



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :17.12.2021

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THE HON'BLE MR. JUSTICE M.SUNDAR

W.P(MD) No.14220 of 2015

and M.P.(MD) Nos.2 and 3 of 2015

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B.Namasivaya Barathi

... Petitioner

Vs.

1.The Assistant Commissioner,
HR&CE Department,
Paramakudi,
Ramanathapuram District.

2.The Executive Officer,
Arulmigu Vettudaiyaar Kaliyamman Temple,
Kollangudi,
Sivagangai District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorarified Mandamus, calling for the records of proceedings of the 1st respondent dated 24.04.2015 in the proceedings of reference Na.Ka.No.893/2006/A7, quash the same and pass consequetial order directing the respondents department not to interfere with the management and administration of the temple known as Arulmigu Kumarakadavul @ Subramaniya Swamy Temple, and Karupapillai Samadhu Madam at Valanadu, Mudukulathur Taluk, Ramanathapuram District.

For Petitioner	: Mr.N.Ananthapadmanaban
For Respondents	: Mr.C.Satheesh,
	Government Advocate for R1
	Dr.C.Guhaseelarupan for R2

O R D E R

This common order will dispose of captioned main writ petition and the two miscellaneous petitions therein.

2. In the hearing today, Mr.N.Ananthapadmanaban, learned counsel for writ petitioner, Mr.C.Satheesh, learned Government Advocate on behalf of first respondent and Dr.C.Guhaseelarupan, learned private counsel for the Executive officer of Arulmigu Vettudaiyaar Kaliyamman Temple, who has been appointed as Fit person of 'Subramaniya Swamy Temple known as Kumarakadavul situate in Valanadu, Mudukulathur Taluk, Ramanathapuram District' (hereinafter 'said temple' for the sake of convenience and clarity) are before me.



3. The captioned matter turns on a short point and therefore factual matrix in a nutshell which is imperative for appreciating this order will suffice. Short facts are that a scheme in O.A.No.22 of 1962 framed vide orders of the jurisdictional then Deputy Commissioner vide order dated 24.09.1964 under Section 64(1) of 'The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act No.22 of 1959)' [hereinafter 'TN HR&CE Act' for the sake of brevity, convenience and clarity] is operating qua said temple; that vide this scheme three hereditary trustees, two non-hereditary trustees (5 in all) are to administer said temple; that the first respondent in and by an 'order dated 24.04.2015 bearing reference ந.க.எண்.893/2006/௮7' (hereinafter 'impugned order' for the sake of convenience and clarity) appointed a Fit person for said temple; that the Fit person appointed for said temple is Executive Officer of Arulmigu Vettudaiyaar Kaliyamman Temple as already alluded to supra (while recording the presence of the counsel); that assailing the impugned order, the captioned writ petition was filed more than one year and half a decade ago in this Court; that to be precise, captioned writ petition was filed on 05.08.2015; that the captioned writ petition has now been pending for six years now.

4. Notwithstanding very many averments in the writ affidavit and very many grounds raised in the writ affidavit, learned counsel for writ petitioner predicates his campaign against the impugned order on two points and those are (a) impugned order is bad as said temple is a private temple. In support of the contention, learned counsel for writ petitioner submits that a suit in O.S.No.34 of 2018 has been filed on the file of Sub Court, Mudukulathur for a declaration that said temple is a private temple and it belongs to writ petitioner and (b) the reasons articulated in the impugned order for appointment of Fit person are bad but I refrain myself from expressing any opinion or view on the same as I intend leaving open the rights of the writ petitioner to make a campaign against the impugned order by way of a statutory revision either under Section 21-A (5) or under Section 21 of TN HR&CE Act.

5. Responding to the above submission, learned State Counsel for first respondent submitted that the impugned order has been made in exercise of powers under Section 49(1) of TN HR&CE Act, such exercise of power in the interest of said temple and it cannot be found fault with.

6. Learned private counsel for the second respondent submitted that two First Information Reports (FIRs) are pending against the writ petitioner pertaining to handling of properties of said temple (trees) and he has entailed disqualification *inter-alia* under clauses (g) and (h) of sub-section (1) of Section 26 of TN HR&CE Act. I refrain myself from expressing any view or opinion on this submission in this order for the self same reason which has been

7. The more significant submission made by learned counsel for second respondent is that the aforementioned suit referred to by learned counsel for writ petitioner being O.S.No.34 of 2018 has been dismissed for default on 08.10.2021 and a copy of the dismissal decree has been placed before me and the same is as follows:

சார்பு நீதிமன்றம், முதுகுளத்தூர்.
முன்னிலை : திரு.ஏ.பி.நசீர் அலி, B.A.,B.L.,
சார்பு நீதிபதி, முதுகுளத்தூர்.

2021ம் ஆண்டு அக்டோபர் திங்கள் 08ம் நாள் வெள்ளிக்கிழமை
அசல் வழக்கு எண். 34/2018

CNR No. TNRMOF-001053-2018

R.P. பாலநமசிவாய பாரதி (எ) R.P.பாலநமசிவாயன்.

..... வாதி

/எதிர்/

1. தங்கச்சாமி
2. துணை ஆணையர்,
இந்து சமய மற்றும் அறநிலையத்துறை,
பரமக்குடி.
3. துணை ஆணையர்,
இந்து சமய மற்றும் அறநிலையத்துறை,
சிவகங்கை மாவட்டம்.
4. ஆணையர்,
இந்து சமய அறநிலையத்துறை,
சென்னை.

5. தக்கார்/செயல் அலுவலர்,
அருள்மிகு குமரக்கடவுள் என்ற வளநாடு,
முதுகுளத்தூர்.

பிரதிவாதிகள்

Amended as per Order in I.A.No.678/2017, dated 01.09.2017.

தபசில் சொத்துக்கள் வாதி குடும்பத்திற்கு சொந்தமான
சொத்துக்கள் என்றும், அதிலுள்ள கருப்பு பிள்ளை மற்றும் நாகலிங்கம்
பிள்ளை ஆகியோரது சமாதிகள் மற்றும் குமரக்கடவுள் கோயில்
ஆகியவை வாதி குடும்பத்தாருக்கு மட்டும் உரிமைப்பட்ட தனிப்பட்ட
வழிபாடு நீண்டதும் என

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வினாம்புகை பரிகாரமும். 2, 3, 4 பிரதிவாதிகள் தமில் சமாதி மற்றும் கோவிலின் வாதி குடும்பத்தினர் செய்யும் வழிபாடுகளுக்கோ நிர்வாகத்திற்கோ எந்தவித இடையூறும் செய்யக்கூடாது என்று நிரந்தர உறுத்துக்கட்டளை கோரும் பரிகாரமும், இவ்வழக்கின் தன்மையை கருத்தில் வற்று சமூகம் நீதிமன்றம் கருதும் இதர பரிகாரம் வழங்கக் கோரியும் வாதியால் இவ்வழக்கு தாக்கல் செய்யப்பட்டுள்ளது.

இவ்வழக்கு என் முன்பாக இறுதி விசாரணைக்காக 08.10.2021 அன்று வந்தபோது வாதி தரப்பில் வழக்கறிஞர் திரு.என்.ஆனந்தபத்மநாபன்

அவர்கள் ஆஜராகியும், 1-ம் பிரதிவாதி இவ்வழக்கில் இருந்து தள்ளுபடி செய்யப்பட்டும், 2 முதல் 5 வரை பிரதிவாதிகள் தரப்பில் கூடுதல் அரசு வழக்கறிஞர் திரு.கே.அழகர்சாமி அவர்கள் ஆஜராகியும், வாதி அழைத்தும் ஆஜரில்லை, எவ்வித பதிலும் இவ்வாறு நிலையில், இன்று இந்நீதிமன்றம் வழங்கும்,



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தீர்ப்புரை

Plaintiff called absent and no representation, Learned counsel for D2 to D5 present. As sufficient opportunities given to plaintiff. Which have not been made use of and as plaintiff has not turned up. Suit is dismissed for default with the costs of D2 to D5.

2021ம் ஆண்டு அக்டோபர் திங்கள் 8ம் நாள் வெள்ளிக்கிழமை திறந்த இந்நீதிமன்றத்தில் அவையறிய பகரப்பட்டது.

ஓம்/-ஏ.பி.நசீர் அலி.
சார்பு நீதிபதி.
முதுகுளத்தூர்.

8. By way of reply, learned counsel for writ petitioner made two submissions and they are

1) there are quash petitions filed to quash the FIRs and the same are coming up for hearing before another Hon'ble Single Judge shortly i.e., in the first week of January 2022 and

2) Second submission is writ petitioner has filed an application for restoration of the suit which was dismissed for default.

9. It is well open to the writ petitioner to pursue the quash petitions and the restoration of suit uninfluenced by any observations that have been made in this order. Likewise it is open to the writ petitioner to take recourse to a legal drill of revision under Section 21-A(5) or 21 of TN HR&CE Act (alluded to supra) subject to limitation and an application under Section 14 of the Limitation Act if that be so. All questions in this regard are left open.



10. In the light of the narrative thus far, I deem it appropriate to not to interfere in the impugned order in writ jurisdiction.

11. Ergo, captioned writ petition and connected WMPs are disposed of as closed preserving the rights of the writ petitioner to the limited extent indicated above.

Sd/-

Assistant Registrar (T&P)

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/ /2022

Sub Assistant Registrar(CS)

To

1.The Assistant Commissioner,
HR&CE Department,
Paramakudi,
Ramanathapuram District.

2.The Executive Officer,
Arulmigu Vettudaiyaar Kaliyamman Temple,
Kollangudi,
Sivagangai District.

+1 CC to M/s.C.GUHASEELARUPAN, Advocate (SR-39374[F] dated 17/12/2021)

+1 CC to M/s.SPL GP (SR-39501[F] dated 20/12/2021)

W.P(MD) No.14220 of 2015
17.12.2021

PS (CO)

KB(07.01.2022) 6P 5C