



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.03.2019

CORAM:

THE HON'BLE Mr. JUSTICE K.KALYANASUNDARAM

AND

THE HON'BLE Mrs. JUSTICE R.THARANI

W.A. (MD) No.367 of 2019

and

C.M.P. (MD) No.3198 of 2019

R.Ganesan

... Appellant/3rd Respondent

Vs.

1.Chinnasamy ..1st Respondent/Writ Petitioner

2.The Revenue Divisional Officer,
Devakottai,
Sivagangai District.

3.The Tahsildar,
Devakottai Taluk,
Sivagangai District. ...2&3 Respondents/1&2 Respondents

4.R.Kaliammal
... 4th Respondent/4th Respondent

PRAYER: The Appeal filed under Clause 15 of Letters Patent Act, against the order passed by the learned Single Judge in W.P.(MD) No.6948 of 2019 dated 25.03.2019.

Prayer in WP(MD). 6948 of 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, forbearing the respondents from interfering with the petitioner's right to conduct poojas during Panguni festival.

For Appellant : Mr.M.Vallinayagam, S.C.for
Mr.J.Anandkumar

For Respondents: Mr.Prabhu Rajadurai for R1
Mr.V.R.Shanmuganathan, Spl.G.P.for R2 & R3
Mr.Arun Swaminathan for R4

JUDGMENT

(Judgment of the Court was delivered by K.KALYANASUNDARAM,J.)

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This Writ Appeal is directed against the order of the learned Single Judge passed in W.P.(MD)No.6948 of 2019 dated



22.03.2019.

2.The first respondent herein has filed the Writ petition praying for issuance of Writ of Mandamus, forbearing the respondent therein from interfering with his right to conduct Poojas during Panguni festival.

3.The appellant herein filed W.P.(MD)No.6267 of 2019 for issuance of Writ of Mandamus, directing the respondents therein to provide police protection for peaceful conduct of Kappukattu Thiruvizha followed by Mulaippari Thiruvizha at Sri Bala Mariamman Kovil, Mannuvayal Village, Devakottai Taluk from 19.03.2019 to 27.03.2019.

4.According to the appellant, the said temple was maintained by the Kallar community and they have made arrangements to celebrate festival during the Tamil month of Panguni. The first respondent herein, namely, Chinnasamy filed a suit in O.S.No.27 of 2015 before the District Munsif Court, Devakottai, claiming right of Poojariship and the suit was decreed on 10.03.2017. Against the said judgment and decree, an appeal was filed. Another suit in O.S.No.46 of 2018 was filed by the villagers and the same is pending before the District Munsif Court, Devakottai. The entire village people decided to celebrate the temple festival and their application for providing police protection was not considered, hence, the Writ petition came to be filed.

5.The first respondent herein entered appearance through his counsel and submitted that the first respondent is a traditional Poojari and he has got civil court decree in his favour in O.S.No.27 of 2015 and therefore, he is entitled to participate in the temple festival conducted by the appellant. It was also brought to the knowledge of the Learned Single Judge that on earlier occasion, the court directed the Tahsildar to conduct the festival. Taking note of the facts of the case, the Learned Single Judge in W.P.(MD)No.6267 of 2019 directed the Tahsildar, Devakottai Taluk, Sivagangai District to depute a fit person for conducting the temple festival and it has been observed that both the parties are entitled to worship in the temple.

6.The Writ petition in W.P.(MD)No.6948 of 2019 was filed by the first respondent contending that pursuant to the order passed in W.P.(MD)No.6267 of 2019, the Tahsildar passed an order and he orally asked the first respondent herein not to conduct Pooja on 21.03.2019 and hence, he approached the Court with the prayer as



referred supra.

7.The Learned Single Judge allowed the Writ petition by observing that the right of Poojariship of the first respondent was not decided in the earlier Writ petition in W.P.(MD)No.6267 of 2019 and as per the Civil Court decree, the first respondent is entitled to perform Poojariship right. Aggrieved over the same, the present Writ Appeal has been filed.

8.Mr.Vallinayagam, learned Senior Counsel for the appellant would argue that as per the direction issued in W.P.(MD)No.2223 of 2011, the first respondent has filed a suit in O.S.No.27 of 2015. Though the appellant was impleaded as the first defendant in the said suit, the same was not filed in a representative capacity and hence, the decree passed in the suit is nullity and the same is under challenge before the Appellate Court. It is further contended that the Temple festival had already commenced on 19.03.2019 and it will be over on 27.03.2019. In the meanwhile, based on the order passed in the second Writ petition, the first respondent is interfering with the temple festival conducted by the Tahsildar.

9.It is the submission of the learned Senior Counsel that the second Writ petition itself is not maintainable and if the first respondent is aggrieved by the order passed in W.P.(MD) No.6267 of 2019, he should have preferred an appeal or the second Writ petition to have been posted before the Learned Single Judge for consideration; that even before passing the order in the earlier Writ petition, the Learned Single Judge has directed the parties to appear before him and after giving proper instructions, the order came to be passed and it has been suppressed by the first respondent in the second Writ petition and that the appellant had claimed right to conduct the festival while the first respondent herein claims right of Poojariship, the Learned Single Judge after considering the claims, have categorically observed that both the parties are entitled to worship in the Temple.

10.Per contra, Mr.Prabhu Rajadurai, learned counsel for the first respondent would urge that the conduct of the festival and performance of Poojari rights are totally different and there is no conflict between the orders passed in the earlier Writ petition and in the subsequent Writ petition. It is his further contention that the right of Poojariship of the first respondent was decided by the competent Civil Court and the rights granted in the Civil Court has not been taken away by this Court in the first Writ petition and hence, the second Writ petition is very well



maintainable and therefore, no warrant of interference is required.

11.Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing for the official respondents would state that as per the order passed in W.P.(MD)No.6267 of 2019 dated 18.03.2019, the Tahsildar, Devakottai has nominated the Village Administrative Officer and the Revenue Inspector to conduct the Temple festival and one Gopi was directed to act as temple Priest. As per the earlier order, the Priest was conducting Pooja from 19.03.2019, however, taking advantage of the order passed in the second Writ petition, the first respondent has claimed right to perform Pooja and also to carry Karagam. According to the learned Special Government Pleader, the festival is almost over and today (26.03.2019) evening, Mulaipari will be conducted and tomorrow morning the same will be taken to a Kanmoi. The learned Special Government Pleader would state that since almost entire festival is over, the parties can be directed to establish their right before the pending suit and the appeal and suitable direction can be given to the Tahsildar to perform Poojas in the Temple.

12.Heard the rival submissions and perused the records.

13.in the instant case, though the first respondent was not a party to the earlier Writ petition, but indisputably he appeared through a counsel and put forth his case. So if he is aggrieved by the observations made in the earlier Writ petition, he should have preferred an appeal or filed a petition to review the said order. It is seen that the first respondent claimed right of Poojariship based on the decree passed in O.S.No.27 of 2015, which was taken note of by the Learned Single Judge. However, considering the fact that the festival is almost over and their claim could be adjudicated before the competent Civil Court, we are of the opinion that it would not be appropriate to decide the disputed question of facts.

14.As an interim measure, separate time slot can be allotted to the appellant and the first respondent to perform their rights today and tomorrow ie., 26.03.2019 and 27.03.2019. The third respondent / Tahsildar shall allot a separate time for performing Pooja to the first respondent and also to the appellant. It is made clear that this arrangement is only for the current year and the parties are directed to work out their remedies before the competent Civil Court. In the light of the facts of this case, the District Munsif, Devakottai is directed to dispose of the suit in O.S.No.46 of 2018 as expeditiously as possible preferably within a period of 6 months from the date of



receipt of the copy of this order. The parties are directed to extend their cooperation to complete the trial within the prescribed time.

15. With the above observations and directions, this Writ appeal is disposed of. No costs. Consequently, connected C.M.P. is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Revenue Divisional Officer,
Devakottai, Sivagangai District.

2. The Tahsildar,
Devakottai Taluk, Sivagangai District.

3. The District Munsif Court,
Devakottai

+1 CC to M/s. J. ANAND KUMAR, Advocate (SR-56765[F] dated
26/03/2019)

nbj

W.A. (MD) No. 367 of 2019
26.03.2019

KM/ (23.04.2019) 5P 5C