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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.20837 of 2015

and

M.P.Nos.1 and 2 of 2015

1. Mr.I.Subbiah (Deceased)

Member, Thenmavatta Maanattu Vakuppu
Tamizhi Viswakarma Uravinmuraaisangam,
(Regd 26/83) No.1, Lakshmi Illam,
Ayappan Nagar, Coimbatore-641 001.

2. I.S.Mani, S/o.Late I.Subbiah,

Member, Thenmavatta Maanattu Vakuppu
Tamizhi Viswakarma Uravinmuraaisangam,
(Regd 26/1983) No.1, Lakshmi Illam,
Ayappan Nagar, Coimbatore-641 001.

.. Petitioners

[P2 - Substituted as legal heir of deceased P1
I.Subbiah as per order dated 22.06.2017 in
W.M.P.No.15602 of 2017 in W.P.No.20837 of 2015]

-vs-

1.The Inspector General of Registration,
Santhome High Road, Chennai-600 028.

2.The Registrar of Societies Coimbatore,
Coimbatore.

.. Respondents

Petition under Article 226 of the Constitution of India
praying for issuance of Writ of Certiorarified Mandamus to call
for the records of the first respondent pertaining to the
impugned order in Reference No.8341/I1/2015, quash the order
dated 07.05.2015 and for a consequential direction to the
respondents to hear the Appeal filed by the petitioner on merits.

For Petitioner : Mr.AL.Somayaji, Senior Counsel
assisted by Mr.V.Perumal

For Respondents : Mr.T.M.Pappiah,
Special Government Pleader



ORDER

Heard Mr.AL.Somayaji, learned Senior Counsel assisted by Mr.V.Perumal, learned counsel for the petitioner and Mr.T.M.Pappiah, learned Special Government Pleader appearing for the respondents.

2.The petitioner (Deceased) has filed this writ petition challenging the order passed by the first respondent dated 07.05.2015, by which, the application filed by the petitioner (Deceased) for condonation of delay in filing the application to restore the name of the society was rejected.

3.Earlier, the petitioner (Deceased) had approached this Court by filing writ petition in W.P.No.589 of 2015 challenging the order passed by the first respondent dated 16.06.2014, refusing to entertain the appeal filed by the petitioner (Deceased) against the removal of the name of the society from the register on the ground that the appeal petition is beyond the period of limitation. The Court after taking note of the factual position, the earlier writ petitions filed and the statutory provisions, viz., the Tamil Nadu Societies Registration Act, 1975 and the Rules framed thereunder, disposed of the writ petition by order dated 12.01.2015. The operative portion of the order read as follows:-

"3.This is the third time, the petitioner approaches this Court by filing this writ petition. The first writ petition in W.P.No.13204 of 2014 was filed challenging the order dated 10.03.2014. The said writ petition was entertained and this Court granted interim stay in M.P.No.1 of 2014 dated 08.05.2015. The second writ petition being W.P.No.28504 of 2013 was filed for issuance of writ of certiorari to quash the order of the District Registrar, Coimbatore, registering the another society, in registration no.153 of 2007 dated 14.06.2007 with the same name as that of the society, in which the petitioner claims to be a Member. This Court, while passing an order dated 11.10.2013 took note of the fact that the petitioner has preferred an appeal as against the order declaring the petitioner's society as defunct before the first respondent and the appeal is under process. The appeal petition was filed by the petitioner on 21.05.2014. It appears that the petitioner has also paid the requisite fee for condonation of delay. However, the respondent has refused to entertain the appeal stating that it has been filed beyond the period



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of limitation prescribed under Rule 37(3) of the Tamil Nadu Society Registration Rules, 1978.

4. On a perusal of the said Rules, it is seen that appeal under Sub Section (5) of Section 44 shall be preferred within one year from the date of publication of the notice referred to in Sub Section (4) of the said Section. A statute does not prevent the appellate authority to entertain the appeal when it is filed beyond the period of limitation since the appellate authority has sufficient power to condone the delay and the statute does not take away the power of the appellate authority. However, it is seen that the petitioner has not filed separate petition for condonation of delay. They have also made certain averments in the delay petition that they are not aware of the order dated 30.09.2005 and that the said order is per se illegal and non - est in the eye of law.

5. Under such circumstances, this Court is of the view that the petitioner is permitted to file petition to condone the delay and any such application being filed, the same shall be considered by the first respondent taking note of the pleadings made by the petitioner.

6. Accordingly, the writ petition is allowed and the impugned order is set aside and the matter is remanded to the first respondent for fresh consideration. The petitioner shall file a petition along with the copy of this Court to condone the delay in filing the appeal wherein, the petitioner has clearly set out under what circumstances the appeal could not be preferred within time as prescribed under the statute and on receipt of the same, the first respondent, after affording an opportunity of personal hearing to the petitioner or his representative, pass a reasoned order, on merits and in accordance with law, within a period of six weeks from the date of receipt of filing of the said petition."

4. In terms of the above direction, the petitioner (Deceased) was required to file a petition along with the copy of the Court order seeking for condonation of delay in filing the appeal and set out as to under what circumstances the appeal could not be filed within time prescribed under the statute. Upon compliance of the direction, the first respondent was directed to afford an opportunity of personal hearing to the petitioner (Deceased) or his representative and pass a reasoned order on merits. The



petitioner (Deceased) has complied with the directions issued to him. Unfortunately, the first respondent failed to understand the scope of the direction and proceeded in a manner which is unknown to law.

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5. It appears that the first respondent had posed several questions to the petitioner (Deceased) and elicited certain officers and also referred the same in the body of the order, but ultimately, the impugned order has been passed on the ground that there is no satisfactory explanation for the delay. The first respondent committed a gross procedural error in the decision making process and there is no finding rendered by the first respondent that there is a rival claim, nor there is any other society registered under the very same name.

6. The petitioner pleaded that several properties have been purchased in the name of the society and the society also owns a kalyana mandapam and the affairs of the society have to be properly maintained.

7. The reason for removing the name of the society from the roll is on account of non-filing of returns. Belated filing of returns is permissible subject to payment of fine and orders to be passed. Therefore, solely for that reason, the society's name should not be struck off from the live register. However, even if it is struck off, if an application is filed with sufficient records, discretion should be exercised by the District Registrar.

8. So far as the role of the District Registrar is concerned, if a society files a Form VII declaration, all that the District Registrar can do is to receive the Form and file it. He cannot adjudicate on the correctness of the details set out therein, nor decide on the rights of parties. This elementary principle of law has been lost sight of by the first respondent. Thus, considering all these facts and also taking note of the earlier orders passed in the writ petition, it is a fit case where the delay in filing the application should be condoned.

9. At this juncture, it is worthwhile to refer to the decision of the Hon'ble Supreme Court in I. Nelson and another vs. Kallayam Pastorate and others, (2006) 11 SCC 624, which also arose under the provisions of the Tamil Nadu Societies Registration Act, 1975, wherein the Hon'ble Supreme Court pointed out that the provisions of the 1975 Act, undoubtedly, is a complete code. It not only provides for the mode and manner in which registration of a society is to be cancelled but also for winding up of a society and removal of a defunct registered society from the registers maintained by the Inspector General of Registration. A society need not necessarily be held to have



become defunct only because certain statutory provisions have not been implied with by it.

10.Mr.T.M.Pappiah, learned Special Government Pleader raised an objection with regard to the maintainability of the writ petitions stating that as against the order passed by the first respondent, appeal lies to the Government.

11.As noticed above, the first respondent has mis-directed himself in the decision making process. The impugned order is contrary to the statutory provisions. Therefore, existence of an alternate remedy is not always a bar for this Court to entertain a writ petition. Furthermore, the writ petition has been pending since 2015, it will be inequitable for this Court to direct the petitioner to avail the statutory remedy of appeal before the Government, which may not be very efficacious.

12.Further, the Hon'ble First Bench of this Court in the case of V.Sobana Kumar vs. The District Registrar and other reported in 2008-4-L.W-760, has pointed out that the society which files the Form VII declaration is to be termed as a "Form Filler" and the concerned District Registrar before whom it is filed it is the "Form Filer".

13.For all the above reasons, this writ petition is allowed, the impugned order is quashed and the delay in filing the appeal petition is condoned and the first respondent is directed to take up the appeal petition, provide an opportunity of hearing to the petitioner and all other persons, who may be required to be heard in the matter and pass a speaking order on merits and in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

abr
To

1.The Inspector General of Registration,
Santhome High Road,
Chennai-600 028.



2.The Registrar of Societies,
Coimbatore.

+3 Ccs to Mr.V.Perumal, Advocate sr 22760, 23113.
+1 CC to Govt. Pleader sr 23229

W.P.No.20837 of 2015

SP(19/03/2020)