

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 24.03.2016

Pronounced on : 02-06-2016

Coram

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Writ Petition No. 30530 of 2015

and

M.P. No. 1 of 2015

C.L. Rajendran

.. Petitioner

Versus

1. The Commissioner
Hindu Religious and Charitable Endowment Department
Madras - 34

2. The Assistant Commissioner
Hindu Religious and Charitable Endowment
Department (Fit Person)
Sri Muthukumaraswamy Devasthanam
Park Town, Madras - 3

... Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus directing the respondents to restore the healthy practice of providing free food to the entire staff members of Kanda Kottam of Sri Muthukumarasamy Devasthanam as has been followed for several hundred years and to suspend the practice of converting Kanda Kottam into one of 'profit making commercial establishment' by charging/collecting entry fee of Rs.10/- and Rs.100/- per person to have the 'dharshan' of Lord Muruga at the heart burnings of the entire Beri Chetty Community people who founded the Kanda Kottam temple of Sri Muthukumarasamy Devasthanam about 450 years back as well as the heart burnings of general devotees of 'Lord Muruga' of Kanda Kottam Sri Muthukumarasamy Devasthanam, Rasappa Chetty Street, Madras - 3 by considering the petitioner's representation dated 15.09.2015 on its merits and in accordance with law as expeditiously as possible.

For Petitioner : Mr. R. Shanmugam
for M/s. Shanmugha Associates

For Respondents: Mr. K.V. Dhanapalan
Additional Government Pleader (HR & CE)

ORDER

The petitioner seeks for issuance of a Writ of Mandamus directing the respondents to restore the healthy practice of providing free food to the entire staff members of Kanda Kottam of Sri Muthukumarasamy Devasthanam as has been followed for several hundred years and also to suspend the practice of converting Kanda Kottam into one of 'profit making commercial establishment' by charging/collecting entry fee of Rs.10/- and Rs.100/- per person to have the 'dharshan' of Lord Muruga at the heart burnings of the entire Beri Chetty Community people who founded the Kanda Kottam temple of Sri Muthukumarasamy Devasthanam about 450 years back as well as the heart burnings of general devotees of 'Lord Muruga' of Kanda Kottam Sri Muthukumarasamy Devasthanam, Rasappa Chetty Street, Madras - 3 by considering his representation dated 15.09.2015 on its merits and in accordance with law as expeditiously as possible.

2. The petitioner claims to be an ardent devotee of Lord Muruga of Kanda Kottam Sri Muthukumarasamy Devasthanam situated at Rasappa Chetty Street, Park Town, Chennai. According to the petitioner the entire expenses relating to maintenance and management of the temple is being done by elected Trustees as per the terms of the scheme decree passed by this Court in Civil Suit No. 117 of 1907 and as per the decision taken by the founders of the family belonging to Beri Chetty Community who founded the Kandakottam temple. Out of the temple funds, there was a practice and custom of providing free food to the staff members of the temple and it was continued till 15.09.2015. However, all of a sudden, the second respondent, on his appointment as Fit Person of the temple, has taken an arbitrary and unauthorised decision to suspend the custom of providing free food to the staff members. According to the petitioner, the second respondent is not empowered to act contrary to the healthy practice and custom of providing free food to the entire staff members which was followed for several years. Further, the second respondent is attempting to convert the temple administration into one of profit making commercial establishment by collecting entry fee of Rs.10/- and Rs.100/- for darshan of the deity and this is contrary to the scheme decree passed by this Court. In such circumstances, the petitioner has given a representation dated 15.09.2015 to the first respondent in person but the same has not been considered, hence, the petitioner has come up with this writ petition before this Court.

3. The learned counsel for the petitioner vehemently contended that he is only seeking for issuing a direction to the first respondent to pass orders on the representation of the petitioner dated 15.09.2015 and it is for the first respondent to consider his claim of the petitioner on its own merits.

4. The learned Additional Government Pleader (HR & CE), relying on the counter affidavit of the second respondent, vehemently opposed the writ petition. According to the learned Additional Government Pleader, the temple in question is under the administrative and supervisory control of the first respondent and it has been included in the list published under Section 46 (iii) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act XXIII of 1959) (hereinafter called as The Act). Even though the temple was previously managed by Beri Chetty Community People, their term of office expired and the Government appointed the second respondent as Fit Person to perform the functions of the Trustees. After taking over the administration of the temple, it was found that the funds of the temple were unauthorisedly utilised in the guise of providing free food for the temple employees who are already receiving salary on par with the Government servants as per the norms fixed by the Government in time scale of pay. Further, nowhere under the Act, the second respondent or the executive authorities of the temple are authorised to provide free meals to employees of the temple. According to the learned Additional Government Pleader, there is no specific endowment, as defined under Section 6 (19) of the Act to provide free food to the temple employees alone. However, for the benefit of the worshippers of the temple, public "Annadhanam Scheme" has been introduced by the Government and it was extended to the temple in question. Even in the scheme decree passed by this Court, there was no direction issued to provide free food to the employees of the temple. As regards the collection of fee for darshan, it is submitted by the learned Additional Government Pleader that even during the trusteeship of the trustees of the temple, there was a practice of collecting fee for special darshan. Further, the trustees of the temple never rendered proper account of the amount collected in this behalf. Therefore, after taking over the administration, the second respondent obtained administrative approval from the first respondent to collect the fee for special darshan and it was also approved by the first respondent vide L.Dis.No.29220/2014/H2 dated 18.07.2014 which has come into effect from 21.07.2014. The petitioner herein is not an employee of the temple. None of the employees in the temple have questioned the act of the second respondent from stopping the provision of offering free food to them. The petitioner has therefore no locus standi to file this writ petition. Therefore, the learned Additional Government Pleader prayed for dismissing the writ petition in limine.

5. I heard the learned counsel for the petitioner as well as the learned Additional Government Pleader appearing for the respondents. I had carefully examined the records made available before this Court.

6. The learned counsel for the petitioner would submit that if a direction is issued to the first respondent to consider the representation of the petitioner dated 15.09.2015, no prejudice would be caused to the respondents. But in my considered opinion, such a relief cannot be granted by this Court for more than one reason. First of all, there is no evidence to show that the representation dated 15.09.2015 has been served on the first respondent. Unless it is proved that the representation said to have been given by the petitioner is pending on the file of the first respondent or the first respondent failed to act upon such representation submitted by the petitioner, this Court cannot issue a Mandamus as sought for by the petitioner. Further, a Mandamus cannot be issued by this Court to compel the first respondent to do certain acts which he is not obliged to do under the Hindu Religious and Charitable Endowments Act.

7. The petitioner claims to be an ardent devotee of the temple in question. Whether such a claim made by the petitioner will give rise to a cause of action for filing this writ petition. The temple in question has been taken over by the Government and it comes within the administrative and supervisory control of the Hindu Religious and Charitable Endowments Department. After taking over the temple, the first respondent has appointed the second respondent as Fit Person of the temple. The petitioner has not challenged such appointment of the second respondent as Fit Person of the temple, however, he made several allegations in the affidavit filed in support of the writ petition as against the second respondent. When the petitioner did not question the appointment of the second respondent, such allegations made by the petitioner need not be gone into by this Court in this writ petition. Even otherwise, the petitioner has no locus standi to question the authority or administrative powers of the second respondent. The petitioner only claims to be an ardent devotee of the temple in question and it will not give him a cause of action for filing this writ petition. Therefore, this Court can only come to the conclusion that the present writ petition has been filed by the petitioner by abusing the process of law and there is no merit in the claim of the petitioner. In other words, this writ petition has been filed by the petitioner in the nature of a public interest litigation to gain cheap popularity. If the relief sought for by the petitioner is considered and a direction is issued to the first respondent even to consider his representation, it would result in adverse consequences and in such event the first respondent will be compelled and constrained to pass an administrative order which he is not obliged to do at the instance of the petitioner. This court also finds that there is neither legal right or interest vested with the petitioner to file this writ petition nor he has locus standi to file this writ petition.

8. In this context, it will be useful to refer to the decision of the Division Bench of this Court in the case of (M. Ingaci vs. The Commissioner, Devakottai Municipality, Sivagangai District) 2010 2 Law Weekly 785, wherein the Division Bench of this Court held that there are several instances where unscrupulous petitioners have misused the direction issued to "consider". It was further held that there are large-scale misuse of the orders "to consider". The Division Bench also relied on para Nos. 18 to 210 of the decision of the Honourable Supreme Court reported in the case of A.P. SRTC vs. G. Srinivas Reddy (2006) 3 SCC 674 = 2006, 3 Law Weekly 170, wherein in Para Nos. 18 to 20, it was held as under:-

"18. We may also note that sometimes the High Court dispose of the matter merely with a direction to the authority to 'consider' the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of the issue can be a reason for the court to avoid deciding the issue which requires to be decided, and disposing of the matter with a direction to 'consider' the matter afresh. Be that as it may.

19. There are also several instances where unscrupulous petitioners with the connivance of 'pliable' authorities have misused the direction 'to consider' issued by Court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable time, the person making the representation approaches the High Court with an innocuous prayer to direct the authority to 'consider' and dispose of the representation. When the court disposes of the petition with a direction to 'consider', the authority grants the relief, taking shelter under the order of the court directing him to 'consider' the grant of relief. Instances are also not wanting where authorities unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order 'to consider' as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in

pursuance of orders to 'consider' may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of the court's direction 'to consider' the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it. Representations of daily-wagers seeking regularisation/absorption in to regular service is a species of cases, where there has been large-scale misuse of the orders 'to consider'.

20. Therefore, while disposing of the writ petition with a direction 'to consider', there is a need for the High Court to make the direction clear and specific. The order should clearly indicate whether the High Court is recording any finding about the entitlement of the petitioner to the relief or whether the petition is being disposed of without examining the claim on merits. The court should also normally fix a time-frame for consideration and decision. If no time frame is fixed and if the authority does not decide the matter, the direction of the court becomes virtually infructuous as the aggrieved petitioner will have to come again to court with a fresh writ petition or file an application for fixing time for deciding the matter."

9. Thus, it is evident from the decision of the Honourable Supreme Court that mere direction to consider one's representation will result in adverse consequences and it will give rise to renewing a stale, untenable or dead claim. It is also evident that there is no straight-jacket formula to be adopted by the Court in simply issuing a direction to consider one's representation without examining the consequences if such a direction is issued. In this case also, the direction as sought for by the petitioner, if issued, will result in adverse and serious consequences whereby the first respondent will be forced to discharge his statutory duty, which he is not bound to do at the instance of the petitioner.

10. For all the above reasons, the writ petition fails and therefore it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

rsh

s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The Commissioner
Hindu Religious and Charitable Endowment Department
Madras - 34

2. The Assistant Commissioner
Hindu Religious and Charitable Endowment
Department (Fit Person)
Sri Muthukumaraswamy Devasthanam
Park Town, Madras - 3

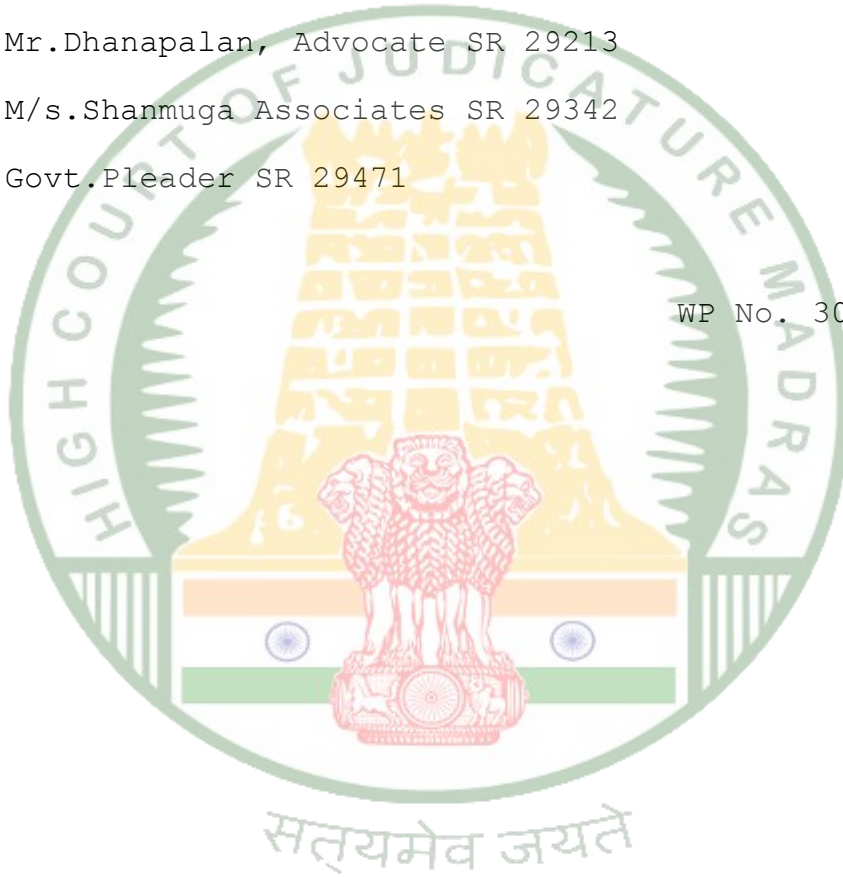
+ 1 cc to Mr.Dhanapalan, Advocate SR 29213

+ 1 cc to M/s.Shanmuga Associates SR 29342

+ 1 cc to Govt.Pleader SR 29471

mg(co)
prk14/6

WP No. 30530 of 2015



WEB COPY