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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.A.No.1778 of 2013 and M.P.No.1 of 2013

1.Narasimha Raghavan

2.Balakrishnan

... Appellants/Petitioner

-Vs-

1.The Commissioner

Hindu Religious and Charitable Endowments Department
No.119, Nungambakkam High Road, Chennai - 600 034.

2.S.Sundarraaj

... Respondents

For Appellant : Mr.Ma.P.Thangavel

For Respondents:Mr.E.Ganesh for Mr.V.Srikanth for R2
Mr.M.Maharaja, Special Government
Pleader for R1(HR & CE)

Prayer : Writ Appeal under Clause 15 of the Letters Patent,
against the order passed by this Honourable Court in
W.P.No.19796 of 2013 dated 29.07.2013.

Prayer in W.P.No.19796 of 2013:Writ of Certiorari calling for
the records pertaining to the proceeding in Suo Moto Revision
No.23 of 2013 D2 dt 16.4.13 on the file of the respondent and
quash the same as illegal incompetent and ultra vires.

J U D G M E N T

(Judgment of the Court was delivered by DR.VINEET KOTHARI, J.)

Mr.Ma.P.Thangavel had appeared in the Court and after
arguing at some length, he submitted that Mr.V.Raghavachari,
his senior is to argue this case. Though we were not inclined
to give any pass over, but at the insistence of



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Mr.Ma.P.Thangavel, we passed over the matter for ten minutes to call his senior. After waiting for more than fifteen minutes, Mr.MA.P.Thangavel is neither present to argue the remaining part of the case nor his senior has come. Hence, we have heard the learned counsel appearing on behalf of the respondents.

2. By the order impugned before us, the learned Single Judge dismissed the writ petition with the following observations:-

" 9. It is not the case of the petitioners that the Commissioner has got a personal bias against them and the same made to initiate proceedings. According to the petitioners, third parties are involved in the matter and at their instance, the Commissioner initiated proceedings. I am not inclined to accept the said contention for more than one reason. Even if the proceedings were initiated at the instance of a third party, it will not change the character of the proceedings. The petitioners have no case that the Commissioner has no jurisdiction to initiate proceedings under Section 69(2) of the Act. Merely because the declaration was made as early as on 04.04.1994, it cannot be said that the present proceedings is barred by limitation. There is no limitation prescribed under the Act to initiate proceedings suo motu. Therefore, I do not find any merit in the contention raised with regard to jurisdiction.

10. The reliance placed on DHARMA PARIPALANA SABHA cited supra would not help the petitioners to substantiate their contention. In that case, the Division Bench found that the Commissioner had already decided that the appellant cannot be the hereditary trustee, and therefore, notice calling upon the appellant for enquiry would be an empty formality.

11. The present case stands on a different footing. The Commissioner has not arrived at a finding that the petitioners are not entitled to be declared as hereditary trustee. The Commissioner has not prejudged the issue. It is for the petitioners to satisfy the Commissioner that the earlier order does not call for interference.

12. In the result, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed."



3. We are of the clear opinion that the writ petition filed by the petitioners itself was premature, as the learned Commissioner had issued only a notice under Section 69(2) of the Act on 16.04.2013 for revision, narrating therein the reasons for issuance of such notice and the grounds for invoking his jurisdiction. Instead of showing cause there, the petitioners Narasimha Raghavan and Balakrishnan approached this Court by way of a writ petition, which was dismissed by the learned Single Judge as premature writ petition.

4. Learned counsel for the appellants Mr.Ma.P.Thangavel also informed that Mr. Narasimha Raghavan has since expired, but his brother Mr.Balakrishnan of the two petitioners, is still surviving. Be that as it may.

5. We are of the considered opinion that the learned Single Judge has not committed any error in relegating the parties before the Commissioner. The impugned show cause notice cannot be said to be without jurisdiction. The parties may make their submissions and lead their appropriate evidence before the Commissioner, in pursuance of the show cause notice dated 16.04.2013.

6. Therefore, there is no good ground for maintaining this appeal. The Writ Appeal is disposed of, giving the aforesaid liberty to the parties. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Commissioner
Hindu Religious and Charitable Endowments Department
No.119, Nungambakkam High Road, Chennai - 600 034.

+1cc to Mr.V.Srikanth, Advocate Sr.58157
+1cc to the Special Government Pleader Sr.58775

W.A.No.1788 of 2013
& MP No.1 of 2013

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srg 21/08/2019