

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 4/3/2016

C O R A M

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition Nos.8154 and 8155 of 2016

1. A. Baskar
 2. M. Subramaniya Devar
 3. Thanikkodi Devar
 4. M.Ramanathan Devar
 5. A. Anbalagan Devar
 6. S. Manoharan
 7. M. Pakkirisamy Devar
 8. M. Kanthasamy
 9. V. Ramalingam
- Petitioners in both the petitions
- Vs
1. The Commissioner
Hindu Religious &
Charitable Endowment Board
Uthamar Gandhi Salai
Nungambakkam
Chennai 600 034.
 2. The Joint Commissioner
Hindu Religious &
Charitable Endowment Board
Thanjavur.
 3. The Assistant Commissioner
Hindu Religious &
Charitable Endowment Board
Nagapattinam.

4. The Fit Person

Arulmighu Sri Mariamman Thiru Koil
Ayakaranpulam - 1

(Inspector of HR & CE Department
Vedaranyam).

... Respondents in both
the petitions.

Prayer in W.P.No.8154 of 2016: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records of the first respondent in N.Dis.No.61135 of 2015, D 2 dated 16/12/2015 and quash the same.

Prayer in W.P.No.8155 of 2016: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records of the first respondent in N.Dis.No.61132 of 2015, D 2 dated 16/12/2015 and quash the same.

For Petitioners ... Ms.G.Sumitra

For respondents ... Mr.K.Dhanapalan
Additional Government Pleader
(HR & CE)

C O M M O N O R D E R

With the consent of the learned counsel appearing on either side, these writ petitions are taken up for final disposal, at the admission stage itself.

2. Heard Ms.G.Sumitra, learned counsel for the petitioners and Mr.K.V.Dhanapalan, learned Additional Government Pleader (HR & CE) for the respondents.

3. Writ Petition No.8154 of 2016 has been filed praying to quash the order passed by the first respondent in N.Dis.No.61135 of 2015, D 2, dated 16/12/2015.

4. Writ Petition No.8155 of 2016 has been filed praying to quash the order passed by the first respondent in N.Dis.No.61132 of 2015, D 2, dated 16/12/2015.

5. The case of the petitioners is that the petitioners are the trustees of Arulmighu Sri Mariamman Thirukoil, situated at Ayakaranpulam - 1 Village, Vedharanyam Taluk, Nagapattinam District. Vide order dated 15/3/2010, the third respondent had

appointed the fourth respondent to manage the affairs of the temple. Against the said order, the petitioners had jointly filed R.P.No.1 of 2010 and O.A.No.2 of 2010 before the second respondent, but the same were dismissed. Against which the petitioners have jointly preferred appeals before the first respondent with a delay and they have also filed petitions to condone the delay. The said petitions were dismissed by the first respondent for non-prosecution, by an order, dated 15/4/2014 and as a consequence, the appeals filed by the petitioners, challenging the order of the second respondent in R.P.No.1 of 2010 and O.A.No.2 of 2010 were also dismissed. Thereafter, the petitioners had filed restoration of the appeals along with the necessary petitions to condone the delay in filing the respective appeals. But the first respondent in N.Dis.No.61132 and 61135 of 2015, D 2 dated 16/12/2015, did not number the petitions and had returned the papers stating that the impugned orders had been passed based on the merits only. The petitioners may seek remedy before the competent Court. Aggrieved against the same, the petitioners have come forward with the present writ petitions praying for the relief as stated therein.

6. The learned counsel appearing for the petitioners would submit that the first respondent has not adduced any reasons in spite of the fact that the petitioners have set out sufficient reason for condonation of delay as well as for allowing the appeal and as such, cryptic order was passed by the first respondent, which was not on merits.

7. It is very useful to extract the relevant portion of the order made in R.C.No.70389 of 2013 D 2, dated 15/4/2014, which is as follows:-

"The above Revision Petition filed under Section 21 of the Act against the order dated 21/2/2012 of the Joint Commissioner, Thanjavur, in dismissing the R.P.No.1 of 2010 filed under Section 21 (A) of the Act.

There is a delay of 590 days in filing the revision petition. The petitioners filed a petition to condone the delay in filing the revision petition. The petition to condone the delay in filing the revision petition came up for hearing on 18/3/2014, 8/4/2014 and finally on 15/4/2014. On all the occasions, both the petitioners and their counsel called absent and remained ex parte. Hence the following order is made.

O R D E R

The petition to condone the delay of 590 days in filing the revision petition is hereby dismissed for non-prosecution."

8. It is also very useful to extract the relevant portion of the order made in R.C.No.70390 of 2013 D 2, dated 15/4/2014, which is as follows:-

"The above Appeal Petition filed under Section 69 (1) of the Act against the order dated 21/2/2012 of the Joint Commissioner, Thanjavur, in dismissing the O.A.No.2 of 2010 filed under Section 64 (1) of the Act.

There is a delay of 534 in filing the Appeal Petition. The petitioners filed a petition to condone the delay in filing the Appeal Petition. The petition to condone the delay in filing the Appeal Petition came up for hearing on 18/3/2014, 8/4/2014 and finally on 15/4/2014. On all the occasions, both the petitioners/appellants and their counsel called absent and remained ex parte. Hence the following order is made.

O R D E R

The petition to condone the delay of 534 days in filing the Appeal Petition is hereby dismissed for non-prosecution."

9. Considering the above facts and circumstances of the cases, this Court is of the considered opinion that the orders passed by the first respondent in N.Dis.No.61135 and 61132 of 2015 D 2 dated 16/12/2015 are liable to be set aside since the same were not passed on merits.

10. Accordingly, these writ petitions are allowed and the impugned orders passed by the first respondent in N.Dis.No.61135 and 61132 of 2015 D 2, dated 16/12/2015 are liable to be set aside. The first respondent is directed to consider the objections filed by the writ petitioners and restore R.P.No.1 of 2010 and O.S.No.2 of 2010, and pass an appropriate order on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioners, within a period of four weeks, from the date of

receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner
Hindu Religious & Charitable Endowment Board
Uthamar Gandhi Salai
Nungambakkam
Chennai 600 034.
2. The Joint Commissioner
Hindu Religious & Charitable Endowment Board
Thanjavur.
3. The Assistant Commissioner
Hindu Religious & Charitable Endowment Board
Nagapattinam.
4. The Fit Person
Arulmighu Sri Mariamman Thiru Koil
Ayakaranpulam - 1
(Inspector of HR & CE Department
Vedaranyam).
5. The Section Officer,
ER Section, High Court, Madras.

(to return the Original impugned order by replacing it with a xerox copy)

+1 cc to Government Pleader, sr.14523

+2 ccs to Ms.G.Sumithra, Advocate, sr.14059

W.P.Nos.8154 and 8155 of 2016

tej co
kra 17.03.2016