BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.11.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD).No.24826 of 2019
and
W.M.P(MD).Nos.21412 and 21413 of 2019

Arulmigu Alappancode Easwarakala
Boothathan Temple,
Represented by its Chairman,
Board of Trustee Viswambaran Nair,
Anducode, Edaicode Post,
Kanyakumari District. ... Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable
Endowments (Admn.) Department,
Chennai.

2.The Joint Commissioner,
Hindu Religious and Charitable
Endowments (Admn.) Department,
Tirunelveli.

3.The Executive Officer,
Arulmigu Easkkiamman Temple,
Muppandal,
Kanyakumari District. ...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 pertaining to nature of writ, calling for the records pertaining to the impugned notice issued by the 2nd Respondent, dated 29.05.2018 vide Na.ka.No. 10428/2017-A2/Aa3 and the consequential notice dated 07.11.2019 vide Na.Ka.No.10428/2017/Aa3, quash the same.

For Petitioners	: Mrs.J.Anandhavalli
For R1 & R2	: Mr.N.Ramesh Arumugam Government Advocate
For R3	: Mr.Sathiya Singh

ORDER

This writ petition is filed challenging the impugned notice, dated 29.05.2018, wherein, it was alleged that the Petitioner had not taken charge and implemented the Annathanam Scheme of the Government. It stated that on 01.06.2016, the 2nd Respondent would make physical inspection of the Respondent Temple and directed the Petitioner to keep the books of accounts of the Respondent Temple ready for verification. Importantly, it also stated that if the Petitioner fails to appear for the enquiry or in keeping the books of accounts ready, proceedings would be initiated under Section 53 of the Hindu Religious and Charitable Endowments Act. The above notice has been challenged as bad for want of jurisdiction.

2. Before proceeding to examine the above question, it may be necessary to note that earlier proceedings, dated 11.04.2018 was challenged

before this Court in W.P(MD).No.12107 of 2018. However, this Court was pleased to direct the Respondents to respond to the show cause notice. On perusal of the said order, this Court finds that the question of jurisdiction has not been examined. It is pointed out by the learned counsel for the Respondents that same has been challenged by the Petitioner by way of writ appeal and the said order has not been stayed.

3. Having recorded the above facts, the question that arises for consideration is whether it is open to the Joint Commissioner, Hindu Religious and Charitable Endowments Department to initiate proceedings, wherein, he proposes that in the case of failure to comply with the directions, proceedings would be initiated under Section 53 of the Hindu Religious and Charitable Endowments Act.

4. It is true that Court would have exercise greater restrain while exercising the power under Article 226 when the challenge is with reference to show cause notice. However, it is not an absolute embargo and one of the circumstances which may warrant interference is when it is shown that the very initiation of the proceedings by issuance of notice is bad for want of jurisdiction.

5. The primary grievance of the learned counsel for the Petitioner is that the 2nd Respondent has exceeded his jurisdiction in stating that the proceedings shall be initiated under Section 53 of the Hindu Religious and Charitable Endowments Act, if the Petitioner does not participate in the enquiry or produce the books of accounts. In this regard, it may be relevant to refer to Section 53 of the Hindu Religious and Charitable Endowments Act, which reads as under:

> *"53. Power to suspend, remove or dismiss trustees.—*
> *(1) In this section, the expression, "appropriate authority" shall, unless the context otherwise requires, means—*
> *(a) in respect of any trustee of any religious institution included in the list published under clause (iii) of section 46, 3[the Government] ;*
> *(b) in respect of any trustee of any religious institution included in the list published under clause (ii) of section 46; the Commissioner];*
> *(c) in respect of any trustee of any religious institution included in the list published under clause (i) of section 46 and in respect of any hereditary trustee of any religious institution not included in the list published under the said section 46.*
> *(d) in respect of any non-hereditary trustee of any religious institution not included in the list published under section 46."*

6. It is submitted that admittedly, the Petitioner's temple is one which is falling under Clause (ii) of Section 46 of the Hindu Religious and Charitable Endowments Act. Therefore, it would be governed by Section 53(1)(b) of the Hindu Religious and Charitable Endowments Act. If that be the case, any

proceedings under Section 53 of the Hindu Religious and Charitable Endowments Act can be initiated by the Commissioner, Hindu Religious and Charitable Endowments Department and any attempt by the Joint Commissioner, Hindu Religious and Charitable Endowments Department to exercise the power under Section 53 of the Hindu Religious and Charitable Endowments Act is clearly bad for want of jurisdiction.

7. Insofar as the direction by the 2nd Respondent to keep the books of accounts ready for inspection, it is not open to the Joint Commissioner to initiate proceedings or call for documents which again in terms of Section 33 of the Hindu Religious and Charitable Endowments Act, power is vested only with the Commissioner or any other officer deputed by the Commissioner. The Joint Commissioner ought to demonstrate that he has been deputed by the Commissioner to make an inspection of the property of the documents in terms of Section 33 of the Hindu Religious and Charitable Endowments Act. The learned counsel for the Respondents has not placed any documents to indicate that there has been such authorisation by the Commissioner. In any view, the attempt by the Joint Commissioner to suggest that he would proceed under Section 53 of the Hindu Religious and Charitable Endowments Act appears to be clearly in excess of jurisdiction.

8. The power under Section 53 of the Hindu Religious and Charitable Endowments Act appears to be vested exclusively with the Commissioner. In view of the mandate contained in Section 33 of the Hindu Religious and Charitable Endowments Act, it may be necessary for the 2nd Respondent to show that he is authorised by Commissioner in terms thereof to exercise the power thereof. It thus appears that the notice is in excess of the jurisdiction of the 2nd Respondent on the above aspects.

This would not preclude the Respondents from taking action within his jurisdiction including under Section 33 of the Act after disclosing the authorisation by the Commissioner and also explain as to the basis for the 2nd Respondent to invoke Section 53 of the Act though on a plain reading the power under that Section is vested with the Commissioner exclusively. The above observations are made only in view of the fact that the earlier order while directing to file objections has not dealt with the aspect of jurisdiction.

10. With the above observations, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

08.11.2022

Index : Yes / No
Internet : Yes/ No
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To

1.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Madurai.

2.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Virudhunagar.

3.The Executive Officer,
Arulmighu Vaithyanathasamy Thirukoil,
Madavarvilagam,
Srivilliputhur Taluk,
Virudhunagar District.

MOHAMMED SHAFFIQ, J.

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W.P(MD).No.24826 of 2019

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