BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.04.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD).No.12532 of 2016
and
W.M.P(MD).No.9476 of 2016

Sri Madu Ramalinga
Choudambikai Amman Temple
Thevaram, rep. by its Managing Trustee,
M.Kamalanathan ... Petitioner
(Petitioner substituted vide Court order
dated 29.03.2022 in W.M.P(MD)No.7939
of 2018 in W.P(MD)No.12532 of 2016)

Vs.

1.The Commissioner,
Hindu Religious and Charitable Endowments Board,
Nungampakkam High Road,
Chennai.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Board,
Madurai.

3.The Inspector,
Hindu Religious and Charitable Endowments Board,
Periyakulam. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the first respondent in his proceedings Letter No.53499/2015-E4-1424, 60783/2015-E5-1425, dated 27.04.2016 and quash the same.

For Petitioner : Mr.PT.S.Narendra Vasan
For Respondent : Mr.P.Subbaraj
Special Government Pleader

ORDER

The petitioner has challenged the impugned demand notice purportedly issued under Section 92 of the Hindu Regligious and Charitable Endowments Act, demanding a sum of Rs.5948/- for fasali 1424 and a sum of Rs.432/- for fasali 1425 from the petitioner.

2. The learned Counsel for the petitioner submits that under the provisions of the Hindu Regligious and Charitable Endowments Act, an order came to be passed in O.A.No.404 of 1938 by the Madras Hindu Religious Endowments Board.

3. By the aforesaid order, the board had concluded that the subject temple, namely Sri Madu Ramalinga Choudambikai Amman Temple was an excepted temple and therefore was not governed by the provisions of the Madras Hindu Religious and Charitable Endowments Act.

4. Aggrieved by the aforesaid order, the trustees of the petitioner temple had filed O.A.No.11 of 1939 before the District Judge of Madras. It is submitted that by a judgment and decree, in O.P.No.11 of 1939, dated 20.03.1940, the District Judge of Madurai held that the trustees of the temple are hereditary trustees, in the sense that succession is regulated by usage and custom therefore, the temple is an excepted one. It is therefore submitted that the impugned demand of the first respondent for the respective fasalis are without authority of law. It is therefore submitted that the Hindu Religious and Charitable Endowments Department has no right to collect any amount. A reference was made to Section 107 of the Hindu Religious and Charitable Endowments Act and Article 25 (2) of the Constitution of India.

5. The learned Counsel for the petitioner also refered to Article 26 of the Constitution of India and therefore submits that impugned demand towards demand is unsustainable. The learned Counsel for the petitioner also has drawn attention to the decision of the Divison Bench of this Court in Sri **Kanniga Parameswari Amman Devasthanam Vs. The Commissioner** in W.A(MD)No.487 of 2009 vide order, dated 29.10.2013 and a subsequent decision of this Court in W.P(MD)No.6676 of 2010 vide order, dated 26.02.2014.

6. It is submitted that at the time when the writ petition was filed, the department had preferred appeal against the said order of this Court in W.P(MD)No.6676 of 2010 in W.A(MD)No.1279 of 2015.

7. The learned Counsel for the petitioner further submits that the writ appeal was dismissed in W.A(MD)No.1279 of 2015 on 14.08.2018 and therefore, issue now stands concluded. It is therefore submitted that the demand is liable to be quashed.

8. Opposing the prayer, the learned Special Government Pleader for the respondent submits that the impugned proceeding is only a demand notice and it is open for the petitioner to give explanation before the first respondent by filing the copies of the orders of this Court. He submit that writ petition is pre-mature and therefore is liable to dismissed. That apart, it is submitted that petitioner has been paying this amount all along and therefore the petitioner cannot now turn around and say that the petitioner is not liable to

pay contribution for the fasalis 1424 and 1425.

9. Heard the learned Counsel for the petitioner and the respondent. I have perused the impugned demand notice, dated 27.04.2016 and the order passed in O.P.No.11 of 1939 and Section 107 of the Hindu Religious and Charitable Endowments Act and Article 25 and 26 of the Constitution of India which reads as follows:

"25. Freedom of conscience and free profession, practice and propagation of religion (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.	***"26. Freedom to manage religious affairs-*** Subject to public order, morality and health, every religious denomination or any section thereof shall have the right (a) to establish and maintain institutions for religious and charitable purposes; (b) to manage its own affairs in matters of religion; (c) to own and acquire movable and immovable property; and d) to administer such property in accordance with law" "107.**Act not to affect rights under Article 26 of the Constitution.**-Nothing contained in this Act shall, save as otherwise provided in Section 106 and in Clause (2) of Article 25 of the Constitution, be deemed to confer any power or impose any duty in contravention of the rights conferred on any religious denomination or any section thereof by Article 26 of the Constitution."

10. The impugned demand has been made under Section 92 under chapter (ix) of the Hindu Religious and Charitable Endowments Act. Section 92 deals with the obligation of religious institution to pay an annual contribution to the Government.

11. If there is a failure powers are given to the Government to recover the amount in terms of Section 93 as per Section 94 assessment and recovery of contribution, pas charges, charges and expenses are provided. It contemplates a method for assessment on the notification to the trustee of all religious institution concerned in the prescribed manner.

12. The issue is now squarely covered by a series of decisions of this Court. The Division Bench has passed an order in W.A.(MD) No.1279 of 2015, dated 14.08.2018 against the order, dated 26.02.2014 in W.P(MD).No.6676 of 2010, wherein, the prayer of the petitioner therein was to quash the demand notice was upheld. The Division Bench held as follows:

> *"4.A perusal of the order passed by a Divisional Bench in W.A.(MD).No.487 of 2009 dated 29.10.2013, it was observed that considering the character of the temple mentioned in the petition and also the direction in the letter dated 24.08.2005, the Hindu Religious and Charitable Endowments Department had exceeded its limit. The respondent has got no power for administration of the said temple since a decree was obtained before the Civil Court stating that the said temple is a denomination temple and the Hindu Religious and Charitable Endowment Board has got no jurisdiction over the same."*

13. Under similar circumstances, the Division Bench after considering the decision of this Court in W.A(MD).No.487 of 2009, dated 29.10.2013, held as under:

> *"4. The learned Single Judge has dismissed the writ petition by way of holding that the letter issued by the second respondent is nothing but a mere notice and the same need not be quashed."*

14. A similar view was also taken by this Court in W.A(MD) Nos.6948, 6896 and 6898 of 2015, vide its order dated 19.03.2019.

15. I therefore find sufficient reasons to quash the impugned demand notice as the petitioner is an excepted temple. Accordingly, the impugned demand notice stands quashed. The writ petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

sn

TO

1.The Commissioner,
Hindu Religious and Charitable Endowments Board,
Nungampakkam High Road,
Chennai.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Board,
Madurai.

3.The Inspector,
Hindu Religious and Charitable Endowments Board,
Periyakulam.

+1 CC to M/s.PT.S.NARENDRAVASAN, Advocate (SR-16187[F] dated 01/04/2022)

+1 CC to M/s.SPL GP (SR-16361[F] dated 04/04/2022)

W.P(MD).No.12532 of 2016
01.04.2022

NA(CO)
KB(22.04.2022) 5P 6C