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W.P. No. 254 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2024

CORAM

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

W.P. No. 254 of 2024

and

W.M.P. Nos. 304 and 305 of 2024

Packrisami

... Petitioner

-VS-

1. The Assistant Commissioner,
HR & CE Department,
Nagapathinam Town and Munsif.

2. The Joint Commissioner,
HR & CE, Vedarnayam Taluk,
Nagapathinam.

3. The Commissioner,
HR & CE, Chennai.

4. Pandian

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to impugned order bearing No.Na.Ka.Mu.Na.Ka.No. 1410/2021/E2 dated 25.03.2021 of the Second Respondent and Order bearing No. Na.Ka.No.7057/2023/E2/Dated 03.10.2023 of the 2nd respondent and quash the same and consequently, direct the 1st and 2nd respondent to take appropriate



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action on the 4th respondent by holding enquiry and appoint a fit person for administration of the Arulmigu Thirowpathiyamman Temple, Panhanathikulam properties.

For Petitioner : Mr. K.Maraimalai

For Respondents : Mr. Arun Natarajan
Special Public Prosecutor (for R1 to R3)

ORDER

Heard Mr. K.Maraimalai, Learned Counsel appearing for the Petitioner, Mr. Arun Natarajan, Learned Special Public Prosecutor, who takes notice for the First to Third Respondents, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner has challenged the Proceedings in Na.Ka.Mu.Na.Ka. No. 1410/2021/E2 dated 25.03.2021 and the Proceedings in Na.Ka.No.7057/2023/E2/ dated 03.10.2023 passed by the Second Respondent in this Writ Petition.

3. It is accepted that the Petitioner is entitled to challenge the impugned



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orders passed by the Second Respondent by filing a Revision Petition under Section 21 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as 'the TN HR & CE Act' for short) before the First Respondent.

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 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



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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], advertent 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:-

“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



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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 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,*



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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. Hence, this Court is not inclined to delve into the merits of controversy involved in the matter.

In the result, the Writ Petition is dismissed with the aforesaid observations. Consequently, the connected Miscellaneous Petitions are closed.
No costs.

12.01.2024

SJ

NCS: Yes/No
Index: Yes/No

Note: Issue order copy by 03.04.2024.

To

1. The Assistant Commissioner,



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HR & CE Department,
Nagapathinam Town and Munsif.

2. The Joint Commissioner,
HR & CE, Vedarnayam Taluk,
Nagapathinam.
3. The Commissioner,
HR & CE, Chennai.



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P.D. AUDIKESAVALU, J.

SJ

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