



W.P.(MD)No.6404 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	26.07.2024
Pronounced on	12.08.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD)No.6404 of 2024

and

W.M.P.(MD)Nos.5998, 5999 and 9277 of 2024

Alanganallur Naatamaikara Vagaiyara,
Represented by Thiru.Prem Kumar,
Alanganallur Village, Vadipatti Taluk,
Madurai District.

... Petitioner

Vs.

- 1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai.
- 2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Madurai.
- 3.The Executive Officer,
Arulmigu Muniyandiswamy Temple,
Alanganallur, Madurai.

4.R.Venkitaswamy

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari, to call for the records of the impugned order dated 09.10.2023 in A.P.No.123/2022/D2 on the file of the first respondent and quash the same.

For Petitioner : Mr.G.Prabhu Rajadurai



W.P.(MD)No.6404 of 2024

For R1 to R3 : Mr.P.Subbaraj
Special Government Pleader

For R4 : M/s.V.Meenakshi Sundaram

ORDER

In this Writ Petition, the Petitioner has challenged the impugned Order dated 09.10.2023 in A.P.No.123/2022/D2 passed by the First Respondent Commissioner as an Appellate Authority under Section 69(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as 'the Act' for the sake of brevity).

2. By the impugned Order, the First Respondent Commissioner has reversed an order dated 28.04.2022 passed by the Second Respondent Joint Commissioner in O.A.No.16 of 2005.

3. O.A.No.16 of 2005 was filed by the Petitioner herein along with others for recognition of customary right to receive the honours during the temple festivals. O.A.No.16 of 2005 was filed by the following 7 persons:

(1) Nattamaikarar Vagaiyara

Represented by Sundararaj @ Subburam (died)

S/o.Ramasamy Naidu

(2) Kammalapatti Nattamaikarar Vagaiyara



W.P.(MD)No.6404 of 2024

Represented by Narayanasamy S/o.Jeyaram Naidu

(3) Servar Nayakkar Vagaiyara

Represented by Raju Naidu S/o.Raju Naidu

(4) Sokkaiya Nayakkar Vagaiyara

Represented by Rajendran @ Pichai S/o.Ramasamy

(5) Kuttikanakkupillai Vagaiyara

Represented by Vijayaragavan S/o.Seenivasan

(6) Venkatesan

S/o. Late R.Sundararaj @ Subburam

(7) Premkumar

S/o. Late R/Sundararaj @ Subburam *

* Represents the petitioner in this writ petition.

4. By a detailed order dated 28.04.2022, the Second Respondent had allowed O.A.No.16 of 2005 by recognizing the rights of the above named persons with the following observations:

“மனுதாரர்கள் தாக்கல் செய்துள்ள புகைப்பட ஆவணத்தில் மனுதாரர்கள் நிர்வாகத்தில் இருந்தபோது அலங்காநல்லூர் அருள்மிகு முனியாண்டிசுவாமி சிலையின் பீடத்தின் அடியில் கிராம மரியாதை பெறக் கூடிய நபர்களின் பெயர்கள் பெயிண்டினால் எழுதப்பட்ட புகைப்படம் ஆவணமாக தாக்கல் செய்யப்பட்டு, அதன்படி மனுதாரர்கள் மரியாதை பெற்று வந்தனர் என்றும், 2ம் எதிர்மனுதாரரை தக்காராக நியமனம் செய்த பின்னர் மேற்படி சிலையின் பீடத்திலிருந்த வண்ணப்பூச்சினை அழித்துவிட்டு, 2ம் எதிர்மனுதாரரால் மனுதாரர்களுக்கு மரியாதை வழங்குவதை தடுக்க முற்பட்டனர் என்றும், தனது தரப்பில் மனுதாரரால் தெரிவிக்கப்பட்டது. எதிர்மனுதாரரின் நிர்வாகத்திற்கு பின்னர் வேறு அறங்காவலர்கள் நியமனம் செய்யப்பட்ட போதும், தக்கார் நியமனம் செய்யப்பட்ட போதும் மனுதாரர்களுக்கு மரியாதை வழங்கப்பட்டது செயல் அலுவலர் திருமதி.ம.அங்கையற்கண்ணி சாட்சியத்தின் மூலமும் மற்றும் ஆய்வர் திருமதி.சி.புவனேஸ்வரி அறிக்யினை அடிப்படையிலும் தெரியவருகிறது. மனுதாரர்கள் கட்டாயப்படுத்தி மரியாதை பெற்றதாக



W.P.(MD)No.6404 of 2024

எதிர்மனுதாரர் தரப்பில் தெரிவிக்கப்பட்டது நிருபணம் செய்யப்படவில்லை. மேலும் பழக்க வழக்கப்படி கிராம மரியாதை மனுதாரர்களுக்கு எதிர்மனுதாரரின் நிர்வாக காலம் தவிர மற்ற காலங்களில் வழங்கப்பட்டு வந்தது நிரூபிக்கப்பட்டுள்ளது.

எனவே இந்துசமய அறநிலையச் சட்டம் 1959 சட்டப்பிரிவு 63(e)ன் கீழ் மனுதாரர்களால் தாக்கல் செய்யப்பட்ட இந்த மனு அருள்மிகு முனியாண்டிசுவாமி திருக்கோயில், அருள்மிகு ஸ்ரீமுத்தாலம்மன் திருக்கோயில், அருள்மிகு காளியம்மன் திருக்கோயில், அருள்மிகு அய்யனார்சாமி திருக்கோயில், கேட்டுக்கடை சித்தி விநாயகர் திருக்கோயில் ஆகிய திருக்கோயில்களில் திருவிழா காலங்களில் மனுதாரர்களுக்கு காலங்காலமாக வழங்கப்பட்டு வந்த மரியாதையை திருக்கோயிலின் செயல் அலுவலர் மற்றும் அறங்காவலர் குழு அல்லது தக்கார் ஆகியோருக்கு வழங்கிய பின்னர் வரிசைப்படி வழங்க உத்தரவிட்டு அனுமதிக்கப்படுகிறது.□

5. In the second round, the First Respondent by a detailed order dated 09.10.2023 in A.P.No.123/2022/D2 has reversed the decision of the Second Respondent in O.A.No.16 of 2005 filed under Section 63(e) of the Act. The operative portion of the impugned Order reads as follows:

“15. Under Section 63(e) of the Act, the Joint Commissioner may decide whether any person is entitled to any honour by custom or otherwise and what is the established usage of a religious institution is in regard to any other matter. The person, who claims any honour based on the custom and usage of the Religious Institutions, should prove what is the established custom and usage of Religious Institution in providing honour to any person.

16. For a custom to be valid, it must be considered whether it has all the essential attributes laid down by Tindal C.J. in Tyson vs. Smith, (9 adx.E.406).

- 1. The custom must be immemorial.*
- 2. It must have continued without interruption since its origin.*
- 3. It must be reasonable; and*
- 4. It must be certain in respect of its nature generally as well as in respect of the locality where it is alleged to obtain and the*



persons whom it is alleged to affect [(Tyson vs. Smith, (9 adx.E. 406)]

The documents produced by the petitioner in OA are of recent origin. They are not sufficient to prove that their claim is based on the custom followed from time immemorial.

In the instant case, none of the above factors have been proved beyond doubt, and it is not within the scope, ambit and covered under Section 63(e) of the Act.

17. Several orders have been passed by the Hon'ble High Court in various cases regarding first honour/special honour in the temple.

i) In W.P.(MD)No.15134 of 2023 dated 23.06.2023 the Hon'ble High Court has observed that

"...6. In view of the fact that a fit person of the Temple has already been appointed and he would monitor and supervise all the functions of the temple and he has also made a statement that in the temple, no first honour is being accorded to any person, we are not inclined to pass any further orders in this writ petition."

ii) In W.P.(MD)No. 15627 of 2023 dated 28.06.2023 the Hon'ble High Court has observed that,

**.....Therefore, considering the fact that there is no clarity with reference to the customary practices followed during the Eruthu Kaatu Vizha, this Writ Petition is disposed of stating that the festival for this year, which has already commenced and which is due to conclude on 02.07.2023, would be conducted without this procession consisting of head gear, sengol etc. For this year, the Poojari and Saamiyaadi alone will go in procession. No person will be permitted to be given any honour in the form of any symbolic attire/head gears/sengol etc. However, since this seems to be the bone of contention year after year, the Joint Commissioner shall, after involving rival groups and the villagers, arrive at the customary practices that are required during the Eruthu Kaatu Festival, that is, conducted in the month of Aani every year...."*

18. The respondents 2 to 7 have admitted that the honour is nothing but by giving 'a pinch of vibuthi'.



W.P.(MD)No.6404 of 2024

Sec 106 of TNHR&CE Act 1959' read as follows:-

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"106. Removal of discrimination in the distribution of prasadam or theerthams.- Notwithstanding anything in this Act or in any text, rule or interpretation of Hindu law or any custom or usage as part of that law or in any other law or in any decree of Court, there shall be no discrimination in the distribution of any Prasadam or Theertham in any religious institution on grounds only of caste, sex, place of birth or any of them.

Explanation. -In this section-

(a) "Prasadam" means any cooked rice or other eatable, any fruit, flower, leaf, vibuthi, kumkumam, tulsi, vilvam, turmeric, sandalpaste and includes such other things as the Government may, by notification, specify;

(b) "Theertham" means sacred water, jiggery water or milk and includes such other liquid as the Government may, by notification, specify."

The claim of the contesting respondents is straightaway barred as per the above provisions of the Act.

19. Further the Counsel for the impleading petitioners/Respondents 9 to 14 has rightly contended that Original Application was filed in representative capacity of i) Nattamaikarar Vagaiyara ii) Kammalapatti Nattamaikarar Vagaiyara (Moonru Petti Vagaiyara) iii) Servar Nayakkar Vagaiyara iv) Kutty kanakku pillai vagaiyara; the Joint Commissioner has failed to analyse who was entitled to get honour. If it is so, the members belonging to each vagaiyara are entitled to receive 1 honour, then it will amounts to discrimination based on caste.

As stated supra, the impugned order suffers from infirmity and is therefore liable to be set aside. Accordingly, the order dated 28.04.2022 of the Joint Commissioner, HR & CE Dept, Madurai in allowing the O.A.No. 16/2005 is hereby set aside and the Appeal Petition is allowed."



W.P.(MD)No.6404 of 2024

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6. The impugned Order dated 09.10.2023 was passed by the First Respondent by allowing several others to participate in the proceedings pursuant to the directions of this Court in W.P.(MD)No.15134 of 2023 dated 23.06.2023 and W.P.(MD)No.15627 of 2023 dated 28.06.2023.

7. The learned counsel for the Petitioner submits as follows:

(i) The Petitioner is the representative of Petitioner Vagaiyara. There are other Vagaiyaras in Alanganallur Village, Vadipatti Taluk, Madurai District namely (i) Kammalapatti Nattamai Vagaiyara (ii) Servai Naicker Vagaiyara (iii) Sokkiah Naicker Vagaiyara and (iv) Kutti Kanakupillai Vagaiyara of Alanganallur village. The Petitioner's ancestors settled in Alanganallur Village about 400 years ago and they were one of the original inhabitants of the said Village. The Petitioner originally had their family deity, Arulmigu Muniyandiswamy at their house and about 200 years ago, had constructed a small temple and installed the deity in the said temple. The other Vagaiyaras joined with the Petitioner's family and were helping them in maintaining the said temple for about 200 years.

(ii) In or about the year 1957, the Petitioner's ancestors purchased the land in the name of all the five Vagaiyaras as Trustees and constructed the



W.P.(MD)No.6404 of 2024

Muniyandiswamy Temple. Besides, they established other temples by name Sri Kaliyamman Temple, Sri Muthalamman Temple, Sri Ayyanarswamy Temple and Kattukadai Sidhi Vinayagar Temple. Deities were installed in all these temples and that the Petitioner's Vagaiyaras were conducting pujas and festivals and particularly the Petitioner's Vagaiyaras received the temple's honour during the festivals respectively.

(iii) The festivals were conducted in Karthigai, Margazhi and that in the month of Thai, Pongal Festival would be conducted in the Muthallamman Temple. Besides, there are other festivals during Masi and Panguni and that the petitioner's Vagaiyaras were receiving the honours during all these festivals.

8. The learned counsel for the Petitioner submits that the order of the First Respondent is absolutely erroneous and has been passed without considering the documentary evidences on record and further states that the First Respondent misled himself in referring to Section 106 of the Act, which is irrelevant to the issue involved in the present proceedings. The said Section is intended to prevent any discrimination in receiving prasadam or theertham on the basis of caste and such non-discrimination clause would not conflict with the right of the Petitioner under Section 63(e) of the Act which deals with customary honours and the same has not been abolished.



W.P.(MD)No.6404 of 2024

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9. The learned counsel for the Petitioner further submits that the First Respondent failed to consider the reasons assigned by the Second Respondent on both occasions categorically holding that the Petitioner Vagaiyaras have established their customary rights to receive honours and overlooked the evidence of the Petitioner and other Vagaiyaras as well as that of the Village elders before the Second Respondent. The evidence on the side of the Petitioner is about 14 in number, whereby it is consistently stated that the Petitioner and Vagaiyaras were receiving the honours.

10. The learned counsel for the Petitioner submits that the First Respondent failed to consider the documents filed by the Petitioner in proof of their receiving honours during festivals and the report of the Inspector of the HR & CE Department before the Second Respondent and wherein the same, the assertion of the Petitioner is supported. Per contra, the Fourth Respondent could not bring any evidence from the Village to dispute the rights of the Petitioner.

11. The learned counsel for the Petitioner submits that the First Respondent without considering the depositions and documents, has simply



W.P.(MD)No.6404 of 2024

stated that the Petitioner failed to prove the customs and the order is in effect, a non-speaking order.

12. Opposing the prayer in this writ petition, the learned Special Government Pleader for the Official Respondents as also the contesting Fourth Respondent would submit that the writ petition is devoid of merits. It is submitted that the impugned Order does not suffer from any violations warranting any interference under Article 226 of the Constitution of India.

13. That apart, it is submitted that the Petitioner has filed this writ petition without impleading the other parties to the proceedings before the Commissioner in A.P.No.123/2022/D2 filed by the Fourth Respondent herein.

14. That apart, it is submitted that there are twin remedies available to the Petitioner by way of an appeal in the form of a Civil Suit before a Civil Court under Section 70 of the Act and a further appeal before this Court.

15. It is therefore submitted that there is no ground for interfering with the impugned Order as none of the grounds stated by the Petitioner warrant interference under Article 226 of the Constitution of India.



W.P.(MD)No.6404 of 2024

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16. That apart, the learned counsel for the Fourth Respondent would also submit that the Petitioner was the Seventh Respondent in A.P.No.123/2022/D2. Now, the Petitioner has filed the present writ petition in his capacity as representative of Alanganallur Naatamaikara Vagaiyara. Hence, the writ petition at the behest of the said unincorporated body is also non-maintainable/unjustifiable.

17. It is submitted that even on merits, the prayer of the Petitioner for receiving prasatham as honours is contrary to Section 106 of the Act. Hence, it is submitted that the writ petition, on this ground, is also liable to be dismissed.

18. The learned Special Government Pleader for the Official Respondents submits that the First Respondent Commissioner has passed the impugned Order dated 09.10.2023, only after taking into consideration of all material facts and circumstances and the past history of the temple and had passed reasoned order. It is further submitted that one Ganesan and 6 others filed writ petition in W.P.(MD).Nos.4160 to 4165 of 2023 before this Court for prohibiting conferring of special rights to any particular caste people in the petition mentioned temples at Alanganallur Village. It is submitted that this



High Court by its order dated 01.03.2023 disposed of the above writ petitions with the following directions:

“2. Learned Additional Government Pleader appearing for the First Respondent, on instructions, states that in respect of the contentions raised by the Petitioners in these Writ Petitions, the appeal in A.P. No. 123 of 2022 D2 under Section 69(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as 'the Act') is pending before the First Respondent against the order dated 28.04.2022 in O.A. No. 16 of 2005 passed by the Second Respondent under Section 63(e) of the Act. In that backdrop, Learned Counsel for the Petitioners seeks permission of the Court to withdraw the Writ Petitions reserving the rights of the Petitioners to be impleaded in the said appeal before the First Respondent and work out their remedies in that regard. He has also made an endorsement to that effect in the court record.

3. As it is represented that the time limit fixed by this Court in the order dated 09.12.2022 in W.P (MD) No. 27794 of 2022 for the disposal of the said appeal before the First Respondent has lapsed on 28.02.2022 and further extension of time is required for hearing all parties concerned including the Petitioners, it shall be ensured by the First Respondent that the said appeal is disposed in terms of the aforesaid order passed by this Court by 30.06.2023 and report of compliance filed before the Registrar (Judicial) of the Court.

In the result, the Writ Petitions are dismissed as withdrawn with the aforesaid clarifications. No costs.”

19. Based on the above direction, the impleading Petitioners were also given opportunity to put forth their case and after hearing the impleading Petitioners and only after hearing all the parties, the First Respondent Commissioner after scrutinizing the Sale Deed dated 20.02.1957, which clearly



W.P.(MD)No.6404 of 2024

states that the land for the temple was purchased out of the funds collected from all the Villagers, belonging to all the communities.

20. The writ petitioner Vagaiyaras were also one of the community members and it is clear that only out of the public donation of the entire Villagers, the temple was constructed. It is also an admitted fact that in 1987, the temples were taken over by the HR & CE Department. Hence, the nature of the temple by itself would constitute that the same is public temple.

21. It is further submitted that when the nature of the temple is found out to be public and not dedicated to a particular community, then the rights claiming under Section 63(e) of the Act cannot be maintained. This apart, the rights claimed by the Petitioner will also be hit by Section 106 of the Act, which clearly says any discrimination in a public temple should be removed. Hence, the application for customary rights made by the Petitioner was straight away barred by the provision of Section 106 of the Act. This was not taken into consideration by the Second Respondent and after considering Section 106 of the Act and the Doc.No.292/1957, the Second Respondent allowed the appeal filed by the Fourth Respondent and set aside the order dated 28.04.2022 in O.A.No.16 of 2005 passed by the Second Respondent.



W.P.(MD)No.6404 of 2024

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22. He submitted that the grounds raised by the Petitioner regarding his claim under Section 63(e) of the Act cannot be maintained, since it will hit by Section 106 of the Act, which clearly says any discrimination in a public temple should be removed. Hence, the application for customary rights made by the petitioner was straight away barred by the provision of Section 106 of the Act.

23. He further submitted that the claim of the Petitioner that the evidence and reasons assigned were not looked into, as incorrect and as stated above, the order of the Second Respondent did not consider the fact that the temple was constructed out of the fund collected from all the Villagers from all communities and there cannot be a customary right in discriminative nature.

24. Further, it is stated by the Petitioner that the First Respondent has not taken into consideration any of the evidence and other documents produced, adverting to which, the learned Special Government Pleader for the official respondents submitted that the impugned Order allowing the Fourth Respondent appeal was passed by the First Respondent only after verifying all the records and evidences in full and the First Respondent has also given a



W.P.(MD)No.6404 of 2024

detailed explanation as to how in a public temple there cannot be a special right overlooking other communities, which will lead to discrimination.

25. I have considered the arguments advanced by the learned counsel for the Petitioner, the learned Special Government Pleader for the First to Third Respondents and the learned counsel for the Fourth Respondent.

26. Earlier, the Second Respondent Joint Commissioner had passed order dated 23.05.2018 in O.A.No.16 of 2005 under Section 63(e) of the Act. Aggrieved by the same, the fourth respondent had approached the First Respondent Commissioner in A.P.No.46/2018/D2.

27. By an order dated 31.12.2018, the Fourth Respondent's appeal was disposed of by the First Respondent by directing the second respondent herein to get a fresh report from the Inspector of the HR&CE Department and to pass fresh orders within a period of three months from the date of enquiry and after affording an opportunity of hearing to the parties mentioned therein.

28. Pursuant to the remand order dated 31.12.2018, order dated 28.04.2022 came to be passed by the Second Respondent the Joint



W.P.(MD)No.6404 of 2024

Commissioner, which decision now stands reversed by the impugned Order dated 09.10.2023 of the First Respondent Commissioner.

29. As the rights were conferred on the Petitioners in O.A.No.16 of 2005 vide order dated 28.04.2022 by the Second Respondent, the Fourth Respondent herein had preferred an appeal before the First Respondent under Section 69(1) of the Act.

30. This writ petition has to fail as the Petitioner has not been able to establish any material irregularity in the decision making process by the First Respondent while passing the impugned Order dated 09.10.2023 in A.P.No. 123/2022/D2 appeal filed by the fourth respondent herein. The Petitioner has an alternate remedy under Section 70 of the Act.

31. That apart, the Respondents have stated that the land in question was purchased out of the funds collected by the devotees belonging to different communities. Thus, there are no indication that the land was purchased by the predecessors from the Petitioner's family. Therefore, on merits also, this Writ Petition has to fail.



W.P.(MD)No.6404 of 2024

32. The order that was passed by the Second Respondent on 28.04.2022, which affirmed the earlier order dated 23.05.2018 in O.A.No.16 of 2005 conferred privilege to the Petitioner and the other persons, who filed petition under Section 63(e) of the Act, has been reversed based on the reasonings in the impugned Order.

33. Further, this Court is also not concerned with the decision *per se* but only with the decision making process. As such, there are no irregularity or illegality discernible in the decision making process adopted by the First Respondent while allowing A.P.No.123/2022/D2 filed by the Fourth Respondent challenging the order passed by the Second Respondent dated 28.04.2022.

34. Therefore, this Writ Petition is liable to be dismissed and is accordingly dismissed with liberty to the Petitioner to file a statutory appeal as is contemplated under Section 70 of the Act. No costs. Connected Writ Miscellaneous Petitions are closed.

12.08.2024

Index : Yes / No
Internet : Yes / No
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Speaking Order / Non-Speaking Order
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W.P.(MD)No.6404 of 2024

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To

- 1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai.
- 2.The Joint Commissioner,
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W.P.(MD)No.6404 of 2024

C.SARAVANAN, J.

ta/arb

Pre-delivery order in
W.P.(MD)No.6404 of 2024

12.08.2024