



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED : 15.03.2022

ORDER PRONOUNCED : 22.04.2022

CORAM:

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

W.P. (MD) Nos.17693 of 2020 and 7418 of 2021

and

W.M.P. (MD) Nos.14780 and 14781 of 2020 and 5599 of 2021

WEB COPY

Arulmigu Muthalamman Thirukovil Trust,
Thambipatti, represented by its President,
Thensamy,
S/o.Sundar Raj,
Thambipatti Village,
Watrap Taluk,
Virudhunagar District.

... Petitioner in both W.Ps.,

/vs./

- 1.The Principal Secretary to the Government,
Hindu Religious and Charitable Endowment Department,
Secretariat,
Chennai 600 009.
- 2.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Chennai 600 034.
- 3.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Sivagangai.
- 4.The Assistant Commissioner,
Hindu Religious and Charitable Endowment Department,
Virudhunagar.
- 5.The District Collector,
Virudhunagar District,
Virudhunagar.
- 6.The Inspector,
Hindu Religious and Charitable Endowment Department,
Srivilliputtur,
Virudhunagar District.



7. Fit Person for Arulmigu Muthalamman Thirukovil
cum Executive Officer,
Thambipatti
Arulmigu Kasiviswanathasamy Thirukovil,
Watrap,
Virudhunagar District.

8. The Inspector of Police,
Watrap Police Station,
Virudhunagar District.

9. P. Baluchamy ... Respondents in both W.Ps.,

PRAYER in W.P. (MD) No.17693 of 2020: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 4th respondent in his proceedings Sey.Mu.Na.Ka.No.1370/2018/A1 dated 13/11/2020 and quash the same and consequently forbearing the respondents 1 to 8 from interfering the administration of the Arulmighu Muthalamman Thirukoil, Thambipatti Village, Watrap Taluk, Virudhunagar District by the Petitioner trust.

PRAYER in W.P. (MD) No.7418 of 2021: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 2nd respondent in his proceedings Nee.Mu.No.5145/2020/E5 dated 15.10.2020 and quash the same and consequently directing the respondents not to interfere with the administration of the petitioner trust administering the Arulmighu Muthalamman Thirukoil, situated at Thambipatti Village, Watrap Taluk, Virudhunagar District.

(Prayer has been amended vide order dated 15.03.2022 made in WMP (MD) .6636/2021 in WP (MD) .7418/2021)

For Petitioner
in both W.Ps.,

: Mr.P.Senthur Pandian assisted by
Mr.V.Thirumal

For R1 to R6 & R8
in both W.Ps.,

: Mr.P.Subbaraj
Special Government Pleader

For R7
in both W.Ps.,

: Mr.V.Chandrasekar



For R9

in both W.Ps.,

: Mr.V.Meenakshi Sundaram

COMMON ORDER

W.P.(MD) No.17693 of 2020 has been filed for a Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 4th respondent in his proceedings Sey.Mu.Na.Ka.No.1370/2018/A1 dated 13/11/2020 and quash the same and consequently forbearing the respondents 1 to 8 from interfering the administration of the Arulmighu Muthalamman Thirukoil, Thambipatti Village, Watrap Taluk, Virudhunagar District by the Petitioner trust.

2.W.P.(MD) No.7418 of 2021 has been filed for a Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 2nd respondent in his proceedings Nee.Mu.No.5145/2020/E5 dated 15.10.2020 and quash the same and consequently directing the respondents not to interfere with the administration of the petitioner trust administering the Arulmighu Muthalamman Thirukoil, situated at Thambipatti Village, Watrap Taluk, Virudhunagar District.

3.The learned counsel for the petitioner submits that the proceedings impugned in W.P.(MD) No.17693 of 2020 dated 13.11.2020 appointing a Fit Person preceded the order of the 2nd respondent, which is impugned in W.P.(MD) No.7418 of 2021. It is submitted that the order impugned in W.P.(MD) No.7418 of 2021 dated 15.10.2020 signed on 19.10.2020 was passed without hearing the petitioner. It is therefore submitted that apart from it being in violation of the order passed in Rev.Application Writ (MD) No.87 of 2019 in W.P.(MD) No.5462 of 2016 filed at the behest of the 9th respondent, it was a clear violation of the following decisions:-

"In *M.S.Munivenkatappa Vs. State Bank of India, represented by its Chief General Manager, Chennai and another* reported in 2007 (2) CTC 135.

In *The Commissioner, HR & CE (Administration Department), Madras and another Vs. K.Nagarajaodayar* reported in (2003) 1 MLJ 288.

In *Committee of Management and another Vs. Vice Chancellor and others* reported in AIR 2009 Supreme Court 1159.

In *W.P.Nos.26650 of 2005 and 7324 and 7325 of 2006 (V.S.O.Balakrishnan Vs. P.K.Selvaraj and another)* dated 07.01.2009.

In *W.A. (MD) No.1434 of 2017 (P.M.Pandiarajan and another Vs. The Commissioner, HR & CE Department, Chennai*

<https://hcservices.ecourts.gov.in/hcservices/>



and others) **dated 21.12.2017.**

In **W.A.No.1599 of 2006** (S.Nalini Srikanan Vs. Union of India) **dated 07.03.2007.**

In **W.P. (MD) No.2069 of 2015** (P.S.Senthilkumar Vs. Joint Commissioner/Executive Officer, Kanyakumari District and other) **dated 23.03.2018."**

WEB COPY

4.Under these circumstances, it is submitted that the impugned order of the 2nd respondent in W.P.(MD) No.7418 of 2021 dated 15.10.2020 is therefore liable to be quashed. It is further submitted that the consequential order dated 13.11.2020 of the 4th respondent/the Assistant Commissioner, HR & CE, Virudhunagar impugned in W.P.(MD) No.17693 of 2020 appointing a Fit Person is also liable to be quashed and both the writ petitions deserve to be allowed.

5.Opposing the prayer, the learned counsel for the 7th respondent/the Fit Person, has drawn attention to the documents filed by the official respondents and the counter filed in these two writ petitions.

6.The learned Special Government Pleader for the official respondents and the Fit Person, namely the 7th respondent herein, submit that in compliance of the order of this Court, the 4th respondent/the Assistant Commissioner, HR & CE, Virudhunagar in W.P. (MD) No.7418 of 2021 has furnished a detailed report to the 2nd respondent/the Commissioner, HR & CE, Chennai and therefore, the 2nd respondent issued notices to 21 persons, who were supposedly representing the interest of all these communities and that about 21 persons have participated in the enquiry and submitted a report in writing.

7.It is submitted that the 2nd respondent after perusing the records passed an order declaring the subject temple, namely, Arulmigu Muthalamman Thirukovil, Thambipatti Village, Watrap Taluk, Virudhunagar District as a public temple and in consequence of the said order appointed the 7th respondent as the Fit Person. It is further submitted that the trust, based on which the petitioner has assumed *suo motu* power along with other members of the dominant community itself is illegal and contrary to the provisions of the HR & CE Act, 1959.

8.It is submitted that the affairs of the temple cannot be administered by a Trust as the affairs of such temple are with the HR & CE Department. It is further submitted that after complaints were received from the 9th respondent, namely P.Baluchamy, the law had to be settled in motion, which has culminated in the two orders,



which have been impugned in these writ petitions.

9.It is further submitted that it is not open for the petitioner or the founding members of the Trust or their nominees to use the administration as well as the affairs of the said temple or the economic activity resulting in revenue to corner of the same for the benefit of a section of members of the community while depriving the members of other communities, namely, 'Thevendhira Kula Velalar' and 'Arunthathiyar'.

10.The learned counsel for the 9th respondent, against whom proceedings came to be initiated pursuant to the order in W.P.(MD) No.5462 of 2016 and the subsequent order dated 22.11.2019 in Review Application (Writ) (MD) No.87 of 2019, submits that all along the members of the dominant community had deprived members of the two other communities, the right to worship and to participate in the tender or even if the tenders were held and if they were the highest bidder, the tender was awarded only to the members belonging to the dominant community. It is submitted that this had resulted in unrest among the people and in the village. There is a long history to the problem and has dividing the community.

11.The learned counsel for the 9th respondent has drawn attention to a series of the documents, which have been filed before this Court to show that even prior to 2008, there were complaints and that the Tahsildar had summoned the members of the different communities for a Peace Committee Meeting as early as 03.03.2008 and 31.03.2008. He has also drawn attention to the recommendation of the Tahsildar to the Revenue Divisional Officer and the District Collector to take over the affairs of the aforesaid temple on account of the discrimination practice in the village by the members of the dominant community. The learned counsel for the 9th respondent has also drawn attention to the recommendation of the police dated 26.04.2008. In this background, the said petitioner trust, represented by Thiru.Thensamy, came to be registered.

12.The learned counsel for the 9th respondent further submits that the Trust that has been registered itself is illegal and has been registered only with a view to carry on the illegal activity, which is not only contrary to the other enactments but also the Constitution of India. In this background, the writ petitions were filed and thereafter, orders came to be passed, which have culminated in the impugned order. It is submitted that before passing the orders declaring the temple under the purview of the HR & CE Act and the consequential order appointing the Fit Person, summons were issued and all the persons were heard.



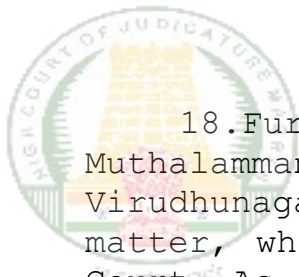
13.The learned Special Government Pleader for the official respondents submits that during the hearing called for, the deponent in the writ petitions, namely Thensamy, had participated in the enquiry held before the 2nd respondent/the Commissioner, but did not make any submission and therefore, it is not open for the petitioner to now come forward to challenge the order stating that the order was passed without hearing him or in violation of the order of this Court in W.P.(MD) No.5462 of 2016 dated 09.03.2016 as modified by order dated 07.08.2017.

14.That apart, the learned counsel for the Fit Person/the 7th respondent also drew attention of this Court to the photographs enclosed in the typed set of papers, wherein it is seen that at the entrance of the temple huge notice board has been fixed below the Gopuram to make it seen as the temple belongs to the trust and is administered by the members of the 7 different communities.

15.I have considered the arguments advanced by the learned respective counsel on either side.

16.The facts on record indicate that the members of the dominant community from the village have been cornering the rights to let out the shops belonging to the temple and the fishing rights in the tank and ponds. Invariably the members of minority community have been ignored. In the temple festivals, the members of the minority community have also been sidelined and thus prejudice has been caused to them, which has led to proceedings before the Tahsildar in 2008 and the recommendation of the Tahsildar and the recommendation of the police department for taking over the temple as it had led to communal disharmony against a particular section of the community.

17.The 9th respondent had earlier filed W.P.(MD) No.5462 of 2016, which led to further proceedings before the 2nd respondent. The proceeding before the 2nd respondent was preceded by issue of summons, wherein all the members of the different communities including the 9th respondent were heard. The records filed by the official respondents in their typed set of papers indicates that the deponent, namely Thensamy appeared before the 2nd respondent on 05.10.2020. Therefore, the complaint of the petitioner that the petitioner or the other community persons were not heard cannot be countenanced. Consequently, violation of the order passed by this Court in W.P.(MD) No.5462 of 2016, vide order dated 09.03.2016 as modified vide order dated 07.08.2017 is not available to the petitioner.



18. Further, the right to declare whether the temple, namely Muthalamman Thirukovil, Thambipatti Village, Watrap Taluk, Virudhunagar District, is a public temple or a private temple is a matter, which has to be agitated and decided only before the Civil Court. As a matter of fact, it appears that the petitioner has also filed an interlocutory application in I.A.No.292 of 2018 in an unnumbered suit under Section 92 of the Code of Civil Procedure seeking leave to institute a suit on behalf of the trust.

19. I am therefore refraining from making any comment on the correctness of the proceedings initiated by the petitioner, but on the same account, I am inclined to hold that it is for the petitioner to workout the remedy before the civil Court. As far as the impugned orders are concerned, I do not find any material irregularity the procedure adopted by the 2nd respondent while bringing the said temple within the purview of the HR & CE Act, vide impugned order dated 15.10.2020 duly signed on 19.10.2020. Consequently, the writ petition filed challenging the same has to fail. Similarly, the consequential order passed under Section 49(1) of the Act appointing a Fit Person, namely the 7th respondent also has to fail as the facts on record overwhelmingly indicate that this was the fit case for appointing a Fit Person.

20. Therefore, I do not find any merits in the challenge to the respective impugned orders in these two writ petitions. At the same time, I leave it open for the petitioner to establish his rights before the Government under Section 114 of the Act, if advised. These two writ petitions are dismissed, in terms of the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AD-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

mm

To

1. The Principal Secretary to the Government,
Hindu Religious and Charitable Endowment Department,
Secretariat,
Chennai 600 009.



2.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Chennai 600 034.

3.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Sivagangai.

4.The Assistant Commissioner,
Hindu Religious and Charitable Endowment Department,
Virudhunagar.

5.The District Collector,
Virudhunagar District,
Virudhunagar.

6.The Inspector,
Hindu Religious and Charitable Endowment Department,
Srivilliputtur,
Virudhunagar District.

7.The Inspector of Police,
Watrap Police Station,
Virudhunagar District.

+5 CC to M/s.V. THIRUMAL, Advocate (SR-20583, 20584, 12690, 12689
+1 CC to Mr. Special Government Pleader, SR.No. 20878
+1 CC to Mr.V.CHANDRASEKAR, Advocate SR.No. 12244
+2 CC to Mr.D.NALLATHAMBI, Advocate SR.No. 12403, 12404

**Common order made in
W.P. (MD) Nos.17693 of 2020 and 7418 of 2021
22.04.2022**

dks (CO)
TR(06.06.2022) 8P 17C