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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2021

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P. NO.29764 OF 2008

AND

M.P. NO.1 OF 2008 AND WMP. NO.23581 OF 2020

C.P.Loganathan

... Petitioner

Vs.

1. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai - 600 034.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Salem.
3. R.Sengoda Gounder (Deceased)
4. K.Nalliappan
5. S.Balasundaram
Substituted as LR's of the Deceased R3
Viz., R.Sengoda Gounder (Deceased)

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certioraified Mandamus, to call for the records of the 1st respondent pertaining to the proceedings in Rc.No.44988/2008 D.2 dated 17.10.2008, quash the same and consequently direct the 1st respondent to condone the delay of 3 years, 6 months and 16 days in filing the appeal against the order of the 2nd respondent dated 06.10.2004 in O.A.No.8 of 1999.

For Petitioners : Mr.P.Valliappan

For Respondents : Mr.NRR.Arun Natarajan,
Government Advocate
for R1 & R2

Mr.T.L.Thirumalaisamay
for R4 & R5



O R D E R

The petitioner has challenged an order dated 17.10.2008 passed by the Commissioner, Hindu Religious and Charitable Endowments Department, (HR & CE) arrayed as R1, rejecting his appeal under Section 69(1) of the Hindu Religious and Charitable Endowments Act, 1959 (in short 'Act') on the ground that the same was delayed by a period of three years, six months and sixteen days.

2. Section 69 of the Act, does not provide any discretion to the Commissioner to condone delay in filing of appeals as confirmed by the Hon'ble Supreme Court in the case of Ganesan Vs. Commissioner, Tamil Nadu Hindu Religious and charitable Endowments Board and others ((2019) 7 SCC 108). In the aforesaid judgement, the Hon'ble Court framed the following issues for resolution:

8. After hearing learned counsel for both the parties and perusal of the record, following are the questions which arises for consideration in this appeal:?

1) Whether the Commissioner while hearing the appeal under Section 69 of Act, 1959, is a Court?

2) Whether applicability of Section 29(2) of Limitation Act is with regard to different limitation prescribed for any suit, appeal or application to be filed only in a Court or Section 29(2) can be pressed in service with regard to filing of a suit, appeal or application before statutory authorities and tribunals provided in Special or Local Laws?

3) Whether the Commissioner while hearing the appeal under Section 69 of Act 1959 is entitled to condone a delay in filing an appeal applying the provisions of Section 5 of the Limitation Act, 1963?

4) Whether the statutory scheme of Act 1959 indicate that Section 5 of Limitation Act is applicable to proceedings before its authorities?

3. The answer to the last question as above is relevant and the same is extracted below:

Question No.4





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59. Section 115 deals with limitation. It only provides that in computing the period of limitation prescribed under Act, 1959 for any proceeding, suit, appeal or application for revision against any order or decree passed under this Act, the time requisite for obtaining a certified copy of such order or decree shall be excluded.

60. The provision of Section 69 of Act, 1959 also indicates that Legislature never contemplated applicability of Section 5 of the Limitation Act in proceedings before Commissioner. Section 69(2) noted above provides that any order passed by the Joint Commissioner or the Deputy Commissioner, as the case may, 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.

61. Thus, Section 69(2) gives suo motu power to the Commissioner to call for and examine the records of the proceedings of Joint Commissioner or the Deputy Commissioner in respect of which no appeal has been preferred within the period specified in sub?section (1). Thus, in a case appeal is not filed within 60 days against the order of Joint Commissioner or the Deputy Commissioner, the Commissioner is vested with suo motu power to call for and examine the records. The suo motu power has been given to the Commissioner to correct the orders of Joint Commissioner or the Deputy Commissioner even if no appeal has been filed within 60 days. Giving of suo motu power to the Commissioner is with object to ensure that an order passed by the Joint Commissioner or the Deputy Commissioner may be corrected when appeal is not filed within time under Section 69(1). The scheme of Section 69 especially sub?section (2) also re?enforces our conclusion that Legislature never contemplated applicability of Section 5 in Section 69(1) for condoning the delay in filing an appeal by applying Section 5 of the Limitation Act.



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62. Learned counsel for the respondent has referred to two Rules framed under Section 116 of 1959, Act, namely, the Application and Appeal Rules dated 30.08.1961 and the Holding of Inquiries Rules dated 30.08.1961. The Application and Appeal Rules provide for procedures and details of filing application, affidavits, memorandum of appeal, application for revision, etc. The said Rules, in no manner, support the contention of the learned counsel for the respondent that Section 5 of the Limitation Act is applicable. Similarly, Holding of Inquiries Rules provide for procedure of holding of inquiries, issue of notice, etc. The above Rules also do not throw any light on the applicability of Section 5 of the Limitation Act.

63. The above provision clearly indicates that provision for only computation of limitation has been made applicable to the proceedings under Act, 1959. Section 115 cannot be read in a manner as to providing applicability of Section 5. There is no other provision in the scheme from which it can be inferred that Act, 1959 intended applicability of Section 5 of the Limitation Act to proceedings of appeal before the Commission. We, thus, conclude that Section 5 of the Limitation Act is not applicable as per the scheme of Act, 1959.

64. In view of the foregoing discussions, we allow the appeal, set aside the impugned judgment of the High Court. The order of the Commissioner dated 31.07.2013 is set aside and the appeal filed by respondent No.3 stands dismissed.

65. We may, however, observe that dismissal of the appeal filed by respondent No.3 as above shall not preclude the Commissioner in exercising his suo motu power under Section 69(2) of the Act, 1959. We, however, are not expressing any opinion with regard to exercise of suo motu by the Commissioner under Section 69(2) in the present case and it is for the Commissioner to invoke his power under Section 69(2) if he is so satisfied. Further, this will be without prejudice to any other remedy open to the respondent No.3 in law.

4. The conclusion of the Hon'ble Bench is to the effect the provisions of Section 5 of the Limitation Act cannot be made



applicable to statutory appeals under Section 69 of the Act. As regards this Court however, discretion, in terms of Article 226 of the Constitution of India is always available, to consider the circumstances in which the delay had been occasioned and condone the same if it were of the view that the delay was justified and liable to be condoned.

5. The order impugned before the Commissioner was dated 06.10.2004 passed in O.A.No.8 of 1999 by the Joint Commissioner, HR & CE Department, Salem. The petition for revision had been filed with a delay of 3 years, 6 months and 16 days. The explanation for the delay as put forth by the petitioner was that it is only when his application for appointment of hereditary trustee was rejected that he came to know about the order dated 06.10.2004 having been passed.

6. However, Mr.Thirumalaisamy appearing for the Executive Officer of the Arulmighu Kanchi Vinayagar, Badrakaliamman, Muniappan and Mariamman Temples, T.Puthupalayam Village, Thiruchengode Taluk, Namakkal District, (temple/temple in question) would draw my attention to the auction register of the temple lands. Entry dated 26.05.2005, relating to the auction of the lands of the temple in question contain the signature of the petitioner at Column.No.3 being 'Devasthanam Mathippu'. The auction notification had, in fact, been issued by the hereditary trustee who have been arrayed here as private respondents. Thus there is no question in my mind that the petitioner was well aware of the appointment of the private respondents as hereditary trustees even as early as on 26.05.2005 and there is no justification for the delay of 3 years, 6 months and 16 days in filing the appeal challenging order dated 06.10.2004 passed by R2 before R1.

7. The impugned order is confirmed and this writ petition dismissed. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

rkp

To

1. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai - 600 034.



2. The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Salem.

+1cc to Mr.T.L.Thirumalaisamay , Advocate, S.R.No.34733

+1cc to Mr.P.Valliappan, Advocate, S.R.No.34826

W.P. No.29764 of 2008
and
M.P. No.1 of 2008 and WMP. No.23581 of 2020

RSV(CO)
RLP(01/11/2021)