

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2020

CORAM

THE HONOURABLE Mr.JUSTICE ABDUL QUDDHOSE

W.P.No.23165 of 2012

S.Sundaramurthy

... Petitioner

Vs.

1.The Commissioner,
HR & CE Department,
Chennai.

2. S.Karunakarn

3. The Joint Commissioner,
HR & CE Department,
Villupuram.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the first respondent in RC. No.4635/2012 D2, dated 20.03.2012 and quash the same.

For Petitioner : Mr.N.Suresh

For Respondents : Mr.R.Venkatesan - For R1 & R3
Government Advocate (HR & CE)
Mr.E.Ganesh - For R2

O R D E R

This writ petition has been filed challenging the order dated 20.03.2012 passed by the first respondent in Rc.No.4635/2012/D2 under Section 54 of the Tamil Nadu Hindu Religious and Charitable Endowments Act (herein after referred to as ''Tamil Nadu HR & CE Act'')

2. It is the case of the petitioner that the third respondent by his order dated 24.05.2011 has unlawfully registered a name of the second respondent as a Hereditary Trustee of the Arulmigu Ramanatheswarar Temple, T.Pudupalayam Village, Tirukoilur Taluk, under Section 54(i) of the Tamil Nadu HR & CE Act.

3. Aggrieved by the order dated 24.05.2011 passed by the third respondent, the petitioner has filed the appeal before the first respondent with the delay of 214 days. Under Section 54(iv) of the Tamil Nadu HR & CE Act, the appeal will have to be filed within one month from the date of receipt of the order dated 24.05.2011. But, in the case on hand, the appeal has been filed by the petitioner with the delay of 214 days.

4. The first respondent, by the impugned dated 20.03.2012, rejected the condone delay application, not only on the ground that the petitioner has not given sufficient reasons for condonation of the delay. But, also, on the ground that the petitioner is a third party and not entitled to be declare as a Hereditary Trustee for the aforesaid temple. Aggrieved by the impugned order dated 20.03.2012 passed by the first respondent, this Writ Petition has been filed.

5. Heard Mr.N.Suresh, learned counsel for the petitioner, Mr.R.Venkatesan, learned Government Advocate (HR & CE), appearing on behalf of the respondents 1 and 3 and Mr.E.Ganesh, learned counsel appearing for the second respondent.

6. Admittedly, Mr.Siva Subramaniya Pillai was a Hereditary Trustee of the Arulmigu Ramanatheswarar Temple, T.Pudupalayam Village, Tirukoilur Taluk. It is admitted fact that Mr.Siva Subramaniya Pillai, died in the year 2004. It is also an admitted fact that the second respondent is a son of Mr.Siva Subramaniya Pillai, who was a Hereditary Trustee of the said Temple. The petitioner has challenged the recognition of the second respondent as a Hereditary Trustee for the aforesaid Temple.

7. It is also an admitted fact that he is not a legal heir of the late Mr.Siva Subramaniya Pillai. As per Section 54 (i) of the Tamil Nadu HR & CE Act, it is made clear that when permanent vacancy occurs in the office of the Hereditary Trustee of a religious institution, the next in the line of succession shall be entitled to succeed to the office. The petitioner, who is not a legal heir of the late Mr.Siva Subramaniya Pillai, is therefore, not entitled to declare as a Hereditary Trustee as per provisions of Section 54(i) of the Act.

8. The judgment of the learned Single Judge of this Court, relied upon by the learned counsel for the second respondent also makes it clear that there is no necessity for any declaration for Hereditary Trusteeship when there occurs a vacancy in the Hereditary Trusteeship has automatically the next

in the line of succession shall be entitled to succeed to the office.

9. The relevant portion of the order passed in the case of Prem Anand Vs. HR & CE. Department and others, reported in 1990 1 LW, is extracted hereunder:

''Under Section 54 of the Tamil Nadu HR & CE Act, when a permanent vacancy occurs in the office of the hereditary trustee of a religious institution, the next in the line of succession shall be entitled to succeed to the office. There is no necessity, whatever, for the next hereditary trustee to make an application for being appointed under the Act. In this case, the petitioner had to approach the first respondent, because a fit person, was already in charge of the administration of the temple. As the first respondent had appointed the fit person, the petitioner sought a direction to the fit person from the first respondent to hand over charge to the petitioner as he has become the hereditary Trustee. The first respondent ought to have issued such a direction. On the other hand, the first respondent directed the petitioner to go to the Deputy Commissioner which is unwarranted by the provisions of the Act.

10. Even though, a condone delay application filed by the petitioner has been dismissed by the first respondent. The first respondent, under the impugned order has also rightly observed as follows:

''The petitioner has no claim against the first respondent. He is not a member of the family of the petitioner who could make a rival claim. The other contentions made by the petitioner are mostly allegation against the recording of succession which have no relevance to Section 54(4) of the Act and any allegation against the Hereditary Trustee can be dealt with only under Section 53(1) and 53(2) of the Act, and not under Section 54(1) or 54(4) of the Act.''

11. As seen from the aforesaid observations, it is clear that the petitioner has no right to be declared as a Hereditary Trustee and he is not a member of the family of the deceased Mr. Siva Subramaniya Pillai. The first respondent has also rightly observed that no sufficient reasons have also been given by the petitioner for condonation of the delay of 214 days in filing the appeal.

12. For the foregoing reasons, this Court is of the considered view that there is no merit in the writ petition. Accordingly, the Writ Petition is dismissed.

Sd/-

Assistant Registrar (C.S.VI)

/True Copy/

Sub Assistant Registrar

To

1.The Commissioner,
HR & CE Department,
Chennai.

2. The Joint Commissioner,
HR & CE Department,
Villupuram.

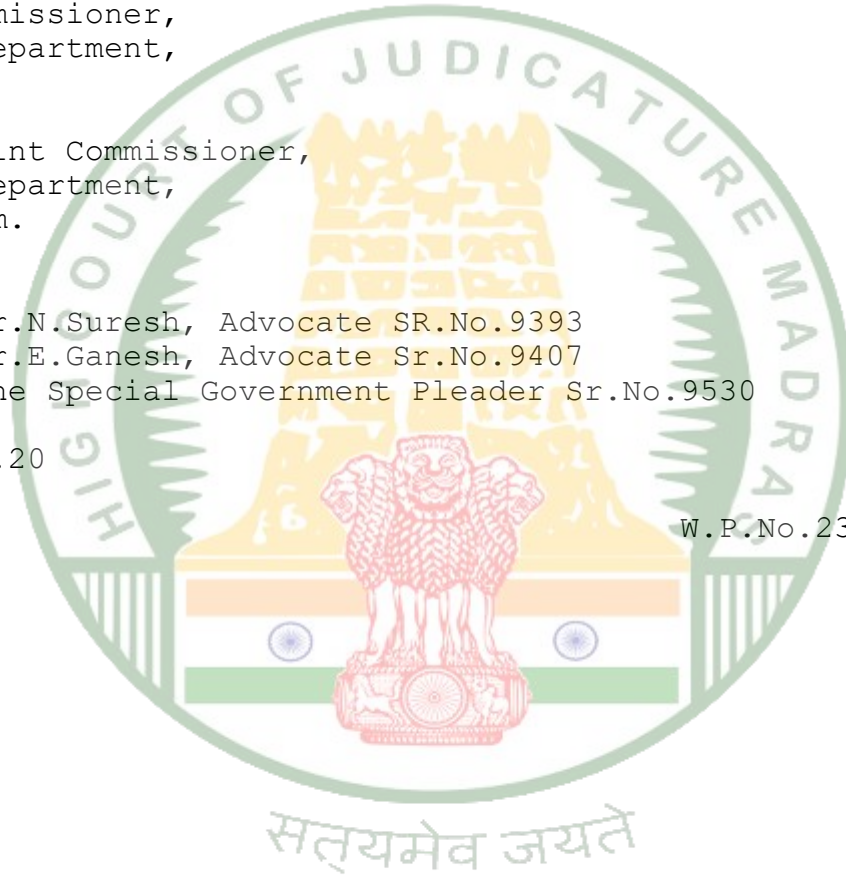
+1cc to Mr.N.Suresh, Advocate SR.No.9393

+1cc to Mr.E.Ganesh, Advocate Sr.No.9407

+1cc to The Special Government Pleader Sr.No.9530

AKM/05.03.20

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