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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 16.04.2019

DELIVERED ON : 24.04.2019

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD) No. 10277 of 2018 &
W.P. (MD) No. 7529 of 2019 &
W.M.P. (MD) Nos. 9312, 9313 & 14832 of 2018

W.P. (MD) No. 10277 of 2018

R. Govindarajan

... Petitioner

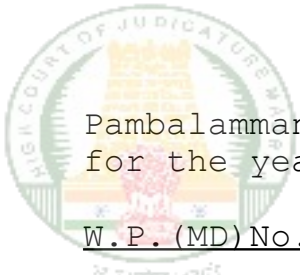
Vs.

1. The Commissioner,
Hindu Religious and Charitable
Endowments Departments,
Nungambakkam,
Chennai - 600 034.
2. The Joint Commissioner,
Hindu Religious and Charitable
Endowments Departments,
Trichy.
3. The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Departments,
Trichy.
4. Takkar/Executive Officer,
Executive Officer of Arulmigu Nallandavar Thirukovil,
Manaparai Nagar, Manapparai Taluk,
Trichy District.
5. The Superintendent of Police,
Office of the Superintendent of Police,
Trichy District, Trichy.

6. Vellaisamy

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in Se.Mu.Na.Ka.No.1187/2016/A1, on the file of the third respondent dated 25.04.2018 and quash the same as illegal, void and incompetent and consequently direct the fifth respondent to provide adequate police protection to conduct for Chithirai festival in Sri



Pambalamman temple situated at T.Thulukkapatti, Manapparai Taluk,
for the year 2018 by the petitioner.

W.P. (MD) No. 7529 of 2019

Vellaisamy

... Petitioner

Vs.

1. The Commissioner,
Hindu Religious and Charitable
Endowments Departments,
Nungambakkam,
Chennai - 600 034.

2. The Joint Commissioner,
Hindu Religious and Charitable
Endowments Departments,
Trichy.

3. The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Departments,
Trichy.

4. Takkar/Executive Officer,
Executive Officer of Arulmigu Nallandavar Thirukovil,
Manapparai Nagar, Manapparai Taluk,
Trichy District.

5. R.Govindarajan

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the third respondent to pass orders in the peaceful conduct of Chithirai festival 2019 in the month of May between (07.05.2019 to 21.05.2019) at Arulmigu Pambalamman temple situated at Thulukkampatti Village, Manapparai Taluk, Trichy District, on the basis of the representation of the petitioner dated 13.03.2019.

For Petitioners : M/s.P.Kalaiyarasi Bharathi
in W.P. (MD) No. 7529 of 2019
Mr.V.Raghavachari
in W.P. (MD) No. 10277 of 2018

For Respondents : Mr.K.Karuppasamy,
Government Advocate
for R-1 to R-3
in W.P. (MD) No. 7529 of 2019 &
for R-1 to R-5
in W.P. (MD) No. 10277 of 2018
Mr.S.Ramesh for R-5 &
M/s.S.Devasena for R-4
in W.P. (MD) No. 7529 of 2019



M/s.P.Kalaiyarasi Bharathi
for R-6 in
W.P. (MD)No.10277 of 2018

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COMMON ORDER

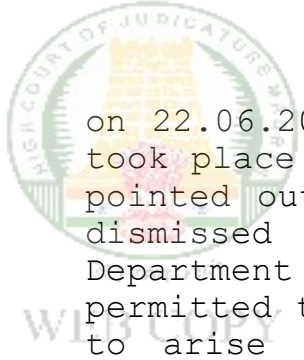
These Writ petitions pertain to the issue of management and administration of Sri Pambalamman Temple, T.Thulukampatti, Manapparai Taluk and the conduct of Chithirai festival. W.P.(MD) No.10277 of 2018 has been filed by Thiru.R.Govindarajan who claims to be the hereditary trustee of the said temple. W.P.(MD)No.7529 of 2019 has been filed by Thiru.Vellaisamy who wants the Hindu Religious and Charitable Endowments Department to conduct the festival that is to take place from 07.05.2019 to 21.05.2019.

2. In W.P.(MD)No.10277 of 2018, the order dated 25.04.2018 passed by the Assistant Commissioner, Hindu Religious and Charitable Endowments Department, Trichy, appointing a fit person for the temple under Section 49(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act is questioned.

3. Heard the learned counsel on either side and perused the pleadings filed by both the parties.

4. The learned counsel appearing for Thiru.Vellaisamy, the Hindu Religious and Charitable Endowments Department and the fit person would contend in unison that Thiru.Govindarajan is yet to secure a declaration in his favour with regard to his so called hereditary rights. Likewise O.A.No.4 of 2019 filed under Section 64 (1) of the Act for framing a scheme for management and administration of the temple is also pending before the Joint Commissioner, Hindu Religious and Charitable Endowments Department, Trichy. It is relevant to point out that for the last at least three years, it is only the Hindu Religious and Charitable Endowments Department that has been performing the Chithirai festival. When the Assistant Commissioner, Hindu Religious and Charitable Endowments Department, Trichy, passed an order dated 29.04.2017 with regard to Chithirai festival of that year, Thiru.Govindarajan questioned the same by filing W.P.(MD) No.8768 of 2017 and the same suffered a dismissal by order dated 04.05.2017. The temple in question is an unlisted temple.

5. It was further pointed out that since 2016, dispute arose between the two parties, the Department had to step in. Since Thiru.Govindarajan insisted on conferment of first honour for his family, there arose a severe opposition from Thiru.Vellaisamy and others. That is why in order to ensure the smooth administration of the temple, the fit person was appointed under Section 49 of the Act. The said order appointing the fit person was of course stayed



on 22.06.2018. But then, the Chithirai festival for the year 2018 took place under the supervision of the fit person. It is further pointed out that O.A.No.10 of 2017 filed by Thiru.Govindarajan was dismissed on 12.04.2018. The learned counsel appearing for the Department expressed his apprehension that if one group alone was permitted to conduct the festival, law and order problems are bound to arise and that therefore, it is the Department that should conduct the festival for the current year also.

6. I am not persuaded by the aforesaid submissions made by the learned counsel. As rightly pointed out by Sri.V.Raghavachari, learned counsel appearing for Thiru.Govindarajan, O.A.No.13 of 1992 was filed under Section 63(b) of the Hindu Religious and Charitable Endowments Act. It was dismissed. But then, the order of dismissal was set aside and the matter was remitted to the file of the authority for fresh consideration. Following remand, O.A.No.13 of 1992 was renumbered as O.A.No.10 of 2017. By order dated 12.04.2018, the Joint Commissioner, Hindu Religious and Charitable Endowments Act, Trichy, dismissed O.A.No.10 of 2017 as not maintainable on the ground of *res judicata*. The order passed by the Joint Commissioner, Hindu Religious and Charitable Endowments Department, Trichy, deserves to be extracted verbatim:-

"

O R D E R

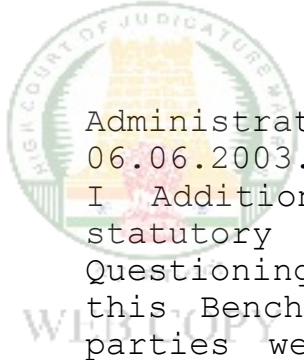
The original application OA.13/1992 was filed by the first petitioner by Rengasamy the first petitioner's father, the second petitioner as Krishnaswamy as third petitioner, and V.Ramaswamy, the respondent's paternal uncle praying to declare that the office of the trusteeship for Arulmighu Pambalamman Temple, Thulukkampatti as Hereditary and the petitioners were the Hereditary trustees of the temple. The petition was dismissed by the Joint Commissioner HR & CE, Trichy in his order dated 11.05.1998 on the ground that there was no record to prove their claim.

Now again this Original Application has been filed by Govindharajan, first petitioner's son and Krishnasamy second petitioner as the third petitioner and third petitioner's brother son Vellaisamy as respondent with the same claim.

The subject matter of OA 13/92 and OA 10/17 is for the declaration of the office of trusteeship of A/m Pambalamman temple Thulukkampatti as Hereditary.

This petition is not maintainable in accordance with law. Hence it is dismissed on the ground of *res judicata*."

7. It is true that on 11.05.1998, O.A.No.13 of 1992 was dismissed. This was questioned in A.P.No.14 of 1998 before the Commissioner, Hindu Religious and Charitable Endowments

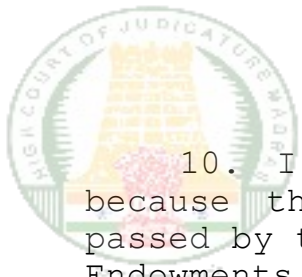


Administration Department, Chennai. The appeal was also dismissed on 06.06.2003. Thiru.Govindarajan filed O.S.No.665 of 2003 before the I Additional Subordinate Judge, Thiruchirappalli. This was a statutory suit. The suit was also dismissed on 27.06.2011. Questioning the dismissal, he filed A.S.(MD)No.32 of 2012 before this Bench. The first appeal was disposed on 27.04.2016 and the parties were directed to approach the competent authority. The entire matter was left open to the decision of the competent authority who was to decide the same only on merits. This was on 27.04.2016. Thus, following the disposal of A.S.(MD)No.32 of 2012, O.A.No.13 of 1992 got renumbered as O.A.No.10 of 2017.

8. These developments have been set out in the order dated 04.05.2016 in W.P.(MD)No.9062 of 2016 filed by Thiru.Vellaisamy. When Thiru.Vellaisamy filed the said Writ petition in respect of the conduct of Chithirai festival for the year 2016, it was disposed of in the following terms:-

"4. However, in the light of the fact that this Court in the above referred Appeal Suit in A.S.(MD)No.32 of 2012 has already directed the parties to approach the competent authority, the competent authority viz., the second respondent will consider all issues and the relief sought for in this writ petition cannot be granted. It is stated by the learned counsel appearing for the intervenor that the application filed under Section 63(b) of the Act is to be dealt with by the second respondent, since this Court in the above Appeal Suit has permitted the parties to approach the competent authority. Therefore, all issues should be considered by the second respondent and it is open to the parties to move the second respondent for appropriate relief, which shall be considered in accordance with law."

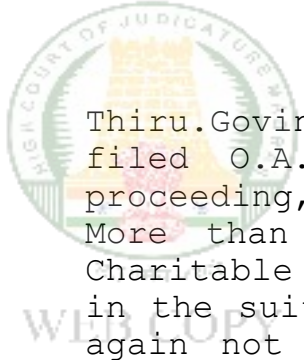
9. It is relevant to mention here that the Joint Commissioner, Hindu Religious and Charitable Endowments Department, Trichy, was shown as the second respondent in W.P.(MD)No.9062 of 2016. In fact probably for the sake of clarity, Thiru.Govindarajan filed a fresh petition before the Joint Commissioner, Hindu Religious and Charitable Endowments Department, Trichy and the same was renumbered as O.A.No.10 of 2017. But then, one cannot lose sight of the fact that it was only a continuation of the earlier proceedings initiated vide O.A.No.13 of 1992. While so, it is strange that the Joint Commissioner, Hindu Religious and Charitable Endowments Department, Trichy, dismissed O.A.No.10 of 2017 as not maintainable and barred by *res judicata*. The same was set aside in W.P.(MD)No.9360 of 2018 dated 25.04.2018. While allowing the Writ petition filed by Thiru.Govindarajan, it was made clear that O.A.No.10 of 2017 was filed only in terms of the decree dated 27.04.2016 made in A.S.No.32 of 2012.



10. I am making a copious reference to these developments, because the order dated 25.04.2018 appointing a fit person was passed by the Assistant Commissioner, Hindu Religious and Charitable Endowments Department, Trichy, only in this background. The Joint Commissioner, Hindu Religious and Charitable Endowments Department, Trichy, had dismissed the O.A. filed by Thiru.Govindarajan on 12.04.2018. The festival had to be conducted. There were rival claims. In these circumstances, a fit person had to be appointed and the Department had to conduct the festival. Therefore, the orders dated 25.04.2018 and 26.04.2018 had a context. But then, the ground on which these two orders rest has since shifted. The order dated 25.04.2018 passed by the Assistant Commissioner, Hindu Religious and Charitable Endowments Department, Trichy, is based on the order dated 12.04.2018 passed by the Joint Commissioner, Hindu Religious and Charitable Endowments Department, Trichy, dismissing O.A.No.10 of 2017. When the order dated 12.04.2018 has been set aside in W.P. (MD)No.9360 of 2018 incidentally on 25.04.2018, the orders impugned in W.P.(MD)No.10277 of 2018 have no legs to stand on.

11. In fact Thiru.Govindarajan had filed W.P.(MD) No.10277 of 2018 on 27.04.2018 itself. But then, notices ordered were returnable by 07.06.2018. Probably, the learned Judge wanted last year's Chithirai festival to pass on smoothly. But then, on 22.06.2018, this Court granted Interim Stay of the order dated 25.04.2018 passed by the Assistant Commissioner, Hindu Religious and Charitable Endowments Department, Trichy. As already pointed out, the very basis on which the order dated 25.04.2018 passed has been knocked out in W.P.(MD)No.9360 of 2018. Therefore, the order impugned in W.P.(MD)No.10277 of 2018 will have to be necessarily quashed and it is accordingly quashed.

12. The issue will have to be adjudicated on merits and not merely from the perspective of law and order. There is something called rule of law. There is something called rights of parties. As rightly pointed out by Sri.V.Raghavachari, learned counsel appearing for Thiru.Govindarajan, Thiru.Vellaisamy is not setting up a rival claim. This is evident from a mere reading of the averments set out in the affidavit filed in support of W.P.(MD)No.7529 of 2019. He and other devotees have filed O.A.No.4 of 2019 for framing a scheme. But Thiru.Govindarajan has been asserting that he is the hereditary trustee of the temple in question. He filed O.A. Though this was instituted way back in the year 1992, till date the matter has not attained finality. This Court in A.S.No.32 of 2012, dated 27.04.2016 directed the parties to approach the Joint Commissioner, Hindu Religious and Charitable Endowments Department, Trichy, who was mandated to decide the issue on merits. It was specifically observed that the issue is left open. But then, this Court categorically directed that the Status Quo that obtained on 27.04.2016 shall be maintained. The learned counsel appearing for Thiru.Vellaisamy would allege that there was a collusive proceeding. Nothing can be farther from truth. It may be that



Thiru.Govindarajan and his brother Thiru.Krishnasamy have jointly filed O.A.No.10 of 2017. But if it really was a collusive proceeding, it would not be taken 13 long years to get concluded. More than anything else, the Commissioner, Hindu Religious and Charitable Endowments Department, Chennai was the second defendant in the suit and the second respondent in A.S.No.32 of 2012. It is again not in dispute that by order dated 03.04.2014 in M.P.(MD) No.1 of 2012 in A.S.No.32 of 2012, Thiru.Govindarajan obtained an Interim Injunction in his favour. By the said interim order, the Department was restrained from interfering with the administration of the temple by Thiru.Govindarajan. That order was very much in force, even when the first appeal was disposed of on 27.04.2016. Hence, there cannot be any doubt that the Status Quo was in favour of Thiru.Govindarajan. The Joint Commissioner, Hindu Religious and Charitable Endowments Department, Trichy, has not passed any order in O.A.No.10 of 2017. Therefore, Thiru.Govindarajan is entitled to conduct the festival. The fifth respondent, the jurisdictional police are mandated to provide adequate police protection for the conduct of the event. But at the same time, this Court cannot lose sight of the fact that the feelings are running rather strong on the ground. This Court therefore suggested that there should not be any conferment of first honour for anybody. This Court must place on record that the Writ petitioner Thiru.Govindarajan through his learned counsel agreed to give up the practice of receiving first honour. This Court records its appreciation for the gesture shown by the Writ petitioner. Before God, everyone is equal. Hence, the question of offering the first honour does not arise.

13. This Court wanted to know from the learned counsel appearing for Thiru.Govindarajan, as to how the festival is being funded. The learned counsel replied that it is done through individual donors. Whenever there is collection, there is bound to be a misappropriation, unless a proper system is in place. It was notoriously remarked once that a person who gathers honey is bound to lick the back of his palm. Since O.A.No.10 of 2017 and O.A.No.4 of 2019 are yet to attain finality, this Court directs that Thiru.Govindarajan to maintain the accounts and submit the same to the Assistant Commissioner, Hindu Religious and Charitable Endowments Department, Trichy. This Court gives permission to Thiru.Vellaisamy to peruse the accounts and raise his objections.

14. The learned counsel appearing for the Department pointed out that the sons of Thiru.Govindarajan had conducted themselves in an unpleasant manner and that led to registration of criminal cases against them. This Court cautions the family members of Thiru.Govindarajan that they should behave in a responsible fashion and in such a manner so as not to give rise to any kind of law and order issue.

15. This Court makes it clear that nothing set out herein will be construed as casting any aspersion on the right of

Thiru.Vellaisamy to prosecute O.A.No.4 of 2019 to its logical conclusion. Thiru.Vellaisamy is also a devotee of the temple and he has every right to participate in the festival and his right to participate does not depend on the sweet will or whim of Thiru.Govindarajan or his family members. With these observations, W.P.(MD)No.7529 of 2019 stands dismissed. In view of the forthcoming, W.P.(MD)No.10277 of 2018 stands allowed. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

Sub Assistant Registrar(CS IV)

pmu
To

1. The Commissioner,
Hindu Religious and Charitable
Endowments Departments,
Nungambakkam, Chennai - 600 034.
2. The Joint Commissioner,
Hindu Religious and Charitable
Endowments Departments, Trichy.
3. The Assistant Commissioner,
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Manaparai Nagar, Manapparai Taluk, Trichy District.
5. The Superintendent of Police,
Office of the Superintendent of Police, Trichy District,
Trichy.

+3 CC to M/s.P.KALAIYARASI BHARATHI, Advocate (SR-62353,62382)
+1 CC to M/s.V.RAGHAVACHARI, Advocate (SR-62388[F] dated 25/04/2019
+1 CC to M/s.SPL GP (SR-62457[F] dated 25/04/2019)

ORDER MADE IN
W.P.(MD)No.10277 of 2018 &
W.P.(MD)No.7529 of 2019 &
W.M.P.(MD)Nos.9312, 9313 & 14832 of 2018
24.04.2019

DS/ /SAR- (27.04.2019) 8P 11C