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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 13.03.2018

DELIVERED ON : 21.03.2018

CORAM:

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

W.A.(MD)Nos.1096 and 1097 of 2016
and
C.M.P(MD)Nos.6668 and 6669 of 2016

W.A(MD)No.1096 of 2016:

The Executive Officer,
Arulmigu Venkatachalapathy Temple,
Tiruvannamalai,
Srivilliputtur Taluk,
Virudhunagar District.

... Appellant/
1st Respondent

Vs.

1.Srinivasarama Battar

... 1st Respondent/
Writ Petitioner

2.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungambakkam,
Chennai.

... 2nd Respondent/
2nd Respondent

PRAYER: Appeal filed under Clause 15 of the Letters Patent, against the order passed in W.P(MD)No.8464 of 2007, dated 25.02.2013.

Prayer in WP(MD). 8464/ 2007 :-

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to allot the 1/8th share in the total Hundial income in the temple namely Arulmighu Venkatachalapathy Temple at Thiruvannamalai in Venkiteswarapuram, Village, Srivilliputhur Town received on every Saturday and Sunday and every Tamil Month of Purattasi in the every year to the Petitioner and further directing the respondents to resume the customary practice in the said temple.



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For Respondents

: Ms.N.Krishnaveni,
Senior Counsel
for Mr.T.Srinivasa Raghavan for R.1

Mr.M.Murugan,
Government Advocate for R.2

W.A(MD)No.1097 of 2016:

The Executive Officer,
Arulmigu Andal Nachiar Temple,
Srivilliputtur,
Virudhunagar District.

... Appellant/
3rd Respondent

Vs.

1.Srinivasarama Battar

... 1st Respondent/
Writ Petitioner

2.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungambakkam,
Chennai.

3.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
40, Muthusamy Street,
Tiruppathur Road,
Sivagangai.

... Respondents 2 & 3/
Respondents 1 & 2

PRAYER: Appeal filed under Clause 15 of the Letters Patent, against the order passed in W.P(MD)No.12466 of 2012, dated 25.02.2013.

Prayer in WP(MD). 12466/ 2012 :-

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned order in Na.Ka.NO.8009/2003/E1 dated 30.11.2011 passed by the 2nd Respondent, quash the same and consequently directing the Respondents to uphold the right of share 1/8th in the Purattasi Saniwara Hundial and tickets in Purattasi month in Sri Srinivasaperumal Temple, Thiruvannamalai, Srivilliputhur, Virudhunagar District and pass such further or other orders.

For Appellant

: Mr.K.Govindarajan

For Respondents

: Ms.N.Krishnaveni,
Senior Counsel
for Mr.T.Srinivasa Raghavan for R.1



Mr.M.Murugan,
Government Advocate for R.2 & R.3

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COMMON JUDGMENT

M.SATHYANARAYANAN, J.

By consent, the writ appeals are taken up for final disposal.

2. The first respondent herein/writ petitioner filed W.P(MD) No.8464 of 2007 praying for the issuance of a writ of Mandamus directing the respondents therein to allot the 1/8th share in the total hundial income in the temple, namely, Arulmigu Venkatachalapathy Temple, at Thiruvannamalai in Venkiteswarapuram village, Srivilliputtur Town, received on every Saturday and Sunday and every Tamil month of *Purattasi* in the every year to him and further directing the respondents therein to resume the customary practice in the said temple.

3. The first respondent herein/writ petitioner filed yet another writ petition in W.P(MD)No.12466 of 2012, praying for the issuance of a writ of Certiorarified Mandamus to call for the records in pursuant to the impugned order in Na.Ka.No.8009/2003/E1 dated 30.11.2011 passed by the Joint Commissioner, Hindu Religious and Charitable Endowment Department, Sivagangai and quash the same and consequently, direct the respondents therein to uphold the right of his 1/8th share in the *Purattasi Saniwara* Hundial and tickets in *Purattasi* month in Sri Srinivasaperumal Temple, Thiruvannamalai, Srivilliputtur, Virudhunagar District.

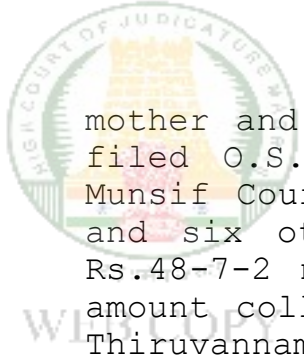
4. The learned Single Judge, vide common order dated 25.02.2013, had allowed both the writ petitions as prayed for and challenging the same, the Executive Officers of Arulmigu Venkatachalapathy Temple, at Thiruvannamalai, Srivilliputtur Town, Virudhunagar District and Arulmigu Andal Natchiar Temple, Srivilliputtur, Virudhunagar District, had filed these writ appeals.

5. Since the facts leading to the filing of these writ appeals are intertwined and that the writ petitions were also disposed of by a common order, these writ appeals are disposed of by this common judgment.

6. Facts leading to the filing of these writ appeals, relevant for the disposal of these cases, and briefly narrated, are as follows:

<https://hcservices.ecourts.gov.in/hcservices/>

6.1. A.Srinivasa Battar, A.Rama Battar, V.Srinivasa Battar, V.Sundararaja Battar, Minor Sundararaja Battar represented by his



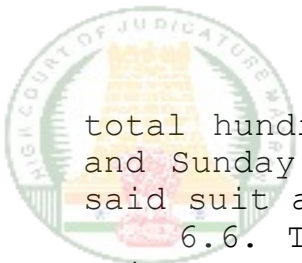
mother and next friend - Namagiri Ammal and V.Srinivasa Battar had filed O.S.No.422 of 1917 on the file of the Principal District Munsif Court, Srivilliputtur, against Sri Veeraraghavathachariar and six others praying for the relief of recovery of a sum of Rs.48-7-2 made up of Rs.35-10-0 being the 1/2 share of the Hundi amount collected on Saturdays and Sundays of *Purattasi* 1918 in the Thiruvannamalai Venkatachalapathi Temple and of Rs.12-13-2 interest thereon at 12 % from 05.01.1914 to 05.01.1917. The said suit was subsequently transferred to file of the Additional District Munsif Court, Srivilliputtur and re-numbered as O.S.No.277 of 1917. In the said suit, the defendants 1, 2, 4 to 7 had contested the matter and the third defendant remained *exparte*. The trial Court, *vide* judgment and decree dated 24.06.1918, has granted the decree as prayed for.

6.2. The very same plaintiffs and four others had filed O.S.No.719 of 1920 on the file of the Principal District Munsif Court, Srivilliputtur, against Sri Nachiarkoil Devasthanam through it's trustees, viz., Veeraragahava Thatha Chariar, Venkata Reddiar and C.Karu C.Chida.Chinthamani Chettiar, praying for a judgment to recover Rs.776-9-9 up of Rs.573-9-1 being the one eighth share of Rs.4588-9-1 of hundi collections received in the Thiruvannamalai Venkatachalapathi temple during the first four Saturdays and Sundays in the month of *Purattasi* 1917 and the first three Saturdays and Sundays of the year 1913 and Rs.203-0-8 interest thereon at 12% per annum from 15.10.1917 to 27.09.1920 as they are the Archaka Paricharakars of Thirumalai Venkatachalapathi temple and are entitled to one eighth of the hundi collections in the said temple.

6.3. In the said suit, the defendants remained *exparte* and therefore, the trial Court has granted a decree as prayed for on 30.10.1920.

6.4. The first respondent herein/writ petitioner in the affidavits filed in support of the writ petitions, would aver among other things that he is a hereditary Archakas and service holder of Arulmigu Venkitachalapathy Temple at Thiruvannamalai in Venkiteswarapuram village, Srivilliputtur Town and the said temple is attached to Arulmigu Nachiar Dewasthanam, Srivilliputtur and the first respondent/writ petitioner is a descendant of Archakars and would further aver that in ordinary days, each of the *Muraikarars* will do all the services as the temple is situated at the top of the hillock and in previous times, a very few devotees will visit on ordinary days and on Saturdays and Sundays and other special days, employed deputies for other work in their costs and they have not been paid by the Dewasthanam and they are not having any *Maniyam* for consideration of such services.

6.5. The first respondent herein/writ petitioner would further aver that for such services rendered in the temple, they were only enjoying the offerings of the worshippers in the temple and when the Dewasthanam Committee introduced the placing of a hundial in the temple, which was originally resisted by his ancestors and later on, permission was accorded to place the hundials in praharam and in the mandapam at the foot of the hillock on condition of getting a share in that and accordingly, Archakars have to be paid 1/8th share in the



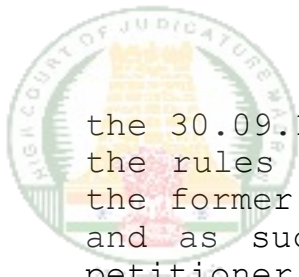
total hundial income in the said temple received on every Saturday and Sunday of every Tamil month of Purattasi and the decree in the said suit also affirmed therewith.

6.6. The first respondent herein/writ petitioner expressed his grievance that Dewasthanam was not sharing the hundial collections for the past five years and despite very many appeals, nothing has been done to pay that amount and therefore, filed W.P(MD)No.8464 of 2007 for issuance of a writ of Mandamus to allot the 1/8th share in the total hundial income of Arulmigu Venkatachalapathy Temple at Thiruvannamalai in Venkiteswarapuram village, Srivilliputtur Town, Virudhunagar District, received on every Saturdays and Sundays and every Tamil month of *Purattasi* in every year to him.

6.7. In W.P(MD)No.12466 of 2012, the first respondent herein/writ petitioner made a challenge to the order of the Joint Commissioner, Hindu Religious and Charitable Endowments Department, Sivagangai, dated 30.11.2011, in and by which, the 1/8th share in the hundial collection was directed to be stopped, with a further direction to set aside the decree passed in O.S.No.252 of 1875. The first respondent herein/writ petitioner expressed his grievance that the said order has been passed in utter violation of principles of natural justice and therefore, prayed for interference.

6.8. The learned Judge, vide common order dated 25.02.2013, found that there has been a practice, by which, 1/8th in the total hundial collection has been given to the Archakars based upon the decree of the civil Court and that the Joint Commissioner, Hindu Religious and Charitable Endowments Department, Sivagangai, has also given a direction to set aside the exparte decree passed in the said suit and as such, the impugned order denying such benefit or emoluments without resorting to due process of law is unsustainable and that apart, the impugned order has been passed without jurisdiction and is patently illegal and therefore, allowed the writ petitions as prayed for and making a challenge to the said common order, the Executive Officers of the respective temples, had filed these writ appeals.

7. Mr.K.Govindarajan, learned Counsel appearing for the appellants has invited the attention of this Court to Section 57 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, [in short 'the Act'] and would submit that as per the said provision, notwithstanding anything contained in any scheme settled or deemed to have been settled under the Act or any decree or usage to the contrary, the trustee of a religious institution shall have power, subject to such conditions as the Commissioner, may by general or special order, direct to fix fees for the performance of any service, ritual or ceremony in such religious institution and to determine what portion, if any, of such fees shall be paid to the archakas or other office-holders or servants of such religious institution and that apart, under Section 118(2)(b)(i) of the Act, if any provision contained in any scheme settled or deemed to have been settled under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1926, including a scheme settled under Section 92 of the Code of Civil Procedure, 1908 and in force immediately before



the 30.09.1951 is repugnant to any provision contained in the Act or the rules made thereunder, the latter provisions shall prevail, and the former provision shall, to the extent of the repugnancy, be void and as such, reliance placed by the first respondent herein/writ petitioner on the said civil Court decree is of no help to him.

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8. It is the further submission of the learned Counsel for the appellant that as per Rule 5 of the Installation, Safeguarding and Accounting of Hundials Rules, 1975, the proceeds of the hundials and other receptacles shall be immediately credited to the accounts of the institution and remitted into the bank and on that ground also, the first respondent herein/writ petitioner is not entitled to 1/8th share in the hundial collection and however, his right to receive *Thattu* collection has not been denied and therefore, prayed for interference.

9. The learned Counsel for the appellant, in support of his submissions, has placed reliance upon the judgments in *M.Krishnaraju Chetty v. The Commissioner of Hindu Religious and Charitable Endowments Board, Nungambakkam, Madras - 34* reported in 1977 (II) MLJ 188 and *Sri Jagannath Temple Puri Management Committee v. Chintamani* reported in AIR 1997 SUPREME COURT 3839.

10. Per contra, Mrs.N.Krishnaveni, learned Senior Counsel assisted by Mr.T.Srinivasa Raghavan, learned Counsel appearing for the first respondent/writ petitioner would contend that the decree granted by the civil Court had attained finality and even in the impugned order of the Joint Commissioner, Hindu Religious and Charitable Endowments Department, Sivagangai, a direction was given to challenge the said decree and without making a challenge, the right of the first respondent/writ petitioner to receive 1/8th share in the hundial collection which is in practice for very many decades, cannot be set at naught and would further state that before issuing the impugned order, the Joint Commissioner did not offer any opportunity whatsoever to the first respondent/writ petitioner to put forth his case and the learned Judge has correctly appreciated the factual aspects and legal position, allowed the writ petitions and therefore, prayed that this Court in exercise of appellate jurisdiction may not interfere with the same.

11. This Court has considered the rival submissions and perused the materials placed before it.

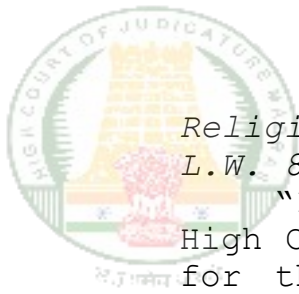
12. It is not in dispute that the decrees passed by the civil Court in the above cited suit had reached finality and even in the impugned order passed by the Joint Commissioner, Hindu Religious and Charitable Endowments Department, Sivagangai, a direction was given to the Executive Officer of the temple concerned to take steps to set aside the said decree. However, in the light of Section 57 read with Section 118 of the Act, whether the first respondent/writ



petitioner, as a matter of right, is entitled to claim 1/8th share in the hundial collection.

13. In *M. Krishnaraju Chetty v. The Commissioner of Hindu Religious and Charitable Endowments Board, Nungambakkam, Madras - 34* reported in 1977 (II) MLJ 188, the word "any Court" in Section 118 (2) (b) (ii) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, came up for consideration and a Division Bench of this Court in paragraph 2, observed as follows:

"2. ... It is not in dispute that in this case the scheme framed in 1926 vested certain powers on the High Court to fill up a vacancy in the office of trusteeship as and when it arises. But under the provision as above, such powers conferred on any Court shall be exercised and discharged by the officers expressly nominated in that section as above and not by the Court which under the quondam scheme was as of right entitled to act and appoint. This substitution of statutory authority in the place of Court being so very expressive and positive cannot be got over on a *a priori* considerations. Mr. Chari however expresses that a Court like the High Court being a Superior Court exercising original and appellate jurisdiction cannot be said to be included in the word "Court appearing in section 118(2)(b)(ii) and if at all, the Legislature could have intended to include within the meaning of the word Court or Judge therein a Court subordinate to the High Court or a Judge who is subordinate to a High Court Judge. We characterised already this argument as an *a priori* reasoning. This is because the words provided in section 118(2)(b)(ii) are "all powers conferred and all duties imposed by such scheme on any Court or Judge shall be exercised and discharged by the Commissioner, Deputy Commissioner or the Assistant Commissioner, as the case may be, in accordance with the provisions of this Act". "Any Court" is an expression, in our view, which is significant enough to include a High Court as well and "any Judge" would include a High Court Judge also. We are unable to accept the argument of the learned counsel for the appellant that the meaning to be given to the word "Court" or "Judge" in section 118(2)(b)(ii) should be circumscribed to a Subordinate Court or a Subordinate Judge. This would be doing violence to both the language and the intendment of the Legislature. By providing provisions like section 118 the burden and responsibility of civil Courts are taken away and they are passed on to the statutory authorities functioning under the Act for the specific purpose of administering and governing Hindu Religious and Charitable Institutions and Endowments in the State. Srinivasan, J., had occasion to deal with this question in *Subramania Achari v. Commissioner, Hindu*



Religious and Charitable Endowments, Madras [(1963) 76 L.W. 856]. The learned Judge said:

"It cannot be contended that a scheme framed by the High Court should stand on a different footing altogether for the reason that a Court as defined by the Madras Hindu Religious and Charitable Endowments Act does not embrace the High Court. What section 118 in particular states is that where the scheme settled under section 92, Civil Procedure Code, contains a provision repugnant to any provision contained in the Act, that provision in the scheme shall be void. The section speaks of a scheme settled under section 92, Civil Procedure Code, and does not in terms make any distinction between a scheme framed by the High Court and a scheme framed by Courts other than the High Court."

The Division Bench of this Court concluded that there is a bar for the maintainability of the application and the appellant therein can only seek his redress before the statutory authorities nominated for the purpose and those provisions cannot be by-passed.

14. In *Sri Jagannath Temple Puri Management Committee v. Chintamani* reported in AIR 1997 SUPREME COURT 3839, the question that arose for consideration was, whether the right of the temple attendants to get a portion of the offerings made to the deity in a temple is a religious right or the manner of collecting and getting a share of the offerings is a religious rite of the temple. The Honourable Supreme Court after considering the provisions of Shri Jagannath Temple (Amendment) Act, 10 of 1983 and also taking into consideration Article 25 of the Constitution of India, in paragraphs 34 and 47, observed as follows:

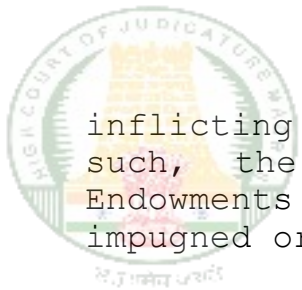
"34. ... The collection of monies and other offerings inside the temple cannot be treated as a practice of religion by the sevaks. They were simply discharging their duties assigned to them for remuneration. Every activity inside the temple cannot be regarded as a religious practice. Moreover, sub-clause (2) of Article 25 of the Constitution has specifically reserved the right of the State for making any law 'regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice'. If there is any financial or economic activity connected with religious practice, the State can make law regulating such activities even though the activity may be associated with religious practice. In the instant case, we are of the view that the various duties assigned to the sevaks are nothing but secular activities, whether associated with religious practice or not. Moreover, the State Legislature has, in any event, power to frame laws for regulating collection and utilisation of the offerings of monies made inside the temple by the devotees.



47. A review of all these judgments goes to show that the consistent view of this Court has been that although the State cannot interfere with freedom of a person to profess, practise and propagate his religion, the State, however, can control the secular matters connected with religion. All the activities in or connected with a temple are not religious activities. The management of a temple or maintenance of discipline and order inside the temple can be controlled by the State. If any law is passed for taking over the management of a temple it cannot be struck down as violative of Article 25 or Article 26 of the Constitution. The management of the temple is a secular act. The temple authority may also control the activities of various servants of the temple. The disciplinary power over the servants of the temple, including the priests, may be given to the Temple Committee appointed by the State. The Temple Committee can decide the quantum and manner of payment of remuneration to the servants. Merely because a system of payment is prevalent for a number of years, is no ground for holding that such system must continue for all times. The payment of remuneration to the temple servants was not a religious act but was of purely secular nature."

15. In *Sthanikam C.Rajagopala Diskshithar v. The Executive Officer, Sri Rajagopalaswamy Devasthanam, Mannargudi, Thanjavur District* reported in 2001-1-L.W. 544, the petitioner therein filed a writ petition for issuance of a writ of Mandamus directing the Executive Officer, Sri Rajagopalaswamy Devasthanam, Mannargudi, Thanjavur District, not to implement the newly introduced Archanai Ticket system of Re.1/- per ticket or any other Archanai ticket system for performing Archana in the said temple. A Single Bench of this Court, after taking into consideration various decisions and more particularly, in the light of Section 57 of the Tamil Nadu Act 22 of 1959, in paragraph 18, observed that "*the trustee of a temple is competent to introduce ticket system for archana in and also determine the apportionment of the proceeds of the collections.*" In the said decision, the learned Judge having found that the Archakas have not been given opportunity before taking a decision to introduce Archanai ticket system, has remanded the matter and observed that "*if there is going to be a variation whether it be an increase or decrease in the Archanai Ticket System and fixation of fees for services etc., the Archakas are entitled to notice and they must be heard before determining the said amount.*". The learned Judge, in the said decision, found that the introduction of Archanai Ticket System for poojas is justified.

16. It is also submitted by the learned Senior Counsel appearing for the first respondent/writ petitioner that the power of appointment of service holders in a religious institution as well as



inflicting of punishment is to be performed by a trustee and as such, the Joint Commissioner, Hindu Religious and Charitable Endowments Department, Sivagangai, has no jurisdiction to pass the impugned order.

17. In the considered opinion of this Court, the said submission lacks merit and substance for the reason that as per Rule 17 of the Collection of Income and the Incurring of Expenditure Rules, where the institution has an executive officer appointed under a scheme or under Section 45 or Section 47 who is authorised to make collections or incur expenditure, such executive officer shall be deemed to be the 'trustee' for purposes of Rules 2 to 6. Even otherwise, Section 57 of the Act speaks about the powers of the Commissioner to pass general or special order directing to fix fees for the performance of any service, ritual or ceremony, etc., and as per Section 13 of the Act, the Commissioner can delegate the powers, with previous approval of the Government.

18. It is also well settled position of law that when a statute prescribes a thing to be done in a particular way, it should be done only in that way and not in any other mode and in the light of Section 57 as well as Section 118 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the Joint Commissioner, Hindu Religious and Charitable Endowments Department, Sivagangai, is competent to pass the impugned order as to the stopping of 1/8th share, in the hundial collection.

19. In the result, both the writ appeals are allowed and the impugned common order dated 25.02.2013 passed in W.P(MD)Nos.8464 of 2007 and 12466 of 2012, is set aside and consequently, both the writ petitions are dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected civil miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub-Assistant Registrar

To

1.The Commissioner,

Hindu Religious and Charitable Endowment Department,
Nungambakkam, Chennai.

2.The Joint Commissioner,

Hindu Religious and Charitable Endowment Department,
40,Muthusamy Street, Tiruppathur Road, Sivagangai.

+2ccs to M/s.S.Madhavan, Advocate, SR.No.56812

+One cc to M/s.K.Govindarajan, Advocate, SR.No.56818

+One cc to The Special Government Pleader, SR.No.57249

rsb

RL/7C/10P/KKR/SAR4/6/4/2018

COMMON JUDGMENT MADE IN
W.A. (MD)Nos.1096 and 1097 of 2016

and
C.M.P (MD)Nos.6668 and 6669 of 2016
21.03.2018