
(2016) 08 MAD CK 0089

In the Madras High Court

Case No : Writ Petition (MD). No. 13056 of 2016

KM. NKM. NKM. Nallakaruppan Chettiar

APPELLANT

Vs

The Joint Commissioner HR & CE Board

RESPONDENT

Date of Decision : 17-08-2016

Acts Referred:

Citation : (2017) AIRCC 631 : (2016) 7 MLJ 96 : (2017) 1 WritLR 212

Hon'ble Judges : Mr. M. Venugopal, J.

Bench : Single Bench

Advocate : Mr. V. Singan, Advocate, for the Petitioner; Mr. V.R. Shanmuganathan Special Govt. Pleader, for Respondents No. 1 & 2; Mr. T. Srinivasa Ragavan, Advocate, for the Respondents Nos. 3 and 4

Final Decision : Dismissed

Judgement

Mr. M. Venugopal, J.— Heard both sides.

2. According to the petitioners, they are the hereditary trustees pertaining to Arulmigu Karpaga Vinayagar Temple, Pillaiyarpatti, Sivagangai District and they are jointly interested in the subject matter in issue. As a matter of fact, the said temple is a denomination public temple and it was notified by the Hindu Religious and Charitable Endowments Board. Although the temple is a denomination public temple, it is an excepted temple, in that, the management of the temple is vested with the Nagarathar Community belonging to a particular clan and family through which they derive their title for management and trusteeship of the temple at Pillayarpatti.

3. The stand of the petitioners is that as per the history of the temple, the Nagarathar (Nattukottai Chettiar) living in certain portions of the village, having the ancient history unknown to memory had come to hold the proprietary rights in respect of the said temple and the said temple was founded originally by their ancestors and along with other ancestors of other co-hereditary trustees, who are also entitled to officiate as "Hereditary Trustees" pertaining to the said

temple.

4. The plea of the petitioners is that there is an ancient genealogy pertaining to the founders of the temple, through which lineal male descendants of the original founder have come to derive Title and Interest in respect of the management of the Pillaiyarpatti Temple. Further, since the genealogy is ancient one, it may not depict the successors in interest. In fact, the petitioners, as lineal descendants of the certain branches deriving interest from the original founder have an indefeasible right in the management. That apart, in the ancient history pertaining to the temple during the founders time, only the persons who have paid "Asthi Vari" i.e the money payable for foundation of the temple would be the persons, who would gain interest in respect of the trusteeship.

5. The plea of the petitioners is that their ancestors had paid "Asthi Vari" even on 11.08.1924, which was vouchsafed in the records of the Pillaiyarpatti Temple. The management of the temple viz., the trusteeship as between the lineal descendants of the common founder is by rotation and where there are plurality of persons claiming interest from a particular kin only the upper clan i.e. eldest two members in a particular family would be entitled to claim the right, to officiate as hereditary trustee for that particular turn of the year during which, their trusteeship falls due.

6. The petitioners in their affidavit at paragraph No.4, of the writ petition had averred that Respondent Nos.3 and 4 are the present trustees in the Office, they are prepared to hand over the possession of the Trusteeship to them. But, as per the practise in vogue, the trustees functioning office required the concurrence of the Hindu Religious and Charitable Endowments Board Officials for the purpose of handing over of the office to the succeeding hereditary trustees. Further, the said practise is being adopted by the Hindu Religious and Charitable Endowments Board for the purpose of taking note of the persons holding office for their particular time in order to have an effective supervision of their management of the denomination temple and also to rule out any act of malfunctioning in regard to the office or any act of "Misfeasance" relating to the funds of the temple.

7. It is the case of the petitioners that in respect of "Right to Office", there is no interse dispute or any misunderstanding between the persons entitled to hold and officiate as hereditary trustees pertaining to the said temple. Also, in view of their unassailed recognition as hereditary trustees, branching from a particular branch flowing from a common ancestor traced to the genealogy, there is no requirement resorting to any civil court in order to obtain any declaration. The Respondents No.3 and 4 require a written order from the Hindu Religious and Charitable Endowments Board officials for the purpose of handing over the office to the petitioners.

8. The petitioners had submitted a representation to the Respondent Nos. 1 & 2 on 11.07.2016.

9. It is the further submission of the petitioners that from the date of filing of the

writ petition till the disposal of the writ petition by this Court, if the petitioners" turn of Office during the current year lapsed, a suitable provision or direction may be issued by this Court, in the interest of Justice, to enable them to assume the duty as that of the hereditary office relating to Karpaga Vinayagar Temple in Pillaiyarpatti in the succeeding Calender year, lest their right to office may be deprived, on account of the number of the persons claiming interest as that of hereditary trustees relating to management and deriving rights from particular branches traceable to a common ancestor, as depicted in the pedigree table. Hence, the petitioner has filed the present writ petition praying for passing of an order by this Court in directing the Respondents No. 1 & 2 viz., the Joint Commissioner of Hindu Religious and Charitable Endowments Board and the Assistant Commissioner of Hindu Religious and Charitable Endowments Board, Paramakudi, Sivagangai District to consider their representations dated 11.07.2016.

10. The Learned Counsel for the Petitioners cites a decision of this Court between Chettimai C. Nanjappa Chettiar (decd.) and another v. S.N. Kuppuswami Chettiar and others, reported in 1986 MLJ at page Nos. 464 and 465, wherein, it is observed as follows:

"It is true that hereditary trusteeship is not property within Article 19(1)(f) of the Constitution. The Supreme Court countenanced that the position of hereditary trustee was that of a dharmakartha of a mere manager or custodian of a religious institution with an exception namely, that the hereditary trustee succeeded to the office as of right and in accordance with rules of succession. Once it is countenanced that succession as of right is available to the office of the hereditary trustee, it is not possible to permit a person in the office for the time being to barter it away for no value so as to stultify or cripple the rule of succession. Such bartering away, release or relinquishment by the person for the time being in office in the hereditary trusteeship will be of no legal consequence and the person who is entitled to succeed can insist on and claim his right as a successor, ignoring such release or relinquishment. Hence, the rule inhibiting relinquishment or renunciation will apply with equal force to a hereditary trusteeship."

11. Per contra, it is the submission of the Learned Special Government Pleader for the Respondents No. 1 & 2 that the writ petition is not maintainable in as much as there is no existence of any statutory right to the petitioners and there is no corresponding statutory duty to the Respondents 1 & 2 to consider the request of the petitioners. Further, it is represented on behalf of the Respondents No.1 & 2 that the writ petition filed by the petitioners before this Court is not maintainable.

12. Continuing further, the Learned Special Government Pleader for the Respondents No.1 & 2 proceeds to take a stand that the petitioners had issued a legal notice dated 22.06.2016 to some of the pangalis of "K.M.P.R Vagai" and others, claiming that they are entitled to assume trusteeship in the forthcoming

year, to which there is a reply by the said pangalis on 15.07.2016 and these material facts were suppressed by the petitioners in the writ petition and on that score alone, the writ petition is liable to be set aside by this Court, because of the reason that the petitioners have not approached this Court with clean hands.

13. The Learned Special Government Pleader for the Respondents No.1 & 2 contends that the writ petition filed by the writ petitioners is premature, because of the reason that turn for the "Next Set of Trustees is due only on 05.09.2016 and further only if the Election and Selection of Trustees is not as per the Approved Scheme of the Temple", the petitioners get the cause of action to approach the Respondent Nos.1 & 2 and later on, they are entitled to seek the relief of mandamus. Even on this ground also, the writ petition filed by the writ petitioners is per se not maintainable. Moreover, as per the scheme, "Administration is vested with the Board of Trustees" selected from the families appended to the scheme and "K.M.P.R. Vagai" is one such family. In fact, the petitioners have projected the present writ petition before this Court as if there is no dispute at all. Therefore, the stand of the Respondent Nos.1 & 2 is that on that score, the writ petition is to be thrown out.

14. The prime contention advanced on behalf of the Respondent Nos.1 & 2 is that under Section 63(b) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the First Respondent can decide as to whether the Office of Trusteeship is hereditary or not? and further the First Respondent/Joint Commissioner, Hindu Religious and Charitable Endowments Board, Sivagangai District cannot determine as to whether a particular person is entitled to succeed to the office of trusteeship. As such, the First Respondent/Joint Commissioner, Hindu Religious and Charitable Endowments Board, Sivagangai District cannot determine as to whether the petitioners can succeed to trusteeship. However, if the petitioners are elected and their names are forwarded, then, the First Respondent/Joint Commissioner, Hindu Religious and Charitable Endowments Board, Sivagangai District would pass appropriate orders recording their trusteeship, if they are otherwise qualified. But, if there is a dispute in the election, the concerned parties are to work out their remedy before the competent civil forum.

15. At this stage, the Learned Counsel for the Respondents No.1 & 2 refers to a decision of the Honourable Supreme Court between State of Uttar Pradesh and Another v. Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti and Others, reported in (2009) 12 Supreme Court Cases 675, wherein, it is held that "a writ of mandamus could not be issued unless existence of a right in favour of employees and corresponding duty of State instrumentality was shown to exist."

16. The Learned Counsel for the Respondent Nos.3 and 4 takes a categorical stand that the petitioners are utter strangers, not coming under the Hereditary 20 families and approved by the Hindu Religious and Charitable Endowments Department long back in O.A.No.74 of 1978, dated 12.02.1979 (Which is in consonance with earlier orders passed by the Hindu Religious and Charitable

Endowments Board in O.A.No.543 of 1931, dated 19.11.1931 and O.A.No.25 of 1972, by the then Deputy Commissioner, Hindu Religious and Charitable Endowments Board, Madurai). Furthermore, when there is statutory orders already passed by the First Respondent, the relief sought for in the writ petition viz., to consider the representation of the petitioners by the First Respondent, would not sustainable in Law. In short, it is pleaded on behalf of the Respondents 3 and 4 that the First Respondent has no jurisdiction to review its own order i.e after 35 long years.

17. At this juncture, the Learned Counsel for the Respondent Nos.3 and 4, brings it to the notice of this Court that the fourth petitioner belong to Rm. P.V. family of Poolangurichi and his family altogether with K.M.family of Karaikudi represented by the Third Respondent are holding the administration presently, as per the Scheme and they have to hand over the "Kariyathanam to KM.PR. Family of Natchanthupatti and M.Rm. Family of Karaikudi etc.". In fact, the petitioners do not belong to "KM.PR family" of Natchanthupatti and viewed in that perspective, the writ petition filed by the writ petitioners is not maintainable.

18. The Learned Counsel for the Respondent Nos.3 and 4 relies on the decision in Karuppa Odayar v. V. Maruda Muthiriar and another reported in 2000 (1) MLJ 549, wherein, it is held as follows:

"The Deputy Commissioner, H.R & C.E has only jurisdiction to decide the question as to whether trustees hold or held office as hereditary trustees and Section 63(b) of the Act does not confer on him power to decide the question as to as who among the rival claimants are entitled to hold office hereditary trustee. In view of the limited scope provided under Section 63(b), naturally, the Deputy Commissioner has no jurisdiction to decide with regard to the interest dispute, among rival claimants for holding the office of the hereditary trustee of the temples. No doubt, the limited question as to whether the temples are administered by hereditary trustees or not, can be decided by the Commissioner."

Also, in the aforesaid decision, it is observed and held as follows:

"Therefore, in the present case, when the H.R & C.E authorities have proceeded to adjudicate upon the rival claims made by the plaintiffs and defendants to the office of hereditary trusteeship, they have definitely exceeded their jurisdiction.

Even apart from that, between the rival claim, there is already an adjudication in an earlier proceeding which has become final and the plaintiffs cannot contend against the decision made in the previous suit."

19. The Learned Counsel for the Respondent Nos.3 and 4, also, brings it to the notice the decision of this Court between S. Rangayya Goundar (died) and others v. Karuppa Naicker and Others, reported in 1971 (1) MLJ at page No. 358, wherein, it is held as follows:

"The question here is not as to whether the office of the trusteeship in the suit temple is hereditary or not. Both the plaintiffs and defendants claim that there

are entitled to be trustees of the temple and claim to have exercised their right hereditarily. Hence, the substantial dispute between the parties is as to which of them are the person entitled to be in management. The dispute centres round as to which of the rival claimants is entitled to celebrate the annual festival and such a dispute cannot fall within the ambit of Section 63 and as such the bar under Section 108 will not apply. Similarly the orders passed by the Deputy Commissioner, holding that the applications are not maintainable cannot also bar the suit under Section 70 of the Act."

20. This Court has heard the Learned Counsel for the Petitioner, the Learned Special Government Pleader for the First and Second Respondents and the Learned Counsel for the Third and Fourth Respondents and noticed their contentions.

21. It is to be noted that a scheme providing for management of a private temple in turn among the members of a family would only be an arrangement inter se .

22. In the instant case, the petitioners in their representation dated 11.07.2016, addressed to the First and Second respondents have inter alia prayed for passing of an order by acceding to the request in obtaining the charge of Hereditary Trustee from this year from the Respondent Nos.3 and 4 and to hand over to them.

23. Considering the fact that the turn of "Next Set of Trustees" is due only on 05.09.2016, the writ petition filed by the petitioners, in the considered view of this Court, is a premature and otiose one. Furthermore, if only the election of selection of trustees is not in accordance with the approved scheme of the temple, then only, the petitioners will get a cause of action to approach the Respondents 1 & 2 and to seek necessary relief in the eye of Law. Besides this, the petitioners do not belong to "KM. PR Vagai family" and in fact, the trusteeship of the temple is hereditary and temple administration is governed by a scheme framed in O.A.No.74 of 1978 dated 12.02.1979 by the Deputy Commissioner, Hindu Religious and Charitable Endowments Board, Madurai. In fact, the petitioners are to establish that they belong to "KM. PR Vagai" or they should seek modification of the scheme if they so desired/advised. Suffice it for this Court to make a pertinent mention that the First Respondent/Joint Commissioner, Hindu Religious and Charitable Endowments Board, Sivagangai District cannot determine as to whether a particular person is entitled to succeed to the Office of Trusteeship. Viewed in that perspective, the First Respondent cannot decide whether the petitioners are entitled to succeed the trusteeship. But the First Respondent, in Law, is to pass necessary orders recording the factum of trusteeship of concerned persons, only if they are elected and names are forwarded. Then, it is for the concerned parties to work out their remedies before the competent civil forum. Looking at from any angle, the writ petition filed by the writ petitioners s a n s merits.

24. In the result, the writ petition is dismissed, leaving the parties to bear their own costs.