BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.12.2022

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P. (MD) No. 12018 of 2013
and
M.P. (MD) No. 1 of 2013

C.Sivakumar ... Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable Endowment
Administration Department,
Chennai-34.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowment
Administration Department,
Trichy-6.

3.The Assistant Commissioner,
Hindu Religious and Charitable Endowment
Administration Department,
Trichy-2. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the constitution of India, to issue a Writ of Certiorari, to call for the records relating to the proceedings in Suo-Motu Revision 30/2013 D2 on the file of the first respondent and quash the same.

For Petitioner : Mr. A.N.Ramanathan

For Respondents : Mr. T.Villavankothai,
Additional Government Pleader

O R D E R

Heard Mr. A.N.Ramanathan, Learned Counsel for the Petitioner, Mr. T.Villavankothai, Learned Additional Government Pleader, for the Respondents and perused the materials placed on record apart from the pleadings of the parties.

2. It is the case of the Petitioner that on his application in O.A. No. 12 of 2006 filed under Section 63(a) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as 'the Act' for short), the Second Respondent by order dated 14.07.2008 declared Arulmigu Varadharaja Perumal Koil in S.F. No. 366/4 of Bikshantharkoil Village, Manachanallur Taluk, Trichy District, to be a Private Temple belonging to the family of the Petitioner and does not come under the purview of the Act. One Ramaraj, who is inimically disposed towards the Petitioner, had filed the Writ Petition in W.P. (MD) No. 9352 of 2011 for

directing the First Respondent to initiate *suo motu* proceedings under Section 21 of the Act against the aforesaid order based on the representation dated 14.05.2011 made by him and the Second Respondent had filed a Counter-Affidavit dated 31.12.2011 supporting the Petitioner and the Division Bench of this Court by order dated 10.01.2013 passed the following order:-

> *"5. The fact remains that the subject Temple, namely, Arulmigu Varadha Raja Perumal Temple at Pitchaander Kovil, Manachanallur, Trichy District, was already declared as a Private Temple, as per the order dated 14.07.2008, in O.A. No. 12 of 2006, passed by the Third Respondent herein. Such being the position, it is open to the Petitioner to prefer an appeal, as it is specifically stated in the said appeal to the effect that if any person is aggrieved by the order passed by the Joint Commissioner, he can prefer an appeal. Though it is contended that the Petitioner is not a party in the present proceedings, it is open to him to prefer an appeal, as per provision under Section 69(1) of the Act.*

6. Accordingly, it is open to the Petitioner to challenge the said order, dated 14.07.2008, in O.A. No. 12 of 2006, passed by the Third Respondent herein, if the Petitioner so desires. It is made clear that in the event of preferring such appeal by the Petitioner, the same may be preferred within a period of four weeks from the date of receipt of a copy of this order, with the condonation of delay petition. The time consumed in respect of pendency of the Writ Petition has to be excluded from commutation of the delay in preferring the appeal. The Writ Petition is hereby disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed. In the event of preferring any such appeal with the condonation of delay, the Second Respondent shall not be influenced by any of ther observations made by this Court in the order."

The said Ramaraj thereafter preferred an appeal under Section 69(1) of the Act before the First Respondent along with an application to condone the delay of 1548 days in filing the same. However, the delay in filing such appeal could not be condoned in view of the dictum laid down by the Hon'ble Supreme Court of India in ***Ganesan -vs- Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments Board*** [(2019) 7 SCC 108] that the applicability of Section 29(2) of the Limitation Act, 1963, is restricted to any suit, appeal or application filed in a 'Court' and cannot be pressed in service with regard to filing of application before the Statutory Authorities and Tribunals provided in a special or local law, though there is no limitation for exercising the powers of *suo motu* revision under the relevant provisions of the Act by the Commissioner without prejudice to any other remedy open to the aggrieved person in law. In that backdrop, the First Respondent by proceedings in Notice S.M.R. No. 30/2013 (R.C. No. 63125/2011 D4) dated 01.07.2013 sent notice to the Petitioner and the said Ramaraj calling upon them to appear for an enquiry on 16.07.2013 to examine the legality of the order dated 14.07.2008 in O.A. No. 12 of 2006 passed by the Second Respondent in the exercise of *suo motu* powers of revision under Section 69(2) of the Act, which is impeached in this Writ Petition.

3. The primordial attack on the impugned order by Learned Counsel

for the Petitioner is that the impugned action of the First Respondent to exercise *suo motu* powers of revision under Section 69(2) of the Act in the present case is *malafide* with an intention to overcome the time bar against entertaining the appeal preferred by the said Ramaraj under Section 69(1) of the Act. As already pointed out supra, the Hon'ble Supreme Court of India in the decision in ***Ganesan -vs- Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments Board*** [(2019) 7 SCC 108] has made the legal position clear that when an appeal preferred by an aggrieved person under Section 69(1) of the Act cannot be entertained due to the time bar, it would not preclude the Commissioner in exercising his *suo motu* power of revision against the same order under Section 69(2) of the Act, if he is so satisfied.

4. At this juncture, it must be recapitulated here that it has been held 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- Ramdesh 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.*
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> *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.

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 Petitioner 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.

5. 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 Petitioner to submit his explanation to the show cause notice, which is impugned in the Writ Petition, if not done already, to the concerned authority by 31.01.2023;

(ii) in the event of not being satisfied with the explanation submitted by the Petitioner, an enquiry shall be conducted following the prescribed procedure after affording full opportunity of personal hearing to the Petitioner and all other persons concerned 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 Petitioner 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.

15.12.2022

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Index : Yes/No

Note: Issue order copy by 27.01.2023.

To

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P.D.AUDIKESAVALU,J.

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