IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Writ Appeal No.216 of 2021
C.M.P.No.950 of 2021

H.H.Sankaracharya Swamigal
Kanchi Kamakodi Peetam
Hereditary Trustee
Sri Viswanatha Swamy Devasthanam
Melavanjur, Thirumalairaya Pattinam
Pondicherry.

.. Appellant

Versus

1. The Govt. of Tamil Nadu,
Represented by its Secretary,
Tourism, Culture and Charitable Endowments Department
Fort St.George
Chennai – 600 009.

2.The Commissioner
Hindu Religious & Charitable
Endowments Department
Nungambakkam High Road
Chennai – 600 034.

3.The Asst. Commissioner
Hindu Religious & Charitable
Endowments Department
Nagapattinam.

.. Respondents

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 12.02.2020 made in W.P.No.23096 of 2013 and allow the above Writ Appeal.

For Appellant	: Mr.A.K.Sriram, Senior Counsel for Mr.Wilson Topas for M/s A.S.Kailasam & Associates.
For Respondents	: Mr.N.R.R.Arun Natarajan State Government Pleader, for RR-1 to 3

JUDGMENT

(Judgment made by the Hon'ble Mr.Justice D.Bharatha Chakravarthy)

A. The Questions:

1. The questions which arise for our determination in this Writ Appeal are,

(i)whether action of the authorities of the State of Tamil Nadu under the Tamil Nadu Hindu Religious & Charitable Endowments Act, 1959, in appointing a fit person in respect of the properties of the appellant Temple is without jurisdiction as extra territorial exerciser of power?; and

(ii)even if they had jurisdiction, whether a fit person can be appointed in respect of property of the temple?

B. The Appeal:

2. This Writ Appeal is directed against the Order of the learned Single Judge dated 12.01.2020 in W.P.No.23096 of 2013, by the said order, the learned Single Judge had disposed of the Writ Petition, on the following terms:

> *"19. In the result, the impugned orders are quashed and the matter is remanded back to the third respondent for fresh consideration and the third respondent shall pass final orders under Section 49 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 after affording sufficient opportunity to the petitioner including granting him the right of personal hearing and after considering all the objections raised by the petitioner within a period of four months from the date of receipt of a copy of this Order.*
>
> *20. With the aforesaid directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed."*

2.1 In the said Writ Petition, the appellant/writ petitioner had prayed for a Certiorarified Mandamus, calling for the records of the first respondent, in

G.O.(Ms) No.91, dated 16.05.2013, to quash the same and consequently forbear the respondents from taking any action against Sri Viswanathaswami Devasthanam, Melavanjur, Thirumalairayar Pattinam, Puducherry.

C. The Factual Matrix:

3.The case of the appellant is that the aforementioned temple is situated in the Union Territory of Puducherry. The Hindu Religious Institutions situated within the Territory of Puducherry are governed by the *Puducherry Hindu Religious Institutions Act, 1972* (hereinafter 'the Puducherry Act'). The appellant is a private temple. A certificate is already issued by the Additional Commissioner of Hindu Religious Institution, Puducherry, that the temple in question is not coming under the purview of the Puducherry Act.

3.1 The appellant temple is possessed of wet lands, ad-measuring an extent of acres 26.13 cents and dry lands ad-measuring an extent of acres 182.55 cents, which are situated in Panangudi Revenue Village, Nannilam Taluk, Nagapattinam District, in the State of Tamil Nadu. While so, a show cause notice dated 25.10.1994 was issued to the appellant as to why a fit person should not be appointed for management of the aforesaid lands. Though an explanation was submitted by the appellant, objecting for such an action, the objections were rejected and a fit person was appointed for managing the said lands, to collect the arrears of rent in respect of the said lands from the cultivating tenants, similarly to collect the arrears due from the plots, to fix fair rent in respect of the above said lands, and to evict the encroachers from the lands. The Executive Officer of the Arulmigu Navaneethaswamy Temple, Sikkal, Nagapattinam District, was given additional charge as the fit person. Aggrieved by the said order, a review petition in R.P.No.32 of 2007 is filed before the second respondent herein. By an order dated 11.10.2010, the review petition was dismissed. Against which a further Revision was laid before the Government of Tamil Nadu/first respondent, under Section 114 of *the Hindu Religious and Charitable Endowments Act, 1959* (hereinafter 'the Tamil Nadu Act'). The said Revision Petition also dismissed by Order dated 16.05.2013 in G.O.(Ms) No.91. Aggrieved thereby a W.P.No.23096 of 2013 is filed.

3.2 It is the further case of the appellant that when the temple is situate within the Union Territory of Puducherry, the respondents herein cannot exercise extra territorial jurisdiction. A fit person can only be appointed in respect of a religious institution and not in respect of the lands. When there is a hereditary trustee for the temple, there is no jurisdiction to appoint a fit person for the temple. When the authorities of Puducherry themselves have issued a certificate, then the same is binding on the respondents. Merely because the definition in Section 6 (20) of the Tamil Nadu Act, includes the land situated within the State, it can at best be only for the purposes of removing the encroachment etc., and not in respect of the appointment of a fit person for the temple.

3.3 It is the case of the respondents that the Section 6 (20) of the Tamil Nadu Act, confers jurisdiction on the respondent authorities in so far as the properties of the temple which are situated within the State of Tamil Nadu. The respondent authorities had passed an order dated 12.06.1983, to bring the said temple in the control of the Hindu Religious & Charitable Endowment Department and the appellant challenged the same by filing R.P.No.2 of 1994 and by an order dated 25.10.1994, the second respondent had already held that the temple is a public temple. In the absence any contra declaration that the temple is a private temple, the appellant is bound to render true and proper accounts of the income from the property situate in the State of Tamil Nadu and in case of mismanagement, action can be taken under the Tamil Nadu Act.

3.4 As a matter of fact, when the appellant wanted to sell a part of their lands belonging to them in Panangudi Village, they approached the second respondent under Section 34 of *the Tamil Nadu Hindu Religious and Charitable Endowments Act*, and permission was granted by the second respondent vide order dated 27.05.2007. Therefore, the respondents have jurisdiction in respect of the subject matter and the appellant themselves admitted the jurisdiction. Section 49 (1) read with explanation to Section 6 (20) of the Act, would make it clear that a fit person can be appointed to administer the property situated within the State of Tamil Nadu. The same is for the allowed purposes of saving the property belonging to the temple and to ensure proper management of the properties.

D. The Findings & Order in the Writ Petition:

4.The learned Single Judge considered the case of the parties found that from the proceedings, it is not known whether any order was passed removing the trustees under Section 53 of the Act. When it is the case of the respondents that the temple is a public temple, an express finding thereof is not given. There is no application of mind, while passing the impugned orders. However, a reading of Section 49 along with Section 6 (20) of the Act would go to show that the respondents are enabled to appoint a fit person, for the purpose of the temple whose properties are situated within the State of Tamil Nadu. Therefore, even though the respondents have the power, since they have not passed a speaking order in clear terms with proper evidence, the impugned orders were quashed and the matter was remanded back to the third respondent herein, to decide the matter afresh, after affording sufficient opportunity to the appellant. Aggrieved thereby, the present Writ Appeal is filed.

E. The Submissions:

5.We have heard *Mr.A.K.Sriram,* learned Senior Counsel appearing on behalf of the appellant and *Mr.N.R.R.Arun Natarajan,* learned Special

Government Pleader appearing on behalf of the respondents 1 to 3 and also perused the material records of the case.

5.1 *Mr.A.K.Sriram,* learned Senior Counsel appearing on behalf of the appellant would submit that once the temple is situate within the Union Territory of Puducherry, the primary control of the temple would only vest with the authorities in the said Territory under the Puducherry Act. If at all any fit person can be appointed, it can be only by exercising the powers under the Puducherry Act and not by the respondents. When the said authorities themselves had given the certificate that the appellant temple is a private temple, then the respondents herein have no jurisdiction whatsoever to declare otherwise or proceed in the matter holding otherwise. Whenever a temple and its properties are situated in more than one jurisdiction, the provisions of the Acts have to be read harmoniously. The jurisdiction, if any, can only be exercised in terms of protecting the properties such as removal of encroachers taking over possession, etc.. Appointment of fit person can only be in respect of religious institution. In this case, no religious institution exists in Tamil Nadu, only landed properties situated in Tamil Nadu. No fit person can be appointed in respect of the landed properties. Therefore, he would submit that the entire exercise of the respondents was absurd and without jurisdiction.

5.2 The learned Senior Counsel appearing on behalf of the appellant would rely upon the Judgment in the case of ***Anant Prasad Lakshminiwas Ganeriwal Vs.State of A.P. And others*** [1] more specifically relying upon paragraph No. 12 to contend that primarily the law, which is applicable to the territory in which the temple is only be applicable. He would further rely upon the Judgment of the Hon'ble Supreme Court in the case of ***Ramaswarup Guru Chhote Balakdas Vs. Motiram Khandu Patil and others*** [2] more specifically relying upon the paragraph No.7 to contend that once the institution is governed by the law in which it is situate, the same cannot fall within the jurisdiction of the authorities of the other States, merely because properties of the institutions is situate in the State. He would press into service the Judgment of the Hon'ble Supreme Court in the case of ***Charity Commissioner, Bombay Vs. Administrator of the Shringeri Math and its properties*** [3] more specifically by relying upon the paragraph No.7 to contend that the situs of the math has to

1 AIR 1963 SUPREME COURT 853
2 AIR 1968 SUPREME COURT 422
3 (1969) 1 SCR 660

be reckoned and once the situs is in Puducherry, merely because of the lands are situate in Tamil Nadu, the respondent authorities cannot exercise the jurisdiction.

5.3 Per contra, *Mr.N.R.R.Arun Natarajan,* the learned Special Government Pleader by taking this Court to the certificate dated 26.03.1991 issued by the authorities of Puducherry would contend that nothing specifically mentioned in the said certificate that the temple is a private temple. As a matter of fact in R.P.No.2 of 1994, there is a specific finding that the temple is a public temple and once it is a pubic temple, express power is conferred by the Tamil Nadu Act as per the explanation under Section 6 (20). The said order has become final inter parties.

5.4 He would further contend that the appellant on the earlier occasion having approached the second respondent, for grant of permission for selling the lands, cannot now re-probate and contend that there is no jurisdiction vested with the authorities in Tamil Nadu. He would submit that a fit person is not appointed, in respect of other affairs of the temple as that would be within the jurisdiction of the authorities in Puducherry. When the temple lands were lying within the jurisdiction of the second respondent and the same was mismanaged, a reading of the Section 49 of the Tamil Nadu Act empowers the appellant to appoint a fit person. It is only for the benefit of the temple and in the interest of safeguarding of the properties, action is taken. As a matter of fact, several complaints were received from the villagers about the mis-managment of the temple. In any event, the appellant can raise all the contentions regarding the merits of the case before the third respondent, to whom the learned Single Judge has remanded the matter to pass orders afresh.

F. The Report of the Amicus Curiae:

6. Earlier by an order dated 10.08.2021, this Court was pleased to appoint *Mr.V.Lakshminarayanan*, Advocate (now, *Justice V.Lakshminarayanan*, Judge,Madras High Court) as A*micus Curiae* to assist the Court. The learned A*micus Curiae* had also filed a brief dated 21.08.2021. A perusal of the brief filed by the learned *Amicus Curiae,* it can be seen that he had first considered as to whether a State can exercise extra territorial jurisdiction and answered the same in negative. Thereafter, he proceeded to

consider that when the primary situs of the temple is situate in one jurisdiction and if it has properties in another jurisdiction and when there are provisions in different acts, enabling different authorities to act, the provisions have to be harmoniously construed and it is viewed from that angle, only in respect of the purposes as such removal of encroachment etc., the powers of the respondent authorities can be exercised and merely because in the definition under Section 6 (20) of the Act, the properties of the temple situated within the State are mentioned, in the absence of an enabling provision, a fit person cannot be appointed for management of the properties.

6.1 We have given our anxious consideration to the submissions made on either side and have duly considered the report of the learned A*micus Curiae* and also perused the material records of the case.

G. Question No. (I):

7.At the outset we fully in agreement with the brief of the learned A*micus Curiae* that the State of Tamil Nadu cannot make extra territorial legislation that when the institution is in a particular jurisdiction and also has branches or properties in other jurisdictions, the primary situs of the institution has to be taken into consideration and therefore whenever any question arises relating to the management or otherwise of the temple, it should be performed only by the authorities of that jurisdiction and any other law which also entitles jurisdiction on the other authorities should be harmoniously construed so as to facilitate the above.

7.1 In this regard, the relevant provision, viz., 6 (20) is extracted hereunder:

> *"(20) "**temple**" means a place by whatever designation known, used as a place of public religious worship and dedicated to, or for the benefit of, or used as of right by, the Hindu community or of any section thereof, as a place of public religious worship;*
>
> ***Explanation**. —Where a temple situated outside the State has properties situated within the State, control shall be exercised over the temple in accordance with the provisions of this Act, in so far as the properties of the temple situated within the State are concerned;"*

7.2 Thus it can be seen that it is not an extra territorial legislation, but applies the law only in respect of the properties which are situated within the State of Tamil Nadu. In the present case, there is no question of any conflict of orders between two authorities of the Union Territory of Puducherry and the State of Tamil Nadu. It is not the case of the appellant that it is being dealt with by the appropriate Act, viz., the Puducherry Act. On the contrary, it is their specific pleading that it is a private temple. Though we are in agreement with *Mr.A.K.Sriram*, the learned counsel appearing on behalf of the appellant that it is not necessary in the first instance for any private temple to go before the Civil Court or before the authorities to declare it is a private temple. However in this case, by a statutory order binding the inter parties, the second respondent in R.P.No.2 of 1994 has held that the appellant temple is a public temple. It is relevant to quote the paragraph No.7 of the said order:

> *"7.The Preliminary report shows that it is a public temple and that even though the temple is located within the limits of Pondicherry State all the properties are situated in Tamil Nadu State only......."*

7.3 Further, as opined by the learned A*micus Curiae* and contended by Mr.A.K.Sriram, the learned Senior Counsel we are also in agreement that if the authorities in which the primary situs of the temple viz., the Hindu Religious Institution Authorities in Puducherry have held that the temple is a private temple, by way of harmonious construction of the two statutes, taking into account, the situs of the temple being in Puducherry, a contrary stand cannot be taken by the respondents herein. In this context what is relied upon by the appellant is a certificate dated 26.03.1991 issued by the Additional Commissioner, Hindu Religious Institutions, Puducherry. The certificate states that the Sri Viswanatha Swamy Devasthanam, Melavanjur, Thirumalairaya Pattinam, Puducherry, is not coming under *the Puducherry Act*. It further states that the certificate is issued, so as to enable temple authorities to produce the same to the Electricity Department and Public Works Department for providing electricity/water service connection to the houses belonging to the above said devasthanam, subject to verification of title deeds. The certificate also specifically instructs that it can be produced to the Electricity Department or Public Works Department, whenever needed. Thus the same cannot be construed as one declaring the appellant as a private temple.

7.4 On the contrary the appellant on their own conduct, on an earlier occasion when they wanted to sell a piece and parcel of the land situate in the same *Nagapattinam District*, under the jurisdiction of the third respondent have approached the second respondent viz., the Commissioner, HR & CE, State of Tamil Nadu to grant permission for selling the property under Section

34 of the Tamil Nadu Act. Unless they are a public temple it is not necessary for them to approach the second respondent and obtain a permission before them. Therefore, the argument that the appellant need not at the first instance approach any Court or Authority to establish that it is a private temple is unacceptable in the context of the present case. In view of the earlier findings to the contrary and the said order having been allowed to become final and the appellant's own conduct of approaching the second respondent, it is now become incumbent on the appellant either to establish before the third respondent or by approaching the appropriate Civil Court to establish that it is a private temple. It can also do so by taking recourse under the Puducherry Act. If such a declaration is granted, then automatically it comes out of the purview of the Section 6 (20) of the Tamil Nadu Act as it will not be a temple within the meaning of Section 6 (20). In the absence of the same, it cannot be said that there is an exercise of extra territorial jurisdiction.

H. Question No. (II):

8.The second limb of the argument on behalf of the appellant is that the fit person cannot be appointed under the Tamil Nadu Act only in respect of the landed properties. Firstly, this question will arise, if only the appellant/Institution fails to establish that it is a private temple. Secondly, as per Section 49 of the Tamil Nadu Act, power is conferred on the Assistant Commissioner to appoint a fit person for any 'religious institution'. The term 'religious institution' is defined under Section 6(18), which reads as follows:-

> "(18) "**Religious institution**" means a math, temple or specific endowment and includes,: —
>
> (i) a samadhi or brindhavan; or
> (ii) any other institution established or maintained for a religious purpose. Explanation.- For the purpose of this clause-
>
> (1) "samadhi" means a place where the mortal remains of a guru, sadhu or saint is interned and used as a place of public religious worship;
> (2) "brindhavan" means a place established or maintained in memory of a guru, sadhu or saint and used as a place of public religious worship, but does not include the samadhi;)"

8.1 The lands cannot be said to be mere properties, but are endowments as defined under Section 6 (17) of the Act, which is extracted hereunder:

> *"(17) "Religious endowment" or "endowment" means all property belonging to or given or endowed for the support of maths or temples, or given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity; and includes the institution concerned and also the premises thereof, but does not include gifts of property made as*

personal gifts to the archaka, service holder or other employee of a religious institution; ……"

8.2 As a matter of fact, if the land is endowed to a temple with specific purpose, then it becomes specific endowment and Section 6 (19) defines 'specific endowment', which is as follows:-

> *"(19)"specific endowment" means any property or money endowed for the performance of any specific service or charity in a math or temple or for the performance of any other religious charity, but does not include an inam of the nature described in Explanation (1) to clause (17);"*

8.3 'Specific endowment' by itself would be a religious institution. The title deeds relating to the lands in question, whether they are mere endowments or specific endowments etc., are not placed before us. Secondly, if they are not specific endowments, then the question would be, whether for the religious endowment alone, a fit person can be appointed, merely by placing reliance under Section 6 (20) of the Tamil Nadu Act. Similarly, the further question that when the hereditary trustee is there, whether a fit person can be appointed and if so under what circumstances and whether the circumstances are made out or not will further arise. Therefore, when the learned Single Judge already set aside the order of appointment of a fit person and has remanded back the matter to the third respondent, all the questions are left open to be decided by the third respondent.

I. The Result:

9. Therefore, while affirming the order of the learned Single Judge, we allow the appellant to raise all their submissions before the third respondent when the matter is proceeded *denova*. We further direct the respondents to render the accounts and handover all the money that are collected in the form of rent, etc from the properties of the temple to the appellant, after defraying the expenses if any. It goes without saying that unless the appellant establishes that it is a private temple, due accounts in respect of the spending etc., shall be furnished before the appropriate authorities, in accordance with law.

9.1 The Writ Appeal is disposed of on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

(S.V.G., C.J.,) (D.B.C., J.,)
08.12.2023

Index : yes
Speaking order
Neutral Citation : yes
Jer

To

1. The Secretary,
Govt. of Tamil Nadu,
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THE HON'BLE CHIEF JUSTICE
AND
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