

(2004) 11 MAD CK 0126

In the Madras High Court

Case No : Writ Petition No. 5125 of 2003

Avaloor Arulmighu Dharmaraja Devasthanam and
Mariamman Thirukovil

APPELLANT

Vs

The Commissioner H.R. and C.E. Administration Dept. and
Others

RESPONDENT

Date of Decision : 25-11-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 2 LW 294

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

Advocate : A. Thamizharasan, for the Appellant; G. Sukumaran Special Govt. Pleader for R1 to R3, K. Chandramouli, for K.R. Nalinishree, for R4 and R5, for the Respondent

Final Decision : Dismissed

Judgement

D. Murugesan, J.—The petitioner, claiming to be the Hereditary Dharmakarthas of Avaloor Arulmighu Dharmaraja Devasthanam and Mariamman Thirukovil, has questioned the order of the Commissioner, H.R. & C.E. Administration Department dated 26.8.2002 and the order of the Assistant Commissioner, H.R. & C.E. Administration Department, Vellore dated 2.9.2002. In the proceedings dated 26.8.2002, in exercise of power u/s 46, as the annual income of the temple in question exceeded Rs. 10,000/= it was directed to be included in the list of temples earning more than Rs. 10,000/= but below Rs. 2,00,000/=. In the proceedings dated 2.9.2002, the Inspector, H.R. & C.E. Administration Department, Arakkonam was appointed as a fit person of the temple. The petitioner, on the claim that he is a hereditary trustee, has questioned both the orders basically on the ground that before the impugned orders were passed, he was not issued with the notice. As to whether the petitioner is entitled to a notice or not, the issue in question as to whether the petitioner is a hereditary trustee should be first decided. The claim of the petitioner that he is a hereditary trustee

is based on the copies of sale deeds dated 10.12.1920, wherein reference is made in respect of certain individuals as managing the affairs of the temple. According to the learned counsel for petitioner, the petitioner being the grandson of one Srinivasa Naicker, who was appointed as a trustee followed by his son Kannappa Naicker, claims that he is a hereditary trustee. Section 6(11) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as "the Act") defines "hereditary trustee" as meaning the trustee of a religious institution, the succession to whose office devolves by hereditary right or is regulated by usage or is specifically provided for by the founder, so long as such scheme of succession is in force. The petitioner though claims to be the hereditary trustee on the basis of the above sale deeds, the sale deeds refer to some four or five names. The petitioner, claiming to be the legal heir of one Kannappa Naicker, claims to be the hereditary trustee. In terms of Section 63(b), a declaration is contemplated by the Joint Commissioner of H.R. & C.E. Department declaring a person to be a hereditary trustee. The petitioner has not obtained such a declaration. Consequently the petitioner had approached the civil Court in O.S. No. 158 of 2002 for an injunction restraining the Assistant Commissioner, H.R. & C.E. Department, Vellore and three individuals from interfering with his right to the conduct of festival. In the pleadings, it is the stand of the petitioner that the temple belonged to the villagers and the community. It is the specific case that his father A.S.Kannappan was selected as Dharmakarthi of the temple. It is his further case that after the demise of his father on 15.11.99, he was selected by the villagers as Dharmakarthi. From the averment in the plaint, it is seen that the petitioner was selected only as Dharmakarthi for the purpose of conduct of festival, which is held once in a year. He has not claimed that he is the hereditary trustee of the temple in the said plaint. Moreover, in the absence of any documents to show that after two sale deeds the petitioner was functioning as hereditary trustee and any declaration was obtained u/s 63(b) of the Act. Even from the plaint it is seen that the temple is a village temple and belongs to the villagers.

2. On the above background, it is now to be considered as to whether the Commissioner would be justified in bringing the temple under the list of temples u/s 46. The petitioner has not neither questioned nor disputed the income of the temple exceeding Rs. 10,000/= per year. If that be the case, the Commissioner is empowered to invoke Section 46(i) to publish the temple in question for the purpose of levy of contribution under Sub-section (1) of Section 92. Such an order has been passed on 26.8.2002. I do not find any merit in the challenge to the said order.

3. Coming to the order of the Assistant Commissioner dated 2.9.2002, in terms of the last proviso to Section 49 the Assistant Commissioner may, in the case of any religious institution which has no hereditary trustee, appoint a single trustee namely, a fit person. When once this Court comes to the conclusion that the petitioner is not a hereditary trustee, the invocation of the last proviso to Section 49 by the Assistant Commissioner cannot be said to be bad.

4. As to the submission of the learned counsel for petitioner for failure on the part of the respondents to give opportunity, Mr. G.Sukumaran, learned Special Government Pleader produced the files. A perusal of the files shows that the Village Administrative Officer of the village in question had recommended to the department to bring the temple within the ambit of the provisions of the Act on 5.1.2002. The Tahsildar, Arakkonam also in his report dated 1.5.2002 had recommended for the temple to be brought under the provisions of the Act. Based on that an enquiry was conducted wherein the statements from Village Administrative Officer, Inspector of Police were also obtained on 5.7.2002.

The recommendations of the Village Administrative Officer and the Tahsildar were made on the basis of the repeated law and order problem which had crept in during the festival time among two groups in the village. Taking into consideration of the above, notices calling for objection were pasted in the office of the Panchayat Village Administrative Officer, the temple and the conspicuous public place. As per Rule 2 of the Manner of Publication of the list of Religious Institutions (other than Maths or specific endowments attached thereto) Rules 1960, no individual notice is contemplated to the villagers and the petitioner, having failed in his attempt to satisfy that he is a hereditary trustee, is not entitled to any individual notice. The files produced show that the publication of notice was effected in terms of the above said rule. In the circumstances, the petitioner cannot have any grievance that the orders were passed without individual notice to him, as the temple is a village temple and owned by the villagers and the petitioner was only selected as Dharmakarthas of the temple for a limited purpose of conducting festival in a year and not for managing the affairs of the temple. In the circumstances, the respondents are entitled not only to bring the temple in the list of temples u/s 46(i) of the Act, but also to appoint a fit person u/s 49 of the Act.

5. For all the above reasons, I find no merits in the writ petition. Accordingly, the writ petition is dismissed. No costs.