



W.P.(MD).No.18622 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 01.09.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**W.P.(MD).No.18622 of 2023
and
W.M.P.(MD).No.15468 of 2023**

Gopinath

... Petitioner

Vs.

1.The Joint Commissioner,
HR and CE Department,
Dindigul.

2.T.Ramesh

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned proceedings dated 21.07.2023 in O.A.No.44 of 2022 on the file of the first respondent and quash the same.

For Petitioner : Mr.V.R.Shanmuganathan

For R-1 : Mr.S.Kameswaran,
Government Advocate.

For R-2 : Mr.V.Chandrasekaran



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ORDER

This Writ Petition is filed to quash the order dated 21.07.2023 passed in O.A.No.44 of 2022 on the file of the first respondent.

2. The contention of the petitioner is that Arulmighu Gopinathasamy Thirukovil, Reddiar Chathiram, Dindigul District is a public Temple and is an exempted Temple administered by Board of Trustees, as per the scheme. The said Temple was administered hereditarily by the forefathers of the petitioner from time immemorial. After 1927 Act, the then HR and CE Board, appears to have settled scheme for administration and was subjected to challenge and ultimately settled by the Hon'ble First Bench of this Court in A.S.No.2 of 1942 dated 07.04.1943. The relevant portion of the scheme is as follows:

“....

2. The temple of Sri Gopinathaswami, Kamakshipuram, Dindigul fo., Madura District, and its endowments shall be administered by a board of 5 trustees of whom three shall be the three hereditary trustees represented by the eldest male member of each of the three. Families viz., (1) the family of the deceased 1st plaintiff and



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plaintiffs 3 to 8, (2) the family of the 2nd plaintiffs and (3) the family of the 2nd defendant and two other non-hereditary trustees to be appointed by the Board.

3. The non-hereditary trustee shall hold office for periods of five years from the date of appointment. They shall be liable to be dismissed or suspended by the Board for the reasons set out in Section 53 of the Act and the Board's order shall be final.

4. The Board shall appoint one of the two non-hereditary trustees as the managing trustee for such period as it may deem fit”.

3. In the present Temple, the hereditary trustees will act as poosari also. Originally, Subbaya Maniagaran have three sons through his four wives. Gopalakrishna Maniam is the eldest son and he has inherited the same. Though the said Gopalakrishna Maniam was having two wives, as per hereditary succession, the first wife son namely, Subbiah Maniam has inherited from the said Gopalakrishna Maniam. After demise of said Subbiah Maniam, his first son Jeyaraman has inherited the rights. Thereafter, the petitioner Gopinath being sole son has inherited the same from Jeyaraman.

4. The second respondent is claiming rights, is the son of Dharmar who in turn was the son of Venugopal@ Rajamanickam son of aforesaid Gopalakrishna Maniam through his second wife Anguthayammal has filed a petition before the Joint Commissioner claiming that he is having hereditary



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rights along with the petitioner. The first respondent has issued notice to the petitioner as well and the petitioner had appeared through an Advocate. The contention of the petitioner is that the first respondent lack jurisdiction, since already under Section 54 of HR and CE Act, as early as 2011 the rights are conferred on the petitioner and to this effect the petitioner submitted evidence to the first respondent. As per the petitioner, the enquiry was conducted without any proper opportunity to the petitioner which is narrated in the affidavit is extracted hereunder:

“11. I submit that after taking cognizance of said application, summons were issued to me by the 1st respondent and I had appeared through my advocate. I submit in-fact 1st respondent ought not have taken cognizance of the said application and 1st respondent lacks jurisdiction. Any how the matter was proceeded and was posted to 24/04/2023 for our evidence. I submit that my counsel had served my proof affidavit along with documents on the other side and the matter was adjourned to 27/06/2023. I submit on that date my advocate was present and for my absence, matter was adjourned to 04/07/2023. I submit on 04/07/2023, I was present and since my advocate could not reach within time to the Court, the matter was adjourned to 11/07/2023. I submit that on the date my advocate who was present had sought for pause over, for my examination. I submit that however it was rejected and orders were reserved. I submit that by order dated 21/07/2023 the said O.A was allowed by 1st respondent, in favour of the second respondent”.



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WEB COP 5. However, the same was refuted by the respondents by stating that the petitioner did not participate in the enquiry properly. During the enquiry, the petitioner has left the enquiry for which the respondents relying on following paragraph:

“மோத்தத்தில் மனுதாரரால் பரம்பரை நிர்வாக உரிமைகோரி அதற்கு ஆதாரமாக பதிவான 10.03.1950 - ல் ஏற்பட்ட பாகப்பிரிவினை பத்திரத்தை 1 - ம் எதிர்மனுதாரரால் மறுக்கப்படவில்லை. 1 - ம் எதிர்மனுதாரரால் நிரூபண வாக்குமூலத்தின் நகல் மனுதாரருக்கு 24.04.2023 - ம் தேதி கொடுக்கப்பட்டுள்ளது. ஆனால் நிரூபண வாக்குமூலம் நீதிமன்றத்தில் சமர்ப்பிக்கப்படவில்லை. ஆகவே மனுதாரர் தாக்கல் செய்துள்ள ம.சா.ஆ - 1 முதல் 3 வரையிலான ஆவணங்களையும், வாய்மொழி சாட்சியத்தை வைத்து மட்டுமே இந்த நீதிமன்றம் விடை காணவேண்டிய கட்டாயத்தினை 1 - ம் எதிர்மனுதாரர் தன்னுடைய தொடர் நடவடிக்கையின் மூலம் ஏற்படுத்தியுள்ளார். குறிப்பாக 24.4.2023 தேதியன்று நிரூபண வாக்குமூலத்தின் நகலை சார்பு செய்து விட்டு குறக்கு விசாரணைக்கு மனுதாரர் தரப்பு வழக்கறிஞர் தயாராக உள்ளார் என்பதை அறிந்து கொண்ட பிறகு நிரூபண வாக்குமூலத்தை தாக்கல் செய்யாமல், வழக்கு விசாரணைக்கு எடுத்துக்கொள்ளும் போது விசாரணையை தவிர்கும் நோக்கத்தோடு நீதிமன்றத்தை விட்டு வெளியேறியதை இந்த நீதிமன்றம் கணக்கில் எடுத்துக்கொள்ள வேண்டிய கட்டாயத்தில் உள்ளது. மேலும் அதன்மீறகு நடைபெற்ற விசாரணைகளிலும் 1 - ம் எதிர்மனுதாரர் கலந்து கொள்ளாமல், ஆனால் நீதிமன்றத்தின் நடவடிக்கைகளை கண்காணிக்கின்ற போக்கையும் இந்த நீதிமன்றம் கவனத்தில் கொள்ள வேண்டியுள்ளது. மோத்தத்தில் 1 - ம் எதிர்மனுதாரரின் போக்கு ஒரு நீதிமன்றத்தினை சிறுமைப்படுத்துவதாகவும் உள்ளது என்றும் விசாரணையை மேற்கொண்டு நடத்துவதற்கு உறுதுணையாகவும், 1 - ம் எதிர்மனுதாரர் இல்லாத சூழ்நிலையில் அவரை தோன்றா தரப்பினராக அறிவிக்க வேண்டிய கட்டாயம் ஏற்பட்டது. அதன்மீறகு துறை ஆய்வர் அளித்த அறிக்கையினை வைத்துக் கொண்டு மனுதாரர் தரப்பில் ஆய்வர் குறக்கு விசாரணை செய்யப்பட்டார். ஆய்வரின் குறக்கு விசாரணையில் மனுதாரர் தன்னுடைய மனுவில் சொல்லப்பட்ட சங்கதிகளை மறுத்து எந்த சாட்சியமும் அளிக்கவில்லை. ஆதே



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நேரத்தில் கோபிநாதசுவாமி திருக்கோயிலை பொறுத்தவரை நிர்வாக உரிமையும், பூஜை பணியும் ஒன்றுக்கொன்று தொடர்புடையது என்றும் தனித்தனியாக மிரிக்க முடியாது என குறக்கு விசாரணையில் குறிப்பாக ஒப்புக்கொண்டுள்ளார்.

6. The learned counsel appearing for the respondents submitted that the petitioner without subjecting himself for cross examination, but had abandoned enquiry. Therefore, the first respondent has passed an order. The learned counsel appearing for the second respondent further stated that even if it is exparte order, the petitioner is having remedy to file a petition to set aside the exparte order. But the claim of the petitioner is that the first respondent has conferred the jurisdiction on himself as a revision authority. When the authority has already passed an order as early as 2011, he cannot review his own order. Therefore, the claim of the petitioner is that the first respondent has passed an order without any jurisdiction.

7. It is seen from the records that the second respondent is claiming rights through a partition deed which was executed in the year 1950. In the partition deed, it has been stated that the parties are entitled for poojari rights and the relevant portion is extracted hereunder:



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நமக்கு பூர்விகமாக இருந்து வரும் ஸ்ரீ கோபிநாத சாமி கோவிலின் பூஜை முறைப்படி நமக்கு ஏற்படும் காலங்களில் 1 நபர் பாதி பாதியாகவும் 2 to 4 நபர்கள் பாதி பாதியாகவும் இருந்து போதித்து வர வேண்டியது என்றும் நம்மனோர்தியில் பிறப்பு வித்துக்கொண்ட பாகப்பிரிவினை தஸ்தவேக.

8. The contention of the petitioner is that the second respondent ancestors have not implemented the said rights which is granted under partition. Admittedly, the second respondent is a great grandson of the original right holder namely, Gopalakrishna Maniam. In the partition the first wife son Subbiah Maniam as one part and the second wife sons namely Venugopal Maniam, Krishnasamy Maniam, Muthu (minor at that time of partition), Paramasivam (minor at that time of partition) as second part had divided the rights of poojariship. But the said four persons have not claimed any rights all these years. The second respondent is the third generation who is claiming right. Admittedly, the limitation is one of the issues among the parties. The other issue raised by the petitioner is that the Joint Commissioner has already passed an order recognizing the right of the petitioner as early as 2011 and the petitioner's ancestors right were recognized all these years from the date of partition i.e. 10.03.1950.



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9. The crucial issue whether the rights granted in the partition deed dated 10.03.1950 can be implemented after the period of limitation ought to be decided by the appropriate court. Therefore, 2nd ought to approach the competent civil court to implement the partition deed and the issue of limitation ought to be decided by the civil court only and the HR&CE authorities is not having any jurisdiction to decide the issue. Hence the impugned order is quashed. The 2nd respondent may prefer suit in competent civil court and seek remedy.

10. With the above direction, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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HR and CE Department,
Dindigul.



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