



IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Civil Appellate Jurisdiction)

Friday, the Twentieth day of May Two Thousand Twenty Two

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PRESENT

THE HON`BLE MR.JUSTICE R.MAHADEVAN

and

THE HON`BLE MR.JUSTICE G.K.ILANTHIRAIYAN

WA.Nos.1381 and 1382 of 2022

and CMP.Nos.8851 and 8853 of 2022

P.B.RAJAHAMSAM

[APPELLANT in WA.1381/2022 &
5th RESPONDENT in WA.1382/2022]

Vs

1 S.NARAYANAN

[1 to 4 RESPONDENTS in ALL THE
APPEALS/PETITIONS]

2 THE STATE OF TAMIL NADU,
REP.BY ITS SECRETARY, TOURISM,
RELIGIOUS AND CHARITABLE ENDOWMENTS DEPARTMENT,
CHENNAI.

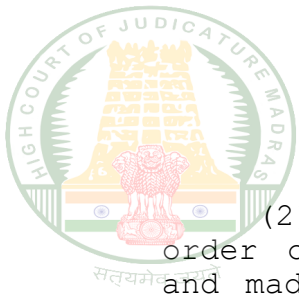
3 THE COMMISSIONER,
HINDU RELIGIOUS AND CHARITABLE
ENDOWMENTS DEPARTMENT, NUNGAMBAKKAM,
CHENNAI-600 034.

4 THE ASSISTANT COMMISSIONER/
EXECUTIVE TRUSTEE,
ARULMIGU DEVARAJASWAMY THIRUKKOVIL,
SANNADHI STREET,
KANCHIPURAM- 631 501.

5 T.A.RANGANATHAN

[5th RESPONDENT in WA.1381/2022
& APPELLANT in WA.1382/2022]

Appeal under Clause 15 of the letters Patent against the order of THE HON`BLE MR.JUSTICE S.M.SUBRAMANIAM dated 17.05.2022 and made in the exercise of the Special Original Jurisdiction of the High Court in the WMP.No.12434 of 2022 in WP.No.12955/2022 presented under Article 226 of the Constitution of India to issue a writ of mandamus (WA.No.1381/2022)



(2)Appeal under Clause 15 of the letters Patent against the order of THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM dated 17.05.2022 and made in the exercise of the Special Original Jurisdiction of the High Court in the WMP.No.12434 of 2022 in WP.No.12955/2022 presented under Article 226 of the Constitution of India to issue a writ of mandamus (WA.No.1382/2022)

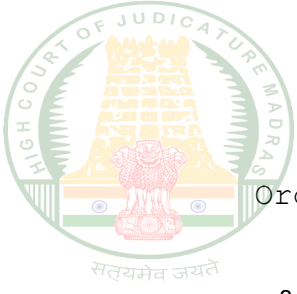
(3)To grant an interim stay on the operation of the Impugned Order of the Learned Judge of this Honourable Court in W.M.P.No. 12434 of 2022 in Writ Petition No.12955 of 2022 dated 17-05-2022 (CMP.No.8851/2022)pending disposal of the WA.1381/2022 and;

(4)To grant an interim stay of the operation of the impugned order dated 17.05.2022 passed by a Learned Judge of this Hon'ble Court in WMP.No.12434 of 2022 in Writ Petition No.12955 of 2022 (CMP.No.8853/2022)pending disposal of the WA.1382/2022

Order: This Appeal coming on for orders on this day upon perusing the Grounds of appeal, the order of the THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM dated 17.05.2022 and made in the exercise of the Special Original Jurisdiction of the High Court in the WMP.No.12434 of 2022 in WP.No.12955/2022 and all other papers material to this case and upon hearing the arguments of M/S.A.R.L.SUNDARESAN, Senior Counsel for M/S.M.V.SWAROOP, Advocate for APPELLANT in WA.1381/2022 & 5th RESPONDENT in WA.1382/2022 and of MR.SATHISH PARASARAN, Senior Counsel for M/S.ABHINAV PARTHASARATHY, Advocate(CAVEATOR) for 1st Respondent/Respondent in both the Appeals/Petitions and of MR.R.SHANMUGASUNDARAM, Advocate General Assisted by MR.ARUN NATARAJAN, Special Government Pleader for 2 & 3 Respondents/Respondents in both the Appeals/Petitions and of MR.R.BHARANIDARAN, Advocate for 4th Respondent in both the Appeals/Petitions and of M/S.P.WILSON, Senior Counsel for MR.R.PALANIANDAVAN, Advocate for 5th RESPONDENT in WA.1381/2022 & APPELLANT in WA.1382/2022, the court made the following order:-

The order of the learned Judge dated 17.05.2022 passed in WMP.No.12434 of 2022 in WP.No.12955 of 2022 is assailed in these two writ appeals, which are filed by Thengalai sect of Vaishnavites of Kanchipuram. In the said writ petition, the first respondent herein has questioned the validity of the notice dated 14.05.2022 issued by the fourth respondent viz., Assistant Commissioner / Executive Trustee, Arulmighu Devarajaswamy Thirukovil, Kanchipuram.

2.For easy understanding, the operative portions of the orders impugned in the aforesaid writ petition and the writ appeals are reproduced below:



Order of the fourth respondent dated 14.05.2022

1) நமது திருக்கோயில் வேதபாராயணம் 30 பேரும் மற்றும் திவ்யப்ரபந்த கோஷ்டிகளில் உரிமை பெற்றவர்கள் (சுபாவ முடினநசன்) 10 பேரும், சாதாரண வழிபாட்டாளர்கள் (சுனையேசல றுசுளானிநச) 10 பேரும் மற்றும் வேதபாராயண கோஷ்டியினர் 30 பேர் கலந்து கொள்ள வேண்டும். கலந்து கொள்ளும் ஒவ்வொருவரும் 23.12.2020 மற்றும் 08.03.2021 அன்று நிர்வாக அறங்காவலர் வெளியிட்டுள்ள அறிக்கைகளைப் பின்பற்றியே செயல்படவேண்டும். கோஷ்டியில் கலந்து கொண்டு எழுத்து மூலம் கொடுத்த உறுதிக்கு மாறாக எவரேனும் செயல்பட்டால் அவர்கள் காவல்துறை உதவியுடன் அப்புறப்படுத்தப்படுவார்கள். அதற்குப் பிறகு அவர்கள் கோஷ்டியில் கலந்து கொள்ள நிரந்தர தடை விதிக்கப்படும்.

2) உயர்நீதிமன்றத் தீர்ப்பு ஏ.எஸ்.175/1910-ல் திவ்ய பிரபந்த கோஷ்டிகளில் ஸ்ரீசைலேச தயாபாத்ரம் தனியன் மட்டுமே ஸேவிக்கப்பட வேண்டும் என்றும், உயர்நீதிமன்றத் தீர்ப்பு ஏ.எஸ்.515/1939-ல் வடகலைப் பிரிவினர் திவ்யப்ரபந்த கோஷ்டிகளில் முதல் இரண்டு வரிசைகளில் வரக்கூடாது என்றும், மணவாள மாமுனிகள் வாழி திருநாமம் மட்டுமே சேவிக்கப்படவேண்டும் என்றும், உயர்நீதிமன்றத் தீர்ப்புகள் ஏ.எஸ்.283/1963 மற்றும் டபிள்யூ.எம்.ப்பி.32323/2018 ஆகியவற்றில் தேசிக பிரபந்தம் பாடக்கூடாது என்றும் தீர்ப்பளிக்கப்பட்டுள்ளது. இவற்றை அனைவரும் கண்டிப்பாக பின்பற்ற வேண்டும் என்றும் கேட்டுக்கொள்ளப்படுகிறது.

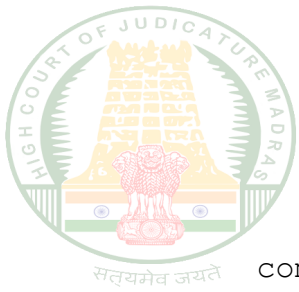
3) திருக்கோயிலில் நடைபெறும் உற்சவங்களின்போது சாதாரண வழிபாட்டாளர்கள் மற்றும் சர்வீஸ்தாரர்கள் தங்களுக்குள் எவ்விதமான வாக்குவாதம், சச்சரவுகளிலும் ஈடுபடக்கூடாது. தங்களுக்கு உள்ள குறைகளைப் பற்றி எழுத்து மூலம் திருக்கோவிலுக்கு எழுதி சமர்ப்பிக்கலாம் அல்லது உரிய நீதிமன்றங்களில் தங்கள் கோரிக்கைகளைத் தெரிவிக்க மாண்புமிகு நீதிமன்ற உத்தரவு பெற்று வரலாம். கோஷ்டியின் உரிமை பெற்றவர்களும் எவ்வித ஆர்ப்பாட்டமும் இன்றி நிர்வாக அலுவலர்/மணியத்திடம் தெரிவிக்கலாமே தவிர கூச்சலிடக்கூடாது. குறிப்பாக வாக்குவாதம் செய்து ஸ்ரீபெருமாள் முன்பு தனிமனித தாக்குதலோ, தகாத வார்த்தைகள் பேசுதலிலோ கண்டிப்பாக யாரும் ஈடுபடக்கூடாது.

4) திருக்கோயில் மணியக்காரர்கள் கோயிலில் நடக்கும் அனைத்து பூஜைகளிலும் தவறாமல் உடனிருந்து இந்த உத்தரவினை செயல்படுத்துமாறு உத்தரவிடப்படுகிறது. இந்த உத்தரவினை செயல்படுத்தாமல் எவரேனும் பிரச்சினை செய்தால் உடனடியாக நிர்வாகத்திடம் அவர்களைப் பற்றிய தகவல்களை எழுத்து மூலமாக தெரிவிக்குமாறு மணியத்திற்கு அறிவுறுத்தப்படுகிறது."

Order of the learned Judge dated 17.05.2022

"22. In view of the facts and circumstances, this Court is inclined to pass following interim orders:

(1) The Thengalai sect shall be permitted to sit in first two or three rows inside the Temple and behind them, the Vadagalai sect and ordinary devotees shall be permitted to sit in the remaining available space inside the Temple. The seating arrangements shall be regulated by the 3rd respondent/ Assistant Commissioner / Executive Trustee in such a manner without affecting discipline and decorum of the rituals and pooja activities.



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(2) The Thengalai sect shall be permitted to commence their initial recital namely Srisaila Dayapathram and thereafter, Vadagalai sect shall be permitted to chant initial recital namely Sri Ramanuja Dayapathram within 10 to 12 seconds each and thereafter, both the Thengalai sect, Vadagalai sect and ordinary devotees shall be permitted to jointly chant Naalayira Divya Prabandham in an uniformed manner without disrupting the rituals and poojas and without causing any inconvenience or nuisance to the other devotees and worshippers, who all are present in the Temple.

(3) On completion of chanting of Naalayira Divya Prabandham by Vadagalai sect, Thengalai sect and ordinary devotees, jointly the final ritual namely Vazhithirunamam may be firstly chanted by Thengalai sect i.e., "Manavalamamunigal Vaazhithirunamam" and thereafter, the Vadagalai sect shall be allowed to recite their concluding Mantra i.e., "Desikan Vazhi Thirunamam" and accordingly, the entire process of rituals shall be concluded.

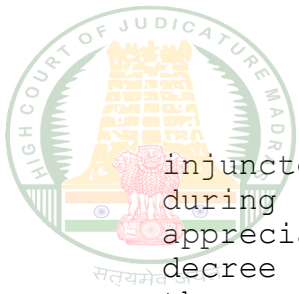
(4) The third respondent / the Assistant Commissioner / Executive Trustee is directed to Monitor the observance of rituals both by the Thengalai sect and Vadagalai sect and in the event of any violations of discipline and decorum, initiate all appropriate action in the manner known to law including penal actions.

(5) The third respondent / the Assistant Commissioner/ Executive Trustee is directed to make the above arrangements with immediate effect and videograph the events and produce the same before this Court during the next hearing, on 25.05.2022.

(6) The third respondent / the Assistant Commissioner/ Executive Trustee is directed to file a Compliance Report on 25.05.2022."

3.The sum and substance of the submissions made by the learned senior counsels appearing for the appellants are as follows:

Mr.P.Wilson: Thengalai sect of Vaishnavites have an exclusive adhyapaka mirasi right of ceremonial worship in respect of the Prabandham service in the Sri Devarajaswamy Temple, Kanchipuram and the said right extends from the commencement of the pooja and continues till the closure by distribution of theertham and prasadam. Further, the said exclusive rights of the Thengalai sect have been unequivocally recognized and confirmed by this Court in the judgments dated 15.01.1915 in A.S.No.175 of 1910 and dated 24.03.1969 in A.S.No.283 of 1963; and the Vadagalai sect has been



injuncted from reciting any of their own Prabandhams or mantrams during the poojas or processions in the temple. Without properly appreciating the established customary practice and the earlier decree and orders of this court, the learned Judge travelled beyond the scope of the matter and issued directions, permitting the Vadagalais to recite their own mantram in the subject temple, etc., which are improper, contrary to the decisions and established principles of law. It is also submitted that what was challenged in the writ petition was only a notice dated 17.05.2022 issued by the fourth respondent, against which, an alternative remedy of appeal under section 63(e) of the HR&CE Act, before the Joint Commissioner of HR&CE Department, is available to the first respondent / writ petitioner, but without resorting to the same, he straight away approached this court under Article 226 of the Constitution of India, which is not maintainable in law.

Mr.AR.L Sundaresan: It is an established customs prevalent from times immemorial in Sri Devarajaswamy Temple, that the Thengalai mantram 'Srisailesa Dayapathram', Always' Tamil Prabandhams and Prabandhams of Swamy Manavala Mahamuni and Thengalai Vaazhi Thirunamams alone are to be sung as a part of worship and also to be recited when the deity is taken in procession outside the temple; the recital of the Tamil prabandham is a right of office vested solely with Thengalais; and the miras rights give the control over the entire service along with all rituals to be performed at the service to the rights holders and hence, the Thengalais are having those exclusive rights to perform the services in the subject temple as per their customs and practices and the same cannot be stayed or modified. Whereas, the learned Judge has passed orders directing performance of ceremonies, poojas and manner of service in the temple, which completely overturn the customs practised over centuries and introduce an entirely new innovation, customs and practices and manner of rendering services, which are nothing but tinkering the earlier decree and orders of this court and beyond the jurisdiction. It is further submitted that there was no prima facie case to stay the notice dated 14.05.2022, which was impugned in the writ petition, however, the learned judge has altered the customs and has gone beyond the prayer sought by the petitioner and the issue involved is barred by res judicata.

Ms. Hema Sampath: Only the Thengalais of vaishnavites of Kanchipuram have the rights of reciting the Prabhandham in the temple and no other goshti, including Vadakalais have their exclusive administrative mirasi rights of reciting their prabandham at the time of processions in the temple. It is further submitted that the notice issued by the fourth respondent did not favour anyone and it merely states that the decree must be followed by all the parties and the persons causing disturbances will be thrown out. Therefore, the Thengalais may be permitted to do the rituals peacefully.



Mr.Srinivasa Ragavan: There are temples, where Vadagalais do the rituals exclusively and there are temples, where Thengalai do the rituals. However, as far as the subject temple is concerned, Thengalais have exclusive rights of reciting Prabhandham at the time of performing poojas and there are philosophical reasons behind the same, which cannot be interfered by the learned Judge, by way of an interim order, which is beyond the jurisdiction.

4.The pith and substance of the arguments advanced on the side of the first respondent / writ petitioner, who are belonging to Vadagalai community and the respondent authorities, are as follows:

Mr. G. Rajagopalan: The writ petition was filed challenging the notice issued by the fourth respondent, wherein, the Executive Trustee of the temple has misinterpreted the earlier judgments of this court, as if the Thengalais have exclusive rights of reciting their prabandhams etc., in the temple at the time of rituals; taking note of the same, the learned Judge has passed an order, issuing directions permitting the vadagalais to take part in the rituals of the temple to certain extent, which is nothing but an interim order and hence, the same does not call for any interference by this court, at the present.

Mr.Satish Parasaran: Before reciting the Prabandhams, both the sects people would salute to their Gurus and the said salutations are not a part of Nalayira Divyaprabanthams, but are carried out as per the customary practice. The Thengalais demand that they alone should be permitted to salute the Guru while excluding the Vadagalais, which cannot be legally correct and the same is offending Articles 14 and 25 of the Constitution of India. In fact, each Dayapathram and Vaazhithirunamam does not exceed a few seconds and hence, Vadagalai sect are also entitled to do the said rituals as like that of Thengalais in the subject temple. Considering the same in a proper perspective, the learned Judge has issued certain directions by way of interim order, which cannot be found fault with.

Mr.V. Raghavachari: The Thathacharyas are the custodians of the temple and during the Thirumanjanam and Thiruvaaraadhanam, they recite Veda Paraayanam (Upanishads, Pancha Suktham); no other person is permitted to recite veda Paraayanam without their permission; they start reciting Veda Paraayanam, after ringing of the temple bell inside Dwarabalaka and at the same time, both Thengalai and Vadagalai sect people start reciting Divya Prabandhams outside the Dwarabalaka, as per the customary practice. Thus, the right of both the sects except for the mirasdars, would be at equal footing; and if the earlier position i.e., before the issuance of the notice impugned in the writ petition, continues, Vadagalai sect will be prejudiced.

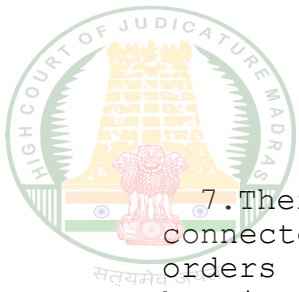


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Advocate General Mr. Shanmugasundaram: There are disputes among the two sects of people, which would lead untowards incident within the temple premises and in order to avoid the same, the fourth respondent issued the notice dated 14.05.2022 impugned in the writ petition, as a regularatory measure; and the respondent authorities have no intention to interfere with the religious rites and rituals of the parties.

5. Heard the rival submissions made by all the parties and perused the materials placed before this court.

6. There are two sects in Vaishnavites viz., Thengalai and Vadagalai and they used to recite Nalayira Divya Prabhandham and Veda mantrams in the Vaishnavite temples. According to the Thengalais, the opening rhyme of the manthram is an invocation of Sri Manavala Maamunikal and the first stanza begins with the words Sreesailesa Dayapathram, whereas, according to the Vadagalais, the first stanza begins with the words Ramanuja Dayapathram and it is an invocation of the vadagalai Guru Sri Vedantha Desikar. While doing such service in the subject temple, there were various disputes arose between the sects, claiming exclusive rights over the same and several cases were filed in this regard. Admittedly, there were judgments dated 15.01.1915 in AS.No.175 of 1910 and 24.03.1969 in AS.No.283 of 1963 recognising the rights of both the sects of Thengalais and Vadagalais of Kanchipuram, to certain extent. Contempt Petition No.367 of 2020 was also filed for the alleged violation of the judgment dated 15.01.1915 passed in AS.No.175 of 1910 and the same was disposed of, with certain directions, on 24.02.2020, which was subsequently, set aside by judgment dated 14.12.2020 in Contempt Appeal Nos.6 and 8 of 2020 and the matter was remanded back for fresh consideration and the same is pending. In the said circumstances, the fourth respondent issued the notice impugned in the writ petition and the learned Judge passed the interim order impugned in the present writ appeals. Thus, out of the cases filed by the parties claiming exclusive rights over the religious ceremonies, rituals, etc, in the subject temple, a few alone attained finality and the rest of the cases are still pending before this court. Such being the actual scenario, this court is of the view that a common adjudication is required, to settle the long lasting and chequered controversy involved herein, once for all, which have been agreed upon by all the counsels appearing for the respective parties.



7. Therefore, this court directs the Registry to tag all the connected matters to these writ appeals, after obtaining necessary orders from the Hon'ble Chief Justice and list the same for common hearing, after summer vacation. Till such time, the notice dated 14.05.2022 issued by the Assistant Commissioner / Executive Trustee, Arulmigu Devarajaswamy Thirukoil, Kanchipuram, the fourth respondent, which was impugned in the writ petition and the order of the learned Judge, dated 17.05.2022, which is impugned in these two appeals, shall be kept in abeyance.

-sd/-

20/05/2022

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Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE SECRETARY,
THE STATE OF TAMIL NADU ,
TOURISM, RELIGIOUS AND CHARITABLE ENDOWMENTS DEPARTMENT,
CHENNAI.

2 THE COMMISSIONER,
HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS
DEPARTMENT, NUNGAMBAKKAM, CHENNAI-600 034.

3 THE ASSISTANT COMMISSIONER/
EXECUTIVE TRUSTEE, ARULMIGU DEVARAJASWAMY
THIRUKKOVIL, SANNADHI STREET,
KANCHIPURAM- 631 501.

C.C. to M/S.R.PALANIANDAVAN Advocate SR.NO.4056/2022

Order
in
WA.Nos.1381 and 1382 of 2022
and CMP.Nos.8851 and 8853 of 2022

Date :20/05/2022

From 26.2.2001 the Registry is issuing certified
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GS(25/05/2022)