



W.A(MD)Nos.141 & 247 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.A(MD)No.141 of 2024

and

C.M.P(MD)No.1133 of 2024

and

W.A(MD)No.247 of 2024

and

C.M.P(MD)No.2150 of 2024

W.A(MD)No.141 of 2023

The Fit Person,
Arulmighu Sri Sithanadha Samedha Angala
Parameshwari Temple,
Varavanai,
Kadavar Taluk,
Karur District.

... Appellant/3rd respondent

Vs.

1.S.Senthil @ Senthilkumar

... 1st Respondent/Writ Petitioner

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2.The Joint Commissioner,
H.R. & C.E., Department,
Tiruppur.

3.The Assistant Commissioner,
H.R. & C.E., Department,
Karur.

... 2nd and 3rd respondents/1st and 2nd respondents

PRAYER : Appeal filed under Clause 15 of the Letters Patent Act, against the order passed in W.P(MD)No.19477 of 2023, dated 13.09.2023.

For Appellant	:Mr.V.Chandrasekar
For R-1	:Mr.A.K.Baskarapandian for Mr.S.Gokul Raj
For R-2 & R-3	:Mr.S.P.Maharajan, Special Government Pleader

W.A(MD)No.247 of 2023

P.K.N.Arumugam

... Appellant/3rd respondent

Vs.

1.S.Senthil @ Senthilkumar

... 1st Respondent/Writ Petitioner

2.The Joint Commissioner,
H.R. & C.E., Department,
Tiruppur.

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4.The Fit Person,
Arulmighu Sri Sithanadha Samedha Angala
Parameshwari Temple,
Varavanai,
Kadavar Taluk,
Karur District.

... Respondents 2 to 4/Respondents 1 to 3

PRAYER : Appeal filed under Clause 15 of the Letters Patent Act, against the order passed in W.P(MD)No.19477 of 2023, dated 13.09.2023.

For Appellant	:Ms.D.Geetha
For R-1	:Mr.A.K.Baskarapandian for Mr.S.Gokul Raj
For R-2 & R-3	:Mr.S.P.Maharajan, Special Government Pleader

COMMON JUDGMENT

[Judgment of the Court was delivered by D.KRISHNAKUMAR, J.]

These writ appeals have been filed as against the order passed by the Writ Court in W.P(MD)No.19477 of 2023, dated 13.09.2023.



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2. The writ petition is filed by the first respondent in these writ appeals, challenging the order passed by the Fit Person of the temple, dated 17.03.2023 in respect of removal of asbestos sheet in S.F.No.888 and the another order passed by the Fit Person, prohibiting the first respondent/writ petitioner from doing daily pooja of the temple and the consequent order passed by the first respondent dated 12.04.2023 and to forbear the respondents therein from interfering with the writ petitioner's poojariship right in the temple.

3. The learned Single Judge allowed the writ petition by setting aside the order of the Fit Person, dated 17.03.2023 and the consequent order dated Nil, and the order passed by the first respondent, dated 12.04.2024. But, however, directed the writ petitioner Senthil @ Senthil Kumar, C.Angusamy, M.P.Kathiresan, C.Karthikeyan and A.Pandian, to submit an application based on the resolution passed by the Trust and directed the respondents authorities to consider the said application and allow the poojaris to perform poojas until the Scheme is formulated.



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4. Being aggrieved by the said order, the Fit person of the temple filed the writ appeal in W.A(MD)No.141 of 2024.

5. In the said writ petition, the appellant in W.A(MD)No.247 of 2024 by name P.K.N.Arumugam, has filed a impleading petition in W.M.P(MD)No.17148 of 2023 stating that he is the donor and he has constructed the temple and is doing welfare activities of the temple and he is also an interested party to the issue in question.

6. The learned Single Judge while allowing the writ petition vide order dated 13.09.2023, in paragraph No.12 of the order, has made some adverse observations against the said P.K.N.Arumugam and therefore, challenging the said observations, the said P.K.N.Arumugam, has filed the writ appeal in W.A(MD)No.247 of 2024.

7. By consent of both parties, the writ appeals are taken up for final disposal at the admission stage itself.



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WEB COPY 8. The learned counsel for the appellant/third party in W.A(MD)No.247 of 2024, would submit that the appellant is the donor of the temple and the temple premises was constructed by him. He is the devotee of the said temple and doing welfare activities. However, without considering all these facts, adverse observations have been made by the learned Single Judge and the same have to be expunged.

9. However, the learned counsel appearing for the first respondent/writ petitioner would vehemently opposes the contention of the learned counsel appearing for the appellant in W.A(MD)No.247 of 2024, stating that forefathers of the first respondent had been doing pooja in the temple from time immemorial and thereafter, the first respondent has been doing pooja for the past five years and he belongs to Paluvithiyavar Five Kilavan Makkal Poosari Vagayara and therefore, the impugned order passed by the Fit Person prohibiting the writ petitioner from doing pooja has been challenged by the first respondent/writ petitioner in the writ petition and along with the same, the order passed by the Fit Person directing to remove the asbestos sheet has also been challenged along



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with the order passed by the Joint Commissioner, dated 12.04.2023.

10. However, according to us, both the order passed by the Fit Person is an independent one and the same cannot be challenged in a single writ petition along with the order passed by the Joint Commissioner. Insofar as the direction for removal of asbestos sheet is concerned, the first respondent/writ petitioner shall make his explanation before the Joint Commissioner, HR & CE Department, Tiruppur.

11. The learned counsel for the first respondent/writ petitioner has also agreed that the first respondent will make necessary explanation before the Joint Commissioner, HR & CE Department with regard to removal of asbestos sheet.

12. Insofar as the prohibitory order, prohibiting the first respondent/writ petitioner is concerned, that is an issue to be decided in these writ appeals.



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13. The learned counsel appearing for the appellant/Fit Person would submit that a Fit Person is now been administered the temple in question and therefore, the remedy available to the first respondent/writ petitioner is to approach the Joint Commissioner, HR & CE Department.

14. The learned Special Government Pleader appearing for the respondents 2 and 3, would submit that being an aggrieved person, the first respondent/writ petitioner has to approach the Joint Commissioner, HR & CE Department, under Section 63(e) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959(in short 'the HR & CE Act'). However, without exhausting such remedy, he has filed a writ petition under Article 226 of the Constitution of India.

15. We have gone through the order passed by the Fit Person. A bare perusal of the same would clearly show that he has passed the order by saying that no materials have been produced and therefore, the first respondent/writ petitioner has to approach the Joint Commissioner and claim his right for



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WEB ROOM performing pooja.

16. In our considered view, that is not an adjudicating order passed by the Fit Person. Further, when there is a dispute with regard to poojariship, the same can be decided only based on the oral and documentary evidence before the concerned authority. Further, when there is an efficacious alternative remedy available to the parties before the Joint Commissioner, the disputed question of fact cannot be gone into by a Writ Court under Article 226 of the Constitution of India.

17. At this juncture, learned counsel appearing for the first respondent/writ petitioner agrees that the first respondent will approach the Joint Commissioner under Section 63(e) of the HR & CE Act, with regard to the claim of poojariship.

18. The learned counsel appearing for the appellant in both the writ appeals, have also agreed that if the first respondent is having poojari right, he



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can agitate the same before the Joint Commissioner and they are also ready to go before the Joint Commissioner to resolve the issue.

19. Insofar as the contention of the learned counsel for the appellant/third party in W.A(MD)No.247 of 2024 is concerned, in our considered view, such adverse observations made by the learned Single Judge requires for expunge.

20. In the light of the above discussions, we are confirming the order of remand and modifying the order insofar as Poojari Right, is concerned. The order passed by the learned Single Judge, dated 13.09.2023, is liable to be set aside to the above extent.

21. As an interim measure, as agreed, the parties shall maintain status-quo as on today, for a period of three weeks. The appellants as wells as the contesting respondents, shall agitate all the issues before the Joint Commissioner. At that time, the Joint Commissioner shall independently decide the issue based on the available records.



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WEB COPY 22. The writ appeals are partly allowed as indicated above. No Costs.

Consequently, connected Miscellaneous Petitions are closed.

[D.K.K., J.] [R.V., J.]

22.02.2024

Neutral Citation: Yes / No

Index : Yes / No

PM

To:

- 1.The Joint Commissioner,
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Tiruppur.
- 2.The Assistant Commissioner,
H.R. & C.E., Department,
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and
R.VIJAYAKUMAR, J.

PM

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