

WP(MD) Nos.9654 of 2024 etc batch

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON
22.12.2024

PRONOUNCED ON
28.01.2025

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD)Nos.9654 of 2024 & 16783 & 23281 of 2023
WMP.(MD).Nos.8950 of 2024 and 14012 & 19486 of 2023

W.P.(MD).No.9654 of 2024

1.D.Arumugham
2.P.Shanmugaganapathy
3.R.Sundarrajan
4.K.Dhanarajan

... Petitioners

vs.

1.The Commissioner
Hindu Religious and Charitable Endowments Department,
Nungambakkam, Chennai.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Madurai.

3.NA.Subramaniam
4.Senthil Sankara Narayanan
5.V.Periasamy
6.A.Balasubramaniyan
7.P.Marimuthu
8.R.G.Sundara Mahalingam

... Respondents



WP(MD) Nos.9654 of 2024 etc batch

PRAYER :- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings of the first respondent dated 11.03.2024 in Se.Mu.Na.Ka.No.56037/2021/A2 and quash the same and consequently direct the respondents 1 & 2 to approve the names of petitioners and fourth respondent as non-hereditary trustees of Arulmighu Mahali Amman Vagayara Temples for a period of two years from the date of their approval and pass such further order.

W.P.(MD).No.16783 of 2023

1.P.Shanmugaganapathy
2.R.G.Sundarrajan Mahalingam

... Petitioners

vs.

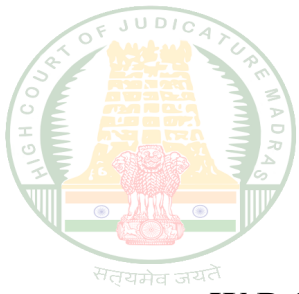
1.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Madurai.

2.The Inspector of Police,
Aruppukottai Police Station,
Virudhunagar District.

3.NA.Subramaniam

... Respondents

PRAYER :- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records relating to the impugned proceedings of the first respondent dated 05.07.2023 in Na.Ka.No.362/2021/AA1 and quash the same.



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W.P.(MD).No.23281 of 2023

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Kannan

... Petitioner

vs.

- 1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Chennai.
- 2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Madurai.
- 3.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Virudhunagar District.
- 4.The Inspector of Police,
Hindu Religious and Charitable Endowment Department,
Aruppukottai
Virudhunagar District.
- 5.The Inspector of Police,
Aruppukottai Town Police Station,
Virudhunagar District.
- 6.Shanmugaganapathy
- 7.R.G.Sundra Mahalingam
- 8.D.Arumugam
- 9.R.Sundarrajan
- 10.Senthil Sankara Narayanan
- 11.Dhanaraj
- 12.Arivuselvam

... Respondents



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PRAYER :- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the respondents 1 to 6 to initiate appropriate action against the respondents 7 to 12 for the untoward incident took place in Arulmighu Ayramkan Mariyamman Temple, Aruppukkottai on 04.04.2023 and also to ensure that the key of the temple is returned to the petitioner.

For Petitioner :Mr.VR.Shanmuganathan in
W.P.(MD).Nos.9654/2024 & 16783/2023
and for RR6-1 in 2W.P.(MD).No.23281/2023

Mr.P.Ganapathi Subramanian in
W.P.(MD).No.23281 of 2023 and
for RR3,6 & 7 in W.P.(MD).No.9654/2024
for R3 in W.P.(MD).No.16783 of 2023

For Respondents :Mr.P.Subbaraj Spl.G.P., for RR1& 2 in
W.P.(MD).No.9654 of 2024
for R1 in W.P.(MD).No.16783 of 2023
for RR1-4 in W.P.(MD).No.23281 of 2023

M/s.M.Aasha G.A., (Crl Side) for R2 in
W.P.(MD).No.16783 of 2023 and for R5 in
W.P.(MD).No.23281 of 2023.

COMMON ORDER

The writ petition in W.P.(MD)No.23281 of 2023 had been filed to direct the respondents 1 to 5 to take appropriate action as against the



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respondents 6 to 12 for their illegal action of forcefully entering into the temple and grabbing the key from the petitioner and to hand over the key to the petitioner. The writ petition in W.P.(MD).No.16783 of 2023 had been filed to challenge the proceeding of the Joint Commissioner dated 05.07.2023, wherein it is directed to secure the key and hand over the same to the nominated trustee. The writ petition in W.P.(MD) No.9654 of 2024 had been filed to challenge the order dated 11.03.2024 passed by the Commissioner wherein the election held on 27.12.2020 was canceled and ordered to conduct fresh election.

2. Mr.VR.Shanmuganathan & Mr.P.Ganapathi Subramanian, learned counsel appearing for the petitioners, Mr.P.Subbaraj, learned Special Government Pleader appearing for H.R.&C.E Department and Ms.M.Aasha, learned Government Advocate (Criminal Side) appearing for second and fifth respondents.

3. Admittedly, in respect of the temple, a Scheme Decree was made by the Sub-Court, Sivagangai in a statutory suit filed under Section 79 of the HR&CE in O.S.No.40 of 1981. Admittedly, the temple was to be



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managed by the Saliar community by electing the trustees from among the community periodically every 3 years. Disputes had arisen and this Court in its order dated 15.10.2020 in W.P.(MD).No.14398 of 2020 had appointed an Advocate Commissioner as an Election Officer for conducting election in accordance with the Scheme Decree. Pursuant to the said order, the writ petition was disposed of by a learned Judge of this Court without entering upon the merits of the arguments made by the respective counsels. However, a direction was given to the Joint Commissioner, to pass appropriate orders after providing an opportunity of hearing to the respective parties and to issue directions recognizing the right to manage the affairs of the temple to the contestants who secured highest vote in the said election and who did not suffer any disqualification. Thereafter, without taking any decision on the same, the Government orders were made appointing 5 trustees to the temple in a contradiction to the Scheme and the same came to be challenged before this Court and this Court in a batch of Writ Petitions in W.P.(MD).No.17653 of 2022 etc.,. By its order dated 29.11.2024, the said Writ Petitions were disposed by holding that the said Government Order cannot be sustained and issued further direction to the Joint Commissioner to put the petitioners therein on notice and forward a



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Report to the Commissioner HR&CE and Commissioner, HR&CE after considering the same and giving reasonable opportunities to the petitioners and any other stakeholders, pass appropriate orders and thereafter, the Commissioner has to pass orders.

4. The Joint Commissioner had forwarded a Report dated 13.03.2023 to the Commissioner recommending 5 names for being appointed as a hereditary trustees to the temple. Again by a further Report dated 05.07.2023, the Joint Commissioner recording certain disqualifications of persons already recommended, had revised the names of the persons to be appointed as a hereditary trustees to the temple. Pursuant to the said Report, the Commissioner seems to have also conducted an enquiry and under the impugned communication had set aside the elections that had been conducted by the learned Advocate Commissioner on the ground that the election had been conducted without verifying the qualifications of the contestants and also of the fact that three years have lapsed after the conduct of the elections, with a further direction to conduct a fresh election as per the Scheme Decree. In this interregnum, a complaint had been filed by one poojari Kannan, the Writ Petitioner in W.P.No.23281 of 2023 alleging that



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the keys of the temple were taken from him by a named person in the said Writ Petition on 04.04.2023. According to him, since no action had been initiated on his complaint, he had approached this Court for a direction to the official respondents to initiate appropriate action against the named private respondent in the Writ Petition and to ensure that the key is returned to him.

5.On 05.07.2023, the Joint Commissioner, Madurai, by considering the complaint made by the said individual and also taking into consideration of the properties belonging to the temple have to be protected, in the interest of the temple, has passed orders to recover the keys from Saliar Mahajan Paribalana Sabai by getting appropriate Police protection. The said order of the Joint Commissioner has been impugned in W.P.(MD)No.9654 of 2024. The same has been the subject matter of challenge in the W.P.(MD)No. 16783 of 2023.

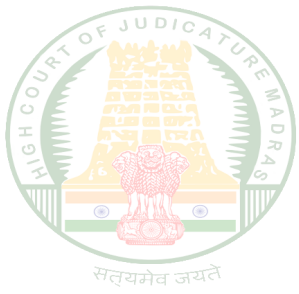
6.It is to be seen that the earlier orders passed by this Court were made, as the disputes with regard to the qualifications and disqualifications of the trustees in the election conducted by the learned Advocate



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Commissioner, pursuant to the order dated 15.10.2020 passed by this Court were made and that without going into such disputes, had left it to the authorities, after affording opportunities to the persons who are sought to be disqualified to assail their disqualification, qualified candidates were sought to be drawn and appointment to be made by the Commissioner, HR&CE on the Report submitted by the Joint Commissioner.

7.It has also been brought on record that the Joint Commissioner has submitted a Report on 31.03.2023 nominating 5 names. The said Report in detail had considered the qualifications and disqualifications of each of the candidates and reasons for recommending the said names. However, by a further Report on 05.07.2023 findings certain of the elected persons who are also disqualified, a revised list of the names have been formulated by the Joint Commissioner. The Commissioner, HR&CE, even though, had conducted an enquiry by himself as permitted by this Court had decided to cancel the said election on the ground that the election had been conducted without verifying the qualifications and disqualifications of the candidates and that three years time has been lapsed.



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8.It is to be noted that it is not the fault of the Election Officer in allowing the unqualified candidates to contest. The learned Judge while appointing Advocate Commissioner had infact directed him to do so in co-ordination of the jurisdictional Assistant Commissioner, HR&CE. It is not the case of anyone that the Election Officer had failed to follow the dictates of the Scheme in conducting the election.

9.It is to be seen that when elections are conducted, objections were not made with regard to the disqualifications of the contesting candidates. Only, thereafter, such disputes arose and the Joint Commissioner was directed to conduct the enquiry into such claims and thereafter select, qualified candidate who had secured the highest votes and recognise their right to manage the affairs of the temple. Trustees were appointed by the Government in G.O(MS).No.204 dated 09.10.2022 and the same had been set aside by orders of this Court holding that the same is unsustainable, with a further direction to the Joint Commissioner to forward a Report to the Commissioner for appointment of trustees based on the election conducted. Only, thereafter, the Joint Commissioner had given a Report on 31.03.2023 and the varied Report on 05.07.2023. The Commissioner took his sweet



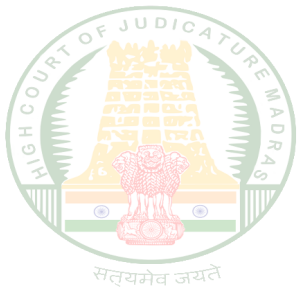
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time and passed the impugned order on 11.03.2024. Therefore, it cannot be

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the fault of the contesting parties or the Election Officer for the debacle and the same had happened only on the contemptuous conduct of the Joint Commissioner and the Commissioner in not keeping up the time line issued by this Court in its earlier orders, having been the primary cause of this contemptuous conduct, the authorities cannot blame the successful candidates for the delay in their appointments.

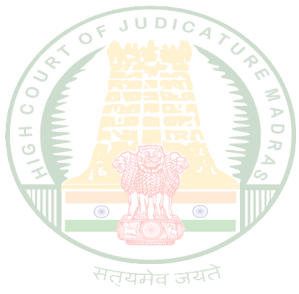
10. Further, what was directed by the Court was to appoint the candidate who had secured highest votes, who had not suffered disqualification as hereditary trustee of the temple. This specific direction is sought to be over-turned by the Commissioner by giving a reason that the period of Office for which they were elected has lapsed. The said reason is a creation of the conduct of the Joint Commissioner and the Commissioner in not abiding to the time-line fixed by this Court. In such an event, the reasons given by the Commissioner in which the order impugned in W.P. (MD)No.9654 of 2024 is wholly unsustainable and hence, the same is set aside.



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11. As regards W.P.(MD).No.23281 of 2023, the claim of the petitioner is that the keys of the temple had been forcefully taken away from him by the named respondents in this Writ Petition on 04.04.2023 and that he had made a complaint both to the Police as well as to the official respondents H.R.&C.E., authorities and no action has been initiated. It is to be seen that the Writ Petitioner even in his affidavit had averred that the Joint Commissioner by his order dated 05.07.2023, had directed the fifth respondent to get a key for the temple and entrust the same with the another elected Trustee, namely N.A.Subramaniam. A reading of the said communication does not indicate that there was a direction by the Joint Commissioner to hand over the keys to the named individual, but was an order to procure the key from the persons who had taken illegal custody of the same from the petitioner, whose complaint was registered as C.S.R.No. 229 of 2023 with the help of the police. The said Writ Petition had also came to be filed only in the month of November 2023. Since, already action was sought to be initiated based on the complaint given by the petitioner, the prayer sought for in the Writ Petition had become infructuous and the claim of the petitioner can only be subject to the enquiry that is to be conducted by the Joint Commissioner in that regard.



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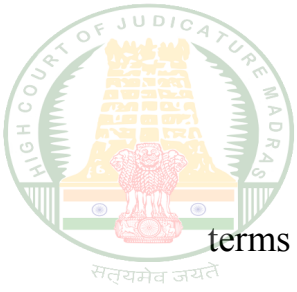
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12. The challenge in W.P.(MD).No.16783 of 2023 is to the order of the Joint Commissioner dated 05.07.2023 to recover the keys of the temple from the Arupukottai Saliya Mahajana Paribalana Sabai which is sought to be represented by the former President and the present President of the said Sabai. If it is the case of the petitioner in W.P.(MD).No.23281 of 2023 that the keys had been taken unauthorisidely from him, from the averments made in the affidavit filed in support of this instant Writ Petition, the keys are admittedly with the said Sabai, who claims to be the trustees of that temple. As noted earlier, the election results have not been announced at the hands of the Joint Commissioner and the Commissioner and thereafter, no one can claim to be validly appointed trustees of the temple.

13.In such an event, this Court is inclined to pass the following orders:-

(a)W.P.(MD).No.9654 of 2024 is allowed and the impugned order is set aside.

(b)The Commissioner shall consider the Reports of the Joint Commissioner dated 31.03.2023 and 05.07.2023 and appoint the candidates who had secured highest votes and who had not suffered disqualification in



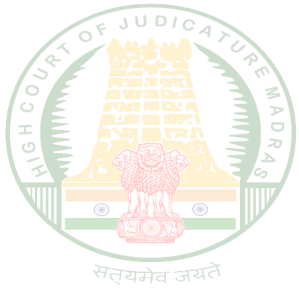
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terms of Section 26 of the HR&CE Act within a period of twelve (12) weeks from the date of receipt of a copy of this order and permit them to occupy the Office of hereditary trustee for a period of three (3) years from the date of such appointment.

(c)W.P.(MD).No.23281 of 2023 is dismissed as infructuous.

(d)W.P.(MD).No.16783 of 2023 is also dismissed as it was a consequential action as this Court had found that the petitioners are not the trustees of the temple.

(e) The Joint Commissioner is directed to appoint a fit person forthwith who shall take charge of the affairs of the temple and if any oppositions are made to the functioning of the fit person, the same shall be addressed to the concerned jurisdictional police who shall take immediate steps to put the fit person in management of the affairs of the temple within a period of 48 hours of such complaint by the fit person appointed by the Joint Commissioner. The appointment of the fit person shall be subject to the decision taken by the Commissioner, pursuant to the direction issued in Clause (b) above.



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However, there shall be no order as to costs. Consequently, connected

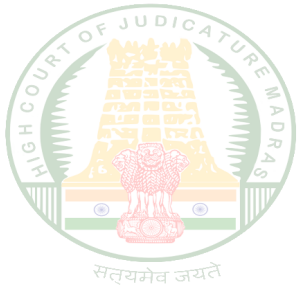
miscellaneous petitions are closed.

28.01.2025

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
Gba

To

1. The Commissioner
Hindu Religious and Charitable Endowments Department,
Nungambakkam, Chennai.
2. The Joint Commissioner,
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Aruppukottai
Virudhunagar District.



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K.KUMARESH BABU.,J.

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A Pre-delivery order made in
W.P.(MD)Nos.9654 of 2024 & 16783 & 23281 of 2023
WMP.(MD).Nos.8950 of 2024 and 14012 & 19486 of 2023

28.01.2025