

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 23.01.2021****CORAM****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****W.P. (MD)No.1407 of 2021****and****W.M.P. (MD)Nos.1204 and 1205 of 2021**

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The Joint Commissioner/Executive Officer,
Arulmighu Meenakshi Sundareswar Thirukoil,
Madurai.

... Petitioner

Vs.

1.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Madurai.

2.Chinthamani Village Kathiraruppu Mandapa
Family Trust, represented by its
Managing Trustee S.Muthurajan.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned proceedings dated 22.01.2021 passed in I.A.No.05/2020 in O.A.No.13 of 2020 on the file of the 1st respondent and quash the same as illegal and pass such other or further orders as this Court may deem fit and proper in the facts and circumstances of the case and thus render justice.

For Petitioner : Mr.V.R.Shanmuganathan,
for Mr.A.L.Kannan.

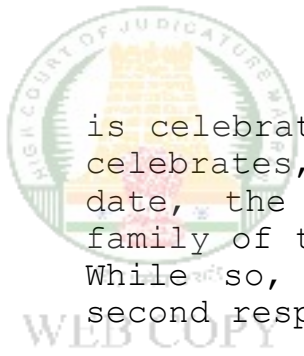
For Respondents : Mr.K.P.Narayanakumar,
Special Government Pleader for R1.
: Mr.A.K.Gopalan, for R2

O R D E R

Heard Mr.V.R.Shanmuganathan, learned counsel for Mr.AL.Kannan appearing for the petitioner, Mr.K.P.Narayanakumar, the learned Special Government Pleader appearing for the first respondent and Mr.A.K.Gopalan, learned counsel appearing for the second respondent. By consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.

2.What is under challenge in this Writ Petition is an interim order passed by the Joint Commissioner, Hindu Religious and Charitable Endowments Department, Madurai in O.A.No.13 of 2020 filed by the second respondent.

3.The Writ Petitioner is Arulmighu Meenakshi Sundareswarar Thirukoil, Madurai. In the Tamil Month of 'Thai' Thaipooosam festival



is celebrated by the temple for 12 days; on the 11th day, the temple celebrates, what is known as 'Kathiraruppu festival' and on the said date, the deities visit a Mandapam in Chinthamani Village. The family of the second respondent has been performing the Mandagapadi. While so, dispute arose between the temple management and the second respondent in the year 2016.

4.The specific allegation of the temple is that the properties endowed for the said 'Kathiraruppu Mandapam', have been unlawfully alienated by the second respondent. The temple therefore, initiated proceedings under Section 78 of the Hindu Religious and Charitable Endowments (HR & CE) Act, 1959 and vide order dated 23.05.2018, in M.P.No.123 of 2017, the Joint Commissioner, HR & CE Department, Madurai, directed the second respondent, namely, Thiru.Muthurajan and one Balasubramanian to hand over the possession of the said Mandapam in question. Challenging the same, the said Muthurajan and Balasubramanian, Trustees of the second respondent Trust, filed R.P.No.110 of 2018 before the Commissioner of HR & CE Department, Chennai and vide order dated 13.01.2020, the Revision Petition was dismissed. It appears to have become final, because no further review petition appears to have been filed by the aggrieved parties.

5.While so, a question arose in the year 2019, as to whether Muthurajan can be allowed to perform the Mandagapadi. Since the temple refused to receive his application, Thiru.Muthurajan filed W.P.(MD)No.1049 of 2019 before this Court and vide order dated 19.01.2019, this Court allowed the writ petition and permitted him to perform Kathiraruppu Mandagapadi. Questioning the same, the temple filed W.A.(MD)No.83 of 2019. After extracting an undertaking from Thiru.Muthurajan, that he will not lay any claim on the Mandapam, the order passed by this Court was sustained by the Hon'ble Division Bench of this Court. The same question again arose in the year 2020 and the said Muthurajan, filed W.P.(MD)No.2252 of 2020, seeking a direction for directing the Temple Authorities to permit him to perform the Kathiraruppu Mandagapadi ceremony and vide order dated 06.02.2020, the Writ petition was disposed of as under:

"11.In the light of the above circumstances, the following order is passed:

(1) As it is expected that the Arulmighu Meenakshi and Sundareswarar should arrive at the Mandapam at Chinthamani for the 'Kathir Aruppu Mandagapadi' tomorrow after-noon ie.,at about 1.00 p.m. on 7.2.2020, the Petitioner is permitted to go to the said Mandapam, offer his worship like any other worshipper, after the deity is placed in the Mandapam. However, the Petitioner is directed to be in the Mandapam not beyond 30 minutes, after the deity is placed in the said Mandapam at Chintamani;

(2) It is made clear the the First Respect (Muthal



Mariyathai) or Mandagapadi will not be offered to the Petitioner;

(3) the performance of pooja will be done only by the Poojaris/Gurukkal/Pattar attached to Arulmighu Meenakshi Sundareswarar Temple, Madurai;

(4) Any Poojari from Chinthamani village will not be allowed to perform the Pooja, as requested by the Petitioner;

(5) The Petitioner also undertakes not to create any confusion or chaos either inside or outside the Mandapam, when he is allowed to worship the deity;

(6) once-again it is made very clear that the Petitioner will not be entertained with any such Writ Petition before this Court with the similar prayer, for the forthcoming years, without working out his remedy in the manner known to law and the practice of the Petitioner in approaching this Court in the last minute and insisting this Court for an order on the ground of sentiments, is highly deprecated."

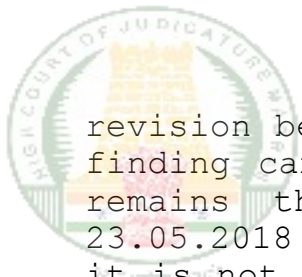
6. We are now in January, 2021, (Tamil month of Thai in Saarvari). Interestingly this time, the said Muthurajan has not knocked the doors of this Court and instead, it is the temple that has come forward. The temple is aggrieved that by an interim order, Muthurajan has been permitted by the authority constituted under the HR & CE Act to perform the Mandagapadi.

7. The learned counsel appearing for the temple reiterated all the contentions set out in the affidavit filed in support of the writ petition and wanted this Court, to set aside the impugned order.

8. Per contra, the learned Special Government Pleader appearing for the Department submitted that the order passed by the Joint Commissioner does not call for any interference.

9. The learned counsel appearing for the second respondent drew my attention to the finding rendered in the order dated 23.05.2018 in M.P.No.123 of 2017. He pointed out that in the said proceedings initiated under Section 78 of the Act, it has been categorically found that the families of Muthurajan and Balasubramanian have been properly performing the Mandahapadi for decades and that therefore, they cannot be termed as encroachers in respect of the ensuing pooja days and only in respect of other days, their occupation of the mandapam can be termed as an act of encroachment.

10. The learned counsel for the second respondent would contend that questioning this finding, the temple has not filed any



revision before the Commissioner. According to him, even an adverse finding can be put to challenge before the higher forum. The fact remains that this order passed by the Joint Commissioner on 23.05.2018 was confirmed as such in the revision and that therefore, it is not open to the temple to question the same at this point of time.

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11. Before proceeding to consider the rival contentions, I put a question to the learned counsel for the temple as to what would happen, if the order impugned in the writ petition is set aside. The learned counsel for the Temple fairly stated that the deity will not skip their annual sojourn and they would visit and halt in the Mandapam in question on 27.01.2021. In fact, the learned counsel went to the extent of stating that even if the order impugned in the writ petition is set aside, the directions given by the learned Judge of this Court in W.P.(MD)No.2252 of 2020, on 06.02.2020 would be scrupulously followed. This submission made by the learned counsel for the temple is placed on record.

12. It is true that a strong finding in favour of the second respondent was rendered in the proceedings initiated under Section 78 of the Tamil Nadu HR & CE Act. But then, the second respondent is squarely bound by the terms of the order dated 19.01.2019 made in W.P.(MD)No.1049 of 2019. In fact, before this Court, it was specifically agreed by the learned counsel for the second respondent that Muthurajan would not agitate the issue once again before the Writ Court and that he would instead move the competent authority under Section 63 (e) of the Tamil Nadu HR & CE Act, 1959. I had given a specific direction that as and when such an application is filed, the authority would dispose of the same well in time. This order passed by me was confirmed in Writ Appeal also on 20.01.2019. The writ petitioner after performing the Mandagapadi in the year 2019 i.e., on 20.01.2019, ought to have immediately moved the Joint Commissioner, Madurai under Section 63 (e) of the Act. He had not done so. Instead, he filed the said application only in December 2019, which was later numbered as O.A.No.13 of 2020. A reading of my order dated 19.01.2019, would clearly indicate that this Court expected the authority to decide the issue finally. This was because of the contention raised by the temple was that by his conduct, Thiru.Muthurajan had forfeited his claim to performance of mandagapadi. The specific stand of the temple is that Muthurajan had alienated endowed properties.

13. As rightly contended by the learned counsel for the temple, the authority after holding a proper enquiry, must give a categorical finding on the declaration as to whether Thiru.Muthurajan or any other person is entitled by custom or otherwise to the honour in question. This is not a matter that could have been disposed of at the interlocutory stage. When the interim relief and the final relief sought for are one and the same, the



Court will decline to grant the interim relief. That is a well settled legal principle.

14.After filing the OA in December 2019, the applicant could have moved this Court and asked for speedy disposal. But, he had not done so and instead literally at the last minute, he had moved the authority and the impugned order had been passed. That was clearly not the course of action envisaged by this Court. Therefore, on this ground, the impugned order has to be set aside. The contentions of the 2nd respondent in O.A No.13 of 2020 are left open. The first respondent shall dispose of the main O.A within six months from the date of receipt of copy of this order. The writ order will have no bearing on the outcome of the O.A.

15.The writ petition is allowed and the impugned proceedings dated 22.01.2021 passed in I.A.No.05/2020 in O.A.No.13 of 2020 on the file of the 1st respondent is set aside. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

das/skm

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 Endowments Department,
Madurai.

W.P. (MD)No.1407 of 2021

and

W.M.P. (MD)Nos.1204 and 1205 of 2021

23.01.2021

SKM(CO)

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