BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.12.2022

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P. (MD) No. 19483 of 2013

1.M.Sonaimuthu
2.M.Muthunayagam ... Petitioners

Vs.

1.The Assistant Commissioner (Excise),
Madurai.

2.The District Revenue Officer (DRO),
Madurai.

3.Anbu Muthusamy

4.Executive Officer,
Arulmigu Edaganathasamy Temple,
Thiruvengadam,
Madurai North Taluk,
Madurai District. ... Respondents

(R4 is impleaded vide Court order dated 21.04.2022 in WMP(MD)No.1902 of 2021.)

PRAYER: Writ Petition filed under Article 226 of the constitution of India, to issue a Writ of Certiorari, calling for the records relating to the Impugned Proceedings of the 1st respondent in N.K.No.9787/2012/Mdu-5 dated 02.07.2012 and consequent Proceedings by the 2nd respondent dated 14.08.2012 in N.K.No.G2/49737/ 2012 and quash the same.

For Petitioners	: Mr. V.R.Shanmuganathan for Mr. V.Vijayasethupathy
For R1 & R2	: Mr. P.Subburaj Special Government Pleader
For R3	: Mr. A.Balamurugan
For R4	: Ms. C.Jegatheeswari

ORDER

Heard V.R.Shanmuganathan, Learned Counsel for the Petitioners, Mr. P.Subburaj, Learned Special Government Pleader for the First and Second Respondents, Mr. A.Balamurugan, Learned Counsel for the Third Respondent and Ms. C.Jegatheeswari, Learned Counsel 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 N.K.No.9787/2012/Mdu-5 dated 02.07.2012 passed by the First Respondent and consequent Proceedings in N.K.No.G2/49737/2012 dated 14.08.2012 passed by the Second Respondent, which are evidently notices for enquiry in the proceedings for entering the name of the owner of the property in the revenue record.

3. It is vehemently contended by the Learned Counsel for the Petitioners that the impugned orders do not disclose the relevant legal provisions under which such enquiry is conducted by the First and Second Respondents.

4. 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-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.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 pre-mature. 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."

5. 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 and Second Respondents, who are 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 notices, which are impugned in the Writ Petition, if not done already, to the concerned authority by 31.12.2022;

(ii) in the event of not being satisfied with the explanation submitted by the 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) there shall be no order as to costs.

08.12.2022

Index : Yes/No
Internet : Yes/No
Sm/pkn

Note: Issue order copy by 15.12.2022.

TO:

1. The Assistant Commissioner (Excise),
   Madurai.

2. The District Revenue Officer (DRO),
   Madurai.

P.D.AUDIKESAVALU,J.

Sm/pkn

W.P. (MD) No. 19483 of 2013

08.12.2022