



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.04.2022

CORAM

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD) .No.8183 of 2022

and

W.M.P(MD) .No.6097 of 2022

S.M.Raja

... Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam Road,
Chennai-600 034.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Dindigul.

3.The Fit Person/Executive Officer,
Arulmigu Dharmasastha Temple,
Thimmarasanayakkanur,
Aundipatti Taluk,
Theni District.

4.K.S.Ravidran

5.S.Ganesan

6.K.M.Gurusamy

7.K.Sendraya Perumal

8.Narasinga Perumal

9.R.Arunagiri

10.S.Ganesan

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the 1st respondent in M.P.No.1/2022 in R.P.No.22/2022 D2, dated 30.03.2022, quash the same.

For Petitioner

: Mr.K.Gokul

For R1 & R2

: Mr.P.T.Thiraviam

Government Advocate

For R3

: Mr.V.Chandrasekar

For R4 to R10

: Mrs.J.Anandhavalli



ORDER

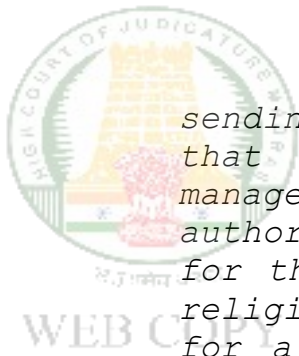
The petitioner has filed this writ petition for a Certiorari to call for the records pertaining to the impugned order passed by the 1st respondent in M.P.No.1/2022 in R.P.No.22/2022 D2, dated 30.03.2022 and to quash the same.

2.The dispute pertains to the temple, called Arulmigu Sri Muthumariamman Thirukovil, Jakkampatti, Theni District. There were internecine dispute between the members of the different communities, who claims to be the devotees of the aforesaid temple. There was an internal power struggle. Under these circumstances, the Department of HR & CE took over the temple and appointed a Fit Person as early as 30.12.2013. This was challenged by one Saaliyar Mahajana Sangam in W.P.(MD) No.9030 of 2015.

3.The petitioner herein had also filed writ petitions in W.P.(MD) No.6295 of 2017 and W.P.(MD) No.5807 of 2016. W.P.(MD) No.6295 of 2017 was filed for a Mandamus to direct the official respondents as also the Saaliyar Mahajana Sangam to take action on the basis of the petitioner's representation dated 13.03.2017 within the stipulated period. W.P.(MD) No.5807 of 2016 was filed for a Mandamus to direct the 1st respondent therein/the District Collector to conduct the 91st Chitra Thiruvizha Festival as a Government Festival at Arulmigu Muthumariamman Thirukovil, Sakkampatti, Aandipatti Taluk, Theni District.

4.The petitioner herein had also filed another writ petition in W.P.(MD) No.10330 of 2015 for a similar relief ie., for the 90th year Chithirai Thiruvizha. One M.Muthuchamy, had filed W.P.(MD) No.2499 of 2014 to quash the order of the 3rd respondent therein/the Assistant Commissioner appointing a Fit Person. The respondent temple had also filed CrI.R.C.(MD) No.681 of 2017 under Sections 397 and 401 of the Code of Criminal Procedure against the order passed in CrI.M.P.No.5156 of 2014 dated 24.04.2015 on the file of the learned District Munsif cum Judicial Magistrate, Aundipatti, Theni District. All these cases were heard together and disposed of with the following observations:-

"5.It may be noted at the out set that the temples in Tamil Nadu are presumed to be public temples. In fact, none of the counsel appeared before us made a claim that the said temple is a private temple. When the temple in question is a public temple, it has to be necessarily under purview of Tamil Nadu HR&CE Department. In the present case, the said temple was out of the purview of the Department. It was under the control of some private individuals. The temple appears to have some properties. Hundials had been installed, but there was no proper counting. Therefore, another group in the village had been



sending complaint after complaint. It cannot be disputed that serious disputes have arisen with regard to the management and administration of the temple. Therefore, the authority rightly passed an order appointing a fit person for the temple. An order of appointing a fit person for a religious institution cannot be for eternity. It is only for a temporary duration. Therefore, no exception can be taken to the issuance of the order dated 30.12.2013. The said order appointing a fit person was passed only after issuing notice to the incumbent trustee. Inspection Report was also obtained earlier. Only after considering all the relevant aspects, the order appointing fit person came to be passed. Though, the said order is an appealable one, instead of availing the said appeal remedy, the writ jurisdiction of this Court was invoked straight away. Therefore, looked at from any angle, the writ petition in W.P.(MD).No.2499 of 2014, is liable to be dismissed and accordingly dismissed.

6.In view of the dismissal of W.P.(MD).No.2499 of 2014, the writ petition in W.P.(MD).No.9030 of 2015, should also be necessarily dismissed.

7.When a statutory order has been passed appointing a fit person, it is a duty of the said fit person to take possession of the property in question. It is a statutory duty. Since in this case, the fit person was resisted, he filed petition under Section 101 of the Act before the Jurisdictional Magistrate. The statutory authority cannot be restrained from discharging his statutory duty.

8.The prayer in W.P.(MD).No.9030 of 2015 is for restraining the authorities from taking possession and management of the said temple without following due process of law. In this case, the fit person has taken only in accordance with law by moving the jurisdictional Magistrate. Therefore, the writ petitioner in W.P.(MD).No.9030 of 2015, cannot have any grievance. He would be given notice by the learned Magistrate, when hearing the Cr.M.P.No.5156 of 2014. The learned Magistrate is directed to post the Cr.M.P.No.5156 of 2014, on 18 November 2017 and an opportunity should be given to the petitioner in W.P.(MD).No.9030 of 2015, to submit his case.

9.The Criminal Revision Case in CrI.R.C.(MD).No.681 of 2017, has been filed challenging the dismissal of Cr.M.P.No.5156 of 2014 by the learned Judicial Magistrate, Aundipatti. The said petition was filed under Section 101 of the Tamil Nadu HR&CE Act. The person, who filed the said



petition was transferred. The new incumbent did not pursue the matter. The petition therefore, came to be dismissed for default. A statutory order has been passed, appointing a fit person in the said temple and it is the duty of the fit person to take possession of the temple in question. In this case, there is resistance and not handing over the possession by the erstwhile trustee. Hence, the fit person rightly filed the said petition. It was dismissed for the reason set out above. The order dismissing the petition under Section 101 of the HR&CE Department will have to be necessarily set aside and the petition restored to file. The learned Magistrate shall re-hear the matter, issue notice to the concerned parties and dispose of the same within a period of four months from the date of receipt of a copy of this order. Crl.R.C.(MD).No.681 of 2017 is allowed as above.

10. In view of the order made in Crl.R.C.(MD).No.681 of 2017 the grievance raised in W.P.(MD).No.6295 of 2017 and 5807 of 2016 and W.p.(Md).No.10330 of 2015 does not survive and accordingly closed. The fit person has already moved the learned Magistrate for taking possession of the temple in question. Depending upon the orders passed by the learned Magistrate, liberty is granted to the fit person to take appropriate action, taking in to account the grievance raised by the petitioner in W.P.(MD).No.5807 of 2016 and W.P.(MD).No.10330 of 2015. No costs. Consequently, the connected miscellaneous petitions are closed."

5. Under these circumstances, a suo motu contempt came to be initiated by the Registrar (Judicial) of this Court. Meanwhile, the petitioner had also filed W.P.(MD) No.3836 of 2019 and another writ petition was filed by the 5th respondent herein in W.P.(MD) No.22998 of 2019. W.P.(MD) No.3836 of 2019 has been filed for a Mandamus to direct the respondents 1 to 4 to administer and conduct the 94th year Chithirai Thiruvizha festival for the year 2019 for the aforesaid temple and W.P.(MD) No.22998 of 2019 has been filed to call for the records pertaining to the impugned order passed by the 2nd respondent in M.P.No.105/2019 dated 30.5.2019 and the consequential impugned order passed by the 3rd respondent vide proceedings in Se.Mu.Na.Ka.No.1390/2013/A2 dated 30.12.2013 and to quash the same.

6. A Division Bench of this Court had disposed of the above writ petitions along with Crl.R.C.(MD) No.719 of 2019 by directing the Joint Commissioner therein to dispose of O.A.No.1 of 2020 filed under Section 64(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 by the 4th respondent herein. In the aforesaid proceedings, the petitioner herein filed I.A.No.1 of 2022, which was allowed by the 2nd respondent herein/the Joint Commissioner by an order dated 01.02.2022.



7. Aggrieved by the aforesaid order, the 4th respondent herein along with others including the respondent temple filed R.P.No.22 of 2022 along with M.P.No.1 of 2022. The Commissioner, in turn, has now stayed the operation of the order dated 01.02.2022 passed by the 2nd respondent, impleading the petitioner herein in I.A.No.1 of 2022 in O.A.No.1 of 2020. The said revision petition was listed for final hearing on 13.04.2022.

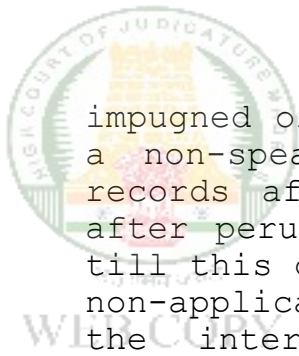
8. The case of the petitioner in this writ petition is that the stay has been obtained without bringing it to the notice of the 1st respondent/the Commissioner that the order of the Division Bench of this Court dated 12.03.2021 in Suo.Motu Cont.P.(MD) No.537 of 2019, W.P.(MD) No.3836 of 2019 and W.P.(MD) No.22998 of 2019 has been violated. It is specifically stated that the Division Bench of this Court while disposing of the above cases not only directed the Joint Commissioner, Dindigul to dispose of O.A.No.1 of 2020 within a period of 4 months from the date of authority but also permitted the authority to put on notice on all the interested persons. It is not clear on what basis the application, which was allowed by the Joint Commissioner, Dindigul in I.A.No.1 of 2022 in O.A.No.1 of 2020, has been challenged by the petitioner. However, the uniform refrain of the counsels appearing on behalf of the temple as also the official respondents and the private respondents is that the proceeding is pending before the Commissioner and therefore it is open for the petitioner to take steps to vacate the interim stay granted by the Commissioner, vide impugned order dated 30.03.2022 passed in M.P.No.1 of 2022 in R.P.No.22 of 2022 D2. The impugned order merely grants stay with the following observations:-

"As being mentioned by M/s.G.Sumitra, Counsel for the petitioner, the above miscellaneous petition filed in the revision petition was taken up for hearing on 30.03.2022. After hearing the counsel for the petitioner and after perusing the records and the matter stood over for consideration till this day, the following order is passed:-

ORDER

The main revision petition is posted for hearing on 13.04.2022. The order dated 01.02.2022 of the Joint Commissioner Dindigul is hereby stayed till then." "

9. O.A.No.1 of 2020, which has been filed by the private respondent under Section 64(1) of the HR & CE Act, 1959, was for framing a scheme. The Division Bench of this Court has already directed the Joint Commissioner to dispose of I.A.No.1 of 2022 within a period of 4 months from the date of receipt of a copy of that order. The order of the Division Bench of this Court also permits the official respondents to put on notice all persons interested before a scheme is framed. The clear intention of the private respondent appears to be shutout the petitioner from the proceedings under Section 64(1) of the HR & CE Act, 1959. The



impugned order passed by the 1st respondent/the Commissioner is also a non-speaking order. It has no reasons whatsoever. It merely records after hearing the learned counsel for the petitioner and after perusing the records and the matter stood over consideration till this date following orders have been passed. Clearly there is a non-application of mind and therefore, there is no basis, on which the interim order passed by the Joint Commissioner in I.A.No.1 of 2022 could have been stayed.

10.Under these circumstances, I am inclined to interfere at this stage by quashing the impugned order and remit the case back to the 1st respondent/the Commissioner to pass a speaking order in M.P.No.1 of 2022 in R.P.No.22 of 2022 D2 within a period of 4 weeks from the date of receipt of a copy of this order. It is needless to state that the petitioner shall also be heard before appropriate orders are passed.

11.The writ petition stands allowed, in terms of the above observation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2022

Sub Assistant Registrar(CS)

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To

1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam Road, Chennai-600 034.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Dindigul.

+1 CC to M/s.K. GOKUL, Advocate (SR-21588[F] dated 27/04/2022)

+1 CC to M/s.J. ANANDHAVALLI, Advocate (SR-22015[F]
dated 28/04/2022)

+1 CC to M/s.SPL.GP (SR-22358[F] dated 28/04/2022)

W.P (MD) .No.8183 of 2022
27.04.2022