

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 22.01.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P.No.1471 of 2019

A. Radhakrishnan

... Petitioner

Vs

- 1.The Commissioner of Land Administration,
Chepauk, Chennai - 600 005
- 2.The Commissioner,
Hindu Religious & Charitable
Endowments Department,
119, Nungambakkam High Road,
Chennai - 600 034.
- 3.The Inspector General of Police,
North Zone, Railway Station Road,
Alandur, Chennai - 600 016
- 4.The District Collector,
Cuddalore District, Cuddalore.
- 5.The Taluk Executive Magistrate/Tahsildar,
Chidambaram Taluk,
Cuddalore District
- 6.The Joint Director of Agriculture,
Near SRS, Gundu Salai Road,
Dhanalakshmi Nagar Extension,
Cuddalore
- 7.The Superintending Engineer,
Tamil Nadu Electricity Generation &
Distribution Corporation,
Cuddalore
- 8.The Deputy Inspector of General of Registrations,
Cuddalore District
- 9.The Regional Joint Director of Municipal Administration,
Chengalpet

10.The Assistant Director of Panchayats,
Cuddalore

11.The General Secretary,
Pothu Deekshidar Saba,
ArulmiguSabanayagar Temple,
Chidambaram,
Cuddalore District

12.The President,
Belgam Anandammal Charities Trust,
Chidambaram 608 001

13.Kanagasabai
Secretary,
Belgam Anandammal Charities Trust,
No.18/65, North Car Street,
Chidambaram - 609=8 001

14.The Managing Trustee,
Ammaniammal Trust,
Chidambaram Town

15. T.Rajasekaran

16. N.Elavarasan

17. V.Loganathan

18. Chakravarthy

19. N.Pandian

20. S.Manohar

21. S.Murugan

22. M.Sundarapandi

23. Tmt.S.Thillaikkarasi

24. Tmt.S.Santhi

25. R.Sambandam

26. P.Rengan

27. R.Jothi

28. R.Ayyappan

29. N.Neelavathi

30. P.Thangarasu

31. T.Kumar

32. R.Sundaramoorthi

... Respondents

Writ Petition filed under Article 226 of Constitution of India praying this Court to issue a Writ of Mandamus directing the fourth respondent to secure the properties belonging to the respondents 12 to 14 situated at Chidambaran Town, Cuddalore Taluk and restore the same to and in favour of Eleventh respondent temple by considering the petitioner representation dated 27.08.2018.

For petitioner : Mr.R. Marudhachalamurthy

For R.1, R.3 to R.6,
R.9 & R.10: Mr.E. Manoharan
AGP

For R.2 : Mr.M. Maharaja
Spl.G.P

For R.8 : Mr.T.M. Pappiah
Spl.G.P

ORDER

(Order of the Court was made by M. SATHYANARAYANAN, J.,)

The present writ petition is styled as 'Public Interest Litigation' and the petitioner claims that he is a social and spiritual activist right from young age and continues to do several social service and at present, he is doing spiritual service in the form of safeguarding the temple properties and also facilitate the basic needs to the devotees.

2. The petitioner would aver that he is an ardent devotee of Arulmigu Sabanayagar Temple, Chidambaram, Cuddalore District and he became aware of the fact that there are properties belonging to Belgam Andalammal Charities Trust situated at Chidambaram and the said Andalammal, during her life time, had executed a Will in respect of the properties, way back in the year 1875 and as per the Will, the income earned out of the said Trust property is to be utilized for conducting rituals of Arulmigu Sabanayagar Temple, Chidambaram.

3. The grievance expressed by the petitioner is that the suit properties are under the illegal occupation of the private respondents and in this regard, he submitted a representation to the Hon'ble Chief Minister of Tamil Nadu on 27.08.2018 and on 29.08.2018 the same was forwarded to the fourth respondent. Despite receipt and acknowledgment, the fourth respondent is yet to respond. Therefore, left with no other option, he is constrained to approach this Court by filing writ petition, styled as 'Public Interest Litigation'.

4. Mr.R.Marudhachalamurthy, learned counsel appearing for the petitioner would submit that since the income earned out of the said Trust property is to be utilized for doing rituals of Arulmigu Sabanayagar Temple, Chidambaram and the Trustees have not taken any care to maintain the temple, therefore, purely on public interest, he has submitted a representation to the Hon'ble Chief Minister, which was forwarded to the fourth

respondent to take proper action, however, the fourth respondent is yet to respond to the representation and as such, he is constrained to approach this court by filing the writ petition.

5. According to the learned counsel for the petitioner, since nobody is taking care of the said property, it had become "Anadheen" property and therefore, it is open to the Government to resume the land and use it for the benefit of the said temple and prays for appropriate order.

6. This Court has carefully considered the submissions made by the learned counsel for the petitioner and also perused the materials available on record.

7. In (2014) 5 SCC 75 (Subramanian Swamy vs State of Tamil Nadu), the issue raised for consideration was whether Dikshitaras constitute a "religious denomination" and whether they have a right to participate in the administration of the Temple and the Hon'ble Supreme Court found that both the issues stood finally determined by this Court in the judgment rendered in the case of Maimuthu Dikshithar vs State of Madras reported in (1952) 1 MLJ 557 and it would operate as res judicata against any subsequent decisions.

8. The facts of the said case would disclose that on 31.07.1987, the Commissioner of Religious Endowments in exercise of his power under the Hindu Religious and Charitable Endowments Act, 1959, appointed an Executive Officer and consequent thereto, the Commissioner, Hindu Religious and Charitable Endowments, passed an order on 05.08.1987, defining the duties and powers of the Executive Officer, so appointed for the administration of the Temple.

9. Aggrieved by the same, a writ petition in WP No.7843 of 1987 was filed and it was dismissed on 17.02.1997. Challenging by the same, one of the respondents filed writ appeal in W.A No.145 of 1997 and this Court, by judgment dated 01.11.2004 disposed of the said writ appeal, giving liberty to the sixth respondent in the writ appeal to file a revision petition before the Government under Section 114 of the Hindu Religious and Charitable Endowments Act, 1959, as the writ petition has been filed without exhausting the statutory remedies available to him.

10. The revision petition was preferred, however the same was dismissed on 09.05.2006

11. Writ petition in W.P No.18248 of 2006 was filed for setting aside the order dated 09.05.2006 passed in the revision petition and the writ petition was dismissed on 02.02.2009 observing that the judgment rendered in the case of Maimuthu Dikshithar vs State of Madras reported in (1952) 1 MLJ 557 would

not operate as res judicata.

12. Challenging the legality of the order dated 02.02.2009, the sixth respondent in the above Writ Petition filed writ appeal in WA No.181 of 2009, wherein Dr.Subramanian Swamy was allowed by the High Court to be impleaded as a party. The writ appeal was dismissed on 15.09.2009 and therefore, Special Leave Petitions were preferred and the Special Leave Petitions were entertained to be converted into Civil Appeal No.10620 of 2013. The Hon'ble Supreme Court found that "the Dikshitaras had been declared by the Apex Court, in a lis between Dikshitaras and the State and the Religious Endowments Commissioner that they were an acknowledged "religious denomination" and in that capacity they had a right to administer the properties of the Temple. Though in view of the provisions of Section 45 read with Section 107 of the Act 1959, the State may have a power to regulate the activities of the Temple, it lacks competence to divest the Dikshitaras from their right to manage and administer the Temple and its properties and further observed that the High Court committed an error by holding that the earlier judgment of the Division Bench in the case of Maimuthu Dikshithar vs State of Madras reported on (1952) 1 MLJ 557 would not operate as res judicata and allowed the appeal.

13. In the light of the above said judgment, it cannot be said that the administration and affairs of Arulmighu Sabanayagar Temple comes under the control of Hindu Religious and Charitable Trust and it is the case of the petitioner that the income earned out of the trust properties have to be utilized for conducting rituals in respect of the said temple and since the trustees have not properly administered, the private respondents, taking advantage of the same, had encroached upon the land.

14. In the considered opinion of the Court, the facts averred by this Court in the earlier paragraphs have disclosed no cause of action to enable the petitioner to invoke jurisdiction under Article 226 of the Constitution of India. Admittedly, no public duty has been cast upon the official respondents, more particularly, no statutory duty has been cast upon the second respondent to take proper action.

15. If the petitioner is of the view that the Trustees are not maintaining properly and that encroachments are taking place on the Trust property on account of non-managing of the Trust, he is always at liberty to work out his remedy under common law before the appropriate forum.

16. In the considered opinion of the court, the writ petition with the present set of facts, is not maintainable.

17. In the result, the writ petition is dismissed as not maintainable. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sr

To

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- 9.The Regional Joint Director of Municipal Administation,
Chengalpet.

10.The Assistant Director of Panchayats,
Cuddalore.

+1cc to Mr.R.Marudhachalamurthy, Advocate, S.R.No.5241
+1cc to the Government Pleader, S.R.No.4810.
+1cc to The Special Government Pleader (HR &CE), S.R.No.5255

W.P.No.1471/2019

BR(CO)

rrs 01/03/2019



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