



W.P(MD)No.8643 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 21.06.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.8643 of 2023

and

W.M.P.(MD)Nos.7937 and 7939 of 2023

Sree Sooravalli Subbaier Charities,
Rep. by its Hereditary Trustee,
M.S.Sankaran @ M.S.Sankar.

... Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Chennai.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Madurai.

3.The Deputy Commissioner / Executive Officer,
Arulmigu Meenkashi Sundareswarar Thirukoil,
Madurai.

*(R3 is impleaded vide order dated 13.07.2023 in
W.M.P.(MD)No.11296 of 2023 in
W.P.(MD)No.8643 of 2023 by GRSJ).*

4.Arulmigu Subramaniaswamy Temple,
Tirupparankundam, Madurai,
Through its Deputy Commissioner /
Executive Officer.

... Respondents



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*(R4 is impleaded vide order dated 18.12.2023 in
W.M.P.(MD)No.25986 of 2023 in
W.P.(MD)No.8643 of 2023 by GRSJ).*

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Declaration, declaring that the proceedings in M.P.No.4350 of 2018 filed under section 53 of the Tamil Nadu Hindu Religious and Charitable Endowment Act pending before the 2nd respondent pertains to the petitioner trust is wholly without jurisdiction and null and void and contrary to the scheme decree dated 06.09.1934 passed in O.S.No.13 of 1932 on the file of Subordinate Court, Madurai.

For Petitioner : Mr.T.V.Ramanujam, Senior Counsel,
For Mr.N.C.Ashok Kumarn.

For Respondents : Mr.P.Subburaj,
Spl. Government Pleader for R1 & R2.
Mr.VR.Shanmuganathan for R3.
Mr.S.Manoharan for R4.

ORDER

Heard both sides.



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2.Vide order dated 19.11.2018, the Joint Commissioner, Hindu Religious and Charitable Endowment Department, Madurai removed M.S.Sankaran @ M.S.Sankar from the post of hereditary trustee of Sree Sooravali Subbier Charitable Trust on the ground that the four charges framed against him stood proved. The order was passed under Section 53 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Aggrieved by the same, M.S.Sankaran filed A.P.No.4 of 2019 before the Commissioner, Hindu Religious and Charitable Endowment Department, Chennai. The original order dated 19.11.2018 was set aside and the matter was remitted back to the file of the original authority to hold denovo enquiry after affording sufficient and reasonable opportunity to all the parties concerned. Pursuant to the order dated 05.09.2020 passed by the appellate authority in A.P.No.4 of 2019, the matter was restored to the file of the Joint Commissioner, Hindu Religious and Charitable Endowment Department, Madurai. Seeking declaration that the proceedings are without jurisdiction, the present writ petition came to be filed.



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3.The learned senior counsel appearing for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for.

4.The learned counsel appearing for the contesting respondents questioned the very maintainability of this writ petition. They point out that the petitioner did not move this Court in the first instance. After suffering an order under Section 53 of the Act, the petitioner moved the appellate authority. The appellate authority after setting aside the order passed by the original authority, remanded the matter back to the file of the original authority. Having taken advantage of the same, it is not open to the petitioner now to seek declaration before this Court that the impugned proceedings are without jurisdiction. The learned counsel argued on the merits of the matter. They point out that the petition mentioned properties are specifically endowed properties and that therefore, the petitioner would be amenable to the jurisdiction of the authorities constituted under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. They called upon this Court to dismiss the writ petition.



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5.It is not in dispute that one Radhakrishnan filed W.P.(MD)No. 22681 of 2018 before this Court. The prayer in the said writ petition was as follows:-

“Writ of Mandamus, directing the 16th respondent to take appropriate action to survey and identify the properties belonging to the 18th and 19th respondents temple and restore the same to in favour of those temples by considering the report submitted by the 11th respondent dated 17.05.2018 in R.C.No. 100/2018/B5 and the proceedings of the 16th respondent in R.C.No. 4350/2018/A4 dated 04.09.2018 as well as by considering the petitioner's representation dated 30.04.2018.”

6.The Hon'ble Division Bench dismissed the writ petition on 28.06.2023 in the following terms:-

“2. We do not think such a prayer can be granted based on a unilateral report of the Tahsildar. The question as to whether these properties are dedicated or there is a charge over the properties has to be decided only by a competent court having jurisdiction to go into the issue.

3. Hence, we do not find any justification to grant the prayer in the public interest litigation. Accordingly, this Writ Petition is dismissed. No costs.”



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7.The Hon'ble Division Bench had held that the character of the properties will have to be decided by the jurisdictional Court. So long as the said order is holding good and it had not been set aside or modified, I have to necessarily act in terms thereof. Since no declaration has been obtained from the jurisdictional Court that the petition mentioned properties are endowed properties, the writ of declaration as sought for by the petitioner will have to be granted. It is accordingly granted. This order passed by me would stand vacated automatically if the petitioner suffers any adverse declaration.

8.This writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

21.06.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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