BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **11.03.2022**
CORAM:
THE HONOURABLE MR.JUSTICE **C.SARAVANAN**
W.P.(MD) No.13973 of 2017
and
W.M.P.(MD) No.10929 of 2017

1.Sri Ammaluammal @ Guruvammal
Charitable Endowments,
represented by its Managing Trustee,
S.P.Vasudevan, S/o.Perumal Naidu,
Alwarpuram, Madurai North Taluk,
Madurai District.

2.Sri Ammaluammal @ Guruvammal
Charitable Endowments,
represented by its Trustee,
S.Balakrishnan, S/o.Subburayalu Naidu,
Alwarpuram, Madurai North Taluk,
Madurai District.

3.Sri Ammaluammal @ Guruvammal
Charitable Endowments,
represented by its Trustee,
N.Mohanram, S/o.Nagarajan Naidu,
Alwarpuram, Madurai North Taluk,
Madurai District.

4.Sri Ammaluammal @ Guruvammal
Charitable Endowments,
represented by its Trustee,
V.Vengatesan, S/o.Venugopal Naidu,
Alwarpuram, Madurai North Taluk,
Madurai District.

5.Sri Ammaluammal @ Guruvammal
Charitable Endowments,
represented by its Trustee,
K.Rengaraj, S/o.Gothandaraman Naidu,
Alwarpuram, Madurai North Taluk,
Madurai District. ... Petitioners

/vs./

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

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

3.The Inspector,
Hindu Religious and Charitable Endowment,
Madurai North. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records of the 2nd respondent impugned order of the 2nd respondent in Na.Ka.No.5876/2015/A1 dated 01.07.2017 and quash the same.

For Petitioners : Mrs.J.Anandhavalli
For Respondents : Mr.P.Subbaraj
Special Government Pleader

ORDER

The petitioners have challenged the impugned notice dated 01.07.2017 seeking to initiate surcharge proceedings against them under Section 90 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 *[hereinafter referred to as 'Act']*.

2.The learned counsel for the petitioners submits that the surcharge proceeding under Section 90 of the Act has to precede an order under Section 86 of the Act r/w the Appointment of Auditors Rules, vide G.O.Ms.No.3029, Revenue, dated 20.07.1961. It is further submitted that the petitioners' applications under Section 86(6) of the Act for ratifying the expenditure incurred during the Fasli year 1425 [wrongly typed as ''1424''] and the report of the Assistant Commissioner has been treated as Audit report for initiating surcharge proceedings against the petitioners.

3.It is submitted that under the Appointment of Auditors Rules, audit of accounts of all religious institutions and charitable endowments under the control of the H.R & C.E. Administration Department shall be done by independent audit-wing created by the H.R. & C.E. Administration Department, which will be under the immediate control of a Chief Audit Officer and the ultimate control of the Commissioner, H.R. & C.E. Administration Department.

4.That apart, the learned counsel for the petitioners has referred to reference No.1, dated 08.07.2015 [Na.Ka.No.5876/2015/Aa1] and the Assistant Commissioner's report dated 23.07.2015 [Na.Ka.No.2260/2015/A6] in the impugned order, which has treated it as audit report for the purpose of invocation of surcharge proceedings against the petitioners. It is therefore submitted that the surcharge proceeding is irregular and is therefore liable to be quashed.

5.The learned Special Government Pleader for the respondents, on the other hand, defends the impugned proceedings and submits that the impugned proceeding is merely a notice and therefore, the Writ Petition is devoid of merits.

The petitioner can submit a reply and participate in the adjudication mechanism prescribed under the Act.

6.It is further submitted that the petitioner has unnecessarily rushed to this Court by filing the present writ petition at the show cause notice stage itself and therefore, the writ petition is liable to be dismissed as premature. The learned Special Government Pleader for the respondents submits that the proceedings are in accordance with the provisions of the Act.

7.The learned Special Government Pleader for the respondents further submits that after perusing the reports submitted by the Assistant Commissioner and the relevant records, the 2^{nd} respondent/Joint Commissioner has concluded that the petitioners have spent a sum of Rs.79,210/- without permission of the department and without maintaining proper account and that therefore, the petitioners were liable for surcharge proceeding and therefore, the impugned show cause notice dated 01.07.2017 has been issued to the petitioners.

8.It is submitted that the 2^{nd} respondent has amble power to issue the show cause notice to the petitioners under Section 90 (2) of the Act. It is therefore submitted that the present writ petition challenging the impugned notice is without merits.

9.I have considered the arguments advanced by the learned counsel for the petitioners and the learned Special Government Pleader for the respondents and perused the provisions of the H.R. & C.E. Act, particularly Chapter VIII of the Act.

10.Section 86(6) of the H.R. & C.E. Act reads as under:-

''86.Budgets of Religious Institutions.-

(6) The trustee shall, within two months after the close of each fasli year, submit to the Commissioner, Joint Commissioner, Deputy Commissioner or Assistant Commissioner, as the case may be, in such form as may be fixed by the Commissioner, a statement of actual receipts and disbursements relating to that fasli year, with particulars of expenditure, if any, incurred without sanction and explaining the necessity therefor or the urgency thereof. The Commissioner, Joint Commissioner, Deputy Commissioner or Assistant Commissioner, as the case may be, may, after considering the explanation of the trustee, approve and

ratify such expenditure, if such expenditure was beneficial or necessary to the institution.''

11.The petitioners were appointed as Trustees pursuant to the order dated 09.09.2014 of this Court and had conducted Chithirai festival during April 2015, corresponding to Fasli year 1425. Certain expenditure were incurred by the petitioners without sanction of the Joint Commissioner and therefore, the petitioners approached the Joint Commissioner for ratification of the expenditure incurred for the Chithirai festival. It appears that on the spot, the Assistant Commissioner has examined the records and concluded that there was an expenditure incurred without permission and therefore, the petitioners were liable for surcharge proceedings under Section 90 of the Act.

12.Section 89 of the H.R. & C.E. Act contemplates what is required to be reflected in the Audit Report. Section 90 of the H.R. & C.E. Act deals with surcharge proceedings.

13.Section 91 of the H.R. & C.E. Act reads as under:-

''91. Chapter to apply notwithstanding provision in scheme.—

The provisions of this Chapter shall apply to every religious institution, notwithstanding anything to the contrary contained in any scheme settled or deemed to have been settled under this Act.''

14.For the above said purpose, the Determination of Surcharge Rules has been framed vide G.O.Ms.No.187, C.T. and RE Department, dated 18.02.1996. As per the said Rules, a notice referred to Section 90(2) of the H.R. & C.E. Act shall be sent by the Commissioner, the Joint Commissioner, the Deputy Commissioner or the Assistant Commissioner, as the case may be, to the Trustee or other persons concerned, by registered post with acknowledgment due and shall specify a date before which the explanation shall be submitted and the date on which the explanation be taken into consideration. Thus, it is evident that the Act is a complete code by itself when read along with the above said Rules.

15.The Act contemplates a particular method for audit and initiating surcharge proceeding. Audit is to be conducted by an independent Audit Wing created by the Department under the control of the Chief Audit Officer, which is under the ultimate control of the Commissioner, H.R. & C.E. Department. After completing the audit for any fasli year or shorter period, or for any transaction or series of transactions, as the case may be, the auditor shall send a report to the Commissioner, in respect of Maths and specific endowments attached to Maths; to the Joint Commissioner, Deputy Commissioner, in respect of institutions included in the list published under Section 46; and to the Assistant Commissioner in respect of other institutions.

16.Section 90 (2) of the Act reads as under:-

> "**90.(2).** *If, on a consideration of the audit report and the report of the trustee and after such inquiry as may be necessary, 1[the Commissioner, Joint Commissioner, Deputy Commissioner or Assistant Commissioner], as the case may be, thinks that the trustee or any other person was guilty of irregular, illegal or improper expenditure, or of loss or waste of money or other property thereof caused by failure to recover moneys due or other property belonging to the religious institution or by neglect or misconduct or misapplication or collusion or fraudulent transactions or breach of trust, 1[the Commissioner, Joint Commissioner, Deputy Commissioner or Assistant Commissioner), as the case may be, may after giving notice to the trustee or such person to show cause why an order of surcharge should not be passed against him and after considering his explanation, if any, by order certify the amount so spent or the amount or value of the property so lost or wasted and direct the trustee or such person to pay within a specified time such amount or value personally:*
>
> *Provided that if, in respect of any expenditure or dealing with the property of the institution, the trustee or such person had obtained the directions of the Commissioner, Joint Commissioner, Deputy Commissioner or Assistant Commissioner, as the case may be, and had acted in accordance with such directions, he shall not be held liable."*

17.For rectification of defects and for initiating surcharge proceeding, a method has been prescribed under the above provisions. It contemplates an audit report relating to the accounts of a religious institution and thereafter it is for the trustee to remedy and defects or irregularities pointed out by the auditor and report the same to the Commissioner, Joint Commissioner, Deputy Commissioner or Assistant Commissioner, as the case may be.

18.It is only thereafter on consideration of the audit report and the report of the trustee after such inquiry as may be necessary, the trustee or any person, who has made such irregular, illegal or improper expenditure, or caused loss or wasted money or other property thereof, recovery can be made after giving a notice to the trustee or such person to show cause why an order of surcharge should not be passed against him and after considering his explanation, if any, by an order certify the amount so spent or the amount or value of the property so lost or wasted by directing the trustee or such person to pay within a specified time such amount or value personally.

19.Thus, when the law mandates a particular thing to be done in a particular manner, then it has to be done. Statutory safeguards cannot be circumvented or bypassed. In this connection, a decision of the Hon'ble Supreme Court in the case of ***State of Uttar Pradesh Vs. Singhara Singh and another*** reported in ***1963 AIR 358:1964 SCR (4) 485*** is referred to. The aforesaid judgment has been followed by the Hon'ble Supreme Court and also by various High Courts.

20.A particular method has been prescribed for conduct of the audit and for initiating surcharge proceedings to recover the amount from the Trustees and therefore, surcharge proceedings cannot be straightaway initiated against the petitioners.

21.Therefore, I find sufficient reasons to allow this writ petition. Therefore, this writ petition stands allowed. The impugned show cause notice dated 01.07.2017 of the 2nd respondent is hereby quashed. Liberty is however given to the respondents to conduct an audit in terms of Sections 89, 90 and 91 of the Act r/w the Determination of Surcharge Rules framed and G.O.Ms.No.187, C.T. and RE Department, dated 18.02.1996 and thereafter initiate surcharge proceeding, if required. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

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

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

3.The Inspector,
Hindu Religious and Charitable Endowment, Madurai North.

+1 CC to M/s.SPL GP (SR-11866[F] dated 14/03/2022)
+1 CC to M/s.J.ANANDHAVALLI, Advocate (SR-11931[F] dated 14/03/2022

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11.03.2022

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