

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.12.2015

CORAM

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH

W.P. Nos.31233 & 31552 of 2015
AND M.P.Nos.2, 3 & 3 of 2015

W.P. No.31233 of 2015

T.Govindaraj

.. Petitioner

Versus

1. The Commissioner,
Hindu Religious and Charitable
Endowments Department,
119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai - 600 034.

2. The Election Commissioner /
Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Dharmapuri - 636 701.

3. Muniappa Gounder

4. Pachiappan

5. C.R.Tirupathi Gounder

.. Respondents

PRAYER: Writ Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the second respondent in its proceedings Na.Ka.No.2305/2015/A5, dated 25.09.2015 and to quash the same as illegal and without jurisdiction and further direct the first respondent to hold an enquiry so to the validity of the order in O.A.No.83 of 1976, dated 06.07.1977.

For Petitioner

: Mr.V.Raghavachari

For Respondent Nos.1&2

: Mr.K.V.Dhanapalan

Additional Government Pleader

For Respondent No.3 : Mr.C.Jagadish
For Respondent No.4 : No Appearance
For Respondent No.5 : Mr.M.S.Krishnan, Senior Counsel
for Mr.J.Bharathiraja

W.P. No.31552 of 2015

1.Muniappa Gounder
2.Karian @ Muniappan
3.Kannayiram
4.Muniraj
5.Chinnathambi
6.Chinna Pachiyappan

.. Petitioners

Versus

1. The Commissioner,
HR&CE Department,
Chennai - 600 034.
2. The Joint Commissioner,
HR&CE Department,
Salem - 1.
3. The Assistant Commissioner /
Election Officer,
HR&CE Department,
Dharmapuri.
4.C.R.Tirupathi
5.Mariappan, s/o.Chinnanan @ Tirupathi Gounder
6.Tirupathi
7.Mariappan, s/o.Bharath @ Tirupathi Gounder
8.Mattukkara Muniappan
9.Madhu
10.Nadu Muniappan
11.C.R.Lakshmanan
12.C.R.Krishnan
13.G.Mariappan
14.G.Mahendran
15.P.Seeni @ Srinivasan
16.P.Krishnamurthy

.. Respondents

PRAYER: Writ Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records leading to pass the impugned proceedings of the third respondent in Na.Ka.No.2305/2015/A5, dated 25.09.2015 and quash the same.

For Petitioners	: Mr.C.Jagadish
For Respondent Nos.1 to 3	: Mr.K.V.Dhanapalan Additional Government Pleader
For Respondent Nos.4 to 10	: Mr.M.S.Krishnan, Senior Counsel for Mr.J.Bharathiraja
For Respondent Nos.11 to 16	: Mr.P.Valliappan

C O M M O N O R D E R

Even though, the interim applications are listed before me, by consent, the Writ Petitions themselves are taken up for final hearing.

2.This is a triangle dispute between three different groups trying to ascertain their own rights as against each other. Before going to the respective contentions of the parties, the factual matrix governing the case requires a proper narration.

3.By the order dated 06.07.1977, two groups headed by one Venkatachala Gounder and Perumal Gounder were recognised as hereditary trustees in O.A.No.83 of 1976. Prior to that, the above said two persons are said to have executed a document, which indicates that the temple has been constructed by the villagers and in order to have smooth administration, these two persons have been appointed by the general public as trustees. There was also a deed executed by the above said persons in the year 1980, which prima facie indicates that the above said persons have stated that they are giving up their rights over the hereditary trusteeship followed by possession.

4.The dispute arose between the group headed by the petitioners group in W.P.No.31552 of 2015 and respondent Nos.4 to 10 therein, who filed the suit in O.S.No.243 of 2003. In the said suit, the trial Court has passed an order which is confirmed as to the effect that both groups can simultaneously act as hereditary trustees.

5.The group in which the respondent Nos.4 to 10 in W.P.No.31552 of 2015 were members got divided into two. The aggrieved persons from the said group filed another suit in O.S.No.107 of 2010. In the said suit, the petitioners group in W.P.No.31552 of 2015 are not parties. A decree has been obtained from the plaintiffs therein, who are added as respondent Nos.11 to 16 in W.P.No.31552 of 2015. The judgment and decree in both suits have been given effect to by the official respondent.

6.Now, for the purpose of selecting the Chairman for the Board of Trustees, the persons, who got the benefit of the decree in both suits have been included. The petitioners in W.P.No.31552 of 2015 have challenged the said order alleging

that the judgment and decree rendered in the subsequent suit in O.S.No.107 of 2010 is not binding on them, as they were not made parties.

7.W.P.No.31233 of 2015 has been filed by the third parties, who are not parties to both the proceedings, basing reliance upon the agreement executed by both groups dated 30.07.1968 followed by the deed executed in the year 1980 by them. Thus, the contention of the petitioners is that neither the order dated 06.07.1997 should be given effect to nor there can be any recognition of the trustee belong to both the suits particularly in the light of the aforesaid two documents.

8.The learned counsel for the petitioners in W.P.No.31552 of 2015 submitted that in view of the aforesaid facts, the order impugned will have to be set aside by removing the respondent Nos.11 to 16. The learned counsel for the petitioner in W.P.No.31233 of 2015 submitted that the entire issue will have to be reconsidered by the Joint Commissioner, H.R.&C.E., Salem.

9.The learned counsel for the respondent Nos.4 to 10 in W.P.No.31552 of 2015 submitted that as the declaration of hereditaryship in favour of the respondents is not in dispute and has been accepted by the official respondent, they need not be disturbed and shall be allowed to go on. The learned counsel for the respondents 3 to 5 in W.P.No.31233 of 2015 submitted that there is a subsequent suit filed by the petitioners in W.P.No.31552 of 2015 and therefore, no interference is required. More so, when there is an order passed by the official respondent.

10.The learned Additional Government Pleader appearing for the respondents 1 and 2 in W.P.No.31233 of 2015 submitted that if proper directions are given, the Joint Commissioner, H.R.&C.E., Salem, would go into the entire issue at length and arrive at a decision. So far as the first petitioner in W.P.No.31552 of 2015 is concerned, there are serious allegations about the administration of the temple and therefore, till a proper decision is taken, it would be just and proper to appoint a fit person in charge of the temple.

11.The facts as narrated above, are not in dispute. The evidentiary value and the binding nature of the suit are the matters to be considered by the Joint Commissioner, H.R.&C.E., Salem. Admittedly, all the parties are not made as parties to all the proceedings. As is the case of the petitioners in W.P.No.31552 of 2015, and the petitioner in W.P.No.31233 of 2015, in both the suits, the relevancy and admissibility of two important documents filed by the petitioners in W.P.No.31233 of 2015 dated 30.07.1968 are the matters to be considered by the Joint Commissioner, H.R.&C.E., Salem.

12. Therefore, this Court is of the view that in the interest of justice, the official respondent, namely, Joint Commissioner, H.R.&C.E., Salem, will have to conduct a detailed enquiry by calling all the parties, including, the petitioners in W.P.No.31552 of 2015 and W.P.No.31233 of 2015 and the private respondents in W.P.No.31552 of 2015 and pass appropriate orders in accordance with law. The orders, as indicated above, will have to be passed within a period of twelve weeks from the date of receipt of a copy of this order.

13. Considering the facts and circumstances of the case, particularly, the apprehension expressed by the learned Additional Government Pleader, till such time, the appropriate authority shall appoint a fit person to deal with the management and the affairs of the temple. While passing final orders as aforesaid, the Joint Commissioner, H.R.&C.E., Salem, is directed to exercise the power under Section 63[b] of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

14. The Writ Petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

To

1. The Commissioner,
Hindu Religious and Charitable
Endowments Department,
119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai - 600 034.

2. The Election Commissioner /
Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Dharmapuri - 636 701.

3. The Joint Commissioner,
HR&CE Department,
Salem - 1.

- + 1 cc to Mr.P.Valliappan, Advocate SR 66974
- + 1 cc to Mr.J.Bharathi Raja, Advocate SR 66827
- + 1 cc to M/s.V.Raghavachari, Advocate SR 66838
- + 1 cc to Mr.C.Jagadish, Advocate SR 66841
- + 1 cc to Govt.Pleader SR 66887

vs (co)
prk28/12

W.P. Nos.31233 & 31552 of 2015



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