



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.03.2022

CORAM

**THE HONOURABLE MR. JUSTICE C.SARAVANAN**

Writ Petition (MD)No.14191 of 2021

and

W.M.P. (MD)No.11139 of 2021

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Esakkiyadum Perumal Pillai Chatram,  
Rep. by it Hereditary Trustee,  
C.Shanmugam,  
Karunkulam, Srivaikundam,  
Thoothukudi District.

.. Petitioner

Versus

1.The Joint Commissioner,  
Hindu Religious and Charitable Endowments Department,  
Thoothukudi.

2.The Assistant Commissioner,  
Hindu Religious and Charitable Endowments Department,  
Thoothukudi.

3.The Executive Officer,  
Arulmigu Kailayanathar Swami Temple,  
Srivaikundam, Thoothukudi.

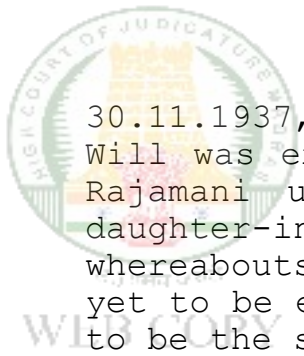
.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to forbear the respondents from interfering with the Akthar/Hereditary Trusteeship of the petitioner in the Esakkiyadum Perumal Pillai Chatram without following due process of law.

|                |   |                            |
|----------------|---|----------------------------|
| For Petitioner | : | Mr.H.Arumugam              |
| For R1 and R2  | : | Mr.P.Subbaraj              |
|                |   | Special Government Pleader |
| For R3         | : | Mr.C.Guhaseelarupan        |

**ORDER**

The petitioner claims to be a male decedent of original settlor namely, Chellam @ Packiyam Ammal. The said Chellam @ Packiyam Ammal had executed a settlement deed, wherein the first schedule to the settlement deed was given to Manthiram @ Rajamani and that the second schedule property was given by way of dedication for rendering charitable activities for providing water and butter milk to devotees visiting Arulmigu Subramania Swamy Temple, Tiruchendur, and to carry on Annadanam. The settlement deed also spells the manner in which the charity is to be administered. Only in the event of female descendant not being available, the male descendant can administer the property. The settlor also executed a Will on



30.11.1937, whereby the scope of the charity was enlarged. Another Will was executed in the year 1977. The donee namely, Manthiram @ Rajamani under the settlement deed, gave certain rights to her daughter-in-law Subbuthai through her son Chellappa, whose whereabouts was not known. The genuinity of the above said Will is yet to be established. The petitioner/deponent - C.Shanmugam claims to be the son of Chellappa and Subbuthai.

2.It is the specific case of the petitioner that the land in question is being encroached by several persons and that right from 2009, he has been taking steps for protecting the property, which has been given under charity. It is submitted that all of a sudden, the third respondent has barricaded the Chatram and Mandapam even though the petitioner has been administering the Chatram and Mandapam as a hereditary trustee and performing Poojas. It is submitted that apart from protecting the property from various encroachers, the petitioner has also been carrying on Annadanam. It is submitted that though the third respondent was appointed way back in 1979, no steps have been taken by the third respondent to protect the interest of the Chatram.

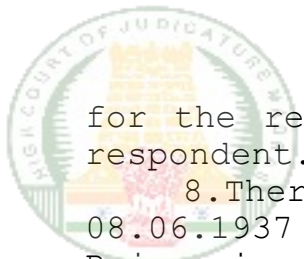
3.It is further submitted that the Office of the Thakkar is limited for a period of two years both under Sections 47(3) and 49 (2) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 [hereinafter referred to as 'the H.R. & C.E. Act']] and thus, the petitioner has filed this Writ Petition for a Mandamus.

4.The learned counsel for the petitioner further submits that the petitioner being a direct male descendant of the original donor Chellam @ Packiyam Ammal, he is entitled to succeed the status of hereditary trustee in terms of Section 54 of the H.R. & C.E. Act.

5.Opposing the prayer, the learned counsel for the third respondent submits that there have been alienations and that the petitioner's mother namely, Subbuthai alienated a portion of the property and demolished one of the structures and therefore, the petitioner cannot claim any right as the hereditary trustee.

6.It is submitted that the Office of the Thakkar appointed by the H.R. & C.E. Department is not limited. As long as there is vacuum, a Thakkar can continue and discharge the function. That apart, the learned counsel for the third respondent submits that the Will executed on 28.04.1977 by Manthiram @ Rajamani in favour of the petitioner's mother Subbuthai is contrary to the original dedication in the settlement deed dated 08.06.1937 and subsequent Will dated 30.11.1937. It is therefore submitted that the petitioner is merely interested in protecting the property for personal gain and not for the purpose of charity.

7.I have considered the arguments advanced by the learned counsel for the petitioner, the learned Special Government Pleader



for the respondents 1 and 2 and the learned counsel for the third respondent.

8. There was a dedication by virtue of a settlement deed dated 08.06.1937 by Chellam @ Packiyam Ammal in favour of Manthiram @ Rajamani. By another Will dated 30.11.1937, the donor Chellam @ Packiyam Ammal further extended the scope of charity to be carried by the said Manthiram @ Rajamani and the manner in which there would be a succession to the Office of the Trustee. The beneficiary namely, Manthiram @ Rajamani however, executed a Will in favour of Subbuthai, who is supposed to be the petitioner's mother and the daughter-in-law of the said Manthiram @ Rajamani. The petitioner claims to be the son of Subbuthai. Though steps have been taken to protect the property namely, the Chatram and Mandapam, the rights of the petitioner to act as a hereditary trustee as per the dedications made needs to be examined. The property appears to be on the river bed of Thamirabarani river, which allows illegal tapping of river sand. The third respondent appears to have barricaded the Mandapam and Chatiram.

9. Considering the fact that there is a doubt as to whether the petitioner is entitled to act as a hereditary trustee under Section 54 of the H.R. & C.E. Act, I am inclined to dispose of this Writ Petition, by permitting the petitioner to file an appropriate application before the first respondent - Joint Commissioner under Section 63 of the H.R. & C.E. Act. During the pendency of the above said application, the third respondent shall continue to administer the property and take steps to cancel all the alienations made so far. The third respondent shall also be impleaded in all the pending suits pending before various Courts, which have been allegedly filed by the petitioner to protect the interest of the said dedication/charity. The worshipping in the Mandapam may be allowed to continue until further orders to be passed by the H.R. & C.E. Department. The petitioner is directed to file such application before the first respondent for recognising him as the Hereditary Trustee, within a period of one month from the date of receipt of a copy of this order. The first respondent shall enquire and pass appropriate orders, within a period of two months thereafter.

10. This Writ Petition is disposed of with the above observation. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2022

Sub Assistant Registrar(CS)



To

1.The Joint Commissioner,  
Hindu Religious and Charitable Endowments Department,  
Thoothukudi.

2.The Assistant Commissioner,  
Hindu Religious and Charitable Endowments Department,  
Thoothukudi.

3.The Executive Officer,  
Arulmigu Kailayanathar Swami Temple,  
Srivaikundam, Thoothukudi.

+1 CC to M/s.SPL GP ( SR-14877[F] dated 28/03/2022 )

+1 CC to M/s.H.ARUMUGAM, Advocate ( SR-14985[F] dated 28/03/2022 )

+1 CC to M/s.C.GUHASEELARUPAN, Advocate ( SR-15021[F] dated  
29/03/2022 )

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RK(05/04/2022) 4P 7C