



W.P. (MD) No. 2362 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.02.2023

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKEVALU

W.P. (MD) No. 2362 of 2023

and

W.M.P. (MD) Nos. 2142 to 2145 of 2023

A.Duraiselvam

... Petitioner

Vs.

- 1.The Joint Commissioner,
Hindu Religious and Charitable Endowments Board,
Madurai.
- 2.The Joint Commissioner/Executive Officer,
Arulmighu Thandayuthapani Thirukoil,
Palani, Dindigul District – 624 601.
- 3.The Executive Officer,
Arulmighu Idumban Thirukoil,
Old Ayakudi, Palani,
Dindigul District – 624 601.

...Respondents



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Prayer: Writ Petition filed under Article 226 of the constitution of India, to issue a writ of Certiorarified Mandamus, to call for records of the impugned order in Na.Ka.No.1239/2018-2/ ௮1 dated 25.09.2019 on the file of 1st Respondent and quash the same and further to direct the Respondents to hand over the possession of the Mutt premises to the Petitioner.

For Petitioner : Mr. G.Prabhu Rajadurai

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

Mr. K.Govindarajan for R2

ORDER

Heard Mr. G.Prabhu Rajadurai, Learned Counsel for the Petitioner, Mr. P.Subbaraj, Learned Special Government Pleader, who takes notice for the First and Third Respondents and Mr. K.Govindarajan, Learned Counsel for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who is a Trustee of Old Ayakudi Pandiya Vellalar Thanner Pandal Madam Trust, Palani, has filed this Writ Petition for directing



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the Respondents to handover possession of the building of an extent of 1160 sq. ft. in the Palani Hill to the Mutt in which the Petitioner is a Trustee.

3. It has been brought to notice that an earlier Writ Petition in W.P. (MD) No. 16832 of 2020 filed by another Trustee of the same Mutt, viz., M.Sivalingam, for handing over the keys and belongings of the said Mutt has been dismissed by this Court by order dated 24.03.2022 which has been upheld in appeal in W.A. (MD) No. 525 of 2022 by order dated 12.01.2023 stating as follows:-

“11. The second respondent by his order dated 25.09.2019 has directed the Fit Person to hand over the keys to the fifth respondent temple. Though the petitioner Trust contends that the second respondent has no jurisdiction to pass such an order, the said order has not been put to challenge. Without challenging the said order, the writ petitioner seeking mandamus to hand over the keys is not maintainable. It is an admitted case that the keys of the Mutt building are with the fifth respondent temple. However, the prayer has been sought for as against the fourth respondent/Fit Person to hand over



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the keys to the petitioner Trust. The fourth respondent is not having the keys with him and he has handed over the same to the fifth respondent pursuant to the order of the second respondent dated 25.09.2019. When there is no prayer as against the fifth respondent temple, the present writ petition is not maintainable.”

Learned Counsel for the Petitioner contends that the aforesaid Writ Petition had not been entertained in the absence of any challenge to the proceedings in Na.Ka.No.1239/2018-2/M1 dated 25.09.2019 passed by the First Respondent, and as such, the Petitioner, who has challenged the said order and has sought for consequential relief to hand over possession of the Mutt premises, is entitled to agitate for the said rights claimed through this Writ Petition.

4. Though the provisions of the Code of Civil Procedure Code, 1908 (hereinafter referred to as 'CPC' for short), are not strictly applicable to writ proceedings under Article 226 of the Constitution before this Court, the principles underlying Rule 2 of Order II of CPC that where a person entitled



to more than one relief in respect of the same cause of action omits to sue for all such reliefs, he shall not afterwards be entitled to sue for the omitted relief, would be definitely get attracted. At this juncture, reference must be made to the effects of finality of litigation as deduced from the authoritative pronouncements of the Hon'ble Supreme Court of India in ***M.Nagabhushana –vs- State of Karnataka*** [(2011) 3 SCC 408] and ***Union of India –vs- Major S.P.Sharma*** [(2014) 6 SCC 351], which can be summarized as under:-

- (a) The doctrine of finality of litigation is an outcome of two age old salutary principles of public policy, viz., *interest reipublicae ut sit finis litium* which signifies that it is in the interest of the State that there should be an end to litigation, and the other principle, viz., *nemo debet bis vexari, si constat curiae quod sit pro una et eadem causa*, conveys that no one ought to be vexed twice in a litigation if it appears to the Court that it is for one and the same cause. One important consideration of public policy is that the decisions pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities or by adopting a procedure prescribed by law. The other principle is that no one should



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be made to face the same kind of litigation twice over, because such a process would be contrary to considerations of fair play and justice. In the absence of such principle, great oppression might result under the colour and pretence of law in as much as there will be no end of litigation and a resourceful and malicious litigant may succeed in infinitely vexing his opponent by repetitive suits and actions. This may compel the weaker party to relinquish his right. The universally acclaimed rule of *res judicata* has been evolved to prevent such anarchy.

- (b) The rule of *res judicata* is common to all civilized system of jurisprudence to the extent that a judgment after a proper trial by a court of competent jurisdiction should be regarded as final and conclusive determination of the questions litigated and should forever set the controversy at rest. That is why it is perceived that the plea of *res judicata* is not a technical doctrine but a fundamental principle which sustains the Rule of Law in ensuring finality in litigation. This principle seeks to promote honesty and a fair administration of justice and to prevent abuse in the matter of accessing court for agitating on issues which have become final between the parties. Any proceeding



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which has been initiated in breach of the rule of *res judicata* is *prima facie* a proceeding which has been initiated in abuse of the process of Court.

- (c) If a litigant has chosen to put his case in one way, he cannot thereafter bring the same transaction before the court, put his case in another way and say that he is relying on a new cause of action. An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject-matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. It also does not lose its authority merely because it was badly argued, inadequately considered and fallaciously reasoned. Such consequence follows both to an order from which an appeal lies but has not been preferred, as well as to an order from which no appeal is provided. This precept is referred in legal parlance as 'constructive *res judicata*'. In a country governed by the Rule of Law, finality of judgment is absolutely imperative to which great sanctity is attached and it is not permissible for the parties to re-open the concluded



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judgments of the court as it would not only tantamount to merely an abuse of the process of the court but would have far reaching adverse affect on the administration of justice.

- (d) It is an abuse of the process of the court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him. The re-agitation may or may not be barred as *res judicata*, but if the same issue is sought to be re-agitated, it also amounts to an abuse of the process of court. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted.

In view of this legal position, it is not possible to entertain this Writ Petition, which is prosecuted in abuse of the legal process.

In the result, the Writ Petition, which is devoid of merits, is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

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NCC : Yes/No

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Index : Yes/No

Internet : Yes/No

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Note: Issue order copy by 15.06.2023

To

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P.D.AUDIKESAVALU,J.

SJ

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