



W.P. No. 28180 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 28180 of 2022

and

W.M.P. No. 27466 of 2022

1. K.Moorthy

2. V.Moorthy

3. V.Rajendran

4. R.Murugan

5. P.Veeramanikandan

6. V.Santhakumar

... Petitioners

-VS-

1. The Joint Commissioner,
Hindu Religious & Charitable Endowment Board,
Villupuram.

2. The Assistant Commissioner,
Hindu Religious & Charitable Endowment Board,
Villupuram.

3. The Executive Officer,
Arulmigu Athulya Nadheswarar Temple,
Arakandanallur,
Kandachipuram,
Villupuram District.

4. S.R.Mohanakrishnan

... Respondents



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Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the records on the file of the First Respondent in M.P. No. 05/2022/Aa2 dated 21.09.2022 and quash the same as illegal, incompetent and without jurisdiction.

For Petitioners : Ms. Sunny Sheen Akkara

For Respondents : Mr. N.R.R.Arun Natarajan,
Special Government Pleader
(for R1 to R3)

Mr. V.Raghavachari (for R4)

ORDER

Heard Ms. Sunny Sheen Akkara, Learned Counsel for the Petitioners, Mr. N.R.R.Arun Natarajan, Learned Special Government Pleader, who takes notice for the First to Third Respondents, and Mr. V.Raghavachari, Learned Counsel, who takes notice for the Fourth Respondent, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the Proceedings in M.P. No. 05/2022/Aa2 dated 21.09.2022 issued by the First Respondent, which is evidently a notice for enquiry conducted under Section 78(4) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, for eviction of the Petitioners from the property belonging to the Temple of the Third Respondent.



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3. It is the case of the Petitioners that since they have been lawfully induced as tenants in that property by the Fourth Respondent, who is the hereditary trustee of the Temple of the Third Respondent, they cannot be treated as unauthorized occupants.

4. It has been brought to notice by Learned Counsel for the Fourth Respondent that the order dated 18.08.2011 in A.S. No. 747 of 1985 passed by this Court has not attained finality as the Petition in Special Leave to Appeal (Civil) Nos. 8072-8074 of 2012 is pending before the Hon'ble Supreme Court of India and its outcome is awaited.

5. The consistent legal position has been reiterated by the Hon'ble Supreme Court of India in ***Union of India -vs- Kunisetty Satyanarayana*** [(2006) 12 SCC 28] that a charge memo or show cause notice cannot be challenged before the completion of enquiry and the proceedings cannot be interdicted till it reaches its logical conclusion. It would be useful here to extract the relevant passages from the said decision which read as follows:-

*“13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide **Executive Engineer, Bihar State Housing Board -vs-***



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Ramdesb Kumar Singh [JT 1995 (8) SC 331], Special Director
-vs- Mohd. Ghulam Ghouse (AIR 2004 SC 1467), Ulagappa -vs-
Divisional Commissioner, Mysore [2001(10) SCC 639], State of
U.P. -vs- Brahm Datt Sharma (AIR 1987 SC 943) etc.

14. *The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.*



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15. *Writ jurisdiction is discretionary jurisdiction and hence*

such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet.

16. *No doubt, in some very rare and exceptional cases the High*

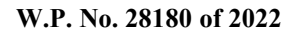
Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if

it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.”

Having due regard to the aforesaid legal position, as there is nothing which precludes the Petitioners from raising the contentions in this Writ Petition in the reply to be submitted to the First Respondent, who is bound to deal with the same before coming to any ultimate conclusion, there is no necessity for the Court to interfere at this pre-mature stage of the matter.

6. In such circumstances, without expressing any view on the merits of the controversy involved in the matter, the Writ Petition is disposed on the following terms:-

- (i) it shall be incumbent upon the Petitioners to submit their explanation to the show cause notice, which is impugned in the Writ Petition, if not done already, to the concerned authority by 30.11.2022;



Petitioners, an enquiry shall be conducted following the prescribed procedure after affording full opportunity of personal hearing to the Petitioners to explain their position in that regard and a reasoned order shall be passed dealing with each of the contentions raised on merits and in accordance with law and the decision taken communicated under written acknowledgment;

(iii) if any adverse decision is taken, the Petitioners may pursue legal remedies in accordance with law;

(iv) consequently, the connected Miscellaneous Petition is closed; and

(v) there shall be no order as to costs.

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Index: Yes/No

Note: Issue order copy by 10.11.2022.

To

1. The Joint Commissioner,
Hindu Religious & Charitable Endowment Board,
Villupuram.



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Hindu Religious & Charitable Endowment Board,
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P.D. AUDIKESAVALU, J.

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