



W.A(MD)No.1073 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.08.2024

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI
W.A(MD)No.1073 of 2024
and
C.M.P.(MD)No.8058 of 2024**

1.Anirudhen Thambi

2.V.Vimal Devi Thankachy

3.A.Goapakumar

4.Raman Thambi

... Appellants / Petitioners

-vs-

1.The District Collector,
Nagercoil,
Kanyakumari District.

2.The Revenue Divisional Officer,
Padmanabhapuram Taluk,
Thuckalay Post,
Kanyakumari District.

3.The Assistant Commissioner (Admn),
HR & CE Department,
Nagercoil-2,
Kanyakumari District.

4.The Fit Person,
Perumal Madam of Thottiyode
and Pillayar Thirukoil and
Executive Officer of Anjanaezhuthiya
Kandan Sastha Kovil,
Office at,
Kannivinayaga Thirukoil,
Vadiveeswaram, Nagercoil,
Kanyakumari District.



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... Respondents / Respondents

5.Samraj

PRAYER: Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 11.08.2023 made in W.P.(MD)No.16829 of 2015.

For Appellants : Mr.K.N.Thambi

For R-1 to R-3 : Mr.S.P.Maharajan,
Special Government Pleader

JUDGMENT

[Judgment of the Court was made by R.SUBRAMANIAN, J.]

The appellants are aggrieved by the order of the learned Single Judge, sustaining the appointment of a fit person for a temple which according to the respondent is allegedly in existence in the property belonging to the appellants. The dispute was triggered by a Public Interest Litigation (PIL) filed by one Samraj who claimed that the lands in survey Nos.657/7, 657/8, 650/5 and 825/4 of Villukurichi village belong to the temple and that the pattas granted in favour of the appellants herein should be cancelled.

2. This Court issued a Mandamus, directing an enquiry. Pursuant to the directions issued by this Court, the Revenue Divisional Officer, Padmanabapuram, passed an order stating that there is no evidence of any temple having been in existence in the said lands. He also referred to the judgment of the District Court, Nagercoil, in O.S.No.83 of 1124 ME dated



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30.08.1951 to conclude that the lands in question belong to the appellants herein. However, liberty was granted to the Hindu Religious and Charitable Endowments Department to proceed under the said Act. An appeal was filed by the Department before the District Revenue Officer, Kanyakumari, said appeal came to be disposed of on 02.12.2015, the District Revenue Officer concluded that there is no evidence of any temple or religious institutions having been in existence in the area in question. It was also held that the properties were not under the control of the Department. The District Revenue Officer also concluded that no document to show that the property belonged to the temple or the Department, was placed before him. It was specifically concluded that in the old revenue records there was no evidence to show that there was a Vinayagar temple open to public.

3. On the above findings, claim of the department was rejected, however, liberty was given to approach the Civil Court. Even during the pendency of the appeal, the Assistant Commissioner, Hindu Religious and Charitable Endowments Department, Nagercoil, passed the order impugned in the writ petition on 25.06.2015, appointing a fit person for Arulmighu Thottiyodu Perumal Madam Mattrum Pillayar Thirukoil which, according to them, is in existence. It is this order which was challenged in the writ petition. The Writ Court though found that the property in question belonged to the petitioners, sustained the order and enjoined the respondents 3 and 4, namely, the Assistant Commissioner, Hindu



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Religious and Charitable Endowments Department, Nagercoil and the fit person from interfering with the possession of the properties alone. Hence, this appeal.

4. Mr.K.N.Thambi learned counsel appearing for the appellants would vehemently contend that both the Revenue Divisional Officer and the District Revenue Officer have categorically concluded that there was no temple in existence and therefore, appointment of a fit person for a non-existent temple cannot be sustained. He would also point out that in the guise of exercising power under Section 49(1), Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the Assistant Commissioner cannot appoint a fit person to a temple which is not at all in existence. Section 49 of the Hindu Religious and Charitable Endowments Act, 1959, which provides for an appointment of the fit person presupposes existence of a temple or a religious institution.

5. Mr.S.P.Maharajan, learned Special Government Pleader would submit that the revenue authorities have no jurisdiction to decide upon the existence or otherwise of the temple. He would also add that a civil suit has been filed by the fit person in O.S.No.75 of 2016 on the file of the Additional District Court, Nagercoil, seeking a declaration that the properties belonged to the temple, the existence of which itself in doubt. We should not be mistaken to have pronounced on the existence of the



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temple. We leave it to the wisdom of the Civil Court to decide that question.

However, as rightly pointed out by Mr.S.P.Maharajan, learned Special Government Pleader, at least to prosecute the suit there must be some representative of some legal entity.

6. Therefore, the order appointing fit person cannot be set aside in its entirety. It is however made clear that the fit person so appointed shall not interfere with the possession of the properties by the appellants or make any attempt to establish any temple in the suit lands. The fit person shall only prosecute the suit and if he or she is able to succeed in the suit, thereafter, they can take possession of the property of the temple. Till such time, the appointment of the fit person is restricted only to right to prosecute the suit and nothing further.

7. With the above observations, this writ petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[R.S.M., J.]

[L.V.G., J.]

20.08.2024

NCC :Yes/No
Index :Yes/No
Internet :Yes
Sml / Mrn



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To

WEB COPY

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