IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2021

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.22891 of 2012
and M.P.No.1 of 2012

1.M.Ramasamy
2.L.Subbaraya Gounder ...Petitioners

Vs

1. The Commissioner,
The Hindu Religious and Charitable
Endowments Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam, Chennai -34.

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

3. V.Sekar ...Respondents

(R3 impleaded vide order dated 14/02/2020 in WMP.1449/2017)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari to call for the records relating to the impugned SMR notice issued by the Joint Commissioner, HR & CE, Salem issued in S.M.R.No.1/2012 B1 dated 31.07.2012 and quash the same.

For Petitioner : Mrs.A.L.Gandhimathi

For Respondents : Mr.NRR.Arun Natarajan,
Government Advocate for R1 & R2
Mr.A.K.Sriram for
M/S.A.S.Kailasam Associates for R3

O R D E R

This Writ Petition has been filed by two petitioners, one of whom (Ramasamy) is stated to have passed away. However, since the question raised is a legal issue and the second petitioner continues the present litigation, the hearing of the matter is proceeded with.

2. The challenge is to a notice in SMR.No.1 of 2012 dated 31.07.2012, being suo motu revisionary proceedings initiated under the provisions of Section 64(5)(a) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (in short 'Act'). The notice is dated 31.07.2012 (signed on 02.08.2012) and calls upon five persons, two of whom have filed the present Writ Petition, to appear on 22.08.2012 at 3.00 p.m. to show cause as to why the Scheme framed on 02.04.1983 in O.A.No.101 of 1980 not be modified.

3. Arulmighu Soleeswararswamy, Alaguraya Perumal and Sellandiamman Temples, Mallasamudram Village, Tiruchengode Taluk, Namakkal District (temple/temple in question) has not been arrayed as a respondent in the matter and the matter is contested hotly by R3 who, under the Scheme which is proposed to be revised, has no role to play in the functioning of the temple. He is the defacto complainant, on the basis of whose complaint, the suo motu revision (SMR) has been initiated. The petitioners are trustees elected as per the scheme framed on 02.04.1983, under proposal to be modified.

4. The challenge is on the premise that the notice for SMR has been issued sans jurisdiction and revolves around the use of the phrase 'suo motu revision'. My attention is drawn to the provisions of Section 64(5)(a) of the Act, which does not use the said terminology. According to the learned counsel for the petitioner, suo motu revision could only be initiated in terms of Section 69(2) which specifically uses the aforesaid phrase.

5. Moreover she would state that the Scheme in this matter which was framed on 02.04.1983 in O.A.No.101 of 1980 by the Joint Commissioner, Hindu Religious and Charitable Endowments Department (HR & CE) was challenged by way of statutory appeal under Section 69(1) of the Act. The appeal came to be dismissed on 08.01.1991 by way of an order passed in R.C.No.89465(D-2) by the Commissioner, HR & CE. The order in statutory appeal was challenged by way of a Civil Suit in O.S.No.190 of 1991 on the file of the sub-Judge, Sankari, which was dismissed for default by judgment and decree dated 19.08.1993.

6. Thus, according to the learned counsel for the petitioner, the matter has attained finality on all counts and there is absolutely no justification in law or on fact for the issuance of the notice for SMR. She would also state that the provisions of Section 64(5)(a) do not provide for SMR and the modification or cancellation referred to therein should only be at the instance of the trustee. In the present case, notice has

been issued by the Joint Commissioner without any authority whatsoever.

7. Per contra, Mr.Sriram, learned counsel appearing for R3 would submit that the fact that an appeal and statutory suit have been filed are immaterial and do not stand in the way of modification or cancellation of the Scheme as provided for under Section 64(5)(a). The provisions of Section 64(5)(a) stand alone, and vest sufficient authority in the Joint/Deputy Commissioner to modify or cancel a Scheme framed under Section 64(1).

8. He would also draw my attention to the Framing of Schemes Rules specifically Rule 2 thereof which elaborates on the powers available under Section 64(5)(a) in support of the present notice.

9. Having heard learned counsel, I am of the view that the challenge to the impugned notice has no legs to stand. The provisions of Section 64 vest power in the Joint/Deputy Commissioner to settle a Scheme where the aforesaid officers have reason to believe that a Scheme should be settled for the proper administration of an institution or when interest is expressed by 5 persons for the settlement of a scheme by way of an application in writing. Such a Scheme has been settled in this case on 02.04.1983.

10. The Scheme has been subject matter of challenge under Section 69(1) and the challenge has been repelled by the Commissioner on 08.01.1991. The aforesaid order has been subject matter of a Civil Suit, which has also come to be decided in favour of the petitioners on 19.08.1993 by the Sub-Judge, Sankari.

11. The question then arising is whether, having regard to the trajectory of the matter as aforesaid, the officials of the HR & CE Department still have the power to modify or cancel the Scheme as provided for under Section 64(5)(a). The answer, in my view, is in the affirmative.

The provision reads as follows:

> 64. Power of Joint Commissioner or Deputy Commissioner to settle schemes.-
>
> (1)...........
>
> (5) (a) [The Joint Commissioner or the Deputy Commissioner, as the case may be,] may, at any time,

after consulting the trustee and the persons having interest, by order, modify or cancel any scheme in force settled under sub-section (1) or any scheme in force settled or modified by the Board under the Madras Hindu Religious Endowments Act, 1926 (Madras Act II of 1927), or deemed to have been settled under that Act, or any scheme in force settled or modified by the [Joint Commissioner or the Deputy Commissioner, as the case may be,] or the Commissioner under this Act, or any scheme in force settled or modified by the Court in a suit under sub-section (1) of section 70, or an appeal under sub-section (2) of that section or any such scheme in force deemed to have been settled or modified by the Court under clause (a) of sub-section (2) of section 118:

Provided that such cancellation or modification of a scheme in force settled or modified by the Court in a suit under sub-section (1) of section 70 or on an appeal under sub-section (2) of that section or of a scheme in force deemed to have been settled or modified by the Court under clause (a) of sub-section (2) of section 118 shall be made only subject to such conditions and restrictions as may be prescribed.

12. The powers under Section 64(5)(a) are wide and permit the Joint/Deputy Commissioner to modify or cancel Schemes settled in various situations, such as i) Section 64(1) of the 1959 Act ii) settled or deemed to be settled under the Madras Hindu Religious Endowments Act, 1926 iii) a Scheme settled under Section 64 by the Joint/Deputy Commissioner/Commissioner under the 1959 Act iv) a Scheme settled or modified by a Court in a Suit under Section 70(1) of the 1959 Act or appeal under Section 70(2) of the 1959 Act or v) a Scheme settled or modified by the Court under Section 118(2)(a) of the 1959 Act. Endowing such wide powers, I am unable to envisage a restriction to be read into the provisions of Section 64(5)(a). The impugned notice is thus, in my view, not bereft of jurisdiction.

13. On merits, if at all the petitioners believe that the Scheme has been tested enough by the officials of the Department as well as by the Civil Court, then, they are at liberty to place such an argument before the Joint Commissioner. After all what is impugned is only a notice.

14. The Framing of Schemes Rules under G.O.Ms.No.4851 dated 26.11.1960 elaborate on the consultation that is envisaged in regard to matters covered by Sections 64(1), (5)(a) and (5)(b). Rule 2 states as follows:

2. The consultation required under sub-sections (1), 5(a) and (b) of section 64 shall be made in the following manner :

(a) When the Joint Commissioner or Deputy Commissioner] proposes on his own motion to take action under sub-section (1) or 5(4), or (5) (b) of section 64 in respect of any institution coming under that section or where an application under sub-section (1) is received by him, he shall give notice of his proposal or the application, as the case may be, to the trustee or the trustees [and Assistant Commissioner, if any], having jurisdiction over the institution and the persons having interest calling upon them to submit any representations they may wish to make before a date to be specified in such notice, which shall not be less than two months from the date of its issue.

(b) If, after a consideration of the objections, or suggestions, if any, received by him, he has reason to believe that a scheme should be settled, or modified or cancelled, he shall give notice to the trustee or the trustees, Assistant Commissioner, if any, having jurisdiction over the institution and the persons having interest, of his intention to settle, modify or cancel a scheme of administration for the institution and call upon to submit in writing any objections or suggestions they may wish to make before the date specified in such notice for an enquiry.

(c) The notice under sub-rules (a) and (b) shall be sent by registered post to the trustee or the trustees and to the Assistant Commissioner concerned and the persons having interest. A copy of the notice shall be affixed on the notice board or front door of the temple and in the case of a specific endowment attached to a temple, on the notice board or front door of the temple to which the specific endowment is attached, on the notice board of the [Joint Commissioner or Deputy Commissioner], and on the notice board of the office of the Assistant Commissioner within whose division the institution is situate, and on the notice board of the office of the Municipal Council including the Corporation d [Chennai] or village chavadi concerned. Such affixture shall be deemed to be sufficient intimation to persons having interest. All representations submitted in time by the trustee or the Assistant Commissioner, or persons having interest shall be taken in consideration by the [1][Joint Commissioner/Deputy Commissioner in settling, modifying or cancelling the scheme.

15. Thus, a Joint/Deputy Commissioner is vested with the requisite power to modify or cancel a Scheme under Section 64(5)(a), but such power shall be exercised only in accordance with the principles of natural justice. Contrast this with the provisions of Section 69(2) which does not provide for any opportunity to be granted to the other persons involved prior to SMR by the Commissioner of any order passed by the Joint/Deputy Commissioner under Section 64(1) where no appeal has been preferred. Section 69(2) is thus inapplicable in the present case since much litigation has ensued after the framing of the Scheme.

16. To meet the emphasis placed by the petitioner on the use of the phrase 'suo motu' in the notice, I would state that the phrase is used merely as a linguistic tool, not a legal one.

17. I thus find no merit in the challenge to the impugned notice. In response to the notice, the Trustees will appear before the authorities on Tuesday the 31st of August, 2021 without awaiting any further notice in this regard. After hearing the Trustees and considering all/any materials that may be submitted by them, let orders be passed within a period of four (4) weeks from the date of first hearing, i.e., on or before 01.10.2021.

18. This Writ Petition is dismissed. No costs. Connected Miscellaneous Petition is also dismissed.

19. List this matter on 04.10.2021 for production of orders.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To
1. The Commissioner,
The Hindu Religious and Charitable
Endowments Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam, Chennai -34.

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

+1cc to M/s.A.S.Kailasam & Associates, Advocate,Sr.42182
+1cc to M/s.A.L.Ganthimathi, Advocate,Sr.42004

W.P.No.22891 of 2012
and M.P.No.1 of 2012

BP[co]
NSK 14/09/2021