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W.P. No. 36316 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2024

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

W.P. No. 36316 of 2023

and

W.M.P. Nos. 36297 and 36298 of 2023

Prema

... Petitioner

-VS-

The Municipal Commissioner
Vedaranyam Municipality
Vedaranyam, Nagapattinam District.

... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, to call for the records regarding the issue as above mentioned especially the notice of the respondent dated 08.09.2023 and quash the same.

For Petitioner : Mr. R.Muruga Bharathi

For Respondent : Mr. B.Vijay

ORDER

Heard Mr. R.Muruga Bharathi, Learned Counsel for the Petitioner and Mr. B.Vijay, Learned Additional Government Pleader, who takes notice for the



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Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner has challenged the demand notice dated 08.09.2023 sent by the Respondent claiming additional rent for the premises occupied by her. On a bare reading, it is evident that it is in the nature of a show cause notice for which the Petitioner can submit her explanation.

3. 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-***



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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 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.*



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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.”*

Having due regard to the aforesaid legal position, as there is nothing which precludes the Petitioner from raising the contentions in the 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 this matter.

4. In such circumstances, the Court is inclined to pass the following order:-
- (i) it shall be incumbent upon the Petitioner to submit his explanation to the show cause notice, which is impugned in the Writ Petition, if not done already, to the concerned authority by 31.03.2023;
 - (ii) in the event of not being satisfied with the explanation submitted by the Petitioner, enquiry shall be conducted following the prescribed procedure



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after affording full opportunity of personal hearing to the Petitioner to explain his position in that regard and reasoned orders 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;

- (iii) if any adverse decision is taken, the Petitioner may pursue legal remedies in accordance with law; and
- (iv) if the Petitioner does not make any representation in that regard, the Respondent is at liberty to proceed in accordance with law.
- (v) though obvious, it is made clear that no view has been expressed by the Court on the merits of the controversy involved in the matter.

In fine, this Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

08.01.2024

Index: Yes/No
NCC: Yes/No

Note: Issue order copy by 23.02.2024.

Maya

To



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The Municipal Commissioner
Vedaranyam Municipality
Vedaranyam, Nagapattinam District.



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P.D. AUDIKESAVALU, J.

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