

31, 1971

No. 10 of 1971

IN THE PRIVY COUNCIL

ON APPEAL
FROM THE SUPREME COURT OF CEYLON

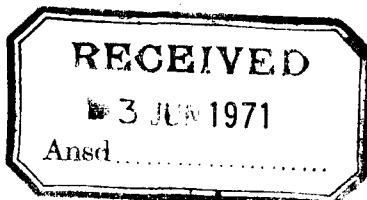
B E T W E E N :

C. SUNTHARALINGAM Appellant

- and -

THE INSECTOR OF POLICE
Kankesanturai. Respondent

RECORD OF PROCEEDINGS



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RECORD OF PROCEEDINGS

(i)

No. 10 of 1971

IN THE PRIVY COUNCIL

ON APPEAL
FROM THE SUPREME COURT OF CEYLON

B E T W E E N :

C. SUNTHARALINGAM

Appellant

- and -

THE INSPECTOR OF POLICE,
Kankesanturai.

Respondent

RECORD OF PROCEEDINGS

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PROCEEDINGS

DESCRIPTION

DATE

IN THE MAGISTRATE'S COURT

Original Plaint.
Plaint as first amended.
Court Notes except the
part reproduced as Item 1
of Proceedings.
Court Journa (except
the part forming Item 9
in the above Index of
Reference)

5th July 1968
3rd September 1968

2nd October 1968
29th July 1968
to
10th November 1968

EXHIBITS in MAGISTRATE'S
COURT NOT REPRODUCED

Mark

DESCRIPTION

DATE

D.2. Defence Exhibit not
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reproduced.

D.3. Defence Exhibit.
Part of the Judgment of
the District Court in
that Suit No. 16,608
not reproduced.

P.1 Prosecution Exhibit;
Decree of the District
Court in Suit
No. 16,608 in pursuance
of the reproduced
Exhibit D.1.

8th November 1949

28th October 1954

20th November 1954.

1.

IN THE PRIVY COUNCIL

No. 10 of 1971

O N A P P E A L
FROM THE SUPREME COURT OF CEYLON

B E T W E E N :

C. SUNTHARALINGAM Appellant

- and -

THE INSPECTOR OF POLICE
Kankesanturai, Ceylon Respondent

RECORD OF PROCEEDINGS

10

No. 1

AMENDED PLAINT

Amended Plaint:

Prevent from entering a temple

CEYLON POLICE.

Case No.4700

IN THE MAGISTRATE'S COURT OF MALLAKAM.

This 2nd day of October, 1968.

I, R. Herath, H.Q.I., Police, K.K.S. in terms of section 148(1) b of The Criminal Procedure Code (Chapter 20), hereby report to the Court that C. Suntheralingam, Ex M.P. for Vavuniya did on or about the 1st day of July 1968 at Mawiddapuram

20

In the
Magistrate's
Court

No. 1

Amended Plaint

2nd October
1968

In the
Magistrate's
Court
No. 1
Amended Plaint
2nd October
1968
(continued)

Kandasamy Temple within the jurisdiction of this Court prevent or obstruct by reason of the caste of certain Murugesu Sinniah of Madduvil North Chavakachcheri a follower of Hindu Religion from entering the inner court yard of the above temple, which inner court yard is a place of worship to which the followers of the Hindu Religion have access, and have thus imposed a Social Disability on the said Murugesu Sinniah and have thus committed an offence punishable under Section 2 of the Prevention of Social Disability Act No. 21 of 1957 read with section 3(b) of the said Act.

10

Witnesses:

1. Murugesu Sinniah of Madduvil North, Chavakachcheri.
2. Pandari Krishnan of -do-
3. Kanawathy Ponmudurai -do-
4. A. Murugesampillai, A.G.A. Kachcheri, Jaffna.
5. S. Nadarajah of Mallakam.
6. V. Nadarajah, G.S.No.66 of Mawiddapuram.
7. P.S.949 Rasiah of Jaffna Police.

20

Sgd. R. Herath
H.Q.I., K.K.S.Police.

No. 2

COURT NOTES (part)

In the
Magistrate's
Court
No. 2
Court Notes
(part)
2nd October
1968

No. 4700

Accused appears in person.

Mr. Adv. Kathirvetpillai instd. by
Mr. Mahadeva for I.P.Herath of the K.K.S.

30

Police, for Prose.

Mr. Suntharalingam objects to Mr. Adv. Kathiravetpillai appearing for the complainant. He draws my attention to Section 199.

Mr. Kathiravetpillai cites 51 N.L.R. page 409 and 60 N.L.R. page 468, and states that he has legal status to appear for the complainant who is I.P.Herath, in this case.

In the
Magistrate's
Court

No. 2

Court Notes
(part)

2nd October
1968

(continued)

10 At this stage the accused (Mr. Suntharalingam) withdraws his objections as Mr. Kathiravetpillai has stated that he has been retained by Mr. Mahadeva who has been retained by the complainant in this case.

Mr. Kathiravetpillai moves to amend the plaint and files an amended plaint.

I now charge the accused from the amended charge sheet. The accused states "I am not guilty".

20 The accused is willing to proceed to trial now.

No. 3

CHARGE SHEET

Accused: C.Suntharalingam

CHARGE SHEET

(Ordinary Proceedings)

Sections 187, 188)

Date: 2nd October, 1968.

In the
Magistrate's
Court

No. 3

Charge Sheet

2nd October
1968

The accused is charged as follows:-

30 You are hereby charged, that you did within the jurisdiction of this Court at Mawiddapuram Kandasamy Temple on 1st July, 1968 prevent or obstruct by reason of the caste of certain

In the
Magistrate's
Court

No. 3

Charge Sheet

2nd October
1968

(continued)

Murugesu Sinniah of Madduvil North Chavakachcheri a follower of Hindu Religion from entering the inner court yard of the above temple, which inner court yard is a place of worship to which the followers of the Hindu Religion have access, and have thus imposed a Social Disability on the said Murugesu Sinniah and have thus committed an offence punishable under Section 2 of the Prevention of Social Disability Act No. 21 of 1957 read with Section 3 (b) of the said Act.

10

The charge having been read, and the accused (or each accused) having been asked if he has any cause to show why he should not be convicted he states as follows:-

"I am not guilty".

Sgd. M. Shanmugalingam,

Magistrate.

2.10.68

In the
Magistrate's
Court

No. 4

Prosecution
Evidence

No. 4

M. SINNIAH

20

M. Sinniah, affd. 31 years, Clerk, Education Office, Jaffna.

Examination
in Chief

M. Sinniah

2nd October
1968

I was born at Madduvil North, Chavakachcheri. My father is Murugan and my mother is Achchipillai. My parents belong to the Hindu faith and to the Hindu religion. I belong to the Hindu religion and Saiva Sect. I have been to temples with my parents, when I was young. I have been to the Amman temple at Madduvil and to the Sivan Kovil at Chavakachcheri and other Hindu Saiva temples. I studied at the Madduvil Maha Vidyalaya. I studied in the Tamil medium. I studied Hindu religion. I offered Hinduism as a subject for my S.S.C. I know the Maviddapuram Kandasamy Temple. On the 1st of July 1968, I went to that temple. I went by car

30

from Madduvil. Krishnar and Ponnudurai accompanied me. I reached the Maviddapuram temple at 10.45 a.m. I then went to the well to wash myself. A person came there and asked us not to go to the well. In spite of his request we proceeded to the well. A person at the well poured water and we washed ourselves and went towards the temple to enter it. We went to the western entrance of the temple. Then the accused said "Pallar, and Nalavar should not enter the temple" and pushed me by my chest and told us to go and complain to the Police if we so desire. Then I went to the temporary Police post there and made a complaint.

10

To Court:

The accused was standing at the Gopura Vasal. I was prevented by the accused from entering the temple. I went there that day to worship.

20

XXD:- My parents are alive. My mother belongs to the Pallar caste and my father also belongs to that caste. When I was young my mother took me to the temple. I have worshipped at Saiva temples with my mother. My mother had never worshipped from the inner court yard of the temple. I have not been with my mother to the inner court yard of a temple to worship. I have been to Saiva temples with my father. My father has also not taken me at any time to the inner court yard of any Saiva temple. I use to worship with my parents from the outer court yard of the temples. It is possible that we did not enter the inner court yard of the temple because we belonged to the Pallar caste, but I cannot say definitely. Even after I grew up I have not been worshipping from the inner court yard of the temple. I have been to the Nallur Kandasamy temple. I have not been to the inner court yard of the temple and worshipped in any temple when I was a young man. I have not been to the Maviddapuram temple inner Court yard. This was the first time I tried to enter that temple. I have not worshipped in this temple before. I first went and worshipped from the inner Court yard of the Nallur Kandasamy Temple in 1959 or so,

30

40

In the
Magistrate's
Court

Prosecution
Evidence

No. 4

Examination
in Chief

M. Sinniah

2nd October
1968

(continued)

To Court.

Cross-
examination

In the
Magistrate's
Court

Prosecution
Evidence

No. 4

M. Sinniah

2nd October
1968

(continued)

but I am not sure. Before 1959 I have not been to the inner Court yard of the Nallur Kandasamy Temple.

Q. You know in 1959 that the Nallur Kandasamy temple authorities had allowed the unfortunate Harijan people to enter the temple and worship from inside ?

A. Yes.

Q. If that consent had not been given, would you have gone in ?

10

A. No.

I have been only once to the Nallur Kandasamy temple and that was in 1959. At the time I went to the Nallur Kandasamy temple, the managements of that temple had allowed the Harijans to enter the temple. Somewhere about 1959 or earlier to that date, I am aware that people of the low caste were prevented from entering the temple, but I cannot say if they did not go inside when they were prevented. The people who were prevented worshipped from the outer court yard. I knew that this was an age old custom.

20

Q. I put it to you that even the people who performed the festivals belonging to the Pallar and Nalava caste make their offering from the outer court yard of the temple and not go inside ?

A. I am not aware of this as we have not performed such festivals.

I know that people of my caste worship from outside the Gopuram vasal. From the time I came to know things, I and the people of my caste have been prevented from entering the inner court yard of the temple, at no time were they prevented from worshipping outside the Gopura Vasal. The land outside the Gopura Vasal (outer court yard) is a part of the temple. I do not belong to any political party.

30

Q. When you went to the temple on 1st July, did you know that you will be prevented from entering the inner court yard of the temple ?

A. We were not aware.

Q. Did you know of any statement in the press as to the admission of the low caste people to the Maviddapuram temple?

A. Yes.

10 I read in the papers that the low caste people would be admitted on the 1st July to the inner court yard of the Maviddapuram temple. I read the Eela Nadu, Virakesari and the Thinakaran. I cannot remember if I read the Eeela Nadu of 23.6.68. I cannot remember if I read an article by the accused in the Eeela Nadu paper of 23.6.68, stating that the low caste people would not be allowed to enter the Maviddapuram Temple inner court yard. I may have read it. On 1st July there was no meeting of the Harijans about temple entry at the Maviddapuram temple. I may have read about it, but I cannot remember.

20 Q. I put it to you that when you came to the Maviddapuram temple on 1st July, you were aware that you will be prevented ?

A. No.

30 I thought I would be allowed to enter. I saw many people like me making complaints at the Police post, but I did not know their caste. I do not know if the Vellala people also complained that they were not allowed to enter the temple. I made my complaint and went away. There was no necessity for me to touch the bucket at the well as water was drawn and given to us to wash ourselves. The accused did not ask me what my caste was. The accused said that the Pallar and Nallavar should not enter the temple, but did not point out to me and say that I was a Pallar. When he said that, I knew that it also applied to me. When I was pushed I knew the accused had addressed this to me also. After I was prevented

40 I did not try to enter the temple.

In the
Magistrate's
Court

Prosecution
Evidence

. No. 4

M. Sinniah

2nd October
1968

(continued)

In the
Magistrate's
Court

Prosecution
Evidence

No. 4

M. Sinniah

2nd October
1968

(continued)

Q. I put it to you that you are uttering a dirty lie when you say that the accused pushed you ?

A. No.

Q. The accused told you, "you cannot enter, there is a Police post, make an entry if you wish to" ?

A. No.

As I was proceeding I was prevented by force. I was trying to go into the inner court yard when I was prevented. I deny that the accused did not push me. I did not fall when I was pushed. The two friends who came with me were by my side when I was prevented from entering the temple. I did not want to worship from outside because I had come with the deliberate intention of worshipping from inside the inner court yard of the temple. I did not go with the intention of worshipping from outside the temple as usual but to go and worship from inside the temple. I had myself worshipped from outside and was walking inside for the purpose of worshipping from inside when I was prevented.

10

20

Q. So you had as usual worshipped from outside?

A. Yes.

After washing myself I worshipped from outside first from where the low caste people worship usually. I went to the Police post close to the entrance and they directed us to another Police post. I made my complaint at about 10.50 a.m. In that statement I gave the names of my witnesses. The witnesses also made their statements. I do not know if the witnesses were prevented from entering the temple. I cannot remember if in their statements they said that they were prevented from entering the temple. I was present when they made their statements. I heard what they said. I heard about 2 Sathiyagraha on the 15th at the temple. I did not take part in it. I went

30

40

to the temple again on the Sapparam Thiruvilla day. That was on the 23rd of July. I went as a worshipper that day. I went at about 10.30 a.m. At that time I did not see a number of people seated in front of the Eastern Velli Mandapan of the temple, but there was confusion all over. There were people congregated near the festival car and other places. I did not see the accused there. I saw the accused on the 23rd July in the temple premises at about 5 p.m. That was after the Police threatened to batton charge the crowd and chased the crowd away. I do not know if Edmund Samarakkody was there. I do not know him. No one told me that there was a Sinhala gentleman there. I read in the papers that a Sinhala gentleman was batton charged by the Police. I cannot remember if I read in the papers about the Harijans trying to enter the temple by force, but I heard that the accused had made a statement to the press stating that the people of my caste had entered the temple by force on the 23rd. I did not read in the papers that the low caste people were trying to enter the temple by force.

In the
Magistrate's
Court

Prosecution
Evidence

No. 4

M. Sinniah

2nd October
1968

(continued)

10 Q. Did you know at any time that the police were going to give protection to the Harijans to enter the temple?

A. Yes.

I may have known that fact before the 1st of July.

30 Q. Because you heard that the Police were going to protect the Harijans who were going to enter the temple before the 1st of July, you went to the temple?

40 A. I went on the 1st July to this temple because I read a press report by the Supdt. of Police stating that the people of the low caste would be allowed to go into the temple and the Police would give protection to any member of the low caste who tried to enter the temple.

If the low caste were prevented entry the police could have given protection. I thought that the

deposition

10.

In the
Magistrate's
Court

Prosecution
Evidence

No. 4

M. Sinniah

2nd October
1968

(continued)

Police would see to it that we were not obstructed. I knew the police would give protection to the low caste people. The Police would have given protection from any danger that would fall on the Harijans by the people who obstructed the entry. I know what "Asoosam" is. I do not know if a Vellala man having asoosam cannot worship from inside the temple.

Q. So you are quite ignorant of the Vellala man's asoosam?

10

A. I do not understand.

I went to the temple with the intention of going to the places where the other worshippers were allowed to go and worship. I know the "Moolaistanam". That is the place where the deity is kept. I do not know the persons who are entitled to go to the "Moolaistanam". I do not know the various mandapams in a Saiva temple.

Q. Do you know there is an entrance for the people in the eastern side of the Maviddapuram temple?

20

A. I do not know.

I know there is a Velli Mandapam in the Maviddapuram temple. I ~~came~~ in the car and got down at the entrance on the western side and when I saw others entering by the entrance at the western side, I followed them. Usually I enter the Nallur Kandasamy temple from the eastern side. On that day the western side entrance of Maviddapuram temple was not closed. I am not aware of a custom that worshippers go to worship in a temple from the eastern entrance.

30

Q. If you had no knowledge of the Police giving protection you would not have gone to this temple on the 1st July to enter the inner court yard?

A. Yes, I know the temple would be opened to us.

10 I went on the 23rd of July because I learnt through the press that there was going to be a Sathiyagraha. I did not know that there was police protection that day. I knew that there was going to be a Sathiyagraha that day by the Harijans. The Sathiyagraha was performed to gain entry to the temple. I heard that on the 16th the Police prevented a Sathiyagraha by the Harijans. On the 23rd I knew a Sathiyagraha would take place. I went on the 23rd to worship from the inner court yard of the temple. I worshipped from outside the temple that day and returned.

Rexd:- Nil.

In the
Magistrate's
Court

Prosecution
Evidence

No. 4

M. Sinniah

2nd October
1968

(continued)

No. 5

P. KRISHNAR

P. Krishnar. Affd. 24 years, Weaver, Power Loom, Madduvil.

In the
Magistrate's
Court

Prosecution
Evidence

No. 5

P. Krishnar.

2nd October
1968

In Chief

20 I was born at Madduvil North. I know the last witness Sinniah. I am a Hindu belonging to the Saiva sect. I went with Sinniah to the Maviddapuram temple by car. One Ponnuthurai also accompanied. We reached the temple at about 10.30 a.m. We then proceeded to the well to wash ourselves. Then a person prevented Sinniah from going to the well. In spite of that we went to the well and a man drew us water from the well and we washed ourselves and then went to the western entrance of the temple to go
30 inside and worship. Then some people were preventing some worshippers and this accused told us that Pallar and Nallavar could not enter the temple. He addressed those words to Sinniah. The accused then pushed Sinniah by his chest. He told us to make a complaint to the Police if we so desire. Then we went and made a complaint to the Police.

XXD:- by Accused:

We were prevented from drawing

In the
Magistrate's
Court

Prosecution
Evidence

No. 5

P. Krishnar

2nd October
1968

In Chief

(continued)

water from the well. We were prevented from touching the bucket. I belong to the Palla caste. I am not married. I was not pushed. I was following Sinniah right behind. Sinniah retreated when he was pushed. Before the accused pushed Sinniah, he said "Pallar, Nallavar and Parayars cannot enter the temple". He uttered these words and pushed Sinniah. When we were prevented from drawing water, they did not say these words. I do not know how the accused came to know that Sinniah was a Palla caste man. There were others pushing the people but the accused was in front. Sinniah asked the accused why he was pushed by the chest. The accused said - "I have told you that the Pallar and Nallavar cannot enter the temple, why do you come again". Sinniah did not try to enter the temple when the accused uttered these words. I deny that the accused did not push Sinniah. I did not worship that day because I was not allowed to enter the inner court yard of the temple. I belong to the Palla caste. My parents are living, my parents have taken me to temple when I was small. We stay outside the temple and worship. My parents have told us that there was no custom for us to worship from inside and if we go inside we would be cut and murdered. I knew by custom that the Palla people worshipped from outside the temple. We were not prevented from staying outside the Gopura Vasal and worshipping. We had gone with the intention of worshipping from inside the temple, but we could not worship from outside the temple either. We went to the Police post immediately and made our complaints. We complained that we were not allowed to enter the inner Court yard of the temple.

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Rexd:- Nil.

No. 6S. NADARAJAH

S. Nadarajah, Affd. 57 years, Proctor
S.C. Mallakam.

In the
Magistrate's
Court

Prosecution
Evidence

No. 6

S. Nadarajah

2nd October
1968

In Chief

10 I am a Proctor of the Supreme Court, for
30 years. I am also a member of the Senate. I
am a resident of Mallakam for 38 years. I know
the Maviddapuram temple, and I have been
worshipping regularly at this temple. I am
generally aware of the affairs of the temple.
Maviddapuram temple has been declared a public
trust. I was the Proctor in the case in which it
was declared a Public Charitable trust. I
produce the decree entered in D.C. Jaffna case
No. 16608, marked Pl. I refer to para 1 of Pl,
which states that the temple and its
temporalities have been declared a public
charitable trust. I am not aware of any
restriction passed by the trustee before 1.7.68,
20 on the entry of the low caste people into the
temple, to my knowledge. I have visited the
temple on every Fridays and attend almost all
the festivals. At no time during the period I
have visited the temple have I known or seen
anybody preventing anybody else from entering the
temple.

30 XXD:- I am aware that the judgment of the D.C.
went up in appeal. I am not aware of a decree
entered by the Supreme Court. I must see the
record to see if there was a decree entered by
the Supreme Court. I did not take the trouble
to find out if there was a decree by the Supreme
Court. I was the Proctor for the trustee in the
D.C. case. If there is a decree filed, I will
accept it. No decree in the Supreme Court would
have been entered without my knowledge as I was
the Proctor in the case. I cannot remember what
transpired so many years ago. The Supreme Court
either allows an appeal or rejects it.
40 Duraisamy Kurukkal is the head and trustee of the
temple. The Supreme Court directed the District
Court to have a scheme of management for the

In the
Magistrate's
Court

Prosecution
Evidence

No. 6

S. Nadarajah

2nd October
1968

In Chief

(continued)

temple. The temple is a public charitable trust.

(The decree of the Supreme Court is produced marked D1 and the judgment of the Supreme Court is marked D2. The proceedings in the District Court would be under the Trust Ordinance if the plaint says so. There was a preliminary inquiry by the Government Agent before the case was filed.

(A passage in the judgment D2 is marked D2A) (D.2A read) The Scheme of management was formulated by the District Judge and it became part of the decree.

10

(The scheme of management is produced, marked D3)

(Para 9 of the scheme of management D3 is marked D3A)

(D3A read) I know that the Law of Thesavalami obtains in this part of the country. I know there are people of the Nallava, Palla and Paraya caste. I am from Rangoon and I came to Ceylon in my 19th year. Before I came to Ceylon I did not know the customs, practices prevailing at the Mawiddapuram temple in regard to the Harijans. I returned from Rangoon in 1930.

20

Q. From 1930 to your knowledge were the Nallavas and Pallas according to custom, worshipping from outside the main Gopuram Vasal ?

A. Yes, it was so about that time.

I cannot say whether the people of the low caste entered, but the practice for them to worship from outside was present. This practice seem to continue even now but in 1930 a movement was led in regard to the abolition of caste. Steps were taken by the leaders in the country to deal with the question of temple entry. I think the low caste people were allowed to go into some temple in or about the year 1933 or 1934. The fight of the entry into temple by the low caste people started in the 1930s or 1940s. During the first high festival at the Maviddapuram temple this year, force was used to enter the temple as force was used to prevent entry. Maviddapuram temple

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was one where the people of the low caste went in and came out whenever they wanted. To my knowledge the first obstruction at the Maviddapuram temple was on the 1st July 1968, during the high festival. I do not know on what date the barricade was put up at the Maviddapuram temple.

In the
Magistrate's
Court

Prosecution
Evidence

No. 6

S. Nadarajah

2nd October

1968

In Chief

(continued)

10

Q. Do you or do you not know that before the barricades were put up in July 1968, the Harijans were not allowed to enter the temple by the managing trustee?

A. Efforts were not made by anybody getting into the temple.

Q. Do you or do you not know that the Harijans were prevented from entering the temple on the flag hoisting ceremony day by the governing authority ?

A. I am not aware of the governing authority Duraisamy Kurukkal taking steps to prevent.

20

I did not go to the temple, so I do not know if there were barricades. I do not know what happened during the whole time of the high festival. The record will bear out if any questions were put to me about temple entry. All what I have answered is my personal knowledge.

To Court:-

To Court

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There were certain people of the low caste in the village who have worshipped from outside, but I am personally aware of low caste people of other areas going into the temple and worshipping.

XXD: contd. These people entered without the knowledge of the managing trustee. The Velli Veethi was part of the temple but now there are roads on the western and northern sides and have become public thoroughfares now. The land outside the temple on the other side of the roads also belong to the temple.

Cross-
examination

The practice of the Harijans worshipping from outside the Gopura Vasal is still going on.

In the
Magistrate's
Court

Prosecution
Evidence

No. 6

S. Nadarajah

2nd October
1968

Re-examination
(continued)

Rexd: The low caste people of this area will not enter the inner court yard because they have their own feelings about it.

In the
Magistrate's
Court

No. 7
Court Notes
2nd October
1968

No. 7

COURT NOTES

Case for the Prosecution closed leading in evidence Pl.

I comply with the provisions of Section 296 of the C.P.C. and call upon the accused for his defence.

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The accused elects to give evidence.

In the
Magistrate's
Court

Defence
Evidence

No. 8

C. Suntharalingam

2nd October
1968

In Chief

No. 8

C. SUNTHARALINGAM

C. Suntharalingam. Affd. 75 years plus, Farmer, student and Advocate, residing at Mahalingam Vasa, Keerimalai, Lingam Thoddam, Vavuniya and Colombo.

I am the accused in this case. I am a M.A. of the University of Oxford, B.Sc. of the University of London, I was a member of the

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Indian Civil Service, Ceylon Civil Service, I was Vice Principal of Ananda College, Colombo, I have been a Professor of Mathematics of University College of the Government of Ceylon, I have been a member of Parliament for Vavuniya, I have been a Minister of Commerce and Trade in the Cabinet of D.S. Senanayake, I have been functioning as a District Judge, Magistrate and Superintendent of Prisons and performing the duties of these officers. On the 31st June 1968, I was made a divine request that I should proceed to Maviddapuram temple forthwith to prevent blood shed and murder due to the caste troubles prevailing in the area. There were frequent murders at Chankanai, Kodikamam Atchuvely and other places. I proceeded to Maviddapuram from Colombo. I made most careful inquiries and I also mentioned to the priest that the Police were going to give protection to the Harijans even if they attempted to enter the temple by force or threat of force. The Harijans were to enter the temple with Police protection and as a result of this statement, the managing authorities of the temple and worshippers in the inner court yard were in a state of panic. There was every likelihood of any Harijan entering the temple not escaping murder. I discussed the matter with the governing authority Duraisamy Kurukkal. I discussed the matter with the Supdt. of Police, Mr. R. Suntheralingam. After discussion with them I prepared a statement to the press, had it typed with the permission of the Supdt. of Police at the Police office and had it sent to all the papers. I personally saw to the translation of my statement in the EELA NADU and I saw the publication in Tamil on the following day. I produce marked D4, the statement I released to the press. (D4) read. In D4 I have used the words rifle or threaten because I was made aware by a police officer that they would even shoot and permit the Harijans to enter the temple. I thereafter made an effort to study the powers of the governing authority and the constitution of the temple. I produce the order and decree of the Supreme Court, the judgment of the Supreme Court and scheme of management as drawn by the District Court, marked D1, D2, and D3 respectively. I marked as D2A and D3A the

In the
Magistrate's
Court

Defence
Evidence

No. 8

C. Sunthara-
Lingam

2nd October
1968

In Chief
(continued)

In the
Magistrate's
Court

Defence
Evidence

No. 8

C. Sunthara-
Lingam

2nd October
1968

In Chief

(continued)

portions of these documents which are most germane to this case. Thereupon I had to attend a conference on the 3rd July 1968 held by the Govt. Agent, Jaffna, at the Jaffna Kachcheri. I produce marked D5, the minutes of the meeting held in the Govt. Agent's conference room at 9.45 a.m. on 23.6.68, regarding temple entry at the Maviddapuram Kandasamy Temple. D5 sets out carefully what transpired at that meeting. (D5 read). I took every step to prevent forcible entry into this temple. Thereafter in view of certain reports I had and the conduct of the Police Officers, I took the authority from the governing authority. I produce marked D6 the letter of authority dated 26th June 1968, written by Duraisamy Kurukkal the High Priest and governing authority of the Maviddapuram Kandasamy Temple, given to me. (Mr. Kathirvetpillai objects to D6 as it has not been proved.) The accused states that he will call Duraisamy Kurukkal. I allow the document D6, subject to proof.

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(D6 read)

After having got the relevant authority D6 from the governing authority the High Priest of the temple, I was taking steps to prevent blood shed and murder and to make all parties conform strictly to the law. If any were to worship within the temple or any part thereof without the consent and concurrence of the High Priest, I was to prevent it. I made a special point of studying the law on the subject Social Disabilities Act No. 21 of 1957, the Law of Thesavalamai and I perused the judgment of His Lordship Justice T.S. Fernando in the case in regard to the Social Disabilities Act. I was satisfied in my mind that I was within my right to protect the temple and see that there was no breach of the peace. While I was making these arrangements, I had information that only certain sections of the Harijan caste, supported by members of the Federal Party, the Communist Party (Peking wing) and the Revolutionary Lanka Samasamaja Party were taking steps to make the Harijans enter the temple at all costs. I also had information that practically more than half

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the so called Harijans who were not supported by the Federal Party or by the Peking Wing of the Communist Party were not in favour of forcible temple entry. On the other hand they were all determined to persuade the governing authorities of the temple to get their concurrence to enter the temple peacefully. Accordingly on the first day of the Festival, the flag hoisting ceremony. I had my organisation and got ready to secure compliance to the law. I had volunteers organised among persons from different parts of the province to spot out any man who was a Harijan and if there was any doubt such a man was to be questioned. If there was doubt, after his admission that he was a Vellala, he was allowed to enter after due verification. Kovias were allowed to enter and barbers were prevented from entering. Pallar, Nalavar and Parayar were prevented from entering. In fact one of the Parayar who was one of the persons performing High Festival came and worshipped from just outside the Gopura Vasal. I saw this. In fact about 10 feet from the Gopura Vasal there was a camphor burning stand in which they placed their camphor, worshipped and went peacefully. I was assured by the authorities that there would be no attempt of breach of the peace. But they could not assure me if there would be a breach of the peace on subsequent days. Worshippers came and I was standing at the Gopura entrance and I had placed the volunteers at the eastern gateway. As I came along some had gone and washed their hands and faces. When a crowd of these people came it was signalled to me that they were Harijans. When they went to draw water from the well although they requested permission to draw water from the well that permission was refused and they had to wash their faces and hands with water which was drawn from the well and given to them. A number of people, before Sinniah the complainant came, had come and when they were identified as belonging to the low caste and when they were stopped from entering the inner court yard and when they were politely told to go and lodge a complaint at the police station, they went away. When Sinniah came some volunteers told me that he belonged to the Palla caste. I told him that he was a Palla man and he said yes. Then I told him that he cannot go

In the
Magistrate's
Court

Defence
Evidence

No. 8

C. Sunthara-
lingam

2nd October
1968

In Chief

(continued)

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In the
Magistrate's
Court

Defence
Evidence

No. 8

C. Sunthara-
lingam

2nd October
1968

In Chief
(continued)

into the temple but he said that he could. I told him to go and make a complaint at the police post. He turned and went. I never touched him. According to ancient religious custom and usage a Palla man cannot enter the temple. It is a blatant lie to say that I touched him. I would have made myself impure if I touched him. This is a pure fabrication made to buttress this case. Earlier in the day when they were prevented entry, the police asked the people who were prevented to go straight to the police post with those who prevented entry. I found that this interfered with the volunteers. I made representations to the A.S.P. against the conduct of the H.Q.I., and thereafter a post close to the entrance was set up. I was not called upon at that time to explain nor did any one ask me why I did not allow the low caste entry. I was questioned later and I denied it. I entered this picture in 1925, and we were going to see that the unfortunate people who had a grievance was righted, and I have acted upon it. I was determined to see that there was no forcible entry. I was one of those who persuaded the management of the Nallur Kandasamy Temple to allow these people to enter. At first I stopped the entry when they tried to come in procession after giving notice of the day of entry. Thereafter without any fuss these people were allowed to enter. But here a position had been created in the country which would have necessarily ended up in murder and blood shed. On the 1st of July the A.S.P. conformed to the undertaking he had given me that no group of persons coming with flags and fuss will be allowed to commit a breach of the peace. From the 1st to the 15th everything was according to law, in spite of some members of Parliament interfering in the matter. I did not allow anyone to be murdered and thus defile the temple. On the 16th morning I was a little late in getting to the temple and when I arrived I saw a crowd of Harijans practising Sathiyagraha. I had known that on the 16th there was going to be a hartal.

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(Mr. Kathirvetpillai objects to this evidence as these are incidents after the 1st. The accused states that he

wants to prove that efforts were made by the people who wanted temple entry to use force as subsequent conduct shows.

I allow this evidence to go in)

10 The Communists had turned hostile from the very first day and ended up by a bomb being burst at Keerimalai on the 25th July proving beyond doubt that the so called Harijan worshippers were being made use of as political tools by a number of interested persons. The police later found two other bombs. My action in this part was merely to prevent blood shed and murder. Up to the end the temple festivals went on peacefully.

20 XXD:- The managing trustee authorised me by D6 to prevent the Harijans from entering the temple forcibly but not in those very words. I had authority to deal with any emergency. There was no question of any consent being given by the managing authorities. An unknown Harijan was not a Harijan as far as I was concerned. To my knowledge I never knew of any unknown Harijans having entered the temple. By D6 I was to avoid the entry of any Harijan without the consent of the managing authorities. Every Harijan who sought entry was prevented by me and my volunteers. I never touched a single soul. There is another case pending like this. I have no doubt about my telling Sinniah not to enter I say that it was my right and duty to prevent Sinniah from entering the temple. There was no necessity to ask Sinniah whether he had the authority of the trustee. The governing authority had told me that no permission was given to any Harijan to enter the temple. If he said he had the authority, I would have verified it.

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Rexd: Nil.

In the
Magistrate's
Court

Defence
Evidence

No. 8

C. Sunthara-
lingam

2nd October
1968

In Chief
(continued)

Cross-
examination

In the
Magistrate's
Court

No. 9

HIGH PRIEST KURUKKAL

Defence
Evidence

Subramania Kurukkal Duraisamy Kurukkal,
Affd. 77 years, High Priest, Maviddapuram Temple,
Maviddapuram.

No. 9

High Priest
Kurukkal

(Shown D6). The signature on D6 is mine.
I granted this document to the accused.

2nd October
1968

In Chief

Cross-
examination

XXD:- The accused explained to me the meaning
of the writing in D6, before I signed it. I
gave the accused authority to prevent any
Harijan from entering the temple. Accordingly
the accused organised volunteers and prevented
the Harijans from entering the temple during the
festival.

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Re-
examination

Rexd:- I have given permission to the accused
to see to it that no Harijan entered the temple
without getting my permission.

Case for the defence closed, leading
in evidence D1 to D6.

In the
Magistrate's
Court

No. 10

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JOURNAL NOTES AS TO TRIAL,
VERDICT AND SENTENCE

Journal
Notes as
to Trial,
Verdict
and
Sentence.

Trial (2)

Accused: C. Suntharalingam - pt.

2nd October
1968

Amended plaint filed.

to

Accused charged again from Amended Charge Sheet.

19th October
1968

Vide typed proceedings.

Addresses on 3.10.68.

Inltd. M.S.
Mag.

In the
Magistrate's
Court

3.10.68

Address:

Accused: C. Suntharalingam - P.
Verdict on 11.10.68.

Inltd. M.S.
Mag.

Journal
Notes as
to Trial,
Verdict
and
sentence

2nd October
1968

19.10.68

Accused: C. Suntharalingam - pt.
I find the charge proved.
I convict the accused and fine him
Rs. 50/=.
Time to pay till 10.11.68.

Inltd. M.S.
Mag.

to
19th October
1968

(continued)

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No.11

REASONED JUDGMENT

REASONS

In the
Magistrate's
Court

No.11

Reasoned
Judgment

19th October
1968

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The accused is charged with having prevented or obstructed Murugesu Sinniah a follower of the Hindu religion from entering the inner court yard of the Maviddapuram Kandasamy Temple by reason of his caste and thereby committed an offence punishable under Section 2 of the Prevention of Social Disabilities Act.

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Murugesu Sinniah who belongs to the Palla caste had gone to the Maviddapuram Kandasamy Temple on the day in question with Krishnar and another for the purpose of worshipping. After performing the customary ablutions he was in the act of entering the temple in order to go into the inner court yard for the purpose of

In the
Magistrate's
Court

No.11

Reasoned
Judgment

19th October
1968

(continued)

worshipping, when the accused prevented his entry. The accused is alleged to have pushed Sinniah by his chest and asked him not to enter the temple but to go to the Police and make a complaint. Sinniah, when he found that he was prevented from entering the inner court yard, did not try to proceed further but went to the Police post which had been set up in the vicinity and made a complaint.

Krishnar, another member belonging to the Palla caste, was following Sinniah when he saw this accused preventing Sinniah from entering the temple and pushing him away by his chest. Krishnar too had gone and made a statement to the Police immediately.

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Sinniah and Krishnar were called by the prosecution and they both testified to the fact that this accused prevented Sinniah from entering the inner court yard of the temple for the purpose of worshipping.

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The prosecution also called Mr. Nadarajah a Proctor, who produced a Decree of the District Court, Jaffna, in case No. 16608 marked P1, whereby this temple was declared a Public Charitable Religious Trust under Section 99 of the Trust Ordinance.

The accused when called for his defence gave evidence and also called Duraisamy Kurukkal, the High Priest of the Maviddapuram Kandasamy Temple as his witness.

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The accused admitted that he prevented Sinniah from entering the Temple as Sinniah belonged to the Palla caste. The position taken by the accused is that he had the written authority D6, to act on behalf of the managing authorities, and that he did prevent Sinniah from entering the temple in accordance with the ancient religious custom and usage whereby a man belonging to the Palla caste was not allowed to enter the temple and go into the inner court yard but had to worship from outside.

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The evidence of Duraisamy Kurukkal is that

he gave the written authority D6 to the accused and that the accused was authorised to prevent any member of the lower caste from entering the temple.

In the
Magistrate's
Court

No.11

Reasoned
Judgment

19th October
1968

(continued)

10 It is admitted by Sinniah that he and his parents worshipped in temples from outside and that this was the first time he had tried to enter this temple and go into the inner court yard. He apparently had done so as he had read in some newspapers that the people of the lower caste would be allowed to go into this temple and that the police would give them protection when they tried to enter. Krishnar also admitted that by custom people belonging to the Palla caste worshipped in temples from outside.

20 I find that even according to the evidence of witnesses Nadarajah, people of the Palla caste always worshipped in temples from outside according to custom. This witness, had known of some people of the lower caste having entered this temple but these persons however had done so without the knowledge of the managing authorities.

The position of the accused is that he prevented Sinniah from entering the temple as Sinniah and the people of his caste worshipped in temples from outside as has been the religious custom and practice.

30 Hence, on this evidence I hold that people of the Palla caste worshipped in Maviddapuram Kandasamy Temple from outside and did not enter the inner court yard for the purpose of worshipping, and that this has been the religious usage and custom of these people.

40 I also hold that when Sinniah tried to enter the temple and go into the inner court yard for the purpose of worshipping, this accused prevented him from entering and that the reason why the accused prevented Sinniah from entering was because Sinniah belonged to the Palla caste.

The question that has to be now decided is

In the
Magistrate's
Court

No.11

Reasoned
Judgment

19th October
1968

(continued)

whether the accused contravened the provisions of Section 3(b) of the Prevention of Social Disabilities Act when he prevented Sinniah from entering the temple.

It would be important to consider the effect of Section 4 of the Thesawalamai Regulation (Chapter 63) before we consider Section 3(b) of the Prevention of Social Disabilities Act.

The Thesawalamai Regulation (Chapter 63) is a legislative Enactment of Ceylon, vide Sections 2(1), 12(3) and 19(d) of (Chapter 1) of the Legislative Enactments of Ceylon. This regulation was promulgated by the British Government in 1806, for the purpose of giving full force to the customs of the Malabar inhabitants of the Province of Jaffna. It has been collected by Class Issaksz at the instance of the Dutch Governor, Simmons and promulgated by the Dutch Government in 1707. The English translation now contained in Chapter 63, was prepared by the then Chief Justice, Sir Alexander Johnstone.

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The Thesawalamai regulation contains 4 introductory sections preceding the setting out of the Dutch promulgation as translated by Johnstone. One of the introductory sections, namely section 4, provides that all questions that relate to these rights and privileges between the higher and the lower castes shall be decided "according to the said customs and ancient usages of the province". The reference here to the "said customs" will of course be to the collection of customs collected and promulgated by the Dutch. These collections, I find, makes no reference to any matters pertaining to the rights and privileges referred to in Section 4. Hence it must follow that Section 4 was giving legal effect to the ancient usages of the province in addition to the customs collected by the Dutch as set out after

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Section 4.

In the
Magistrate's
Court

No.11

Reasoned
Judgment

19th October
1968

(continued)

10 One of these ancient usages referred to in Section 4 I find is the privilege of the higher caste to the exclusive right of entry into a temple as opposed to the people of the lower caste who did not have this right of entry. This "usage" was in the case of a certain Hindu temple at Palaly in Jaffna, proved and recognised by the Supreme Court in 1910 in the case of Kurukkal etal Vs. Nuranny et al, reported in 2 Current Law Reports, page 182, wherein it was held that persons of the barber caste have, according to the Hindu religion and custom, no right to enter the temple. Indeed it was held that the Managers have a right and duty to prevent persons who have no right to enter, from entering the temple.

20 Hence, it is quite clear that by ancient usage recognised and validated by the Thesawalamai regulations the people of the lower caste had no right of entry into a Hindu temple and had to content themselves by worshipping from outside. This, to my mind, was the law before the promulgation of the Prevention of Social Disabilities Act No. 21 of 1957.

30 Now let us examine the relevant Section of the Prevention of Social Disabilities Act. According to Section 3(b) of this Act, a person shall be deemed to impose a Social Disability on another if he prevents or obstructs such other person being the follower of any religion from or in entering, being present in, or worshipping at any place of worship to which followers of that religion have access.

The Prevention of Social Disabilities Act has not repealed expressly the customs and ancient usages, which have the force of law, referred to in Section 4 of the Thesawalamai

In the
Magistrate's
Court

No.11

Reasoned
Judgment

19th October
1968

(continued)

Regulation. The only question that has now to be decided is whether the Prevention of Social Disabilities Act had repealed the said custom and ancient usage by implication, or whether both can exist side by side.

The important words of Section 3(b) of the Prevention of Social Disabilities Act, are - "worshipping at any place of worship to which followers of that religion have access".

It has been contended by the accused that the above words did not confer on the followers of any religion the right of worshipping at any place of worship, which they did not have before the Act came into force, and that it only re-affirmed the status quo. The case of Seiventhinathan Vs. Nagalingam reported in 69 New Law Reports, page 419 was cited in support. I must admit that I was attracted by this proposition and the obiter dicta in the said judgment of the Supreme Court referred to, when I heard a similar case earlier, where of course it did not necessitate a specific finding on this question of law.

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However, I now find that if one has to give the meaning as stated above, then it would necessarily mean importing the following words "by reason of his caste", after the word religion.

Hence it would now read - "worshipping at any place of worship to which followers of that religion by reason of their caste have access". It is an important principle in the interpretation of statutes that nothing is to be added to or taken away from a statute unless there are similar adequate grounds to justify the inference that the legislature intended something which it omitted to express. This I find cannot be the case.

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The intended meaning becomes clear when according to the rules of interpretation one uses the singular for the plural and we have the words - "worshipping at any place of worship to which a follower of that religion has access".

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This shows that what was intended, was the place of access to the people of that religion within practical limits irrespective of any caste distinction.

In the
Magistrate's
Court

No.11

Reasoned
Judgment

19th October
1968

(continued)

10 I also find that this Act No.21 of 1957, had been enacted to prevent the imposition of social disability on any persons by reason of their caste. Hence it would indeed be unreasonable to presume, that the legislature intended to re-affirm the custom of an imposition of a social disability on persons by reason of their caste, in the very Act that was specially enacted to prevent the imposition of such social disabilities. The least one would have expected was for the legislature to have been silent on the customs as regards temples and not deal with it at all in that Act. I therefore hold that the words "worshipping at any place of worship to which followers of that religion have access" means uninterrupted ingress to the normal places of worship permitted to all votaries alike irrespective of any distinction of caste.

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The principle of repeal by implication was enunciated in a series of cases one of which is Brown Vs. Great Western Railway Company (1885) 9 Q.B.D.755, where it was held that if the provisions of a later Act are inconsistent with, or repugnant to these of an earlier Act that, the two cannot stand together, the earlier stands impliedly repealed by the latter. It is obvious that the customs and ancient usages according to Section 4 of the Thesawalamai regulation and the Prevention of Social Disabilities Act cannot stand together or cannot be construed together to make consistent sense since the former one sanctions caste distinctions while the latter, unequivocally reprobates it.

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This necessarily means that the Prevention of Social Disabilities Act had replaced by necessary implication Section 4 of the Thesawalamai Ordinance which recognised as law, the customs of the people of the lower caste worshipping in Hindu Temples from outside the temple and not entering into the inner court yard of the temple for the purposes of worshipping.

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Repeal by
implication

In the
Magistrate's
Court

No.11

Reasoned
Judgment

19th October
1968

(continued)

I therefore hold that so much of the custom and ancient usage which had the force of law and which prohibited a person by reason of his caste from entering the inner court yard of the Hindu Temple, was repealed by the provisions of the Prevention of Social Disabilities Act.

In the result the defence taken by the accused in this case that he prevented Sinniah from entering the inner court yard, as he was a member of the Palla caste and that by reason of that caste he had no right to enter the inner court yard necessarily fails.

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129(2)(d)

It was also submitted that Section 3(b) of this Act is repugnant to the provisions of Section 29(2)(d) of the Ceylon Constitution Order-in-Council. According to Section 29(2)(d) of the Ceylon Constitution Order in Council, Parliament cannot make any law which alters the constitution of any religious body except with the consent of the governing authority of that body.

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I have considered these submissions and I find that it has no application to this case as the Prevention of Social Disabilities Act does not seek to alter the constitution of any religious body.

I, therefore, hold that the Prevention of Social Disabilities Act has not contravened the provisions of Section 29(2)(d) of the Ceylon Constitution Order-in-Council.

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The accused also submitted as a matter of law that he had no criminal intention when he prevented Sinniah from entering the temple as he was there to prevent blood shed and murder which according to the accused would have necessarily ensued if Sinniah entered the temple.

I am satisfied on the evidence of the accused that he genuinely believed that he was there to prevent blood shed and murder. It appears to me that the presence of this accused prevented an ugly situation erupting with

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violence. However, this only constitutes the motive of the accused when he prevented Sinniah from entering the temple, and motive is not relevant to this charge except perhaps on the question of sentence.

In the
Magistrate's
Court

No.11

Reasoned
Judgment

19th October
1968

(continued)

10 Another matter which I feel I must refer to, although it is not quite relevant to the issues is the evidence given by Sinniah and Krishnar when they stated that the accused pushed Sinniah by his chest when he asked him not to enter the temple. The accused on the other hand denied that he touched Sinniah on this day.

20 Sinniah I find did not try to enter the temple forcibly and hence the necessity to push him away could not have arisen. Besides, the frank manner and the sincerity of purpose which this accused displayed when he gave evidence impressed me immensely. Even as regards the part played by him at the temple, I find that he had been in the forefront and appeared to be all too willing to face the consequences. He quite candidly admitted his actions in Court. Under these circumstances, I cannot conceive of this accused deviating from the truth on particular matters.

30 I therefore accept the evidence of the accused and hold that he did not use any force on Sinniah when he prevented him from entering the temple.

I hold that the accused prevented Sinniah a follower of a Hindu religion from entering the inner court yard of the Maviddapurem Kandasamy Temple, by reason of his caste, when Sinniah wanted to go to the inner court yard for the purpose of worshipping.

I accordingly find the charge proved.

(Sgd) M. Shanmugalingam

Magistrate,

19.10.68.

In the
Supreme
Court

No.12
Petition of
Appeal
19th October
1968

No. 12

PETITION OF APPEAL

R.Herath, H.Q.I., Police,
Kankesanturai.

Complainant.

Vs.

C.Suntharalingam, Ex.M.P.
for Vavuniya.

Accused.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

10

C.Suntharalingam, Ex.M.P.
for Vavuniya.

Accused-Appellant

Vs.

R.Herath, H.Q.I., Police,
Kankesanturai.

Complainant-Respondent

To the Honourable the Chief Justice and other
Judges of the Supreme Court of the Island of
Ceylon.

20

On this 19th day of October, 1968.

The petition of appeal of the accused
appellant respectfully showeth that:-

1. The accused appellant abovenamed was
charged in the Magistrate's Court of Mallakam
with having on the 1st day of July, 1968, at
Mavindapuram Kandasamy Temple prevented or
obstructed by reason of the caste of certain
Murugesu Sinniah of Madduvil North Chavakachcheri
a follower of Hindu Religion from entering the
Inner Court Yard of the above temple, which Inner
Court Yard is a place of worship to which the

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followers of Hindu Religion have access and have thus imposed a social disability on the said Murugesu Sinniah and have thus committed an offence punishable under Section 2 of the Prevention of Social Disability Act No. 21 of 1967.

In the
Supreme
Court

No.12

Petition of
Appeal

19th October
1968

(continued)

2. That after trial the learned Magistrate found the accused appellant guilty of the charge and sentenced him to pay a fine of Rs.50/-.

10 3. Being aggrieved and dissatisfied with the said conviction and sentence, the accused appellant appeals therefrom on the following among other grounds that may be urged at the hearing of this appeal:

(a) It is respectfully submitted that the learned Magistrate has erred in law in respect of the following:-

20 1. In holding that the Prevention of the Social Disabilities Act, No.21 of 1957 has repealed the provisions of section 4 of the Law of Thesawalamai (Cap.63) of the R.L.E.C.

2. In not directing his mind on the submission of the accused appellant that the "maxim" generalia speciali bus non derogant" applied to the case in that the Law of Thesawalamai applied specially to the Northern Province while the Prevention of the Social Disabilities Act was general in scope, aim and area of application being the whole of Ceylon.

30 3. The accused appellant submitted proof of the Constitution of the Temple in question and showed by documentary evidence that the Governing Authority of the Temple was under decree of Court required to be responsible "for the proper conduct and performance of the poojahs". The interpretation placed by the learned Magistrate alters the Constitution in so far as it prevents the Governing Authority from discharging his responsibility under the Constitution of the Temple. It was submitted to the learned Magistrate that in so far as a Prevention of the Social Disabilities Act violates the provisions of

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In the
Supreme
Court

No.12

Petition of
Appeal

19th October
1968

(continued)

section 29(1)(d) of the Ceylon (Constitution) Order in Council (Cap.379) it is ultra vires of the Constitution. The finding of the learned Magistrate in this regard is erroneous in law.

4. The Constitution of the Temple under D1, D2, D2A, D3 and D3A was in conformity with the provisions of Section 106 of the Trust Ordinance (Cap.87). The learned Magistrate has not, it is respectfully submitted, directed his mind to the effect of these provisions to the facts of the case. 10

5. The accused appellant submitted to the learned Magistrate that although it might be held that there was actus reus there was no mens rea on his part and as such the accused appellant was entitled to be acquitted. The learned Magistrate has misdirected himself in regard to the law whereby motive is relevant to the question of intention.

6. The learned Magistrate it is respectfully submitted had misdirected himself in the interpretation of section 3(b) of the Prevention of Social Disabilities Act which provides "worshipping at any place of worship to which followers of that religion have access" - The learned Magistrate has overlooked that section 2 of the Social Disabilities Act limits its provisions to "a person's caste" and it was not necessary to import the words "by reason of his caste" in the words in section 3(b) of the Act. 20 30

7. The learned Magistrate has not given due weight to the judgment of His Lordship S.P.J., T.S. Fernando, Esqr. in the case of Seiventhins-than Vs. Nagalingam reported in 69 N.L.R. page 419.

Wherefore the accused appellant prays that the said conviction and sentence be set aside and the accused appellant acquitted and for such other and further relief as to Your Lordship's Court shall seem meet. 40

Sgd. C.Suntharalingam
Accused-Appellant

No. 13

JUDGMENT OF H.N.G. FERNANDO,
CHIEF JUSTICE

S.C.1192/'68

M.C.Mallakam case No.4700

Inspector of Police,
Kankasanturai

Complainant
and
Respondent

Versus

C. Suntharalingam, Ex Member of
Parliament for Vavuniya

Accused
and
Appellant.

10

In the
Supreme
Court

No.13

Judgment of
H.N.G.
Fernando,
Chief
Justice

13th May
1969

Present: H.N.G.Fernando, C.J.

Counsel: C.Suntharalingam with S.N.Rajadurai,
R.R. Nalliah, P.Nagendran and
V. Shanmuganathan for the
Accused-Appellant.

20

L.D. Guruswamy, Crown Counsel, for
the Crown.

Argued on: 14th February, 1969.

Decided on: 13th May, 1969.

H.N.G.Fernando, C.J.

This is an appeal against the conviction
of the appellant on a charge that in contravention
of the Prevention of Social Disabilities Act,
No.21 of 1957, he did prevent or obstruct one
Sinniah, being a follower of the Hindu religion,
from or in entering or being present in or
worshipping at a place of worship to which
followers of that religion have access.

30

The appellant did not at the trial deny
that he prevented or obstructed Sinniah from

any

In the
Supreme
Court

entering the inner court yard of a Hindu Temple, or that Sinniah is a follower of the Hindu religion. The grounds of his appeal are based on matters of law.

No.13

Judgment of
H.N.G.
Fernando,
Chief
Justice

13th May
1969

(continued)

The appellant firstly referred to a decree of Court declaring this Temple and its appurtenances to be a public religious trust, and declaring the High Priest of the Temple to be its hereditary trustee, responsible inter alia for the proper conduct and performance of poojahs in the Temple. The High Priest had by the document D6 authorised the appellant to act on his behalf in taking steps to secure that the customs and ancient usages of this Temple are observed, and the appellant's position was that his act of prevention or obstruction (in relation to Sinniah) was necessary to prevent defilement of the Temple by the entry of a person of low caste; if there had been such defilement, he argued, poojahs could not be thereafter performed in the Temple. On this basis, the appellant urged that the Act of 1957, in purporting to penalise the prevention of the entry of persons of low caste into this Temple, has the consequence that its operation can prevent the High Priest from performing poojahs in this Temple, and that it is thus a law which alters the constitution of a religious body; not having been passed with the consent of the governing body, this law offended the provisions of s.29(2)(d) of the Constitution of Ceylon, and was therefore void.

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I agree with the learned Magistrate in rejecting this argument. Even if all the "facts" on which the appellant's argument is based be correct, the question whether some person may or may not enter, or be prevented from entering, premises controlled by a religious body, is not one which relates to the "constitution" of that body. Section 29(2)(d) of the Constitution of Ceylon would in my opinion apply only to a law which purports to alter the mode by which a religious body is elected appointed or otherwise set up, or to commit any power or function of such a body to some other person, or to change the principles governing the relationship inter se

40

of members of the body.

The appellant relied also on s.4 of the Tesawalamai (Cap.63) which provides as follows:-

10 "All questions that relate to those rights and privileges which subsist in the said province between the higher castes, particularly the Vellales, on the one hand, and the lower castes, particularly the Govias, Nalluas, and Palluas, on the other, shall be decided according to the said customs and the ancient usages of the province."

20 The appellant's contention was that it was a custom or ancient usage of the Northern Province that persons belonging to certain alleged "low" castes were not permitted entry into or beyond the inner court-yards of certain temples, including the Temple to which this case relates, and that this custom or usage is a special law relating to Temple entry. This special law, he urged, was not superseded by any provision of the Act of 1957 because of the operation of the maxim "generalialia specialibus non derogant". The simple answer to this argument is that the Act contains several provisions directly intended to afford to persons of all castes the freedom to enter places of several specified descriptions; these provisions thus constitute a special law which prohibits the obstruction of the entry of persons into such places on the ground of their caste. Even therefore if s.4 of the Tesawalamai can be regarded as a special law regulating Temple entry, the later special law contained in the Act must prevail over the former.

30 The appellant also relied heavily on an observation in the judgment in Sevvanthinathan v. Nagalingam (69 N.L.R.419) to the following effect:-

40 "I am inclined to agree also with the argument of Mr. Ranganathan that sections 2 and 3 of the Prevention of Social Disabilities Act, No.21 of 1957 do not have the effect of conferring on

In the
Supreme
Court

No.13

Judgment of
H.N.G.
Fernando,
Chief
Justice

13th May
1969

(continued)

*generalialia
specialibus*

In the
Supreme
Court

No.13

Judgment of
H.N.G.
Fernando,
Chief
Justice

13 May
1969

(continued)

the followers of any religion a right of entering, being present in or worshipping at any place of worship which they did not have before the Act came into force; in other words, the Act penalised only the prevention or obstruction of the exercise of a right which was an existing right at the time the Act became law."

This observation was made obiter in the case under reference, but it is directly in point in the instant case. The Magistrate has found as a fact that people of the caste to which Sinniah belongs used to worship at this Temple only from the outer courtyard, and were not permitted to enter the inner yard. On that finding, the obstruction offered by the appellant did not interfere with rights which people of that caste used to enjoy before the enactment of the Act of 1957.

10

With the utmost respect, I am unable to agree with the very narrow construction which was given to the Act in the cited case. Let me consider the first of the "rights" in respect of which the Act prohibits discrimination on the ground of caste, namely the admission of a student to a school. If admission is refused on the ground of the student's caste, there is nothing whatsoever in the Act which even by implication can permit the school management to plead, as a defence to a charge under the Act, that students of that caste were excluded from that school before the Act was passed. Nor is there anything in the Act from which it may be implied that in such a case the prosecution must establish that students of the complainant's caste had prior to the Act enjoyed a right of admission to the school.

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Having regard to the terms of the Act, a person commits an offence if "he prevents or obstructs another person in entering" any of several specified places. The terms are substantially the same as those which occur in a provision like s.183 of the Penal Code:-
"Whoever voluntarily obstructs any public servant in the discharge of his public

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functions". If, as is manifest, s.183 covers any obstruction to the discharge of functions committed to a public servant both before and after the enactment of the Code, the Act of 1957 equally covers obstruction to any entry to which the Act refers, whether or not a right to such entry had existed before the Act was passed.

In the
Supreme
Court

No.13

Judgment of
H.N.G.
Fernando,
Chief Justice

13th May 1969

(continued)

10 The judgment in the 69 N.L.R. case appears to regard the Act of 1957 as having been intended merely to prevent the imposition of "new" social disabilities, if that be the intention, then the Act has achieved nothing in practice, for in my understanding the social evil arising from distinctions of caste in this country at the present time is only that undemocratic and anti-social forms of discrimination still persist in some areas and communities despite popular opposition to such discrimination. I must prefer
20 the construction, plainly appearing from the Act, that Parliament did intend to prevent forms of discrimination which prevailed in the past.

The reasons stated by the learned Magistrate in this case deal adequately with other matters urged by the appellant in support of his case. The appeal is dismissed.

Sgd. H.N.G.Fernando
CHIEF JUSTICE.

No. 14

ORDER IN COUNCIL GRANTING SPECIAL
LEAVE TO APPEAL

In the
Privy Council

No.14

Order in
Council
granting
Special Leave
to Appeal

5th April
1971

L.S.

At the Court at Windsor Castle

The 5th day of April 1971

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

10

20

30

In the
Privy Council

No.14

Order in
Council
granting
Special
Leave to
Appeal

5th April
1971

(continued)

LORD PRESIDENT	MR. WOOD
LORD CARRINGTON	SIR MICHAEL ADEANE
MR. SECRETARY WALKER	
	SIR BLANSHARD STAMP

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 1st day of April 1971 in the words following viz:-

"WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of C. Suntharalingam in the matter of an Appeal from the Supreme Court of Ceylon between the Petitioner and the Inspector of Police, Kankesanturai Ceylon Respondent setting forth that the Petitioner prays for special leave to appeal to Your Majesty in Council from a Judgment dated the 13th May 1969 of the Supreme Court of Ceylon dismissing his Appeal against a Judgment dated the 19th October 1968 of the Magistrate's Court of Mallakam whereby the Petitioner was convicted of an offence punishable under the Prevention of Social Disabilities Act No. 21 of 1957 and sentenced to pay a fine of Rs. 50/-: And humbly praying Your Majesty in Council to grant him special leave to appeal against the Judgment of the Supreme Court of Ceylon dated the 13th May 1969 and against his conviction and sentence or for further or other relief:

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20

30

"THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof no one appearing at the Bar in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the

40

Petitioner to enter and prosecute this Appeal against the Judgment of the Supreme Court of Ceylon dated the 13th May 1969:

In the
Privy Council

No. 14

Order in
Council
granting
Leave to
Appeal

5th April
1971

(continued)

10 "And Their Lordships do further report to Your Majesty that the authenticated copy of the Record produced by the Petitioner upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondent) as the Record proper to be laid before Your Majesty on the hearing of the Appeal."

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

20 Whereof the Governor-General or Officer administering the Government of Ceylon for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

W.G. AGNEW

DL. DEFENCE EXHIBIT:
DECREE OF THE SUPREME
COURT ON APPEAL IN
SUIT No. 16,608

In the
Magistrate's
Court

DL.

Defence
Exhibit;
Decree of the
Supreme Court
on Appeal in
Suit No.16,608

8th November
1949

30 George the Sixth by the Grace of God of Great Britain Ireland and the British Dominion beyond the seas, King, Defender of the faith.

In the Supreme Court of the Island of
Ceylon.

Subramania Kurukkal Thuraiisamy Kurukkal.
1st Substituted - Defendant-Appellant.

In the
Magistrate's
Court

Against

1. T.M.Chellappahpillai and 5 others.
Plaintiffs-Respondents.

Pl.

7. Samy Kurukkal Kumarasamy Kurukkal
and 2 others
Defendants-Respondents

Defence
Exhibit;
Decree of
the Supreme
Court on
Appeal in
Suit No.
16,608

10. Subramania Kurukkal Somasundra Kurukkal
alias Shanmugananda Swamy.
2nd Substituted-Respondent.

Action No.16608 -

10

8th November
1949

DISTRICT COURT OF JAFFNA.

(continued)

This cause coming on for hearing and determination on the 1, 2, 3 and 4th days of November, 1949 and on this day, upon an appeal preferred by the 1st substituted-defendant before the Hon. Mr. R.F. Dias, Puisne Justice and the Hon. R. Windham, Puisne Justice of this Court, in the presence of the appellant and respondents.

It is considered and adjudged that the decree and the Vesting Order entered in this action by the District Court of Jaffna be and the same is hereby affirmed with the following variations:-

20

(a) The 1st substituted Defendant is declared the hereditary trustee and the high priest of the temple, and in any scheme of management which may be formulated his rights and status must be made clear.

30

(b) The 2nd defendant (now represented by the 10th respondent), the 3rd and 4th defendants are declared to be the hereditary priests of the temple with the right to perform poojas and to receive the customary perquisites of that Office, and in any scheme of management which may be formulated the rights of these priests must be made clear.

40

In accordance with the District Judge's directions it will now be the duty of the Court to approve the scheme for the future management of the temple and its temporalities - It is very desirable that such a scheme should not be too elaborate but should be as simple as possible.

It is further directed that each and every party to bear their own costs of this appeal. The order for costs made in the lower court will stand affirmed.

Witness the Hon. Sir Edwin Arthur Luis Wijeyawardena Kt.Kc., Chief Justice at Colombo the 8th day of November, in the year of our Lord One thousand nine hundred and forty nine, and of our reign the thirteenth.

Sgd. illegibly

Act. Deputy Registrar, S.C.

(Seal)

D3. (Part)

ORDER OF DISTRICT JUDGE IN
SUIT No. 16,608

D.C.16608

28.10.54

Mr. S. Cumarasuriar for the plaintiffs.

Mr. Adv. K.K. Subramaniam instructed for the 1st substd. defdt.

Mr. C. Subramaniam for the 4th defendant.

Mr. M.M. Sultan for the 8th and 9th defdts.

Mr. Subramaniam argues that the 1st substd. defdt. is the sole trustee and he has to be the sole trustee in any scheme of management that the Court frames.

In the
Magistrate's
Court

Dl.

Defence
Exhibit;
Decree of
the Supreme
Court on
Appeal in
Suit No.
16,608

8th November
1949

(continued)

In the
Magistrate's
Court

D3(Part)

Order of
District
Judge in
Suit No.
16,608

28th October
1954

In the
Magistrate's
Court

D3(Part)

Order of
District
Judge in
Suit No.
16,608
28th October
1954
(continued)

On the other hand, Mr. Cumarasuriar submits that the 1st substd. defdt. is the hereditary trustee and high priest of the temple. But in a scheme of management there may be other trustees.

ORDER

I am afraid I will have to uphold Mr. Subramaniam's contention. The last two sentences in the last paragraph but four of the Supreme Court judgment are as follows:

10

"The 1st substd. defdt. and his ancestors for nearly one hundred years have been officiating as the de facto managers and trustees of this temple. In such circumstances any court of equity would hold that in the interests of the temple and all concerned the 1st substd. defdt. should be held and declared to be the de jure trustee of this temple, and I so declare him to be".

This would indicate that he alone, as long as he lives, should be the trustee of this temple and after him his heir would be de jure trustee and high priest. Therefore, any scheme that has to be framed will be with the 1st substituted defendant as the hereditary trustee and high priest and it cannot include any other person as trustee.

20

Counsel and proctors desire that the scheme be considered on a Saturday.

30

Scheme to be considered at 10 a.m. on 20.11.54.

Sgd. P. Sri Skanda Rajah
District Judge.

28.10.54.

True copy of Scheme of Management dated 20.11.54 and Order dated 28.10.54 filed of record in case No.16608/Trust District Court of Jaffna.

PART D.3DEFENCE EXHIBIT; PART DECREE
OF THE DISTRICT COURT (SCHEME
OF MANAGEMENT) IN SUIT No.16608In the
Magistrate's
Court

Part D.3

Defence
Exhibit:
Part Decree
of the
District
Court
(Scheme of
Management)
in Suit
No. 16608

IN THE DISTRICT COURT OF JAFFNA.

Dead - 1. K. Kanagarayer of Tellippallai East,
Jaffna.2. T.M. Chellappshpillai of -do-
(and 6 others)

Plaintiffs

No.16608

Vs.

5. Subramaniakurukkal Duraisamy
Kurukkal and

1st Subst.Defdt.

(and 8 others)

Defendants

20th November
1954

This action coming on for final disposal before P.Sri Skandarajah Esquire, District Judge, Jaffna on the 20th day of November 1954 in the presence of Mr. S. Cumarasurier, Proctor on the part of the plaintiffs and of Mr. K.K. Subramaniam, Advocate, instructed by Mr. S.Nadarajah, proctor on the part of the 1st substituted defendants and of Mr. C. Subramaniam, Proctor on the part of the 4th defendant and of Mr. V. Navaratnarajah, Proctor on the part of the 7th defendant.

It is ordered and decreed that in terms of the order and the directions by the Honourable the Supreme Court of the Island of Ceylon dated 8th day of November 1949 that the Hindu Temple called and known as the Maviddapuram Kandasamy Kovil which was established and dedicated as a place of Hindu Public Religious worship on the land called "Kovilkadavai" which is situated at Maviddapuram and Palai Veemankamam in Tellipallai within the jurisdiction of this Court and more fully described

In the
Magistrate's
Court

Part D.3

Defence
Exhibit:
Part Decree
of the
District
Court
(Scheme of
Management)
in Suit
No. 16608

in Schedule A together with all the shrines edifices and mandapams and all its properties both movables and immovables and its temporalities be and the same is hereby declared a public charitable Religious trust under Section 99 of the Trust Ordinance No. 9 of 1917 (Chapter 72).

2. It is further ordered and decreed that the 1st substituted defendant Subramania-kurukkal Duraisamy kurukkal be and the same is hereby declared to be the hereditary trustees and high priest of the said temple and after him his heirs would be de jure trustee and high priest.

10

20th November
1954

3. It is further ordered and decreed that:-

(continued)

(i) the said temple and its temporalities shall vest in the hereditary trustee the 1st substituted - defendant and his successors in title.

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9. He shall be responsible for the proper conduct and performance of the poojahs.

This 20th day of November, 1954.

Sgd. P.Sri Skandarajah
District Judge, Jaffna.

(He) shall be the person who etc (acc know) out

He shall have the power to say how poojahs shall be carried out. D. 4

In the
Magistrate's
Court

D.4.

Defence
Exhibit:
Statement
of Appellant
for Newspaper
Publication

22nd June
1968

DEFENCE EXHIBIT; STATEMENT
OF APPELLANT FOR NEWSPAPER
PUBLICATION

MAVIDDAPURAM KANDASWAMY TEMPLE ENTRY

30

I was perturbed by the News Items appearing in the Daily Mirror of June 18, 1968, and in the Eelanadu of June 22, 1968, in regard to Temple Entry into the Maviddapuram

Murugan Temple in contravention of established practice and custom.

In the
Magistrate's
Court

D.4.

Defence
Exhibit:
Statement
of Appellant
for Newspaper
Publication

22nd June
1968

(continued)

10 I have contacted the S.P., N.P.,
Mr. R. Sunderalingam, in regard to these news
items, which have dragged on his name. They
appeared to be highly coloured, if not perforce
versions, of the attitude of the police in the
matter. All that the police can do is to
listen to the complaint of any individual, who
claims he has a right to enter the Temple
without the consent and concurrence of the
Managing Authority of the Temple (in this case
the Ven'ble High Priest) and is requested not
to enter or is prevented from entering the
Temple, is to proceed to the nearest Police
officer peacefully and lodge a complaint. The
aggrieved person has no right to commit a breach
of the peace and try to enter the temple
precincts by use of force or threat of use of
20 force. The police will no doubt investigate
into the complaint and take whatever action
they are empowered by law under the Prevention
of Social Disabilities Act (No. 21 of 1957) or
otherwise, to find out whether any offence has
been committed, and, if so, to prosecute the
offender. The S.P., has rightly assured me
that the police will be no party to any
"forcible entry" into the Temple precincts and
they will afford no protection to any person who
30 seeks to commit any breach of the peace. On the
contrary they will check any attempt on the part
of any group of persons or individuals, who by
show of flags, or of force, seek to enter the
Temple.

40 I repeat, and I beg, that no person
should attempt to enter the Temple by force if he
is asked not to enter it and I hope no person
entertains the feeling that the Police will
assist or even connive at "forcible entry". It
is only within the competence of Courts of Law
to adjudicate on complaints and it is not within
the power of any individual or caste to take the
law into his or their hands. One cannot and
should not try to apply the surgeon's knife or
use the rifle bullet to eradicate a social ill
of centuries.

In the
Magistrate's
Court

D.4.

Defence
Exhibit:
Statement
of Appellant
for Newspaper
Publication

22nd June
1968

(continued)

I have written out this statement after I have interviewed the most Ven'ble High Priest of Maviddapuram Murugan Temple and the S.P., N.P. Mr. R. Sunderalingam.

I earnestly pray to Maviddapuram Murugam, that He will prevent the happenings of any untoward or ugly incidents.

Sgd. C. Suntharalingam.

"Mahara Linga Vasa",
Keerimalai.

22.6.68

10

In the
Magistrate's
Court

D.5.

Defence
Exhibit;
Government
Agent's
Minute of
Conference
on 23rd
June 1968.

12th July
1968

D.5.

DEFENCE EXHIBIT. GOVERNMENT
AGENT'S MINUTE OF CONFERENCE
ON 23rd JUNE 1968

Minutes of the meeting held in the Government Agents' Conference Room at 9.45 a.m. on June 23rd, 1968 regarding Temple Entry at Maviddapuram Kandasamy Temple

Mr. Vernon Abeyasekera, Government Agent,
Jaffna District presided.

Others present were:-

Brama. Shri S.D. Shanmuganatha Kurukkal,
Maviddapuram, Tellipalai.

Mr. C. Suntharalingam, Advocate, Vavuniya.
" V. Thambipillai, Maviddapuram, Tellipallai.
" V. Sengarapillai, Kayanthappai, Tellipallai.
" A. Nadarasa, Maviddapuram, Tellippalai.
" T. Shanmuganathan Taiyiddi, Kankesantburai.
" S.K. Rasa, Maviddapuram, Tellipallai.
" S. Ramachandren, Thunnalai.
" A. Kandiah, Vasevilan.

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	Mr. V. Poopalasingham, Maviddapuram, Tellippalai.	In the
	" V. Sinnathurai, Maviddapuram, Tellipallai.	Magistrate's
	" S. Kanthasamy, Mavidapuram, Tellipalai.	Court
	" V. Sellathurai, Maviddapuram, -do-	
	" S. Kandiah, Tellipallai.	D.5.
	" V. Mapanar, Maviddapuram -do-	
	" S. Segarajasingha, Tellipallai.	Defence
	" T. Selladurai, Tellipalai East, Tellipallai.	Exhibit;
	" P.L. Patrick, D.R.O., Valigamam North,	Government
10	Tellipallai.	Agent's
	" N.C. Selvanayagam, Public Relations Officer,	Minute of
	Kachcheri, Jaffna.	Conference
	" T. Murugesapillai, A.G.A., Jaffna District.	on 23rd
		June 1968.

The Chairman thanked the invitees for attending the conference, which he desired should be an informal one. Three big meetings had been earlier held on the question of Temple Entry. At the first and the second meetings views were expressed for and against Temple Entry. The administration clearly indicated its responsibilities. At the third meeting, which was convened after Sellamanathy temple court order, the discussions were directed to finding out how soon temple entry could be effected and what measures should be adopted to securing this. The Act of Parliament which dealt with the abolition of social discrimination took its inspiration from the Declaration of Human Rights of the U.N.O. and the relevant sections of the Indian Constitution. The most encouraging statement at this meeting came from Brama Shri Duraisamy Kurukkal, the high priest of Maviddapuram Temple (His statement was read out to the members).

12th July
1968
(continued)

Subsequently a meeting was convened on 7.4.68 at the Maviddapuram Temple itself and an advisory committee was appointed at that meeting to draft rules in conformity with which admission into the temple could be permitted. The rules were to be drafted by this Committee before the 30th of June. Today's meeting had been convened, seven days prior to the date of expiry of the three months respite to ascertain the progress made. The decision made at the Maviddapuram meeting was published in Jaffna and all over the country. There were a large number of persons

In the
Magistrate's
Court

D.5.

Defence
Exhibit;
Government
Agent's
Minute of
Conference
on 23rd
June 1968

12th July
1968

(continued)

waiting to find out what rules had been framed. It would therefore be necessary to show something concrete and prove the bona fides of the participants. A decision should be made and this should be published if possible with the issue of a press communique. All hasty action and violence in any form should be avoided. All actions should be so directed as to avoid a recurrence of the ugly incidents that had happened at Modikamam and Chankanai. The Chairman then invited views and suggestions from those present. Mr. C. Suntharalingam represented the Ven. High Priest and Managing authority as a authorised worshipper - spokesman thanked the Chairman and spoke of the Kanagarratnam Commission on Temple Entry and Hindu Temporalities. Mr. Suntharalingam in the course of his speech adverted to an earlier attempt when Sir Oliver Goonatillake was Home Minister to enact legislation to provide, inter alia, for the admission of certain classes of persons into Hindu temples; the attempt was thwarted on the cry "Hands off Hinduism". He was glad to hear that five temples had opened their doors recently and added that as far as the Maviddapuram temple was concerned nothing should be done without the full consent and concurrence of the Chief High Priest. Nobody should act illegally in enforcing the law.

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The High Priest had been advised by the Upayakaras, worshippers and festival holders that there should be no deviation from the established customs and practices and that nothing should be done without the consent and concurrence of the High Priest. He added that from the 1st of July, 1968 representative of the Mawiaddapuram Kandasamy Temple High Priest would be at all the entrances of the Temple precincts and they will be authorised by the High Priest to prevent any person, who tried to enter contrary to the ancient usages and established customs prevailing in the temple, from entering. Such refusal of admission will apply to all harijans - depressed classes such as barbers, pallas, paraiyas, and nalavas. In this connection he referred to the Thesavalemai Law (Chapter 63 of the L.EE of Ceylon). A person

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debarred from entering the temple could make a complaint to the Police, and the police could take action under the law. There had been no change of heart on the part of the priest and the people since the last meeting, and Mr. Suntharalingam requested the Chairman to make it clear to all the officers their position in the matter. Their decisions were as follows:-

1. There shall be no use of force or threat of use of force in regard to entry into Maviddapuram Kandasamy Temple without the consent and concurrence of Brama Shri Duraisamy Kurukkal or his eldest son Brama Sri S.D. Shanmuganathan Kurukkal, managing authority who is also the Chief High Priest.
2. The impression that has been created in the minds of certain section of the public that the police will be a party or privy to forcible entry must be eradicated and the police must warn people in unambiguous and explicit terms that they will not in any way assist or connive with any person in entering the temple without the consent and concurrence of the Venerable Chief High Priest.
3. The police will act justly and impartially as between various disputants according to law not only in giving effect to the purpose of the law but also in the procedure that is to be adopted according to the Criminal Procedure Code. The Social Disabilities Act does not make any offence under this Act a cognizable offence. Therefore if any person, in spite of a request made by the representative of the High Priest that he should not enter the temple, nevertheless seeks to enter it, he should be escorted by the police to make a formal complaint at the police station for investigation according to the law.
4. All authorities - the Ven. High Priest, Government Agent, Police Officers and

In the
Magistrate's
Court

D.5.

Defence
Exhibit;
Government
Agent's
Minute of
Conference
on 23rd
June 1968

12th July
1968

(continued)

In the
Magistrate's
Court

others will take every possible step to maintain law and order and to prevent any breach of the peace.

D.5.

Mr. Suntharalingam said that it would be most desirable if these resolutions are correctly translated and both are publicised in the press.

Defence
Exhibit;
Government
Agent's
Minutes of
Conference
on 23rd
June 1968

Mr. Alvan Kandiah of Vasavilan and upayakara of the Maviddapuram Temple, belonging to the Parava Community, said that the depressed caste would prefer not to enter the temple except with the consent of the High Priest. He claimed that he expressed these views on behalf of three festival holders of the temple from his community.

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12th July
1968
(continued)

The Chairman thanked all present for responding to his invitation. The meeting terminated at 12.10 p.m.

Sgd. Vernon Abeyasekera,
Government Agent,
Jaffna District.

Sgd. T. Murugesampillai
Asst. Government Agent.

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The Kachcheri,
Jaffna, July 12, 1968.

In the
Magistrate's
Court

D.6

DEFENCE EXHIBIT: AUTHORITY BY
HIGH PRIEST TO THE APPELLANT

D.6.

Defence
Exhibit;
Authority
by High
Priest to
the
Appellant
25th June
1968

MAVIDDAPURAM KANDASAMY KOVIL

S. DURAISAMY KURUKKAL,
Proprietor, Manager,
& High Priest.

MAVIDDAPURAM,
Tellipallai,
25th June, 1968.

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Saivathiru, S. Suntharalingam,

I hereby authorise you to take all steps for and on my behalf to secure unless I otherwise direct the strict observance of all customs and ancient usages as have hitherto obtained according to the Law of Thesawalamai in respect of ceremonies festivals etc. of Maviddapuram Kandasamy Kovil.

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You will consult me and obtain my consent whenever possible before hand for any step you propose to take. However in any emergency you will be free to take decisions and implement them, and thereafter report to me as early as possible and act accordingly to my directions.

You will keep me informed of all matters.

"WITH ALL THE BLESSINGS OF SKANTHAN"

Sgd. S. Duraisamy Kurukkal.
High Priest & Managing Authority
Kandasamy Kovil - Mavai, Aatheenam,
MAVIDDAPURAM.

Copies to:-

1. G.A., Jaffna.
2. S.P., N.P., Jaffna.

In the
Magistrate's
Court

D.5.

Defence
Exhibit;
Government
Agent's
Minute of
Conference
on 23rd
June 1968

12th July
1968

(continued)

No. 10 of 1971

IN THE PRIVY COUNCIL

O N A P P E A L
FROM THE SUPREME COURT OF CEYLON

B E T W E E N :

C. SUNTHARALINGAM Appellant

- and -

THE INSPECTOR OF POLICE
Kankesanturai. Respondent

RECORD OF PROCEEDINGS

A.L. BRYDEN & WILLIAMS,
20, Old Queen Street,
London S.W.1.

Solicitors and Agents
for Appellant.

HATCHETT JONES & CO.,
90, Fenchurch Street,
London, E.C.3.

Solicitors and Agents
for Respondent.