

BEFORE THE COMMISSIONER, H.R. & C.E.ADMN.DEPARTMENT, CHENNAI-34.

Tuesday the 27th day of June, Two thousand and Seventeen.

Present: Dr.M.Veera Shanmugha Moni,
Commissioner.

I.A.No.1/2017 of A.P.22/2017 D2

Between

- 1.S. Muthu
- 2.P. Tilak Kumar
3. K.S.Ravichandran
4. S. Suresh Babu

...Appellants

And

- 1.The Joint Commissioner
HR&CE Department, Chennai.
2. B. Balasubramanian(Since deceased)
3. G. Ekambara Chetty (Since deceased)
4. C.R Palani Doss
5. D.S. Balasundaram (Since deceased)
- 6.P.L.D. Elumalai
7. M. Elangovan
8. A.K. Gurunathan
- 9.K.M. Venkatesan
- 10.G.Gopal
- 11.C.C.Lakshmi Narayana
12. S. Gnanasekar

...Respondents

In the matter of Arulmigu Muthukumaraswamy @ kandasamy temple, No.44,
Rasappa chetty street, Chennai -03.

The Appeal petition filed under Section 69(1) of the Tamil Nadu H.R. & C.E. Act, 1959 (Tamil Nadu Act 22 of 1959) against the order dated 26.04.2017 of the Joint Commissioner, HR&CE Admn Department, Chennai in Suo-Moto O.A.3 of 1999 in modifying the Scheme.

Order in I.A.No.1/2017 of A.P.22/2017 D2 dated:27.06.2017

The above petition came up for final hearing before me on 27.06.2017 in the presence of M/s.K.Mohanamurali, Counsel for the appellants, M/s.Shanmuga Associates counsel for the 7th and 8th respondent, Thiru.N.Kanakavelu, counsel for the 10th respondent, and Thiru.P.K.Sivasubramanian, counsel for 4th and 6th respondent. Upon hearing their arguments and having perused the connected records the following order is passed:-

ORDER

The above IA was filed praying to stay of the order dated 26.04.2017 passed by the Joint Commissioner, Chennai in SMR.No.3/1999 u/s.64(5) of the Act.

2. In the affidavit filed by the petitioner they have stated that the present appeal was filed to set aside the impugned order in O.A.No.3 of 1999 dated 26.04.2017 passed by the 1st respondent. The appellants are writ petitioners in W.P.Nos.27522 of 2014, 23560 of 2014, 27681 of 2014 and 27842 of 2014 before the Hon'ble High Court, Madras. The Hon'ble High Court, Madras passed an order in a batch of writ petitions including the above writ petitions by an order dated 02.09.2015 directing the writ petitioners to contest Suo-moto O.A.No.3 of 1999 on the file of this Hon'ble Court. Already the 1st, 2nd and the 3rd appellants have filed W.A.Nos.1636/2015, 1586/2015, 1587/2015 against the common order passed in writ petitions dated 02.09.2015. However without prejudice to their contention before the Hon'ble High court, Madras the present objections 25.11.2015 are filed before the respondent. In the said reply the appellants have categorically pleaded that the Original Show cause notice was issued in Suo Moto O.A.No.3 of 1999 was initiated with original show cause notice dated 05.03.1999 is *per se* illegal in view of the fact that show cause notice was issued with a clear wording subjecting a similar case in which orders were passed in W.A.No.122 of 1987 and W.A.No.141 of 1997 by an order dated 02.05.1997 reported in AIR 1997 Madras Page 346, and said to have been confirmed by Hon'ble Supreme Court of India. In this regard the preliminary objection is that O.S.No.126/1976 was filed before the Hon'ble High Court Madras, when the HR &CE claim that they are entitled to appoint trustees for the Sri Muthu Kumarasamy Devasthanam. The suit was dismissed by way of a decree and judgment dated 16.06.1987. The said judgment and decree was challenged before the Division Bench of Hon'ble High Court Madras in O.S.A. No. 108 of 1987. The said OSA was conducted by the State of Tamil Nadu, HR &CE to maintain the status involving the provision U/S 118 (2)(b) and (i) of Act 22 of 1959. Finally the following observations were made in the Judgment and decree in O.S.A. No. 108 /2014 dated 21.02.1994. While the Hon'ble High Court has made the above observations, the same are binding on HR &CE Department. Instead approaching remedy if any before the scheme court in C.S. No. 117/1907 dated 12.01.1910 and 25.01.1921, an illegal Show cause notices were issued by the department. In C.S. No. 126/1976 a

detailed discussion was also made about the HR & CE Commissioner who appointed 5 trustees by an order dated 10.08.1964. While so the contention of the department wants to take control one way or other without approaching the scheme court and attempted to disturb the administration, election and other functions of the Shri.Muthu Kumarasami Temple. It was at the time appropriate were passed in O.S.A. The issue No. land 2 in C.S. No. 126/1976 as follows:

"1. Is the decree in O.S.No. 2467 of 1959, on the file of the City Civil Court Madras, void, non west or unenforceable in so far as it vests the right of appointing trustees for the Sri Muthukumara Swami Temple, in the second defendant or whether the decree is enforceable in full as contended by the defendants?"

2. What reliefs the plaintiffs are entitled to? K.M.Natarajan, I framed the following additional issue on 01.11.1985.

"Whether the suit temple is a denominational one as contended by the plaintiff?"

The same was hold in the favour of the department and modified in O.S.A. No. 108 of 1987 dated 21.02.1994. Hence, the department is barred from taking any contra action as the issue is directly and substantially covered by the judgment and decree passed in O.S.A. No. 108 of 1987. Hence the principle of res- judicata is squarely applied in the present show cause of notice. Admittedly the Judgment and Decree passed in C.S No.117 of 1907 dated 12.01.1910 and 25.01.1921 has become final. There is no locus standi to issue show cause notice when the subject matter in lis or directly and substantially discussed by the Hon'ble High Court Madras. The department maintained a similar claim as mentioned in the show cause notice. The HR & CE has lost their case in Appeal (Civil) No.4467 of 2005 dated 25.07.2005 R.Murali Vs Kanyaka Parameswari Devasthanam Charities before the Hon'ble Supreme Court. The issue involved is Article 26 of Constitution of India. The Hon'ble Supreme Court of India in Civil Appeal No.10620 of 2013 dated 06.01.2014. Dr.Subramaniaswamy Vs. State of TN and others and in the subject matter of Sri Subayanagar Temple again involved Article 26 (d) of the Constitution of India and hold the issue against HR & CE Department. During the year 2008, elections were conducted by the department as per

the directions of the Hon'ble High Court. In the time of hearing of the Writ Petitions the department has not raised the matter of pendency of Sua Moto OA No.3 of 1999 before the Hon'ble High Court but conducted the elections and also permitted the Senior Trustee to take steps for election process in the year 2013. Accordingly the senior Trustee took steps for the election process, but for the reasons known only to the department in the year 2014, that too after commencing the election process by the department official as per the directions of the Hon'ble High Court. The so-called financial constrains are subject matter of periodical audit of HR &CE Department. Proper in time replies are given to the department. The subject matter of Faslis are cleared without any objections. Without any leave or liberty the present show cause notice is given for a belated period. On behalf of the deceased 1st respondent their then Senior Trustee submitted an objection statement dated 10.11.1999. The records were perused and on perusal of the records it is not found under what basis the show cause notice was issued claiming exorbitant are made without any supporting materials. In Counter affidavit filed by the election Officer/fit person of the Temple wherein it was contended that Sua Moto O.A. No. 3 of 1999 is pending for disposal. At that time of serving the counter on 04.01.2016 a typed set of papers containing the orders in the subject matter of Sua Moto O.A. No.3 of 1999 were served. On perusal of the said typed set of papers it came to the knowledge that a maintainability of Sua Moto O.A. No.3 of 1999 was enquired as a preliminary issue and the 2nd respondent have passed orders in A.P. No.4 and 5 of 2006 dated 11.01.2011 not duly served confirming the order passed in the Preliminary Order in Sua Moto 9.A. No.3 of 1999 dated 14.12.2005 passed by the respondent. The said order at present served filed in the typed set of papers in A.P. No.4 and 5 of 2006 dated 11.01.2011 not duly served confirming the order passed in the Preliminary Order in O.S.No. 3 of 1999 dated 14.12.2005 passed by the Commissioner; HR&CE Department was already challenged in W.P.No.2301 of 2016 before the Hon'ble High Court. A.P. No. 20 of 2016 D2 was filed before this Hon'ble Court challenging the order passed in Sua Moto OA No.3 of 1999 dated 10.02.2016. During the pendency of the proceedings under Section 64 (5) (a) & (b) of Act 22 of 1959 this Hon'ble Court was pleased to dismiss A.P. No. 20 of 2016 D2 by an order dated 04.04.2017. Against which the appellants had already

preferred O.S. No. 2513 of 2017 before the VIII Asst. Judge, City Civil Court, Chennai. The appellants also took out I.A. No. 6603 of 2017 seeking for suitable interim orders against the 1st respondent from further implementing the orders passed in A.P.No.20/2016 D2 by an order dated 04.04.2017. Interim Application was filed before the 1st respondent specifically seeking to stay all further proceedings in Suo-Moto OA No.3/1999 by incorporating the orders of the Hon'ble High Court passed in W.A.Nos.1636, 1586 and 1587 of 2016 dated 16.08.2016. Submissions were made on 20.04.2017 and the 1st respondent agreed to pass orders in the said application instead the 1st respondent passed the impugned order in O.A.No.3/1999 dated 26.04.2017 and the same is liable to be set aside for the following among other. Unless suitable stay of the order

Impugned is not granted the respondent Temple will be put to great hardship has it goes to the root of the management of the Temple. The balance of convenience is also in favour of the petitioner and against the respondents.

3. I heard M/s.K.Mohanamurali, Counsel for the appellants, M/s.Shanmuga Associates counsel for the 7th and 8th respondent, Thiru.N.Kanakavelu, counsel for the 10th respondent, and Thiru.P.K.Sivasubramanian, counsel for 4th and 6th respondent and perused the relevant records.

4. In the impugned order, the Joint Commissioner has confirmed the draft modified scheme issued in the order dated 26.04.2017. Previously, the petitioners herein had filed an appeal petition in A.P.20/2016 u/s.69(1) of the Act challenging the order passed in SMR.O.A.No.3/1999 dated 10.02.2016. The said appeal petition was dismissed by order dated 04.04.2017 on the ground that the Joint Commissioner has issued a draft modified scheme and the petitioners were given liberty to file their objection or suggestion on the draft same. But instead of filing any objection or suggestion they have filed O.S.No.2513/2017 challenging the order passed by the Commissioner in A.P.No.20/2016. The impugned order was passed by the Joint Commissioner, Chennai confirming the draft scheme, even before filling of the said O.S.No.2513/2017. Further in the said original suit no stay or injunction was granted.

5. The issues raised in the affidavit filed along with the stay petition have to be decided in the main appeal petition. The petitioners failed to state in what way the

impugned order affects their rights, if the same is not stayed.

6. As per the Sec 64(6) of the Act ***“Every order of the Joint Commissioner or the Deputy Commissioner, as the case may be settling modifying or cancelling a scheme under this section shall be published in the prescribed manner and on such publication shall, subject to the provisions of Section 69 and 70 be , binding on the trustee, the executive officer and persons having interest”.***

Accordingly the impugned order shall come into force only after publication and such publication shall be subject to the outcome of the appeals filed u/s.69 and 70 of the Act. Since the petitioners have filed the appeal petition within the time, implementation of the impugned order shall be subject to the disposal of the appeal petition.

As the petitioners have not made out any grounds for the stay of the operation of the impugned order, this forum is not convinced to grant stay as prayed by the petitioners. Therefore the stay petition is hereby dismissed as devoid of merit.

/typed to dictation/

Sd./- M.Veera Shanmugha Moni
Commissioner

/t.c.f.b.o./

Superintendent

To

1. The appellant through Thiru.K.Mohanamurali, Advocates, No.13, Law Chambers, High court Buildings, Chennai-600 104.
2. The 4th and 6th respondent through Thiru.P.K.Sivasubramanian, Advocate, No.99, Law Chambers, High Court Buildings, Chennai-104.
3. The 7th and 8th respondent through M/s.Shanmuga Associates, Advocates & Legal Consultants, No.8/19B, Mariam Apartments, Casa Majar Road, Egmore, Chennai-8
4. The 10th respondent through Thiru.N.Kanakavelu, Advocate, No.43/14, Adam Sahib Street,(1st Floor) Royapuram, Chennai-600 013.

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5. The Joint Commissioner, HR & CE Admn.Department, Chennai.
6. The Assistant Commissioner, HR & CE Admn.Department, Chennai.
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