

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.4.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.15301 of 2016

Mr.M.Venkatesalu,
Managing Trustee,
Sri Sakthi Vinayakar Balamurugan Trust,
366, Avarampalayam Road,
Sridhapudhur,
Coimbatore 641 044

... Petitioner

Vs.

The Joint Commissioner,
HR & CE Department,
Coimbatore

... Respondent

PRAYER : Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus directing the respondent to consider the representation of the petitioner dated 26.09.2014 filed under Section 63(b) before the Joint Commissioner HR & CE Department, Coimbatore to declare the petitioner as Hereditary Trustee of the Sri Sakthi Vinayagar Balamurugan Temple on merits without any further delay.

For Petitioner : Mr. N.L. Rajah
Senior Counsel

For Respondent : Mrs. Rita Chandrasekar
Spl. Govt. Pleader (HR&CE)

O R D E R

The petitioner has come forward with this Writ Petition seeking for a mandamus upon the respondent to consider the representation of the petitioner dated 26.09.2014 filed under Section 63(b) before the Joint Commissioner HR & CE Department, Coimbatore to declare the petitioner as Hereditary Trustee of the Sri Sakthi Vinayagar Balamurugan Temple on merits without any further delay.

2. According to the petitioner, he is the Managing Trustee of Sri Sakthi Vinayagar Balamurugan Temple situate at

Sithapudhur, Coimbatore. In the year 1963, the petitioner's father Muthusamy Naidu has constructed a Vinayagar Temple at Avarampalayam Road, Sithapudhur, Coimbatore on lands measuring 1301 square feet and later the idols of Balamurugan and other deities were installed in the year 1975. After the demise of petitioner's father, he took over the full charge of the temple and he has been in charge of the temple affairs. In the year 2011, he created a trust in the name of Sri Sakthi Vinayagar Balamurugan trust by executing a registered trust deed on 23.11.2011 registered as Doc.No.1087 of 2011 retaining right to amend the Trust Deed. The main objection of the trust was to maintain the Sri Sakthi Vinayagar Balamurugan Temple situate at Avarampalayam Road, Sithapudhur, Coimbatore and as a Managing Trustee of the Trust, the petitioner has contributed a sum of Rs.10,008/- towards the Trust fund and on 01.10.2014, he executed a supplemental trust deed on 01.10.2014 under Document No.79/2014. As the temple was built and duly maintained by his family and he has been maintaining proper accounts of the temple administration for the past 52 years, he filed an application on 26.09.2014 under Section 63(b) before the Joint Commissioner HR & CE Department, Coimbatore to declare him as a Hereditary Trustee of the said temple, but there was no response to his application from the authorities. Therefore, he filed a writ petition in W.P.No.33746 of 2014 before this Court to consider his application dated 26.09.2014 and this Court by order dated 19.12.2014, directed the Joint Commissioner to dispose off his representation on merits within a period of four weeks from the date of receipt of the order.

3. It is the further case of the petitioner that the person whom he had included as members of the trust formed another Trust completely against law and making false claim of right over the temple administration and in pursuance of which, the Joint Commissioner, HR & CE Department, Coimbatore without proper investigation, illegally put a seal on the Hundials kept in the said temple. Immediately the petitioner wrote a detailed letter on 27.12.2014 to the Joint Commissioner HR & CE Department, Coimbatore along with relevant records and the Joint Commissioner, HR&CE Department, Coimbatore had also accepted and agreed to remove the seal, however, no action has been taken so far. The petitioner has also filed a civil suit in O.S.No.2050 of 2014 before the Additional District Munsif, Coimbatore restraining the persons from acting detrimental to the interest of the temple from interfering with the management of the temple and the same is still pending.

4. It is the further case of the petitioner that pending suit, the respondent along with other persons illegally broke open the hundials of the said temple and took away all the temple valuables and money found in the Hundials. Hence the petitioner sent a detailed representation on 3.9.2015 to the

respondent to produce the inventory of the valuables from the temple high handedly without following the due process of law. Once again the petitioner filed a Writ Petition in W.P.No.31261 of 2015 and sought the respondent herein to hand over the accounts and articles taken from the hundials of the above said temple to him and this Court, by order dated 7.12.2015 directed the respondent dispose of the petitioner's representation dated 3.9.2015.

5. It is the grievance of the petitioner that to his shock, the respondent, instead of handing over the accounts and valuables to him, had passed an order bearing Lr. No. Na. Ka. No. 4126/ 2015/ A4/ dt.30.01.2016, which was received by petitioner on 12.3.2016, against the said order, the petitioner filed a revision petition before the Commissioner, HR & CE Department. It is the further grievance of the petitioner that no action has been taken so far despite the order of this Court dated 19.12.2014 in W.P.No.33746 of 2014 to dispose of the petitioner's representation dated 26.09.2014 on merits within a period of four weeks from the date of receipt of the order. Therefore, the respondent's conduct in deliberately disobeying the orders of this Court and at the same time, indirectly encouraging and supporting the encroachers is condemnable and reprehensible. Hence the petitioner has filed this present Writ Petition to dispose of his representation dated 26.09.2014 filed under section 63(b) before the respondent.

6. Learned counsel for the petitioner submitted that the petitioner's representation dated 26.09.2014 filed under Section 63(b) before the respondent to declare him as Hereditary Trustee of the said Temple is still pending and no action has been taken till today despite of the order passed by this Court in W.P.No.33746 of 2014. Thus he prayed for a direction.

7. Learned Government Advocate opposed to grant a direction contending that the petitioner has filed a civil suit in O.S.No.2050 of 2014 before the Additional District Munsif, Coimbatore and there is a rival claim.

8. Irrespective of the submission made by both sides, this Court, in the interest of justice, directs the respondent to consider the representation of the petitioner by conducting an enquiry after affording an opportunity of personal hearing to the petitioner as well as to all the necessary parties and pass appropriate orders on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order.

9.It is made clear that this Court has not expressed any opinion with regard to the merits of the claim made by the petitioner and it is for the respondent to decide the matter purely on merits.

10. With the above direction, this Writ Petition is disposed of. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

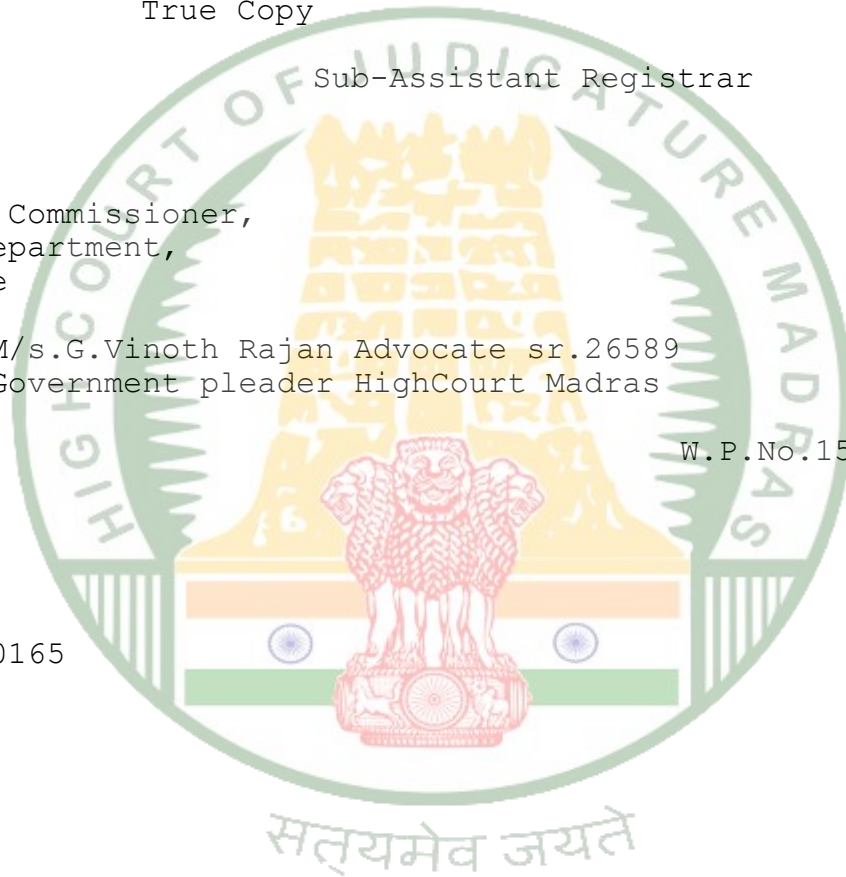
To

The Joint Commissioner,
HR & CE Department,
Coimbatore

+1 cc to M/s.G.Vinoth Rajan Advocate sr.26589
+1 cc to Government pleader HighCourt Madras
sr 26634

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