



W.P.No.18608 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2024

CORAM

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

W.P.No.18608 of 2008

Sundararajn Poosari

...Petitioner

Vs.

1. The Commissioner,  
HR & CE (Admn.),  
Chennai.

2. The Joint Commissioner,  
HR & CE (Admn.),  
Madurai.

3. The Executive Officer/Assistant Commissioner,  
A/m. Subramaniaswamy Temple,  
Thiruparakundram, Madurai.

...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the 1<sup>st</sup> respondent dated 26.11.1991, vide his proceedings in Pa.Mu.No.80695/91 G 4 and quash the same.



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For Petitioner : M/s.G.Sumithra

For Respondents : Mr.K.Karthikeyan, GA, for R1 & R2  
: Mr.P.Gopalan, for R3

### **ORDER**

This Writ petition has been filed seeking quashment of the proceedings of the 1<sup>st</sup> respondent dated 26.11.1991 in Pa.Mu.No.80695/91 G 4.

2. The case of the petitioner is that the petitioner and five other persons are in the management and administration of the temple and that the petitioner's ancestors were in management of the temple time immemorial and the suit filed in O.S.No.95 of 1983 by the Executive Officer of Arulmighu Veyilukkatha Amman Thirukkoil, Thiruparankundram, Madurai, ended in favour of the petitioner's ancestors, wherein the trial court had observed that the ancestors of the petitioner were in management of the temple as hereditary trustees. Thereafter, vide impugned order dated 26.11.1991, the 1<sup>st</sup> respondent passed an order u/s 23 of the Tamil Nadu Hindu Religious and Charitable endowments Act, which was not served on



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the persons, who were in management of the temple based on which the 3<sup>rd</sup> respondent filed a petition u/s 101 of the Act before the Judicial Magistrate No.VII, Madurai seeking possession and temple along with the records and accounts. The petitioner came to know about the impugned order only on receipt of notice in the above proceedings and the management of the temple filed a counter questioning the right of the 3<sup>rd</sup> respondent and as no direction was issued in the Section 101 proceedings to take possession of the temple, the petitioner was advised to file a quash petition before this Court. It is the further averment of the petitioner that it is the stand of the 3<sup>rd</sup> respondent that when the order of the 1<sup>st</sup> respondent is not questioned, the 3<sup>rd</sup> respondent is entitled to take possession of the temple. Only on that ground, as the petitioner is not having any other alternative remedy, the petitioner is constrained to question the impugned order dated 26.11.1991 by filing this writ petition.

3. Learned counsel for the petitioner submitted that, though the 1<sup>st</sup> respondent passed the impugned order under Section 23 of HR & CE Act, however, proviso to Section 23 of the said order makes it clear that, the Commission shall not pass any order prejudicial to any temple or



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endowment unless the trustees concerned had a reasonable opportunity of making their representations. While so, without following the said proviso to Section 23, the 1<sup>st</sup> respondent passed the impugned order which is not sustainable. Accordingly, she prayed for appropriate orders.

4. Per Contra, the learned Government Advocate appearing on behalf of the 1<sup>st</sup> & 2<sup>nd</sup> respondents submitted that, though the petitioner claim that his father is in management of the A/m.Veyilukatha Amman Temple, Madurai against whom, the suit in O.S.No.95 of 1983 has been filed and the same was dismissed on 07.03.1985, however, the petitioner did not aver with regard to transfer of trusteeship from his father to him. Unless he is recognised as trustee, there is no necessity to hear him. Thereby, no interference is warranted in the impugned order. Learned counsel further submitted that, the impugned order came to passed in the year 1991, however, the present writ petition was filed only in the year 2008, after a lapse of 17 years, which is impermissible. Accordingly, he prayed for dismissal of this Writ petition.



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5. On the above said contentions, heard learned counsel appearing on behalf of the 3<sup>rd</sup> respondent and perused the materials available on record.

6. The issue involved in the present Writ petition is whether the petitioner is trustee of A/m.Arulmighu Veyilukkatha Amman Thirukkoil, Thiruparankundram, Madurai.

7. Though the petitioner claims that his father was administering the temple and questioning the same, the 3<sup>rd</sup> respondent filed a suit in O.S.No.95/1983, which came to be dismissed, however, he did not produce any material document before this court to establish the trusteeship of his father. Further, though the petitioner claims to be the trustee of the temple, as per proviso to section 23 of Act, the petitioner failed to establish that he is the trustee and no material document substantiating his claim has been filed before this Court. In the absence of any document establishing the aforesaid fact, the claim of the petitioner that he was not heard and, therefore, the said order is in violation of principles of natural justice, cannot be accepted to hold that the said impugned order is erroneous.



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Unless the petitioner establishes the aforesaid fact, no duty is cast on the respondents to hear the petitioner.

8. In such view of the matter, this writ petition stands dismissed with liberty to petitioner to establish that he is the trustee of the temple and upon establishing that he is a trustee of the temple, further liberty is granted to the petitioner to approach the authority to remove the subject temple from the list of temples under the aegis of the HR & CE Act. No costs.

**28.08.2024**

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NCC : Yes/ No  
Speaking Order : Yes/ No  
Index : Yes/ No

To

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**M.DHANDAPANI, J.**

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