



W.P.(MD).No.23452 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	:	01.12.2022
Pronounced on	:	07.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.23452 of 2022

and

W.M.P.(MD) Nos.17533 & 17536 of 2022

Parvathipuram Udamuttu Dharmam,
Represented by its President / Managing Trustee
S.Udayakumar,
Vadasery South Village Nagercoil,
Agatheeswaram Taluk,
Kanyakumari District. ... Petitioner

Vs.

- 1.The Commissioner,
Hindu Religious and Charitable
Endowment Department,
Chennai.
- 2.The Joint Commissioner,
Hindu Religious and Charitable,
Endowment Department,
Tirunelveli.
- 3.The Assistant Commissioner,
Hindu Religious and Charitable
Endowment Department,
Nagercoil,
Kanyakumari.



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4. The Executive Officer,
Arulmigu Subramaniya Swamy Temple,
Thiruchendur,
Tuticorin District.

... Respondents

PRAYER: The writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records relating to the impugned order passed by the 1st respondent in Se.Mu.Na.Ka.44422/07/A2, dated 15.01.2008 and quash the same.

For Petitioner : Mr.H.Arumugam

For Respondents : Mr.P.Subbaraj
Special Government Pleader for R-1 to R-3

Mr.M.Muthugeethaiyan for R-4

ORDER

The present writ petition has been filed challenging the impugned order passed by the 1st respondent in Se.Mu.Na.Ka.44422/07/A2, dated 15.01.2008. A preliminary objection was raised by the 4th respondent as to the maintainability of this writ petition. This Court is inclined to examine the above aspect before proceeding further.



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2. The petitioner has stated / filed the present writ petition claiming to be the Managing Trustee of the petitioner's trust while questioning the impugned proceeding by which the 1st respondent was appointed a "Fit Person" to specific endowment viz., Parvathipuram Udamuttu Dharmam (herein after referred to as "Dharmam") pursuant to the recommendations made by the Joint Commissioner, Tirunelveli. The impugned order appointing a Fit Person was made to presence/ look after and protect the land belonging to the said Dharmam to an extent of 1 acre and 50 cents. The above land had been encroached and the Fit Person was also tasked to remove the encroachment and attend to the said land.

3. The 4th respondent i.e., Fit Person pursuant to the above order of appointment, initiated steps to remove the encroachment by filing nearly 50 petitions before the Joint Commissioner, Tirunelveli. The applications were adjudicated by the Joint Commissioner and some of the encroachers were set ex partie. It is submitted by the learned counsel for the respondent that the petitioner herein was also set exparte by the Joint Commissioner vide order dated 10.02.2017 in M.P.No.58 of 2016. The



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petitioner has also filed an application to set aside the exparte order passed by the Joint Commissioner, Tirunelveli, the 2nd respondent herein. The petitioner had also filed a revision before the 1st respondent, Commissioner. It was submitted that these proceedings have been suppressed and thus the writ petition ought to be dismissed on the ground that the petitioner has not come to Court with clean hands. It was further submitted that the petitioner had come to Court challenging an order dated 15.01.2008 nearly 14 years after the said order came to be passed. Thirdly, the Writ petition is not maintainable inasmuch as the legality of the order dated 15.01.2008 by which the Fit person has been appointed was held by this Court as having attained finality. Thus the present writ petition questioning the order dated 15.01.2008 is nothing but abuse of process of this Court and liable to be dismissed.

4. To the contrary it was submitted by the petitioner that the order dated 15.01.2008 was not communicated to the petitioner and thus the impugned proceeding is a nullity and reliance was placed in the judgment of the Supreme Court reported in (2001) 8 SCC 443 and in the matter of M.R.Mondal and Ucal Machine tools reported in (2019) 3 CTC



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546. Secondly, it was submitted that the petitioner Trust is not a “specific endowment” within the meaning of Section 6 (19) of HR and CE Act 1950, instead it was submitted that the petitioner Trust is a private trust maintained by the Yathava Community alone and the object is to provide Baanagam and Buttermilk to the devotees which cannot be treated as endowment of the property in favour. Reference was made by both the learned counsel for the petitioner as well as the respondent to proceedings before the Civil Court in O.S.No.230 of 2016 pending on the file of the II Additional Sub Court, Nagercoil.

5. Heard both sides perused the materials on record including the written submissions / notes filed by both sides.

6. This Court is of the view that the present writ petition challenging the order dated 15.01.2008 cannot be entertained inasmuch as this Court in W.P.(MD)No.20275 of 2021 dated 11.11.2021 wherein, while dealing with a prayer in that writ petition, this Court found as under:



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“a) A Fit Person has been appointed for said entity wayback in 2008 i.e., on 15.08.2008 to state with specificity vide an order bearing Na.Ka.No.44422/07/A2 dated 15.01.2008 and this order has become final. To be noted there is no dispute or disagreement about this.

b) Owing to the aforementioned appointment of Fit person having attained finality/given legal quietus, it will be inappropriate to entertain the primary/first part of prayer i.e., interference details of which have been alluded to supra elsewhere in this order.”

A reading of the above portion of the judgment of this Court in W.P(MD) No.20275 of 2021 leaves no room for doubt that it has been categorically held that there is no dispute or disagreement with regard to the fact that the order dated 15.01.2008 had attained finality and given legal quietus. The present writ petition is nothing but an abuse of process of this Court after having obtained the above findings in the earlier round of litigation in particular W.P(MD)No.20275 of 2021. The recourse which was available to the petitioner against the above order of this Court W.P(MD)No.20275 of 2021 was to either file a review petition or an appeal. It is certainly not open to the petitioner to question the order dated



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15.01.2008 in the absence of any challenge to the orders of this Court W.P.(MD).No.20275 of 2021. As I am inclined to reject the Writ Petition on the preliminary issue I do not intend to express any view on merits of the case though attempts were made on both sides to submit on the merits as well.

7. In view of the above, the writ petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

07.02.2023

Index: Yes/No
Internet: Yes/No
Speaking order/Non speaking order
Neutral Citation: Yes / No

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MOHAMMED SHAFFIQ,J.

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