



W.A.(MD)No.1528 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 17.08.2023

PRONOUNCED ON: 21.12.2023

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)No.1528 of 2018
and
C.M.P.(MD)No.10880 of 2018

- 1.Shanmugasundara Bhattar (Died)
- 2.Sekar Alias Saminatha Bhattar (Died)
- 2.Kumar Alias Deivasigamani Bhattar
- 4.S.Karpooram

...Appellants

(Appellants 2 to 4 are brought on record as LR's of the deceased sole appellant vide Court order dated 27.03.2023 made in CMP(MD)No.3867 of 2023.)

(Memo presented before the Court on 27.03.2023 is recorded, as 2nd appellant died, vide Court order dated 27.03.2023 made in CMP(MD)No.3867 of 2023.)

/Vs./



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1.S.Chandrasekara Bhattar

2.The Joint Commissioner,
Hindu Religious & Charitable Endowment,
Madurai.

3.The Executive Officer / Joint Commissioner,
Arulmigu Meenakshi Sundareswarar Temple,
Madurai – 1.

...Respondents

PRAYER:- Writ Appeal - filed under Clause XV of Letters Patent Act, to set aside the order passed in W.P.(MD)No.17634 of 2017 dated 08.10.2018.

For Appellants : Mr.S.Ramesh

For Respondents : Ms.D.Geetha (R1)

Mr.S.P.Maharajan (R2)

Special Government Pleader

Mr.V.R.Shanmuganathan (R3)

JUDGMENT

(Judgment of the Court was made by **DR.ANITA SUMANTH, J.**)

The third respondent in the Writ Petition is the appellant (hereinafter referred to as ‘appellant’) and the Writ Petitioner is arrayed as R1 (hereinafter referred to as ‘writ petitioner’) in this Writ Appeal. The Joint Commissioner (JC) of Hindu Religious and Charitable



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Endowments (HR & CE) Department and the Executive Officer (EO)/Joint Commissioner of Arulmighu Meenakshi Sundareswarar Temple (in short 'Temple') were arrayed as R1 and R2 in the Writ Petition and R2 and R3 in the Writ Appeal and are henceforth referred to as per their array in the appeal, that is, R2 and R3.

2. The brief facts that arise in the matter culminating in order dated 08.10.2018 in W.P.(MD) No.17634 of 2017 are as follows:

- i) The writ petitioner is an Archakar attached to the temple.
- ii) Traditionally, Archakars are appointed based on ancestry and render three kinds of duties, viz., a) performance of Pooja b) performance of Murai and c) those who perform both Pooja and Murai.
- iii) The writ petitioner was engaged exclusively for performance of Pooja.
- iv) According to the writ petitioner, appellant was engaged only for performance of Murai from 1968.
- v) While so, the appellant approached the JC/EO of the Temple on 21.06.2010 asking for assignment of Pooja duties as well.



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vi) Despite objections of the writ petitioner as well as others, an order was passed on 15.02.2013 holding that the appellant had 1/6th right in pooja rights and was thus entitled to perform pooja on the 7th and 22nd day of every month per the Tamil calendar.

vii) The above order was assailed by the writ petitioner before the Commissioner, HR & CE Department in Revision Petition No.19 of 2013, which came to be dismissed by the Commissioner on 06.08.2013.

viii) The petitioner was of the view that the specific ground in relation to assumption of jurisdiction by the EO had not been properly answered by the EO.

ix) Thus, the writ petitioner preferred W.P.No.22632 of 2013, which was disposed on 07.10.2014. The operative portion of that order reads thus:

'8. Mr.R.Thiagarajan, learned Senior Counsel for the petitioner submitted that the petitioner would take recourse to Section 63(e) of the Act. There cannot be any objection to the said course of action. The proceedings impugned in this writ petition, may not directly satisfy the requirements of Section 63(e) of the Act. Under Section 63(e) of the Act, the Joint Commissioner is obliged to hold a full-fledged enquiry, in respect of certain disputes and matters



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listed out in clauses (a) to (g). It is like a judicial enquiry and hence there cannot be any impediment for the petitioner to invoke Section 63(e) of the Act.

9. Therefore, the Writ Petition is disposed of leaving it open to the petitioner to move an application under Section 63(e) of the Act. It is open to the parties to raise the question of locus standi of the petitioner also before the Joint Commissioner; if and when the petitioner moves an application under Section 63(e) of the Act. Independent of the orders passed, the Joint Commissioner can go into the question of the locus standi of the petitioner. No costs. The Connected Miscellaneous Petition is closed.'

x) Writ Appeal in W.A.No.1650 of 2015 was preferred by writ petitioner and the order of the Writ Court was confirmed on 07.01.2016 in the following terms:

'.....

"3. The learned single Judge, examining all the facts of the case, observed that if an application is moved by the appellant/writ petitioner, the dispute may be resolved by the Joint Commissioner, without being influenced by the observations made by the Court and also other orders passed.

4. In such view of the matter, without adjudicating the dispute, we are also of the view that on an appreciation to be made by the appellant, the Joint Commissioner (Administration), Hindu Religious and Charitable Endowments Department, Madurai, shall examine the dispute and take a decision in accordance with law and on its own merits, after affording opportunity of hearing to both parties viz., the appellant/writ petitioner as well as the fourth



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respondent. If such an application is made by the appellant/writ petitioner within a period of one week, the Joint Commissioner shall consider the same expeditiously.”

xi) Based on the above order, an application was made by the writ petitioner in terms of Section 63(e) of the Hindu Religious and Charitable Endowments Act, 1959 (in short ‘Act’).

xii) The maintainability of the application and locus standi of the writ petitioner to file the application under Section 63(e) of the Act was questioned by the appellant before the JC by way of an interim application.

xiii) After hearing the rival contentions, the JC passed an order on 21.08.2017 rejecting the application on the ground that the dispute raised did not fall within the scope of Section 63(e) of the Act and permitting the parties to approach the competent Civil Court for redressal, assailing which order the Writ Petition had been filed.

3. The issue that arose before the Writ Court was the appropriateness or otherwise of the application under Section 63(e) of the Act. The provision reads as follows:



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“63:(Joint Commissioner or Deputy Commissioner) to decide certain disputes and matters: - Subject to the rights of suit or appeal hereinafter provided, (the Joint Commissioner or the Deputy Commissioner, as the case may be), shall have power to inquire into and decide the following disputes and matters -

- (a) whether an institution is a religious institution;*
- (b) whether a trustee holds or held office as a hereditary trustee;*
- (c) whether any property or money is a religious endowment;*
- (d) whether any property or money is a specific endowment;*
- (e) 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 religious institution is in regard to any other matter.”*

4. The petitioner contended that the right in question/subject right, fell squarely within the framework of Section 63(e), whereas, the JC had proceeded on the basis that the issue for adjudication related to a rival claim between the writ petitioner and the appellant in relation to performance of Poojas.

5. The defence of the writ petitioner was premised on the fact that the dispute arose only upon the appellant filing an application seeking Pooja rights and thus the lis pertained to whether there was



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custom or usage prevalent on the basis of which such right could have been insisted upon by the appellant. In any event, such a dispute would fall within the four corners of Section 63(e) of the Act.

6. In fact, the argument advanced is that such a dispute could not be adjudicated upon by a Civil Court, as Section 108 of the HR & CE Act bar the institution of Suits in respect of administration or management of religious institutions. Section 108 reads thus:

108. Bar of suits in respect of administration or management of religious institutions, etc. - No suit or other legal proceeding in respect of the administration or management of a religious institution or any other matter or dispute for determining or deciding which provision is made in this Act shall be instituted in any Court of Law, except under, and in conformity with, the provisions of this Act.

7. The Writ Court took note of the following judgments relied upon by the petitioner.

(i) *In Sinna Ramanuja Jeer and Others Vs. Ranga Ramanuja Jeer and Others*¹

(ii) *In Sadhu Sri Vaishnavar Nambi Srinivasa Iyengar Vs. K.K.V. Annan Srinivasachariar and others*²

(iii) *Chitti Babu Mudaliar Vs. A.Venkatasubbu Mudaliar and another*³

¹ AIR 1961 SC 1720

² AIR 1990 Mad. 375

³ AIR 1993 Mad 264



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(iv) *In Muthamilselvan and others Vs. A.Manickam and others*⁴
(v) *Arulmighu Kumbeswarar Koil, Kurinjipadi, by P.K.Annamalai as Trustee and Worshipper Vs. The Commissioner, H.R.&C.E. Department, Nungambakkam High Road, Madras and three Others*⁵

(vi) *In R.Lakshmi Narasimha Battar Swami Vs. The Commissioner, Hindu Religious and Charitable Endowment and two others*⁶

(vii) *Sri.Kovil Vedavyasa R.Lakshmi Narasimha Battar Swami Vs. The Commissioner, Hindu Religious and Charitable Endowment, Nungambakkam High Road, Chennai and another*⁷

(viii) *V.S.Seshadri Vs. The Joint Commissioner/Executive Officer, Arulmigu Aranganathar Swamy Thirukoil, Srirangam, Trichy and another*⁸

8. The appellant relied upon *Chinnathambi Moopan and another Vs. Mamundi Mooppan and another*⁹. The writ Court concluded in favour of the writ petitioner holding that the dispute is not one of rival claim, but one of customary claim of right to do pooja in the temple and such right could only be decided by the competent authority under the provisions of the Act.

9. The order adverse to the writ petitioner was set aside and the authority was directed to hear the parties and pass orders afresh within a

⁴ 2004 (4) CTC 650

⁵ 2003 (2) CTC 408

⁶ Review Application (MD)No.53 of 2011 and W.P.(MD)Nos.5943, 9202, 9263 and 9447 of 2011 dated 19.12.2011

⁷ W.P.(MD).No.14229 of 2009 and W.P.(MD).No.13055 of 2010 dated 19.10.2010

⁸ W.P.(MD)No.7395 of 2011 dated 07.07.2011

⁹ MLJ 1966 361



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period of eight (8) weeks from date of receipt of that order. The present appeal has been filed by the appellant, who maintains that the order passed by the JC relegating the parties to the Civil Court was erroneous and does not set out the proper course of action to be adopted.

10. We have heard the detailed submissions of Mr.S.Ramesh, learned counsel for the appellant, Ms.D.Geetha, learned counsel for the writ petitioner, Mr.S.P.Maharajan, learned Special Government Pleader for JC and Mr.V.R.Shanmuganathan, learned counsel for EO.

11. The legal issue to be decided in this matter is as to the nature of dispute between the parties. The decision on the nature of dispute would clarify and would be critical to decide on the method of resolution in that regard.

12. Section 63(e), which has been seen earlier, provides for an enquiry and decision on five enumerated kinds of disputes/issues. The disputes in (a) to (d) are not relevant to this case and the question that arises is *‘whether any person is entitled, by custom or otherwise to any honour, emolument or perquisite in any religious institution; and what*



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the established usage of religious institution is in regard to any other matter’.

13. The issues that fall within the five adumbrated clauses are required statutorily to be decided only under Section 63 and there is a bar under Section 108 to refer this question for decision by Civil Courts.

14. The case of the writ petitioner is that the writ appellant is not entitled to conduct poojas in the Temple, whereas, the case of the writ appellant is that he holds such entitlement, as his competence is established by virtue of heredity. For that purpose, he is expected to have raised averments establishing his heredity even at the first instance.

15. However, the counter filed in the Writ Petition merely refers peripherally to his claim that he belongs to the category of ‘*pooja and Muraidarars*’ and not *Muraidarar* alone. He claims to have adduced sufficient documentary evidence to prove that himself and his ancestors belonged to the category of pooja and Muraidarar. He has not elaborated further.

16. It is only in the written arguments filed on behalf of the appellant that he talks about the genealogy commencing from his alleged



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adoption by one Muthu Meenakshi Ammal and her husband Swaminatha Bhattar on 02.03.1949. Even in the written arguments, there is nothing to establish conclusively his claim that he is entitled to customary and hereditary rights of *Pooja and Murai*. There is reference to orders of the Inam Tribunal, Entries in the Inam Fair Register, based on all of which the claim of the writ appellant is put up.

17. The Writ Court rightly did not advert to this aspect of the matter, seeing as they are questions of fact, disputed, as it were, and it is for this reason that the matter has been referred to the authorities of the HR & CE Department, to be adjudicated under Section 63(e) of the Act. The decisions that have been cited are discussed briefly below to support the conclusion that the proper course of action has been adopted by the writ Court.

18. The decision in the case of *Chitti Babu Mudaliar* (supra) touched upon the maintainability of a Suit under Section 9 of the CPC. The prayer of the plaintiff had been for a declaration to the rights to conduct Aroodra Utsavam at Sree Kabaleeswarar Temple. The Court



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holds that the plaint was not maintainable, since there was no ‘mutuality of obligations’.

19. In *Thirumalai Alwar Ayyangar V. Srinivasachariar*¹⁰, the Court had entertained a Suit for declaration that that plaintiff was entitled to perform duties of the office, that is to conduct a Mandahappady. However, that case was distinguished in *Chitti Babu Mudaliar*’s case (supra), since the Court felt that to constitute an office, it was essential to have some duties attached to it which the office holder would be under legal obligation to perform.

20. This was based on the concession made by the learned counsel before the lower Court that the conduct of Aroodra Utsavam did not involve any duty as such, but a mere conferment of honour on the plaintiff. In the absence of any responsibility or duty cast on the plaintiff, the Court held that there could be no prayer for declaration for enforcing the honours.

21. In *Sinna Ramanuja Jeer and Others* (supra) the prayer was for a declaration of the right of first theertham. After considering the

¹⁰ (1916_ 36 1 C 568



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earlier decision in *Striman Sadagopa V. Kristna Tatachariyar*¹¹, where the Court had held that honours and emoluments cannot be considered as remuneration of duties or ministrations performed by the plaintiff in secular affairs or religious services of the pagoda, and considering the case of *Sri Rungachariar V. Rungasami Buttachar*¹², *Athan Sadagopachariar Swamigal V. Elayavalli Srinivasachariar*¹³, the appeals were allowed, reversing the decision of the High Court and restoring the decision of the District Judge.

22. In *Sadhu Sri Vaishnavar Nambi Srinivasa Iyengar* (supra) also the question of maintainability of the Suit arose and the cases discussed above were cited. The Court analysed the objection relating to maintainability stating that it is two-fold. The first part of the objection relates to the nature of the right sought to be asserted by the first respondent in the course of performance of duties related to the Adyabaga Goshti for the recitation of Divya Prabandham before Sri Ranganathaswami whenever the deity is taken out in procession outside

11 (1863) 1 M.H.C.R. 301

12 I.L.R(1909) – 32 Mad.291

13 (1913) M.W.N.289



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the Aryabatal Vasai.

23. The second argument was that the established usage and custom in that Institution required appointment of appropriate persons to participate in the Adyabaga Goshti and this issue could be ascertained only by the officers of the HR & CE Department under Section 63(e) of the Act. The jurisdiction in this regard of the Civil Court was barred under Section 108.

24. The defence put up related to a factual dispute as to whether at all the person claiming such right had established a customary/hereditary right to perform such a duty. In that case, the person had established a customary/hereditary right and hence the High Court held that what was sought to be agitated by the first respondent in the suit was a civil right cognizable by a civil Court under Section 9 of the CPC, thus not barred by the provisions of Section 63 (e) read with Section 108 of the Act.

25. This case is similar in factual matrix to the present matter. There is no quarrel on the understanding of Section 63(e) insofar as it



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provides for the resolution of a dispute relating to a rival claim that is on the supposition that both parties making the rival claim have established a hereditary right to such claim. It is only thereafter that the question of quantification of that right, arises for decision.

26. In the present case, the case of the writ petitioner from inception has been that the writ appellant does not hold the requisite hereditary/customary right to perform Pooja in the Temple and this question cannot be referred to the Civil Court as it is wholly within the domain of the authorities to consider and decide.

27. In the case of *Chinnathambi Moopan* (supra), relied upon by the respondents, the controversy has been clearly outlined at paragraph 6 of that decision, the Court saying '*there is here no controversy about the office or the emoluments attached to the office, in relation to the services rendered in exercise of the right under the office. The question as is clear from the pleadings, is confined to the rival claims, whether the office of moopannar is vested in the community of pallars or whether the first Defendant is entitled to it as of right*'.



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28. It is for that reason that they conclude that '*whether the controversy centers around as to which of the rival claimants to the office is entitled to it, it squarely does not fall within the ambit of Section 63(e)*'. The question of rival claim would come in only when both the contesting parties are entitled to their share or other attributes of the responsibilities.

29. In such a case, the matter would go before the Civil Court, as it is not the entitlement of the party which is to be decided, but the quantification of the duties/rights as entrusted to them. In the present case, it is the specific contention of the writ petitioner that the writ appellant has no share in the Pooja at all. In such a situation, the question of a rival claim does not arise and this issue is one which would fall squarely within the four corners of Section 63(e) alone.

30. In light of this discussion, this Writ Appeal is dismissed and there is a direction to the second respondent to hear the writ petitioner as well as the writ appellant and pass orders on the application



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filed under Section 63(e) of the Act by the writ petitioner within a period of six (6) weeks from date of receipt of a copy of this order. No costs.

[A.S.M.J.,] & [R.V.J.,]
21.12.2023

NCC :Yes/No
Index :Yes/No
Internet :Yes
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TO

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Pre-delivery Judgment made in
W.A.(MD)No.1528 of 2018

Dated: 21.12.2023