



W.A.Nos.2262 & 2263 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 28.09.2021

DATE OF DECISION : 30.06.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

W.A.Nos.2262 & 2263 of 2011

Thiru Sabanatha Oli Sivachariyar
S/o Chit Sabesa Sivachariyar .. Appellant in both the W.A's

-VS-

1. The Commissioner
H.R. & C.E. Department
Uthamar Gandhi Salai
Chennai 600 034 .. 1st Respondent in both the W.A's
2. The Joint Commissioner
H.R. & C.E. Department
Villupuram .. 2nd Respondent in both the W.A's
3. Thondarkula V.Perumal .. 3rd Respondent in WA 2262/2011
4. G.Subramanian .. 3rd Respondent in WA 2263/2011
5. The Executive Officer
Thiru Arutprakasa Vallalar
Deivanilayam, Vadalur
Cuddalore District 607 003 .. 4th Respondent in both the W.A's

1/24



W.A.Nos.2262 & 2263 of 2011

6. The Chairman
Thiru Arutprakasa Vallalar
Deivanilayam, Vadalur
Cuddalore District 607 003

.. 5th Respondent in both the W.A's

Appeals filed under Clause 15 of the Letters Patent against the order dated 24.03.2010 made in W.P.Nos.22886 & 22887 of 2007.

For Appellant	::	Mr.M.C.Swamy for M/s Senthil Swamy Associates
For Respondents	::	Mr.T.Arunkumar Government Advocate for R1 & R2 in both W.A's Mr.M.Kannan for M/s M.Saravanakumar for R3 in both the Writ Appeals Mr.D.R.Sivakumar for R4 & R5 in both the W.A's

JUDGMENT

T.RAJA, J.

These writ appeals are directed against the impugned order passed by the learned single Judge dated 24.03.2010 made in Writ Petition Nos.22886 & 22887 of 2007, confirming the orders passed by the Joint Commissioner, Hindu Religious and Charitable Endowments Department, the second respondent herein in Current R.C.Nos.1426/2006/A2 and 1971/2006/A2, dated 18.09.2006 respectively and re-confirmed by the Commissioner, Hindu Religious and Charitable Endowments Department, the first

2/24



W.A.Nos.2262 & 2263 of 2011

respondent herein in R.P.Nos.71/2007 and 72/2007, dated 30.4.2007

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2. Mr.M.C.Swamy, learned counsel appearing for the appellant argued that Vallalar was a staunch devotee of Lord Nataraja of Chidambaram. He also devoted his entire life in propagating Shaivism. He has also written many lyrics in praise of Lord Shiva at Padi, Lord Subramaniam at Kandakottam and Goddess Vadivudaiamman at Thiruvotriyur. Vallalar had great respect for the forefather of the appellant, namely, Adoor Sabapathy Sivachariyar. On many occasions, both Vallalar and the appellant's forefather had debated and discussed on various aspects of Shaivism. Accepting Vallalar's principles and tenets, number of disciples and followers donated lands and cash gifts. Vallalar also had strong belief that Lord Shiva is the only ultimate God, because Lord Nataraja at Chidambaram was considered as one of Shiva's manifestation. Therefore, he sung many poems in praise of Lord Nataraja, which were subsequently published as "Nangam Thirumurai". After designing the architecture of the temple in Vadalur, a temple was constructed in the form of Lotus leaves



W.A.Nos.2262 & 2263 of 2011

with "Ashtakonam Formation" and named this temple as "Uthira Gnana Sabai", while he called Chidambaram temple as "Purva Gnana Sabhai".

Vallalar had also installed a "Spatika Lingam" representing "Roopa/Arupa" manifestation of Lord Shiva. Seven curtains were hung representing seven "Sakthis". He also put a plain glass and lamp behind the glass in the "Sanctum Sanctorum" in Vadalur. The consecration function was also carried out by the forefather of the appellant as per the Agamic rules on 25.01.1872. But, subsequently, the Hindu Religious and Charitable Endowments Department took over the administration of the temple established by Vallalar. However, the pooja system based on Agamic way, which was started during the lifetime of Vallalar, continued even after the administration was taken over by the Government. When complaints were given to the Department complaining about the wrong rituals performed at Vadalur contrary to the philosophy propounded by Vallalar, the Joint Commissioner, Hindu Religious and Charitable Endowments Department, Villupuram was directed to conduct an enquiry by the first respondent. After issuing notice to the appellant and others, the second respondent conducted the enquiry without following the procedure contemplated under Section 63



W.A.Nos.2262 & 2263 of 2011

of the Hindu Religious and Charitable Endowments Act and without any
due regard to the custom and usage in the Sathiya Gnana Sabai, wrongly
passed the impugned order dated 18.09.2006 directing certain forms of
rituals to be performed, as if those rituals were ordained by Vallalar as per
his letter dated 18.12.1872 with a further direction to stop all other forms of
rituals which were conducted for the last 136 years.

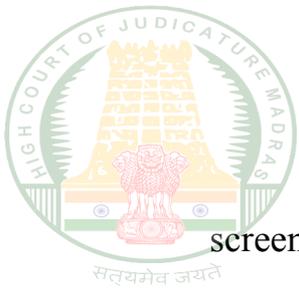
3. Learned counsel appearing for the appellant also submitted that the second respondent has no power under the Act to direct as to what rituals are to be performed in a religious institution, because nowhere the Act gives power to the Department to interfere in the religious affairs of the institution. When the proceeding is conducted by the Joint Commissioner, he should have held the enquiry in conformity with Sections 63, 69, 110 and 114 of the Act and the non-compliance would vitiate the mandatory provisions of the Act. But this has been ignored by the learned single Judge. Under Chapter V, the Joint Commissioner is defined as a Court, while so, he cannot hold the enquiry to his whims and fancies. The learned single Judge ought to have held that it is for the respective third respondent to prove their



W.A.Nos.2262 & 2263 of 2011

WEB COPY

case and not for the appellant, because shifting of the burden will come into play only if the respective third respondent prove their case. This vital aspect has been overlooked. Moreover, the respective third respondent had not produced any documentary evidence to substantiate their contentions, except placing self serving oral testimonies. Therefore, when appeals were filed before the Commissioner, he has, confirming the findings and conclusions reached by the second respondent, simply dismissed the case of the appellant. The learned single Judge also, narrating the background of Vallalar history, referring to various judgments in *Durgah Committee v. Syed Hussain Ali*, (1962) 1 SCR 383; *Seshammal v. State of Tamil Nadu*, (1972) 2 SCC 11; *M.Ismail Faruqui (Dr) v. Union of India*, (1994) 6 SCC 360; *Pannalal Bansilal Pitti v. State of A.P.*, (1996) 2 SCC 498; *A.S.Narayana Deekshitulu v. State of A.P.*, (1996) 9 SCC 548; *N.Adithayan v. Travancore Devaswom Board*, (2002) 8 SCC 106; *Guruvayoor Devaswom Managing Committee v. C.K.Rajan*, (2003) 7 SCC 546, has wrongly dismissed the writ petitions, when none of the above judgments are applicable to the present cases. When poojas are performed in Chidambaram temple as roopa form of Lord Shiva Linga and also aroopa form behind the



W.A.Nos.2262 & 2263 of 2011

screen even now, Saint Vallalar himself had stated that Lord Nataraja had given darshan in Sathya Gnana Sabai in Jothi swaroopam and after he had darshan of Lord Shiva in Jothi swaroopam, he started chanting Lord Shiva as “Arutperum Jothi Thani Perum Karunai”. Therefore, when poojas are performed in Chidambaram temple and also in Tiruvannamalai temple, prohibiting the performance of poojas in Sathiya Gnana Sabhai cannot be sustained. Moreover, when the books published by the Department are the evidence for conducting poojas in the Sabha, the learned single Judge dismissed the writ petitions confirming the wrong orders passed by the Joint Commissioner and the Commissioner, therefore, they are liable to be set aside, he pleaded. Mr.M.C.Swamy further contended that the fact that Vallalar Adigal himself wore sacred ash on his forehead, gave holy ash and prasadh to devotees coming to the temple cannot be brushed aside. Therefore, the Commissioner, under the guise of declaring established usage of religious institution, cannot alter the religious rituals, mode of worship, etc., which are in clear violation of Articles 25 and 26 of the Constitution of India. Article 25 guarantees that all persons are equally entitled to freedom of conscience and free profession, practice and propagation of religion.

7/24



W.A.Nos.2262 & 2263 of 2011

WEB COPY

Article 26 also says that every religious section shall have the right (a) to establish and maintain institutions for religious and charitable purposes; and (b) to manage its own affairs in matters of religion. Therefore, the Commissioner, ignoring the fact that Vallalar himself gave pooja articles, Spadikalingam to the appellant's grandfather and thereby requested to conduct Poojas, cannot alter the same. It is also evident from the letter written by Vallalar to his grandfather dated 03.06.1868. Moreover, the respondents by relying upon 6th Thirumurai came to the conclusion that Vallalar was against idol worship and propagated Jyoti worship, but the same was not published by Vallalar.

4. Learned Government Advocate appearing for the Department and the learned counsel appearing for the respective third respondent in the appeals have submitted that the writ petitions are not legally maintainable. When the Joint Commissioner had not passed orders under Section 63, in which case the statutory appeal remedy lies only under Section 69 of the Act, the appellant has wrongly preferred revisions under Section 21. Moreover, Section 63(e) also does not have application to the present cases,

8/24



W.A.Nos.2262 & 2263 of 2011

as no application was made under that provision. Secondly, the Department

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has not directed any new custom or practice to be followed, because it has merely declared the established usage and there is no violation of Articles 25 and 26 of the Constitution of India. Moreover, the appellant cannot compare Jothi cum idol worship with that of Tiruvannamalai temple, because Vallalar explicitly told his followers that God is formless and that Jyothi worship is the ideal form of worship and hence, daily ritual cannot be compared with one day Karthigai Deepam festival. They further argued that notice for enquiry was sent to the appellant on 06.07.2006, 20.07.2006, 10.08.2006 and 05.09.2006 and the proof of acknowledgment thereof was also received by the Department. Besides, the appellant also participated in the enquiry through his Advocate on 18.09.2006 and he had also marked some evidences and also filed written submissions, hence, the enquiry was conducted in a fair and proper manner. Even the rules of Worship dated 18.07.1872 codified by the disciples of Vallalar published in Gnana Sabha Pattirikai, bars idol worship. Vallalar has been preaching throughout his life to all the persons including people belonging to other religions and it has become well accepted tradition that all the devotees visiting the temple are

9/24



W.A.Nos.2262 & 2263 of 2011

aware of the fact that Vallalar's philosophy is against the idol worship and preached the devotees to worship Jyoti and chant in silence "Arutperumjyothi thani perum karunai". Secondly, referring to the letter said to have been written by Vallalar to the appellant's grandfather dated 03.06.1868, learned counsel argued that sofaras the letter relied on by the appellant is concerned, it does not contain any date, besides, it does not mention about Shiva Lingam and the signature also cannot be identified. Thus, it is clear that there is no evidence to show that Linga Pooja was done from 1872 and even the old Thaiposam invitation bears only Nataraja picture and that does not show the existence of Linga Pooja. Further, the writ petitions and writ appeals have become infructuous, since the appellant was relieved from his duties on 17.05.2007 and from the date he was relieved, the customary practice adopted and performed by Vallalar are being followed.

5. We also find merits on the submissions made by the learned Government Advocate and the learned counsel appearing for the third respondent. It is not in dispute that after sending notice of enquiry to the appellant on various dates, namely, 06.07.2006, 20.07.2006, 10.08.2006 and



W.A.Nos.2262 & 2263 of 2011

05.09.2006, the respondent Department had also received the acknowledgment for the same. It is also seen from the records that the appellant took part in the enquiry through his Advocate on 18.09.2006 and he had also marked evidences and also filed written submissions, therefore, in our considered view, the enquiry conducted by the Joint Commissioner of Hindu Religious and Charitable Endowments Department can be safely held as fair and proper one. When it was the grievance of the appellant that the enquiry under Section 63(e) was improper, the proper legal remedy available to the appellant is to file an appeal under Section 69. Leaving that statutory appeal provision, he has wrongly preferred revisions under Section 21 of the Act. Therefore, when the appellant himself, instead of filing statutory appeal under Section 69 of the Act, has wrongly filed revisions under Section 21 of the Act, the feign attempt made by the appellant that enquiry was not conducted in a fair manner by the Joint Commissioner does not sound good.

6. One of the contentions of the appellant is that the authority ought to have conducted the proceedings in conformity with Sections 63, 69, 110



W.A.Nos.2262 & 2263 of 2011

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and 114 of the Act, because, under Chapter V of the Act, the Joint Commissioner is functioning as a Court, hence, he cannot conduct the enquiry to his whims and fancies. But the Joint Commissioner has miserably failed to adhere to such procedure and this has been ignored during the appeal stage by the Commissioner as well by the learned Single Judge. In our considered view, the said contention is liable to be rejected. When the appellant canvassed that the enquiry ought to have been conducted under Section 63 of the Act, after the order passed by the Joint Commissioner, instead of filing statutory appeal available under Section 69 of the Act, the appellant himself has wrongly chosen to file revision under Section 21(4)(a) of the Act, which is quoted as under:-

“Section 21 (4)(a):- The Commissioner may call for and examine the record of any trustee of a math or a specific endowment attached to a math in respect of any proceeding under this Act (not being a proceeding in respect of which a suit or appeal to a Court is provided by this Act) to satisfy himself as to the legality of any decision or order passed therein.”

A reading of Section 21(4)(a) would show that the Commissioner may



W.A.Nos.2262 & 2263 of 2011

examine the relevant record in respect of any proceeding under the Act to satisfy himself as to the legality of any decision, but, not being a proceeding in respect of which a suit or appeal to a Court is provided by the Act.

7. Besides, for better appreciation, Section 110 of the Act is also extracted below:-

110. Procedure and powers at inquiries under Chapters V and VI.—(1) Where a Commissioner or a Joint Commissioner or a Deputy Commissioner makes an inquiry or hears an appeal under Chapter V or Chapter VI, the inquiry shall be made and the appeal shall be heard, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (Central Act V of 1908) to the trial of suits or the hearing of appeals, as the case may be.

(2) The provisions of the Indian Evidence Act, 1872(Central Act I of 1872) and the Indian Oaths Act, 1873 (Central Act X of 1873), shall apply to such inquiries and appeals.

(3) The Commissioner or a Joint Commissioner or a Deputy Commissioner holding



WEB COPY



W.A.Nos.2262 & 2263 of 2011

such inquiry or hearing such an appeal shall be deemed to be a person acting judicially within the meaning of the Judicial Officers Protection Act, 1850 (Central Act XVIII of 1850).

8. A mere reading of Section 110 would show that where a Commissioner or a Joint Commissioner or a Deputy Commissioner makes an inquiry or hears an appeal under Chapter V or Chapter VI, the inquiry shall be made and the appeal shall be heard as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits or the hearing of appeals, as the case may be. In that event, the provisions of the Indian Evidence Act, 1872 (Central Act I of 1872) and the Indian Oaths Act, 1873 (Central Act X of 1873), shall apply to such inquiries and appeals. Therefore, Section 21 falling under Chapter-II cannot be compared to Section 110 of the Act, since the procedure and powers of enquiry are in tune with the Chapters V and VI. Therefore, when Section 110 cannot be applied, it is not open to the appellant to canvass that the Joint Commissioner and the Commissioner should have held enquiry in accordance with the procedure contemplated



W.A.Nos.2262 & 2263 of 2011

under the Code of Civil Procedure.

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9. We also find that the Joint Commissioner and the Commissioner, after going through the background history of Ramalinga Adigalar, who is a great saint born in the 19th Century, have observed that Ramalinga Adigalar, without any caste disparity, formed an organization to bestow love to all living beings as his main principle and basis and the path travelled by Vallalar in search of enlightenment is very long. Each and every stage of the path reflects the particular stage of the human being who wish to reach God. Learned Single Judge also analysed that till the time Sathya Gnana Sabai was formed, Vallalar preached natural principles of Saivaite to the people. Keeping in mind the high philosophy, Vallalar rightly demonstrated Jyoti worship, as the difference in caste and creed could not be eradicated by following idol worship, and established Sathya Gnana Sabai. Arulperunjothi Agaval was written by Vallalar stating that

சமயம் கடந்த தனிப்பொருள் வெளியாய்
அமையும் திருச்சபை அருட்பெருஞ்ஜோதி
சாதியும் மதமும் சமயமும் காணா
ஆதி அநாதியாய் அருட்பெருஞ்ஜோதி

15/24



WEB COPY



W.A.Nos.2262 & 2263 of 2011

முந்திரும் ஐந்தொழில் ஸூர்த்திகள் பலர்க்கும்
ஐந்தொழில் அளிக்கும் அருட்பெருஜேஜாதி

Meaning of the above is that eternal divinity and the supreme gracious light is beyond religion with its unique sense of meaning. The supreme effulgence is not confined to any caste, race and religion. Divine works and energies are of five actions of God; they are creation, preservation, destruction, internally developing the soul and awarding his grace. There is only one God, which is the supreme Lord Arutperumjothi who is omnipotent and it is the only God who is doing all five divine works for which those five Murthis are deputed.

10. It may not be out of context to mention herein that in India, we have different religions and each one propagates their own rules of worship formulated by them. Adi Shankara had faith in Lord Shiva and preached Saivism while advocating abolition of rituals. Adi Shankara born in 8th century is known for his systematic reviews and commentaries on ancient Indian texts. The review of Brahma Sutra that he wrote is a famous one, as that of Brahmasutrabhasya and is the oldest commentary on Brahma Sutra.

16/24



W.A.Nos.2262 & 2263 of 2011

He also wrote views and commentaries on the 10 principles of Upanishads and Bhagvad Gita. He preached in his entire life Advaita Vedanta. His entire writings are to identify Self (Atman) and Brahman, for which, he advised to take Upanishads as an independent means of knowledge, against the rituals and superstitious belief. In the entire writing, the Adi Shankara has advocated only one God, namely, Lord Shiva.

11. Later-on, Shri Ramanuja, who came in 1000 years ago, advocated social reforming among all sections. He is noted to be one of the most important exponents of Sri Vaishnavism tradition within Hinduism. In the case of Nalvars, namely, Appar, Sundarar, Sambandar and Manikkavasagar, their contribution to the humanity is also similar to the one preached by Adi Shankara and Shri Ramanuja, because, these Nalvars also engaged in casteless society and advocated the temples for everyone irrespective of the caste, race and religion. Thereafter, Vallalar, born on 5th October, 1823, emerged as social reformer. Vallalar advocated - வாடிய பயிரை கண்டபோதெல்லாம் வாடினேன் that means, “I would shed tears on seeing the crops which are withering for want of water.” This would show that he



W.A.Nos.2262 & 2263 of 2011

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not only showed kindness but also equally showed love and affection to environment. He also advocated caste-less society. Therefore, he advocated the people to withdraw idol worship and follow Jyoti worship or follow Aruva Dharsanam. The 6th Thirumurai, according to Vallalar, is that there is only one ultimate God, which is Lord Shiva, and also prescribed the Rules of worship formulated on 18.07.1872 stating that Jothi Deepam must be shown in thin glass and the oil should be poured and thereafter Deepam to be lighted; that when Jhothi is shown, people should stand silently without making noise; that Arulperumjothi mantra should be chanted; that attention should not be had on Upanishads, Vedas, Agamas, Puramas; and that attention should be shown on Saivaite Vedantham and Siddantham. Article 25 of the Constitution of India guarantees protection of religious practise which forms an essential and integral part of religion and the said Article is extracted hereunder:-

“25. Freedom of conscience and free profession, practice and propagation of religion

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.



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W.A.Nos.2262 & 2263 of 2011

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.”

Article 25 says that all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion. Therefore, the unique and innovative method of worship to attain the final enlightenment, namely, ஒன்றே குலம் ஒருவனை தேவன் - one Clan, one God presented to the entire humanity by the great Saint Ramalinga Adigalar, preaching caste-less society and non-ritualistic worship, have to be preserved by the humanity for all times to come and the practise of any path



W.A.Nos.2262 & 2263 of 2011

has to be left to the choice of the devotees, by virtue of Article 25. Hence,

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interfering with such faith by the appellant by changing the method of worship is highly regrettable. Therefore, the findings of fact reached by the authorities, namely, Joint Commissioner and Commissioner of the Hindu Religious and Charitable Endowments Department on the method of worship preached by Lord Ramalinga Adigalar, have been rightly upheld by the learned single Judge and we also do not find any merit in the appeals to interfere with the same. Accordingly, the writ appeals are dismissed. Consequently, M.P.Nos.1 of 2011 are also dismissed. No costs.

Speaking/Non speaking order

(T.R.,J.) (T.V.T.S.,J.)

Index : yes

30.06.2022

Issue on 24.08.2022

SS

To

1. The Commissioner
H.R. & C.E. Department
Uthamar Gandhi Salai
Chennai 600 034

2. The Joint Commissioner
H.R. & C.E. Department
Villupuram

20/24



WEB COPY



W.A.Nos.2262 & 2263 of 2011

T.RAJA, J.

and

T.V.THAMILSELVI, J.

SS

Judgment in
W.A.Nos.2262 & 2263 of 2011

30.06.2022



W.A.Nos.2262 & 2263 of 2011

W.A.Nos.2262 & 2263 of 2011

WEB CO T.RAJA, J.

and

T.V.THAMILSELVI, J.

(Judgment of the Court was made by T.RAJA, J.)

The matters are listed today under the caption “for being mentioned” at the instance of the learned counsel appearing for the third respondent. The learned counsel stated that in the eighth sentence at paragraph-11 of the judgment, the words **Uruva Aruva Dharsanam**, have to be mentioned, instead of Aruva Dharsanam. Similarly, in the first part of ninth sentence, the words **Arutperumjothi Andavar** (அருட்பெருந்தீஜாதி ஆண்டவர்) have to be mentioned, instead of Lord Shiva. Similarly, in the fifth part of ninth sentence, the word **not** has to be inserted, after the words, that attention should.....

2. Learned counsel appearing for the appellant also does not dispute the said submission.

3. In view thereof, the eighth and ninth sentences of paragraph-11 of

22/24



W.A.Nos.2262 & 2263 of 2011

the judgment shall read as follows:-

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“11.....Therefore, he advocated the people to withdraw idol worship and follow Jyoti worship or follow **Uruva** Aruva Dharsanam. The 6th Thirumurai, according to Vallalar, is that there is only one ultimate God, which is **Arutperumjothi Andavar** (அருட்பெருஞ்ஜோதி ஆண்டவர்), and also prescribed the Rules of worship formulated on 18.07.1872 stating that Jothi Deepam must be shown in thin glass and the oil should be poured and thereafter Deepam to be lighted; that when Jhothi is shown, people should stand silently without making noise; that Arulperumjothi mantra should be chanted; that attention should not be had on Upanishads, Vedas, Agamas, Puramas; and that attention should **not** be shown on Saivaite Vedantham and Siddantham....”

(T.R.,J.) (T.V.T.S.,J.)
01.09.2022

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23/24



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W.A.Nos.2262 & 2263 of 2011

T.RAJA, J.

and

T.V.THAMILSELVI, J.

SS

W.A.Nos.2262 & 2263 of 2011

01.09.2022

24/24