



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.6295 of 2017, 5807 of 2016, 9030 of 2015, 10330 of 2015
and 2499 of 2014

and

Cr1.R.C.(MD).No.681 of 2017

and

M.P.(MD).Nos.1 and 2 of 2015

in

W.P.(MD).No.9030 of 2015

and

M.P.(MD).Nos.1, 2 and 3 of 2014

in

W.P.(MD).No.2499 of 2014

W.P.(MD).No.6295 of 2017

S.M.Raja

.. Petitioner

Vs.

1.The District Collector,
Theni District.

2.The Commissioner,
Hindu Religious and Charitable Endowments,
Nungambakkam, Chennai.

3.The Joint Commissioner,
Hindu Religious and Charitable Endowments,
Madurai.

4.The Assistant Commissioner,
Hindu Religious and Charitable Endowments,
Dindigul.

5.The President,
Saaliyar Mahajana Sangam,
Sakkampatti, Theni District.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents 1 to 5 to take action on the basis of the petitioner's representation dated 13.03.2017 within a stipulated period.

For petitioner : Mr.K.Gokul

For R1 to R4 : Mr.M.Govindan

Special Government Pleader

For R5 : Mr.Rajesh Saravanan



W.P. (MD).No.5807 of 2016

S.M.Raja

.. Petitioner

Vs.

1.The District Collector,
Theni District.

2.State rep.
The Superintendent of Police,
Theni District.

3.The Revenue Divisional Officer,
Periyakulam, Theni District.

4.The Asst. Commissioner,
H.R.& N.C., Dindigul.

5.The Tahsildar,
Aundipatti, Theni District.

6.The Inspector of Police,
Aandipatti Police Station,
Theni District.

7.K.S.Ravindran
President, Saaliyar Mahajana Sangam,
Sakkampatti,
Theni District.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the 1st respondent to conduct the 91st Chitra Thiruvizha Festival as a Government Festival at Arulmigu Muthumariamman Thirukovil, Sakkampatti, Aandipatti Taluk, Theni District on the basis of the petitioner's representation dated 09.03.2015.

For petitioner	: Mr.K.Gokul
For R1 to R6	: Mr.M.Govindan Special Government Pleader
For R7	: Mr.Rajesh Saravanan

W.P. (MD).No.9030 of 2015

Saaliyar Mahajana Sangam

.. Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable,
Endowments Department,
Nungambakkam, Chennai.



2.The Joint Commissioner,
Hindu Religious Charitable
Endowments Department,
Madurai.

3.The Assistant Commissioner,
Hindu Religious and Charitable,
Endowments Department,
Dindigul.

4.Fit Person/Executive Officer,
Arulmigu Dharmasastha Thirukovil,
Thimmarasanaickanur,
Aundipatti Taluk,
Theni District.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, restraining the respondents from taking possession and management of Arulmigu Sri Muthumariamman Thirukoil, Jakkampatti, Aundipatti Taluk, Theni District from the writ petitioner without following due process of law.

For petitioner	: Mr.B.Rajesh Saravanan
For R1 to R3	: Mr.M.Govindan Special Government Pleader
For R4	: Mr.M.Karuppasamy Pandian
For Pro. Respondent	: Mr.K.Gokul

W.P.(MD).No.10330 of 2015

S.M.Raja

.. Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Nungambakkam, Chennai.

2.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department, Madurai.

3.The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Dindigul.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to publish the accounts for the 90th year Chithirai Thiruvizha Festival of Arulmigu Sri Muthumariamman Thirukovil situated in S.No.2333 of Jakkampatti Village, Aundipatti Taluk, Theni District by considering the petitioner's representation dated 17.05.2015.



For petitioner : Mr.K.Gokul
For Respondents : Mr.M.Govindan
Special Government Pleader

W.P.(MD).No.2499 of 2014

M.Muthuchamy

.. Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Chennai-34.

2.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Madurai.

3.The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Dindigul,
Dindigul District.

4.The Revenue Divisional Officer,
Periyakulam,
Theni District.

5.S.M.Marimuthu

6.S.P.Velmurugan

(R5 and R6 impleaded vide Court order
dated 25.03.2014 in M.P.(MD).No.4/14)

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the 3rd respondent's impugned order in Se.Mu.Na.Ka.No.1390/2013/Aa2 dated 30.12.2013 and quash the same as illegal and consequently direct the respondents not to interfere in the peaceful administration of the Arulmighu Sri Muthumariamman Temple Trust to conduct temple poojas in Arulmigu Sri Muthumariamman Temple situated at Jakkampatti, Andipatti Taluk, Theni District.

For petitioner : Mr.B.Rajesh Saravanan
For R1 to R4 : Mr.M.Govindan
Special Government Pleader
For R5 & R6 : Mr.M.Saravanan for Mr.R.Subramanian

Crl.R.C. (MD).No.681 of 2017

Arulmighu Muthumariamman Thirukovil,
Jakkampatti,
Aundipatti Taluk, Theni District,
Rep by the Fit Person, Thiru Arul Selvam
The Executive Officer,
Aulmighu Dharmasastha Thirukkivil,
Thimmarasanaikckkanoor,
Aundipatti Taluk,
Theni District.

.. Petitioner

Vs.

1.S.Ganesan
2.R.Arunagiri
3.K.M.Gurusamy
4.Thillaii Natarajan
5.M.Muthuchamy
6.M.Ponraj
7.Narasimha Perumal

.. Respondents

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C., against the order passed in Cr.M.P.No.5156 of 2014 dated 24.04.2015 on the file of the learned District Munsif cum Judicial Magistrate, Aundipatti, Theni District.

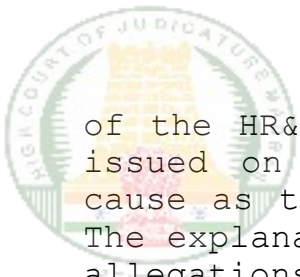
For petitioner	: Mr.M.Karuppasamy Pandian
For R1 to R3, 6, 9,7	: Mr.B.Rajesh Saravanan

COMMON ORDER

[Common Order of the Court was made by G.R.SWAMINATHAN, J.]

The subject matter of all the writ petitions as well as the Criminal Revision Case is administration of Arulmigu Sri Muthumariamman Temple situated at Jakkampatti, Aundipatti Taluk, Theni Distirct.

2.The Assistant Commissioner, HR&CE Department, Dindigul, called upon the Inspector, HR&CE, Usilampatti to conduct inspection of the said temple and submit his report. The Inspection Report was submitted to the effect that the said temple is a public temple and that representations had been received from various communities calling for bringing the said temple under the supervision of HR&CE Department. Though Hundials were originally installed, in order to preempt the HR&CE Department from bringing the institution under its purview, the said Hundials were removed. There also existed serious dispute and difference of opinion between two groups of people with regard to the management and administration of the temple. Therefore, recommendation was made for bringing the temple under the HR&CE control. Accordingly, the Commissioner, HR&CE Department by order dated 19.11.2013 brought the said temple under the Supervision

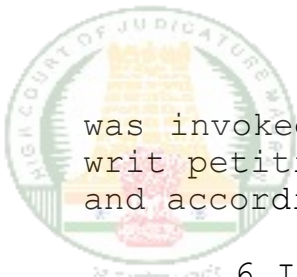


of the HR&CE Department. Based on the said proceedings, notice was issued on 25.11.2013 calling upon the incumbent trustee to show cause as to why fit person should not be appointed for the temple. The explanation dated 17.12.2013, was considered, but in view of the allegations made with regard to the management of the temple, in order to administer the temple without going room for any complaint, the Assistant Commissioner, HR&CE Department, Dindigul passed an order dated 30.12.2013 appointing the Executive Officer, Arulmigu Dharmasastha Temple, Thimmarasanaickanur, as fit person for Arulmigu Muthumariamman Thirukovil, Jakkampatti. The said order is challenged in W.P. (MD).No.2499 of 2014.

3.Saaliyar Mahajana Sangam, filed W.P.(MD).No.9030 of 2015, restraining the HR&CE Department from taking possession and management of the said temple. On the other hand, one S.M.Raja, filed W.P.(MD).No.5807 of 2016 and W.P.(MD).No.6295 of 2017, for taking over the temple based on his representation. Since the incumbent trustee did not hand over the possession of the temple to the fit person appointed by the Department, a petition under Section 101 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, was filed before the Court of Judicial Magistrate, Aundipatti. In view of the transfer of the fit person, the said petition came to be dismissed for default. Challenging the dismissal of the order dated 24.04.2015 in Cr.M.P.No.5156 of 2014, the Criminal Revision Petition in Crl.R.C.(MD).No.681 of 2017 came to be filed before this Court. Since the issue in all the above writ petitions are inter connected, they were heard together.

4.Heard the learned counsel for all the parties.

5.It may be noted at the outset that the temples in Tamil Nadu are presumed to be public temples. In fact, none of the counsel appeared before us made a claim that the said temple is a private temple. When the temple in question is a public temple, it has to be necessarily under purview of Tamil Nadu HR&CE Department. In the present case, the said temple was out of the purview of the Department. It was under the control of some private individuals. The temple appears to have some properties. Hundials had been installed, but there was no proper counting. Therefore, another group in the village had been sending complaint after complaint. It cannot be disputed that serious disputes have arisen with regard to the management and administration of the temple. Therefore, the authority rightly passed an order appointing a fit person for the temple. An order of appointing a fit person for a religious institution cannot be for eternity. It is only for a temporary duration. Therefore, no exception can be taken to the issuance of the order dated 30.12.2013. The said order appointing a fit person was passed only after issuing notice to the incumbent trustee. Inspection Report was also obtained earlier. Only after considering all the relevant aspects, the order appointing fit person came to be passed. Though, the said order is an appealable one, instead of availing the said appeal remedy, the writ jurisdiction of this Court



was invoked straight away. Therefore, looked at from any angle, the writ petition in W.P.(MD).No.2499 of 2014, is liable to be dismissed and accordingly dismissed.

6. In view of the dismissal of W.P.(MD).No.2499 of 2014, the writ petition in W.P.(MD).No.9030 of 2015, should also be necessarily dismissed.

7. When a statutory order has been passed appointing a fit person, it is a duty of the said fit person to take possession of the property in question. It is a statutory duty. Since in this case, the fit person was resisted, he filed petition under Section 101 of the Act before the Jurisdictional Magistrate. The statutory authority cannot be restrained from discharging his statutory duty.

8. The prayer in W.P.(MD).No.9030 of 2015 is for restraining the authorities from taking possession and management of the said temple without following due process of law. In this case, the fit person has taken only in accordance with law by moving the jurisdictional Magistrate. Therefore, the writ petitioner in W.P.(MD).No.9030 of 2015, cannot have any grievance. He would be given notice by the learned Magistrate, when hearing the Cr.M.P.No.5156 of 2014. The learned Magistrate is directed to post the Cr.M.P.No.5156 of 2014, on 18 November 2017 and an opportunity should be given to the petitioner in W.P.(MD).No.9030 of 2015, to submit his case.

9. The Criminal Revision Case in CrI.R.C.(MD).No.681 of 2017, has been filed challenging the dismissal of Cr.M.P.No.5156 of 2014 by the learned Judicial Magistrate, Aundipatti. The said petition was filed under Section 101 of the Tamil Nadu HR&CE Act. The person, who filed the said petition was transferred. The new incumbent did not pursue the matter. The petition therefore, came to be dismissed for default. A statutory order has been passed, appointing a fit person in the said temple and it is the duty of the fit person to take possession of the temple in question. In this case, there is resistance and not handing over the possession by the erstwhile trustee. Hence, the fit person rightly filed the said petition. It was dismissed for the reason set out above. The order dismissing the petition under Section 101 of the HR&CE Department will have to be necessarily set aside and the petition restored to file. The learned Magistrate shall re-hear the matter, issue notice to the concerned parties and dispose of the same within a period of four months from the date of receipt of a copy of this order. CrI.R.C.(MD).No.681 of 2017 is allowed as above.

10. In view of the order made in CrI.R.C.(MD).No.681 of 2017 the grievance raised in W.P.(MD).Nos.6295 of 2017 and 5807 of 2016 and W.P.(MD).No.10330 of 2015 does not survive and accordingly closed. The fit person has already moved the learned Magistrate for taking possession of the temple in question. Depending upon the orders passed by the learned Magistrate, liberty is granted to the fit person to take appropriate action, taking into account the



grievance raised by the petitioner in W.P.(MD).No.5807 of 2016 and W.P.(MD).No.10330 of 2015. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(RTI)

WEB COPY

/True Copy/

Sub Assistant Registrar.

To:

- 1.THE DISTRICT COLLECTOR, THENI DISTRICT.
- 2.THE COMMISSIONER,HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS, NUNGAMBAKKAM, CHENNAI.
- 3.THE JOINT COMMISSIONER,HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS, MADURAI.
- 4.THE ASSISTANT COMMISSIONER, HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS,DINDIGUL.
5. THE SUPERINTENDENT OF POLICE, THENI.
6. THE REVENUE DIVISIONAL OFFICER,PERIYAKULAM,THENI DISTRICT.
7. THE ASSISTANT COMMISSIONER, HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS DEPARTMENT,DINDIGUL.
8. THE TAHSILDAR, AUNDIPATTI,THENI.
9. THE INSPECTOR OF POLICE, AUNDIPATTI POLICE STATION,THENI.
10. THE JUDICIAL MAGISTRATE, AUNDIPATTI.

Copy to:

THE SECTION OFFICER, CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1CC to the Special Government Pleader SR.No.75080

+6CC to Mr.K.Gokul, Advocate, SR.No. 74719,74923,74918,74920,74922,
74921

+1CC to Mr.M.Karuppasamy Pandian, Advocate, SR.No. 75020

+1CC to Mr.B.Rajesh Saravanan, Advocate, SR.No. 74740

+1CC to Mr.R.Subramanian, Advocate, SR.No. 74731

ORDER MADE IN
W.P.(MD)Nos.6295 of 2017, 5807 of 2016, 9030 of 2015, 10330 of 2015
and 2499 of 2014
and
Crl.R.C.(MD).No.681 of 2017
and
M.P.(MD).Nos.1 and 2 of 2014
in
W.P.(MD).No.9030 of 2015
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M.P.(MD).Nos.1, 2 and 3 of 2014
in
W.P.(MD).No.2499 of 2014
24.08.2017