BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 09.09.2019
CORAM:
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.(MD) No.7911 of 2016
and
W.M.P.(MD)No.6504 of 2016

K.Kathiresan ... Petitioner

-Vs-

1.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Chennai.

2.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department, Madurai.

3.The Joint Commissioner / Executive Officer,
Arulmigu Dandayuthapanisamy Thirukoil,
Palani.

4.K.Rajamanickam ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records relating to the impugned proceedings of the third respondent in Se.Mu.Na.Ka.No.437/13/G1, dated 31.03.2016 and quash the same.

For Petitioner : Mr.J.Anandkumar
For R1 to R3 : Mr.V.R.Shanmuganathan,
Special Government Pleader.

ORDER

Heard Mr.J.Anandkumar, learned counsel appearing on behalf of the writ petitioner and Mr.V.R.Shanmuganathan, learned Special Government Pleader appearing on behalf of the respondents 1 to 3.

2.This Writ Petition is filed to quash the order of the third respondent in proceeding dated 31.03.2016.

3.According to the writ petitioner, while he was working as Executive Officer at Arulmigu Subramaniasamy Thirukoil, Kumaravayalur, Trichy District, he was deputed as Foreign Service Superintendent on 27.07.2011. During the audit inspection on 15.02.2013, there was a shortage of stocks to the tune of Rs.10,85,655/- between 01.11.2010 and 30.06.2011. According to the writ petitioner, shortage of stocks has occurred, before he joined as Foreign Service Superintendent on 27.07.2011 and he is not responsible for the said shortage. The third respondent, by the proceedings dated 18.02.2013, called for explanation from the writ petitioner. The writ petitioner submitted his explanation on 25.02.2013 and the same was accepted by the third respondent.

4.When the fourth respondent was appointed as Executive Officer of the temple, he has issued show cause notice, dated 23.06.2015 under Section 90(2) of Hindu Religious and Charitable Endowments Act, 1959, (hereinafter referred to as 'the Act') for an order of surcharge. The writ petitioner submitted his explanation. The third respondent, by proceedings dated 14.07.2015, again called the writ petitioner for enquiry to be held on 10.08.2015. The writ petitioner has given detailed explanation to the effect that he is in no way connected with the allegations and nothing to do with the shortage of stocks. The third respondent, by the proceedings dated 31.03.2016, held that the writ petitioner is liable to pay a sum of Rs.2,17,131/-, being his share for the loss. Challenging the said order dated 31.03.2016, the writ petitioner has come out with the present Writ Petition.

5.The learned counsel appearing on behalf of the writ petitioner contended that as per Section 90(2) of the Act, only the Commissioner, Joint Commissioner, Deputy Commissioner or Assistant Commissioner have jurisdiction to enquire the matter. The third respondent is only an Executive Officer of the temple appointed under Section 45(1) of the Act and he has to perform the duties assigned to him by the Commissioner, as per Section 47 of the Act. Even though the third respondent is in the rank of Joint Commissioner, he is not a competent authority to initiate proceedings under Section 90(2) of the Act. The third respondent did not follow the proceedings contemplated under Sections 89 and 90 of the Act and prayed for setting aside the impugned order of the third respondent.

6.The learned Special Government Pleader appearing on behalf of the respondents 1 to 3 submitted that the writ petitioner along with others committed irregularity and caused loss to the temple to the tune of Rs.10,85,655/- and the impugned order is valid and the writ petitioner is liable to pay a sum of Rs.2,17,131/- being his share for the loss. He further contended that if the writ petitioner is aggrieved by the impugned order, he has to avail the statutory remedy under Section 90(4) of the Act to apply to the court to set aside the said order and the Court after taking such order, pass appropriate orders or the writ petitioner can file an appeal to the Government and the Government may pass orders, as may think fit and prayed for dismissal of the Writ Petition. He would further state that the Executive Officer is in the rank of Joint Commissioner and therefore, he is competent to initiate proceedings contemplated under Sections 89 and 90 of the Act and if this Court comes to a conclusion that the third respondent is not a competent person, liberty may be given to the third respondent to initiate proceedings as per the Act.

7.From the materials on record, it is seen that the writ petitioner is challenging the jurisdiction of the third respondent to initiate proceedings under Section 90(2) of the Act, among other grounds. It is pertinent to extract Sections 90(1) and 90(2) of the Act, which reads as follows:-

> *"**90.Rectification of defects disclosed in audit and order of surcharge against trustee, etc.**-(1) [The Commissioner, Joint Commissioner, Deputy Commissioner or Assistant Commissioner], as the case may be, shall send a copy of every audit report relating to the accounts of a religious institution to the trustee thereof, and it shall be the duty of such trustee to remedy any defects or irregularities pointed out by the auditor and report the same to [the Commissioner, Joint Commissioner, Deputy Commissioner or Assistant Commissioner], as the case may be.*
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> *(2) If on a consideration of the audit report and the report of the trustees and after such inquiry as may be necessary, [the Commissioner, the Joint Commissioner, Deputy Commissioner or Assistant Commissioner], as the case may be, thinks that the trustee or any other person was guilty of irregular, illegal or improper expenditure or of loss or waste of money or other property thereof caused by failure to recover moneys due or other property belonging to the religious institution or by neglect or misconduct or misapplication or collusion or fraudulent transactions or breach of trust, [the Commissioner, the Joint Commissioner, Deputy Commissioner or Assistant Commissioner], as the case may be, after giving notice to the trustee or such person to show cause why an order of surcharge should not be passed against him and after considering his explanation, if any, by order certify the amount so spent or the amount or value of the property so lost or wasted and direct the trustee or such person to pay within a specified time such amount or value personally:*
>
> *Provided that if, in respect of any expenditure or dealing with the property of the institution, the trustee or such person has obtained directions of Joint Commissioner, Deputy Commissioner or Assistant Commissioner], as the case may be, and has acted in accordance with such directions, he shall not be held liable."*

8.A reading of above two Sections clearly show that only the Commissioner, Joint Commissioner, Deputy Commissioner or Assistant Commissioner are the authority to initiate proceedings and pass orders under Sections 90(1) and 90(2) of the Act. In the present case, the Joint Commissioner was appointed as Executive Officer as per Section 45(1) of the Act. The Executive Officer can perform the function that may be assigned to him by the Commissioner as per Section 47 of the Act. The Joint Commissioner when appointed as Executive Officer, is not performing the duties of the Joint Commissioner, but performs only the duties of the Executive Officer. In the impugned order itself, it is clearly stated that the order is passed in the capacity of Executive Officer/Thakkar and not as a Joint Commissioner. The impugned order has been passed without jurisdiction and therefore, the contention of the learned Special Government Pleader that the writ petitioner ought to have taken steps under Section 90(4)(a)(b) of the Act, is without merits. Without deciding the issue on merit, whether the writ petitioner is responsible for the loss caused to the temple and is liable to pay a sum of Rs.2,17,131/-, the impugned order is quashed. However, it is open to the concerned Commissioner to initiate appropriate proceedings under Sections 90(1) and 90(2) of the Act.

9.With the above observation, this Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Writs)

// True Copy //

Sub Assistant Registrar(CS)

To

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   Hindu Religious and Charitable
   Endowments Department, Chennai.

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