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WP.Nos.34726 of 2022
& 3241 of 2023

In the High Court of Judicature at Madras

Reserved on : 27.6.2023	Delivered on : 30.6.2023
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Writ Petition Nos.34726 of 2022 and 3241 of 2023 &
WMP.Nos.34148 of 2022 & 3286 and 5412 of 2023

W.P.No.34726 of 2022 :

The Idol of Arulmigu Sri
Sundaramoorthi Vinayagar
rep.by its Hereditary Trustee
Mr.S.Venkatachalam

...Petitioner

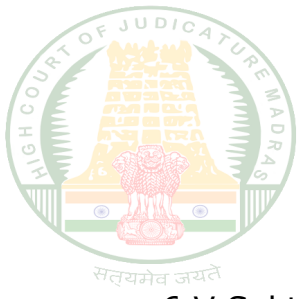
Vs

1.The Union Territory of
Pondicherry, rep.by its
Secretary, Hindu Religious
Institutions and Wakfs,
Goubert Avenue, Beach Road,
Pondicherry.

2.The Commissioner, Hindu
Religious Institutions and
Charitable Trusts, III Floor,
Valuthavur Road (Near Rani
Hospital), Pettaiyanchatram,
Pondicherry-9.

3.D.Perambalam
4.M.Parasuraman
5.M.Umapathy

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6.V.Sakthivel
7.S.Rajsekhar

...Respondents

W.P.No.3241 of 2023 :

Gollapalli Srinivas Ashok

...Petitioner

Vs

- 1.Union of India, rep.by the
Secretary to Government,
Department of Hindu Religious
Institutions & Wakf,
Government of Puducherry,
III Floor, Collectorate Complex,
Vazhudhavur Road,
Pettaiyanchathiram, Puducherry-9.
- 2.Under Secretary to Government
(Temples), Department of Hindu
Religious Institutions & Wakf,
Government of Puducherry,
III Floor, Collectorate Complex,
Vazhudhavur Road,
Pettaiyanchathiram, Puducherry-9.
- 3.The Chief Secretary to Government-
cum-Chief Vigilance Officer,
Government of Puducherry,
Chief Secretariat, Puducherry-1.
- 4.Thiru Kapaganti Uma Shankar,
President, Sri Venkateswara
Devasthanam, Yanam-533464.
- 5.Thiru Yalla Meerayya, Vice President,
Sri Venkateswara Devasthanam,
Yanam-533464.
- 6.Thiru Akula Nageswara Rao,

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Secretary, Sri Venkateswara
Devasthanam, Yanam-533644.

7.Thiru Kada Venkateswara Rao,
Treasurer, Sri Venkateswara
Devasthanam, Yanam-533644.

8.Tmt.Gandham Mahalakshmi,
Member, Sri Venkateswara
Devasthanam, Yanam-533644.

...Respondents

PETITIONS under Article 226 of The Constitution of India praying
for the issuance of

(i) a Writ of Prohibition restraining the respondents from interfering
with the affairs of the idol of Arulmigu Shree Sundarmoorthi Vinayagar by
purporting to exercise powers under Section 4(1) of the Pondicherry
Hindu Religious Institutions Act, 1972 (WP.No.34276 of 2022); and

(ii) a Writ of Certiorari to call for records pertaining to Government
Order G.O.Ms.No.24/CHRI/T.2/2022 dated 04.5.2022 passed by the 2nd
respondent and quash the same (WP.No.3241 of 2023).

For Petitioner in
WP.No.34726 of 2022 :

Mr.Sharath Chandran

For Petitioner in
WP.No.3241 of 2023 :

Ms.Akshayaa Benjamin

For Respondents 1 and 2 in



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WP.No.34726 of 2022 &
For Respondents 1 to 3 in
WP.No.3241 of 2023 :

Mr.R.Sankaranarayanan,
Additional Solicitor General
assisted by
Mr.S.Raveekumar, Government
Pleader (Puducherry) and
Mr.J.Kumaran, Additional
Government Pleader
(Puducherry)

For Respondents 3 to 7 in
WP.No.34726 of 2022 :

Mr.T.Sathiyamoorthy

For Respondents 4 to 8 in
WP.No.3241 of 2023 :

Mr.V.Moorthi

COMMON ORDER

The issue involved in both the writ petitions are common and hence, they are taken up together, heard and disposed of through this common order.

2. W.P.No.34726 of 2022 has been filed for the issuance of a Writ of Prohibition restraining the respondents from interfering with the affairs of the petitioner temple on the assumed powers under Section 4(1) of the Puducherry Hindu Religious Institutions Act, 1972 (for short, the Act).



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3. W.P.No.3241 of 2023 has been filed challenging the Government Order in G.O.Ms.No.24/CHRI/T.2/2022 dated 04.5.2022 passed by the second respondent whereby a new Board of Trustees was constituted in exercise of powers under Sections 4(1) and (1A) of the Act for the administration of Sri Venkateswara Devasthanam, Group of Temple, Yanam.

4. The common ground that has been urged in both these writ petitions is that Sections 4(1) and 9(1) of the Act have already been struck down as unconstitutional, that in view of the same, they are non est in the eye of law and that as a result, the official respondents did not have any power or jurisdiction to interfere with the administration of temples at Puducherry.

5. I have heard the respective learned counsel appearing for the petitioner in both the writ petitions, the Additional Solicitor General appearing on behalf of the learned Government Pleader (Puducherry) and the learned Additional Government Pleader (Puducherry) appearing for the official respondents in both the writ petitions and the respective learned counsel appearing for the private respondents in both the writ

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petitions.
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6. In order to have more clarity on the issue raised in these writ petitions, it is necessary to take note of the earlier orders passed by this Court.

7. In the case of **Meenakshi Devi Bhavanani & another Vs. Union of India & Others [W.P.Nos.8797 and 11736 to 11738 of 1986 dated 10.12.1986]**, a learned Single Judge of this Court dealt with the constitutional validity of Sections 4(1) and 9(1) of the Act. After considering the rival contentions, this Court, by a common order, struck down both the provisions and allowed the writ petitions.

8. The above common order dated 10.12.1986 was carried on appeal in W.A.Nos.1344 to 1347 of 1986 and 2205 to 2208 of 1987 by both the parties. The Division Bench of this Court, by a common judgment dated 03.4.2001, once again went into the issue and confirmed the said common order dated 10.12.1986 passed by the learned Single Judge by holding Sections 4(1) and 9(1) of the Act as unconstitutional and in view of the same, the Government Orders that were issued in

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exercise of the powers conferred by these provisions were also quashed.

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9. The said common judgment rendered by the Division Bench of this Court was assailed before the Apex Court by filing Civil Appeal Nos. 5543 to 5550 of 2001. These civil appeals were disposed of by the Apex Court by a common order dated 18.2.2013. For proper appreciation, the relevant portion in the order dated 18.2.2013 is extracted as hereunder :

"As far as the decision of the learned Single Judge as affirmed by the Division Bench relating to the vires of Sections 4(1) and 9(1) of the Act, it was brought to our notice that the said issue is pending consideration before another Bench of this Court in Writ Petition (Civil) No.476/2012. In such circumstances, we only state that leaving the said question open for consideration to be decided by the appropriate Bench, we are not expressing any opinion on that issue. As far as the writ petitioners' right, entitlement or any other issue as regards Sri Kamblisamy Madam is concerned, it is open to respondents 1 and 2 to work out their remedy before the appropriate civil court in the manner known to law, if so advised. In the event of respondents 1 and 2 working out their remedy before the appropriate civil court, it is always open to them to fall back upon Section 14 of Limitation Act to seek for appropriate orders and it is also open to the appellant to resist such suit on all issues including on the issue relating to the question of limitation by raising appropriate plea in that respect. Leaving all issues left open to be decided by the appropriate



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civil court in the event of respondents 1 and 2 choose to work out their remedy in the manner known to law, these civil appeals stand disposed of."

10. It is quite apparent from the common order dated 18.2.2013 passed by the Apex Court that the decision of the learned Single Judge of this Court, as affirmed by the Division Bench, was not interfered and the question was left open for consideration to be decided by an appropriate Bench in the pending case in W.P.(C) No.476 of 2012.

11. The next question that arises for consideration is as to whether the common order dated 18.2.2013 passed by the Apex Court by leaving open the question to be considered in a pending writ petition wipes away the common order dated 10.12.1986 passed by this Court declaring Sections 4(1) and 9(1) of the Act as unconstitutional.

12. The law on this issue is no longer res integra and the common order dated 10.12.1986 passed by this Court does not vanish into thin air and it continues to be binding.



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13. Useful reference can be made to the following judgments :

(a) ***Dhanpati Vs. Government of NCT of Delhi [reported in ILR (2010) 6 Del. 343]; and***

(b) ***CIT Vs. Integra Engineering India Limited [reported in 2013 SCC Online Gujarat 7389].***

14. An Act or a provision of law, which is declared as unconstitutional for violation of the Fundamental Rights under Part III of The Constitution of India, is a still born child in the eye of law. It is deemed to have never been in existence by virtue of Article 13(2) of The Constitution of India.

15. Useful reference can be made to the following judgments in this regard :

(i) ***Deep Chand Vs. State of U.P. [reported in AIR 1959 SC 648]; and***

(ii) ***State of Manipur Vs. Surajkumar Okram [reported in 2022 SCC Online SC 130].***



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16. The Government Orders that have been issued derive their source from Section 4(1) of the Act and if the source itself has been declared as unconstitutional, it will be in the nature of a building without foundation and it has to naturally crumble down. After the provision has been declared as unconstitutional, the Government Orders issued and all that transpired thereafter must be held to be a nullity in the eye of law.

17. The learned Additional Solicitor General appearing on behalf of the official respondents raised two legal pleas to sustain the Government Order impugned in one writ petition and to justify the further action taken by the Puducherry Hindu Religious and Charitable Endowment Department (for brevity, the Department). They are :

- (i) doctrine of merger; and
- (ii) doctrine of necessity.

18. In so far as the first legal plea that was raised by the learned Additional Solicitor General appearing on behalf of the official respondents is concerned, it was contended that the common order passed by this Court dated 10.12.1986 got merged with the order passed by Apex Court, which did not ultimately declare Sections 4(1) and 9(1) of the Act as

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unconstitutional.

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19. The doctrine of merger will not have any bearing to the case on hand. It is true that the common order dated 10.12.1986 passed by this Court got merged with that of the common order of the Supreme Court dated 18.2.2013. However, such merger did not result in the law declared by this Court getting reversed. The relevant portion in the common order of the Supreme Court, which is extracted supra, makes it clear that the Apex Court was not expressing any opinion, either way, on the constitutional validity of the provisions and the question was kept open to be decided in the pending case in W.P.(C) No.476 of 2012.

20. The upshot is that the doctrine of merger does not really revive the power of the official respondents, since, even as on date, the provisions are non est and there is no source for the official respondents to exercise their powers through a non existent provision.

21. The next legal ground that was urged by the learned Additional Solicitor General appearing on behalf of the official respondents was on the doctrine of necessity. He submitted that the temples at Puducherry

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are administered by the Department and if it is let loose, it will cause confusion and the temples will be put to jeopardy. The Additional Solicitor General justified the Executive continuing to exercise their control over the temples at Puducherry till a final judgment is rendered by the Apex Court in the pending writ petition or a new Enactment is passed by the Legislature.

22. The law permits certain things to be done as a matter of necessity, which would otherwise not countenanced on the touchstone of judicial propriety. The doctrine of necessity makes it imperative for the authority to decide and considerations of judicial propriety must yield. The doctrine of necessity introduces or brings the privilege into play. It is only on occasions where such necessity arises, it gives rise to a privilege, which otherwise would not exist.

23. The plea that has been raised by the learned Additional Solicitor General is that the official respondents will have to necessarily administer the temples at Puducherry, failing which, there will be anarchy and it will seriously affect the interest of the temples.

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24. This submission made by the learned Additional Solicitor General is too far-fetched and it gives an impression as if temples can never be managed by private persons and it will always be safer to be in the hands of the Department. The power exercised by the officers of the Department and the Government Order passed are traceable only to such a power given under the provisions of the Act. The officers, who exercise such a power, are creatures of the Enactment and if there is no law or provision in force, the creatures of such a law also cease to exist. Hence, the power exercised by virtue of the provisions of the Act cannot be continued to be exercised with the aid of the doctrine of necessity after those provisions ceased to exist.

25. If such exercise of power is permitted, the State and its Instrumentalities would continue to pass orders and take control of the administration of temples even in the absence of a statutory provision by just invoking the doctrine of necessity. If the same is entertained, the common order passed by this Court dated 10.12.1986 declaring the relevant provisions as unconstitutional becomes otiose. Those Authorities will achieve indirectly what they were not able to achieve directly by virtue of the provisions having been declared as unconstitutional. The

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doctrines of necessity can never be invoked in a case of this nature and this doctrine is not meant for disregarding the orders passed by a Constitutional Court declaring a law as unconstitutional.

26. If the submission of the learned Additional Solicitor General is accepted and if the Authorities are allowed to exercise their power without the source of power, it will set a very bad precedent. Hence, the invocation of the doctrine of necessity as pleaded by the learned Additional Solicitor General appearing on behalf of the official respondents is liable to be rejected by this Court and is accordingly rejected.

27. Mr.A.Sivasankaran, Commissioner of the Department was present in court at the time of hearing. The learned Government Pleader (Puducherry), on instructions from the Commissioner, further instructed the learned Additional Solicitor General that the Government of Puducherry is proposing to bring in a fresh enactment.

28. The law that was declared by this Court is kept pending and the question is yet to be heard and decided in a pending writ petition before the Apex Court. In the meantime, if the Government of Puducherry wants



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to enact a new law, the pending case before the Apex Court will lose its steam. However, it is for the Government of Puducherry to take a call on this. Therefore, the official respondents can exercise powers of controlling the administration of temples at Puducherry either when the Apex Court decides the issue in favour of the Department and restores Sections 4(1) and 9(1) of the Act or when the Government of Puducherry comes up with the new enactment. Till then, there is no scope for the Department to wield any powers nor take over the administration of the temples at Puducherry by virtue of Sections 4(1) and 9(1) of the Act. It also goes without saying that the other provisions are intact and it will be kept open for the Department to act in line with those provisions.

29. In the light of the above discussions, both the writ petitions stand allowed as prayed for. No costs. Consequently, the connected WMPs are closed.

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Index : Yes
Neutral Citation : Yes
Speaking Order : Yes

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To

- 1.The Secretary, Union Territory of Pondicherry, Hindu Religious Institutions and Wakfs, Goubert Avenue, Beach Road, Pondicherry.
- 2.The Commissioner, Hindu Religious Institutions and Charitable Trusts, III Floor,Valuthavur Road (Near Rani Hospital), Pettaiyanchatram, Pondicherry-9.
- 3.The Secretary to Government, Union of India, Department of Hindu Religious Institutions & Wakf, Government of Puducherry, III Floor, Collectorate Complex, Vazhudhavur Road, Pettaiyanchathiram, Puducherry-9.
- 4.The Under Secretary to Government (Temples), Department of Hindu Religious Institutions & Wakf, Government of Puducherry, III Floor, Collectorate Complex, Vazhudhavur Road, Pettaiyanchathiram, Puducherry-9.
- 5.The Chief Secretary to Government-cum-Chief Vigilance Officer, Government of Puducherry, Chief Secretariat, Puducherry-1.

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N.ANAND VENKATESH,J

RS

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