



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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|---------------|------------|
| Reserved On   | 31.03.2022 |
| Pronounced On | 13.04.2022 |

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THE HON'BLE **MR.JUSTICE C.SARAVANAN**

**W.P. (MD) No.24766 of 2016**

and

**W.M.P. (MD) Nos.17906 & 17907 of 2016**

and **W.M.P.(MD) No.10915 of 2017**

S.Mahalingam,  
S/o.S.T.Shanmugam Mudaliyar,  
President,  
Tenkasi Senkunthar Madam Courtallam,  
New No.28 / Old No.30A,  
Nainar Street, Tenkasi - 627 811,  
Tirunelveli District.

... Petitioner

Vs.

1.The Joint Commissioner,  
Hindu Religious & Charitable Endowment  
Department,  
Sivagangai, Sivagangai District.

2.Fit Person / The Executive Officer,  
A/m Tirucourtalanatha Swamy Thirukoil,  
Courtallam, Tirunelveli District.

3.The Assistant Commissioner,  
Hindu Religious & Charitable Endowment  
Department,  
Tirunelveli.

... Respondents

Writ Petition filed for issuance of a Writ of Certiorari, to call for the records in R.P.No.2/2016 dated 24.11.2016 on the file of the first respondent and quash the same.

For Petitioner : Mr.K.Chandrasekaran

For R1 & R3 : Mr.P.Subbaraj,  
Special Government Pleader

For R2 : Mr.S.Manohar



**O R D E R**

The petitioner has challenged the impugned order dated 24.11.2016 of the first respondent, the Joint Commissioner, Hindu Religious and Charitable Endowments Department, Sivagangai District. By the impugned order, the first respondent rejected the Revision Petition filed by the petitioner under Section 21-A of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as T.N.H.R. & C.E. Act, 1959).

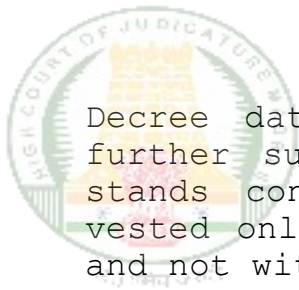
2. The said Revision Petition was filed by the petitioner pursuant to the order dated 07.02.2014 passed by this Court in W.P. (MD) No.5676 of 2009. The said W.P.(MD) No.5676 of 2009 was filed by the petitioner for issuance of a Writ of Certiorarid Mandamus, to call for the records relating to the order dated 09.06.2009 of the Assistant Commissioner, Hindu Religious and Charitable Endowments Department, Tirunelveli bearing reference Se.Mu.Na.Ka.No.3526/09.E1 and quash the same and consequently, to restrain the respondents from interfering with the functioning of the Tenkasi Sengunther Madam, Courtallam. This Court, while disposing the said Writ Petition, granted the liberty to the petitioner therein to approach the authority under Section 21 of the T.N.H.R. & C.E. Act, 1959.

3. The cause of action in the present Writ Petition has arisen on account of paper publications dated 08.10.2015 and 25.10.2015 issued in the light of the proceedings of the third respondent dated 09.06.2009. The third respondent by an order dated 09.06.2009 had appointed a fit person for the purpose of collecting rents from the shops which is situated at the centre of the city of Courtallam and collecting amounts from paid toilets, for feeding the poor and for administrating the madam. This was the subject matter of the aforesaid proceedings.

4. It is the case of the petitioner that earlier rival faction representing Sengunthar Samuthayam 56 Desam had filed O.S.No.90 of 1985 before the Sub Court at Tenkasi for a declaration that the property and the management belonged to the entire Sengunthar Mudaliar Community. The suit was decreed in favour of the rival faction by the Trial Court by its judgement dated 05.04.1989.

5. Aggrieved by the aforesaid Judgment and Decree, the petitioner representing the Tenkasi Sengunthar Madam, Courtallam, who was the defendant in the aforesaid suit, had preferred A.S.No.45 of 1989 before the I Additional District Court, Tirunelveli.

6. The learned counsel for the petitioner submits that the said A.S.No.45 of 1989 was also dismissed by the I Additional District Court, Tirunelveli vide Judgment and Decree dated 02.04.1990. A further Second Appeal in S.A.No.736 of 1990 before the Principal Bench of this Court at Chennai was however allowed by a Judgment and



Decree dated 12.12.1997. The learned counsel for the petitioner further submits that in terms of the aforesaid decision, it now stands concluded that the management property of the Madam was vested only with the members of Tenkasi Sengunthar Community alone and not with Sengunthar Samuthayam 56 Desam.

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7. The learned counsel for the petitioner further submits that a fringe elements belonging to Tenkasi Senkunthar Mudaliar Sangam had earlier filed O.S.No.289 of 1984 for a permanent injunction to restrain the official respondents namely the officials of the Hindu Religious and Charitable Endowments Department from interfering with the management of the Madam property.

8. It is submitted that the said suit was dismissed for non prosecution by Judgment and Decree dated on 03.12.1999. It is submitted that in the light of the judgment and decree of the Principal Bench of this Court in S.A.No.736 of 1990, the issue stood concluded that the property of the Madam was to be managed only by the natives of the Tenkasi, Courtallam.

9. It is therefore submitted that the third respondent who appointed as fit person in terms of proceedings dated 09.06.2009 ignoring the decision of the Principal Bench of this Court in S.A.No.736 of 1990 was bad in law and therefore, the petitioner was constraint to file a Writ Petition in W.P.(MD).No.5676 of 2009. Pursuant to order dated 07.02.2014 in W.P.(MD).No.5676 of 2009, the petitioner filed the Revision Petitioner under Section 21-A of the T.N.H.R. & C.E. Act, 1959.

10. The learned counsel for the petitioner has also placed reliance on the following cases:-

- i. **N.K.S.Sankarakumara Nadar and others Vs The Assistant Commissioner for Hindu Religious and Charitable Endowments, Tirunelveli** in App.No.471 of 1969, against the decree of the Sub-Court, Tirunelveli in O.S.No.109/67, dated 01.08.1974.
- ii. **The State of Madras Rep by the Collector of Dharmapuri and others Vs Mahadeva Iyer and others** in S.A.No.1845 of 1979, dated 27.03.1987.
- iii. **Tirumala Tirupati Devasthanms Vs K.M.Krishnaiah** in Civil Appeal No.1484 of 1987 and I.A.No.1 of 1991, dated 02.03.1998
- iv. **N.Sivasubramanina Vs The Government of Tamil Nadu, HR&CE Department, Fort St.George, Chennai-600009 and others** in W.A.Nos.2351 and 2352 of 2005, dated 11.02.2006
- v. **Chandrasekaran Vs The Inspector General, CISG Eastern Zone, 41, Karaya Road, Park Circle, Calcutta-17 and others** in W.P.No.22671 of 1993,



dated 15.03.2007.

**vi. Dr. Subramanian Swamy Vs The State of Tamil Nadu  
and others** in Civil Appeal No.10620 of 2013, dated  
06.01.2014.

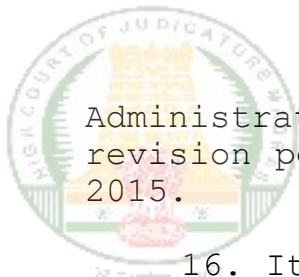
11. Opposing the prayer, the learned counsel for the second respondent submits that this Writ Petition is not maintainable. At the outset, the learned counsel for the second respondent submits that O.S.No.90 of 1985 was filed before the Subordinate Court, Tenkasi by Senkunthar Samuthayam 56 Desam, represented by the representative against the respondents herein. The suit was filed for a declaration that the suit property belongs to the plaintiff therein and for a permanent injunction from interfering with the possession of the suit property.

12. The learned counsel for the second respondent submits that the Hindu Religious and Charitable Endowments Department was not a party to the aforesaid proceedings and therefore, the order, which came to be passed subsequent to the aforesaid Judgment and Decree are not pending on the Hindu Religious and Charitable Endowments Department. It is submitted that the suit was originally decreed as prayed for by the Trial Court on 05.04.1989.

13. The appeal filed by the respondents in A.S.No.45 of 1989 was dismissed by the I Additional District Court on 02.04.1990. The second appeal before this Court in S.A.No.736 of 1990 was allowed on 12.12.2019. The suit filed by the Senkunthar Samuthayam 56 Desam, represented by its representatives was not against Hindu Religious and Charitable Endowments Department. Consequently, the appointment of the fit person in the year 2009 by the Assistant Commissioner cannot be put to jeopardy.

14. The learned counsel for the second respondent further submits that earlier, the order of the third respondent Assistant Commissioner appointing the second respondent as the fit person was put to challenge by one A.Velayutham in W.P (MD) No.5676 of 2009. The Court had granted an interim stay of the order appointing the second respondent as a fit person on 03.07.2009. However, the Writ Petition was eventually dismissed by the Court, vide order dated 07.02.2014 with liberty to the petitioner to approach the authority under Section 21 of the Act within a period of two weeks from the date of receipt of copy of this order.

15. The learned counsel for the second respondent therefore submits that no such revision petitioner was filed by the petitioner within the stipulated time before the Commissioner. Instead, a revision petition was filed under Section 21-A of the Hindu Religious and Charitable Endowments Act, 1959 by the petitioner as President of the Tenkasi Senkunthar Madam, Courtrallam before the Joint Commissioner, Hindu Religious and Charitable Endowments



Administrative Department, Tirunelveli. After filing the aforesaid revision petition, the petitioner also filed a W.P (MD) No.20323 of 2015.

16. It is submitted that the revision petition in the year 2014 could not have been filed, as there is a specific period of limitation under Section 21-A of the T.N.H.R. & C.E. Act, 1959. It is submitted that as per the aforesaid provision, the limitation that is stipulated is three months from the date of which the decision or the order to which the application relates was communicated.

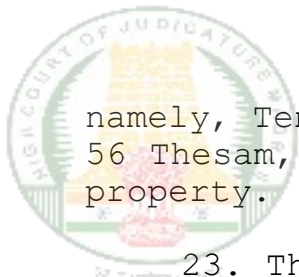
17. Therefore, a preliminary objection was raised by the respondents on the ground that an order passed under Section 21-A of the T.N.H.R. & C.E. Act, 1959 was appealable and a remedy by way of revision is available before the Government under Section 114A of the aforesaid Act.

18. The learned counsel for the second respondent as also the official respondent submits that there is no infirmity in the order inasmuch as to be decided whether the petitioner representing Tenkasi Senkunthar Madam, Courtallam as a denomination is not the subject matter of the dispute. It is for the petitioner to approach the Civil Court for a declaration. It is submitted that in any event, without any proof of denomination, the prayer of the petitioner for setting aside the order of appointing the second respondent as a fit person cannot be countenanced.

19. At this stage interjects, the learned counsel for the petitioner submits that the principle in Section 41 of Indian Evidence Act has to be applied to the facts of the case also. It is submitted that once there is a declaration that the Tenkasi Senkunthar Madam is the denomination, principle in Section 41 of the Indian Evidence Act can be applied as far as the petitioner is concerned as such declaration has to operate in rem. It is therefore submitted that the writ petition deserves to be allowed.

20. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Special Government Pleader appearing for the first and third respondents and the learned counsel for the second respondent.

21. The dispute in O.S.No.90 of 1985 came to be decided in favour of the Sengunthar Samuthayam 56 Desam by Judgment and Decree dated 05.04.1989. However, the Judgment and Decree dated 05.04.1989 in O.S.No.90 of 1985 was reversed by the Principal Bench of this Court at Chennai in S.A.No.736 of 1990 by Judgment and Decree dated 12.12.1997.



namely, Tenkasi Senkunthar Madam Courtallam and Sengunthar Samudayam 56 Thesam, as to who could claim the right of the management of the property.

23. The Inam Fair Register dated 21.09.1911 clearly states that the property was dedicated for Mandagapadi of the Kuttalam Thaswami on the 5<sup>th</sup> Festival Day and for feeding the poor on that day. At the time of dedication, it merely recognised the representatives for the time being of the community of weavers. Whether the said temple is a denomination temple are not and entitled for protection under Article 26 of the Constitution of India read with Section 107 of the T.N.H.R. & C.E. Act, 1959 is the matter to be decided by a Civil Court.

24. *Prima facie* it appears that the said temple is not a denomination temple for Senkunthar Mudaliar Community alone. Whether the Senkunthar Mudaliar Community is having separate belief and practise or not is to be determined in an appropriate proceeding. It would require a detailed consideration before a Civil Court. Therefore, there is no merit in the present Writ Petition. There are indications that the property dedicated was not properly administered. Therefore, a fit person has been appointed.

25. Therefore, I am inclined to dismiss this Writ Petition. At the same time, I am inclined to allow the petitioner to file a statutory appeal / revision under Section 114 of the T.N.H.R. & C.E. Act, 1959, within a period of 30 days from the date of receipt of a copy of this order. The Authority concerned is directed to consider the said appeal / revision on merits if such appeal / revision is filed within such time. Liberty is also granted to the petitioner to file a suit for declaration that said temple is a denomination temple and is entitled for protection under the Constitution.

26. This Writ Petition is dismissed with the above observations. No cost.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)

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To

1.The Joint Commissioner,  
Hindu Religious & Charitable Endowment Department,  
Sivagangai, Sivagangai District.

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



2.Fit Person / The Executive Officer,  
A/m Tirucourtalanatha Swamy Thirukoil,  
Courtallam, Tirunelveli District.

3.The Assistant Commissioner,  
Hindu Religious & Charitable Endowment Department,  
Tirunelveli.

+1 CC to M/s.K.CHANDRASEKARAN, Advocate ( SR-19023[F] dated 18/04/2022 )

+1 CC to M/s.SPL.GP. ( SR-19001[F] dated 18/04/2022 )

+1 CC to M/s.S.MANO HAR, Advocate ( SR-19251[F] dated 19/04/2022 )

W.P.(MD) No.24766 of 2016  
and W.M.P. (MD) Nos.17906  
& 17907 of 2016 and  
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13.04.2022

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