



Writ Appeal No.3947 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 23.08.2023
DELIVERED ON: 25.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR. JUSTICE P.B.BALAJI

Writ Appeal No.3947 of 2019
and CMP.No.24766 of 2019

N. Kulandaivadivelu

.. Appellant

Versus

1. The Commissioner,
H.R. & C.E. (Admn.) Department,
Nungambakkam High Road,
2. The Joint Commissioner,
Hindu Religious & Charitable Endowments
(Admn.) Department, Coimbatore.
3. N.Venkatachalam
4. N.Balasubramani
5. K.Navaneedam
6. K.Veeramuthu
7. K.Selvaraj

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 30.07.2019 made in WP. No. 1799 of 2010 on the file of this Court.

For appellant	:	Mr. D. Rajagopal
For respondents	:	Mr. Yashwant,
		Additional Government Pleader for RR1 & 2
	:	No Appearance for RR3 to 7



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order dated 15.04.1933 has become final as it was not appealed against. While so, the second respondent initiated suo-motu proceedings in the year 1979 in O.A. No. 121 of 1979 under Section 63-A of the Act to review the order dated 15.04.1933 but subsequently dropped it by passing an order dated 18.06.1992 with an observation that there was no evidence of any public participation in the affairs of the temple.

4. According to the appellant, subsequently, for the same cause of action, the successor of the second respondent issued a notice under Section 63-A of the Act to once again review the earlier orders. In the said proceedings, the respondents 3 to 7 got themselves impleaded as party respondents and submitted as if they are having interest in the affairs of the temple in question. Therefore, aggrieved by the second suo motu proceedings, the appellant has filed W.P.No.3584 of 1994 before this Court, which was dismissed on 12.03.2001, with a direction to the second respondent to furnish all materials, indicating the reasons for initiating the suo motu revision and to complete the original application within a period of three months. While so, the second respondent appointed a Fit Person for this temple against which the appellant filed RP No. 30 of 2008 under Section 21 (1) of the Act, before the first respondent in which the first respondent passed an order directing the



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second respondent to complete the proceedings as expeditiously as possible and also granted interim stay of operation of the order, appointing fit person.

In spite of the same, the second respondent did not pass final orders in RP No. 30 of 2008. While that being so, on 20.11.2009, the second respondent appointed a Special Officer for the temple against which the appellant filed a revision before the first respondent. During the pendency of the revision before the first respondent, the appellant has filed the instant Writ Petition to quash the second suo motu proceedings initiated by the second respondent.

5. The learned single Judge, on considering the rival submissions held that the temple is maintained by the appellant and it was also declared as a private temple in the earlier proceedings. While so, it was held that till a decision is taken in the second suo motu proceedings initiated by the second respondent with regard to the character of the temple, the respondents 1 and 2 shall not interfere with the administration of the temple. The appellant was also directed to cooperate with the earlier disposal of the original application. Aggrieved by the said order dated 30.07.2019 passed in WP No. 1799 of 2010, the appellant has filed this writ appeal.



6. The learned counsel for the appellant submitted that the second *suo motu* proceedings initiated under Section 63(A) of the Act by the second respondent is without jurisdiction and there is no provision to initiate a second *suo motu* proceedings. When once the competent District Court has declared the nature and character of the temple in question, it cannot be reviewed by the second respondent by initiating suo motu proceedings for the second time, that too after a long passage of time.

7. The learned counsel appearing for the appellant would further submit that Section 63 of the Act does not confer any right or jurisdiction to the second respondent especially when already the dispute as to the nature and character of the temple has already been adjudicated in O.P.No.50 of 1930 before the District Court Coimabtoire by order dated 15.04.1933. Once the said order become final, the initiation of *suo motu* proceedings for the second time is illegal and arbitrary. The learned counsel for the appellant by relying upon the judgement of this Court in ***S.Sethuraman vs. R.Venkataraman and others reported in (2007) 6 SCC 382*** submitted that there is no estoppel on the part of the appellant to challenge the *suo motu* proceedings initiated by the second respondent by way of a Writ Petition and therefore, the writ petition is maintainable.



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WEB COPY 8. Per contra, the learned Special Government Pleader appearing for the respondents 1 and 2 would contend that the learned single Judge has passed an order adequately protecting the interest of the appellant. It is always open to the appellant to participate in the *suo motu* proceedings initiated by the second respondent, including its maintainability and it is for the second respondent to consider it. The learned Special Government Pleader for the respondents 1 and 2 further submitted that the appellant has already filed Writ Petition before this Court in WP.No.3584 of 1994, which was dismissed with a direction to the second respondent to pass orders within a period of three months. Subsequent to the order of this Court, the appellant has appeared for enquiry before the second respondents. Thereafter, he has filed the present writ petition challenging the *suo motu* proceedings issued by the second respondent, after a lapse of more than 2 decades. In support of this contention, the learned Special Government Pleader for the respondents 1 and 2 relied upon the judgment of this Court in ***Courtallam Town Panchayat vs. The Executive Officer, Thirukuthalanatha Swamy Devasthanam and others***. In that case, the plaintiff was entrusted with the right to manage the temple namely Kuthalanathaswamy Devasthanam, however, owing to certain complaints about non-performance of *Kattalais* and performance of religious and



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charitable duties, *suo motu proceedings* were initiated by the Joint Commissioner. Having regard to such facts, this Court refused to interfere with the *suo motu* proceedings. In the present case also, the *suo motu* proceedings were initiated mainly on the ground that the character of the temple has now changed owing to lapse of time and to ascertain the same, the *suo motu* proceedings have been initiated by the second respondent. In any event, the appellant has already appeared for enquiry before the second respondent. Once he appeared before the enquiry, pursuant to the direction of this Court in WP. No. 3584 of 1994, he is estopped from challenging the show cause notice issued by the second respondent. While so, the present appeal is devoid of any merits and it is liable only to be dismissed.

10. We have heard the learned counsel for both sides and perused the materials.

11. The question arises for consideration in this appeal is whether the *suo motu* proceedings initiated by the second respondent can be challenged by way of Writ Petition.



12. Before dealing with the said question, it is necessary to state that the *suo motu* proceedings initiated by the second respondent is questioned by the appellant on the ground that such proceedings is not contemplated under Section 63 of the Act. In fact, the appellant has already subjected himself to the jurisdiction of the second respondent, participated in the enquiry and it is pending from 2009. In the second *suo motu* proceedings, the respondents 3 to 7 have also impleaded themselves as parties and making a claim contrary to the one made by the appellant. Even the appellant has already preferred a statutory appeal against such *suo motu* proceedings initiated by the second respondent, before the first respondent and the first respondent remanded the matter back to the second respondent for fresh consideration. While so, at this stage, we refrain from going into the merits of the case or the maintainability of the *suo motu* proceedings initiated under Section 63 of the Act.

13. It is needless to mention that Section 63 of the Act empowers the second respondent to decide certain disputes and matters where any property or money has been given for the support of an institution, which is partly of religious character and partly of a secular character, or the performance of any service or charity connected with such an institution or where any property or money given is appropriated partly to religious and partly to secular uses. In



the present case, after initiation of the *second suo motu* proceedings by the second respondent, the respondents 3 to 7 has impleaded themselves as party respondents. The appellant has not questioned their impleadment. Therefore, in such circumstances, interest of justice demands that the *suo motu proceedings* initiated by the second respondent has to be permitted to be adjudicated on its own merits. The appellant is always at liberty to participate in the *suo motu* proceedings initiated by the second respondent and raise all the points that are raised in the present writ petition.

14. As regards the maintainability of the writ petition against the *suo motu* proceedings, admittedly, there is a statutory remedy of appeal provided before the first respondent. The appellant has also availed of such a remedy of appeal and the appellate authority/first respondent remanded the matter back to the second respondent, with a direction to complete the *suo motu* proceedings as expeditiously as possible. The appellant has not challenged the order of the first respondent passed in the statutory appeal. However, the present writ petition has been filed as against the very same *suo motu* proceedings of the second respondent against which appeal was already filed before the first respondent. While so, the writ petition is not maintainable when a statutory and in-built appeal remedy is provided before the first respondent.



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15. Even though the appellant placed reliance on the decision of the Honourable Supreme Court in *S. Sethuraman* case mentioned supra, the said decision has no application to this case. The said decision arises out of a service dispute raised by the appellant therein with respect to his promotion to the post of Headmaster. In that case, the Honourable Supreme Court held that the judicial review vested with the High Court under Article 226 of The Constitution of India could be invoked if the order under challenge contains errors apparent on the face of the record. In the present case, admittedly, the appellant has only challenged the show cause notice issued by the second respondent in the *suo motu* proceedings initiated by him. Such a proceedings initiated by the second respondent is still pending in which no final order has been passed. While so, it cannot be said that the present writ petition as against such a proceeding is maintainable.

16. At this juncture, learned counsel for the appellant submitted that the appellant will submit his objections before the respondents, by raising all the grounds and therefore, he seeks liberty to raise all the grounds before the authorities without being influenced by any of the observations made in this writ appeal.



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17. In the light of the above, we are not inclined to interfere with the order passed by the Writ Court. Accordingly, the Writ Appeal stands dismissed with liberty to the appellant to raise all the grounds which are raised in the writ petition, before the second respondent, at the time of enquiry. The enquiry in the *suo motu* proceedings shall be wrapped up by the second respondent after giving sufficient and adequate opportunity to the appellant as well as the respondents 3 to 7 and appropriate orders shall be passed on merits and in accordance with law, as expeditiously as possible, without being influenced by any of the observations made by this Court in the instant writ appeal. No costs. Consequently, connected miscellaneous petition is closed.

[D.K.K., J] [P.B.B., J.]
25.09.2023

Speaking order: Yes/No
Index : Yes/No
pvs/jvm

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