BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 26.11.2021
CORAM:
THE HONOURABLE MR.JUSTICE M.SUNDAR
W.P.[MD]Nos.21081 and 21082 of 2021
and
W.M.P(MD).Nos.17677 and 17680 of 2021

W.P(MD).No.21081 of 2021:

NR.Chandrasekaran : Petitioner

Vs.

1. The Assistant Commissioner,
   Hindu Religious Charitable and Endowments Department,
   Karur.

2. The Inspector,
   Hindu Religious Charitable and Endowments Department,
   Kulithalai.

3. Mr.Gnanasekaran : Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari calling for the records relating to the impugned proceedings in Na.Ka.No.2569/2021/A2, dated 04.10.2021 issued by the first respondent and quash the same as illegal.

W.P(MD).No.21082 of 2021:

NR.Chandrasekaran : Petitioner

Vs.

1. The Tahsildar,
   Kulithalai Taluk, Karur District.

2. Mr.P.Malarkannan

3. Mr.Gnanasekaran : Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari calling for the records relating to the impugned proceedings in Na.Ka.No.A4/3242/2021, dated

20.10.2021 issued by the first respondent and quash the same as illegal.

For Petitioner : Mr.VR.Shanmuganathan (in both W.Ps)

For Respondents : Mr.A.Baskaran,
Additional Government Pleader
for R1 and R2 in WP(MD).21081 of 2021)
and for R1 in WP(MD).21082 of 2021

COMMON ORDER

'Arulmigu Kottai Mariamman Temple and Kaali Amman Temple situate at Neithalour South Village, Kulithalai Taluk, Karur District' (hereafter 'said Temple' collectively for the sake of convenience and clarity) and administration of the same is the central theme in captioned two main writ petitions.

2. In this common order, for the sake of convenience and clarity, 'W.P(MD).No.21081 of 2021' shall be referred to as 'senior W.P' and 'W.P(MD).No.21082 of 2021' shall be referred to as 'junior W.P'.

3. In senior W.P a notice dated 04.10.2021 bearing reference Na.Ka.No.2569/2021/A2 issued by the Assistant Commissioner of 'Tamil Nadu Hindu Religious & Charitable Endowments Department' (hereinafter referred to as 'TNHR&CE Dept' for the sake of convenience and clarity) has been assailed. This notice has been issued by 'the Assistant Commissioner- TNHR&CE Dept, Karur' (first respondent in senior W.P and hereinafter 'jurisdictional AC-TNHR&CE Dept' for the sake of convenience and clarity). In the junior W.P proceedings of 'Revenue Tahsildar, Kulithalai Taluk, Karur District' (first respondent in junior W.P and hereinafter 'jurisdictional Revenue Tahsildar' for the sake of convenience and clarity) has been called in question. This proceedings is dated 20.10.2021 bearing reference Na.Ka.No.A4/3242/2021.

4. The notice dated 04.10.2021 issued by the jurisdictional AC-TNHR&CE Dept is in the nature of a show cause notice and therefore, the same shall be referred to as 'impugned SCN'. The 20.10.2021 record of proceedings of jurisdictional Revenue Tahsildar which has been assailed in junior W.P is in the nature of proceedings and therefore, the same shall be referred to as 'impugned proceedings'.

5. Mr.VR.Shanmuganathan, learned counsel for writ petitioner in both the captioned main writ petitions notwithstanding very many averments in the writ affidavit and notwithstanding several grounds set out in the writ affidavit assails the impugned SCN and impugned proceedings primarily on two grounds and they are as follows:

(a) The jurisdictional Revenue Tahsildar has no jurisdiction qua said Temple;

(b) The writ petitioner is in administration of said Temple but he has not been given audience by jurisdictional AC-TNHR&CE Dept (he went before AC-TNHR&CE Dept though he was not arrayed as a noticee in impugned SCN) and he has also not been called by the jurisdictional Revenue Tahsildar in making the impugned proceedings.

6. Mr.A.Baskaran, learned Additional Government Pleader accepts notice on behalf of respondents 1 and 2 (official respondent) in senior W.P and first respondent in junior W.P. To be noted, respondent No.3 in senior W.P and respondent Nos.2 and 3 in junior W.P are private respondents. It is also to be noted that respondent No.3 in senior and junior W.P is the same person. Captioned writ petitions can be disposed of by making a common order which is not adverse to these private respondents and also by providing adequate and ample safety valve qua these private respondents. Therefore, with the consent of learned counsel on both sides, main writ petitions were taken up and heard out.

7. Learned counsel for writ petitioner furthering his submissions, submitted that the complaint from third respondent in senior W.P pertains to said Temple administration whereas the complaint from second respondent in junior W.P pertains to certain alleged encroachments in the properties of said Temple. The jurisdictional Revenue Tahsildar has no jurisdiction qua said Temple. It is also asserted that though the writ petitioner was not put on notice, the writ petitioner by his own volition went before jurisdictional AC-TNHR&CE Dept on 11.10.2021 at 03.00 PM, but he was denied audience. To be noted, this is articulated in paragraph number 10 of the writ affidavit in senior W.P. It was also argued that the jurisdictional Revenue Tahsildar had not added the writ petitioner as one of the parties though the writ petitioner is in administration of said Temple.

8. Learned State counsel who accepts notice on behalf of the official respondents pointed out that even according to the writ affidavit in captioned writ petitions, said Temple is a public temple and therefore, Sub-section (3) of Section 1 of 'the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959)' [hereafter 'TNHR&CE Act' for the sake of convenience and clarity] operates. Learned State counsel submitted that there are two sets of complaints which have been brought to the notice of the authorities by two different persons. One by second respondent in junior W.P and the other by the third respondent in senior and junior W.Ps. One pertains to some possible unrest between two sections of society qua said Temple and another pertains to alleged encroachment of lands belonging to said Temple and action to be taken in this regard. It also pertains to a plea to TNHR&CE Dept

to take over the management of said Temple. It is in this backdrop that proceedings were initiated by jurisdictional AC-TNHR&CE Dept as well as jurisdictional Revenue Tahsildar. While the proceedings initiated by jurisdictional AC-TNHR&CE Dept is to physically take over the management of said Temple, the proceedings before the jurisdictional Revenue Tahsildar is in the context of possible breach of peace. Therefore, there is neither overlap nor lack of jurisdiction is learned State counsel's submission.

9. I carefully considered the submissions made by both sides and also perused the case file which has been placed before me. I now proceed to discuss the same and give my dispositive reasoning by this common order.

10. A perusal of the writ affidavit and more particularly paragraph 3 therein makes it clear that the writ petitioner admits that said Temple is a public Temple. Paragraph 3 of the writ affidavit reads as under:

> *'I <u>submit that thus the said temple is a public temple belonging to our village</u>, in which there are residents from all Religious and communities like Reddiar, Vellalar, Gounder, Asari, Servai, Naidu, Nadaar, Mutharayar, Thottia Naicker, Devendra Kula Vellalar, Adhi Dravidar (Parayar), Arunthathityar, Valluvar, Udayar, Muslims, Christians. I with all firm submit that there is no dispute among the people of various communities in worshipping the above deities till date, though there was an attempt to give such colour by some miscreants and which was later found to be false, by the public authorities as narrated infra.'*
>
> *(underlining made by this Court to supply emphasis, for ease of reference and for highlighting)*

11. The moment a Temple is a public Temple, as rightly pointed out by learned State counsel, Sub-section (3) of Section 1 of TNHR&CE Act operates. If this provision operates, absent any exception under Section 3 of TNHR&CE Act, the supervisory jurisdiction of the TNHR&CE Dept cannot be disputed. Learned counsel for writ petitioner also very fairly submits that he neither disputes the fact that said Temple is a public Temple nor disputes the supervisory jurisdiction of TNHR&CE Dept. This makes the task qua dispositive reasoning in captioned writ petition fairly simple.

12. This takes me to impugned SCN issued by jurisdictional AC-TNHR&CE Dept. It is a SCN as already alluded to supra. The scope of challenge to a SCN in writ jurisdiction has been decided and crystallized as principles and propositions over a long line of case laws over a period of time. I deem it appropriate to refer to ***Coastal Container Transporters Association & Ors., v. Union of India & Ors.,*** case wherein Hon'ble Supreme Court in and by order dated

26.02.2019 in Civil Appeal No.2276 of 2019, set out the crystallized legal position in this regard. To be noted, in this case, it was a question of classification of service provided by the appellant for purposes of fiscal law. While Revenue took a stand that the classification would fall under a particular category, the appellant disputed the same and took a stand that it would fall under another category. This fact scenario is captured in the first part of paragraph 4 of the order of Hon'ble Supreme Court and the same reads as follows:

> '*4. Necessary facts, in brief, are as under :*
>
> *First respondent is an association, whose members are transport operators engaged in the business of transportation of goods entrusted by the customers. By way of impugned show cause notices, the appellants have proposed to demand service tax from the respondents under the category of "cargo handling service", while it is the case of the respondents that the service which is being provided by them, falls under the taxable category of "goods transport agency". The respondents, to bolster their case, have placed reliance upon circulars dated 06.08.2008 and 05.10.2015 issued by the Central Board of Excise and Customs (CBEC).*
>
> *Based upon the intelligence gathered by the officers of Rajkot Regional Unit, which revealed that several business entities including respondent nos.2 and 3 who are engaged in doing the business of cargo handling in west coastal region but had got themselves registered under "good transport agency", by taking approval from the competent authorities, searches were conducted in the premises of respondent nos.2 and 3. It is alleged that during such searches several incriminating documents, including the quotations submitted by the respondent companies to their customers were seized and statements of the Directors were recorded as per the provisions of Central Excise Act, 1944 read with the provisions under Finance Act, 1994. Subsequently, the show cause notices dated 08.10.2015 and 30.09.2015, were issued to respondent nos.2 and 3, which are impugned in the writ petition filed before the High Court.*'

13. Thereafter, on the scope of writ jurisdiction qua challenge to SCN, the long line of authorities, crystallized propositions, pattern of judgments over a period of time have been captured by Hon'ble Supreme Court in paragraph 19. To be noted, paragraph 19 also talks about *Union of India & Anr. v. Guwahati Carbon Ltd* as well as *Malladi Drugs & Pharma Ltd. v. Union of India* cases. The facts scenario, propositions laid down have also been captured in paragraph 19 and therefore, I deem it appropriate to extract and reproduce paragraph 19 which reads as follows:

> '*19. On the other hand, we find force in the*

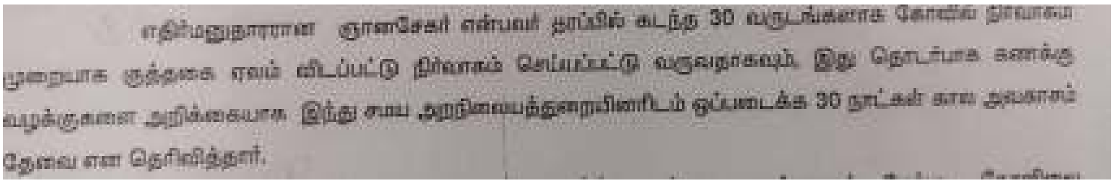
contention of the learned senior counsel, Sri Radhakrishnan, appearing for the appellants that the High Court has committed error in entertaining the writ petition under Article 226 of Constitution of India at the stage of show cause notices. Though there is no bar as such for entertaining the writ petitions at the stage of show cause notice, but it is settled by number of decisions of this Court, where writ petitions can be entertained at the show cause notice stage. Neither it is a case of lack of jurisdiction nor any violation of principles of natural justice is alleged so as to entertain the writ petition at the stage of notice. High Court ought not to have entertained the writ petition, more so, when against the final orders appeal lies to this Court. The judgment of this Court in the case of ***Union of India & Anr. v. Guwahati Carbon Ltd.*** *(supra) relied on by the learned senior counsel for the appellants also supports their case. In the aforesaid judgment, arising out of Central Excise Act, 1944, this Court has held that excise law is a complete code in order to seek redress in excise matters and held that entertaining writ petition is not proper where alternative remedy under statute is available. When there is a serious dispute with regard to classification of service, the respondents ought to have responded to the show cause notices by placing material in support of their stand but at the same time, there is no reason to approach the High Court questioning the very show cause notices. Further, as held by the High Court, it cannot be said that even from the contents of show cause notices there are no factual disputes. Further, the judgment of this Court in the case of* ***Malladi Drugs & Pharma Ltd. v. Union of India****, relied on by the learned senior counsel for the appellants also supports their case where this Court has upheld the judgment of the High Court which refused to interfere at show cause notice stage.'*

14. The sequitur is, challenge to impugned SCN issued by the jurisdictional AC-TNHR&CE Dept becomes a non-starter. The impugned notice i.e., impugned SCN issued by jurisdictional AC-TNHR&CE Dept is perfectly valid absent jurisdictional issue (to be noted, writ petitioner admits that said Temple is a public Temple, Sub-section (3) of Section 1 of TNHR&CE Act exists and there is no exemption under Section 3 of TNHR&CE Act). There will be some discussion about carrying the impugned SCN to its logical end which will be set out infra in the latter part of this order.

15. I will now deal with the impugned proceedings of jurisdictional Revenue Tahsildar. The jurisdictional Revenue

Tahsildar has only embarked upon the exercise of ensuring that there is no breach of peace as there are two sets of complaints from two different parties. It is also seen from the proceedings of jurisdictional Revenue Tahsildar that one of the complaints pertains to alleged encroachment of Temple lands. This is an issue where this Court comes in as *parens patriae* in the light of the principle laid down by Hon'ble Supreme Court in A.A.Gopalakrishnan's case [***A.A.Gopalakrishnan v. Cochin Devaswom Board and Ors.,***] reported in *(2007) 7 SCC 482,* wherein it was held that it is the duty of the Courts to protect temple properties. In this regard, principles that this Court is *custodia legi's* qua temple properties and that this Court is guardian qua idol which in law is akin to a minor become relevant and assume significance. If the allegation is true, it warrants immediate attention but I express no opinion or view on the allegation at this stage as the jurisdictional AC-TNHR&CE Dept will now be in seizin of the matter to carry it to its logical end.

16. I also now deal with the argument that the jurisdictional Revenue Tahsildar cannot go into affairs of said Temple. A careful perusal of the impugned proceedings, brings to light that the jurisdictional Revenue Tahsildar has not gone into the affairs of said Temple. All that jurisdictional Revenue Tahsildar has done is he has recorded the submission of third respondent in senior W.P and junior W.P that the third respondent would submit accounts and records. More importantly, what has been recorded shows that the accounts and records of said Temple would be submitted to TNHR&CE Dept. The relevant paragraph in impugned proceedings of jurisdictional Revenue Tahsildar reads as follows:


எதிர்மனுதாரரான ஞானசேகர் என்பவர் தரப்பில் கடந்த 30 வருடங்களாக கோவில் நிர்வாகம் முறையாக குத்தகை ஏலம் விடப்பட்டு நிர்வாகம் செய்யப்பட்டு வருவதாகவும், இது தொடர்பாக கணக்கு வழக்குகளை அறிக்கையாக இந்து சமய அறநிலையத்துறையினரிடம் ஒப்படைக்க 30 நாட்கள் கால அவகாசம் தேவை என தெரிவித்தார்.

This draws the curtains on the first point urged i.e., the jurisdictional issue point. In other words there is no jurisdictional issue.

17. Now that the first point has been answered, it takes me to the second point on which challenge to the impugned SCN and impugned proceedings are predicated. The challenge is predicated and posited on the point that writ petitioner is in administration. In this regard, learned counsel submits that the writ petitioner would submit accounts and records pertaining to said Temple. If the writ petitioner is in possession of accounts and in possession of records pertaining to said Temple, it is only important that the same is also before the jurisdictional AC-TNHR&CE Dept for taking a decision regarding the further course of action as said Temple is now clearly under the supervision of the TNHR&CE Dept. For this purpose, if not by way of assertion of rights/perpetual rights of writ petitioner,

in the interest of said Temple, it is necessary that the records and accounts qua said Temple said to be in the possession of the writ petitioner is placed before the jurisdictional AC-TNHR&CE Dept.

18. I propose to say that an opportunity to the writ petitioner will be given to do this and while doing this, private respondent No.3 in senior W.P and private respondent Nos.2 and 3 in junior W.P will also be heard out. This protects the interest of the private respondents in both senior and junior W.Ps and it also puts in a safety valve qua the private respondents. To be noted, this has already been alluded to supra in this order.

19. In the light of the narrative thus far, discussion and dispositive reasoning set out supra the following order is passed:

(a) Impugned SCN dated 04.10.2021 bearing reference Na.Ka.No.2569/2021/A2 issued by first respondent in senior W.P (jurisdictional AC-TNHR&CE Dept) is sustained;

(b) The writ petitioner will now be given an opportunity by the first respondent in senior W.P to submit all the records and accounts pertaining to said Temple which is said to be in his possession in the next inquiry which will be on 30.11.2021 (Tuesday) at 03.00 PM. The first respondent in senior W.P shall proceed and conclude the proceedings as expeditiously as possible and in any event within a fortnight from 30.11.2021 i.e., on or before 14.12.2021;

(c) The third respondent, who has given an undertaking before the jurisdictional Revenue Tahsildar vide impugned proceedings in junior W.P to submit records pertaining to administration of said Temple before TNHR&CE Dept shall also to do so on 30.11.2021 at 03.00 PM. The third respondent shall be put on notice by due service under due acknowledgement. I also find that the proceedings of the jurisdictional Revenue Tahsildar has not arrived at any conclusion or no decision has been taken and it merely records that one of the parties would submit all records and accounts before the TNHR&CE Dept and therefore, there is no reason to set aside the impugned proceedings of the first respondent in the junior W.P;

(d) Likewise, second respondent in the junior W.P will also be permitted to submit records and participate in the proceedings and he shall also be put on notice under due acknowledgement for the 30.11.2021 inquiry;

(e) The first respondent in senior W.P shall thereafter consider all the records and take a decision. It is made clear that it is open to him to take a decision in accordance with law uninfluenced by any observations made in this order;

(f) The proceedings of the first respondent in the junior W.P (jurisdictional Revenue Tahsildar) is sustained as the further proceedings regarding said Temple administration, accounts etc., will now be before the first respondent in senior W.P. In any event, this proceedings has only recorded the fact of one of the parties undertook to submit records and accounts in the said Temple;

(g) Regarding complaints of breach of peace, it will be open to first respondent to act in accordance with law if the need arises in the days to come and this order will neither fetter nor stifle the first respondent in the junior W.P in this regard;

(h) It is open to the first respondent in senior W.P to reschedule 30.11.2021 inquiry if the need arises.

20. Captioned writ petitions are disposed of with the above directives. Consequently, captioned WMPs are disposed of as closed. There shall be no order as to costs.

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1. The Assistant Commissioner,
Hindu Religious Charitable and Endowments Department,
Karur.

2. The Inspector,
Hindu Religious and Charitable and
Endowments Department,
Kulithalai.

3. The Tahsildar,
Kulithalai Taluk, Karur District.

+1 CC to M/s.SPL GP (SR-36288[F] dated 29/11/2021)

W.P.[MD]Nos.21081 and 21082 of 2021
26.11.2021

TP(CO)
TR(29.11.2021) 9P 5C