

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2020

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.5813 of 2009 &
M.P.No.2 of 2009

1. A.Purushothaman (deceased)
2.P.Rajan
(Substituted as LR by order dated 20.06.2012) ...Petitioners

Vs

1. The Commissioner, HR&CE
Department, Nungambakkam
Chennai- 600 034
2. The Deputy Commissioner
HR&CE Department [Impleaded as per order
Mayiladuthurai dt.19.04.10 in wp.01/2010]
3.A.Narasimhan

4. A.Jayaraman ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the Respondents order passed in No. S.M.R. No.7 of 1996 (Rc.11792/96) D.2 dated 30.6.2008 and quash the same as illegal and void and further directing the Respondents to permit the Petitioner to continue to hold as hereditary Trustee in the office of Trusteeship of Arulmighu Drawpathy Amman Temple No.2 Road Mayiladuthurai Town & Taluk Nagapattinam District.

For Petitioners : Mr.S.L.Sundarsanam

For Respondents : Mr.M.Karthikeyan
Special Government Pleader for R1 & R2

O R D E R

The petitioner challenges an order dated 30.06.2008 passed in terms of Section 69(2) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (in short 'Act'). It appears that the Deputy Commissioner had, by order dated 25.01.1996 in OA. No.6 of 1994 considered the application for settling of a scheme of Trusteeship and office of Hereditary Trustees and the

manner in which they are to manage the temple of Drowpathi Amman at Myladuthurai.

2. According to the petitioner, the five applicants in OA. No.6 of 1994 had thereafter been engaged in the Management of the Temple in a peaceful manner. Even during the pendency of the application before the Deputy Commissioner, it appears that an interim application has been filed by one S.Vasatha seeking impleadment in the application. This application came to be dismissed by the Deputy Commissioner on 23.01.1996 without hearing the applicant. Thus, Vasatha filed an appeal before the Commissioner that came to be rejected. No appeal appears to have been filed thereafter by the said Vasatha and order dated 23.01.1996 has thus attained finality. The veracity or otherwise of impugned order dated 30.06.2008 has to be tested in the light of the facts and circumstances as aforesaid.

3. Section 69(2) of the Act reads as follows:

69. Appeal to the Commissioner. - (1)

(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 motu 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 Commissioner in respect of an 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).

4. Suo motu revision has itself to be initiated/taken up, only in those cases where no appeal has been preferred as against the order passed by the Deputy Commissioner. In the present case Vasatha has challenged the order and the said appeal has come to be dismissed by the Commissioner. It is relevant to note that the issue in regard to which the original order dated 25.01.1996 has been revised suo motu is the same as the issue raised in appeal by Vasatha. Thus the pre-condition for revision suo motu as per Section 69(2) is itself not satisfied. Even on this one score, the impugned order is liable to be set aside.

5. There is yet another point. Though no statutory time frame is fixed for suo motu revision, a reasonable time-frame must be read into the provision and the revision cannot be taken

up after a period of twelve (12) years from date of passing of the order sought to be revised, as in the present case. In the present case, the order in OA. No.6 of 1994 has been passed on 25.01.1996, whereas the proceedings for suo motu revision have been taken up and completed in the year 2008 i.e. twelve (12) years after passing of the original order, which cannot be construed to be reasonable under any stretch of imagination.

6. For reasons as stated above, this Writ Petition allowed. No costs. Connected Miscellaneous Petition is closed.

Ska/sl

To

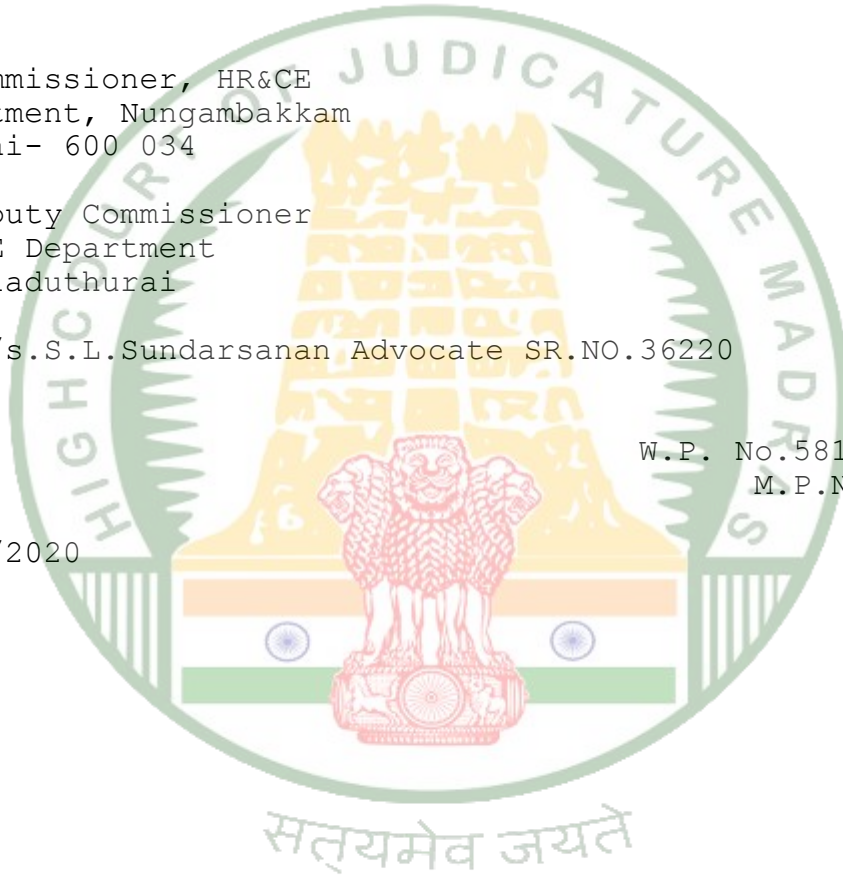
1. The Commissioner, HR&CE
Department, Nungambakkam
Chennai- 600 034

2. The Deputy Commissioner
HR&CE Department
Mayiladuthurai

+1cc to M/s.S.L.Sundarsanan Advocate SR.NO.36220

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RGN CO
SDR 18/12/2020



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