BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.[MD]No.2149 of 2022
and
W.M.P(MD) No.1877 of 2022

Karuppiah : Petitioner

Vs.

1. The Principal Secretary,
Hindu Religious and Charitable
Endowment Department,
Secretariat, St.George Fort,
Chennai.

2. The Commissioner,
Hindu Religious and Charitable
Endowment Department,
Chennai - 34.

3. The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
M.R.S.Nagar, Mullippadi Village,
Keelapadi Post, Dindigul.

4. The Assistant Commissioner,
Hindu Religious and Charitable Endowment Department,
6-2-1. T.B.N. Road, Palanichetipatti,
Theni - 34.

5. The Takkar cum Executive Officer,
Arulmigu Kalyanasundareswarar Thirukkoil,
Avaniyapuram, Madurai - 12.

6. The Inspector of Police,
Chekkanoorani Police Station,
Chekkanoorani, Madurai District. : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for records relating to the impugned order passed by the fourth respondent in Na.Ka.No.935/2021/Aa2 dated 29.12.2021 and quash the same and further direct the respondents 1 to 5 not to interfere into the peaceful possession, enjoyment and celebration of the 'Arulmigu Bathirakali Amman Thirukovil' situated in S.No.37 at Kuruvakudi village, Usilampatti Taluk, Madurai District, which belongs to Five Muthanmaikarars and Thathan.

For Petitioner : Mr.S.M.Anantha Murugan

For Respondents : Mr.T.Amjadkhan, Govt. Advocate
for R1 to R6

O R D E R

In the captioned main writ petition an 'order dated 29.12.2021 bearing reference Na.Ka.No.935/2021/Aa2' (hereinafter 'impugned order' for the sake of convenience and clarity) made by the fourth respondent has been assailed.

2. Mr.S.M.Anantha Murugan, learned counsel on record for writ petitioner and Mr.T.Amjadkhan, learned Government Advocate, who accepted notice on behalf of all the six respondents are before this virtual Court.

3. Short facts shorn of elaboration or in other words, short facts that are imperative for appreciating this order are that the impugned order has been made by the fourth respondent; that vide the impugned order, the fourth respondent has made it clear that the hundiyal in what is being described as அருள்மிகு அம்மாச்சியார் என்ற பத்திரகாளியம்மன் திருக்கோவில் temple situate in Kuravakudi Village, Usilampatti Taluk, Madurai District is to be opened in accordance with 'the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959)' [hereinafter referred to as 'TNHR&CE Act' for the sake of convenience and clarity] and the Rules thereunder and no one shall cause hindrance to the same; that writ petitioner submits that Arulmigu Ammachiyar Temple and Arulmigu Bathirakali Amman Temple are two different temples; that writ petitioner contends that Arulmigu Bathirakali Amman Temple is the one that the writ petitioner is concerned for now in this (captioned) writ petition and this Temple is not under 'Tamil Nadu Hindu Religious & Charitable Endowments Department' (hereinafter 'TNHR&CE Dept' for the sake of convenience and clarity); that this temple belongs to writ petitioner and four other individuals described as 'Muthanmaikarars' is learned counsel's say; that to be noted, the fourth respondent is the Assistant Commissioner of TNHR&CE Dept; that assailing the impugned order, captioned writ petition has been filed.

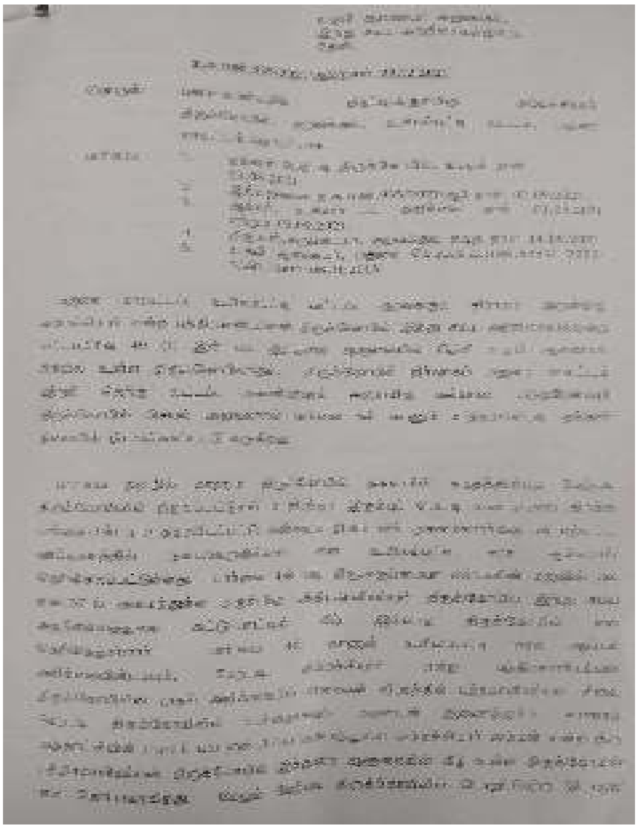
4. In his campaign against the impugned order, learned counsel for writ petitioner drew the attention of this Court to two orders made by the fourth respondent namely, 'order dated 08.11.2013 bearing reference செ.மு.ந.க.3353/2003-3/ஆ and order dated 28.04.2017 bearing reference நா.க.எண்.3353/2003/ஆ1' (hereinafter referred to as 'first order and second order' respectively for the sake of convenience and clarity). To be noted, in and by the first order a Fit Person has been appointed for Arulmigu Ammachiyar Temple situate in Kuravakudi Village, Usilampatti Taluk, Madurai District, in and by the second order some instructions have been given to the Fit Persons of four temples. Learned counsel submits that these four temples do not include Arulmigu Bathirakali Amman Temple which he is concerned for in the instant matter.

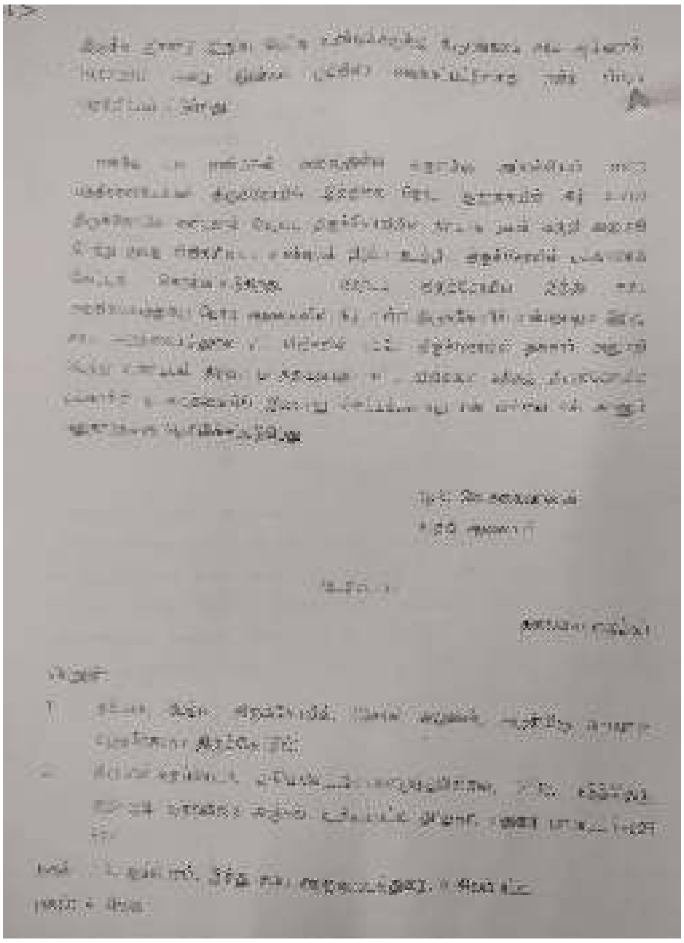
5. Learned State counsel brings to the notice of this Court that the first and second orders have been assailed by one P.Duraipandi vide W.P(MD) No.13457 of 2017 and the same was disposed of by this Court in and by an order dated 19.09.2017 with a directive that a detailed representation can be made and the fourth respondent herein (first respondent in that writ petition) i.e., jurisdictional Assistant Commissioner of TNHR&CE Dept shall dispose of the representation on merits. It may not be necessary to elaborate further on these aspects of the matter.

6. Learned State counsel, on instructions, submits that Arulmigu Bathirakali Amman Temple is under the management and control of TNHR&CE Dept and it is not a private temple belonging to writ petitioner and four other Muthanmaikarars as contended.

7. To refute the above submission, learned counsel for writ petitioner drew the attention of this Court to a certificate issued by the Village Administrative Officer of Vinnakudi & Kuravakudi, Usilampatti Taluk, wherein, the Village Administrative Officer vide his generic certificate dated 10.09.2021 has certified that Arulmigu Ammachiyar Temple and Arulmigu Bathirakali Amman Temple are situate in different places. Regarding Arulmigu Ammachiyar Temple, the Village Administrative Officer has observed that on enquiry it came to light that the 'விளக்கு தண்டு மற்றும் சூலாயுதம்' in the banks of a waterbody (கண்மாய்) in Vinnakudi Village is Arulmigu Ammachiyar Temple. Photocopies of extracts from Revenue records have been placed as part of the typed set of papers to show that two temples are different and distinct.

8. The impugned order of the fourth respondent is as follows:





9. To decide the challenge to the impugned order, it may not be necessary to embark upon the exercise of resolving the factual disputation as to whether Arulmigu Ammachiyar Temple and Arulmigu Bathirakali Amman Temple are two different temples. It may be two different temples situate in two different locations or it may be one and the same but that question is left open as it is a factual disputation.

10. Let me now examine the right of the writ petitioner who assailed the impugned order and the correctness of the impugned order on a demurrer i.e., on the basis of writ petitioner's submission that Arulmigu Bathirakali Amman Temple is distinct/separate and not part of or also known as Arulmigu Ammachiyar Temple.

11. Even if the argument of the writ petitioner is to be admitted, there is no shred of document before this Court to demonstrate that Arulmigu Bathirakali Amman Temple in Kuravakudi Village, Usilampatti Taluk, Madurai District (from hereon 'said Temple' for the sake of convenience and clarity) is a private temple and mere *ipse dixit* of the writ petitioner that he along with four others are Muthanmaikarars does not clothe the writ petitioner with any right qua said Temple. There is also no error in the impugned order as the same has been made in accordance with TNHR&CE Act and the Rules thereunder. The reasons are as follows:

(a) TNHR&CE Act is a self contained code. This Court repeatedly has held in a long line of authorities that TNHR&CE act is a self contained code. This principle has been set out in a long line of case laws which are as follows:

(i) In *R.Lakshmi Narasimha Bhattar v. The Commissioner, HR&CE* case, reported in *2011 SCC On Line Mad 2474*, while inter-alia dealing with a honour (during 'Viswaroopa Dharsanam' in Arulmigu Aranganatha Swamy Thirukovil Srirangam, Trichy) and while referring to earlier orders vide Chapter V inquiry proceedings after holding that remedy is by way of statutory revision under Section 21, a learned Single Judge held that TNHR&CE Act is a self contained code. Most relevant portions are contained in paragraphs 25 and 27 and the same read as follows:

Relevant portion in paragraph 25:

'...Ultimately, if at all the petitioner's grievance to establish an honour attached to his office if any held it can be gone into only by instituting a proceedings under Section 63(e) of the TN HR&CE Act followed by a suit under Section 70(1) and a further appeal to this court under section 70(2)

of the Act. Merely accusing the Joint Commissioner cum Executive Officer as biased or contending that the remedy by way of revision need not be availed since the Joint Commissioner cum Executive Officer has no jurisdiction to pass orders cannot be countenanced by this court.

Paragraph 27:

27. In fact the petitioner's hereditary right to receive honour is seriously under challenge by the temple management by relying upon the Tamil Nadu Act 2/1971 and also the allegation was that Rengesa Prohida service is done only by temple servants and hereditary succession over such Kaingaryams is not recognised under law. The so-called custom pleaded was also broken many times and reading of Panchangam was done by other families. All the more reasons, the petitioner has to only approach the authority under the Act and cannot bypass the Act. The Act is the self contained code. Only after exhausting all the remedies, a statutory appeal to this court is available over the action of the authorities. Under these circumstances, W.P.(MD) Nos. 9202 and 9263 of 2011 are also liable to be rejected.'

(Underlining made by this Court for ease of reference)

(ii) As there are long line of authorities as alluded to supra for the proposition that TN HR&CE Act is a self contained Code, this Court deems it appropriate to give a list of case laws alone in order to avoid this order becoming verbose, which is as follows:

(i)order dated 21.06.2016 in W.P(MD) No.10840 of 2016 vide *V.Subramanian v. The Joint Commissioner, HR&CE Department* case [Paragraph 7];

(ii)*Palanichamy v. The Commissioner, HR&CE Department* case, reported in *2016 SCC OnLine Mad 21977* [Paragraph 30];

(iii)*M/s.Temple Worshippers Society v. Government of Tamil Nadu* reported in *2017 SCC OnLine Mad 7178* [Paragraph 5(i)];

(iv)order dated 09.11.2021 in W.P.(MD)No.20109 of 2021 vide *R.S.Mani v. The Joint Commissioner* [Paragraph 11];

(v)order dated 26.04.2019 made in W.P(MD) No.10392 of 2019 reported in 2019 SCC OnLine Mad 10975 *(C.Rajamohan Vs. Commissioner and another)* [Paragraph 2];

(b) In TNHR&CE Act, Section 116 is a Rule making power, the Government has been vested with the power to make Rules which are in the nature of subordinate legislations. One such Rule made by the Government i.e., subordinate legislation is 'the Installation, Safeguarding and Accounting of Hundials Rules, 1975' (hereinafter 'said Rules' for the sake of convenience). A careful perusal of such Rules makes it clear that the fourth respondent (Assistant Commissioner of TNHR&CE Dept) is the appropriate authority qua temples with income less than INR 10,000/- (Rupees Ten Thousand only). In the case on hand, there is no disputation about the income of said temple. This appropriate authority has to necessarily safeguard the hundials and other receptacles either permanently embedded in a religious institution or temporarily used during festivals and other occasions. To be noted, 'religious institution' is defined under Section 6(18) of TNHR&CE Act and this has to be read in conjunction with Section 6(20) of TNHR&CE Act which defines a 'temple'. Therefore, hundials installed in said Temple will come under the sweep of TNHR&CE Act and said Rules. An elaborate procedure for maintenance of registers, sealing of hundials and also the arrangement of opening of hundials have been adumbrated in said Rules. Reverting to TNHR&CE Act being a self contained code, one has to take a look at Subsection (3) of Section 1 of TNHR&CE Act which reads as follows:

> '*(3) It applies to all Hindu public religious institutions and endowments [including] the incorporated Dewaswoms and Unincorporated Dewaswoms.*
> *Explanation.- In this sub-section, Hindu public religious institutions and endowments do not include Jain religious institutions and endowments.*' ;

(c) The aforementioned Subsection (3) of Section 1 of TNHR&CE Act read with in conjunction with the definition of 'religious institution' and 'temple' under Section 6(18) and Section 6(20) of TNHR&CE Act respectively make it clear that on and from the appointed date, TNHR&CE Act applies to all Hindu public religious institutions and endowments including incorporated Devaswoms and unincorporated Devaswoms. The appointed dates are 19.11.1959 and 02.12.1959 when TNHR&CE Act received the assent of the President and was published in the official gazette respectively. The only exit from the sweep of TNHR&CE Act is by way of an exemption under Section 4 of TNHR&CE Act and the power to exempt is vested with the Government. There is no exemption before this Court in the case on hand. The other exemption is a civil Court decree that a temple is a private temple, there is none in the case on hand.

13. The aforementioned dispositive reasoning make it clear that the impugned order does not call for interference in writ jurisdiction.

14. The sequitur is, captioned writ petition fails and the same is dismissed. Consequently captioned W.M.P is also dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar (AD-III)

// True Copy //

/ /2022

Sub Assistant Registrar

To

1. The Principal Secretary,
   Hindu Religious and Charitable
   Endowment Department,
   Secretariat, St.George Fort,Chennai.
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   Hindu Religious and Charitable
   Endowment Department, Chennai – 34.
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   Chekkanoorani Police Station,
   Chekkanoorani, Madurai District.

+1 CC to M/s.S.M.ANANTHA MURUGAN, Advocate (SR-4082[F] dated 03/02/2022)
+1 CC to M/s.S.M.ANANTHA MURUGAN, Advocate (SR-4295[F] dated 04/02/2022)
+1 CC to M/s.SPL.GP (SR-4188[F] dated 04/02/2022)

W.P.[MD]No.2149 of 2022
03.02.2022

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