



W.P.(MD)No.8481 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 13.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.8481 of 2023
and
W.M.P.(MD)No.7809 of 2023

Arulmighu Kattu Karuppannasamy
Temple,
Rep. by its Hereditary Trustee,
A.Nagalingam,
S/o.Alagappa Pillai,
51/4, Ashok Nagar,
Mohammedshapuram,
Tirumangalam,
Madurai District.

... Petitioner

versus

1. The Commissioner (HR&CE),
Tamil Nadu Hindu Religious & Charitable
Endowments,
Administration Department,
Chennai,
2. The Joint Commissioner (HR&CE),
Office of the Joint Commissioner,
HR&CE Department,
Madurai,
Madurai District.



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3. The Assistant Commissioner (HR&CE),
Office of the Assistant Commissioner,
HR&CE Department,
Madurai,
Madurai District.

4. The Executive Officer,
Arulmighu Thandayuthapani Thirukovil,
Nethaji Salai,
Madurai.

5. S.Mahalingam

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 3rd respondent in his proceedings in Se.Mu.Na.Ka.No.368/2018/E3 dated 13.03.2023 and quash the same as illegal and consequently, direct the 3rd and 4th respondents to hand over the key of the petitioner's private temple Arulmighu Kattu Karuppanna Samy Temple, Maravamangalam Village, Tirumangalam Taluk, Madurai District.

For Petitioner : Mr.J.Jeyakumaran

For R1 to R4 : Mr.P.Subbu Raj
Special Govt. Pleader

For R5 : Mr.N.Dilipkumar



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ORDER

This writ petition is filed as against the order of the 3rd respondent appointing the 4th respondent as a fit person for the administration of Arulmighu Kattu Karuppanna Samy Temple, Maravamangalam Village, Tirumangalam Taluk, Madurai District. The 3rd respondent passed the impugned order based on the orders passed by the first respondent/the Commissioner (HR&CE), Tamil Nadu Hindu Religious & Charitable Endowments, Administration Department, Chennai, in R.P.No.139/2021 and A.P.No.51/2021 dated 03.02.2023.

2. The petitioner was, in fact, declared as a Hereditary Trustee by the second respondent/the Joint Commissioner, HR&CE Department, Madurai, on the application filed by him under Section 63(b) of the Hindu Religious and Charitable Endowments Act, 1959, in O.A.No.2 of 2021, by his order dated 07.01.2021. The said order was challenged by the 5th respondent before the first respondent/the Commissioner of



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HR&CE in R.P.No.139/2021. The first respondent, by his order dated 03.02.2023, set aside the order passed by the second respondent appointing the petitioner as a Hereditary trustee and remanded the matter to the second respondent for fresh consideration. Pending the proceedings before the second respondent, the 3rd respondent/the Assistant Commissioner of HR&CE Department, by his impugned proceedings, dated 13.03.2023, appointed the 4th respondent as a fit person for administration of the Arulmighu Kattu Karuppanna Samy Temple, considering the Mahasivarathiri festival from 18.03.2023 to 23.03.2023, which is under challenge in this writ petition.

3. The learned counsel for the petitioner claims that the petitioner has already been declared as a Hereditary Trustee and the Arulmigu Kattu Karuppanna Samy is a family deity of Pillaimar Community. The Pillaimar Community has established the said Temple and is also maintaining the temple from time immemorial. The petitioner also belongs to the Pillaimar Community and he has already been declared



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as a Hereditary Trustee by the second respondent/the Joint Commissioner of HR&CE Department, Madurai. However, the third respondent/the Assistant Commissioner of HR&CE Department, without conducting any enquiry and without providing any opportunity to the petitioner, by order dated 13.03.2023, has appointed the 4th respondent as a fit person for administration of the Temple for the Maasi Kalari festival, which was held during March 2023. However, in the strength of that order, the 4th respondent is still continuing as the Administrator of the temple. According to the petitioner, the temple festival was already over in the month of March 2023. Therefore, there is no need for the 4th respondent to continue as Administrator of the Temple.

4. The learned counsel appearing for the 5th respondent submits that the Temple is having a checkered history. The 5th respondent belongs to vannar community. The vannar community people are also having a right of worship in the Temple and for the right of worship,



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they are agitating this issue for more than half a century. There are three orders of the Division Bench of this Court in favour of the 5th respondent that the vannar community people are also entitled to worship and perform the poojas. The petitioner was managed to get an order from the second respondent/the Joint Commissioner of HR&CE Department, as a Hereditary Trustee in the absence of 5th respondent and the same was challenged before the first respondent/the Commissioner of the HR&CE Department. The first respondent, by his order dated 03.02.2023, set aside the order passed by the second respondent appointing the petitioner as a Hereditary Trustee and remanded the matter to the second respondent for fresh consideration. The right of the petitioner as a hereditary trustee is still under the consideration of the second respondent.

5. The learned counsel appearing for the 5th respondent further submits that the 3rd respondent has already passed the order of appointing the 4th respondent as a fit person for administration of the



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Temple in the year 2019, which was challenged by the petitioner in

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W.P.(MD)No.16876 of 2019. The said writ petition was taken up by the Division Bench of this Court along with a batch of cases. The Division Bench of this Court, by order dated 11.02.2021, has dismissed the writ petition, however, by recording that the observation of this Court will not have a bearing for the petitioner in making application, seeking declaration under Section 68(b) of the HR&CE Act. The second respondent/Joint Commissioner of HR&CE Department, by order dated 07.07.2021 allowed the application filed by the petitioner in O.A.No.2 of 2021, without providing an opportunity to the 5th respondent. Challenging the same, the 5th respondent has filed a Revision Petition in R.P.No.139/2021 before the first respondent, challenging the dismissal of his impleading petition in O.A.No.2/2021 and also filed an Appeal in A.P.No.51/2021 challenging the order passed by the second respondent dated 07.07.2021. The first respondent, by order dated 03.02.2023, set aside the order dated 07.07.2021 passed by the second respondent appointing the petitioner



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as a Hereditary Trustee and remitted the matter to the second respondent for fresh consideration, which is under consideration. Now, the third respondent, by order dated 13.03.2023, appointed the 4th respondent as a fit person for administration of the Temple as an interim arrangement. Therefore, the petitioner is not having any locus to challenge this order.

6. The learned Special Government Pleader appearing for the HR&CE Department submits that the appointment of fit person is only a temporary arrangement for the smooth functioning of the temple and to avoid the law and order problem. The application filed by the petitioner under Section 63(b) of the HR&CE Act, which was under consideration of the second respondent in O.A.No.7 of 2023, is also listed for further hearing on 26.04.2023.

7. This Court considered the rival submissions made and also perused the materials placed on record.



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8. As rightly pointed by the learned counsel appearing for the 5th respondent, it appears that there is a checkered history between the parties and that there are three orders of the Division Bench of this Court in connection with the performance of pooja in Arulmighu Kattu Karuppanna Samy Temple between the petitioner's community and the 5th respondent's community.

9. In a writ appeal filed by the 5th respondent in W.A.(MD)No. 305 of 2016, the Division Bench of this Court, by order dated 16.02.2016, has held as follows:

“12. Considering the facts and circumstances of the case, this Court is of the view that interests of justice would be met by passing the following order:-

(i) The first respondent is directed to provide adequate and effective police protection towards enabling the petitioner as all other villagers, including the 5th respondent and persons belonging to his community, observing the conduct of Masi Maha



Sivarathiri festival at Arulmighu Katty Karuppanasamy Kovil, Maravankulam Village, Tirumangalam Taluk, Madurai District as also connected festivities between 06.03.2016 and 09.03.2016 (both days inclusive).

(ii) The second respondent Superintendent of Police, Madurai District (Rural), Madurai shall supervise the police protection arrangements made by the first respondent.

(iii) This Order is not to be read as determinant of rights of parties.

(iv) The above order is subject to the appellant swearing to a notarized affidavit, undertaking that members of the appellant community would conduct themselves in a peaceful and law abiding manner and would in no manner hinder or obstruct the participation of the members of the rival community.

13.The Writ Appeal is ordered accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.”

10. In another writ appeal filed by the 5th respondent in W.A. (MD)No.183 of 2017, the Division Bench of this Court, by order dated



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10.04.2017, has held as under:

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“8. We have carefully perused the said order passed by the Joint Commissioner and in the said order, the Joint Commissioner has declared the right of the appellant only for worship. In fact, the prayer before the Joint Commissioner itself was only for worshipping the Deity. Therefore, the finding rendered in paragraph No.7 of the impugned order is perfectly valid and justified.

9. For the above reasons, the appellant has not made out any case for interference. Accordingly, the Writ Appeal is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.”

11. In the writ petition filed by the petitioner in W.P.(MD)No. 16876 of 2019, the Division Bench of this Court, by order dated 11.02.2021, has observed as follows:

“10. In fact, learned Senior Counsel for the petitioner in W.P.(MD) No. 16876 of 2019 submitted that the order passed in O.A.No.16 of 2019 has to be understood in the context of subsequent orders, while invoking Section 64(1) of the H.R. & C.E. Act in



O.A.No.19 of 2002, which is confirmed by the appellate authority. With respect to the learned Senior Counsel, we do not think so. The aforesaid order passed in O.A.No.19 of 2002 has been rightly construed by the Division Bench of this Court in W.P.(MD) Nos.14059 and 4422 of 2018, dated 02.08.2018. We only extract the operative portion of the order for better appreciation:

16. With all due respect, we would observe that such decision runs directly contra the decision of this Court in W.A. (MD).No.305 of 2016, dated 16.02.2016, wherein in Paragraph No. 10, it had been held as follows:-

"10.In O.A.No.19/2002 filed before the Joint Commissioner, HR & CE Department, the appellant sought recognition of right to celebrate Maha Sivarathiri festival of the temple and other festivities along with the rival community. Orders were passed on 05.02.2011, whereunder both sides were permitted to jointly participate in the conduct of Maha Sivarathiri festival of the temple and other festivities".

17. The cardinal principle requires that no bench of equal co-ordinate strength can render undue finding of earlier one. We would reiterate that, rightly or wrongly,



this Court has rendered findings in W.A.(MD).No.305 of 2016 and Review Application (MD).No.33 of 2016, which will hold the field till set aside by the Apex Court or by a Larger Bench of this Court.

.....

20. Learned counsel for the petitioner sought to impress upon us that the prayer of the petitioner in O.A.No.19 of 2002 did not fall within the ambit of Section 63(e) of the Tamil Nadu Hindu Religious & Charitable Endowments, Act, 1959. We are unable to agree with the said submission. Section 63(e) contains two parts, which are as follows:-

"whether any person is entitled, by custom or otherwise, to any honour, emolument or perquisite in any religious institution; and what the established usage of a religious institution is in regard to any other matter";

.....

22. In the light of the above discussion, this Court is inclined to allow W.P.(MD).No.14059 of 2018, as prayed for. Accordingly, there shall be a direction to the official respondents to protect the right to worship including the celebration of Mahasivarathiri Festival and other festivities and rituals, as is allowed to the bulk of



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the other worshippers every year to the petitioner community people in the public temple of Arulmigu Kaattu Karuppanna Samy Thirukovil, Maravankulam Village, Thirumangalam Taluk, Madurai District, without showing any racial discrimination by caste or creed.”

In view of the above, there is no difficulty in holding that the group belonging to the petitioner in W.P. (MD) No.1778 of 2020 is entitled not only worship right, but also to take part in the performance of the ceremonies in the festival Mahasivarathiri. It is to be noted that the aforesaid day is an auspicious day, because people belonging to both the groups congregate and make various offerings on the day.

11. Accordingly, W.P.(MD) No.16876 of 2019 stands dismissed. No costs. However, we make it clear that our discussion made in the matter is a prima facie observation, which will not have a bearing for petitioner in W.P. (MD) No.16876 of 2019 in making application, seeking declaration under Section 63(b) of the H.R. & C.E. Act.

12. In view of the above, the 3rd respondent has passed the impugned order appointing the 4th respondent as a fit person, as an



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interim arrangement, for the smooth administration of the temple and to avoid any law and order problem. Therefore, this Court is not inclined to interfere with the order passed by the 3rd respondent dated 13.03.2023.

13. Accordingly, this writ petition is dismissed. However, there shall be a direction to the 2nd respondent/the Joint Commissioner of HR&CE Department, Madurai, to conclude the proceedings in O.A.No.7 of 2023, within a period of three months from the date of receipt of a copy of this order. It is needless to state that it is the duty of the fit person to ensure the smooth functioning of the temple without any law and order problem and also to ensure that both the groups are having a right of worship in the temple. No costs. Consequently, connected miscellaneous petition is closed.

13.04.2023

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NCC : Yes / No.
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B.PUGALENDHI, J.

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To

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Tamil Nadu Hindu Religious & Charitable Endowments,
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Office of the Joint Commissioner,
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