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W.P.No.2530 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2023

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.2530 of 2023

Jayaraman T.M.

.. Petitioner

Vs

1.The National Commission for Scheduled Castes,
5th Floor, Lok Nayak Bhawan,
Khan Market,
New Delhi-110 003.

2.The Commissioner,
Hindu Religious and Charitable Endowments,
119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai-600 034.

3.K.Sinivasan

4.The Executive Officer/Thakkar,
Arulmigu Sakkiyamman Tirukkovil,
Thasirippalli,
Krishnagiri District-685 001.

.. Respondents

(Respondent No.4 impleaded as per the order
dt. 1.3.2023 made in WMP.No.6296 of 2023)



W.P.No.2530 of 2023

Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the records of the impugned order dated 18.10.2022 passed by the first respondent Commission in File No.14/21/T.N/2022-ESDW and quash the same.

For the Petitioner : Mr.Naveen Kumar Murthi
for Mr.G.V.Mohan Kumar
and Mr.C.Palanisamy

For the Respondents : Mr.G.Ilangovan
CGSCC
for respondent No.1

: Mr.P.Muthukumar
State Government Pleader
for respondent No.2

: Mr.Srinath Sridevan
Senior Counsel
for Mr.Bhagavath Krishnan

: Mr.N.R.R.Arun Natarajan
Spl. Govt. Pleader (HR&CE)
for respondent No.4

ORDER

(Order of the court was made by the Hon'ble Acting Chief Justice)

Jayaram T.K., son of Munusamy, a resident of V.Madepalli Village, Krishnagiri District, has filed this writ petition under Article



W.P.No.2530 of 2023

226 of the Constitution of India assailing the order dated 18.10.2022 passed in File No.14/21/T.N./2022-ESDW by the National Commission for Scheduled Castes, New Delhi [for brevity, "*the Commission*"] injuncting the Hindu Religious and Charitable Endowments Department from taking any further action in respect of the land belonging to Arulmigu Sakiyamman Temple in whatsoever circumstance without the knowledge of the Commission. The Commission further directed the officials, who were present before it, to maintain status-quo in the matter.

2. Mr.Naveen Kumar Murthi, learned counsel appearing on behalf of the petitioner, would submit that Arulmigu Sakiyamman Temple [for brevity, "*the temple*"] situate in Madepalli Village, Krishnagiri District, is common to several worshippers of the Hindu religion across all communities, including the Scheduled Caste community. The petitioner also belongs to the Scheduled Caste community and is a devotee of the temple and, therefore, has locus standi to file this writ petition.



W.P.No.2530 of 2023

WEB COPY

3. Learned counsel for the petitioner further submitted that since the third respondent, K.Srinivasan, encroached the lands belonging to the temple situated at Survey Nos.85 and 85-150/B, 85-169/3 in Medapalli Village, Krishnagiri District, measuring an extent of 3.75 acres, the officials of the HR&CE Department had initiated action against the third respondent and ten other persons by issuing a notice under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 [for brevity, "*the Act of 1959*"], calling upon them to show cause as to why action should not be taken for removal of the encroachments from the lands belonging to the temple.

4. Learned counsel also submitted that the third respondent, being fully aware of the fact that he has no legal or civil right over the lands belonging to the temple, without even giving his brief explanation with supportive documents to show that the lands in question belong to him, has straightaway filed a complaint addressed to the Dr.Anju Bala, Member of the Commission, in contravention of Rule 7.4.1 (a) of the Rules of Procedure of the



W.P.No.2530 of 2023

WEB COPY

National Commission for Scheduled Castes which mandates that the complaint should be directly addressed to the Chairman/Vice-Chairman/Secretary of the Commission or the heads of its State Offices. He further submitted that the said complaint lodged by the third respondent was received by Dr.Anju Bala, Member of the Commission, and on 10.8.2022 she called for report within seven days. According to the petitioner, the complaint addressed to the Member of the Commission ought not to have been entertained at all.

5. Taking support from Article 338(8) of the Constitution of India, learned counsel for the petitioner submitted that although the Commission has got power to investigate any matter referred to it in sub-clause (a) or inquire into any complaint referred to in sub-clause (b) of clause (5) and enjoys the powers of a Civil Court trying a suit for the purposes of (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath; (b) requiring the discovery and production of any documents; (c) receiving evidence on affidavits; (d) requisitioning



W.P.No.2530 of 2023

WEB COPY

any public or copy thereof from any court or office; (e) issuing commissions for the examination of witnesses and documents; (f) any other matter which the President may, by rule, determine, the Commission is not empowered to pass an order of injunction injuncting any authority to inquire into the matter covered by a specific statute like the Act of 1959, invoking which power the show cause notice was issued to the third respondent and ten other encroachers in the case on hand. He hastened to add that it is the bounden duty of the temple authorities to safeguard the land of the temple and, therefore, the action initiated for removal of the encroachments from the lands by issuing notices under Section 78 of the Act of 1959 does not warrant interference.

6. Refuting the averment contained in paragraph (2) of the complaint filed by the third respondent before the Commission that the third respondent alone was targeted and harassed as he belongs to the Scheduled Caste community, learned counsel for the petitioner submitted that the eviction notice dated 8.8.2022 was issued to 11 persons, including the third respondent, and the third



W.P.No.2530 of 2023

respondent cannot raise the plea of discrimination on the ground of community.

7. Taking support from a judgment of the Apex Court in the case of *All India Indian Overseas Bank SC and ST Employees' Welfare Association and others v. Union of India and others, (1996) 6 SCC 606*, learned counsel for the petitioner submitted that when a similar issue as to whether the Commission is empowered to pass an order of injunction was raised, the Apex Court after examining the language employed in Article 338(8) of the Constitution of India has clearly and vividly ruled that the Commission having not been specifically granted any power to grant an order of interim injunction, lacks any authority to pass an order of interim injunction. Learned counsel specifically pointed out the observation of the Apex Court to the effect that the powers of a civil court of granting injunctions, temporary or permanent, do not inhere in the Commission nor can such a power be inferred or derived from Article 338(8) of the Constitution of India.



W.P.No.2530 of 2023

WEB COPY

8. Again drawing our attention to the order dated 18.10.2022 passed by the Commission, learned counsel for the petitioner submitted that when the land in question is situate in Madepalli Village, Krishnagiri District and the third respondent disputes the claim of encroachment, it is not known why the third respondent has chosen to lodge a complaint from Bangalore. He pleaded that the same only shows that the third respondent does not belong to Madepalli Village, Krishnagiri District. However, this vital aspect has not been considered by the Commission.

9. Based on the aforesaid arguments, learned counsel for the petitioner prayed for setting aside the impugned order dated 18.10.2022 passed by the Commission and a consequential direction to the HR&CE Department to pursue the matter to the logical end so that proper inquiry can be held and the grievance of the petitioner can be properly addressed by the authorities.

10. Mr.Srinath Sridevan, learned Senior Counsel appearing on



W.P.No.2530 of 2023

behalf of the third respondent, heavily urged this court to dismiss the writ petition on the premise that the petitioner has no locus to come to this court as against the impugned order dated 18.10.2022 passed by the Commission. He further contended that when the pleadings are complete before the Commission, in which the HR&CE Department on receipt of the summons has filed its counter, the Commission should be allowed to adjudicate upon the complaint and arrive at a conclusion. He added that the petitioner has an axe to grind against the third respondent and, therefore, to wreak vengeance, he has filed this writ petition, which should be dismissed as he lacks locus standi.

11. Learned Senior Counsel for the third respondent submitted that when the third respondent has made a specific case before the Commission that he and his predecessors have been in possession and enjoyment of the lands in question for over 200 years, but he was denied electricity service connection without assigning any rhyme or reason, may be on the ground that he belongs to the Scheduled Caste community, the Commission has rightly passed the



W.P.No.2530 of 2023

order dated 18.10.2022 exercising its inherent power under New Rule 7.2(a)(vii) of the Rules, which were notified on 25.3.2009, after the judgment of the Supreme Court in the case of *All India Indian Overseas Bank SC and ST Employees' Welfare Association and others*, supra. Therefore, the said decision of the Supreme Court has no relevance because much water has flown pursuant to the issuance of the aforesaid notification. When the judgment in the case of *All India Indian Overseas Bank SC and ST Employees' Welfare Association and others*, supra, was pronounced obviously the Rules of Procedure of the National Commission for Scheduled Castes were not available granting inherent power to the Commission, but since there is a New Rule empowering the Commission to pass interim order, the impugned order is valid in law and, therefore, without even questioning the relevant Rule, the writ petition ought not to be entertained.

12. Learned Senior Counsel for the third respondent also stated that when it is the specific case of the third respondent that he has not encroached the temple lands, it is for the Commission to



W.P.No.2530 of 2023

render a finding whether the third respondent is wrongly in possession of the land belonging to the temple or the land does not belong to the temple.

13. Continuing his arguments, Mr.Srinath Sridevan, learned Senior Counsel for the third respondent, submitted that it is a simple case of harassment meted out to the third respondent by the officers of the HR&CE Department wrongly exercising the power under Section 78 of the Act of 1959 only against the third respondent. When the third respondent has taken a ground that the land belongs to him and does not belong to the temple, it is for the temple to substantiate their case and disprove the averment made by the third respondent before the Commission. When the Commission is seized of the matter, which is ripe for hearing, there is no need for this court to waste its precious time. Even if the petitioner is aggrieved, he may approach the Commission seeking redressal of this grievance and cannot file a writ petition. When the petitioner has got legal statutory remedy before the Commission, he cannot be allowed to maintain the writ petition. Therefore, he



W.P.No.2530 of 2023

WEB COPY

prayed for dismissal of the writ petition.

14. Mr.P.Muthukumar, learned State Government Pleader appearing on behalf of second respondent, and Mr.N.R.R.Arun Natarajan, learned Special Government Pleader appearing on behalf of the fourth respondent, submitted that it is a clear case of gross misuse of the process of law by the third respondent and, therefore, the writ petition filed by the petitioner questioning the validity of the order passed by the Commission, which is running contrary to the mandate of Article 338(8) of the Constitution, be entertained and also allowed. It is further submitted that the Settlement Tahsildar has passed proceedings holding that the land in question belongs to the temple. Based on the said order, the Executive Officer of the temple has issued notice to 11 encroachers, including the petitioner, under Section 78 of the Act of 1959. Instead of giving a brief reply enclosing supportive documents, the third respondent has wrongly invoked the jurisdiction of the Commission. It is submitted that the land belongs to the temple. When the notice has been issued to 11 encroachers, it does not lie in the



W.P.No.2530 of 2023

WEB COPY

mouth of the third respondent to say that he alone has been singled out and subjected to harassment on the ground of his communal status. When the third respondent has been issued an eviction notice on 8.8.2022, instead of submitting his explanation, he ought not to have approached the Commission raising a different plea that he has been denied electricity service connection and he has been singled out and targeted to dispossess him from the land in question. Till date the third respondent has not produced any shred of material to prove that the land belongs to him.

15. Concluding their arguments, it is submitted that the fact that the Rules of Procedure of the National Commission for Scheduled Castes were notified on 15.3.2009 does not make any impact because Article 338(8) of the Constitution has been vividly interpreted by the Apex Court in the case of *All India Indian Overseas Bank SC and ST Employees' Welfare Association and others*, supra, making it clear that the Commission although enjoys the powers of the Civil Court does not have power to grant injunctions, temporary or permanent. In any event, the Apex Court



W.P.No.2530 of 2023

decision holding that the Commission has no power to pass an order of interim injunction is binding precedent under Article 141 of the Constitution of India. In the present case, the interim order challenged by the petitioner clearly shows that the HR&CE Department and the Executive Officer of the temple have been enjoined by the Commission from taking any action in respect of the lands in question. This is against the command of Article 338(8) of the Constitution of India. Therefore, the writ petition deserves to be allowed.

16. After hearing learned counsel on either side, we find merit in the submissions made by learned counsel for the petitioner and learned counsel for the respondent authorities.

17. Since 11 persons have encroached the land belonging to Arulmigu Sakiyamman Temple situate in Madepalli Village, Krishnagiri District, eviction notices were issued to all those 11 persons including the third respondent/Mr.K.Sinivasan under Section 78 of the Act of 1959 calling upon them to show cause as to



W.P.No.2530 of 2023

why action should not be taken for removal of the encroachments from the lands belonging to the temple. Peculiarly, the third respondent alone straightaway filed a complaint addressing to Dr.Anju Bala, Member of the Commission, as against Rule 7.4.1(a) of the Rules of Procedure of the National Commission for Scheduled Castes, which mandates that the complaint should be directly addressed to the Chairman/Vice-Chairman/Secretary to the Commission. The said complaint given by the third respondent was ironically received by Dr.Anju Bala, Member of the Commission and thereafter, on 10.08.2022, she called for report within 7 days. Overlooking the procedures, the Commission has also passed the order dated 18.10.2022 exercising its inherent power under Rule 7.2(a)(vii) of the Rules notified on 25.03.2009, which is after the judgment of the Hon'ble Apex Court in ***All India Indian Overseas Bank SC and ST Employees' Welfare Association and others (cited supra)***, in which, the Hon'ble Apex Court has held that the Commission having not been specifically granted any power to issue interim injunctions does not have any authority to pass an order of interim injunction. The Hon'ble Apex Court while interpreting Article



W.P.No.2530 of 2023

338(8) of the Constitution of India has made it clear that the Commission although enjoys the power of the Civil Court does not have the power to grant injunctions either temporary or permanent. Therefore, we have no hesitation to hold that there is infirmity in the order passed by the Commission.

18. Therefore, the limited question raised in the writ petition is as to whether the Commission has got the power to issue a direction in the nature of interim injunction. The very same question has been raised and answered by the Apex Court in the case of *All India Indian Overseas Bank SC and ST Employees' Welfare Association and others*, supra. The relevant portions of the order passed by the Supreme Court wherein the issue has been raised and answered are extracted hereunder:

"3. The short question that arises for consideration in this matter is whether the Commission had the power to issue a direction in the nature of an interim injunction? The appellant supports the letter dated 4-3-1993 of the Commission on the facts of the case which



WEB COPY



W.P.No.2530 of 2023

supposedly justify the passing of an interim direction of the type contained in the letter dated 4-3-1993. The appellant refers to Article 338, clauses (5) and (8) of the Constitution introduced by the Constitution (Sixty-fifth Amendment) Act, 1990 to argue that the Commission had power to requisition public record and hence it could issue directions as if it enjoyed powers like a civil court for all purposes. Further the appellant contends that even a single member of the Commission has every authority to pass a direction on behalf of the entire Commission and hence the High Court was wrong in expressing the view that a single member of the Commission could not have issued the direction contained in the letter dated 4-3-1993. The appellant further contends that no writ would lie against an interim order of the Commission.

...

10. Interestingly, here, in clause (8) of Article 338, the words used are "the Commission shall ... have all the powers of the Civil Court trying a suit". But the words "all the powers of a Civil Court" have to be exercised "while investigating any matter referred to in sub-clause (a) or inquiring into any complaint



WEB COPY



W.P.No.2530 of 2023

referred to in sub-clause (b) of clause 5". All the procedural powers of a civil court are given to the Commission for the purpose of investigating and inquiring into these matters and that too for that limited purpose only. **The powers of a civil court of granting injunctions, temporary or permanent, do not inhere in the Commission nor can such a power be inferred or derived from a reading of clause (8) of Article 338 of the Constitution.**

11. The Commission having not been specifically granted any power to issue interim injunctions, lacks the authority to issue an order of the type found in the letter dated 4-3-1993. The order itself being bad for want of jurisdiction, all other questions and considerations raised in the appeal are redundant. The High Court was justified in taking the view it did. The appeal is dismissed.."

[emphasis supplied]

19. In view of the law enunciated by the Apex Court in the case of *All India Indian Overseas Bank SC and ST Employees'*



W.P.No.2530 of 2023

Welfare Association and others, supra, we hold that the Commission lacks jurisdiction to pass the order of interim injunction dated 18.10.2022.

20. Further, on a perusal of the additional complaint filed by the third respondent, it can be seen that when he contended that the temple is not in existence, taking contra stand he pleaded that the Executive Officer of the temple has neglected to support him for granting permission for electricity connection. Thus, it can be seen that, on the face of it, the complaint does not disclose any deprivation of right, even to invoke the jurisdiction of the Commission as per Article 338(5)(b) of the Constitution of India.

21. For all the reasons mentioned supra, the writ petition stands allowed and the impugned order dated 18.10.2022 passed by the Commission is set aside. The third respondent is directed to pay costs assessed at Rs.2,000/- to the fourth respondent within two weeks from the date of receipt of a copy of this order for misusing the legal process. There will be no order as to costs.



W.P.No.2530 of 2023

Consequently, W.M.P.Nos.2623, 2624 and 4467 of 2023 are closed.

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(T.R., ACJ.) (D.B.C., J.)
23.03.2023

Index : Yes
Neutral Citation : Yes
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Note: Issue order copy today (i.e., on 04.05.2023)

To:

- 1.The National Commission for Scheduled Castes,
5th Floor, Lok Nayak Bhawan,
Khan Market,
New Delhi-110 003.
- 2.The Commissioner,
Hindu Religious and Charitable Endowments,
119, Uthamar Gandhi Salai,
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- 3.The Executive Officer/Thakkar,
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W.P.No.2530 of 2023

THE HON'BLE ACTING CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J.

(sasi)

W.P.No.2530 of 2023

23.03.2023