



W.P.(MD) No.26514 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

**W.P.(MD) No.26514 of 2022
and
W.M.P.(MD) Nos.20686 and 20688 of 2022**

S.Shanmugam

... Petitioner

/vs./

- 1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
No.119, Uthamar Gandhi Road,
Thousand Lights West,
Nungambakkam,
Chennai 600 034.
- 2.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
106H/5B, Millerpuram Main Road,
Sinnamani nagar,
Thoothukudi 628 002.
- 3.The Assistant Commissioner,
Hindu Religious and Charitable Endowment Department,
Alagesapuram Main Road,
Thoothukudi 628 002.



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4.The Executive Officer,
Arulmigu Mutharamman Thirukovil,
Kulasekharapatnam,
Tiruchendur Taluk,
Thoothukudi Dist. 628 203

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records relating to the order dated 18.03.2022 vide proceedings in Se.Mu.Na.Ka.No.76854/2021-16/Z3, issued by the 1st respondent with respect to the Arulmigu Kanni Vinagar Thirukovil, Nangaimoli Village, Tiruchendur Taluk, Thoothukudi District and the consequential demand notice dated 09.11.2022 issued by the 4th respondent and quash the same.

For Petitioner : Mr.P.Thiyagarajan

For Respondents : Mr.P.Subbaraj
Special Government Pleader

ORDER

The petitioner has filed this writ petition for a Writ of Certiorari to call for the records relating to the order dated 18.03.2022 passed bearing Ref.Se.Mu.Na.Ka.No.76854/2021-16/Z3, by the 1st respondent and the consequential demand notice dated 09.11.2022 issued by the fourth respondent and to quash the same.



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2.The petitioner claims to be a descendant of late.Nainar Oduvar, the 6th respondent in O.P.No.48 of 1949. The case of the petitioner is that Nainar Oduvar along with others were declared as hereditary trustee, vide order dated 21.02.1950 in O.P.No.48 of 1949 by the Court of the District Judge, Tirunelveli in a petition filed by one Sundara Oduvar under Section 84(2) of the Madras Hindu Religious Endowments Act 11 of 1927.

3.O.P.No.48 of 1949 was filed to set aside the order of the Hindu Religious Endowment Board dated 11.11.1948 in O.A.No.116 of 1948 and to declare the petitioner therein, namely Sundara Oduvar and the respondents 1 to 7 therein as hereditary trustee of the subject temple, Sri Kannivinayagar temple, Nangaimoli Village.

4.It is submitted that the District Court, Tirunelveli, by its order dated 21.02.1950 ultimately concluded as follows:-

“51. Reviewing the evidence it is clear that the lands and the temple have been from 1854 if not before in the exclusive possession of the pandarams for at least four generations. It is therefore clear on the authority of the decision in Madana Palo V. The HINDU



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RELIGIOUS ENDOWMENTS BOARDS, MADRAS(2) (1937) M.L.J. 830, that the claim of hereditary trustees has been made out in Ganapathi Iyer's book on Law of Hindu and Muhammadan Endowments at pages 451 and 452 it is stated, that when the arohaka or the officiating priest of a temple has been managing its affairs with the knowledge and privity of the worshippers, as well as the archakas and the case in the presumption is that he is the manager Ramaswami V.Ramaswamy (2 JLJ 251) is quoted as authority (73rd page). Thus a legal origin can be presumed for the right of the pandaram, (see also page 47 of the book) Alternatively they can be held to have prescribed for it. In either case, it is clear that their claim to hereditary trusteeship must be upheld. The case cited by the respondents counsel, namely Ramasamy xx Ayyer V. Venkatachary, (I.Moore indian appeals 344) is distinguish-able on the facts.

52. Accordingly it will be declared that the petitioner and the respondents 1 to 7 are the hereditary trustees of the temple and the order of the Board to the contrary will be set aside.

53. There remains the question of costs. Normally it is obvious that the contesting respondents should bear their own costs, also pay the costs of the petitioner. But section 68 of the madras hindu religious endowment act enacts that the costs in connection with legal proceedings to which a board is a party shall not with standing anything contained in section 7A be payable out of the funds of such endowment. But in this case there are no such funds because the income from the inam lands will be sufficient if at alonely for the pooja and other festivals of the temple. The result is that the parties will have to bear their own costs. considering the amount of work involved I fix the vakil's fee Rs.200 (two hundred). There will be only one off vakil's fee for the contesting respondents 8,9 and 10 who were all represented only by M.G.Mahadava Iyer dutated to the shorthand writter, transcribed by him, corrected and pronounced by me in open court, this the 21st day of Feb. 1950."



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5.The issue has attained finality. It is submitted that Nainar Oduvar, the 6th respondent in O.P.No.48 of 1949 died leaving his wife, Pitchammal, who in turn executed a Will on 02.03.1983 in favour of Sundaralingam, who is none other than the elder brother of the petitioner and that the said Sundaralingam in turn executed a Will in favour of the petitioner on 02.03.2009 and that since the death of his brother, Sundaralingam, the temple has been under the control of the petitioner.

6.It is therefore submitted that the impugned order dated 18.03.2022 passed by the first respondent purportedly in the exercise of power conferred under Section 23 of the HR & CE Act, 1959 annexing 8 temples, which includes the temple, namely Kannivinayagar temple, Nangaimoli Village with Mutharamman temple, Kulasekaranpattinam is unjustified for the reasons that the order has been passed contrary to proviso to Section 23 of HR & CE Act, 1959.

7.The impugned order of the first respondent is defended by the learned Special Government Pleader for the respondents on the following ground:-

“7.....It is submitted that the Arulmigu Kanni Vinagar Thirukovil, Nangaimoli Village temple situates in Tuticorin District,



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therefore, in order to maintain the said temple which is categorized as temple which is generating income below Rs.5,000/-, therefore, the said temple is attached to the Arulmigu Mutharamman temple, in order to provide monetary support and maintain the said temple and there is no illegality in the impugned order. Since the Arulmigu Mutharamman Temple is generating more revenue and the said revenue will be utilized for maintaining in the present temple. In order to protect the temple property, the amalgamation order came to be passed and there is no illegality in the impugned order and as such the writ petition is liable to be dismissed.”

8.That apart, it is submitted that the petitioner is not the descendant of late.Nainar Oduvar, the 6th respondent in O.P.No.48 of 1949. There are no records to substantiate the same and therefore, the first respondent was not required to issue any notice to the petitioner before passing the impugned order.

9.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Special Government Pleader for the respondents.

10.Whether the first respondent has right or not to pass the impugned order under Section 23 of HR & CE Act, 1959 can be decided by the first respondent, as admittedly the petitioner appears to have been in control of the subject temple, namely Kanni Vinayagar Temple, Nangaimoli Village. Therefore, the impugned



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order is liable to be set aside, as it has been passed in violation of principles of natural justice. If there was any other report that was available to substantiate that the temple was under the control of some other person as a hereditary trustee, proper notice may be issued to such person as well before passing fresh orders.

11. Accordingly, the impugned order of the first respondent passed bearing Ref.Se.Mu.Na.Ka.No.76854/2021-16/Z3 dated 18.03.2022 is set aside, insofar as Kanni Vinayagar Temple, Nangaimoli Village alone is set aside and the case is remitted back to the first respondent to pass a fresh order. This exercise shall be carried out by the first respondent within a period of 8 weeks from the date of receipt of a copy of this order. It is needless to state that the petitioner or any other third person, who may claim to be the hereditary trustee of the temple, shall be heard before fresh order is passed.

12. The Writ Petition stands allowed, accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes / No

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C.SARAVANAN, J.

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