



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.08.2020

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.22506 of 2017

WEB COPY

M.Thangaraj

... Petitioner

Vs.

1.The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Nethaji Road,
Madurai.

2.Dindigul Mavatta Churuttu
Thozhilalar Nala Sangam,
Through its President.

3.Balasubramanian

4.M.Thavaseelan

5.P.Chinnakaruppan

6.R.Ganesan

7.Chairman
Board of Hereditary Trustees,
Arulmigu Kottaimariamman Temple,
Dindigul.

... Respondent

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent dated 29.11.2017 in proceedings A.Thee.Mu.10212/2017/E7, quash the same and consequently, direct the first respondent to number and dispose the interim application in O.A.No.2/2017 filed by the petitioner to set aside the exparte order dated 23.10.2017 on merits.

For Petitioner : Mr.R.G.Shankar Ganesh

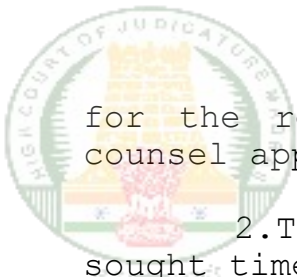
For R1 : Ms.J.Lakshmi Prasanna
Government Advocate

For R2 to R6 : Mr.P.Arun Jeyatram

For R7 : Mr.C.Guhaseela Rupam

ORDER

Heard the learned counsel appearing for the writ petitioner, Ms.Lakhmi Prasanna, learned Government Advocate, appearing for the first respondent, Thiru.P.Arun Jeyatram, learned counsel, appearing



for the respondents 2 to 6 and Thiru.C.Guhaseela Rupan, learned counsel appearing for the Temple.

2.The learned counsel appearing for the respondents 2 to 6 sought time to file his counter. But I declined the said request.

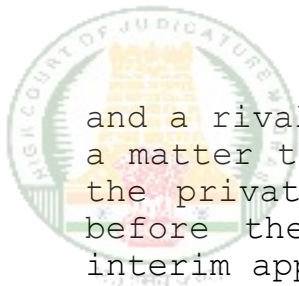
WEB COPY

3.I went through the materials on record.

4.The petitioner herein was shown as second respondent in O.A.No.2 of 2017 filed by the respondents 2 to 6 herein before the Joint Commissioner, HR & CE Department, Madurai. This O.A.No.2 of 2017 was filed under Section 63(e) of the Act. The issue relates to performance of Mandakapadi. O.A.No.2 of 2017 was posted for hearing on 28.06.2017 and adjourned to 26.07.2017, 16.08.2017 and then 30.08.2017. Even though the petitioner had entered appearance through Counsel, on 30.08.2017 none appeared for the petitioner herein. The petitioner also had not filed any counter by then. He was therefore set ex-parte. On 06.09.2017, the matter was reserved for orders. The petitioner herein filed interim application on 13.10.2017 seeking reopening of O.A.No.2 of 2017 that was reserved for orders. The said interim application was filed along with a counter also. The said application was returned on 23.10.2017 with an endorsement that on 06.09.2017 itself, orders had been pronounced in the main O.A.No.2 of 2017. Since the main O.A.No.2 of 2017 was no longer pending on the file of the first respondent, interim application filed by the petitioner herein could not be entertained. This was the order passed by the first respondent on 23.10.2017.

5. But a mere look at the materials enclosed in the typed set of papers would indicate that O.A.No.2 of 2017 itself was disposed of only on 23.10.2017. O.A.No.2 of 2017 might have been reserved for orders on 06.09.2017. But then, the orders were passed only on 23.10.2017. Since this is an undisputed position, I find considerable merit in the contention of the petitioner's counsel that when the petitioner filed an interim application on 13.10.2017, it ought to have been given a disposal and only thereafter, the orders in the main O.A.No.6 of 2017 could have been passed.

6.The order impugned in this writ petition is vulnerable on more than one count. The main O.A.No.6 of 2017 was disposed of only on 23.10.2017 and not on 06.09.2017. The first respondent has incorrectly stated or I would even say falsely recorded that O.A.No.6 of 2017 itself was disposed of on 06.09.2017. Since the reason set out in the impugned order runs counter to the record, I have no hesitation to set aside the same. More than anything else, O.A.No.6 of 2017 itself was filed only in the month of June 2017. The petitioner had engaged a counsel to represent him. It appears that the said counsel had not chosen to appear on his behalf or file counter. But the Temple had made its stand clear. That is also referred to at length in the impugned order itself. From the stand



and a rival claim. Therefore, in the very nature of things, this is a matter that could not have been settled based on the testimony of the private respondents alone. This is all the more so because, before the final order was passed, the petitioner had filed an interim application for reopening along with his counter.

WEB COPY

7. In as much as, the orders were pronounced in the main O.A.No.2 of 2017 by not taking note of the petition for reopening. I am constrained to interfere. The order impugned in the writ petition is set aside. The writ petition is allowed. The matter is remitted to the file of the first respondent and the main O.A itself is re-opened. The first respondent will issue fresh hearing notice to both the parties and conclude the proceedings on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order. No costs.

8. The petitioner's counsel gives an undertaking that on all the hearing dates in future, he will appear and that, he will not take any adjournment.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

rmi

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department, Nethaji Road,
Madurai.

+1 CC to SGP (SR-14873[F] dated 25/08/2020)

W.P. (MD) No.22506 of 2017

24.08.2020

_KM (28.08.2020) 3P 3C