

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30 .11.2010

CORAM:-

The Hon'ble Mr. Justice R. SUDHAKAR

W.P. No. 33648 of 2007

M MAHIBALAN

.. Petitioner

Vs

1. THE COMMISSIONER
HINDU RELIGIOUS & ENDOWMENT DEPARMENT,
ADMINISTRATION DEPARTMENT,
NUNGAMBAKKAM, CHENNAI.34.
2. THE JOINT COMMISSIONER
HINDU RELIGIOUS & ENDOWMENT DEPARMENT, SALEM
- 3 THE EXECUTIVE OFFICER
ALRULMIGHU ANGALAMMAN THIRUKKOVIL,
SANKARI TALUK,
HAVING OFFICE AT NANJUNDEESWARAR
THIRUKKOVIL EDAPADI VILLAGE, SALEM DISTRICT.
- 4 MR. M. PERIASAMY
S/O MUTHUSAMY POOZARI KALVADANGAM VILLAGE
MUTHANKADU POST, SANKARI TALUK,
SALEM DISTRICT.

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for records in relating order of he first respondent passed in R.P. No. 73/2006 D2 dated 10.08.2007 and quash the same and forbear the respondents from in any manner interfering with the joint poojas to be conducted in the third respondent temple by the petitioner and the fourth respondent who are poojaries/ hereditary trustees of the temple as per the earlier order passed in O.A.No. 47 of 1976 and as per the established custom of the third Respondent temple.

For Petitioner : Mr. R. Thiyagarajan
Sr. Counsel
for
Mr. S. Ravichandran

For Respondents : Mr. T. Chandrasekaran
Spl. Govt. Pleader -R1 to R3

Mr. W.C. Thiruvengadam - R4

ORDER

This writ petition is filed to call for records relating to the order of the first respondent passed in R.P. No. 73/2006 D2 dated 10.08.2007 and quash the same and forbear the respondents from in any manner interfering with the joint poojas to be conducted in the third respondent temple by the petitioner and the fourth respondent who are poojaries/ hereditary trustees of the temple as per the earlier order passed in O.A.No. 47 of 1976 and as per the established custom of the third Respondent temple.

2. The petitioner and the 4th respondent are hereditary trustees of Arulmigu Angalamman Temple, Sankari Taluk, Salem District. The present writ petition has been filed challenging the order of the first respondent/ Commissioner of H.R. & C.E. Department, who held that the 4th respondent and the petitioner will manage the affairs of the temple by turn system of one year each starting from the Tamil month of Chithirai. The Commissioner/ first respondent reversed the order of the Joint Commissioner dated 2.11.2006, who held that both the hereditary trustees should perform the festivals jointly and such order was passed based on the order passed by the Deputy Commissioner, Hindu Religious and Endowment Department in O.A. No. 47 of 1976 on 8.1.1977.

4. Sri. Thiyagarajan, learned Senior Counsel appearing for the petitioner states that from the date of the order passed by the Deputy Commissioner in O.A.No. 47 of 1976, the temple is being managed by the two hereditary trustees jointly and therefore, the same system should continue. The order of the Commissioner has to be set aside.

5. This statement is refuted by Sri. W.C. Thiruvengadam, learned counsel appearing for the 4th respondent, who primarily relies upon the Muchalika submitted before the Joint

Commissioner, which records that the parties would operate by turn system. He also submitted that in the case of hereditary trusteeship, the proviso to Section 48 of the Tamil Nadu Hindu Religious and Charitable Endowments Act Act 1959 permits only one person to hold the post of Chairman and therefore the rotation system is justified and the order of the Commissioner is correct.

6. Sri Chandrasekaran, learned counsel appearing for the Hindu Religious and Endowment Department stated that the Commissioner has passed this order taking into consideration the long pending dispute between the parties and in order to avoid any confrontation between either party, the turn system was ordered.

7. The Commissioner's order holding that the hereditary trustees should operate by turn system on rotation need to be fine tuned based on the provisions of law. The Commissioner's view that there is nothing wrong in having the system of rotation among hereditary trustees should be supported by law. It is true that the turn system does not affect the hereditary right as there is no relinquishment of rights by either party. But the Commissioner has failed to take into consideration the earlier orders passed by the Deputy Commissioner of H.R. & C.E. Department, which was in vogue for long number of years and followed by the predecessors of the present petitioner and the 4th respondent, who was also a party to the proceedings in O.A.No. 47 of 1976 on the file of the Deputy Commissioner. It will be relevant to note that in the said proceedings in O.A.No. 47 of 1976 the clear finding is that the temple was founded by the ancestors of petitioner namely one V. Muthuswamy Poosari, whose descendant is present petitioner and Periyasamy Poosari, the 4th respondent herein. It is also admitted that the Pooja is being performed by the two persons representing the two communities viz., Karnigars and Vanniars. The ancestors of the petitioner and the 4th respondent had a working arrangement for performance of the pooja to the temple deity and both were holding the office of hereditary trustee jointly. This is clarified in the suit filed by the 4th respondent before the District Munsif Court, Sankari against the petitioner herein, which was filed for a relief of managing the temple by turn for a period of one year reckoned from first of Chithirai to end of Panguni of the succeeding year. It is another matter that the suit was not prosecuted and the same has been withdrawn. It is pointed out only to show that prior to the year 2005, the management of the temple was by two hereditary trustees jointly. This aspect has to be considered for the purpose of deciding the rival claims.

8. The Executive Officer, who is present in Court stated that there are some difficulties when two persons were holding the same post and therefore, some workable arrangement should be made so that the affairs of the temple can be properly managed by the Executive Officer with the assistance of the hereditary trustees.

9. Section 48 of the Act provides for the election or nomination for the post of Chairman in a religious institution when it is managed by Board of Trustees or by hereditary trustees. Proviso to Section 48 of the Act reads as follows:-

4. " Section 48.....

Provided that in the case of a religious institution:-

(i) having one hereditary trustee, such hereditary trustee alone shall be its Chairman; and

(ii) having more than one hereditary trustee, one of such hereditary trustees alone shall be elected or nominated to be its Chairman. "

10. The said provision provides that the hereditary trustees if there are more than one person, to elect or nominate one of them as chairman. In this case, the right of the petitioner and the 4th respondent to serve as hereditary trustee and to manage the affairs of the temple is also not in dispute. There is some difficulties in performing poojas and festivals jointly. Section 48 of the Act provides the remedy in such a situation to elect or nominate one of them as Chairman and the other will continue as hereditary trustee and both will perform their duties to the temple jointly. The post of Chairman can be taken by turn. Accordingly the two hereditary trustees will perform poojas and festival jointly and one of them will hold the post of Chairman by turn.

11. In view of the very specific provision of Law, which enables the religious institution to be managed by hereditary trustees numbering more than one by election or nomination one of them as chairman, this Court is of the view that instead of setting aside the order of the Commissioner and remanding the matter back to the first respondent, one of the two hereditary trustees will hold the post of Chairman for a period of one year and the other will succeed him after the end of the tenure.

12. Shri R. Thiagarajan, learned counsel appearing for the petitioner and Shri. W.C.Thiruvengadam, learned counsel appearing for the fourth respondent after consulting the parties agree that one of the two hereditary trustees will perform the duties as a chairman and the other hereditary trustee will assist him during that period. They suggested that the one year turn should be from 1.1.2011 to 31.12.2011.

13. Accordingly, this writ petition is disposed of as hereunder:-

(i) The two hereditary trustees or the successors will hold the post of Chairman by turns.

(ii) The fourth respondent will hold the office of Chairman from 1.1.2011 to 31.12.2011.

(iii) The petitioner or his successor will hold the post of Chairman for the succeeding year (i.e.) from 1.1.2012 to 31.12.2012.

(iv) The hereditary trustee holding the office of the chairman will cease to hold the office of chairman on the last day of the English calendar year, automatically and the incumbent will take charge.

(v) The executive Officer will continue to manage the affairs of the temple as before with the co-operation of the two hereditary trustees, who will perform the pooja and festival jointly.

(vi) The meeting of the hereditary trustees will be a joint meeting presided over by the Chairman.

The writ petition is disposed of by consent of parties on the above terms. Consequently, M.P.No. 1 of 2007 is closed. No costs.

Sd/-
Asst.Registrar.

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Sub Asst.Registrar.

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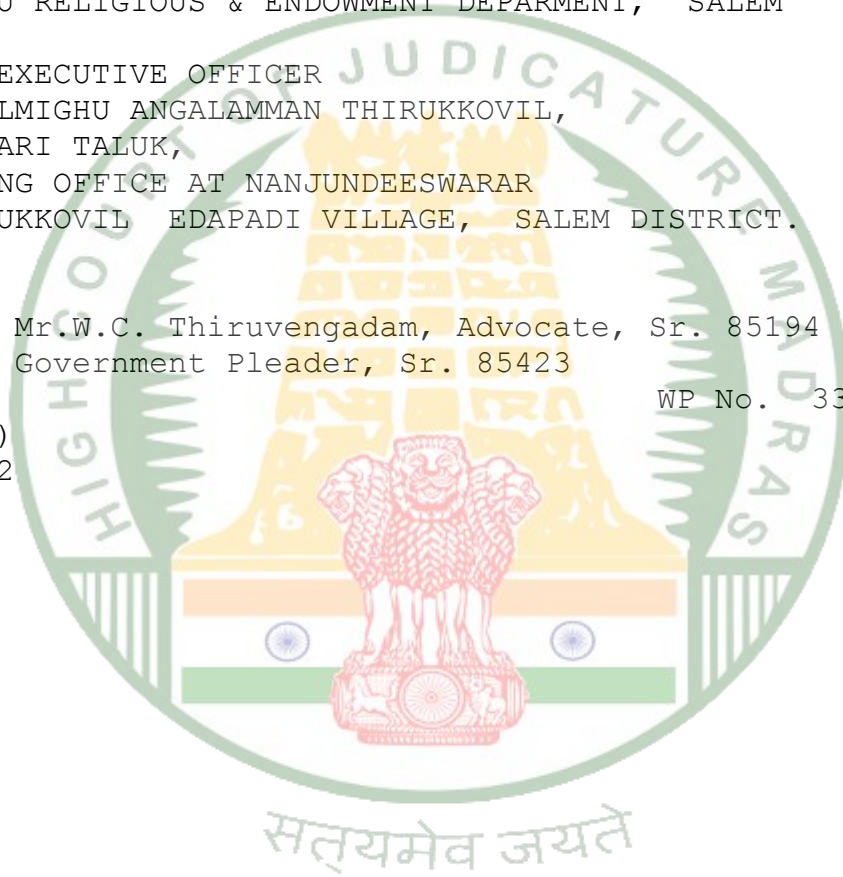
To

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HINDU RELIGIOUS & ENDOWMENT DEPARMENT,
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THIRUKKOVIL EDAPADI VILLAGE, SALEM DISTRICT.

1 cc to Mr.W.C. Thiruvengadam, Advocate, Sr. 85194
1 cc to Government Pleader, Sr. 85423

WP No. 33648/2007

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