



W.P.(MD)No.19389 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.08.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.19389 of 2024

and

WMP(MD)Nos.16431, 16432 and 16433 of 2024

1.K.Ayyampillai

2.S.Sudalai Suresh

3.S.Meikanda Muthu Pillai

4.N.Murugan

5.A.Murugan Pillai

6.A.Pechirajan

7.S.Subramaniya Pillai

8.C.Pitchaiyandi Pillai

9.S.Maruthanayagam Pillai

10.M.Gomathi Nayagam Pillai

11.S.Chinnathambiya Pillai

... Petitioners

Vs.

1.The Commissioner,
Hindu Religious and Charitable Endowments Board,
Chennai.



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2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Board,
Thoothukudi.

3.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Board,
Thoothukudi.

4.The Executive Officer,
Arulmigu Karkkuvel Ayyanar Thirukovil,
Their Kudiyruppu,
Tiruchendur Taluk,
Thoothukudi District.

5.The Thakkar/Fit Person,
Arulmigu Karkkuvel Ayyanar Thirukovil,
Their Kudiyruppu,
Tiruchendur Taluk,
Thoothukudi District.

6.N.Gandhimathi

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the impugned notice affixed by the fourth respondent herein in his nil proceedings nil dated and quash the same as illegal and further directing the respondents herein not to interfere from the petitioner's right to do pooja and enjoy the produce from the tamarind trees, the right to get emolument (Thattukanikai) or perquisite in the Kallarvettu Festival and Panguni Uthira Festival, right to get vetti and thundu and the right to get share in coconut cracking fee in Arulmigu Karukuvel Ayyanar ThiruKovil, Therikudiyruppu, Tiruchendur Taluk, Thoothukudi District till disposal of the pending proceedings under Section



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63(e) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 as per the judgment passed in Second Appeal in S.A.(MD)No.572 of 2006 before this Court by considering the petitioner's representation dated 06.08.2024.

For Petitioner : Mr.V.Meenakshi Sundaram

For R-1 to R-3 : Mr.Veera Kathiravan,
Additional Advocate General
Assisted by,
Mr.K.S.Selva Ganesan
Additional Government Pleader

ORDER

The present Writ Petition is filed challenging the notice affixed by the fourth respondent in the temple premises, insofar as it states that any one who attempts to perform poojas contrary to the directions of this Court in Second Appeal in S.A.(MD)No.572 of 2006 would not be permitted.

2. It is submitted by the learned counsel for the petitioner that earlier they had filed a civil suit in O.S.No.65 of 2003 before the District Munsif Court, Tiruchendur seeking (a)for a declaration that they are the hereditary poojaris of Arulmigu Karukuvel Ayyanar ThiruKovil, Therikudiyiruppu, Tiruchendur



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Taluk, Thoothukudi District, (b) for a declaration that the plaintiffs are entitled to remuneration attached to the office of the Hereditary poojaris and (c) seeking cancellation of the order passed by the Tahsildar, Thiruchendur in his proceedings in DTR.No.10 of 1976, dated 08.04.1991, wherein there was a change in the name of the patta which is stated to have originally been in the name of the petitioner and was sought to be converted in the name of the deity. The above suit was dismissed by the Trial Court on the premise that, the remedy, if any, would lie only under the Section 63(e) of the HR and CE Act. As against the same, an appeal was preferred in A.S.No.04 of 2005 before the Sub Court, Thoothukudi. The first appellate Court affirmed the dismissal of the suit with regard to the suit prayer (a) and (c). However, the findings of the Trial Court with regard to prayer (b) was reversed and the appeal was partly allowed granting the suit prayer (b) in favour of the plaintiffs. The same was challenged by the Executive Officer by way of Second Appeal in S.A.(MD)No.572 of 2006. The above Second Appeal was allowed vide order dated 23.07.2024, by finding that the remedy would lie before the Joint Commissioner, in terms of Section 63 of the Act. After referring to Section 63 and Section 108 of the Act, it was observed as under:

12.A combined reading of the above mentioned sections make it clear that the Joint Commissioner is the competent authority to decide whether any person is entitled by



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custom or otherwise to any honour, emolument or perquisite in a religious institution. It is also clear that no suit or legal proceedings shall be instituted in a Civil Court in respect of a matter or dispute for determination of which a provision is made in the HR and CE Act. In the present suit, the plaintiffs are claiming certain remuneration/perquisites like right to enjoy the usufructs of the tamarind trees standing in the suit temple lands as an old custom. As far as claim of the plaintiffs with regard to remuneration and perquisites etc attached to the office of the Poojariship is concerned, when the prayer (a) is negated by the Courts below, the Plaintiffs are not entitled to claim those rights which is depending on their status as poojaris. In view of amendment to Section 55 of HR and CE Act abolishing hereditary rights in Poojariship, the Courts below are justified in rejecting prayer(a) in the plaint. Regarding the claim made by the plaintiffs with regard to the perquisites/share in the offerings by way of long established custom in the temple is concerned, the said issue cannot be raised before the Civil Court in view of specific bar under Section 63(e) of HR and CE Act. The entitlement of the plaintiffs for perquisites/remuneration or share in the offerings made in the suit temple by virtue of long established custom and usage in the temple, the competent authority is the Joint Commissioner in an enquiry under Section 63 of the HR and CE Act. Therefore, the Civil Court jurisdiction to decide the said right of the



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plaintiffs is expressly barred by the provisions of HR and CE Act. Therefore the prayer (b) is also not maintainable before the Civil Court. The substantial question of law taken up for consideration is answered accordingly in favour of the appellant and against the respondents. In view of answer to the substantial question of law, the Second Appeal is allowed by setting aside the judgment and decree passed by the First Appellate Court granting prayer (b) in the suit and the suit in its entirety is dismissed.

3. It is submitted that the petitioner had in the meanwhile filed an Original Application before the Joint Commissioner of HR and CE Department under Section 63(e) of the Act on 03.03.2023 and the same was returned on 09.04.2024 and represented on 06.06.2024. It was submitted that until the disposal of the Original Application before the Joint Commissioner, the petitioner must be permitted to perform the poojas and enjoy the produce from the tamarind trees, the right to get emolument (Thattukanikai) or perquisite in the Kallarvettu Festival and Panguni Uthira Festival, right to get vetti and thundu and the right to get share in coconut cracking fee in Arulmigu Karukuvel Ayyanar ThiruKovil, Therikudiyiruppu, Tiruchendur Taluk, Thoothukudi District.



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4. To the contrary, it was submitted by the learned Additional Advocate General that the Writ Petition itself is not maintainable, in as much as, the petitioner has already approached the Joint Commissioner under Section 63 (e) of the Act. Having approached the Joint Commissioner, it may not be open for the petitioner now to seek any remedy before this Court, for it would then mean, the petitioners are permitted to avail parallel remedies. It has been consistently held that one cannot be permitted to pursue parallel remedies (riding two horses at the same time) and such practice is frowned upon by the Apex Court consistently.¹

5. It was also submitted by the learned Additional Advocate General that presently, the poojas are being performed by one Ramasamy and if need be, they may appoint additional poosari, to which the learned counsel for the petitioner expressed apprehension that, the entire Original Application may be rendered infructuous, if they are permitted to appoint poosari.

6. It is made clear that this Court is not expressing any opinion on merits of the submissions made on either side. The Original Application before the

1. Jai Singh v. Union of India, (1977) 1 SCC 1; Orissa Power Transmission Corpn.Ltd. v. Asian School of Business Management Trust, (2013) 8 SCC 738



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Joint Commissioner shall be disposed of within a period of 10 weeks from the date of receipt of a copy of this order. As an interim arrangement, this Court is of the view that the poojas will be performed by Mr.Ramasamy. If appointments of poosaris or additional poosaris are required to perform the poojas, the same may be made by the concerned/appropriate authority. It is made clear that the permission to Mr.Ramasamy and appointment of poosaris or additional poosaris to perform poojas is only by way of interim arrangement and the same is subject to the outcome of the Original Application before the Joint Commissioner. The appellants are entitled to putforth all their objections before the Joint Commissioner.

7. In view of the above, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

12.08.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr



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To:

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MOHAMMED SHAFFIQ, J.

Nsr

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