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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.08.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

CONT P(MD)No.579 of 2023

and

W.P.(MD).No.12279 of 2023

and

W.M.P(MD)No.10468 of 2023

CONT P(MD)No.579 of 2023

P.Pitchaimuthu

... Petitioner/Petitioner

vs.

1. Bharathi,
The Joint Commissioner,
H.R & C.E. Department,
Dindigul.
(Due to change of jurisdiction)

2. V.Suresh,
The Assistant Commissioner,
H.R & C.E. Department,
Dindigul

... Contemnors/R-2 & R-3

PRAYER: Petition filed under Section 11 of the Contempt of Court Act, 1971, to punish the Contemnors herein for the wanton and willful disobedience of the order in W.P(MD)No.11252 of 2015 dated 26.11.2021.



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For Petitioner : Mr.H.Lakshmi Shankar

For Respondents : Mr.M.Kameswaran
Government Advocate

W.P.(MD).No.12279 of 2023

Kanagamuthuvijayan

... Petitioner

/vs/

1. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Dindigul.
3. The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Dindigul.
4. The Thakkar/Executive Officer,
Arulmighu Srinivasaperumal Thirukovil,
Malaiyadivaram,
Dindigul.

5. P.Pitchaimuthu ... Respondents
[5th respondent is added as per Order of this Court, dated 09.08.2023]

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the impugned order of the 2nd respondent in Se.Mu.Na.Ka.No.5554/2021/Aa1, dated 10.04.2023 and the



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consequential impugned order passed by the 4th respondent, dated 09.05.2023 and quash the same as illegal.

For Petitioner : Mr.M.Kannan

For R-1 to R-4 : Mr.S.Kameswaran
Government Advocate

For R-5 :Mr.H.Lakshmi Shankar
[Impleaded Respondent]

COMMON ORDER

This writ petition has been filed for Writ of Certiorari, to quash the impugned order, dated 10.04.2023 and the consequential order, dated 09.05.2023.

2. Heard Mr.M.Kannan, the Learned Counsel appearing for the petitioner, Mr.S.Kameswaran the Learned Government Advocate appearing for the respondents 1 to 4 and Mr.H.Lakshmi Shankar the Learned Counsel appearing for the impleaded 5th respondent and perused the material documents available on record.



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3. The claim of the petitioner is that the petitioner's ancestors had constructed the temple and were doing pooja and was also managing the temple management from time immemorial. His grandfather was granted recognition Hereditary Poojariship to the '*Arulmighu Mahalingeswarar, Arulmighu Maragathavalli Amman and Arulmighu Manickavalli Amman*' temple, which would be evident from the proceedings, dated 17.02.1945. In the same proceedings the temple is recognized as "excepted public temple" under section 19 of the Act, 1945 and also held that the petitioner's ancestors were looking after the management as Hereditary Trustees.

4. In short the HR&CE has recognized the petitioner's Hereditary Poojariship as well as Hereditary Trusteeship. The temple consists of Maragathavalli Amman and Manickavalli Amman. According to the petitioner he is not aware of the name of the person whose mortal remains are laid in the Samathi, but he accepts the existence of Samathi. The petitioner has sold the lands belonging to the Samathi in S.No.327 and 334/2 in T.D.No.514 through Document No.1223 of 2009 in S.No.224/2 dated 04.06.2009. Also sole the land



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in S.No.327 through Document No.1836 of 2009 dated 12.08.2009. And also land in S.No.327 through Document No.1837 of 2009 dated 12.08.2009. Through the sale consideration the petitioner's father had put up construction of the temple. The contention of the petitioner is that the Samathi is not coming under the purview of the Hindu Religious and Charitable Endowments Department and it is brought under the purview by the amendment in the year 2012. After the said amendment, the petitioner has faced certain allegations that he has sold the lands of Samathi. However, after the said allegation the petitioner's father had cancelled two sale deeds executed in Document No.1836 and 1837 through Document No. 1973 and 1974 of 2012 on 21.06.2012 with the consent of the purchaser. But he could not cancel the sale in S.No.334 since the purchaser has not come forward to cancel the same, hence as on date the said sale deed is still in force.

5. The 5th respondent/impleaded petitioner has objected the activities of the petitioner and his father. Earlier, he has filed a writ petition in W.P(MD) No.11252 of 2015 and the petitioner's father was 4th respondent in that writ petition. This Court directed the authorities to appoint a fit person. Since the same



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was not complied, the petitioner in the writ petition has filed a contempt petition in CONT.P(MD)No.579 of 2023 and the same was listed along with this writ petition. After filing the contempt petition, the respondents have appointed fit person, vide order, dated 10.04.2023. Aggrieved over the appointment, the present writ petition is filed.

6. Since the respondents have appointed fit person, and the order of the Court in the earlier writ petition is complied with and hence this Contempt petition in CONT.P(MD)No.579 of 2023 is closed.

7. The impleading petition in ***W.M.P(MD)No.12740 of 2023 in W.P.(MD)No.12279 of 2023*** is allowed.

8. The contention of the impleading petitioner is that the temple and the Samathi are existing continuously, it cannot be separated. The Samathi belongs to 'Bharadwaja Munivar', who is an ancient saint in Hinduism. The



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petitioner cannot separate the Samathi and the temple and he have no right to sell the property. Moreover, the petitioner is relying on the order passed under Section 19, of the Hindu Religious and Charitable Endowments Act, 1945, where excepted public temple was recognized. Subsequently, the said concept was deleted in the amendment of 1959 Act. Therefore, the petitioner cannot claim any hereditary Trusteeship which was recognized in an earlier Act. The said Hereditary Trusteeship automatically would be cancelled on enactment of subsequent of 1959 Act.

9. Admittedly, there was recognition of Hereditary Trusteeship under the 1945 Act. Now the petitioner has filed a petition before the authorities claiming Hereditary Trusteeship under the present Act. Since the respondents have not considered the same, the petitioner has filed a petition in W.P.(MD)No. 8484 of 2023 and there is a direction by this Court to consider his application and the said petition is still pending before the authorities. Since the petitioner's Hereditary Trusteeship rights was not considered and order was not passed and the same was still pending before the appropriate authority and the petitioner



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cannot claim Hereditary Trusteeship rights until it is recognized by the authorities. However, the petitioner is having Hereditary Poojariship rights.

10. Until the issue is considered, as an interim arrangement this Court is appointing “Three Members Committee” consisting of the petitioner, the fit person and an Advocate namely *Mr.P.Thirunavukkarasan (Retired Professor, Madurai Law College), Enrollment No.MS 544/1983, Chamber No.58, Madurai Bench of Madras High Court, Mobile No.98941 82344.*

11. The said Committee shall manage the Administration of the temple until the order is passed in the petitioner's petition seeking Hereditary Trusteeship. The petitioner as well as the impleading petitioner has every right to file a petition to formulate a scheme and they shall file a petition for formulating scheme, within a period of four weeks, from the date of receipt of a copy of the order and the respondent shall consider to formulate the scheme within a period of four months thereafter. The committee is directed to take steps to cancel the sale deed, which is stated supra by filing a petition before the Joint



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Commissioner, who is the appropriate authority under law. And shall take steps to enter the temple name in the revenue records. If any other property is sold, the committee shall take appropriate steps action, as per law.

12. With these directions, this Writ Petition is disposed of. There shall be no order as to Costs. Consequently, connected miscellaneous petition is closed.

09.08.2023

Index : Yes / No
Internet : Yes
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To

1. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Dindigul.
3. The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
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S.SRIMATHY, J

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Order made in
CONT. P(MD)No.579 of 2023
and
W.P(MD)No.12279 of 2023

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