



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

W.P. (MD) No.15158 of 2017

and

W.M.P. (MD) Nos.11977 and 11978 of 2017

Periyathambi

... Petitioner

Vs

1.The Commissioner,
Hindu Religious and Charitable Endowments
Administration Department,
Chennai - 34.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowments
Administration Department,
Thanjavur District.

3.The Assistant Commissioner,
Hindu Religious and Charitable Endowments
Administration Department,
Thanjavur District.

4.Palanivel

5.Ravi

6.Panneer Selvam

7.Mathiyalakan

8.Karunanithi

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned order in R.C. 22573/2017 D2, dated 16.06.2017 on the file of the respondent No.1 and quash the same as illegal, consequently to direct the respondent No.1 to consider the appeal filed by the petitioner in R.C.22573/2017 D2, dated 16.06.2017, afresh and in accordance with law with in the time stipulated by this court.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.K.Mu.Muthu

Additional Government Pleader for R1 to R3

**ORDER**

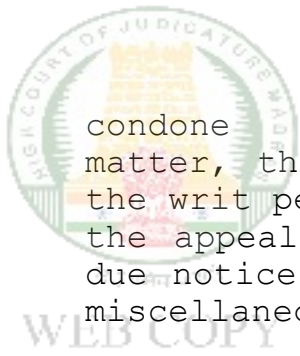
Heard the learned counsel on either side.

2. The respondents 4 to 8 herein filed O.A.No.3 of 2013 before the Joint Commissioner, Hindu Religious and Charitable Endowments Administration Department, Thanjavur District, under Section 63(b) of the TamilNadu Hindu Religious and Charitable Endowments Act, 1959. The petitioner herein was shown as the respondent in the original application. The original application was allowed on 06.01.2016. The petitioner herein filed W.P.(MD)No.7750 of 2016, questioning the same. The writ petition was disposed of on 21.04.2016 and the petitioner was asked to avail the remedy of appeal set out in the TamilNadu Hindu Religious and Charitable Endowments Act. Not satisfied with the same, the petitioner filed W.A.(MD)No.1023 of 2016 and the writ appeal was dismissed. The petitioner filed Review Application (MD)No.80 of 2016 and the same was also dismissed and the petitioner was given liberty to move the Commissioner, Hindu Religious and Charitable Endowments Department. The petitioner availing the said liberty filed an appeal before the first respondent. In the process, there was a delay of 357 days. The first respondent by an order dated 16.06.2017, dismissed the application for condonation of delay. Challenging the same, this writ petition has been filed.

3. When the matter was taken up for hearing, the counsel appearing for the respondents 4 to 8 pointed out that the petitioner can very well avail the remedy under Section 70 of the TamilNadu Hindu Religious and Charitable Endowments Act, 1959.

4. The question that arises for my consideration in this writ petition is whether the first respondent was justified in declining to condone the delay of 357 days in filing an appeal under Section 69(1) of the TamilNadu Hindu Religious and Charitable Endowments Act, 1959.

5. As already pointed out that an ex parte order was passed against the writ petitioner herein. The petitioner filed writ petition, writ appeal and a review application in that regard. Only thereafter he moved the first respondent by filing the statutory appeal under the relevant provision of the TamilNadu Hindu Religious and Charitable Endowments Act, 1959. It cannot be in dispute that the petitioner was not guilty of any indifference and carelessness. He was actually prosecuting the case. But then, instead of filing a statutory appeal, he was pursuing writ remedy. Therefore, I am of the view that the delay occasioned in this case has been more than satisfactorily explained. The first respondent ought to have noted that the order with which, the petitioner is aggrieved is an ex parte order. He ought to have seen that Section 69 of the Act confers the valuable right of appeal to the writ petitioner. The delay occasioned in this case is adequately explained. Hence, the first respondent erred in declining to



condone the delay. In this view of the matter, the order impugned in this writ petition is set aside and the writ petition stands allowed. The first respondent shall number the appeal and dispose of the appeal in accordance with law after due notice to all the parties. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

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To:

1. The Commissioner,
Hindu Religious and Charitable Endowments
Administration Department,
Chennai - 34.

2. The Joint Commissioner,
Hindu Religious and Charitable Endowments
Administration Department,
Thanjavur District.

3. The Assistant Commissioner,
Hindu Religious and Charitable Endowments
Administration Department,
Thanjavur District.

1 CC to M/s.D.R.MURUGESAN, Advocate (SR-55780[F] dated 21/03/2019)

+1 CC to M/s.SPL GP (SR-55924[F] dated 22/03/2019)

+1 CC to M/s.R.ALAGUMANI, Advocate (SR-56430[F] dated 25/03/2019)

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21.03.2019

DS/ /SAR- (12.04.2019) 3 P 7C