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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2021

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THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.21723 of 2021

and

W.M.P.No.22903 of 2021

Arulmigu Jothipuram Thandumariyamman
Aarathanai and Vazhipattu Arakattalai,
Rep.by its Dharmakartha R.Rangaraj,
S/o.Ramasamy,
No.548, Mettu Palayam Road,
Kaalai Pannai Street,
Jothipuram Village & Post,
Coimbatore District-641 047.

...Petitioner

-Vs.-

1. The Joint Commissioner,
HR&CE,Coimbatore-18.
2. The Assistant Commissioner
HR&CE,Coimbatore.
3. The Executive Officer
Arulmigu Anuvavi Subramaniaswami Thirukovil
Periyathadagam, Kovai North Taluk
Coimbatore District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the impugned order having reference Se.Mu.Na.Ka.No.1918/2015/A6 dated 15.05.2017 on the file of the 2nd respondent the Assistant Commissioner, Hindu Religious and Charitable Endowments, Coimbatore and quash the same.

For Petitioner : Ms.A.Srijayanthi

For Respondents : Mr.NRR.Arun Natarajan
Government Advocate for R1&R2
Mr.R.Rajesh Vivekananthan
for R3



O R D E R

'Arulmigu Thandu Mariyamman and Vinayagar Murugan Temple, situate at Jothipuram, Periyanaickenpalayam, Coimbatore District' [hereinafter 'said temple' for the sake of convenience and clarity] is the subject matter of captioned main writ petition. A photograph has been placed before me as part of case file (Page No.24 of typed set of papers). A colour scanned reproduction of the same is as follows:



2. Ms.A.Srijayanthi, learned counsel for writ petitioner submits that captioned main writ petition has been filed assailing an 'order made in May of 2017 bearing reference No.Se.Mu.Na.Ka.No.1918/2015/A6' [hereinafter 'impugned order' for the sake of convenience and clarity] by the second respondent (Assistant Commissioner) and signed on 15.05.2017.

3. Mr.NRR.Arun Natarajan, learned State counsel accepts notice on behalf of the respondents 1 and 2 and Mr.R.Rajesh Vivekananthan, learned counsel accepts notice on behalf of third respondent, with the consent of all the three counsel, captioned main writ petition is taken up, as the matter turns on a very narrow compass.



4. The impugned order has been made under Section 49 of 'The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act No.22 of 1959)' [hereinafter 'TN HR&CE Act' for the sake of convenience and clarity] appointing a Fit Person for said temple. Learned counsel for writ petitioner submits that the impugned order was served on one R.Rangaraj (deponent of writ affidavit) only last week. As the expression 'last week' lacks specificity, I take it as 30.09.2021.

5. Learned counsel for writ petitioner submits that the said temple is being managed by a Trust for over 70 years and deponent of the writ affidavit is Dharmakartha.

6. Learned State counsel, on instructions, submits that the Fit person has taken charge of the said temple on 17.04.2019 and has sent a letter to this effect to Assistant Commissioner (second respondent). To be noted, third respondent, who is Executive Officer of another temple has been appointed as a Fit person qua said temple. Learned State counsel also brought to the notice of this Court that earlier vide an order dated 15.05.2017, another officer was appointed as Fit person, but thereafter the impugned order was made. The relevant extracts from the records of the respondent placed before me are as follows:



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முதுகவரை அலுவலர் அலுவலகம்,
உயர்நீதிமன்றம்

பெயர்: **தேவன் பிரபாகர்** - தீர்மானம்: **15.04.2019**

பெயர்: **தேவன் பிரபாகர் - தீர்மானம்: 15.04.2019**
பெயர்: **தேவன் பிரபாகர் - தீர்மானம்: 15.04.2019**
பெயர்: **தேவன் பிரபாகர் - தீர்மானம்: 15.04.2019**

தேவன் பிரபாகர் - தீர்மானம்: 15.04.2019
தேவன் பிரபாகர் - தீர்மானம்: 15.04.2019
தேவன் பிரபாகர் - தீர்மானம்: 15.04.2019

பெயர்	தீர்மானம்	தீர்மானம்
1. தேவன் பிரபாகர் - தீர்மானம்: 15.04.2019	தீர்மானம்: 15.04.2019	தீர்மானம்: 15.04.2019

தேவன் பிரபாகர் - தீர்மானம்: 15.04.2019
தேவன் பிரபாகர் - தீர்மானம்: 15.04.2019
தேவன் பிரபாகர் - தீர்மானம்: 15.04.2019

உயர்நீதிமன்றம்



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இந்த சபை ஆதரவளித்தால்
அருள்மிகு அறுமன்றியுரிமைப்பரணியலகையித் திருக்கோயில்
தெருக்கோயில், கோவை வட்டம், கோவை மாவட்டம்

அருள்மிகு :

பெருமன்ற
கோவை அருள்மிகு (ப.க.க.)
செருக்கோயில்
கோவை அருள்மிகு

செருக்கோயில் :

செருக்கோயில்
இந்த சபை ஆதரவளித்தால்
கோவை - 6

திகதி : 17.04.2018

புது :

செருக்கோயில் : அருள்மிகு மாவட்டம் செருக்கோயில் மாவட்டம் கருத்து -
திகதி : 17.04.2018 அருள்மிகு அறுமன்றியுரிமைப்பரணியலகையித்
திருக்கோயில், தெருக்கோயில், கோவை வட்டம், கோவை மாவட்டம், கோவை
அருள்மிகு மாவட்டம் - கோவை
புது : 1. கோவை வட்டம் செருக்கோயில் கருத்து : 17.04.2018-ம்
திகதி : 15.04.2018

கோவை மாவட்டம், கோவை வட்டம், தெருக்கோயில் அருள்மிகு
அறுமன்றியுரிமைப்பரணியலகையித் திருக்கோயில் மாவட்டம் அருள்மிகு அறுமன்றியுரிமைப்பரணியலகையித்
திருக்கோயில், தெருக்கோயில் திகதி : 17.04.2018-ம் திகதி : கோவை அருள்மிகு மாவட்டம் செருக்கோயில்
திருக்கோயில் அருள்மிகு மாவட்டம் தெருக்கோயில் கோவை அருள்மிகு மாவட்டம், கோவை வட்டம், கோவை
அருள்மிகு மாவட்டம் தெருக்கோயில் தெருக்கோயில் தெருக்கோயில் தெருக்கோயில் தெருக்கோயில் தெருக்கோயில்
தெருக்கோயில் தெருக்கோயில் தெருக்கோயில் தெருக்கோயில் தெருக்கோயில் தெருக்கோயில்

பெருமன்ற அருள்மிகு

பெருமன்ற அருள்மிகு
கோவை

பெருமன்ற அருள்மிகு

பெருமன்ற அருள்மிகு

பெருமன்ற அருள்மிகு

பெருமன்ற அருள்மிகு



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7. Learned counsel for third respondent also confirms that third respondent has taken over administration of said temple, but this is disputed by the learned counsel for writ petitioner. This is a factual disputation/disagreement I am exercising writ jurisdiction and therefore I refrain myself from going into this aspect of the matter.

8. Be that as it may, I am unable to sustain or accept challenge to the impugned order and the reasons are as follows:

(a) Adverting to photograph of said temple (scanned and reproduced supra), learned counsel for writ petitioner submits that it is situate in land belonging to National Highways. Therefore, it is not situate in private land much less in land belonging to the Trust which has been shown as petitioner;

(b) Question as to whether a Trust can maintain a writ petition much less writ petition of this nature is left open;

(c) A Trust deed has been placed before this Court and Trust deed is dated 07.02.2017. Trust deed talks about 'Arulmigu Jothipuram Thandumariamman Aarathanai and Vazhipattu Arakattalai' [hereinafter 'said Trust']



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for the sake of convenience and clarity], but the name of deponent of the writ affidavit R.Rangaraj, does not feature in the Trust deed;

(d) Admittedly, i.e., as per the stated position of writ petitioner, there is no declaration that said temple is a private temple and the writ petitioner has not obtained any exemption under Section 4 of TNHR&CE Act. This means that Section 1(3) of the TNHR&CE Act operates. To be noted, sections 1(3) and Section 4 of TNHR&CE Act read as follows:

Section 1(3) of TN HR&CE Act:

'1. Short title, extent, application and commencement.-

(1).....

(2).....

(3) It applies to all Hindu public religious institutions and endowments [including] the incorporated Dewaswoms and Unincorporated Dewaswoms.

Explanations.- In this sub-section, Hindu public religious institutions and endowments do not include Jain religious institutions and endowments.'

Section 4 of TN HR&CE Act:

'4.Exemptions.- [The Government may, by notification exempt whether prospectively or retrospectively] from the operation of any of the provisions of this Act or of any rules made thereunder any religious institution or religious or charitable endowment or vary or cancel any such exemption:

Provided that before such exemption is varied or cancelled, the person affected shall be given a reasonable opportunity of showing cause against such variation or cancellation.'

(e) The third respondent, on instructions, submits that earlier there was another temple by name Bala Murugan Temple that was removed owing to being obstruction in the National Highways and some of the idols were kept in this location wherein the said temple is now said to be situated;

(f) Though obvious, submission of learned counsel for writ petitioner that said Trust is in the management of said temple for over 70 years, is untenable as Trust deed itself is of recent origin i.e., 07.02.2017;

(g) Regarding locus of deponent of the writ affidavit (to be noted, not the writ petitioner-Trust which has been left open), learned counsel adverts to a resolution at page No.23 of typed set of papers, that



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resolution has been signed by fifteen individuals and the same reads as follows:



(h) The above resolution is not traceable to any provision of law and therefore, that does not give any status qua said temple to deponent of writ affidavit;

(i) There is an alternate remedy available to writ petitioner i.e., statutory revision under Section 21 of TN HR&CE Act and the same lies to Commissioner of Tamil Nadu Hindu Religious and Charitable Endowments Department, 119, Uthamar Gandhi Salai, Chennai 600 034 (Appellate Authority). Three months is the time limit for writ petitioner to file a revision qua impugned order, if the writ petitioner chooses to do so. I have already recorded that the date of service of impugned order on the writ petitioner is to be construed as 30.09.2021 and that shall be taken as reckoning date for computation, if the writ petitioner chooses to do embark upon a legal drill under Section 21 of TN HR&CE Act. To be noted, there is remedy available to writ petitioner under Section 21-A of TN HR&CE Act also. It



is open to the writ petitioner to invoke sub-section (5) of Section 21-A of TN HR&CE Act. However, all this will be subject to locus and limitations which shall be decided on facts by Revisional authority;

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9. To be noted, the narrative captured supra will bring to light that there are serious factual disputations and disagreements even with regard to the administration of said Temple and therefore, it is only appropriate that writ petitioner is relegated to alternate remedy. There is no demonstrable infirmity or illegality that has been projected before this Court qua impugned order.

10. Owing to all that have been set out supra, captioned main Writ Petition fails and the same is dismissed albeit preserving the rights of writ petitioner subject to locus, if the writ petitioner chooses to file a statutory revision under Section 21 of TN HR&CE Act or take 21-A route, if the writ petitioner chooses to do so, the same shall be examined on its own merits and in accordance with law, uninfluenced by any observations made in this order and obviously, subject to locus of petitioner-Trust/deponent of writ affidavit and limitation which have to be tested on facts. Consequently, connected miscellaneous petition is also disposed of as closed. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

mk/nsa

To

1. The Joint Commissioner,
HR&CE, Coimbatore-18.
2. The Assistant Commissioner
HR&CE, Coimbatore
3. The Executive Officer
Arulmigu Anuvavi Subramaniaswami Thirukovil
Periyathadagam, Kovai North Taluk
Coimbatore District.

W.P.No.21723 of 2021
and W.M.P.No.22903 of 2021

PCH(CO)
RGA(22/11/2021)