

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.05.2019

CORAM :

THE HON'BLE MR. JUSTICE RMT. TEEKAA RAMAN
and
THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. No. 1739 of 2019
and
C.M.P. No. 11717 of 2019

1. Arulmighu Sellandiamman Thirukkoil,
Vilayankulathaar Welfare Association,
Reg. No. 63/1993,
Rep. by its President and Secretary,
1/45, Keelchathambur Post,
Namakkal Taluk and District.
 2. K.M. Velusamy Appellants/Petitioners
- vs-
1. The Joint Commissioner,
Tamil Nadu HR & CE Department,
Salem - 636 004.
 2. The Executive Officer,
Palapattarai Mariamman Temple,
Namakkal - 637 001. Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order of this Court dated 16.05.2019 passed in W.P. No. 14303 of 2019.

Prayer:

Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari Calling for the records on the file of the 1st respondent relating to the issue of the impugned order namely in Se.Mu. Na.Ka. No.92229/2018/E1 dated 2.4.2019 and quash the same and consequently to issue orders forbearing/ restraining the respondents from interfering with the affairs of the subject temple i.e. A/m.Sellandiamman Thirukkoil situated at Keelsathambur Village of Paramathy Taluk, Namakkal District.

For Appellants : Mr. N. Subramaniyan

For Respondents : Mr. M. Maharaja,
Special Government Pleader (HR & CE)

J U D G M E N T

(Judgment of the Court was delivered by P.D. AUDIKESAVALU, J.)

The intra Court appeal arises out of the order dated 16.05.2019 in W.P. No. 14303 of 2019 passed by the Learned Judge of this Court.

2. One M. Jayaraman, had made a representation dated 13.10.2017 to the Commissioner, HR & CE Department, Government of Tamil Nadu for conducting an enquiry with regard to the demolition of certain old structures in Arulmighu Sellandi Amman Temple, Keelsathambur Village, Paramathi Velur Taluk, Namakkal District, under the guise of putting up new construction, and had filed W.P. No. 30871 of 2017 in this Court seeking direction to dispose that representation. This Court by order dated 29.11.2017 in that Writ Petition recorded the submission made on instructions by the Learned Special Government Pleader who had appeared on behalf of the Respondents that the representation of the said M. Jayaraman was under consideration by conducting enquiry and directed the Respondents to complete the same and pass final orders within a period of eight weeks from the date of receipt of copy of that order. In pursuance thereof, the Joint Commissioner, HR & CE Department, Salem after issuing notice to all parties concerned, passed an order Se. Mu. Na. Ka. No. 9229/2018/E1 dated 02.04.2019. The First Appellant, which is an association of belonging to Vilaiyankula Gounders of Vellala Gounders community living in certain villages of Namakkal District and the Second Respondent as a Periathanakaarar of the Temple, challenged the aforesaid order in W.P. No. 14303 of 2019 before this Court.

3. When the matter came up for admission before the vacation sitting of this Court on 16.05.2019, the Learned Judge, who heard the matter, noticed that there was provision for appeal under Section 53(5) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, which had been indicated in that order and that the Appellants ought not to have come to this Court without taking recourse to that alternative statutory remedy which was available. The contention of the Learned Counsel for the Appellants that the Respondents do not have jurisdiction was taken cognizance and permission was granted to

the Appellants to raise issue of jurisdiction in the grounds of appeal. It was also made clear that if the Appellants were able to explain the delay beyond thirty days for not filing appeal, the same may be considered by the Appellate Authority. Accordingly, the Writ Petition was dismissed with the aforesaid permission granted to the Appellants to file appeal before the statutory forum. Not content with the same, the Appellants have preferred this appeal.

4. We have heard Mr. N. Subramaniam, Learned Counsel appearing for the Appellants, Mr. M. Maharaja, Learned Special Government Pleader appearing on behalf of the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

5. The Learned Counsel appearing for the Appellants strenuously urged that the Temple, which is the subject matter of the Writ Petition is a private one and as such, cannot be governed by the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, which is applicable only to public temples, and more particularly, when there has not been any declaration by a Competent Authority that it was a public Temple at anytime earlier. It is further contended that by directing the Appellant to avail alternative remedy under Section 53(5) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the Appellants have been forced to subject themselves to the illegal jurisdiction of that Act and perpetuate illegality and it would cause grave injustice to the Appellants in following their religious faith.

6. On a consideration of the aforesaid submissions made by the Learned Counsel for the Appellants, we are of the view that all the aforesaid contentions sought to be raised by the Appellants in the Writ Petition could be decided in the statutory appeal by the Appellate Authority. The question whether the Temple is a private one or was dedicated for the benefit of public for worship as of right, is a question of fact which requires production of evidence by parties making such rival claims for an adjudication in that regard. It is well settled legal position that the discretionary jurisdiction of this Court under Article 226 of the Constitution, is confined to the contours of judicial review of the decision making process and is not an appeal against the decision itself. As such, it would not be appropriate for this Court to undertake the exercise of deciding the factual contentions raised by the Appellants and the statutory forum would be most suitable for that purpose. This Court in the decision in P.K. Vasudevan -vs- Manikandan Nair [(2011) 3 MLJ 563], cited by the Learned Counsel for the Appellants, has held that the question whether a Temple is private or public falls within the ambit of the decision by the

Joint Commissioner of the HR & CE Department under Section 63(a) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, and even the jurisdiction of the Civil Court in that regard is ousted by virtue of Section 108 of that Act read with Section 9 of the Code of Civil Procedure, 1908. It is true that in R. Shanmuga Sundaram -vs- Commissioner, Hindu Religious and Charitable Endowments [(1991) 2 MLJ 582], cited by the Learned Counsel for the Appellants, this Court has held that the authorities under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, before assuming jurisdiction to invoke the provisions of that Act would have to decide the question whether the Temple is a public or private and only when a conclusion is reached on the materials placed that it is a public Temple that the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, could operate and in the event of arriving at the conclusion that it was a private Temple, no jurisdiction to further proceed with the matter could be assumed. However, that does not preclude the Appellants from raising that contention in the statutory appeal against order merely because the Joint Commissioner had not adverted to that germane aspect inasmuch the Appellate Authority has the same powers and performs the same duties as are conferred and imposed on the Original Authority by the statute, unless expressly restricted by law. In this view of the matter, we are unable to countenance the aforesaid submissions made by the Learned Counsel for the Appellants for expressing inability to resort to the remedy available by way of statutory appeal.

7. It is needless here to recapitulate that the Hon'ble Supreme Court of India in CCE -VS- Dunlop India Ltd. [(1985) 1 SC 260], has succinctly explained the legal position relating to the exercise of discretionary powers under writ jurisdiction, as follows:-

"3. ... Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the

proceedings by one device or the other. The practice certainly needs to be strongly discouraged.”
The aforesaid principles squarely apply to the facts of the instant case.

8. The Learned Counsel for the Appellants finally made a submission that the order impugned in the Writ Petition could be quashed and the matter remitted back to the Joint Commissioner, HR & CE Department, Salem for fresh decision. On a perusal of the averments in the Writ Petition, we find that the Appellants have not raised any dispute regarding the factual correctness of the findings in the impugned order and as such, we are of the view that the same does not require to be set aside. However, we hasten to clarify that the Appellants are not precluded from raising any objection with regard to the factual findings of the First Respondent in the appeal that may be preferred before the Appellate Authority, and if such contentions are raised, the same shall have to be decided on merits and in accordance with law, uninhibited and uninfluenced by any of the observations made earlier. We also reiterate that if the Appellants raise the question relating to the issue as to whether the Temple is a private one which cannot be governed by the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, it shall be incumbent upon the Appellate Authority to render specific finding on the basis of evidence placed before it. It is also open to the Appellants to seek interim orders before the Appellate Authority.

9. Accordingly, we confirm the order dated 16.05.2019 in W.P. No. 14303 of 2019 passed by the Learned Judge and dismiss the Writ Appeal with the aforesaid observations. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar/Vacation Officer

//True Copy//

Sub Assistant Registrar

To

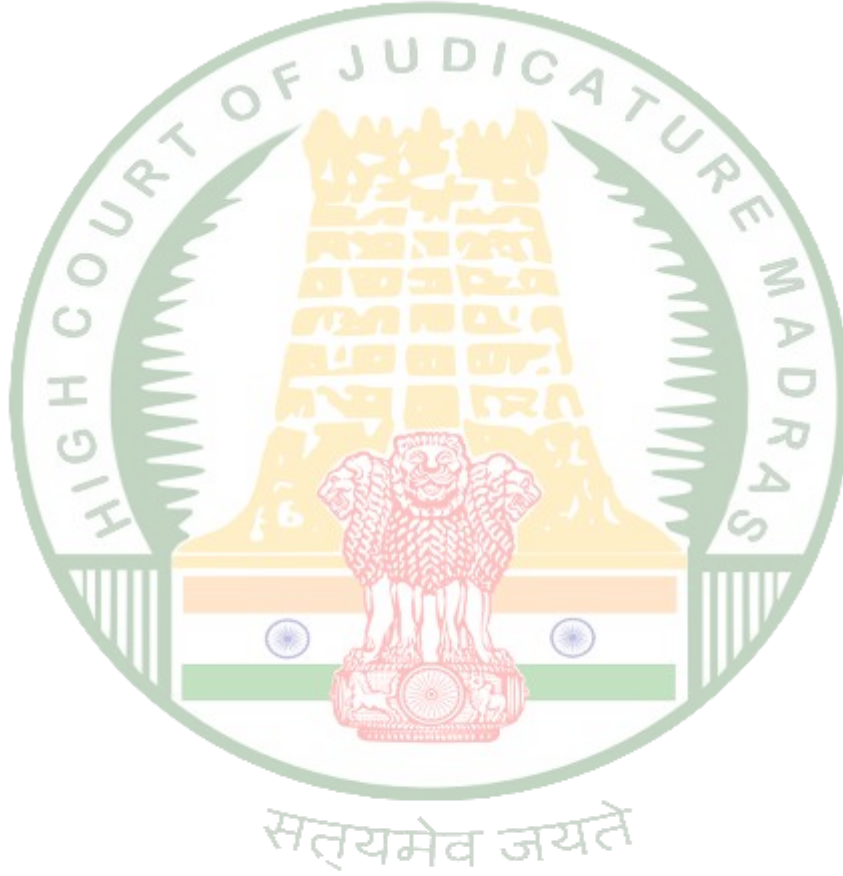
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+2cc to Mr. N. Subramaniyan, Advocate sr.44326, 44323

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