

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.7838 of 2008

and

M.P.No.1 of 2008

Chetty Pillaiyar Koil
@ Varasiddhi Vinayagar Koil,
Naduveerapattu by trustee Jayarama Chettiar,
Naduveerapattu, Cuddalore Taluk. Petitioner

Vs.

1. The Commissioner,
Hindu Religious & Charitable Endowment Board,
Nungambakkam High Road,
Chennai - 600 034.
 2. Joint Commissioner,
Hindu Religious & Charitable Endowment Board,
Villupuram.
 3. Assistant Commissioner,
Hindu Religious & Charitable Endowment Board,
Cuddalore.
 4. N.Dhandapani Chettiar,
 5. R.Selvaraj
 6. D.Mahadevan
- सत्यमेव जयते ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in Na.Ka.No.172/2006 H1 dated 04.01.2008 signed on 05.02.2008 by the first respondent and quash the same, consequently, forbear respondents from interfering with petitioner's right to function as trustee of Chetty Pillaiyar Koil alias Varasiddhi Vinayagar Koil, Naduveerapattu, Cuddalore Taluk.

For Petitioner : Mr.D.Baskar

For Respondents : Mr.M.Maharaja (HR&CE)

Special Government Pleader
For R1 to R3

Mr.K.Gnanasekar
For R4 to R6

O R D E R

This Writ Petition has been filed to call for the records of the first respondent made in Na.Ka.No.172/2006 H1 dated 04.01.2008 signed on 05.02.2008 and to quash the same, and consequently, to forbear the respondents from interfering with petitioner's right to function as trustee of Chetty Pillaiyar Koil alias Varasiddhi Vinayagar Koil, Naduveerapattu, Cuddalore Taluk.

2. It could be seen from the affidavit filed by one Jayarama Chettiar, son of Rangasami Chettiar, aged about 55 years, residing at Keezh Chetty Street, Naduveerapattu, Cuddalore Taluk, Cuddalore District, that Chetty Pillaiyar Koil alias Varasiddhi Vinayagar Koil in Naduveerapattu Village, Cuddalore Taluk, belongs only to the people belonging to Sozhia Chettiar Community of Naduveerapattu and the petitioner herein is the trustee of that temple. The respondents 4 to 6 also belong to Naduveerapattu village, but, they joined hands with Sozhia Chettiars belonging to C.N.Palayam and allowed them to claim right in the said temple. Further, they also conducted themselves in a manner detrimental to the interest of the temple. The petitioner was appointed as a trustee in the temple and this was challenged by the fourth respondent by filling a suit in O.S.No.82 of 1985 before the Sub-Court, Cuddalore. Thereafter, the said suit was dismissed, hence, the fourth respondent has filed an appeal suit in A.S.No.158 of 1986 and it was also dismissed by the District Court. However, the fourth and other respondents have been disturbing the petitioner's rights as trustee.

3. It can be further seen from the affidavit that even though it was declared in O.S.No.178 of 1973 that the temple was a denominational temple belonging to Sozhia Chettiars of C.N.Palayam, and as the same disputes were sought to be raised, the petitioner has filed a suit in O.S.No.99 of 1990 before the Sub-Court, Cuddalore, against the respondents 1 to 5 and 2 others, seeking declaration of the right of Sozhia Chettiar Community of Naduveerapattu and for permanent injunction. On 10.03.1992, the said suit was decreed in favour of the petitioner and as against which, the respondents 4, 5 and others have filed appeal suit in A.S.88 of 1992 claiming that the petitioner was removed from the office and hence, they were appointed trustees. The Appellate Court, by its Judgment dated

04.02.1993, has rejected their claim and confirmed the petitioner's right, and directed possession of the temple and its affairs to be handed over to the petitioner.

4. Challenging the order of the Appellate Court, the respondents 4, 5 and others have filed second appeal in S.A.No.317 of 1993 before this Court and by Judgment dated 16.04.2005, this Court has dismissed the appeal suit and confirmed the order of the Appellate Court declaring that the temple is a denominational temple belonging to the Sozhia Chettiar community of Naduveerapattu, and, the petitioner is the trustee of the temple and hence, the possession has to be delivered to him.

5. Pursuant to the decree and Judgment made in S.A.No.317 of 1993, the petitioner has filed Execution Petition in E.P.No.3 of 2006 for delivery of the possession. In order to prevent the petitioner from taking delivery of the possession, the said E.P.No.3 of 2006 is being dragged on by the respondents 5 and 6 stating that as if the petitioner has given a representation before the first respondent on 19.12.2007, but the same did not contain any signature of the petitioner, and the petitioner also denies sending the said representation.

6. While that being so, on 14.02.2008, proceedings in Na.Ka.No.172/2006 H1 dated 04.01.2008 was issued to the petitioner by the first respondent stating that the representation given by the petitioner was sent to the Joint Commissioner and they will take further action. To which, the petitioner has sent his reply on 18.02.2008 stating that he had not sent any such representation to them and it may be the handiwork of his opponents. Further, a copy of the High Court Judgment was also enclosed in the reply and a copy was also marked to the first and second respondents. The second respondent has acknowledged the receipt of the same, but, the acknowledgment of the first respondent was not returned even though it has been served.

7. It was further contended that the Communication dated 14.03.2008 in Na.Ka.No.65/2008 was issued to the petitioner, wherein, it was informed that the third respondent will conduct enquiry on 24.03.2008 and the petitioner has to appear before the third respondent on the said date along with documents regarding the said complaint. When the petitioner has not sent any representation to the respondent and has denied the same, no enquiry can be held and the copy of the alleged petition was also not given to the petitioner. Moreover, when the respondents 1 to 3, who have already suffered a decree against them, cannot decide the case themselves that too, when Execution Petition is pending. Therefore, the petitioner seeks to quash the

proceedings in Na.Ka.No.172/2006 H1 dated 04.01.2008 and to forbear the respondents from interfering with petitioner's right to function as trustee of Chetty Pillaiyar Koil alias Varasiddhi Vinayagar Koil, Naduveerapattu, Cuddalore Taluk.

8. Mr.M.Maharaja, learned Special Government Pleader appearing for the respondents 1 to 3 would submit that since there was a representation received from the Chief Minister Cell, the respondents 1 to 3 have acted upon it and there was no malafide intention to harass the petitioner.

9. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents, and perused the materials available on records.

10. On perusing the records, it could be seen that in earlier appeal suit in S.A.No.317/1993 filed by the respondents 4 and 5 and others, this Court, vide Judgment dated 16.04.2005 has declared that the temple is a denominational temple belonging to the Sozhia Chettiar community of Naduveerapattu and thereby, the petitioner is the trustee of the temple and the possession of the temple has to be delivered to him. Even though, the petitioner has filed E.P.No.3/2006 for delivery of the same, in 2006 which is being dragged on by the respondents one way or the other and the same is still pending.

11. Under these circumstances, this Court is of the opinion that since the petitioner has been appointed as a trustee of the said Chetty Pillaiyar Koil @ Varasiddhi Vinayagar Koil of Naduveerapattu, he would not have sent any representation against himself. Further, a copy of the said representation has also not been produced before this Court by the respondents. In view of the earlier Court proceedings, which went upto 2nd appeal before this Court and by the Judgment and Decree dated 16.04.2005, wherein, it was decided in favour of the petitioner, this Court came to the prima facie conclusion that the petitioner would not have sent any such representation detrimental to his rights. Hence, the proceedings of the first respondent made in Na.Ka.No.172/2006 H1 dated 04.01.2008 is hereby quashed and the respondents concerned are directed to appear before the E.P. Court and handover the possession to the petitioner within a period of 4 weeks from the date of receipt of a copy of this order. As already decided and confirmed by this Court in S.A.No.317 of 1993 that the petitioner is the trustee of the temple, the respondents are also directed not to interfere with the petitioner's right to function as trustee of Chetty Pillaiyar Koil @ Varasiddhi Vinayagar Koil of Naduveerapattu, Cuddalore Taluk, and, the petitioner need not appear before the third respondent or to approach the second respondent in this regard.

12. With these observations, the Writ Petition is allowed.
No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

raja

To

1. The Commissioner,
Hindu Religious & Charitable Endowment Board,
Nungambakkam High Road,
Chennai - 600 034.
2. The Joint Commissioner,
Hindu Religious & Charitable Endowment Board,
Villupuram.
3. The Assistant Commissioner,
Hindu Religious & Charitable Endowment Board,
Cuddalore.

+1cc to Ms.G.Sumitra, Advocate SR.No.36818

+1cc to Mr.R.Gururaj, Advocate SR.No.37128

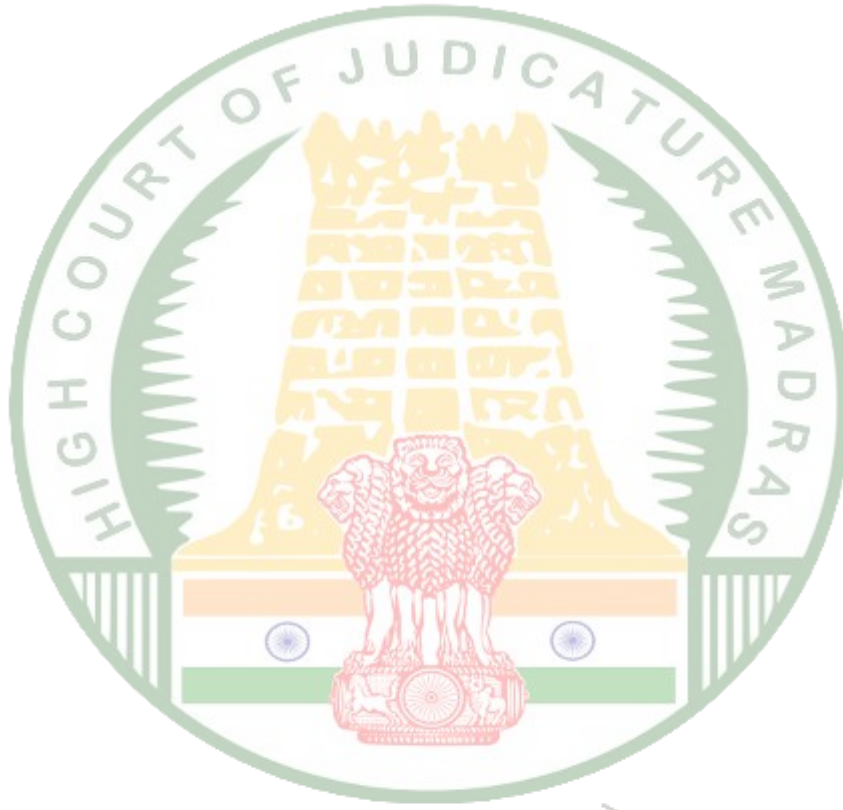
+1cc to Government Pleader SR.No.66676

W.P.No.7838 of 2008
and
M.P.No.1 of 2008

RJ (CO)

GMV (02/11/2018)

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