

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 17.12.2018

CORAM
THE HON'BLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.34719 of 2006
&
W.M.P.No.2 of 2006

1. Sri.I.Subramaniam

2. D.Senthilkumar

...Petitioners

Vs

1.The Commissioner, H.R.& C.E.,
Administration Department,
Uthama Gandhi Road,
Nungambakkam, Chennai - 34.

2.Palaniswamy

... Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the first respondent culminating with his order bearing SMR No.6/2001(31883/2001) D2 dated 01.03.2006.

For Petitioners: M.Vaidyanathan

For Respondents: Mr.M.Maharaja (for R.1)
Special Government Pleader (H.R.& C.E)
Mr.K.Jayalakshman for
Mr.N.S.Sivakumar (for R.2)

O R D E R

The order passed by the first respondent/Commissioner in proceedings dated 01.03.2006 under Section 69(2) of H.R.& C.E Act is under challenge in the present Writ Petition.

2.The learned counsel for the petitioner states that the petitioner was employed as a conductor in a Private Transport Organization and after getting relieved himself under the Voluntary Retirement Scheme, he constructed a temple namely, Arulmigu Kanniputhu Karungalimman Naga Temple and Vinayaga Temple situated at Kumarasamipatti, Rajaji Road, Salem. A

petition under Section 63(b) of the Hindu Religious & Charitable Endowment Act was filed before the Joint Commissioner during the year 1999 for appointment of Hereditary Trustees for the aforesaid temple. The petition was numbered as O.A.No.19/99/A1. The Joint Commissioner conducted an enquiry and after examination of the parties concerned, passed an order on 11.04.2001, allowing the claim of the Writ petitioner. Accordingly, the petitioner was appointed as Hereditary Trustee of the aforesaid temple.

3.The learned counsel appearing on behalf of the petitioner states that no appeal was filed by any person against the orders passed by the Joint Commissioner, H.R.& C.E Department. Surprisingly, the first respondent/Commissioner, initiated suo-moto proceedings against the order of the Joint Commissioner dated 17.04.2011, allowing the said claim of the Writ Petitioner. The said suo-moto proceedings were initiated under Section 69(2) of the H.R & C.E Act.

4.The learned counsel appearing on behalf of the petitioner is of an opinion that the initiation of suo-moto proceedings by the Commissioner was not at his own instance and by application of mind. Contrarily the suo-moto proceedings were initiated at the instance of other two persons including the second respondent, who are all the enemies in respect of the temple activities of the petitioner. Thus, the Commissioner has not independently applied his mind for initiation of suo-moto proceedings by including Section 69(2) of the H.R & C.E Act.

5.The learned counsel appearing on behalf of the petitioner made an attempt to articulate that the suo-moto proceedings ought to have been initiated by the Commissioner by independently applying his mind. In the present case on hand, two unconnected persons had impleaded themselves as parties in the suo-moto review proceedings. Thus, the review proceedings are very much in violation of Section 69(2) of the H.R & C.E Act. Thus, the impugned order is liable to be scrapped.

6.This Court is of an opinion that the provision of suo-moto proceedings as contemplated under various statutes require interpretation. A pragmatic approach is certainly warranted in order to give proper implementation of these Provisions. The Legislators enacted the suo-moto power to the higher officials in order to ensure that the wrong, incorrect or erroneous orders of the Sub-ordinate officials are properly dealt with, so as to see a proper decision is arrived at, in respect of issues relating to various subjects. There are possibilities where the decisions of the Sub-ordinate officials may escape from the knowledge of the higher officials. In those circumstances, the higher officials during periodical audit inspection or on enquiry must be vested with the power to initiate suo-moto

proceedings to correct all those erroneous orders. Even beyond this, there is a possibility of collusion of some Sub-ordinate officials with the other persons, who are all indulging in corrupt activities and attempting to grab the valuable properties donated to these temples or income of these temples. Even in such circumstances, the higher officials may not have the knowledge, and only after sometime, they may come to know about all such irregularities or illegalities. Even in such circumstances, the suo-moto revision power alone will be of helpful to such authorities, who deal with all such irregularities and illegalities. Thus, the very purpose and object of such suo-moto proceedings are to ensure that substantial justice has been done to the parties concerned and to the temple with reference to the H.R & C.E Act.

7. In the present case on hand, undoubtedly, the original proceedings ended in favour of the Writ petitioner and the petitioner was appointed as Hereditary Trustee of the temple. However, the Commissioner has initiated suo-moto proceedings under Section 69(2) of the H.R & C.E Act. Admittedly, two other persons, who were parties to the original proceedings were impleaded themselves as parties in suo-moto proceedings.

8. This Court has to adopt a pragmatic approach. This apart, the Commissioner, even on initiation of suo-moto proceedings should ensure that all the issues are adjudicated by considering the relevant files and the issues raised and the order passed by the Sub-ordinate officials and take a decision and pass orders. Thus, the ultimate object is to cull out the truth behind the incidence, when the Commissioner is in the process of understanding the truth behind the incidence, the order passed by the Sub-ordinate officials and all materials produced by any person and the files are considered for the purpose of taking a decision.

9. This being the very purpose and object of the Provisions of the Act, this Court is of an opinion that the suo-moto proceedings initiated by the Commissioner need not be quashed on such technical grounds and in the event of quashing the proceedings on such technical ground, the principles of the equity, good conscious and fair play will be affected. This apart, the Commissioner after initiation of suo-moto proceedings, allowed the implead petition filed by them and two other persons, and heard them and decided the matter by remanding the case back to the Joint Commissioner. Thus, the Writ petitioner will also get another opportunity to put forth his case before the Joint Commissioner for effective adjudication of the issues. It is not as if the Commissioner himself has decided all the issues, when the new persons have impleaded themselves and raised certain issues. The Commissioner of the H.R & C.E stated that those issues are also to be

considered by Joint Commissioner by re-opening the case once again. Thus, the remanding of the matter by the Commissioner is in accord to Section 69(2) of the H.R & C.E Act and there is no illegalities or otherwise and all the parties including the Writ Petitioner are at liberty to submit their explanations/objection to the Joint Commissioner, enabling the Joint Commissioner to take all the issues by affording opportunity to all the parties concerned and take a decision and pass orders on merits and in accordance with law.

10.In view of this matter, the orders impugned in accordance with Section 69(2) of the H.R & C.E Act and there is no infirmity as such. The Joint Commissioner is directed to hear all the parties concerned by affording an opportunity and pass orders on merits and in accordance with law within a period of three months from the date of receipt of a copy of this Order.

11.With this direction, the Writ petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrm/ska

To

The Commissioner, H.R.& C.E.,
Administration Department,
Uthamar Gandhi Road,
Nungambakkam, Chennai - 34.

+lcc to Mr.M.Vaidhiyanathan, Advocate, S.R.No.87857
+lcc to Mr.N.S.Sivakumar, Advocate, S.R.No.87634
+lcc to the Government Pleader, S.R.No.88561.

W.P.No.34719 of 2006

RV(CO)

rrs 25/01/2019