



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.Nos.267 of 2022 and 3137 of 2021
and

C.M.P.Nos.1914 of 2022 and 21712 of 2021

P.Govindan
R.Madhavan

...Appellant in W.A.267/2022
...Appellant in W.A.3137/2021

vs

1.B.Ramakrishna Reddy

2.The Commissioner

The Tamil Nadu Hindu Religious
and Endowments Board
119, Uthamar Gandhi Road
Nungambakkam, Chennai-600 034.

3.The Joint Commissioner

The Tamil Nadu Hindu Religious
and Endowments Board
Kottai Mariyamman Koil Campus
Salem - 636 001.

4.The Assistant Commissioner

The Tamil Nadu Hindu Religious
and Endowments Board
Kottai Mariyamman Koil Campus
Salem - 636 001.

5.The Executive Officer

The Tamil Nadu Hindu Religious
and Endowments Board,
Arulmighu Tharamangalam Sri
Kailasanathar Thirukoil, Tharamangalam
Omalur Taluk,
Salem District-636 502.

...Respondents 1 to 5 in both W.As.

6.R.Madhavan

...Respondent No.6 in W.A.No.267/2022

7.Govindan

...Respondent No.6 in W.A.No.3137/2021



Prayer in both W.As.: Appeals under Clause 15 of the Letters Patent to set aside the order passed in W.P.No.26914 of 2021 dated 17.12.2021.

Prayer in WP 26914 of 2021:

Writ Petition filed under Article 226 of the constitution of India for issuance of a Writ mandamus, to Direct the respondents 1 to 4 to consider and dispose the Petitioners representation dated 10.06.2021 within the stipulated time as prescribed by this Honble court and consequently directing the Respondents 1 to 4 to recover the Sri Vettaraya Perumal Swamys idol and Jewels from the 5th and 6th Respondents asper the order passed by the 2nd respondent vide Na.Ka.No.1222/2020/AA4 dated 29.01.2021.

For Appellant in W.A.No.267 of 2022	:	Mr. Jothimanian for Mr.K.Balu
For Appellant in W.A.No.3137 of 2021	:	Mr.M.Devaraj
For Respondent No.1 in both Appeals	:	Mr.R.Balagurusamy
For Respondents 2 to 4 in both appeals	:	Mr.NRR.Arun Natarajan Special Govt.Pleader HR & CE
For R5 in both appeals	:	No appearance
For R6 in W.A.267 of 2022	:	Mr.M.Devaraj
For R6 in W.A.3137 of 2021	:	Mr.Jothimanian for Mr.K.Balu

ORDER

(Order of the Court was made by
the Hon'ble Chief Justice)

These writ appeals have been filed challenging the order dated 17.12.2021, where the writ petition was disposed of by the learned Single Bench with certain directions. A challenge to the order has been made by the appellants on the ground that they were not heard by the learned Single Judge despite their right being affected.

2. Elaborating the facts of the case, the learned counsel for the appellants submits that, a dispute regarding the jewels and property of the temple was the subject matter of the suit preferred by the appellant and also the father of the petitioner/non-appellant. The petitioner's father died during the currency of the suit, which resulted in a compromise decree



later on. This fact was not narrated by the petitioner while preferring the writ petition seeking for a direction for recovery of the jewels and the property of the temple apart from the Perumal Swami Idol from the 5th and 6th respondents, who are none else than the appellants herein. It is further stated that the petitioner / non-appellant, even suppressed the fact regarding filing of a civil suit for the subject matter issue, thus the petitioner is guilty of suppression of facts. The writ petition should have been dismissed on the aforesaid ground itself.

3. Learned Special Government Pleader appearing for the HR & CE Department has contested the appeal. He submits that the writ petition filed by the petitioner / non-appellant should have been rendered infructuous in the light of the facts given in Para No.4 of the order impugned herein. The learned Single Judge in the said paragraph has given reference to the order dated 29.01.2021 issued by the HR&CE Department to take the properties belonging to the temple must be in the joint custody, however, joint custody pursuant to the order, was not taken. In the light of the aforesaid, the custody of jewels, property and idol should have been taken by the 1st to 4th respondents and a direction given by the learned Single Judge is nothing but for which order was already passed by the Department on 29.01.2021. The custody of the jewels, property has already been taken and of the idol, it is yet to be taken.

4. We have considered the rival submissions made by the parties and perused the materials placed on record.

5. The writ appeal has been filed largely alleging denial of opportunity of hearing by the learned Single Judge while passing the order, despite the appellants being party respondents to the writ petition. The grounds raised by the appellants is tenable to interfere with the order, but finding that it may result only in remand of the case thus, it was thought appropriate by this Court to hear the appellants and accordingly, opportunity was given to the them to address the issue on merit.

6. It was stated that the jewels and the property in question was the subject matter of the suit filed by the appellants and the petitioner's father. The said suit is said to have resulted in compromise decree after the death of the petitioner's father and the petitioner was not brought on record as legal heir. In any case, if any decree exists, it can have its own effect, but so far as the effect of the non-hearing of the appellants while disposing of the writ petition is concerned, the issue is to be taken up. The writ petition was filed for seeking a direction to the respondents 1 to 4 to



consider the representation and take custody of jewels, property and idol from the 5th and 6th respondents. In the reply to the writ petition, a copy of the order dated 29.01.2021 was produced by the HR & CE Department that a direction has already been given for joint custody of the property to the respondents 1 to 4. Accordingly, the custody of properties was to be taken by the respondents 1 to 4 from the respondents 5 and 6. In the light of the aforesaid, the writ petition should have been rendered infructuous as otherwise, the writ appellants herein should have challenged the order dated 29.01.2021. It is stated that the said order has been challenged and a writ petition in W.P.No.5708 of 2021 is pending consideration. If that is so, then the order in question would remain subject to the outcome of the writ petition where the order dated 29.01.2021 has been challenged because, pursuant to the aforesaid order aforesaid, the property was to come to the joint custody and in fact, the learned Single Judge should have avoided from passing any separate order. Rather, when the order dated 29.01.2021 was passed by the Department itself for joint custody of the properties, no further direction was required to be given.

7. In any case, the right of the writ appellants are not affected by the order for the reason that, pursuant to the order dated 29.01.2021 itself, the property was to be taken in custody by the 1st to 4th respondents. Thus, even if the writ petition would not have been filed, the custody of the jewels, properties and idol would have been taken by the HR & CE Department. Thus, looking into the nature of the allegations in the order passed therein, it is not affecting the appellants, however, their right is to be protected in reference to the writ petition challenging the order dated 29.01.2021, which is pending for consideration. If any other suit is pending consideration regarding the same property, it will have its own effect, where the order dated 29.01.2021 and the order impugned are to be taken as interim measure till the dispute is settled between the parties.

8. With the above said clarification and observation, protecting the right of the parties in litigation, these writ appeals are disposed of. There shall be no order as to costs. Consequently, C.M.P.Nos.1914 of 2022 and 21712 of 2021 are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

KST



To:

1.The Commissioner

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Kailasanathar Thirukoil, Tharamangalam
Omair Taluk, Salem District-636 502.

+1cc to Mr.K.Balu, Advocate, S.R.No.23584

+1cc to Mr.M.Devaraj, Advocate, S.R.No.23304

+1cc to Mr.R.Balaguruswamy, Advocate, S.R.No.23477

+1cc to Mr.R.Balaguruswamy, Advocate, S.R.No.23478 [10/06/2022]

+2cc to the Special Government Pleader(HR&CE),
S.R.No.24087 & 24088

W.A.Nos.267 of 2022
and
3137 of 2021

PA(CO)
RN(13/04/2022)