



W.P. (MD) No. 755 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2023

CORAM

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

W.P. (MD) No. 755 of 2023

and

W.M.P. (MD) No. 746 of 2023

P.S.Chandrasekararaja

... Petitioner

Vs.

Sankaranarayana Swami Kovil Devasthanam,
Sankaran Kovil Rep by its Executive Officer,
Sankarankovil,
Tenkasi District.

... Respondent

Petition filed under Article 226 of the Constitution of India, for issue of Writ of Certiorari, to call for the records from the respondent herein relating to his order passed in proceedings Na.Ka.No. 1288/1983/A1 dated 27.12.2022 and quash the same.

For Petitioner : Mr. V.K.Vijayaraghavan
for M/s. V.Venkatasamy

For Respondent : Mr. VR.Shanmuganathan

ORDER



W.P. (MD) No. 755 of 2023

WEB COPY

Heard Mr. V.K.Vijayaraghavan, Learned Counsel appearing for the Petitioner and Mr. VR.Shanmuganathan, Learned Counsel for the Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Respondent, viz., Sankaranarayana Swami Kovil Devasthanam, had instituted the suit in O.S. No. 360 of 1983 before the District Munsif Court, Sankarankovil, claiming that the property occupied by one S.N. Appasamy Bhattar, had been granted to him as Service Inam by the Respondent, but he had sold it to Chidhambaram Vellammal and four others, who in turn illegally transferred it to the Petitioner viz., P.S.Chandrasekararaja, on 30.09.1982 and had sought for declaration that the aforesaid sale transactions of the said property by the said S.N. Appasamy Bhattar and the purchasers from him in favour of the Petitioner were not binding on it and for permanent injunction restraining the Petitioner from putting up any construction in the said property. After contest between the Petitioner and the Respondent, it was ultimately held by the Hon'ble Supreme Court of India by Order dated 23.02.2022 in Civil Appeal No. 2671 of 2013 that the Respondent was entitled to the relief sought in that suit with the clarification that it would be open to the Respondent to



W.P. (MD) No. 755 of 2023

initiate proceedings under Section 21(7) of Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963, and to contest the question as to whether the services obliged to be performed by said S.N.Appasamy Bhattar or his progenies are still being performed or not. After the culmination of the aforesaid legal proceedings, the Respondent by notice dated 27.12.2022 has called upon the Petitioner to hand over vacant possession of the land, which is treated as an encroachment made by him of its property, failing which legal action would be taken including proceedings for a Contempt of Court, which is assailed in this Writ Petition.

3. The pivotal attack on the impugned order by the Petitioner is that as long as the progenies of the said S.N. Appasamy Bhattar, continue to render service in the Temple of the Respondent, the Petitioner cannot be dispossessed from the property purchased by him. It is highlighted by the Respondent that if the Petitioner has any objection for the claim to the property made by the Respondent, he would have to submit his explanation with supporting documents in that regard, which shall be duly considered by the concerned authority before taking any further course of action in the matter.



WEB COPY

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 reads 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



W.P. (MD) No. 755 of 2023

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.

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.”



W.P. (MD) No. 755 of 2023

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 with the impugned order at this pre-mature stage of the proceedings. It is needless to add here that in the event that the Respondent comes to the conclusion that the Petitioner is an encroacher on its property, it shall be incumbent upon the Respondent to follow the due process of law for evicting him from the premises, and the Petitioner shall not be precluded from pursuing the available legal remedies to resist the same in accordance with law and no view is expressed by this Court on the merits of the controversy involved in that regard.

5. In such circumstances, the Writ Petition is disposed on the following terms:-

- (i) it shall be incumbent upon the Petitioner to submit his explanation to the impugned notice with supporting documents to the Respondent by 30.06.2023;
- (ii) in the event of not being satisfied with the explanation submitted by the Petitioner, an enquiry shall be conducted following the prescribed



W.P. (MD) No. 755 of 2023

procedure after affording full opportunity of personal hearing to the

Petitioner to explain his position in that regard;

- (iii) a reasoned order shall be passed dealing with each of the contentions raised by the Petitioner on merits and in accordance with law and the decision taken communicated under written acknowledgment;
- (iv) consequently, the connected Miscellaneous Petitions are closed; and
- (v) there shall be no order as to costs.

22.02.2023

sj

NCC : Yes/No

Index : Yes/No

Note : Issue copy of the order by 22.06.2023.

To

The Executive Officer,
Sankaranarayana Swami Kovil Devasthanam,
Sankarankovil,
Tenkasi District.

Copy to

P.S.Chandrasekararaja,
S/o. Poosapadi Subba Raja,
No. 120, East Street,
South Balabakya Nagar,
Thirunelveli.



WEB COPY



W.P. (MD) No. 755 of 2023

P.D. AUDIKESAVALU, J.

sj

W.P. (MD) No. 755 of 2023

Dated : 22.02.2023