



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 11.11.2021

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THE HON'BLE Mr. JUSTICE M. SUNDAR

W.P (MD) .No.20275 of 2021

and

W.M.P (MD) .No.16945 of 2021

Parvathipuram Udamuttu Dharmam,
rep. by its President / Managing Trustee
S.Udayakumar,
S/o.Subramonian,
Parvathipuram
Vadasery Village,
Nagercoil,
Agastheeswaram Taluk,
Kanyakumari District.

... Petitioner

Vs.

- 1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Chennai - 600 034.
- 2.The Joint Commissioner
Hindu Religious and Charitable Endowment Department,
Tirunelveli.
- 3.The Assistant Commissioner
Hindu Religious and Charitable Endowment Department,
Nagercoil - 600 002,
Kanyakumari District.
- 4.The Executive Officer
Arulmigu Subramania Swamy Temple
Thiruchendur,
Thoothukudi District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents not to interfere with the day to day administration of the petitioner trust namely, Parvathipuram Udamuttu Dharmam, managed by the Managing Trustee and from interfering with the powers and the allocation of the work and the method of the performance of such work of the trustees until the final verdict of the original suit in



O.S.No.230 of 2016 on the file of the II Additional Subordinate Judge, Nagercoil.

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For Petitioner : Mr.G.Aravinthan
For Respondents : Mr.M.Lingadurai,
Government Advocate for R1 to R3
Mr.M.Muthugeethayan,
Standing Counsel for R4

O R D E R

Captioned main writ petition pertains to an entity which goes by the name Parvathipuram Udamuttu Dharmam [hereafter 'said entity' for the sake of convenience and clarity] which according to Mr.G.Aravinthan, learned counsel for writ petitioner is an endowment of certain immovable properties for the performance of specific service / charity in 'Arulmighu Subramania Swamy Temple, Tiruchendur, Thoothukudi District' [hereafter 'said Temple' for the sake of convenience and clarity].

2.The prayer in the writ petition is for a Mandamus to direct the respondents to not to interfere with the administration of the said entity. To be noted, this is the first limb of the prayer. Another part second limb of the prayer is that a suit in O.S.No.230 of 2016 is pending on the file of the 'III Additional Subordinate Judge's Court, Nagercoil' [hereafter 'said Civil Court' for the sake of convenience and clarity] and that the verdict in this suit has to be awaited qua the first limb of the prayer.

3.Mr.M.Lingadurai, learned Government Advocate (Civil Side) [hereafter referred to as 'State Counsel'] accepts notice on behalf of respondents 1 and 2 and Mr.M.MuthuGeethayan, learned Private Counsel accepts notice on behalf of the third respondent i.e., Executive Officer of said temple who shall hereinafter be referred to as learned 'Temple Counsel' for convenience and clarity.

4.Owing to the short point involved in the captioned main writ petition, main writ petition is taken up with the consent of all the aforementioned counsel.

5.Learned State Counsel and learned Temple Counsel pointed out that the aforementioned suit itself is not maintainable *inter alia* in the light of Section 108 of 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].



6.It was also pointed out by learned Temple Counsel that the said entity for all practical purposes is a specific endowment within the meaning of Sub Section (19) of Section 6 of TNHR&CE Act qua a religious institution within the meaning of Section 6(18) and to be noted said Temple is a 'Temple' within the meaning of Section 6(20) of TNHR&CE Act.

7.Learned Temple Counsel also pointed out that the lis has been conclusively decided in an earlier suit in O.S.No.579 of 1953 on the file of the Principal District Munsif, Nagercoil, in and by judgment and decree, dated 23.12.1959.

8.Learned State Counsel pointed out that there are several encroachers in the properties which form subject matter of said entity and appropriate action under Section 78 of TNHR&CE Act has been initiated against the encroachers.

9. In the light of the order which I propose to make, I refrain myself from expressing any opinion or view on the aforementioned rival contentions.

10.This Court is not inclined to accede to the prayer of the writ petitioner and the reasons are as follows :

a) A Fit Person has been appointed for said entity wayback in 2008 i.e., on 15.01.2008 to state with specificity vide an order bearing Na.Ka. No.44422/07/A2 dated 15.01.2008 and this order has become final. To be noted there is no disputation or disagreement about this.

b) Owing to the aforementioned appointment of Fit Person having attained finality / given legal quietus, it will be inappropriate to entertain the primary / first part of prayer i.e., interference details of which have been alluded to supra elsewhere in this order.

c) The captioned writ petition has been laid by said entity and going by the cause title, it is represented by President / Managing Trustee one Mr.S.Udaykumar who is plaintiff No.3 in the civil suit in said civil Court.

d) In the said civil Court, fourth respondent in the captioned main writ petition is the third defendant and this Court is informed that the third respondent filed written statement on 25.11.2019 and completed pleadings.

e)Two orders made in revisional jurisdiction by the first respondent being order dated 09.03.2018 made in RP No.212 of 2017 and order 23.08.2018 made



in R.P.No.89 of 2018 have been placed before this Court as part of the typed set of papers, but those revisions are at the instance of two individuals namely, Mr.V.Raghavan Nair and Mr.V.Murugan who are admittedly third parties qua the captioned matter.

f) This Court is informed that they are individuals who faced proceedings under Section 78 of TNHR&CE Act initiated by said Temple and carried the matter by way of revision to the Commissioner, TNHR&CE Department.

11. The argument that these two revisional orders have been placed before this Court to emphasize that pendency of the suit will decide the applicability of TNHR&CE Act, does not impress this Court. The reason is an order made by the first respondent will have no binding effect on this Court. On the contrary the order can be tested by this Court, if challenged in an appropriate manner. Therefore, I refrain myself from expressing any opinion in this order in the captioned matter.

12. The writ petitioner (to be noted the natural person representing the said entity in the captioned matter is Plaintiff No.3 in the civil suit in the said Civil Court) has already filed a civil suit and the same is pending. If any interim order is required the writ petitioner should have moved the Civil Court concerned i.e., said civil Court and it is no ground nay no argument to come to this Court and seek an interim protection pending a civil suit.

13. Owing to all that have been set out supra, captioned writ petition fails and the same is dismissed albeit preserving the rights of both sides to canvas their respective stated positions before the said Civil Court including maintainability of the said suit.

14. This Court is informed that the aforementioned civil suit is at a stage where the plaintiffs have moved substituted petition owing to demise of one of the natural persons qua said entity. The said Civil Court i.e., III Additional Subordinate Judge's Court, Nagercoil, will do well to dispose of the suit as expeditiously as the business of the Court would permit on its own merits, in accordance with law and in any event within three months from today i.e., on or before 11.02.2022. The plaintiffs, defendants 1 and 2 (who are represented by State Counsel) and the third defendant (Executive Officer of said Temple) who is represented by a private counsel shall all co-operate in expeditious disposal of the civil suit. To be noted disposal of suit directive will not preclude the Civil Court from considering an application for rejection of plaint if moved.



15.This Court is informed that various proceedings under Section 78 of TNHR&CE Act against various encroachers qua corpus of said entity i.e., immovable properties specifically endowed qua said entity attached to said Temple are pending at various stages. This order of this Court will have no impact on those proceedings. To put it differently, this order will neither impede nor serve as an impetus in those proceedings which will proceed in accordance with law on their own merits, untrammelled by this order.

16. Captioned Writ Petition is dismissed albeit with above observations. Consequently, connected WMP is also dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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,
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+1 CC to M/s.M.MUTHUGEETHAYAN, Advocate (SR-34166[F] dated
11/11/2021)

+1 CC to M/s.SPL GP (SR-34445[F] dated 15/11/2021)

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and
W.M.P (MD) .No.16945 of 2021
11.11.2021

AC (CO)
KB (02.12.2021) 6P 7C