



W.A.(MD)Nos.590 and 591 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the order	Date of Pronouncing the order
04.01.2023	27.01.2023

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE SUNDER MOHAN**

**W.A.(MD)Nos.590 and 591 of 2021
and
C.M.P.(MD)Nos.2676, 2677, 2678 and 2680 of 2021
and 2600, 2601, 2603 and 2604 of 2022**

W.A.(MD)No.590 of 2021:-

Rebello, S/o.Raja

... Appellant

vs.

1.P.M.Jegadees Pandian

2.The Commissioner,
Hindu Religious and Charitable Endowments Board,
No.119, Uthamar Gandhi Salai,
Nungambakkam High Road,
Nungambakkam,
Chennai – 600 034.

3.The Joint Commissioner,
Hindu Religious and Charitable Endowments Board,
Office of the Joint Commissioner,
No.1, West Chitirai Street,
NTC Building Upstairs,
Madurai – 625 001.

4.R.Lakshmi

5.S.Ponnu Pandian

6.Jayaveera Pandi, S/o.V.K.Pandian



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7.Rajesh Pandi, S/o.Ramesh Poosari
8.Rishi Pandi, S/o.Pandiarajan

... Respondents

Prayer :- Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 29.01.2021, made in W.P.(MD)No.18940 of 2020.

For Appellant	: Mr.A.V.Arun
For 1 st Respondent	: Mr.V.Meenakshisundaram for Mr.D.Nallathambi
For Respondents 2 and 3	: Mr.T.Villavankothai Additional Government Pleader
For Respondents 4 and 8	: Ms.J.Anandhavalli
For Respondents 5 and 6	: Mrs.L.Victoria Gowri
For 7 th Respondent	: No Appearance

W.A.(MD)No.591 of 2021:-

Rebello, S/o.Raja

... Appellant

vs.

1.Aarthi, W/o.P.M.Veerpandi

2.The Commissioner,
Hindu Religious and Charitable Endowments Board,
No.119, Uthamar Gandhi Salai,
Nungambakkam High Road,
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6.Jayaveera Pandi, S/o.V.K.Pandian
7.Rajesh Pandi, S/o.Ramesh Poosari
8.Rishi Pandi, S/o.Pandiarajan

... Respondents

Prayer :- Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 29.01.2021, made in W.P.(MD)No.18947 of 2020.

For Appellant	: Mr.A.V.Arun
For 1 st Respondent	: Mr.V.Meenakshisundaram for Mr.D.Nallathambi
For Respondents 2 and 3	: Mr.T.Villavankothai Additional Government Pleader
For Respondents 4 and 8	: Ms.J.Anandhavalli
For Respondents 5 and 6	: Mrs.L.Victoria Gowri
For 7 th Respondent	: No Appearance

COMMON JUDGMENT

DR.G.JAYACHANDRAN, J.
and
SUNDER MOHAN, J.

Arulmigu Pandi Muneeswarar Kovil, Melamadai, Madurai, is the popular deity in the city of Madurai, administered by the descendants of Valliammal. After the demise of Valliammal, the right of the Temple administration devolved upon Periyannan @ Mahamuni Poosari and Bothai Poosari @ Pandiyan. The turn of administration between these two branches came to be settled by way of a compromise decree passed on 20.06.1973 in O.S.No.383 of 1973. As per the terms of compromise, these two branches reserved the right to do Poojas for five weeks each on rotation.



2. Periyannan @ Mahamuni Poosari, who got the right to do Pooja for five weeks on rotation with his brother Bothai Poosari @ Pandiyan, during his lifetime, had five wives. Rebello, the appellant herein is the son of his first wife [Ulagammal]. Jegadees Pandian, who is the writ petitioner in W.P.(MD)No.18940 of 2020, is the son of Periyannan @ Mahamuni Poosari born to his fourth wife Indira. V.Aarthi, who is the writ petitioner in W.P.(MD)No.18947 of 2020, is the daughter-in-law of Dhanam, who is the fifth wife of Periyannan @ Mahamuni Poosari.

3. Whether the subsequent marriage with four ladies while the first wife Ulagammal was alive is valid or not is a question, which has not been tested so far. However, when the right of other wives and the Will alleged to have been profounded by Periyannan @ Mahamuni Poosari was challenged by Raja Poosari, the son of the first wife in O.S.No.257 of 2007, the right of other wives and their children was subject matter, but the suit ended in a compromise decree, dated 20.06.2007. Therefore, the validity of the Will dated 16.08.1985, purported to have been executed by Periyannan @ Mahamuni Poosari has not yet been tested so far in the manner known to law.

4. The said compromise decree was challenged by one of the parties to the compromise decree, namely, Saroja Ammal, the second wife of Periyannan @ Mahamuni Poosari. She filed O.S.No.191 of 2008 to declare the decree, dated 20.06.2007, as null and void.



5. In the above factual scenario, Saroja Ammal, the second wife of Periyannan @ Mahamuni Poosari died intestate. Her right in the trusteeship came to be questioned since the compromise decree in O.S.No.257 of 2007 was challenged by Saroja Ammal in O.S.No.191 of 2008, though she was a party to the compromise. The suit filed by Saroja Ammal got abated on her death. O.S.No.43 of 2011 filed by the children of fourth and fifth wife of Periyannan @ Mahamuni Poosari to enforce the Will also dismissed for default. When the dispute regarding the right to enjoy the Pooja service in the turn meant for Saroja Ammal arose, the Joint Commissioner, H.R. & C.E. Department, Madurai, vide order dated 30.04.2012, directed Rebello to function as Poosari in the turn meant for Saroja Ammal on daily wage basis on condition. No share in the Plate Collection to be disbursed to Rebello and the same should be deposited in the Temple account. This order was passed taking note of the fact that Rebello was doing Pooja service on behalf of Saroja Ammal even during her lifetime since 2008. Later, on 06.03.2017, the wage for doing Pooja was fixed at the rate of Rs.500/- per day. The said order of the Joint Commissioner, H.R. & C.E. Department, Madurai, came to be challenged in W.P.(MD)No.4229 of 2017 by Rebello taking exception to certain expression in the said order, which according to the petitioner Rebello, gives an apprehension that his status as hereditary trustee deemed to be undermined.

6. The learned Single Judge of this Court, who incidentally passed the present order under challenge, has disposed the writ petition on 04.08.2020 with the



following observation:-

"3.The petitioner apprehends that on account of the order dated 06.03.2017, the petitioner's status as hereditary trustee or Poojari may be taken away. Since the order dated 06.03.2017 is only in line with the earlier order dated 30.04.2012, I am of the view that no interference is called for. At the same time, I must clarify that the order dated 06.03.2017 will in no way take away or affect the rights which the petitioner may have. In other words, the petitioner's claim as hereditary trustee/poojari of the said temple will not be affected merely because of passing of the order dated 06.03.2017 by the second respondent herein. I am not inclined to interfere for the reason that it is in continuation of the earlier order dated 30.04.2012. If the order dated 30.04.2012 gets itself worked out, automatically the order dated 06.03.2017 will go as a consequence. I also permit the petitioner to move the authority concerned for recall of the order dated 30.04.2012 or the order dated 30.04.2012 is recalled, the consequential order dated 06.03.2017 will also gets recalled as a consequence.

4.With these observations, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous petitions are closed."

7. It is pertinent to note at this juncture that earlier in the year 2012, when Rebello was appointed as Poosari for the turn of Saroja Ammal, one Veerapandian, who is the descendant of the fifth wife challenged it by way of writ petition, but



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withdrawn later. In the said circumstances, pursuant to the order of the learned Single Judge, passed in W.P.(MD)No.4229 of 2017, Rebello filed a petition before the Joint Commissioner, H.R. & C.E. Department, Madurai. In pursuant to his representation, the Joint Commissioner has passed a proceedings in Na.Ka.No. 8302/2020/Aa1, dated 02.12.2020. Notice was issued to the parties interested in the dispute and enquiry was conducted. Various litigations between the parties and the directions of the Court were taken into consideration and the Joint Commissioner vide order dated 02.12.2020, permitted Rebello to continue the service as Poosari for the turn of Saroja Ammal and he will be entitled for the shares in the plate collection. The Joint Commissioner has also taken note of the pending litigation before the Sub-Court, Melur, in O.S.No.17 of 2019, regarding the right of poojariship in respect of Saroja Ammal.

8. The order of the Joint Commissioner, dated 02.12.2020, was subject to the outcome of the said suit. The said order of the Joint Commissioner, dated 02.12.2020, was challenged by Jegadees Pandian and Aarthi in W.P.(MD)Nos.18940 and 18947 of 2020.

9. The learned Single Judge, who gone through the records, after considering Sections 55 and 57 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 [hereinafter referred to as "the H.R. & C.E. Act"], held as



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"13. As on date, the temple is functioning under a trust board. The Hon'ble Supreme Court had restored their position recently. The temple does not even have an Executive Officer. The second respondent herein is only a Joint Commissioner (Administration). He is not the Executive Officer of the temple. He is not its fit person. I fail to understand as to how he assumed the jurisdiction to issue the directions set out in the impugned order. The second respondent has clearly overreached himself. However, I sustain the impugned order to the extent it cancels the earlier orders passed by the second respondent on 30.04.2012 and 06.03.2017. In fact, the recall and cancellation of these earlier orders is very much in order. They are liable to be recalled and cancelled for the very same reasons on which I am setting aside the other directions issued by the second respondent."

10. As a consequence, the learned Single Judge set aside the order of the Joint Commissioner, dated 02.12.2020, and allowed the Writ Petition partly. The learned Single Judge has held that the Joint Commissioner, H.R. & C.E. Department, has no jurisdiction to pass the impugned order, permitting Rebello to officiate as Poosari in the turn meant for Saroja Ammal and enjoy the fruits thereof.

11. Rebello, in his appeal, challenges the validity of the order of the learned Single Judge on the grounds that,

(a) the learned Single Judge has failed to take note the fact that he is doing



Pooja in the turn of Saroja Ammal since 2008. Pursuant to the terms of the decree, dated 20.06.2007, passed in O.S.No.257 of 2007, the Board of Trustees of the Temple have admitted the fact that the appellant [Rebello] is doing Pooja for the turn of Saroja Ammal from 2008. The *locus* of Jegadees Pandian, who is the writ petitioner in W.P.(MD)No.18940 of 2020, is questionable, since he has been removed from the Poojariship and he has challenged his removal by way of an appeal to the State;

(b) having agreed to the terms of compromise decree in O.S.No.257 of 2007, through which, the right of Poojariship for the turn of Saroja Ammal being enured to Rebello, others like, Jegadees Pandian is estopped from challenging the right of Rebello doing Pooja service for the turn of Saroja Ammal;

(c) the provisions of Sections 55 and 57 of the H.R. & C.E. Act referred by the learned Single Judge has no relevance to the facts of the case, since the Board of Trustees have consented and confirmed the Pooja service conferred on Rebello for the turn of Saroja Ammal; and

(d) the Board of Trustees having consented for appointing Rebello as Poosari, the course of enquiry conducted by the Joint Commissioner pursuant to the order passed by the very same learned Judge, cannot be now termed as an order passed without jurisdiction.



12. The learned counsel appearing for the appellant submitted that Arulmigu Pandi Muneeswarar Temple is a Temple, which is exempted from certain provisions of the H.R. & C.E. Act and being administered by the Hereditary Trustees, who are the descendants of Valliammal. Since Periyannan @ Mahamuni Poosari, the second son of Valliammal had as many as five wives and children born to them, the turn of Poojariship among the two branches namely, Bothai Poosari @ Pandiyan branch and Periyannan @ Mahamuni Poosari branch came to be determined through a compromise decree, dated 20.06.1973.

13. Long ago, the turn of Poojariship among the descendants of Periyannan @ Mahamuni Poosari had become a vexed question, leading to multiple suits, writ petitions and consequential appeals. As on date, though the right of inheritance can only be vested with the first wife's children, in order to give quietus to the litigation, in O.S.No.257 of 2007, filed by Raja Poosari [the father of Rebello], all the representatives of five branches entered into compromise and acted upon. Since 2008 Rebello is officiating as Poosari for the turn of Saroja Ammal and it is an admitted fact supported by record.

14. While so, Rebello was forced to file W.P.(MD)No.4229 of 2017 since the tenor of the order gave an impression that it is a temporary order under the guise of entrusting the right of Hereditary Trusteeship for the turn of Saroja Ammal.



Pursuant to the order passed by the learned Single Judge in his writ petition, he made a representation to the Joint Commissioner and the Joint Commissioner rightly recognized his right to officiate as Poosari in the turn meant for Saroja Ammal and enjoy the fruits thereof. Neither the writ petitioners nor any other persons can have any grievance in the order passed by the Joint Commissioner, which was passed after conducting due enquiry and after consulting and getting concurrence of the Board of Trustees.

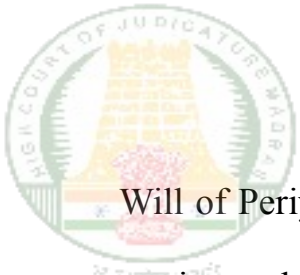
15. The learned counsel for the appellant further submitted that the learned Single Judge erred in holding that the Joint Commissioner has no jurisdiction to decide the matter in spite of the fact that the said order came to be passed pursuant to the Court's direction. The learned Single Judge earlier directed the appellant to seek for re-call of the order passed on 30.04.2012 and to pass appropriate orders. Furthermore, due to the peculiar facts in respect of Arulmigu Pandi Muneeswarar Temple, the Hereditary Trustees, who administered the Temple as Board of Trustees are also vested with the service right of Poojariship and therefore, though the definition of office-holders or servants includes Poosaris and appointment of Poosari as a servant of the Temple by the Board of Trustee will tantamount to appointing themselves as Poosaris. Therefore, the order of the Joint Commissioner, who is vested with the power to supervise the administration of the Temple under the H.R. & C.E. Act in consultation with the Board of Trustees and the appellate authority in



the matter involving appointment of servants in compliance with the order of the learned Single Judge, has passed the order appointing Rebello to officiate the Poojariship for the turn meant for Saroja Ammal and enjoy the fruits thereof.

16. The learned counsel for the appellant also submitted that there is no illegality in the order passed by the Joint Commissioner either on jurisdiction or on facts. As on date, the compromise decree entered between the members of all the branches recognize Rebello as the representative of Saroja Ammal to do the Poojariship on her behalf. The wages and share in the Thattu collection and Hundial collection is part of the service. The right of Rebello is conferred pursuant to the compromise decree, which still holds good, though some of the interested parties have challenged the same. Till the outcome in those suits for the service rendered as Poosari by Rebello, he is entitled for the fruits thereof.

17. Per contra, the learned counsel for the writ petitioners/respondents submitted that it is incorrect to say that Rebello is entitled to officiate as Poosari for the turn meant for Saroja Ammal and enjoy the fruits thereof based on the compromise decree, passed in O.S.No.257 of 2007. The said decree was challenged by Saroja Ammal herself during her lifetime and by the members of other branch, who were not parties to the compromise decree. There is a cloud over the said decree and the same is under challenge by separate suit. Rebello cannot enjoy the fruits of Poojariship meant for the turn of Saroja Ammal. Furthermore, under the



Will of Periyannan @ Mahamuni Poosari, right is conferred to persons, who are not parties to the compromise decree passed in O.S.No.257 of 2007. While so, the right of the persons to whom the Poojariship vested as per the Will of Periyannan @ Mahamuni Poosari cannot be ignored. Therefore, the order passed by the Joint Commissioner is without jurisdiction and liable to be quashed. The learned Single Judge has rightly set aside the said order.

18. Heard the learned counsel appearing for the parties and perused the order of the learned Single Judge, impugned in the Writ Appeals.

19. Arulmigu Pandi Muneeswarar Temple at Madurai is one of the landmarks to the ancient City of Madurai. It is administered by Hereditary Trustees and the Trustees are locked in Courts engaging themselves in cases regarding the Trusteeship and sharing the collection of this Temple. One of the Trustees have already been found unfit by the H.R. & C.E. Department and was removed. Challenging the removal from the Trusteeship, appeal is pending. As far as the present Writ Appeals are concerned, it is to test whether the order of the Joint Commissioner permitting the appellant to officiate the turn of Poojariship meant for Saroja Ammal and enjoy a share in the plate collection is *ultra vires* to Sections 55 and 57 of the H.R. & C.E. Act, as held by the learned Single Judge.



20. Sections 55 and 57 of the H.R. & C.E. Act read as under:-

"55.Appointment of office-holders and servants in religious institutions.- (1) Vacancies, whether permanent or temporary, among the office-holders or servants of a religious institution shall be filled up by the trustee in all cases.

Explanation.-The expression "office-holders or servants" shall include archakas and pujaries.

(2)No person shall be entitled to appointment to any vacancy referred to in sub-section (1) merely on the ground that he is next in the line of succession to the last holder of the office.

*[(3) * * *] omitted by Section 2(3) of the Tamil Nadu HR&CE (Amendment) Act,1978 (Tamil Nadu Act 2 of 1971)*

(4)Any person aggrieved by an order of the trustee under sub-section (1) may, within one month from the date of the receipt of the order by him, appeal against the order to the Joint Commissioner or the Deputy Commissioner, as the case may be.

57.Power to fix fees for services, etc., and to determine their apportionment.- Notwithstanding anything contained in any scheme settled or deemed to have been settled under this Act or any decree or usage to the contrary, the trustee of a religious institution shall have power, subject to such conditions as the Commissioner may, by general or special order, direct, to fix fees for the performance of any service, ritual or ceremony in such religious institution and determine what portion, if any, of such fees shall be paid to the archakas or other office-holders or servants of such religious institution."



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21. As pointed out by the learned Single Judge, Section 55 of the H.R. & C.E. Act empowers the Board of Trustees to appoint office-holders and servants in religious institutions. For the said reason, the learned Single Judge has held that the explanation to the expression 'servant' includes Poosaris and therefore, the Poosaris can be appointed only by the Board of Trustees and not by the Joint Commissioner, who is the appellate authority.

22. The reading of Section 55(4) of the H.R. & C.E. Act, makes clear that the right is conferred to the person aggrieved to prefer an appeal to the Joint Commissioner or the Deputy Commissioner in case of any appointment made by the Board of Trustees. One peculiar fact in respect of Arulmigu Pandi Muneeswarar Temple as pointed out by the learned counsel for the appellant is that, though the explanation to Section 55 of the H.R. & C.E. Act for the expression 'servant' includes Poosari, as far as Arulmigu Pandi Muneeswarar Temple is concerned, only Trustees or their descendants can be appointed as Poosaris and there cannot be any other persons other than the Trustees or their representative to render service of Poosari. If strict interpretation to Section 55 of the H.R. & C.E. Act is given, the Board of Trustees have to appoint themselves as Poosaris and if anyone is aggrieved by the appointment, the appeal lie with the Joint Commissioner.



23. In the case in hand, when the Board of Trustees were in loggerheads to get the right of Poojariship for the turn of Saroja Ammal, a suit was filed and the said suit ended in a compromise decree. In terms of the compromise decree, Rebello was permitted to officiate as Poosari for the turn of Saroja Ammal since 2008. There is no contra evidence to this fact. Such being the case, when Rebello was appointed to officiate as Poosari for the turn of Saroja Ammal for daily wages was challenged by Veerapandian. However, he did not pursue his petition before the H.R. & C.E. Department.

24. Challenging the compromise decree, dated 20.06.2007, passed in O.S.No.257 of 2007, Jegadees Pandian and others have preferred a suit in O.S.No.43 of 2011, on the file of the Sub-Court, Melur, which was re-numbered as O.S.No.17 of 2019. It is stated that the said suit was dismissed for default on 10.11.2020 and steps are being taken to restore the same. The impugned order of the Joint Commissioner, which was passed after hearing the parties concerned, including the Members of the Hereditary Trustees, has specifically stated that this order is subject to the outcome of the suit in O.S.No.17 of 2019 pending before the Sub-Court, Melur. While so, it is incorrect to hold that the Joint Commissioner has no jurisdiction to appoint a servant in the light of Section 55 of the H.R. & C.E. Act.



25. The customary convention of Arulmigu Pandi Muneeswarar Temple is that the Trustee shall also be a Poosari of the Temple. This uniqueness makes the Joint Commissioner, who is the appellate authority, for any appointment of office-holders or servants made by the Board of Trustees, to have a right to appoint, more particularly, in the light of the direction of this Court. Applying the doctrine of necessity and the principle of reading down, this Court holds that the Joint Commissioner is right in appointing the appellant as Poosari and therefore, the order of the learned Single Judge, declaring the Joint Commissioner has no jurisdiction to pass the impugned order, recognizing Rebello as Poosari to officiate the turn of Saroja Ammal, is set aside. Rebello, the appellant derives this right through the compromise decree, which is in force.

26. The order of the Joint Commissioner recognizing Rebello as a Poosari and permitting him to enjoy the fruits thereof is not an unconditional order, but subject to the outcome of the suit filed by Veerapandian, which is pending before the Sub-Court, Melur, in O.S.No.17 of 2019.

27. The facts of the case would clearly show that the descendants of other wives of Periyannan @ Mahamuni Poosari having participated in the suit filed by Raja Poosari [the father of Rebello], questioning their right or claim in the administration of the Temple and later, entered into a compromise decree in the year



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2007. They are in the pursuit of reopening the settled dispute by filing a fresh suit challenging the validity of the compromise decree. Till they succeed in their attempts, Rebello, who has been recognized as a person to officiate as Poosari for the turn of Saroja Ammal, need not be disturbed.

28. The Joint Commissioner has passed an order on 02.12.2020 pursuant to the direction of this Court. It is a speaking order with reasoning. Taking into consideration the pendency of the litigation and the rights of the respective parties, the Joint Commissioner has appointed the appellant subject to the outcome of the suit filed by Veerapandian pending before the Sub-Court, Melur, which will decide the legality of the compromise decree, dated 20.06.2007. As long as the compromise decree is in force, the order of the Joint Commissioner, dated 02.12.2020, conferring the right of Poojariship to Rebello for the turn of Saroja Ammal is perfectly justifiable, backed by sound reasoning.

29. For the above said reasons, these Writ Appeals are allowed. The order of the learned Single Judge, dated 29.01.2021, made in W.P.(MD)Nos.18940 and 18947 of 2020, is hereby set aside. The order of the Joint Commissioner, dated 02.12.2020, is upheld. No costs. Consequently, connected Miscellaneous Petitions are closed.

NCC : Yes
Index : Yes
Internet : Yes / No

[G.J., J.] [S.M., J.]
27.01.2023



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To

1.The Commissioner,
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DR.G.JAYACHANDRAN, J.
and
SUNDER MOHAN, J.

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PRE-DELIVERY COMMON JUDGMENT MADE IN
W.A.(MD)Nos.590 and 591 of 2021

DATED : 27.01.2023