



W.P.No.10142 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 03.04.2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.10142 of 2023
and
W.M.P.No.10166 of 2023

K.Rajan

...Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable
Endowment Department
No.119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai – 600 034.

2.The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
No.130, R.K.Mutt Road,
Mylapore, Chennai – 600 004.

3.The Assistant Commissioner,
Hindu Religious and Charitable
Endowment Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai – 600 034.

4.Sri.Logavinayagar Temple,



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Rep.by its The Executive Officer / Fit Person,
Pillaiyar Koil Street,
Maduvankarai, Guindy,
Chennai – 600 032.

..Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Declaration, declaring that the petitioner is entitled for certified copy of the adjudication dated 28.02.2023 and direct the 2nd respondent to furnish the adjudication dated 28.02.2023.

For Petitioner : Mr.A.R.Nixon

For R1 to R4 : Mr.N.R.R.Arun Natarajan
Special Government Pleader
(For HR & CE)

ORDER

The Writ of Declaration has been instituted to declare that the petitioner is entitled for certified copy of the adjudication dated 28.02.2023 and to direct the 2nd respondent to furnish the adjudication dated 28.02.2023.

2. Admittedly, the respondent / Hindu Religious and Charitable Endowments Department (hereinafter referred to as 'HR & CE Department') initiated Eviction proceedings under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as



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'HR & CE Act') against 25 respondents in M.P.No.134/2018 dated 20.12.2018.

3. The learned counsel for the petitioner mainly contended that the Adjudicating Authority has recorded some notings in the file and such notings made in the adjudication has not been communicated to the writ petitioner and therefore, the petitioner has chosen to file the present writ petition.

4. The writ petitioner submitted an application for the certified copy of the notings and the said application was also not considered by the competent authorities.

5. It is not in dispute that the enquiry is in progress and the examination of witnesses are going on. The evidence of the petitioner's side was completed and the examination of other witnesses are in progress. While so, the petitioner apprehends that the notings made by the Adjudicating Authority is against his interest and therefore, it is to be furnished to him based on the application submitted.



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6. The learned counsel appearing for the petitioner before the Adjudicating Authority filed a memo on 03.03.2023, asking the competent authority to furnish the certified copy of the notings. The memo had not been entertained or received by the adjudicating Court and therefore, the petitioner has no other option, except filing the present writ petition.

7. The learned counsel for the petitioner contended that the Joint Commissioner of HR & CE Department has recorded adverse remarks against the witness in her notes paper, which has not been disclosed to any person. The notes paper is a public record. Thus, the petitioner is entitled for a copy of the said notings made by the Joint Commissioner.

8. The learned Special Government Pleader appearing on behalf of the respondents / HR & CE Department objected the said contention by stating that notings were made by the Presiding Officers with reference to the facts, opinions or otherwise formed at the time of hearing and such notings cannot form part and parcel of record. Therefore, the petitioner is not entitled to seek certified copy of such notings made by the Presiding



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Officer at the time of hearing of the case. The statement of the witnesses recorded alone is to be furnished and that has already been furnished to the petitioner, which was acknowledged. In respect of notings made by the Presiding Officer in the file, it is for the personal understanding of the Presiding Officer concerned and to form an opinion with reference to the facts and circumstances of the case. Therefore, the very claim made by the petitioner is untenable.

9. The learned Special Government Pleader appearing on behalf of the respondents / HR & CE Department relied on the judgment of the Delhi High Court in the case of ***Secretary General, Supreme Court of India Vs. Subhash Chandra Agarwal***, reported in ***ILR (2010) II Delhi 1*** and the relevant paragraph is extracted hereunder:

“62. The apprehension of the learned Attorney General that unless a restrictive meaning is given to Section 2 (j), the notes or jottings by the Judges or their draft judgments would fall within the purview of the Information Act is misplaced. Notes taken by the Judges while hearing a case cannot be treated as final views expressed by them on the case. They are meant only for the use of the Judges and cannot be held to be a part of a record “held” by the public authority. However, if



*the Judge turns in notes along with the rest of his files to be maintained as a part of the record, the same may be disclosed. It would be thus retained by the registry. Insofar as the draft judgments are concerned, it has been explained by Justice Vivian Bose in **Surendra Singh v. State of UP**, AIR 1954 SC 194:*

“Judges may, and often do, discuss the matter among themselves and reach a tentative conclusion. That is not their judgment. They may write and exchange drafts. Those are not the judgments either, however heavily and often they may have been signed. The final operative act is that which is formally declared in open court with the intention of making it the operative decision of the Court. That is what constitutes the ‘judgment’...”

The above observations though made in a different context, highlight the status of the proceedings that take place before the actual delivery of the judgment. Even the draft judgment signed and exchanged is not to be considered as final judgment but only tentative view liable to be changed. A draft judgment therefore, obviously cannot be said to be information held by a public authority.”

10. Relying on the above judgment, the learned Special Government



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Pleader appearing on behalf of the respondents / HR & CE Department

reiterated that the parties are prolonging the trial and already forty hearings were completed and still the Presiding Officer is unable to conclude the proceedings. The lawyers are appearing in the cases and adjournments are obtained on flimsy reasons and the authorities are not in a position to conclude the proceedings on account of non co-operation on the part of the parties concerned.

11. The learned counsel for the petitioner states that many number of cases are listed before the Presiding Officers and therefore, they are adjourning the matters on account of time constraints.

12. May that as it be. This Court is of the considered opinion that the cases on Board are to be regulated by the Presiding Officers themselves as they are the best persons to decide, what all are the cases, which are to be disposed of quickly and what all are the cases which can take more time for disposal. It is the discretionary power of the Presiding Officers to take decisions and proceed in accordance with law. However, the authorities competent must ensure that adjournments are granted only on genuine



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grounds and not on flimsy reasons. Rule is to conduct the cases, whenever it is listed. Adjournment is an exception. No party to the litigation shall be allowed to prolong or protract the issue by getting adjournments on flimsy grounds. Thus, the adjournments are to be granted only if any request is made by the parties on genuine grounds and by recording reasons but not in a casual manner.

13. In the present case, the learned Special Government Pleader appearing on behalf of the respondents / HR & CE Department made a submission that during the second day of cross-examination on 28.02.2023, the 25th respondent/writ petitioner herein had not properly answered the questions asked in the cross-examination and further behaved indecently by making careless signs towards the Forum. At that point of time, the Forum decided to close the cross-examination of 25th respondent with the suggestion of the petitioner counsel and made the adjudication as 'cross closed'.

14. Such misbehaviour of the parties or showing wrong signs to the



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Presiding Officer or at the learned counsel at no circumstances be tolerated.

Any misbehaviour during examination or adjudication must be viewed seriously and the Presiding Officer is empowered to initiate all appropriate actions in the manner known to law.

15. It is needless to state that the parties and the respective learned counsels appearing on behalf of the parties are expected to maintain Decorum during the course of proceedings and in the event of any misconduct, misbehaviour or otherwise during the course of proceedings, they are liable for prosecution and the Presiding Officer is empowered to initiate appropriate actions in the manner known to law.

16. Creating certain emotional scenes during the course of proceedings are to be avoided and due respect towards the proceedings under the Act must be shown by all the parties concerned.

17. The practice of creating certain situation either by the parties or by the learned counsel appearing for the parties cannot be appreciated by this Court. All concerned parties must ensure that the proceedings are



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conducted in the manner contemplated under the provisions of the Act and Rules and by mutual respect. Therefore, this Court is of the considered opinion that such writ petitions filed during the intermission of the enquiry proceedings cannot be entertained in a routine manner. Regarding the notings of the Presiding Officer, it cannot be considered as a public document and therefore, the petitioner is not entitled to seek the certified copy of the same. The petitioner is entitled to seek the statement of witnesses made during the cross-examination and other proceedings and certainly not the notings made by the Presiding Officer in the files, which are made for the understanding of the Presiding Officer about the case. Hence, such notings cannot be construed as a public document for the purpose of getting the certified copies.

18. Admittedly, no final order has been passed and examination of witnesses are in progress. Therefore, certain notings made by the Presiding Officer for their convenience and for the better understanding of the facts, and circumstances of the case or otherwise cannot be construed as a public document and therefore, the petitioner is not entitled to seek the certified copy of such personal notings made by the Presiding Officer, while



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conducting the enquiry proceedings.

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19. Section 78 of the HR and CE Act enumerates “*Where the Assistant Commissioner having jurisdiction either suo motu or upon a complaint made by the trustee **“has reason to believe”** that any person has encroached upon any land, building, tank, well, spring or water-course or any space wherever situation belonging to the religious institution or endowment, he shall report the fact together with relevant particulars to the Joint Commissioner having jurisdiction over the division in which the religious institution or endowment is situated*”.

20. If the authority competent under Section 78 of the HR & CE Act has '***reason to believe***' that any person is in possession of the Temple property, then an enquiry is to be conducted by following the procedures. Sub-Section (4) to Section 78 of the HR & CE Act stipulates “*after considering the objections, if any, of the encroacher received during the period specified in the notice referred to in sub-section (2) and after conducting such inquiry as may be prescribed, the Joint Commissioner is satisfied that there has been an encroachment, he may by order and for*



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reasons to be recorded, require the encroacher to remove the encroachment and deliver possession of the property (land or building or space) encroached upon to the trustee before the date specified in such order”.

21. The procedures as contemplated are unambiguous. Once the competent authority has '**reason to believe**' that the property belongs to a religious institution, and if any person has encroached upon such property belonging to the religious institution, the proceedings can be initiated under Section 78 of the HR & CE Act. Under Sub-Section (2) to Section 78 of the HR & CE Act, summons are to be issued to such persons. Thereafter, an enquiry is to be conducted. Regarding the holding of enquiry, procedures as contemplated under the HR & CE Act is to be followed by the competent authorities. Thus, an opportunity is to be provided to the encroachers, who in turn, is entitled to defend their case by availing the opportunity.

22. While defending the case, the parties are bound to follow the procedures and in the event of any misbehaviour, misconduct or otherwise, the Presiding Officer, who is conducting the enquiry, is empowered to initiate appropriate action against all such persons in the manner known to



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law.

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23. The learned Special Government Pleader appearing on behalf of the respondents / HR & CE Department brought to the notice of this Court that 40 hearings were already over and still the Presiding Officer is unable to conclude the proceedings on account of various reasons.

24. This being the factum, the Presiding Officer in this case has to complete the proceedings as expeditiously as possible and pass final orders without causing any undue delay. In order to avoid such untoward remarks either against the Presiding Officer or against the witnesses or otherwise, the Presiding Officers shall conduct the enquiry proceedings by installing CCTV Cameras or conduct the proceedings in a hall, where such CCTV cameras are made available, so as to ensure that unnecessary allegations are not made against the Presiding Officers / competent authorities.

25. In the present case, the 2nd respondent / The Joint Commissioner is directed to proceed with the enquiry and conclude the same and pass final orders within a period of three months from the date of receipt of a copy of



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this order.

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26. With this direction, the writ petition stands disposed of. No costs.

Consequently, connected miscellaneous petition is closed.

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Index : Yes
Speaking order
Neutral Citation: Yes
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S.M.SUBRAMANIAM, J.

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