



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.[MD].No.18972 of 2017

and

W.M.P. (MD) No.15332 of 2017

P.Giri

: Petitioner

Vs.

1.The Secretary to Government,
Hindu Religious and Charitable Endowment Department,
St. George Fort,
Chennai.

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

3.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Tirunelveli-2.

4.The Assistant Commissioner,
HR&CE Department,
Nagercoil-2, Kanyakumari District.

5.The Executive Officer,
Arulmigu Muppanthal (East) Esakkiamman Temple,
Aralvaimozhi,
Kanyakumari District.

6.The Superintendent of Police,
Kanyakumari District,
Nagercoil.

7.T.Karunanithi

8.Thanu

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents 1 to 4 to take over the Administration of Arulmigu Chockkar Giri Murugan Temple and by considering the representations of the petitioner dated 02.12.2013, 06.08.2015, 14.10.2015, 22.06.2016 and 15.09.2016.



For Petitioner : Mr.N.Sivakumar
For Respondents 1to4&6: Mr.N.Shanmugaelvam,
Additional Government Pleader
For Respondent No.5 : Mr.K.Sathiyasingh
For Respondents 7&8 : Mr.M.Sankar

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O R D E R

[Order of the Court was made by **M.M.SUNDRESH, J.**]

This is really very unfortunate that notwithstanding the fact that the Temple in question has been brought within the purview of the Hindu Religious and Charitable Endowments Department by order dated 24.04.2015, followed by the appointment of the fifth respondent as a Fit Person, by proceedings dated 09.07.2015, the possession has not been handed over and taken from the respondents 7 and 8.

2.The respondents 7 and 8 are still claiming to be the Trustees. Be that as it may, the order passed bringing the Temple within the purview of the Hindu Religious and Charitable Endowments Department, followed by the consequential order of appointing the Fit Person as an Executive Officer, are not under challenge.

3. Taking note of the above said situation, this Court, in and by order dated 17.01.2018, was pleased to pass the following order:

"The grievance expressed by the petitioner, who has filed this Writ Petition in the form of 'Public Interest Litigation', is that despite taking over the administration of 'Arulmigu Chockkar Giri Murugan Temple' situated at Thovalai, Kanyakumari District, the respondents 7 and 8 are not permitting them to do so and when the fifth respondent approached the Inspector of Police, Aralvaimozhi Police Station, Aralvaimozhi, to accord necessary police protection, it has not been done.

2. It is also brought to the knowledge of this Court that subsequent to the filing of this Writ Petition, the respondents 7 and 8 have filed O.S.No.41 of 2017 on the file of the District Munsif-cum-Judicial Magistrate, Poothapandi, against the respondents 4 and 5 herein, praying for permanent injunction restraining them from interfering with the peaceful possession and enjoyment of the Temple by Thovalai Chockkar Giri Murugan Temple Magamai Trust and no interim orders are in operation.



respondents, seeks time to file counter-affidavit.

4. In the light of the allegations made, the Superintendent of Police, Kanyakumari District, Nagercoil, is directed to file a counter-affidavit, after verifying the said allegations with the Station House Officer of Aralvaimozhi Police Station, Aralvaimozhi, Kanyakumari District.

5. It is also pertinent to note at this juncture that it also appears to be the stand of the HR & CE Department that whenever suits are filed, they will lay off their hands, despite the fact that no interim orders are in operation.

6. Call on 09.02.2018."

4. Since the aforesaid order was not complied with, another order was passed on 25.09.2018, which is hereunder:

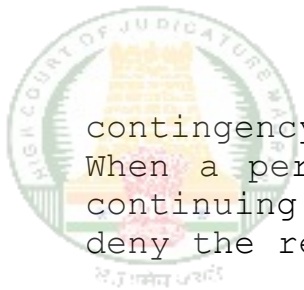
"Despite the order of this Court dated 17.01.2018, no steps have been taken to take over the temple. Therefore, a direction is issued to respondent No.5 to carry out the earlier order passed by this Court and if necessary with the assistance of the Superintendent of Police, Kanyakumari District, Nagercoil. The Respondent No.5 is directed to be present before this Court on the next date of hearing.

Post the matter on 09.10.2018."

5. Unfortunately, even today, the administration has not been taken over by the respondent No.5, as indicated in the earlier orders.

6. On behalf of the respondents 7 and 8, though an attempt is made placing reliance upon Section 101 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, we are of the view that the said position cannot go beyond the directions issued by this Court, especially, when the Temple itself has been brought within the purview of the Hindu Religious and Charitable Endowments Department.

7. Admittedly, the orders passed by the department have not been challenged. The respondents 7 and 8 have lost their status. Therefore, for their illegal control of the administration, they cannot be allowed to contend that they should only be removed by following the procedures under Section 101 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. This provision is only an enabling provision to be used on a



contingency. It is not as if in all cases, it has to be invoked. When a person has no authority and despite knowing the same, is continuing with these illegal activities, a Court of law cannot deny the relief to a party, who knocks the door seeking justice.

8. In such view of the matter, we direct the respondent No.6 to extend all necessary help to respondent No.5 to take charge of the administration. Needless to state that it has to be done, within a period of four weeks from the date of receipt of a copy of this order.

9. The Writ Petition stands disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS-I)

To

1.The Secretary to Government,
Hindu Religious and Charitable Endowment Department,
St. George Fort,
Chennai.

2.The Commissioner,
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3.The Joint Commissioner,
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4.The Assistant Commissioner,
HR&CE Department,
Nagercoil-2, Kanyakumari District.

5.The Superintendent of Police,
Kanyakumari District,
Nagercoil.

+ 1 CC TO MR.N.SIVAKUMAR, ADVOCATE IN SR NO.89546

1 CC TO MR.K.SATHIYASINGH, ADVOCATE IN SR NO.89684
<https://hcservices.courts.gov.in/hcservices>



+ 1 CC TO MR.M.SANKAR, ADVOCATE IN SR NO.89643
+ 1 CC TO SPECIAL GOVERNMENT PLEADER, IN SR NO.90275

SML

BU/SKN/SAR-1 :13.11.2018 : 5P/10C

Order made in
W.P.[MD].No.18972 of 2017
Dated: 09.10.2018