



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE PARESH UPADHYAY

AND

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

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W.A.(MD) Nos.146 and 171 of 2022
and C.M.P. (MD) Nos.1429 and 1702 of 2022

W.A.(MD) No.146 of 2022

1. S.P.Meyappan
2. A.Shanmugam ... Appellants/3rd and 4th Respondents

Vs.

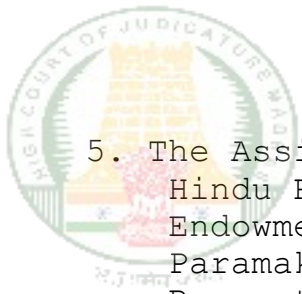
1. K.Bose ... 1st respondent/Writ Petitioner
2. The Tahsildar,
Karaikudi,
Sivagangai District. ... 2nd Respondents /
1st Respondents

W.A.(MD) No.171 of 2022

1. S.P.Meyappan
2. A.Shanmugam ... Appellants/3rd Parties

Vs.

1. K.Yoganathan ... 1st respondent/Writ Petitioner
2. The District Collector,
Sivagangai District,
Sivagangai - 630 002.
3. The District Revenue Officer,
Sivagangai District,
Sivagangai - 630 562.
4. The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Sivagangai - 630 562.



5. The Assistant Commissioner,
Hindu Religious and Charitable
Endowment Department,
Paramakudi - 623 707,
Ramanathapuram District.

6. The Tahsildar,
Karaikudi Taluk,
Karaikudi - 630 002.
Sivagangai District.

7. The Inspector,
Hindu Religious and charitable
Endowment Department,
Karaikudi - 630 002.
Sivagangai - 630 562.

... Respondents 2 to 7 /
Respondents 1 to 6

Writ Appeals filed under Clause 15 of Letters Patent, against the common order dated 21.01.2022, made in W.P.(MD) Nos.15784 & 19922 of 2021.

Prayer in WP(MD). 15784/ 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of declaration, declaring the decision taken in the Peace Committee meeting dated 21.08.2021 held by the 1st respondent herein with regard to Arulmigu Thittumalai Kaliamman Temple situated in S.No.186/1 at Patharakudi Village, Kazhanivasal Group, Karaikudi, Sivagangai District as null and void and pass such further or other orders as this Honourable Court may deem fit and proper in the circumstances of the case and thus render justice.

Prayer in WP(MD). 19922/ 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Mandamus, directing the respondents to permit the petitioner to continue as the priest and perform daily poojas in the Thittumalai Kaliamman Temple, situated in Survey No.186/1 Patharakudi Village in Managiri Sukkanedhal Revenue Village, Karaikudi Tk., Sivagangai Dist and for that limited purpose open the Temple and pass such further or other orders as this Honourable Court may deem fit and proper in the circumstances of the case and thus render justice.

For Appellants

: Mr.Ajmal Khan
Senior Counsel
in both writ appeals



For Respondents in W.A.
(MD) No.146 of 2022

: Mr.VR.Shanmuganathan
for R1
Mr.S.Shaji Bino,
Special Government Pleader
for R2

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For Respondents
in W.A(MD) No.171/22

: Mr.P.Krishnasamy for R1
Mr.K.Balasubramani,
Special Government Pleader
for R2, R3 & R6
Mr.P.Subbaraj,
Special Government Pleader
for R4, R5 & R7

COMMON JUDGEMENT

(Delivered by PARESH UPADHYAY, J.)

Challenge in these appeals is made to the common order dated 21 January 2022 recorded on W.P(MD) Nos. 15784 and 19922 of 2021. These appeals are by a third party. Since the impugned common order dealt with two writ petitions, two separate appeals are filed. W.A.(MD) No.146 of 2022 is qua W.P(MD) No.15784 of 2021 and W.A.(MD) No.171 of 2022 is qua W.P(MD) No.19922 of 2021.

2. We have heard Mr.Ajmal Khan, learned Senior Advocate for the appellants and Mr.VR.Shanmuganathan and Mr.P. Krishnasamy, learned advocates for the contesting respondents - original writ petitioners. Learned Government Advocates have also addressed the Court. It is noted that these appeals were heard on earlier dates and lastly on 29 March, 2022. Today also, all the learned advocates, including learned advocate of the writ petitioner of W.P.(MD) No.19922 of 2021, are heard at length.

3. Learned Senior Advocate for the appellants has submitted that, the findings and final directions of learned Single Judge are not only beyond pleadings, the substantive direction is based on the so-called dream of one person, which is accepted to be the basis for the judgment. In this regard, attention of the Court is invited to the contents of para : 23 of the impugned order. It is submitted that, the reliefs sought in the petitions could not be asked for, keeping in view the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Reference is made to Sections 55 and 63 of the Act in that regard.

Section 55 of the Act reads as under:

"55. Appointment of office-holders and servants in religious institutions.-(1) Vacancies, whether permanent or temporary among the office-holders or servants of a religious institution shall be filled

<https://hcservices.ecourts.gov.in/hcservices/> up by the trustee in all cases.



Explanation.— The expression “office-holders or servants” shall include archakas and pujaries.

(2) No person shall be entitled to appointment to any vacancy referred to in sub-section (1) merely on the ground that he is next in the line of succession to the last holder of the office.

(3) * * *

(4) Any person aggrieved by an order of the trustee under sub-section (1) may, within one month from the date of the receipt of the order by him, appeal against the order to the Joint Commissioner or the Deputy Commissioner.”

Section 63 of the Act reads as under:

“63. Joint Commissioner or Deputy Commissioner to decide certain disputes and matters.— Subject to the rights of suit or appeal hereinafter provided, the Joint Commissioner or the Deputy Commissioner, as the case may be, shall have power to inquire into and decide the following disputes and matters:—

(a) whether an institution is a religious institution ;

(b) whether a trustee holds or held office as a hereditary trustee ;

(c) whether any property or money is a religious endowment ;

(d) whether any property or money is a specific endowment ;

(e) whether any person is entitled, by custom or otherwise, to any honour, emolument or perquisite in any religious institution ; and what the established usage of a religious institution is in regard to any other matter ;

(f) whether any institution or endowment is wholly or partly of a religious or secular character; and whether any property or money has been given wholly or partly for religious or secular uses ; and

(g) where any property or money has been given for the support of an institution which is partly of a religious and partly of a secular character, or the performance of any service or charity connected with such an institution or the performance of a charity which is partly of a religious and partly of a secular character or where any property or money given is appropriated partly to religious and partly to secular uses, as to what portion of such property or money shall be allocated to religious uses.”

It is noted that, learned Senior Counsel for the appellants has taken this Court extensively through the paper book, more
<https://hccservicescourts.gov.in/cservices> the paper book supplied by the respondents and has



addressed the Court at length in the rejoinder to the reply given by the respondents. It is submitted by him that, these appeals be allowed.

4. Learned advocates for the respondents have taken this Court extensively through the pleadings on record of writ petitions, so also the additional papers book supplied to the Bench, including the records of earlier round of litigation and the orders passed by the civil Court in different civil suits.

5. Mr.VR.Shanmuganathan, learned advocate has contested both these appeals. He is representing the writ petitioner of W.P(MD) No.15748 of 2021. The said petition is allowed by the impugned order. That part of the order is supported by him. He has however further submitted that, no interference be made by this Court qua the order in W.P.(MD) No.19922 of 2021 also. It is submitted that the relief granted by the learned Single Judge is just and proper and these appeals be dismissed.

6. Mr.P.Krishnasamy, learned advocate has addressed the Court at length by taking the Court through various pleadings including the judgment of the trial Court in civil suit being O.S.No.193 of 2006. It is submitted that, the temple stands on the land which was granted prior to independence and the benefits flowing therefrom are inherited by the petitioner of W.P.(MD) No.19922 of 2021 and learned Single Judge has rightly granted that relief and therefore no interference be made by this Court. It is submitted that these appeals be dismissed.

7. Having heard learned advocates for the respective parties and having considered the material on record this Court finds as under:-

7.1. The prayer clause of writ petitioner in W.P.(MD) No.15784 of 2021 reads as under:-

"Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Declaration to declare the decision taken in the Peace Committee Meeting dated 21.08.2021 held by the first respondent herein with regard to Arulmighu Thittumalai Kalamman Temple situated in S.No.186/1 at Patharakudi Village, Kazhanivasal Gropu, Karaikudi, Sivagangai District as null and void."

7.2 The prayer clause of writ petitioner in W.P.(MD) No.19922 of 2021 is as under:-

"Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Declaration to direct the respondents to permit the petitioner to continue as the priest and perform daily pujas in the Thittumalai Kalamman Temple



situated in Survey No.186/1, Patharakudi Village in Managiri Sukkanedhal Revenue Village, Karaikudi Taluk, Sivagangai District and for that limited purpose open the Temple."

7.3 The operative part of the order under challenge reads as under:-

" 24. I would therefore pass the following directions:

(1) W.P.(MD)No.15784 of 2021 is allowed. The temple is directed to be opened by the first respondent/Tahsildar and a direction is issued to the Superintendent of Police, Sivagangai District to simultaneously deploy sufficient police force to ensure that peace reigns in that area during the period of worship. The daily Poojas must be conducted. Everybody must be permitted to worship the Deity. The decision to lock and seal the temple is set aside. The temple is directed to be opened forthwith.

(2) W.P.(MD)No.19922 of 2021 is allowed and the Writ Petitioner is permitted to conduct the daily Poojas.

(3) The arrangement which was taken in the Peace Committee Meeting in the year 2020 also may again be followed for the month of Aadi every successive year.

(4) No order as to costs..."

7.4 The above quoted final order is based on the findings / satisfaction / judgment recorded by learned Single Judge in para : 23, which reads as under:-

"23.The administration of the temple is in the hands of the HR & CE Department, but so long as, the right to do pooja is concerned, it vests with the petitioner in W.P.(MD)No.19922 of 2021. Let that right continue and it should not be interfered with owing to prejudices raised by the respondents in W.P.(MD)No.15784 of 2021. The right to worship is an inherent right of everybody, whose feet are in this land. That cannot be prevented. Therefore, all the villagers of the named three villages can always worship in the temple. But let the Deity have the pleasure of the poojas being conducted by the descendents of the person, to whom She came in a dream and who recovered her from the bushes and had given Her dignity and a place of honour in the temple."



8. The point at issue before this Court is, whether there can be said to be any error apparent on the face of record in the satisfaction / judgment arrived at by learned Single Judge, which calls for any interference by this Court. For this purpose, our findings, qua each of the satisfaction / judgment recorded by learned Single Judge in para : 23 (quoted above), is as under.

8.1 The opening part of the para : 23 (quoted above) reads to the effect that The administration of the temple is in the hands of the HR & CE Department. We take note of this finding, with approval.

8.2 The same paragraph however proceeded to record as under:- (The administration of the temple is in the hands of the HR & CE Department), but so long as, the right to do pooja is concerned, it vests with the petitioner in W.P.(MD)No.19922 of 2021. Let that right continue and it should not be interfered with owing to prejudices raised by the respondents in W.P.(MD)No.15784 of 2021. The right to worship is an inherent right of everybody, whose feet are in this land. That cannot be prevented. Therefore, all the villagers of the named three villages can always worship in the temple. But let the Deity have the pleasure of the poojas being conducted by the descendents of the person, to whom She came in a dream and who recovered her from the bushes and had given Her dignity and a place of honour in the temple."

(Emphasis supplied)

8.3 The above judgment / satisfaction recorded by learned Single Judge, according to us, is erroneous. Firstly, it is based on the so-called dream of the forefathers of the writ petitioner and it further recognizes the inheritance of right to perform pooja. The exercise of power under Article 226 of the Constitution of India can not be based on the claim of some one on his dream or the dream of a person who might have lived on this earth before decades / centuries. Secondly, the right to perform pooja in the line of succession, which is specifically prohibited by Section 55(2) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 is acknowledged by the Writ Court. According to us, neither of these two can be sustained. The final directions, based on this satisfaction need to be interfered with.

9. In spite of the above, the entire order need not be disturbed, because according to us, there are some directions which can be salvaged. They are as under.

9.1 W.P(MD) No.15784 of 2021 is allowed vide para 24(i) of the impugned order. It reads as under:-

"W.P.(MD)No.15784 of 2021 is allowed. The temple

is directed to be opened by the first respondent /



Tahsildar and a direction is issued to the Superintendent of Police, Sivagangai District to simultaneously deploy sufficient police force to ensure that peace reigns in that area during the period of worship. The daily Poojas must be conducted. Everybody must be permitted to worship the Deity. The decision to lock and seal the temple is set aside. The temple is directed to be opened forthwith."

According to us, none of the above needs to be interfered with. The challenge in the appeal to that extent needs to be dismissed.

9.2 So far para 24(ii) of the impugned order is concerned, learned Single Judge has allowed the W.P (MD) No.19922 of 2022. The prayer of the petitioner to the effect that he be continued as the priest can not be granted. Therefore, that prayer was required to be rejected. Further, the reference to the proceedings of the peace committee can not have any relevance, since it was for the year 2020. The appeal needs to be allowed to that extent. Other relief granted to the said petitioner, that it will be open for him to offer worship like any other villager need not be interfered with. The challenge to the order of learned Single Judge in W.P(MD) No.19922 of 2022 to that extent needs to be rejected. So far other grievance of the writ petitioner as voiced in the writ petition is concerned, it is always open to him to take recourse to the law. Specific reference in this regard needs to be made to Section 63 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

9.3 Challenge to the order of learned Single Judge therefore needs to be answered, keeping in view the above findings.

10. For the reasons recorded above, the following order is passed:-

10.1 W.A.(MD) NO.146 of 2022 is dismissed.

10.2 W.A(MD) No.171 of 2022 is partly allowed, with the clarification noted above.

10.3 No costs. Consequently, connected miscellaneous petitions would not survive.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



sj/11

To

1. The District Collector,
Sivagangai District,
Sivagangai - 630 002.
2. The District Revenue Officer,
Sivagangai District,
Sivagangai - 630 562.
3. The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Sivagangai - 630 562.
4. The Assistant Commissioner,
Hindu Religious and Charitable
Endowment Department,
Paramakudi - 623 707,
Ramanathapuram District.
5. The Tahsildar,
Karaikudi Taluk,
Karaikudi - 630 002.
Sivagangai District.
6. The Inspector,
Hindu Religious and charitable
Endowment Department,
Karaikudi - 630 002.
Sivagangai - 630 562.

+2 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-16011[F] dated 01/04/2022)

+1 CC to M/s.SPL GP (SR-16339 & 16067[F] dated 04/04/2022)

W.A.(MD) Nos.146 and 171 of 2022
31.03.2022

SG(CO)

TR(19.04.2022) 9P 10C