



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.11.2021

CORAM:

THE HONOURABLE MR. JUSTICE M. SUNDAR

W.P.[MD]No.19375 of 2021

and

W.M.P(MD).No.16096 of 2021

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S.V.Anburaj Subramanian

: Petitioner

Vs.

1. The Commissioner,
Hindu Religious and Charitable
Endowments Department,
119, Uthamar Gandhi Salai,
Chennai - 600 034.
2. The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Palayamkottai,
Tirunelveli - 627 002.
3. The Executive Officer,
Pillaiyan Arthasama Kattalai,
35, Sudalaimadan Kovil Street,
Tirunelveli Town - 627 006,
Tirunelveli District.
4. The Commissioner,
Vickramasingapuram Municipality,
Vickramasingapuram - 627 425,
Tirunelveli District.
5. M.Anto
6. The Executive Officer,
Arulmigu Papanasa Swamy Temple,
Papanasam - 627 425,
Ambasamudram Taluk,
Tirunelveli District.
[R6 is impleaded vide Court
order dated 15.11.2021 in W.M.P(MD).16997/2021 in
W.P.No.19375/2021)

: Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents 1 to 3 to initiate proceedings under Section 78 & 79 of the HR&CE Act as against the encroachments made by the fifth respondent herein in Survey No.460/2 of Vickramasingapuram Part-1 village, Ambasamudram Taluk, Tirunelveli District and to pass appropriate orders in accordance with law within a time that may be stipulated



by this Court.

For Petitioner : Ms.N.Thuja
For Respondents : Mr.M.Lingadurai, Spl.Govt.Pleader
for R1, R2, R4 and R6
Mr.R.Vel Murugan for R3

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O R D E R

N.Thuja, learned counsel for the sole writ petitioner and Mr.M.Lingadurai, learned Special Government Pleader who accepts notice on behalf of respondents 1 to 4 and 6 are before me.

2. Read this in conjunction with and in continuation of earlier proceedings made in previous listings on 08.11.2021 and 15.11.2021 which read as follows:

Proceedings dated 08.11.2021:

'When the matter was taken up in the admission board, it came to light that the matter pertains to a Kattalai qua 'Arulmigu Papanasanatha Swamy Temple at Papanasam, Tirunelveli District' (hereinafter 'said temple' for the sake of convenience and clarity).

2. From the submissions made by learned counsel for writ petitioner, it comes to light that the Kattalai may qualify as a specific endowment within the meaning of sub-section 19 of Section 6 of 'The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959)' (hereinafter 'TNHR&CE Act' for the sake of convenience and clarity), but 'temple' is defined in Section 6 (20) of TNHR&CE Act. The array of respondents brings to light that the Executive Officer of the said temple has not been arrayed as a respondent.

3. This Court is of the view that the locus of the writ petitioner is to be tested.

4. Be that as it may, faced with the above situation, regarding temple not being arrayed as respondent, learned counsel for writ petitioner sought time to do the needful. Request acceded to. List under the caption 'adjourned admission' one week hence.

5. List on 15.11.2021.'

Proceedings dated 15.11.2021:

'Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 08.11.2021 in the main writ petition.

2. In the light of the trajectory the matter took in the



previous listing on 08.11.2021 in the main writ petition the captioned writ miscellaneous petition (WMP) has been taken out. To be noted, 08.11.2021 proceedings in the main writ petition reads as follows:

'When the matter was taken up in the admission board, it came to light that the matter pertains to a Kattalai qua 'Arulmigu Papanasanatha Swamy Temple at Papanasam, Tirunelveli District' (hereinafter 'said temple' for the sake of convenience and clarity).

2. From the submissions made by learned counsel for writ petitioner, it comes to light that the Kattalai may qualify as a specific endowment within the meaning of sub-section 19 of Section 6 of 'The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959)' (hereinafter 'TNHR&CE Act' for the sake of convenience and clarity), but 'temple' is defined in Section 6 (20) of TNHR&CE Act. The array of respondents brings to light that the Executive Officer of the said temple has not been arrayed as a respondent.

3. This Court is of the view that the locus of the writ petitioner is to be tested.

4. Be that as it may, faced with the above situation, regarding temple not being arrayed as respondent, learned counsel for writ petitioner sought time to do the needful. Request acceded to. List under the caption 'adjourned admission' one week hence.

5. List on 15.11.2021.'

3. In the light of the fact that the captioned WMP is imperative, though the learned counsel for writ petitioner should have been cautious and taken care while filing the writ petition, as a one off measure captioned WMP for impleading is ordered as prayed for.

4. Registry is directed to carry out necessary and consequential amendments and list the captioned main writ petition along with other WMPs if any therein under the caption 'ADJOURNED ADMISSION' one week hence.

List on 22.11.2021.'

3. The above two proceedings inter-alia capture the trajectory the matter has taken.

4. Captioned writ petition can be disposed of by making an order which is not adverse to the rights of the fifth person (private person) and also by providing adequate safety valve mechanism for the fifth respondent. Therefore, with the consent of the aforementioned learned counsel on either side, captioned main writ petition is taken up.



5. In continuation of paragraph 3 of the earlier proceedings dated 08.11.2021, I first advert to the locus of the writ petitioner. To be noted, this is articulated in paragraph 3 of my 08.11.2021 proceedings which reads as follows:

'3. This Court is of the view that the locus of the writ petitioner is to be tested.'

6. 'The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959)' [hereafter 'TNHR&CE Act' for the sake of convenience and clarity] has been repeatedly held to be a self contained code by this Court. Be that as it may, the expression 'person having interest' has been defined in Sub-section (15) of Section 6 of TNHR&CE Act.

7. I find from the writ affidavit that the writ petitioner may not really qualify as a person having interest qua said temple though learned counsel makes a broad generic submission that the writ petitioner is a devotee. Therefore, without entering into this factual matrix arena, I deem it appropriate to discharge the writ petitioner, but consider the matter as *parens patriae*, this Court being guardian qua the presiding deity idol being in the status of a minor. That this Court is *parens patriae* qua said temple, temples of similar nature and also *custodia legis* qua properties vested in a minor idol are well settled legal principles. Hon'ble Supreme Court in A.A.Gopalakrishnan's case [**A.A.Gopalakrishnan v. Cochin Devaswom Board and Ors.**,] reported in (2007) 7 SCC 482, has also held that it is the duty of this Court to protect the properties vested in temples.

8. I am not expressing any view at this *prima facie* stage as the fifth respondent will have to have a say in the proceedings which this Court is informed have already been kick-started. This A.A.Gopalakrishnan case principle is mentioned only for the limited purpose of the basis of which this order is being made after discharging the writ petitioner on the ground of locus.

9. Learned State counsel, on instructions submits that proceedings under Section 78 of TNHR&CE Act have already been initiated. Learned State counsel submits that proceedings under Section 78 have to be carried to its logical end. The proceedings are obviously before the second respondent i.e., jurisdictional Joint Commissioner who is the authority who is statutorily vested with powers to deal with petitions under Section 78 of TNHR&CE Act. To buttress the factual position in this regard, learned State counsel draws the attention of this Court to page 1 of the typed set of papers which is a notice dated 17.07.2019 and the same reads as follows:



1. *Journal of Management Studies*, 1996, 33, 1, 1-14.

[illegible]

11/20/17 07:2019

အကျဉ်းချုပ်

பொருள்-
 டிரைவிங் - (பெண்மையர் அறித்தலாகக் கட்டளைகளிற் சென்றதனால்
 தீவிரமாக டிரைவிங் செய்து, கட்டுப்பாட்டின் கட்டுக்குள் இல்லாத நிலை
 தயக்கம் போன்ற பண்புகள் பெண்களால் பெறப்பெற்று
 கட்டுப்பாட்டாக டிரைவிங் - Drive, Force.

திருநெல்வேலி மாவட்டம், பாதுகா, அருகிலிருந்து சென்னைக்கு அடுத்ததாகக் கடலாறுக்குள் சென்றுள்ள தீவிரக் கடலாறு மாவட்டம் துறைமுகம் துறைமுகம் சென்று பாதுகாவிட்டதில் விவகாரமாகிறது. சட்டம் 400/20 உடனடி நடவடிக்கை எடுத்தால் மட்டுமே சென்று வரலாம். சென்னைக்குள் வந்தால் துறைமுகம் அங்கிலிக்கு தள்ளிவிடப்படும். சென்னைக்குள் சென்று தீவிர துறைமுகம் சென்று சென்னைக்குள் வரலாம். சென்னைக்குள் சென்று தீவிர துறைமுகம் சென்று சென்னைக்குள் வரலாம்.

தேர்தல்கள் விவகாரத்தில், 2015-2016-2017-ல் உள்ள ஸ்டேட் தேர்தல் திட்டத்தில் திட்டமிடப்பட்ட எல்லாப் பகுதிகளிலும் (பிளாக் பிளாக்) 10 குத்தகைகளைக் கட்டுத் கட்டித் தருவதில் டி.பி.என். தேர்தலுக்கு உரிய பகுதி சென்ட்ரல், உள் குத்தகைக்கு விடுவதற்கு உடனடியாக உத்தரவு பிறப்பித்து, அதற்கான நடவடிக்கை மேற்கொள்ளும் திட்டம். இத்திட்டம், இத்தேர்தல் (பிளாக்) முடிவாகிய பின்னர் 2-ல் உள்ள தாங்கள் எந்த உத்தரவுகளை அளித்திருக்கிறார்கள் என்பதைப் பொறுத்து உத்தரவுகளை எழுதிப் பார்த்தால் சென்ட்ரல் கட்டிடம் இது உடனடியாகத்தான் எட்டிவிடுவதற்கு முயற்சி எடுப்பது உத்தரவு சென்ட்ரல் டி.பி.என். தேர்தல் நடந்த பின்னர்.

கட்சிமாண்புமிகு பேரவைத் தலைவர்: கட்டணத்தில் செலுத்தப்படாத புகளில் இருந்திருக்கிற விவரங்கள் சொல்லு. எவ்வளவுகூடுதல் புகளில் செலுத்தி வருகிறார்கள் என்பது விதிவழக்கு முப்பத்தாறு கோடியில்

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எனவே, கட்டளைக்கு நேரடியான செலவு நிவந்தில் உரிய அனுமதி அளிக்கப்பட வேண்டி அத்தகுறி உறுப்பினர் கட்டுமானங்கள் ஏற்படுத்தி, கட்டளை நிவந்திற்கு குவிக்கப்பட்டு, மரத்தாண்டு செலவுகள் தங்கள் அக்கமிட்டிபகார ஸ்பாடு உறுப்பினரங்கள் முகவரிகள் காரணம் 2-ல் உள்ள தங்கள் ஏற்படுத்தியுள்ள கட்டுமானங்களை உடனடித் தங்கள் கடை உண் கட்டளை நிவந்தில் கவனிக்கத்தக்கதாகவும் முன்பகு புகாரில் 31.07.2019-ஆம் கட்டளை கடை ஒப்படைக்க அறிவிப்பு செய்யப்படுகிறது.

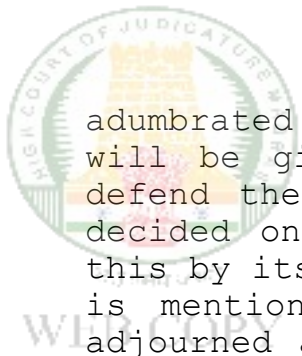
தமிழகப் பிளவுகள், ஆக்கிரமிப்பாளர் தலையிட்டு இந்திய சபா அறியாமையுடனான பட்டியல்கள் 78, 79-ல் சிறு தகவல் தரப்பட்டிருக்கிறது. இக்கட்டளைக்குப் பின்னாலான வேலையில் பித்திரிப் பதனாவல் ஏற்படுத்தப்பட்ட ஆக்கிரமிப்பாளர் அனைத்துமேல் முழுமையான அளவில் செயல்படுத்தப்படுவதால் பட்டியலாளர் குற்றமில்லை. தரப்பட்டிருக்கிறது. இந்திய சபா அறியாமையுடனான பட்டியல்கள் 78, 79-ல் சிறு தகவல் தரப்பட்டிருக்கிறது.

பெயர்:-
1. திருமதி ராஜினி,
துறைமுகம் 2-ம்,
கொத்திடி துறை,
விடுதலைச் சாலை, துறை.

[illegible]

Dr. S. S. Srinivasan
 Director, Tamil Nadu Sahitya Akademi
 10, Anna Salai, Chennai - 600 002
 Phone: 627 006

10. Now that it is the stated position of learned State counsel that Section 78 proceedings i.e., proceedings under Section 78 of TNHR&CE Act has been initiated against the fifth respondent, the same has to be proceed on its own merits in accordance with law before the second respondent. To be noted, proceedings under Section 78 of TNHR&CE Act have to be conducted in a manner adumbrated in a set of Rules which goes by the title 'The Removal of Encroachments on Lands or Buildings Belonging to Religious Institutions Rules' (hereinafter 'said Rules' for the sake of brevity, convenience and clarity). To be further noted, said Rules is a piece of subordinate legislation made by the Government as delegatee under Section 116 of the TNHR&CE Act. It is a Rule making power. A perusal of the Rules



adumbrated under said Rules make it clear that the fifth respondent will be given reasonable opportunity to put across his case and defend the proceedings and that Section 78 proceedings has to be decided on its own merits and in accordance with law. Therefore, this by itself will act as a safety valve qua fifth respondent. This is mentioned as the writ petition is being disposed of in the adjourned admission stage, wherein the counsel for writ petitioner and State counsel representing respondents 1 to 4 and 6 (official respondents) are before this Court. Therefore, this order is not adverse to the fifth respondent and there is adequate safety valve for the fifth respondent.

11. Before concluding this order with the operative portion, though obvious, I make it clear that I have not expressed any view or opinion on the merits of the matter qua the alleged encroachment. Suffice to say that there will be a direction to the second respondent to conclude the Section 78 proceedings which have already been kick-started before the second respondent by considering the petition on its own merits and in accordance with law, more particularly, in accordance with said Rules which provides for reasonable opportunity for the fifth respondent. This legal drill shall be completed by the second respondent as expeditiously as his/her business would permit and in any event within three months from today i.e., on or before 24.02.2022.

12. Captioned main writ petition is disposed of with the above directions. Consequently, connected W.M.P is disposed of as closed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

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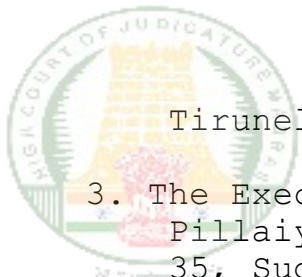
/ /2021

Sub Assistant Registrar(CS)

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To

1. The Commissioner,
Hindu Religious and Charitable
Endowments Department,
119, Uthamar Gandhi Salai,
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2. The Joint Commissioner,
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5. The Executive Officer,
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Papanasam - 627 425,
Ambasamudram Taluk,
Tirunelveli District.

+1 CC to M/s.SPL GP (SR-35448[F] dated 23/11/2021)

+1 CC to M/s.R. VELMURUGAN, Advocate (SR-35477[F] dated
23/11/2021)

+1 CC to M/s.K.NEELAMEGAM, Advocate (SR-35511[F] dated 23/11/2021)

W.P.[MD]No.19375 of 2021
22.11.2021

PS (CO)
KB(30.11.2021) 7P 9C