



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.04.2022

CORAM

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

Writ Petition (MD) No.11181 of 2017

and

W.M.P. (MD) Nos.8567 and 9344 of 2017

S.Vallinayagam

.. Petitioner

Versus

1.The Commissioner,

Hindu Religious and Charitable Endowment Department,  
Chennai.

2.The Joint Commissioner,

Hindu Religious and Charitable Endowment Department,  
Madurai - 1.

3.The Executive Officer,

A/m.Meenakshi Sundareshwarar Temple,  
Madurai Town.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for records in pursuant to the impugned order passed by the second respondent vide Na.Ka.No.1274/2017/E2, dated 14.04.2017, quash the same as illegal and consequently, directing the third respondent from in any way obstructing the entrance installing Hundial and providing hindrance in the administration of the petitioner's Temple namely, Sri Mottaigopuram Muneeswarar Temple, situated at North Chitrai Street, Madurai.

For Petitioner

: Mr.S.Madhavan

For R1 and R2

: Mr.P.Subbaraj

Special Government Pleader

For R3

: Mr.VR.Shanmuganathan

### ORDER

The petitioner has challenged the impugned order of the second respondent - Joint Commissioner, Madurai, directing the petitioner to work out remedy under Section 63(a) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 [hereinafter referred to as the 'H.R. & C.E. Act']. The dispute in the present case pertains to a small Temple called 'Sri Mottagopuram Muneeswarar Temple'.

2.The case of the petitioner is that he is administering Sri Mottagopuram Muneeswarar Temple, which is under the Northern Tower of the third respondent Temple called 'Arulmigu Meenakshi Amman Temple, Madurai' and partly on the public space abetting the



Northern Tower of the said Arulmigu Meenakshi Amman Temple. Earlier, there were disputes between the Temple and the petitioner's ancestors in O.S.No.11 of 1909, on the file of the District Munsif of Madura (Additional). The suit was filed for injunction to restrain the third respondent Temple from interfering with the Temple managed by the petitioner's ancestors. The suit came to be decreed by the said Court by its judgment and decree dated 18.02.1910. Further appeal before the District Court, Madura, in A.S.No.172 of 1910 was also dismissed by the learned District Judge, Madura, on 31.12.1910. It is therefore submitted that the judgment and decree of the trial Court and the first appellate Court had attained finality. It stands concluded that the third respondent Temple had failed to prove any sort of title to the suit property and therefore, the appeal filed by the third respondent Temple was dismissed. That apart, it is submitted that a petition under Section 84(2) of the Madras Hindu Religious Endowments Act, 1927 was also filed before the learned District Judge, Madura, in O.P.No.33 of 1939. The learned District Judge, Madura, framed the following issues:-

- ''(i) Whether the Mottagopuram Muneeswarar Temple, Madura, is a private Temple?*  
*(ii) To what relief is the petitioner entitled?''*

3.It is submitted that the said proceeding filed by the ancestors of the petitioner was also allowed and no further appeal was filed by the third respondent Temple. It is submitted that the learned District Judge, Madura, in O.P.No.33 of 1939 categorically held that Sri Mottagopuram Muneeswarar Temple was a 'private temple' and was outside the purview of the Madras Hindu Religious Endowments Act, 1927.

4.It is therefore submitted that on 23.12.2016, the third respondent Temple installed a Hundial in front of Sri Mottagopuram Muneeswarar Temple without any authority of law. Therefore, the petitioner was constrained to send representations, dated 23.12.2016 and 27.12.2016, to the official respondents to take steps to remove the Hundial and restrain the third respondent Temple from interfering with the day-to-day administration of the said Temple. Since no action was taken, the petitioner was constrained to file W.P.(MD)No.244 of 2017, which came to be disposed of 06.01.2017, by directing the second respondent namely, the Joint Commissioner, Madurai, to consider and pass appropriate orders on merits on the respective representations dated 23.12.2016 and 27.12.2016 of the petitioner.

5.The learned counsel for the petitioner submits that while the scope of enquiry before the second respondent - Joint Commissioner was only relating to removal of Hundial placed on 23.12.2016 and to restrain the third respondent from interfering with the day-to-day management and affairs of the Temple, the second respondent without



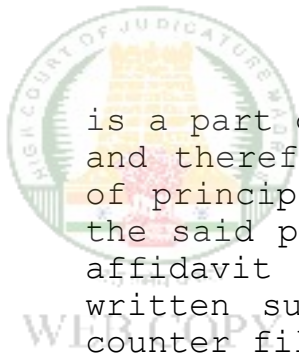
notice to the petitioner, enlarged the scope of enquiry, by concluding that *prima facie* it appeared that the subject Temple called 'Sri Mottaigopuram Muneeswarar Temple' situated below the Northern Tower of the third respondent Temple was a public temple and therefore, the petitioner should work out the remedy under Section 63(a) of the H.R. & C.E. Act to establish that it is a private temple. It is submitted that the petitioner was not put on notice and therefore, the directions contained in the impugned order of the second respondent asking the petitioner to work out the remedy under Section 63(a) of the H.R. & C.E. Act was beyond jurisdiction and was therefore liable to be quashed.

6. Opposing the prayer, the learned counsel for the third respondent submits that the construction of North Tower of Arulmigu Meenakshi Amman Temple was started in the year 1564 and completed in the year 1878 and the Temple viz., Sri Mottaigopuram Muneeswarar Temple was constructed by encroaching upon the property of the third respondent Temple by putting up temporary structure. It is submitted that the Sanctum and Sanctorum of Sri Mottaigopuram Muneeswarar Temple is situated right below the Northern Tower of Arulmigu Meenakshi Amman Temple and that over a period of time, the devotees visiting the Arulmigu Meenakshi Amman Temple also offering their prayers at Sri Mottaigopuram Muneeswarar Temple.

7. It is submitted that the petitioner cannot claim that the said Temple is a private Temple. In this connection, the learned counsel for the third respondent has drawn the attention of this Court to the definition of the word 'Temple' in Section 6(20) of the H.R. & C.E. Act and the definition of the words 'Religious Institution' in Section 6(18) of the H.R. & C.E. Act.

8. It is submitted that the public has also donated funds for the maintenance of Sri Mottaigopuram Muneeswarar Temple and therefore, it is no longer open for the petitioner to claim it to be a private temple of the petitioner. It is further submitted that Sri Mottaigopuram Muneeswarar Temple has been built within the third respondent Temple Complex i.e., under the Northern Tower of the third respondent Temple and partly on the public space abetting the Northern Tower of the third respondent Temple. It is therefore submitted that the third respondent is entitled to put up a Hundial. That apart, it is submitted that Sri Mottaigopuram Muneeswarar Temple attracts devotees from public and therefore, it is a 'public temple' and if it is the case of the petitioner that the said Sri Mottaigopuram Muneeswarar Temple is a 'private temple', it is for him to file an appropriate petition under Section 63(a) of the H.R. & C.E. Act.

9. It is further submitted that the petitioner was also put to notice in the proceedings before the Joint Commissioner inasmuch as the defence of the third respondent Temple was that the said Temple



is a part of Arulmigu Meenakshi Amman Temple and was a public Temple and therefore, the petitioner cannot state there was any violation of principles of natural justice. It is further submitted that in the said proceedings, not only the third respondent filed a counter affidavit to this effect, but the petitioner has also given a written submission to distant itself from the allegations in the counter filed by the third respondent.

10.It is further submitted that the third respondent had also filed a written submission and it is pursuant to the above said, a decision has been taken asking the petitioner to work out his remedy under Section 63(a) of the H.R. & C.E. Act.

11.The learned counsel for the third respondent has also drawn the attention of this Court to the following decisions of this Court as well as the decisions of the Hon'ble Apex Court and submitted that the Writ Petition is devoid of merits and is liable to be dismissed.

(i) Sri Chidambareswara Sivagami Ambigai Temple, by their Managing Trustee, S.V.R.A.Nallakaruppan Chettiar vs. Commissioner, Hindu Religious and Charitable Endowments, Madras [AIR 1966 Madras 99]

(ii) Goswami Shri Mahalaxmi Vahuji vs. Ranchhoddas Kalidas and others [1970 AIR (SC) 2025]

(iii) M.Lakshmiammal and others vs. K.T.T.Ramalingam Chettiar and another [1992 (II) MLJ 93]

(iv) S.Pitchai Ganapathy and others vs. Commissioner, Hindu Religious and Charitable Endowments Department and others [2001 (8) SCC 460]

(v) Teki Venkata Ratnam and others vs. Dy. Commissioner, Endowment and others [2001 AIR (SC) 2436]

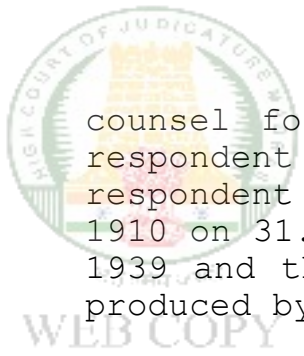
(vi) A.A.Gopalakrishnan vs. Cochin Devaswom Board and others [2007 (7) SCC 482]

(vii) C.R. Jayaraman and others vs. M.Palaniappan and others [2009 (3) SCC 425]

(viii) The Principal Secretary, HR & CE Department, Chennai-34 and others vs. G.Paramasivam and others [2015 Writ L.R. 1086].

12.The learned counsel for the third respondent has also shown Photographs and Newspaper clippings showing the public devotees worshipping in Sri Mottaigopuram Muneeswarar Temple and receipt of contribution from the public for putting up a silver door for locking the Sanctum Sanctorum of Sri Mottaigopuram Muneeswarar Temple situated right below the Northern Tower of Arulmigu Meenakshi Amman Temple. That apart, the third respondent has also shown Photographs to show that additional renovation is being made by the petitioner without any authorisation. It is submitted that but for contribution from Public, it is not possible for the petitioner to put up construction.

<https://hcservices.courts.gov.in/hcservices/> 10. I have considered the arguments advanced by the learned



counsel for the petitioner and the learned counsel for the third respondent Temple and perused the impugned order passed by the third respondent and the orders that came to be passed in A.S.No.172 of 1910 on 31.12.1910 and the judgment dated 21.03.1940 in O.P.No.33 of 1939 and the provisions of the H.R. & C.E. Act and the Photographs produced by the learned counsel for the third respondent.

14.The issue as to whether the petitioner had a right over portion of the Temple property where they have put up Sri Mottaigopuram Muneeswarar Temple now stands concluded by the judgment and decree of the learned District Judge, Madura, in A.S.No.172 of 1910. A reading of the above said judgment and decree of the first appellate Court in A.S.No.172 of 1910 indicates that the Poojaris had clearly a good title by adverse possession in their individual capacity and not in their capacity as Poojaris of Sri Mottaigopuram Muneeswarar Temple and therefore, it was concluded that there was nothing compatible with the petitioner's ancestors' claim that they are the trustees and owners of the Temple. The said decision has not been disturbed till date.

15.Similarly, in the petition filed under Section 84(2) of the Madras Hindu Religious Endowments Act, 1927 by the petitioner's ancestors also indicate that Sri Mottaigopuram Muneeswarar Temple is a private temple. However, the case laws submitted by the learned counsel for the third respondent also indicate that a private temple may also become a public temple over a period of time. The fact of the matter is that the Temple was not built on a private land belonging to the petitioner's ancestors. It was by way of adverse possession certain rights have conferred as is evident from the reading of the judgment and decree in A.S.No.172 of 1910, dated 31.12.1910. Having established adverse possession and having established that it is a private Temple, the Temple is being renovated. However, the fact also remains that the Temple is situated both within and outside the precincts of the third respondent Temple. It is not being worshipped exclusively by the members of the petitioner's family. It appears that it is also being worshipped by the members of the public. Therefore, if the petitioner wants to establish that Temple is still a private temple at this distant point of time, the petitioner will have to necessarily file an application under Section 63(a) of the H.R. & C.E. Act. Though the placing of Hundial on 23.12.2016 by the third respondent *prima facie* appears to be an indirect attempt of the third respondent Temple to garner the collection, which the petitioner expects to pocket.

16.I do not find anything offensive in the impugned direction of the second respondent, directing the petitioner to file an appropriate application under Section 63(a) of the H.R. & C.E. Act. I am therefore unable to take a different view. Therefore, I am inclined to dispose this Writ Petition, by directing the petitioner



to file an application within a period of 30 days from the date of receipt of a copy of this order under the above said provision before the second respondent herein, who shall consider the petitioner's case and the third respondent's case and pass appropriate orders on merits. The second respondent shall endeavour to pass final orders preferably within a period of six months from the date of receipt of a copy of this order. It is made clear that this order shall stand automatically vacated, in case, the petitioner fails to file such an application before the second respondent - Joint Commissioner, Madurai, within the above stipulated time limit. Pending resolution of the proposed application by the second respondent, the third respondent Temple is directed to furnish proper accounts of the Hundial receipts and collection before the second respondent - Joint Commissioner, Madurai. The amounts collected shall be appropriated in accordance with law. In case, it is concluded that Sri Mottaigopuram Muneeswarar Temple is a public Temple, the authorities acting under the H.R. & C.E. Act are empowered to take appropriate steps to bring the above said Temple under the purview of the H.R. & C.E. Act.

17.This Writ Petition stands disposed of in terms of the above observations. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

smn2

To

- 1.The Commissioner,  
Hindu Religious and Charitable Endowment Department,  
Chennai.
- 2.The Joint Commissioner,  
Hindu Religious and Charitable Endowment Department,  
Madurai - 1.
- 3.The Executive Officer,  
A/m.Meenakshi Sundareshwarar Temple,  
Madurai Town.



WP (MD) No.11181 of 2017

+1 CC to M/s.SPL.GP. ( SR-19740[F] dated 20/04/2022 )

WP (MD) No.11181 of 2017  
19.04.2022

KS (CO) 25

KB (29.04.2022) 7P 5C

WEB COPY