



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 27.09.2018
DELIVERED ON : 08.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.(MD) No.17634 of 2017

and

W.M.P.(MD) Nos.14188 and 14189 of 2017

S.Chandrasekara Bhattar ... Petitioner

vs.

1.The Joint Commissioner,
Hindu Religious and Charitable Endowment,
Madurai Division,
Madurai.

2.The Executive Officer/Joint Commissioner,
A/m Meenakshi Sundareswarar Temple,
Madurai.

3.Shanmuga Sundara Bhattar ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of Certiorarified Mandamus calling for the records in Na.Ka.No.1959/2010/E4 passed by the second respondent dated 15.02.2013 and the order in I.A.No.27 of 2017 in O.A.No.07/2016, dated 21.08.2017 passed by the first respondent, quash the same and direct the second respondent to restore status quo ante on 15.02.2013.

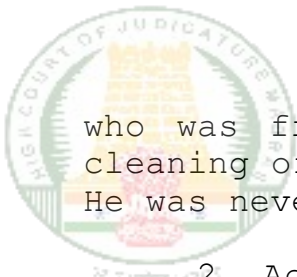
For Petitioner : Mrs.D.Geetha
For Respondent : Mr.C.M.Marichelliah Prabhu
No.1 Additional Government Pleader

For Respondent No.2 : Mr.VR.Shanmuganathan

For Respondent No.3 :Mr.S.Ramesh

O R D E R

The case of the petitioner is that he is an archagar attached to the Meenakshi Sundareswarar Temple, Madurai. In the said temple, the archagars were engaged to do poojas and other allied works in the sanctum sanctorum who hail from three different family ancestors (i) those who are exclusively engaged for performing pooja; (ii) those who are engaged in "Murai work" and (3) those who do pooja and murai. The petitioner claims to belong to the first category and therefore was engaged to do pooja in the sanctum sanctorum of the temple. Whereas, according to the petitioner, the third respondent



who was from the second category was engaged only as murai ie., cleaning of the sanctum sanctorum and maintenance of the lights etc. He was never involved in performing pooja at the temple at all.

2. According to the petitioner, the third respondent had been engaged to do murai work from 1968 and he has been carrying the duties as such and while so, he approached the Joint Commissioner/Executive Officer of the temple on 21.06.2010 vide his representation stating that his ancestors had enjoyed the right to do pooja and therefore, he should also be assigned pooja work. The said representation has been resisted by the petitioner and few archagars. However, the Joint Commissioner/Executive Officer ultimately without considering the objections of the petitioner and others in proper prospective, passed an order on 15.02.2013 holding that the third respondent has 1/16th right in the pooja rights and further held that he was entitled to do pooja on 7th and 22nd day of every month as per tamil calendar.

3. The above order passed by the Executive Officer was challenged by the petitioner before the Commissioner, Hindu Religious and Charitable Endowments Department, by way of revision in R.P.No.19 of 2013. The Commissioner, by order dated 06.08.2013 dismissed the revision petition and confirmed the order passed by the Executive Officer. According to the petitioner, several grounds were raised in the revision petition including the issue of jurisdiction by the Executive Officer for passing such order in favour of the third respondent. In fact it was contended before the Commissioner that the Executive Officer has only limited powers in relation to the administration of the properties and day to day affairs of the temple and cannot appoint the third respondent to do pooja, which is completely outside the purview of the power enjoyed by the Executive Officer.

4. In any case, the petitioner preferred a writ petition in W.P.No.22632 of 2013 before this Court, challenging the order passed by the Commissioner, dated 06.08.2013. The writ petition was disposed of by this Court on 07.10.2014, on the basis of the submission made by the Counsel. The learned Judge has disposed of the writ petition as under in paragraph Nos.8 and 9 of the order which are reproduced as herein:

"8. Mr.R.Thiagarajan, learned Senior Counsel for the petitioner submitted that the petitioner would take recourse to Section 63(e) of the Act. There cannot be any objection to the said course of action. The proceedings impugned in this writ petition, may not directly satisfy the requirements of Section 63(e) of the Act. Under Section 63(e) of the Act, the Joint Commissioner is obliged to hold a full-fledged enquiry, in respect of certain disputes and matters listed out in clauses (a) to (g). It is like a judicial enquiry and hence there cannot be any impediment for the petitioner to invoke Section 63(e) of



the Act.

9. Therefore, the Writ Petition is disposed of leaving it open to the petitioner to move an application under Section 63(e) of the Act. It is open to the parties to raise the question of locus standi of the petitioner also before the Joint Commissioner, if and when the petitioner moves an application under Section 63(e) of the Act. Independent of the orders passed, the Joint Commissioner can go into the question of the locus standi of the petitioner. No costs. The Connected Miscellaneous Petition is closed."

5. However as against the order passed by the learned Judge, a writ appeal has been filed in W.A.No.1650 of 2015 and a Division Bench of this Court vide its judgment dated 07.01.2016 has confirmed the order passed by the learned single, after making some observations which are as under:

"3. The learned single Judge, examining all the facts of the case, observed that if an application is moved by the appellant/writ petitioner, the dispute may be resolved by the Joint Commissioner, without being influenced by the observations made by the Court and also other orders passed.

4. In such view of the matter, without adjudicating the dispute, we are also of the view that on an appreciation to be made by the appellant, the Joint Commissioner (Administration), Hindu Religious and Charitable Endowments Department, Madurai, shall examine the dispute and take a decision in accordance with law and on its own merits, after affording opportunity of hearing to both parties viz., the appellant/writ petitioner as well as the fourth respondent. If such an application is made by the appellant/writ petitioner within a period of one week, the Joint Commissioner shall consider the same expeditiously."

6. Based on the above orders passed by the learned Judge as well as the learned Division Bench of this Court, an application was made under Section 63(e) of the Hindu Religious and Charitable Endowments Act before the first respondent. In the said proceedings, the third respondent filed an interim application questioning the locus standi of the petitioner to file an application under Section 63(e) of the Act. After hearing the parties to the dispute, the first respondent passed an order on 21.08.2017 rejecting the application filed by the petitioner on the ground that the dispute or the right as raised does not fall within the scope of Section 63(e) of the Act and therefore, the parties are directed to approach the competent civil Court and seek appropriate remedies. The said order dated 21.08.2017 is put to challenge in the present writ petition.

7. Mrs. D. Geetha, learned Counsel appearing for the petitioner would submit that the rejection by the first respondent stating that the right as claimed by the petitioner as against the third



respondent does not fall within the ambit of Section 63(e) of the Hindu Religious and Charitable Endowments Act, which is completely misconceived and suffers from erroneous appreciation of both in facts and law on the subject matter. In this connection, the learned Counsel would draw the attention of this Court to Section 63 of the Hindu Religious and Charitable Endowments Act, which reads as under:

"63: (Joint Commissioner or Deputy Commissioner) to decide certain disputes and matters: - Subject to the rights of suit or appeal hereinafter provided, (the Joint Commissioner or the Deputy Commissioner, as the case may be), shall have power to inquire into and decide the following disputes and matters -

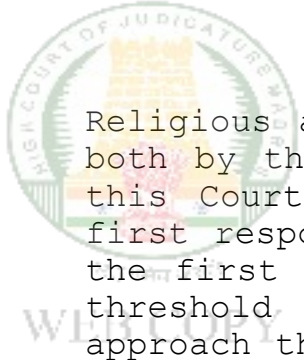
- (a) whether an institution is a religious institution;
- (b) whether a trustee holds or held office as a hereditary trustee;
- (c) whether any property or money is a religious endowment;
- (d) whether any property or money is a specific endowment;
- (e) whether any person is entitled, by custom or otherwise, to any honour, emolument or perquisite in any religious institution; and what the established usage of religious institution is in regard to any other matter."

8. According to the learned Counsel, the subject right falls squarely within the frame work of Section 63(e) of the Act, but unfortunately the first respondent rejected the claim as if there was a rival claim between the petitioner and third respondent for doing pooja in sanctum sanctorum attached to the temple.

9. The learned Counsel would submit that the issue that is involved in the proceedings that was initiated before the first respondent was whether the third respondent has the right to be assigned pooja work on the basis of the custom and usage and such right would be adjudicated only under Section 63(e) of the Act and such right cannot be declared by any civil Court under Section 108 of the Hindu Religious and Charitable Endowments Act, as well as Section 9 of the Code of Civil Procedure and Section 108 of the the Hindu Religious and Charitable Endowments Act reads as under:

"108. Bar of suits in respect of administration or management of religious institutions, etc. - No suit or other legal proceeding in respect of the administration or management of a religious institution or any other matter or dispute for determining or deciding which provision is made in this Act shall be instituted in any Court of Law, except under, and in conformity with, the provisions of this Act."

10. According to the learned Counsel, the first respondent construed the application filed by the petitioner as if there was a rival dispute as between him and the third respondent and therefore such rival dispute has to be necessarily decided by the competent civil Court. The issue before the first respondent was not one of the rival claim, but one of the right to do pooja in the temple which can be only adjudicated under Section 63(e) of the the Hindu



Religious and Charitable Endowments Act. Moreover when this Court both by the learned Single Judge as well as the Division Bench of this Court had given a direction to the parties to approach the first respondent under Section 63(e) of the Act, it is not open to the first respondent to reject the claim of the petitioner at the threshold as being not maintainable and drive the parties to approach the competent civil Court to work out their remedies. The first respondent had abdicated the statutory power and responsibility by rejecting the claim by the petitioner on erroneous appreciation of the provisions of the Act and the law on the subject matter. Therefore, the learned Counsel would submit that the order impugned in the writ petition is liable to be set aside.

11. In support of her legal contentions viz., that the subject right involved in the writ petition falls squarely within the legal frame work of Section 63(e) of the Hindu Religious and Charitable Endowments Act, the learned Counsel places reliance on the following decisions:

(a) In *Sinna Ramanuja Jeer and Others Vs. Ranga Ramanuja Jeer and Others* reported in AIR 1961 SC 1720, the Honourable Supreme Court of India in similar circumstances has held that in respect of such matter of honours, the suits were not maintainable in the civil Court and ultimately the appeals have been allowed.

(b) In *Sadhu Sri Vaishnavar Nambi Srinivasa Iyengar Vs. K.K.V. Annan Srinivasachariar and others* reported in AIR 1990 Mad.375, the learned Judge of this Court has held that the suit insofar as the customary right of the plaintiff regarding the recitation of Divya Probandam and other connected rights has to be determined by the authority concerned only under Section 63 of the Hindu Religious and Charitable Endowments Act and not before the civil Court.

(c) *Chitti Babu Mudaliar Vs. A.Venkatasubbu Mudaliar and another* reported in AIR 1993 Mad 264.

In the said decision, the learned Judge of this Court wayback in 1932 has held that insofar as the suit was a claim for mere honours it would not lie in view of Section 9 of the Code of Civil Procedure. The suit for declaration was dismissed as not maintainable under Section 9 of the Code of Civil Procedure and in the appeal, this Court has upheld the decision of the lower Court.

(d) In *Muthamilselvan and others Vs. A.Manickam and others* reported in 2004(4) CTC 650, the learned Judge of this Court has held that there was a bar of suit in respect of right to honour in temple, following the law laid down by the Honourable Supreme Court of India in *Sri Sinha Ramanuja Jeer alias Sri Vanamamalai Ramanuja Jeer Swamikal Vs. Sri Ranga Ramanuja Jeer alias Emberumanar Jeer and Others* reported in AIR 1961 SC 1720, wherein the Honourable Supreme Court of India has held that the jurisdiction of the civil Court is



barred in respect of the customary right to religious honours in temple.

The learned Judge of this Court after adverting to various decisions has held as follows:

"26. On the part of the petitioners, it would further be argued that the Civil Court could only try those suits unless barred by special enactment such as T.N.H.R. & C.E. Act and since there is a bar created under law, the lower Court having entertained the suit regarding the disputes which have arisen regarding the religious institutions defined therein with which only those authorities who are designated under Section 63 of the Act could sit over the decision and not the civil forums and therefore entertaining the suit of such nature and deciding the same by the Court of District Munsif, Melur, Madurai District is irregular and impermissible and therefore it would further be argued on the part of the petitioners that as it has been remarked by the Honourable Apex Court in the judgment cited by the respondents, extracted supra, the Civil Revision Petition is filed under Article 227 of the Constitution not merely testifying the error apparent on the face of the records or the facts in issue, but the very jurisdiction that the lower Court has embraced as against the vital provisions of law not only giving such powers to decide to the Joint Commissioners and Deputy Commissioners since the subject in dispute is regarding the religious institution or the temple and therefore the bar created under Section 108 of the Act is effective and testifying such serious irregularities adopting a different parameter than what could be adopted by the lower Court in entertaining the suit is erroneous and hence the petitioners are fully justified in testifying the validity of the suit under Article 227 of the Constitution of India in the manner that they have done.

27. This Court is in agreement with the arguments advanced on the part of the petitioners so far as entertaining the above Civil Revision Petition for decision on a judgment and decree delivered in the suit by the lower Court since it is not the merit of the suit that has been gone into either discussing the same or weighing the evidence therein but the very foundation of entertainment of the suit by the Court thereby questioning the jurisdiction of the Court to entertain the suit and therefore this Court is of the view that absolutely there is no bar for the petitioners to have come forward to institute the above Civil Revision Petition testifying the legality of the filing of the above Civil Revision Petition before this Court and hence this question is decided in favour of the petitioners and against the respondents.



28. So far as the jurisdiction question No. (1) raised above is concerned, on the part of the petitioners, the learned counsel appearing for them would cause production of humpty number of judgments particularly delivered by the Honourable Apex Court, such as reported in Sri Sinha Ramanuja Jeer alias Sri Vanamamalai Ramanuja Jeer Swamigal v. Sri Ranga Ramanuja Jeer alias Emberumanar Jeer and Ors., wherein it has been clearly spelt out that since the suit is regarding the religious Honours, the same is not maintainable before the Civil Court further observing that 'prima facie, Honours such as who is to stand in the ghoshti, in what place, who is to get the tulasi etc... cannot be considered to be part of the remuneration or perquisites attached to an office for they are only tokens of welcome of an honoured guest within the precincts of a temple'.

29. The other judgments delivered by the Honourable Apex Court and the Madras High Court regarding such rights are also cited such as Chitti Babu Mudaliar v. A. Venkatasubbu Mudaliar and Anr., AIR 1933 Madras 264 and Arulmighu Kumbeswarar Koil, Kurinjipadi, by P.K. Annamalai as Trustee and Worshipper v. The Commissioner, H.R. & C.E. Department, Nungambakkam High Road, Madras and three Ors., wherein the exercise of revisional powers by the High Court under Article 227 of the Constitution of India is justified and it has been held that such powers under the said Article and Section 115 of the C.P.C. could also be exercised suo motu by the High Court, thus deciding the issue so tellingly and therefore, in these circumstances, this Court cannot have a different opinion than to accept the legal dictum derived by the upper forums in their earlier decisions and relying on them, if this Court has to decide the above Civil Revision Petition, it has to allow the same granting the relief as prayed for and hence the following order:

In result,

(i) the above Civil Revision Petition succeeds and the same is allowed.

(ii) The judgment and decree dated 16.4.2004 rendered in O.S.No. 144 of 2003 by the Court of District Munsif, Melur is hereby nullified.

However, in the circumstances of the case, there shall be no order as to costs.

Consequently, C.M.P.Nos. 8727 & 8728 of 2004 and V.C.M.P.No. 320 of 2004 are closed."



"35. From the facts and circumstances of the case, it is clear that it is for the petitioner to establish his claims relating to the customs and usages and also with regard to the rights, privileges and honours, said to be enjoyed by him, before the appropriate authority, under Section 63(e) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Even though the learned counsel for the petitioner had submitted that the rights, privileges and honours enjoyed by the petitioner forms part



of the customs and usages, saved under Section 105 of the Act, there is no doubt that such a claim has to be established by way of evidence, before the appropriate forum, in accordance with the procedures established by law. Even if certain practices have been followed for a long number of years and even if such practices can be taken to form part of the religious rights, recognised under Articles 25 and 26 of the Constitution of India, reasonable restrictions can be imposed on such practices by the State, on certain specific grounds.

36. It is also seen that the members of the other branches of Shri.Vedavyasa Battar Thiruvamsam have not been made as parties to the present Writ Petition, even though they are necessary parties for the adjudication of the issues arising for the decision of this Court. Even otherwise, disputed factual issues cannot be gone into by this Court, while exercising its extraordinary jurisdiction, under Article 226 of the Constitution of India. From the records placed before this Court, by the learned counsel appearing on behalf of the second respondent, it is seen that the Board of Trustees of Arulmighu Sree Ranganathar temple, at Srirrangam, Trichy, had passed a resolution No.107, on 27.09.2010, giving up the practice of carrying person in a Palanquin, in the temple premises. The said resolution has not been challenged, till date. Further, it is also noted that the Tamil Nadu Association of Temple Employees had also passed a resolution, on 23.10.2010, stating that they would not take part in the practice of carrying persons in Palanquins in the temple premises.

37. In such circumstances, this Court is of the considered view that the petitioner has not shown sufficient cause or reason to grant the reliefs, as prayed for by the petitioners, in the present Writ Petitions. Hence, the Writ Petition, in W.P.(MD).No.13055 of 2010, stands dismissed. No costs. Consequently, the connected miscellaneous petitions, in M.P.(MD).Nos.1 to 4 of 2010, are also dismissed."

(g) In an unreported judgment made in W.P.(MD)No.7395 of 2011, dated 07.07.2011, this Court has passed orders in similar circumstances which reads as follows:

"2. Heard Mr.Veera Kathiravan, learned Counsel for the petitioner, Mr.K.Govindaraj, learned Counsel for the first respondent and Mr.V.Sitharanjandas, learned Counsel for the second respondent. By consent, the writ petition is taken up for final disposal.

The petitioner claims to be Secretary of the Vadakalai Ghosti and he seeks the right to recite Vedaparayanam on the occasion of Srimanth Nathamunigal Thirunakshathiram and Sri



Alavanthar Thirunakshathiram. An application was submitted to the Executive Officer and the same was considered and a detailed order has been passed by the Executive Officer rejecting his claim by stating that the petitioner has not submitted sufficient records to claim the above stated right. However, the Executive Officer granted liberty to the petitioner to file an application in terms of Section 63(e) of the Tamil Nadu Hindu Religious and Charitable Endowments Act.

4. Aggrieved by the said order, the writ petition has been filed.

5. Mr.K.Govindaraj, learned Counsel appears on behalf of the first respondent. Mr.V.Sitharanjandas, learned Counsel has filed M.P(MD)No.3 of 2011 to implead himself on behalf of the Koil Thennacharya Samprathaya Samrakshana Sabha and that petition has been allowed. He stated that the temple is being managed by the Thenkalai sect and therefore, the petitioner should establish his right, if any, in accordance with Section 63(e) of the Tamil Nadu Hindu Religious and Charitable Endowments Act.

6. The learned Counsel for the first respondent produced a copy of proceedings dated 17.05.2011, whereby the second respondent has been permitted to perform the monthly service for the deity, Saint Nathamunigal. He states that it is purely an administrative order for performing the monthly recital connected with Saint Nathamunigal.

7. In the impugned proceedings, the first respondent has referred to various Court and Quasi-judicial proceedings in serial Nos.5 to 11 and has also referred to the proceedings dated 17.05.2011, granting right to the second respondent which is referred to above. The grievance of the petitioner is that while rejecting the claim and directing the petitioner to approach the competent authority, the first respondent ought not to have given a finding against the petitioner which will prejudice his claim in a proceedings under Section 63(e) of the Act. Therefore, the impugned proceedings is bad.

8. If the first respondent wanted the petitioner to approach the competent authority in terms of Section 63(e) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, there is no justification to give a finding that will affect the right of the petitioner in his claim to perform the Ghosti.

9. Once the first respondent has decided to relegate the petitioner to approach the competent authority in terms of Section 63(e) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, it is totally unnecessary on his part to give a finding on various issues which may



affect the right of the person concerned. This plea of the petitioner is tenable and the learned Counsel for the first respondent fairly states that such portion of the order that may affect the petitioner's claim may be set aside.

10. Having directed the petitioner to approach the competent authority, there is no necessity for the first respondent to go into the merits of the claim. This Court is inclined to set aside that portion of the order where the first respondent has referred to various proceedings and stated that the petitioner does not have the right to claim the relief and perform the Ghosti in respect of Saint Nathamunigal.

11. The petitioner, however, is given liberty to approach the competent authority under Section 63(e) of the Tamil Nadu Hindu Religious and Charitable Endowments Act for establishing his right as above. The authority concerned shall consider the claim without reference to any of the observations made by the Executive Officer in the order dated 25.06.2011. The proceedings in Na.Ka.No.1772/1412/D1 dated 17.05.2011 granting right to the second respondent, as stated by the learned Counsel for the first respondent, is an administrative order and therefore, such order will necessarily be subject to any orders that may be passed by the competent authority as and when such application is filed by the petitioner in terms of Section 63(e) of the Tamil Nadu Hindu Religious and Charitable Endowments Act. The impugned order insofar as it is relatable to the merits of the claim of the petitioner is concerned, alone is set aside."

(h) In yet another unreported judgment made in W.P.(MD)No.384 of 2012, dated 25.04.2017, the yet another learned Judge of this Court has held that any such claim of right, the parties should approach the authority under Section 63 of the Hindu Religious and Charitable Endowments Act and the operative portion of judgment made by the learned Judge is found in paragraphs 9 to 11, which are extracted herein:

"9. Therefore, I see no ground to interfere with the order of the District Collector which only records certain events and directs the Deputy Superintendent of Police, Melur, to see that the festivals are conducted without any breach of peace.

10. It is open to the petitioner to approach the Deputy Commissioner or Joint Commissioner, Hindu Religious and Charitable Endowments Department, seeking declaration that the fifth respondent, namely, Anwar Bag is not entitled to any honour in the religious institution. A specific power has been conferred on the authority to



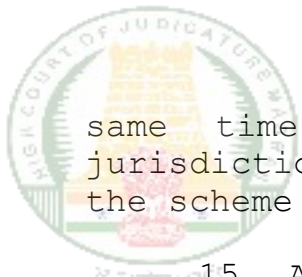
decide such questions and they are also vested with certain judicial powers and they act as a quasi-judicial authorities while performing such functions under Section 63(e) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Therefore, it is for the petitioner to approach those authorities seeking redressal of his grievance.

11. Hence, this writ petition is dismissed, leaving it open to the petitioner to approach the authorities under the Hindu Religious and Charitable Endowments Act, seeking declaration that the fifth respondent or any other person is not entitled to any honour in the religious institution concerned. If the petitioner chooses to approach the authority, it shall decide the same independently based on the evidence produced before it without being influenced by any of the observations made by the District Collector in the impugned proceedings. No costs. Consequently, the connected miscellaneous petition is also dismissed."

12. Therefore, the learned Counsel appearing for the petitioner would submit that the issue of right as claimed in the petition is squarely covered by the above decisions of the Honourable Supreme Court as well as the various pronouncements of this Court and despite the same, the authority viz., the first respondent passed the impugned order and in the subject matter of the writ petition, the authority alone is having jurisdiction and not the civil Court.

13. On behalf of the first respondent Mr.C.M.Marichelliah Prabhu learned Additional Government Pleader entered appearance, on behalf of the second respondent, Mr.V.R.Shanmuganathan, learned Counsel entered appearance and on behalf of the third respondent, Mr.S.Ramesh entered appearance.

14. A detailed counter affidavit has been filed on behalf of the third respondent. The third respondent, being the contesting respondent, has vehemently opposed for grant of any relief to the petitioner on the ground that in respect of rival claims, it is only the civil Court which has jurisdiction and such competitive right cannot be adjudicated under Section 63(e) of the Hindu Religious and Charitable Endowments Act. According to the learned Counsel appearing for the third respondent, the Commissioner of the Hindu Religious and Charitable Endowments Department has passed a very detailed order in the revision petition in R.P.No.19 of 2013 and his order dated 06.08.2013 is well founded and therefore, the same is not liable to be interfered with. In any case, it is on the basis of the submissions made on behalf of the petitioner, this Court has directed the parties to submit the application under Section 63(e) of the Hindu Religious and Charitable Endowments Act, but at the



same time, such direction by the High Court cannot confer jurisdiction on the authority if he is otherwise lack in terms of the scheme of the Hindu Religious and Charitable Endowment Act.

15. According to the learned Counsel appearing for the third respondent, in case of dispute between parties to perform pooja, the same cannot be adjudicated under Section 63(e) of the Hindu Religious and Charitable Endowment Act. The learned Counsel would rely on the following decision in support of his contentions.

(i) In *Chinnathambi Moopan and another Vs. Mamundi Mooppan and another* reported in MLJ 1966, page at 361, the learned Judge of this Court has held that such dispute will fall within the jurisdiction of the civil Court.

16. The learned Counsel particularly would draw the attention of this Court to certain observations made by the learned Judge while coming to the above conclusion which as under:

"The 2nd defendant, which is the Devasthanam, took the plea that the suit would be barred by Section 63 of the Act, as it relates to a dispute regarding honours, emoluments, perquisites, to which the plaintiffs claimed to be entitled in the suit temple and on the usage regarding the same. The Devasthanam further pleads in its written statement that it has the right to do all that is necessary for the proper and efficient performance of the services, and in case there is dispute between the villagers, it is open to the Devasthanam to have the services rendered by sircar nominee.

The learned District Judge with reference to the question whether the suit falls within the purview of Section 63(e) expressed the view that the question is essentially a matter that has got to be proved by the established usage in the institution and that is a matter that falls directly within the scope of the latter part of clause (e) of Section 63. He went to say:

"The controversy between the plaintiffs on the one hand and the first defendant on the other is one that falls under the first part of the above clause, the controversy being whether the elected person is entitled to do the service and receive the perquisites or whether the customary Mooppanar who is generally held to be the leader of the community is entitled to that right".

In the circumstances, he was of opinion that the authority competent to decide the dispute is the Deputy Commissioner under Section 63 of the Act, and the suit would, therefore, be barred under Section 108.

I am afraid the view of the learned District Judge cannot be accepted. There is here no controversy about the office or the emoluments attached to the office, in relation to the services rendered in exercise of the right under the office. The question, as is clear from, the



pleadings, is confined to the rival claim, whether the office of Moopanar is vested in the community of pallars or whether the first defendant is entitled to it as of right. The 2nd defendant further claims that if, because of a dispute over the office, there is the necessity, it should be open to it to make arrangements for doing the service by employing a sircar nominee. If there is no dispute as to the character of the office and the emoluments payable in respect of it, I do not see how the controversy in the suit will fall within the purview of the first part or the second part of section 63(e). Nowhere does it appear from the pleadings either in the plaint or in the written statement that the usage or custom of the Devasthanam governs the vesting of the right to the office either in the community or in the first defendant. No one says that, if a particular person is entitled to the office he is not also entitled to the emoluments.

I am of the view, therefore, that where the controversy centres round as to which of the rival claimants to the office is entitled to it, it squarely does not fall within the ambit of Section 63(e). In my opinion, the principle of *Sastri Ammal V. Pravalavarna Naicker* reported in (1995)2 MLJ., 612, will govern the matter. The learned District Judge sought to distinguish this case on the ground that there it was the common case of both parties that the office was hereditary. But the point was missed by him that here too there is no dispute as to the character or the existence of the office or the right to emoluments attached to the office, and the only controversy is as to which of the rival claimants to the office should succeed. That is a matter for the civil Court.

The Petition is allowed. No costs."

17. Therefore, he would submit that the issue on hand is about the rival claims of the parties and therefore, the first respondent has rightly rejected the application filed by the petitioner under Section 63(e) of the Act and directed him to approach the civil Court to get appropriate remedies. Therefore, he would submit that the order passed by the first respondent does not call for interference by this Court.

18. The learned Counsel appearing for the respondents 1 and 2 made their submissions stating that it was well within the right of the first respondent to pass orders and therefore, the same cannot be found fault with.

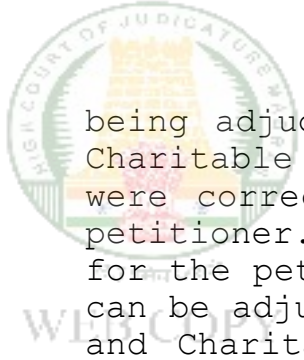
19. This Court gave its anxious consideration to the rival submissions of the Counsels appearing on either side.



20. First of all, it has to be seen that initially the order was passed by the Joint Commissioner/Executive Officer of the temple on 15.02.2013 assigning the 1/16th right to the third respondent in performing pooja on two days in tamil calendar month. This Court is unable to understand under what provision of law or rule, such order was passed by the Executive Officer at the instance of the third respondent. The order passed by the Executive Officer dated 15.02.2013 is rather cryptic and does not spell out reasons for assigning such right to the third respondent, nor it disclosed under what provisions of law, such order has been passed at the instance of the third respondent. Therefore, this Court is of the view that the original order itself passed by the second respondent/Executive Officer had to be interfered with. However in view of the subsequent development, viz., filing of revision petition by the petitioner before the Commissioner, the Hindu Religious and Charitable Endowment Department and also the parties approached this Court in writ petition and the writ appeal as aforementioned and obtained directions to approach the first respondent under Section 63(2) of the Hindu Religious and Charitable Endowment Act, this Court refrains from interfering with the original order passed by the Executive Office on 15.02.2013.

21. Be that as it may, the Commissioner of the Hindu Religious and Charitable Endowments Department ought to have seen that the Executive Officer clearly lacked jurisdiction in assigning pooja rights to the third respondent only on the basis of legal opinion from the advocate and there was absolutely no discussion or reference to any materials in support of his order, apart from the lack of jurisdiction on his part. Nonetheless, the Commissioner of the Hindu Religious and Charitable Endowments Department has confirmed the order which was the subject matter of the proceedings before this Court in both writ petition as well as the writ appeal. In view of these developments, this Court has to finally see as to whether the impugned order passed by the first respondent dated 21.08.2017 is sustainable both in terms of law and on facts. From the dispute as raised before the first respondent, it is very clear that it is one of the customary and usage right for being assigned pooja work and such right can be adjudicated only under Section 63 (e) of the Hindu Religious and Charitable Endowments Act and such a right cannot be a subject matter of adjudication before the civil Court.

22. As rightly contended by the learned Counsel appearing for the petitioner that the suit in respect of administration and management of religious institution is clearly barred under Section 108 of the Hindu Religious and Charitable Endowments Act as well as Section 9 of the Code of Civil Procedure. In view of the clear bar envisaged in the above enactments, the only remedy that is available for establishing the pooja right is before the first respondent under Section 63(e) of the Hindu Religious and Charitable Endowments Act. In fact, the Courts have recognized such right



being adjudicated under the provisions of the Hindu Religious and Charitable Endowments Act in several decisions as cited supra which were correctly relied on by the learned Counsel appearing for the petitioner. In all the decisions relied on by the learned Counsel for the petitioner, it was categorically established that such right can be adjudicated only under the provisions of the Hindu Religious and Charitable Endowment Act and the same cannot fall within the jurisdiction of the civil Court.

23. From the materials and the pleadings disclosed, it is very clear that the issue is not one of the rival claim but the issue is one of the claim to do pooja on the basis of the ancestral right, which subject can only come within the frame work of Section 63 of the Hindu Religious and Charitable Endowments Act. In this case, admittedly the third respondent has been granted two designated days in a tamil calender month as against the exclusive right claimed by the petitioner herein. Such right in the opinion of this Court falls fully within the domain of Section 63 of the Hindu Religious and Charitable Endowment Act, as held by the various decisions of this Court as well as the Honourable Supreme Court of India.

24. On the other hand, the decision relied on by the learned Counsel appearing for the third respondent is in respect of two rival claims to the exclusion of the other in regard to certain honours and such rival claim did not fall within the scope of Section 63 of the Hindu Religious and Charitable Endowment Act and therefore, the learned Judge of this Court has rightly held that the dispute fell within the jurisdiction of the civil Court.

25. On the contrary, the present dispute is not one of the rival claim and that one of customary claim of right to do pooja in the petitioner temple and such right can only be decided by the competent authority under the provisions of the Hindu Religious and Charitable Endowments Act. Infact from the materials as disclosed, this Court is of the view that if the first respondent's order is to be upheld, in which case, originally he ought to have directed the third respondent to approach the civil Court in order to work out his remedies. Having failed to pass orders originally on the above terms, it is not open to the first respondent to drive the petitioner herein, who had already been enjoying the right to do pooja in the petitioner temple, to approach the civil Court. It appears that the first respondent had been taking contradictory stand, one in respect of the petitioner and in other in respect of the third respondent. Therefore, it is clearly established that the first respondent is either not aware of the jurisdiction vested in him under the scope of Section 63(e) of the Hindu Religious and Charitable Endowment Act or he was deliberately feigning ignorance in order to favour the third respondent while conferring such right on the third respondent. In any case, this Court is of the view that both in terms of law and facts, the order impugned in the writ petition is unsustainable.



26. For the above said reasons, the impugned order dated 21.08.2017 by the first respondent is hereby set aside and the matter is remitted back to the first respondent for fresh consideration.

27. The first respondent is directed to pass orders on merits and in accordance with law after hearing the objections of the parties concerned and if necessary after giving personal opportunity to both the petitioner as well as the third respondent and other interested parties and thereafter pass a speaking order within a period of eight weeks from the date of receipt of a copy of this.

28. The Writ Petition stands allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/

Assistant Registrar(AD-I)

/True copy/

Sub Assistant Registrar (CS-IV)

To

1.The Joint Commissioner,
Hindu Religious and Charitable Endowment,
Madurai Division,
Madurai.

2.The Executive Officer/Joint Commissioner,
A/m Meenakshi Sundareswarar Temple,
Madurai.

+1cc to Mr.D.GEETHA, Advocate, SR.No.89277

+1cc to Mr.V.RAGHAVACHARI, Advocate, SR.No.89167

+1cc to M/s.Special Government Pleader,SR.No. 89414

W.P.(MD) No.17634 of 2017
08.10.2018

SSL

KK/SV/SAR-4/25.10.2018/17P-6C