

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2016

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

W.P.Nos.3141 & 3857 of 2015

W.P.No.3141 of 2015

R.Anand

... Petitioner

Versus

1.The Revenue Divisional Officer,
Salem Division,
Salem District.

2. The Assistant Commissioner of Police,
Hasthampatti,
Salem - 7.

... Respondents

W.P.No.3857 of 2015

R.Anand

... Petitioner

Versus

1.The Revenue Divisional Officer,
Salem Division,
Salem District.

2. The Assistant Commissioner of Police,
Hasthampatti,
Salem - 7.

3. Rajammal
4. Lakshmi
5. Kulandaiammal
6. Parvathi
7. Indirani
8. Angamuthu

... Respondents

PRAYER in W.P.No.3141 of 2015: Writ Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Mandamus, or any other writ or order or direction in the nature of writ directing the first respondent to permit the petitioner and his agnates to perform the Temple festival for "ARULMIGU SRI ANGALAMMAN THIRUKKOVIL" situated in T.S.No.128, at Ward J, Block 9, East Street-3, Johnson Nagar, Hastampatty, Salem

- 7 from 1.02.2015 to 20.02.2015 with adequate police protection based on the representation of the petitioner dated 31.01.2015.

PRAYER in W.P.No.3857 of 2015: Writ Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus, or any other writ or order or direction in the nature of writ calling for the entire records pertaining to the order passed by the Revenue Divisional Officer, Salem, the first respondent herein vide her proceedings dated Naka.1127/2013/A2 dated 06.02.2015 and Quash the same as illegal, arbitrary, unreasonable being violative of rules and principles of natural Justice and thereby direct the I Respondent to permit the petitioner and his agnates to perform the Temple festival for "ARULMIGU SRI ANGALAMMAN THIRUKKOVIL" situated in T.S.No.128, at Ward J, Block 9, East Street-3, Johnson Nagar, Hastampatty, Salem - 7 from 1.02.2015 to 20.02.2015 with adequate police protection.

For Petitioner : Mr.A.R.Suresh
in both W.Ps.

R1- Service awaited

For Respondent-2: Mr.P.Sanjay Gandhi,
in both WPs Additional Government Pleader

For Respondents : Mr.A.S.Balaji
3 to 8 in W.P.No. For M/s.Jothi Kumar
3857 of 2015

O R D E R

These Writ Petitions have been filed to direct the first respondent to permit the petitioner and his agnates to perform the temple festival for Arulmigu Sri Angalamman Thirukkivil with adequate police protection.

2. Challenging the impugned order dated 06.02.2015 the present writ petition has been filed stating that Arulmigu Sri Angalamman Thirukkivil in Johnson Nagar, Salem is constructed by one Marimuthu, who is great grand father of 'A' party and 'B' party, the petitioners and the respondents. The said Marimuthu was having 3 sons, namely Mariappan, Muthu and Kulandaivelu. The said Kulandaivelu is having one son Ponnusamy and he died 10 years prior to the death of Kolandiavelu. His wife and children are available. Now the dispute is between the legal heirs of Mariappan and Muthu. It is an admitted fact that Mariappan died in the year 1984. After the death of Mariappan, till the death of Muthu in the year 2010, all the legal heirs of Mariappan and Muthu joined together and performed the festival jointly. But after the death of Muthu, the legal heirs of Mariappan, one Indirani and Angamuthu filed the suit in O.S.No.152 of 2009 against his own brothers Angamuthu and Raju for declaration that the plaintiffs are pangaligal of the said temple Arulmigu Sri Angalamman Thirukkivil at No.3, Johnson Nagar, Salem and restraining the defendants from in any manner interfering with the plaintiffs and

their family in participating in the temple festival celebration permanently. Though the suit has been dismissed for default. subsequently, the children of Mariappan filed the suit in O.S.No.196 of 2011 on the file of the Principal District Munsif, Salem for declaration that the plaintiffs are entitled to do poojas, conduct festivals in the ensuing Tamil Masi amnavasai on 04.03.2011 and alternatively in the subsequent years and manage the affairs of the temple in the same manner and permanently restraining the defendants 1 to 6 and their men from in any way preventing the plaintiffs from doing poojas, conducting festivals in the ensuing Tamil Masi Amavasai on 04.03.2011 and alternatively in the subsequent years and manage the affairs of the temple and for costs. It is also an admitted fact that the said suit in O.S.No.196 of 2011 has been decreed exparte. It is also admitted that subsequently, that exparte decree has been set aside and the said suit is pending. During the pendency of the suit in O.S.No.196 of 2011, on the complaint given by Indirani, a case in Crime Number 116 of 2013 under section 107 Cr.P.C. has been registered and the first respondent conducted enquiry and passed an order that since in 2014, the petitioners Raju and others have performed the pooja, in 2015 Indirani and others are permitted to perform pooja and next year Raju and others are permitted to perform pooja.

3. At this juncture, the petitioner has preferred W.P.No.3141 of 2015 for direction to permit the petitioner to perform temple festival from 1.02.2015 to 20.2.2015 and for providing adequate police protection. On 16.2.2015, the present impugned order has been passed and that has been challenged in W.P.No.3857 of 2015 stating that merely on the basis of the exparte decree passed in O.S.No.196 of 2011, the second respondent has passed the order and hence he prayed for setting aside the same.

4. Resisting the same, the learned Additional Government Pleader filed counter and would submit that pursuant to the Crime No.124 of 20015, the first respondent summoned both the parties and equired and passed the order directing the respondents to perform the temple festival in 2015. But that has been prevented by Raju and others and so they are unable to celebrate the festival in 2015 and prayed for dismissal of the application. However, he would submit that whenever this Court Orders for police protection, they are ready to provide police protection.

5. Considering the rival submissions and on perusal of typed set of papers, the W.P.No.3141 of 2015 has been filed to permit the petitioner to perform the festival from 01.02.2015 to 20.02.2015 with adequate police protection. But, already the period is over. Hence the W.P.No.3141 is liable to be dismissed as infructuous.

6. Now, in W.P.No.3857 of 2015, the petitioner challenges the order passed by the Revenue Divisional Officer. In

that, it was specifically mentioned that in the year 2015 Indirani and others and subsequently Raju and others have been permitted to perform the festival alternatively. But, admittedly both the parties submitted that no festival has been performed by Indirani and others in the year 2015, since the petitioners have prevented them from conducting the temple festival.

7. Now, the point to be decided is whether the Order of the Revenue Divisional Officer is sustainable. The suit has been filed in the year 2011 in O.S.196 of 2011 for the reliefs of declaration and permanent injunction. Till the disposal of the suit, the Revenue Divisional Officer has made temporary measure. But, even then, the petitioner counsel would submit that since the suit in O.S.No.196 of 2011 is decreed *exparte* and that on the basis of the said *exparte* decree, the order has been passed. On perusal of page No.59 of typed set, in the Order of the Revenue Divisional officer, it has been specifically stated that as per the order dated 18.11.2015 in the O.S.No.196 of 2011, both parties are directed to perform the pooja alternatively. But that has not been followed by Raju and others. Hence, Indirani and others approached the police station and on the basis of their complaint, a case in Crime No.116 of 2013 under section 107 of Cr.P.C. has been registered. But admittedly, the said suit is pending.

8. Even though, this Court has suggested for compromise, to conduct temple festival jointly till the disposal of the suit, since the temple festival has been conducted jointly till the death of Muthu in the year 2010, they have not agreed of that compromised. Furthermore, it is pertinent to note that Marimuthu is having three sons and among them the legal heirs of Mariappan and Muthu are conducting the temple festival. So the legal heirs of Kulandai are also entitled to perform pooja. In such circumstances, the impugned order of the first respondent is set aside and till the disposal of the suit in O.S.No.196 of 2011, both parties are restrained to perform the temple festival to avoid creating law and order problem in the locality. Since both the parties are restrained to perform the temple festival in order to avoid law and order problem, the learned I Additional District Munsif, Salem is directed to dispose the suit in O.S.No.196 of 2011 within three months from the date of receipt of a copy of this Order.

9. With the above direction, the Writ Petition No.3857 of 2015 is disposed of and the Writ Petition No.3141 of 2015 is dismissed as infructuous.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1. The I Additional District Munsif
Salem

2. The Revenue Divisional Officer,
Salem Division,
Salem District.

3. The Assistant Commissioner of Police,
Hasthampatti,
Salem - 7.

4. The Additional Government Pleader,
High Court,
Chennai.

1 cc to M/s.M. Jothikumar, Advocate, Sr. 9299

1 cc to M/s. A.R. Suresh, Advocate, sr. 9294

W.P.Nos.3141 & 3857 of
2015

AK (CO)
kk 26/2



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