



WP(MD)No.25406 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 21.12.2023
Pronounced on: 05.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

WP(MD)No.25406 of 2023
and
WMP(MD)Nos.21577 to 21580,
21582 to 21584 of 2023

R.Vairavan

... Petitioner

Vs

1.The Secretary to Government,
Tourism, Culture and
Religious Endowments Department,
Government of Tamil Nadu,
Chennai.

2.The Commissioner,
Hindu Religious
and Charitable Endowments Department,
Nungambakkam High Road,
Chennai - 600 034.

3.The Executive Officer
cum Joint Commissioner,
Arulmigu Dandayauthapani Sway Temple
Palani,
Dindigul District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records relating to the impugned order dated 30.12.2022 in Na.Ka.No.972/2021/C6 passed by the third respondent;



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the impugned order dated 29.12.2022 in RP.NO.72 of 2022 passed by the second respondent and the impugned order dated 22.04.2022 in Na.Ka.No.972/2021/E3 passed by the third respondent and quash the same and consequently directing the second respondent to consider the representation dated 12.09.2022 submitted by the petitioner to the first respondent and forwarded to the second respondent vide letter dated 10.01.2023.

For Petitioner : Mr.J.Bharathan
For Respondent : Mr.P.Subbaraj,
Nos.1 and 2 Special Govt.Pleader
For Respondent : Mr.R.Bharanidharan
No.3

ORDER

The petitioner claims that he is a descendant of one Vellaiyappa Chettiyar, S/o.Mayandi Chettiyar of Devakottai. His ancestors were doing several dharma kariyams including thanneer pandal dharmam at the top of the hillock of Arulmigu Dhandayuthapani Swamy Thirukoil, Palani.

2.The petitioner claims that they have been providing drinking water [thanneer pandal] throughout



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the year for quenching the thirst of the devotees, who visit the temple. This thanneer pandal according to the petitioner was started by their ancestors before 120 years and his forefathers had put up a permanent structure in the year 1898 for thanneer pandal with the permission of the temple. This building bears the name as RM.M.ST.Thanneer Pandal Mandapam. The petitioner's family is also performing the 3rd day mandagapadi during the Kanda Sasti festival in the temple from the year 1990.

3.While so the 3rd respondent the Executive Officer of the temple by his letter dated 23.10.2021 has requested this petitioner to hand over this building to the temple that this building is required for the temple for providing shelter to the devotees who, reach the temple through the winches during the rainy and summer seasons. The petitioner has submitted a reply on 20.11.2021 setting out the history of the building that it was established only for the purpose of doing charity and they are doing the charity for more than 100 years. However, without



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considering this reply, the 3rd respondent has issued notice dated 17.03.2022 directing the petitioner to hand over the key of the mandampam and also passed an order dated 22.04.2022 to hand over the key before 11.05.2022, otherwise, the temple administration will break-open the lock and take possession of the same. Aggrieved over this order dated 22.04.2022 the petitioner filed a revision petition before the Commissioner under Section 21 of the Hindu Religious and Charitable Endowments Act, on 04.05.2022 and also filed the writ petition before the Principal Seat of this Court in WP.No.21444 of 2022 for a writ of mandamus forbearing the respondents 2 and 3 from in any manner break-opening the lock or taking forcible possession of thanneer pandal pending disposal of the writ petition, wherein this Court by order dated 11.05.2022 directed the 2nd respondent / the Commissioner to dispose of the revision petition within a period of four weeks and directed the order dated 22.04.2022 to be kept under abeyance till then.



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4. Pending the said revision petition, the petitioner has also made a proposal by his representation dated 12.09.2022 to the 1st respondent requesting him to permit the petitioner to put up a building with two floors in the said place, in which one floor can be used by the temple and the other floor can be retained by him for maintaining the thanneer pandal and doing the charity. The petitioner has also made a request to the trustees on 27.09.2022 in this regard and filed an affidavit dated 19.10.2022 before the Commissioner with a further proposal that he would hand over 600 Sq.Ft space abutting the area, which leads to the steps to the winch, which can be used as waiting hall by the devotees. The Commissioner without considering the grounds raised in the revision petition and the proposals made by this petitioner on 12.09.2022 and 19.10.2022, dismissed the revision petition on 29.12.2022 with the following directions:

"i. The revision petitioner shall hand over the property to the temple authorities immediately;



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ii.The Executive Officer shall permit the revision petitioner to carry out necessary repairs to the mandapam, at this own cost, as a donor work, in accordance with law.

Iii.The Executive Officer shall fix a date for completion of the repair work considering the kumbabisekam date

iv.If the revision petitioner is not willing or unable to take up the work, the Executive Officer may take necessary steps to execute the repair work, from out of funds of the temple.

v.The revision petitioner is permitted to perform third day mandagapadi during the Kanda Sasti festival as is now in practice. The temple should provide required space in the thanneer pandal mandapam to perform mandagapadi pooja, in the evening when Urchava Moorthy will be taken to the mandapam."



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5.Pursuant to this order dated 29.12.2022 of the 2nd respondent / the Commissioner, the Executive Officer has issued an order on 30.12.2022 that the temple administration will take possession of the building by 02.01.2023 for consecration of the temple. As against this orders of the Commissioner, dated 29.12.2022 in RP.No.72 of 2022 and the consequential order passed by the 3rd respondent dated 30.12.2022, the petitioner has filed a writ petition before the Principal Seat in WP.No.24 of 2023 and on the directions of this Court, the petitioner has withdrawn that writ petition and filed this present writ petition.

6.The learned Counsel for the petitioner has made his submissions as follows:

i.The petitioner's forefathers and the petitioner have been performing various dharmam for the temple. Thanneer pandal dharmam is one among them. As early as in the year 1985 for the continuous performance of the dharmam, superstructure were



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raised by the petitioner's forefather and a permanent superstructure was raised with the permission of the temple administration and the same has been allowed to be permanently used by the petitioner's family.

ii.The building has been maintained in a proper manner for more than a century. The petitioner has allowed the employees of the temple to take rest in a portion of the mandapam. Even during the earlier festivals the temple has been using the mandapam.

iii.The petitioner has agreed for doing repair and renovation at his own cost and also agreed to provide 600 Sq.Ft of the space for the benefit of the devotees, using the winch.

iv.The temple administration does not have any right over the building and in any event, the Executive Officer cannot demand the petitioner to surrender possession.



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v.The petitioner is not an encroacher of the temple properties and no notice can be issued by the Executive Officer straightaway to take forcible possession. Assuming without admitting that the temple has any right, the respondents have to invoke the provision of Section 78 of the Hindu Religious and Charitable Endowments Act, the persons aggrieved by the order has got right to file civil suit as per Section 79(2) of the said Act. Therefore the petitioner prays for allowing this writ petition.

7.The 3rd respondent has filed a counter affidavit as follows :

i.In the earlier days only through the steps the temple in the hillock could be reached. Therefore the practice of providing drinking water was started. The petitioner's forefather undertook to provide such drinking water to the devotees in the hillock. Subsequently a small shed was allowed to be put up. Thereafter the present structure to an extent of 1800 Sq.Ft was constructed on the western side of the



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temple and it is situated on the southern end of the footpath near the temple. The winch station is located on the southern side of the structure.

ii.The petitioner's forefather was performing the charity of providing drinking water. At present there are three winch stations in the hillock, which were established in the years 1966, 1981 and 1988 respectively and they are operated from 3.20am to 9.00 pm everyday. That apart rope car facility was introduced in the year 2004, it functions from 7.00am to 9.00pm. In all these winch stations and rope car stations purified drinking water facility provided. Therefore at least for the past thirty years, no such charity of providing drinking water has been undertaken in the mandapam by the petitioner or by his family members. The temple administration has provided potable water facility in several places in the temple, throughout the footpath and in several other places.



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iii. The petitioner's forefathers could only be considered as a permissive occupants of the building, which was constructed upon the land belonging to the temple on permission, would belong to the temple and not otherwise. The land admittedly belongs to the temple.

iv. The entire Palani hill comprised in S.No.862 is classified as 'Sarkar Poramboke' and is in possession of the temple. While being so, the building constructed with a permission to perform the charity of thanneer pandhal can neither be construed as an own building of the petitioner's forefathers nor the petitioner's.

v. What has been permitted vide the deed dated 15.11.1898 is only to construct the building for performance of the charity, instead of it being done from a thatched shed. The receivers of the charity is the devotees, who visit the temple at large. The building was constructed for benefit of the devotees. Therefore one family cannot claim ownership



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over the property nor can claim right to perform the charity in eternity, when the temple itself has been providing such a facility for so many years

vi.If a mandapam is allowed to be constructed by a devotee in the temple as a donor, for the benefit of the devotees, the mandapam vests with the temple and the donor cannot claim any ownership over the same.

vii.In the present case the petitioner had stopped doing of the charity before a few decades. However, the building is remained closed and retained by the petitioner and it is used only for Mandagapai. The petitioner allows only a particular community to stay in the mandapam, who carries Kaavadi during the Thai Poosam festival.

viii. Once the doing of charity is stopped, the petitioner has no right or whatsoever, even if the building was constructed by his forefather.



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ix.The temple administration has installed several Reverse Osmosis (RO) drinking water kiosks / stations around the the hill and therefore there is no necessity for anyone or for any donor to provide water to the devotees separately and such a charity has become obsolete.

x.During the Kandha Shasti festival, 3rd day mandagapadi, urchava moorthi of the temple visits the mandapam for the pooja performed by the petitioner's community and on this particular day alone the mandapam is used by the petitioner and his community members. For the rest of the year, the mandapam remains locked. It is used for the benefit of the devotees / public.

xi.It is specifically contended that the mandapam is not being used for thanneer pandal at all and the same remains locked and left idle by the petitioner.



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xii.The petitioner is in occupation of 1800Sq.ft of property, wherein he is neither a lessee of the temple nor is he the owner of the property.

xiii.The unused mandapam building is now required for the temple administration for establishing a lounge for the devotees in the upper winch station and this place will be more suitable as it is situated abutting the upper winch station.

xiv.The petitioner was initially requested to hand over the key of the closed room in the mandampam building vide communication dated 17.03.2022, but the petitioner did not respond. Hence once again a communication dated 22.04.2022 was sent to the petitioner to hand over the key and even thereafter, the petitioner had not handed over the key.

xv.There cannot be charity within the temple precincts without the permission of the temple administration. The then trustees of the temple administration have permitted the petitioner's



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forefathers to perform the thanneer pandal in the temple and it would not give any individual right possess the place, which has been earmarked for doing charity. The charity should be considered attached to the temple and without the control of the temple administration, there cannot be any charity in the temple premises for the benefit of the pilgrims

xvi. Under the Palani Temple Master plan to provide amenities to the pilgrims, announcements were made in the assembly on 04.09.2021 and at present the administrative sanction has been issued by the government vide G.O.Ms.No.237 Tourism, Culture and Endowments Department dated 22.06.2023, wherein apart from other facilities, it is proposed to provide winch entry plaza in both the lower and upper winch stations. The proposal sent to the Commissioner regarding the master plan works pertaining to rope car station - lower, winch station -lower, pilgrims-lower, winch station - upper etc., has been technically sanctioned by the Chief Engineer, HR and CE Department by proceedings No.104551/2023/G1, dated

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09.10.2023 for Rs.99.98 Cores.

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xvii.The learned Counsel for the 3rd respondent has pointed out that the temple administration is having a plan to utilise this space with three floors as under:

Sl.No.	Work	Area in Sq.M
1.	Ground Floor	702.63
2.	First Floor Plan	1160.18
3.	Second Floor	1160.18
4.	Third Floor	125.75
	Total	3148.74

xviii.In those days the water was carried by labourers employed by the petitioner's forefather, in pots and stored in big copper pots. Thereafter it was distributed to the devotees. Now when the temple administration has been supplying treated water from reverse osmosis plants installed in many places in the temple, the question of bringing water to the hill does not arise at all. The petitioner has not averred as to how the water is brought uphill at



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present, when and how the same distributed to the devotees.

8.This Court considered the rival submissions made and perused the materials placed on record.

9.The petitioner's forefather one Vellaiyappa Chettiyar has sought permission of the temple to do dharma kariyam for the devotees of Arulmigu Dhandayuthapani Swamy Thirukoil at Palani by providing water in the top of the hill. The temple is situated in the hillock of Palani and the entire hill is under the name of the Arulmigu Dhandayuthapani Swamy Devasthanam. The petitioner is in occupation of 1800 Sq.Ft space in the hillock. In those days there was no water facility in the top of the hillock. Therefore water was carried in pots by engaging labourers, stored in copper pots and the same was distributed to the devotees. This building is adjacent to the winch station, established by the temple administration. The temple administration requires this space for establishing a lounge for the



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devotees, who are using the winches to reach the temple. This petitioner claims that the mandapam was constructed by his forefathers and they are having right to retain the same for performing thanneer pandal dharmam. The temple administration claims that the temple administration itself provides potable water facility to the devotees by installing several Reverse osmoses kiosks in the hill area throughout the footpath and therefore, there is no necessity for any donor to distribute water in the hillock and such a charity has become obsolete. The temple also claims that the petitioner has not done the charity for the past three decades, however kept the building under lock and left idle. Admittedly electricity and water connection to this mandapam is being provided by the temple administration.

10. At the request of the learned Counsel on either side during the course of hearing, this Court has personally visited this mandapam along with the learned counsel for the petitioner and the respondents. This mandapam is in the prime location



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en-route the temple via footpath, abutting the winch station. The temple administration has established three winch stations in the temple. However, the winch stations lack space to accommodate the travellers/ devotees and therefore, they are sitting on the steps, which leads to several problems. There is no space for providing ramp near the winch station. If the space is available, it would be easy for the temple administration to provide ramp from the winch station, through which anyone irrespective of their age, health and physical condition can reach the temple without any difficulty.

11.The temple administration had made a request to the petitioner to hand over the place in the year 2021. The petitioner is neither using the mandapam nor returning the mandapam to the temple administration and raising this issue for the past three years and thereby this petitioner is depriving the facilities, which can be provided by the temple administration to its devotees. Since the temple administration is providing the RO kiosks around the



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temple premises, there is no necessity for thanneer pandal darmam in such circumstances. Apparently there is no facility available in the mandapam for providing thanneer dharmam as claimed by the petitioner. This petitioner has not even made any arrangements for providing any RO unit as provided by the temple administration.

12. Several thousands of devotees are visiting this temple every day. The space available in the hilltop is very minimum. The temple administration is taking every steps to cater the needs of the devotees. However, the temple administration is lacking sufficient space for providing a lounge or waiting hall to the devotees. There are three winch stations. Every 5 minutes hundreds of people are using these winch stations. The petitioner has claimed right over the mandagapai based on the document dated 15.11.1898. This document appears to be a permission sought by the petitioner's forefather to do some dharmam. If the petitioner is really having any concern as their ancestors had, he ought to have provided this

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mandapam at the earliest point of time, when the request was made by the temple, realising the pressing necessity and the situation prevailing at present. However, the petitioner is squatting on the property by referring to the letter dated 15.11.1898. This is only a letter / undertaking given by the petitioner's forefather to do thanneer pandal dharmam, and not amounting to permission given by the temple administration. The petitioner cannot treat this as a right conferred on him to keep premises under lock, to an extent of 1800 Sq.ft without any usage for several decades in the hilltop, where admittedly the space is very minimum. Further there cannot be any charity within temple premises without any permission of the temple administration. If any permission was provided by this petitioner's forefathers to perform thanneer pandal in those days, it would not automatically give right on the petitioner's to retain the property. As rightly pointed out by the learned Counsel for the temple, the relationship of this petitioner with the temple is only a donor. There is no relationship of land



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lord and tenant between the petitioner and the temple. There is no necessity for this thanneer pandal in the present situation, when the drinking water is very much made available by the temple administration.

13.The letter referred to by the petitioner is dated 15.11.1898, which is nearly half a century before the enactment of the Hindu Religious and Charitable Endowments Act, 1959. Therefore it cannot hold good, since the temple is now governed by the HR and CE Act, 1959. It is only for doing thanneer pandal dharma and the circumstances under which it was permitted has now vanished.

14.The petitioner has also claimed that he is having the 3rd day mandagapadi right in the mandampam. The Commissioner / the Revision Authority has considered the same and has passed an order in the revision petition permitting this petitioner to use the premises for the 3rd day mandagapadi during the Kanda Sasti festival as is now in practise.



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Therefore, this Court is not inclined to entertain this writ petition. In addition to that if the petitioner wishes to continue the dharmam of providing water in any other place in the foothills the same may be considered by the respondents.

15. Accordingly this writ petition is dismissed. The respondent temple shall take possession of the subject property forthwith. No costs. Consequently connected miscellaneous petitions are closed.

05.03.2024

Internet : Yes / No

Note: Issue order copy on 05.03.2024

To

1. The Secretary to Government,
Tourism, Culture and
Religious Endowments Department,
Government of Tamil Nadu,
Chennai.
2. The Commissioner,
HR and CE Department,
Nungambakkam High Road,
Chennai - 600 034.
3. The Executive Officer
cum Joint Commissioner,
Arulmigu Dandayauthapani Sway Temple
Palani, Dindigul District.

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B. PUGALENDHI, J.

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