



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.No.1057 of 2022
and

C.M.P.Nos.7472, 7336, 6643 and 6646 of 2022

Sri Ram Samaj

...Appellant/Petitioner

vs

1. The Commissioner,
Hindu Religious and Charitable Endowments
Department, 34, Nungambakkam High Road,
Chennai 600 034.

2. The Assistant Commissioner,
34, Nungambakkam High Road,
Chennai 600 034.

3. The Thakkar/Executive Officer,
C/o.Arulmigu Balasubramania Swamy
Tirukkoil, Teynampet, Chennai 600 018.

4. M.V.Ramani

...Respondents/Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 17.03.2022 passed in W.P.No.449 of 2014 on the file of this Court.

Prayer in WP.No.449 of 2014: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus, calling for the records of the second respondent comprised in its proceedings in Na.Ka.No.1947/2012/A1 dated 31/12/2013 and quash the same as being without Jurisdiction, illegal, arbitrary and ultra vires the provisions of the HR & CE Act and consequently forbear the respondents, their officers, employees, subordinates, agents or any other persons claiming and/or acting under the respondents from in any manner interfering with the right of the petitioner in carrying on the activities of the petitioner society.



For the Appellant

: Mr.Satish Parasaran,
Sr. Counsel,
for Mr.R.Parthasarathy

For the Respondents

: Mr.R.Shunmugasundaram
Advocate General
Assisted by Mr.N.R.R. Arun
Natarajan, Spl.Govt. Pleader
for RR 1 and 2

: Mr.A.K.Sriram
for M/s.A.S.Kailasam and Asso.
for Respondent No.3/Caveator

: Mr.T.S.Rajamohan
for Respondent No.4/Caveator

JUDGMENT

(Judgment of the Court was delivered by
the Hon'ble Chief Justice)

By this writ appeal, challenge is made to the order dated 17.03.2022 whereby the writ petition preferred to challenge the order dated 31.12.2013 was dismissed.

2. The writ petition was filed to challenge the order dated 31.12.2013 by which the respondents, after issuing notice to the writ appellant, passed an order to appoint a Fit Person under Section 49 of the Hindu Religious and Charitable Endowments Act, 1959 [in short, "the Act of 1959"] and, accordingly, the Executive Officer/third respondent herein was appointed as Trustee of the appellant society. The President of the appellant society was directed to hand over the responsibilities to the Executive Officer of Arulmigu Balasubramaniam Temple, Teynampet, Chennai.

3. Challenge to the order was made mainly on the ground that before passing the order, the procedure given under the Act of 1959 was not applied and otherwise the order makes a reference to the reply given by the appellant admitting certain facts to make out a case to bring the appellant society under the definition of 'Temple' given under Section 6(20) of the Act of 1959, though no admission was made. The allegations made against the appellant could not be proved by the respondent by adducing evidence. The order was passed mainly in reference to the complaint made by none else than a person who remained part of the society.



4. Elaborating the arguments, Mr.Satish Parasaran, learned senior counsel, submitted that the appellant is a Society registered under the Societies Registration Act, 1975, running not only the Mandapam in question, but also educational institution and doing other religious activities. The appellant is maintaining a composite account properly, yet by virtue of the provisions of the Act of 1959, the Fit Person was appointed without causing a notice for mismanagement of account. It was even without declaring the appellant society to be falling under the definition of Section 6(20) of the Act of 1959, rather what has been given in the order is that ingredients exist to bring it under Section 6(20) of the Act of 1959.

5. The finding aforesaid has been recorded even without advertting to the reply to the show cause notice where there was a specific denial to the allegation of existence of Statue (of Deity) installed as per Agamas and furthermore, there was a specific denial of public worship. A specific reply was given that certain photographs of Rama, Lakshmana, Sita and Hanuman exist in the mandapam and the appellant society is involved in organising meetings and lectures and celebrating Rama Navami every year. It is one of the objects for which the Society was created.

6. The learned Single Judge passed an interim order and accordingly, the appellant society continued the possession and has been administering all the institutions established under it. The writ petition came to be dismissed vide the impugned order after referring to certain facts and holding that an alternative remedy is available. The dismissal of the writ petition on the ground of availability of alternative remedy was after a lapse of eight years. When the matter has been kept pending before the Court for years together, it should have been decided after adjudication on merits, instead of non-suiting the petitioner writ appellant on the ground of alternative remedy.

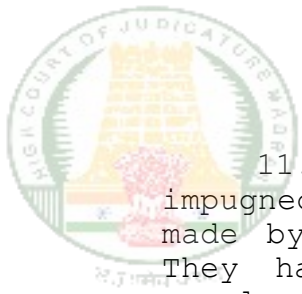
7. The further allegation made by the writ appellant is against the action of the respondent HR & CE department literally acting as an instrument of the complainant and therefore, while issuing a notice to show cause, no allegation was mentioned therein so as to be replied. The learned counsel for the appellant referred to the show cause notice dated 22.05.2013 calling upon objections as to why the appellant society shall not be brought under the domain of the department for administration under the Act of 1959. It was without disclosing any material and basis for taking it under the domain of the HR & CE Department. Thus, the first show cause notice was for the sake of it and as an empty formality.



8. The second show cause notice dated 17.06.2013 was also of similar nature, though it makes a reference of spot inspection made by the Assistant Commissioner and it is the case of the non-appellant that a spot inspection was conducted thereupon, but the impugned order does not refer to any spot inspection report. It was based on whether the idol was found in the mandapam for public worship. In view of the above, the impugned order was passed by the department after causing show cause notice but without referring to the spot inspection report. Thus, the order was passed to satisfy the complainant and accordingly, the department became an instrument of the complainant, though earlier, when similar complaint was made by the same complainant in the year 2004, an enquiry was conducted by the Inspector and finding the complaint to be incorrect, the matter was dropped. In fact, the complainant had given in writing that he does not want to pursue the complaint. The department, however, entertained the second complaint by the same person despite dropping of the matter at the first instance after causing an enquiry. The department could not have entertained the second complaint by the same person once an enquiry was caused and the matter was dropped. But, going against all the canons of law, the respondents issued the second show cause notice and without any evidence to substantiate the allegations, passed the impugned order which was challenged in the writ petition. It was dismissed after eight years without addressing the merits of the case, but on the ground of availability of alternative remedy.

9. The learned senior counsel for the appellant has made a reference on certain paragraphs of the impugned order dated 31.12.2013 to prove its contents to be contrary to the reply to the show cause notice and, therefore, the prayer is made to set aside the impugned order passed by the learned Single Judge so also the order dated 31.12.2013.

10. The writ appeal has been contested by the learned Advocate General along with the learned counsel appearing for the HR and CE Department. It is submitted that no illegality has been caused by the learned Single in dismissing the writ petition due to availability of alternative remedy. In view of the above, this Court may not cause interference, though in all cases where alternative remedy is available, the writ may not be dismissed but can be entertained, however, it can be only in exceptional cases as held by the Apex Court in the case of Whirlpool Corporation vs. Registrar of Trade Marks reported in (1998) 8 SCC 1. Finding it not to be a case of exceptional nature to be governed by the judgment of the Apex Court in the case of Whirlpool (supra), the learned Single Judge passed the just order to dismiss the writ petition.



11. The learned Advocate General further submits that the impugned order has been passed precisely based on the admission made by the appellant in the reply to the show cause notice. They had admitted the installation of idol and conduct of regular prayers and poojas in the morning and evening which were sufficient to bring the appellant in the purview of definition of 'Temple' under Section 6(20) of the Act of 1959. The department had rightly passed the order to appoint a Fit Person invoking Section 49 of the Act of 1959. It is more so when serious allegation of mismanagement of fund was made in the complaint. The appellant was given a direction to furnish all the documents pertaining to the books of accounts. Looking to the allegation of mismanagement of fund or the fees/charges collected from the public, it became necessary for the department to immediately appoint a Fit Person and therefore, there remains no reason to cause interference in the order. Though the learned Single Judge has not recorded its finding on merit of the case but dismissed the writ petition on the ground of availability of alternative remedy, if this Court finds dismissal of the writ petition on the ground of availability of alternative remedy not proper, then the prayer is to consider the arguments of the department on merit which are sufficient to justify the impugned order challenged by the writ appellant by maintaining the writ petition.

12. The learned Advocate General has further clarified that they have not taken over the management of the educational institution or any other activity of the appellant society other than to take possession of the mandapam because it falls under the definition of 'Temple' under Section 6(20) of the Act of 1959. It is further submitted that the HR & CE department has no intention to take over the management of the educational institution which would be affecting the studies of the students, if any. The prayer is, accordingly, to dismiss the writ appeal. It is, however, submitted that if this Court finds that proper opportunity of hearing was not given to the appellant, then a liberty may be given to the department to initiate the action afresh as per the provisions of law and after giving proper opportunity of hearing, to pass a fresh order. To repose confidence in the action of the Government which was otherwise without bias and not at the instance of the complainant, the learned Advocate General even offered nomination of an independent person to cause enquiry into the matter. However, in the first instance, the prayer was made to dismiss the writ appeal having no merit.

13. We have considered the rival submissions of the parties and perused the records.

14. The brief facts pertaining to the case have been



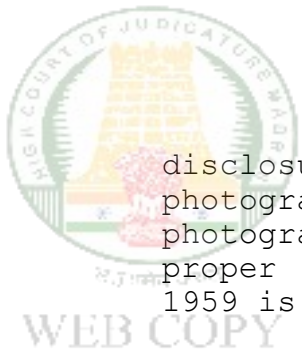
narrated by the learned counsel appearing for the parties while advancing their arguments and accordingly, we would not be reiterating those facts unless so required to deal with the arguments. A perusal of the documents on record shows that the appellant was given a show cause notice on 22.05.2013 and it reads as under:

"Notice is hereby sent to Sri Ram Samaj Functionaries that in case there are objections, if any, as to why the institution Sri Ram Samaj operating at Arya Gowder Road, West Mambalam, Chennai 600 033 shall not be brought under the domain of this department and make it conducting the administration as per the HR & CE Act and its byelaws, within 7 days from the date of receipt of this notice. In case, no objections are received within the specified above, considering that there are no objections worth informing, further action will be continued."

15. A perusal of the notice quoted above does not indicate any allegations against the appellant society or any material so as to bring it under the domain of the HR & CE department. The notice aforesaid was given even without ascertaining the status of the appellant, being a society registered under the Societies Registration Act. The objects given in the memorandum for registration of the society, which includes running of the educational institution and even to organise functions on the day of Rama Navami have not been taken into consideration. Pursuant to the registration of the appellant society, they had constructed a mandapam to organise various activities which includes conducting lectures, apart from organising Veda Parayanam.

16. The second show cause notice was given on 17.06.2013 when a decision was taken to cause a spot inspection and therefore, the President of the appellant society was asked to cooperate and thereupon, a letter was sent to the appellant on 01.07.2013 to seek certain documents, which were nine in all, but it does not show or call for the documents or material to indicate or prove the installation of statue by observing the process given in Agamas and prayers by the public. It was more pertaining to books of accounts and details of movable and immovable properties in the name of the appellant society construing it to be a temple without an order and allegation of mismanagement.

17. A detailed reply to the show cause notice was given by the appellant indicating the various activities undertaken by it. The activities disclosed therein includes the conduct of Rama Navami utsavam apart from other activities with a



disclosure of the fact that the appellant has kept the photographs of Rama, Lakshmana, Sita and Hanuman and their photographs are distributed even on the day of Rama Navami. For proper appreciation of the case, Section 6(20) of the Act of 1959 is quoted hereunder:

"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;"

18. The allegation of prayers before idol by the public was disputed though while giving para-wise reply to para 5 of the notice, the appellant had referred to the activity of Veda Parayanam conducted to Shivalingam on every Pradhosham day. It is, however, with the denial of Abhishekam or pooja referred in the the notice and clarified that it is not conducted as per Agama Shastra as the idol was not consecrated as per the Shastras. Denial of existence of Hundies in the mandapam was also made calling upon the respondents to put to strict proof thereupon to prove the allegation. The respondents had taken para 5 of the reply to the show cause notice to be the admission of existence of panchaloga idols and conduct of poojas in the morning and evening, and, accordingly, passed the order impugned before the learned Single Judge. The relevant paragraph of the order is extracted hereunder to show the basis for passing the order to appoint a Fit Person under Section 49 of the Act of 1959:-

"In the letter given by the President of Sri Ram Samaj, as reply to the above, it has been stated religious and cultural services are rendered in Sri Ram Samaj to the General public, the daily collections received in Hundi and place having been counted and taken into account by 4 or 5 persons and receipts have been issued on the same date and the said collections would go the total account, that there are panchaloga Idols of Sri Rama-Lakshmana, Seethai and Anumal, register in regard to donations in both gold and silver is maintained, valuation of these are done by GRT Thanga Maligai, poojas and Dheepa Aradhanai having been performed in



morning and evening in the Ayodhya Mandapam of Sri Ram Samaj, Prasadhams are distributed in the evening and donations are received from the General Public."

We do not find the reply to the show cause notice in the manner indicated above.

19. The admission taken from the side of the appellant was that religious and cultural services are being rendered by the appellant society to the general public and the daily collections received in Hundi are counted and taken into account by respondents 4 and 5. Reference of other activities have also been made, but the learned counsel appearing for the respondent department could not refer to such admission in reply to show cause notice, which has been taken as the basis for passing the impugned order.

20. It is even if we ignore that prior to the action by the respondents at the instance of the complainant, earlier, same complaint was made in the year 2004 which resulted in an enquiry by an Inspector and finding the allegation to be incorrect, the matter was dropped. It could not be clarified as to why the same allegations were entertained by the department in the hands of the same person when earlier it was dropped. In any case, even if the complaint was taken to be the basis, it was expected from the department to provide proper opportunity of hearing to the appellant which should be after serving proper notice containing the allegations so as to be replied which was not done at the first instance. The procedure given under Sections 49, 63 and 110 of the Act of 1959 was not applied.

21. It is, however, a fact that the reply to the show cause notice was taken to be the basis for passing the order. It is despite a specific denial to all the allegations. In fact, the department could have proceeded further in the matter by leading evidence to prove the allegations, but without there being any material to prove the allegations other than consideration of the show cause notice, the impugned order was passed, which in the aforesaid facts and circumstances cannot be said to be appropriate.

22. It is more so when Section 110 of the Act of 1959 provides for the procedure and powers at inquiries under Chapters V and VI. But, the procedure given therein was not applied. The appellant could not have been brought under the definition of 'Temple' given under Section 6(20) of the Act of 1959 only in reference to the allegation, unless it is further proved. This allegation was otherwise denied and in the circumstances, the respondent department could have referred to the spot inspection conducted by them. But the document on



record shows issuance of a notice to the appellant to cooperate for the spot inspection. Whether it was subsequently conducted or not is not coming out on record and if it was conducted, what prevented the department to refer to the spot inspection report to substantiate their case could not be clarified.

23. In the instant case, the impugned order has been passed not based on any material collected by the respondents, but in reference to the reply to the show cause notice by the appellant. It is despite the procedure given under Sections 63 and 110 of the Act of 1959. The aforesaid cannot be ignored more so when, on earlier occasion, on a similar complaint given by the same person, an Inspector was appointed to cause enquiry into the matter and after his enquiry and a report thereupon, the matter was dropped. Why the same procedure was not applied in the case could not be clarified.

24. Sections 63 and 110 of the Act of 1959 are reproduced hereunder:

"63. Joint Commissioner or Deputy Commissioner to decide certain disputes and matters.- Subject to the rights of suit or appeal hereinafter provided, the Joint Commissioner or the Deputy Commissioner, as the case may be, shall have power to inquire into and decide the following disputes and matters:-

- (a) whether an institution is a religious institution;
- (b) whether a trustee holds or held office as a hereditary trustee;
- (c) whether any property or money is a religious endowment;
- (d) whether any property or money is a specific endowment;
- (e) whether any person is entitled, by custom or otherwise, to any honour, emolument or perquisite in any religious institution and what the established usage of a religious institution is in regard to any other matter;
- (f) whether any institution or endowment is wholly or partly of a religious or secular character ; and whether any property or money has been given wholly or partly for religious or secular uses ; and
- (g) where any property or money has been given for the support of an institution which is partly of a religious and partly of a secular character, or the performance of any service or charity connected with such an institution or the performance of a charity which is partly of a religious and partly of a secular character or where any property or money given is appropriated partly to religious and partly



"110. Procedure and powers at inquiries under Chapters V and VI.

(3) The Commissioner or a Joint Commissioner or a Deputy Commissioner holding such an inquiry or hearing such an appeal shall be deemed to be a person acting judicially within the meaning of the Judicial Officers Protection Act, 1850, (Central Act XVIII of 1850)."

25. The learned Advocate General was candid in making a statement that while appointing a Fit Person, care has been taken not to disturb the educational activities of the society. Thus, it becomes clear that society was created not only to run the mandapam, but for other activities and thereby it was incumbent on the respondents to refer to the object of the society and after analysing other activities, to take a proper decision as to whether the society or part of it will fall in the definition of 'Temple' so as to give effect to the impugned order. The care aforesaid has not been taken in the matter and what we find is that the impugned order has been passed without recording a finding that the appellant society falls in the definition of the 'Temple' given under Section 6(20) of the Act of 1959, but only referring that it satisfies with the ingredients of the definition of 'Temple' without recording a definite finding on that. In absence of declaring the appellant society to be falling in the definition of 'Temple', the further exercise to appoint a Fit Person could not have been undertaken because, the provision of the Act of 1959 can be applied only when the appellant falls in the definition of 'Temple' or comes under the purview of the Act of 1959.



26. The question as to whether an institution is a religious institution or not, the Act of 1959 is a self contained Code. Chapter-V, specifically deals with inquiries. Under Section 63, the Joint Commissioner or Deputy Commissioner as the case may be, have the powers to enquire into and decide whether the institution is a religious institution or not. Any person aggrieved by the decision is entitled to file an appeal to the Commissioner under Section 69 of the Act and any person aggrieved by the order of the Commissioner is entitled to file a suit under Section 70 of the Act. Section 110 of the Act provides that where a Commissioner or a Joint Commissioner or a Deputy Commissioner makes an enquiry or hears an appeal under Chapter - V or Chapter - VI, enquiry shall be made and the appeal shall be heard, as nearly as may be, in accordance with the procedure applicable under Code of Civil Procedure to the Trial of suits or hearing of the appeal as the case may be. Provisions of the Indian Evidence Act and Indian Oaths Act shall apply to such enquiries and appeal. Further, the Commissioner or Joint Commissioner or Deputy Commissioner holding such enquiry or hearing such appeal shall be deemed to be a person acting judicially within the meaning of the Judicial Officers Protection Act, 1850.

27. The power to appoint a fit person vests in the Assistant Commissioner, as per Section 49, which can be exercised on two contingencies. First, the institution must be a religious institution and second, upon satisfaction of any mal-administration of the institution by the existing trustees. It may be seen in the instant case that while appointing a fit person, the Assistant Commissioner himself has attempted to proclaim and decided that the institution is a religious institution. When the fourth respondent filed a complaint that the institution is a religious institution, the appellant having denied the same, it was necessary that the matter should have been taken up first by the Joint Commissioner/Deputy Commissioner under Section 63 for determining whether the institution is a religious institution or not. The same has to be done by following due procedure, that is, recording evidence and thereafter, pronouncing a decision under Section 63 of the Act. If any party is aggrieved, they can file an appeal and thereafter, a suit, but without following the said procedure, straight away, the second respondent has assumed jurisdiction and appointed a fit person in an illegal manner. As a matter of fact, the learned Single Judge of this Court in the case of R.Shanmugasundram Vs. Commissioner of HR & CE (1991 2 MLJ 582), had specifically held that power under Section 49 to appoint a fit person cannot be exercised before determination of the issue under Section 63 of the Act of 1959. The aforesaid judgment is applicable to this case.



28. The second procedural violation is that before passing the order under Section 49 of the Act of 1959 appointing a fit person, except to record that a show cause notice was sent, reference of the allegation of mismanagement has not been given. Thus, there was neither any specific allegation of mal-administration nor any recording of subjective satisfaction. Further, such allegations should be specifically made in the show cause notice and hearing on such allegations should have been made before appointing of a fit person.

29. Therefore, we find reason to cause interference in the order passed by the learned Single Judge, who ought not to have dismissed the writ petition without addressing the issues on merit, when challenge to the order was alleging violation of the principles of natural justice and non-observance of procedure in passing the order. Ignoring the aforesaid, the writ petition was dismissed on the ground of availability of alternative remedy and involvement of question of facts, whereas challenge was on the ground of non-compliance of procedure given under Section 63 of the Act of 1959 and Chapters V and VI thereof. It is even bit by the judgment of the Supreme Court in the case of Durga Enterprises (P) Ltd. vs. Principal Secretary, Govt. of U.P., reported at (2004) 13 SCC 665. There also, the writ petition was dismissed on the ground of availability of alternative remedy after keeping the matter pending for a long period of 13 years. It was held that the High Court having entertained the writ petition and the pleadings by the parties were complete, ought to have decided the case on merit instead of relegating the parties to take the alternative remedy. We are not further entering into the issue that only on account of availability of alternative remedy, the jurisdiction of this Court under Article 226 of the Constitution of India is not barred rather in view of the judgment of the Apex Court in the case of Whirlpool Corporation (supra), the writ petition can be entertained despite the availability of alternative remedy. It is more so when procedure given under the Act of 1959 was not applied.

30. Accordingly, for all the reasons given above, we cause interference in the impugned order dated 17.03.2022 of the learned Single Judge so also the order dated 31.12.2013 passed by the respondent department. It is, however, with liberty to the department to proceed in the matter afresh in accordance with the provisions of law. The appellant would be at liberty to prove their case by bringing the material and evidence, if fresh action is taken, and after completion of the aforesaid procedure, which may be after taking into consideration the power given to the department under Section 110 of the Act of 1959, to pass a speaking order.



31. With the aforesaid, the writ appeal is allowed, with a direction to the department to immediately hand over the possession of the mandapam and even all the records to the appellant. The appellant is directed to maintain the accounts, which should be duly audited.

No costs. Consequently, all the miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CS-I)

//True Copy//

Sub-Assistant Registrar

sra

To:

1. The Commissioner,
Hindu Religious and Charitable Endowments
Department, 34, Nungambakkam High Road,
Chennai 600 034.

2. The Assistant Commissioner,
34, Nungambakkam High Road,
Chennai 600 034.

+1cc to M/s.R.Parthasarathy, Advocate, S.R.No.29457

+1cc to Mr.A.S.Kailasam Associates, Advocate, S.R.No.29711

+1cc to the Government Pleader, S.R.No.30554

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.29814 [23/05/2022]

W.A.No.1057 of 2022

RR(CO)
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