



W.P(MD)No.17824 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 30.07.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.17824 of 2024

and

W.M.P.(MD)No.15725 of 2024

G.Pandi

... Petitioner

Vs.

1.The District Collector,
District Collectorate Complex,
Madurai District.

2.The Revenue Divisional Officer,
Usilampatti Division,
Madurai District.

3.The Tahsildar,
Peraiyur Taluk,
Madurai District.

4.The Inspector of Police,
Elumalai Police Station,
Madurai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, forbearing the respondents 1 to 3 herein from stopping the Vellalar (Pillaimar) Uravinmurai to open the Sri Muthalamman and Sri Mariyamman Temple situated in Uthapuram Village, Peraiyur Taluk, Madurai District and consequently grant permission to conduct



W.P.(MD)No.17824 of 2024

daily pooja and celebrate the festivals to the deities, based on the judgement of this Honble Court in W.P.(MD)Nos.10500 of 2010 (batch) dated 20.03.2012, within the time frame fixed by this Court.

For Petitioner : Mr.G.Prabhu Rajadurai,
For Mr.S.Senthur Pandian.

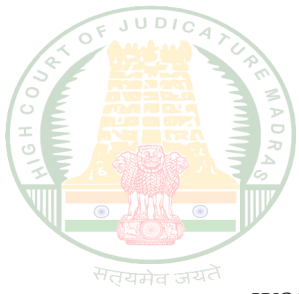
For Respondents : Mr.G.V.Vairam Santhosh,
Addl. Government Pleader for R1 to R3.
Mr.A.Albert James,
Govt. Advocate (Crl. Side) for R4.

ORDER

"An orthodox Brahmin once brought with him his puja casket with a view to give it to His Holiness and receive it back with his blessings. His Holiness took it and opened it, and scanned the several images therein. Then he picked up a saligrama stone (Where it is believed some aspect of Maha Vishnu is immanent) and exclaimed, 'Why, the Lord here has been starved for seven years.'

The disciple was taken aback at this accusation and said, 'So far as I remember, I have not been remiss in my worship to justify such a charge. If I have unconsciously erred, I am certainly prepared to abide by your Holiness's directions.

His Holiness replied, 'I am sorry but you have not performed the worship properly. The deity immanent here required daily Kshirabhisheka (bathing in milk) and *Payasanaivedya* (offering of milk food) and I note that these have not been done for the past seven years.



WEB COPY



W.P(MD)No.17824 of 2024

The disciple then said, 'I now recollect that when my father was alive he used to give the bathing and offering mentioned by your Holiness. As I had begun my own *puja* even during his life-time, I added his *puja* to mine soon after he died and worshipped all the deities together without making any distinction and they all had the same kind of bathing and offering.

His Holiness said, 'Evidently it is now seven years since your father died ?

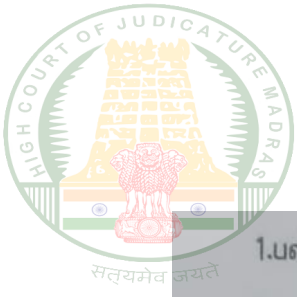
"Yes", replied the disciple.

'You did wrong in putting all the deities together and treating them all alike' pointed out His Holiness. This *murti* requires special worship and *naivedyam*. Please offer them as I have mentioned'."

- From 'The Life and Times of H H Sri Chandrasekhara Bharathi'
- by Prof.N.Nanjunda Sastry

What is the relevance of the above anecdote in the life of the pontiff of Sringeri Mut to this case? Read on.

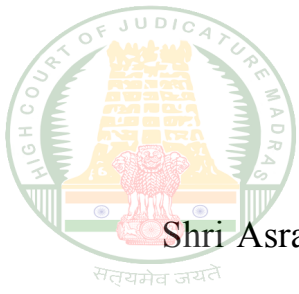
2.Uthapuram Village of Peraiyur Taluk in Madurai District shot to notoriety in the year 2010. Dispute arose between Pillaimar Community and Pallar Community members over what came to be known as “Untouchability wall”. Writ Petitions were filed and eventually disposed of in terms of the agreement arrived at between the parties. The compromise was as follows:



W.P(MD)No.17824 of 2024

WEB COPY

- 1.பின்னர் சமுதாயத்தினர் முத்தாலம்மன், மாரியம்மன் ஆலய வழிபாடு செய்வதற்கு பிள்ளைமார் சமுதாயத்தினர் அனுமதிக்க வேண்டியது.
- 2.விழாக்காலங்களில் தோரணங்கள், சீரியல் லைட்டுகள் உத்தபுரம் பஸ்ஸ்டாப்பில் வைத்துக்கொள்ள இரு சமுதாயத்தினரும் சம்மதிக்கப்பட்டது.
- 3.உத்தபுரம் மக்கள் பயன்படுத்த நிழற்குடை ஒன்றினை தற்போது போலீஸ் ஸ்ட்ரீ ஆக செயல்பட்டு வரும் கட்டிடத்தின் ஒரு பகுதியை அகற்றி தக்க இட வசதியுடன் அமைக்க இரு சமூகத்தினரும் சம்மதித்தனர். கட்டிட இடவசதியை பிள்ளைமார் ஏற்பாடு செய்து தரவேண்டும்.
- 4.தற்போது ஏற்படுத்தப்பட்டுள்ள புதிய பாதையில் உள்ள இடற்பாடுகளை அப்புறப்படுத்தி பாதையினை அகலப்படுத்த வேண்டியது, இதற்கு பிள்ளைமார் சம்மதித்தனர்.
- 5.புதியபாதை சுவர் இடிப்பு சம்பந்தமாக பிள்ளைமார் தொடர்ந்துள்ள வழக்கினை அவர்கள் வாபஸ் பெற வேண்டியது.
- 6.இருதரப்பினர் மீதும் பதிந்துள்ள வழக்குகளை முடிவுக்கு கொண்டுவர மாவட்ட ஸ்ட்ரீ அவர்களின் உதவியின் மூலம் தீர்வு காண வேண்டியது.
- 7.முத்தாலம்மன் ஆலய இடம் சம்மந்தமான பட்டா பெறுவது பற்றி இருதரப்பினரும் பின்னர் உரிய முறையில் மாவட்ட நிர்வாகத்தை அனுக வேண்டியது.
- 8.முத்தாலம்மன், மாரியம்மன் ஆலய உரிமை, நிர்வாகம், பராமரிப்பு ஆகியவை பிள்ளைமார் வசம் இருப்பது போன்றே தொடர்ந்து இருக்கவேண்டியது. ✓
- 9.உத்தபுரம் கிராமத்தில் ஏற்படுகிற பிரச்சினைகளுக்கு காவல்துறையையும், மாவட்ட நிர்வாகத்தையும் அனுகி சரியான முறையில் தீர்வுகளை இருசமுதாயத்தினரும் மேற்கொண்டு சட்டம் ஒழுங்கினை பராமரிக்க ஒத்துழைக்க வேண்டியது.
- 10.எதிர்காலத்தில் இரு சமுதாயத்தினரும் பரஸ்பரம் நன்மை, தீமைகளை பகிர்ந்து ஒத்துழைப்போடும், ஒற்றுமையோடும் வாழ்வது.



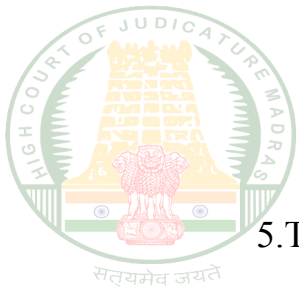
W.P(MD)No.17824 of 2024

Shri Asra Garg, I.P.S was the then Superintendent of Police, Madurai (Rural)

and consensus was arrived at only due to his tireless efforts. That is why encomium was paid to him vide order dated 20.03.2012 in W.P(MD)No.10500 of 2010 etc batch. Following the disposal of the writ petitions, Kumbabishekam (Consecration ceremony / renovation) was performed for the village temple.

3.It appears that in April 2014 persons belonging to Scheduled Caste wanted to introduce new forms of worship and once again disputes arose. Crime No.64 of 2014 was registered on the file of Elumalai Police Station. The temple remains closed for the last 10 years. Hence this writ petition has been filed for forbearing the authorities from stopping the Pillaimar Community from opening the temple and offering customary worship.

4.When the matter was taken up for hearing, the respondents claimed that the temple was closed by the Pillaimar Community on their own. While admitting that the temple remains closed since April 2014 the respondents categorically submitted that they have not passed any closure order. And that they did not lock the temple.



W.P(MD)No.17824 of 2024

5.The petition mentioned temple is a public temple. The HR&CE Department has not assumed supervisory jurisdiction over it. It is beyond dispute that it has been traditionally managed by the persons belonging to Pillaimar Community. It is however conceded that the temple is open to worship by persons of all communities. Persons irrespective of caste can offer their worship and participate in the annual festivals.

6.When the practice of untouchability and caste discrimination has been totally eschewed, can there be a reason for closing the temple and stopping the performance of the daily rituals? Any temple is an abode of deity. Way back in 1922, in ***Rambrama Chatterjee Vs Kedar Nath Banerjee & Others AIR 1923 Cal60***, it was observed as follows:

“We need not describe here in detail the normal type of continued worship of a consecrated image, the sweeping of the temple, the process of smearing, the removal of the previous day's offerings of flowers, the presentation of fresh flowers, the respectful oblation of rice with flowers and water, and other like practices. It is sufficient to state that the deity is, in short, conceived as a living being and is treated in the same way as the master of the house would be treated by his humble servant. The daily routine of life is gone through with minute accuracy; the vivified image is regaled with the necessaries and luxuries of life in due succession, even to the changing of clothes, the offering of cooked and uncooked food,



W.P(MD)No.17824 of 2024

WEB COPY

and the retirement to rest. The dedicated food, known as bhog, is, after completion of the worship, distributed in charity amongst members of the family as also among guests invited and uninvited; for in the oldest Brahminical writings hospitality is regarded as the discharge of a common debt to humanity and the guest is honoured as a divinity. In our opinion, a direction that the descendants of the daughters of the founder should participate in such a distribution of consecrated food, is in no way inconsistent with the purpose of the endowment. The pecuniary value of the bhog may be and in the present case is insignificant from a secular point of view. But to the pious Hindu, the worth of prasad or consecrated food, which has been dedicated to the deity, cannot be measured in money; and the right to participate in its distribution would obviously possess special importance in the eyes of the descendants of the founder.”

What the Hon'ble High Court had said synchronizes with what the revered Shankaracharya has said.

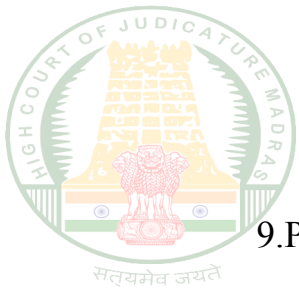
7.Once it is understood that the idol housed in a temple is to be treated as a living person, closure of the temple without the customary poojas would amount to its imprisonment. Even prison inmates are fed properly and their basic necessities are met. In the case on hand, the deity has been totally deprived. An idol is considered as a juristic personality in law. This is understood as enabling the idol to hold property and to sue and be sued in its name. Time has come to expand the scope of this concept.



W.P(MD)No.17824 of 2024

WEB COPY

8. Article 25 of the Constitution of India declares that all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion. This is a fundamental right guaranteed by the Constitution. This right is subject to public order, morality, health and to the other provisions of Part III of the Constitution of India. The question is whether a temple can be closed by citing public order. So long as there is no practice of untouchability or offending the rights of others, a temple cannot be closed or shut down indefinitely. This is as much the right of a devotee to offer worship as well as the right of the deity to observance of the customary rituals. Court has to exercise *parens patriae* jurisdiction when the interest of minor, the mentally ill and idols are at stake. It is the duty of the Court to uphold the right of the parties to perform the daily dharmic rituals. If persons cause obstruction in the discharge of this duty, the administration cannot remain a mute spectator. It has to actively intervene in favour of the right holders. It must remove the obstruction. An easy way would be to close down the temple. But exercise of such an option would be illegal and unconstitutional. It would be height of arbitrariness. Thus there will be a clear breach of the constitutional mandate enshrined in Article 14 and Article 25 of the Constitution of India.



W.P(MD)No.17824 of 2024

9. Probably realising this, the respondents have taken a clear stand that they have not closed down the temple. I do not buy this theory. It is the Pillaimar Community that is before me. Their prayer is that they should not be prevented from opening the temple. If they have on their own volition locked the temple, why would they seek this prayer? They can simply open the temple. It is because of their apprehension that the respondents may adversely react, the present writ petition has been filed.

10. The religious freedom guaranteed by Article 25 and 26 is intended to be a guide to a community life and ordain every religion to act according to its cultural and social demands to establish an egalitarian social order. The protection of Articles 25 and 26 of the Constitution is not limited to matters of doctrine. They extend also to acts done in furtherance of religion and, therefore, they contain a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of the religion (*vide (1997) 4 SSC 606 (Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi & Others Vs State of U.P & Others)*).

11. The learned counsel appearing for the petitioner showed the photographs. The current condition of the temple is truly pathetic. The matter



W.P(MD)No.17824 of 2024

can no longer brook any delay. The petition mentioned temple shall be opened forthwith. It shall be kept open for worship during the usual hours. The parties shall adhere to the agreement extracted earlier. The fundamental right of the petitioner and the other villagers guaranteed under Article 25 of the Constitution to visit the temple and take part in the worship of the deity shall not be taken away for any reason. If law and order arises, the jurisdictional Police will register an FIR and prosecute the offenders. No temple can be locked and sealed on the ground of law and order.

12.This writ petition is allowed accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

30.07.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
ias/mga

To:-

- 1.The District Collector,
District Collectorate Complex,
Madurai District.
- 2.The Revenue Divisional Officer,
Usilampatti Division,
Madurai District.



WEB COPY



W.P(MD)No.17824 of 2024

G.R.SWAMINATHAN, J.

ias/mga

3.The Tahsildar,
Peraiyur Taluk,
Madurai District.

4.The Inspector of Police,
Elumalai Police Station,
Madurai District.

W.P(MD)No.17824 of 2024

30.07.2024