



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.08.2023**

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
AND
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRVARTHY**

**W.A(MD)NO.1323 OF 2023
and
C.M.P(MD)No.9983 of 2023**

The Joint Commissioner(HR and CE),
Madurai. :Appellant/Third Respondent

.VS.

1.KR.Meenakshi Sundaram. :Ist Respondent/Writ Petitioner

2.The District Registrar,
Madurai South,
Madurai District.

3.The Sub-Registrar,
Thirupparakundram,
Madurai. : Respondents 2 and 3/
Respondents 1 and 2

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent
praying this Court to set aside the order passed by this Court in
W.P(MD)No.249 of 2023, dated 28.2.2023.



For Appellant

:Mr.Veerakathiravan
Addl.Advocate General
assisted by
Mr.S.P.Maharajan
Special .Govt.Pleader

For Respondent-1

:Mr.T.Mohan
Senior Counsel
for Mr.RM.Arun Swaminathan

JUDGMENT

[Judgment of the Court was made by **S.S.SUNDAR,J.**]

This Writ Appeal is directed against the order of the learned Single Judge in allowing the Writ Petition filed by the first respondent herein in W.P(MD)No.249 of 2023.

2.Mr.T.Mohan, learned Senior Counsel representing Mr.RM.Arun Swaminathan, learned counsel on record, takes notice for the first respondent. By consent of both parties, the Writ Appeal is taken up for final disposal at the admission stage itself.

3.The brief facts that are necessary for the disposal of this Writ Appeal are as follows:

The first respondent herein claims title to the property in S.No.32/2, measuring an extent of 29 cents of vacant land in Ward No.2, Thirupparankundram Registration District. It is the case of the



first respondent that the property belongs to the first respondent's ancestor. The title to the property as well as to the temple, was decided in a suit in O.S.No.183 of 1968 before the II Additional Sub Court, Madurai. It is to be noted that the suit filed by the predecessor-in-interest of the first respondent was dismissed and the first appeal had also ended as against the first respondent's predecessor-in-interest. However, this Court, in Second Appeal in S.A.No.1783 of 1970, by judgment, dated 9.3.1977, allowed the Second Appeal upholding the title of the first respondent. It is declared that the first respondent is the owner of the suit property. The temple was also held to be a private temple of the first respondent's predecessor-in-interest. However, there was an observation made by this Court in the Second Appeal at the time of disposal of the Second Appeal that steps can be taken by the HR and CE Board if the temple later became a public temple. Based on the observation made by this Court while disposal of the Second Appeal, it appears that the Deputy Commissioner has declared the temple as a public temple, in exercise of his power under Section 63(a) of the HR and CE Act and on appeal in A.P.NO.89 of 2010, the Commissioner also confirmed the order declaring the temple as a public temple. Aggrieved by the findings of the Joint Commissioner and the Commissioner of HR and CE Department, a statutory suit



came to be filed by the first respondent's predecessor-in-interest in O.S.No.919 of 2012 before the Sub-Court, Thirumangalam. The said suit was decreed by specifically holding that the temple is a private temple. While holding that the temple is a private temple and setting aside the order passed by the Joint Commissioner as well as the Commissioner of HR and CE Department, the learned Subordinate Judge had made an observation in the following lines:

“இறுதியில் முதலேற்பு வழக்கு 919/12 மற்றும் முதலேற்பு வழக்கு 1212/12 வழக்கில் வாதி கோரியுள்ள பரிகாரங்கள் வாதிக்கு கிடைக்கத்தக்கதென்றும் தாவாகோவிலை பொதுக்கோவிலாக அறிவித்து பிராதிற் குறிப்பிட்டுள்ள OA.50/80 மனுவில் 2ம் பிரதிவாதி 12.7.10ம் தேதி பிறப்பித்துள்ள உத்தரவும் அதை எதிர்த்து தாக்கல் செய்யப்பட்டுள்ள மேல்முறையீடு AP.89/10 ல் 196.12 தேதி 1ம் பிரதிவாதி பிறப்பித்துள்ள உத்தரவும் செல்லத்தக்கதல்ல என ரத்து செய்யப்படுகிறது. தாவா சம்பந்தப்பட்ட கோவில் வாதிகளுக்கு சொந்தமான தனியார் கோவில் என விளம்புகை செய்யப்படுகிறது. பிராதிற் குறிப்பிட்டுள்ள வீரபத்திர சுவாமி கோவிலை பராமரிக்க பொறுப்பு நபராக 3ம் பிரதிவாதியை நியமித்து 3.3.2003ம் தேதிய செ.மு.ந.க.நம்பர்.503.01 ஏ-3 நடவடிக்கை மூலம் 3ம் பிரதிவாதி பிறப்பித்த உத்தரவும் அது சம்பந்தமாக மேல்முறையீட்டில் 19.6.2012 ம் தேதி ஆர்.பி.116-10 ல் 1ம் பிரதிவாதி பிறப்பித்த உத்தரவும் ரத்து செய்யப்படுகிறது. தாவா சம்பந்தப்பட்ட கோவிலை வாதி சட்ட விரோதமாக பராதீனம் செய்துள்ளதாக கூறப்படுவது குறித்தும் சட்டவிரோதமாக பராதீனம் செய்யவிருப்பதாக கூறப்படுவது குறித்தும் தக்க சட்ட நடவடிக்கைகளை இந்து சமய அறநிலைய ஆட்சித்துறை எடுத்துக்கொள்ளலாம் என்றும் இவ்வழக்கின் சங்கதி மற்றும் குழ்நிலையை கருத்தில் கொண்டு அவரவர் செலவுதொகையை அவரவர்களே ஏற்றுக்கொள்ள வேண்டும் என்றும் தீர்ப்பளிக்கப்படுகிறது.□



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4.The observations that the Department could initiate action challenging alienation are quite contrary to the declaration regarding the status of the temple as a private temple. Therefore, an application was filed by the plaintiffs in the suit, in I.A.NO.233 of 2017 in O.S.No.919 of 2012 to expunge the adverse remarks which are contrary to the decision on the issue raised and decided by the Sub-Court in O.S.No.919 of 2012. This application was dismissed by the learned Subordinate Judge. Aggrieved by the same, the plaintiffs/predecessors-in-interest of the first respondent, filed a revision in C.R.P(MD)No.1285 of 2021. This Court, after recording the finding that the Deputy Commissioner has earlier declared the temple as a private temple and belonging to the family of the plaintiffs, held that the HR and CE Department has no locus-standi to take action against the plaintiffs. Therefore the order passed by the learned Subordinate Judge, dismissing the application filed by the plaintiffs was set aside and the revision petition was allowed by this Court. The observation of the learned Sub-ordinate Judge contrary to the declaration was also removed. The learned Additional Advocate General submitted that a Review Application is pending before this Court to review the judgment.



5.It is in the meanwhile, the first respondent presented the document for registration in relation to the property which was declared as the property of the first respondent in the first suit. The document was kept pending and returned to the first respondent on the ground that the property is shown as the property of the temple and the property cannot be subject to valuation indicating the property as property of the temple. The order of the Sub-Registrar was challenged before this Court in W.P(MD)No.249 of 2023 and the learned Single Judge of this Court, after elaborately considering the merits of the matter, allowed the said Writ Petition with a direction to the Petitioner to represent the document for registration and the second respondent was directed to register the document, subject to the other formalities. Liberty was also given to the Registration Department for correction or revision in the guideline register. Aggrieved by the same, the above Writ Appeal is filed by the Joint Commissioner of HR and CE Department, who is the respondent in the Writ Petition.

6.This Court is unable to find any reason to interfere with the order of the learned Single Judge. This Court is of the view that the HR and CE Department is trying to relitigate the issues which had already been settled long back in the civil proceedings. First of all,



the title to the property is declared in favour of the predecessors-in-interest of the first respondent even in the judgment made in S.A.No.1783 of 1974 in the year 1977 itself. Based upon the observation made in the said judgment which was dated 9.3.1977, further proceedings were initiated to change the character of the temple as a public temple under Section 63(a) of the HR and CE Act. Though the order passed by the Joint Commissioner/Deputy Commissioner of HR and CE Department was confirmed by the Commissioner by declaring the temple as a public temple, it is admitted that the order of the Joint Commissioner and Commissioner was set aside and the temple was declared as a private temple of the first respondent's family in the statutory suit in O.S.No.919 of 2012. As pointed out earlier, the observations of the learned Subordinate Judge in the suit holding that the HR and CE Department can have control over the affairs of the temple was also deleted and held in favour of the first respondent in C.R.P(MD)No.1285 of 2021. In such circumstances, quite contrary to the findings of the Civil Court in the first round and in the second round of litigation, the appellant is now trying to establish the right over the temple, it may be for some extraneous reasons.

7.This Court, having regard to the admitted facts, is unable to



sustain any of the arguments made by the learned Additional Advocate General appearing for the appellant. The learned Additional Advocate General relying upon the order passed by the HR and CE Board to appoint a fit person in respect of the temple, submit that the power of the Department to bring the temple under their control in relation to the affairs of the temple has been admitted by the first respondent. This submission is not supported by any relevant material. Even assuming that an order is passed, the learned Senior Counsel appearing for the first respondent states that the order was acted upon and the temple is under the management of the first respondent all along. It is further stated that every attempt is made by the appellant to interfere with the first respondent's right is successfully defended and that the respondents's title is declared by the decree of the Civil Court. The contention of the appellant that the temple will come under the control of the appellant, cannot be accepted. This Court finds that the claim of the appellant is nothing but a re-litigation. This Court and the Honourable Supreme Court repeatedly held that the parties cannot be allowed to re-agitate the issues which had already been settled and finality is reached. It is nothing but an abuse of process of law to come forward with contentions ignoring the legal implications following the Civil Court's decree. Therefore the Writ



Appeal is liable to be dismissed.

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8. Accordingly, the Writ Appeal stands dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.

[S.S.S.R.,J.] [D.B.C.,J.]
10.08.2023

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Internet:Yes/No
NCC:Yes/No
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