



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.12.2021

CORAM

THE HON'BLE MR. JUSTICE M.SUNDAR

W.P(MD) No.14248 of 2015

and M.P. (MD) Nos.1 and 2 of 2015

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Balasubramani

... Petitioner

Vs.

1.The Commissioner,
HR & CE Department,
Chennai.

2.The Joint Commissioner,
HR & CE Department,
Madurai.

3.The Assistant Commissioner,
HR & CE Department,
Dindigul.

4.The Inspector of Police,
Erioud Police Station,
Dindigul District.

5.Chellaiah
6.Dharman

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Mandamus, directing the respondents to taken over and bring the temples namely Arulmigu Mariamman and Kaliyamman temples situated in S.F.No.233/1G to an extent of 1.42.5 hectare, Thiruvalluvar Nagar, Nagayakottai Village, Veda sandur Taluk, Dindigul District under the control of the HR & CE Department.

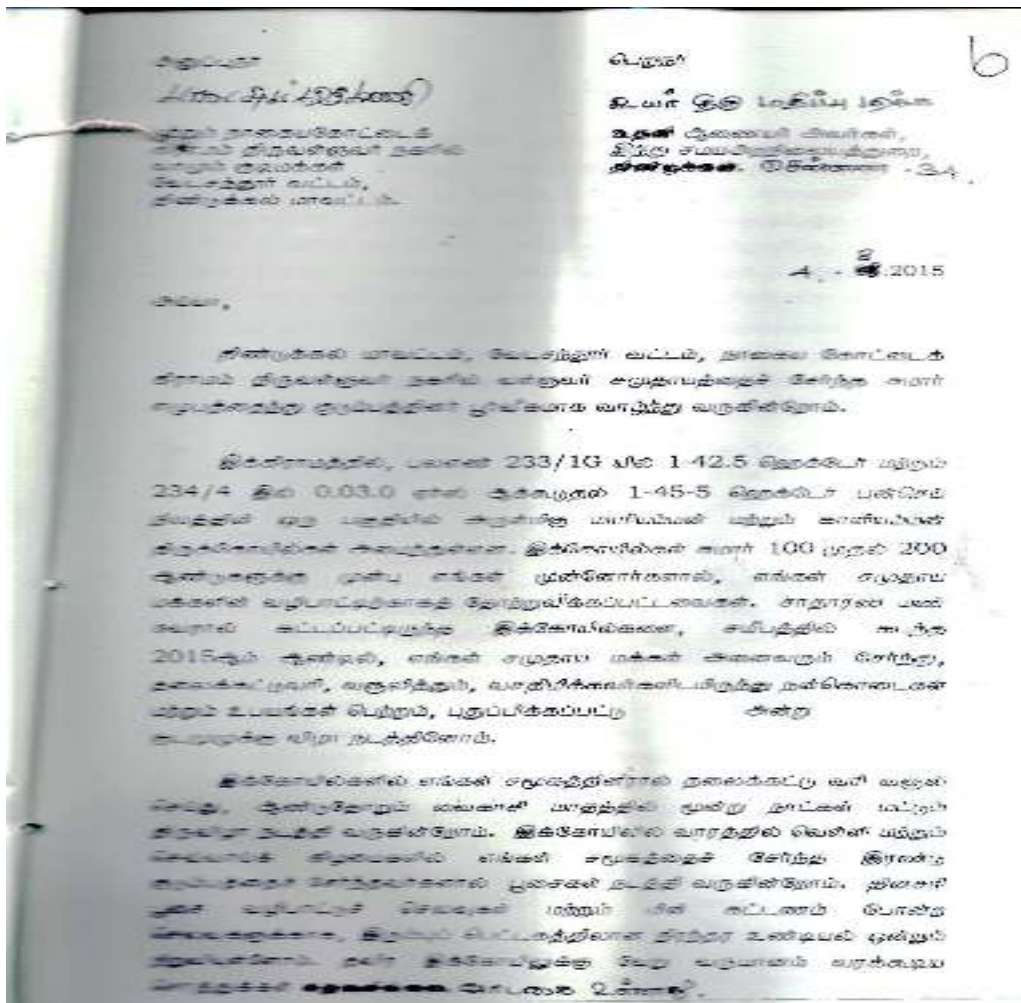
For Petitioner	: Mr.S.Gokul Raj
For Respondents	: Mr.M.Lingadurai, Special Govt. Pleader for R1 to R4 Mr.M.Suresh for Mr.M.Gnanagurunathan for R5 & R6

O R D E R

Mr.S.Gokul Raj, learned counsel for writ petitioner, Mr.M.Lingadurai, learned Special Government Pleader for respondents 1 to 3 who also represents the learned Additional Public Prosecutor on behalf of the fourth respondent and Mr.M.Suresh, learned counsel representing the counsel on record for respondents 5 and 6 (private respondents) are before me.



2. Captioned writ petition has been pending in this Court for more than half a decade, on 07.08.2015 captioned writ petition was filed in this Court with a prayer for mandamus. Mandamus is to direct the respondents to take over administration of a temple which goes by the name 'Arulmigu Mariamman and Kaliyamman temples situate in Thiruvalluvar Nagar, Nagayakottai Village, Vedasandur Taluk, Dindigul District' (hereinafter 'said temple' for the sake of convenience and clarity). The writ petitioner has sent a representation dated 04.08.2015 to the first respondent in this regard and the same is as follows:



இந்நிலையில் எங்கள் இனத்தைச் சேர்ந்த சிவகுமார், எங்கள் கிராமத்தைச் சேர்ந்த சிவசுப்பிரமணியம் மற்றும் மகன் செல்வமணி என்பவருக்கும் ஒப்பிட்ட தனிப்பட்ட விரோதத்தின் காரணமாக நடந்த மைகாசியில் மடைபெற்ற திருவிழாவிற்கு, கிணற்றுக்குள் சேர்ந்து சிலரை ஊர்க் கட்டுப்பாடு செங்கு ஒழுமில் வைத்துவிட்டு, அவர்களிடம் தகவல்கள்பற்றி, வரிசைபடுத்தி செல்வமணி, 'தொகுத்து கட்டுப்பாட்டில் சில நடவடிக்கைகள் ஏற்படும்படியாகக் கொண்டு' நவீனமயமாக்க திருவிழாமை நடத்தி விட்டார். இது வரையில் குறிக்கப்பட்டிருக்கக்கூடிய எல்லாப் பிழைகளும் முடிந்திருக்கும் அளவிற்கு எங்கள் பிழைகள் நிறைவேற்றம் செய்யப்பட்டுள்ளன. இதுவரையில் இவ்விழாமை நடத்தி வருவதில் எந்தவித தாமதங்களும் இல்லை, திருவிழாமை நடத்தி வருவது உடனடியாக நடத்தப்படும்.

இருளும் நெய்ப்பதற் கிராமத்திலுள்ள வள்ளலர் இனத்தவர் சொந்த
பொருத்திலுக் குறமடிகளில் வளர்ப்பனத்தில் மூலம் கட்டியபிறகு, வரம்புபட்ட
உரிமை உள்ள தொழ்புறக் கொள்கைகளை தீர்மானிக்கவல்ல சலிப்பவர்
தாக்கு மட்டுமே பாத்திரமிரப்பட்டு நியை கருக்கலாண்டு வள்ளலர்
இனத்தவர் ஒரு தரப்பினரின் பாரமியமான வரம்பு உரிமைகளைப்
பறிக்க முயற்சித்து வருகின்றனர். இதனால் சகல இனத்தவர்களுக்கும்
பலகாலமாகத் தாண்டி வர்ப்பு, சிறு தரப்பினர்களுக்கிடையே மிக
நகராறுகளைப்பி ஏற்படுத்தி கிணரம் கட்டி ஒன்றிப்பிரச்சனைகளை
உருவாக்கவும் திட்டமிட்டு செயல்பட்டு வருகின்றனர்.

எனவே, தனது தொழிலாளர்கள் பாதுகாப்பை கைப்பற்றி
சிரமத்தில் வாழ்ந்து வருவதற்கு அவர்கள் உரிமை, தீவிரமாக எடுத்துக்
கொள்ள வேண்டும். பாதிக்கப்பட்ட தொழிலாளர்கள் போராட்டம் நடத்தி
நலன் காத்தல், தீவிர சமரசம் செய்வதை சட்டத்தின் கீழ் நடத்தி,
கட்டுப்பாட்டின் கீழ் கொண்டு வர வேண்டும் என்று அவர்கள் விரும்புகிறார்கள்.

[illegible]



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இவ்வாறு பிழிதாரிசர், விருவர்களுடன் தகர வந்தியி தீசைதமன் சென்ற
பொது மயிதன் முன்மலையில் கிழந்து காணக்கிட்டு, சித்திரமயகைய,
கவாடி பெயரில் வந்தியின் கீழ்க் கிழந்து தக்க நடவடிக்கை எடுக்கவும்
பயிதா...பிதா...கி...கி...கி...

தேதி: 4.8.2015

பிரபு மகேசன்
கி...கி...கி...

M. Prabhakaran

M. Lakshminarayana

திருமதி க. கிருஷ்ணா

திரு. ஜெ. கிருஷ்ணா

திரு. கிருஷ்ணா

திரு. கிருஷ்ணா

திரு. கிருஷ்ணா

திரு. கிருஷ்ணா

திரு. கிருஷ்ணா

3. At the outset, learned counsel for writ petitioner submitted that he is a poosari in said temple. A careful perusal of the representation and writ affidavit bring to light that there is no averment to this effect. I also find that the writ petitioner is unable to demonstrate his legal right. To be noted, to seek mandamus legal right is imperative, this being ratio of Hon'ble Supreme Court in **Praga Tools** case [**Praga Tools Corporation Vs. Imanuel and others** reported in **AIR 1969 SC 1306**] more importantly this matter pertains to '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]. In TN HR&CE Act the expression 'person having interest' has been defined under Section 6(15) and the same reads as follows:

'6. Definitions.-

.....

(15) "**person having interest**" means—

(a) in the case of a math, a disciple of the math or a person of the religious persuasion to which the math belongs;



(b) in the case of a temple, a person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple, or who is entitled to partake or is in the habit of partaking in the benefit of the distribution of gifts thereat;

(c) in the case of a specific endowment, a person who is entitled to attend at or is in the habit of attending the performance of the service or charity, or who is entitled to partake or is in the habit of partaking in the benefit of the charity;

(d) in case of samadhi, brindhavan or any other institution established or maintained for a religious purpose, a person who is entitled to attend at or is in the habit of attending the performance of worship or service in such religious institution, or who is entitled to partake or in the habit of partaking in the benefit of the distribution of gifts thereat;'

There is nothing in the case file to demonstrate that the writ petitioner qualifies as a person having interest qua said temple.

4. Be that as it may, learned State Counsel submits that though there is an averment in the counter affidavit of private respondents that said temple is a private temple, there is no decree and therefore, said temple will be a religious institution within the meaning of Section 6(18) of TN HR&CE Act read with Section 6(20). Section 6(18) of TN HR&CE Act defines 'religious institution' and Section 6(20) of TN HR&CE Act defines 'temple'. Learned State Counsel submits that Section 1(3) of TN HR&CE Act operates and there is nothing to demonstrate that there is any exemption under Section 4 of TN HR&CE Act.

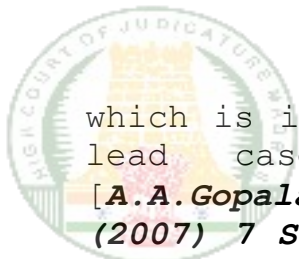
5. Learned counsel for the private respondents, adverting to the counter affidavit, submits that there is no decree but there is no hundial in said temple and it is situate in private land. This is controverted by the learned counsel for writ petitioner by showing a photograph (page 10 of the typed set of papers) to say that there is hundial and the same is as follows:

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6. In the counter affidavit, there is also a reference to crime No.331 of 2015 and O.S.No.70 of 2017. The Court on the file of which O.S.No.70 of 2017 is pending has not been mentioned in the counter affidavit. I am now informed that O.S.No.70 of 2017 is pending on the file of Principal District Munsif's Court, Vedachandur and that this is a suit filed by the writ petitioner seeking permission to conduct certain festival in said temple. I have serious doubts about maintainability of this suit in the light of Sections 108 and 109 of TN HR&CE Act but it is best left open as in this six years old writ petition only a simple mandamus has been sought for. Similarly the police station on the file of which crime number is pending has also not been mentioned.

7. Though writ petitioner has neither a legal right nor qualifies as a person having interest with the meaning of Section 6 (15) of TN HR&CE Act, this Court is *parens patriae* qua idol,
<https://hcservices.ecourts.gov.in/hcservices/>



which is in the status of a minor and this Court is guardian. The lead case in this regard is **A.A.Gopalakrishnan's** case [**A.A.Gopalakrishnan v. Cochin Devaswom Board and Ors.,**] reported in **(2007) 7 SCC 482**, wherein Hon'ble Supreme Court has held that it is the duty of this Court to protect temple properties. Therefore in this capacity, this Court deems it appropriate to direct the second respondent to consider the aforementioned representation (though the representation has been sent to first respondent) on its own merits, in accordance with law and proceed further. It is open to the second respondent to put the writ petitioner and private respondents on notice at his discretion but the second respondent is free to proceed in accordance with TN HR &CE Act.

8. The aforementioned exercise of considering the aforementioned representation on its own merits, in accordance with law shall be commenced forthwith and concluded as expeditiously as the business of the second respondent would permit and in any event by three months from today i.e. by 14.03.2022.

9. Captioned Writ Petition is disposed of on the above terms. Consequently, captioned MPs are also disposed of as closed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsm

To

- 1.The Commissioner,
HR & CE Department,
Chennai.
- 2.The Joint Commissioner,
HR &CE Department,
Madurai.
- 3.The Assistant Commissioner,
HR & CE Department,
Dindigul.
- 4.The Inspector of Police,
Erioud Police Station,
Dindigul District.



5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.M.GNANAGURUNATHAN, Advocate (SR-38406[F]
dated 13/12/2021)

+1 CC to M/s.S.GOKULRAJ, Advocate (SR-38425[F] dated 13/12/2021)

+1 CC to M/s.SPL GP (SR-38577[F] dated 14/12/2021)

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