



Writ Petition No.28957 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 05.08.2025

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.28957 of 2025

and

W.M.P.No.32494 of 2025

1.A.Rajakumari
W/o.Late K.M.Ayyanathan

2.Dr.A.Jeevagan
S/o.Late K.M.Ayyanathan

... Petitioners

vs.

1.Joint Commissioner,
Zonal II HR & CE Department,
130, R.K.Mutt Road,
Mylapore, Chennai – 600 004.

2.Assistant Commissioner,
HR & CE Department,
Chennai – 34.

3.Executive Officer,
A/m Ekambareswarar Thirukoil,
Aminjikarai, Chennai – 600 029.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorari calling for the records from the first respondent relating to proceedings initiated u/s.78(2) of the HR& CE Act, 1959 in M.P.No.15/2018/A3/24.10.2024 and quash the same.



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For Petitioners : Mr.V.Venkatasamy
For Respondents : Mr.N.R.R.Arun Natarajan
Special Government Pleader

ORDER

This writ petition has been filed challenging the impugned proceedings of the first respondent dated 24.10.2024 wherein the first respondent is proceeding further with the enquiry under Section 78(2) of the Hindu Religious and Charitable Endowment Act, 1959 [hereinafter referred to as 'the Act'].

2. Heard Mr.V.Venkatasamy, learned counsel for petitioners and Mr.N.R.R.Arun Natarajan, learned Special Government Pleader appearing for respondents.

3. This is virtually the second round of litigation before this Court since the petitioners had earlier filed W.P.No.23199 of 2018 challenging the notice issued by the first respondent under Section 78(2) of the Act. This writ petition was dismissed by an order dated 10.09.2024. After the dismissal of the writ petition, subsequent notice has been issued by the first respondent calling the petitioners for enquiry. The same has been put to challenge in this writ petition.



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4. Learned counsel for petitioners submitted that the first respondent does not have the power and jurisdiction to proceed further with the matter under Section 78(2) of the Act. Therefore, the very notice of enquiry issued by the first respondent suffers from illegality.

5. In the considered view of this Court, the issue regarding jurisdiction of the first respondent was a ground available to the petitioners even in the earlier writ petition in W.P.No.23199 of 2018. It is now too well settled that the principle of *constructive res judicata* will apply even insofar the writ proceedings are concerned. When a point of law is available at the time of filing the earlier writ petition and the same is not raised, the petitioners cannot be permitted to file a fresh writ petition and raise that ground subsequently. The same is clearly barred by principles of *constructive res judicata*. Useful reference can be made to the judgment of the Apex Court in ***Shankara Cooperative Housing Society Limited v. M.Prabhakar and others [(2011) 5 SCC 607]***. The relevant portion is found at P.No.641. Reference can also be made to the judgment of the Apex Court in ***CELIR LLP v. Sumati Prasad Bafna and others [(2025) 1 MLJ 193 (SC)]***.



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6. In view of the above, the ground raised by the petitioners in the present writ petition touching upon the jurisdiction of the first respondent was a ground that was available even when the earlier writ petition was filed. Since the same was not raised, this Court will not go into the issue in this writ petition. It is left open to the petitioners to question the jurisdiction of the first respondent even during the enquiry and the first respondent will deal with the same. The petitioners, instead of filing an appeal against the order passed by the learned Single Judge or a review petition before the same Judge, cannot be permitted to file a fresh writ petition by raising this ground.

In the result, this Court does not find any merits in this case. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

05.08.2025

Neutral Citation: Yes/No
Index: Yes/no
Speaking Order/Non-Speaking Order
gm



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To
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N.ANAND VENKATESH, J

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