

(2017) 12 MAD CK 0071
In the Madras High Court
Case No : 1524 of 2014

V.Subramanian

APPELLANT

Vs

The Commissioner & Ors

RESPONDENT

Date of Decision : 07-12-2017

Acts Referred:

Citation : (2017) 12 MAD CK 0071

Hon'ble Judges : K.Kalyanasundaram, V.Bhavani Subbaroyan

Bench : DIVISION BENCH

Advocate : K.Kalyanasundaram, V.Bhavani Subbaroyan

Final Decision : Dismissed

Judgement

1. This Writ Appeal is filed challenging the order passed by the learned single Judge in W.P(MD)No.19422 of 2014, dated 04.12.2014, before this Honourable Court.

2. The brief facts of the case presented by the appellant, who was the writ petitioner, is as follows:- The appellant/petitioner, who is a practising Advocate in and around the Courts of Madurai District, is a devotee of Lord Subramaniaswamy and he is a frequent visitor to Lord Muruga's Temple at Thirupparankundram, which is one of the Arupadaiveedu, the six main abodes of Lord Muruga and this Temple is a cave Temple with unique feature of carving out of rocks and visited and worshipped by thousands of people every day and particularly in festival seasons, lakhs of devotees will be thronging to visit the Temple for Dharsan of Lord Muruga.

3. The entire issue in the Writ Petition revolves around particularly to the lighting of "Karthigai Deepam" during the eve of "Karthigai Deepa Thirunaal" on the top of the hill, for decades immemorial. However, subsequently a dispute arose between group of Muslims and Hindus with regard to the place of lighting of "Karthigai Deepam", since a Muslim Dargha is situated very near to the place where "Karthigai Deepam" is lit once in a year.

4. The learned counsel for the appellant/petitioner would submit that there was a dispute arose during the rule of British Government itself and a suit was filed in respect of the title by the Devasthanam and the said suit was allowed in favour of the Temple Devasthanam holding that the Temple Devasthanam is the owner fo the entire hill with some few exceptions. The matter was appealed and the Privy Council upheld the Judgment and Decree of the trial Court, which is reported in AIR 1931 Privy Council 212. However, because of the dispute arose different place was earmarked to light up the "Karthigai Deepam" and accordingly, the Temple Devasthanam started lighting the "Karthigai Deepam" in the place where "Motcha Deepam" was lighted.

5. On perusing the affidavit filed by the appellant/petitioner in support of the Writ Petition, the entire crux of issue is lighting the "Karthigai Deepam" in the place where "Motcha Deepam" has been lit by the devotees. According to the appellant/petitioner, "Motcha Deepam" is lighted by the devotees in fond remembrance of their ancestors which as per the averments of the appellant/petitioner is that it is against the "Agama Sastras" and lakhs of devotees are wounded by the deliberate violation of "Agama Sastras" which made the appellant/petitioner to send representations to the respondents herein and thereafter, filed a Writ Petition No.19422 of 2014, seeking a Writ of Mandamus directing the respondents 3 and 5 to light up the "Karthigai Deepam" on the top point of Thirupparankundram Hills instead of lighting the "Karthigai Deepam" in the present place near "Motcha Deepam" by considering the representation of the appellant/petitioner, dated 20.11.2014.

6. While considering the Writ Petition the learned Single Judge, after appreciating the submissions made by the appellant herein as well as the Special Government Pleader appearing for the respondents, had dismissed the Writ Petition on the ground that the appellant/petitioner has not established his case that he has a legal right, which entitles him to seek its enforcement. Aggrieved by the said order of the learned Single Judge, this Writ Appeal has been filed.

7. Heard the learned counsel for the appellant/petitioner and the learned Special Government Pleader appearing for the respondents and perused the materials on record and the photographs.

8. On a careful perusal of the issue in hand, is to be noted that no doubt the appellant as a devotee can maintain a Writ Petition seeking enforcement of any right of practice of the Temple and its enforcement of the same. However, when there is an existence of Muslim Darga on top of the Hill which is very near to the place where this appellant seeks to light up the "Karthigai Deepam" and lots of Muslim devotees also treat the said Darga as place of sanctity, who have faith in that and when such fact is not denied, the appellant ought to have made the person concerned with the said Darga as also a party to the Writ Petition before seeking an order, which would certainly bring differences of opinion among two religious devotees. When that being so, the Writ Petition filed by the appellant/petitioner without impleading the necessary party, the Writ Petition ought to have

been dismissed on the ground of non-impleadment of the proper and necessary party.

9. Apart from that, the learned Judge while considering the claim putforth by the appellant/petitioner has rightly dismissed the Writ Petition stating that the Writ Petitioner has come up before this Court that the lighting of "Karthigai Deepam" near the place of "Motcha Deepam" is against the "Agama Sastras" ought to have placed in record his claim regarding the lighting of the "Karthigai Deepam". The Temple is performing the "Karthigai Deepam" in its property as performed during previous years and the lighting of Deepam is against "Agama Sastras" was not substantiated by any evidence. Mere statement in the affidavit that lighting of "Karthigai Deepam" near the "Motcha Deepam" is against the "Agama Sastras" without any piece of evidence cannot be accepted at any stretch of imagination. That apart, the Privy Council has affirmed the conclusion taken by the learned Subordinate Judge as early as on 1931. The present practice of lighting "Karthigai Deepam" near "Motcha Deepam" when the authorities as well as the representatives of the Darga is performed peacefully for the last few decades, there is no reason why such peace and tranquillity maintain by both the communities should be disturbed, that too, when the appellant/petitioner has not chosen to make the representatives of the Darga as a party before this Court.

10. In similar circumstances, the Division Bench of this Court in an unreported decision in W.A(MD)No.1442 of 2014 (Ganesan Vs. The Superintendent of Police), dated 19.07.2017, held in paragraph No.4 is as follows:- "4.We do not propose to go into those issues. It is for the Temple Authorities to take appropriate action in compliance with the order passed by this Court in W.P.No. 18884 of 1994, dated 21.11.1996. Certainly law and order is an issue to be kept in mind while doing so. After all the object is to see that peace and tranquillity is being maintained and for the aforesaid purpose the onus is on the respondents. Thus, the Writ Appeal stands disposed of by observing that the Temple Authority namely the third respondent will take appropriate action to see to it communal harmony is maintained. No costs. Consequently, connected Miscellaneous Petitions are closed."

11. The learned Single Judge in W.P(MD)No.19422 of 2014 in paragraph No.14 has held as follows:- "14.At this Juncture, this Court cites the decision of the Honourable Supreme Court in Director of Settlements Vs. N.R.Apparao reported in 2002 (4) SCC 636, wherein it is held that the powers of High Court under Article 226 of the Constitution of India though discretionary and though without serious limitations, must be exercised along with recognized lines and subject to self imposed limitations".

12. Under these circumstances, on a careful consideration of arguments putforth by the appellant counsel as well as the respondent counsel, we do not find any infirmity in the order passed by the learned single Judge that too when the contention of the appellant that it is against "Agama Sastras" has not been established by mere averments in the affidavit cannot hold good.

13. In the result, this Writ Appeal is liable to be dismissed and accordingly, the same is hereby dismissed. No costs.