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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2014

CORAM:

THE HONOURABLE MR. JUSTICE M. VENUGOPAL

W.P(MD)No.19422 of 2014

V.Subramanian

.. Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
119, Uthamar Gandhi Salai,
Nungambakkam, Chennai-34.

2.The District Collector,
Madurai District,
Madurai.

3.The Deputy Commissioner/Executive Officer,
HR & CE,
Arulmigu Subramaniasamy Temple,
Thirupparankundram,
Madurai.

4.The Revenue Divisional Officer,
Collectorate Campus,
Madurai.

5.Arulmigu Subramaniaswamy Temple,
Thirupparankundram,
Rep. by its Devasthanam Board,
Thirupparankundram,
Madurai.

.. Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents 1 to 3 to light up the Karthigai Deepam which falls on 05.12.2014 on the top of the Thirupparankundram Hill instead of lighting it in the present place nearby Motcah Deepam by considering the petitioner's representation dated 20.11.2014.

For Petitioner : Mr.P.T.Ramesh Raja

For R1 : Mr.V.R.Shanmuganathan
Special Government Pleader

For R2 and R4 : Mr.B.Pugalendhi
Special Government Pleader

For R3 and R5 : Mr.S.Manohar

ORDER

Heard the learned counsel appearing for the petitioner; the learned Special Government Pleaders appearing for the respondents 2 to 3 and the learned counsel appearing for the respondents 3 and 5.

2. The petitioner has focussed the instant writ of Mandamus praying for passing of an order by this Court in directing the respondents 1 to 3 to light up the Karthigai Deepam which falls on 05.12.2014 on the tope of the Thirupparankundram Hill instead of lighting it in the present place nearby Motcah Deepam by considering the petitioner's representation dated 20.11.2014.

3. According to the petitioner, he is a practicing advocate in and around the Courts at Madurai District. He is a 'Devotee of Tamil Lord Subramaniaswamy'. He is a frequent visitor to Lord Muruga's Temple at Thirupparankundram, which is one of the Arupadaiveedu, the six main abodes of Lord Muruga. The Temple is a cave temple which is one of its unique features. Thirupparankundram Temple is one of the famous rock temples of South India and it attracts lakhs and lakhs of devotees every year. Pilgrims around the world used to visit the Temple during its auspicious festivals such as Skandasashti, Thai Poosam, Karthigai Festival, Vaikasi Visagam, Vaigunda Ekadasi etc.

4. The learned counsel for the petitioner submits that the Temple Devasthanam used to light 'Karthigai Deepam' during the eve of 'Karthigai Deepa Thirnaal' on the top of the hill, which was the practice for more than several decades. Later, a dispute arose between a group of Muslims and Hindus with regard to the place of the lighting of Deepam, since a Muslim Dargha was nearby the place of 'Karthigai Deepam'. The dispute arose during the British Rule and a suit was filed in respect of the title by the Devasthanam and the suit ended in favour of the Devasthanam holding that the Devasthanam is the owner of the entire hill with some few exceptions. The matter went upto the Privy Council and the Privy Council upheld the Judgment and decree of the trial Court.

5. The learned counsel for the petitioner proceeds to state that because of the dispute a different place was earmarked to light up the 'Karthigai Deepam' and accordingly, the Temple Devasthanam started lighting the 'Karthigai Deepam' in the place where 'Motcha Deepam' was lighted. 'Motcha Deepam' is the Deepam, which will be placed by the devotees in fond remembrance of their ancestors. The present place where the 'Karthigai Deepam' lighted by the Devasthanam is absolutely against the 'Agama sastra' and lakhs of devotees are wounded by the deliberate violation of 'Agama Sastra'. Earlier, in an issue in regard to the place of lighting of 'Karthigai Deepam', this Court has allowed the Devasthanam to light the 'Karthigai Deepam' at the top of the hill some meters away from the Muslim Dargha. Subsequent to the said order also the Devasthanam failed to shift the place and continued lighting of 'Karthigai Deepam' at the place, where 'Motcha Deepam' is lit up and this hurts the sentiments of Hindus. In regard to the Hindu-Muslim dispute over the said dargah is concerned, the said issue was settled. In fact, there is no dispute at all.

6. The learned counsel for the petitioner brings it to the notice of this Court that earlier a Peace Committee Meeting was held in the year 2005 in the presence of fourth respondent and the Muslim representatives had agreed that they had no objections in lighting up 'Karthigai Deepam' at the top of the hill. Despite the stand, the Temple authority continued lighting up of 'Karthigai Deepam' in the place 'Motcha Deepam' and violated the 'Agama Sastra'. During the year 2013, the third respondent had communicated the first respondent about the prevailing problem faced by the devotees every year during the month of Karthigai and suggested the first respondent to form a special committee to resolve the dispute. Based on the communication, the first respondent has also recommended the fourth respondent to form a special committee to decide the place of lighting of 'Karthigai Deepam'.

7. It appears that the fourth respondent had not acted upon the recommendations of the first respondent and because of the lethargic approach shown by the concerned authorities, the plight of the sentiments of the Hindu went unanswered. Several Hindu organizations have been continuously agitating the place of lighting up of 'Karthigai Deepam' to the Government, but the Government has been showing lukewarm response to the sentiments of the Hindus. The present act of the Devasthanam in lighting up 'Karthigai Deepam' at the place of 'Motcha Deepam' is against the 'Agama Sastra' and also against the Constitution of India. Further, the petitioner had sent a representation on 20.11.2014 to the respondents requesting them not to light up 'Karthigai Deepam' on the place of 'Motcha Deepam' which is against the 'Agama Sastra' and requested them to light the 'Karthigai Deepam' for this year on the top of the hill. Inasmuch as the respondents have not acted upon the petitioner's representation dated 20.11.2014, he has preferred the present writ petition before this Court.

8. Per contra, the learned Special Government Pleader appearing for the respondents 2 and 4 submits that during the 'Karthigai Deepam Festival', much number of devotees will gather from across the State and as requested by the Temple authorities, adequate police protection would be provided for the devotees to worship the Lord and the Temple administration alone will light the 'Deepam' on the top of the Mandapam of 'Uchipillaiyar Temple' on the eve of 'Mahadeepam Festival' in A/m. Thirupparankundram Temple, Madurai to be held on 05.12.2014 as per the usual practice. Further, since the Temple administration has never decided to light the 'Deepam' in a place except the place where it is lighted every year and people from other religious have expressed their aversion with regard to lighting of 'Deepam' in other places except the place, wherein it is lighted every year.

9. Added further, the learned Special Government Pleader appearing for the respondents 2 and 4 brings it to the notice of this Court previously, ten criminal cases were registered under Section 151 of Cr.P.C. in various crime numbers by the concerned Police against the Hindu Munnani, who attempted to claim over the hill with an intention to light 'Deepam' on top of the hill and their attempts were prevented.

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10. Per contra, it is the submission of the learned counsel appearing for the respondents 3 and 5 that the petitioner has no *locus standi* to maintain the present writ petition and he has to establish

that he has a legal right in himself and that the Temple has neglected to perform its duty.

11. The learned counsel appearing for the respondents 3 and 5 contents that the entire hill belongs to the Temple and except the place specified in the decree the Temple is performing the 'Karthigai Deepam' in its property as performed during previous years. Further, it is not correct to state on the part of the petitioner that the lighting of 'Deepam' is against 'Agama Sastras'. In fact, the petitioner in his representation dated 20.11.2014 has not stated how the lighting of 'Deepam' is against the 'Agama Sastras' and in fact, the Temple has made arrangements to light the 'Deepam' as per procedures prevailing in previous years. Since the Temple has not failed to perform their legal duty, the present writ petition is not maintainable.

12. The learned counsel appearing for the respondents 3 and 5 contents that the petitioner had not given any representation to the Temple prior to the filing of the present writ petition and that apart, the petitioner cannot seek a relief of Mandamus in the present writ petition and in fact, the writ affidavit is silent on the aspect of representation. The learned counsel appearing for the respondents 3 and 5 relies on the decision of the Hon'ble Supreme Court in *STATE OF KERALA v. KANDATH DISTILLERIES* reported in (2013) 6 SCC 573 wherein it is held that a Writ of Mandamus can only be issued in favour of applicant, who establishes a legal right in himself and is issued against an authority which has a legal duty to perform, but has failed and/or neglected to do so. He also invites the attention of this Court to the Division Bench Judgment of this Court in *SONA KRISHNAMOORTHY v. THE COMMISSIONER, HR&CE DEPARTMENT*, reported in 2009 (4) CTC 20 at special page 40, wherein in paragraph No.27, it is observed as follows:-

"It is well settled that while an essential religious practice is protected by Article 25(1), an optional religious practice is not. (State of W.B. -vs- Ashutosh Lahiri (1995) 1 SCC 189 quoted with approval by a 7 member Constitution Bench in State of Gujarat -vs- Mirzapur Moti Kureshi Kassab Jamat (2005) 8 SCC 534). Therefore, it is clear that while the very construction of the yagasala is undoubtedly an essential religious practice, the practice of locating the same inside the temple, though followed for centuries in the temple, cannot be taken to be an essential religious practice, which is inviolable, especially in the light of the license expressly granted by Vamadeva Paddhati, to the location of the yagasala outside. If a custom or practice followed for several years, is altered or deviated from, and such deviation has the sanction of some ancient religious texts, it cannot be said to be an infringement of Articles 25 and 26 of the Constitution. Therefore the contention of the learned counsel for the appellant that the change of location of the yagasala amounted to an infringement of Articles 25 and 26, cannot be accepted in view of (i) the non availability in our hands of any prohibition for the same in the Agamas or Paddhatis and (ii) the express stipulation contained in Vamadeva Paddhati permitting the location of the yagasala outside."

13. At this stage, this Court pertinently points out that 'Mandamus' is a command issued to a public authority to perform a duty imposed by Statute or by the common law. It cannot be gainsaid. For the issue of writ of Mandamus, a Court of law has to first come to a conclusion that the aggrieved person has a legal right which entitles him to seek its enforcement. As a matter of fact, the existence of a legal right and infringement of the same by a public authority is a *Sine quo non* for exercise of jurisdiction to issue a writ of Mandamus.

14. At this juncture, this Court cites the decision of the Hon'ble Supreme Court in **DIRECTOR OF SETTLEMENTS v. M.R. APPARAO** reported in **2002 (4) SCC 638**, wherein it is held that the powers of High Court under Article 226 of the Constitution of India though discretionary and though without serious limitations, must be exercised along the recognized lines and subject to self imposed limitations.

15. On a careful consideration of respect contentions and this Court taking note of the entire gamut of the attendant facts and circumstances of the present case, in a proper and real perspective comes to an inevitable conclusion that the petitioner has not established that he has a legal right, which entitles him to seek its enforcement and further the temple has made arrangements as per the procedure prevailing in previous years in regard to the lighting of 'Deepam', on 05.12.2014. Therefore, it cannot be said by any stretch of imagination that the temple has failed to perform its duty much less a legal duty. Moreover he has not expatiated as to how the lighting of 'Deepam' is against 'Agama Sastras'. As such the writ petition filed by the petitioner is devoid of merits and the same fails.

16. In the result, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar(T&P)

/TRUE COPY/

Sub Assistant Registrar

To

1. The Commissioner,
Hindu Religious and Charitable Endowments Department,
119, Uthamar Gandhi Salai, Nungambakkam, Chennai-34.
2. The District Collector, Madurai District, Madurai.
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Thirupparankundram, Rep. by its Devasthanam Board,
Thirupparankundram, Madurai.

+1cc to Mr. P.T. Ramesh Raja, Advocate, SR.No.65192

+1cc to Mr. S. Manohar, Advocate Sr.No.65438

Order made in

W.P. (MD) No.19422 of 2014

04.12.2014