

W.P(MD)No.23296 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.10.2022

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CORAM :

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P(MD)No.23296 of 2022

and

W.M.P.(MD)Nos.17384 and 17385 of 2022

K.Seeni Thevar

... Petitioner

Vs

- 1.The Joint Commissioner,
HR & CE Department,
Madurai.
- 2.The Assistant Commissioner,
HR & CE Department,
Madurai.
- 3.The Fit Person,
Arulmigu Gurunathasamy Temple,
Melanesaneri Village,
Thirumangalam Taluk,
Madurai District.
- 4.The Revenue Divisional Officer,
Usilampatti,
Madurai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the 3rd respondent dated 30.09.2022 and quash the same.



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For Petitioner : Mr.C.Selvaraj
For R1, R2 & R4 : Mr.D.Gandhiraj,
Special Government Pleader
For R3 : Mr.S.Manohar

ORDER

The above Writ Petition has been filed challenging the order of the 3rd respondent dated 30.09.2022, wherein, he has stated that the temple in issue will be opened on 07.10.2022.

2.Heard Mr.C.Selvaraj, learned counsel for the petitioner, Mr.D.Gandhiraj, learned Special Government Pleader for the respondents 1, 2 and 4 and Mr.S.Manohar, learned counsel for the 3rd respondent.

3.The case of the petitioner is that the temple called Arulmighu Valagurunathaswamy Temple situated at Melanesaneri Village, Thirumangalam Taluk, Madurai District is in existence for more than 150 years and that the same belongs to his ancestors and has been worshipped by the members of the particular community. He would further submit that there are civil proceedings in O.S.Nos.45 and 78 of 2011 and O.S.No.171 of 2014 pertaining to the affairs of the temple. He would



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further plead that the 3rd respondent herein had also filed an application to implead himself only in O.S.Nos.171 of 2014 and 78 of 2011, but had not impleaded himself in the suit filed by the petitioner in O.S.No.45 of 2011. He would further submit that the 4th respondent herein called for a peace committee meeting, wherein the rival parties including the petitioner had appeared before the 4th respondent. Taking note of the fact that the civil suit is pending, the 4th respondent had directed the parties to redress their grievances in the pending suit.

4.The learned counsel for the petitioner would further contend that the petitioner had come to know that one Veerapathiran has approached this Court by filing a writ petition in W.P.(MD) No.17260 of 2018, in which this Court was pleased to direct the said Veerapathiran to submit a fresh representation to the 3rd respondent herein and on receipt of such representation, the 3rd respondent was directed to dispose of the same within a period of 4 weeks thereafter on merits and in accordance with law. While that being so, the 3rd respondent had issued the impugned notice on 30.09.2022, which was affixed on the wall of the temple stating that as per the directions of this Court in the aforesaid writ petition, the temple will be opened on 07.10.2022 at 10.00 am. The said notice,



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according to him, is totally contrary to the order passed by this Court as there was no positive direction directing the 3rd respondent to reopen the temple. He would further submit that when there is no order or direction issued by this Court to reopen the temple, the order passed by the 3rd respondent as if this Court had directed opening of the temple is wholly void and has tried to mislead the devotees and therefore, he sought to quash the said notice.

5. Countering this argument, Mr.D.Ganthiraj, learned Special Government Pleader appearing for the respondents 1, 2 and 4 would vehemently contend that the temple has been closed from the year 2011 due to the personal dispute between the petitioner and the other members of the particular community. There were also dispute with regard to the installation of idol. He would further submit that this Court had directed the 3rd respondent to pass appropriate orders on the representation. It was also the request of the villagers to reopen the temple and considering such request, the temple was directed to be reopened by the 3rd respondent.



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6. Mr. Manohar, learned counsel for the 3rd respondent would vehemently submit that there has been various request from the public to reopen the temple and the petitioner is resisting the said reopening, which is causing public unrest in the locality. He would further submit that pendency of the aforesaid suit would not be a bar for him to reopen the temple at the request of the public.

7. At this juncture, this Court enquired about the statement made by the 3rd respondent in the impugned notice as to the fact that whether this Court had passed any orders directing him to open the temple in the order dated 15.02.2022 made in W.P.(MD) No.17260 of 2018. To this question, the learned counsel for the 3rd respondent answered in negative and said that it was only a direction to consider the representation of one Veerapathiran, the petitioner in the said writ petition and pass appropriate orders. However, he would further submit that the said Veerapathiran had not made any representation as directed by this Court, but there were various representations received from the general public of the said Village for reopening of the temple and therefore, the 3rd respondent is well within his authority to order opening of the temple.



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8.I have considered the rival submissions made by the learned counsel appearing on either side.

9.At the outset, the impugned notice proceeds on the premise that this Court in its order dated 15.02.2022 made in W.P.(MD) No.17260 of 2018 had directed opening of the temple of Arulmighu Valagurunathaswamy Temple situated at Melanesaneri Village, Thirumangalam Taluk, Madurai District. Based upon the said order and advise of the Commissioner of HR & CE, the temple was to be opened on 07.10.2022 at about 10.00 am., in the presence of the revenue officials.

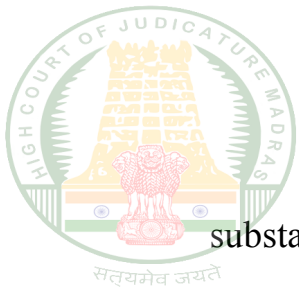
10.A perusal of the order made in W.P.(MD) No.17260 of 2018 would clearly indicate that no such order has been passed for the opening of the temple. What has been directed was to consider a representation, which was to be forwarded again by the petitioner therein to the 3rd respondent and the 3rd respondent was directed to pass appropriate orders on merits and in accordance with law. It is also brought to the notice of this Court that the said Veerapathiran had not made any representation in compliance of the orders passed by this Court in the aforesaid writ



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petition. When that being so, the notice issued by the 3rd respondent is wholly non est in law and the intention of this notice was trying to make this Court fait accompli to his actions. This attitude of the 3rd respondent has to be highly deprecated. However, without making any remarks further on the said action of the 3rd respondent, this Court set aside the notice dated 30.09.2022 issued by the 3rd respondent for opening the temple.

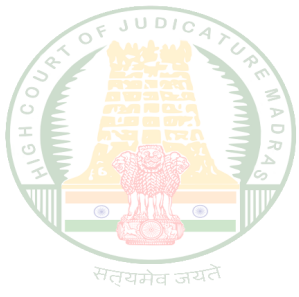
11.It is also noted that the temple has been closed due to the differences between the two groups of people and the civil suits are also pending for almost more than a decade. Even though the fit person was appointed as early as in the year 2011, no action has been initiated or proceeded for the past 12 years and suddenly the present notice has been issued. Such initiation may be correct as the worshipping of a god cannot be stopped by closing of the temple due to the dispute between the two rival groups, such dispute had not been settled between the parties. Even though the department had appointed the fit person as early as in the year 2011, he has not taken any steps to take over the temple. The petitioner even though claims that it belongs to a particular community, he has also not taken any steps to declare the temple as a private temple to



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substantiate his claim as pleaded in the writ petition. In the light of the fact that the worshipping of a god is a right of every individual according to his personal faith, it would be appropriate to direct the 1st respondent herein to conduct an enquiry into the affairs of the temple under the provisions of the HR & CE Act, and decide the rights of the parties in accordance with law as expeditiously as possible. The pendency of the civil proceedings are only with reference to a mandatory injunction for opening of the temple, for a negative injunction restraining the people from interfering with the affairs of the temple and for installation of the idol in the temple only. In my view the said suits cannot be a bar for the 1st respondent to decide about the nature of the temple or as to the rights of the rival parties in administering the temple.

12. In the light of the above, the impugned notice passed by the 3rd respondent dated 30.09.2022 is set aside and in the interest of justice, the 1st respondent is directed to conduct an enquiry as observed above as expeditiously as possible, but not later than 6 months from the date of receipt of a copy of this order.



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WEB COPY 13.In fine, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

06.10.2022

Index : Yes/No
Internet: Yes/No
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Note : Issue order copy on 06.10.2022

To

- 1.The Joint Commissioner,
HR & CE Department,
Madurai.
- 2.The Assistant Commissioner,
HR & CE Department,
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- 3.The Revenue Divisional Officer,
Usilampatti,
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K.KUMARESH BABU, J

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