



W.A. No. 1460 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.07.2023

Pronounced on : 13.07.2023

CORAM :

THE HON'BLE MR. SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

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

W.A. No. 1460 of 2023

and

C.M.P. No. 14118 of 2023

M.S.Senkathir Prakash

... Petitioner

-VS-

1. The Commissioner
Hindu Religious Charitable Endowment
Uthamar Gandhi Road
Chennai.
2. The Joint Commissioner
Hindu Religious Charitable Endowment
Machampalayam Village
Madhukarai Taluk
Coimbatore District.
3. The Assistant Commissioner
Hindu Religious Charitable Endowment
Machampalayam Village
Madhukarai Taluk
Coimbatore District.



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4. The Inspector
Hindu Religious Charitable Endowment
Perur, Coimbatore District.

5. S.K.Bhoopathy Yadav

... Respondents

Prayer:- Appeal under Clause 15 of the Letters Patent against the order dated 22.06.2023 passed in W.P. No. 11193 of 2023 by the learned Single Judge.

For Appellant : Mr. V.Raghavachari
Senior Counsel
For Ms. V.S.Usharani

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

J U D G M E N T

(Judgment of the Court was made by P.D. AUDIKESAVALU, J.)

The Appellant claims to be the Hereditary Trustee of Arulmigu Mariamman and Vinayagar Temple (hereinafter referred to as 'the Temple' for short) situated at Machampalayam Village, Madhukarai Taluk, Coimbatore District.

2. The Fifth Respondent, who is related to the Appellant, has a rival claim for the Hereditary Trusteeship of the Temple, is prosecuting the suit in O.S. No. 874 of 2017 before the Sub Court, Coimbatore in that regard. The Second Respondent by proceedings



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in Na.Ka.No. 1090/2023/Aa4/dated 24.03.2023 had called for the explanation of the Appellant for certain charges levelled against him in the conduct of the affairs of the Temple and pending enquiry into the same, he was placed under suspension, and the Fifth Respondent was appointed as Fit Person in the exercise of powers under Section 54(3) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 (hereinafter referred to as 'the Act' for short). The order was assailed by the Appellant in the Writ Petition in W.P. No. 11193 of 2023 before this Court.

3. After hearing the parties, the Writ Court by order dated 22.06.2023 expressed the view that it was incumbent upon the Appellant to submit his explanation for the charges and an enquiry would have to be conducted into the same and refused to delve into the challenge made to quash the charges. However, the appointment of the Fifth Respondent as the Fit Person was set aside and the concerned authorities were required to appoint an Executive Officer for administering the Temple, subject to the final decision to be taken after completion of the enquiry in the disciplinary



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proceedings taken against the Appellant. Aggrieved thereby, the Appellant has preferred this intra-court Appeal invoking Clause 15 of the Letters Patent Act, 1865.

4. Mr. V.Raghavachari, Learned Senior Counsel appearing for the Appellant strenuously contended that the Fifth Respondent, who has a rival claim for the Hereditary Trusteeship of the Temple, had been instigating the authorities under the Act to oust the Appellant from office and in that backdrop, the Second Respondent had issued the charge-memo and placed the Appellant under suspension and appointed the Fifth Respondent as Fit Person, which evidently smacks of malafides requiring interference by this Court. It is also sought to be canvassed that the same charges had been raised against the father of the Appellant, viz., Marudhachalam, while he was the Hereditary Trustee, which was closed after receiving his explanation and it was not permissible to call upon the Appellant to answer it once again at this distance of time. It is further pleaded that though the Appellant has been placed under suspension pending enquiry, in real effect, it stigmatizes him.



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5. Mr. N.R.R.Arun Natarajan, Learned Special Government Pleader, who takes notice for the First to Fourth Respondents, submits that the charges against the Appellant are grave in nature and no prejudice is caused to the Appellant, who has been called upon to submit his explanation in consonance with the principles of natural justice before taking final decision in the matter.

6. 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*



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(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 charges-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*



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and held that in view of the pendency of the proceedings initiated by him in that regard, it would not be appropriate to appoint him as Fit Person of the Temple till the finalization of the impugned proceedings initiated against the Appellant in this case.

8. We also concur with the Writ Court that in order to ascertain the true state of affairs of the Temple, the Second Respondent is fully justified in divesting the Appellant of its control by placing him under suspension till completion of the enquiry.

9. The Writ Court has accepted the contention of the Appellant that under the guise of placing the Appellant under suspension, the Second Respondent ought not to have appointed the Fifth Respondent as Fit Person of the Temple, and has further held that instead of appointing a Fit Person for the Temple pending the finalization of the charges against the Appellant, the proper recourse would be to appoint an Executive Officer in the exercise of powers under Section 45 of the Act, which is obviously a temporary arrangement to set right any irregularities in the administration of



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the Temple. In this context, it must be pointed out that the Hon'ble

Supreme Court of India in **Dr. Subramanian Swamy -vs- State of Tamil Nadu** [(2014) 5 SCC 75] has observed as follows:-

*"65. Even if the management of a temple is taken over to remedy the evil, the management must be handed over to the person concerned immediately after the evil stands remedied. Continuation thereafter would tantamount to usurpation of their proprietary rights or violation of the fundamental rights guaranteed by the Constitution in favour of the persons deprived. Therefore, taking over of the management in such circumstances must be for a limited period. Thus, such an expropriatory order requires to be considered strictly as it infringes the fundamental rights of the citizens and would amount to divesting them of their legitimate rights to manage and administer the temple for an indefinite period. We are of the view that the impugned order [**Sri Sabanayagar Temple v. State of Tamil Nadu**, (2009) 4 LW 705 : (2009) 8 MLJ 1503] is liable to be set aside for failure to prescribe the duration for which it will be in force.*



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66. *Supersession of rights of administration cannot be of a permanent enduring nature. Its life has to be reasonably fixed so as to be co-terminus with the removal of the consequences of maladministration. The reason is that the objective to take over the management and administration is not the removal and replacement of the existing administration but to rectify and stump out the consequences of maladministration. Power to regulate does not mean power to supersede the administration for indefinite period."*

The appointment of the Executive Officer, who holds the prescribed qualification, shall be made expeditiously and he shall hold such office for the limited period till the final decision is taken in the proceedings initiated by the Second Respondent against the Appellant, which shall not, in any event, exceed the maximum prescribed period in the Rules framed under the Act.

10. It shall be incumbent upon the Appellant to submit his explanation to the charges, if not already done, by 21.07.2023.



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After receipt of the explanation, the concerned authorities shall examine whether the same could be accepted to close the action, and if not satisfied, necessary further enquiry shall be conducted following the prescribed procedure in consonance with the principles of natural justice and reasoned order shall be passed dealing with each of the contentions raised on merits in accordance with law. Such exercise shall be completed by 30.09.2023 and the decision taken communicated to the concerned parties under written acknowledgment.

In the result, the Writ Appeal is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed.
No costs.

(S.V.G., C.J.) (P.D.A., J.)
13.07.2023

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Index : Yes/No
NCS : Yes/No

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