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W.P.No.27573 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.09.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P No.27573 of 2023
and W.MP Nos.27022,27027,27261 of 2023

1.S. Balaji

2.S.Chandramouli

3.S.Saishankar

...Petitioner

Vs.

1.The Joint Commissioner,
Hindu Religious & Endowment Department,
Mahatma Gandhi Salai,
Chennai-600034.

2.The Executive Officer,
Arulmighu Sowmiya Damodar Temple,
Villivakkam,
Chennai-600 049.

....Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent ending in the Notice dated 20.07.2023 and quash the same and pass a consequential direction to 1st respondent to dispose of the proceeding in Na.Ka.No.2008/2009/A3 dated 04.08.2015, pending on the file of the 1st respondent.



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For Petitioners : Mr. S. Krishna
For Respondents : Mr.N.R.R. Arun Natarajan,
Special Government Pleader (HR&CE)

ORDER

The writ petition is filed challenging the notice issued by the 2nd respondent for initiation proceedings under Section 78 of HR & CE Act treating the petitioners as an encroachers.

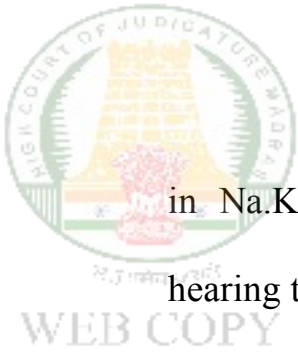
2. The learned counsel for the petitioners submit that earlier, similar notice was issued and proceedings under Section 78 of the HR & CE Act was initiated against the petitioners in Na.Ka.No.2008/2009/A3 dated 04.08.2015. The petitioners appeared before the 1st respondent and participated in the proceedings. After hearing the petitioners, the order was reserved on 17.12.2018. It is further stated that no final order has been passed by the 1st respondent in the earlier proceedings. However, strangely the impugned notice has been issued to the petitioners again initiating new proceedings under Section 78 of HR&CE Act.



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3. When the matter is taken up for hearing, the learned Special Government Pleader (HR &CE) appearing for the respondents on instructions, submits that earlier, proceedings under Section 78 of HR & CE was initiated against the petitioners and after hearing the petitioners, order was reserved on 17.12.2018. However, no final order has been passed. In these circumstances, the 1st respondent thought it fit to hear the petitioners again and hence the impugned notice has been issued to the petitioners.

4. Admittedly, the 1st respondent initiated proceedings under Section 78 of HR & CE Act against the petitioners earlier and order has been reserved on 17.12.2018 after hearing the petitioners. If the 1st respondent wants to hear the petitioners further, he can reopen the very same proceedings and after giving opportunity to the petitioners, proceed to pass final orders. Initiating another proceeding under Section 78 of the HR&CE Act is not tenable in law when no final order has been passed in proceedings initiated earlier. Therefore, this court is inclined to quash the impugned notice issued by the 1st respondent with liberty to reopen the earlier proceedings initiated against the petitioners



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in Na.Ka.No.2008/2009/A3 dated 04.08.2015 and pass final orders after hearing the petitioners.

5. At this juncture, the learned Special Government Pleader submits that as on today, the jurisdictional Joint Commissioner for the 2nd respondent temple is Joint Commissioner (Region-1), HR & CE Department, Chennai-600 006. In view of the said statement, the Joint Commissioner-1, HR & CE Department is permitted to reopen the earlier proceedings initiated against the petitioners and pass final orders after hearing the petitioners within a period of 12 weeks from the date of receipt of a copy of this order.

6. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

21.09.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

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Mahatma Gandhi Salai,
Chennai-600034.
- 2.The Executive Officer,
Arulmighu Sowmiya Damodar Temple,
Villivakkam,
Chennai-600 049.
3. The Joint Commissioner(Region-1)
HR & CE Department,
9th Floor, EVK Sampath Maligai,
Tamil Nadu Text Book Society Campus,
Nungambakkam, College road,
Chennai-600 006.



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S.SOUNTHAR, J.
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