



W.P.(MD).No.18485 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.12.2023

PRONOUNCED ON : 30.01.2024

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.18485 of 2023

and

W.M.P.(MD)Nos.15322, 17344 and 18152 of 2023

D.Senthilkumar

... Petitioner

Vs.

1. Government of Tamilnadu,
represented by its Principal Secretary,
Department of Tourism, Culture and
Religious Endowments,
Fort St.George, Chennai-9.

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



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3.The Executive Officer,
Arulmigu Palani Dhandayuthapani Swamy
Devasthanam,
Palani, Dindigul District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a ***Writ of Mandamus***, to direct the respondents to permit the Hindus alone to the Hill Temple Premises and its sub temples and consequently directing the 3rd respondent to display boards to that effect in all entrances based on the representation of the petitioner, dated 26.06.2023.

For Petitioner : Mr.N.Anantha Padmanabhan
Senior Counsel
for Mr.R.M.Arun Swaminathan
For R1 and 2 : Mr.Veera Kathiravan
Additional Advocate General
assisted by Mr.R.Ragavendran
Government Advocate
For R3 : Mr.R.Baranidharan
For intervenor : Mr.Abinav Parthasarathy

ORDER

The writ petition is filed for writ of mandamus directing the respondents to permit the Hindus alone to the Hilltop Temple premises and its



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sub-temple and consequently direct the third respondent to display Boards to that effect in all entrances based on the petitioner representation dated 26.06.2023.

2. The facts as stated by the petitioner is that the petitioner is running “Shashti Toy Shop” at Adivaram Pazhani and he is also an organiser of Pazhani Hill Temple Devotee Organisation. Every day he would visit the temple to worship Lord Dhandapani. A few days ago some non-Hindus purchased tickets at the Winch Station in Pazhani to reach the temple hilltop. One Sahul who runs a fruit shop near Pazhani Bus Stand brought his relatives who were wearing burqas and had bought tickets. When the ticket issuing authority had noticed burqas, the authority had retrieved the tickets since they are non-Hindus. But the said Shahul reportedly argued with the employees present in the Winch Station saying that “this is a tourist place. If non-Hindus are not allowed, then you should put up banner, should I get some banners for you from my money”.



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When the news of the said incident spread, the devotees gathered in the Winch Station and argued in support of the temple employees. Further the devotees condemned the third respondent for failing to put a banner mentioning that non-Hindus were not allowed, which were removed during renovation work for Kumbabishekam of the temple. Following this the third respondent placed the banners at the entrance but removed them again within few hours. It was speculated that the temple authorities were under pressure from some higher authorities to do so. Social media posts from the usual suspects like Atheists and Islamists gave credence to the speculation. Recently, a group of Muslims were found consuming non-vegetarian food inside the Brihadeeswara Temple premises in Thanjavur. Another group was caught eating meet in Hampi Temple complex. A Muslim youngster was arrested after he offered namaz in a Hindu Temple, Uttar Pradesh. The Hindu temples are always treated as places of worship and such reverence to the temples, its place, rituals and practices connected thereto have become part of the Karma Kanda of Hindu theology. By



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way of analogy, it is well known that near a Muslim Mosque no band or music or amusement could pass, by so as to disturb the peace of the presence of the mosque, no matter whether it is namaz time or not. It is also the practice in mosques not to allow non-Muslims at a particular place of worship inside the mosque. These rules of propriety, being a matter of Islamic religion are promptly respected by all citizens of India embracing other religions. There are positive indications to hold that if a Hindu Temple is intended for a spiritual benefit of all classes of Hindus and the temple as a whole starting from the Gopuram and leading to Kodimaram, Artha-Mandapam, Maha-Mandapam and Garba-Graham is to be kept undefiled and unpolluted, no non-Hindu can for pleasure and social evaluation seek entry into such places. The purpose of such entry is totally unconnected with any matter of religion known to Hinduism and to Hindus. Such entry would negate the very object and avowed of the temple entry itself, which says that entry into temples is available to all classes of Hindus. The Hindu religion and a Hindu temple has its ceremonial prospects.



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Any religion lies on the foundation of its ancient beliefs, rituals and practises. Religion is ordinarily referable to the expression of all men's believe in and reference for a super human power recognised as creator and governor of the universe. But Hindu religion, whose origin is so ancient has maintain throughout its ethics, practices and mandates, that they have lived through every changing time, but maintaining at all times its pristine usefulness and its inhered capacity to demand respect and reference to such tenets. One such accredited practice in Hindu religion is worship in temples and that too in a prescribed manner. If there are certain well laid practices regarding the mode of worship in a Hindu temple and if such practices are backed by Agama, then those are matters connected with the religion. Further the religious practices are reflective of matters concerning religion and if religion is to be revered, then the practices annexed thereto are equally respectable. Further in Tamil Nadu the Temple Administration Laws has evolved as follows:



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“i. The British introduced the Madras Religious Regulation VII of 1817, which brought temples under the control of government as an agenda for colonisation and conversions. Temples in the south possessed massive land and wealth and with this regulation the British through East India Company could monitor the grants and endowments to them

ii. In 1840, there was a directive to return temples to their trustees and this had something to do with Christian missionaries not liking the idea of managing in the Hindu temples.

iii. In 1922, The Hindu Paripalanam Act was proposed by Ramraya Naicker, the King of Panagal, when he took charge as the Chief Minister of the Madras presidency.

iv. He attempted to bring temples under the control of government. In 1927, the HR&CE Board was constituted and vested with the power to control and supervise administration of temples.

v. Following the success of the temple entry movement by A Vathiyar headed the Maduari Temple Entry Movement in 1939 to facilitate the entry of the oppressed classes in Madurai Meenakshi Temple.



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vi. *This was the time when the Temple Entry Authorisation and Indemnity Act, 1939 enacted by the then Hon'ble Chief Minister of Madras Presidency, C, Rajagopalachari.*

vii. *Temple Entry Authorization Act 1947, by Omandur P. Ramasamy Reddy, (first Chief Minister of Tamil Nadu) were passed with 11 provisions. The legislation reflected the intent of the government to democratise temple worship and give all Hindu sector people access.*

viii. *State Government headed by former Chief Minister Karunanidhi repealed 3(a) of the Act and introduced Rule 4-A published in Fort St. George Gazette dated 28.01.1970."*

3. One Kalyan Dass of Ramanathapuram has filed a petition in W.P.No. 3066/1970 and the same was allowed on 05.07.1972. The Hon'ble Court quashed the insertion of Section 4(A) and held the amendment as ultra vires and also held that the State Government acted beyond the scope of delegated power conferred by the Constitution. The maximum temples are governed by the second respondent has affixed the above caution Board in the front of the



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temples. But in order to get fame and media attention, some problem makers trying to enter the temple premises. The maximum devotees are observing fasting and coming to Pazhani for Darshan. Further Pazhani Hill Temple is not a picnic spot and the land is having rich culture and epic. Hence the petitioner submitted representation to the respondent on 27.06.2023 and there is no response from the respondent. The petitioner is having interest over the religious institution and as per section 6(15) of HR&CE Act the petitioner has right to file this petition and hence the petitioner pray to allow the petition.

4. At the time of admission, this court had granted an interim order of status quo ante with a direction to restore the Board. The respondents had filed counter along with vacate interim direction petition. In the counter the respondents had stated that the prayer in the main writ petition and the miscellaneous petition are one on the same and hence writ petition is not maintainable. Further the petitioner's representation was received on



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28.06.2023, even before a decision could be taken in respect of the display of Board, the present writ petition has been filed, in which an interim direction in W.M.P.(MD) No.15322 of 2023, seeking to direct the third respondent to affix the display board as non-Hindus are not allowed in the temple premises in all languages in the temple at all entrance, pending disposal of the writ petition. The interim direction exceeded the relief sought for in the main writ petition. Whatever the allegations could be the respondents ought to have been allowed to express their stand on the said issue by way of filing counter affidavit. However, this court by an order dated 31.07.2023 has passed the interim order.

5. The respondents further submitted that the Hill Temple of Arulmighu Dhandapani Swamy, Pazhani is considered to be the abode of Lord Murugan and said to be mentioned in Thirumurugatruppadaai (Sangam Literature) as the third abode of Lord Muruga of the six “Arupadai Veedu”. The Moolavar is said to have been made of Navapashanam (9 poisonous materials) by a Siddhar



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Bohar who lived around 3000 BC. The respondent submitted that not only devotees are coming from Tamil Nadu but also coming from all over country as well as foreign countries to worship, Lord Murugan. Devotees are allowed to reach the hill temple from the Giri Veethi path by Winch Service, Rope Car Service and footsteps as well as elephant path for their convenience. Only in Tamil Nadu this temple is having Winch Service to the devotees to reach the hill temple from the Giri Veethi path and most of the devotee as well as general public prefer to go by Winch Service. Lord Murugan is not only worshipped by the people of Hindu religion but also worshipped by non-Hindus who are having faith in the deity by accepting the customs and practises followed in the Hindu Religion as well as temple customs. Being the secular form of the government, it is duty of the State Government as well as the Temple Administration to ensure the rights of the citizens of India enumerated in the Constitution of India under Article 25 to 28. The Temple Entry Authorisation Act, 1947, clearly states the definition of the temple and from the said



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definition it is clearly understood the temple premises is only the place of religious worship that is sanctum and sanctorum of the temple in which the people of other than Hindu religion are restricted. The Winch Service Station and Rope Car Station is outside the temple premises which does not amount to entry inside the temple premises and placing the boards in these stations are unnecessary and does not have any effect at all. The people other than Hindus who are having faith in the Hindu religion can enter any of the temples in Tamil Nadu and may worship as per customs and practices followed in the temple. Even the Non-Hindus by accepting the customs and practice of the Hindu religion can enter the temple and worship the deity. This respondent does not prohibit anybody from entering the temple premises except beyond the Kodimaram. Many temples in Tamil Nadu are allowing the non-Hindu religion people to enter the temple by following the customs and practice. For instance, Arulmighu Meenakshi Sundareswarar Temple Madurai is providing entry to people from foreigners inside the temple by Foreigners Entry Fee of Rs.50/-



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and the people from foreign countries are restricted to Kodimaram of the temple. The same is followed in many temples where the importance of the temple is found to be significant for the tourist to visit, all persons other than Hindus are allowed in the temple precincts except the sanctum sanctorum. In a similar instance, when a writ petition was filed in W.P.(MD)No.14081 of 2022, seeking for a direction not to permit non-Hindu to enter the temple premises during Kumbabishekam festival of Arulmighu Adikesavaperumal Thirukovil Thiruvattar Kanyakumari District, the Hon'ble Court vide order dated 04.07.2022, had dismissed the petition with the following observation:

“In our considered opinion, when a public festival like the Kumbabishekam of a temple is performed, it will be impossible for the authorities to check the religious identity of every devotee for the purpose of permitting his entry into the temple. That apart, if a person belonging to another religion has faith in a particular Hindu deity that cannot be prevented nor can his entry into the temple be prohibited. Therefore even if the board as prayed for by the petitioner is installed a person belonging to another religion cannot be stopped if he reposes



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faith in the deity of a particular temple. The temple authorities are preventing the person from other faith if they are identified and allowed only if they admit that they profess faith in the Hindu religion.”

Further all foreigners and persons belonging to other faith are allowed inside Arulmighu Brahadeeswarar Thirukovil Thanjavur who want to admire the temple precincts. Further it could be seen at Arulmighu Ranganathaswamy Thirukovil Srirangam, there is a particular shrine for “Bibi Nachiyar” also called as “Thuluka Nachiyar” who was said to be the daughter of Mogul Emperor and even today the presiding deity is offered “Roti with butter” everyday morning. There are other instances in Arulmighu Sowriraja Perumal Tirukkannapuram, Nagapattinam District and Bhuvarahaswamy Temple Srimushnam, Cuddalore District, where both the deities are taken in procession during certain festival they are halted before a mosque and offered prayers and respects.



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6. The respondents further submitted that the petitioner had stated an incident wherein a non-Hindu family attempted to purchase tickets in Winch Station which was not allowed by the Temple staff, but without mentioning the date of the incident. Further the petitioner had not stated regarding the incident in the representation and the representation is unconnected with the writ petition. Hence, there was no immediate requirement to put up the Board, more so near the rope car entrance as well as the winch and pathway entrances, as the averments in the affidavit is nothing but bald and vague allegations. As per the averments in the affidavit the alleged incident, the non-Hindu family was not allowed by the Temple staff and therefore there was no cause of action to file the present petition and in such circumstances, the immediate installation of display boards, prohibiting entry of non-Hindus who have faith and belief in the deity would not only hurt the religious sentiments and also run contrary to the rights enshrined under the Constitution of India. In the said circumstances, the implementation of the interim direction granted on 31.07.2023 to install the



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board immediately would not only hurt the religious sentiments and also would run contrary to the rights under the Constitution of India, hence the implementation of the interim direction to display the board immediately, might cause unrest, and therefore it is just a necessary that the interim direction be vacated in the interest of justice and to prevent the disharmony. No prejudice would be caused to the first respondent if the direction is vacated and the case is heard fully after counter being filed in the main writ petition and to take into consideration as to what are the steps taken by the temple administration to adhere to the rules under the Tamil Nadu Temple Entry Authorisation Act, 1947. The temple has not been allowing the non-Hindus on being found so and even if so, if the concern person expresses his faith to the deity, the same cannot be prevented. All these aspects are to be considered by the High Court. On the contrary if the interim direction is sustained the same amount to allow the main writ petition itself without the case being adjudicated as the issue may be relevant to all the public temples in the Tamil Nadu. The petitioner has



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submitted representation only on 26.06.2023 and has rushed to the court even before the Temple Administration could refer the issue to the respondents 1 and 2, as the issue would have certain repercussions and therefore the decision to install display boards even at the foothills of the temple is to be taken by considering the pending circumstances as well as repercussions and therefore unless interim direction is vacated, the respondent will be put to irreparable loss and untold hardships. Though the order of interim direction was passed on 31.07.2023, the same was only uploaded on 07.08.2023 and therefore this respondent was not able to immediately file counter and vacate Stay petition immediately. Therefore, the Hon'ble Court may consider the above counter for a limited purpose of vacating the stay and this respondent reserve its right to file counter affidavit in the main petition and contest the case. Hence, the respondent pray to vacate the interim direction.



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7. One T.R.Ramesh had filed an impleading petition to implead himself as respondent in the writ petition and had stated in the affidavit that he is the President of Temple Worshippers Society and Indic Collective Trust both based in Chennai and had filed many writ petitions concerning Hindu temples, protection of temple funds, properties, traditions and regarding the fundamental religious rights and administrative rights guaranteed under the Constitution of India. He had further stated that he recently came across an order passed by this High Court on 31.07.2023 by which the Hon'ble Court has issued Status Quo Ante and had directed the respondents 1 to 3 to restore the Board. Since he is an interested party with respect to subject Temple he had filed the present petition. Further he has stated that he had filed W.P.(MD)No.10903 of 2022 challenging the tender notification issued by the subject Temple Administration and the Hon'ble Court was pleased to allow the writ petition and had held that the Executive Officer functioning as the Fit Person for the same temple for years together is fraud on the Statue and the continuation of the Executive



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Officer in Sri Dhandayuthapani Swami Temple Pazhani with reference to section 75-B of HR&CE Act is illegal and it cannot be continued. The respondents preferred writ appeal in W.A.(MD)No.860 of 2020 and the same was disposed of with directions, but the Hon'ble Division Bench declined to grant the prayer of the respondents. Further he had preferred public interest litigation in W.P.(MD)No. 16416 of 2020, challenging the order of appointment of Executive Officer in the subject Temple and pending the public interest litigation the government had appointed trustee in the subject Temple. The Executive Officer has been in existence in the subject temple by way of subterfuge by which the respondents has brought an amendment to HR&CE Act, 1959 to get over the order passed by the Hon'ble Supreme Court reported in AIR 1965 SC 1578 by issuing G.O.Ms.No.2349 dated 13.07.1966 and similar G.O.Ms.No.2347 dated 13.07.1966 concerning Sri Thiagarajaswamy Temple, Thiruvarur was put to challenge and the Principal Bench of this Hon'ble Court held the said G.O. unsustainable vide its order dated 22.12.1993



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which is reported in *1994 (2) MLJ 313*. The subject temple is a Hindu temple and a non-Hindu cannot be permitted inside its premises. Further the said issue is also well protected by the Tamil Nadu Temple Entry Authorisation Act, 1947 and the rules framed thereunder. Infact the said issue was raised before the Parliament in a debate on Article 15(2) and the same was negatived. An amendment to the preamble of the Constitution by bringing in the term “secular” cannot in any way permit the respondents to permit non-Hindus to enter the premises of the subject temple, which has given only to Hindus from times of yore. Hence, it is imperative to allow the writ petition. And an order passed by this High Court and reported in *AIR 1973 Madras 264* clearly holds that it is against the religious tenants of Hindu temples to allow non-Hindu inside the temple. Hence, in order to assist the Court for complete adjudication and settle all the questions involved in the present lis, prayed to allow his impleading petition.



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8. Heard Mr.N.Anantha Padmanbhan, Learned Senior Counsel assisted by Mr.R.M.Arun Swaminathan, appearing for the writ petitioner, Mr. Veera Kathiravan, Learned Additional Advocate General assisted by Mr.R.Ragavendran, Learned Government Advocate appearing for the respondents 1 and 2 and Mr.R.Baranidharan appearing for the 3rd respondent and perused the records. The impleading petitioner, Mr.T.R.Ramesh is treated as intervenor and the contents of the affidavit filed along with the impleading petition was also taken into consideration.

9. The first contention of the respondents is that the interim prayer and the main prayer are one and the same, hence if interim order is granted it would amount to allowing the writ petition. When the interim order was granted by this Court the same plea was raised by the respondents and after hearing the elaborate arguments only this Court had granted the interim direction to maintain status quo ante. While granting the said interim order this Court had



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taken into consideration of the fact that the said Board was earlier exhibited, but was removed during the recent Kumbabishekam festival, after the Kumbabishekam festival was over, the respondents had not reinstalled the same. Further after the alleged incident the temple had reinstalled the Board, but had removed within few hours. Even though the prayer are one and the same, in order to restore the earlier practice the said direction was issued and the same would not prejudice the respondents, hence this plea is rejected.

10. The next contention of the respondents is that in the petitioner's representation dated 26.06.2023, the petitioner had not stated about the incident which the petitioner had stated in the writ affidavit. On perusing the representation it is seen that the petitioner had stated in the last paragraph of the representation, wherein it is stated that two days before some persons belonging to other religion had tried to board the Winch in order to go to temple. Therefore, the said plea raised by the respondents is incorrect.



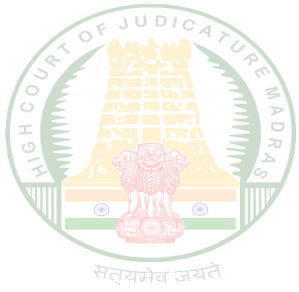
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11. The next contention of the petitioner is that the Tamil Nadu Temple Entry Authorisation Act, 1947 was enacted with an object to authorize entry in the Hindu Temples in the State of Tamil Nadu and the offer worship by all classes of Hindus and this Act is enacted only for the Hindus and non-Hindus cannot be permitted. To consider this plea, the definition of “temple” under HR&CE Act and the definition of “temple” under the Temple Entry Act is necessary. Under HR&CE Act the definition of ‘temple’ is as under:

“Section 2 (20) “temple” means a place by whatever designation known, used as a place of public religious worship and dedicated to, or for the benefit of, or used as of right by, the Hindu community or of any section thereof, as a place of public religious worship;”

Under Temple Entry Act the definition is as under:

“Section 2(1) ‘Temple’ means a place, by whatever name known which is dedicated to, or for the benefit of, or used as of right by the Hindu Community or any section thereof as a place of public religious worship, and includes subsidiary shrines and mandapams attached to such place.”



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The Temple Entry Act has extended definition wherein the subsidiary shrines and mandapams are included, but both categorically states **it is right of the Hindu Community.**

12. Further under section 10 of the HR&CE Act states that the employees of the Department shall be persons who profess Hindu religion and ceases to hold office, when the person ceases to profess that religion and the same is extracted hereunder:

“10. Commissioner, etc., to be Hindus.—The Commissioner, 4[the Additional Commissioner], 5[every Joint, Deputy or Assistant Commissioner] and every other officer or servant appointed to carry out the purpose of this Act, by whomsoever appointed, shall be a person professing the Hindu Religion and shall cease to hold office as such when he ceases to profess that religion.”



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Further the HR&CE Act restricts the entry to the temple for the employees of the HR&CE itself under section 24. In the said provision of section 24, under sub clause (4) the non-Hindus are not allowed at all and the section 24 reads as under:

“24. Power to enter religious institutions.—

(1) 2[The Commissioner, or an Additional] or a Joint or a Deputy or an Assistant Commissioner or any officer authorized by the Commissioner or 3[Additional Commissioner or Joint Commissioner or Deputy Commissioner or] the Assistant Commissioner in his behalf shall have power to enter the premises of any place of worship for the purpose of exercising any power conferred or discharging any duty imposed by this Act, or the rules made thereunder.

(2) If any such officer is resisted in the exercise of such power or discharge of such duty, the Magistrate having jurisdiction shall, on a written requisition from such officer direct any police officer not below the rank of Sub Inspector to render such help as may be necessary to enable the officer to exercise such power or discharge such duty.



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(3) Before entering the sanctum sanctorum or pooja gruha or any other portion held specially sacred within the premises of a religious institution or place of worship, the person authorized by or under sub-section (1) or the police officer referred to in sub-section (2), shall give reasonable notice to the trustee or head of the institution and shall have due regard to the religious practice or usage of the institution.

(4) Nothing in this section shall be deemed to authorize any person who is not a Hindu to enter the premises or place referred to in this section or any part thereof.

(5) If any question arises, whether the religious practice or usage of the institution prohibits entry into the sanctum sanctorum or pooja gruha or any other portion held specially sacred within the premises of a religious institution, or place or worship, by the person or police officer mentioned in sub-section (3), the question shall be referred for the decision of the Commissioner. Before giving any decision on any such question, the Commissioner may make such enquiry as he deems fit.

(6) Any person aggrieved by the decision of the Commissioner under subsection (5) may, within one month from the date of the decision, appeal to the Government.



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Provided that the Government shall not pass any order prejudicial to any party unless he has had a reasonable opportunity of making his representations.”

The HR&CE Act itself prohibits entry for the non-Hindus under section 24(4) and the same throw some light on the issue raised by the parties.

13. On the same line, under Section 3 of the Temple Entry Act also states entry is allowed only to Hindus and the same is extracted hereunder:

“3. Right of all classes of Hindus to enter and offer worship in temples.-

(1) Notwithstanding any law, custom or usage to the contrary, every Hindu irrespective of the caste or sect to which he belongs shall be entitled to enter any Hindu temple and offer worship therein in the same manner and to the same extent as Hindus in general or any section of Hindus; and no Hindu shall, by reason only of such entry or worship whether before or after the commencement of this Act, be deemed to have committed any actionable wrong or offence or be used or



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prosecuted therefor.

(2) Without prejudice to the generality of the foregoing provision, it is hereby declared that the right conferred by sub-section (1) shall include the following Right of all classes of Hindus to enter and offer worship in temples rights, if, and to the extent to which, they are enjoyed by Hindus in general, or any section of Hindus:-

(a) the right to bathe in, or use the waters of, any sacred tank, well, spring or water-course appurtenant to the temple, whether situated within or outside the precincts thereof;

(b) the right of passage over any sacred place, including a hill or hillock or a road, street or pathway, which is requisite for obtaining access to the temple.”

Further the Rules enacted under the “Rules Under the Tamil Nadu Temple Entry Authorization Act”, which was published in G.O.Ms.No.164 Firka Development dated 23.03.1948, wherein under Rule 3 of the said Rules states that non-Hindus are not allowed and the same is as follows:



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*“The classes of persons mentioned hereunder **shall not be entitled to enter or offer worship in a temple** or bathe in or use the waters of any sacred tank, well, spring or water-course appurtenant to the temple, whether situate within or outside the precincts thereof, or any scared place including a hill or hillock or a road, street or pathway, which is requisite for obtaining access to the temple.*

Persons who are not Hindus

Person under pollution arising out of birth or death in their families

Women at such times during which they are not by custom and usage allowed to enter temples

Drunken or disorderly persons

Persons suffering from any loathsome or contagious disease

Persons of unsound of mind except when taken for worship under proper control and with the permission of the Executive Authority of the temple concerned

Professional beggars

From the above provisions it is evident that when the class Hindus were not allowed inside the temple, in order to eradicate the differentiation among all classes of Hindus, the Temple Entry Act and Rules were enacted permitting all



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Hindus to enter the temples. While enacting the same the Legislature was aware of the confusion that would create and had cautiously stated that non-Hindus are not allowed. Hence the Legislature had stated that Hindus are allowed and at the same time the prohibited the non-Hindus from entering the temple.

14. At the cost of repetition, in the Temple Entry Act under section 3 it has been stated “*Right of all classes of Hindus to enter and offer worship in temples*”. Hence, the Temple Entry Act speaks about Hindus rights to enter temple. While enacting the Rules, under Rule 3(a) it is specifically stated that a non-Hindus are not permitted to enter temple. The Temple Entry Act and Rules makes it abundantly clear that all classes of Hindus are allowed and non-Hindus are not allowed. Likewise, under section 10 HR&CE Act, the Commissioners, Joint Commissioners etc., shall be a person professing the Hindu Religion and shall cease to hold office as such when he ceases to profess that religion. Under section 24 of HR&CE Act states non-Hindus are not



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permitted to entry the temple. In short both the HR&CE Act and the Temple Entry Act allows all Hindus to entry the temple and also states non-Hindus are not allowed inside the temples. In such circumstances the respondents are bound to implement the Act and Rules in letter and spirit.

15. The position is further clear when the government had amended the Temple Entry Rule and inserted Rule 4-A, in order to take away the prohibition of not allowing the non-Hindus, but the said Rule was struck down by the Hon'ble Court. The Rule 4-A reads as “

Persons who are not Hindus shall be admitted into temples provided:

“(i) they are admitted only during the time when pooja is not performed.

(ii)they are permitted to enter into Mahamandapam and not to the Arthamandapam.

(iii)they inform the temple authorities of the object of their visit, obtain a pass and enter into the temple with a temple guide or if there is no guide a servant of the temple.

(iv)they abide by the customs and usage prevailing in the temple;



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(v) they safeguard the general and special sanctity and honour of the temple;

(vi) they do not take photographs of any part of the temple without the permission of the appropriate authority.”

The said Rule 4-A was challenged in ***Kalyan Dass Vs. State of Tamil Nadu and another*** reported in ***1972 2 MLJ 581 (AIR 1973 Mad 264)*** and the Hon'ble Court had struck down the said amendment of Rule 4-A and has held as under:

“13. The doctrine of exclusion no doubt has suffered various inroads due again to the march of law and advanced socialistic principles at one time based on base sanctimoniousness. Our Constitution itself has abolished untouchability in all forms. Even prior to the induction of Article 17 in our Constitution, our law makers, particularly, in the State of Tamil Nadu, removed certain caste disabilities amongst certain classes of Hindus by enacting the Malabar Temple Entry Act and the present Temple Entry Act Prior to these enactments a social evil pervaded the Hindu community which excluded certain classes of Hindus from enjoying certain privileges which included the rights of entry of such depressed classes into the temple. This ban was removed



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by legislation. But it is to be noted that the ban was lifted in so far as it affected a part of the Hindu Community and not non-Hindus. It is in this light that the observations of the Supreme Court in AIR 1954 SC 282 at p. 292 become relevant. There the Supreme Court was considering the vires of Section 21 of the Madras Hindu Religious and Charitable Endowments Act (Act 19 of 1951). That section empowered the Commissioner and his subordinate officers and also persons authorised by them to enter the premises of any religious institution or place of worship for the purpose of exercising any power conferred or any duty imposed by or under the Act.

14. The Supreme Court observed: "It is well-known that there could be no such thing as an unregulated and unrestricted right of entry in a public temple or other religious institution, for persons who are not connected with the spiritual functions thereof. It is a traditional custom universally observed not to allow access to any outsider to the particularly sacred parts of a temple as for example, the place where the deity is located. There are also fixed hours of worship and rest for the idol when no disturbance by any member of the public is billowed. Section 21, it is to be noted, does not confine the right of entry to the outer portion of the premises; it does not even exclude, the inner sanctuary, 'The Holy of Holies' as it is said, the sanctity of which is



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zealously preserved. It does not say that the entry may be made after due notice to the head of the institution and at such hours which would not interfere with the due observance of the rites and ceremonies in the institution. We think that as the section stands it interferes with the fundamental rights of the Madadhipathi and the denomination of which he is head guaranteed under Articles 25 and 26 of the Constitution.”

15. Even in AIR 1958 SC 255 at p. 267 the Supreme Court reiterated the same principle, while considering the scope of the power of a denominational temple. The Supreme Court said: “There is, it should be noted, a fundamental distinction between excluding persons from temples open for purposes of worship to the Hindu public in general on the ground that they belong to the excluded communities and excluding persons from denominational temples on the ground that they are not objects within the benefit of the foundation. The former will be hit by Article 17 and the latter protected by Article 26..... We must therefore hold that denominational institutions are within Article 25(2)(b).”

The Hon'ble Court had relied on the judgment of Hon'ble Supreme Court rendered in the case of amendment of HR&CE Act, 1951 (Act 19 of 1951), wherein most of the provisions were declared as unconstitutional. In the said



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judgment the Hon'ble Supreme Court had held that "it is well-known that there could be no such thing as an unregulated and unrestricted right of entry in a public temple or other religious institution, for persons who are not connected with the spiritual functions thereof". Therefore, when the other religious persons who are not connected with the Hindu Deities, the religious ceremonies and functions and its spiritual functions, then there can be restrictions in the case of non-Hindus entering the religious places of Hindus. Likewise, there can be restrictions in entering the religious places of churches by non-Christians and mosques by non-Muslims and the same would not be violative of Article 15. Infact these restrictions would ensure communal harmony among different religions and ensure peace in the society.

16. The learned Additional Advocate General appearing for the respondents 1 and 2 submitted that under Article 13 and 15 of the Constitution of India, especially under clause 15(1), the rights of other persons are protected.



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The said objection of the respondents was refuted by the petitioner and submitted that under Article 15(2) of the Constitution, the Temples are not included. Further submitted that the Temples were not included since temples cannot be used as picnic spots. The intervenor had stated in the affidavit that while considering the said Article 15, the Constituent Assembly had discussed the issue, several members had moved certain amendments to maintain the secular nature of the country, except few, other amendments were negatived. This Court had perused the debates of the Constituent Assembly. The present Article 15 was Article 9 in the Draft Constitution. The proposed Amendment Nos.293, to 301, 304, 305, 306 and 308 are all amendments sought to include several common places in Article 15 to grant equal rights and to maintain the democratic nature of the country (the word “secular” was not referred). And one such place is “temples” and the same were negatived. Since the Amendment No.293 was comprehensive, the same was considered, discussed then negatived. The relevant portion of proposed Amendment No. 293 is extracted



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hereunder:

“That in clause (1) of article 9, for sub-clauses a and b the following be substituted :-

*“any place of public use or resort, maintained wholly or partly out of revenues of the state or in any way aided, recognized, encouraged, or protected by the State, or place dedicated to the use of general public like schools, colleges, libraries, **temples**, hospitals, hotels and restaurants, places of public, entertainment, recreation or amusement like theaters and cinema houses or concert halls public parks gardens or museums; roads, wells, tanks or canals; bridges, posts and telegraphs, railways, tramways and bus services and the like”*

The Amendment No.296 is “that in sub-clause (a) of clause (1) of article 9 after the words ‘of public entertainment’ the words of places of worship be inserted” was negatived. The Amendment No.299 “that in sub-clause (a) of clause (1) of article 9, the word ‘public’ be deleted” was negative. The Amendment No.301 “that in sub-clause (a) of clause (1) of article 9, between the words ‘public’ and ‘restaurants’ the words ‘places of worship’ Dharamsalas, Musafirkhanas’ be



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inserted” was negatived. Likewise, the amendments 305, 314 were negatived. All oral motions were not allowed. Except for Amendment No.303, wherein the word ‘bathing ghats’ was inserted, all other oral amendment and written amendments from 296 to 314 were negatived. In the light of the discussion in the Constituent Assembly this Court is of the considered opinion that the temples are not covered under Article 15, hence it has restricted entry for non-Hindus and hence the plea of the respondents ought to be rejected.

17. The next contention of the respondents is that the devotees are coming not only from Tamil Nadu, but also from foreign countries to worship Lord Murugan. Further not only Hindus worship Lord Murugan but also non-Hindus who are having faith in the deity by accepting the customs and practices followed in the Hindu Religion as well as temple customs would come to worship, hence installing such Board would affect their sentiments. From the above plea the issue can be divided into three categories. Firstly the **devotees**

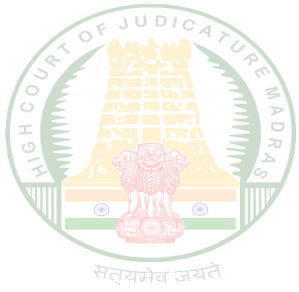


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who are Hindus coming from all over India and foreign countries and as far as this category is concerned there is no quarrel. Both the petitioner and the respondents are accepting that they should be allowed and if restrained that would amount to violating the Tamil Nadu Temple Entry Authorisation Act.

18. The next category is **Non Hindus visiting the temples**. The contention of the petitioner is that they should not be allowed. Even the respondents stated in the counter they cannot be allowed and the relevant portion stated in paragraph nos. 6 and 9 of the counter is extracted hereunder:

“6. I submit that the Lord Murugan deity in Pazhani hill temple is not only worshipped by the people of Hindu religion but also worshipped by non-Hindus who are having faith in the deity by accepting the customs and practises followed in the Hindu Religion as well as temple customs. Being the secular form of the government, it is duty of the State Government as well as the Temple Administration to ensure the rights of the citizens of India enumerated in the Constitution of India under



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Article 25 to 28. The Temple Entry Authorisation Act, 1947, clearly states the definition of the temple and it is

2. In this Act, unless there is anything repugnant Definitions in the subject or context-

[1] Temple means a place by whatever name known which is dedicated to or for the benefit of or used as right by the Hindu community or any section there of as a place of public religious worship and includes sub shrine and Mandapam attached to such place

Worship means such religious service as the bulk of worship may offer or participate in in accordance with such rules and regulations, as may be made under this act

7. I submit that from the above definition it is clearly understood the temple premises is only the place of religious worship i.e. sanctum and sanctorum of the temple in which the people of other than Hindu religion are restricted. The Winch Service Station and Rope Car Station is outside the temple premises which does not amount to entry inside the temple premises and placing the boards in these stations are unnecessary and does not have any effect at all.



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8. *I submit that the people other than Hindus who are having faith in the Hindu religion can enter any of the temples in Tamil Nadu and may worship as per customs and practices followed in the temple. Even the non-Hindus by accepting the customs and practice of the Hindu religion can enter the temple and worship the deity. This respondent does not prohibit anybody from entering the temple premises except beyond the Kodimaram.*

9. *I submit that many temples in Tamil Nadu are allowing the non-Hindu religion people to enter the temple by following the customs and practice. For instance, Arulmighu Meenakshi Sundareswarar Temple Madurai is providing entry to people from foreigners inside the temple by Foreigners Entry Fee of ?.50/- and the people from foreign countries are restricted to Kodimaram of the temple. The same is followed in many temples where the importance of the temple is found to be significant for the tourist to visit, all persons other than Hindus are allowed in the temple precincts except the sanctum sanctorum.”*

The only difference between the petitioner and the respondents is that, the petitioner states they should not be allowed right from the entrance of the temple i.e. from Gopuram (to have clarity the Meenakshi Temple, Madurai is



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taken as example and the temple has entrance from Gopuram onwards). But the respondents contention is that they cannot be allowed from Kodimaram / Dhvajasthambham. Further the respondents states that if any non-Hindus who are having faith in any particular deity and accepts the customs and practices followed in the Hindu Religion as well as Temple customs they should be allowed. But the respondents have not explained in the counter how they could identify the non-Hindus having faith in the particular deity of the temple and are willing to abide by the customs of Hindu religion and customs of the concerned temple. At this juncture the Learned Senior Counsel appearing for the petitioner submitted that in Meenakshi Sundareswarar Temple a system is being followed if a non-Hindu wishes to visit the temple, the temple administration would take an undertaking from the non-Hindu that he is having faith in the deity and he would follow the customs and practices of Hindu religion and also abide by the Temple customs and would make an entry in



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register maintained for the same. The Learned Additional Advocate General also admitted that the said system is being followed in all the temples.

19. The next category is foreigners who are non-Hindus and the respondents are allowing them to visit the temple by collecting “Foreigners Entry Fee of Rs.50/-”. In this category also the respondents cannot allow foreigners who are Non-Hindus inside the temple from Kodimaram / Dhvajasthambham.

20. The respondents stated in the counter that if the Board indicating “Non-Hindus are not allowed” is installed the same would hurt the religious sentiments of the persons who would like to visit the temple. The respondents are confusing the issue. If a non-Hindu is not having faith and decline to follow the customs and practices of the Hindu religion and decline to follow the



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Temple Customs, then the said non-Hindu cannot be allowed and hence there is no question of hurting his sentiments. On the other hand if the non-Hindu who declines to follow the customs and practices of the Hindu religion and decline to follow the Temple Customs is allowed inside the temple, it would affect the sentiments of the large number of Hindus who practices the faith as Hindu reverently. This would affect the right of Hindus guaranteed under the Constitution of India. The respondents are worried about the sentiments of non-Hindu who is not having faith in Hindu religion. By pleading so the respondents are failing to protect the sentiments of the Hindus. Infact the Hindu Religion & Charitable Endowment Department is mandated to protect the Hindu religion, Hindu temples, its customs and practices, temple customs etc. The respondents are having misplaced sympathy and misplaced worry on sentiments of Non-Hindus.



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21. The next contention of the respondents is that the government being secular, it is the duty of the State Government as well as Temple Administration to ensure the rights of the citizens of India enumerated in the Constitution of India under Article 25 to 28. To consider this plea it is necessary to refer the Articles and the same is extracted hereunder:

“Right to Freedom of Religion

25. Freedom of conscience and free profession, practice and propagation of religion.—(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;



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(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jains or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

26. Freedom to manage religious affairs.—Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

(a) to establish and maintain institutions for religious and charitable purposes; (b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law.

27. Freedom as to payment of taxes for promotion of any particular religion.—No person shall be compelled to pay any taxes, the proceeds



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of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions.—(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.”

The aforesaid Articles has guaranteed right to profess and practice their own religion. The people belonging to Hindu religion has right to profess and



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practice Hindu religion. Likewise people belonging to other religions have right to profess and practice their religion. But the customs and practice of their respective religion cannot be interference with and any interference ought to be curtailed. The Temple is not picnic spot or tourist spot. Even in Arulmighu Brahadeeswarar Temple, Thanjavur the other religion people are allowed to admire and appreciate the architectural monuments of the temple, but not after Kodimaram. While admiring the architectural monuments the people cannot use the premises as picnic spot or tourist spot and the temples premises ought to be maintained with reverence and as per agamas. Therefore the rights guaranteed under the Articles is not granting any right to the respondents to allow the other religion people if they do not have any faith and belief in the Hindu religion. Moreover the rights are guaranteed to all religion and there cannot be any bias in applying such right.



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22. The respondents had narrated certain examples to show that the non-Hindus are allowed inside the temple and submitted that the same would be affected if the Board is installed. The first example is that in Arulmighu Brahadeeswarar Temple, Thanjavur foreigners are allowed to admire and appreciate the architectural monuments of the temple. This Court is of the considered opinion that the architectural monuments are shown from outside the temple and the foreigners are not allowed inside the place of worship from Kodimaram, therefore the said example is not relevant. The next example is in Arulmighu Ranganathaswamy Temple, Srirangam there is a shrine for Bibi Nachiyar also called as Thuluka Nachiyar who is said to be the daughter of Mughal Emperor. But this example is favouring the petitioner rather than the respondent, since if any person is an ardent devotee of any deity then Hindus would respect them and make them as Nachiyar or Nayanmar or Bakthas. Hence now also any Non-Hindus is having faith in any deity, having faith in the customs and practices of Hindu religion and follows the customs of temple



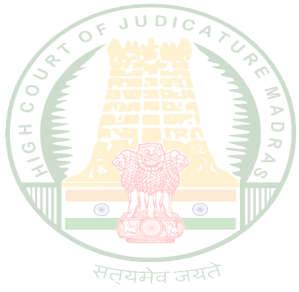
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administration then the same would be given due respect and revered. Initially they would be allowed after taking an undertaking as stated supra and later on they would be treated as Hindus and finally revered as Nachiyar or Nayanmar or Bakthas. The next example is the Arulmighu Sowriraja Perumal Tirukkannapuram, Nagapattinam District and Bhuvarahaswamy Temple Srimushnam, Cuddalore District, where both the deities are taken in procession during certain festival, they are halted before a mosque and offered prayers and respects. Again this is happening during procession outside the temple and not inside the temple and the same would exhibit the religious harmony. Always religious harmony is maintained among the Hindus, Muslims, Christians and other religions in Bharat, when people belonging to different religions respect each other faith and respect each other sentiments. Therefore this example is also not supporting the respondents plea.



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23. But the examples cited by the petitioner are real concern for Hindus devotees. Even though the respondent deny the incident cited by the petitioner, there is a newspaper reporting wherein it is stated that group of persons belonging to other religion tried to enter the temple as tourists. It was also reported that in Arulmighu Brahadeeswarar Temple a group of persons belonging to other religion had treated the temple premises as picnic spot and had non vegetarian food inside the temple premises. Likewise recently on 11.01.2024 a newspaper had reported that a group of persons belonging to the other religion had entered the Arulmighu Meenakshi Sundareswarar Temple, Madurai with “**their sacred book**” near sanctum and sanctorum and was attempting to do their prayers before sanctum sanctorum. These incidents are absolutely interfering in the fundamental rights guaranteed to the Hindus under the constitution. The Hindus also have fundamental right to profess and practice their religion freely and propagate their religion without interfering in their way of practice. Therefore the Hindus have right to maintain their temples



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as per their customs, practices and Hindu Religious and Charitable Endowment Department is having duty to protect the temples from such unwanted incidents. In fact in the above narrated incidents the Department had failed to protect the fundamental rights guaranteed under the constitution.

24. The next contention of the respondents is that the Board need not be installed near the entrance of the temple, near Winch Station, near Rope Car Station, since the same would not come within the temple premises. This contention of the respondents cannot be accepted, since the entire Pazhani hill is considered as sacred / holy to the Hindus. Moreover if the Board is kept in the entrance like Gopuram or Winch station or Rope Car Station it would be a warning to the non-Hindus. If the non-Hindus is climbing all the way to the Hill and after climbing the Hill, if it comes to the knowledge that non-Hindus are not allowed then it would frustrate them and he would question why it has not



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been informed before climbing. In order to avoid such situations it is imperative to install a board in the entrance itself and also as many places as possible.

25. Finally all provisions may have exemption, but the exemption cannot be made as main provision. The present case is one such case where the respondents are trying to make the exemption as a rule. The non-Hindus cannot be allowed inside the temple but if the faith is established by non-Hindus, then an exemption is granted to the said non-Hindu to become believer of Hindu faith.

26. The respondents submitted that the said writ petition is filed only for the Palani temple and the order may be restricted to the said Temple alone. But the issue raised is larger issue and the same ought to be applicable to all Hindu temples, hence the plea of the respondents is rejected. As stated supra these

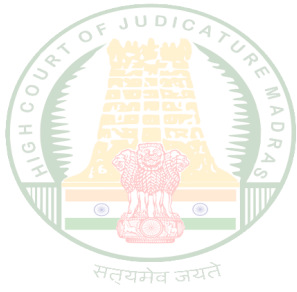


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restrictions would ensure communal harmony among different religions and ensure peace in the society. Therefore the State Government, the HR&CE department, the respondents and all persons who are involved in temple administration are directed to follow the directions to all Hindu Temples.

27. For the reasons discussed above, the writ petition is allowed with the following directions to the respondents:

- i) The respondents shall install Boards indicating that “Non-Hindus are not allowed inside temple after Kodimaram” in the entrance of the temples, near Kodimaram and at prominent places in the temple.
- ii) The respondents are directed not to allow the Non-Hindus who do not believe in Hindu religion.
- iii) If any Non-Hindu claims to visit particular deity in the temple, then the respondents shall obtain undertaking from the said Non-Hindu that



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he is having faith in the deity and he would follow the customs and practices of Hindu religion and also abide by the Temple customs and on such undertaking the said Non-Hindu may be allowed to visit the temple.

iv) Whenever a Non-Hindu is allowed based on the undertaking the same shall be entered in the register which shall be maintained by the temple.

v) The respondents shall maintain the temple premises by strictly following the agamas, customs and practices of the temple.

28. For the reasons stated supra the writ petition is allowed with directions. No Costs. Consequently, connected miscellaneous petitions are closed.

30.01.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No

Tmg



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To

- 1.Principal Secretary,
Government of Tamilnadu,
Department of Tourism, Culture and
Religious Endowments,
Fort St.George, Chennai-9.
- 2.The Commissioner,
Hindu Religious Charitable Endowments
Department,
119, Uthamar Gandhi Salai,
Nungambakkam, Chennai-34.



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VERDICTUM.IN



W.P.(MD).No.18485 of 2023

S.SRIMATHY, J.

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W.P.(MD).No.18485 of 2023

30.01.2024