



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.01.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)Nos.18940 & 18947 of 2020

and

W.M.P. (MD)Nos.15861, 15863, 15866, 15868 &
15870 of 2020

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P.M.Jegadees Pandian ... Petitioner in WP(MD)No.18940 of 2020

V.Aarthi ... Petitioner in WP(MD)No.18947 of 2020

Vs.

1.The Commissioner,
Hindu Religious & Charitable
Endowment Board,
No.119, Uthamar Gandhi Salai,
Nungambakkam High Road,
Nungambakkam, Chennai - 600 034.

2.The Joint Commissioner,
Hindu Religious & Charitable
Endowment Board,
Office of the Joint Commissioner,
No.1, West Chithirai Street,
NTC Building Upstairs, Madurai - 625 001.

3.R.Laskhmi

4.Ponnu Pandian

5.Jayaveera Pandi

6.Rajesh Pandi

7.Rishi Pandi

8.Rebello ... Respondents in both writ petitions

Comon Prayer: Writ petitions are filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus, challenging the order passed by the 2nd Respondent herein in his proceedings in Na.Ka.No. 8302/ 2020 / Aa1 dated 02/12/2020 and quash the same as illegal and further direct the 3 to 7 Respondents / Trustees of Arulmighu Pandi Muneeswarar Kovil, Melmadai, Madurai , in accordance with the will dated 16/08/1985 of Late.Mahamuni in respect of Pooja turn of Late.Saroja Ammal is concerned within a time stipulated by this Court and pass such other further orders that may deemed to be fit and proper in the facts and the circumstances of the case and thus render justice.

in both cases :

For Petitioner :Mr.V.Meenakshi Sundaram

for Mr.D.Nallathami



For Respondents :Mr.K.P.Narayanakumar
Special Government Pleader for R1 & R2

Ms.J.Anandhavalli for R3 to R7

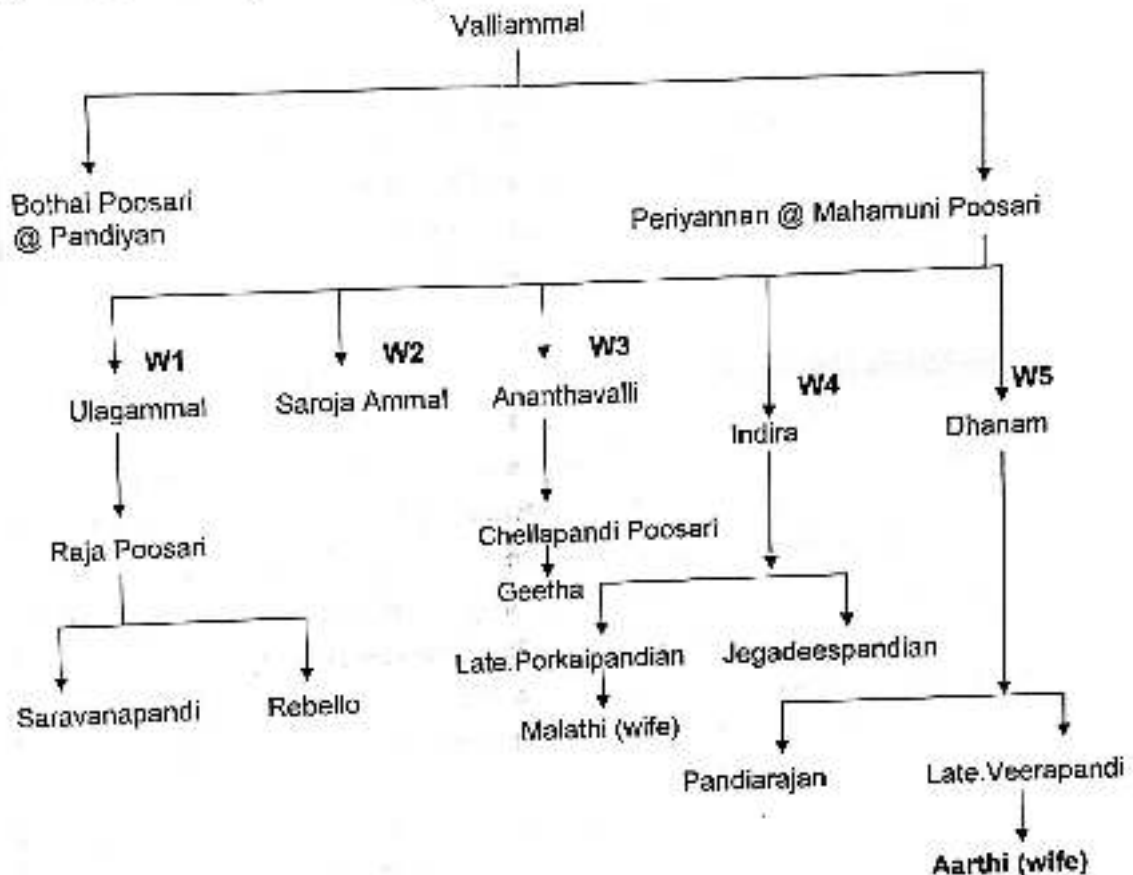
Mr.A.V.Arun for R8

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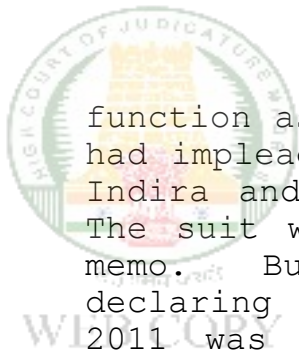
COMMON ORDER

Heard the learned counsel on either side. With their consent, the writ petitions are taken up for final disposal.

2.One Periyannan @ Mahamuni Poojari and another person by name Bothai Poojari @ Pandiyan were in joint management and administration of a temple known as Arulmighu Pandi Muneeswarar Temple which is said to be about hundred years old. The subject matter of these writ petitions relates to Mahamuni branch. He had five wives. The family tree is as follows :



3.Periyannan @ Mahamuni executed a Will dated 16.08.1985. In his Will Periyannan @ Mahamuni had stated that Saroja Ammal during her lifetime would enjoy the rights of trusteeship and that after her demise, the children born through the remaining wives would inherit the right of Saroja Ammal in a particular proportion. After the demise of Mahamuni but during the lifetime of Saroja Ammal, Raja poojari the son born through the first wife, filed O.S No.257 of 2007 on the file of the II Additional Sub Judge, Madurai seeking the relief of declaration that he alone was entitled to



function as Poojari of the temple. In the said suit, Raja Poojari had impleaded his son Saravana Pandi, Saroja Ammal, the fourth wife Indira and Pandiarajan born through the fifth wife as defendants. The suit was disposed of on 20.06.2007 in terms of a compromise memo. But then, Saroja Ammal herself filed OS No.191 of 2008 for declaring the compromise decree as invalid and void. O.S No.43 of 2011 was filed by the fifth branch and the fourth branch for enforcing the Will dated 16.08.1985. It is stated that the suits have been dismissed for default. It is however claimed that application for restoration is pending. Just as Mahamuni had too many wives, the subject temple is also riddled with too many cases. It will be a futile exercise to cover the entire history. It is also not necessary for giving a disposal to the case on hand. What is under challenge in these writ petitions is the order dated 02.12.2020 passed by the Joint Commissioner, HR&CE, Madurai whereby it has been held that Rebello, the eighth respondent herein can officiate as Poojari in the turn meant for Saroja Ammal and enjoy the fruits thereof. WP(MD)No.18940 of 2020 is filed by one P.M.Jagadeesh Pandian, the son of Mahamuni born through the fourth wife. WP(MD)No.18947 of 2020 is filed by one V.Aarthi, the granddaughter of Mahamuni through his fifth wife Dhanam.

4.The learned counsel appearing for the petitioners reiterated all the contentions set out in the affidavits filed in support of the writ petitions and wanted this Court to quash the impugned order as one lacking in jurisdiction.

5.Per contra, the learned Special Government Pleader appearing for the department, the learned counsel appearing for the respondents 3 to 7 and the learned counsel appearing for the 8th respondent submitted that the impugned order does not call for any interference and wanted this Court to dismiss the writ petitions.

6.Their pointed contention is that the petitioners can very well avail the statutory remedy of revision before the Commissioner, HR&CE. They would also point out that the impugned order merely reiterates the terms of the compromise decree dated 20.06.2007 in O.S No.257 of 2007 on the file of the II Additional Sub Court, Madurai. According to them, the said decree was accepted and acted upon by the parties concerned and that as on date, it is still holding good. The suits filed by the contestants for nullifying the same have suffered dismissals for default and that since the said decree is still holding the field, the second respondent was justified in passing the impugned order.

7.I carefully considered the rival contentions and went through the materials on record. By order dated 19.05.2011, the Joint Commissioner (Administration) Madurai recognized that Mrs.Saroja Ammal will have her Pooja turn from 20.05.2011 to 26.05.2011 by appointing Poojari on daily wages basis. This was



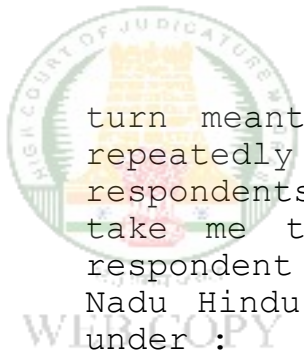
2011 came to be filed by one P.M.Veerapandi. The writ petition was allowed vide order dated 20.02.2012 in the following terms :

"12.Now that the impugned order dated 23 may, 2011 is set aside, it is for the first respondent to decide the matter afresh. The petitioner is given liberty to make an application before the first respondent to recognize his turn and to permit him to conduct poojas and for other incidental reliefs. In case any such application is filed, the first respondent is directed to decide the issue with notice to the petitioner and other contesting respondents, as expeditiously as possible ad in any case, within a period of four weeks."

8.Pursuant to the said direction, the Joint Commissioner, HR&CE, (Administration), Madurai passed the order dated 30.04.2012 directing the eighth respondent, namely, Rebello to function as Poojari in the turn meant for Saroja Ammal on daily wages basis. It was also directed that the said amount should not be disbursed to Rebello and that it should be kept in the temple account in a fixed deposit. Subsequently, vide order dated 03.03.2017 the quantum was fixed as Rs.500/-. Challenging the same, Rebello filed WP(MD) No.4229 of 2017. When the writ petition was came up for disposal before me, I pointed out that the order dated 06.03.2017 was only a continuation of the earlier order dated 30.04.2012 and in as much as the earlier order was not put to challenge by Rebello, the question of interfering with the order dated 06.03.2017 will not arise. Thereupon, the petitioner in WP(MD)No.4229 of 2017 sought leave to move the authority concerned for recall of the order dated 30.04.2012. I granted permission to Rebello to move the authority concerned for such recall since if the order dated 30.04.2012 is recalled, the consequential order dated 06.03.2017 would also go automatically. The writ petition was disposed of on that basis on 04.08.2020. Availing the liberty granted by me to apply for recall, Rebello filed a petition before the Joint Commissioner (Administration), HR&CE, Madurai for recall of the order dated 30.04.2012. While disposing of the said recall petition, the impugned order came to be passed.

9.Even at the outset, I posed a specific question to the learned counsel for the petitioners to justify his invocation of the writ jurisdiction in the very first instance without availing the statutory remedy under Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The learned counsel for the petitioners pointed out that the petitioners were very much entitled to move this Court since the first respondent herein did not have the jurisdiction to issue the directions set out in the impugned order.

10.The second respondent by the impugned order has directed the first respondent Rebello can officiate as Poojari in the



turn meant for Saroja Ammal and enjoy the fruits thereof. I repeatedly called upon the learned counsel appearing for the private respondents as well as the learned Special Government Pleader to take me to the relevant provision which authorised the second respondent to pass an order of this nature. Section 55 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 reads as under :

"55.Appointment of office-holders and servants in religious institutions.- (1) Vacancies, whether permanent or temporary among the office-holders or servants of a religious institution shall be filled up by the trustee [in all cases].

Explanation.-The expression "office-holders or servants" shall include archakas and pujaries.

(2) No person shall be entitled to appointment to any vacancy referred to in sub-section (1) merely on the ground that he is next in the line of succession to the last holder of the office.

[(3) * * *] omitted by section 2(3) of the Tamil Nadu HR&CE (Amendment) Act, 1978 (Tamil Nadu Act 2 of 1971)

(4) Any person aggrieved by an order of the trustee under sub-section (1) may, within one month from the date of the receipt of the order by him, appeal against the order to the Joint Commissioner or the Deputy Commissioner, as the case may be."

11.A mere look at the aforesaid provision would show that it is only the trustee who can appoint archakas and pujaries. Of course, the order passed by the trustee can be put to challenge before the second respondent. In other words, he can only be an appellate authority in such matters. He cannot be the appointing authority. By appointing the eighth respondent herein as Poojari in the turn earmarked for Saroja Ammal, the second respondent has acted illegally. Of course, the learned counsel for the eighth respondent would contend that it is the order granted by this Court in WP(MD)No.4229 of 2017 that gave the jurisdiction to the second respondent. I reject this contention straightaway. This is for two reasons. The only leave I granted was to permit the eighth respondent to move the second respondent for recall of the order passed on 30.04.2012 by the office of the second respondent. Secondly, if an authority is not possessed of a certain jurisdiction, no court including a constitutional court can clothe him with that jurisdiction. The learned counsel would thereafter fall back on Section 57 of the Act. It reads as follows :

"57.Power to fix fees for services, etc., and to determine their apportionment.-Notwithstanding anything contained in any scheme settled or deemed to have been settled under this Act or any decree or usage to the



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contrary, the trustee of a religious institution shall have power, subject to such conditions as the Commissioner may, by general or special order, direct, to fix fees for the performance of any service, ritual or ceremony in such religious institution and determine what portion, if any, of such fees shall be paid to the archakas or other office-holders or servants of such religious institution."

12. Even a plain reading of the aforesaid provision indicates that it is only the trustee of the religious institution who has to fix the fees for the purpose of any services and determine what portion thereof will be paid to the archakas. Of course, the exercise of this power is subject to the condition as may be fixed by the Commissioner by general or special order. Nowhere the Joint Commissioner (Administration) HR&CE, comes in the picture.

13. As on date, the temple is functioning under a trust board. The Hon'ble Supreme Court had restored their position recently. The temple does not even have an Executive Officer. The second respondent herein is only a Joint Commissioner (Administration). He is not the Executive Officer of the temple. He is not its fit person. I fail to understand as to how he assumed the jurisdiction to issue the directions set out in the impugned order. The second respondent has clearly overreached himself. However, I sustain the impugned order to the extent it cancels the earlier orders passed by the second respondent on 30.04.2012 and 06.03.2017. In fact, the recall and cancellation of these earlier orders is very much in order. They are liable to be recalled and cancelled for the very same reasons on which I am setting aside the other directions issued by the second respondent.

14. The impugned order is set aside to the extent as mentioned above and the writ petitions are partly allowed. I make it clear that I have not pronounced on the rival claims or the rights of the parties concerned. I have not gone into the power of the trust board. I have not pronounced on the validity or otherwise of the compromise decree dated 20.06.2017 in O.S No.257 of 2007 on the file of the II Additional Sub Court, Madurai. All other issues are left open. The only issue that I have decided is on the jurisdiction of the second respondent to pass the impugned order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(T & P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



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:

1.The Commissioner,
Hindu Religious & Charitable
Endowment Board,
No.119, Uthamar Gandhi Salai,
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Nungambakkam, Chennai - 600 034.

2.The Joint Commissioner,
Hindu Religious & Charitable
Endowment Board,
Office of the Joint Commissioner,
No.1, West Chithirai Street,
NTC Building Upstairs, Madurai - 625 001.

+1 CC to M/s.J.ANANDHA VALLI, Advocate (SR-2466[F]
dated 29/01/2021)

+1 CC to M/s.GP (SR-2814[F] dated 02/02/2021)

+1 CC to M/s.J.ANANDHA VALLI, Advocate (SR-2465[F]
dated 29/01/2021)

WP (MD) Nos.18940 & 18947 of 2020
29.01.2021

SSS (CO)
TR(11.02.2021) 7P 5C
TR(17.02.2021) 1C