



W.P.Nos.28206, 28210 & 28212 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. No.1390 of 2019 & W.P. No.28383 of 2024
and
W.M.P. Nos.1549 of 2019 & 30947 of 2024

In both W.P.s:

K. Ramachandran

... Petitioner

Versus

1.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Salem.

2.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Salem.

3.Govindaraj

4.J.Giridharan

5.T.Ravichandran

6.T.Jaganathan

... Respondents

Prayer in W.P.No.1390 of 2019 : Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records pertaining to the order passed by the first respondent in M.P.Nos.09/2017 and 10/2017/Aa1/dated 12.12.2018 and quash the same.



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Prayer in W.P.No.28383 of 2024 : Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records pertaining to the order passed by the second respondent in Na.Ka.No.1371/2016-1/E2 dated 20.09.2024 and quash the same.

In both W.P.s:

For Petitioner : Mr. G. Sankaran, Senior Counsel,
for Mr. R. Marudhachalamurthy

For Respondents : Mr. D. Balachandran (for R4 to R6)

: Mr. N.R.R. Arun Natarajan, Spl.GP, (for R1 & R2)

: No Appearance (for R3)

COMMON ORDER

The case of the petitioner is that Arulmigu Varadharaja Perumal Koil in Vellalagoundanur, Morasampatti, Edapaddi Taluk, Salem was administrated and managed by his predecessors since 1920. In the year 1992, as there was no proper idol/deity his predecessor have installed the idol of Shir Varadharaja Perumal on 30.11.1992 and performed necessary pooja. The petitioner also refers to conduct of Kumbabishegam on 25.11.1998 and 22.08.2010. According to the petitioner, the father of the



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respondents 4 to 6 was one Devaraja Iyer. He was paid salary by his predecessors. However, the said Devaraja Iyer clandestinely filed an O.A.No.38 of 1972 before the Deputy Commissioner, HR & CE, Coimbatore, to appoint him as hereditary trustee of the said temple. On 13.07.1992, the Deputy Commissioner, Coimbatore, declared him as hereditary trustee without any notice to the predecessors of the petitioner. When some of the third parties attempted to encroach the temple land, his predecessor verified the record of the temple and came to know about the order dated 13.07.1992 passed by the Deputy Commissioner of HR & CE, Coimbatore, appointing the said Devaraja Iyer as hereditary trustee of the temple. When the said Devaraja Iyer confronted about the said order, he admitted his guilt and relinquished all his right and interest in respect of the temple by signing a memorandum dated 01.12.1989. Even thereafter, the said Devaraja Iyer continued to perform poojas to the temple and was receiving salary from his predecessors. The said Devaraja Iyer died on 22.10.1993. The petitioner and brother succeeded the office of the temple. After they took charge of the temple, they laid foundation stone on 24.02.2008 and constructed a Kalayanamandam, which was inaugurated



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along with the Kumbabishegam on 22.08.2010. On 14.02.2011, the petitioner had taken steps to constitute a committee to manage and administrate the temple effectively. Even till such time, the respondents 4 to 6 received salary from the petitioner for performing pooja to the deity.

2. While so, on 18.01.2016, legal notice was received on behalf of the respondents 4 to 6, in which, they claimed to have succeeded the hereditaryship of Late. Devaraja Iyer, their father. On 22.02.2016 a reply was sent by the petitioner to which rejoinder dated 02.03.2016 was sent. At that time, the petitioner verified records of the temple and came to know that several records have been taken away by the respondents 4 to 6. On 18.04.2016, the petitioner has given a complaint against the respondents 4 to 6, but, no investigation was conducted. At this juncture, the petitioner also came to know about the order dated 23.10.2015 was passed without disclosing the fact that the Late. Devaraja Iyer accepted his right and relinquished his hereditaryship in the temple through a memorandum dated 01.12.1989. Therefore, challenging the order dated 23.10.2015 of the second respondent, the petitioner filed an application



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before the first respondent with a delay of 234 days. The first respondent by order dated 30.01.2017 refused to condone the delay and dismissed the application. As against the order dated 30.01.2017, the W.P.No.22224 of 2017 was filed, in which, on 21.08.2017 an order was passed by directing the petitioner with liberty to approach the Secretary to Government of HR&CE Department, by way of appeal. Accordingly, an appeal was filed by the petitioner, at that stage, the respondents 4 to 6 with the help of the third respondent approached the first respondent and filed an application under Section 78(2) of the Tamil Nadu Hindu Religious and Endowments Act, to remove the encroachments in the temple property. On the basis of such application, a show cause notice 29.11.2016 was issued to the petitioner. The petitioner submitted a detailed reply to the show cause notice. However, without considering the reply, the first respondent directed the petitioner to appear for enquiry on 26.07.2017. The petitioner also participated the proceedings initiated under Section 78 of the HR &CE Act and filed 48 documents for consideration. However, the first respondent passed an order dated 12.12.2018 by allowing the application filed by the respondents 4 to 6. Challenging the same, the above



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W.P.No.1309 of 2019 was filed by the petitioner.

3. This Court by order dated 21.01.2019 granted an order of Status-Quo. The order of Status Quo was in force atleast for a period of four years. While so, on 19.09.2024, in W.P.No.1390 of 2019 was taken up for hearing, this Court passed the following order:-

“ When the matter is taken up for hearing today, learned counsel for the petitioner submitted that the temple namely Arulmigu Varadharaja Perumal Koil situated in Vellalagoundanur, Morasampatti, Vellarivelli Village, Edapadi Taluk, Salem District is administrated and managed by the petitioner's predecessors and all the properties owned by the said temple is under the control of the said temple and HR&CE Department. He further submitted that the petitioner has no objection for removal of the encroachment made by anyone in the properties belonging to the said temple.

2. In view of the above fair submissions made by the learned counsel for the petitioner, there shall be a direction to the respondents 1 and 2 to measure and survey the properties owned by the said temple and if



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any encroachment is made in respect of the properties owned by the said temple, the same may be removed and file a report before this Court on or before the next date of hearing.

3. For filing report, post this matter on 26.09.2024.”

4. Pursuant to such order, claiming that survey was conducted and encroachments have been found, and thereafter the order dated 20.09.2024 was passed for removal of the encroachments. Challenging the said order dated 20.09.2024, the above W.P.No.28383 of 2024 was filed.

5. Learned counsel for the petitioner would submit that when the appeal was filed by the petitioner as against the order dated 23.10.2015, was pending, the very initiation of proceedings under Section 78 of the Act, is legally not maintainable. The petitioner filed a suit in O.S.No.134 of 2017 on the file of the District Munsif Court, Sankari for declaration to declare him as a hereditary trustee of the said temple. When the said suit is pending for consideration, the order dated 20.09.2024 was passed by the second respondent, which is challenged in W.P.No.28383 of



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2024, is legally not sustainable.

6. Learned Additional Government Pleader appearing for the respondents 1 and 2 submitted that the temple is a not listed temple as contemplated under Section 49(1) of the HR &CE Act and it is under the administrative control of the Assistant Commissioner of HR&CE, Salem. The respondents 4 & 5 have been declared as hereditary trustee by order dated 23.10.2015 passed in O.A.No.38 of 1972 by the Deputy Commissioner of HR&CE, Coimbatore. On the other hand, the petitioner has not been declared as hereditary trustee or appointed as a person in-charge of administration of the temple at that point of time. It is further stated that the petitioner has illegally constructed a marriage hall measuring at 12675 sq.ft, toilet block measuring 516 sq.ft, vinyagar shrine measuring 43 sq.ft and parking lot measuring 48238 sq.ft without any permission. The petitioner has no right to make such construction without any prior permission from the department. Even the formation of committee by the petitioner was also without any permission from the authorities. Thus the petitioner is in illegal possession of the temple.



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Therefore, the proceedings under Section 78 have been initiated, in which, notice was issued to the petitioner and he has also submitted his reply. While so, W.P.No.1309 of 2019 was listed for hearing, this Court passed an order dated 19.09.2024, directing the respondents 1 and 2 to measure and survey the property towards by the temple and to remove the encroachments, if any noticed. Accordingly, survey was conducted from 20.09.2024 to 23.09.2024 and survey stones have been laid around the temple lands, from which, it was found that the petitioner has also encroached the temple land. However, he refused to budge. Therefore, with the assistance of Police and Revenue officials, on 24.09.2024, the encroachments have been removed, and the equipments and furniture in the marriage hall have been checked and the entire building has been sealed. Therefore, it is submitted that no further order is required in these writ petitions and it is liable to be dismissed.

7. That apart, learned Additional Government Pleader has specifically stated that the petitioner in any manner aggrieved by the order dated 20.09.2024 or the subsequent removal of encroachments, it is open



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to him to file an appeal before the Additional Secretary to Government, Tourism, Culture, Religious Endowments, and Chairman, Tamil Nadu Tourism Development Corporation, Fort St.George, Chennai-9, and the Writ Petitions are not maintainable at this stage.

8. In fact, the appeal was filed by the petitioner as against the order dated 23.10.2015 appointing the respondents 4 to 6 as hereditary trustee has been rejected. Against which, a revision petition has been filed by the petitioner along with one Mr. S. Nagarajan and the same is pending with the Additional Secretary to Government in R.P.No.03/2024.

9. Heard the rival submissions made by the learned counsel on both sides and perused the material available on records.

10. In the light of the above facts, it is evident that as against the order dated 23.10.2015 passed by the second respondent, the appeal has been filed before the Commissioner of HR &CE and it was also rejected. Challenging the same, the said Revision Petition in R.P.No.03 of 2024 was



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filed before the Additional Secretary to Government, HR&CE and the same is pending. Furthermore, as against the order of removal of encroachments in the temple land, by the official respondents, pursuant to the order of this Court dated 19.09.2024 in W.P.No.1309 of 2019, it is open to the petitioner to file appropriate statutory appeal before the appropriate appellate authority.

11. The appellate authority as well as the revisional authority, namely, the Additional Secretary to Government, HR & CE shall consider and dispose of the appeal/revision in R.P. No.03 of 2024 filed by the petitioner, after providing due opportunity to the petitioner, on merits and in accordance with law, within three months from the date of receipt of a copy of this order.

12. Since it is stated that the said Kalayanamandam have been constructed by the petitioner for the larger benefit of the devotees to visit the temple, the official respondents are directed to de-seal the said Kalayanamandam for the benefit of the temple and devotees. It is made



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clear that the said Kalayanamandam shall be maintained by the hereditary trustee of the temple under the Supervisory and Administrative control of the official respondents, without giving room for any complaint.

13. With the above observations and directions, the Writ Petitions are disposed of without any order as to costs. Consequently, the connected miscellaneous petitions are also closed.

26.09.2024

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order

klt

To

- 1.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Salem.
- 2.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Salem.



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M.DHANDAPANI, J.,

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