



W.P.(MD) No.12140 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

**W.P.(MD) No.12140 of 2024
and
W.M.P.(MD) No.10779 of 2024**

Hari Anand

... Petitioner

Vs.

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

V.Rasu Pillai (died)

2.M.Deivandran

3.V.Pichai Pillai

4.V.Mupilian

5.P.Ariyanayagam

6.R.Chinnadurai

7.The Executive Officer,
A/m Madhanagopalsamy Temple,



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WEB COPY Raja Mill Road, Madurai.

8.Maheshwari

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records pertaining to the impugned order passed by the 1st respondent herein dated 28.03.2024 in I.A.No.46 of 2023 in O.A.No.18 of 2014 and quash the same.

For petitioner : Mr.M.Sridharan

For respondents : Mr.P.T.Thiraviam

Government Advocate for R1

Mr.S.Manohar for R7

ORDER

This Writ Petition is disposed of at the time of admission after dispensing with the requirement of filing of counter by the respondents 1 and 7, who are present herein with the counter and after dispensing with the notice to the private respondents as no adverse order has proposed to be passed against them.

2. The petitioner is the son of Late.Mupiliapillai who was the second



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respondent in O.A.No.18 of 2014 filed by the private respondent no.2 herein along with one Rasu Pillai who was since deceased. O.A.No.18 of 2014 was filed for the following relief:

“IX. The present petition is filed against the Respondents 1 and 2 and his family members only. The other group of Virattipathu and sithalankudi are not opposing nor interfering into the petitioner’s celebration on the said day. Therefore, they are not added as a party herein and no relief is sought against them. Hence, their presence in the present case is not necessary to decide the fact in dispute. It is therefore prayed that this Hon’ble Court may graciously be pleased to grant order recognizing the exclusive customary rights of the petitioners to receive temple honour through their duly elected president on behalf of Thiruvallavaya Nallur pangaligal on the occasion of mahasivarathri festival at Arulmigu Mahadevasamy Temple, Madurai Town as the established usage of the institution.”

3. The aforesaid petition was filed under Section 63(e) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959. The petitioner's father was the second respondent in the aforesaid proceeding. It appears that after counter was filed on behalf of the first respondent in the aforesaid proceedings, not enquiry was held. Mean while, the petitioner's father, Late.Mupiliapillai, who was the second respondent in O.A.No.18 of 2014 died. Therefore, the petitioner and his mother were impleaded on 22.06.2022 vide order in I.A.No.03 of 2022 in



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the O.A.No.18 of 2024 as his legal representatives. In the above O.A, the petitioner, filed I.A.No.46 of 2023, purportedly, under Order VII Rule 11 of C.P.C to reject the application in O.A.No.18 of 2014 filed under section 63(e) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959. The aforesaid application has been, purportedly, filed under Holding of Inquires Rules framed by the Governor for the exercise of power vested with the Government under Section 116(2) of the TNHR&CE Act, 1959. Rule 20 of the aforesaid Rules reads as under:

“20.The provisions of the Code of Civil Procedure, 1908 (Central Act V of 1908) and the Civil Rules of Practice and Circular Order shall apply, as far as practicable, to appearance of pleader and to affidavits, production or documents, examination of witnesses, taking of oral evidence, proof of affidavits, filing of exhibits, issue of commissions, return of documents not admitted in evidence, and other connected matters, and the inquiry shall be made, as far as practicable, in the manner laid down in the said Code for the trial of suits.”

4. The petitioner aggrieved by the impugned order passed in I.A.No.46 of 2023 by the first respondent, which has rejected the petitioner’s prayer for rejecting the plaint/petition. The operative portion of the order is extracted as under:



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எதிர்மனுதாரர்கள் ஆட்சேபணை தெரிவிக்கவில்லை என்றும், இடைநிலை மனுக்களை தள்ளுபடி செய்ய வேண்டும் என இடைநிலை எதிர்மனுதாரர் தரப்பில் வாதாடா செய்யப்பட்டது.

6. மனுத்திருக்கோயிலில் இந்த இடைநிலை மனுதாரர் தாத்தா அவரது தந்தைவழி மாண மரியாதை பெற்று வருவதாக சொல்லப்பட்டதற்கு எவ்வித உத்தரவு நகலும் வழங்காததாலும், மாண்புமிகு நீதிமன்றத்தால் W.P.(MD)No 18060/2015 மற்றும் W.P.No.20769/2023 என்ற இரண்டு வழக்குகளிலும், இம்மன்றத்தில் நிறுவனையில் உள்ள ஓ.எ.18/2014 வழக்கினை விசாரித்து உத்தரவு பிறப்பிக்க கால நிர்ணயம் செய்து உத்தரவிடப்பட்டுள்ளதாலும், அசல் வழக்கு தாக்கல் செய்து பத்தாண்டுகள் ஆன நிலையில், தற்போது இந்த மனுவை Rival claim அடிப்படையிலேயே தள்ளுபடி செய்ய தாக்கல் செய்யப்பட்டுள்ளதாலும், 1வது எதிர்மனுதாரர் தரப்பில் எதிருரை மற்றும் கூடுதல் எதிருரை தாக்கல் செய்யப்பட்டுள்ளதாலும், மேற்படி எதிருரை மற்றும் கூடுதல் எதிருரையில் Rival claim குறித்து எதிருரை தாக்கல் செய்யப்படாததாலும், 2வது எதிர்மனுதாரர் Rival claim குறித்தான பொருண்மைகள் இல்லாததாலும், மாண்புமிகு நீதிமன்ற உத்தரவுபடி அசல் வழக்கினை விசாரணை செய்ய உத்தரவு பிறப்பிக்க வேண்டியுள்ளதாலும், இந்த இடைநிலை மனுதாரர் அசல் வழக்கில் 4வது எதிர்மனுதாரராக உள்ளதாலும், தனது தரப்பு வாதங்களை மேற்படி அசல் வழக்கில் வாதம் செய்ய வழிவகை உள்ளதாலும், சட்டப்பிரிவு 63(e)-ன் கீழான பரிசீலித்தல்கள் சீவில் நீதிமன்றத்தால் வழங்க இயலாது என்பதாலும், Rival claim என்ற வாதம் இவ்வழக்கில் வழுவில்லை என்பதாலும், இந்த இடைநிலை மனுதாரர் தாக்கல் செய்த இடைநிலை மனு தள்ளுபடி செய்து உத்தரவு பிறப்பிக்கப்படுகிறது.

5. The petitioner has challenged the impugned order on the ground that there is no jurisdiction vested with the Joint Commissioner/the first respondent, where there is an *inter-se* dispute between the parties in respect of rights under Section 63(e) of the TNHR&CE Act, 1959. It is submitted that once there is *inter-*



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se dispute between the parties, the parties have to approach the Civil Court of competent jurisdiction. In this connection, the learned counsel for the petitioner has placed reliance on the decision of the Court referred in ***A.Rajendran vs. The Joint Commissioner, HR&CE Department in W.P.(MD).Nos.11977 of 2015 and 13352 of 2015 on 10.08.2015***. Specifically, a reference is made to para 11 of the said decision, which reads as under:

“11. But, the reading of the above-said provision, does not speak about any inter se between the parties. Hence, in my considered opinion as to whether the petitioner or the private respondents has to conduct Adi Amavasai festival in the temple located at foot hill is purely an inter-se dispute cited supra. As such, the same has to be decided only by the Civil Court based on the evidence that is going to be adduced by both the parties.”

6. It is submitted that the impugned order rejecting the application filed under Order VII Rule 11 of C.P.C is not maintainable.

7. This Writ Petition is opposed by the learned Government Advocate for the first respondent and the learned counsel for the seventh respondent/the Executive Officer of the temple. Both the counsel inform that the petitioner's father was the second respondent in the aforesaid proceedings and pleadings were



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completed and therefore, merely because the petitioner's father died, the petitioner cannot file a fresh application to reject the plaint. It is submitted that the petitioner's father had acquiesced the proceedings as the proceedings is on the year 2014.

8. It is submitted that the application was, earlier, dismissed for non-prosecution and thereafter, the petitioner rushed to this Court and obtained an order in W.P.(MD).20769 of 2023 dated 01.09.2023, wherein, the order was passed and the application was directed to be restored.

9. It is submitted that in the compliance with the order of the Court, the application filed by the petitioner was taken up and has not been dismissed. That apart, the learned Government Advocate for the first respondent and the learned counsel for the seventh respondent in unison would submit that the scope of the inquiry under Order VII Rule 11 of C.P.C as made applicable to the proceedings before the Joint Commissioner/first respondent under the Holding of Inquiry Rules is confined only to the circumstances specified in Order VII Rule 11 of C.P.C and not into the merits.



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10. I have considered the I.A.No.46 of 2023 and the submissions of the learned counsel for the petitioner and the learned Government Advocate for the first respondent and also the learned counsel for the seventh respondent under Order VII Rule 11 of C.P.C, a Court or an Authority cannot go into the merits. Therefore, the application has been rightly rejected. However, it would be different for the Joint Commissioner to give an independent conclusion as to whether O.A.No.18 of 2014 is maintainable or not on merits otherwise at the time of final disposal. Therefore, there is no merits in the present Writ Petition. However, it is open for the petitioner to request the Joint Commissioner to frame its preliminary issue as to whether the relief in O.A.No.18 of 2014 maintainable in the light of the decision of this Court in ***A.Rajendran vs. The Joint Commissioner, HR&CE Department in W.P.(MD).Nos.11977 of 2015 and 13352 of 2015 on 10.08.2015*** and other decisions of the Courts. In any event, O.A.No.18 of 2014 shall be disposed of as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of this order on merits.



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This Writ Petition is disposed of, with above directions. No costs.

Consequently, connected miscellaneous petition is closed.

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Internet : Yes / No

apd

To

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



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C.SARAVANAN, J.

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