BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	18.07.2024
Delivered on	25.11.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) Nos.25273 of 2023 & 12566 of 2024
and
W.M.P.(MD) Nos. 21463 of 2023 & 11218 & 11219 of 2024

W.P(MD)No.25273 of 2023

Sri Sutha Rathneswara Swamy
Private Temple Trust, Sorakkottai
Represented by its President
and Treasure of the Trust,
Madhusudan Dilipsinh Mohite ... Petitioner

vs.

1. The Secretary,
   Secretariate,
   Hindu Religious and Charitable
   Endowments Department,
   Chennai.

2.The Commissioner,
   Hindu Religious and Charitable
   Endowments Department,
   Chennai.

3. The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Chennai.

4. The Executive Officer,
Arulmigu Sri Sutha Rathneswara Swamy Trust,
Sorakkottai Village,
Thanjavur District.

(R4 is suo motu impleaded vide Order
dated 18.10.2023 in WP(MD) No.25273/23 ... Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India for issuance of a Writ of Mandamus directing the respondents to remove the board immediately, put up on the Sri Sudda Rathneswara Swamy Private Trust Temple land situated at Soorakkottai Village of Thanjavur District based on the representation given by the petitioner on 05.09.2023 and consequently direct the respondents to hand over the land to the petitioner trust.

For Petitioner : Mr.Mahendran

For R1 to R3 : Mr.P.Subba Raj
Spl.Govt.Pleader

For R4 : Mr.V.Chandrasekar

W.P(MD)No.12566 of 2024

Sri Sutha Rathneswara Swamy
Private Temple Trust, Sorakkottai
Represented by its President
and Treasure of the Trust,
Madhusudan Dilipsinh Mohite ... Petitioner

vs.

1. The Secretary to Government,
Tourism, Culture and Religious
Endowments Department,
Chennai.

2. The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Chennai.

3. The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Chennai.

4. The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Thanjavur.

5. Fit Person
Sri Sutha Rathneswara Swamy Temple Trust,
Executive Officer, Kotteswarar Endowment
Thanjavur District. ... Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the 4th respondent in Se.Mu.Na.Ka.No.4415/2019/E1 dated 19.08.2021 quash the same and consequently direct the 5th respondent to handover the administration of the temple to the petitioner.

For Petitioner : Mr.Mahendran

For R1 to R4 : Mr.P.Subba Raj
Spl.Govt.Pleader

For 5 : Mr.V.Chandrasekar

COMMON ORDER

By this common order, these two writ petitions are being disposed of for the following relief:-

W.P.No.252743 of 2023	***W.P.No.12566 of 2024***
This writ petition has been filed to issue a writ of Mandamus to direct the respondent to remove the board put up by the respondents on the Sri Sudda Rathneswara Swamy Private Trust Temple based on the representation of the petitioner dated 05.09.2023 .	This writ petition has been filed to issue a Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the 4th respondent in Se.Mu.Na.Ka.No. 4415/ 2019/E1/2019 dated 19.08.2021 quash the same and consequently direct the 5th respondent to handover the administration of the temple to the petitioner.

2. W.P.No. 252743 of 2023 has been filed to direct the respondent to remove the board that was installed by the respondents on the land of

Sri Sudda Rathneswara Swamy Temple. The board, placed by the 4th respondent, Assistant, H.R. & C.E., states that the temple is under the control of the H.R.&C.E. Department, signifying that they have taken over the management of the Temple. This action was taken without prior notice to the temple's trustees. In response, the petitioner submitted a representation to the respondents on 05.09.2023. However, the respondent failed to remove the board and did not hand over the lands back to the petitioner trust. Consequently, the petitioner has filed this W.P.No. 252743 of 2023 before this Court.

3. In W.P.No.12566 of 2023, the petitioner has challenged the impugned order dated 19.08.2021 passed by the 4th respondent, the Assistant Commissioner H.R. & C.E in his proceedings bearing Reference Se.Mu.Na.Ka.No.4415/2019/E1. By the impugned order dated 19.08.2021, bearing Reference Se.Mu.Na.Ka.No.4415/2019/E1, the 4th respondent, the Assistant Commissioner has appointed the fifth respondent as the Thakkar and has further directed to submit a report accepting responsibility from the Acting Administrator for the entire responsibilities of the said temple. The relevant portion of the above

communication of the 4th respondent reads as under:-

> “Thanjavur District And circle Surakottai Arulmiku Suttaratneswarar Temple is an unlisted temple under Thanjavur Assistant Commissioner Division.
>
> Thanjavur district has accepted the report of the surveyor which is in view of the administrative interest of the temple and to get a fair compensation for land acquisition for the widening of the highway for the Chennai Kanyakumari Industrial Project. Circle and Nagar, Melayveedi, Arulmiku Kotiswarar Trust Executive Officer is appointed as a trustee under section 49(1) of the Act.
>
> The Thakkar appointed as per this order is directed to submit a report accepting responsibility from the Acting Administrator for the entire responsibilities of the said temple.
>
> It is hereby notified to Thakkar that until non-hereditary trustees are appointed for this temple in accordance with the provisions of this department, no policy decisions related to the said temple shall be taken or acted upon without the prior permission of this department”.

4. It is the case of the petitioner that the temple was a “private temple” and not a “public temple” within the purview of H.R.& C.E. Act. Earlier, the Authorised Officer had initiated action under the Tamil Nadu Land Reforms (Fixation of Ceiling of Land) Act, 1961 (hereinafter referred to as the Act) and held that the temple held land in excess of 15 standard acres as per circulars under the Tamil Nadu land Reforms (Fixation of Ceiling of Land) as amended Act, 1970.

5. Aggrieved by the same, an appeal was filed by Temple represented by its Trustee represented by Power Agent of Hereditary Trustee, Mr.Radhakrishna Ghade Rao Sahib. before the Land Reforms Tribunal (District Revenue Officer). The Land Reforms Tribunal (District Revenue Officer) however dismissed LTC.No.Ma.15 of 1979 vide order dated 12.11.1979.

6. Aggrieved against the dismissal of the appeal in LTC No.Ma.15 of 1979 by the Land Reforms Tribunal (District Revenue Officer), the Hereditary Trustee of the Sri Sudda Rathneswara Swamy Temple filed CRP. No.1111 of 1881 before this Court. The Hereditary Trustee of the Sri Sudda Rathneswara Swamy Temple was represented by Power Agent of Hereditary Trustee, Mr.Radhakrishna Ghade Rao Sahib.

7. This Court vide order dated 18.12.1981 in CRP.No.1111 of 1981 reversed the decision of the Land Reforms Tribunal (District Revenue Officer) dated 12.11.1979 in LTC.No.Ma.15 of 1979 and remanded the case back to the Land Reforms Tribunal (District Revenue Officer) with the following observations:-

> "This is a petition to revise the order of the Land Tribunal (District Revenue Officer) Thanjavur. The

petitioner is a private temple. The authorised officer initiated action under the Tamil Nadu Land Reforms (Fixation of Ceiling of Land) Act, 1961 (hereinafter referred to as the Act). He declared the holdings in excess of 15 standard acres as surplus under the Act as amended by Act.No.17 of 1970. There was an appeal against this order and the Appellate Authority held that the petitioner itself was a person as defined under Section 3(34) of the Act and that it could held only 15 standard acres under Section 7 of the Act. He therefore declined to interfere.

In the present revision petition, it is contended that under Section 5(3A) of the Act the land owned by a private trust is to be deemed to be land owned by the beneficiaries under the private trust and each such beneficiary could be deemed to be the owner of the land to the extent of the share to his beneficial interest in the said trust. The purport of the provision is to disintegrate the trust by a fiction and to treat the share of each beneficiary as if he held it on his own. With reference to the holding personally and as a shareholder of the trust, the question of ceiling will have to be determined. In the present case, the appellate authority under Section 3(34) of the Act the expression " person" includes any private trust or public trust. It is not in dispute that this is a private trust. The definition provision will have to be applied only if the context warrants such application. When there is a substantial provision in the Act as to how the trust property is to be dealt with for purpose of determining the ceiling, it would not to proper to apply the definition provision and treat the trust as if it was itself a person the Tribunal lost sight of Section 5(3A) of the Act while adjudicating the matter before it. The manner as to how the trust property has to be disintegrated and added to the share of each beneficiary will have to be

> considered by the Tribunal. The Tribunal will go iinto this question and decide the appeal in accordance with law. The revision petition is accordingly allowed. There will be no order as to costs".

8. Pursuant to remand order dated 18.12.1981 in CRP.No.1111 of 1981, the Authorized officer, Land Reforms Tribunal (District Revenue Officer) vide order dated 04.05.2017 bearing reference MR1/22S/37-72/TJR held that the land was held by the Private trust and therefore there was no excess land held by the Trust.

9. Operative portion of the order dated 04.05.2017 of the Authorized officer, Land Reforms Tribunal (Revenue Divisional Officer) bearing reference MR1/22S/37-72/TJR reads as under:-

> "The notification was published to declare 75 standard acre equivalent to 134 ordinary acres as surplus of total holding as per 10(1) draft. Against the draft notification, the petitioner made an objection under Section 10(5) of TNLR Act. There was no raised and initiated substantial question for title deed or others connected in clause 2 of Section 11 by the Land Tribunal. No doubt exists to declare orders passed by following clause 5 of Section 10 and clause 1 of Section 11 of Tamil nadu Land Reforms Act 58/61 as amended and the same is followed.

> "**The above land is held by the Private Trust. Private Trust is treated as a person or a family.** The trust was created in the year 1944. Clause 36-A of Section 3 is inserted in 37/72 Act. As on year 1972, the settlor had family members of his wife, 5 major sons, one married daughter and one unmarried daughter. He, the settlor, his wife and his unmarried daughter have to entitle the one share, his 5 major sons should receive 5 shares and his married daughter has to entitle one share. Hence, the total holding of 90 standards Acres is to be divided into 6 or 7 shares. The 9 beneficiaries i.e. the family members of settlor are entitled to equal shares. Hence, it is concluded that there is no surplus land of holding by Sri Srisutharathneswaraswamy temple, located at Soorakkottai Village, Thanjavur Taluk and District bearing Patta No.6, agricultural lands measuring 151.91 ordinary acres in Survey Number 398/1B, 3.63 acres and other survey numbers equivalent to 89.981 standard acres. The file is accordingly dropped for further proceedings".

10. In support of the present writ petitions, the learned Senior counsel for the petitioner submits that the finding of this Court in CRP.No.1111 of 1981 vide order dated 18.12.1981 is conclusive and is binding on the department. However, the department relies upon an order dated 19.08.2021 appointing a fit person to a Private temple to interfere with the management of the affairs of the Private Trust.

11. It is submitted that the Order dated 19.08.2021 which is a subject matter of challenge before this Court in W.P.No.12566 of 2024 is illegal and arbitrary. It is submitted that the impugned order dated 19.08.2021 of the 4th respondent, Assistant Commissioner, Hindu Religious and Charitable Endowment, is illegal for the following reasons:-

A) The Tamil Nadu Hindu Religious and Charitable endowments Act 1989 does not apply to private trust or private temple.

B) Section 1(3) of the Act specifically states, It applies to all Hindu PUBLIC religious institutions and endowments.... The very language of the Act excludes the application to the private temple.

C) In matters of appointment of fit person, section 49 speaks of a "religious institution" which is not included in the list published under section 46 and is not a religious institution notified or deemed to be notified under chapter VI of the Act. Section 46 applies to religious institutions of certain income barrier for the purposes of levying contribution. Contribution can be levied only in respect to public religious institution To put it fine, the definition under section 6(18) speaks of temple, math or specific endowment and temple under section 6(20) is defined as: "temple" means a place by whatever designation known used as a place of public religious worship, and dedicated to, or for the benefit of, or used as of right by, the Hindu community or any section thereof, as a place of public religious worship. When the civil court has declared the temple to be a private temple, the assistant commissioner has no jurisdiction to appoint a fit person. The order is a nullity in the eye of law.

(D)The recent pronouncement of the Madras High Court in W.P (MD) No.2327 of 2016 following the settled principles of the Madras High Court had concluded that the authority of the Assistant Commissioner to appoint a fit person in respect to a private trust offends the personal and fundamental rights guaranteed under the Constitution of India and even a show cause notice against such body is impermissible and without jurisdiction (See paragraph 26). Therefore, the order impugned in W.P (MD) No. 12566 of 2024 is patently illegal and liable to be quashed".

12. The learned Senior counsel for the petitioner further submits that it is not in dispute that the temple is managed by a private trust. It is submitted that the definition provision can be applied only if the context warrants such application and that where there is a substantial provision in the Act as to how the trust property is to be dealt with for purposes of determining the ceiling, it would not be proper to apply the definition provision and treat the trust as if it was itself a person.

13. It is further submitted that it is ironical that one limb of the State admitted the property to be a private trust and a mere statutory body

like that of the respondent attempting to take a contrary stand. It is submitted that post the decree of the Civil Court in O.S.No.44 and 45 of 1969, the respondents are precluded from taking a different stand or mischievously attempting to nullify the decree of the Civil Court.

14. In support of the present writ petitions, the learned senior counsel for the petitioner has relied on the following decisions :-

> "i) **Selva Rajakumar vs. The Commissioner, H.R.& C.E. Government of Tamil Nadu, Chennai and 3 Others** , W.P.(MD)No.2327 of 2016;
>
> ii) **Sri Ram Samaj vs. Commissioner, Hindu Religious and Chairtable Endownments Department and Others,** (2022) 4 MlJ 449;
>
> iii) **Central Warehousing Corporation vs. Adani Ports and Sepcial Economic Zone Limited (APSEZL) and Others,** (2022) 15 SCC 110

15. On behalf of the respondents in W.P.No.25273 of 2023, a detailed counter has been filed by the 4th respondent, Assistant Commissioner, H.R. & C.E. Department, wherein it is stated that the writ petition has been filed by the Trust which was created recently to usurp the Temple and its properties which originally belonged to the Kingdom of Thanjavur. It is further submitted that the so called Trust cannot in law claim right over the temple and its properties given in inam by the last

Marathas Emperor even as per the document furnished before the Sub Court in O.S.Nos.44 & 45 of 1969. That apart there were discrepancies regarding the alleged inam.

16. It is further submitted that Document No.444/1943 dated 31.01.1943 is only a Settlement Deed to administer the properties owned by the Settlor and as far as the temple and its properties are concerned , the properties in Schedule C were to be used only for the upkeep of the Temple and that no trust was created to administer the affairs of the Temple. It is further submitted that the so-called Amendment to Trust Deed on 18.07.2023 styled as Amendment Deed was created with a view to lay claim over the Temple and its properties.

17. It is submitted that so called trust which was created in the year 2023 forms the basis of question to the appointment of Fit person made in the year 2021 by the 4th respondent.

18. It is submitted that Document No:444/1943 dated 31.01.1943 categorically stated that the income from the Schedule-C properties were to be utilized only for the upkeep of the Temple and for preforming pooja

and that the so called Trustees have no iota of evidence to prove that they were really administering the affairs of the temple for all these years.

19. It is submitted that the newly created amendment deed which contains recitals was not only to ruin the temple but also to siphon off the income derived from the temple's property.

20. It is submitted that there is a recital regarding the sale of the lands which was originally the properties of the people of Thanjavur and submits that the recitals in the so called temple Trust Deed speaks volume about the illegal attitude of the so called Trustees.

21. It is further submitted that the Civil Revision Petition against order of the Authorized Officer (Land reforms) was filed by the Power of Attorney of the Hereditary Trustee of the Temple and that the so-called Trust has created a new picture to claim ownership of the properties owned by the temple which is totally illegal.

22. It is submitted that the writ petition filed challenging the order of appointment of Fit person on the ground that no notice was issued to

the so called trust cannot be countenanced as both the temple and its properties were abandoned long back and it is only the Fit Person who has taken efforts to retrieve the lands from the clutches of the villagers and conducted public auction for proceeds of cultivation. It is submitted that there was nobody in Tamilnadu to administer the affairs of the Temple and therefore, no notice could be issued before appointing a Fit Person and submitted that even now in this Writ petition the so-called Trust are having address only at Pune in Maharashtra.

23. It is therefore submitted that, abandonment of Temple and its land is proved to the hilt and the so called Trust has no legal right to file the writ petition challenging the appointment of Fit Person. It is further submitted that if at all the trust has got any semblance of right over the Temple and its properties, they have to file a Civil Suit to establish their right which is the only viable alternative and therefore submitted that these writ petitions are not maintainable and is liable to be dismissed.

24. It is submitted that the Temple is a Public Temple and that with a view to claim the compensation received due to Acquisition of lands of the Temple, the petitioner has now claimed that the Temple was a Private Temple.

25. It is further submitted that the Trial Court in O.S.Nos.44 & 45 of 1969 has concluded in its Judgment and decree dated 20.03.1972 that the temple was a private temple. However, it is submitted that the members of late.Ry.Yeswanta Rao Alias Venkata Rao mainly Dhairyasheel V.Mohite had abandoned the temple from its management and now with a view to disturb the control of the temple of the H.H.R.& C.E, Department has filed these writ petitions.

26. The learned counsel for the fourth respondent has drawn attention to the following decisions in W.P.No.25273 of 2023 :-

i) **Maharaja of Kolhapur vs. S.Sundaram Ayyar,** AIR 1925 Madtras 497
ii)**Teki Venkata Ratnam & Ors. vs. Dy.Commissioner, Endownment and Ors.** AIR 2001 SCC 2436

27. I have considered the arguments advanced by the learned Senior counsel for the petitioner and the learned counsel for the HR&CE Department and the fit person appointed by the Government.

28. There is a long history to the dispute pertaining to the aforesaid Temple. The above temple was built during the reign of Maratha Ruler

Chhatrapati Sivaji during 1674. About 20,000 kulis of land was purportedly gifted by Emperor Sivaji (Sivaji Maharaja) as an inam to his sister, Princess Sulakshanamba Bai Saheb.

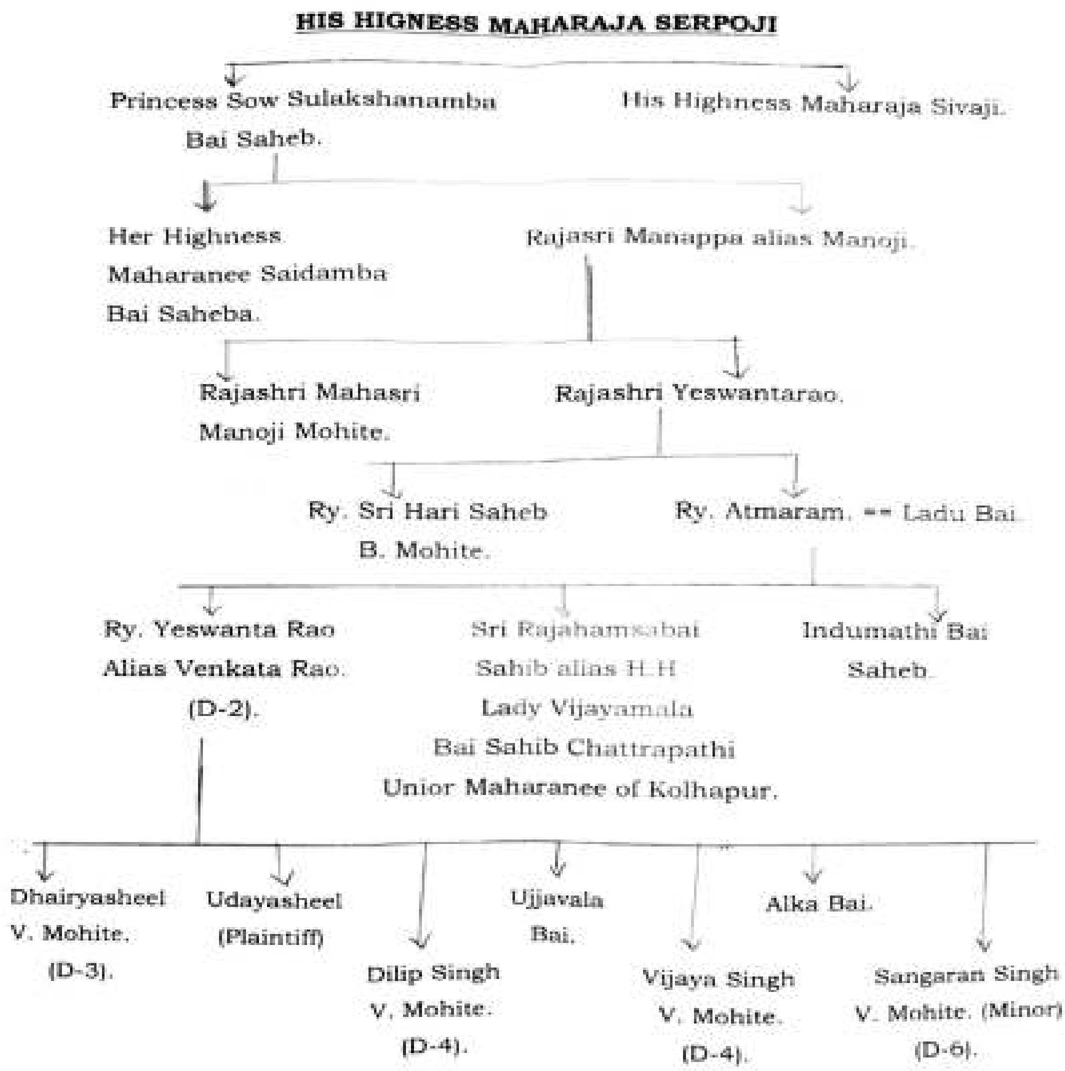
29. The temple viz., Surakottai Arulmiku Sutta Ratneswarar Temple was built on this 20,000 kulis of land purportedly gifted by Emperor Sivaji as an inam to his sister Princess Sulakshanamba Bai Saheb, adjacent to the palace of the said princess.

30. The Royal Palace exists no more. However, Temple Surakottai Arulmiku Sutta Ratneswarar still exist. It is now under the control of the H.R. & C.,E, Department in view of the Impugned Order dated 19.08.2021 of the 4th respondent namely Assistant Commissioner, HR &CE.

31. The princess apparently had no male descendants. The temple was ostensibly constructed exclusively for the women from the Royal family to offer their prayers to the Presiding Deity viz, Lord Shiva. The temple was apparently looked after by the great-grandson of Princess Sulakshanamba Bai Saheb, namely late Ry.Sri Hari Saheb B.Mohite

during his lifetime and thereafter, after his death by his nephew Ry.Yeswantarao alias Venkata Rao through his brother, Ry.Atmaram – Ladu Bai. The family tree of Princess Sulakshanamba Bai Saheb furnished before the Court is given below:-

GENEOLOGY



32. It appears that the said Ry.Yeswantarao Alias Venkata Rao however took up the employment as an Executive Magistrate in the State of Kolhapur and had given power of attorney to his sister, Sri Rajahamsasbai to manage the affairs of the said Temple.

33. The said Ry.Yeswantarao alias Venkata Rao had later executed a registered Document No.444/1943 dated 31.01.1943. In the said document, among various assets which were inherited by the Royal family, it is stated that the Trustees shall apply the net income from the Schedule C properties mentioned in schedule C thereto belonging to the Temple of Sri Sudharatneswara Swamy Temple for the conduct of pooja in the said temple and for carrying out the necessary repairs to the temple premises and for effecting such improvements to the said temple of which the settler was the Hereditary Trustee.

34. Further, the Document states that after the life time of the trustees, the properties mentioned in Schedule-A to the aforesaid document shall revert back to the descendants in the male line of the

settler then living. Schedule -C dealt with the temple property measuring an extent of 157.3 acres of land. Relevant portion of the said Settlement Deed dated 31.01.1943 reads as under:-

வரிசை நெம்பர்	நஞ்சை அல்லது புஞ்சை	சர்வே		விஸ்தீரணம்	
		நிர்	லேட்	ஏ	சே
1 வழ 34	நஞ்சை	398 - 534	-	6-4	0-45
	ஆக கூடுதல்			157	35

35. Later, the nephew of late Ry.Sri Hari Saheb B.Mohite namely Ry.Yeswanta Rao alias Venkata Rao had filed O.A.No.212 of 1948 before the Commissioner of H.R. & C.E. for a declaration to declare himself as a "Hereditary Trustee" of the temple. The said O.A.was however dismissed on 10.12.1948. There, Late Ry.Yeswanta Rao alias Venkata Rao did not claim that the temple was a "private temple".

36. Earlier attempt made by the H.R &C.E Department in 1946 by appointing two trustees to manage the affairs of the temple. The Trustee Ry.Yeswantarao alias Venkata Rao therefore also filed O.A.No.248 of 1948 to set aside the order of the appointment of the Trustees.

37. However on 11.08.1948, the then Assistant Commissioner, H.R.& C.E West Tanjore in his proceedings bearing Reference D.Dis.No. 716/1948 closed O.A.No.248 of 1948, on the ground that no decision was called for.

38. It in this background, Dhairyasheel V.Mohite and Udayasheel who are first and second son of Ry.Yeswantarao alias Venkata Rao filed O.A.No.61 of 1983 under Section 57(a) of the Act and O.A.No.83 of 1962 under Section 63(a) of Madras Act 22/59 before the Deputy Commissioner, H.R.& C.E. Department, Tanjore to declare the temple was a "private temple". Both O.A.No.61 of 1983 and O.A.No.83 of 1962 were dismissed by two separate orders dated 16.04.1962 and 23.04.1962 by the Deputy Commissioner, H.R. & C.E Department respectively.

39. Aggrieved by two separate orders dated 16.04.1962 and 23.04.1962 of the Deputy Commissioner. H.R.& C.E., both Dhairyasheel V.Mohite and Udayusheel V.Mohite filed A.Ps.No.2 & 3 of 1966 before the Commissioner under Section 69(1) of H.R.&C.E Act of 1959. Both A.P.Nos.2 & 3 of 1966 were also dismissed on 16.11.1968 by the Commissioner.

40. It is under these circumstances, O.S.Nos.44 and 45 of 1969 were filed before the Subordinate Court, Tanjore by Dhairyasheel V.Mohite and Udayusheel V.Mohite for declaration that the suit Temple was a" Private Temple".

41. O.S.No.44 of 1969 and O.S.No.45 of 1969, their father, late Ry.Yeswantara Rao Mohite and the Commissioner of H.R.& C.E. Department were arrayed as defendants. The Sub Court, Tanjore had framed the following issues in O.S.No.44 of 1969 and O.S.No.45 of 1969:-

1) Whether the plaint temple is the **"private temple"** of the plaintiff and his family?

2) Whether the petition **O.A.No.212 of 1948** filed before the Commissioner**, H.R. & C.E.,** Madras by the 2nd defendant, father of the plaintiff can in law be a bar to the plaintiff's present claim especially in the absence of an adjudication in that petition of any right?

3. Whether the order of the 1st defendant– Commissioner is liable to be set aside for the reasons set out in the plaint?

4. To what relief, is the plaintiff entitled?

42. O.S.No.44 of 1969 & O.S.No.45 of 1969 was decreed on 20.03.1972 in favour of the plaintiff's namely, **Dhairyasheel V.Mohite** and **Udayusheel V.Mohite.** As far as issue No.1 is concerned, the Trial Court has concluded that the suit temple is a **"Private Temple"**. Issue No.2 was answered as follows:-

> "It has already been pointed out that, because the plaintiff's' father did not claim the suit temple as the private temple, there cannot be any estoppels. The application O.A.No.212 of 1948 preferred by him to the Commissioner cannot therefore be a bar to the present suits. There was no adjudication in that application. Ex.A12 shows that the application was closed, because there was no dispute. I therefore answer this issue in favour of the plaintiffs".

43. Meanwhile, Dhairyasheel V.Mohite and Udayusheel V.Mohite who are the sons of late.Ry.Yeswanta Rao Alias Venkata Rao, who were the plaintiffs in O.S.Nos.44 & 45 of 1969 also died.

44. Aggrieved by the Judgment and decree dated 20.03.1972 of the Sub Court, Tanjore in O.S.Nos.44 & 45 of 1969, the Commissioner of H.R.& C.E filed A.S.No.257 of 1975. The said appeal is said to have been dismissed. Copy of the Judgment and Decree in A.S.No.257 of 1975 has not been furnished to this Court.

45. Meanwhile, proceedings were also initiated under the provisions of the Tamil Nadu Land Reforms (Fixation of Ceiling of Land) Act, 1961 as in force from 15.02.1970 in respect of the lands of the temple. As mentioned above, the Authorized Officer under the said Act declared the land as “surplus land”.

46. The Power Agent of Hereditary Trustee thus filed appeal in **LTC No.Ma.15/1979** before the Land TribunaL (DRO). The Land Reforms Tribunal, (District Revenue Officer) had rejected the prayer of the petitioner Trust vide order dated **12.11.1979** and held that Shri Sudda Rathneswara Swamy Private Temple Trust itself was a “person” under Section 3(34) of the Act and that it could hold only **15 standards acres** under Section 7 of the Act.

47. Aggrieved against the dismissal of the appeal in LTC No.Ma.15 of 1979 by the Land Reforms Tribunal (District Revenue Officer), the Hereditary Trustee of the Sri Sudda Rathneswara Swamy Temple filed CRP. No.1111 of 1881 before this Court. As mentioned above the Hereditary Trustee of the Sri Sudda Rathneswara Swamy Temple was

represented by Power Agent of Hereditary Trustee, Mr.Radhakrishna Ghade Rao Sahib.

48. This Court vide order dated 18.12.1981 in CRP.No.1111 of 1981 reversed the decision of the Land Reforms Tribunal (District Revenue Officer) dated 12.11.1979 in LTC.No.Ma.15 of 1979 and remanded the case back to the Land Reforms Tribunal (District Revenue Officer).

49. The Authorised Officer, Land Reforms/ Revenue Divisional Officer in his proceedings bearing Reference MR I/22S/37-72/TJR dated 04.05.2017 pursuant to the remand order 18.12.1981of this Court in CRP.No.1111 of 1981, passed a fresh order and has concluded that there is was no surplus land held by Sri Sutha Rathneswara Swamy Temple, located at Soorakkottai Village, Thanjavur Taluk and District bearing Patta No.6, agricultural lands measuring 151.91 ordinary acres in Survey Number 398/1B, 3.63 acres and other survey numbers equivalent to 89.981 standard acres. Relevant portion of which has been extracted elsewhere in this order.

50. The grandson of the settlor late.Ry.Yeswanta Rao alias Venkata Rao namely, **Mr.V.Madhusudan Dilipsingh Mohite and Satwasheel Udayashil Mohite** through his sons Udayasheel V.Mohite Dilip Singh V.Mohite have authored an Amendment Deed dated 18.07.2023 which has been registered as Document No.148 of 2023. Late.Ry.Yeswanta Rao alias Venkata Rao had been given control of the temple .

51. Thus, the records that are available before this Court indicate that the temple was a Private Temple and that each member of the family of Ry.Yeswanta Rao Alias Venkata Rao were entitled to an extent of 15 acres of its land.

52. Unless there are clear indications that the subject temple has become a "Public Temple", the HR&CE Department will have no jurisdiction to assume control over the same in place of the family members/descendants of Princess Sow Sulakshanamba Bai Saheb, the sister of Marata King emperor Sivaji who regimed in the southern part of Tamil Nadu.

53. Thus, the challenge to the impugned order dated 19.08.2021 of the Assistant Commissioner, the fourth respondent in W.P.No.12566 of 2024 for appointing the fourth respondent as a fit person is liable to be declared as contrary to the decision of the Sub-Court in OS.No.44 &45 of 1969 vide its judgment and decree dated 20.03.1972.

54. The case of the H.R.& C.E. Department that after execution of the registered Document No.444 of 1943 dated 31.01.1943 there was no management of the temple by the family members of late Ry.Yeswanta Rao Alias Venkata Rao and that the land was encroached by public and that the land was retrieved by the H.R.& C.E Department from the villagers and a regular Poosari has now been appointed in the said temple needs to be established. The appointment has been made contrary to the rights of the family members of Ry.Yeswanta Rao Alias Venkata Rao. The impugned order dated 19.08.2021 passed by the Assistant Commissioner, whereby the Executive Officer of Kotteswarar Endowment, Thanjavur District was appointed as a fit person is liable to be interfered in the light of Judgment and Decree dated 20.03.1972 in O.S.No.44 & 45 of 1969 of Sub Court, Tanjore.

55. Therefore, the impugned order dated 19.08.2021, appointing the fourth respondent as a fit person as an interim measure is liable to be quashed with a consequential direction to the fifth respondent to hand over the administration of the temple to the petitioner.

56. Consequently, W.P.No.12566 of 2024 as also W.P.No.25273 of 2023 deserves to be allowed. However, this is without prejudice to the rights of the H.R & C.E Department to exercise rights over the temple. In case, there are sufficient evidence to establish that the subject temple is no longer a Private Temple and is a " Public Temple" where public is allowed to offer their prayers to the presiding deity, the H.R. & C.E.Department shall assume control over the Temple. The Temple property shall not be alienated.

57. These Writ Petitions stand allowed with the above observations. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes/No 25.11.2024
Internet : Yes/No
Speaking : Non-speaking Order
Neutral Citation : Yes/No
kkd

To

1. The Secretary,
   Hindu Religious and Charitable
   Endowments Department,
   Chennai.

2.The Commissioner,
   Hindu Religious and Charitable
   Endowments Department, Chennai.

3. The Assistant Commissioner,
   Hindu Religious and Charitable
   Endowments Department,
   Chennai.

4. The Joint Commissioner,
   Hindu Religious and Charitable
   Endowments Department,
   Chennai.

5. The Executive Officer,
   Arulmigu Sri Sutha Rathneswara Swamy Trust,
   Sorakkottai Village, Thanjavur District.

C.SARAVANAN, J.

kkd

Pre-delivery Common Order in
W.P.(MD) Nos.25273 of 2023
& 12566 of 2024

25.11.2024