



BEFORE THE MADURAI BENCH OF MADRAS HIGHCOURT

RESERVED ON : 21.11.2017
DELIVERED ON : 04.12.2017

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THE HONOURABLE MR.JUSTICE M.VENUGOPAL
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.A. (MD) No.1094 of 2014
and
M.P. (MD) No.1 of 2014

Ganesan : Appellant
rep.by its Power Agent G.Rukmani Ganesan

Vs

1.The Commissioner,
The Tamil Andu Hindu Religious and
Charitable Endowments Board,
No.119/3, Uthmar Gandhi Salai,
Nungambakkam,
Chennai.

2.The Joint Commissioner,
Hindu Religious and Charitable Department,
Sivagangai,
Sivagangai.

3.P.R.Ramanathan : Respondents

PRAYER: Appeal filed under Clause 15 of Letters Patent, praying to set aside the order dated 22.08.2014 made in W.P.(MD) No.13804 of 2013 on the file of this Court and allow this writ appeal.

Prayer in WP(MD).13804 of 2013:

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorari calling for records relating to the impugned order of the 1st Respondent in his proceedings in A.P.No. 28 of 2013 (R.C. No. 2007 of 2012 D2)



For Appellant : Mr.Ajmal Khan,
Senior Counsel
for M/s. Ajmal Associates
For Respondents 1&2 : Mr.V.R.Shanmuganathan
Special Government Pleader
For Respondent No.3 : Mr.Veera Kathiravan
Senior Counsel
for Mr.D.Gnanasekaran

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COMMON JUDGMENT

ABDUL QUDDHOSE, J.

The only point for consideration in this Writ Appeal is whether the Commissioner under the Hindu Religious and Charitable Endowments Act, 1959 [hereinafter referred to as "the Act"], is a Court within the meaning of Section 5 of the Limitation Act.

2.An application was filed by the Appellant/Petitioner under Section 63 of the Act before the Joint Commissioner, Hindu Religious and Charitable Department, Sivagangai (Second Respondent herein) in O.A.No.7 of 2008, to declare the Petitioner as the 'Ambalathaar' for the village. By order dated 31.10.2010, the Second Respondent allowed the application in O.A.No.7 of 2008, declaring the Appellant as the 'Ambalathaar' for the village. Since, the Third Respondent was not a party to O.A.No.7 of 2008, also claiming to be the 'Ambalathaar' for the same village, filed an Appeal aggrieved by the order of the Second Respondent dated 31.10.2010 under Section 69(1) of the Act along with an application to condone the delay of 266 days in filing the Appeal. Under Section 69(1) of the Act, the Appeal against the order of the Second Respondent ought to have been filed before the First Respondent within sixty days from the date of the publication of the order or of the receipt thereof as the case may be. Section 69 of the Act reads as follows:

"69. Appeal to the Commissioner:- (1) Any person aggrieved by any order passed by [the Joint Commissioner or the Deputy Commissioner, as the case may be,] under any of the foregoing sections of this Chapter may, within sixty days from the date of the publication of the order of of the receipt thereof by him, as the case may be, appeal to the Commissioner and the Commissioner may pass such order thereon as he thinks fit.

(2) Any order passed by [the Joint Commissioner or the Deputy Commissioner, as the case may be,] in respect of which no appeal has been preferred within the period specified in sub-section (1) may be revised by the Commissioner suo moto and the Commissioner may call for and examine the records of the proceedings to satisfy himself as to the regularity of such



proceedings or the correctness, legality or propriety of any decision or order passed by the Joint Commissioner or the Deputy Commissioner, as the case may be]. Any such order passed by [the Joint Commissioner or the Deputy Commissioner as the case may be], shall be deemed to have been passed by the Commissioner on an appeal preferred to him under sub-section (1).

(3) Any order passed by the Commissioner on such appeal against which no suit lies to the Court under the next succeeding section, or in which no suit has been instituted in the Court within the time specified in sub-section (1) of Section 70 may be modified or cancelled by the Commissioner if the order has settled or modified a scheme for the administration of a religious institution or relates to any of the matters specified in Section 66."

3.The reason given by the Third Respondent for condonation of delay is that he was ill and could not engage an Advocate. The relevant portion of his affidavit is extracted below:

"3. I submit that after obtaining the order from the office of the Joint Commissioner, I was not able to instruct my counsel at Chennai to prefer the appeal, since I was ill for 7-8 months. I was not able to travel to Chennai to instruct my counsel. Hence, there occurred a delay of 266 days. The said delay is neither willful nor wanton, but for the above said reason."

4.Along with the condone delay application, the Third Respondent also filed an application seeking leave to file the Appeal before the First Respondent since he was not a party to the impugned proceedings of the Second Respondent in O.A.No.7 of 2008. The Appellant/Petitioner who was declared as 'Ambalathaar' by the Second Respondent by order dated 31.12.2010, filed his counter affidavit in the condone delay and leave application filed by the Third Respondent and in his counter affidavit, he submitted that the First Respondent does not have jurisdiction to condone the delay under Section 69(1) of the Act. By order dated 31.07.2013, the Third Respondent condoned the delay in filing the Appeal by the First Respondent in A.P.28/2013(Rc.2007/2012 D2). Aggrieved by the order passed by the First Respondent, condoning the delay of 266 days in filing the Appeal under Section 69(1) of the Act, the Appellant in this Appeal filed the Writ Petition. The only ground raised by the Writ Petitioner, who is the Appellant herein, in the Writ Petition was that the First Respondent is not a Court within the meaning of Section 5 of the Limitation Act and therefore, he is not empowered to condone the delay under Section 69 of the Act.



5.The First Respondent has also filed his counter affidavit in the Writ Petition, reiterating that he was not aware of the proceedings before the Second Respondent in O.A.No.7 of 2008, as he was not a party to that proceedings and since he was ill and was unable to engage an Advocate, the delay had occurred for filing the Appeal under Section 69 of the Act. According to the First Respondent, the delay in filing the Appeal was neither willful nor wanton and the First Respondent is empowered to condone the delay in filing the Appeal.

6.The Learned Single Judge, by order dated 22.08.2014, in W.P.(MD)No.13804 of 2013, which is the impugned order, dismissed the Writ Petition filed by the Appellant and held that the leave granted to the First Respondent in filing the Appeal under Section 69 of the Act and condoning the delay of 266 days in filing the said appeal is in order and cannot be interfered with. Aggrieved over the dismissal of the Writ Petition, the Petitioner in the Writ Petition has preferred the instant Appeal.

SUBMISSIONS OF THE COUNSEL:

7.Mr.Ajmal Khan, Learned Senior Counsel for the Appellant submits that the Provisions of the Limitation Act will not apply for the First Respondent since he is not a Court. Hence, he submitted that Section 5 of the Limitation Act will not apply for the First Respondent hearing an Appeal under Section 69(1) of the Act. He drew our attention to Section 69 of the Act as well as Section 5 of the Limitation Act. Section 69 of the Act reads as follows:

"69. Appeal to the Commissioner:- (1) Any person aggrieved by any order passed by [the Joint Commissioner or the Deputy Commissioner, as the case may be,] under any of the foregoing sections of this Chapter may, within sixty days from the date of the publication of the order of of the receipt thereof by him, as the case may be, appeal to the Commissioner and the Commissioner may pass such order thereon as he thinks fit.

(2) Any order passed by [the Joint Commissioner or the Deputy Commissioner, as the case may be,] in respect of which no appeal has been preferred within the period specified in sub-section (1) may be revised by the Commissioner suo moto and the Commissioner may call for and examine the records of the proceedings to satisfy himself as to the regularity of such proceedings or the correctness, legality or propriety of any decision or order passed by the Joint Commissioner or the Deputy Commissioner, as the case may be]. Any such order passed by [the Joint Commissioner or the Deputy Commissioner as the case may



bel], shall be deemed to have been passed by the Commissioner on an appeal preferred to him under sub-section (1).

(3) Any order passed by the Commissioner on such appeal against which no suit lies to the Court under the next succeeding section, or in which no suit has been instituted in the Court within the time specified in sub-section (1) of Section 70 may be modified or cancelled by the Commissioner if the order has settled or modified a scheme for the administration of a religious institution or relates to any of the matters specified in Section 66."

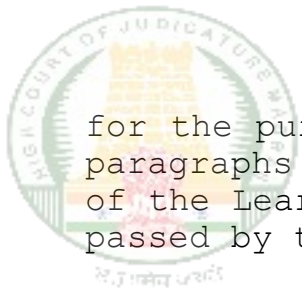
8. The Learned Senior Counsel referring to Section 69(1) of the Act submitted that an Appeal under Section 69 of the Act to the First Respondent will have to be filed within 60 days from the date of the publication of the order or of the receipt thereof by the aggrieved party. According to the Learned Senior Counsel, there is no question of condonation of delay in filing the Appeal under Section 69 of the Act, since the Act is a Special Code by itself and when there is a special law covering the field, only the special law will apply. He also drew our attention to Section 5 of the Limitation Act, which reads as follows:

"5. Extension of prescribed period in certain cases:- Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period, if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation:- The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section."

9. He submitted that the power to condone the delay under Section 5 of the Limitation Act is only vested with the Court as Section 5 of the Limitation Act gives power to condone the delay only to the Court. According to the Learned Senior Counsel, the First Respondent is not a Court for the purpose of Section 5 of the Limitation Act and hence, the order passed by the First Respondent condoning the delay in filing the Appeal under Section 69 of the Act is erroneous and contrary to law.

10. The Learned Senior Counsel then drew our attention to the finding of the Learned Single Judge on the issue whether the First Respondent under Section 69(1) of the Act is a Court or not



for the purpose of Section 5 of the Limitation Act. He referred to paragraphs 25 to 27 of the impugned judgment which is the finding of the Learned Single Judge for upholding the order dated 31.07.2013 passed by the First Respondent and is extracted hereinbelow.

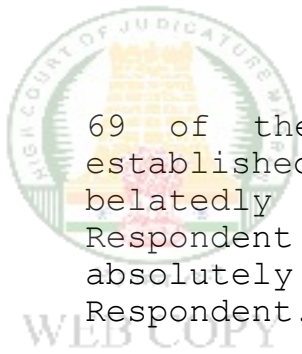
"25. Bearing the above legal principles in mind, if the facts are analyzed, it is to be noted that the third respondent is a third party to the proceedings. He was not a party respondent before the second respondent in O.A.No.7 of 2008. Therefore, he sought leave to file appeal petition. In such circumstances, the crucial question would be as to when a limitation start to run. Obviously, it would be from the date of knowledge and receipt of the order to be challenged. The petitioner would submit that the third respondent had knowledge of the proceedings even as on 13.01.2011 in a peace committee meeting convened by the Revenue Divisional Officer, Devakottai. On a perusal of the peace committee meeting, it is seen that the third respondent has stated that he does not know about the order and as and when he gets, he will challenge the same. Thus, the finding rendered by the Revenue Divisional Officer, Devakkottai, in the peace committee meeting, does not in any manner give any lead that the third respondent was in possession of the order passed by the second respondent and had full knowledge and deliberately preferred the appeal belatedly. As noticed above, the third respondent was not a writ petitioner in earlier writ petitions before this Court. Hence, this Court is of the view that a person, who has not been made as a party respondent before the second respondent in O.A.No.7 of 2008, has subsequently preferred appeal along with leave petition, is entitled to an opportunity to question the correctness of the order passed by the second respondent invoking its power under Section 63(3) of the Act."

11. The Learned Single Judge has confirmed the order of the First Respondent for the following reasons:

i) The First Respondent was a third party to the impugned proceedings in O.A.No.7 of 2008 before the Third Respondent.

ii) The First Respondent was not aware of the impugned proceedings in O.A.No.7 of 2008 before the Third Respondent and he was also not a party to the earlier Writ Petitions before this Court.

iii) The right of the Appeal provided under the Act before the First Respondent is statutory and a very valuable right. Therefore, the Third Respondent should not be shut out from exhausting the Appeal remedy at the very threshold and the matter requires to be examined on merits. The exercise of discretion by the First Respondent in condoning the delay in filing the Appeal under Section



69 of the Act is perfectly valid. The Petitioner has not established that the Third Respondent deliberately filed the Appeal belatedly for malafide reasons and the cause pleaded by the Third Respondent that he was unwell has not been established to be absolutely false by providing any evidence before the First Respondent.

12.The Learned Senior Counsel then drew our attention to the reasons given by the Third Respondent in his affidavit to condone the delay of 266 days in filing the Appeal under Section 69 of the Act. He referred to Paragraph 3 of the said affidavit which reads as follows:

"3. I submit that after obtaining the order from the office of the Joint Commissioner, I was not able to instruct my counsel at Chennai to prefer the appeal, since I was ill for 7-8 months. I was not able to travel to Chennai to instruct my counsel. Hence, there occurred a delay of 266 days. The said delay is neither willful nor wanton, but for the above said reason."

13.According to the Learned Senior Counsel, it is not the case of the Third Respondent that he was not aware of the impugned proceedings dated 31.12.2010 of the Second Respondent. According to the Learned Senior Counsel, the Third Respondent being aware of the impugned order dated 31.12.2010 made in O.A.No.07/2008 by the Second Respondent cannot file an Appeal under Section 69 of the Act beyond the period of sixty days which is a limitation period for filing the said Appeal. Since the affidavit seeking condonation of delay is bereft of details as to the date of knowledge or of the order, the Second Respondent is not empowered to condone the delay if the Appeal was filed beyond the period of sixty days from either the date of publication of the order or from the date of the receipt of the order.

14.The Learned Senior Counsel submitted that under Section 5 of the Limitation Act, the Court alone has got the powers to condone the delay. He then drew our attention to Section 29 of the Limitation Act which reads as follows:

"29.Savings:- (1)Nothing in this Act shall affect Section 25 of the Indian Contract Act, 1872.

(2)Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in



sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law."

15. According to the Learned Senior Counsel, when there is a special law, the Provisions contained in Section 4 to 24 (inclusive) of the Limitation Act shall not apply. According to him since the Act is a Special Enactment, only the Provisions of the Act will apply if a dispute is raised under the Provisions of the said Act.

16. The Learned Senior Counsel then drew our attention to various Provisions of the Act namely Section 6(6), 6(7), 63, 69, 70, 84, 110 and 115.

"Section 6(6) - "Commissioner appointed under Section 9".

Section 6(7) - "Court"

Section 63 - "Joint Commissioner or Deputy Commissioner to decide certain disputes in matters".

Section 69 - "Appeal to the Commissioner"

Section 70 - "Suits and Appeals"

Section 84 - "Constitution of Tribunals"

Section 110 - "Procedure and powers at inquiries at Chapters V & VI.

Section 115 - "Limitation".

17. The Learned Senior Counsel particularly highlighted Section 6(6) and Section 6(7) of the Act. Section 6(6) defines Commissioner and Section 6(7) defines Court, for the purpose of the said Act. Section 6(6) and Section 6(7) of the Act reads as follows:

"6(6). "Commissioner" means the Commissioner appointed under Section 9.

6(7). "Court" means

(i) In relation to a math or temple situated in the President town, the [Chennai] City Civil Court;

(ii) In relation to a math or temple situated elsewhere, the Subordinate Judge's Court having jurisdiction over the area in which the math or temple is situated, or if there is no such Court, the District Court having such jurisdiction;

(iii) in relation to specific endowment attached to a math or temple, the Court which could have jurisdiction as aforesaid in relation to the math or temple;



(iv) in relation to a specific endowment attached to two or more maths or temples, any Court which would have jurisdiction as aforesaid in relation to either or any of such maths or temples;"

The Commissioner under the Act is a person notified under Section 9 of the said Act.

18. The Learned Senior Counsel submitted that Section 115 of the Act which deals with the limitation is akin to Section 12 of the Limitation Act. Section 115 of the Act reads as follows:

"115. Limitation:- In computing the period of limitation prescribed under this Act for any proceeding, suit, appeal or application for revision against any order or decree passed under this Act, the time requisite for obtaining a certified copy of such order or decree shall be excluded.

Explanation:- For the purpose of this Section, order includes any annexure to such order."

Section 12 of the Limitation Act reads as follows:

"12. Exclusion of time in legal proceedings:- (1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.

(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.

(3) Where a decree or order is appealed from or sought to be revised or reviewed, or where an application is made for leave to appeal from a decree or order, the time requisite for obtaining a copy of the judgment shall also be excluded.

(4) In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

Explanation:- In computing under this section the time requisite for obtaining a copy of a decree or an order, any time taken by the Court to prepare the decree or order before an application for a copy thereof is made shall not be excluded."



19. According to the Learned Senior Counsel, the Act is a self contained code which stipulates the period of limitation for preferring an Appeal under Section 69(1) of the Act and also has a separate Provision for excluding the time under Section 115 of the Act which is similar to Section 12 of the Limitation Act and therefore, the Provisions of the Act including the Limitation Provisions will alone apply for filing an Appeal under Section 69 of the Act. The First Respondent is a Quasi-Judicial Authority and does not exercise judicial powers whereas the Court exercises judicial power. Hence, according to the Learned Senior Counsel, the First Respondent is not a Court and therefore, Section 5 of the Limitation Act will not apply to him.

20. The Learned Senior Counsel then referred to the decision rendered by the Hon'ble Supreme Court reported in 2003 (8) SCC 431 (Prakash H.Jain Vs. Marie Fernandes). He drew our attention to paragraph 11 and 12 of the said judgment which reads as follows:

"11. Sub-section (4) of Section 43 of the Act, which is relevant for our purpose reads as follows:

"43. (4)(a) The tenant or licensee on whom the summons is duly served in the ordinary way or by registered post in the manner laid down in subsection (3) shall not contest the prayer for eviction from the premises, unless within thirty days of the service of summons on him as aforesaid, he files an affidavit stating grounds on which he seeks to contest the application for eviction and obtains leave from the competent authority as hereinafter provided, and in default of his appearance in pursuance of the summons or his obtaining such. leave., the statement made by the landlord in the application for eviction shall be deemed to be admitted by the tenant to the licensee, as the case may be, and the applicant shall be entitled to an order for eviction on the ground aforesaid.

(b) The competent authority shall give to the tenant or licensee leave to contest the application if the affidavit filed by the tenant or licensee discloses such facts as would disentitle the landlord from obtaining an order for the recovery of possession of the premises on the ground specified in Section 22 or 23 or 24;

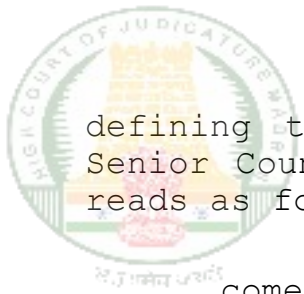
(c) Where leave is granted to the tenant or licensee to contest the application, the competent authority shall commence the hearing of the application as early as practicable and shall, as far as possible, proceed with the hearing from day to day, and decide the same, as far as may be, within six months of the order granting of such leave to contest the application."



12. The provisions of Chapter VIII stand apart, distinctly and divorced from the rest of the Act, except to the extent indicated therein itself and for that matter has been given an overriding effect over any other provisions in the very Act or any other law for the time being in force, though for enforcement of other remedies or even similar remedies under the provisions other than Chapter VIII, altogether different procedure has been provided for. It is unnecessary to once again refer to the special procedure provided for in Chapter VIII, but the various provisions under Chapter VIII unmistakably indicate that the competent authority constituted thereunder is not "court" and the mere fact that such authority is deemed to be court only for limited and specific purposes, cannot make it a court for all or any other purpose and at any rate for the purpose of either making the provisions of the Limitation Act, 1963 attracted to proceedings before such competent authority or clothe such authority with any power to be exercised under the Limitation Act. It is by now well settled by innumerable judgments of various courts including this Court, that when a statute enacts that anything shall be deemed to be some other thing the only meaning possible is that whereas the said thing is not in reality that something, the legislative enactment requires it to be treated as if it is so. Similarly, though full effect must be given to the legal fiction, it should not be extended beyond the purpose for which the fiction has been created and all the more, when the deeming clause itself confines, as in the present case, the creation of fiction for only a limited purpose as indicated therein. Consequently, under the very scheme of provisions enacted in Chapter VIII of the Act and the avowed legislative purpose obviously made known patently by those very provisions, the competent authority can by no means be said to be "Court" for any and every purpose and that too for availing of or exercising powers under the Limitation Act, 1963."

After referring to the judgment cited supra, the Learned Senior Counsel submitted that the Act being a self contained Code, though envisaged with the powers of a Court cannot exercise powers under Section 5 of the Limitation Act as the the First Respondent under the Act is not a Court.

21. The Learned Senior Counsel then referred to the judgment reported in 1985 (3) SCC 590 (Sakuru Vs. Tanaji), for the purpose of



defining the powers of a Quasi-Judicial Authority. The Learned Senior Counsel referred to paragraph 3 of the said judgment, which reads as follows:

"3. After hearing both sides we have unhesitatingly come to the conclusion that there is no substance in this appeal and that the view taken by the Division Bench in Venkaiah case' is perfectly correct and sound. It is well settled by the decisions of this Court in Town Municipal Council v. Presiding Officer, Labour Court², Nityananda M. Joshi v. Life Insurance Corporation of India³ and Sushila Devi V. Ramanandan Prosad, that the provisions of the Limitation Act, 1963 apply only to proceedings in 'courts' and not to appeals or applications before bodies other than courts such as quasi-judicial tribunals or executive authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on courts under the Codes of Civil or Criminal Procedure. The Collector before whom the appeal was preferred by the appellant herein under Section 90 of the Act not being a court, the Limitation Act, as such, had no applicability to the proceedings before him. But even in such a situation the relevant special statute may contain an express provision conferring on the appellate authority, such as the Collector, the power to extend the prescribed period of limitation on sufficient cause being shown by laying down that the provisions of Section 5 of the Limitation Act shall be applicable to such proceedings. Hence it becomes necessary to examine whether the Act contains any such provision entitling the Collector to invoke the provisions of Section 5 of the Limitation Act for condonation of the delay in the filing of the appeal. The only provision relied on by the appellant in this connection is Section 93 of the Act which, as it stood at the relevant time, was in the following terms :

93. Limitations.—Every appeal and every application for revision under this Act shall be filed within sixty days from the date of the order against which the appeal or application is filed and the provisions of the Indian Limitation Act, 1908 shall apply for the purpose of the computation of the said period. On a plain reading of the section it is absolutely clear that its effect is only to render applicable to the proceedings before the Collector, the provisions of the Limitation Act relating to "computation of the period of limitation". The provisions relating to computation of the period of limitation are contained in Sections 12 to 24 included in Part III of the Limitation Act, 1963. Section 5 is not a provision dealing with



"computation of the period of limitation". It is only after the process of computation is completed and it is found that an appeal or application has been filed after the expiry of the prescribed period that the question of extension of the period under Section 5 can arise. We are, therefore, in complete agreement with the view expressed by the Division Bench of the High Court in Venkaiah case' that Section 93 of the Act did not have the effect of rendering the provisions of Section 5 of the Limitation Act, 1963 applicable to the proceedings before the Collector."

22. According to the Learned Senior Counsel, applying the principles of law laid down by the Hon'ble Supreme Court in the judgment cited supra, the First Respondent is only a Quasi-Judicial Authority and will not be a Court for the purpose of Section 5 of the Limitation Act, though, he is vested with some powers exercised by the Courts. According to the Learned Senior Counsel, Section 69 (1) of the Act does not contemplate extending the period of limitation. Therefore, the Provisions of the Limitation Act will not apply to proceedings under the Act.

23. The Learned Senior Counsel then referred to a Single Judge judgment of the Andhra Pradesh High Court reported in 2012 (6) ALT 31 (Alladi Nageswara Rao & others Vs. The Executive Officer, Sri Agestheswara Swami Temple, Nallapadu village, Guntur Rural Mandal, Guntur District) and referred to a portion of paragraph 8, paragraph 9, paragraphs 23, a portion of paragraph 24 and paragraphs 25 and 26 of the said judgment which reads as follows:

"8.....In the petitions filed for condonation of the delay along with the appeals, the Regional Joint Commissioner, in fact, had no power under the Act or the Rules to condone the delay. Rule 4 of the Rules did not provide for any 'condonation of delay when it made it mandatory to prefer an appeal within 30 days from the date of receipt of the decision or order. The quasi-judicial authority could not have condoned the abnormal delay without any explanation, when what were referred to were only the' subsequent events which cannot be taken into account.

9. In W.P. No.22294 of 2011, it was further stated that when A.P. „Act 30 of 1987 is a complete code by itself and the appellate authority is only a persona designata, any inherent powers under Section 151 of the Code of Civil Procedure or Section 5 of the Limitation Act could not have been invoked. Even under Section 5 of the Limitation Act, proof- of sufficient cause is a condition precedent for the exercise of discretionary



jurisdiction and any delay, which a party could have avoided by exercise Of due care .and caution and attention cannot be a sufficient cause. The indefeasible right accrued to the tenant, could not have been interfered with on equitable grounds, more so when the delay was unexplained and deliberate.

23. A 'Court' for the purpose of the Act has been defined in Section 2(8) which did not include any statutory authority beyond the Courts specified in its meaning. The powers and functions of Regional Joint Commissioner defined by Section 9 do not clothe any exercise of powers or performance of functions by the Regional Joint Commissioner with any colour of such exercise of powers or performance of functions by a Court. None of the provisions of the enactment providing for any appeals or reviews revisions specified the provisions of the Limitation Act, 1963 or Section 5 of the Limitation Act in particular to be applicable and Section 149, which governs the procedure and powers at enquiries under the Act including hearing of appeals, prescribes about the applicability of the procedure under the Code of Civil Procedure to the trial of suits and the further applicability of the Evidence Act and Oaths Act, but not the Limitation Act, 1963: Deeming the officers under Section 149(3) to be persons acting judicially within the meaning of the judicial Officers' Protection Act, 1850 can be considered no indication of treating such officers as Courts for any other purpose and the beneficiary provision should be considered available only to the specific extent provided therein to the officer, but cannot be stretched to make the officer a judicial officer/Court for all purposes.

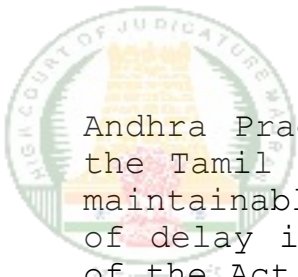
24.....The period of 30 days from the date of the receipt of the decision or order by the aggrieved person, within which the appeal has to be, thus, filed under the statutory rules, is not expressly or impliedly impressed with any elasticity either by the statutory rules or by the statute under which the rules were made. The above background may clearly exclude the application of Section 5 of the Limitation Act to such appeals.

25. Section 5 of the Limitation Act providing for extension of prescribed period in certain cases like any appeal or any application, enabled admission of such an appeal or application only if the appellant or the applicant satisfies the "Court" that he had a



sufficient cause for not preferring the appeal or making the application within such period, The word "Court" itself, not defined by the Limitation Act, 1963, but defined by A.P. Act 30 of 1987 for its purposes, does not include the Regional joint Commissioner of Endowments in any view. Section 29(2) of the Limitation Act, 1963 provided that the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as and to the extent to which they are not expressly excluded by such special or local law, where any, such special or local law prescribed for any suit, appeal or application a different period of limitation than prescribed by the Limitation Act, 1963. A.P. Act 30 of 1987 being a complete code in itself may, thus, make any applicability of Section 5 of the Limitation Act, 1963 to the appeals provided by the statutory rules above referred to, not arise with reference to Section 29(2) of the Limitation Act, 1963, apart from Section 5 specifically referring to satisfaction of the Court in this regard. The principles laid down by a Division Bench of this Court in K. Venkaiah v. K. Venkateswara Rao (7 supra) upheld by the Apex Court in Sakurb v. Tanaji (6 supra) and the ratio decidendi of the other precedents above referred to, make Section 5 of the Limitation Act, 1963 inapplicable to appeals under Rule 4 of the Rules in the absence of any express or even an implied provision under A.P. Act 30 of 1987 to consider such application even remotely possible. The limitation on exercise of such power by a Statutory authority, who is a persona designata, is circumscribed by the very statutory provisions, which conferred quasi-judicial powers and any other equitable considerations cannot provide shelter to exercise of any such power against the unambiguous letter of the statute and if so, Section 5 of the limitation Act, 1963 could not have been taken aid by the Regional Joint Commissioner to entertain applications for condonation of delay in filing the appeals under Rule 4 of the Rules and condone the delay by allowing any such applications on any ground."

24. The Learned Senior Counsel submitted that the Andhra Pradesh Hindu Religious and Charitable Endowments Act is in Pari materia with the Tamil Nadu Hindu Religious and Charitable Endowments Act. Therefore, the judgment of the Learned Single Judge of the Andhra Pradesh High Court cited supra can be applied to the case on hand. In that judgment, the Learned Single Judge of the Andhra Pradesh High Court has held that Section 5 of the Limitation Act, 1963, is inapplicable for an Appeal filed under the Provisions of the Andhra Pradesh HR & CE Act. According to the Learned Senior Counsel, applying the same proposition of law laid down by the



Andhra Pradesh High court, the Appeal filed under Section 69(1) of the Tamil Nadu HR & CE Act, beyond the period of sixty days is not maintainable as Section 5 of the Limitation Act seeking condonation of delay is not applicable for an Appeal filed under Section 69(1) of the Act.

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25.The Learned Senior Counsel then relied upon a full Bench Judgment of Kerala High Court reported in AIR 1974 Kerala 162 (Jokkim Fernandez Vs. Amina Kunhi Umma) and referred to paragraphs 16 and 17 of the said judgment and submitted that as per the proposition of law laid down by the full bench judgment, the Kerala High Court has held that the Limitation Act, 1963 applies only to Courts and prescribes the periods of limitations in respect of Suits, Appeals and Applications filed only in Courts. In that judgment, the Kerala High Court has held that Section 18(1)(b) of the Kerala Buildings (Lease and Rent Control) Act is a self contained code in the matter of prescribing the periods of limitation and granting exemptions therefrom. Therefore, Section 5 of the Limitation Act for condonation of delay will not apply to Kerala Buildings (Lease and Rent Control) Act. A portion of paragraph 16 and 17 of the said judgment is extracted hereunder:

"16.I am afraid the above contention must fail. It has been ruled that the Limitation Act, 1963 applies only to courts and prescribes periods of Limitation in respect of suits, appeal and applications filed only in Courts. Section 18 of the Kerala Buildings (Lease and Rent Control) Act is clear that the appellate authority constituted under it is not a court but only an authority persona designata.....

17..... The Provisions of Section 18(1)(b) therefore show that the Kerala Buildings (Lease and Rent Control) Act, was meant to be a self-contained code in the matter of prescribing the periods of Limitation and granting exemption therefrom."

26.The Learned Senior Counsel then referred to the latest judgment of the Hon'ble Supreme Court in Civil Appeal No.16962 of 2017 (International Asset Reconstruction Company of India Ltd. Vs. The Official Liquidator of Aldrich Pharmaceuticals Ltd and other) reported in the internet (www.livelaw.in) wherein, the Hon'ble Supreme Court has held that Section 5 of the Limitation Act is not applicable to the proceedings under Section 30 of the Recovery of Debts and Bankruptcy Act, 1993. He referred to paragraphs 3, 9, 10, 11, 13 and 14 of the said judgment. The operative portion of the said judgment is found in paragraph 14, which reads as follows:

"14. The RDB Act is a special law. The proceedings are before a statutory Tribunal. The scheme of the Act manifestly provides that the Legislature has provided



for application of the Limitation Act to original proceedings before the Tribunal under Section 19 only. The appellate tribunal has been conferred the power to condone delay beyond 45 days under Section 20(3) of the Act. The proceedings before the Recovery officer are not before a Tribunal. Section 24 is limited in its application to proceedings before the Tribunal originating under Section 19 only. The exclusion of any provision for extension of time by the Tribunal in preferring an appeal under Section 30 of the Act makes it manifest that the legislative intent for exclusion was express. The application of Section 5 of the Limitation Act by resort to Section 29(2) of the Limitation Act, 1963 therefore does not arise. The prescribed period of 30 days under Section 30(1) of the RDB Act for preferring an appeal against the order of the Recovery officer therefore cannot be condoned by application of Section 5 of the Limitation Act."

27. After relying upon the authorities in support of his submissions, the Learned Senior Counsel submitted that the Act is a self contained code and the powers of the three authorities namely, a) Commissioner; b) Tribunals and c) Court have been very clearly defined under the Act. Therefore, according to the Learned Senior Counsel, the First Respondent has erroneously and contrary to law has applied Section 5 of the Limitation Act and condoned the delay of 266 days in filing the Appeal under Section 69(1) of the Act.

28. Per contra, Mr. Veera Kathiravan, Learned Senior Counsel for the Third Respondent submits that the Writ Petition is not maintainable since the power of attorney dated 22.02.2001 has been executed by the Appellant, who is a citizen of Malaysia in favour of his wife Ganesan Ruckmani, who has signed the Writ Petition for the purpose of managing, controlling and supervising the management of all the properties belonging to him and situated at Thiruvudaiyarpatti, Tamil Nadu. According to the Learned Senior Counsel, the Appellant Ganesan being a foreign national cannot act as an 'Ambalathaar' for the temple. He drew our attention to Section 26 of the Act which deals with disqualification of Trustees. Section 26(1) and 26(1)(b) of the Act reads as follows:

"26. Disqualification of trustees:- (1) A person shall be disqualified for being appointed as, and for being, a trustee of any religious institution or endowment,

(a)

(b) If he is not a citizen of India."

29. The Learned Senior Counsel submitted that the Appellant is a foreign national. Applying Section 26(1)(b) of the Act, the



Appellant is disqualified from being a Trustee of the temple which is equivalent to the 'Ambalathaar'. Further he submitted that a power of attorney holder cannot act as an 'Ambalathaar' of the temple.

30.The Learned Senior Counsel then drew our attention to the order passed by the second respondent in O.A.No.7 of 2008 and submitted that none of the villagers were summoned and the Third Respondent was also not made a party and was also not heard by the Second Respondent before the pronouncement of the order dated 31.12.2010, passed by the Second Respondent. He referred to page 6 of the said order which reads as follows:

“இது தொடர்பாக பெறப்பட்ட வாக்குவாதங்கள், ஆய்வர் அறிக்கை சமர்ப்பிக்கப்பட்ட சான்றாவணங்கள் என்னால் பார்வையிடப்பட்டது. அனைத்து ஆவணங்களும் மனுதாரரின் கூற்றை மிரதிபலிப்பதாக உள்ளது. மாறுபட்டகருத்து ஏதும் தெரிவிக்கப்படவில்லை. மரியாதை பெறுதல் தொடர்பாக பழமையான ஆவணங்களோ மட்டையமோ அல்லது ஒலைச்சுவடிகளோ ஆணித்தரமான முக்கியமான ஆவணங்களோ தாக்கல் செய்யப்படவில்லை. மேலும் திருப்பத்தூர் வட்டாட்சியர் காவல் துறை ஆய்வாளரின் 05.02.2009 கடிதம் மற்றும் திருப்பத்தூர் வட்டாட்சியர் 30.01.2008 கடிதம் மட்டும் முக்கிய ஆவணங்களாக கருதப்படுகிறது. சம்பந்தப்பட்ட வருவாய் துறை அதிகாரி மற்றும் காவல் துறை அதிகாரிகள் முன்னிலையில் இருதரப்பினரும் ஒத்துக்கொண்டு மனுதாரரை மரியாதை ஊர் அம்பலம் என்பதற்கு முப்பிலிருப்பர் கோயிலில் சத்தியம் செய்யவேண்டும் என ஒப்புகொண்டும் அதன்படி அவரும் சத்தியம் செய்து ஊர் அம்பலமாக இருந்து மரியாதை பெற்றுவருவது தேவ்வாக தெரியவருவதால் மனுதாரர் கேட்ட ச.பி.63(e)யின் படியான பரிகாரம் மனுதாரருக்கே வழங்கலாம் என முடிவெடுத்து மனுதாரர் மனு அனுமதிக்கப்படுகிறது.”

31.As seen from the order, none of the villagers were heard and documents submitted to rebut the claim of the Appellant. The Learned Senior Counsel then submitted that aggrieved by the order passed in O.A.No.7 of 2008, dated 31.12.2010, under Section 63(e) of the Act, the Third Respondent after coming to know about the order which was passed behind his back, filed an Appeal under Section 69 (1) of the Act along with an application seeking condonation of delay of 266 days and also seeking leave to file an Appeal as he was not a party to the proceedings in O.A.No.7 of 2008 before the Second Respondent.

32.The Learned Senior Counsel, then drew our attention to the Division Bench Judgment made in W.P.(MD)Nos.14382 of 2011 and 185 of 2012 dated 10.01.2010, involving the same subject matter of dispute and he referred to paragraphs 7, 8, 9 and 10 of the said judgment and submitted that the Division Bench recorded the submission made by the Appellant in that Appeal that since there is an Appeal remedy available against an order passed under Section 63 (e) of the Act, the Writ Petitioner was directed to pursue the Appeal remedy under Section 69(ii) of the Act, which he had filed on 12.05.2011. According to the Learned Senior Counsel, even on 10.01.2010, the Appeal if filed or pursued will be beyond the period of sixty days as prescribed under Section 69 of the Act and therefore, the Appellant has blown hot and cold to suit his



convenience and therefore, the contention of the Appellant that there is no provision for condonation of delay for an Appeal under Section 69 of the Act cannot be countenanced.

33.The Learned Senior Counsel then submitted that the Third Respondent became aware of the order passed by the Second Respondent in O.A.No.7 of 2008 only on 06.12.2011, when the Peace Committee Meeting was held. He referred to paragraph 3 of the affidavit filed by the Third Respondent seeking leave to file the Appeal under Section 69 of the Act, which reads as follows:

"11.It is therefore prayed that this Hon'ble Tribunal may be pleased to grant leave to the third party appellant to challenge the order dated 31.12.2010 in O.A.No.7 of 2008 passed by the Joint Commissioner, The Tamil Nadu Hindu Religious And Charitable Endowments, Sivagangai pending disposal of the above appeal and pass such other suitable order and thus render justice."

34.The Appeal under Section 69 of the Act was filed by the Third Respondent in January 2012 and therefore, according to the Learned Senior Counsel, the Appeal was filed within the period of sixty days stipulated under Section 69 of the Act and is therefore filed within time.

35.He also referred to the various grounds raised by the Third Respondent in the Appeal filed before the First Respondent under Section 69(1) of the Act and submitted that the Third Respondent by order dated 31.10.2010, in O.A.No.7 of 2008 has given a finding in favour of the Appellant though none of the villagers were arrayed as Respondents and particularly, one Madhavan, who claims first respect was also not arrayed as party Respondent.

36.The Learned Senior Counsel then referred to Section 110 of the Act which reads as follows:

"110.Procedure and powers at inquiries under Chapters V and VI:- (1)Where a Commissioner [or a Joint Commissioner or a Deputy Commissioner] makes an enquiry or hears an appeal under Chapter V or Chapter VI, the inquiry shall be made and the appeal shall be heard, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (Central Act V of 1908) to the trial of suits or the hearings of appeals, as the case may be.

(2)The provisions of the Indian Evidence Act, 1872 (Central Act I of 1872) and the Indian Oaths Act, 1873 (Central Act X of 1873), shall apply to such inquiries and appeals.



(3) The Commissioner [or a Joint Commissioner or a Deputy Commissioner] holding such inquiry or hearing such an appeal shall be deemed to be a person acting judicially within the meaning of the Judicial Officers Protection Act, 1850 (Central Act XVIII of 1850)."

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37. According to the Learned Senior Counsel, as seen from Section 110, the First Respondent while holding an enquiry or hearing an Appeal under Chapter V or VI in which Section 69 falls, the Appeal will have to be heard as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of Suits or hearing of Appeals as the case may be. Therefore, according to Learned Senior Counsel, by virtue of Section 110 of the Act, Section 5 of the Limitation Act is also applicable for an Appeal under Section 69 of the Act.

38. The Learned Senior Counsel submitted that the First Respondent has rightly exercised his powers under Section 5 of the Limitation Act and condoned the delay of 266 days in filing the Appeal under Section 69 of the Act after having satisfied himself that the reasons given for condonation of delay was properly explained by the Third Respondent.

39. The Learned Senior Counsel submitted that it is well settled that the Commissioner under the Act has got all the powers available to a Court. He relied upon a Single judge Judgment of the Madras High Court, reported in 1983 TNLJ 155 (Nagarajan Vs. The Commissioner, Hindu Religious and Charitable Endowments (Administration) Department), which also deals with the Act and referred to the relevant portions in the said judgment which reads as follows:

"Yet another submission made is that, merely because an authority is not 'persona designata', it does not as held in Venkai Marbon Vs. Dakshinamoorthy (1981 1 MLJ 275), "without any ade" Section 5 would apply. If not a persona designata, an authority can be a tribunal or quasi judicial authority and need not necessarily be only a Court. This contention is acceptable, since the aspect as to whether an authority is a 'Court' or not can be decided only by analysing how and to what extent he is enabled to function in deciding disputes and claims.

Hence, on an analysis made of the manner in which he disposes of appeals and what have been provided specifically under the Act, the following are the essential features made out.

<https://hcservices.ecourts.gov.in/hcservices> 1) Parties are allowed to be heard in person or counsel (Rule 18).



2) If facts are disputed, parties can adduce oral or documentary evidence (Rule 18).

3) Witnesses can be summoned, if need be. (Rule 18).

4) He can compel documents to be produced (Rule 18).

5) He hears arguments both on facts and on law and renders findings like a Court on issues or points for consideration framed (Rule 20).

6) He can administer oath under the Indian Oaths Act (Section 110(2)).

7) Provisions of the Indian Evidence Act are applicable (Section 110(2)).

8) He must hear appeals as nearly as may be, in accordance with Civil Procedure Code and Civil Rules of Practice as applicable to the trial of suits (Rule 20).

9) He has to decide the disputes 'judicially' which is recognised under the Act, and that is the reason why he is given protection under Judicial Officers Protection Act, 1950 (Section 110(3)).

10) He functions to decide finally and authoritatively the 'lis' which arises between parties.

11) He can award costs.

When these features are present, the Commissioner in disposing of appeals, acts judicially though a quasi-judicial functionary, and hence, for purposes of Limitation Act, he will be a Court, though certainly he is not a Court of Justice and will not be a Court within the meaning of Civil Courts Act.

The next point to be considered is, whether Section 5 of the Limitation Act would be applicable. Once a finding is arrived at that he is a Court for the purposes of Limitation Act, there is no conceivable difficulty in holding that Section 5 could be invoked by him while entertaining appeals alone, and he can grant relief, provided sufficient cause is shown. In the event of holding that he is not a Court to what extent the provisions of the Limitation Act could be availed of, is considered hereunder, in the light of arguments advanced on this aspect.

The point evolved by relying upon these decisions is that unless there is express exclusion, by referring to any of the Sections 4 to 24, they would be applicable. This connection can no longer be



sustained, in view of the decision rendered in *Hukumdev Vs. Lalit Narain* (AIR 1974 SC 480), wherein it was held that, it would suffice to look into the scheme of the special law and the nature of remedy provided, and if the intention of the Legislature is made out that it is a complete code by itself, then the provisions of the Limitation Act would necessarily be excluded.

Section 115 of T.N. Act, is to the following effect.

It is identical to Section 12(2) of 63 Act. By referring to this section, it is claimed that when a special provision is found dealing with limitation, all the sections from 4 to 24 cannot be invoked, even if the Commissioner is to be treated as a Court. This is a contentions in extremism, because Section 115 can in no sense be understood as to embrace all the aspects covered by those Sections. The only one sub-section that would stand excluded, is Section 12(2) of 63 Act. There is no express reference made in the Act for excluding anyone of those provisions. Looking into the Section in T.N. Act, to find out whether the scheme and the nature of the Act is such as to exclude the applicability of Limitation Act, unlike the Representation of the people Act, this Act cannot be termed as a code by itself proving for everyone of those contingencies which are available under Section 4 to 24 of the Limitation Act. Hence, an attempt made that even if Commissioner is a Court, none of the provisions of Sections 4 to 24 of Act would be available, has to be rejected.

Considering the provisions of T.N. Act and on what has been stated above that except Section 115, which is similar to Section 12(2) of 63 Act, there being no other provision, or scheme of the Act envisaging exclusion of the applicability of Sections 4 to 24; applying the principles and precautions spelt out by Supreme Court, it is held that Section 5 would apply, when Commissioner exercises appellate powers."

40. Therefore, according to the Learned Senior Counsel, Section 5 of the Limitation Act is applicable for an Appeal before the First Respondent filed under Section 69 of the Act. The Learned Senior Counsel then submitted that unless and until the Act excludes the applicability of the Limitation Act, the Provisions of Section 5 of the Limitation Act will apply. Since there is no such exclusion under the Act, according to the Learned Senior Counsel, Section 5 of the Limitation Act will apply.



41. The Learned Senior Counsel then drew our attention to various other enactments namely, The Arbitration and Conciliation Act, 1996, The Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 and The Recovery of Debts and Bankruptcy Act, 1993 and referred to the limitation period fixed under those respective enactments. He referred to Section 34 of The Arbitration and Conciliation Act, 1996 and the relevant clause in Section 34(3) reads as follows:

"34(3). An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter."

42. Section 20 (3) of The Recovery of Debts and Bankruptcy Act, 1993 reads as follows:

"20(3). Every appeal under sub-section (1) shall be filed within a period of thirty days from the date on which a copy of the order made, or deemed to have been made, by the Tribunal is received by him and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period."

43. Section 25(2) of The Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 reads as follows:

"25(2). Every application to the High Court for the exercise of its power under sub-section (1) shall be preferred within one month from the date on which the order of proceedings to which the application relates is communicated to the appellant.

Provided that the High Court may, in its discretion, allow further time not exceeding one month for the filing of any such application, if it is satisfied that the applicant had sufficient cause for not preferring the application within the time specified in this sub-section."



44.The Learned Senior Counsel submitted that there is a proviso which gives an extension to the prescribed limitation period under the above mentioned acts but in the case of the HR&CE Act, there is no such Provision for extension beyond the period stipulated under Section 69(1) of the Act. According to the Learned Senior Counsel, unless and until the enactment provides for an extension for filing an Appeal beyond the stipulated period, the Provisions of Section 5 of the Limitation Act will apply. According to the Learned Senior Counsel, if the intention of the legislature was to fix a period of Limitation which cannot be extended beyond the stipulated period, the legislature would have introduced similar proviso as contained in The Arbitration and Conciliation Act, 1996, The Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 and The Recovery of Debts and Bankruptcy Act, 1993. Further he submitted that unless the special law namely the HR & CE Act specifically excludes the applicability of Section 4 to 24 of the Limitation Act, Section 29(2) of the Limitation Act cannot be applied since the HR & CE Act does not provide for any such exclusion.

45.The Learned Senior Counsel then submitted that the reason for delay has been properly explained by the Third Respondent in the application filed by him to condone the delay of 266 days in filing the Appeal under Section 69(1) of the Act. He referred to Article 123 of the Limitation Act and submitted that the date of knowledge of the proceedings in O.A.No.7 of 2008 before the Third Respondent was only on 06.12.2011 and the Appeal was filed in the month of January 2012, within a period of sixty days from the date of knowledge of the order dated 31.10.2010 passed by the Third Respondent in O.A.No.7 of 2008. Therefore, according to the Learned Senior Counsel, the Appeal under Section 69 is filed well within time applying Article 123 of the Limitation Act.

46.According to the Learned Senior Counsel, instead of contesting the Appeal filed under Section 69 of the Act on merits, the Appellant has abused the process of law by filing proceedings after proceedings to deprive the Third Respondent to contest the claim of the Appellant on merits. Therefore, according to the Learned Senior Counsel, the Learned Single Judge has rightly dismissed the Writ Petition and there is no infirmity in the said order.

47.Per contra, Mr.V.R.Shanmuganathan, Learned Special Government Pleader appearing for the First and Second Respondents in the Appeal submits that the First Respondent has been entertaining applications to condone the delay in filing the Appeal under Section 69(1) of the Act from 1959 onwards. According to the Learned Special Government Pleader, the Judicial Powers exercised by the First Respondent Commissioner are similar to the Judicial Powers exercised by the authorities under the Tamil Nadu Cooperative Societies Act and the Registration Act.



48. He placed reliance on a judgment reported in AIR 1967 SC 1494 (Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd., and another). He referred to a portion of paragraphs 9 and 11 of the said judgment which reads as follows:

"9. In order to appreciate whether the Assistant Registrar was functioning as a Court, it is necessary to examine certain provisions of the Act.....

11. It will be noted from the above that the jurisdiction of the ordinary civil and revenue Courts of the land is ousted under S.57 of the Act in case of disputes which fell under S.48 must, therefore, be held to discharge the duties which would otherwise have fallen on the ordinary civil and revenue Courts of the land. The Registrar has not merely the trapping of a Court but in many respects he is given the same powers as are given to ordinary civil Courts of the land by the Code of Civil Procedure including the power to summon and examine witnesses on oath, the power to order inspection of documents, to hear the parties after framing issues, to review his own order and even exercise the inherent jurisdiction of Courts mentioned in S.151 of the Code of Civil Procedure. In such a case there is no difficulty in holding that in adjudicating upon a dispute referred under S.48 of the Act, the Registrar is to all intents and purposes, a Court discharging the same functions and duties in the same manner as a Court of law is expected to do."

49. According to the Learned Senior Counsel, in the judgment cited supra, the Hon'ble Supreme Court has held that Registrar to all intents and purposes is a Court discharging the same functions and duties in the same manner as a Court of law is expected to do.

50. The Learned Special Government Pleader then submitted that unless and until the special law expressly excludes the operation of the Limitation Act, there is no bar to apply Section 5 of the Limitation Act for an Appeal filed under the Provisions of the special law. For this proposition, he referred to the a Single Judge judgment of the Madras High Court reported in 1999 (1) CTC 534 (N.M.Palanimuthu Vs. The Commissioner HR & CE (Admn). Dept. and five others). Paragraphs 5 and 6 of the said judgment reads as follows:

"5. A question arose before this Court as to whether Section 5 of the Limitation Act would apply or not to an appeal provided to the Commissioner under Section 69 of the Endowments Act. A learned Single Judge of this Court in a judgment reported in Nagaran Vs. The Commissioner, HR & CE (Admn) Department Madras, 1983 T.L.N.J. 155 held that Section



5 of the Limitation Act is applicable to the said appeal. In that judgment the question as to whether Section 5 of the Limitation Act would apply to a suit under Section 70 of the Endowments Act or not was neither raised nor considered. There is no doubt that the Endowments Act is a special law which prescribes it's own period of limitation under Section 70 as 90 days from the date of the receipt of the order to file a suit and 90 days from the date of the decree of that court to appeal before the High Court. When a special law provides a period of limitation of it's own, then the question that arise for consideration is whether by such prescription of a separate period of limitation does the provisions of the Limitation Act stand excluded? Section 29(2) of the Limitation Act, 1963 is totally different from sub section 2 of Section 29 of the Limitation Act, 1908. under Section 29(2) of the present Limitation Act, if any special or local law prescribes for any suit, appeal a period by the schedule to that Act..... then it is deemed that such period were the period prescribed by the schedule and for the purpose of determining any period of limitation prescribed for any suit..... by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as and to the extent to which they are not expressly excluded by such special or local law. The sum and substance of this sub-section is, unless a special or local law expressly excludes the application of Section 4 to 24 of the Limitation Act, they would automatically apply. The learned Single Judge who disposed of the case reported in Nagarajan Vs. The Commissioner, HR & CE (Admn) Department Madras, 1983 T.L.N.J. 155, also had the question before him as to whether there should be express exclusion of Sections 4 to 24 or whether such exclusion could be gathered from the scheme of the special or local law. In that context, the learned Single Judge has held as follows:

"The point evolved by relying upon these decisions is that unless there is express exclusion by referring to any of the Sections 4 to 24 they would be applicable. This contention can no longer be sustained, in view of the decision rendered in Hukumdev Vs. Lalit Naratin, A.I.R. 1974 S.C. 480 wherein it was held that it would be suffice to look into the scheme of the special law and the nature of remedy provided, and if the intention of the Legislature is made out that it is a complete code by itself, then the provisions of the Limitation Act would necessarily be excluded".



6. Therefore whether Sections 4 to 24 of the Limitation Act is attracted to a suit under Section 70 of the Endowments Act or not depends upon the scheme of the Endowments Act."

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51. According to the Learned Special Government Pleader, applying the proposition of law laid down by the Madras High Court, the First Respondent exercising powers under Section 69 of the Act is vested with all the powers of the Court and therefore, Section 5 of the Limitation Act will apply. According to the Learned Special Government Pleader, the order dated 31.12.2010 in O.A.No.7 of 2008 was obtained behind the back of the Third Respondent and the reason for delay is also fully explained by the Third Respondent and therefore, allowing the application for condonation of delay by the First Respondent is in accordance with law. He also prayed for dismissal of this Appeal.

52. In reply to the submissions made by the Learned Counsels for the Respondents, Mr. Ajmal Khan, Learned Senior Counsel for the Appellant submitted that

a) once power has been exercised illegally by the First Respondent, the Court cannot allow the illegality to continue.

b) the judgment of the Learned Single Judge is erroneous and has to be set aside.

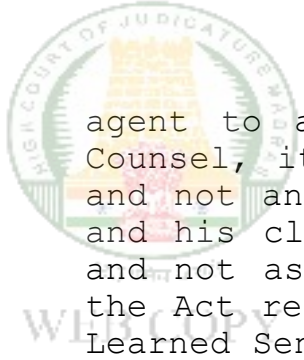
c) just because the authorities under the HR & CE Act has similar powers under the Code of Civil Procedure, the authority cannot be considered as a Court. According to the Learned Senior Counsel, the judgment relied upon by the Learned Special Government Pleader reported in 1999 1 CTC 534 will not apply to the facts of the instant case since that judgment relates to filing of Suits before the Court under Section 70 of the Act and does not relate to Appeal filed under Section 69 of the Act.

d) The scheme of the Act excludes the applicability of the Provisions of the Limitation Act.

e) Section 69(2) of the Act is also not applicable, since it relates to suo motu revision exercised by the First Respondent, which is not the case on hand.

f) the judgment relied upon by the Learned Senior Counsel appearing for the Third Respondent reported in 1974 2 SCC 133 is also not applicable for the instant case and referring to paragraphs 17 and 18 of the said judgment, submitted that exclusion of the Limitation Act need not be in express terms for its exclusion.

g) referring to clause 11 and 12 of the power of attorney given by the Appellant in favour of his wife, the Learned Senior Counsel for the Appellant submitted that it relates only to the appearance before the authorities concerned and it does not confer power on the



agent to act as 'Ambalathaar'. According to the Learned Senior Counsel, it is only the Appellant who can act as the 'Ambalathaar' and not any one else. The Appellant is the native of the village and his claim is only the right as an 'Ambalathaar' in the temple and not as a trustee. Therefore, the Provisions of Section 26 of the Act relates to disqualification of Trustees relied upon by the Learned Senior Counsel for the Third Respondent will not apply. The Act is a special code and it will prevail over the Limitation Act.

h) when there are inconsistencies between the laws by the Parliament and the laws made by the legislatures of States and if the law of the legislatures of States has been given ascent to by the President, then the law of the legislature of the State will prevail as per Article 254(1) of the Constitution of India. Therefore, according to the Learned Senior Counsel, since the Act is a State legislature having got the ascent of the President, the Provisions of the said Act shall prevail over the Limitation Act which is a Central Legislation. Being a special enactment, according to the Learned Senior Counsel, the Provisions of the Act alone shall apply for the purpose of condoning the delay in filing the Appeal under Section 69(1) of the Act.

DISCUSSION AND CONCLUSION:

53. The only point for consideration in this Writ Appeal is whether the Commissioner of the Hindu Religious and Charitable Endowments Department under Section 69 of the Act, is a Court within the meaning of Section 5 of the Limitation Act.

54. The Act is a special enactment to amend and facilitate the law relating to the administration and governance of Hindu Religious and Charitable Institutions and Endowments in the State of Tamil Nadu. Section 69(1) of the Act provides for an Appeal against the order passed under Section 63 of the Act. Under Section 69(1) of the Act, the Appeal will have to be filed within sixty days from the date of the publication of the order or of the receipt thereof by the aggrieved person. In the instant case, the Appeal was filed by the Third Respondent under Section 69(1) of the Act beyond the period of sixty days. He filed an application to condone the delay of 266 days under Section 5 of the Limitation Act, 1963, which was allowed by the First Respondent by order dated 31.07.2013 and it was challenged by the Appellant in the Writ Petition. The Learned Single Judge, by order dated 22.08.2014, in W.P.(MD)No.13804 of 2013, dismissed the Writ Petition and against the order of dismissal, the Appellant has filed this Writ Appeal on the ground that the First Respondent is not a Court and therefore, he ought not to have condoned the delay exercising the powers under Section 5 of the Limitation Act.

55. The Act does not specifically exclude the applicability of the Limitation Act, 1963. Section 5 of the TN HR & CE Act



specifically excludes the application of certain Acts to Hindu Religious Institutions and Endowments. The Limitation Act is not excluded under Section 5 of the Act. Section 5 of the Act reads as follows:

"5. Certain Acts not to apply to Hindu Religious Institutions and Endowments:- The following enactments shall cease to apply to Hindu Religious Institutions and endowments namely,

(a) The [Tamil Nadu] Endowments and Escheats Regulation, 1817 ([Tamil Nadu] Regulation VII of 1807);

(b) The Religious Endowments Act, 1863 (Central Act XX of 1863);

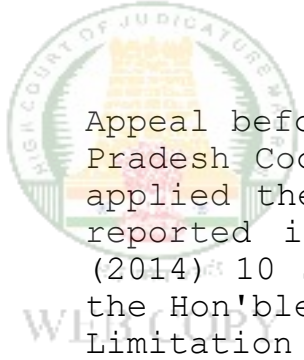
(c) The Charitable Endowments Act, 1890 (Central Act VI of 1890);

(d) The Charitable and Religious Trusts Act, 1920 (Central Act XIV of 1920); and

(e) section 92 and 93 of the Code of Civil Procedure, 1908 (Central Act V of 1908)."

56. As per Section 29(2) of the Limitation Act, unless and until the special law excludes the applicability of Section 4 to 24, there is no bar for applying those Sections of the Limitation Act to the special law. Under the Act, there is no express exclusion of the applicability of Sections 4 to 24 of the Limitation Act. If the Legislature would have deemed it fit to exclude the applicability of Section 5 of the Limitation Act to the Appeal under Section 69(1) of the Act, it would have introduced a similar proviso as contained in the case of Section 34 of the Arbitration and Conciliation Act, 1996, Section 25(2) of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 and Section 20(3) of the Recovery of Debts and Bankruptcy Act, 1993 and similar such special enactments wherein, the proviso in those special enactments gives an extension to the prescribed limitation period. But, in the case of the Act, there is no such provision for extension beyond the period stipulated under Section 69(1) of the Act. The Limitation Act is also not one amongst the excluded Acts under Section 5 of the HR & CE Act.

57. The Hon'ble Supreme Court had an occasion to deal with a similar issue involving Madhya Pradesh Cooperative Societies Act, 1960. Under Section 55(2) of the said Act, similar to Section 69(1) of the HR & CE Act, there was no Provision to condone the delay in filing the Appeal. In that case, the Appeal was filed before the Deputy Registrar, with a delay of two days. The Hon'ble Supreme Court had to decide whether Section 5 of the Limitation Act will apply for an Appeal before the Deputy Registrar under Section 55(2) of the Madhya Pradesh Cooperative Societies Act, 1960. In that case, the Hon'ble Supreme Court held in 2016 12 SCC 365 (Syed Zalil Akhtar Vs. Zila Sahkari Krishi Avam Gramin Vikas Bank, Mydt.), the Hon'ble Supreme Court held that Section 5 of the Limitation Act will apply for an



Appeal before the Deputy Registrar under Section 55(2) of the Madhya Pradesh Cooperative Societies Act, 1960. The Hon'ble Supreme Court applied the law laid down by the Apex Court in Mukri Gopalan case, reported in (1995) 5 SCC 5 and Anshuman Shukla case reported in (2014) 10 SCC 814. In all these decisions cited supra rendered by the Hon'ble Apex Court, it was held that as per Section 29(2) of the Limitation Act, unless and until there is an express mention in the special law that the applicability of Sections 4 to 24 of the Limitation Act are excluded, the Provisions of Section 5 of the Limitation Act would automatically get attracted to the special law. The relevant paragraphs of the judgment cited supra is extracted hereunder:

"10. Thus a critical analysis of the applicability of Section 5 of the Limitation Act in a situation of this kind has been elaborately made and the above conclusion has been drawn by this Court as early as in the year 1995. Unfortunately, this decision appears to have not been brought to the notice of this Court in Noharlal case. Moreover, in the said decision this Court by simply referring to the relevant provision under which the limitation has been prescribed, namely, Section 55 straightaway held as under:

"34. As stated earlier, Section 55 allows an aggrieved party to approach the Registrar within a period of thirty days. There is no provision analogous to Section 5 of the Limitation Act, 1963 allowing the Registrar to condone delay if "sufficient cause" is shown. In view of this fact, in our opinion, the contention of the learned counsel for the Bank is well founded that the application submitted by the appellant was barred by time."

11. Having noted the said view expressed in para 34, as compared to a detailed analysis made in the earlier decision of this Court made in Mukri Gopalan case we are of the considered view that in the light of the subsequent larger Bench decision of this Court in Anshuman Shukla case which has given its seal of approval to the decision in Mukri Gopalan case, the latter decision can be followed in all respects and the one held in Noharlal Verma case cannot be said to be good law.

12. Therefore, applying the law thus laid down by this Court in Mukri Gopalan case and Anshuman Shukla case, we are convinced that Section 5 of the Limitation Act would apply."

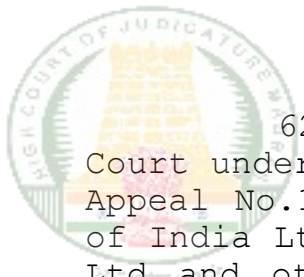


58. Therefore, this Court is of the view that the judgment relied upon by the Learned Senior Counsel for the Appellant in 2003 8 SCC 431 (Prakash H. Jain Vs. Marie Fernandes), is not applicable and his submission that the HR & CE Act being a self contained code, though the Commissioner under Section 69(1) of the Act has some powers of a Court, he cannot exercise powers under Section 5 of the Limitation Act, to condone the delay is not accepted by us.

59. The First Respondent under the HR & CE Act, as per Section 110 of the Act, while holding an enquiry or hearing an Appeal under Chapter V or VI of the Act, the Appeal will have to be heard as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of Suits or hearing of Appeals, as the case may be. Section 69(1) of the Act falls under Chapter V and therefore, the First Respondent will have to follow the same procedure as applicable under the Code of Civil Procedure, 1908 to the trial of Suits or the hearing of Appeals, as the case may be. The Provisions of the Indian Evidence Act, 1872 and the Indian Oaths Act, 1873 shall apply to such enquiries and Appeals. The Commissioner or a Joint Commissioner or a Deputy Commissioner holding such enquiry or hearing such an Appeal shall be deemed to be a person acting judicially within the meaning of the Judicial Officers Protection Act, 1850 (Central Act XVIII of 1850). Therefore, the Commissioner exercising the powers under Section 69(1) of the Act has got all the trappings of a Court.

60. The First Respondent under Section 69(1) of the Act has to decide 'lis' between parties in a judicial manner and subject to the revision of its order, the decision would remain final between the parties. The Hon'ble Supreme Court in Mukri Gopalan case reported in (1995) 5 SCC 5, had an occasion to consider whether the Appellant authority under Section 18 of the Kerala Rent Control Act is a Court and has the power to condone the delay in filing the Appeal after the expiry of the period of limitation prescribed under it. The Hon'ble Supreme Court held that the Appellate Authority having all the trappings of a Court can exercise powers under Section 5 of the Limitation Act.

61. This Court is therefore of the considered view that the judgment relied upon by the Learned Senior Counsel for the appellant reported in 1985 3 SCC 590 (Sakuru Vs. Tanaji), will not apply since the First Respondent has all the trappings of a Court since it has to follow the Civil Procedure Code, the Indian Evidence Act, 1872 and the Indian Oaths Act, 1873 and there is no express exclusion of the Limitation Act, 1963 under Section 5 of the HR & CE Act and the Provisions of Section 4 to 24 of the Limitation Act are also not specifically excluded for the purpose of deciding an Appeal under Section 69(1) of the Act.

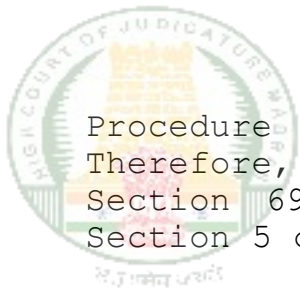


62. Insofar as the recent judgment of the Hon'ble Supreme Court under the Recovery of Debts and Bankruptcy Act, 1993, in Civil Appeal No.16962 of 2017 (International Asset Reconstruction Company of India Ltd. Vs. The Official Liquidator of Aldrich Pharmaceuticals Ltd and other) reported in the internet (www.livelaw.in) relied upon by the learned Senior Counsel for the appellant is concerned, under Section 20(3) of the DRT Act, the Appellate Tribunal has been conferred the power to condone the delay beyond 45 days. But, in the case on hand, the Commissioner under Section 69(1) of the HR & CE Act has not been given such an express power, and the applicability of the Limitation Act has not been expressly excluded under the HR & CE Act. Therefore, the judgment relied upon by the Learned Senior Counsel for the Appellant will not apply to the instant case.

63. The Single Judge Judgment of the Andhra Pradesh High Court reported in 2012 (6) ALT 31 (Alladi Nageswara Rao & others Vs. The Executive Officer, Sri Agestheswara Swami Temple, Nallapadu village, Guntur Rural Mandal, Guntur District), relied upon by the Learned Senior Counsel for the Appellant is also not applicable since the Hon'ble Supreme Court, in the case reported in 2016 12 SCC 365 (Syed Zalil Akhtar Vs. Zila Sahkari Krishi Avam Gramin Vikas Bank, Mydt.), following Mukri Gopalan case reported in 1995 5 SCC 5 and Anshuman Shukla case reported in 2014 10 SCC 814 has clearly held that an authority similar to the First Respondent can exercise powers under Section 5 of the Limitation Act to condone the delay when there is no express exclusion of its applicability under the special enactment.

64. This Court is in agreement with the Learned Senior Counsel for the Third Respondent that if there was a legal bar for the applicability of Section 5 of the Limitation Act to an Appeal under Section 69(1) of the HR & CE Act, the legislature would have expressly excluded its applicability as in the case of the Arbitration and Conciliation Act, 1996, The Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 and The Recovery of Debts and Bankruptcy Act, 1993 and similar such special enactments, which was not done under the HR & CE Act.

65. The definition of Court under Section 6(7) of the Act is only an inclusive definition and not an exhaustive definition. Section 6(7) of the Act deals only with the jurisdiction of the respective Courts in relation to a Math or temple or a specific endowment attached to a Math or Temple, depending upon the place where the Math or Temple or a specific endowment attached to a Math or Temple is situated. It does not deal with the functions of the authorities concerned under the HR & CE Act and whether they exercise judicial functions tantamounting to Court or not. As discussed earlier by us, there is no specific bar to the applicability of the Limitation Act to the HR & CE Act and the Commissioner under Section 69 will have to follow the Civil



Procedure Code, Indian Evidence Act and Indian Oaths Act. Therefore, we are of the considered view that the Commissioner under Section 69 is a Court for the purpose of the applicability of Section 5 of the Limitation Act.

66. Insofar as the applicability of Article 254(1) of the Constitution of India is concerned, it will not apply for the instant case as there is no inconsistency between the HR & CE Act and the Limitation Act. The HR & CE Act is a substantive law dealing with Hindu Religious and Charitable Endowments and Institutions. Whereas, the Limitation Act is a procedural law dealing with Limitation for initiating legal actions. Therefore, Article 254(1) of the Constitution of India which the learned Senior Counsel for the appellant relied upon is not applicable to the case on hand as there can never be a conflict between the HR & CE Act and the Limitation Act.

67. The reasons for delay is also sufficiently explained by the Third Respondent in the condone delay application and the leave application filed before the First Respondent. Admittedly, the Third Respondent was not a party to the proceedings under Section 63 of the HR & CE Act by which the Appellant was declared as "Ambalathaar". None of the villagers were made as parties in the impugned proceeding passed under Section 63 of the Act. The Third Respondent has also stated in his affidavit before the First Respondent seeking leave to file the Appeal under Section 69(1) of the Act that he came to know about the factum of passing of the impugned order only during the Peace Committee meeting conducted by the Tahsildar, Thiruppathur dated 06.12.2011. He has filed the Appeal in January 2012, within the period of sixty days as per Section 69(1) of the Act.

68. We are therefore of the considered view that Section 5 of the Limitation Act applies to an Appeal under Section 69(1) of the TN HR & CE Act. We are also satisfied that sufficient reasons have been given by the Third Respondent for condonation of delay of 266 days in filing the Appeal. The Learned Single Judge, has rightly rejected the Writ Petition filed by the Appellant. We find that there is no infirmity in the dismissal of the Writ Petition by the Learned Single Judge.

69. In the result, the Writ Appeal shall stand dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)



To

1.The Commissioner,

The Tamil Nadu Hindu Religious and
Charitable Endowments Board,
No.119/3, Uthmar Gandhi Salai,
Nungambakkam,
Chennai.

2.The Joint Commissioner,

Hindu Religious and Charitable Department,
Sivagangai,
Sivagangai.

+1cc to M/S.DR.D.GNANA SEKARAN, Advocate SR.No.90719.

+1cc to M/S.VEERA ASSOCIATES, Advocate SR.No.90978.

+1cc to M/S.AJMAL ASOCIATES, Advocate SR.No.90820.

+1cc to Special Government Pleader in SR.No.90889.

JUDGMENT MADE IN
W.A. (MD) No.1094 of 2014

MR

SDS/SV:MMS/SAR 4/21.12.2017/34P/7C