BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.03.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

W.A(MD)No.866 of 2022
and
C.M.P(MD)No.7163 of 2022

M.Gandhi ... Appellant / Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable Endowments Board,
Chennai – 34.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Board,
Madurai – 625 001.

3.S.Ashok Kumar ... Respondents / Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 14.03.2022 in W.P(MD)No.7905 of 2017.

For Appellant : Mr.G.Prabhu Rajadurai

For Respondents : Mr.K.S.Selvaganesan
Additional Government Pleader
for R.1 & R.2

Mr.S.Manohar for R.3

JUDGMENT

(Judgment of the Court was made by G.R.Swaminathan J.)

Heard both sides.

2.The case on hand pertains to the affairs of Shri Rajarajeswari Thandumariamman Temple, Nethaji Road, Madurai. It was declared as an excepted temple way back in the year 1933. A scheme for administration was framed in O.A.No.7 of 1952 dated 02.03.1953 on the file of the Deputy Commissioner, Thanjavur. Though the scheme envisaged management of the temple by 7 hereditary trustees belonging to 7 streets and 5 non hereditary trustees, in practice, the grandfather of the writ petitioner Subramanya Gounder was exclusively managing the temple. After his demise, the appellant's father Mahalinga Gounder was functioning as the hereditary trustee. Mahalinga Gounder became sick and handed over the charge to his brother Sarangapani Gounder. Sarangapani Gounder died in the year 1985. After his demise, his son

Vellankannu had taken over the administration of the temple. In the year 1999, the third respondent herein Thiru.S.Ashok Kumar, another son of Sarangapani Gounder was recorded as the hereditary trustee by the jurisdictional Joint Commissioner.

3.While so, the appellant herein M.Gandhi submitted representation dated 12.07.2014 before the Joint Commissioner, HR&CE Madurai demanding enquiry against Thiru.S.Ashok Kumar. The appellant accused that S.Ashok Kumar was guilty of misappropriation and mismanagement. The Joint Commissioner, HR&CE called for a report from the Inspector who submitted his report on 04.08.2014. Thereupon, the Joint Commissioner issued proceedings dated 18.07.2015 informing the appellant that he has to agitate his claim regarding hereditary trustee issue only before the jurisdictional civil Court. Aggrieved by the same, the appellant herein filed R.P.No.108 of 2016 before the Commissioner, HR&CE. The revision was dismissed on 13.09.2016. In the said order, a finding was given that the appellant's right stood extinguished by virtue of Article 107 of the Limitation Act. Challenging the said order, the appellant filed W.P(MD)No.7905 of 2017. The writ petition was disposed of on 14.03.2022 in the following terms:

"46. Therefore, I am inclined to uphold the impugned order dated 30.09.2016 of the first respondent rejecting the application filed under Section 54 of H.R & C.E Act by the petitioner to claim succession to the office of Hereditary Trustee.

47. There is however no discussion in the impugned order dated 30.09.2016 of the first respondent regarding the grievances of the petitioner that there were alleged malfeasance, misfeasance, mismanagement and misappropriation by the third respondent. To that extent, the impugned order dated 30.09.2016 of the first respondent and the impugned dated 18.07.2015 of the second respondent signed on 20.07.2015 are set-aside and the case is remitted back to the second respondent to take appropriate action on the complaint of the petitioner regarding the alleged large scale malfeasance, misfeasance, mismanagement and misappropriation of funds by the third respondent based on the report 04.08.2014 of the Inspector of H.R &C.E Department.

48. The application of the petitioner alleging malfeasance, misfeasance, mismanagement and misappropriation by the third respondent, as the Hereditary Trustee shall be examined by the second respondent Joint Commissioner denovo and fresh order shall be passed by the second respondent Joint Commissioner within a period of three (3) months from

> *the date of receipt of a copy of this order. Needless to state, such order shall be passed after due notice to both the petitioner and the third respondent.*
>
> 49. While passing such order, the second respondent is directed to consider the report 04.08.2014 of the Inspector of H.R. & C.E. Department and take appropriate action under the provisions of the H.R. &C.E. Act, 1959 if the third respondent is found guilty of any misdemeanour."

Challenging the same, this intra-Court appeal has been filed.

4.We uphold the contention of the learned counsel for the third respondent that the hereditary trustee issue will have to be resolved only before the jurisdictional civil Court. We are of the view that no definite finding could have been rendered in this regard by the learned single Judge. The Commissioner, HR&CE also could not have gone into the issue of limitation and rendered any adverse finding against the appellant. Those observations and findings made against the appellant stand vacated. The appellant is given liberty to move the jurisdictional civil Court. As and when the suit is filed, it shall be dealt with on its own merits and in accordance with law. The appellant is also given liberty to move the jurisdictional Joint Commissioner for modification of the scheme that was framed in the year 1953.

5.This Writ Appeal is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

[G.R.S., J.] [M.J.R., J.]
07.03.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
MGA

To

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G.R.SWAMINATHAN,J.

AND

M.JOTHIRAMAN, J.

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