IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2021

CORAM

THE HON'BLE Mr.JUSTICE M.SUNDAR

W.P.No.19644 of 2021
and
W.M.P.Nos.20926 and 20928 of 2021

T.Manikandan
S/o.S.Thangarasu ... Petitioner

-Vs.-

1. The Commissioner,
H.R.&C.E. Department
Nungambakkam
Chennai 600 034.

2. The Joint Commissioner,
H.R.&C.E. Department
Cuddallore.

3. The Assistant Commissioner,
H.R.&C.E. Department
Cuddalore. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to call for the records of the third respondent in his proceedings in Na.Ka.No.633/2001-25/A1 dated 22/04/2002 and quash the same.

For Petitioner : Mr.A.Muthukumar

For Respondents : Mr.NRR.Arun Natarajan
Government Advocate

O R D E R

Captioned main writ petition has been filed assailing 'proceedings dated 22.04.2002 bearing reference Na.Ka.No.633/2001-25/A1' [hereinafter 'impugned proceedings' for the sake of brevity, convenience and clarity] made by third respondent.

2. Captioned main writ petition and writ miscellaneous petitions therein are now in the Admission Board.

3. Mr.A.Muthukumar, learned counsel on record for writ petitioner and Mr.NRR.Arun Natarajan, learned State counsel who accepts notice on behalf of all the three respondents are before me.

4. This Court with the consent of both sides, takes up the main writ petition as the entire matter turns on a narrow compass. The impugned proceedings made by the third respondent (jurisdictional Assistant Commissioner of 'Tamil Nadu Hindu Religious and Charitable Endowments Department' [hereinafter 'TN HR&CE Department' for the sake of convenience and clarity] i.e., Assistant Commissioner Cuddalore) is one appointing a Fit person to 'Arulmigu Nithiyanandha Samy Madam @ Keni Madam' [hereinafter 'said entity' for convenience and clarity].

5. It is the case of the writ petitioner that the impugned proceedings was made nearly 19 years ago, but it was served on writ petitioner only on 01.09.2021, in the enquiry before third respondent, pursuant to 'enquiry notice dated 16.08.2021 bearing reference No.2943/2015/m1' [hereinafter 'said enquiry notice' for the sake of convenience and clarity].

6. A summation of submissions made by the learned counsel for writ petitioner in his campaign against the impugned proceedings are as follows:

(a) Prior notice i.e., notice prior to impugned proceedings was not given to the writ petitioner;

(b) The said entity are Samadhies and therefore, they do not come under the purview of '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];

(c) Adverting to proceedings dated 15.03.2019 bearing reference Na.Ka.No.36/2019, made by jurisdictional Inspector of TN HR&CE Department i.e.,Inspector, TN HR&CE Department, Chidhambaram, it was contended that TN HR&CE Department itself has made it clear that the said entity does not come under the purview of TN HR&CE Act;

7. Learned State counsel who accepted notice on behalf of all the three respondents in response to the above submissions, raised points, a summation of which is as follows:

(a) Prior notice is not necessary as the impugned proceedings have been made under Section 49(1) of TNHR&CE Act, it is only a transitory appointment to safeguard the administration and properties and TN HR&CE Act does not contemplate prior notice to any one;

(b) Samadhies will also qualify as religious institutions under 6(18)(i) of TN HR&CE Act. In this regard, learned State counsel pressed into service a judgement of a Hon'ble Division Bench of this Court in Amirthammal Case Law [Inspector/Fit Person H.R. & C.E., Arulmighu Sundaresa Gnaniar Koil Cholakadai Street, Dharapuram Vs. Amirthammal and 3 others reported in 2003 (1) CTC 484] to say that this is a matter where the writ petitioner if at all and if that be so should seek a declaration before jurisdictional Joint Commissioner under Section 63(a) of TN HR&CE Act;

(c) Communication dated 15.03.2019 does not say that the said entity is not within the purview of TN HR&CE Act it neither says that it is not within purview of TN HR&CE Act nor says that the said entity does not come under the purview of TN HR&CE Department;

(d) Learned State counsel also pointed out that in response to said enquiry notice, writ petitioner appeared before third respondent through a counsel on 01.09.2021 and he has made submissions, which means that the writ petitioner has submitted himself to the jurisdiction of the third respondent;

8. By way of reply, learned counsel for writ petitioner reiterated that Section 63(a) of TN HE&CE Act does not apply to the case on hand as this is a Samadhi and learned counsel also submitted that he needs to necessarily challenge the impugned proceedings.

9. I now proceed to consider the rival submissions and give my dispositive reasoning followed by my conclusion.

10. The primary sheet anchor submission is, said entity being Samadhi does not qualify as religious institution within the meaning of TN HR&CE Act. In my considered view, this sheet anchor submission which is reiterated repeatedly in the writ affidavit and which is also projected in the arguments before me is flawed, as Samadhi is included in the definition of religious institution vide Section 6(18)(i) of TN HR&CE Act as rightly contended by learned State counsel. I deem it appropriate to extract entire Section 6(18)(i) of TN HR&CE Act and the same reads as follows:

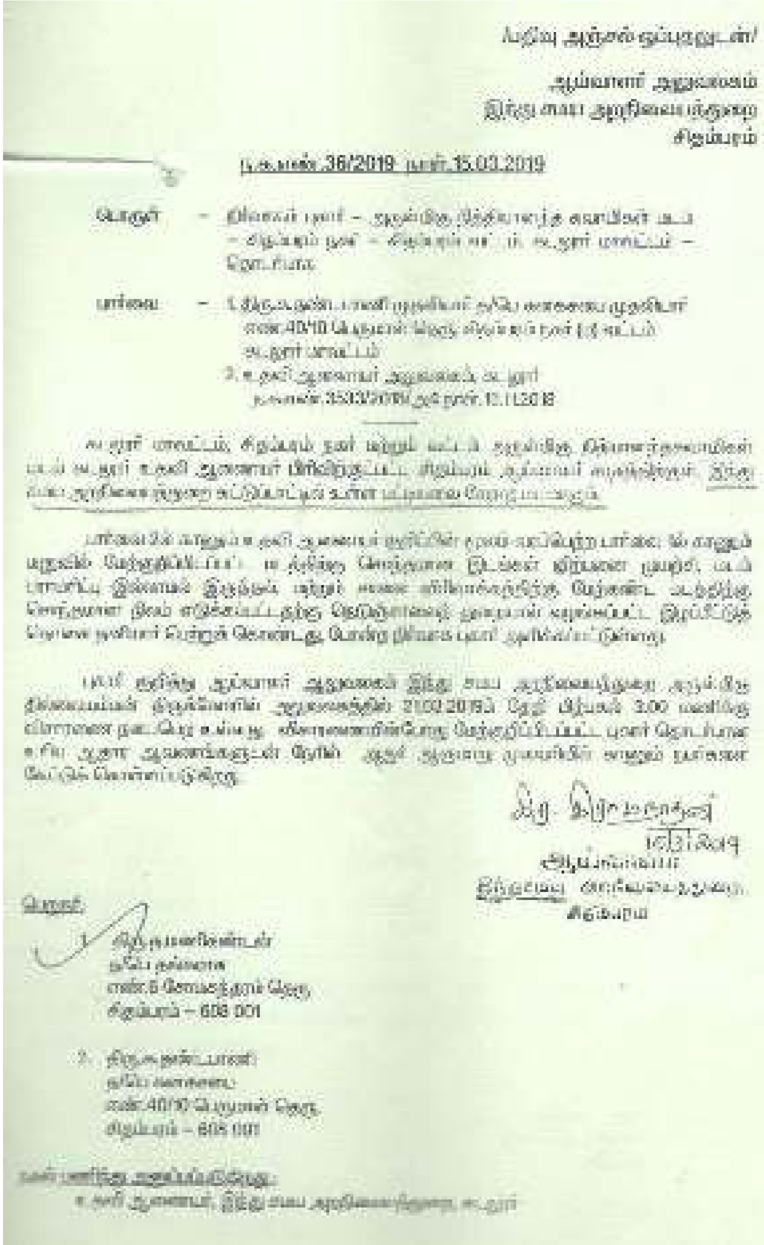
> '6. Definitions.- In this Act, unless the context otherwise requires,
>
> (1) to (17) ....
>
> (18) "Religious institution" means a math, temple or specific endowment and includes,:-
>
> (i). a samadhi or brindhavan; or'

11. To be noted, Section 6 is definition clause in 'TN HR&CE Act', Sub-Section (18) defines 'Religious Institution' and what is of relevance is Section 6(18)(i) of TN HR&CE Act. To be noted, this is by way of amendment to TN HR&CE Act, which came into force on and from 27.06.2012. Therefore, I may have to necessarily deal with the issue that the impugned proceedings are prior to 27.06.2012. I proceed to do so. The entire sub-section 18 was brought in, i.e., brought into the Statute book qua TN HR&CE Act by way of a substitution vide Tamil Nadu Act 26 of 2012 which kicked in on and from 27.06.2012. As it was brought in by way of a substitution, it is to be presumed that the provision existed from the day parent Statute came into force.

12. Another important reason is, when an entity of such nature comes into existence by operation of Section 1(3) of TN HR&CE Act, it automatically comes under the sweep of TN HR&CE Act and TN HR&CE Department. Exceptions are made qua Jain religious institutions and Endowments vide Section 3 of TN HR&CE Act. Otherwise, any person who seeks exemption from the provisions of TN HR&CE Act should apply to the Government under Section 4 of TN HR&CE Act to get exemption. Absent such exemption, the said entity will automatically come under the sweep of TN HR&CE Act. It is in this regard that the proceedings under Section 63(a) of TN HR&CE Act become relevant. I have no difficulty in agreeing with the submission of learned State counsel that the Amirthammal principle laid down by Hon'ble Division Bench of this Court referred to supra would apply to the case on hand where the writ petitioner can resort to Section 63(a) of TN HR&CE Act, of so advised and if that be so. To be noted, Amirthammal principle was incidentally rendered in the same year of the impugned proceedings and the date of Amirthammal order is 17.12.2002.

13. This takes us to the next question of prior notice. Section 49(1) of TN HR&CE Act is a transitory and therefore, prior notice is not contemplated under the Statute. In other words, prior notice is optional and discretionary at the discretion of the officer making the order. Section 49 of TN HR&CE Act is intended to safeguard the properties of religious institutions as the law is well settled that the idol is a minor and the Court is parentis locus qua minor idol and custodia legis qua the properties of the minor idol. Therefore, the moment it is a religious institution, it comes under the sweep of TN HR&CE Act vide Section 1(3) of TN HR&CE Act and appointing a Fit person which is a transitory to safeguard in the interest of religious institution and its properties is available.

14. This takes us to the argument predicated on 15.03.2019 proceedings of jurisdictional Inspector. This communication dated 15.03.2019 reads as follows:



ஆய்வாளர் அலுவலகம்
இந்து சமய அறநிலையத்துறை
சிதம்பரம்

ந.க.எண்.36/2019 நாள்.15.03.2019

(Underlining made by this Court is for ease of reference)

15. Paragraph No.1 of aforementioned communication was read to this Court to say that TN HR&CE Department itself has taken a stand that the said entity does not come under the purview of TN HR&CE Act. Paragraph No.1 says 'இந்து சமய அறநிலையத்துறை கட்டுப்பாட்டில் உள்ள பட்டியலை சேராத மடமாகும்'. This only means that the said entity is not listed, but it is under the control of TN HR&CE Department.

There are three listings under TN HR&CE Act depending on the income of religious institutions. It is not necessary to dilate much of these aspects. Suffice to say that the institution which falls below a minimum income to become unlisted institution but will still be under the purview of TN HR&CE Act and TN HR&CE Department. Therefore, a religious institution can be under four categories, one of three lists or unlisted. This means that the jurisdictional Inspector has merely said that the said entity is unlisted. It does not mean that the said entity does not come under the purview of TN HR&CE Act or TN HR&CE Department as the jurisdictional Inspector saying that it is unlisted, has clearly preceeded by the expression 'that it is under the control of TN HR&CE Department' i.e., 'இந்து சமய அறநிலையத்துறை கட்டுப்பாட்டில் உள்ள......'.

(underlining made by Court for ease of reference)

16. This takes us to the important argument of learned counsel for writ petitioner that he will have to necessarily assail the impugned proceedings.

17. This Court put it to the learned counsel for writ petitioner to know what prejudice would be caused if writ petitioner goes before third respondent pursuant to the aforementioned 16.08.2021 said enquiry notice. In response to this, learned counsel for writ petitioner submitted that he may have to necessarily challenge the impugned proceedings. I have noticed the submission of learned State counsel on instructions, that on 01.09.2021 the writ petitioner has gone before the third respondent through a counsel and has submitted himself to the jurisdiction. However, without elaborating more on this, it will suffice to say that the writ petitioner is having statutory remedy by way of a statutory revision under Section 21 of TN HR&CE Act qua impugned proceedings. The time limit is three months. I am aware that in Rukmani Ganesan case [Ganesan, represented by its power agent G.Rukmani Ganesan Vs. Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments Board and others reported in (2019) 7 SCC 108], it has been held that this three months is not extendable.

18. Be that as it may, in response to the objections raised by the Registry at the time of filing of the captioned writ petition, the writ petitioner has made an endorsement which reads as follows:

> 'The impugned order dated 22.04.2002 was served on the petitioner on 01.09.2021 when Enquiry was conducted in that behalf. Hence there was no delay in preferring the above W.P.'

19. In the light of the above, it is clear that the impugned proceedings were served on writ petitioner only on 01.09.2021

i.e., in the enquiry before third respondent pursuant to 16.08.2021 notice referred to supra. If the writ petitioner is able to satisfy (on facts) the first respondent-Revisional authority that the impugned proceedings were never served on the writ petitioner prior to 01.09.2021, it is well open to first respondent to entertain the revision, if it is preferred within three months from 01.09.2021. If the writ petitioner chooses to prefer a Statutory revision under Section 21 of TN HR&CE Act, it is made clear that the first respondent shall deal with the revision on its own merits and in accordance with law after giving opportunity to all concerned, uninfluenced and untrammeled by any trappings or traces of observations which may appear to have been made on merits in this order. The same would apply to the proceedings under Section 63(a) of TN HR&CE Act if the writ petitioner is so advised and if he chooses to do so.

20. Before concluding, I deem it appropriate to refer to alternate remedy aspect as I have touched upon the same in this writ petition. Though there is a long line of authorities starting from Dunlop India [Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vs. Dunlop India Ltd., and others reported in (1985) 1 SCC 260] Hon'ble Supreme Court has recently as on 03.09.2021 i.e., less than a fortnight ago in Commercial Steel Limited case [The Assistant Commissioner of State Tax and others Vs. M/s.Commercial Steel Limited in Civil Appeal No.5121 of 2021], speaking through Hon'ble Justice Dr.Dhananjaya Y Chandrachud reiterated the position that existence of alternate remedy no doubt is not an absolute bar to the maintainability of a writ petition, but it is a self imposed restraint and more particularly in dealing with a situation where the writ petitioner had not availed the alternate remedy four exceptions were reiterated and those four exceptions have been neatly and nicely captured in Paragraph Nos.11 & 12 of the Commercial Steel Limited case and the same read as follows:

> '11 The respondent had a statutory remedy under section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where there is: (i) a breach of fundamental rights; (ii) a violation of the principles of natural justice; (iii) an excess of jurisdiction; or (iv) a challenge to the vires of the statute or delegated legislation.
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> 12 In the present case, none of the above exceptions was established. There was, in fact, no

violation of the principles of natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was CA 5121/2021 7 not appropriate for the High Court to entertain a writ petition. The assessment of facts would have to be carried out by the appellate authority. As a matter of fact, the High Court has while doing this exercise proceeded on the basis of surmises. However, since we are inclined to relegate the respondent to the pursuit of the alternate statutory remedy under Section 107, this Court makes no observation on the merits of the case of the respondent.'

21. The challenge made by the writ petitioner in the captioned writ petition at best come close to exceptions 2 and 3 namely, violation of NJP and jurisdiction. Both these aspects have been dealt with and extracted supra. There is no violation of NJP. To reiterate at the risk of repetition for the purpose of clarity and specificity, I deem it appropriate to set out that with regard to NJP, it has already been held in this order supra that under TN HR&CE Act, prior notice qua Fit person appointment is at the discretion of the authority concerned as it is a transitory measure. This is intended to safeguard the properties of religious institution. As far as jurisdiction is concerned, it has already been held supra as to how said entity comes under the purview of TN HR&CE Act and TN HR&CE Department. Finally, I make it clear that it is open to writ petitioner to continue to participate in the proceedings before third respondent.

22. In the light of the narrative and discussion thus far, captioned Writ Petition is disposed of, albeit preserving the rights of writ petitioner in the aforesaid manner. Consequently, connected writ miscellaneous petitions are also disposed of as closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mk
To

1.The Commissioner,
H.R.&C.E. Department
Nungambakkam
Chennai 600 034.

2. The Joint Commissioner,
   H.R.&C.E. Department
   Cuddallore.

3. The Assistant Commissioner,
   H.R.&C.E. Department
   Cuddalore.

+1cc to M/s.A.Muthukumar, Advocate Sr.47315
+1cc to the Government pleader Sr.47670

W.P.No.19644 of 2021
and
W.M.P.Nos.20926 and 20928 of 2021

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srg 20/10/2021