



W.P. (MD) No. 17683 of 2014

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.12.2022

CORAM

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

W.P. (MD) No. 17683 of 2014

and

M.P. (MD) Nos. 1 and 2 of 2014

P.Thandavarajan

... Petitioner

Vs.

- 1.The Commissioner,
Hindu Religious & Charitable Endowment,
O/o. The Commissioner, Uthamar Gandhi Salai,
Nungambakkam, Chennai – 600 034.
- 2.The Joint Commissioner,
Hindu Religious & Charitable Endowment,
Sivagangai.
- 3.The Executive Officer,
A/m. Vaikuntha Moorthy Ayyanar Temple,
Sundara Pandian, Srivilliputhur Taluk,
Virudhunagar District.
- 4.V.Palanisamy, IAS (Retd.),
No. 343, 16th Street,
Anna Nagar West,
Chennai.

... Respondents



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Petition filed under Article 226 of the Constitution of India, for issue of Writ of Certiorari, calling for the entire records pertaining to the Impugned Proceedings of the 1st Respondent initiated vide notice dated 21.03.2014 made in SMR (Suo Moto Revision) No.2/2014/D2 and quash the same.

For Petitioner	:	Mr. R.Aravind Raj
For Respondents 1 & 2	:	Mr. P.Subbaraj Special Government Pleader
For 3 rd Respondent	:	Mr.P.Mahendran Standing Counsel
For 4 th Respondent	:	No Appearance

O R D E R

Heard Mr. R.Aravind Raj, Learned Counsel for the Petitioner, Mr. P.Subbaraj, Learned Special Government Pleader appearing for the First and Second Respondents and Mr. P.Mahendran, Learned Standing Counsel appearing for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.



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2. It borne out from the record that the Deputy Commissioner, Hindu Religious and Charitable Endowments Department, Madurai by order dated 13.09.1985 in the application in O.A. No. 6 of 1983 made under Section 63(b) of the Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as 'the Act' for short) declared that 'hereditary office' is held by the Trustees of Arulmigu Vaikuntha Moorthy Ayyanar Temple, Sundara Pandiam, Srivilliputtur Taluk, Virudhunagar District (hereinafter referred to as 'the Temple' for short). According to the Petitioner, he is presently functioning as one of the Hereditary Trustees of the said Temple and after a lapse of 28 years, at the mischievous instigation of the Fourth Respondent, notice has been sent by the First Respondent in Proceedings SMR (Suo Moto Revision) No. 2/2014/D2 dated 21.03.2014 to exercise powers of *suo motu* revision under Section 69(2) of the Act of the order dated 13.09.1985 in O.A. No. 6 of 1983 passed by the Deputy Commissioner, Hindu Religious and Charitable Endowments Department, Madurai on the grounds mentioned below:-

“(i) *That the Deputy Commissioner failed to consider genealogy table filed by the Petitioners in the Original Application was*



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not supported by any documentary evidence.

- (ii) *That the Deputy Commissioner failed to consider that in the exhibits marked in the Original Application, the Petitioners and their ancestors were shown as hereditary service holders only. Nowhere Petitioners and their ancestors mentioned as Trustees.*
- (iii) *That the Deputy Commissioner, failed to consider that non-hereditary trustees were appointed by the Department from the year 1958.*
- (iv) *Though the report of the Inspector was marked as Ex.C1, the Deputy Commissioner failed to discuss the evidentiary value of the said Exhibit.*
- (v) *That the Joint Commissioner failed to discuss the evidentiary value of the each documents filed by the Petitioners and failed to give his findings on each documents whether they supports the case of the Petitioners or not.*
- (vi) *In the enquiry, except the First Petitioner in O.A. no other independent witnesses were examined by the Deputy*



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Commissioner.

(vii) *That the Deputy Commissioner failed to examine the Inspector of the Department who caused local enquiry on the Original Application.”*

The Trustees of the said Temple including the Petitioner have been called upon to appear for enquiry on 15.04.2014 before the First Respondent in that regard, which is assailed in this Writ Petition.

3. The pivotal attack on the impugned order is that a time limit of one month has been fixed for preferring appeal before the Commissioner under Section 69(1) of the Act against an order passed under Section 63(b) of the Act by the Deputy Commissioner, Hindu Religious and Charitable Endowments Department and if the Fourth Respondent had not filed any such appeal within that time limit, he cannot after the lapse of the said period, circumvent that statutory bar by requiring the First Respondent to exercise the powers of *suo motu* revision. In this context, reference has to be made to the decision of the Hon'ble Supreme Court of India in **Ganesan -vs- Tamil Nadu Hindu Religious and Charitable Endowments Board** [(2019) 7 SCC 108] where it has been clarified that there is



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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.

4. The next plea raised on behalf of the Petitioner citing the decisions of the Hon'ble Supreme Court of India in ***State of Himachal Pradesh -vs- Rajkumar Bruender Singh*** [(2014) 10 SCC 585] and ***Ibrahimpattanam Taluk Vyavasaya Coolie Sangham -vs- K.Suresh Reddy*** [(2003) 7 SCC 667] is that even when the statute does not provide for period of limitation, the provisions of the statute must be invoked within a 'reasonable time', which would mean that the belated exercise of such powers of *suo motu* revision particularly at the instance of a third party, like the Fourth Respondent in this case, prejudicially affecting the accrued rights of the Petitioner is *malafide* that would vitiate the entire proceedings. The determination as to what is 'reasonable time' is a question of fact which would vary from case to case and has to be considered taking into account all relevant facts and circumstances and it is not possible to lay down any specific time limit for the same. It would be useful to extract the relevant passages from the decision of the Hon'ble Supreme Court of India in ***Veerayee Ammal -vs- Seenii Ammal***



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“13. The word “reasonable” has in law prima facie meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of the word “reasonable”. The reason varies in its conclusion according to idiosyncrasy of the individual and the time and circumstances in which he thinks. The dictionary meaning of the “reasonable time” is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. In other words it means, as soon as circumstances permit. In P. Ramanatha Aiyar's The Law Lexicon it is defined to mean:

“A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstances will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be



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done; some more protracted space than 'directly'; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey more or less the same idea.'"

As such, it is incumbent upon the First Respondent to expressly deal with the question as to whether powers of *suo motu* revision has been exercised within a 'reasonable time' having due regard to the rival contentions of the contesting parties in that regard before taking a final decision in the matter.

5. It must also be recapitulated here that while highlighting 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, the Hon'ble Supreme Court of India in ***Union of India -vs- Kunisetty Satyanarayana*** [(2006) 12 SCC 28] has observed 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



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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 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*



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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 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.



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6. The result of the foregoing discussion is that 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 in the enquiry proposed to be conducted by the First Respondent, which is challenged in the Writ Petition;
- (ii) in the event of not being satisfied with the explanation made by the Petitioner in such enquiry conducted following the prescribed procedure, full opportunity of personal hearing shall be afforded to the Petitioner and all other persons concerned in support of their respective contentions, and a reasoned order shall be passed dealing with each of the same on merits and in accordance with law and the decision taken communicated under written acknowledgment;
- (iii) if any adverse decision is taken against the Petitioner, he may then pursue legal remedies in accordance with law;
- (iv) consequently, the connected Miscellaneous Petitions are closed; and
- (v) there shall be no order as to costs.



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Index : Yes/No

Note: Issue order copy by 30.01.2023.



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To

1.The Commissioner,
Hindu Religious & Charitable Endowment,
O/o. The Commissioner, Uthamar Gandhi Salai,
Nungambakkam,
Chennai – 600 034.

2.The Joint Commissioner,
Hindu Religious & Charitable Endowment,
Sivagangai.

Copy to

P.Thandavarajan,
S/o. Palanichamy Poosari,
136, Sekkadi Street,
Sundarapandiam,
Virudhunagar District.



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P.D. AUDIKESAVALU, J.

sj

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