

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Appeal No. 1243 of 2019
&
C.M.P.No.8552 & 8550 of 2019

Tmt V.Suguna ...Appellant/3rd party

-vs-

1. V.Palanisamy ...1st Respondent/ Petitioner

2. The Commissioner,
HR & CE Department,
Nungambakkam, Chennai - 34.

3. The Joint Commissioner,
HR & CE Department, Salem.

4. The Assistant Commissioner,
HR & CE Department, Namakkal.

5. The Revenue Divisional Officer,
Tiruchencode, Namakkal District.

6. The District Superintendent of Police,
Kumarapalayam Police Station,
Namakkal District.

7. The Inspector of Police,
Kumarapalayam Police Station,
Namakkal District.

..2 to 7 Respondents/ 1 to 6 Respondents

Writ Appeal filed under Clause 15 of Letters
Patent against the order of this Court in W.P.No.8313 of
2019 dated 20.03.2019.

Prayer in W.P.No.8313 of 2019:

Writ Petition filed under Article 226 of the
Constitution of India to issue a Writ of Mandamus ,
Directing the respondents 4 to 6 to give Appropriate

police protection to conduct the Annual Panguni Festival on 26-3-2019 by the Hereditary trustees of A/M. Karia Kaliyamman temple situated at Padaveedu village natham Medu namakkal district.

For appellant: Mr.A.R.L.Sundaresan, Senior Counsel
for Mr.A.Periyasamy

For Respondents : Mr.W.M.Abdul Majeed for
Mrs.G.Sumithra (for R.1)
Mr.M.Maharajan,
Special Government Pleader (HR&CE)
for R.2 to R.4
Mrs.R.Janaki,
Additional Government Pleader
for R.5 to R.7.

JUDGMENT

(Judgment of the Court was delivered by T.S.Sivagnanam,
J.)

The appeal by the writ petitioner is directed against the order in W.P.No.725 of 2017 dated 03.02.2017.

2. This appeal has been filed by the appellant, who is third party to the writ petition, challenging the order passed in W.P.No.8313 of 2019 filed by the first respondent herein.

3. The said writ petition was filed by the first respondent praying for a direction upon the respondent Nos. 4 to 6 to give appropriate police protection to conduct Annual Panguni Festival on 26.03.2019, by the Hereditary Trustees situated at Arul Mighu Kaliyamman Temple situated at Padaveedu Village, Natham Medu, Namakkal District.

4. The writ petition was disposed of by the impugned order and operative portion of the direction issued reads as follows:

"6. When such being the factual position, the respondents shall see to that, that the festival is conducted by the petitioner peacefully, without giving any room for law and order problem. Consequently, the respondents 5 and 6 are directed to provide police protection for conducting the Panguni Festival at the subject matter Temple

commencing from 26.03.2019 onwards.”

5. The appellant has filed this appeal contending that the Annual Panguni Festival has to be conducted by the villagers i.e., the people residing in the village and the first respondent/writ petitioner has no independent right to conduct the festival. The learned counsel appearing for the first respondent would strenuously contend that the first respondent had filed a suit in O.S.No.204 of 1985 on the file of the Sub Court, Sangagiri for a declaration to declare him as a Hereditary Trustee and to manage the temple and its property. The suit was dismissed by judgment and decree dated 07.11.1994. As against which, the first respondent and others have filed Appeal Suit in A.S.No.11 of 1995 in which an order of interim injunction was granted in C.M.P.No.269 of 1995 dated 11.01.1995 which was made absolute on 19.10.1995. Therefore, it is the contention of the first respondent that they are entitled to be in full control of the temple and have the exclusive right to perform the pooja during the Panguni festival. It is seen that the said Appeal Suit in A.S.No.11 of 1995 was dismissed as infructuous by judgment dated 08.06.2007 on the ground that scheme has been framed in O.A.No.52 of 1993 dated 30.03.2006.

6. The first respondent and others have filed Review Application in Review Application No.93 of 2007 in A.S.No.11 of 1995 on the ground that the Appeal Suit was dismissed by misrepresentation that a scheme has been framed in respect of the Temple. The Review Application was allowed by order dated 15.10.2015 and the appeal was restored for fresh hearing. Thus, it is the submission of the learned counsel for the first respondent that the appeal having been restored, the order of interim injunction which granted also stands restored and would enure in favour of the first respondent. It is the further submission of the learned counsel for the first respondent that the appellant before us had filed W.P.No.10778 of 2016 praying for issuance of writ of mandamus to grant permission to conduct Panguni Festival between 24.03.2016 and 07.04.2016. In the said writ petition, the first respondent herein was not impleaded as party. The writ petition came to be disposed by order dated 23.03.2016 issuing direction in favour of the appellant to conduct the festival on the said dates.

7. The first respondent filed a petition seeking leave to file writ appeal against the said order. The writ appeal in W.A.No.401 of 2015 was entertained by the

Division Bench. The said writ appeal was allowed by judgment dated 01.04.2016. Further, it is submitted by the learned counsel for the first respondent that the Joint Commissioner (H.R.&.CE), Salem, the third respondent before us has passed an order dated 07.12.2017 appointing a fit person to the temple and this was challenged by first respondent by filing W.P.No.32474 of 2016, in which, order of status quo which was prevailing as on 06.12.2017 was passed and the said writ petition is still pending and the interim order is still in force.

8. Further it is submitted that one C.Dhanapal S/o. Chinna Gounder filed an application in C.M.P.No.1846 of 2016 to implead himself as the 13th respondent in A.S.No.11 of 1995 on the ground that he is a worshipper of the deity and he has been residing in the village and he is interested in safeguarding the assets of the temple. This application was dismissed by order dated 16.03.2016. Therefore, it is the submission of the learned counsel for the first respondent that the appellant is attempting to indirectly achieve what he cannot directly achieve.

9. The learned Special Government Pleader submitted that after the interim order was granted in W.P.No.32784 of 2017 dated 15.12.2017 granting an order of status quo as on 06.12.2017, Joint Commissioner passed an order on 21.12.2017 in compliance with the order of status quo in which it has been stated that prior to 06.12.2017, as per the report of the Inspector, H.R. & CE Department, Salem, festival was conducted by a Poojari nominated by the villagers and the said poojari shall continue to perform the festival. Therefore, it is submitted that all along the Panguni festival was conducted by the Poojari nominated by the villagers and by virtue of interim orders obtained by the first respondent in A.S.No.11 of 1995 and in W.P.No.32784 of 2017, at best the first respondent can be in administration of the temple and has no right to perform the Pooja during the Panguni Festival.

10. We have elaborately heard the learned counsel for the parties and given our careful consideration to the materials placed on record. As pointed out earlier, the first respondent herein approached this Court on an earlier occasion and filed W.A.No.401 of 2016 to set aside the order in W.P.No.10778 of 2016 filed by the appellant before us. The said appeal filed by the first respondent was allowed by judgment dated 01.04.2016. The grounds canvassed before us by the learned counsel for

the first respondent were infact canvassed before the Hon'ble Division Bench in the same manner, which was taken note of and ultimately the appeal was allowed and the writ petition filed by the appellant in W.P.No.10778 of 2016 was dismissed with further direction to the Joint Commissioner to take all necessary steps in consultation with all parties concerned for the conduct and conclusion of the Panguni festival at the temple to be held till 07.04.2016.

11. Therefore, in our considered view, the arguments which are now advanced before us by the learned counsel for the first respondent were considered by the Division Bench in the appeal filed by the first respondent and directions were issued to the Joint Commissioner, HR & CE, with regard to the conduct of the Panguni Festival for the year 2016. Thus, the first respondent cannot plead a different case nor plead contrary to the direction issued in W.A.No.401 of 2016 filed by the first respondent itself, as he is stopped from doing so.

12. At this juncture, it would be useful to refer to the operative portion of the judgment dated 01.04.2016 in W.A.No. 401 of 2016 which reads as follows:

"6. Be that as it may, the fourth respondent was represented through counsel and was aware of the interim order as aforesaid passed in the appeal. However, the same was not brought to the notice of the learned Single Judge. The direction to grant permission to the first respondent/writ petition may have bearing in the functioning of the temple and as such, any order ought to have been passed after hearing the appellant herein also. However, as stated by the learned counsel appearing for the parties that the fourth respondent is competent to look into the entire affairs and take a considerate decision in the interest of temple and religious functions performed therein and in view of the fact that several meetings have taken place in consultation with all concerned, including the appellant for smooth celebration of the Panguni Festival, the appeal is being disposed of.

7. In such view of the matter, while dismissing the writ petition for non joinder

of proper parties, we make it clear that the fourth respondent herein shall take all necessary steps in consultation with all parties concerned for the conduct and conclusion of the Panguni festival at Vinayagar Mariamman Karia Kula Kaliyamman Temple at Padaveedu Village, Natham Medu, Kumarapalayam Taluk, Namakkal District to be held till 7th April, 2016. The writ appeal is allowed in the aforesaid terms. No costs. Consequently, the connected miscellaneous petitions are closed."

13. The Inspector, H.R & CE Department is present in Court and it is submitted that one Balu Pandaram was the poojari who was nominated by the villagers and he conducted Panguni festival in terms of the direction issued by the Division Bench in W.A.No.401 of 2016. Therefore, in our considered view, the same position should be maintained and continued to the present festival also which is to come to an end on 11.04.2019.

14. The learned counsel for the first respondent expressed an apprehension that any orders passed in this appeal may affect the rights of the first respondent which he claims pursuant to the order of interim injunction granted in A.S.No.11 of 1995 and order of status quo granted in W.P.No.32784 of 2017 dated 15.12.2017. We find that there is no basis for such an apprehension because in both these orders, there is no reference to conduct of Panguni festival which was all along been conducted by Poojari nominated by the villagers. Considering the disputes which are prevailing between the group headed by the appellant and group headed by the first respondent, we deem it appropriate to nominate the poojari by name so that festival can be conducted in smooth manner. We also make it clear that all the villagers will be entitled to the right of worship during in the festival season and at all times.

15. For the above reasons, the writ appeal is partly allowed and the order and direction issued in the writ petition stands modified and we direct Mr.Balu Pandaram who had performed festival during 2016 shall perform the festival for the current year also which is stated to come to an end on 11.04.2019. The Inspector of Police, Kumarapalayam Police Station, Namakkal District is directed to constitute a team of Police Officers and Constables to oversee that the direction issued by us is complied with in its letter and spirit. In the event, of

any interference is caused by any third party or any of the parties to these appeals i.e., the appellant and her group and first respondent and his group, the Police Authorities shall take appropriate action against them in accordance with law.

16. With the above directions, the writ appeal stands partly allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mrm

to

1. The Commissioner,
HR & CE Department,
Nungambakkam, Chennai - 34.
2. The Joint Commissioner,
HR & CE Department, Salem.
3. The Assistant Commissioner,
HR & CE Department, Namakkal.
4. The Revenue Divisional Officer,
Tiruchencode, Namakkal District.
5. The District Superintendent of Police,
Kumarapalayam Police Station,
Namakkal District.
6. The Inspector of Police,
Kumarapalayam Police Station,
Namakkal District.

+1cc to Mr. A.Periyasamy, Advocate SR.No. 31923

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&
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A.SK(05/04/2019)