IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2021

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.NO.19380 OF 2021

C.M.Ravi
S/o.Marimuthu

... Petitioner

-Vs.-

1. The Commissioner
HR & CE Department
Uthamar Gandhi Road
Nungambakkam
Chennai-600 034.

2. The Joint Commissioner
HR & CE Department
Commercial Tax Building, Ground Floor
Dr.Balasundaram Road
Coimbatore - 641 018.

3. The Executive Officer
Arulmighu Mariamman and Mundhi Vinayagar Temple
Puliyakulam
Coimbatore - 641 045.

4. Devendrakula Velalar Samooga Panchayat Sabhai
Rep. by its President, Arivazhagan
D.No.4/21 Karupparayan Koil Street
Coimbatore - 641 045.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the 2nd respondent to forthwith conduct enquiry under Rule 5A of the Collection of Income and the Incurring of Expenditure Rules, in respect to the improper collection of donations by the 4th respondent in the name of the 3rd respondent Temple and consequently, initiate prosecution under the provisions of the Indian Penal Code.

For Petitioner : Mr.P.Saravana Sowmiyan

For Respondents : Mr.NRR.Arun Natarajan
Government Advocate
for R1 to R3

O R D E R

Captioned writ petition arises under 'The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act No.22 of 1959)' [hereinafter 'TN HR&CE Act' for the sake of convenience and clarity].

2. The subject matter of captioned writ petition is 'Arulmighu Mariamman, Munthi Vinayagar Temples' [hereinafter 'said Temples' for the sake of convenience and brevity].

3. The said Temples are being administered as per a scheme dated 10.01.2017 framed/settled in O.P.No.2 of 2000 by the second respondent. To be noted, this Court is informed that this scheme is settled under Section 64(1) of TN HR&CE Act. It is not necessary to delve further on these aspects of the matter owing to the short and narrow compass on which the captioned writ petition turns.

4. Mr.P.Saravana Sowmiyan, learned counsel on record for writ petitioner is before this Virtual Court, Mr.NRR.Arun Natarajan, learned State counsel accepts notice on behalf of respondents 1 to 3 (official respondents) and this Court takes up the captioned main writ petition with the consent of learned counsel for writ petitioner and learned State counsel.

5. To be noted, fourth respondent is a private respondent. This Court is of the considered view that owing to the narrow compass on which the captioned writ petition turns, the same can be disposed of without making an order adverse to fourth respondent and also by putting in a safety valve qua fourth respondent.

6. One A.Gunasekaran, moved this Court vide W.P.No.9012 of 2020 on the basis of a representation dated 17.03.2020 wherein it was alleged that the fourth respondent is using the name of said Temples for collection of funds. This writ

petition was disposed of by Hon'ble Predecessor Judge by an order dated 08.07.2020 with a direction to dispose of the representation dated 17.03.2020 within twelve weeks after taking into account the submissions of writ petitioner therein and fourth respondent therein who is fourth respondent herein also.

7. This Court is informed by learned State counsel that pursuant to the aforementioned order, the representation dated 17.03.2020 came to be disposed of by third respondent on 05.10.2020. To be noted, this disposal proceedings is enclosed in the typed set of papers forming part of this case file and this is at page No.21 of typed set of papers. Thereafter, the third respondent has issued a notice to fourth respondent being notice dated 10.12.2020 and this notice says that it is issued under Rule 5-A of 'the Collection of Income and the Incurring of Expenditure Rules' [hereinafter 'said Rules' for the sake of convenience and brevity]. To be noted said Rules is a piece of subordinate legislation having been made by a delegated authority in exercise of powers under Section 116 of TN HR&CE Act. Rule 5-A of said Rules reads as follows:

> '5-A. Prevention of improper collection- No person, who is not, in any way, connected with the affairs of the religious institution, shall collect any money, subscription, donation or other property for religious purpose connected with the religious institution. If it is brought to the notice of the competent authority having jurisdiction and administrative control over the religious institution, that a person or group of persons, indulged in making such collection, such authority shall direct such person or group of persons, to stop making such collection forthwith, and require such person or group of persons to deposit such collection with the religious institution concerned and to render an account of the collection made by such person or group of persons.
>
> Any person or group of persons, who fail to comply with the direction of such competent authority will be liable for prosecution under the provisions of the Indian Penal Code.'

8. Notwithstanding the language in which the prayer in the writ petition is couched, learned counsel for writ petitioner in the Virtual hearing, submits that the prayer in effect is to carry the aforementioned Rule 5-A notice to its logical end. Ideally, the prayer should have been couched in a different language. In other words, I am of the considered view that the prayer is not happily worded. However, as this is writ

jurisdiction and considering the nature of the matter besides facts and circumstances of this case, I take recourse to the residuary limb part of the prayer and deem it appropriate to accede to the request of learned counsel for writ petitioner to consider the prayer as one seeking to Mandamus the third respondent to carry 10.12.2020 notice issued under Rule 5-A of said Rules to its logical end.

9. Carrying the aforementioned notice to its logical end, necessarily means and includes giving sufficient opportunity to the fourth respondent. Though obvious, this is set out for the purpose of clarity and specificity.

10. In the light of the narrative thus far, captioned Writ Petition is disposed of with a directive to third respondent to proceed further qua notice dated 10.12.2020 issued under Rule 5-A of said Rules adhering to the procedure, giving sufficient opportunity to noticee and carry it to its logical end on the merits of the rival contentions and in accordance with law. This exercise shall be concluded by third respondent as expeditiously as his official business would permit and in any event, within six weeks from today i.e., on or before 26.10.2021. This Court has made it clear that the fourth respondent has to be given sufficient opportunity and this is the safety valve qua fourth respondent which has been alluded to supra as captioned writ petition is being disposed of in the Admission Board. There shall be no order as to costs.

Sd/-
Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar

mk/nsa

To

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HR & CE Department
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+1cc to the Government Pleader, S.R.No.46953

W.P.No.19380 of 2021

SRA(CO)
RLP(24/09/2021)