathipathi is performing his duties in accordance with the Religious Customs and Practices.

5. Mr.N.R.R.Arun Natarajan, learned Special Government Pleader for the 1st respondent would oppose by stating that notice was issued to the appellant, who in turn requested to grant time to file counter, but not filed. Thereafter, the Commissioner considered the issues and passed orders.

6. Learned counsel for the respondents 2 to 8 would also submit that



large number of devotees are expecting the Madathipathi to be present at the Math. The various reasons stated in the proceedings dated 05.08.2016 would reveal that the Madathipathi is not attending the Math. Therefore, they have sought the consent of the Commissioner for institution of suit against Madathipathi.

7. This Court considered the rival submissions made on behalf of the parties to the lis. Section 59 of the HR&CE Act speaks about Math, which reads as under,

“59. Suit for removal of trustee of math or specific endowment attached thereto.—(1) 1[The Commissioner] or any two or more persons having interest and having obtained the consent in writing of 1[the Commissioner], may institute a suit in the Court to obtain a decree for removing the trustee of a math or a specific endowment attached to a math for any one or more of the following reasons, namely:—

- (a) the trustee being of unsound mind ;
- (b) his suffering from any physical or mental defect or infirmity which renders him unfit to be a trustee ;
- (c) his having ceased to profess the Hindu religion or the tenets of the math ;
- (d) his conviction for any offence involving moral delinquency ;
- (e) breach by him of any trust created in respect of any of



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the properties of the religious institution ;

(f) waste of the funds or properties of the institution or the wrongful application of such funds or properties for purposes unconnected with the institution ;

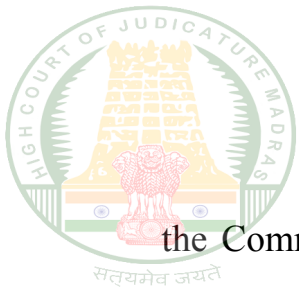
(g) the adoption of devices to convert the income of the institution or of the funds or properties thereof into “pathakanika” ;

(h) leading an immoral life or otherwise leading a life which is likely to bring the office of head of the math into contempt ;

(i) persistent and willful default by him in discharging his duties or performing his functions under this Act or any other law.

(2) Where [the Commissioner] refuses to give consent under sub-section (1), the party aggrieved may, within three months from the date of the receipt of the order by him, appeal to the Government who may, after making such inquiry as they may consider necessary, confirm the order of [the Commissioner] or direct [the Commissioner] to give [his consent] in writing.”

8. The above provision speaks of institution of suit for removal of trustee of math or specific endowment attached thereto. The entire reading of Section 59(1) would explicitly make it clear that there is no procedure contemplated for conduct of inquiry or hearing of all the parties. Section 59 empowers the Commissioner to give consent for institution of suit and therefore,



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the Commissioner is not empowered to decide the disputes between the parties relating to merits. He has to consider the grounds only for the limited purpose of granting consent as contemplated under Section 59(1) of the Act and not to resolve the dispute between the parties. Suo motu power also has been conferred on the Commissioner to grant consent for institution of Civil Suit. Altogether the very objective of Section 59 is to ensure that the issues exist between the parties are resolved by institution of civil suit before the competent Court of Law.

9. The conduct of inquiry has been contemplated only under Section 59(2) of HR&CE Act i.e., appeal to the Government and therefore, the powers of the Commissioner may be exercised without conducting an inquiry by affording opportunity to the parties. In other words, an inquiry is contemplated under sub section (2) to Section 59, but such inquiry has not been contemplated under Section 59(1) of the Act.

10. This Court is of the view that obtaining consent from the Commissioner to institute a suit would not cause any prejudice to the rights of the parties. Rules of natural justice is to be complied with mandatorily, only if the rights of the parties are affected, but not in all circumstances, where permission or consent is given by the competent authority under the statute for institution of a



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11. The object of Section 59(1) of HR & CE Act indicates that institution of frivolous and unnecessary suit ought to be avoided against the Madathipathi or Math. Therefore, the Commissioner could form *prima facie* opinion that the issue raised in the complaint deserves to be adjudicated before the Civil Court of law, he is empowered to give consent under Sections 59(1) of the Act and for forming an opinion he may collect requisite details, but no enquiry has been contemplated under Section 59(1) of the Act. In the absence of any provision to conduct enquiry and the power is conferred only to give consent to institute civil suit, conducting an enquiry to decide certain issues become unnecessary and not intended under Section 59(1) of the Act.

12. Right of hearing or enquiry has not been contemplated under Section 59(1) of the Act. It is a decision to be taken by the Commissioner based on the application and to grant consent for institution of civil suit. When the Act does not contemplate conduct of enquiry or personal hearing under the provision and such an enquiry is not being an integral part of necessary for grant of consent, hearing of the parties would not arise at all. It is the discretion of the Commissioner to conduct an enquiry, if he considers it fit for taking an appropriate decision to give



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consent for institution of suit. Thus, conducting an enquiry is a discretion to be exercised, wherever required and the person who is submitting an application under Section 59(1) of the Act has no right to demand enquiry or personal hearing from the hands of the Commissioner of HR & CE Department.

13. Accordingly, the first ground raised on behalf of the appellant is answered against the appellant. As far as the ground raised on merits are concerned, it is brought to the notice of this Court that pursuant to the consent given by the Commissioner vide proceedings dated 05.08.2016, a civil suit has been instituted in O.S.No.164 of 2016 on the file of the Sub Court, Bhavani and sub judice. Written statements are filed. As per the submissions of the learned Special Government Pleader, trial commenced on 14.02.2024 and the same is in progress. Therefore, it is for the appellant to raise all the grounds on merits before the Trial Court in the manner known to law.

14. With these observations, the Writ Appeal is dismissed. However, it is made clear that the suit instituted is to be decided by the Civil Court independently and uninfluenced by the observations made on facts in the present order. No costs. Consequently, the connected Miscellaneous Petitions, if any, are closed.



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[S.M.S., J.]

[K.R.S., J.]

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WEB COPY Index: Yes/No

Speaking/Non-speaking order
gd

To

1.The Commissioner,
Hindu Religious & Charitable Endowment,
Administrative Department,
119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai – 600 034.



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