



W.P(MD). No. 28119 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2022

CORAM

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

W.P(MD). No. 28119 of 2022

and

W.M.P(MD). No. 22198 of 2022

Pavunathal @ Periyathai

... Petitioner

-VS-

Thakkar / Fit Person,
Arulmigu Chellandi Amman Thirukovil,
Periya Mandavadi,
Oddanchatram Taluk,
Dindigul District.

... Respondent

Prayer:- Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records pertaining to the impugned notice issued by the respondent dated 30.11.2022 and quash the same as illegal.

For Petitioner : Mr. D.Venkatesh

ORDER

Heard Mr. D.Venkatesh Learned Counsel for the Petitioner and perused the materials placed on record, apart from the pleadings of the parties.



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2. The Writ Petition challenges the proceedings dated 30.11.2022 issued by the Respondent, which is evidently a notice calling upon the Petitioner to surrender possession of the property failing which action would be taken under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, (hereinafter referred to as 'HR & CE Act' for short) for his eviction treating him as an encroacher of the property belonging to the Respondent. It is needless to add here that if the Petitioner disputes the said claim of the Respondent, he would have to state his objections with reasons by way of reply and in the event of the Respondent not accepting the same, resort would have to be made to the procedure prescribed in Section 78 of the HR & CE Act.

3. The consistent legal position has been reiterated by the Hon'ble Supreme Court of India in ***Union of India -vs- Kunisetty Satyanarayana*** [(2006) 12 SCC 28] 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. It would be useful here to extract the relevant passages from the said decision which read 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 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 infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.*

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.”*



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In such circumstances, 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 and there is no necessity for the Court to interfere at this pre-mature stage of the matter.

4. In view of the same, Learned Counsel for the Petitioner seeks permission of this Court to withdraw the Writ Petition reserving the rights of the Petitioner to raise all contentions by way of reply and in the eviction proceedings before the concerned authority, if taken against him, and he has made an endorsement to that effect in the court record. Though obvious, it is made clear that no view has been expressed by the court on the merits of the controversy involved in the matter.

In fine, the Writ Petition is dismissed as withdrawn with the aforesaid clarifications. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index: Yes/No

Note: Issue order copy by 26.12.2022.



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To

Thakkar / Fit Person,
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Periya Mandavadi,
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P.D. AUDIKESAVALU, J.

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