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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.15775 of 2013
and MP. No.2 of 2013

S.Sarojini

...Petitioner

Vs

1.The Commissioner,
Hindu Religious & Charitable Endowment Department,
Uttamar Gandhi Salai,
Nungambakkam, Chennai-600 034.

2.D.Gurumurthy

3.R.Hari Krishnan

4.G.Dasaratha Raman

5.The Chairman,
TNHB, Chennai-35.

6.The Executive Officer & Administrative Officer,
K.K.Nagar Division, TNHB, Chennai-83.

...Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari calling for the records pertaining to the impugned order dated 16.04.2013 made in M.P.No.1 of 2013 in SMR.No.5/2012/D2 passed by the 1st respondent and quash the same.

For Petitioner : Mr.V.Srikanth

For Respondents : Mr.N.R.R.Arun Natarajan (for R1)
Government Advocate

Mr.T.Sundaravadanam (for R2 & R3)

Mr.R.Bharath Kumar (for R5 & R6)
No Appearance
R4 - Deceased



O R D E R

The petitioner has challenged the rejection of her miscellaneous petition by the Commissioner, HR&CE arrayed as R1 wherein she had prayed for revocation of a notice dated 25.07.2012 issued in Suo motu Revision in SMR.No.5 of 2012. The challenge is essentially on the ground that the proceedings have been initiated 18 years after she assumed charge as Hereditary Trustee of the Arulmigu Muthu Mariamman Temple at K.K.Nagar, Chennai after a declaration was made to that effect on 31.12.1994 by way of an order under Section 63(b) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 (TNHR&CE Act).

2. The writ petition was accompanied, inter alia with an application seeking stay of the proceedings. When the matter came up for admission and consideration of interim order, on 14.08.2013, Justice K.K.Sasidharan passed an order permitting the Commissioner, HR&CE Department to proceed with the hearing of SMR.No.5 of 2012, however, placing an embargo upon the Commissioner to pass final orders till the disposal of the writ petition.

3.As against the aforesaid order, the petitioner filed Writ Appeal in W.A.No.175 of 2014. Pending writ appeal, on 17.09.2013, the prayer for stay was itself rejected by the learned Single Judge in the strongest of terms and I can do no better than to extract the order of Justice K.K.Sasidharan, as follows:

'This is an application to stay all further proceedings in SMR.No.5/2012/D2 on the file of the Commissioner, Hindu Religious and Charitable endowment Department, pending disposal of the writ petition.

2.The petitioner, along with her family members, constructed a temple in Thiruvallurval Colony, K.K.Nagar, Chennai. The temple is popularly known as Arulmigu Muthu Mariamman Temple. The Tamil Nadu Housing Board allotted three grounds of lands adjacent to the temple. The temple attracts large number of devotees. The temple is managed by the petitioner.

3.The statutory authorities under the Hindu Religious and Charitable Endowment Department, took steps to appoint a non hereditary trustee to



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the temple. The petitioner immediately filed O.A.No.34 of 1988 before the Deputy Commissioner, HR&CE Department, after conducting a detailed enquiry, passed an order dated 31 December 1994, declaring the petitioner as the hereditary trustee of the temple. The said order has become final. The petitioner has been administering the temple in her capacity as the hereditary trustee.

4.While so, the first respondent took suo motu revision and it was numbered as SMR.No.5/2012/D2. The first respondent wanted to examine the legality and correctness of the order passed by the Deputy Commissioner, HR&CE Department in O.A.No.34 of 1988. The first respondent, after entertaining suo motu revision, stayed the order dated 31 December 1994 in O.A.No.34 of 1988. The said order was challenged in W.P.No.21732 of 2012. This Court, by order dated 17 September 2012, directed the Commissioner to dispose of the suo motu proceedings. The petitioner thereafter filed an interlocutory application in M.P.No.1/2013, seeking to revoke the notice dated 25 July 2012. The said application was rejected by order dated 16 April 2013. The said order is challenged in this writ petition.

5.The petitioner wanted interim stay of all further proceedings till the disposal of the writ petition.

6.The second respondent filed a detailed counter affidavit contending that the petitioner constructed 24 shops in Plot No.100A/1 without any permission from the local authority. The shops were all given on lease to the tenants. The petitioner has been collecting the amount by way of rent, public offerings and donations. The acts of misappropriation alone made the Department to initiate suo motu revision.

7.The learned counsel for the petitioner contended that the Deputy Commissioner was pleased to pass an order on 31 December 1994 in O.A.No.34 of 1988. The first respondent, without any basis, initiated suo motu proceedings. Since the earlier order was passed after conducting a detailed enquiry, the Commissioner was not correct in initiating suo motu revision.



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8.The learned counsel for respondents 2 and 4 and the learned Special Government pleader appearing for the HR&CE Department submitted that the petitioner is determined to prolong the proceedings with ulterior motive. The petitioner did not want the Commissioner to take a decision in the matter. She is minting money by giving lease of the temple property and as such, there is every need to conclude the proceedings initiated by the first respondent.

9.The documents available on record show that the Deputy Commissioner passed an order dated 31 December 1994 in O.A.No.34 of 1988 recognizing the right of the petitioner to function as the hereditary trustee of the temple. The Commissioner initiated suo motu proceedings and issued a notice to the petitioner on 25 July 2012. Notice issued to the petitioner contains grounds which made the Commissioner to take suo motu proceedings. The Commissioner was of the view that the Deputy Commissioner failed to examine independent witnesses and by believing the case put up by the petitioner, the original application was allowed.

10.The petitioner has no case that the Commissioner is not having jurisdiction to initiate a suo motu revision. The Commissioner, in exercise of the powers vested in him under Section 69(2) of the HR&CE Department, initiated suo motu proceedings. The Commissioner was expected to state briefly the reason for initiation of revisional proceedings. The Commissioner has clearly stated the grounds which made him to exercise the revisional jurisdiction.

11.The petitioner filed a writ petition in W.P.No.21732/2012 to quash the notice dated 25 July 2012. When the writ petition was taken up for consideration, the petitioner and the respondents made joint request to dispose of the writ petition with a direction to the Commissioner to dispose of the suo motu proceedings within a period of four months and to maintain status quo till then. It was essentially a consent order. This Court, believing the representation made by the petitioner, disposed of the writ petition by order dated 17 September 2012. The petitioner is now holding office on the strength of the order of status quo. The petitioner though wanted to



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maintain status quo, is not prepared for disposal of the statutory proceedings within a period of four months. The petitioner, having subjected to the jurisdiction of the Commissioner and obtained an order directing him to dispose of the statutory proceedings within a period of four months, should not have filed another application before the very same statutory authority to rescind the notice. The very application filed by the petitioner to rescind notice appears to be a clear device to drag on the proceedings. In view of the earlier order passed by this Court in W.P.No.21732 of 2012, there is no question of staying the proceedings. The proceedings initiated by the first respondent should come to a logical conclusion. That was the essence of the order passed by this Court earlier at the instance of the petitioner and the contesting respondents. Such being the case, I am not inclined to stay the proceedings during the currency of the writ petition.

12. In the upshot, I dismiss this petition. No costs.'

4. The writ appeal was also dismissed on 05.02.2014, confirming the order of the learned Single Judge and at paragraphs-3 and 4, the Bench states as follows:

'.....

2. Suo motu proceedings were initiated against the appellant/writ petitioner and it was contended by her that it came to be initiated after 18 long years and the concerned official respondents have no jurisdiction to invoke such suo motu proceedings and accordingly, filed an application before the first respondent. The first respondent, vide order, dated 16.04.2013, has dismissed the said application and challenging the vires of the same, W.P.No.15775 of 2013 was filed.

3. The learned Judge, after taking note of the earlier order dated, 17.09.2012, made in W.P.No.21732 of 2012, wherein the writ petitioner herself has agreed for early disposal of the suo motu proceedings, decided that no case has been made out for grant of interim order and accordingly, dismissed the petition for interim stay.



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4.This Court heard the submissions of Mr.V.Srikanth, learned counsel appearing for the appellant/writ petitioner and also perused the materials placed on record. As rightly observed by the learned Judge in the impugned order, by virtue of an order, dated 17.09.2012, made in W.P.No.21732 of 2012, the writ petitioner has agreed for early disposal of the suo motu proceedings and we find no error or infirmity in the reasons assigned by the learned single Judge for dismissing the petition for stay.

5.In the result, the writ appeal is dismissed. Connected M.P. is closed. No costs. Since it is contended by the learned counsel for the appellant that suo motu proceedings came to be initiated after a long lapse of time, we deem it fit to request the learned Port Folio Judge to give preference for early disposal of the main writ petition.'

5. With the confirmation of the order of learned Single Judge dated 14.08.2013 as well as the subsequent order passed by the learned Single Judge on 17.09.2013, nothing survives in this writ petition.

6. On instructions received from the Divisional Inspector, HR&CE Department, Mr.Arun confirms that, in line with order dated 14.08.2013, hearings have been conducted and concluded in SMR.No.5 of 2012 on 26.08.2014, but, no final orders have been passed. All that remains at this juncture is that the SMR be disposed.

7. Bearing in mind the elapse of time from 26.08.2014 till date, it would be appropriate that the petitioner be permitted to appear once, to reiterate her submissions and enable the Commissioner, HR&CE Department to pass final orders.

8. For this purpose, the petitioner and the private respondents arrayed in this writ petition will appear before the first respondent on Tuesday, the 31st of August, 2021 at 10.30 a.m. Notice will be issued forthwith to the private respondents by the Commissioner, HR&CE Department. The petitioner however shall not await any further notice in this regard. After hearing the petitioner as well as the private respondents, orders shall be passed in SMR.No.5 of 2012 within a period of four (4) weeks from today. There is no representation for the private respondents, but since the HR&CE Department has been directed to serve notice, that would suffice.



9. This Writ Petition stands dismissed. No costs.
Connected Miscellaneous Petition is closed.

10. List this matter on 01.10.2021 for production of orders.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Commissioner,
Hindu Religious & Charitable Endowment Department,
Uttamar Gandhi Salai,
Nungambakkam, Chennai-600 034.

2.The Chairman,
TNHB, Chennai-35.

3.The Executive Officer & Administrative Officer,
K.K.Nagar Division, TNHB, Chennai-83.

Copy to
The Section Officer,
Writ Section, High Court,
Madras 600104

+1cc to Mr.R.Bharath Kumar, Advocate, S.R.No.41424

W.P. No.15775 of 2013
and MP. No.2 of 2013

JP(CO)
KKV/24/08/2021