



W.P. No. 26928 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

CORAM

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

W.P. No. 26928 of 2023

and

W.M.P. No. 26361 of 2023

1. K.V.Karthick

2. V.Kanchana

3. V.Sathya

4. V.Venkatesh

... Petitioners

-VS-

1. The Commissioner,
Hindu Religious and Charitable Endowment Department,
Uthamar Gandhi Salai,
Chennai – 600 034.

2. The Joint Commissioner,
HR & CE Department,
Balasundaram Road,
Coimbatore.

3. Arulmighu Thiruvankitanathaperumal Temple,
Rep. by its Executive Officer,
Sulur Village,
Sulur Taluk,
Coimbatore District.

Respondents

...



W.P. No. 26928 of 2023

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling upon the records about the Impugned Notice dated 16.08.2023 in Miscellaneous Petition No. 82/2022/B1 and quash the same and consequently direct the Third Respondent or anyone under it, not to interfere with the peaceful possession and enjoyment of the property in Survey No. 444/2 at Sulus Village, Sulus Taluk, Coimbatore District.

For Petitioners : Mrs. V.S.Usharani

For Respondents : Mr. N.R.R.Arun Natarajan,
Special Government Pleader
(for R1 & R2)

Mr. Rajesh Vivekanandan (for R3)

ORDER

Heard Mrs. V.S.Usharani, Learned Counsel for the Petitioners, Mr. N.R.R.Arun Natarajan, Learned Special Government Pleader appearing for the First and Second Respondents and Mr. Rajesh Vivekanandan, Learned Counsel for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the Notice dated 16.08.2023 in



W.P. No. 26928 of 2023

Miscellaneous Petition No. 82/2022/B1 issued by the Second Respondent,

which is evidently a show cause notice calling upon the Petitioners to show cause as to why encroachments made by him in Survey No. 444/2, Sular Village, Coimbatore District, should not be removed.

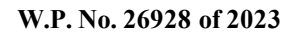
3. The consistent legal position has been reiterated by the Hon'ble Supreme Court of India in ***Union of India -vs- Kunisetty Satyanarayana*** [(2006) 12 SCC 28] that a charge memo or show cause notice cannot be challenged before the completion of enquiry and the proceedings cannot be interdicted till 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.*



W.P. No. 26928 of 2023

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.*



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.”

Having due regard to the aforesaid legal position, as there is nothing which precludes the Petitioners from raising the contentions in this Writ Petition in the reply to be submitted to the Second Respondent, who is bound to deal with the same before coming to any ultimate conclusion, there is no necessity for the Court to interfere at this pre-mature stage of the matter.

4. In such circumstances, this Court without expressing any view on the merits of the controversy involved in the matter, passes the following order:-

(i) it shall be incumbent upon the Petitioners to submit their explanation to the show-cause notice, which is impugned in the Writ Petition, if not done already, to the concerned authority by 15.11.2023;



W.P. No. 26928 of 2023

(ii) in the event of not being satisfied with the explanation submitted by the

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Petitioners, an enquiry shall be conducted following the prescribed procedure after affording full opportunity of personal hearing to the Petitioners to explain their position in that regard and a reasoned order shall be passed dealing with each of the contentions raised on merits and in accordance with law and the decision taken communicated under written acknowledgment; and

(iii) if any adverse decision is taken, the Petitioners may pursue legal remedies in accordance with law.

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

02.11.2023

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 06.11.2023.

ns1/vjt

To

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Uthamar Gandhi Salai,



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W.P. No. 26928 of 2023

P.D. AUDIKESAVALU, J.

nsI/vjt

W.P. No. 26928 of 2023

02.11.2023