



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.[MD]No.12861 of 2012

and

M.P.[MD]No.1 of 2012

WEB COPY

Madanraj

... Petitioner

Vs.

1.The Commissioner,  
Hindu Religious & Charitable Endowments Department,  
Chennai.

2.The Joint Commissioner,  
Hindu Religious & Charitable Endowments Department,  
Nethaji Road,  
Madurai.

3.The Assistant Commissioner,  
Hindu Religious & Charitable Endowments Department,  
Madurai.

... Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records of the first respondent dated 27.06.2012 in S.M.R.No.1/2010D2 and quash the same.

For Petitioner : Mr.R.G.Shankar Ganesh  
For Respondents 1 to 3 : Mr.A.Baskaran  
Additional Government Pleader

### **O R D E R**

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Captioned main writ petition has been filed assailing an order dated 27.06.2012 made by the first respondent in *suo motu* Revision No.1/2010D2 [hereinafter 'impugned order' for the sake of convenience and clarity].

2.The impugned order has been made under Section 69(2) of 'the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959)' {hereinafter 'TN HR & CE Act' for the sake of convenience and clarity}. This impugned order is more than a decade old. It completed 10 years, about 5 months ago.

3.Be that as it may, this writ petition itself has been filed in this Court on 01.10.2012 and therefore, the captioned writ petition is also more than a decade old. An interim order has been granted in the captioned miscellaneous petition in the captioned



main writ petition, this interim order is dated 13.02.2013 and the same reads as follows:

*'Heard the learned Counsel for the petitioner.*

*Learned Government Advocate takes notice for the respondents and he seeks time to take instruction.*

*Post on 14.03.2013. There shall be an order of interim stay of the order passed by the Commissioner in the meantime. However, it is made clear that granting of interim stay would not amount to granting permission to the petitioner to assign the property of the Temple in question. It is also made clear that the property of the Temple shall not be assigned on the basis of this order of stay.'*

*[Extracted and reproduced as such]*

4. Aforementioned interim order has been extended until further orders vide orders dated 14.03.2013, which reads as follows:

*'The interim stay already granted on 13.02.2013 shall continue until further orders.'*

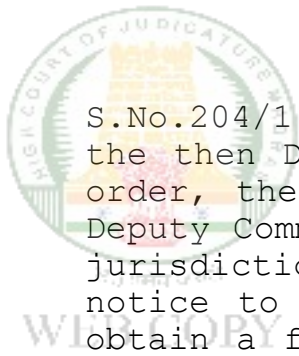
*[Extracted and reproduced as such]*

5. In three months from now, the interim order also would become one decade old. To be noted, the interim order has now been operating for nine years and nine months.

6. Reverting to the impugned order, the same pertains to a temple which goes by the name 'Arulmighu Badrakaliamman Temple situate at Melakottai, Thirumangalam Taluk, Madurai District' ['said temple' for the sake of convenience and clarity].

7. Factual matrix containing facts that are imperative for appreciating this order are that the then Deputy Commissioner of 'Tamil Nadu Hindu Religious and Charitable Endowments Department' ['TN HR & CE Dept.', for the sake of brevity] was petitioned under Section 63(a) of the TN HR & CE Act by one Regunatha Das Pandian I.A.S. vide O.A.No.85 of 1980 and the then Deputy Commissioner in and by an order dated 19.06.1982 declared that said temple is not a religious institution coming within the purview of Section 6(20) of the TN HR & CE Act; that it is to be noted that Section 6(20) of the Act defines 'temple' and not a 'religious institution'; that religious institution is defined under 6(18) of TN HR & CE Act.

8. Be that as it may, writ petitions were filed in this Court being W.P.[MD]No.3467 of 2008 and W.P.[MD]Nos.10188 & 12319 of 2008. These writ petitions came to be disposed of by this Court by orders dated 15.04.2008 & 03.09.2009 and these writ petitions pertain to properties qua said temple; that the first respondent exercised suo motu powers under sub-Section 2 of Section 69 and made the impugned order; that in and by the impugned order, the first respondent noticed that said temple is situate in Natham Poramboke



S.No.204/1 and not in a private house of a Zamindhar as observed by the then Deputy Commissioner in his 1982 order; that vide impugned order, the first respondent set aside the 19.06.1982 order of then Deputy Commissioner of TN HR & CE Dept., remanded the matter to the jurisdictional Joint Commissioner of TN HR & CE Dept., to issue notice to the writ petitioner and other persons, hold an enquiry, obtain a fresh report giving reasonable opportunity to the parties concerned and then give an order on merits and in accordance with law as expeditiously as possible; that this did not move forward, this writ petitioner has filed this writ petition on 01.10.2012 and the interim order dated 13.02.2013 staying the impugned order (alluded to supra) came to be made by this Court; that the interim order is operating until today and therefore, the proceedings before jurisdictional Joint Commissioner never got kick-started post remand vide the impugned order.

9.The aforementioned narrative sets out factual matrix containing facts imperative for appreciating this order and it also captures the broad trajectory the matter has taken in reaching this final hearing today before me.

10.Mr.R.G.Shankar Ganesh, learned Counsel for writ petitioner assailing the impugned order notwithstanding very many averments in the writ affidavit and notwithstanding several grounds in the writ affidavit submitted that his campaign against the impugned order is three fold and the three main grounds are as follows:

a) The *suo motu* exercise of powers by first respondent is *mala fide* and the Assistant Commissioner giving a report triggering the *suo motu* proceedings is also *mala fide*;

b) The *suo motu* proceedings have commenced after thirty years which is not reasonable time; and

c) Reasonable time *qua suo motu* proceedings is imperative.

11.Elaborating on the above submissions, learned Counsel reiterated that the trigger is a report of the Assistant Commissioner and that emanates from *mala fides*. Elaborating on the second point of exercise of *suo motu* powers after thirty years, learned Counsel pressed into service three case laws being order of Hon'ble Supreme Court in Civil Appeal Nos.10787 to 10795 of 1996 dated 19.08.2003, order of a Hon'ble Single Judge of this Court dated 04.11.2009 in W.P.No.4139 of 2007 and order of another learned Single Judge of this Court dated 03.03.2010 in W.P.Nos.26883 & 26884 of 2008. The third point of reasonable time is dovetailed with the second point of exercise of *suo motu* powers post 30 years or in other words it is the same point in different form and therefore, the submissions can be considered as buttressing one another.



12.Learned State Counsel in response to the aforementioned arguments made submissions a summation of which is as follows:

a) There is nothing to demonstrate *mala fides*; and

b) It was brought to the notice of the first respondent *inter alia* by the report as also the fate of the earlier writ petitions which were filed and therefore, it cannot be gainsaid that the delay of thirty years vitiates the *suo motu* proceedings. This applies to the third point which depends upon the reasonable time.

13.By way of reply, learned Counsel for writ petitioner, submitted that there is no change of circumstances warranting a remand. It is necessary to record that learned Counsel submitted that interim order is limited to restraining alienation of property of the said temple but the case file placed before this Court speaks otherwise. To be noted, the interim order and the extension of same until further orders made by Hon'ble Predecessor Judge have been extracted and reproduced supra. Therefore, one has to proceed necessarily on the basis of the case files and the records before this Court. When this was pointed out, learned Counsel shifted gears, changed lane *qua* submissions and said he does not have the copies of the interim orders before him. Therefore, this Court proceeds on the basis that the aforementioned interim order *qua* impugned order is operating.

14.I now proceed to discuss the rival submissions, set out the dispositive reasoning and arrive at a conclusion.

15.Regarding *mala fides*, law is well settled that *mala fides* has to be well pleaded and has to be a matter of substance. In the instant case, there is nothing demonstrable *qua mala fides* and therefore, in my considered view the *mala fides* argument is a non-starter.

16.I now move on to the second argument ie., exercise of *suo motu* powers after thirty years. As already alluded to supra three case laws were pressed into service. The first case law is the case of **Ibrahimpatnam Taluk Vyavasaya Collie Sangham Vs. K.Suresh Reddy & Ors.** in Civil Appeal Nos.10787 to 10795 of 1996 dated 19.08.2003 ie., **K.Suresh Reddy's** case. **K.Suresh Reddy's** case arose under a Statute which goes by the name 'Andhra Pradesh (Telangana Area) Tenancy and Agricultural Land Act, 1950' [hereinafter 'AP Act' for the sake of brevity]. The Statement of Objects and Reasons of this Act has also been extracted and reproduced in **K.Suresh Reddy's** case and the same reads as follows:

'STATEMENT OF OBJECTS AND REASONS "Section 47 of

<https://hcservices.ecourts.gov.in/hcservices/> the Andhra Pradesh (Telangana Areaa) Tenancy and



Agricultural Lands Act, 1950, which is in force in the Telangana Area of this State as it stood prior to its amendment by the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands (Amendment) Act, 1959, provided that no permanent alienation or other transfer of agricultural land shall be valid unless it was made with the previous sanction of the Collector. In actual practice, however, the requirement of this section and also sections 48 and 49 had not been complied with, and alienations and transfers had been effected on a considerable scale without the previous permission of the Collector, by means of oral agreement, unregistered documents, etc.'

[Extracted and reproduced as such]

17. The factual matrix in **K. Suresh Reddy's** case reveals that sale deeds were executed by owners of lands in favour of 4 different persons and pursuant to sale deeds possession was also delivered to the vendees. Parties to the sale deeds have filed applications under Section 50-B of AP Act for validation of sales. Concerned Tahsildar issued validation certificates on various dates and thereafter orders of the Tahsildar giving validation certificates were challenged in appeals by Special Tahsildar and the Authorised Officer (Land Reforms) before the Joint Collector of the District but those were dismissed in 1988. Thereafter, the Joint Collector issued show cause notices purporting to exercise *suo motu* powers under Section 4 of Section 50-B of AP Act. Therefore, the facts are clearly distinguishable. The other distinguishing factor being in **K. Suresh Reddy's** case, rights were crystallized in favour of certain persons by way of sale deeds and subsequent validation certificates which was also confirmed by an appellate authority. These rights were sought to be lightly disturbed several years later and it is in this context that Hon'ble Supreme Court observed that exercise of *suo motu* powers 'at any time' only means that no specific period such as days, months or years are not prescribed reckoning from a particular date but that does not mean 'at any time' should be unguided and arbitrary.

18. In this regard I remind myself of the celebrated **Padma Sundara Rao** case being **Padma Sundara Rao Vs. State of Tamil Nadu** case reported in (2002) 3 SCC 533 which was rendered by a Hon'ble Constitution Bench. **Padma Sundara Rao** case is an authority for the proposition as to how case laws and precedents have to be set out and reckoned. The facts have to be first mentioned and then the proposition has to be highlighted. Relevant paragraph in Padma Sundara Rao case law is 9 and the same reads as follows:

'9. Courts should not place reliance on decisions without discussing as to how the factual

fits in with the fact situation of the



decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington Vs. British Railways Board* (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.'

*[Extracted and reproduced as such]*

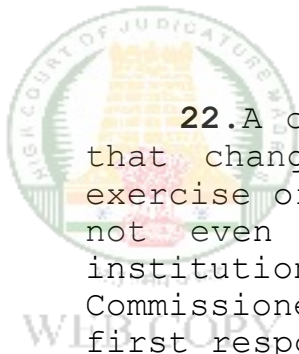
**19.**In this case though the facts were not highlighted, I have taken it upon myself and set out the facts. I am of the considered view that the facts are clearly distinguishable and one other distinguishable feature is the Statutes are completely different, they operating in different realms. The TN HR & CE Act has been repeatedly held to be a self-contained code by this Court in a long line of cases and catena of judgments. Therefore, TN HR & CE Act being self-contained code contains a self-contained mechanism for Chapter V proceedings. I shall deal with this elsewhere in this order.

**20.**This takes us to the second and third case laws cited by the learned Counsel. Those two case laws turn on service jurisprudence and I find that those two case laws do not come to the aid of the writ petitioner for the case at hand.

**21.**This takes us to the question of change in circumstances. With regard to the change in circumstances, Section 69(2) of TN HR & CE Act reads as follows:

**'69(2).** Any order passed by [the Joint Commissioner or the Deputy Commissioner, as the case may be], in respect of which no appeal has been preferred within the period specified in sub-section (1) may be revised by the Commissioner suo motu and the Commissioner may call for and examine the records of the proceedings as to satisfy himself as to the regularity of such proceedings or the correctness, legality or propriety of any decision or order passed by [the Joint Commissioner or the Deputy Commissioner, as the case may be]. Any such order passed by the Commissioner in respect of an order passed by the [Joint Commissioner or the Deputy Commissioner, as the case may be], shall be deemed to have been passed by the Commissioner on an appeal preferred to him under sub-section(1).'

*[Extracted and reproduced as such]*



**22.**A careful perusal of Section 69(2) of the Act makes it clear that change of circumstances, is not a condition precedent for exercise of *suo motu* powers. In this case, the first respondent has not even conclusively decided regarding the character of the institution ie., said temple which was decided by the then Deputy Commissioner way back in 1982 in a 63(a) legal drill. All that the first respondent has done is, he has remanded the matter back to the jurisdictional Joint Commissioner for a fresh enquiry and has also made it clear that the enquiry will be after calling for a report, after putting all concerned (including the writ petitioners on notice) after giving opportunity to all persons for deciding the matter on merits and in accordance with law. In this regard, I deem it appropriate to extract and reproduce the concluding paragraph of the impugned order and the same reads as follows:

*'I find valid and justifiable reasons to interfere with the impugned order of the then Deputy Commissioner. Accordingly, the order passed by the then Deputy Commissioner dated 19.06.1982 made in O.A.No.85/1980 is hereby set aside and the matter is remanded back to the Joint Commissioner for enquiry denova. The Joint Commissioner is directed to issue notice to the present respondent and other persons having interest, hold an enquiry after obtaining fresh report from the Inspector of this Division and afford reasonable opportunity to the parties and to decide the matter on merits and in accordance with law as expeditiously as possible.'*

*[Extracted and reproduced as such]*

**23.**As already alluded to supra, this remand did not get kick-started owing to the writ petitioner filing the captioned writ petition and obtaining an interim order [details of which have been alluded to supra] which is operating until today.

**24.**In my considered view, there would be no prejudice caused to the writ petitioner if the denova legal drill is conducted in accordance with the remand order ie., impugned order. This is more so as the matter pertains to TN HR & CE Act which is a self-contained Code. The issue will be comprehensively resolved ie., whether said temple would qualify as a public temple and therefore whether sub-section (3) of section 1 will operate or would it be exempt and not qualify as a religious institution at all. In this regard, before concluding, I deem it appropriate to make two more points. One point is, as already alluded to supra, Section 63 (a) itself talks about whether an institution is a religious institution. It does not talk about whether an entity is a temple. 'Temple' is defined in Section 6(20) whereas 'Religious Institution' is defined in Section 6(18). Section 6(18) and Section 6(20) reads as follows:



'6(18). "Religious institution" means a math, temple or specific endowment and includes, :-

- (i) a samadhi or brindhavan; or
- (ii) any other institution established or maintained for a religious purpose.

Explanation.- For the purpose of this clause-

(1) "samadhi" means a place where the mortal remains of a guru, sadhu or saint is interned and used as a place of public religious worship;

(2) "brindhavan" means a place established or maintained in memory of a guru, sadhu or saint and used as a place of public religious worship, but does not include the samadhi;

.....

6(20). "temple" means a place by whatever designation known, used as a place of public religious worship and dedicated to, or for the benefit of, or used as of right by, the Hindu community or of any section thereof, as a place of public religious worship;

**Explanation.** - Where a temple situated outside the State has properties situated within the State, control shall be exercised over the temple in accordance with the provisions of this Act, in so far as the properties of the temple situated within the State are concerned;'

[Extracted and reproduced as such]

25. The then Deputy Commissioner has held that the entity ie., said temple is not a religious institution within the meaning of Section 6(20). This itself may warrant a re-visitation. This itself points towards an error in the approach and therefore, I do not find any infirmity in exercise of suo motu powers to interfere with such an order.

26. The second point which is deemed appropriate to make is TN HR & CE Act being a self-contained code provides for a mechanism for Chapter V proceedings as alluded to supra any order made under Section 69 can be subjected to a statutory suit under Section 70 of TN HR & CE Act, which reads as follows:

**'70.Suits and appeals.-** (1) Any party aggrieved by an order passed by the Commissioner-

(i) under sub-section (1) or sub-section (2) of section 69 and relating to any of the matters specified in section 63, section 64 or section 67; or

(ii) under section 63, section 64 or section 67 read with sub-section(1)(a), 2 or (4)(a) of section



22 or under section 65

may, within ninety days from the date of the receipt of such order by him, institute a suit in the Court against such order, and the Court may modify or cancel such order, but it shall have no power to stay of order of the Commissioner pending the disposal of the suit.

(2) Any party aggrieved by a decree of the Court under sub-section (1), may, within ninety days from the date of the decree, appeal to the High Court.'

[Extracted and reproduced as such]

**27.** After a statutory suit under Section 70 of TN HR & CE Act in the jurisdictional Court, there is also a provision to appeal to this Court [High Court] under sub-section (2) of Section 70. Therefore, there are two more tiers in Chapter V proceedings itself. Whether it would be appropriate even to file a suit as the impugned order is only an order of remand is a moot question but the fact remains that this has not been resorted to. The argument that Section 70 was not resorted to as the Commissioner (first respondent) has exercised *suo motu* powers using a report of an Assistant Commissioner as a trigger does not impress me, as *suo motu* powers are *sui generis*. In this view of the matter also the writ petitioner does not go any further in his campaign against the impugned order.

**28.** A recent judgment of Hon'ble Supreme Court in the case of **Ganesan, Rep. by power agent G.Rukmani Ganesan Vs. The Commissioner, The Tamil Nadu Hindu Religious and Charitable Endowments Board and Others** [hereinafter '**G.Rukmani Ganesan's**' case for the sake of convenience and clarity] reported in **(2019) 7 SCC 108** is of relevance. In **G.Rukmani Ganesan's** case, the question was whether the Commissioner of TN HR & CE Dept., is vested with powers of condonation of delay [CoD]. While answering this question in the negative, Hon'ble Supreme Court made it clear that this proposition will not apply to the *suo motu* exercise of powers. This is mentioned to say that even in a case where appeal remedy is barred and even in a case where the Hon'ble Supreme Court held that a delayed appeal cannot be entertained, Section 69(2) powers were preserved. In this regard, paragraph No.17 of **G.Rukmani Ganesan's** case is relevant and the same reads as follows:

'17. When an appeal is provided against the order of the Commissioner under Section 69 of the Court which is defined under Section 6(7), there is no question of treating the Commissioner as a Court under the statutory scheme of Act, 1959. We, thus, conclude that Commissioner is not a Court within the meaning of Act, 1959.'

[Extracted and reproduced as such]



**29.** Considering the length of time the details of which has been mentioned more than once elsewhere supra in this order, the second respondent Joint Commissioner shall do well to kick-start the proceedings under Section 63(a) of the Act and conclude the same as expeditiously as possible and in any event within six [6] months from today ie., on or before **25.04.2022**. To be noted, earlier it was Deputy Commissioner, now statutorily jurisdictional Joint Commissioner is vested with the powers qua proceedings under Section 63(a). I have noticed this statutory provision and the obtaining position as far as TN HR & CE Act is concerned as it is relevant in the light of remand qua impugned order.

**30.** Owing to all that have been set out supra, the captioned writ petition fails and the same is dismissed. Consequently, captioned miscellaneous petition is also dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MR

**NOTE:** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Commissioner,  
Hindu Religious & Charitable Endowments Department,  
Chennai.

2.The Joint Commissioner,  
Hindu Religious & Charitable Endowments Department,  
Nethaji Road, Madurai.

3.The Assistant Commissioner,  
Hindu Religious & Charitable Endowments Department,  
Madurai.

+1 CC to M/s.SPL GP ( SR-36041[F] dated 26/11/2021 )

**ORDER MADE IN**

**W.P. [MD]No.12861 of 2012**

**25.11.2021**

NSN(CO)

GC(13.12.2021) 10P 5C

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