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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 02.09.2021

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.Nos.26865 of 2013

&

M.P.No.1 of 2013

K. Parameswaran Gurukkal

... Petitioner

Vs.

1.The Commissioner,

Hindu Religious and Charitable Endowments Department,
Uthamar Gandhi salai,
Nungambakkam,
Chennai 34

2. The Joint Commissioner,

H.R. & C.E. Coimbatore,
O/o The Joint Commissioner,
Hindu Religious & Charitable Endowments Department,
Coimbatore District.

... Respondents

Writ petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari calling for the entire records pertaining to the impugned proceeding in Na.Ka.No. 5937/2013/A1 commenced by the notice dated 07-06-2013 of the 2nd respondent and quash the same.

For Petitioner : Mr.V.Srikanth

For Respondent : Mr.NRR.Arun Natarajan

ORDER

Mr.V.Srikanth, learned counsel for writ petitioner and Mr.NRR.Arun Natarajan, learned State counsel for the two respondents are before this Court.

2. In the captioned writ petition, a 'notice dated 07.06.2013 bearing reference Na.Ka.No.5937/2013/A1' [hereinafter 'impugned notice' for the sake of convenience and clarity] issued by the second respondent has been assailed.

3. There is no disputation or disagreement before this



court that the impugned notice has been issued by the second respondent under Section 53(2) of the 'The Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 (Act 22 of 1959)' [hereinafter 'TN HR & CE Act' for the sake of convenience and clarity].

4. A perusal of the impugned notice makes it clear that the second respondent has merely called for an explanation after framing charges against the writ petitioner who is a Hereditary Trustee/Pujari of Arulmighu Theneeswarar Sangandi Vinayagar Temple, Kanjapalli Village, Annur Taluk, Tirupur District. To be noted, as many as eight charges have been framed.

5. A further perusal of the case file brings to light that writ petitioner and three other co-hereditary trustees have sent an explanation dated 24.06.2013 and the second respondent, after perusal of the explanation, has come to the prima facie conclusion that further enquiry qua charges is necessary. This appears to be predicated on prima facie view of second respondent that the explanation per se or the explanation by itself is not acceptable and good enough to drop the proceedings.

6. On this basis, second respondent has sent a communication dated 24.07.2013 bearing reference No.Na.Ka.No.5937/2013/A1 fixing an enquiry on 21.08.2013 at 10.30 am. Learned counsel for the writ petitioner submits that the enquiry did not get kick started on 21.08.2013.

7. Thereafter, captioned writ petition was filed in this Court on 25.09.2013 and an order of interim stay qua impugned notice was granted on 27.09.2013 in M.P.No.1 of 2013. This interim order is operating until today and in little over a fortnight from now, it will turn nine. In other words, the interim order has been operating for nearly nine years now.

8. The interim order granted on 27.09.2013, which is terse reads as follows:

'Ms.S.Kandasamy, learned Special Government Pleader takes notice on behalf of respondents and seeks time to get instructions.

Post on 05.11.2013. There shall be an interim stay in the meantime.'

9. Aforementioned interim order has also been extended from time to time and as already mentioned supra, it is now operating.

10. Though very many averments have been made in the writ



affidavit and many grounds have been raised in the writ affidavit, challenge to the impugned notice is primarily posited and predicated on the submission that the lands which the writ petitioner is said to have dealt with are not lands belonging to said temple. This Court is of the considered view, that all this is in the realm of enquiry as Section 53(3) provides for a mechanism for the noticee to meet the charges and decide the same on evidence adduced by the noticee before it (if that be so) besides testing evidence against him and carry the matter to its logical end. To be noted, this is ingrained in sub-section (3) of Section 53 itself which reads as follows:

' 53 Power to suspend, remove or dismiss trustees

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(1)

(2)

(3) When it is proposed to take action under sub-section (2), the appropriate authority shall frame charges against the trustee concerned and give him an opportunity of meeting such charges, of testing the evidence adduced against him and of adducing evidence in his favour ; and the order of suspension, removal or dismissal shall state the charges framed against the trustee, his explanation and the finding on each charge with reasons therefor. '

11. In the light of the narrative thus far, learned State counsel submits that the impugned notice is more in the nature of a show-cause notice and therefore, in the light of well established exceptions for interference qua a show-cause notice, the case on hand deserves to be dismissed. In other words, learned State counsel submits that it is nobody's case that a) the second respondent does not have jurisdiction to issue the impugned notice; b) the impugned notice has been issued in a pre-determined manner or c) the impugned notice is in complete violation of settled position of law. It is not necessary to dilate further on this aspect of the matter as the principles are well settled.

12. There is one other aspect of the matter this Court notices in the impugned notice. In the impugned notice, the second respondent has noticed that the jurisdictional inspector of 'Tamil Nadu Hindu Religious and Charitable Endowment Department' [hereinafter 'TN HR & CE Dept.' for the sake of convenience and clarity] has recommended temporary suspension of the hereditary trustees and appointment of a Thakkar (Fit person), but the second respondent has not done that. If the second respondent were to do that, he should resort to sub-section (4) of Section 54 of TN HR & CE Act, but interim order of this Court started operating. Be that as it may, as the same has not been done and the interim order has been operating for



nearly 9 years now, it will serve the purpose well qua all concerned to direct the second respondent to carry the impugned notice to its logical end and dispose of the same within a time frame with a rider that he shall not resort to Section 53(4) within this time frame i.e., for carrying the impugned notice to its logical end.

13. In the light of the narrative, discussion and dispositive reasoning thus far, notwithstanding very many averments and grounds raised in the writ affidavit, this Court without embarking upon the exercise of getting into factual disputations in a writ petition more so as a comprehensive mechanism has been provided and ingrained in sub-section (3) of Section 53 of TN HR & CE Act (under which the impugned notice has been issued) passes the following order:

a) The impugned notice i.e., notice dated 07.06.2013 bearing reference Na.Ka.No.5937/2013/A1 issued by the second respondent is not interfered with and the same is sustained.

b) As writ petitioner and co-hereditary trustees have responded to the impugned notice and second respondent has also fixed further enquiry vide communication dated 24.07.2013 bearing reference Na.Ka.No.5937/2013/A1, the enquiry under Section 53(3) of TN HR and CE Act shall be continued and concluded on the merits of the matter and in accordance with law as expeditiously as the business of the second respondent would permit and in any event within eight weeks from today i.e., on or before 28.10.2021.

c) The second respondent shall not resort to suspension of the writ petitioner and appointment of Thakkar (Fit person) till the conclusion of these proceedings within the time frame, owing to the reasons which have been set out supra.

d) Though obvious, it is made clear that this Court has not expressed any opinion or view on the merits of the matter and all questions including the grounds urged in the captioned writ petition are left open to be adjudicated upon by the second respondent.

e) The final order made by the second respondent shall be duly communicated to the writ petitioner and if necessary to the co-hereditary trustees under due acknowledgement as soon as the order is made and in any event within seven working days from the date of order. The writ petition is disposed of with the above directions.



Consequently, connected miscellaneous petition is also closed.
There shall be no order as to costs.

Sd/-

Assistant Registrar(CO)

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//True Copy//

Sub Assistant Registrar

gpa

To

1. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Uthamar Gandhi salai,
Nungambakkam,
Chennai 34
2. The Joint Commissioner,
H.R. & C.E. Coimbatore,
O/o The Joint Commissioner,
Hindu Religious & Charitable Endowments Department,
Coimbatore District.

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KSM(CO)
CB(14/09/2021)