



WP (MD) Nos.13365 of 2023
and 13570 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

**WP(MD)Nos.13365 of 2023
and 13570 of 2023
and**

**WMP(MD)No.11264 of 2023, 11447
and 1148, 11591, 11594 of 2023**

WP(MD)No.13365 of 2023

Kottanatham Hindu Nadar Uravinmurai,
represented by its President,
Kottanatham,
Vilathikulam Taluk,
Thoothukudi District.

... Petitioner

Vs

- 1.The Assistant Commissioner,
The Hindu Religious and Charitable Endowments Department,
Officer of the Assistant Commissioner of HR and CE Department,
Thoothukudi – 628 003.
- 2.The Tahsildar,
Vilathikulam Taluk Office,
Thoothukudi District,
Thoothukudi.



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- 3.The Executive Officer,
Arulmighu Meenakshi Sundareswarar Thirukovil,
Vilathikulam Town and Taluk,
Thoothukudi District.
[wrongly shown as Thakkar of Arulmighu Muniyasamy Temple, Kottanatham]
- 4.The Deputy Superintendent of Police,
District Police Office,
Thoothukudi District.
- 5.The Inspector of Police,
Vilathikulam Police Station,
Vilathikulam,
Thoothukudi District.
- 6.Shri Moorthi
- 7.Muniyasamy Thevar
- 8.Subramanian
- 9.Pandimuniasamy ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a writ of mandamus forbearing the respondents from interfering with the rights of the petitioner in Arulmighu Pon Muniyaswamy alias Muniyaswamy Temple situated in the petitioner's private patta land in Survey No.88 Kottanatham Village, Vilathikulam Taluk, Thoothukudi district.

For petitioner : Mr.N.Dilipkumar

For Respondent : Mr.SP.Maharajan,

No.1 & 3 Special Government Pleader



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For Respondent : Mr.GV.Vairam Santhosh
Nos.2, 4 & 5 Additional Government Pleader
For Respondent : Mr.J.Gunaseelan Muthiah,
Nos.6 to 9

WP(MD)No.1370 of 2023

Moorthi Poosari

... Petitioner

Vs

1.The District Collector,
Thoothukudi District.

2.The Tahsildar,
Vilathikulam Taluk,
Thoothukudi District.

3.The Executive Officer,
Kottanatham Muniyasamy Temple,
Hindu Religious and Charitable Endowment Department,
Vilathikulam Taluk,
Thoothukudi District.

4.The Inspector of Police,
Vilathikulam Village,
Thoothukudi District.

5.Sundarraaj

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records in Na.Ka.No.A6/4608/2021 on the file of the 2nd respondent Tahsildar, Vilathikulam



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Taluk, dated 06.06.2023 and quash the same and consequently issue direction to the respondents 1 to 4 permit the petitioner to conduct the Vaikasi Kodaivila Festival as per schedule dated 09.06.2023 with custom tradition.

For petitioner : Mr.J.Gunaseelan Muthiah
For Respondent : Mr.GV.Vairam Santhosh
Nos.1,2& 4 Additional Government Pleader
For Respondent : Mr.SP.Maharajan
Nos.3 Special Government Pleader

COMMON ORDER

Since both the writ petitions are related to the same issue, they are heard together and disposed of by this common order.

2. The writ petition in WP(MD)No.13365 of 2023 has been filed by the president of the Kottanatham Hindu Nadar Uravin Murai for a writ of mandamus forbearing the respondents from interfering with the rights of conducting festival in Arulmighu Pon Muniyaswamy @ Muniya Swamy temple [herein shall be referred to as “the Temple”] situated in S.No.88 of Kottanatham Village, Thoothukudi District.



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3. The case of the petitioner is that the land in S.No.88 to an extent of 1 Acre 30 cents belonged to one Vaiyammal, from her, one K.Palthuraichi, N.Muthulakshmi and S.Shankari have purchased the property on 14.02.2000 vide document No.152 of 2000. From them this petitioner society has purchased this land by way of a registered sale deed dated 07.01.2013 vide document No.46 of 2013. Subsequently, they have obtained permission from local body, put up construction, drawn electricity line and also have been paying necessary tax for the temple. The temple is the private property and it has been administered by the Nadar Uravin Murai from time immemorial and therefore, they must be permitted to conduct the festival.

4. This writ petition was moved as lunch motion on 08.06.2023 and this Court considering the materials placed on record, has granted an order of interim injunction as prayed for.

5. The 6th respondent in this writ petition, one Shri Moorthi, Poosari of the



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temple has filed a writ petition in WP(MD)No.13570 of 2023 challenging the order of the 2nd respondent Tahsildar, Vilathikulam Taluk dated 06.06.2023 and for consequential direction to permit him to conduct Vaikasi kodai festival as scheduled on 09.06.2023.

6. Both these writ petitions were tagged together and listed for hearing by order dated 15.06.2023.

7. Mr.N.Dilip Kumar, learned Counsel appearing for the writ petitioner in WP(MD)No.13365 of 2023 submits his case based on the documents filed by him in the typed set of papers that the property in dispute was purchased by the petitioner from one Palthuraichi, Muthulakshmi and Shankari, who purchased it from one Vaiyammal. After necessary permission the petitioner has put up super structure, drawn electricity line and the tax receipts were also issued by the local body in their name. The temple festival for this year has been conducted as per the directions of this Court and therefore, nothing survives in this writ petition.



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8. Mr.J.Gunaseelan Muthiah, learned Counsel appearing for the 6th respondent in WP(MD)No.13365 of 2023 and for the petitioner in WP(MD)No.13570 of 2023 one Shri Moorthi submits that this temple is in the government poramboke land and though the petitioner society has purchased the adjacent patta land, now he claims title over the property. He has also referred to the proceedings of the Tahsildar and submits that the request of the petitioner society for grant of patta has been rejected on the ground that the subject land is a temple land. He further submits that this temple is worshipped by 7 community people including the members of nadar uravin murai. However by purchasing the adjacent lands to the temple, the petitioner society claims title over the temple.

9. The learned Counsel further submits that a peace committee meeting was conducted on 06.06.2023 and certain resolutions were passed for conducting the temple festival by appointing a common poosari. Challenging the decision of the peace committee meeting, he has filed the writ petition in WP(MD)No.13570 of 2023, which was listed before the Court dealing with General Miscellaneous. The writ petition in WP(MD)No.13365 of 2023 was listed before the Court dealing with HR and CE cases for lunch motion and an interim order was



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obtained. Taking advantage of this interim order in WP(MD)No.13365 of 2023, Moorthi Poosari group was not permitted to take part in the festival.

10. Mr.S.P.Maharajan, learned Special Government Pleader, appearing for HR and CE Department submits that the Inspector of HR&CE, Kovilpati has inspected the temple in question and filed a report on 15.07.1972 to include this temple under minor temple and to appoint a non-hereditary trustee for the temple. Based on the recommendations of the Inspector, HR&CE Department, the Assistant Commissioner, HR&CE Department, Tirunelveli was directed to appoint a non-hereditary trustee to the above temple. Further vide order dated 16.12.2002 the Executive Officer of Arulmighu Meenakshi Sundreswar Thirukovil Vilathikulam has been appointed as a fit person to the temple with a direction to take over the administration of the temple from the non-hereditary trustee.

11. The learned Special Government Pleader further submits that the HR&CE department uploaded the particulars of the temple in their official website and the temple has been assigned with an unique number 41208 and the particulars are available in the integrated temple management system. The Executive Officer of



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the Meenakshi Sundreswarar Temple has taken over the charge of the temple on 16.12.2020 from the 6th respondent poosari. The temple has been under the control of HR& CE department even prior to the sale deed dated 07.01.2013 relied on by the petitioner organisation. The order appointing the 3rd respondent's Executive Officer, has not been challenged by the non hereditary trustees so far and therefore, the petitioner organisation cannot restrain the 3rd respondent from administering the temple. Hence the dismissal of the writ petition is prayed for.

12. In response, the learned Counsel for the petitioner relied on the judgment of a Division Bench of this Court in the case of the **Commissioner, HR&CE, Nungambakkam, Madras and another Vs.T.S.Palanichamay and seven others** reported in **2003(1) CTC 65**, wherein this Court has held as follows

“ 13. Thus, the entire foundation for the assumption made that there is a presumption that all the temples in Madras Presidency are public is founded only on this statement of Seshagiri Aiyar, J. who did not decide the case before him on the basis of any presumption, but who after deciding the case with regard to the evidence placed before him, considered it necessary for him to make certain general observations to the effect that



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outside public have not established kattalais or built chatrams for private temples in southern India except Malabar.

14. The observations so made are clearly not to the effect that there is a presumption that the temples in the Madras Presidency are public temples. What was actually said was that the learned Judge and also the counsel who appeared in the matter were not aware of cases where public had established kattalais and built chatrams for the accommodation of the travellers in private temples. The observation in AIR 1934 PC 230 that Seshagiri Aiyar, J. had stated that in the greater part of the Madras Presidency private temples are 'practically unknown', is factually incorrect.

20. The presumption on which the State wants to rely is thus a presumption which has been wrongly assumed to exist by the misreading of a judgment delivered way back in the year 1920. On appeal heard by the Privy Council from that judgment the Privy Council did not refer to any presumption and the case was decided on the basis of the evidence adduced in the case. The judgment of Sheshagiri Aiyar, J., was misread and was stated as the source of authority for a proposition which he had not laid down in AIR 1934 PC. The Privy Council in that case (AIR 1934



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PC 230) had no evidence on basis on which to lay down that the Court should presume that the temples in Madras Presidency are public temples.

22. Each case has to be decided on the basis of the evidence placed before the Court in that case and not on the basis of any non statutory presumption of the nature canvassed for by the State. What is crucial for the purpose of deciding as to whether the temple is a public temple or private is the dedication to the public and the right recognised in public to offer worship at the temple as of right. That question is to be decided on a consideration of the oral and documentary evidence in the case and not on the basis of any nonstatutory presumptions.

23. The apex Court in the case of Gopalan, AIR 1972 SC 1716 has adverted to matters which are required to be considered while deciding as to whether the temple is a public temple or a private temple. The Court therein referred to the decision rendered in the case of Goswami Shri Mahalaxmi Vahuji vs. Rannchoddas Kalidas, AIR 1970 SC 2025 wherein it has been held that the appearance of a temple though a relevant circumstance was by no means decisive, and that the circumstance the public or a section thereof had been regularly



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worshipping in the temple as a matter of course and they could take part in the festivals and ceremonies conducted in that temple apparently as a matter of right, was a strong piece of evidence to establish its public character and if offerings were being made by the public and the expenses were being met by public contribution, it would be safe to presume that the temple was public. "In short, the origin of the temple, the manner in which its affairs were managed, the nature and the extent of the gifts received by it, rights exercised by devotees in regard to worship therein, the consciousness of the manager and consciousness of the devotees themselves as to the public character of the temple were factors that went to establish whether the temple was public or private."

25. *The test so formulated in that case when applied to the facts before us clearly lead to the same conclusion, namely, that the temple is a private temple. The temple here was founded by the grandfather of the plaintiff. There is no endowment made to that temple by any outsider. The temple does not have Prakaram, but only has Dwajasthamba. There is no Hundial for the public offering. There is no offering of Kattalai by the members of the public. There is no evidence of monies having been expended for the improvement of the temple by any member of the public.*



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26. In the case of *Radhakanta Deb vs. The Commissioner of Hindu Religious Endowments, Orissa, AIR 1981 SC 798*, a case similar to the one before us, the Court held that "the cardinal point to be decided is whether it was the intention of the founder that specified individuals are to have the right of worship at the shrine, or the general public or any specified portion thereof." Thereafter, the Court observed that the mere fact that members of the public are allowed to worship by itself would not make an endowment a public unless it is proved that the members of the public had a right to worship in the temple. At paragraph fourteen of the judgment, the Court formulated four tests as providing sufficient guidelines to determine on the facts of each case whether an endowment is of a private or of a public nature. The four tests are - (1) whether the user of the temple by members of the public is of right; (2) Whether the control and management vests either in a large body of persons or within the members of the public and the founder does not retain any control over the management; (3) Whether the dedication of the properties is made by the founder who retain the control and management and whether control and management of the temple is also retained by him; and (4) where the evidence shows that the founder of the endowment did not make any stipulation for offerings or contributions to be made by the members of the public to the temple, this would be an important intrinsic circumstance to



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indicate the private nature of the endowment.”

13. This Court considered the submissions made on either side and perused the materials placed on record.

14. The writ petition in WP(MD)No.13365 of 2023 is filed for a writ of mandamus restraining the respondents from interfering with the rights of the petitioner from interfering with the rights of the petitioner's society in the temple situated at TS.No.86. The other writ petition in WP(MD)No.13570 of 2023 is filed by one Shri Moorthi Poosari as against the decision taken in the peace committee meeting. The HR & CE Department has placed reliance on the report of the Inspector, HR & CE dated 15.07.1972 and another proceedings issued by the Assistant Commissioner, HR & CE dated 16.12.2002, by which fit person was appointed for the temple. It is also claimed that the fit person has assumed charge only on 16.12.2020. The grievance of the petitioner society is that the orders have been passed by the HR & CE Department without hearing the petitioner, who is the real owner of the property. Admittedly the property has been purchased by the petitioner in the year 2013 vide sale deed dated 07.01.2013 and the documents



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relied on by the HR & CE Department are of the year 2002.
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15. This court in ***T.S.Palanichamay Case (Supra)*** held that there is no presumption that all the temples in South India are public temple. However, the onus is on the petitioner organisation to prove that the temple is their private temple. The crucial factor for deciding whether a temple is a public temple or a private temple is the dedication to the public and the recognisable right of the public in offering the worship. The petitioner organisation has to prove that the temple was established by them and the management of the temple remained with the members of the organisation throughout, by oral and documentary evidence.

16. The temple is in existence for more than 50 years. The Inspector HR & CE, Kovilpatti by his report dated 15.07.1972, has observed that temple is situated in a “path poramboke” without any structure to an extent of 10 cents. It was reported that there is no trustee for the temple and hence, it was recommended to be classified as “minor temple”. Therefore, the HR & CE department has passed an order for appointment of fit person in the year 2002. This order has not been challenged and from this it can be inferred that it was used as a public temple. The



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Executive Officer of the Meenakshi Sundreswarar Temple took in charge as the fit person from 16.12.2020. The petitioner organisation having purchased the land in S.No.88 in the year 2013 and has also created documents by putting up constructions, drawing electricity line and also by paying necessary tax from the year 2013. It can be seen that only after purchasing the land in 2013, the petitioner is claiming the temple as a private temple. Therefore the relief sought in WP(MD)No.13365 of 2023 cannot be granted. Hence dismissed.

17. In view of the decision in WP(MD)No.13365 of 2023, the writ petition in WP(MD)No.13570 of 2023 is also dismissed with liberty to the petitioner in both the writ petitions to file necessary applications under Section 63 of the HR & CE Act before the Joint Commissioner, HR & CE, Thoothukudi within a period of four weeks from the date of receipt of a copy of this order and shall establish their case and if any application is filed the Joint Commissioner, HR & CE Department, Thoothukudi shall consider it and pass appropriate orders after affording opportunity of hearing to the necessary parties concerned within a period of six months therefrom.



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18. Till a decision is taken, the temple shall be administered by the fit person appointed by the HR & CE Department and all the persons shall be permitted to offer their prayers to the deity without any disturbance to others. No costs. Consequently connected miscellaneous petitioners are closed.

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NCC:Yes/ No

Internet:Yes / No

Index:Yes / No

dsk

To

1.The Assistant Commissioner,
The Hindu Religious and Charitable Endowments Department,
Officer of the Assistant Commissioner of HR and CE Department,
Thoothukudi – 628 003.

2.The Tahsildar,
Vilathikulam Taluk Office,
Thoothukudi District, Thoothukudi.

3.The Executive Officer,
Arulmighu Meenakshi Sundareswarar Thirukovil,
Vilathikulam Town and Taluk,
Thoothukudi District.



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4.The Deputy Superintendent of Police,
District Police Office,
Thoothukudi District.

5.The Inspector of Police,
Vilathikulam Police Station,
Vilathikulam, Thoothukudi District.



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