

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

WEB COPY

| | |
|-------------|---------------|
| Reserved on | Pronounced on |
| 22.11.2022 | 09.12.2022 |

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE J. SATHYA NARAYANA PRASAD

Writ Petition (MD) No. 24497 of 2022

R. Sidhrangathan

.. Petitioner

Versus

1. The Commissioner
Hindu Religious and Charitable Endowments
No.119, Uthamar Gandhi Salai
Nungambakkam,
Chennai - 600 034
2. The Joint Commissioner
Hindu Religious and Charitable Endowments
Thoothukudi District
3. The Idol Arulmighu Subramania Swami Temple
Represented through its Joint Commissioner/
Executive Officer
Tiruchendur
Thoothukudi District
4. The District Collector
Thoothukudi District
Thoothukudi

.. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus directing the respondents to grant permission to the devotees to stay and observe fasting in the outer Praharam of the Lord Subramania Swamy Temple at Tiruchendur, Tuticorin District during the



Kanda Sashti Festival between 25.10.2022 to 30.10.2022 as being done from time immemorial by issuing identity card.

WEB COPY

For Petitioner : Mr. H. Arumugam
For Respondents : Mr. P. Subbaraj
Special Government Pleader for RR1, 2 & 4
Mr. M. Muthugeethaian for R3

ORDER

R. MAHADEVAN, J

The land of Tamil Nadu has multitudinous and ancient, large and exhilarating temples with an unique style and art, which are of archaeological importance. They are not only the places for worship, but also the places that exhibited extraordinary art in the form of sculptures, idols, paintings, murals and music, forming a part of its heritage. Temples that have withstood the test of time are places of archaeological or historical importance as they are not only built with extraordinary skill, but also reflect historical events termed as “legends” in common parlance and they are instrumental in the survival of the language of this land.

2. Every ancient temple was structured in such a way that specific places were allocated for the activities associated with the traditional method of worship that included recital of hymns in praise of deity, recital of Thirumuraigal, vedic hymns, dance, drama or folklore, debates, conduct of



festivals, etc. The artistic exuberance of ancient Tamils is reflected in the paintings and murals in the temples and religious architecture which convey various legends associated with the temples. The existence of the temple is interwoven with the co-existence of the various activities mentioned above. The waning of one activity will not only affect the rituals, but also result in waning of other activities and eventually the temples itself. Temples have played multiple roles in the development of society and civilization, and the regular and traditional functioning of the temples should be of paramount consideration in the preservation of these cultural and architectural marvels.

3. As described by the Historians, Arulmigu Subramaniya Swamy Temple, Tiruchendur, is one of such ancient temples, situated on the shores of Bay of Bengal, built by three holy saints and is an abode of Lord Murugan. Thousands of devotees visit the temple, with the number increasing manifold during the festive times.

4. According to the petitioner, every year Kanda Shasti festival will be commemorated with religious fervor in Arulmigu Subramaniya Swamy Temple, Tiruchendur and to witness it, several lakhs of people from the breadth and length of the Country will visit there. 'Soorasamhara festival' is celebrated to commemorate the victory of Lord Murugan against



WEB COPY

Soorapathman, the demon, after fighting him for 6 days. The festival spans for a period of six days and all the worshippers fast from the first to the sixth day of Soorasamhara festival, otherwise called as 'Kanda Shasti', which falls on the 6th day of the Tamil Month of Aippasi i.e., in the months of October and November every year. During the Shasti days, the devotees fast, sing kanda shasti kavasam and perform religious activities in the temple, without going to their home. At such times, the devotees are normally be permitted to stay in the outer praharam of the temple viz., first praharam (precinct) from the entry of the temple premises. This has been the practice in the temple for quite long time.

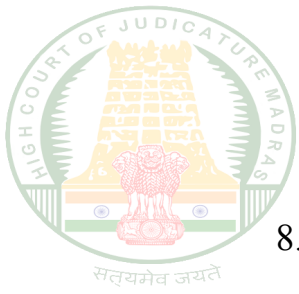
5. It is the petitioner's grievance that this year, during the Kanda Shasti festival which started on 25.10.2022 and ended on the 6th day i.e., on 30.10.2022, the devotees were not permitted to stay and fast within the premises of the outer praharam. According to the petitioner, such restriction imposed by the third respondent is contrary to the convention and religious sentiments of the devotees of the Lord Murugan. Stating that the act of the third respondent in restraining the devotees from staying and doing their religious activities in the outer praharam of the temple is illegal and violative of the fundamental rights guaranteed under the Constitution, the petitioner approached the respondents 1 and 4 and submitted a petition, seeking



permission to stay in the outer praharam of the temple, as has been done earlier. Even though the respondent authorities assured to do the needful, they did not permit the devotees in the outer praharam. Therefore, the petitioner has come up with this writ petition as a public interest litigation praying to issue a Mandamus to the respondents to grant permission to the devotees to stay and observe fasting in the outer praharam of the temple during the Kanda Shasti festival without any restriction, whatsoever.

6. We have heard the learned counsel for the petitioner, the learned Special Government Pleader for the respondents 1, 2 and 4 as well as the learned standing counsel for the third respondent temple.

7. At the outset, it is pertinent to mention here that as per Article 25 of the Constitution, all persons are entitled to freely profess, practice and propagate religion. However, such freedom to act and practise can be subject to regulations, inside the premises of the temple. The Agamas prescribe the rules regarding the rituals to be followed in the worship services at the temple. According to the same, the temple authorities should ensure the safety and security of the devotees, besides maintaining the decorum and sanctity of the temple.



8. Section 4 of the Tamil Nadu Temple Entry Authorization Act, 1947 empowers the trustees or any authority in-charge of the temple to make regulations for the maintenance of order and decorum in the temple. For better appreciation, the said provision is extracted below:

"4. Powers of trustees to make regulations for the maintenance of order and decorum, the due performance of rites and ceremonies in temples.—

The trustee or other authority in charge of a temple shall have power, subject to the control of the State Government and to any rules which may be made by them, to make regulations for the maintenance of order and decorum in the temple and the due observance of the religious rites and ceremonies performed in the temple, but such regulations shall not discriminate in any way against any Hindu on the ground that he belongs to a particular caste or sect."

9. The Rules under the Tamil Nadu Temple Entry Authorization Act, 1947 also prescribe certain code of conduct for maintenance of order and decorum in the temple, in addition to the regulations made by the trustee or authority as the case may be. Particularly, Rule 5 prohibits chewing or spitting tobacco/smoking and any other act which tends to derogate from the purity and cleanliness of the temple and its premises; and Rule 6 prohibits loud conversations and demonstrations interrupting the worship in a temple. Further, Rule 8 prohibits the usage of temple buildings and premises unconnected with or not arising from the worship, usage and observations of such temples. At the same time, the rules also impose an embargo upon the executive authority (the trustee or authority in charge of the temple, as the case



may be) under Rule 9 which provides that regulations shall not be in such a way as to prejudicially affect the rights and facilities which worshippers had generally exercised.

10. In this regard, it is relevant to refer to a decision of the Hon'ble Supreme Court in *Nar Hari Sastri and others v. Shri Badrinath Temple Committee [AIR 1952 SC 245]*, in which, while dealing with the right of pandas (guides) accompanying pilgrims and receiving gifts from them in the precincts of the Badrinath temple, Puri, it was observed as follows:

“23. This right of entry into a public temple is, however, not an unregulated or unrestricted right. It is open to the trustees of a public temple to regulate the time of public visits and fix certain hours of the day during which alone members of the public would be allowed access to the shrine. The public may also be denied access to certain particularly sacred parts of the temple, e.g. the inner sanctuary or as it is said the Holy of Holies where the deity is actually located. Quite apart from these, it is always competent to the temple authorities to make and enforce rules to ensure good order and decency of worship and prevent overcrowding in a temple. Good conduct or orderly behavior is always an obligatory condition of admission into a temple (Vide Kalidas Jivram v. Gor Parjaram, I.L.R. 15 Bom. p. 309 : Thackersay v. Harbhum, I.L.R. 8 Bom. p. 432, and this principle has been accepted by and recognised in the Shri Badrinath Temple Act, section 25 of which provides for framing of bye-laws by the temple committee inter alia for maintenance of order inside the temple and regulating the entry of persons within it.”

11. That apart, Section 23 of the HR&CE Act, provides power to the Commissioner to issue administrative instructions / circulars to the Joint



Commissioner / Executive Officer of the temple to streamline the administration and to maintain orderliness in the temple. While so, it is the duty of the temple administration to maintain decorum and sanctity of the temple, apart from providing safety and security to the devotees who visit the temple.

12. Originally, the petitioner sought a direction to the respondent authorities to permit the devotees who visit the third respondent temple during *Kanda Shasti* festival, commemorated from 25th October 2022 to 30th October 2022, to stay and observe fasting in the outer praharam (*precinct*) of the temple, as has been permitted earlier. However, the said request was not acceded by the respondent authorities. Therefore, this writ petition.

13. When the matter was taken up for consideration earlier, this court directed the learned counsel appearing for the third respondent to take notice and file a written response with regard to the issue involved herein.

14. Pursuant to the aforesaid direction, the third respondent filed a detailed counter affidavit denying the averments made in the writ petition.

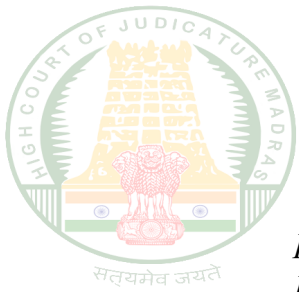
According to the third respondent, the outer praharam mentioned by the



WEB COPY

petitioner is the first utpraharam of the temple. During the *Kanda Shasti* festival, lakhs of devotees visit the temple and at all times, the crowd is unmanageable. Therefore, in this year, the third respondent avoided the accommodation of some of devotees inside the utpraharam (பாந்தூ) for the Kantha Sasti festival, thereby managing the crowd in a better manner, providing a hygienic and safe atmosphere to the devotees and avoiding confusion in worshipping the main deity through entry. The counter affidavit also proceeds to state that recently, the Government has implemented the Master Plan Project worth about Rs.300 crores for improvement of various amenities in the third respondent temple and the same was inaugurated on 26.09.2022. Immediately, various improvement works commenced. As the development work is in progress, in order to avoid any inconvenience to the devotees and also taking into account their safety and security, the devotees were not permitted inside the utpraharam of the temple. It is further stated by the third respondent that when several devotees have observed fasting outside the temple in the temporary structures with basic amenities provided by the temple, the petitioner along with 400 others sought to accommodate them in the utpraharam of the temple, which was not considered, in order to ensure equality and non-discrimination among the devotees. For better appreciation, paragraphs 5 to 7 of the counter affidavit are quoted below:

"5. I respectfully submit that by virtue of not



WEB COPY



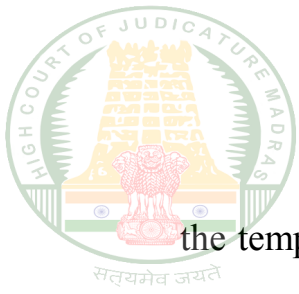
providing accommodation inside the premises of the third respondent temple to some of the devotees i.e., a maximum number of 400 persons and for which the third respondent temple has made alternative arrangements for the Kantha Sasthi festival by providing 18 temporary shelters to the devotees with basic amenities such like drinking water, toilets and fans. Therefore, the need of the devotees to have their Kanda Sasthi Viratham during the period starts from 25.10.2022 to 30.10.2022 has been taken into consideration by this respondent and suitable accommodation has also been provided as stated above, with safety measures with security and also made arrangements to worship the main deity in a peaceful manner without any discrimination among the devotees. Therefore, the claim of the petitioner that not permitting a group/minimum number of the devotees to stay and observe fast within the premises of the third respondent temple will not violate Articles 21 and 26 of The Constitution of India.

6. *I respectfully submit that the third respondent temple is not performing any homams and Thara Abishekam. Since the above said homams which generate more black gas which is affecting the old stone sculptures and also the stone praharams situated in the third respondent temple. For the above said reasons, which necessitates the third respondent temple by not performing any homams and Thara Abishekam and also prevented all the persons from performing such homams and Thara Abishekam inside the temple premises.*

7. *I respectfully submit that in the third respondent temple the Kantha Sasthi festival has been performed in a grand manner for a period of 12 days and in particular the period from 25.10.2022 to 30.10.2022 and the third respondent temple has also provided better accommodation to all the devotees who visited the temple during the above said festival as stated above and the devotees have also provided with the basic amenities."*

15. That apart, the learned counsel appearing for the third respondent

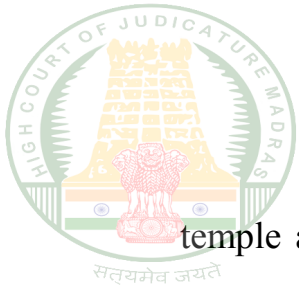
submitted that to ensure the safety of the devotees and maintain the sanctity of



the temple, the third respondent will not permit any devotee to stay inside the utpraharam of the temple, for observing fasting and performing other religious activities during the said festival or any other days here, in future. However, they will make all the arrangements to accommodate the devotees, without any discrimination, by providing temporary shelters with adequate basic amenities.

16. In the light of the averments made in the counter affidavit, this court is of the opinion that the third respondent is justified in not permitting the devotees to stay inside the utpraharam of the temple, in order to maintain safety and security, provide a hygienic atmosphere and worship of the deity in a peaceful manner, without any discrimination. The further reason stated by the third respondent that the works relating to the master plan project worth about Rs.300 crores for development of the subject temple, are in progress, appears to be *bona fide*.

17. Therefore, placing on record the submission made by the learned counsel for the third respondent in paragraph 15 *supra*, this court directs the third respondent to maintain the same status by not permitting anyone to stay inside the premises of the temple during festive and any other occasions. The third respondent is also directed to judiciously utilise the sum of Rs.300 crores allotted by the Government for various developmental works in the subject



WP (MD) No. 24497 of 2022

temple and complete the same as expeditiously as possible, besides ensuring that devotees are benefited by such works.

18. With the above observation, the writ petition is disposed of. No costs.

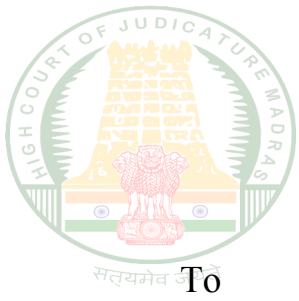
(R.M.D., J.) (J.S.N.P., J.)

09.12.2022

rsh

Index : Yes / No

Internet : Yes / No



WEB COPY

1. The Commissioner
Hindu Religious and Charitable Endowments
No.119, Uthamar Gandhi Salai
Nungambakkam,
Chennai - 600 034
2. The Joint Commissioner
Hindu Religious and Charitable Endowments
Thoothukudi District
3. The Idol Arulmighu Subramania Swami Temple
Represented through its Joint Commissioner/
Executive Officer
Tiruchendur
Thoothukudi District
4. The District Collector
Thoothukudi District
Thoothukudi



WEB COPY

VERDICTUM.IN



WP (MD) No. 24497 of 2022

R. MAHADEVAN, J
and
J. SATHYA NARAYANA PRASAD, J

rsh/ps

Pre-delivery order in
WP (MD) No. 24497 of 2022

09.12.2022