



W.P(MD)No.7550 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD)No.7550 of 2023

and

W.M.P(MD)No.7036 of 2023

M.Senthil Kumar

... Petitioner

Vs.

- 1.The District Collector
Tenkasi District,
Tenkasi.
- 2.The Superintendent of Police
Tenkasi District,
Tenkasi.
- 3.The Joint Commissioner
HR & CE Department,
Tirunelveli,
Tiruenvelveli District.
- 4.The Tahsildhar
Thiruvankadam,
Tenkasi District.



W.P(MD)No.7550 of 2023

5.The Inspector of Police
Karivalam Vanthanallur Police Station,
Tenkasi District.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the Respondents 1, 2, 4 and 5 to take necessary actions to prevent the Mahakumbabishega festival from being conducted at the Arulmigu Vadabadrakaliamman Temple situated at Pillaiyarkulam Village, Thiruvenkadam Taluk, Tenkasi District, on 05.04.2023 .

For Petitioner : Mr.N.L.Rajah,
Senior Counsel
for Mr.A.Saravanakumar

For Respondents : Mr.N.Muthu Vijayan - for RR1, 2, 4 & 5
Special Government Pleader

Mr.M.Senthil Ayyanar - for R3
Government Advocate

Mr.P.Aathi Moolapandian
Unimpleaded respondent



W.P(MD)No.7550 of 2023

WEB COPY

ORDER

The matter has been heard through Video-conferencing. Mr.N.L.Rajah, learned Senior Counsel for Mr.A.Saravanakumar, learned counsel for the petitioner addressed the Court through video-conference. Heard also Mr.N.Muthu Vijayan, learned Special Government Pleader appearing for respondents 1, 2, 4 and 5 and Mr.M.Senthil Ayyanar learned Government Advocate appearing for the third respondent / HR & CE Department. It must also be stated that complaining that necessary parties had not been impleaded, Mr.P.Aathimoola Pandian, learned counsel also advanced arguments.

2. It appears that the issue relating to administration of Arulmigu Vadabadrakalaiaimman Temple and Kalyana Veerabathirar Thirukovil at Pillaiyarkulam Village, Thiruvankadam Taluk, Tenkasi District, had been the subject matter of litigation before the Civil Court. My attention is drawn to an order passed by the learned Subordinate Judge, Sankarankovil in A.S.No.99 of 2014. The respondents therein can be said to be represented in the present writ petition by the writ



W.P(MD)No.7550 of 2023

petitioner, though the *locus* of the petitioner is very seriously objected to by the learned counsels for the respondents.

3. It is stated that the petitioner resides 3 Kms., away and cannot be termed as a local and it is alleged that the only intention in the filing of the present writ petition is to prevent the Mahakumbabishegam from being conducted in the temple.

4. It is common knowledge that the date for the Kumbabishegam is determined not a day prior to the actual date of Kumbabishegam. But for some strange reason, the petition has been brought up before this Court for consideration today on 03.04.2023 when, in the morning at 07.00 a.m. the preliminary functions towards the Kumbabishegam which is scheduled on 05.04.2023 had already commenced. It either shows that the petitioner is not interested in the Kumbabishegam being conducted or, had notice of it and had deliberately filed the writ petition a day earlier to the date determined for the Kumbabishegam to be done. This attitude of bringing up the writ petition a day prior to the scheduled date, cannot be appreciated by this



W.P(MD)No.7550 of 2023

Court. There must be some leverage given for instructions to be obtained or to examine whether necessary parties have been impleaded. As seen, the petitioner had not impleaded proper parties to the writ petition. There are a string of allegations made against a particular community and even complaining that the temple had been painted in a different colour, but without impleading any member of the said community, though the names are well known as seen from the cause title in A.S.No.99 of 2014.

5. In S.P.Chengalvaraya Naidu (died) through LR's. Vs. Jagannath and Others reported in 1994 (1) SCC 1 = 1994 AIR 953, the issue of suppression had come up for consideration before the Hon'ble Supreme Court and the Supreme Court had widened the concept to state that suppression would also be fraud. It had been held in paragraph No.5 as follows :

"5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire



W.P(MD)No.7550 of 2023

and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation".

6. In the instant writ petition, the petitioner had deliberately suppressed impleading the necessary parties who must also be heard



W.P(MD)No.7550 of 2023

before any order is passed in the nature of relief sought namely, to frustrate performance of the Mahakumbabishegam itself.

7. When, in the aforementioned first appeal, the right to administer the temple stood vested with the appellants therein, the non-impleading of them can be categorized as deliberate suppression of not just a material fact, but of denial to an individual of his right to be heard, and which right had been attempted to be shut down by the petitioner herein for the reasons only known to him.

8. Be that as it may, to focus on the issues raised, in the said first appeal, the learned Subordinate Judge had issued two separate directions. He had first stated that the appellants therein, have every right to administer the temple. In the same breath, as a further stipulation, he has also stated that both the appellants and the respondents who are termed as plaintiffs and defendants, have every right to worship in the temple.



W.P(MD)No.7550 of 2023

9. Let me take that second direction as a guiding principle.

The entire issue comes under that one particular observation, rather direction of the learned Subordinate Judge that every community has a right to worship. That right to worship, quite appreciably had not been denied either by Mr.Aathimoolapandian who now appears on behalf of the unimpleaded respondents and is also asserted by the learned Special Government Pleader and also by the learned Government Advocate on behalf of the HR & CE.

10. In the affidavit filed, it had also been stated that reliance should be made to orders of this Court in W.P.(MD) Nos.4205 of 2019 and 2126 of 2019 which have been filed, not by the petitioner, but by others who are probably aligned with the petitioner herein.

11. In W.P.(MD) No.4205 of 2019, a learned Single Judge of this Court, by an order, dated 25.02.2019, was called upon to protect the right of the petitioner therein to play drums and musical instruments during the annual temple festival of this very temple in the Tamil month of Masi.



W.P(MD)No.7550 of 2023

WEB COPY

12. During the course of the order, the learned Single Judge had also observed the statements made on behalf of the respondents therein, that the issue of playing drums had given rise to serious and law and order issues and had therefore, placed directions and conditions that they can play music only before the deity and within the compound wall and that there should be only 8 persons.

13. But it is to be mentioned that this order was specific to the month of Masi which occurs every year, and if every year, there had been a consistent practice of playing drums during the festival in the month of Masi, that custom was recognized by the learned Single Judge and permission was granted with certain directions.

14. In W.P.(MD) No.2126 of 2020, the relief sought was again by the very same petitioner to beat drums and play musical instruments, during the shining of the Sun and Moon. This was on the basis of a representation given on 06.01.2020 which would mean that it had been given in the Tamil month of Thai. Again, it is specific for that particular month. Again, the learned Single Judge had stated that a Peace



W.P(MD)No.7550 of 2023

Committee Meeting had been convened and that a settlement had been arrived at in the Peace Committee Meeting and had therefore, reverted the parties to abide by such decision taken in the Peace Committee Meeting.

15. The present case is unique, for which, there cannot be a customary practice which can be impressed upon or spoken of as a Constitutional right to worship in a specific manner as stated by the learned Senior Counsel. If such form of worship is in the form of a regular practice done year after year in a particular month, then that right blossoms to be one to be protected under the Constitution. A Mahakumbabishegam is a stand alone and one off event. Here, the Administrators of the temple who are the appellants in the first appeal but who have not been added as parties are performing the Kumbabishegam. There have been complaints that the temple was painted in particular colours, but the learned Government Advocate appearing on behalf of the HR & CE stated that the colour has been removed and the temple has been repainted.



W.P(MD)No.7550 of 2023

WEB COPY

16. It had been uniformly assured by the respondents that every person can worship the temple.

17. The focus should be to ensure that it is not for a community, but for the deity that the Kumbabishegam is performed. It is not for the benefit of any individual or for the benefit of any particular community but for the deity to be worshipped in all glory. If there is worship. keeping in mind the deity, then peace and harmony would prevail. If not there is no point in stating that there is a right to worship. Claiming right to worship with angst covering the mind cannot be appreciated.

18. A schedule of the events have been presented before me. It reflects that the function had started on 03.04.2023 (today) at 07.00 a.m. It goes on for the whole day and it goes on again on 04.04.2023 and finally, it ends on 05.04.2023, which is the Panguni Uthiram day with Maha Abisegam. The Maha Kumbabisegam is at 10.00 a.m.



W.P(MD)No.7550 of 2023

WEB COPY

19. Let the Mahakumbabishegam which had started, continue to be performed. This Court can only wish that it is performed smoothly with peace and harmony and without any acrimony. It is the duty of each and every worshipper to maintain peace and harmony. Let them all put aside their individual manner in which they want to worship the deity, but let them focus on the deity and ensure that the Mahakumbabishegam is performed well.

20. To this extent, this Court should seek assistance of the fourth respondent/Tahsildar, Thirvengadam, Tenkasi District. A direction is issued that the Tahsildar, should ensure that all community people irrespective of their background, their caste, their community should be permitted to worship and they can come to the temple. A corresponding duty is cast upon every worshipper who enters the portals of that temple to enter with the object to worship the deity and not anything else. Let them put aside their personal differences to the background for these next three days and worship the temple and move ahead.



W.P(MD)No.7550 of 2023

WEB COPY

21. The fourth respondent/Tahsildar, is also directed to provide Police bandobust in that particular area to ensure that peace is maintained. There must be due respect given to the judgment of the learned Subordinate Judge, wherein, he had recognized the appellants therein as the Administrators of the temple and that finding should also be recognized by this Court since that is a judgment which prevails upon all the parties.

22. It is informed by Mr.N.L.Rajah, learned Senior Counsel that the respondents therein have intention to file a Second Appeal, but that has not been filed so far. Till this date, the judgment of the First Appellate Court stands.

23. As repeatedly pointed out, let any and every worshipper enter the temple with object to worship the deity and for no other purpose. Let the Mahakumbabishegam be conducted. Let the Tahsildar be present and ensure that there is peace. Let him take the assistance of the fifth respondent, the jurisdictional Inspector of Police to provide necessary bandobust.



W.P(MD)No.7550 of 2023

WEB COPY

24. No further orders are required.

25. Accordingly, the Writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

03.04.2023

Index :Yes/No
Internet :Yes/No
NCC : Yes / No
RM



W.P(MD)No.7550 of 2023

To
WEB COPY

- 1.The District Collector
Tenkasi District,
Tenkasi.
- 2.The Superintendent of Police
Tenkasi District,
Tenkasi.
- 3.The Joint Commissioner
HR & CE Department,
Tirunelveli,
Tirunelveli District.
- 4.The Tahsildhar
Thiruvankadam,
Tenkasi District.
- 5.The Inspector of Police
Karivalam Vanthanallur Police Station,
Tenkasi District.



WEB COPY



W.P(MD)No.7550 of 2023

C.V.KARTHIKEYAN, J.

RM

W.P(MD)No.7550 of 2023

03.04.2023