

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH  
AND  
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.A.Nos.1636, 1586 & 1587 of 2015

S.Muthu .. Appellant in W.A.No.1636 of 2015  
K.S.Ravichandiran .. Appellant in W.A.No.1586 of 2015  
P.Thilak Kumar .. Appellant in W.A.No.1587 of 2015

-vs-

1. The Secretary to Government  
Commercial Taxes and Religious  
Endowment Department  
Fort St.George Chennai 600 009
2. The Commissioner  
Hindu Religious and Charitable  
Endowment Department  
Uthamar Gandhi Road  
Nungambakkam Chennai 600 034
3. The Joint Commissioner cum  
Election Officer  
Hindu Religious and Charitable  
Endowment Department  
Sri Muthukumarasamy Devasthanam  
Popularly known as Kandha Kottam  
Rasappa Chetty Street  
Park Town Chennai 600 003
4. T.Kaveri  
The Joint Commissioner cum  
Election Officer  
Hindu Religious and Charitable  
Endowment Department  
Sri Muthukumarasamy Devasthanam  
Popularly known as Kandha Kottam  
Rasappa Chetty Street  
Park Town  
Chennai 600 003 .. Respondents in W.A.No.1636 of 2015

1. The Secretary to Government  
Commercial Taxes and Religious  
Endowments  
Fort St.George  
Chennai 600 009
2. The Commissioner  
Hindu Religious and Charitable  
Endowments  
Uttamar Gandhi Road  
Nungambakkam  
Chennai 600 034
3. The Joint Commissioner/Election Officer  
Hindu Religious and Charitable Endowments  
Sri Muthukumaraswamy Devasthanam  
known as "Kandha Kottam"  
Rasappa Chetty Street  
Park Town  
Chennai 600 003 .. Respondents in W.A.No.1586 of 2015
1. The Secretary to Government  
Tourism, Culture and Religious  
Endowments  
Fort St.George, Chennai-9
2. The Commissioner  
Hindu Religious and Charitable  
Endowments  
Uttamar Gandhi Road  
Nungambakkam  
Chennai 600 034
3. Ms.P.Vijaya/Fit Person  
Sree Muthukumarasamy Devasthanam  
Popularly known as "Kandha Kottam"  
Rasappa Chetty Street  
Park Town  
Chennai 600 003
4. The Joint Commissioner/Election Officer  
Hindu Religious and Charitable Endowments  
  
Sree Muthukumarasamy Devasthanam  
Popularly known as "Kandha Kottam"  
Rasappa Chetty Street  
Park Town  
Chennai 600 003 .. Respondents in W.A.No.1587 of 2015

Appeals under Clause 15 of the Letters Patent, against the order dated 2.9.2015 made in W.P.Nos.27681, 27522 & 27842 of 2014.

Prayer in WP 29659/2014: Petition filed under Article 226 of constitution of India to issue a writ of certiorarified mandamus calling for the entire records of the 1st Respondent made in proceeding in SE.Mu.NA.KA.No.24877/2013/A1 dated 20.12.2013 and consequential election notification issued by the 3rd respondent in the order ref.No.1 dated Nil and the publication of the final list of candidates dated Nil affixed on the temple wall on 10.10.2014 and quash the same and consequently appoint a retired Judge of this Hon'ble Court to conduct the election for the board of Trustees for 3rd respondent Temple Sree Muthukumarasamy Devasthanam popularly known as "Kandakottam" Rasappachary Street, Park Town, Chennai 3.

WP Nos.27522/14 & 27842/14: Writ petition is filed under Article 226 of the constitution of India to issue a Writ of certiorarified mandamus thereby calling for the entire records of the 3rd respondent in the order ref. Nil dated Nil affixed in the 3rd respondent temple on 10.10.2014 and quash the same thereby include name of the petitioner to contest in the election for the board of Trustees for 3rd respondent temple Sree Muthukumaraswamy Devasthanam popularly known as "Kandhakottam" Rasappachary Street, Park Town, Chennai 600 003 as claimed by the Petitioner in his letter dated 12.10.2014.

For Appellants :: Mr.N.Umapathi in W.A.No.1636 of 2015  
Mr.K.Mohana Murali in W.A.Nos.1586  
& 1587 of 2015

For Respondents:: Mr.V.S.Sethuraman  
Additional Advocate General  
assisted by Mr.M.Maharaja  
Special Government Pleader for  
R1 & R2  
Mr.M.Loganathan for R3 & R4

#### JUDGMENT

(Judgment of the Court was made by HULUVADI G.RAMESH, J.)

Heard the learned counsel for the parties.

2. These writ appeals are filed against the order passed by the learned single Judge, wherein the learned single Judge has observed thus:-

"Learned counsel appearing for all the parties concerned in unison would submit that the scheme decree has to be complied with and

the election will have to be conducted in accordance with it. However, the learned Additional Advocate General appearing on behalf of the official respondents submitted that though there is a Government Order paving way for the conduct of the election, a sub application is pending in O.A.No.3 of 1999 initiated by the Joint Commissioner of Hindu Religious and Charitable Endowment Department with respect to clause (1) of the scheme. That portion of the scheme is extracted hereunder:-

"1 (a) Clause 1

Clause 1 of the present scheme as modified says that 5 Dharmakarthas shall be elected by voters whose names appear in the register maintained. This provision goes contrary to the provisions contained in Sec.47 of the Act wherein trustees for all public temples have to be appointed by the Govt and the Commissioner in the present case, and such number of trustees shall be not less than 3 and not more than 5. Therefore, the clause I of the scheme is not in conformity with the provisions of the Act."

2. The learned counsel for the petitioner also submitted that under Section 118(2)(b) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, any provisions contained in any scheme if repugnant to any provisions contained in the act shall become void.

3. Thus, unless and until the said sub application is disposed of one way or another, the other issues raised by the parties to these writ petitions cannot be gone into.

4. Hence, keeping the writ petitions pending, a direction is issued to the Joint Commissioner of Hindu Religious and Charitable Endowment Department, Chennai-34 to dispose of O.A.No.3 of 1999. All the petitioners are at liberty to give their objections before the said Joint Commissioner within a period of four weeks from the date of receipt of a copy of this order and the



Joint Commissioner after considering the same shall pass appropriate orders within a period of four weeks, thereafter. Post the matters after eight weeks.”

3. It appears that there is a Scheme framed more than 100 years back by this Court in the civil suit filed regarding the management of Sri Muthukumarasamy or Kandaswamy Temple and of its properties and for the conduct of election for the appointment of Dharmakarthas from among the members of the Beri Chetty caste being the disciples of the Sri Abhinava Dharma Siva Chariar and for other reliefs. In the meanwhile, in the place of the old Act, the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 came into force. It appears that pursuant to the framing of the Scheme, the appellants / writ petitioners are insisting on the election to be conducted for the Board of Trustees, on the ground that for more than a decade, the election had not been conducted. In this regard, referring to Section 118(2)(b) of the Hindu Religious and Charitable Endowments Act, the learned single Judge has referred the matter to be considered by the authority, namely, the Joint Commissioner or the Commissioner, as the case may be for doing the needful.

4. In this regard, objections were also filed by the appellants / writ petitioners and now the matter is shown to have been considered by the Joint Commissioner and an order came to be passed by the Joint Commissioner on 10.2.2016. In the circumstances, the appeals filed before us are premature and the order passed by the Joint Commissioner may be placed before the learned single Judge, since the learned Judge is seized of the matters, by the appellants / writ petitioners to arrive at a decision by raising all their contentions. The Government as well as the Department are also at liberty to file their objections vis-a-vis the objections raised by the appellants / writ petitioners to enable the learned single Judge to pass appropriate orders in accordance with law. Thereafter, if the writ petitioners are aggrieved, it is always open to them to come in appeal. However, now the grievance of the writ petitioners appears to be for the smooth conduct of the election, on the ground that the same has not been conducted for more than a decade. Regarding the contentions raised by some of the writ petitioners as to the initiation of action against a dead person or to bring some other person or the fraud being played by the temple or by the trustees, it is needless to say that all such contentions are left open to be urged by the parties before the learned single Judge in the same writ petitions or in different writ proceedings, if so advised.

5. In the light of the above, we dispose of these writ appeals with liberty to the appellants / writ petitioners to

place the order passed by the Joint Commissioner and to raise all their contentions before the learned single Judge. It is also submitted by the learned Additional Advocate General for the respondents 1 & 2 that some of the writ petitioners or the trustees have also filed appeals before the Commissioner against the order passed by the Joint Commissioner. In our opinion, this fact may also be emphasised before the learned single Judge by the writ petitioners and the learned single Judge would take care of the situation and pass appropriate orders regarding the time limit and other necessary orders with regard to the conduct of the election, either as provided under the Scheme framed by this Court or as per the provisions of the Hindu Religious and Charitable Endowments Act, as the case may be, after hearing the parties concerned.

6. Registry is directed to list the Writ Petition Nos.27681, 27522, 27842 of 2014 along with the Writ Petition Nos.29658, 29659, 34672 of 2013, 15151, 18068, 17599, 23560, 27522, 27681, 27842 of 2014 & 2301 of 2016 as well as any other connected writ petition on the same issue before the concerned learned single Judge for disposal in accordance with law. Consequently, M.P.Nos.1 of 2015 are closed. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government  
Commercial Taxes and Religious  
Endowment Department  
Fort St.George  
Chennai 600 009

2. The Secretary to Government  
Tourism, Culture and Religious  
Endowments Department  
Fort St.George  
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3. The Commissioner  
Hindu Religious and Charitable  
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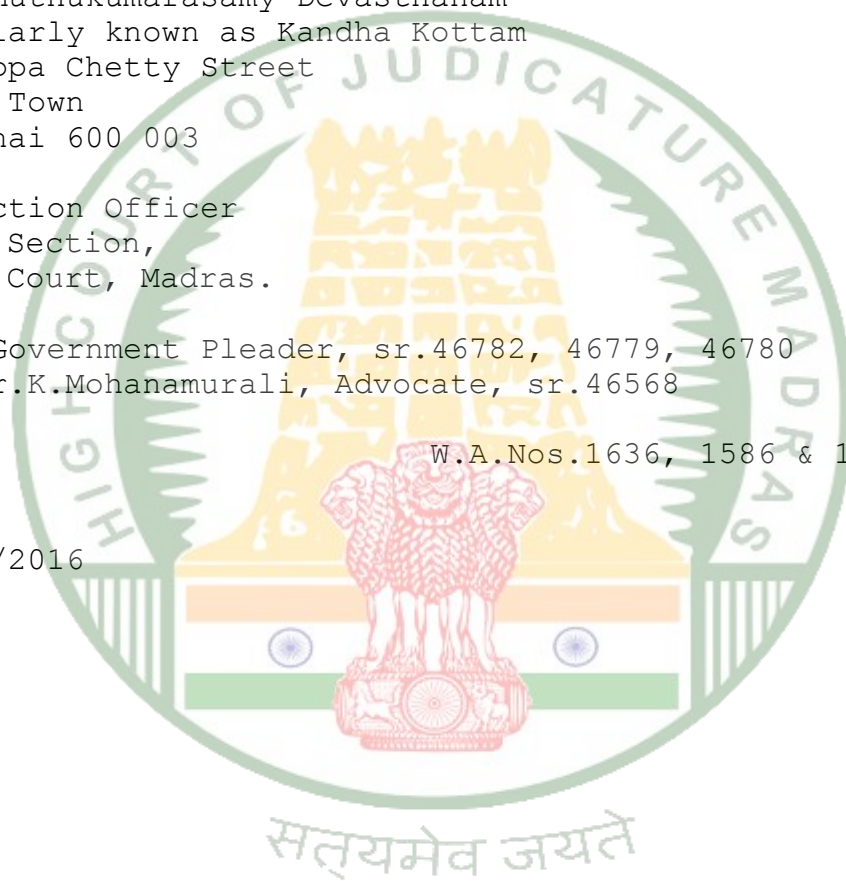
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Popularly known as Kandha Kottam  
Rasappa Chetty Street  
Park Town  
Chennai 600 003

5. The Section Officer  
Writ Section,  
High Court, Madras.

3 ccs to Government Pleader, sr.46782, 46779, 46780  
1 cc to Mr.K.Mohanamurali, Advocate, sr.46568

W.A.Nos.1636, 1586 & 1587 of 2015

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