



WEB COPY



W.P. No. 27971 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 27971 of 2022

and

W.M.P. Nos. 27269 and 27270 of 2022

A/m Kumbeswarar Koil,
Kurinjipadi,
represented by its Managing Trustee,
S.Somasundaram,
S/p/ Sovagurunatha Mudaliar,
Kunrinjipadi Taluk,
Cuddalore District.

... Petitioner

-VS-

1. The Commissioner,
Hindu Religious and Charitable Endowments Department,
No. 119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai - 600 034.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Villupuram.
3. The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
No. 8, River Side Street,
Pudupalayam,
Cuddalore - 607 001.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the records and quash



W.P. No. 27971 of 2022

entry No. 218 pertaining to the A/m Kumbeswarar Temple, Kurinjipadi, Kurinjipadi Taluk, Cuddalore District from the list of notified temples maintained by the First Respondent.

For Petitioner : Mr. R.Gururaj

For Respondents : Mr. N.R.R.Arun Natarajan,
Special Government Pleader

ORDER

Heard Mr. R.Gururaj, Learned Counsel for the Petitioner and Mr. N.R.R.Arun Natarajan, Learned Special Government Pleader who takes notice for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, which claims to be a 'Private Temple', has challenged its mention at S. No. 218 in the list of Public Temples published under Section 46(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as 'the Act' for short).

3. It has been brought to notice by Learned Special Government Pleader appearing for the Respondents that the Petitioner has been treated as a 'Public



W.P. No. 27971 of 2022

Temple' in furtherance to the conclusions arrived by this Court in the judgment and decree dated 16.04.2003 in S.A. No. 1742 of 1992 filed by the Petitioner,

where it has been held as follows:-

"21. For the reasons stated above, the decree passed by the Courts below are modified, as follows:-

- (1) The declaration that the suit temple is a denominational temple is set aside.*
- (2) The decree that the suit temple belong to people of Senguntha Mudaliar of three streets is set aside.*
- (3) The decree passed in O.S. 28 of 1914 that the temple belong to people of Senguntha Mudaliar community of Pazhantheru (Old Street) is confirmed.*
- (4) The H.R. & C.E. can appoint only the people of Senguntha Mudaliar community of the three streets as trustees of the temple is confirmed."*

It is further stated that the Petitioner had filed the Writ Petition in W.P. No. 12822 of 2020 impeaching the demand for payments due under Section 92 of the Act, which was dismissed by order dated 23.03.2022 passed by the Court holding as follows:-



WEB COPY

"7. From the materials on record, it is seen that the petitioner is challenging the demand notices dated 06.11.2019 and 14.11.2019, issued by the Respondent under Section 92 of the Act. The Court can interfere with a notice only when the said notice is issued by the person having no jurisdiction or notice is malafide. When a person is alleging malafide, the official who is acting in a malafide manner must be impleaded in his individual capacity. In the present case, it is not the case of the Petitioner that the Respondent is acting in a malafide manner. But, it is the case of the Petitioner that the Petitioner Temple is a Private Temple and it is not a Public Temple. Therefore, provisions of the Act is not applicable. On the other hand, it is the case of the Respondent that in the scheme decree framed in O.S. No. 28 of 1914, it has been held that the Petitioner Temple is a Public temple. The Respondent has contended that publication has been effected under Section 46(1) of the Act, declaring Arulmighu Kumbeswarar Koil, Kurinjipadi, Kurinjipadi Taluk, Cuddalore District as a Public Temple. Further, it is the case of the Respondent that general public are worshipping in the said temple and it is not restricted to the people of the Sengundha



W.P. No. 27971 of 2022

WEB COPY

Mudaliar Community alone. According to the Respondent, audits are conducted regularly by the HR & CE Department and Petitioner is paying contribution from Fasli 1389 to 1427 (upto 2018 – 2019) and also paying audit fees. These averments are not denied by the Petitioner. It is the further case of the Petitioner that Section 92 of the present Act is corresponding to Section 76 of Old Act and Section 76 of the Old Act has been struck down by the Hon'ble Apex Court. On the other hand, the Respondent has furnished the details to show that validity of Section 92 of the present Act has been confirmed by this Court as well as by the Hon'ble Apex Court. In view of the confirmation of the validity of Section 92 of the Act, the contention of the Petitioner that Section 92 of the Act is not valid and it is not applicable to the Arulmighu Kumbeswarar Koil, Kurinjipadi, Kurinjipadi Taluk, Cuddalore District is without merits. For the above reasons, the Writ Petition is liable to be dismissed as devoid of merits."

In the appeal preferred by the Petitioner against the said order, the Division Bench of the Court by order dated 23.08.2022 in W.A. No. 1858 of 2022 has held as follows:-



W.P. No. 27971 of 2022

WEB COPY

"4. It is also the fact that the Respondent before the Learned Single Judge has referred a notification published under Section 46(1) of the Act of 1959 declaring the temple in question to be a Public Temple. It was found that general public are worshipping in the said Temple and it is not restricted to the people of Sengundha Mudaliar community alone. It was also found that audits are conducted by the HR & CE Department and the Appellant has paid contribution from fasli 1389 to 1427 (up to 2018-2019), apart from payment of audit fees. Those averments were not denied, but the fact remains that publication declaring Arulmighu Kumbeswarar Koil, Kurinjipadi, Kurinjipadi Taluk, Cuddalore District to be a Public Temple was not questioned.

5. In the light of the aforesaid, we do not find any reason to cause interference in the order unless the Appellant successfully challenged the publication declaring the Temple to be a Public Temple and remained successful therein. The liberty aforesaid would not affect the outcome of this litigation. However, till the challenge remains successful, the Appellant has to satisfy the payment, as the Appellant earlier paid the required payment till the year 2018-2019."



W.P. No. 27971 of 2022

It is evident from the said legal proceedings that the Petitioner has been held to be a Public Temple and the plea now raised that it is a private Temple cannot be countenanced in law.

4. Though Learned Counsel for the Petitioner contends that the Division Bench of the Court had granted liberty to the Petitioner to challenge the publication declaring the Petitioner to be a Public Temple in the order dated 23.08.2022 in W.A. No. 1858 of 2022, it is apparent from the materials borne out of the record that the Petitioner has been treated a 'Public Temple' is in furtherance to the conclusions arrived by this Court in the earlier legal proceedings between the parties culminating in the judgment and decree dated 16.04.2003 in S.A. No. 1742 of 1992 passed by this Court, which has attained finality, as referred supra.

5. At this juncture, reference must be made to the effects of finality of litigation as deduced from the authoritative pronouncements of the Hon'ble Supreme Court of India in *M.Nagabhushana –vs- State of Karnataka* [(2011) 3 SCC 408] and *Union of India –vs- Major S.P.Sharma* [(2014) 6 SCC 351], which can be summarized as under:-



W.P. No. 27971 of 2022

(a) The doctrine of finality of litigation is an outcome of two age old salutary

WEB COPY

principles of public policy, viz., *interest reipublicae ut sit finis litium*

which signifies that it is in the interest of the State that there should be an

end to litigation, and the other principle, viz., *nemo debet bis vexari, si*

constat curiae quod sit pro una et eadem causa, conveys that no one

ought to be vexed twice in a litigation if it appears to the Court that it is

for one and the same cause. One important consideration of public policy

is that the decisions pronounced by courts of competent jurisdiction

should be final, unless they are modified or reversed by appellate

authorities or by adopting a procedure prescribed by law. The other

principle is that no one should be made to face the same kind of litigation

twice over, because such a process would be contrary to considerations

of fair play and justice. In the absence of such principle, great oppression

might result under the colour and pretence of law in as much as there will

be no end of litigation and a resourceful and malicious litigant may

succeed in infinitely vexing his opponent by repetitive suits and actions.

This may compel the weaker party to relinquish his right. The universally

acclaimed rule of *res judicata* has been evolved to prevent such anarchy.

(b) The rule of *res judicata* is common to all civilized system of

jurisprudence to the extent that a judgment after a proper trial by a court



W.P. No. 27971 of 2022

of competent jurisdiction should be regarded as final and conclusive determination of the questions litigated and should forever set the controversy at rest. That is why it is perceived that the plea of *res judicata* is not a technical doctrine but a fundamental principle which sustains the Rule of Law in ensuring finality in litigation. This principle seeks to promote honesty and a fair administration of justice and to prevent abuse in the matter of accessing court for agitating on issues which have become final between the parties. Any proceeding which has been initiated in breach of the rule of *res judicata* is *prima facie* a proceeding which has been initiated in abuse of the process of Court.

- (c) If a litigant has chosen to put his case in one way, he cannot thereafter bring the same transaction before the court, put his case in another way and say that he is relying on a new cause of action. An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject-matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. It also does not lose its authority merely because it was badly argued, inadequately considered and fallaciously reasoned.



W.P. No. 27971 of 2022

WEB COPY

Such consequence follows both to an order from which an appeal lies but has not been preferred, as well as to an order from which no appeal is provided. This precept is referred in legal parlance as 'constructive *res judicata*'. In a country governed by the Rule of Law, finality of judgment is absolutely imperative to which great sanctity is attached and it is not permissible for the parties to re-open the concluded judgments of the court as it would not only tantamount to merely an abuse of the process of the court but would have far reaching adverse affect on the administration of justice.

- (d) It is an abuse of the process of the court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him. The re-agitation may or may not be barred as *res judicata*, but if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of court. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted.

In view of this legal position, it is not possible to entertain this Writ Petition, which is prosecuted in abuse of the legal process.



W.P. No. 27971 of 2022

6. In the result, the Writ Petition, which is devoid of merits, is dismissed.

Consequently, the connected Miscellaneous Petitions are closed. No costs.

20.10.2022

vjt

Index: Yes/No

Note: Issue order copy by 14.11.2022.

To

1. The Commissioner,
Hindu Religious and Charitable Endowments Department,
No. 119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai - 600 034.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Villupuram.
3. The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
No. 8, River Side Street,
Pudupalayam,
Cuddalore - 607 001.



WEB COPY



W.P. No. 27971 of 2022

P.D. AUDIKESAVALU, J.

vjt

W.P. No. 27971 of 2022

20.10.2022