

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2022

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.21585 of 2017
and
W.M.P.No.22619 of 2017

Sri Singam Cehtty Attendrooloo Chetty's Charities
Represented by its President,
Having Office at No.141, Mint Street,
Chennai - 600 001.

... Petitioner

Vs.

The Assistant Commissioner,
H.R.&C.E. Department,
Nungambakkam High Road,
Chennai - 600 034.

... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the respondent in the proceedings in Na.Ka.No.2617/2017/Aal/ dated 04.08.2017 and quash the same.

For Petitioner : Mrs.Chitra Sampath

For Respondent : Mr.N.R.R.Arun Natarajan
Special Government Pleader

ORDER

The petitioner has challenged the impugned show cause notice dated 04.08.2019 purportedly issued under Section 49 of the HR&CE Act, 1959. An interim order came to be passed by this Court at the time of admission on 11.08.2017 by directing the petitioner to submit an explanation to the impugned notice before the respondent within a period of six weeks and on receiving the same the respondent had conducted an enquiry and filed a report before this Court and till such time the

respondent was directed not to pass any further order. Thereafter, yet another order was came to be passed on 22.08.2017. Thus, the order passed by this Court on 11.8.2017, after the amendment reads as follows:-

"2.The learned Senior Counsel appearing for the petitioner submitted that by the impugned notice dated 04.08.2017, the petitioner was called upon to give explanation on or before today i.e., on 11.08.2017, which is too short time, for the reason that the petitioner has to trace the records for the past 120 years."

2.Pursuant to the directions of this Court the respondent has now conducted an enquiry and filed a report wherein such irregularities have been mentioned. The learned senior counsel for the petitioner submits that the respondent have no jurisdiction under the Act to appoint a fit person. At best, there can be a guidance as to how the properties are to be managed and whether there is any deficiency in the observation of the religious and charitable activities mentioned in schedule E to deed of Trust dated 28.6.1989. She further submits that at best, the respondent can call for the explanation as to whether 50% of the amount generated out of income has been utilized for the aforesaid purpose in terms of Board of Revenue Order in O.A.No.10 of 1947 dated 10.12.1947. It is not open for the respondent to appoint a fit person and therefore it is submitted that the writ petition deserves to be allowed.

3.The learned counsel for the petitioner also submits that section 49 of the HR&CE Act will not apply as per the said provisions in the case of any religious institution which is not included in the list published under section 46 and is not a religious institution notified or deemed to have been notified under Chapter VI of this Act, the [Assistant Commissioner] shall have the same power to appoint trustees including fit persons or constitute a Board of Trustees.

4.Opposing the prayer, the learned counsel for the official respondent submits that the issue is as to whether the provisions of the HR&CE Act applicable or not is no longer available in view of the order of the board of revenue under the provisions of the erstwhile Act, order dated 10.12.1947 in O.A.No.10 of 1947 and in the light of the decision of the Hon'ble Supreme Court in Civil Appeal No.9493 of 1995 dated 02.05.2001.

5.That apart, the learned counsel for the respondent further submits that under Section 49 of the HR&CE Act, a fit person can act along with the trustees to oversee the objects in the deed

of trust dated 28.06.1899 are being observed. He therefore submits that there is no merits in the present writ petition. It is further submitted that the present writ petition has been filed at a pre-mature stage and therefore on this ground also the writ petition is liable to be dismissed.

6.I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent.

7.The petitioner has only been issued only with show cause notice to show cause why a fit person should not be appointed. An enquiry was also directed to be conducted, pursuant to which, a report has been filed. However the said report cannot be construed to have given a final decision. Under these circumstances, I am inclined to dispose this writ petition by directing the officer to pass final orders after considering the objections raised by the petitioner regarding applicability of Section 49 of HR&CE Act. Needless to State the decision of the Hon'ble Supreme Court shall be considered. This exercise shall be carried out by the petitioner within a period of sixty days from the date of receipt of a copy of this order. The petitioner is entitled to file all documents that may be necessary in support of its defense. The respondent shall hear the petitioner before passing the orders on merits and in accordance with law.

8.This writ petition stands disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner,
H.R.&C.E. Department,
Nungambakkam High Road,
Chennai - 600 034.

+1cc to Mr.T.S.Baskaran, Advocate, S.R.No.34728

W.P.No.21585 of 2017

and

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GSM[co]

NSK/15/07/2022