



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.01.2018

CORAM:

WEB COPY

**THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA**

**W.A.(MD)No.1190 of 2017
and
C.M.P(MD)No.8309 of 2017**

1. The Assistant Commissioner,
Department of Hindu Religious and
Charitable Endowment,
Malaivasal, Trichy - 1.
2. The Executive Officer,
Arulmigu Sabthareeswarar Thirukoil,
Lalkudi, Trichy District.
3. The Inspector,
Hindu Religious and Charitable Endowments,
Musiri, (East) Musiri, Trichy District.
4. The Joint Commissioner,
Department of Hindu Religious and
Charitable Endowments,
Malaivasal, Trichy - 1.
5. The Commissioner,
Department of Hindu Religious and
Charitable Endowment,
Uthamar Gandhi Road,
Nungambakkam, Chennai - 36. : Appellants/Respondents

Vs.

Arulmigu Balaguranthasamy Sametha,
Angala Parameswari Amman Thirukovil,
Rep. by the Hereditary Trustee,
Senthamangudi Village,
Hamlet of Ayyampalayam Village,
Musiri Taluk, Trichy District. : Respondent/Writ Petitioner

PRAYER: Appeal filed under Clause 15 of the Letters Patent,
<https://hcservices.ecourts.gov.in/hcservices/>
against the order passed in W.P.(MD)No.5201 of 2013, dated
23.06.2017.



Prayer in WP(MD). 5201/ 2013 :

Petition filed under Article 226 of the Constitution of India, praying for issue of a Writ of certiorari, to call for the records relating to the impugned order of the 1st respondent dated 25.03.2013 made in his proceedings Se.Mu.Na.Ka.No. 944/2013-A5 , and quash the same.

For Appellants : Mr.A.K.Baskara Pandian
Special Government Pleader

For Respondent : Mr.V.Sitharanjan Das

JUDGMENT

(Judgment of the Court was delivered by M.SATHYANARAYANAN,J.)

By consent, the writ appeal is taken up for final disposal.

2. Mr.V.Sitharanjan Das, learned counsel accepts notice on behalf of the respondent / writ petitioner.

3. The respondent / writ petitioner had filed W.P.(MD)No.5201 of 2013, challenging the illegality of the impugned order of the first appellant, dated 25.03.2017, in and by which a fit person came to be appointed.

4. The writ petition after contest came to be dismissed on 06.06.2014 and aggrieved by the same, the writ petitioner / Temple filed an appeal in W.A.(MD)No.750 of 2014 and the said Writ Appeal was also dismissed on 12.02.2015. The writ petitioner / Temple, aggrieved by the dismissal of the writ appeal, in and by which the order passed dismissing the writ petition came to be confirmed, filed a Special Leave Petition before the Hon'ble Supreme Court of India and it was entertained and notices were ordered.

5. The Hon'ble Supreme Court of India, vide order dated 20.01.2017, observed that the impugned order passed by the first appellant herein was contrary to Section 47 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 [hereinafter referred to as "the H.R. & C.E. Act"] and the said question has not been dealt with by the High Court and citing the said reason, has set aside the impugned judgment passed in the Writ Appeal and restored the Writ Petition on file with a direction that it shall be decided by the High Court. The Hon'ble Supreme Court of India also granted liberty to the respondents to contest the said Writ Petition on all grounds that are available to them and also directed the respondent to maintain the maintenance of *status quo* for a period of two months and granting liberty to the High Court to consider as to whether

the *status quo* should be extended or not.

6. Pursuant to the order of remand, the Writ Petition was once again heard and vide impugned order dated 23.06.2017, it was allowed and Rule Nisi was made absolute and the Single Bench of this Court, while allowing the Writ Petition also observed that "this will not prevent the first respondent (first appellant) from taking any action to remedy the evils of alleged mismanagement of maladministration by taking appropriate action short of take over of the entire management of the temple" and in paragraph - 23, it is further observed that "If there is any specific instance of mismanagement or maladministration, it is open to the authorities concerned to take suitable action to remedy the situation".

7. Mr.A.K.Baskara Pandian, learned Special Government Pleader appearing for the appellants / official respondents in the Writ Petition would contend that the Writ Petition came to be dismissed on 06.06.2014 and in paragraph -18 of the said order, the issue relating to Sections 47 and 49 of the H.R. & C.E. Act was considered and in the Writ Appeal, no specific ground has been raised as to the said legal plea and as a consequence, the Division Bench of this Court has not considered the said issue. It is the further submission of the learned Special Government Pleader that even before the Honourable Supreme Court of India, the memorandum of grounds in the Special Leave Petition, no specific ground has been raised as to Sections 47 and 49 of the H.R. & C.E. Act and for the first time, during the course of argument, such a plea has been raised before the Hon'ble Supreme Court of India, which was found acceptance and the matter was remanded. It is also pointed out by the learned Special Government Pleader that liberty was granted to the respondents in the writ petition / appellants therein to raise all the grounds and no such liberty has been granted to the writ petitioner to raise additional grounds apart from Section 49 of the H.R. & C.E. Act.

8. The learned Special Government Pleader on merits of the matter would contend that under Section 107 of the H.R. & C.E. Act, "Nothing contained in this Act shall, save as otherwise provided in Section 106 and in clause (2) of Article 25 of the Constitution, be deemed to confer any power or impose any duty in contravention of the rights conferred on any religious denomination or any section thereof by Article 26 of the Constitution" and in the light of the said provision, power has been conferred on the first respondent to interfere with the affairs in the event of mismanagement or misdeed, is brought to their knowledge and draw the attention of this Court to the impugned order passed by the first appellant dated 25.03.2013 and would submit that while conducting Kumbabishekam to the Temple in <https://hsevesec005.gov.in/hsevesec005> sum of Rs.3,00,00,000/- have been collected and since the complaint has been received in this regard for the interest and administration of the Temple only, a fit person came



to be appointed and such an act cannot be faulted with and hence, prays for interference.

9. Per contra, Mr.V.Sitharanjan Das, learned counsel appearing for the respondent / writ petitioner has drawn the attention of this Court to the impugned order passed in the writ petition and would submit that the learned Judge apart from placing his findings on facts, had also taken note of the relevant provision of the H.R. & C.E. Act as well as the decision rendered by this Court and the Hon'ble Supreme Court of India reported in **(2014) 5 SCC 75 (Dr.Subramanian Swamy Vs. State of Tamil Nadu and others)** and rightly reached the conclusion and that since the Temple is a denomination temple in terms of the decree dated 10.01.1979 in O.S.No.78 of 1976 on the file of the III Additional Subordinate Judge, in which the Commissioner, H.R. & C.E. Department is also one of the defendants, it is not open to the appellants to contend otherwise and would further add that the learned Judge having foreclosed the action on the part of the police herein to take any appropriate action and also granted liberty to them to remedy the evils on alleged mismanagement or maladministration, in the light of the above cited decision rendered by the Hon'ble Supreme Court of India and would further add that in the absence of any infirmity for the reasons assigned, this Court, in exercise of the jurisdiction, Clause 15 of the Letters Patent, may not interfere with the reconsidered opinion having been rendered by the learned Single Judge and prays for dismissal of this appeal with cost.

10. This Court has considered the rival submissions and also perused the materials placed on record.

11. A perusal of the impugned order in and by which the Writ Petition filed by the respondent came to be allowed, would disclose that the learned Judge, in order to reach the conclusion that Section 49 of the H.R. & C.E. Act has no application in the case of denomination temple, he has placed reliance upon the decisions of the Hon'ble Supreme Court in **R.Murali and others Vs. Kanyaka P.Devasthanam and Charities and others** reported in **2005 (4) CTC 234, Madurai Sourashtra Sabha rep. by its Honorary Secretary, E.V.Seshachary, Madurai Vs. State of Tamil Nadu** reported in **(2007) 2 MLJ 913** as well as the above cited decision rendered by the Apex Court reported in **(2014) 1 MLJ 622**.

12. In paragraph - 16 of the impugned order, the learned Judge has recorded the finding that as per Section 107 of the H.R. & C.E. Act, the provisions of Section 49 of the said Act will not apply to a temple which has been declared to be one belonging to a religious denomination and therefore, recorded the finding that the first appellant herein / first respondent in the Writ Petition has no power to appoint a Fit person to a temple which has been declared as a religious denomination. The learned Judge, in order



to reach the conclusion, has also placed reliance upon the judgments reported in **(2007) 2 MLJ 913** and **(2014) 5 SCC 75** (cited *supra*).

13. It is also pertinent to point out at this juncture that in the suit in O.S.No.78 of 1976, wherein, the denomination nature of the Temple came to be declared in favour of the plaintiffs, the Commissioner, H.R. & C.E. Department is one of the defendants.

14. The Hon'ble Supreme Court of India, in **Dr. Subramanian Swamy's case reported in (2014) 5 SCC 75** (cited *supra*), in paragraph - 40, has observed that "even an erroneous decision on a question of law attracts the doctrine of *res judicata* between the parties to it."

15. It is also a settled position of law that even if the decision is erroneous one, the parties to the said decision are bound by the same, in the absence of any challenge to the said finding. Admittedly, the judgment and decree in the suit in O.S.No.78 of 1976 on the file of the II Additional Subordinate Judge, Trichirappalli, is an interparty judgment and therefore, the Commissioner, H.R. & C.E. Department being one of the defendants, is bound by the said judgment and decree and it is also brought to the knowledge of this Court that no challenge has been made to the said decree and it has also become final.

16. The learned Judge, in order to reach the conclusion, has placed heavy reliance upon the above cited decisions rendered by the Hon'ble Supreme Court of India and also extracted the relevant paragraphs.

17. The Hon'ble Supreme Court of India, in paragraphs 28, 31, 54 and 66, has observed that the "law could not divest the administration of religious institution or endowment. However, the State may have a general right to regulate the right of administration of a religious or charitable institution or endowment and by such a law, the State may also choose to impose such restrictions whereof as are felt most acute and provide a remedy therefor. It was further observed that "the power to supersede the functions of a "religious denomination" is to be read as regulatory for a certain purpose and for a limited duration, and not an authority to virtually abrogate the rights of administration conferred on it. Supersession of rights of administration cannot be of a permanent enduring nature. Its life has to be reasonably fixed so as to be co-terminus with the removal of the consequences of maladministration. It is a temporary measure till the evil gets remedied".

18. The learned Judge, while allowing the writ petition, in the light of the said observation has granted liberty to the



official respondents herein to carry out the said exercise.

19. This Court, on an independent application of mind to the entire materials placed, is of the considered view that the findings rendered in the writ petition are based on well settled decision of law and factually speaking also. The Commissioner, H.R. & C.E. Department, being a party to the suit in O.S.No.78 of 1976 is bound by the Judgment and Decree dated 10.01.1979 in and by which the Temple in question has been declared as a denomination Temple.

20. There is no error apparent or infirmity in the reasons assigned by the learned Judge for allowing the writ petition.

21. In the result, the Writ Appeal is dismissed, confirming the order dated 23.06.2017, subject to the above observation. However, in the circumstances of the case, there shall be no order as to costs. It is open to the respondent herein, in the light of the observations made in paragraphs - 22 and 23 of the impugned order dated 23.06.2017 in W.P.(MD)No.5201 of 2013 and proceed further in accordance with law. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

+ 2 ccs TO Mr.V.Sitharanjan Das , Advocate in SR No. 42737
+ 1 cc TO The Special Government Pleader in SR No. 42886

MR/AKV
AE/SKN RSK/SAR2/08.02.2018/6P/4C

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and
C.M.P (MD) No.8309 of 2017
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