



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.02.2022

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WEB COPY

THE HONOURABLE MR. JUSTICE C.SARAVANAN

Writ Petition (MD)Nos.870 of 2021 and 1719 of 2022
and
W.M.P.(MD)Nos.727 and 730 of 2021 in W.P.(MD)No.870 of 2021

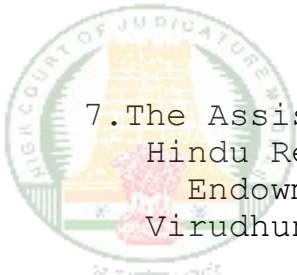
W.P. (MD)No.870 of 2021:-

Elambarithi, S/o.Sundaramahalingam

.. Petitioner

Versus

- 1.The Commissioner,
Hindu Religious and Charitable
Endowment Department (HRCED),
No.119, Uthamar Gandhi Road,
Nungambakkam,
Chennai.
- 2.The Revenue Divisional Officer,
Aruppukkottai,
Virudhunagar District.
- 3.The Deputy Superintendent of Police,
Aruppukkottai,
Virudhunagar District.
- 4.The Tahsildar,
Aruppukkottai,
Virudhunagar District.
- 5.The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department (HRCED),
Sivagangai.
- 6.The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department (HRCED),
Madurai.



7.The Assistant Commissioner,
Hindu Religious and Charitable
Endowment Department (HRCED),
Virudhunagar.

8.The Inspector of Police,
Aruppukkottai,
Virudhunagar District.

9.The Inspector,
Hindu Religious and Charitable
Endowment Department (HRCED),
Aruppukkottai.

10.Sri Irulappan,
Advocate Commissioner,
No.12, Lawyers' Chamber,
High Court Buildings,
Madurai - 23.

11.N.A.Subramaniam

12.Arumugam, S/o.Dharmar

13.P.Shanmuga Ganapathy

14.R.Sundarrajan

15.Dhanarajan, S/o.Gurusamy

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to election of the respondents 12 to 15 as Trustee of Aruppukkottai - Puliampatti - Thirunagaram Saliyar Maha Jana Arulmigu Mahaliyamman Vagayara Temples Election, which was held on 27.12.2020, quash the same as illegal and consequently, declare the runner up candidates as elected.

For Petitioner	:	Mr.R.Murugappan
For R1 to R9	:	Mr.P.Subbaraj Special Government Pleader
For R12	:	Mr.VR.Shanmuganathan
For R13, R14 and R15	:	No Appearance



W.P. (MD)No.1719 of 2022:-

P.Shanmuganapathy

.. Petitioner

Versus

- 1.The Commissioner,
Hindu Religious and Charitable
Endowment Department (HRCED),
No.119, Uthamar Gandhi Road,
Thousand Lights West,
Nungambakkam,
Chennai.
- 2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Madurai.
- 3.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Virudhunagar.
- 4.The Inspector,
Hindu Religious and Charitable Endowments Department,
Aruppukkottai, Virudhunagar District.

5.N.A.Subramaniam

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for issuance of a Writ of Mandamus to direct the respondents 1 and 2 herein to pass appropriate orders on the application dated 24.06.2021, submitted by the writ petitioner to record the name of the trustees elected for Arulmighu Mahaliamman Vagaira Temples, Puliampatti, Aruppukkottai, pursuant to election held by the Advocate Commissioner appointed by this Court, in its order dated 15.10.2020, made in W.P.(MD)No.14398 of 2020, within the time limit to be fixed by this Court.

For Petitioner	:	Mr.VR.Shanmuganathan
For R1 to R4	:	Mr.P.Subbaraj Special Government Pleader
For R5	:	Mr.A.Selvam

COMMON ORDER

After hearing the learned counsels for the respective Writ Petitioners, the learned Special Government Pleader for the official respondents in the respective Writ Petitions and the rival parties, these Writ Petitions are disposed of.



2.W.P.(MD)No.870 of 2021 has been filed by a person, who has lost in the election held pursuant to the order dated 15.10.2020 in W.P.(MD)No.14398 of 2020. The main grievance of the petitioner in W.P.(MD)No.870 of 2021 is that the private respondents viz., respondents 12 to 15 were suffering disqualification in terms of Section 26(1-A)(a) of the Hindu Religious and Charitable Endowments Act, 1959 [hereinafter referred to as 'the H.R. & C.E. Act'], inasmuch as they had involved themselves in a work relating to construction of Arch before the said Temple namely, Aruppukkottai - Puliyampatti - Thirunagaram Saliyar Mahajana Arulmigu Mahaliamman Vagayara Temple.

3.It is the submission of the learned counsel for the petitioner in W.P.(MD)No.870 of 2021 that all these persons were concerned with the construction of Arch before the Temple out of the donations received from Saliyar Mahajana Paribalana Sabai and that in this connection, a complaint was given by the petitioner on 28.09.2020, much prior to the order that came to be passed by this Court in W.P.(MD)No.14398 of 2020.

4.It is submitted that the Inspector, H.R. & C.E. Department, Aruppukkottai, the 9th respondent in W.P.(MD)No.870 of 2021 has also sent a communication to the 8th respondent viz., the Inspector of Police, Aruppukkottai, to take appropriate action in this regard. It is submitted that since the private respondents in W.P.(MD)No.870 of 2021 were constructing a Arch before the Temple without permission of the official respondents, they have incurred disqualification under the above provision. It is, therefore, submitted that the election conducted by the Election Commissioner pursuant to the order of this Court, dated 15.10.2020, in W.P.(MD)No.14398 of 2020, is liable to be countermanded, accordingly, the Writ Petition deserves to be allowed.

5.W.P.(MD)No.1719 of 2022 has been filed by the 13th respondent in W.P.(MD)No.870 of 2021 for a Mandamus, to direct the respondents 1 and 2 to pass appropriate orders on the application dated 24.06.2021, submitted by the petitioner, to record the name of the Trustees elected for Arulmighu Mahaliamman Vagaira Temples, Puliyampatti, Aruppukkottai, pursuant to election held by the Advocate Commissioner appointed by this Court, in its order dated 15.10.2020, made in W.P.(MD)No.14398 of 2020.

6.Appearing on behalf of the petitioner in W.P.(MD)No.1719 of 2022/13th respondent in W.P.(MD)No.870 of 2021, the learned counsel for the petitioner submits that the petitioner namely, D.Shunmugaganapathy has not attracted disqualification. It is submitted that only if there were any commercial involved between Temple and the Contestants, the question of disqualification would arise. It is further submitted that the Arch was constructed from the donations received by the Saliyar Mahajana Paribalana Sabai and



that even in the inscription, which has been put below the Arch, no claim has been made by any of the private respondents in W.P.(MD) No.870 of 2021 and the petitioner in W.P.(MD)No.1719 of 2022.

7. Appearing on behalf of 11th respondent in W.P.(MD)No.870 of 2021/5th respondent in W.P.(MD)No.1719 of 2022, the learned counsel submits that the above said Temple comes under Section 46(ii) of the H.R. & C.E. Act and in terms of Section 47(ii) of the H.R. & C.E. Act, it is the Commissioner, who has to constitute the Board of Trustees. It is, therefore, submitted that as per the above said provision, the Board of Trustees can be selected only under the above said provision and not through the election.

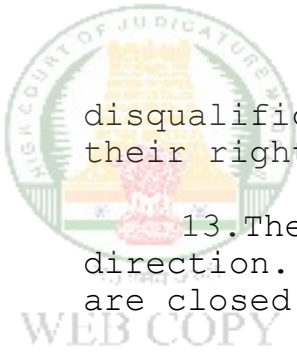
8. By way of rejoinder to the learned counsel for the petitioner in W.P.(MD)No.1719 of 2022/13th respondent in W.P.(MD)No.870 of 2021 submits that the above said provision has no application where there is a scheme decree. It is submitted that the Board of Trustees and others had to be appointed only in terms of the scheme decree.

9. In this connection, the learned counsel referred to Section 118 of the H.R. & C.E. Act. It is, therefore, submitted that the scheme decree was passed on 31.01.1993 in O.S.No.49 of 1981 would govern the office of the Trustees to administer the Temple.

10. The learned Special Government Pleader for the official respondents in these Writ Petitions would submit that the competent authority is seized of the issue as to whether the election was conducted in a proper manner and whether the private respondents namely, respondents 12 to 15 in W.P.(MD)No.870 of 2021 were eligible to contest in the election. It is submitted that it is the Joint Commissioner who is competent to decide in terms of Section 26(3) of the H.R. & C.E. Act.

11. I have considered the arguments advanced by the learned counsel appearing for the parties.

12. Though elaborate arguments were advanced by the learned counsel for the parties and rival submissions were made, considering the fact that the matter is now pending before the Joint Commissioner as to whether the election was conducted in a proper manner and whether the private respondents were eligible to contest in the election, I am refraining from giving any final decision on the interpretation to be placed on Section 26(1-A)(a) of the H.R. & C.E. Act. The Joint Commissioner namely, the 5th respondent in W.P.(MD)No.870 of 2021/ the 2nd respondent in W.P.(MD)No.1719 of 2022 is directed to pass appropriate orders regarding the election held pursuant to the order of this Court, dated 15.10.2020, in W.P.(MD) No.14398 of 2020, within a period of four weeks from the date of receipt of a copy of this order. Needless to state that all the concerned parties shall be heard before an appropriate order is passed. In case, it is held that the contestants, who have secured



disqualification, appropriate order shall be passed recognising their right to manage the affairs of the said Temple.

13. These Writ Petitions stand disposed of with the above direction. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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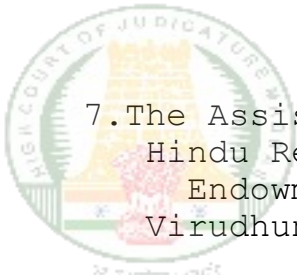
/ /2022

Sub Assistant Registrar(CS)

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To

1. The Commissioner,
Hindu Religious and Charitable
Endowment Department (HRCED),
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Nungambakkam,
Chennai.
2. The Revenue Divisional Officer,
Aruppukkottai,
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Endowment Department (HRCED),
Aruppukkottai.

10.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Madurai.

+1 CC to M/s.R.MURUGAPPAN, Advocate (SR-8245[F] dated 24/02/2022)

+1 CC to M/s.V.R.SHANMUGANATHAN, Advocate (SR-8468[F] dated
24/02/2022)

+1 CC to M/s.A.SELVAM, Advocate (SR-8162[F] dated 23/02/2022)

+1 CC to M/S.THE SPECIAL GOVERNMENT PLEADER, SR-8381, dated
24/02/2022

Common order in
WP (MD) Nos.870 of 2021 and 1719 of 2022
23.02.2022

RK(07/03/2022) 7P 15C