



W.P. No. 3322 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2024

CORAM

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

W.P. No. 3322 of 2024

S.Mohan

... Petitioner

-VS-

1. The Commissioner,
Hindu Religious and Charitable Endowment Department,
Uthamar Gandhi Road,
Nungambakkam,
Chennai - 600 034.

2. The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Padi,
Chennai - 600 034.

3. S.Sathyavasan

4. S.Venkatesan

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the First and Second Respondents to consider the Petitioner's representation dated 30.08.2023 and conduct the enquiry within the stipulated time prescribed by this Court.



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For Petitioner : Mr. M.Maharaja
For Respondents : Mr. S.Ravichandran,
Additional Government Pleader
(for R1 & R2)

ORDER

Heard Mr. M.Maharaja, Learned Counsel for the Petitioner and Mr. S.Ravichandran, Learned Additional Government Pleader, who takes notice for the First and Second Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The grievance ventilated by the Petitioner is that the Third and Fourth Respondents have been clandestinely declared to be a hereditary trustee of Arulmigu Muthumariamman Temple, Ambattur, Chennai by the Deputy Commissioner, Hindu Religious and Charitable Endowments Department by order dated 16.06.1994 in O.A. No. 47 of 1987 and that he had along with other members of the public in that locality had made a representation dated 30.08.2023 to recall the said order to the First and Second Respondents, but as it did not evoke any response, it has necessitated the filing of this Writ Petition.



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3. In this context, reference must be made to Section 69 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as 'the TN HR & CE Act' for short), which provides that any person aggrieved by any order passed by the Deputy Commissioner under any of the foregoing Section of that chapter, which includes Section 63(b) of the TN HR & CE Act may within 60 days from the date of publication of the order or the receipt thereof by him, as the case may be, appeal to the First Respondent, may passed such order thereon as he thinks fit.

4. It must, at once, be emphasized that the Hon'ble Supreme Court of India in *Assistant Collector of Central Excise -vs- Dunlop India Limited* [(1985) 1 SCC 260] has precisely explained the legal position relating to the exercise of discretionary powers under writ jurisdiction when an alternative remedy exists, in the following words:-

"3. Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public



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justice require it that recourse may be had to Article 226 of the

Constitution. But then the Court must have good and sufficient

reason to by-pass the alternative remedy provided by statute.

Surely matters involving the revenue where statutory remedies are

available are not such matters. We can also take judicial notice of

the fact that the vast majority of the petitions under Article 226 of

the Constitution are filed solely for the purpose of obtaining

interim orders and thereafter prolong the proceedings by one

device or the other. The practice certainly needs to be strongly

discouraged.”

In ***Nivedita Sharma -vs- Cellular Operators Association of India*** [(2011) 14 SCC 337], advertng to the the previous decisions with regard to the rule of self-restraint when an alternative remedy is available to the aggrieved person, the Hon'ble Supreme Court of India has emphasized that when a statutory forum is created by law for redressal of grievance, a Writ Petition should not be ordinarily entertained ignoring that statutory dispensation. Further, the law has been restated by the Hon'ble Supreme Court of India in ***Radha Krishan Industries -vs- State of Himachal Pradesh*** [(2021) 6 SCC 771] as extracted below:-



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“27.1. The power under Article 226 of the Constitution to

issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or



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liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. *In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”*

In such circumstances, the Petitioner has not been impeded from canvassing what is sought to be agitated in this Writ Petition in the aforesaid statutory remedy and there is no acceptable explanation from the Petitioner for not having availed it.

5. When the said legal position was pointed out to Learned Counsel for the Petitioner, he seeks permission of the Court to withdraw the Writ Petition with liberty to resort to the aforesaid procedure. He has also made an endorsement to that effect in the court record.



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In the result, the Writ Petition is dismissed as withdrawn granting such liberty. It is made that clear for the purpose of reckoning limitation for availing the aforesaid remedy, the period from the date of filing of the Writ Petition, viz., 06.02.2024, till the date on which the certified copy of this order is made ready by the Registry, shall be excluded. No costs.

16.02.2024

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 28.03.2024.

vjt

To

1. The Commissioner,
Hindu Religious and Charitable Endowment Department,
Uthamar Gandhi Road,
Nungambakkam,
Chennai - 600 034.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
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P.D. AUDIKESAVALU, J.

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