



W.P.(MD).No.7203 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 10.08.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.7203 of 2020

and

W.M.P.(MD).No.6634 of 2020

1.U.Murugan

2.V.Karuppasamy

3.Kottursamy

... Petitioners

Vs.

1.The Joint Commissioner,
Hindu Religious and Charitable Endowment
Department, Tirunelveli.

2.The Assistant Commissioner,
Hindu Religious and Charitable
Endowment Department,
Tirunelveli – 2.

3.The Inspector,
Hindu Religious and Charitable
Endowment Department,
Sankarankovil Range,
Tenkasi District.

4.Periyasamy



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5.Kottursamy Pandian

6.Shanmugaiah Pandian

7.Murugaiah

8.Durairaj

9.Ramesh Kumar

10.Kottur Murugan

11.Kottursamy

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the first respondent vide his proceedings in O.A.No.8 of 2000 dated 24.03.2020 and quash the same as illegal.

For Petitioner : Mr.C.Mayilvahana Rajendran

For R-1 to R-3 : Mr.S.P.Maharajan,
Special Government Pleader.

For R-4 to R-11 : Mr.F.X.Eugene

ORDER

This Writ Petition is filed to quash the order dated 24.03.2020 passed by the first respondent.



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WEB COP 2. The contention of the petitioners is that they belong to Devendira Kula Vellalar Community. The respondents 4 to 11 belongs to Thevar Community. When the rival claims arose, the respondents have preferred a petition before the authority to formulate a scheme. The respondents 4 to 11 have submitted the documents to substantiate their claim along with stones encryptions as well. The learned counsel appearing for the petitioners submitted that at the time of admission, after hearing the case elaborately, this Court has granted interim stay. The learned Judge has recorded that only 5 documents were marked on the side of the private respondents. On perusing the order, it is seen apart from 5 documents which were marked, the order shows a list of evidence that is relied by the respondents. However, it is not shown as “marked”. Therefore, the learned counsel appearing for the petitioners submitted that those documents were not taken into account. However, the learned counsel appearing for the respondents submitted that the Joint Commissioner has perused those documents, even though it has not been marked, the relevant documents and evidence are present before the Joint Commissioner and the Joint Commissioner after perusing the same then only the impugned order is passed. In fact, the petitioners were also granted opportunity to submit the same, but



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they did not utilize the opportunity. Having slept over their right, they cannot claim before this Court.

3. The Learned Counsel appearing for the respondent further submitted that this Writ Petition is filed at the time of Covid, since regular hearing cannot be conducted by the Commissioner. Hence, the petitioner had filed writ petition by invoking Article 226 inter alia praying to restrain the respondents from conducting the festival or managing the temple. After the covid period is over, the petitioner ought to have filed a petition before appropriate authority and hence the present writ petition cannot be entertained.

4. However, this Court is inclined to allow this Writ Petition on two grounds. In spite of notice, the petitioners have not submitted any documents but have enclosed the relevant documents which they intended to rely before this Court. Therefore, the petitioners are entitled one more opportunity. As far as second ground is concerned, this Writ Petition is filed in the year 2020 and it is pending before this Court for the past 3 years. Without evidence and other documents, if the petitioners are directed to file an appeal before the Commissioner, it will be the loss of time and the issues raised between the



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petitioner and the respondents cannot be resolved. Evidence is also necessary to resolve the issue and therefore, remitting back alone is an appropriate remedy. Therefore, this Court is remitting the case before the Joint Commissioner.

5. It is seen that the petitioners had submitted objections to the proceedings pending to formulate a scheme. The official respondents have declined to implead the petitioners in the proceedings and simply rejected their claim. The petitioners ought to have been impleaded as party and ought to have allowed to let in evidence, when they have a rival claim. Even if the rival claim is not substantiated with any evidence, the official respondent ought to grant opportunity to substantiate. The official respondent cannot dismiss the claim of the petitioners at implead petition stage. Therefore, the impugned order suffers with totally non application of mind as well as by depriving the rights of the petitioners there is clear violation of natural justice. Hence, the impugned order is quashed. The authorities are directed to issue notice to both the parties and conduct fresh enquiry. This Court on earlier occasion granted an interim order not to construct any building in the disputed site. The same shall continue until the completion of enquiry and the earlier order will continue, until the enquiry is completed and order is passed by the respondents. The



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enquiry shall be completed within a period of two (2) months from the date of receipt of a copy of this order.

6. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

10.08.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr

To

- 1.The Joint Commissioner,
Hindu Religious and Charitable Endowment
Department, Tirunelveli.
- 2.The Assistant Commissioner,
Hindu Religious and Charitable
Endowment Department,
Tirunelveli – 2.
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S.SRIMATHY, J.

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