



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2021

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

WEB COPY

W.P.(MD)Nos.16876 of 2019, 1778 and 18837 of 2020

and

W.M.P.(MD)No.13457 of 2019 in W.P.(MD)No.16876 of 2019

W.P.(MD)No.16876 of 2019:-

N.Nagalingam

... Petitioner

Vs.

1.The Commissioner (H.R. & C.E.),
Tamil Nadu Hindu Religious and Charitable
Endowments Administration Department,
Chennai.

2.The Joint Commissioner (H.R. & C.E.),
Office of the Joint Commissioner,
H.R. & C.E. Department,
Madurai,
Madurai District.

3.The Assistant Commissioner (H.R. & C.E.),
Office of the Assistant Commissioner,
H.R. & C.E. Department,
Madurai,
Madurai District.

4.The Executive Officer / Fit Person,
Arulmighu Thandayuthapani Thirukovil,
Nethaji Salai,
Madurai.

5.Somasundaram,
Inspector,
Office of the Assistant Commissioner,
H.R. & C.E. Department,
B1 Salai, Ellis Nagar,
Madurai.

6.S.Jeyakodi

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorari, to call for



the records pertaining to the impugned order passed by the third respondent in his proceedings in Se.Mu.Na.Ka.No.368/2018/E3, dated 09.07.2019 and quash the same as illegal.

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For Petitioner

: Mr.M.Vallinayagam
Senior Counsel
for Mr.J.Jeyakumaran

For R1 to R3

: Mr.K.P.Narayana Kumar
Special Government Pleader

For R4

: Mr.M.Saravanan

For R6

: Mr.N.Dilipkumar

W.P. (MD) No.1778 of 2020:-

S.Jeyakodi

... Petitioner

Vs.

- 1.The District Collector,
Madurai, Madurai District.
- 2.The Superintendent of Police,
Madurai District (Rural),
Madurai.
- 3.The Joint Commissioner (H.R. & C.E.),
Office of the Joint Commissioner,
H.R. & C.E. Department,
Madurai,
Madurai District.
- 4.The Assistant Commissioner (H.R. & C.E.),
Office of the Assistant Commissioner,
H.R. & C.E. Department,
Madurai,
Madurai District.
- 5.The Fit Person / Thakkar,
Arulmighu Kattu Karuppannasamy Temple,
Maravankulam Village,
Tirumangalam Taluk,
Madurai District.
[Working as the Executive Officer of
Arulmighu Dhandayuthapaniswamy Temple,
Madurai]



6.The Revenue Divisional Officer,
R.D.O., Usilampatti.

7.The Tahsildar,
Taluk Office, Tirumangalam,
Madurai District.

8.The State,
Rep by its Inspector of Police,
Tirumangalam,
Madurai District.

9.Nagalingam

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Mandamus, directing the official respondents to provide adequate police protection towards the celebration of Mahashivarathiri on 21.02.2020 and the annual Masi Kalari Festival, scheduled to be conducted by the petitioner community people to their family deities in Arulmigu Kattu Karuppanna Samy Thirukovil, Maravankulam Village, Thirumangalam Taluk, Madurai District, from 28.02.2020 to 01.03.2020 or any other order date with their Poojari.

[Prayer amended vide order dated 05.03.2020 made in W.M.P.(MD) No.4009 of 2020 in W.P.(MD)No.1778 of 2020].

For Petitioner : Mr.N.Dilipkumar

For R1 to R4 & R6 to R8 : Mr.K.P.Narayana Kumar
Special Government Pleader

For R5 : Mr.M.Saravanan

For R6 : Mr.N.Dilipkumar

For R9 : Mr.M.Vallinayagam
Senior Counsel
for Mr.J.Jeyakumaran

W.P. (MD)No.18837 of 2020:-

S.Suresh

... Petitioner

Vs.

1.The District Collector,
Madurai, Madurai District.



2.The Commissioner (H.R. & C.E.),
Tamil Nadu Hindu Religious and Charitable
Endowments Administration Department,
Chennai - 600 034.

3.The Joint Commissioner (H.R. & C.E.),
Office of the Joint Commissioner,
H.R. & C.E. Department,
Madurai - 625 001.

4.The Assistant Commissioner (H.R. & C.E.),
Office of the Assistant Commissioner,
H.R. & C.E. Department,
Madurai.

5.A.Nagalingam

6.S.Jeyakodi

7.The Fit Person / Thakkar,
Arulmighu Kattu Karuppasamy Temple,
Maravankulam Village,
Tirumangalam Taluk,
Madurai District.

... Respondents

[R5 to R7 are *suo motu* impleaded vide order dated
21.12.2020, in W.P.(MD)No.18837 of 2020]

Prayer : Writ Petition filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Mandamus, directing the respondents to open the Arulmigu Kattu Karuppasamy Temple, situated at Maravankulam Village, Thirumangalam Taluk, Madurai District, for the purpose of worship by all the people, in the light of the representation made by the petitioner, dated 10.11.2020 and pass appropriate orders in accordance with law.

For Petitioner	: Mr.K.Srinivasan
For R1 to R4	: Mr.K.P.Narayana Kumar Special Government Pleader
For R5	: Mr.M.Vallinayagam Senior Counsel for Mr.J.Jeyakumaran
For R6	: Mr.N.Dilipkumar
For R7	: Mr.M.Saravanan

* * * * *



COMMON ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

Heard Mr.M.Vallinayagam, learned Senior Counsel appearing for the petitioner in W.P.(MD) No.16876 of 2019 and respondent No.5 in W.P.(MD) No.18837 of 2020, Mr.N.Dilip Kumar, learned counsel appearing for the petitioner in W.P.(MD) No.1778 of 2020 and respondent No.6 in W.P.(MD) No.16876 of 2019 and 18837 of 2020, Mr.K.Srinivasan, learned counsel for the petitioner in W.P.(MD) No.18837 of 2020, Mr.K.P.Narayanakumar, learned Special Government Pleader appearing for respondents 1 to 4 in W.P.(MD) No.18837 of 2020, respondents 1 to 3 in W.P.(MD) No.16876 of 2019 and respondents 1 to 4 and 6 to 8 in W.P.(MD) No.1778 of 2020 and Mr.M.Saravanan, learned counsel for respondent No.7 in W.P.(MD) No.18837 of 2020, for respondent No.4 in W.P.(MD) No.16876 of 2019 and for respondent No.5 in W.P.(MD) No.1778 of 2020.

2.These three Writ Petitions are the continuation of the dispute between the two communities, one wants to hold of the temple and while the other wants their participation. The history involved is certainly checkered. There are numerous litigations involved, including the proceedings before the authorities constituted under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as 'the H.R. & C.E. Act'], Civil Court and this Court.

3.The present dispute exhibits the sorry state of affair prevailing in this part of the State. A temple along with a deity is meant to bring forth equality, but in reality, they become the place of inequality due to the conduct of the persons, who managed them.

4.The order impugned in W.P.(MD) No.16876 of 2019 was passed on the earlier occasion, appointing a Fit Person, while taking note of the underlined dispute between the worshipers, who divided among two communities. Accordingly, a Fit Person was appointed by the official respondents. It was put to challenge and accordingly, allowed for want of notice. After issuing notice, the same order is passed once again on the premise that the dispute between the two communities needs to be resolved and the administration is put on rails. Challenging the same, W.P.(MD) No.16876 of 2019 has been filed. The other two Writ Petitions have been filed seeking police protection and a direction to open the temple for the worship of all the general public.

5.The petitioner in W.P.(MD) No.1778 of 2020 filed an application under Section 64(1) of the HR & CE Act, seeking approval of Scheme in O.A.No.19 of 2002. After exhausting the ordeal, the petitioner filed a suit with petition to condone the delay. On an earlier occasion, the very same petitioner filed an application under 63(e) of the HR & CE Act to facilitate them to take part in the festival of Mahasivarathiri and worship. Without much of the



contest, this application was filed.

6.The learned Senior Counsel appearing for the petitioner in W.P.(MD) No.16876 of 2019 submitted that there is no right beyond mere worship to the petitioners in the other two Writ Petitions and their clamp. This was accordingly, held in O.A.No.19 of 2002, as confirmed by the earlier authority. There is non-application of mind in appointing the Fit Person. Section 49 of the H.R. & C.E. Act has to be construed to mean that a Fit Person can only be appointed, when the appointment of Board of Trustees is pending consideration. In such view of the matter, the Writ Petition in W.P.(MD) No.16876 of 2019 requires to be allowed and consequently, the other two Writ Petitions are to be dismissed.

7.Mr.N.Dilip Kumar, learned counsel, who is appearing for the contesting respondent in W.P.(MD) No.16876 of 2019 and the petitioner in W.P.(MD) No.1778 of 2020, submitted that the temple will have to be left open for all communities, irrespective of caste or creed.

8.Atleast, on one issue, all the counsel on record are on the same page, i.e., with respect to the worship of the deity, in the temple in question, by one and all having same faith. However, on the challenge made to the appointment of Fit Person, we are of the view that the same cannot be countenanced. Sections 46 and 49 of the H.R. & C.E. Act travel in their own spheres. Section 49 of the H.R. & C.E. Act deals with the appointment of Fit Person along with Trustees or a Board of Trustees. Under Section 49 of the H.R. & C.E. Act, the authorities are concerned with the administration *per se* as there is no question of appointment of hereditary trustee or representing somebody in his place, which is involved in Section 47 of the H.R. & C.E. Act. Section 47 of the H.R. & C.E. Act once again makes the position clear that it is not applicable to a case, where the Assistant Commissioner has no power of appointment, which is not a case under Section 49 of the H.R. & C.E. Act. The reference made to proviso to sub-section (1) of Section 47 cannot be accepted as the word 'pending the constitution' has to be given wider impact. Once again, this is for the reason, Section 47 deals with the religious institutions, where there is no hereditary trustee is involved. Under Section 47(2) of the H.R. & C.E. Act, power is given to the Government, the Commissioner or the Joint Commissioner or the Deputy Commissioner as the case may be, to appoint hereditary trustee in certain specified contingencies. Therefore, even in a case of a hereditary trustee, so declared, the power of the official respondents are not ousted and they can interfere when there is subjective satisfaction. Once we understand the scope of Section 47 of the H.R. & C.E. Act, the imposition of Section 49 of the H.R. & C.E. Act, become clear. Under Section 47(2) of the H.R. & C.E. Act,, a non-hereditary trustee can be appointed, resultantly, there is no difficulty in holding that the power to appoint Fit Person is



absolutely in the interest of administration.

9. Learned Senior Counsel appearing for the petitioner has made reference to Section 47(i) and (ii) of the H.R. & C.E. Act, primarily, on the exercise of power by the Assistant Commissioner under Section 49 of the H.R. & C.E. Act. Section 49 of the H.R. & C.E. Act provides power to the Assistant Commissioner only. This is only in the interest of the institution and no right of third party is involved and after all, it is limited. Therefore, in the interest of administration Section 49(1) can be invoked in the absence of declaration under Section 63(b) of the H.R. & C.E. Act. In the case on hand, there is no declaration of petitioner in W.P. (MD) No.16876 of 2019 as hereditary trustee. In such view of the matter, the subjective satisfaction arrived cannot be found fault with, as even before us, we could see *inter se* dispute between groups, which made the parties to approach this Court by way of filing Writ Petition after Writ Petitions. We have also perused the photographs, which *prima facie* indicates the prevailing situation.

10. In fact, learned Senior Counsel for the petitioner in W.P. (MD) No.16876 of 2019 submitted that the order passed in O.A.No.16 of 2019 has to be understood in the context of subsequent orders, while invoking Section 64(1) of the H.R. & C.E. Act in O.A.No.19 of 2002, which is confirmed by the appellate authority. With respect to the learned Senior Counsel, we do not think so. The aforesaid order passed in O.A.No.19 of 2002 has been rightly construed by the Division Bench of this Court in W.P. (MD) Nos.14059 and 4422 of 2018, dated 02.08.2018. We only extract the operative portion of the order for better appreciation:

16. With all due respect, we would observe that such decision runs directly contra the decision of this Court in W.A. (MD).No.305 of 2016, dated 16.02.2016, wherein in Paragraph No.10, it had been held as follows:-

"10. In O.A.No.19/2002 filed before the Joint Commissioner, HR & CE Department, the appellant sought recognition of right to celebrate Maha Sivarathiri festival of the temple and other festivities along with the rival community. Orders were passed on 05.02.2011, whereunder both sides were permitted to jointly participate in the conduct of Maha Sivarathiri festival of the temple and other festivities".

17. The cardinal principle requires that no bench of equal co-ordinate strength can render undue finding of earlier one. We would reiterate that, rightly or wrongly, this Court has rendered findings in W.A. (MD).No.305 of 2016 and Review Application (MD).No.33 of 2016, which will hold the field till set aside by the Apex Court or by a Larger Bench of this Court.

...

20. Learned counsel for the petitioner sought to



impress upon us that the prayer of the petitioner in O.A.No.19 of 2002 did not fall within the ambit of Section 63 (e) of the Tamil Nadu Hindu Religious & Charitable Endowments, Act, 1959. We are unable to agree with the said submission. Section 63(e) contains two parts, which are as follows:-

"whether any person is entitled, by custom or otherwise, to any honour, emolument or perquisite in any religious institution; and

what the established usage of a religious institution is in regard to any other matter";

...

22. In the light of the above discussion, this Court is inclined to allow W.P.(MD).No.14059 of 2018, as prayed for. Accordingly, there shall be a direction to the official respondents to protect the right to worship including the celebration of Mahasivarathiri Festival and other festivities and rituals, as is allowed to the bulk of the other worshippers every year to the petitioner community people in the public temple of Arulmigu Kaattu Karuppanna Samy Thirukovil, Maravankulam Village, Thirumangalam Taluk, Madurai District, without showing any racial discrimination by caste or creed."

In view of the above, there is no difficulty in holding that the group belonging to the petitioner in W.P.(MD) No.1778 of 2020 is entitled not only worship right, but also to take part in the performance of the ceremonies in the festival Mahasivarathiri. It is to be noted that the aforesaid day is an auspicious day, because people belonging to both the groups congregate and make various offerings on the day.

11. Accordingly, W.P.(MD) No.16876 of 2019 stands dismissed. No costs. However, we make it clear that our discussion made in the matter is a *prima facie* observation, which will not have a bearing for petitioner in W.P.(MD) No.16876 of 2019 in making application, seeking declaration under Section 63(b) of the H.R. & C.E. Act.

12. Since we have already upheld the order appointing the Fit Person, we expect either party to see to it that the festival is conducted smoothly without any hindrance. In the light of the observations made, it is well open to all the officials concerned, including police to interfere, if situation warrants.

13. After dictating the order, learned counsel appearing for the Fit Person submitted that there is some practical difficulty in conducting the function in view of the prevailing law and order situation. We are not inclined to accept the said submissions made. When it comes to equity, the State is expected to undertake the exercise even at the cost of law and order as the right to worship is constitutionally recognised and in the light of the discussion made above, there shall be no impediment for the Fit Person to carryout the directions issued for the purpose of conducting the



festival and the day-to-day administration with right to worship to all the members of both sides. In such view of the matter, the Superintendent of Police, Madurai (Rural) is directed to bestow his best knowledge to see to it that the Fit Person is carrying out his lawful duty without any interference. We expect the Fit person to take charge at once.

14. We further make it clear that inasmuch as the Fit Person has entered into the arena, he has to take decisions in the interest of the administration of the temple and the earlier orders passed by this Court should not come as a hindrance, as he is acting only in accordance with law.

15. W.P. (MD) Nos. 1778 and 18837 of 2020 are disposed of with the above observations and directions. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sj

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

1. The District Collector,
Madurai, Madurai District.
2. The Superintendent of Police,
Madurai District (Rural),
Madurai.
3. The Commissioner (H.R. & C.E.),
Tamil Nadu Hindu Religious and Charitable
Endowments Administration Department,
Chennai.



- 4.The Joint Commissioner (H.R. & C.E.),
Office of the Joint Commissioner,
H.R. & C.E. Department,
Madurai,
Madurai District.
- 5.The Assistant Commissioner (H.R. & C.E.),
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R.D.O., Usilampatti.
- 7.The Tahsildar,
Taluk Office, Tirumangalam,
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- 8.The Inspector of Police,
Tirumangalam,
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- 9.The Executive Officer / Fit Person,
Arulmighu Thandayuthapani Thirukovil,
Nethaji Salai,
Madurai.
- 10.The Fit Person / Thakkar,
Arulmighu Kattu Karuppannasamy Temple,
Maravankulam Village,
Tirumangalam Taluk,
Madurai District.

- +1cc to Mr.K.SRINIVASAN, Advocate, SR No.5823
- +1cc to Mr.M.Saravanan, Advocate, SR No.5578
- +1cc to Mr.J.Jeyakumaran, Advocate, SR No.5550
- +3cc to Mr.N.Dilipkumar, Advocate, SR No.5688,5689,5690
- +1 CC to M/s.SPL GP (SR-5934,5935[F])

Common order in
W.P. (MD)Nos.16876 of 2019, 1778 and 18837 of 2020

16.02.2021

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sv2 (CO)
KK(09.03.2021) 10P 18C