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WP.No.14663 of 2023

In the High Court of Judicature at Madras

Reserved on : 28.6.2023	Delivered on : 03.7.2023
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

W.P.No.14663 of 2023 &
WMP.Nos.14142 and 14150 of 2023

C.V.Chandrasekaran,
Hereditary Trustee,
Collah Singanna Chetty
Charities, Big Kanchipuram

...Petitioner

Vs

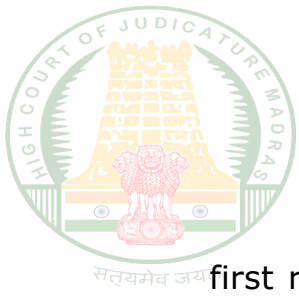
1.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Kanchipuram.

2.The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Kanchipuram.

3.The Executive Officer,
Sri Ekambaranahar Temple,
Kanchipuram-631502.

...Respondents

PETITION under Article 226 of The Constitution of India praying
for the issuance of a Writ of Certiorari to call for the records of the



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first respondent relating to the impugned order Se.Mu.Na.Ka.No.3300 of 2021 A1 dated --/4/2023 passed by the Joint Commissioner, HR and CE, Kanchipuram - the 1st respondent herein and quash the same

For Petitioner : Mr.S.Ravi, SC for
Mr.M.Ramamoorthy

For Respondents 1 & 2 : Mr.S.Yaswanth,
Additional Government Pleader

For Respondent-3 : Mr.R.Baranidharan
Standing Counsel

ORDER

The suspended hereditary trustee of Collah Singanna Chetty Charities (hereinafter called the trust) has filed this writ petition assailing the order passed by the first respondent through proceedings dated --/4/2023 (i) framing charges against the petitioner; (ii) suspending the petitioner pending enquiry under Section 53 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (for brevity, the Act); and (iii) appointing a fit person to administer the trust.



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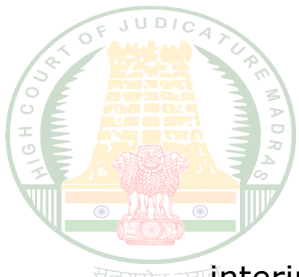
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2. Shorn of unnecessary facts, the grievance that has been expressed by the petitioner is as follows :

(i) The petitioner is the hereditary trustee of the trust from the year 1997 after the demise of his father. He was holding the complete administration and management of the trust and running the trust in line with the object, for which, it was established.

(ii) Earlier also, the petitioner was suspended from the office of the hereditary trustee by the first respondent through proceedings dated 13.10.2008 on the ground that the petitioner was attempting to sell the properties belonging to the trust. The petitioner challenged the earlier order of suspension dated 13.10.2008 before this Court in W.P. No.25511 of 2008. The said writ petition came to be dismissed by this Court by an order dated 05.11.2019.

(iii) Aggrieved by the said order of this Court dated 05.11.2019, the petitioner filed a writ appeal in W.A.No.185 of 2020. A Division Bench of this Court, by a judgment dated 22.9.2020, allowed the said writ appeal by setting aside the earlier order of suspension dated 13.10.2008 passed by the first respondent and further directed the first respondent to pass orders afresh in accordance with law within a period of three months. The Division Bench further continued the



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interim order that was granted in favour of the petitioner till the matter was finally decided by the first respondent.

(iv) After the Division Bench remanded the matter back to the file of the first respondent, the impugned proceedings came to be issued by framing 26 charges against the petitioner and an enquiry was initiated under Section 53 of the Act. Pending the enquiry, the petitioner was suspended under Section 53(4) of the Act and the fit person was appointed to discharge the duties and perform the functions of the petitioner. Aggrieved by the same, the present writ petition has been filed before this Court.

3. The first respondent has filed a counter affidavit, explained as to why the enquiry was initiated and reiterated the reasons given in the impugned proceedings. In the counter, the first respondent has stated that various acts of maladministration/mismanagement were identified and nearly 26 charges have been framed against the petitioner. The first respondent has further stated in the counter that the petitioner was alienating and encumbering the immovable properties belonging to the trust according to his whims and fancies and that the very object of the trust was defeated due to the act of



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the petitioner. It has also been stated in the counter that apart from that, the petitioner did not initiate proper action to safeguard the properties of the trust, that as a result, several properties were knocked away by third parties, who had encroached those lands and that under such circumstances, it was deemed fit and proper to suspend the petitioner pending enquiry and appoint the fit person to streamline the administration of the trust. It has been further stated in the counter that a detailed enquiry has to be conducted in this case and that there is absolutely no ground to interfere with the proceedings initiated by the first respondent. Accordingly, the first respondent sought for dismissal of the writ petition.

4. During the pendency of the writ petition, the petitioner has filed an additional affidavit, in which, the petitioner has come up with a stand that the trust is being run by a hereditary trustee as per the scheme framed by this Court in C.S.No.27 of 1944 dated 07.9.1944, that even if the first respondent wanted to suspend the petitioner under Section 53(4) of the Act pending the enquiry, the fit person cannot be appointed in the place of the petitioner and that it is only the person, who is next-in-line of succession, should have been



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allowed to function as the hereditary trustee. Accordingly, the petitioner has taken a stand that the appointment of the fit person through the impugned proceedings runs contrary to the scheme framed by this Court. The petitioner has once again reiterated the fact that the trust is a denomination and that therefore, the Tamil Nadu Hindu Religious and Charitable Endowments Department does not have jurisdiction to interfere with the administration of the trust.

5. The first respondent has filed an additional counter affidavit for the additional affidavit filed by the petitioner. The first respondent has taken a stand that the suspension was not made under Section 53(2) of the Act nor under Section 54(2) of the Act, that the interim suspension has been made only under Section 53(4) of the Act, that there is no occasion for accommodating a person, who is next-in-line of succession and that there is absolutely no illegality in appointing the fit person to administer the trust pending the enquiry against the petitioner.

6. When the matter came up for hearing on 19.6.2023, this Court passed the following order :

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"The subject matter of challenge in the present writ petition pertains to the proceedings of the 1st respondent suspending the petitioner from his position as a hereditary trustee of the Collah Singanna Chetty Charities and appointing a fit person to take over the management of the charities.

2.The pleadings were complete and hence, this Court took up the main writ petition itself for final hearing.

3.The learned Senior Counsel appearing on behalf of the petitioner submitted that the order of suspension was passed pending enquiry on the charges that were framed against the petitioner. Hence, the petitioner will have to give his reply for the charges framed against him and ultimately the proceedings initiated by the 1st respondent will be decided on its own merits and in accordance with law. The learned Senior Counsel submitted that the main ground of challenge in the present writ petition pertains to the appointment of a fit person in the place of the petitioner who was suspended pending enquiry. It was contended that the fit person ought not to have been appointed since the endowment is governed by a scheme framed by this Court in C.S.No.27 of 1944. Under the said scheme decree, the Office of trustee vested hereditarily on the grand father of the petitioner and from him to his male descendants in the agnatic line. Accordingly, the office of hereditary trustee was held by the father of the petitioner and thereafter by the petitioner. In view of the same, it was submitted that if the petitioner is going to be suspended from his



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position as a hereditary trustee, pending enquiry, it is only the next male decedent in line who must be handed over the charge of hereditary trustee and neither an executive officer nor a fit person can be appointed.

4.The learned Senior Counsel appearing on behalf of the petitioner fairly submitted that this ground was not sufficiently projected in the affidavit filed in support of the writ petition and it was elaborately pleaded only in the additional affidavit that was filed during the pendency of the writ petition. The learned Senior Counsel in order to substantiate his submission relied upon the Division Bench order of this Court in W.A.(MD).Nos.1288 to 1291 of 2015, dated 14.12.2015. The learned Senior Counsel specifically relied upon paragraphs 37 onwards. By pointing out to this judgment, the learned Senior Counsel contended that where the hereditary trustee, who falls next in line is available, there is no question of appointing a fit person.

5.The learned Additional Government Pleader appearing on behalf of the 1st and 2nd respondents submitted that the counter affidavit was filed by the 1st respondent by meeting the points raised in the affidavit filed in support of the writ petition. The issue that has now been projected by the learned Senior Counsel, has been brought in by means of an additional affidavit filed in the writ petition. Hence, the learned Additional Government Pleader seeks sometime to file a counter affidavit for the additional affidavit filed by the petitioner.



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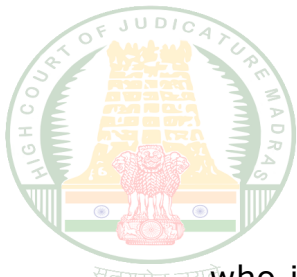
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6. In the considered view of this Court, the entire trajectory of the writ petition has undergone a change since originally the petitioner had raised all grounds questioning the order of suspension passed by the 1st respondent and whereas in the course of proceedings, it is now limited to the question of appointment of a fit person in the place of the petitioner during the period of his suspension. Therefore, the short issue that requires the consideration of this Court is as to whether the appointment of the fit person in the place of the petitioner who was suspended, can be sustained in view of the scheme decree passed in C.S.No.27 of 1944 and in view of the availability of male descendants of the petitioner and also by virtue of the Division Bench order which has been taken note supra.

7. Post the writ petition under the caption "for orders" on 28.06.2023."

7. It is pellucid from the said order dated 19.6.2023 that the petitioner has now confined the challenge to the proceedings of the first respondent only in so far as the appointment of the fit person is concerned.

8. The petitioner is focussing his grievance and is contending that even if there is jurisdiction for the first respondent to suspend the petitioner pending the enquiry, it is only the male descendant,



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who is next-in-line of succession, should have been given the charge as the hereditary trustee as per the scheme decree.

9. To substantiate the said contention, the learned Senior Counsel appearing on behalf of the petitioner has relied upon the following clause in Schedule A from the scheme decree :

".....

2. The office of the trusteeship of the suit charities shall vest hereditarily in the 1st defendant and his male descendants in the agnatic line, provided that

a. When there are more persons than one of the same degree of relationship, the senior most of them shall be the trustee for his life or till his resignation or removal by court.

b. Until the person in the same degree of succession are all exhausted, the office of the trusteeship shall not descend to the next degree."

10. I have heard Mr.S.Ravi, learned Senior Counsel appearing on behalf of Mr.M.Ramamoorthy, learned counsel on record for the petitioner, Mr.S.Yaswanth, learned Additional Government Pleader appearing for respondents 1 and 2 and Mr.R.Baranidharan, learned Standing Counsel appearing for the third respondent.

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11. The learned counsel on either side have confined their arguments only to the appointment of the fit person pending the enquiry under Section 53(4) of the Act qua the mandate provided under the scheme decree for appointment of hereditary trustee.

12. In support of his submissions, the learned Senior Counsel appearing on behalf of the petitioner cited the following judgments :

(i) of the Division Bench of this Court in the case of ***N.H.M.Pandian, Zamindar of Uthumalai Vs. Deputy Commissioner, HR & CE [reported in 1966 (1) MLJ 288]*** and specifically relied upon the following passages :

"Sub-Section (4), while providing for power of suspension pending an enquiry, gives also power to appoint a fit person to discharge the duties and perform the functions of the trustee. The Sub-Section does not speak of filling up of a vacancy unlike Section 54 (1) and (2). Nor does Sub-Section (1) prescribe any procedure to be followed in appointing a fit person, as for instance the Explanation to Sub-Section (3). The statutory provisions, as they stand now, do not require that, when appointing a fit person, the claims of the members of the trustee's family should be taken into account.

But having regard to the scheme of Section 54, the policy of the Legislature appears to be that while dealing with a vacancy in a hereditary office, the right



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of the next in line to succeed is recognised and it is because of this, even where a vacancy cannot be filled up immediately, in appointing a fit person, due regard should be had to the claims of the members of the family of the trustee. On principle, we fail to see any basic distinction between a suspension pending an enquiry and suspension following an enquiry by way of punishment. In either case, a vacancy arises. But Section 54 is confined only to cases of suspension and vacancy arising out of it, other than suspension pending an enquiry, and therefore, it is not possible to accept the contention of the appellant that, while a fit person is appointed under Section 53(4), the appellant can invoke at the same time the aid of the Explanation to Sub- Section (3) of Section 54.

Nevertheless, we are of the view that having regard to the nature of the office of hereditary trustee under the general law, the appellant is entitled to contend that, although Sub-Section (4) does not provide for it, it is necessary, while appointing a fit person, to have due regard to the claims of the members of the family of such trustee.

But that can make no difference to the validity of the order of the first respondent because as a matter of fact the 1st respondent considered the claims of the eldest son of the appellant, and, for reasons given by him, he thought that he was not suitable for the appointment. The power to appoint a fit person is a discretionary power and all that is required for a valid exercise of the power is that, in making an appointment, he must have due regard to the claims of



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the members of the family and once that requisite is satisfied for reasons stated by the concerned officer, this Court will not ordinarily interfere with the discretion exercised by him in that regard."

(ii) of the Apex Court in the case of ***Ratilal Panachand Gandhi Vs. State of Bombay [reported in AIR 1954 SC 388]*** and placed specific reliance on paragraph 17, which reads as hereunder :

"Section 37 has been objected to on the ground that an unrestricted right of entry in any religious premises might offend the sentiments of the followers of that religion; but the section has expressly provided that the officers making the entry shall give reasonable notice of their intended entry to the trustees and shall have due regard to the religious practice and usages of the trust. Objection has next been taken to Sections 44 and 47 of the Act. Section 44 lays down that the Charity Commissioner can be appointed to act as trustee of a public trust by a court of competent jurisdiction or by the author of the trust. If the author of the trust chooses to appoint the Charity Commissioner a trustee, no objection can possibly be taken to such action; but if the court is authorised to make such appointment, the provisions of this section in the general form as it stands appear to us to be open to serious objection. If we take for example the case of a religious institution like a Math at the head of which stands the Mathadhipati or spiritual superior. The Mathadhipati is a trustee according to the provisions of the Act and if the



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court is competent to appoint the Charity Commissioner as a superior of a Math,. the result would be disastrous and it would amount to a flagrant violation of the constitutional guarantee which religions institutions' have under the Constitution in regard to the management of its religious affairs. This is not a secular affair at all relating to the administration of the trust property. The very object of a Math is to maintain a competent line of religious teachers for propagating and strengthening the religious doctrines of a particular order or sect and as there could be no Math without a Mathadhipati as its spiritual head, the substitution of the Charity Commissioner for the superior would mean a destruction of the institution altogether. The evil is further aggravated by the provision of clause (4) of the section which says that the Charity Commissioner shall be the sole trustee and it shall not be lawful to appoint him as a trustee along with other persons. In our opinion, the provision of Section 44 relating to the appointment of the Charity Commissioner as a trustee of any public trust by the court without any reservation in regard to religious institutions like temples and Maths is unconstitutional and must be held to be void. The very same objections will apply to the provisions of clauses (3) to (6) of Section 47. The court can certainly be empowered to appoint a trustee to fill up a vacancy caused by any of the reasons mentioned in Section 47(1), and it is quite a salutary principle that in making the appointment the court should have regard to matters specified in clause (4) of Section 47; but the provision of clause (3) to the extent that it authorises



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the court to appoint the Charity Commissioner as the trustee - and who according to the provisions of clause (5) is to be the sole trustee - cannot be regarded as valid in regard to religious institutions of the type we have just indicated. To allow the Charity Commissioner to function as the Shebait of a temple or the superior of a Math would certainly amount to interference with the religious affairs of this institution. We hold accordingly that the provisions of clauses (3) to (6) of Section 47 to the extent that they relate to the appointment of the Charity Commissioner as a trustee of a religious trust like temple and Math are invalid. If these provisions of Section 47 are eliminated, no objection can be taken to the provision of Section 48 as it stands. This section will in that event be confined only to cases where the Charity Commissioner has been appointed a trustee by the author of the trust himself and the administrative charges provided by this section can certainly be levied on the trust." and

(iii) of the Division Bench of the Madurai Bench of this Court in the case of **C.Andiappan & Others Vs. Joint Commissioner, TN HR & CE Board & Others [W.A.(MD) Nos.1288 to 1291 of 2015 dated 14.12.2015]** and a specific reliance was placed on the following passages :

"37. The next contention of the learned senior counsel for the appellants is that even if the appellants deserved to be suspended, either pending enquiry into



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charges or as a measure of penalty, the same would not entitle the appropriate authority to appoint a stranger as a fit person. Even the appointment of an Executive Officer as a fit person would tantamount to the appointment of a stranger to the specific endowment. In this connection, the learned senior counsel places reliance upon the following decisions:

(i) P.K.Soundararaja Mudaliar v. Deputy Commissioner, H.R. & C.E. {1964 (1) MLJ 236};

(ii) N.H.M.Pandian v. Deputy Commissioner, H.R. & C.E. {1966 (1) MLJ 288};

(iii) Rajambal Ammal v. The Deputy Commissioner, H.R. & C.E. (Admn.) Dept. {1993 (2) MLJ 31}; and

(iv) G.Shanmugam v. The Commissioner, HR & CE (Admn.) Department, Chennai - [2010] 0 Supreme (Mad) 702.

38. As in the present case, the challenge in P.K.Soundararaja Mudaliar was to an order by which the hereditary trustee was placed under suspension and a fit person was appointed. K.Srinivasan,J (as he then was) quashed even the order of suspension on the ground that the charges were framed in January, 1961 and in the course of the enquiry, the order of suspension and appointment of a fit person was passed much later, in July, 1961. Therefore, the learned Judge felt that there was no reason as to why after six months of the framing of the charges, a suspension pending enquiry should be passed. It is while quashing the order of suspension that the learned Judge held that whenever a permanent or temporary vacancy arose,



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due to the suspension of a hereditary trustee, the same cannot be filled-up by strangers but had to be filled-up only by a person next in the line of succession.

39. In N.H.M.Pandian, the hereditary trustee contended that the appointment of a fit person in exercise of the power conferred by Section 54(2) was illegal, in respect of cases covered by Section 53(4). But the Division Bench of this Court held that the power to appoint fit person under Section 53(4) was a special provision covering a specific contingency and that therefore the general power of appointment of a fit person available under Section 54(2) stood excluded by Section 53(4). Nevertheless, on the question as to who should be appointed, the Division Bench made it clear that having regard to the nature of the office of hereditary trusteeship under the general law, the appropriate authority is bound to have due regard to the claims of members of the family of the trustee. However, in the case before the Division Bench, the claim of the eldest son of the hereditary trustee who was placed under suspension was considered and rejected by the appropriate authority and hence the Division Bench chose in N.M.H.Pandian not to interfere with the decision of the appropriate authority.

40. In Rajambal Ammal, a learned single Judge of this Court was concerned with a case where there was two hereditary trustees. Only one of them was placed under suspension. Therefore, the learned Judge held that when one of the hereditary trustee was available in flesh and blood, without having been removed or facing any disciplinary action, it was not



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proper for the appropriate authority to appoint a fit person. Therefore, the said decision is of no assistance to the learned senior counsel for the appellants.

41. Interestingly, the decision of the Division Bench of this Court in G.Shanmugam was virtually a hereditary litigation for the office to hereditary trusteeship. This decision also arose out of the appointment of a fit person to the very same temple Badrakaliamman Temple in Kollampalayam Road, Erode Town, which was the subject matter of dispute in Rajambal Ammal. While in Rajambal Ammal, the validity of appointment of a fit person in the absence of any proceedings against a co-trustee by name Rajambal Ammal was in question, what was in question in G.Shanmugam was whether the son of Kuppurathinammal against whom disciplinary proceedings were initiated was entitled to be appointed upon the suspension of his mother. The other children of the suspended trustee Kuppurathinammal gave letters of consent to the appointment of the eldest son G.Shanmugam. But, they withdrew the consent letters after the death of Kuppurathinammal. The question that arose before the Division Bench was whether such withdrawal of consent could be accepted. The Division Bench held that the situation that arose after the death of Kuppurathinammal was completely different and that after the death of Kuppurathinammal, the line of succession opened.

42. From all the above decisions, it appears that this Court has consistently taken the view that the suspension of a hereditary trustee is not a bar for



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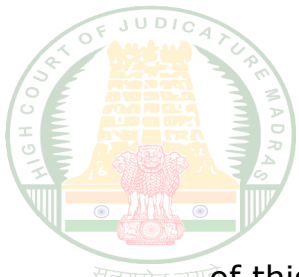


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considering the claims of persons next in the line of succession to the office of trusteeship. The logic behind the aforesaid view is perhaps our traditional belief that sinners and saints need not necessarily beget sinners and saints, respectively. Hindu mythology has it that most of demons (asuras) were born only to great Rishis. The converse is also proved by the case of Prahlad born to Hiranyakasipu.

43. Moreover, at least in respect of appointment of fit persons to endowments of this nature, the contention of the appellants cannot be rejected so easily. This can be understood better by having a look at the nature of the endowment in question."

13. The learned Senior Counsel appearing on behalf of the petitioner, by placing reliance upon the above judgments, submitted that where a hereditary trustee is suspended pending the enquiry under Section 53 of the Act, the claims made by persons, who are next in the line of succession to the office of the trusteeship must be first considered and only when they are found to be unfit, as a last resort, the fit person can be appointed to administer the trust. According to the learned Senior Counsel, as a consequence, since the first respondent did not consider the appointment of the male descendant next in the line of succession to the office of trusteeship, the appointment of the fit person is illegal and it requires interference



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of this Court.

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14. Per contra, the learned Additional Government Pleader appearing for respondents 1 and 2 relied upon the order of a learned Single Judge of this Court in the case of ***M.C.Karthikeyan Vs. Joint Commissioner, HR & CE [reported in 1998 (1) LW 148]*** and placed specific reliance on the following passages :

"6. Mr.W.C.Thiruvengadam, learned counsel appearing for the 2nd respondent contends that the claim of the petitioner is totally misconceived and cannot be sustained. Further, learned counsel for the 2nd respondent points out that if the son of the hereditary trustee-father is allowed to hold the office, that would be detrimental to the interest of the institution, besides it is not the scope and purport of the statutory provisions in the Act.

7. Identical claim had been considered by S. Ramalingam,J in N.K.Manikanda Mudaliar v. The Deputy Commissioner, H.R. & C.E. Department, Salem (W.P.No. 12810 of 1990). In the said case, the learned Judge has considered the scope of Sections 53 and 54 of the Act and has held thus:

'4. On a consideration of these rival submissions, it is seen that while Section 53(2) deals with the power of the appropriate authority to impose punishment on a trustee any order of suspension as a substantive punishment is imposed, it will disable the hereditary



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trustee to discharge his duties by reason of that disability by way of suspension and hence there is a duty cast upon the prescribed authority to consider the claims of the next line of succession to succeed to the office of that disabled hereditary trustee to perform the functions of the trustee until his disability ceases.

5. In a case where pending enquiry into certain charges if a trustee is placed under suspension, then, that ad interim suspension is governed by the provisions of Section 53(4) of the Act which enables the competent authority to appoint a fit person to discharge the duties of that trustee who is under ad interim suspension.

6. Here is a case where the petitioner who was a hereditary trustee was placed under ad interim suspension pending enquiry into certain charges and therefore Section 53(4) alone would be attracted and not Section 53(2) of the Act. Under Section 53(4) of the Act, a fit person could be appointed pending enquiry into the charges framed against the hereditary trustee and the claim of the next in line of succession need not be considered at that stage. Hence the writ petition is dismissed.'

7. Independent of the said decision of Ramalingam,J, I had also occasion to consider an identical question in W.P.No.4893 of 1997 as well as W.P.No.10951 of 1995 and I had also taken the same view as that of Ramalingam,J.

In W.P.No.10951 of 1995, this Court has held thus:

'6. Mr.K.Alagiriswami, learned senior counsel



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placed reliance on the observation of the Division Bench which passage has already been set out above and contends that when the petitioner has made a request, it is incumbent on the part of the 1st respondent to consider the request and this should not be ignored. The law laid down by the Division Bench in W.A.No.277 of 1962, K.Srinivasan,J. in 1964 (1) MLJ 236 and the Division Bench in 1966 (1) M.L.J. 288, made it clear that the petitioner is not entitled to be appointed as a fit person when the 3rd respondent has been placed under suspension under Sub-Section (4) of Section 53. The statutory provisions of Sub-Section (4) of Section 53 provides for appointment of a fit person. Section 54 which provides for filling up of vacancies in the office of hereditary trustee, when a vacancy arises either permanent or temporary. This provision cannot be read into Sub-Section (4) of Section 53 not a right is conferred on the petitioner for being appointed as a fit person. The Division Bench in (1966) 1 M.L.J. 288 has observed that although Sub-Section (4) does not provide for it, the claims of the members of the family has to be considered and on the facts of that case, the Division Bench had held so. The learned Special Government Pleader pointed out that the writ petitioner had joined hands with the 3rd respondent in alienating the properties and assets of the temple and as such, he cannot be considered suitable for being appointed as a fit person. In the order passed by the 1st respondent, no such reasoning have been assigned and in fact, the writ petitioner's request had not been considered.'

8. When Sub-Section (4) of Section 53 provides



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for appointment of a fit person, as already held above, the provisions of Section 54(1) and (2) cannot be relied upon nor it could be pressed into service. In my considered view, as no vacancy had arisen, it is not for the 1st respondent to pass order under Sub-Section (4) or (2) of Section 54. As of present the writ petitioner has no right at all. When it is found that the statute provides that a particular thing has to be done in a particular manner it has to be done in that manner and no other manner is permissible. In this case, Section 53 provides for filling up vacancy either temporary or permanent in the office of the Hereditary Trustee and such a contingency provided for in Section 53 cannot be read into Section 54. It has been held in AIR 1996 SC 529 Martin Burn Limited Vs. Calcutta Corporation as follows:

'A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. A statute must of course be given effect.

When the statute does not enable the petitioner in terms of Section 53(4) for being appointed as a fit person in contra to distinction to Section 54 of the Act. In my considered view, the request of the petitioner need not be considered as there is no vacancy as 3rd respondent had been merely placed under suspension under section Sub-Section (4) of Section 53'."

15. The learned Additional Government Pleader appearing for



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respondents 1 and 2, by placing reliance upon the above order of the learned Single Judge of this Court, has submitted that it is not necessary that the claims of the members of the family should be considered in every case before appointment of the fit person and that it will always depend upon the facts and circumstances of each case and the seriousness of the charges framed in a given case. He has further submitted that on the facts of the present case, considering the nature of charges framed against the petitioner and considering the fact that the further chances of the properties belonging to the trust being alienated, it was thought fit not to appoint the son of the petitioner as the trustee in the place of the petitioner during the period of suspension. In view of the same, he has concluded his arguments by submitting that on the facts of the present case, the son of the petitioner was found ineligible to be appointed as a trustee and as a result, the fit person was appointed to administer the trust.

16. I have carefully considered the submissions made on either side and perused the materials available on record.

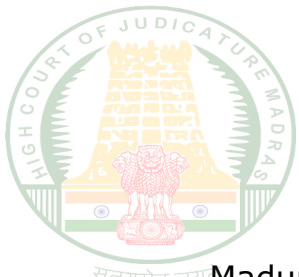


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17. It is quite apparent from the materials available placed before this Court that the scheme decree specifically provides for the office of the trustee vesting hereditarily on the male descendants in the agnatic line. The judgments that have been relied upon supra and have been taken note of by this Court categorically held that there is no distinction between a suspension pending an enquiry and a suspension following an enquiry by way of punishment. In either case, a vacancy arises and the Authority concerned has to necessarily first consider the appointment of the male descendant under the scheme decree. Only if the male descendant is found to be unfit for reasons to be recorded in writing, the fit person can be appointed to administer the trust.

18. The Division Bench of the Madurai Bench of this Court in ***C.Andiappan's case***, in no uncertain terms, held that whenever a permanent or temporary vacancy arises due to suspension of a hereditary trustee, the same cannot be filled up by strangers, but it had to be filled up only by a person next in the line of succession, unless he is found to be unfit. This is more so in cases where the trust is in the nature of an endowment. The Division Bench of the



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Madurai Bench of this Court further held that the son of a sinner need not necessarily be a sinner and that he can turn out to be a saint.

19. In the instant case, the trust in question is more in the nature of an endowment and it has to maintain the properties to carry out the objectives of the trust. A careful reading of the charges framed against the petitioner shows that the properties belonging to the trust have been allegedly alienated without getting any permission, that, in addition, some of the properties were allowed to be taken away by third parties, who had encroached upon those properties, that a huge financial loss has been caused to the trust and that the objectives of the trust were not properly performed.

20. The first respondent, before taking a decision to appoint the fit person, ought to have first considered the appointment of the male descendant to hold the post of trusteeship as per the scheme decree. Upon such consideration, if the male descendant is found to be unfit and hence, the first respondent decides to appoint the fit person, the same should have been mentioned in the impugned proceedings. To arrive at a conclusion that the male descendant is unfit to hold the



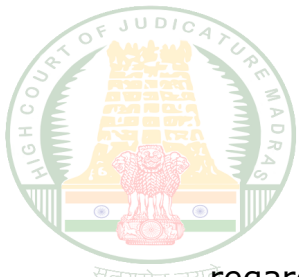
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post of trusteeship is not a subjective satisfaction and it has to be considered objectively by assigning reasons. This is in view of the fact that the male descendant, as a matter of right, can hold the post of trusteeship and if it is sought to be denied, the same must be supported by reasons and it should be stated in the proceedings. Only then, the Court can satisfy itself as to whether the decision arrived at by the Authority concerned is reasonable.

21. In the instant case, there is nothing available in the impugned proceedings to show that the first respondent had first considered the appointment of the male descendant to hold the post of trusteeship, found him to be unfit for any reasons and thereafter appointed the fit person to administer the trust. The impugned proceedings of the first respondent can be tested only from what is stated in the order and not from what is attempted to be improved during the course of proceedings.

22. Useful reference can be made to the judgment of the Apex Court in the case of ***Mohinder Singh Gill Vs. Chief Election Commissioner, New Delhi [reported in AIR 1978 SC 851]*** in that



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regard.
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23. In the light of the above discussions, the impugned proceedings of the first respondent dated --/4/2023 is liable to be quashed only to the limited extent of appointing the fit person without considering the right of the male descendant to hold the post of trusteeship during the period of suspension of the petitioner.

24. Accordingly, the writ petition is partly allowed in the following terms :

(a) The order placing the petitioner under suspension and framing the charges against him is upheld and the Competent Authority namely the first respondent is directed to proceed further with the enquiry into the charges and pass final orders within a period of three months from the date of receipt of a copy of this order;

(b) The order of appointment of the fit person is set aside and the first respondent is directed to independently consider the right of the next male descendant to hold the post of trusteeship during the period of suspension of



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the petitioner. A decision in this regard shall be taken within a period of two weeks from the date of receipt of a copy of this order.

(c) The male descendant, who is next in the line of succession, shall be permitted to temporarily administer the trust till a decision is taken by the first respondent as directed in clause (b) and it is made very clear that none of the properties belonging to the trust shall be dealt with or encumbered till the completion of the enquiry against the petitioner. The income derived by the trust shall be properly accounted and it shall be used only for fulfilling the objectives of the trust.

No costs. Consequently, the connected WMPs are closed.

03.7.2023

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes

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

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2.The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Kanchipuram.

3.The Executive Officer,
Sri Ekambaranahar Temple,
Kanchipuram-631502.

RS



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N.ANAND VENKATESH,J

RS

W.P.No.14663 of 2023 &
WMP.Nos.14142 & 14150
of 2023

03.7.2023

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