IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.Nos.184, 185 and 186 of 2018

and CMP Nos.1266, 1267 & 1268 of 2018

WA No.184 of 2018

Selvaganapathy ... Appellant

versus

1. V.Senthilnathan
2. V.Swaminathan
3. V.Sivanathan

4. The Commissioner,
Hindu Religious & Charitable Endowments,
(Administration) Department,
Nungambakkam, Chennai 600 034.

5. The Joint Commissioner,
Hindu Religious& Charitable Endowments
Thanjavur.

6. The Assistant Commissioner,
Hindu Religious & Charitable Endowments
(Administration) Department
Nagapattinam.

7. V.Muruganandam ... Respondents

Appeal filed against the order passed by this Court dated 18.12.2017 passed in W.P.No. 41422 of 2016.

WA No.185 of 2018

Selvaganapathy ... Appellant

versus

1. V.Muruganandam

2. The Commissioner,
Hindu Religious & Charitable Endowments,
(Administration) Department,
Nungambakkam, Chennai 600 034.

3. The Joint Commissioner,
Hindu Religious & Charitable Endowments
Thanjavur.

4. The Assistant Commissioner,
Hindu Religious & Charitable Endowments
(Administration) Department
Nagapattinam.

5. V.Senthilnathan

6. V.Swaminathan

7. V.Sivanathan ... Respondents

Appeal filed against the order passed by this Court dated 18.12.2017

passed in W.P.No. 43153 of 2016.

WA No.186 of 2018
Selvaganapathy ... Appellant

versus

1. V.Muruganandam

2. The Commissioner,
Hindu Religious & Charitable Endowments,
(Administration) Department,
Nungambakkam, Chennai 600 034.

3. The Joint Commissioner,
Hindu Religious & Charitable Endowments
Thanjavur. ... Respondents

Appeal filed against the order passed by this Court dated 18.12.2017 passed in W.P.No. 43154 of 2016.

PRAYER IN WP.NO.41422, 43153 & 43154 OF 2016:

Writ Petition filed Under Article 226 of the Constitution of India to call for the records pertaining to the order dated 30.9.2016 passed in R.P.3/2016 D2 by the Commissioner, Hindu

Religious and Charitable Endowments (Administration) Department, Nungambakkam, Chennai 600 034, the 1st respondent herein, quash the same and consequently direct the 2nd respondent to appoint the petitioners as a hereditary trustee in Sri Rajathagiriswaraswamy Temple, Keezhvelur Taluk, Velankanni, Nagapattinam District or any other qualified branch members of the family

For appellant : Mr.R.Saravanakumar
(in all Writ Appeals)

For Respondents : Mr.M.Maharaja
Special Government Pleader (HR & CE)
for RR 4 to 6 in WA No.184/2018,
for RR 2 to 4 in WA No.185/2018 &
for RR 2 & 3 in WA No.186/2018

: Mr. S.Sithirai Anandan,
for 7th respondent in WA No.184/2018 &
for 1st respondent in WA Nos.185 & 186/18

COMMON JUDGMENT

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

These three Intra Court Appeals have filed by the appellant, who was the 4th respondent in WP No.43153, and 41422 of 2016 and the 3rd respondent in WP No.43154 of 2016, challenging the common order dated 18.12.2017 made in the above Writ Petitions, in and by which, the learned Single Judge, while setting aside the orders of the Commissioner, Hindu Religious and Charitable Endowments Department, made in R.P. No.3/2016 D2 and A.P. No.28/2016 D2 dated 30.09.2016 had remitted the matter to the Commissioner, Hindu Religious and Charitable Endowments Department, to consider the same afresh on merits.

2. W.P. No. 43153 of 2016 was filed by the 1st respondent in the Writ Appeal No.185 of 2018, challenging the order of the Commissioner, Hindu Religious and Charitable Endowments Department, dated 30.09.2016 made in R.P. No.3/2016 D2, filed under Section 21 of the Hindu Religious and Charitable Endowments Act, 1959. WP 43154 of 2016, was filed by the 1st respondent in WA No.186 of 2018, challenging the order dated 30.09.2016 passed by the Commissioner, Hindu Religious and Charitable Endowments Department, made in A.P. No.28/2016 D2, is an appeal filed under Section 69(1) of the Hindu Religious and Charitable Endowments Act, 1959. WP No.41422 of 2016 was filed by the respondents 1 to 3 in WA No.184 of 2018.

3. The facts that led to the filing of the Writ Petition are as follows:

One Dhakshanamurthy, who is the grandfather of the appellant, was declared as a hereditary trustee of Arulmigu Rajathagiriswarar Temple by the Deputy Commissioner in O.A.No.34 of 1972, filed under Section 63(b) of the Hindu Religious and Charitable Endowments Act, by an order dated 26.05.1973. After the death of the said Dhakshanamurthy, his son Vairamuthu, the father of the appellant was recorded as the hereditary trustee, under Section 54(1) of the Hindu Religious and Charitable Endowments Act, by the Joint Commissioner on 18.10.1995. By an order dated 01.07.2003, made by the Joint Commissioner, Hindu Religious and Charitable Endowments Department, Thanjavur, the appellant was recorded as the hereditary trustee of the said temple, under Section 54(1) of the of the Tamil Nadu Hindu Religious and Charitable Endowments Act.

4. One Muruganandam, who is the petitioner in WP Nos.43153 & 43154 of 2016, filed an application in OA No. blank of 2014, claiming that he should be declared as the hereditary trustee. It was his contention that it was his forefathers who had founded the temple and as such, he is entitled to be declared as hereditary trustee. He also claimed that the order dated 01.07.2003, in and by which, the appellant was recognized as the hereditary trustee has obtained by suppression of facts and hence the same should be set aside. Simultaneously, the said Muruganandam also filed a Revision Petition in R.P. No. 3 of 2016, challenging the order dated 01.07.2003. By an order dated 05.01.2016, the Joint Commissioner, Hindu Religious and Charitable Endowments Department, Thanjavur, rejected the claim of the said Muruganandam, made under Section 63(b) of the Act, seeking a declaration that he is also a hereditary trustee. This order of rejection of the application under Section 63 (b) was challenged by the said Muruganandam, by preferring an appeal in A.P.No.28 of 2016, before the Commissioner, Hindu Religious and Charitable Endowments Department. It is also seen from the records that the said Muruganandam had filed WP No.34366 and 34367 of 2015, in this Court seeking a direction to the Joint Commissioner, Hindu Religious and Charitable Endowments Department, to number the Original Application filed by him on 01.12.2004, under Section 63(b) of the Act and for a Mandamus forbearing the Joint Commissioner, Hindu Religious and Charitable Endowments Department, Thanjavur, from proceeding further with the contemplated enquiry under Section 78(2) of the Act, in pursuance of the notice dated 02.04.2015, without considering the original application filed by him, under Section 63 (b) dated 01.12.2004.

5. The said Writ Petitions came to be disposed of by this Court on 28.10.2015, with the following observations:

> "3. The learned Additional Government Pleader submitted that having passed an order, the respondent No.I has become functus officio. The only remedy open to the petitioner is to approach the Commissioner, Hindu Religious and Charitable Endowments Department. This Court is not willing to go into the disputed question of facts. What the petitioner seeks to challenge is the order dated 01.07.2003 passed by respondent No.1. The petitioner appears to be not in possession of the said order. Therefore, it is not known as to whether the said order has been passed in accordance with law or not.
>
> 4. Thus, a direction is issued to Respondent No.1 to issue a copy of the order dated 01.07.2003 to the petitioner within a period of four weeks from the date of receipt of a copy of this order. After receipt of the same, the petitioner is at liberty to file an appeal to the Commissioner, Hindu Religious and Charitable Endowments Department within a further period of four weeks. Till such time, the proceeding dated 02.04.2015 initiated by respondent No.I is directed to be kept in abeyance. The petitioner is at liberty to seek appropriate interim order before the Commissioner in the appeal to be filed."

6. Pursuant to the above said order passed by this Court on 28.10.2015, the said Muruganandam having obtained the copy of the order dated 01.07.2003 had filed the Revision Petition in R.P.No.3 of 2016. It is also seen that the application under Section 63(b) of the Act filed by the said Muruganandam came to be rejected as not maintainable by the Joint Commissioner by an order dated 05.01.2016. Challenging the said rejection, an appeal in A.P.No.28 of 2016 was filed by the said Muruganandam, the Commissioner, Hindu Religious and Charitable Endowments Department, Chennai 34, where by his order dated 30.09.2016, made in R.P.No.3 of 2016, held that the petitioner therein had lost his right to claim that he is the hereditary trustee of the temple, in as much as the grant father of the appellant was declared as the hereditary trustee as early as on 26.05.1973 and the said order has not been challenged. It is also pointed out that the order made on 01.07.2003, is one passed under Section 54(1) of the Act, which is only an order recognizing a heir of the hereditary trustee as the hereditary trustee. Therefore, unless the original order dated 26.05.1973, in and by which, the appellant's grandfather was recognised as a trustee is challenged the petitioner cannot challenge the consequential

order made under Section 54(1) of the Act.

7. The Revision Petition filed in R.P.No.3 of 2016 was also dismissed on the same date on substantially similar grounds. Aggrieved by the dismissal of the appeal petition in A.P.No.28 of 2016, filed under Section 69(1) of the Hindu Religious and Charitable Endowments Act, the said Muruganandam had filed WP No.43154 of 2016. The order rejecting the Revision Petition in R.P.No.3 of 2016 was challenged by the said Muruganandam in W.P.No.43153 of 2016. The respondents 5 to 7 in W.P.No.43153 of 2016, who were impleaded as respondents in R.P.No.3 of 2016 had filed W.P.No.41422 of 2016, challenging the order under R.P.No.3 of 2016.

8. The learned Single Judge, by a common order dated 18.12.2017, had set aside the orders passed in A.P.No.28 of 2016 as well as R.P.No.3 of 2016 on the ground that the Commissioner has dismissed the Appeal as well as the Revision Petition, solely on the ground of limitation. The learned Single Judge has after referring to the order passed by this Court in W.P.No.34366 and 34367 of 2015, which gave liberty to the petitioner therein to challenge the order passed on 01.07.2003, held that once liberty had been granted to file an appeal and revision and it is not open to the Commissioner, to have rejected the applications on the ground of Limitation. Being aggrieved by the order of the learned Single Judge, the appellant has come forward with the present appeals.

9. We have heard Mr.R.Saravanakumar, learned counsel appearing for the appellant in all the petitions. Mr.M.Maharaja, learned Special Government Pleader (HR & CE), appearing for Respondents 4 to 6 in WA No.184 of 2018, Respondents 2 to 4 in WA No.185 of 2018 and Respondents 2 & 3 in WA No.186 of 2018. Mr.S.Sithirai Anandan, learned counsel appearing for the 7th respondent in WA No.184 of 2018 and for 1st respondent in WA Nos.185 & 186 of 2018.

10. Mr.R.Saravanakumar, learned counsel appearing for the appellants would contend that the premise, viz. that the Commissioner, Hindu Religious and Charitable Endowments Department, had dismissed the appeal as well as the Revision Petition on the ground of Limitation, on which the learned Single Judge has proceeded to dispose of the writ petitions is not correct. He would refer to the order made in WP Nos.34366 and 34367 of 2015 dated 28.10.2015, which has been extracted above and contend that this Court only granted liberty to the 1st respondent to challenge the order dated 01.07.2003 in a manner

known to law. Whether the 1st respondent in Writ Appeal Nos.185 and 186 of 2018 had the right to challenge the said orders, de hors the question of limitation was in fact gone into by the Commissioner and the Commissioner had in fact found that the 1st respondent having not challenged the order in OA No.34 of 1972 dated 26.05.1973, in and by which, the grandfather of the appellant was recognized as the hereditary trustee, has lost the right to claim that he should also be recognized as the hereditary trustee of the Temple in question.

11. The sum and substance of the contention of the learned counsel for the appellant is that the appeal as well as the revision petition were not rejected on the ground of the limitation, but were dismissed on merits. On the ground that the 1st respondent in WA Nos.185 and 186 had lost his right to challenge the order dated 01.07.2003 and also to claim as the hereditary trustee, nearly after 43 years, from the date on which, the grandfather of the appellant was recognized as the hereditary trustee.

12. Per contra, Mr.S.Sithirai Anandan, learned counsel appearing for the 1st respondent Muruganandam would contend that the order dated 01.07.2003 was obtained behind his back and insofar as the orders dated 26.05.1973 and 18.10.1995 his forefathers had given no objection for the appointment of Dhakshanamurthy and after him, his son Vairamuthu Devar as the hereditary trustee. Therefore, according to Mr.S.Sithirai Anandan, his claim under Section 63(b) should have been considered on merits, de hors the orders dated 26.05.1973 and 18.10.1995.

13. We have considered the rival submissions. A perusal of the order made in WP No.34366 and 34367 of 2015, would show that this Court had only granted liberty to the 1st respondent in WA No.185 and 186 to challenge the order dated 01.07.2003 and a direction was also issued to the authorities to furnish the copy of the order dated 01.07.2003 to the petitioner therein, who is the 1st respondent in the Writ Appeal Nos.185 and 186 of 2018. This Court has not given any directions, as to how and in what manner those proceedings should be disposed of by the Commissioner.

14. A perusal of the order of the learned Commissioner, Hindu Religious and Endowments dated 30.09.2016, impugned in the Writ Petitions shows that the claim of the 1st respondent was

considered on merits and it was rejected on the ground that the 1st respondent had lost his right to claim as the hereditary trustee of the Temple in question. In view of the lapse of nearly 43 years, from the date on which, the grandfather of the appellant was recognized as the trustee. We find that the Commissioner had not rejected the Appeal or the Revision Petition on the ground that they are barred by limitation. Unfortunately, this fact has not been brought to the notice of the learned Single Judge, when the Writ Petitions were disposed of. In the order impugned in the Writ Petitions, it is observed as follows:

> "5. Considering the fact that this Court has already granted liberty to file such an appeal/revision before the first respondent, in the above said order passed on 28.10.2015, the first respondent is not justified in rejecting the revision solely on the ground of limitation, especially, in the light of the order passed by this Court in C.R.P.(PD) Nos.2758 & 3116 of 2014 dated 10.12.2014 reported in 2015(1) LW 560 (V.P.Narayanasamy v. Gurusamy) and the observation made therein."

15. A reading of the above would show that the learned Single Judge, while disposing of the Writ Petitions, had concluded that the Commissioner, Hindu Religious and Charitable Endowments, has rejected the Revision Petition in R.P.No.3 of 2016 as well as the Appeal Petition in AP.No.28 of 2016 on the ground of Limitation. On facts it is not so, both the Revision Petition as well as the Appeal Petition have been dismissed on merits on the ground that the petitioner/appellant therein, has lost his right to claim hereditary trusteeship of the Temple in question.

16. Mr.R. Saravanakumar, learned counsel appearing for the appellant would also contend that an order passed in an Appeal under Section 69(1) of the Act, could be challenged by way of the statutory suit, under Section 70 of the Act. Therefore, the Writ Petition challenging the same is not maintainable. We are not, however, going into that question, in view of the fact that those questions have not been gone into by the learned Single Judge, when the Writ Petitions were disposed of. We find that the premise on which the learned Single Judge has set aside the order and remitted the matter back to the Commissioner, directing him to reconsider the matter on merits, is factually in-correct.

17. In view of the above conclusion these Writ Appeals are allowed, the common order dated 18.12.2017 made in the W.P.Nos.43153, 43154 and 41422 of 2016 is set aside and the Writ Petitions are remitted to the learned Single Judge to be heard on merits and in accordance with law. It will be open to the appellant to raise the question of maintainability of the Writ Petition in WP No. 43154 of 2016, where the order of the Commissioner passed in A.P.No.28 of 2016 was put in issue.

18. In fine the Writ Appeal is allowed, the common order dated 18.12.2017 is set aside. The Writ Petitions are remitted back to the learned Single Judge to be heard on merits and in accordance with law.

19. The Writ Appeals are disposed of accordingly. Consequently, the connected miscellaneous petitions are closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

jv

To

1. The Commissioner,
Hindu Religious & Charitable Endowments,
(Administration) Department,
Nungambakkam, Chennai 600 034.

2. The Joint Commissioner,
Hindu Religious& Charitable Endowments
Thanjavur.

3. The Assistant Commissioner,
Hindu Religious & Charitable Endowments
(Administration) Department
Nagapattinam.

4. The Section Officer,
Writ Section, High Court, Madras.

+2cc to Mr.R.SARAVANAKUMAR, Advocate, S.R.No.25879 & 25880
+1cc to Mr.S.SITHIRAIANANDAM, Advocate, S.R.No. 25981
+1cc to the Government Pleader, S.R.No.26444
+1cc to Mr.R.SARAVANAKUMAR, Advocate, S.R.No.25878
(08/05/2018)

W.A.Nos.184, 185 and 186 of 2018
and CMP Nos.1266, 1267 & 1268 of 2018

RSK(CO)
TR(27/04/2018)