IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.08.2023

PRONOUNCED ON : 18.10.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. No. 1934 of 2023

A/M Kumbeswarar Koil,
Kurinjipadi, Represented by its Managing Trustee
S. Somasundaram,
S/o Sivagurunatha Mudaliar,
Kurinjipadi Taluk,
Cuddalore District ... Appellant / Petitioner

Vs.

1. The Commissioner,
   Hindu Religious and Charitable Endowments Department,
   Nungambakkam, Chennai – 600 034.

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

3. The Joint Commissioner,
   Hindu Religious and Charitable Endowments Department,
   No.8, River Side Street,
   Pudupalayam, Cuddalore - 607001.

...Respondents / Respondents

Prayer: Writ Appeal as against the order dated 20.10.2022 passed in W.P. No. 27971 of 2022.

For Appellant :: Mr. R. Gururaj

For Respondents :: Mr. N. R. R. Arun Natarajan, Special Government Pleader

JUDGMENT

(Delivered by K. Rajasekar, J.)

This Appeal has been filed challenging the order dated 20.10.2022 passed in W.P. No. 27971 of 2022, wherein this Court has dismissed the Writ Petition filed by the appellant herein. The petitioner, who claims to be a private Temple, challenging the inclusion of its name in the list of public temples published U/s. 46(1) of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, hereafter referred as HR & CE Act.

2. The facts leading to filing of this appeal is brief as follows:

3. The Appellant Temple is situated at Kurinjipadi Taluk, Cuddalore district. It is 200 years old Temple, established by persons belongs to Sengundar Mudaliar community of Kurinjipadi Pazhantheru. The Temple was always under the management of the above community. In the year 1914, a suit in O.S. No. 28 of 1914 was filed by another community claiming trusteeship over the petitioner Temple and it was held, that the

Temple belongs to the Sengundar Mudaliar community of Kurinjipadi. The scheme was also framed for administration of the Temple and the HR & CE was given right to appoint trustees. It was only limited right to appoint the trustees and they have no authority to interfere with the affairs of the Temple.

4. In the year 1988, respondents interfered with the Temple affairs by appointing 'Fit person'. Persons from Sengundar Mudaliar community filed a suit in the representative capacity in O.S. No. 10/1988 on the file of Sub Court, Cuddalore seeking declaration that the Temple is a denomination Temple and only the people of Mudaliar community of three streets would be appointed as a trustees and the same was partly decreed and appointment of fit person was held valid. The HR & CE department has not filed any appeal in the decree passed in the suit. Only the Temple, filed an appeal in A.S. No.239 of 1989 on the file of District Court, Cuddalore and the appeal was dismissed, and against the first appeal, the Temple Management has approached this Hon'ble High Court in the Second Appeal in S.A. No.1974 of 1992 and judgment and decree was passed on 16.04.2003, modifying the judgments of lower Court as follows:

1. The declaration that the Temple is a denominational

Temple is set aside.

2. *The decree that the suit Temple belongs to the people of Senguntha Mudaliar of three streets is set aside.*
3. *The decree passed in O.S. No.28 of 1914 that the Temple belong to the people of Senguntha Mudaliar community of Pazhantheru (old street) is confirmed.*
4. *The HR & CE can appoint only the people of Senguntha Mudaliar community of the three streets as trustees of the Temple is confirmed.*

5. In the year 2020, the Temple has challenged the Demand Notice, dated 06.11.2019 issued by the second respondent, wherein, the Temple was asked to pay Audit Fees by raising various grounds, by a Writ Petition in W.P.No.12822 of 2020. It is contended that even though, the Temple is not a denominational Temple, it is a private Temple belongs to the people of Mudaliar community of three streets of Kurinjipadi and the Judgment in O.S. No. 442 of 1986 on the file of District Magistrate Court, Cuddalore has also become final, hence the Temple has to be treated as a private Temple. Hence, the HR & CE has no control over the Temple or the Management. Judgment and decree passed in the Second Appeal does not give any rights to the HR & CE to interfere in the affairs of the Temple and provisions of HR & CE Act, is not applicable to the Temple. The expenses of the Temple are made out of the generous donations of the members of founding families, devotees, worshipers, etc., mostly in kind. There are

several donors, the Temple has not requested the services of the HR & CE department for auditing also. While that being the case, on 06.11.2019, the Joint Commissioner HR & CE has issued a demand notice demanding payment of audit fees and same is arbitrary and unconstitutional.

6. The earlier Writ Petition in W.P. No.12822 of 2020 was dismissed rejecting the contention of the Temple including the contention that the Temple is a private Temple. It is held as follows:

> *"7. From the materials on record, it is seen that the petitioner is challenging the demand notices dated 06.11.2019 and 14.11.2019, issued by the Respondent under Section 92 of the Act. The Court can interfere with a notice only when the said notice is issued by the person having no jurisdiction or notice is malafide. When a person is alleging malafide, the official who is acting in a malafide manner must be impleaded in his individual capacity. In the present case, it is not the case of the Petitioner that the Respondent is acting in a malafide manner. But, it is the case of the Petitioner that the Petitioner Temple is a Private Temple and it is not a Public Temple. Therefore, provisions of the Act is not applicable. On the other hand, it is the case of the Respondent that in the scheme decree framed in O.S. No.28 of 1914, it has been held that the Petitioner Temple is a Public Temple. The Respondent has contended that publication has been effected under Section 46(1) of the Act, declaring Arulmighu Kumbeswarar Koil, Kurinjipadi, Kurinjipadi Taluk, Cuddalore District as a Public Temple. Further, it is the case of the Respondent that general public are worshipping in the said Temple and it is not restricted to the people of the Sengundha Mudaliar community alone. According to the Respondent, audit are conducted regularly by the HR & CE Department and Petitioner is paying contribution from Fasli 1389 to 1427 (upto 2018 -*

2019) and also paying audit fees. These averments are not denied by the Petitioner. It is the further case of the Petitioner that Section 92 of the present Act is corresponding the Section 76 of Old Act and Section 76 of the Old Act has been struck down by the Hon'ble Apex Court. On the other hand, the Respondent has furnished the details to show that validity of Section 92 of the present Act has been confirmed by this Court as well as by the Hon'ble Apex Court. In view of the confirmation of the validity of Section 92 of the Act, the contention of the Petitioner that Section 92 of the Act is not valid and it is not applicable to the Arulmighu Kumbeswarar Koil, Kurinjipadi, Kurinjipadi Taluk, Cuddalore District is without merits. For the above reasons, the Writ Petition is liable to be dismissed as devoid of merits."

7. Challenging the order passed in W.P. No. 12822 of 2022, the Temple filed a Writ Appeal in W.A. No. 1858 of 2022 and in the Appeal also, the Division Bench of this Court has considered the submissions of the Temple and it has held in Paragraph Nos. 4 and 5 as follows:

"4. It is also the fact that the respondent before the learned Single Judge has referred a notification published under Section 46(1) of the Act of 1959 declaring the temple in question to be a public temple. it was found that general public are worshiping in the said temple and it is not restricted to the people of Sengundha Mudaliar commuity alone. It was also found that audits are conducted by the HR & CE Department and the appellant has paid contribution from fasli 1389 to 1427 (up to 2018-2019), apart from payment of audit fees. Those averments were not denied, but the fact remains that publication declaring Arulmighu Kumbeswarar Koil, Kurinjipadi, Kurinjipadi Taluk, Cuddalore District to be a public temple was not questioned .

5. In the light of the aforesaid, we do not find any *reason to cause interference in the order unless the appellant successfully challenged the publication declaring the temple to be a public temple and remained succesful therein. The liberty aforesaid would not affect the outcome of this litigation. However, till the challenge remains successful, the appellant has to satisfy the payment, as the appellant earlier paid the required payment till the year 2018-2019."*

8. Taking advantage of the liberty granted in paragraph No. 5 of judgment of the Division Bench, cited supra, the temple has once again filed the present Writ Petition, seeking a relief of Writ of Certiorari, to quash Entry No.218, in the List of Public Temples, listed by the Respondents.

9. Since there is categorical finding rendered by this Court in both Writ Petition and Writ Appeal in the earlier round of litigation, the learned Single Judge has rejected the contention that the Temple is not a public Temple and granting liberty to the Appellant in the Writ Appeal shall only mean that the Temple is entitled to challenge the proceedings, if there was no earlier legal pronouncement. In this case, the doctrine of res-judicata is starred against the petitioner herein. The Single Judge by referring the judgment of the Apex Court in ***M. Nagabushana vs. State of Karnataka [(2011) 3 SCC 408]*** and ***Union of India vs. Major S.P. Sharma [(2014 6 SCC 351]*** has held that any proceeding which has been initiated in breach of rule of *res-judicata* is abuse of process of Court.

10. Assailing the Order passed in the present Writ Petition in W.P. No.27971 of 2022, the learned counsel for the Appellant/ Temple herein contended that, this Court while disposing the W.A. No.1858 of 2022, the Temple has granted liberty to challenge the listing of the name of the Temple u/s. 46(1) of HR & CE Act. In the earlier writ petition, challenge is made against the Demand Notice issued u/s 92(1) and 92(2) HR & CE Act, hence, earlier order is not bar to file present Writ Petition. It is also contended that the Temple is only a Private Temple and not a Public Temple. HR & CE has no authority to conduct audit of the Private Temple and inclusion of the Temple in list u/s. 46(1) of HR & CE Act is illegal and prays to remove the name of the Temple.

11. Heard the submissions on both sides and perused the documents placed on record.

12. The Temple has relied on the order passed by this Court in S.A. No. 1974 of 1992 to contend that there is a declaration that the Temple belongs to the Community. In the earlier suit, the issue was raised whether the appellant Temple is a denominational Temple and of appointment of 'Fit

person' by the HR & CE Department is valid or not. The Judgment of this Court in S.A. No. 1974 of 1992, dated 16.04.2003 has held that the declaration of the suit Temple is a denominational Temple is not valid since the Temple is Public Temple and the Decree passed in O.S. No.28 of 1914 that the Temple belongs to Sengundar Mudaliar Community of three streets was also set aside.

13. This Court has further held that, after incorporating the Draft scheme for the Administration of Temple approved in earlier suit, in Paragraph No. 12, as follows:

> "12. *The plaintiff has filed and relied upon the judgment in Ex.A.3 which shows that the scheme has been framed by a decree in O.S. No.28 of 191 4, as early as 1917 itself; The relevant provisions of the scheme are as follows:*
>
> *İt is decreed that the scheme drafted and put into Court by the parties and approved by the Court with the modifications above set forth with reference to Clauses 25 and 26 of the draft scheme be adopted for the convenient management of the plaint Mariamman Temple and the Kumbeswaraswami Temple in the village of Kurinjipadi kuppam, Cuddalore Taluk,*
>
> *"TERMS OF THE DRAFT SCHEME*
>
> *(1) The suit Temple, i.e., the Mariammal Temple and the Kumbeswaraswami Temple, be declared to be a public religious trust, i.e., all members of the public are entitled to worship therein; bu the trusteeship for the control and management of the said Temple and*

all their properties movable and immovable now in existence or that my be acquired in future shall vest solely in the Sengundar community of Pazhantheru of Kurinjipadi.
....

(19) On the occurrence of a vacancy in the Board caused by death, removal, resignation, or otherwise, the community shall, at a general meeting, fill up the vacancy by election. If any vacancy remains unfilled for over 3 months, the eldest members of the households entitled to vote for the purpose, may after giving a fortnight's notice to the members of the Board, fill up the vacancy by election. If any seat on the Board remains vacant for more than 6 months, this Couirt amy on its own motion or on the application of any ten interested in the trust fill up the vaccncy by appointing a member from among the members of the Pazhantheru Sengundars.
....

(23) The Board may from time to time frame new rules or modify the existing rules in regard to the management of the suit temples subject to the approval of the Sengundar community of Pazhantheru and of this Court. The Court also may of its own motion or on the application of any one interested in the trust frame rules for the purpose of management of the suit temples, without prejudice to the rights of the Pazhantheru Chengundar community and not inconsistent with the general principles of this scheme."

<u>*From this, it is clear that the Court as early as 1917 has declared that the suit Temple is a "public Temple." It is also clarified that "all the public has the right to worship in the Temple." Where the public has a "right" to worship in a Temple without any restriction whatsoever, that Temple cannot be a denominational Temple as held by the Supreme Court in SHIRUR MUTT case. Therefore, the decree of declaration by the trial Court that it is a denominational Temple does not*</u>

<u>appear to be correct."</u>

14. The Judgment of this Court in the Second Appeal has clarified and categorically declared that the Temple could not be termed as a private Temple. Now, the Temple by taking advantage of the liberty granted by the Division Bench in Writ Appeal, now attempts to re-open its case to claim that it is not a public Temple, which is not at all permissible as the issue whether the Temple is a denominational Temple or a public Temple was directly in issue and the issue was considered by this Court in Second Appeal in the year 2003 and the Decree and Judgment, dated 16.04.2003 has become final. In the circumstances, this Writ Appeal filed by the appellant, taking leaverage that they have been granted liberty to challenge the declaration of the Temple as a public Temple is clear abuse of process of law as rightly held by the learned Single Judge.

15. The Judgment passed by this Court in the Second Appeal in S.A. No.1742 of 1992 was not taken up for the consideration by the Division Bench of this Court, while granting liberty to the appellant and as held by the learned Single Judge that, already by way of declaration made by the Civil Court that, the Temple is not denominational Temple since

same is only a Public Temple, the Temple is not entitled to claim that it is a Private Temple. Hence on the principle of *res-judicata*, the Writ Petition filed is not maintainable and order of dismissal is proper and valid.

16. For the argument sake, if we agree with the Temple that, they are entitled to challenge the impugned lists, de-hors the previous judicial pronouncements against the Appellant Temple, we are of the view that, the Temple has not fulfilled the factors to be declared as Private Temple.

17. There are umpteen number of judgments providing Tests to be adopted for determining character of Temple, pronounced by the Hon'ble Apex Court and this Court. For the benefit of better understanding, few judgments are referred herein.

18. The Hon'ble Apex Court in ***Goswami Shri Mahalaxmi Vahuji vs. Ranchhoddas Kalidas and others*** reported in ***(1969) 2 SCC 853***, held that, "*The True character of the particular temple is decided on the basis of various circumstances:*

> *(i). Is the temple build in such imposing manner that, it may prima facie appear to be a public temple?*

(ii). Are the members of the public entitled to worship in that temple as of right?

(iii). Are the temple expenses met from the contributions made by the public?

(iv). Whether the Sevas and Utsavas conducted in the temple are those usally conducted in public temples?

(v). Has the management as well as the devotees been treating that temple as a public temple?"

19. In ***Radhakanta Deb and another vs. The Commissioner of Hindu Religious Endowments, Orissa*** reported in ***1981 (2) SCC 226***, suggesting the following test to determine the character of the Temple, as follows:

(i). Whether the public use the temple as of right;

(ii). Whether the control and management vests in public and the founder does not retain any control over management;

(iii). Even if there is dedicatiion of properties by the founder, whether the founder retains the control and management of the temple and properties.

(iv). Whether the founder of endowment made any stipulation for offerings or contributions to be made by the memebrs of the public to the temple.

20. In ***C.R. Jayaraman and others vs. M. Palaniappan and others*** reported in ***2009 (2) LW 136 : 2009 (3) SCC 425,*** the Hon'ble Apex Court has reiterated the above factors for determination of nature of Temple and observed as follows:

"The High Court, in its impugned judgment relied on Madras ***Hindu Religious Endowment Board vs. V.N. Deivannai Ammal By Power of Attorney Agent TV. Mahalingam Iyer, 1952(2) MLJ 686*** *in Paragraph no.6 which held that: "The Poojari of the aforesaid temples deposed before the trial court and stated categorically in his deposition, which was accepted by the High Court also, that the Pooja articles were received from the public during the Pooja time and in turn, he used to give Prasadam to the public. It was also stated by him that utsavams were used to be conducted during "Skanda Sasmti", "Thai Pyosam", and "Panchuni Uthiram"; and on those occasions, the deities were taken out as a general custom in procession through the main roads of Erode Town. It was also admitted by him that during festival days and also during the Pooja time, public used to come and offer their worship before the deities and there was no direction issued to him that he should not perform the pooja offered by the public. The Poojari had also admitted before the Assistant Commissioner of the Board that public used to come to the festival without any obstruction and that they used to offer donations and collect funds from the public to conduct festivals in the temples. The High Court, in its impugned Judgment, relied on its decision reported in The Madras Hindu Religious Endowment Board Vs. V. N. Deivanai Ammal By Power of Attorney Agent TV. Mahalingam Iyer, [1952(II) M.L.J. 686], which held that where there was an Utsava idol and processions were taken out, it would indicate the fact that the temple was a public temple. This principle was also reiterated in another decision of the Madras High Court in the case of Commissioner, H.R. & C.E. Vs. Kalyanasundara Mudaliar, [1957(II) MLJ 463], wherein it was also held that the provisions of the settlement deed taken along with the other features such as the existence of Dwajasthambam, Balipeetham and Utsava Vigraham and carrying on deity in procession and accepting Deeparadhana from the members of the public on that occasion conclusively*

establish that the institution was a place of public religious worship conducted to or for the benefit of the Hindu community in the village as a place of religious worship and that it was the public and not a private temple and fell within the definition of Section 9(12) of the Madras Act II of 1927. We are in respectful agreement with the views expressed by the Madras High Court in the aforesaid two decisions regarding the principles to be applied to come to a finding whether the temple is private or public in nature. The evidence at our disposal also shows that the public at large used to offer worship to the Vinayaka Temple in the platform of Brough Road and also the Ajaneya temple in the bank of the river Cauvery and these temples were always accessible to the residents of Erode and the public had always regarded these temples with great esteem and veneration. This Court in Deoki Nandan Vs. V. Murlidhar & Ors. [AIR 1957 SC 133], held that where idols were installed not within the precincts of residential quarters, but in a private building constructed for that very purpose on a vacant site and where some of the idols were permanently installed on a pedestal within the temple precincts, that is more consistent with the endowment being public rather than private. Further, a Constitution Bench of this Court in Tilkayat Shri Govindlalji Maharaj etc. Vs. State of Rajasthan & Ors. [AIR 1963 SC 1638], held that where evidence in regard to the foundation of the temple is not clearly available, the answers to the questions namely, are the members of the public entitled to take part in offering service and taking darshan in the temple, are the members of the public entitled to take part in the festivals and ceremonies arranged in the temple and are their offerings accepted as a matter of right will establish the character of the temple. Therefore, according to the above mentioned decision, the participation of members of the public in the darshan in the temple and in the daily acts of worship or in the celebrations of festive occasions are to be very important factors in determining the character of the temple. In the present case, even though the appellant has contended that it is not possible under the Hindu custom to refuse the entry of the public into the temple, but this *contention cannot be supported in the light of the discussions and rationale of the cases mentioned above."*

21. The Judgment of this Court in ***Deputy Commissioner, Hindu Religious and Charitable Endowments Administration Department and another vs. Kannan alias Kannian*** [***2017 (4) CTC 8 : 2017 (2) LW 739]***, has reiterated the above factors and held in Paragraph No.30 that, if there is no dedication of temple for the benefit of public or as contribution from public, or participation of public in the affairs of temple, and the management of Temple only with plaintiff or his predecessors in interest, then, the Temple shall be termed as Private Temple.

22. It is admitted by the learned counsel for the Petitioner, that Temple is collecting donations and contributions from various persons and devotees. It is specifically pleaded in Paragraph Nos.14 and 15 of the affidavit of the Managing Trustee that, people of all communities and the public at large are allowed to worship, and allowing the public to worship will not take away the character of Temple as Private Temple. The above facts shows that, Temple falls with in the character of Public Temple. That apart, the Temple is being administered by way of Scheme framed and the fact that Public Trust is administering the Temple also shows that beneficiaries of Trust being general public. As discussed supra, Temple is

having following characters of public Temple.

(i). Temple is collecting donation, contributions and funds for Management of Trust.

(ii). Temple is being worshiped by general public without any restrictions and they have not been restricted from participating in celebrations.

(iii). Temple is not dedicated to few persons and dedicated to all the communities for the worship and any person from Senguntha Mudaliar Community residing in the Pazhantheru are entitled to be appointed as Trustees.

(iv). Sewas and Utsavas performed are those usually conducted in Public Temples.

(v). The Management treating the Temple as Public Temple by creating Public Trust to administer the Temple.

Accordingly, the contention of the Petitioner Temple, that it is a private Temple is liable to be rejected and listing of the Petitioner Temple in the list of Public Temple by the respondents is valid and binding on the Petitioner Temple, resultantly, the Writ Appeal is liable to be dismissed.

23. The Writ Appeal stands dismissed with the above observations. No costs.

(S.V.N.J.) (K.R.S.J.)
18.10.2023

stn
Index: Yes/No
Speaking Order: Yes/No
Neutral Citation Case : Yes/No

To

1. The Commissioner,
   Hindu Religious and Charitable Endowments
   Department,
   Nungambakkam, Chennai – 600 034.

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

3. The Joint Commissioner,
   Hindu Religious & Charitable
   Endowments Department,
   No.8, River Side Street,
   Pudupalayam, Cuddalore - 607001.

S. VAIDYANATHAN, J.
AND

K. RAJASEKAR, J.

stn

Pre-delivery Judgment made in
W.A. No. 1934 of 2023

18.10.2023