IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.No.8033/2014 & MP.No.1/2014

P.Sundaramurthy .. Petitioner

Versus

1.The Secretary to Government
Government of Tamilnadu
Tourism, Cultural & Religious
Department, Fort St. George,
Chennai 600 009.

2.The Commissioner,
Hindu Religious & Charitable Endowment
Department, Chennai 600 034.

3.The Joint Commissioner,
Hindu Religious & Charitable Endowment
Department, Mayiladuthurai.

4.T.Rangaraj
5.M.Sundaramurthy
6.D.Subramani
7.R.Balasubramanian
8.D.Chandrasekaran .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records of the 1st respondent in G.O.Ms.No.3, Tourism and Cultural and Religious Department dated 03.01.2014 and quash the same.

For Petitioner : Mr.K.Raja
For RR 1 to 3 : Mr.M.L.Mahendran, GA
For RR 4 to 8 : M/s.Kanimozhimathi

ORDER

Heard Mr.K.Raja, learned counsel appearing for the petitioner and Mr.M.L.Mahendran, learned Government Advocate appearing for the respondents 1 to 3 and M/s.Kanimozhimathi, learned counsel appearing for the respondents 4 to 8 and perused the materials available on record.

2.The petitioner has filed this writ petition challenging the order passed by the 1st respondent in G.O.Ms.No.3, Tourism and Cultural and Religious Department dated 03.01.2014.

3.By the said Government Order, the Government in exercise of the powers conferred under section 114-A of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 [hereinafter called as "the Act"], allowed the review petition filed by the petitioner to review the order passed by the 1st respondent in G.O.Ms.No.76 dated 18.04.2013 and the said Government Order in G.O.Ms.No.76, passed under section 114 of the Act. By the said order, the Government confirmed the order passed by the Commissioner, HR&CE, in an application filed by the private respondents, viz., respondents 4 to 8, to condone the delay of 241 days in filing the appeal petition under section 61 of the Act.

4.The writ petitioner filed an application before the Joint Commissioner, HR&CE, Mayiladuthurai, the 3rd respondent herein, to declare him as the Hereditary Trustee of Arulmighu Karpavinayagar Temple at Kida Thalaivan Palayam Village, Thillaiyadi Post, Tharangampadi Taluk, Nagapattinam District. The said application was taken on file as OA.No.5/2008 and by order dated 25.01.2011, the Joint Commissioner, Mayiladuthurai, allowed the application. It is to be pointed out that in the said application filed by the present writ petitioner, P.Sundaramurthy, there was no respondent. Therefore, the order passed by the 3rd respondent, was an uncontested order as there was no respondent impleaded to contest the claim. It is not known as to how the 3rd respondent/Joint Commissioner, entertained such a petition. Be that as it may, the respondents 4 to 8 having come to know of the same, filed an appeal under section 69 [1] of the Act before the Commissioner, HR&CE/2nd respondent herein. Since the respondents 4 to 8 were not parties to OA.No.5/2008, the provision relating to the limitation will commence only from the date of knowledge of the order passed by the 3rd respondent. Nevertheless, since the limitation was computed by the 2nd respondent from the date of the order, the respondents 4 to 8 filed a petition for condonation of delay of 241 days in filing the appeal petition.

5.The Commissioner, HR&CE, by order dated 20.04.2012, rejected the petition stating that no sufficient grounds have been made out to condone delay. Thus, it is seen that the appeal petition was never heard on merits and in fact, the appeal petition was not even numbered. Aggrieved by the order passed by the Commissioner, HR&CE, refusing to condone the delay, the petitioner preferred a revision before the Government under section 114 of the Act. The Government, after hearing the parties, dismissed the revision petition, confirming the order passed by the Commissioner, HR&CE, refusing to condone the delay, as against which the respondents 4 to 8 preferred review petition under section 114-A of the Act and the Government, on considering the matter afresh on review, allowed the review petition and condoned the delay. Aggrieved by the same, the present writ petition has been filed by the petitioner.

6.Learned counsel for the petitioner raised two contentions challenging the impugned order:-

[a]Firstly, by contending that the respondents 4 to 8 preferred an appeal under section 69[1] of the Act before the Commissioner, HR&CE and the same having been dismissed by the Commissioner, HR&CE, the only remedy available to the private respondents is to file a suit in terms of section 70[1][ii] of the Act and a petition for revision under section 114 is not maintainable and consequently, the review filed under section 114-A is also not maintainable.

[b]Secondly, by contending that repeatedly, the petitioner has been approaching the authorities belatedly and there is no sufficient cause shown for condonation of delay and this issue has been ignored by the Government while considering the review petition.

7.On the first contention, it is to be pointed out that the appeal filed by the respondents 4 to 8 under section 69[1] of the Act was not entertained on the ground that the appeal was filed belatedly. As pointed out earlier, the respondents 4 to 8 were not the respondents in OA.No.5/2008 filed by the writ petitioner before the 3rd respondent herein. In fact, there were no respondents in the said Original Application. Therefore, the respondents 4 to 8 being not parties to the Original Application, cannot be blamed for approaching the authority after they came to know the order. Therefore, when the private respondents stated that they came to know about the order only subsequently, the Commissioner took a narrow and pedantic view stating that it is strange for the respondents 4 to 8 to contend that they came to know of the order only in September 2011 when renovation of the temple was going on from 2008. One important fact which the Commissioner failed to take note of is that the petitioner should have established that the private respondents 4 to 8 had the knowledge of the order passed in OA.No.5/2008 on the date when it was pronounced or subsequently thereafter. Having failed to do so, the question of objecting the appeal petition filed by the respondents 4 to 8 on the ground that it is belated, is a plea that should have been rejected. There is no material placed before the Commissioner by the writ petitioner stating that the respondents 4 to 8 had knowledge of the order in OA.No.5/2008 dated 25.01.2011 prior to September 2011. Therefore, the limitation shall be computed only from the date of knowledge which has to be accepted as September 2011. If that is taken into consideration, then there is no delay and the appeal petition filed by respondents 4 to 8 was perfectly well within the period of limitation. However, while passing the order, the Commissioner did not take into consideration that vital aspect and this error committed by the Commissioner continued with the Government when they considered the revision filed under section 114 of the Act, by passing the order dated 18.04.2013. Only on review, the Revisional Authority came to understand the facts and allowed the revision.

8.As pointed out earlier, the order passed by the Commissioner which has resulted in the subsequent order passed by the Government on revision is on a wrong application of the legal principle and without taking note of the fact that the limitation should be computed from the date of knowledge, which is September 2011. Therefore, there is no error in the order passed by the Revisional Authority which is impugned in this writ petition.

9.As far as the plea raised by the petitioner that only a suit should be filed in terms of section 70[1][ii] of the Act, it is to be pointed out that the appeal petition filed by the respondents 4 to 8 was never decided on merits. In fact, the appeal petition itself was not entertained and the application for condonation of delay alone was dismissed. Therefore, the same cannot be stated to be a final order deciding the rights of the parties and no finality could be attached to the said order and the Government was entitled to examine the correctness of the order in exercise of its powers under section 114 or 114-A of the Act.

10.In the result, no grounds have been made out by the writ petitioner warranting interference of this Court with the impugned order. Accordingly, the writ petition fails and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

AP
To
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Tourism, Cultural & Religious
Department, Fort St. George,
Chennai 600 009.

2.The Commissioner,
Hindu Religious & Charitable Endowment
Department, Chennai 600 034.
3.The Joint Commissioner,
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Department, Mayiladuthurai.

1 cc to M/s.Kanimozhimathi ,Advocate, SR.No.18315
1 cc to Mr.K.Raja ,Advocate, SR.No.

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rj(co)
pmk.13.4.2015