BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.08.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P(MD).No.17011 of 2022
and
W.M.P.(MD).No.12377 of 2022

S.Sivan Sankaranarayanan ... Petitioner

Vs.

The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Thoothukudi District. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the impugned show cause notice issued by the Respondent under Na.Ka.No. 3212/2022/A2 dated 05.05.2022 and quash the same as illegal.

For Petitioner : Mr.M.Kannan

For Respondent : Mr.M.Lingadurai,
Special Government Pleader.

ORDER

This Writ Petition has been filed seeking to quash the impugned show cause notice issued by the Respondent under Na.Ka.No.3212/2022/A2 dated 05.05.2022.

2. The contention of the petitioner is that Arulmigu Venkatachala Perumal Temple situated at Thiruvenkatam Village, Sankarankovil Taluk, Tirunelveli District is a non-listed temple and it is an exempted temple administered by hereditary trustee. The petitioner and his fore-fathers for generations have administered the temple as hereditary trustees. Earlier, when an attempt was made to appoint one Gurusamy Naicker as a trustee of the temple, the petitioner's grand-father namely, Sivasankara Narayana Iyer filed a petition under 63(b) of the Hindu Religious and Charitable Endowments Act, at Chennai in O.A.No.59 of 1965. The Deputy Commissioner of HR and CE Department, Madurai by order, dated 16.01.1970, had held that the petitioner's grandfather is holding the office of the Management as hereditary trustees, petitioner's grandfather Sivasankara Narayana Iyer expired on 18.03.1978 and petitioner's father, Subramaniyan succeeded him. The petitioner's father expired on 12.02.2000 and thereafter, the petitioner succeeded his father. During the year 2009, the petitioner obtained

permission for conducting Kumbabishegam. The Commissioner of Hindu Religious and Charitable Endowments Department, in his proceedings Mu.Mu.Na.32593/2009/G4, dated 04.07.2009 permitted the petitioner to perform Kumbabishegam. The petitioner performed Kumbabishegam in a grand manner and poojas are regularly performed and the salary of the Poojaris are paid by the petitioners. He further submitted that under Section 54 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, when a permanent vacancy occurs in the office of the hereditary trustee of a religious institution, the next in line of succession shall be entitled to succeed to the office and there is no necessity to make an application for being appointed under the said Act. In the year 2014, the petitioner sent a communication to the respondent and the Commissioner, Hindu Religious and Charitable Endowments Department informing that the petitioner is the elder son of Subramanian and next in line of succession to become Hereditary Trustee and requested them to take on record, the name of the petitioner as Hereditary Trustee. Thereafter, there was no communication. Further, the petitioner for this contention, relied upon the decision of this Court in the case of Prem Anand Vs. Commissioner of Hindu Religious and Charitable Endowments reported in SCC online 1990-1- L.W 144, wherein, this Court had observed that there is no necessity, whatever, for the next hereditary trustees to make an application for appointment under the Act. This being so, the petitioner has now issued the impugned order dated 25.06.2022 which was received by the petitioner on 13.07.2022. The notice is a preconceived notice. Though the notice appears to be designed as a notice seeking explanation, the wordings of the notice reveals that the notice is preconceived notice wherein the notice already decided the issue, giving no option for the petitioner's explanation to be considered. Hence, the petitioner filed this Writ Petition seeking to quash the impugned order.

3. The learned counsel appearing for the respondent submitted that it is only a notice calling for explanation. The petitioner can appear before the respondent or through his representative, give his explanation with connected documents and the same may be considered. He further submitted that on complaints received, a spot enquiry was conducted by the Assistant Commissioner on 25.03.2022, wherein, several irregularities in the temple properties found. Hence, the notice has been issued to the petitioner, calling for explanation.

4. The learned counsel for the petitioner further submitted that even in the year 2014, the petitioner gave representation about encroaching of temple properties, denying the temple of its rightful earnings and further, the possibility of temple properties lost is very much there. It would be

appropriate for the Assistant Commissioner to send a report regarding encroachment and thereafter, the Joint Commissioner will issue notice under Section 78, conduct enquiry and remove the encroachments. The petitioner shall co-operate for removal of the encroachment. The petitioner is a retired Government official, now at the evening of his life, shall give all the necessary support and co-operation in this regard.

5. I have considered the matter in the light of the submissions made by learned counsel for both the parties and perused the records.

6. Perusal of the records reveal that the petitioner earlier, during the year 2014, informed the encroachments of the temple properties and thereafter, nothing happened, despite the department made aware of the encroachments. Keeping the petitioner's representation pending for 8 years, suddenly issued the impugned notice, is surprising. It is to be seen that what steps so far taken by the department from the year 2014 for the earlier petition given by the petitioner not known. In any event, the removal of encroachment and restoring the temple and its properties, augmenting the revenue to the temple is the priority of the petitioner as well as the department. The petitioner is willing to participate and co-operate with the enquiry in this regard. The respondent is directed to furnish the copy of the documents and

the statement which are referred and relied upon in the impugned notice, so that the petitioner can give his explanation. The petitioner on receipt of details of documents to give his explanation thereafter within two weeks, the respondent to consider the earlier representation given in the year 2014 along with the present explanation, give personal hearing and thereafter to take appropriate steps under Section 78 and relevant provisions of Hindu Religious and Charitable Endowments Act.

8. With the above directions, the Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

01.08.2022

Index : Yes / No
Internet : Yes/ No
Nsr

To

The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Thoothukudi District.

M.NIRMAL KUMAR, J.

Nsr

W.P(MD).No.17011 of 2022

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