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W.P. No. 27685 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2023

CORAM

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

**W.P. No. 27685 of 2023
and
W.M.P. No. 27156 of 2023**

The President,
Ameerunnisa Begum Sahiba Endowment Committee,
No. 76, Bharathidhasan Salai,
Triplicane,
Chennai – 600005.

... Petitioner

-VS-

The Chief Executive Officer,
Tamil Nadu Wakf Board,
No. 1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 1.

... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, calling for the records of the Respondent dated 05.09.2023 and made in Na. Ka. No. 10577/06/B9/Che and quash the same.

For Petitioner : Mr. N.A.Nissar Ahamed,
Senior Counsel for
Mr. N.A.Nassir Hussain

For Respondent : Mr. S.Haja Mohideen Gisthi,
Standing Counsel



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ORDER

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Heard Mr. N.A.Nissar Ahamed, Learned Senior Counsel appearing for the Petitioner and Mr. S.Haja Mohideen Gisthi, Learned Standing Counsel appearing for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the Proceedings in Na.Ka.No. 10577/06/B9/Che dated 05.09.2023 issued by the Respondent, which is evidently a show cause notice for which the Petitioner has been required for submit his explanation for the prosecution intended to be launched against him under Section 61 of the Waqf Act, 1995 (hereinafter referred to as 'the Act' for short).

3. The primordial contention of the Learned Senior Counsel for the Petitioner is that the administration of the Waqf of the Petitioner is carried out in accordance with the scheme decree dated 10.04.1922 in C.S. No. 196 of 1913 framed in the Original Side of this Court under Section 92 of the Code of Civil Procedure, 1973, and as such, the First Respondent cannot interfere into the affairs of the Waqf of the Petitioner.



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4. 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.*

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



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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.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet.

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.”



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Having due regard to the aforesaid legal position, as there is nothing which precludes the Petitioner from raising the contentions in this Writ Petition in the reply to be submitted to the 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.

5. 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 Petitioner and all other persons concerned to submit his explanation to the notice of enquiry, which is impugned in the Writ Petition, if not done already, to the Respondent by 19.01.2023;
- (ii) in the event of not being satisfied with the explanation submitted by the parties, an enquiry shall be conducted following the prescribed procedure after affording full opportunity of personal hearing to the Petitioner and all other persons concerned to explain their position in that regard;
- (iii) 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
- (iv) if any adverse decision is taken, the Petitioner may pursue legal remedies before the proper forum in the manner recognized by law.



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In the result, the Writ Petition is disposed on the aforesaid terms.

Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 29.12.2023.

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To

The Chief Executive Officer,
Tamil Nadu Wakf Board,
No. 1, Jaffar Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 1.



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P.D. AUDIKESAVALU, J.

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