

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.04.2015

DATE OF DECISION : 21.04.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.1072 of 2014
and
M.P.No.1 of 2014

K.M.Venkatesan

...Appellant/4th Respondent

Vs.

1. C.G.Lakshmi Narayana,
Trustee,
Arulmigu Muthukumarasamy Devasthanam,
Kandakottam, Chennai-3.
2. The Secretary to Government,
Department of Hindu Religious and
Charitable Endowment,
Fort St. George, Chennai-600 009.
3. The Commissioner,
Hindu Religious and Charitable Endowment,
Administration Department,
Nungambakkam,
Chennai-600 034.
4. The Joint Commissioner,
Hindu Religious and Charitable Endowment,
Administration Department,
Nungambakkam,
Chennai-600 034.

...Respondents/Petitioner &
Respondents 1 to 3

This writ appeal is preferred under Clause 15 of the Letters Patent against the order of this court dated 07.03.2013 made in W.P.No.2624 of 2012.

Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for the records relating to the G.O.No.243, dated 25.10.2011 and quash the same.

For Appellant : Mr.R.Shanmugam
for M/s.Shanmuga Associates

For Respondents : Mr.L.Chandrakumar for R-1
Mr.P.S.Sivashanmugasundaram,
Spl.G.P. For RR2 to 4

JUDGMENT

SATISH K. AGNIHOTRI, J.

The instant intra-court appeal arises from the order dated 07.03.2013 passed by the learned Single Judge in W.P.No.2624 of 2012.

2. The facts in nutshell relevant for adjudication of the dispute are that the first respondent was elected as trustee of Arulmigu Muthukumaraswamy Devasthanam at Chennai in the elections held on 23.11.2008. The appellant made a complaint that the first respondent does not belong to Beri Chetty caste, but Vaduga Chetty caste. He has been elected on perpetration of fraud before the Joint Commissioner, Hindu Religious & Charitable Endowment Department (hereinafter referred to HR&CE Department). The Joint Commissioner, by his order dated 18.8.2010, dismissed the complaint, holding that he cannot be disqualified on the basis of the letter issued by the Revenue Tahsildar.

3. Thereagainst, the appellant preferred a revision petition under Section 21 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 22 of 1959 (for short "Act of 1959"). The said revision petition, being R.P.No.89 of 2010, was dismissed on December 28, 2010, holding that the appellant had not filed a verified petition before the Joint Commissioner under Section 26 of the Act of 1959 for proper judicial adjudication and as such, the same was rightly rejected without passing a speaking order. It was further

held that proper remedy available to the appellant was to file an appeal or civil suit. Being aggrieved, the appellant preferred a further revision before the Government under Section 114 of the Act of 1959. The State Government by order dated 25.10.2011, set aside the order passed by the Commissioner and remitted the case back to the Commissioner for reconsidering the matter and pass orders on merit under the provisions of law. The said order was under challenge in the writ petition filed by the first respondent.

4. The learned Single Judge, examined all the facts, held as under:

"27. Thus it is clear that there are ever so many distinctions based upon very small or trivial habits, customs and practices. Many titles are misleading. The same Community known by one name in one area, has a different name in another area, in this part of the country. With such nuances, splitting communities by a hair's breadth, it is impossible for a Joint Commissioner to find out the truth or otherwise of the allegation of the fourth respondent. This is why, the Joint Commissioner rightly directed the fourth respondent to go to the Civil Court and there was no occasion for the Government to set aside the said order and to remit the matter back to the Commissioner for a full-fledged trial. After all, the petitioner has been in the list of voters of the temple for the past over 26 years and he has also been elected in the past as a Trustee. Therefore, his Community status cannot be easily decided by the Joint Commissioner, in the same manner and with the same felicity with which a Civil Court could do.

28. In view of the above, I find that the order of the Government remitting the matter back to the Commissioner for a reconsideration, is wholly unjustified and unwarranted. There was neither any procedural irregularity nor any illegality in the orders of the Joint Commissioner and Commissioner warranting interference under Section 114(1). Therefore, the writ petition is allowed and the impugned order is set aside. It will be open to the fourth respondent to seek remedies before a Civil Court. Since the remedy to be sought by the fourth respondent relates to the Community status of the petitioner, such a suit will not be barred by Section 108 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. There will be no order

as to costs. Consequently, connected miscellaneous petition is closed."

Feeling aggrieved, the appellant / fourth respondent therein has come up with the instant appeal.

5. Thiru R.Shanmugam, the learned counsel appearing for the appellant, relying on the decree dated 03.02.1893 would submit that a scheme was framed under the order of the court for the management of the temple of Sri Muthukumarasamy or Kandaswamy temple and its properties and for the conduct of election for the appointment of Dharmakarthas from among the members of the Beri Chetty caste, being the followers of the Sri Abhinava Dharma Sivachariar, which was properly notified on 12.01.1910.

6. The first respondent / writ petitioner admittedly belongs to Hindu Vaduga Chetty caste as is evident from the community certificate, the bonafide certificate issued by the Hindu Theological Higher Secondary School and the service book of C.G.Janardhanam of the brother of the first respondent. It is further contended that the first respondent herein obtained voting right and participated in the election on the basis of the letter issued by the Tahsildar. It is neither a certificate nor a legal document for the purpose of establishing the caste certificate. It is further urged that with regard to the election to be held in 2014, the Joint Commissioner / Election Officer for electing trustees had already held in his order dated 26.6.2014 that the first respondent has not produced any relevant and requisite document to show that he belongs to Aaiyra Vaisya Beri Chetty community. In the said order, it was further stated that as per G.O.Ms.No.1564, Social Welfare Department dated 30.07.1985, the community Aaiyra Vaishiar has been shown in item No.12, whereas in the said G.O., the said Vaduguar caste has been shown in item 45 and therefore, it is clear from the above that the above said two communities are different and coming under different categories. Thus, it is not necessary to take recourse to civil court when documents clearly establish that the first respondent is not entitled to be a part of the aforestated trust.

7. On the other hand, Thiru L.Chandrakumar, learned counsel appearing for the first respondent herein/ writ petitioner would submit that he belongs to Beri Chetty caste. The Vaduga caste is only the name used in some other areas, but in effect, he belongs to the same caste and as such, the first respondent is entitled to participate in the election process and also to contest therein for the election as trustee of Arulmigu Sri Muthukumarasamy or

Kandaswamy temple.

8. We have given our careful and anxious consideration to the rival submissions advanced by the learned counsel for the parties and perused the pleadings and documents appended thereto.

9. There is no dispute that under the scheme framed by the civil court, the management of Sri Muthukumarasamy or Kandaswamy temple has to be done by the Board of Trustees, who are members of the Beri Chetty caste being the disciples of the Sri Abhinava Dharma Sivachariar. The question involves is as to whether the writ petitioner/ first respondent herein belongs to Beri Chetty Caste. There are certain documents on record which indicates that he belongs to Vaduga Chetty caste. Whether Vaduga Chetty caste and Beri Chetty caste are one and the same or there is difference in their tradition, culture, way of worship and other related practices in the caste, is the dispute which could necessarily be settled by examination of evidence and documents and the same cannot be done by the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The competent jurisdictional civil court, having all trappings of courts, alone is empowered to decide the dispute with regard to the caste and community as involved in the instant case.

10. As a sequel, we do not find any infirmity, irregularity, irrationality or illegality in the order rendered by the learned Single Judge sought to be impugned in this appeal, warranting a different view, leading to interference. Resultantly, the writ appeal is dismissed. Cost made free. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

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सत्यमेव जयते
Sub Assistant Registrar

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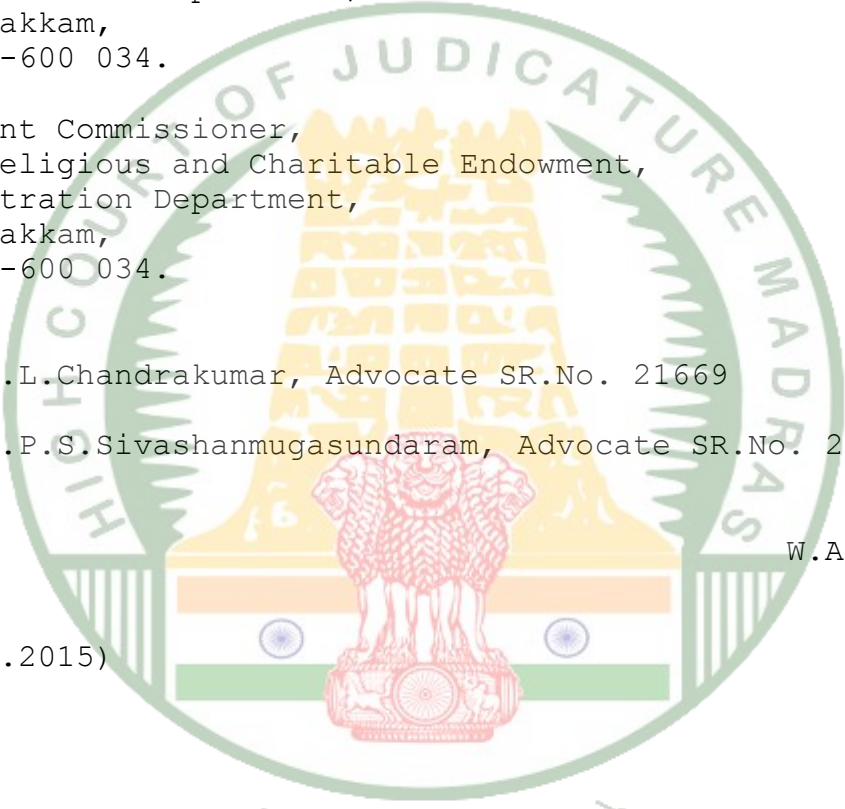
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To

1. The Secretary to Government,
Department of Hindu Religious and
Charitable Endowment,
Fort St. George,
Chennai-600 009.
 2. The Commissioner,
Hindu Religious and Charitable Endowment,
Administration Department,
Nungambakkam,
Chennai-600 034.
 3. The Joint Commissioner,
Hindu Religious and Charitable Endowment,
Administration Department,
Nungambakkam,
Chennai-600 034.
- 1 CC to Mr.L.Chandrakumar, Advocate SR.No. 21669
- 1 CC to Mr.P.S.Sivashanmugasundaram, Advocate SR.No. 21625

W.A.No.1072 of 2014

MSM (CO)
PSI (27.04.2015)



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