

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Special Original Jurisdiction)**

W.P(MD).No.23655 of 2023

1. S.Nachiappan,
S/o Subbiah,
1-13, SriNagar, Managiri,
Karaikudi Taluk.

2. Nachiappan,
S/o. Karanthamalai,
46, P.Karungulam village,
Thirupathur Taluk,
Sivagangai District.

3. Suresh,
S/o Periasamy,
1/296, P.Karungulam village,
Thirupathur Taluk,
Sivagangai District.

Vs.

....Petitioner ✓

1. The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Sivagangai.

2. The Assistant Commissioner,
Hindu Religious & Charitable Endowments Department,
Sivagangai.

3. The District Committee,
Through its Chairman,
Hindu Religious & Charitable Endowments Department,
Sivagangai.

4. The Exeutive Officer,
Arulmighu Koppudayanayagi Amman Thirukovil,
Karaikudi.

5. CT.Manivannan,
S/o Chidambaram,
P.Karungulam village,
Thirupathur Taluk, Sivagangai District. ✓

6. Tmt S.Vijayapriya,
W/o Senthilkumar,
P.Karungulam village,
Thirupathur Taluk,
Sivagangai District.

...Respondents

COUNTER AFFIDAVIT FILED BY 2nd RESPONDENT

I, V.Selvaraj S/o (Late) P.M.Velayuthan Hindu, aged about 59 years, working as the Assistant Commissioner, H.R. & C.E. Department, Sivagangai, having Office at Sivagangai do hereby solemnly affirm and sincerely stated as follows:-

1. I am well acquainted with the facts and circumstances of the case as per the records available. I am filing this counter for myself and on behalf of respondents 1 and 3.

2. I submit that the above Writ Petition is filed by the petitioner with a prayer "to issue a writ of Declaration or any other appropriate writ or order or direction in the nature of a writ of Declaration declaring that the impugned resolution passed by the 3rd respondent in Resolution No. 57 dated 31.7.2023 and the impugned proceedings passed by the 2nd respondent in Se.Mu.Na.Ka.No. 2469/2023/A5 dated 4.8.2023 are illegal and against the provisions of Hindu Religious and Charitable Endowments Act 1959"

3) I submit that averments contained in paras 2 to 8 of the affidavit of the petitioner are totally denied and put to proof by the petitioner himself.

4) I submit that Arulmighu Paranachiamman is one of a Hindu public temple situate in P.Karungulam village, Thirupathur Taluk in Sivagangai District. This temple was brought under the control of the Hindu Religious and Charitable Endowments Department in the year 1976. Notice, inviting applications from the eligible persons for appointment of Trustees has already been called for this temple in the year 1976 itself.

5) I submit that a departmental officer, namely Executive Officer, 4th respondent herein has been appointed as Fit Person to this temple in the year 2010 and the Fit Person took complete charges of the temple on 16.6.2011 from then person-in-management of the temple. The day to day affairs are carried out by the 4th respondent herein. Till date this temple is administered by the 4th respondent in the Fit Person capacity without any break.

6) I submit that there is no claim by the petitioner or any person that there is scheme of administration framed in force for the administration of this temple.

7) I submit that as this temple being a Hindu public temple having no hereditary trustee and having no scheme of administration for this temple, by the powers vested upon the Assistant Commissioners under Section 49 (1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act 1959 (Act XXII of 1959) in appointment of non-hereditary trustees to Hindu public temples, notice, inviting applications from the eligible persons for appointment of Trustees has been called for this temple vide this office No.1735 (113)/2023/A5 dated 05.06.2023 (with a mention of last date as 4.7.2023 for the submission of filled up application) and also uploaded in the online web site of hrce.tn.gov.in.

8) I submit that in accordance with procedures laid down in the provisions of the H.R.&C.E. Act, the said notice is affixed in the notice board of the temple and published on 13.6.2023.

9) I submit that five applications separately were received from the individuals on 3.7.2023. The received applications sent to field officer on 14.7.2023 for direct verification. The verified report received from the field officer on 29.7.2023. On receipt of verification report from the field officer the qualified applications are placed in agenda before Sivagangai District Committee meeting held on 31.7.2023.

10) I submit that the District Committee after scrutiny of eligibility of qualifications of the individual applications, in their Resolution No.57 dated 31.7.2023 selected and prepared panel of 5 persons. Out of panel of 5 persons 3 persons recommended for appointment by the competent authority and remaining 2 persons recommended for appointment by nomination method by the Government of Tamil Nadu.

11) I submit that on receipt of Resolution from the District Committee, appointment orders were passed on 4.8.2023 for recommended 3 persons as non-hereditary trustees for a period of two years in accordance with the provisions of the H.R.& C.E. Act, vide Pro.RC.No.2469/2023/A5 dated 4.8.2023. The said order was not issued to the respective individuals but kept in abeyance, as the Board of Trustees have to constituted only after the receipt of orders for the nominated members from the Government of Tamil Nadu. Simultaneously proposal for appointment of nominated members of trustees as recommended by the District Committee in their Resolution No.57 dated 31.7.2023 has been sent to Head Office on 7.8.2023 with a requisition for obtaining Government Orders for the appointment of nominated trustee members.

12) I submit that as no formal orders (dated 4.8.2023) were served/issued to the 3 individuals from this office so far. A copy of order dated 4.8.2023 was sent to Head Office for reference and for further action of getting Government Orders for the nominated members of the Board of Trustees.

13) I submit that as no G.O. is formally received till date the appointment of trustees to this temple is not given effect to.

14) I submit that at the time of inviting notice dated 5.6.2023 neither petitioner nor the villagers sent any applications participating in the trustees appointment.

15) I submit that no one is challenged the order dated 5.4.2010 of appointment of Fit Person to this temple. Hence, the order of appointment of Fit Person to this temple became absolute.

16) I submit that no one is challenged the order dated 11.3.1976 and 5.6.2023 regarding notice, inviting applications for appointment of non-hereditary trustees to this temple.

17) I submit that neither the petitioner nor his supporters sent applications for the appointment of non-hereditary trusteeship to this office within the stipulated given time.

18) I submit there is no any restriction or bar for the petitioner or his supporters for applying the trusteeship posts as per the notification issued from this office.

19) I submit that the averments contained in para 9 of the affidavit of the petitioner that there were notice, no calling of applications and no selection process are false. Notice, inviting applications from the eligible persons for appointment of Trustees has been called for this temple vide this office No.1735 (113)/2023/A5 dated 05.06.2023 (with a mention of last date as 4.7.2023 for the submission of filled up application) and also uploaded in the online web site of **hrce.tn.gov.in**. The said notice is affixed in the notice board of the temple and published on 13.6.2023. Five applications separately were received from the individuals on 3.7.2023. The received applications sent to field officer on 14.7.2023 for direct verification. The verified report received from the field officer on 29.7.2023. On receipt of verification report from the field officer the qualified applications are placed in agenda before Sivagangai District Committee meeting held on 31.7.2023. The District Committee after scrutiny of eligibility of qualifications of the individual applications, in their Resolution

No.57 dated 31.7.2023 selected and prepared panel of 5 persons. Out of panel of 5 persons 3 persons recommended for appointment by the competent authority and remaining 2 persons recommended for appointment by nomination method by the Government of Tamil Nadu. Hence, there is no violation of procedures as alleged by the petitioner.

20) I submit that the averments contained in para 10 of the affidavit of the petitioner that appointment of 5th respondent as Fit Person to this temple should also have been without any notice and without any enquiry are false. This temple was brought under the departmental control in the year 1976. Notice, inviting applications from the eligible persons for appointment of Trustees has already been called for this temple in the year 1976 it-self. A departmental officer, namely Executive Officer, 4th respondent herein has been appointed as Fit Person to this temple in the year 2010 and the Fit Person took complete charges of the temple on 16.6.2011 from then person-in-management of the temple who is resident and belonged to that village. Hence, there is no violation of procedures as alleged by the petitioner.

21) I submit that the averments contained in para 11 of the affidavit of the petitioner that the appointment of trustees to the temple which is in the administration of the villagers, without any notice or any enquiry or any selection process, is illegal and violative of the provisions of the Act are false. The temple is under the sole administration of the 5th respondent from 16.6 2011 to till date. As such contention that the administration is vested with the villagers is put to strict proof by the petitioner. As this temple already taken under the control of the department from the year 1976 and under the day to day administration of the 5th respondent herein, there is no need to conduct enquiry about the appointment of non-hereditary trustees to this temple. There is no provision in the said Act for conduct of enquiry of villagers for this purpose. District Committee Rules, 1997 was already published as per G.O. Ms.No.275 C.T.& R.E. Department dated 16.7.1997 for the functioning of

the District Committees and Rule No.8 specifically provided in the above Rules extracted as below:

Rule 8: Function of the District Committee:- (1) Preparation of panel of names of qualified persons for appointment of trustees:-

The District Committee shall, from the application received, prepare a panel of qualified persons not exceeding ten in number for each religious institution for being appointed as trustees.

22) I submit that till date there is no case is filed by the petitioner or his supporters for the formulation of scheme of administration to this temple as expressed by the petitioner and the same is incorporated in the stay order dated 27.9.2023 as, **the petitioner has filed a petition to formulate a scheme and the same is pending.**

23) I submit that there is no merit in the writ petition and the same deserves to be dismissed. I reserve my right to file additional counter if and when necessary.

For the foregoing submissions I submit that this Hon'ble High Court may be pleased to accept this counter, and prayed that this Hon'ble Court may kindly be pleased to vacate the stay and dismiss the Writ Petition with cost as devoid of merits and thus render justice.

2nd Respondent.

Solemnly affirmed at
Madurai on this the
..... day of October,
2023 and signed his name in
my presence.

Before Me

Subject to corrections

P. Subbaraj 21.11.23
P. SUBBARAJ
SPECIAL GOVERNMENT PLEADER
MADURAI BENCH OF MADRAS HIGH COURT
MADURAI-23