BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.07.2022

CORAM:

THE HONOURABLE **MR.JUSTICE M.NIRMAL KUMAR**

W.P.(MD)No.3966 of 2017
and
WMP(MD) No.3151 of 2017

Shir Nirathala Mudaiya Ayyanar Sonaiya Kovil
Manamadurai
Sivagangai District
Rep. by its Managing Trustee
P.Ramaraja .. Petitioner

Vs

1. The Joint Commissioner
Hindu Religious and Charitable Endowment Board
Sivagangai District

2. The Assistant Commissioner
Hindu Religious and Charitable Endowment Board
Sivagangai District.

3. The Regional Audit Officer
Office of the Hindu Religious and Charitable Endowment Board
Sivagangai District

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the impugned notice of the third respondent in Na.Ka.No.20/2017/A2 dated 28.02.2017 and quash the same and direct the respondents not to conduct the audit as if the petitioner temple is a public temple.

For Petitioner	: Mr.S.Natarajan
For Respondents	: Mr.M.Lingadurai Special Government Pleader

ORDER

This Writ Petition has been filed to quash the impugned notice of the third respondent in Na.Ka.No.20/2017/A2 dated 28.02.2017 and direct the respondents not to conduct the audit as the petitioner temple is a public temple.

2. The contention of the petitioner is that the petitioner is the Managing Trustee of Shri Nirathla Mudaiya Ayyanar Sonaiya Kovil at Manamadurai and it is a private denominational temple. Since the HR & CE Department and its officials constantly interfering with the administration and management of the temple, the temple was constrained to file a suit in O.S.No.49 of 1987 on the file of the Sub Court, Sivagangai, in which, the Commissioner of HR & CE, Chennai, Deputy Commissioner of HR & CE, Sivagangai and Assistant

Commissioner of HR & CE, Ramnad at Madurai were parties. Though the suit was dismissed, in the appeal in A.S.No.49 of 1993 was allowed by the District Court, Sivagangai, the District Judge of Pasumpon Muthuramalinga Thevar District at Sivagangai, granted a decree dated 26.08.1994, declaring the temple as a denominational temple, belonging to Kulalar community of Manamadurai and granted permanent injunction against the HR & CE Department from in any way interfering with the community's management and administration of the temple. That decree was granted as per Article 26 of the Constitution of India.

3.In the judgment in Appeal suit No.49 of 1993, the first appellate Court has observed as follows:

> *"Therefore from the foregoing decision it is clear that the facts of this case satisfied all the tests laid down by the Madras High Court and Supreme Court . Therefore I hold that the suit temple namely Ayyanar temple of Manamadurai belonging to Kulalar community of Manamadurai is a denominational temple. Hence they are entitled to the rights granted under Article 26 of the Constitution".*

4. The Commissioner, Deputy Commissioner and the Assistant Commissioner are parties to the said suit and they contested the suit and the Department not taken any steps to file second appeal against the judgement dated 26.08.1994, thereby the judgment has become final. Despite the same, for every Fasali, notice are issued mechanically, each time the petitioner had to approach this Court reminding the department that the petitioner is a denominational temple and the department has got no right to call for the particulars including the budgetary proposals for each Fasali. The petitioner further submitted that earlier the petitioner challenged the respondents' interfering with the management and administration of the temple in WP(MD) No. 2795 of 2011 and this Court by an order dated 19.02.2013, referred to various judgments in para 11, held as follows:

> *“ In the light of the above stated legation position ad taking note of the decree passed by the Civil Court, the respondent Department is not automatically permitted to call for the entire records/accounts, as if, dealing with a public temple, which is under direct control of the department and if*

there are any complaint it would be open to the respondent department to call upon the petitioner to produce the accounts for auditing and verification. However, as observed earlier the prayer for issuance of a blanket writ of Mandamus cannot be granted. With the above direction the writ petition was disposed."

5. Thereafter a notice in letter No.20/2015 dated 28.12.15 was issued that audit for Fasali 1419 and 1424 is to be conducted by the Audit Inspector during February 2016 and hence, directed the petitioner to make ready all the documents. On receipt of the same, the petitioner sent objection letter on 04.01.2016, referring to the earlier order of the civil Court as well as the writ petition order in WP(MD) No. 2795 of 2011, wherein the petitioner temple is declared recognised as a denominational temple and hence, no accounts of the temple can be produced. The petitioner challenging the third respondent notice in Na.Ka. No.20/17/A2 dated 28.02.2017, filed this writ petition.

6. The primary contention of the petitioner is that the petitioner temple being declared as a denominational temple, the H.R. & C.E. authorities, the administration wing and the audit wing has got no right to call for any records, more particularly, the accounts and other particulars of the temple for audit and verification. He further submitted that prior to the filing of the writ petition, audit and contribution fees were paid and after filing the writ petition they stopped paying the audit and contribution fees. The HR and CE Department or the other department has got no control over the temple as any public temple and they cannot call for any records or details unless there is specific complaint against the management and functioning of the temple. In this case, there is no such complaint received or pending in any manner and no reference has been made in the notice sent to the temple. Hence the impugned notice to be quashed.

7.The learned counsel would further submit that it is settled preposition of law that pleadings in counter cannot improve the impugned order. An order should either stand or fall solely based on the reasons stated therein and not by substitution of reasons stated in a pleading filed in support of such order. Hence, the averments made in the counter affidavit cannot be sustituted as the reason for passing the impugned order. In the impugned notice, no allegation against the petitioner and no reason given, whether at all there is any complaint pending against the petitioner. If there is any complaint, the same may be informed to the petitioner, after giving him an opportunity to give his explanation for the same, in the absence of same no action can be taken. The counter filed by the respondents cannot improve their case.

6. The learned Additional Government Pleader appearing for the respondents filed his counter and submits that the petitioner temple is a Hindu Public Religious institution as defined under Section 6(18) and more fully under section 6(20) of the HR and CE Act. He admits that the Kulalar Samooga Sangam and five others filed a suit No.49 of 1987 before the Sub Court, Devakottai to declare the above temple as a denominational institution belonging to plaintiff community and also prayed for permanent injunction restraining the HR and CE Department from any way interfering with temple management and internal administration, The said suit was dismissed on 22.03.1993. Aggrieved

against the same the petitioner preferred an appeal in AS No.49 of 1993 and the District Court, Sivagangai, allowed the appeal on 26.08.1994, declaring that the petitioner temple a denominational temple. Thereafter, the department has filed an appeal in SA. Sr.No. 7726 of 1995 in CMP No.64 of 1998, which was dismissed on 29.02.2016. Hence, the SA.Sr.No.7726 of 1995 stands rejected. Further abiding to the Civil court order, the HR and CE Department has not entered into the day to day affairs of the temple, but the temple which is a public religious temple falls under the HR and CE Act. Further, as per section 1(B) of the Act, it applies to all public hindu religious institutions and endowments including Devasthanam. Thus the petitioner, being a hindu religious institutions comes under the perview of the Act. There are certain exemptions and privileges given to the denominational temple with regard to the administration of the temple subject to getting exemption under Section 4 of the Act. In this case the petitioner had not obtained any exemption.

7. Learned Additional Government Pleader for the respondents frurther submits that in case of receipt of any complaint from the HR and CE Department, the same can be enquired by the Department. As far as

the budgetary proposal for Fasali is called for calculating audit and contribution fees, all the temple assessts can be audited on voluntary disclosure, based on which the audit and contribution fees can be calculated. If necessary, the entire record with regard to the accounts of the temple can be verified which is within the powers of the HR and CE department, the petitioner cannot question the same. The petitioner relying on the civil suit is not prper. Denominational temple rights are for a limited purpose. As regards the observation made in writ petition in WP(MD) No.2795 of 2011, it is categorially stated that if there are any complaints it would be open to the respondent/department to call upon the petitioner to produce the account for audit and verification and further it qualifies by stating the department/respondents are not automatically permitted to call for the entire records of account of the petitioner temple. In this case, the impugned notice has been issued for Fasali 1419-1425, for auditing purpose and not the entire records asked. It would be suffice that income and expenditure accounts to be produced by the petitioner, which can be verified with the permanent records of the temple, which cannot be termed as interfering with the administration of the denominational temple in any manner. In support of this contention he relied on the decision of the Hon'ble Division of this Court in the case of ***Madurai Saurashtra Sabha rep. by its Honorary Secretary . R.V.Seshachary Madurai vs. The State of Tamil Nadu re. by its Secretary to Government Religious Charitable Endowments, Madras and others*** reported in **2007(2)CTC11,** where is it is held that there cannot be a blanket mandamus, forbearing the authorities of the HR and CE Departement from interfering with the affairs of the temple, as claimed by the petitioner.

8. It is seen that it is not in dispute that the petitioner temple is a denominational temple, which is declared in AS.No.49 of 1993 by the District Court, Sivagangai. Thereafter, though the department attempted to take it for appeal in SA(MD) SR.No.7726 of 1995 but their attempt ended in failure. Hence, the declaration made in the Appeal Suit in A.S.No.49 of 1993 has become final. The observation made in WP(MD)No.2795 of 2011 is for the limited purpose, giving any rights to automatically call for the entire records and accounts, as if dealing with the public temple which is under the direct control of them. This temple though declared as denominational temple admittedly worshipped by

the people and it is a public temple, administered by the petitioner trust. The respondent department is not automatically permitted to call the entire records, which does not mean that they can never call for any records. Further, as per section 86 of the Act, the trustee of every religious institution would submit such form as may be specified the budget showing the government disbursement during the following Fasali year. This is for the purpose for fixing the annual contribution fees as per section 92 of the Act. For this limited purpose, notice has been issued and further as per Section 87 the trustee of every religious institution shall keep all receipts and disbursements for each Fasali year separately and it should be audited by auditors appointed. Thus to this limited purpose, notice has been issued, which cannot be termed as interfering with the denominational temple administration. It is further noticed that the Hon'ble Division Bench of this Court has held that there cannot be any blanket mandamus forbearing the respondents from interfering with the administration of the temple. Once it is a public religious temple, the department has got every right to implement the Act. In the case petitioner a denominational temple was called to produce annual income and expenditure which cannot be termed as interference with the administration of the denominational temple violating article 26 of the Constitution.

9. In view of the same, the writ petition stands dismissed. No costs. Consequently connected miscellaneous petitions are also closed.

06.07.2022

Index: Yes/No
Internet : Yes/No
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M.NIRMAL KUMAR, J.

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