

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2019

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.P.No.10656 of 2009
and M.P.Nos.2 of 2009 & 1 of 2010

Venkidusamy Naidu (Died)

2.Guruvammal
3.Nirmaladevi
4.Ethiraj

...Petitioners

(P2 to P4 are substituted as L.R's of the deceased
P1 vide order of this Court dated 16.07.2019 made
in W.M.P.No.12354/2019 in W.P.No.10656 of 2009)

Vs

1.The Assistant Commissioner,
Hindu Religious & Charitable
Endowments Department,
Coimbatore - 18.

2.The Executive Officer,
A/m.Alkondammal Thirukovil,
Somavarapatti,
Udumalpet Taluk,
Tiruppur District.

3.V.Rajagopalan

... Respondents

(R3 impleaded as per order of this Court
dated 20.10.2010 in M.P.No.3 of 2009 in
W.P.No.10656 of 2009)

Prayer: Writ Petition filed under Article 226 of the
Constitution of India, seeking issuance of a Writ of
Certiorari, calling for the records relating to the
impugned order dated 05.05.2009 made in
Proc.Na.Ka.No.1817/2007/A6 passed by the 1st respondent
herein, quash the same.

For Petitioners : Mr.N.Manokaran
For Respondents : Mr.M.Maharaja
Special Government Pleader (HR & CE)
No appearance for R2
Mr.P.Rajendran for R3

O R D E R

This writ petition has been filed challenging the appointment of a fit person to the Arulmighu Renuka Devi, Sri Genga Naidu, Sri Gengammal, Sri Nagammal temple situated at Pollachi Taluk, Coimbatore District.

2.The case of the petitioner is that the lands comprised in S.F.Nos.294, 295 and 296 were purchased by his father Thirupathy Naidu and mother Perammal, through a registered sale deed dated 27.08.1935. Subsequently, there was a family partition, in which, an extent of 2.63 acres in S.F.No.294, 20 cents in S.F.No.295 and 3.32 acres in S.F.No.296 were allotted to the petitioner on 12.04.1978 and thereby, he became an absolute owner of the said properties.

3. The petitioner would further submit that abutting his residential house situated in S.F.No.295/2, there is a temple called 'Sri Gangammal Temple'. The said temple is absolutely belongs to his family and his predecessors and they have been performing poojas for the past several years. When the dispute arose between the petitioner and the third respondent, a suit in O.S.No.266 of 2009 was instituted before the District Munsif Court, Pollachi. However, during the pendency of the suit the third respondent herein gave a frivolous complaint to the first respondent and on that basis, a fit person was appointed.

4. Mr.N.Manokaran, learned counsel for the petitioners would submit that suppressing the pendency of the suit in O.S.No.266 of 2009, the third respondent gave a complaint to the first respondent on 04.05.2009 and on the very next day, the impugned order came to be passed. It is further contended that in the suit filed by the petitioners in O.S.No.266 of 2009, the Civil Court gave a categorical finding that the temple in dispute is a private temple and hence, the first respondent has no authority to appoint a fit person.

5. Per contra, Mr.M.Maharaja, learned Special Government Pleader appearing for the first respondent and Mr.P.Rajendran, learned counsel for the third respondent would contend that the order impugned in this writ

petition is an appealable and the Civil Court has granted a decree without considering the fact that it is a public temple. It is further submitted that the Hindu Religious & Charitable Endowments Department, was not made as a party in the said suit and the suit is not maintainable, in view of bar under the Tamil Nadu Hindu Religious & Charitable Endowments Act.

6. I have heard the rival submissions made by the learned counsel on either side and perused the materials available on record.

7. It is represented that during the pendency of the Writ Petition, the original Writ Petitioner, viz., Venkidusamy Naidu died and his legal heirs, the petitioners 2 to 4 are brought on record.

8. In the instant case, it is not in dispute that the temple called Sri Gangammal temple was constructed in S.F.No.295. It is the case of the petitioners that the said temple is a private temple and therefore the authorities have no right to appoint a fit person. It is pertinent to note that in view of the private dispute between the original writ petitioner and the third respondent the complaint was given on 04.05.2009, during the pendency of the suit and the impugned order came to be passed by the first respondent.

9. It is the submission of the learned counsel for the petitioners that since at the time of filing the suit, there was no dispute between H.R. & C.E. department and the petitioners and hence, the H.R. & C.E. department was not made as defendant in the suit.

10. A perusal of the records would reveal that the suit was filed in the year 2009 and the Civil Court after considering the oral and documentary evidence adduced by the parties gave a categorical findings that the temple in dispute is a private temple. The learned counsel for the petitioners submitted that the findings have attained finality as no appeal has been preferred against the judgment of the trial Court, which is not disputed by the learned counsel for the third respondent. The trial Court after analyzing the entire evidence gave the finding. It is not disputed that in respect of a private temple, no right has been conferred on the official respondents to appoint a fit person.

11. In such view of the matter, the order impugned in this writ petition is set aside and the writ petition

is allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ms

1.The Assistant Commissioner,
Hindu Religious & Charitable
Endowments Department,
Coimbatore - 18.

2.The Executive Officer,
A/m.Alkondammal Thirukovil,
Somavarapatti,
Udumalpet Taluk,
Tiruppur District.

+1cc to Mr.n.Manokaran , Advocate SR.No. 72297

+1cc to Mr.p.Rajendran , Advocate SR.No. 71988

+1 cc to Spl Government Pleader (HR&CE) Sr.No. 72882

W.P.No.10656 of 2009

and

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SV

A.SK(14/10/2019)

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