



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.[MD]No.21873 of 2021

and

W.M.P.[MD]No.18479 of 2021

Balamurugan

... Petitioner

Vs.

1. The Commissioner,
Hindu Religious and Charitable Endowments Department,
119, Uthamar Gandhi Road,
Nungambakkam,
Chennai.

2. The Joint Commissioner,
Administration,
Hindu Religious and Charitable Endowments Department,
Trichy.

3. The Fit Person Appointee,
Arulmighu Pichayee Amman Thirukoil,
Priamanar Kovil Street,
Manachanallur,
Cum the Executive Officer,
Pitchandavar Kovil,
Uthamar Kovil, Trichy.

4. S.Mahendran

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records relating to the impugned proceedings of the second respondent in Se.Mu.Na.Ka.No.4601/2021/A1 dated 29.11.2021 and quash the same as illegal.

For Petitioner

: Mr.VR.Shanmuganathan

For Respondents 1 to 3

: Mr.C.Satheesh
Government Advocate



O R D E R

Captioned main writ petition pertains to Arulmighu Pichayee Amman Thirukoil situate in Manachanallur Town, Manachanallur Taluk, Tiruchirapalli District [hereinafter 'said temple' for the sake of convenience and clarity].

2.The second respondent [Joint Commissioner, Trichy] has made an order dated 29.11.2021 bearing Reference No. செ.மு.ந.க.எண். 4601/2021/அ1 [hereinafter 'impugned order' for the sake of convenience and clarity]. In and by the impugned order the second respondent has appointed a Fit Person *qua* said temple. To be noted, the Fit Person so appointed vide the impugned order is Executive Officer of another temple viz., Arulmighu Uthamar Thirukovil, Manachanallur, Tiruchirapalli and the Fit Person has been arrayed as third respondent in the captioned writ petition.

3.To be noted the fourth respondent is a private respondent.

4.Learned Counsel for writ petitioner, notwithstanding very many averments in writ affidavit and several grounds raised in writ affidavit, in his campaign against the impugned order makes three submissions and they are as follows:

a) Said temple is exempt under Sections 18 and 84 of erstwhile Act ie., Predecessor Act *qua* 'the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959)' {hereinafter 'TN HR & CE Act' for the sake of brevity}. This predecessor Act is Madras Act II of 1929.

b) A suit in O.S.No.407/1980 came to be filed on the file of Subordinate Judge's Court, Tiruchirapalli and vide judgment and decree dated 16.03.1983 it was *inter alia* declared that said temple is a denomination temple. This order has attained finality / legal quietus is learned Counsel's say.

c) Prior to the impugned order, the second respondent has issued a show cause notice dated 29.09.2021 bearing reference No. செ.மு.ந.க.எண். 4601/2021/அ3 [hereinafter 'said SCN' for the sake of convenience and clarity] the writ petitioner responded to the said SCN by a statement dated 09.10.2021 but without considering the reply to the show cause notice the impugned order has been made.

5.Mr.C.Satheesh, learned Government Advocate accepts notice on behalf of respondents 1 to 3.



6.From the case file and the arguments it is clear that the captioned main writ petition can be disposed of by making an order which is not adverse to the fourth respondent (private respondent) and by also putting in a safety valve *qua* fourth respondent. Owing to these reasons and owing to the narrow compass on which the captioned main writ petition turns, with the consent of aforementioned Counsel on both sides aforementioned main writ petition was taken up.

7.Learned State Counsel on instructions submitted that the third respondent (Fit Person) is yet to take charge [as of today]. Learned State Counsel submits that the second respondent has adequate and ample powers to appoint a Fit Person *qua* said temple and therefore, the impugned order cannot be found fault with.

8.By way of reply learned Counsel for writ petitioner reiterated his submissions made in the opening arguments and emphasized on the point that said SCN having been issued, though the writ petitioner responded to the same, manager in the office of the second respondent merely took a statement dated 09.10.2021 but even that has not been considered while making the impugned order.

9.In the light of the narrative thus far, I find it appropriate to dispose of the captioned writ petition on the third point, leaving open points 1 and 2. The reason is the second respondent has chosen to issue said SCN to the writ petitioner (who is Hereditary Trustee *qua* said temple). Having issued said SCN the second respondent ought to have considered the response of the writ petitioner and then made the impugned order. This by itself is a reason that is good enough to dislodge the impugned order. Therefore the following order is made:

a) Impugned order being order dated 29.11.2021 bearing Reference No.செ.மு.ந.க.எண் .4601/2021/ஆ1 made by second respondent is set aside;

b) It is made clear that impugned order is set aside solely on the ground that show cause notice issued prior to the impugned order and the response of the writ petitioner (hereditary trustee) to the same has not been considered in the impugned order;

c) As a continuation of the previous limb, it is made clear all questions including questions raised in the captioned main writ petition are left open to be decided by the second respondent;



d) The second respondent shall now proceed from the stage of said SCN ie., Show Cause Notice dated 29.09.2021 bearing Reference No. செ.மு.ந.க.எண் . 4601/2021/அ3. In proceeding from said SCN stage, the second respondent shall now call for objections from the fourth respondent [private respondent] also, consider objections from both sides, deal with the same on its own merits, in accordance with law and pass orders;

e) The aforementioned *de novo* legal drill from the said SCN stage shall be commenced forthwith and completed as expeditiously as the business of the second respondent would permit and in any event within two [2] months from today ie., on or before 09.02.2022;

f) Though obvious it is made clear that it is open to the second respondent to call for documents from the writ petitioner as well as fourth respondent but all that is at the discretion of the fourth respondent;

g) For the purpose of abundant clarity and specificity, I make it clear that the second respondent shall do the aforementioned *de novo* legal drill dehors the observations made in this order which are for the limited purpose of disposal of the captioned main writ petition.

10. Captioned main Writ Petition is disposed of with the aforementioned directives. Consequently, captioned Writ Miscellaneous Petition is disposed of as closed. There shall be no order as to costs.

Sd/-

Assistant Registrar (A.D.I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MR

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.

<https://hcservices.ecourts.gov.in/hcservices/>



To

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+1 CC to M/s.VR.SHANMUGANATHAN, Advocate (SR-38089[F] dated 10/12/2021)

+1 CC to M/s.SPL GP (SR-38124[F] dated 10/12/2021)

ORDER MADE IN
W.P.[MD]No.21873 of 2021

09.12.2021

USK (21.12.2021) 5P 6C