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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2024

CORAM:

THE HONOURABLE **MR.JUSTICE R.SURESH KUMAR**

AND

THE HONOURABLE **MR.JUSTICE G.ARUL MURUGAN**

W.A.(MD)No.1057 of 2024
and
C.M.P.(MD)No.7893 of 2024

P.Marudaiyan Chettiar ... Appellant

-Vs-

1.M.Sivakumar

2.The Commissioner,
Hindu Religious Charitable and
Endowment Department,
119, Uthamar Gandhi Salai West,
Nungambakkam, Chennai-600 034.

3.The Joint Commissioner,
Hindu Religious Charitable and
Endowment Department,
No.56, Sachinantha Moopanar Road,
NSC Bose Nagar, Thanjavur-613 007.

4.The Revenue Divisional Officer,
Thanjavur.

5.M.Veeran Poosari
6.M.Durairaj Poosari

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7.Rajendran Poosari
8.Chinnaiyan Poosari ... Respondents

PRAYER: Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 18.04.2024 made in W.P.(MD)No.9489 of 2024 on the file of this Court.

For Appellant	: Mr.D.Rajagopal
For R1	: Mr.M.Gnanagurunathan
For R2 to R4	: Mr.P.Subbaraj, Special Government Pleader

JUDGMENT

[Judgment of the Court was delivered by *R.SURESH KUMAR, J.*]

This is a third party intra-Court appeal, assailing the order passed by the Writ Court dated 18.04.2024 made in W.P.(MD)No.9489 of 2024.

2.The said Writ Petition was filed by one M.Sivakumar, who is the 1st respondent herein. He had approached the Writ Court, seeking for Mandamus, directing the respondents 1 and 2 therein to protect the deities and temple, namely, Karuppar Kovil situated at Palayapatti South Village, Budalur Taluk, Thanjavur district by bringing the said temple under the control of the Hindu Religious and Charitable Endowments (HR & CE) Department by considering the petitioner's representation dated 11.10.2023.

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3.When the said Writ Petition was taken up for hearing by the Writ Court on 18.04.2024, it was represented by the learned Government Advocate for the official respondents therein / respondents 2 to 4 herein that based on the representation given by the writ petitioner, the Joint Commissioner of HR & CE Department, who is the 2nd respondent in the Writ Petition, has already initiated enquiry and this fact has been communicated to the writ petitioner by the Assistant Commissioner, HR & CE Department, Thanjavur on 02.02.2024 through his communication.

4.When this factor has been brought to the notice of the learned Single Judge by the learned Government Advocate for the official respondents in the Writ Petition, the learned Single Judge, having recorded the same, passed the following order:-

> *"4.It is further submitted that the enquiry will be completed and appropriate orders will be passed within a period of 3 months.*
>
> *5.Recording the above submission the Writ Petition stands disposed of by directing the second respondent to pass appropriate orders on merits and in accordance with law within a period of 3 months from the date of receipt of a copy of this order. No costs."*

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5.The learned Single Judge in the operative portion has only stated that recording the above submission, the Writ Petition stands disposed of by directing the 2nd respondent / Joint Commissioner to pass appropriate orders on merits and in accordance with law within a period of three months.

6.According to the present appellant, he is aggrieved with this direction given by the learned Single Judge. The reason for such grievance, according to the learned counsel for the appellant, is that under Section 13 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as 'the Act') though the power is vested with the Commissioner of HR & CE Department to make delegations on the Joint Commissioner or Deputy Commissioner with regard to the area, where he can exercise the power conferred on him or discharge the duties imposed by the Government, insofar as the enquiry to be conducted by the Commissioner is concerned, under Section 72 of the Act, it cannot be delegated by virtue of Sub Section 2 of Section 13 of the Act.

7.Therefore, it is the contention of the learned counsel for the appellant that the present enquiry being conducted by the Joint Commissioner is an enquiry under Section 72 of the Act. Therefore, that enquiry cannot be conducted by the Joint Commissioner and it is to be conducted only by the Commissioner, as the

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power to conduct enquiry under Section 72 of the Act could not have been or ought not to have been delegated to the Joint Commissioner or Deputy Commissioner. This is the sum and substance of the objections, he raised.

8.Insofar as the objections raised by the appellant, for which, he quoted the provisions, namely, Section 13 as well as Section 72 of the Act, are concerned, we have gone into the provisions of Section 13 and 72 of the Act as well as Section 71 of the Act.

9.The enquiry contemplated under Section 72 of the Act is the follow up action with the notice issued under Section 71 of the Act.

10.Section 71 of the Act makes it clear that if any religious institution is governed by a scheme settled or deemed to have been settled under this Act, where the Commissioner has reason to believe that such institution is being mismanaged and is satisfied that in the interest of its administration, it is necessary to take proceedings under this chapter, the Commissioner may, by notice published in the prescribed manner, call upon the trustee and all other persons having interest to show causes why such institution should not be notified to be subject to the provisions of this Chapter.

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11.Here, in the case on hand, the enquiry that has been initiated by the Joint Commissioner is not under Section 71 of the Act of issuing any notice. It was only simple enquiry conducted by the Joint Commissioner on the representation, that was given by the 1st respondent / writ petitioner.

12.When that being so, it cannot be stated that such enquiry being conducted by the Joint Commissioner is an enquiry under Section 72 of the Act.

13.In the absence of any notice being issued by the Commissioner under Section 71 of the Act, if any enquiry is conducted, it cannot be construed as enquiry within the meaning of Section 72 of the Act.

14.When that being so, the objections since have been raised by the appellant that as per Sub Section 2 of Section 13, the power of the Joint Commissioner or Deputy Commissioner as the case may be to conduct enquiry under Section 72 of the Act is not permissible, as it has not been delegated to either the Joint Commissioner or the Deputy Commissioner as the case may be, such situation has not arisen in this case for the reason being that it is not an enquiry even within the meaning of Section 72 of the Act.

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15.Therefore, since the enquiry is already commenced by the Joint Commissioner as has been informed through the learned Government Advocate before the Writ Court, stating that the enquiry has already been initiated on the representation of the writ petitioner, the learned Single Judge has simply recorded the same and directed the Joint Commissioner to pass orders within the period of three months. It is a very simple and innocuous order, that has been passed by the learned Single Judge not based on the merits of the claim, that has been made by the 1st respondent / writ petitioner in his representation.

16.Therefore, at no stretch of imagination, it cannot be stated that the enquiry initiated by the Joint Commissioner / 3rd respondent herein is an enquiry within the meaning of Section 72 of the Act. Therefore, the ground, that has been urged by the learned counsel for the appellant projecting this Writ Appeal against the order impugned, is clearly misconceived. Therefore, this Writ Appeal fails and accordingly, it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[R.S.K., J.] & [G.A.M., J.]
26.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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AND

G.ARUL MURUGAN, J.

Yuva

To

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