



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 07.07.2023

PRONOUNCED ON : 12.07.2023

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.1088 of 2023

and

W.M.P.Nos.1074, 1075 and 7767 of 2023

S.Krishnasamy Bhattar

... Petitioner

VS.

1.The Joint Commissioner,
HR&CE Admin. Department,
11/20, A.K.Thangavelar Street
Kancheepuram.

2.The Commissioner
Hindu Religious & Charitable Endowments
(Administration) Department
Uthamar Gandhi Adigal Salai
Nungambakkam
Chennai – 600 034.

3.The Assistant Commissioner/Executive Officer
Arulmighu Devarajaswami Temple
Chinna Kancheepuram
Kancheepuram District – 631 501.

4.S.Srinivasa Ragavan Bhattar



5.Kannan Bhattar

6.C.N.Varadarajan

7.P.Senthil Kumar

8.P.Rajkumar

9.Sampath Kumara Bhattar

... Respondents

PRAYER: Writ Petition is filed Under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the impugned order Suo Motu Original Application No.01/2022 dated 09.12.2022 passed by the 1st Respondent herein, and quash the said impugned order.

For Petitioner : Mr.V.Raghavachari
(Senior Advocate)
for M/s.J.Shankarraman

For R1 and R2 : Mr.N.R.R.Arun Natarajan
Special Government Pleader (HR & CE)

For R3 : Mr.R.Bharanidharan
Standing Counsel (HR & CE)

For R4 : Mr.T.Mohan
(Senior Advocate)
for M/s.Abhinav Parthasarathy

For R6 : Mr.T.Ramesh
for M/s.K.Venkatesan

For R7 and R8 : Mr.S.Parthasarathy
(Senior Advocate)
for M/s.S.Ilamvaludhi

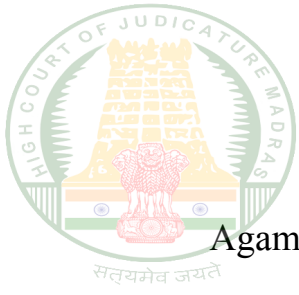


ORDER

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The writ petition has been filed seeking quashment of the order passed by the 1st respondent in Suo Motu Original Application No.1 of 2022, dated 09.12.2022.

2. The petitioner is an Archakar of Sri Devarajaswamy Temple, Kanchipuram. It is the case of the petitioner that the said Temple is following Pancharathra Agamam. Under Pancharathra Agamam, there are some Samhithas like Jayagya Samhithai/Padma Samhithai. In order to perform pooja as an Archaka in the said Temple proper training under the above said Samhithas is absolutely necessary. After training in the said Samhithas before performing poojas as Archaka, the person concerned must get Dheeksha (Initiation) from the elder Archaka, who has been performing Pooja as Archaka in the said temple. The persons, who got trained in particular Samhithas under Pancharathra Agamam and got initiated by an Archaka in particular temple cannot perform Pooja in another Temple where different Samhitha is followed. It is also stated that in Sri Ranganathaswami Temple at Srirangam, Paameshwara Samhithai under Pancharathra



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Agamam is being followed and therefore, persons trained and initiated under Paarameshwara Samhithai cannot perform pooja in Sri Devarajaswamy Temple, Kancheepuram.

3. It is the case of the petitioner that the 4th respondent herein got trained under Paarameshwara Samhithai and got initiation to perform as Archaka at Sri Ranganathaswami Temple, Srirangam. When 4th respondent is performing pooja as Chief Archaka of said temple, the 3rd respondent herein by order dated 04.12.2017 passed an order as if, the 4th respondent has got Archakaship at Sri Devarajaswamy Temple. It was specific case of the petitioner that 4th respondent was never appointed as Archaka of said Temple and he never performed duty as Archaka in Sri Devarajaswamy Temple. The 2nd respondent herein initiated suo motu proceedings in Sua Motu Revision No.4 of 2018/D2, dated 21.06.2018 to examine the legality of the order passed by 3rd respondent. The 4th respondent filed a writ petition in W.P.(MD).No.17507 of 2018, challenging the initiation of suo motu revision by the 2nd respondent. The said writ petition was allowed by quashing the suo motu revision and aggrieved by the same, the 3rd respondent herein filed an appeal in W.A.(MD).No.316 of 2020. Ultimately,



the said writ appeal was allowed directing the 2nd respondent to proceed

with suo motu revision and pass orders.

4. Pursuant to the direction issued by this Court in W.A.(MD).No.316 of 2020, the suo motu revision was proceeded with by the 2nd respondent and an order came to be passed on 30.11.2021 by setting aside the original order passed by the 3rd respondent in favour of the 4th respondent. In his order, the 2nd respondent directed initiation of suo motu proceedings under Section 63(e) of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as 'HR and CE Act' for brevity) to decide the following seven issues:-

“(i) Whether the said Srinivasa Raghavan was an Archakar of Arulmighu Devaraja Swamy Temple, Kancheepuram?

(ii) Whether he is entitled to perform archaka service as per the established custom and usage of the temple and Section 55 (2) of the TNHR&CE Act, 1959.

(iii) The right of the Archaka has developed from whom and how? From the person who held it originally devolves from father to his son hereditarily (or) by customary practice and



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usage.

(iv) *Whether, the archakamurai can be performed through substitute?*

(v) *Whether, Thiru. Srinivasa Raghavan is entitled to perform archaka service in the said temple by custome and what the established usage of the temple in this regards.*

(vi) *Whether Thiru Srinivasa Raghavan can do archaka service in both the temples?*

(vii) *Whether archaka service can be delegated to other persons?"*

5. As per the directions of the 2nd respondent, the 1st respondent herein initiated Suo Motu Proceedings under Section 63(e) of HR and CE Act in Suo Motu Original Application No.1 of 2022 and passed impugned order giving following directions:-

“The religious service called Pooja murais (performance of service to the Deities) in ancient temples like this one viz, Arulmigu Devarajaswamy Temple, Kanchipuram are governed by the custom and usages of the temples concern, which the higher Courts consistently considered are having



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worth as if a law in the matters deciding with the religious natured claims relating to those services. However, the said service holders are not completely out of scope of the provisions contain in Section 55 of the HR&CE Act 1959 as amended by Act 2/1971 and the Rules framed thereunder, same otherwise than the customary rights. Therefore apart from existing statutory provisions, it is essential to maintain a Code Book stating the traditional custom and usages to be observed in such temples, that are usually absent in such temples including this temple, which result in deciding any dispute arising in such matters to be done relaying on with the allied purpose solving evidences produced from the executive authorities of the temple concerned and on the statements made by the acquainted persons, alone.

(ii) In this case, suo motu initiated under Section 63 (e) of the HR&CE Act, in the matter of deciding the 2nd respondent's entitlement to perform archaka service in this temple, conducive and authoritative evidences as to the customary rights of this temple were placed by the parties as elaborated in the Annexure to this order and based on them his entitlement could be found affirmative.

(iii) However in view of the difficulties experienced in arriving decision, it is found, that it is most essential and necessary to main a Code Book for all custom and usages pertaining to various religious services performed in this



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temple, the 1st respondent directed to conduct investigative enquiry by issuing notice to all the Archakas, Sthanikas and other persons involved and connected with various religious service performed in this temple to ascertain definitely as a rule of the rights and capacity of the persons clothed with in all religious services performed in this temple has been decided by the Courts in several cases or has been in practice by long tradition, with reference to Act 2/1971 and Section 55 of the H.R.&C.E. Act 1959 and the Rules framed there under and to keep it as a consolidated permanent record as Code Book of all religious service to be performed in this temple as according to the traditional custom and usages of the temple and to submit the same for the approval. The 2nd respondent is also entitled to participate in the enquiry purported to be conducted by the 1st respondent.

(iv) Till such time, during the pendency of the enquiry and decision arrived at by the 1st Respondent as directed in the 2nd para, the 2nd Respondent is entitled to perform archakaship in this temple coupled with other benefits attached thereto. On arriving the decision and making it in a permanent Code Book as directed, the 1st respondent in the competency vested in him as the Executive Authority (Executive Trustee) of the temple, is to examine all the Archakas, Sthanikas and other custom based religious service in the temple including that of the 2nd respondent to find out whether they are holding the services as



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according to the qualification and previlages clothed in them by custom and usages of the temple and as , in other aspects, be in conformity of the provisions of the Hindu Religious and Charitable Endowments Act 1959 as amended by Act 2/1971 and the Rules framed thereunder and to take appropriate follow up action in the cases where there exist deviations in respect of them and thereby to make complete perfection in the maintenance of the internal administration of the temple to avoid any future disputes arising in respect of them.

(v) The above said process shall be completed within 3 months from the date of receipt of this order.”

6. Aggrieved by the said order passed by the 1st respondent, the petitioner has come up by way of this writ petition.

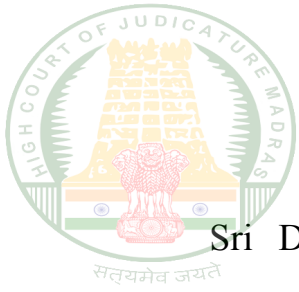
7. When the writ petition was taken up for hearing, the learned counsel for the 4th respondent raised the question of maintainability of the writ petition in view of availability of alternative remedy of appeal before the Commissioner under Section 69 of HR and CE Act. Therefore, the learned counsel for the petitioner and the learned counsel for the respondents were heard on the question of maintainability of writ petition.



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8. Heard the arguments of Mr.V.Raghavachari, learned Senior Counsel for the petitioner, Mr.N.R.R.Arun Natarajan, learned Special Government Pleader for respondents 1 and 2, Mr.R.Bharanidharan, learned Standing Counsel for 3rd respondent, Mr.T.Mohan, learned Senior Counsel for 4th respondent, Mr.T.Ramesh, learned counsel for 6th respondent and Mr.S.Parthasarathy, learned Senior Counsel for respondents 7 and 8.

9. Mr.V.Raghavachari, learned Senior Counsel appearing for the petitioner submitted that the order passed by the 1st respondent cannot be treated as a final order passed under suo motu proceedings initiated under Section 63(e) of HR and CE Act and the same is interim in nature and therefore, the petitioner is entitled to invoke the extraordinary jurisdiction of this Court. The learned Senior Counsel further submitted that the 2nd respondent in his suo motu revision framed as many as seven issues for consideration of the 1st respondent in the suo motu proceedings under Section 63(e) of HR and CE Act. But however, the 6th respondent has not considered each and every issues framed by the 2nd respondent. It is also the contention of the learned Senior Counsel that the order passed by the 1st respondent permitting the 4th respondent to perform the duties as Archaka in



Sri Devarajaswamy Temple without deciding his entitlement to hold Archakaship is totally illegal. The learned Senior Counsel further submitted that the 1st respondent is not justified in ordering further enquiry by the 3rd respondent and pending such enquiry passing an order permitting 4th respondent to perform Archakaship.

10. Mr.S.Parthasarathy, learned Senior Counsel appearing for respondents 7 and 8 while supporting the arguments of the learned Senior Counsel for the petitioner submitted that the 1st respondent has not following the principles of natural justice and afforded opportunity to the parties to lead evidence and hence, the impugned order is vitiated by violation of principles of natural justice. The learned Senior counsel further submitted that the order passed by the 1st respondent would amount to appointing the 4th respondent as Archaka of Sri Devarajaswamy Temple and under Section 55 of HR and CE Act, it is for the trustee of the Temple to appoint Office Holders or Servants (including Archaka) and hence, the 1st respondent has no such authority.



11. Mr.T.Ramesh, learned counsel appearing for the 6th respondent

also submitted that there is a violation of principles of natural justice by the 1st respondent and therefore, the writ petition is maintainable before this Court.

12. Per contra, Mr.T.Mohan, learned Senior Counsel appearing for the contesting 4th respondent submitted that when there is a statutory remedy of appeal available to the petitioner under Section 69 of HR and CE Act, filing of writ petition before this Court is not maintainable. The learned Senior Counsel further by taking this Court to the impugned order submitted impugned order is a well reasoned one and therefore, it cannot be branded as the one without proper enquiry.

13. The learned Senior Counsel by taking this Court to Paragraph Nos.5 to 8 of the impugned order submitted that the enquiry was conducted on different dates and written submission were filed by some of the respondents in the suo motu proceedings and inspite of grant of sufficient time other respondents in the suo motu proceedings did not file any counter statement. The learned Senior Counsel further submitted that 4th respondent



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is the one who got initiated and obtained Dheeksha by the petitioner himself before performing pooja in Sri Devarajaswamy Temple and hence, the petitioner cannot be heard to say that 4th respondent is not trained in Samhithas followed in the Temple and hence, he is not entitled to perform pooja. The learned Senior Counsel submitted that based on the materials available before her, the 1st respondent came to a conclusion that the 4th respondent is entitled to perform Archaka service in the Temple and permitted him to do so. The direction to the 3rd respondent is with regard to the other benefits attached with Archakaship and hence, the order passed by the 1st respondent cannot be termed as interim order.

14. A perusal of the documents filed in the typed-set of papers would suggest the impugned order has been passed by the 1st respondent in a suo motu original proceedings initiated under Section 63 (e) of HR and CE Act as directed by 2nd respondent. Under Section 63 (e) of HR and CE Act, the Joint Commissioner (1st respondent herein) has power to enquire into and decide disputes relating to the questions whether any person is entitled, by customs or otherwise, to any honour, emolument or perquisite in any religious institution and what the established usage of a religious institution



is in regard to any other matter.

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15. Section 69 of HR and CE Act provides appeal remedy to any person aggrieved by any order passed by Joint Commissioner under Chapter-V of the Act (i.e., Section 63 to 70).

16. Section 69 of HR and CE Act, reads as follows:-

“69. Appeal to the Commissioner.— (1) Any person aggrieved by any order passed by I[the Joint Commissioner or the Deputy Commissioner, as the case may be], under any of the foregoing sections of this chapter, may within sixty days from the date of the publication of the order or of the receipt thereof by him as the case may be, appeal to the Commissioner and the Commissioner may pass such order thereon as he thinks fit.

(2) Any order passed by I[the Joint Commissioner or the Deputy Commissioner, as the case may be], in respect of which no appeal has been preferred within the period specified in sub-section (1) may be revised by the Commissioner suo motu and the Commissioner may call for and examine the records of the proceedings as to satisfy himself as to the regularity of such proceedings or the correctness, legality or



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propriety of any decision or order passed by 1[the Joint Commissioner or the Deputy Commissioner, as the case may be]. Any such order passed by the Commissioner in respect of an order passed by 1[the Joint Commissioner or the Deputy Commissioner, as the case may be], shall be deemed to have been passed by the Commissioner on an appeal preferred to him under sub-section (1).

(3) Any order passed by the Commissioner on such appeal against which no suit lies to the Court under the next succeeding section or in which no suit has been instituted in the Court within the time specified in sub-section (1) of section 70 may be modified or cancelled by the Commissioner if the order has settled or modified a scheme for the administration of a religious institution or relates to any of the matters specified in section 66.”

17. A reading of above provision would make it clear that any person aggrieved by any order passed by 1st respondent in a proceedings initiated under Section 63 (e) of HR and CE Act, which falls under Chapter-V of the said Act is appealable to the Commissioner of HR and CE.



18. Section 70 of HR and CE Act reads as follows:-

“70. Suits and appeals.—(1) *Any party aggrieved by an order passed by the Commissioner—*

(i) under sub-section (1) or sub-section (2) of section 69 and relating to any of the matters specified in section 63, section 64 or section 67 ; or

(ii) under section 63, section 64 or section 67 read with sub-section (1)(a), 2 or (4)(a) of section 22 or under section 65 may, within ninety days from the date of the receipt of such order by him, institute a suit in the Court against such order, and the Court may modify or cancel such order, but it shall have no power to stay of order of the Commissioner pending the disposal of the suit.

(2) Any party aggrieved by a decree of the Court under sub-section (1), may, within ninety days from the date of the decree, appeal to the High Court.”

19. A reading of above provision would suggest that against the order passed by the Commissioner, in appeal, any party aggrieved is entitled to file a statutory suit before a regular Civil Court. Any person aggrieved by the Decree passed in such suit has got appeal remedy before this Court under Section 70(2) of HR and CE Act. Therefore, a person aggrieved by



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any order passed in a proceedings initiated under Section 63(e) is entitled to file an appeal before the Commissioner and any order passed by the Commissioner in such appeal can be challenged before the Regular Civil Court and decree passed by the Civil Court is liable to be appealed against before this Court. Therefore, the aggrieved person is not only having appeal remedy before the Statutory Authority, he is also entitled to file a suit before the regular Civil Court and move before this Court by way of regular appeal against the decree passed by the Civil Court. When effective alternative remedy is available to the aggrieved party before hierarchy of Courts including this Court, the petitioner is not entitled to by-pass the alternative remedy available under the Act and rush to this Court by invoking Article 226 of the Constitution of India.

20. One of the main contention made by the learned Senior Counsel for the petitioner is that the 1st respondent has issued directions for further enquiry by the 3rd respondent and hence, the impugned order is interim in nature.



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21. On the contrary, the learned Senior Counsel appearing for the 4th respondent submitted that the impugned order is a final order, the direction issued to the 3rd respondent is only with regard to the attendant benefits. In a considered view of this Court whether the impugned order is a final order or an interim order passed in a proceedings under Section 63 (e) of HR and CE Act, by virtue of expression “any order” used under Section 69 of HR and CE Act, even an interim order passed in a proceedings initiated under Section 63 (e) of HR and CE Act is appealable.

22. The Hon'ble Apex Court in *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others vs. Tuticorin Educational Society and others* reported in (2019) 9 SCC 538 = MANU/SC/1365/2019, held that when an alternative remedy is available before regular Civil Court such alternative remedy is near total bar for the High Court to entertain a revision under Article 227 of Constitution of India. The relevant observation of the Hon'ble Apex Court is as follows:-

“13. But courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before Civil Courts in terms of the provisions of



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Code of Civil procedure and (ii) cases where such alternative remedy is available under special enactments and/or statutory rules and the fora provided therein happen to be quasi-judicial authorities and tribunals. In respect of cases falling under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of Code of Civil Procedure, may have to be construed as a near total bar.”

23. As discussed earlier, the petitioner has got alternative remedy of filing an appeal before the Commissioner and any order passed by the Commissioner is liable to be challenged by way of suit before the regular Civil Court. Further, appeal to this Court is also provided. When petitioner has got three remedies one by way of appeal before the Statutory Authority, the other by way of regular Civil Suit and regular first appeal to this Court, which is governed by Code of Civil Procedure, the law laid down by the Hon'ble Apex Court in the case law referred above is squarely applicable to this Court. Even though the above said decision was rendered in the context of exercise of revisional jurisdiction under Article 227 of the Constitution of India, the same is applicable to exercise of power under Article 226 of the Constitution of India also. Hence, I hold the writ petition is not maintainable



when petitioner has got effective remedy before the Statutory Authority and also before the regular Civil Court.

24. The arguments of the learned counsel for either side culled out in previous paragraphs would indicate that the present case involves various disputed questions of fact like whether 4th respondent performed the duties of Archaka of Sri Devarajaswamy Temple?, whether he is trained in Samhithas followed in the said Temple? and whether he got initiated (Dheeksha) into the Archakaship of the Temple by competent Senior Archaka? etc. This Court sitting in writ jurisdiction cannot conveniently adjudicate the above said pure questions of fact and precisely for this reason, I am not inclined to entertain the writ petition and petitioner should avail the alternative remedy of appeal wherein these disputed question of facts can be conveniently adjudicated upon.

25. The learned Senior Counsel for the petitioner emphatically submitted that the 1st respondent failed to follow the proper procedure in enquiry and decide the various issues which had been framed by the 2nd respondent. Any illegality or irregularity in the enquiry conducted by the 1st



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respondent and also his failure to follow the directions of the 2nd respondent

etc., can also be agitated in an appeal filed before the 2nd respondent. Lastly,

the learned Senior Counsel for the petitioner submitted that in case this

Court comes to a conclusion that the petitioner shall avail alternative

remedy before the 2nd respondent, this Court may grant an interim order in

favour of the petitioner till the matter is decided by the 2nd respondent.

When petitioner has got alternative remedy of appeal before the 2nd

respondent, it is also open to him to file necessary application seeking

interim order. When the matter came up before this Court on 12.01.2023 an

interim injunction was granted restraining the 4th respondent from

performing Archakaship till the date of next hearing. The matter again came

up for hearings before this Court on 25.01.2023, 05.06.2023, 14.06.2023,

05.07.2023 and 07.07.2023. It appears the interim order granted by this

Court on 12.01.2023 was not extended subsequently.

26. Therefore, if any appeal is filed by the petitioner before the 2nd

respondent challenging the impugned order along with petition for interim

orders, such application for interim order shall be taken up for hearing

immediately by the 2nd respondent without any delay. The impugned order

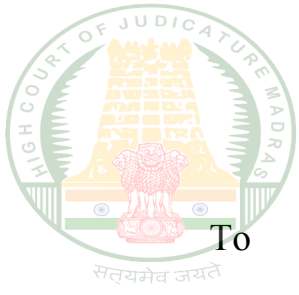


said to have been passed on 09.12.2022 and the annexure which contains the detailed order appear to have been signed on 10.01.2023 as seen from the typed-set of papers. The petitioner filed the writ petition on 10.01.2023. The petitioner is entitled to exclude the period from 10.01.2023 to the date of disposal of this writ petition while calculating the limitation for filing appeal before the 2nd respondent.

27. With these observations, the writ petition is dismissed with liberty to the petitioner to file a statutory appeal before the 2nd respondent. No costs. Consequently, the connected miscellaneous petitions are closed.

12.07.2023

Index : Yes
Speaking order: Yes
Neutral Citation: Yes
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To

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11/20, A.K.Thangavelar Street
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VERDICTUM.IN



W.P.No.1088 of 2023

S.SOUNTHAR, J.

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**Pre-delivery order made
in W.P.No.1088 of 2023**

12.07.2023