



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2021

CORAM

THE HON'BLE Mr.JUSTICE M.SUNDAR

W.P.No.17948 of 2021

and

W.M.P.No.19161 of 2021

Tamilselvi

W/o.Sundar

... Petitioner

-Vs.-

1.The Commissioner

Hindu Religious & Charitable Department

No.119, Uthamar Gandhi Road,

Nungambakkam

Chennai-600 034.

2.The Joint Commissioner

Hindu Religious & Charitable Department

Salem-636 001.

3.The Assistant Commissioner/Executive Officer

A/M Vaikundavasa Perumal Thirukoil

Villupuram Town and Taluk.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the return in clause 8 in Dis.No.54196/21 dated 02.08.2021 issued by the first respondent and to quash the same and consequently, direct the first respondent to take the revision on its file and to decide the same on merits in accordance with law by condoning the delay in filing the revision in Dis.No.54196/21 dated 02.08.2021.

For Petitioner : Mr.C.Prabakaran

For Respondent : Mr.NRR. Arun Natarajan
Government Advocate
for R1 & R2
Ms.G.Sumitra, for R3



O R D E R

Captioned main Writ Petition along with 'Writ Miscellaneous Petition' [hereinafter 'WMP' for the sake of clarity] have been listed in the Admission Board before this Court.

2. Mr.C.Prabakaran, learned counsel on record for writ petitioner is before this Virtual Court. Mr.NRR.Arun Natarajan, learned State counsel accepted notice on behalf of respondents 1 and 2 and Ms.Sumitra, learned counsel accepted notice on behalf of third respondent.

3. This Virtual Court, with the consent of aforementioned learned counsel on both sides took up the main writ petition.

4. The main writ petition turns on a very short point and narrow compass.

5. The writ petitioner suffered an order under Section 78 of 'The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act No.22 of 1959)' [hereinafter 'TN HR&CE Act' for the sake of brevity, convenience and clarity] qua property belonging to 'Arulmigu Vaikundavasa Perumal Thirukoil' [hereinafter 'said temple' for the sake of convenience and clarity] on the ground that the writ petitioner is an encroacher qua immovable property of said temple.

6. Aforementioned order under Section 78 of TN HR&CE Act is dated 03.04.2019 bears reference No.செ.மு.ந.க.1375/2014/இ2 and this order was made by second respondent who is the authority statutorily vested with the powers in this regard under TN HR&CE Act. There is no disputation or disagreement that this order was served on writ petitioner on 19.12.2019. The writ petitioner erroneously preferred an appeal under Section 81 of TN HR&CE Act and this appeal was filed on 26.07.2021. It goes without saying that the writ petitioner 'erroneously' preferred the appeal, because appeal will not lie against an order under Section 78 of TN HR&CE Act. To be noted, if at all and if that be so, the writ petitioner should have filed revision before the first respondent-Commissioner under Section 21 of TN HR&CE Act.

7. The appeal filed by writ petitioner was returned vide a signed memorandum dated 02.08.2021 bearing reference Dis.No.54196/2021 and a scanned reproduction of the said memorandum is as follows:



WEB COPY

BY SERVICE BEARING

Office of the Commissioner
HR & CE Admn. Department,
Chennai - 34.

N Dis. No. 54/16/2011 Dt Dated 17.03.2017

Returned Against the impugned order passed by the Joint

(1) The Appeal/Revision Petition should be verified and signed by the Appellant/Petitioner as in a suit. Commissioner. Appeal is not maintainable.

(2) The Vakalat requires acceptance/attestation. Revision Petition is to be filed.

(3) The certified copy of the annexure to the order against which the appeal/revision petition is filed should be affixed with court Fee Stamp to the value of Rs.1/-

(4) Notice charges at the rate of Rs.30/- for each respondent should be paid at the office of the Assistant Commissioner concerned or at this office and the relative challan enclosed.

(5) more additional copies of the appeal/revision petition should be filed.

(6) The correct and sufficient postal address of the respondents should be furnished

(7) The Vakalat should be affixed with court fee stamp to the value of Rs. 2/- and other welfare stamps

(8) The appeal/revision Petition has been Filed out of time. There is delay of days in filing. Copy of decretal order is not received to calculate the delay if any. Review of the Order of Honble J.C.J. made in C.A. No. 4552/2019 is closed.

(9) An authenticated or a certified copy of the order/a certified copy of the annexure to the order should be filed vide Rule 6 of the Rules under Section 116(2)(ii) and (iii) of the Act.G.O. Ms No.3158 dated 29.7.1961. There is no provision for dispensing with production of the above under the rules. Commissioner is not informed by order. Hence delay in filing.

(10) Only Rs. Court fee stamp has been affixed and deficit court fee of Rs. should be affixed. Rs. 1/-

(11) The appellant(s) herein is / are not a party before the Joint Commissioner in O.A. Hence he/they has/have to file petition seeking "Leave- to prefer this appeal.

(12) The order impugned herein is passed by the Joint Commissioner under Section 78(4) of the Act. Against this order the remedy provided for under Section 79(2) of the Act is to file a suit in a Civil Court and hence maintainability of this petition under Section 21 should be explained.

(13) No appeal shall be entertained under sub-section (3) unless it is accompanied by satisfactory proof of deposit of the rent so fixed or refixed, in the account of the religious institution concerned and such amount shall be adjusted towards the rent amount payable by the lessee as per the order passed in the appeal.

Time for representation is 15 days from the date of receipt.

Encl: 54/16/2011

Petition with enclosures

Assistant Commissioner (Legal Cell)
for Commissioner.

8. This writ petition has been filed with a prayer to quash the aforementioned memorandum and direct the first respondent to take the revision on file.

9. Though as many as five objections have been mentioned in the memorandum, learned counsel for writ petitioner restricts/abridges his challenge to Serial No.8 supra. Serial No.8 as is evident will make it clear that the same turns on 'condonation of delay' [COD]. There is no dispute that the



appeal under Section 81 of TN HR&CE Act (filed erroneously) was filed with a delay and that the delay is 850 days. Learned counsel who restricted his challenge to Serial No.8 admits that it will not be an appeal under Section 81 of TN HR&CE Act, but only a revision has to be filed under Section 21 of TN HR&CE Act. Likewise, with regard to authentication of impugned order being produced, there is no disputation before this Court and the other two returns are completely procedural. Learned counsel says that there is no quarrel about the returns/objections other than S.No.8.

10. Reverting to COD, a perusal of Serial No.8 makes it clear that the office of first respondent has returned the writ petitioner's appeal saying first respondent does not have powers qua COD owing to judgment of Hon'ble Supreme Court in C.A.No.4582 of 2019 dated 03.05.2019. This Court notices that this judgment dated 03.05.2019 made in C.A.No.4582 of 2019 has been reported and the citation is (2019) 7 SCC 108 and name of the case is Ganesan, Rep. by power agent G.Rukmani Ganesan Vs. The Commissioner, The Tamil Nadu Hindu Religious and Charitable Endowments Board and Others. This Court is informed that this has also been reported in Current Tamil Nadu cases and citation is 2019 (3) CTC 469.

11. The issue that fell for consideration before Hon'ble Supreme Court in G.Rukmani Ganesan's case is, whether the Commissioner as a quasi-judicial authority under TN HR&CE Act will have powers to condone delay or in other words can exercise powers under Section 5 of 'Limitation Act, 1963' [hereinafter 'Limitation Act' for the sake of brevity]. Hon'ble Supreme Court, after a detailed survey of various case laws, held that the first respondent Commissioner under TN HR&CE Act does not have Section 5 of Limitation Act powers to condone delay. To be noted, G.Rukmani Ganesan's case pertains to a statutory appeal under Section 69 of TN HR&CE Act, which is widely known as Chapter V proceedings. There is nothing to demonstrate that this does not apply to a revision under Section 21 of TN HR&CE Act and after all sauce to Goose is sauce to Gander too. Be that as it may, as per law laid down by Hon'ble Supreme Court in G.Rukmani Ganesan's case, Commissioner of TN HR&CE Department under TN HR&CE Act does not have powers under Section 5 of Limitation Act. This by itself draws the curtains qua captioned writ petition as vide the impugned memorandum, office of first respondent has respectfully and correctly followed the law laid down by Hon'ble Supreme Court. This Court is unable to convince itself to persuade to find fault qua first respondent for having respectfully followed the law laid down by the Hon'ble Supreme Court or in other words, the ratio in G.Rukmani Ganesan's case.



12. Notwithstanding the above, learned counsel for writ petitioner submitted that this Court can consider condonation of delay, but condonation of delay petition is not before me. To be noted, this Court is informed that Section 81 of TN HR&CE Act appeal was filed with COD application, but as already alluded to supra, that is not before me.

13. In this case, learned State counsel points out on instructions that writ petitioner was not the original lessee, the original lessee was another person, in any event the demised area is only 966 sq.ft, the writ petitioner had taken on rent the superstructure from original lessee, but what is of importance is, writ petitioner has encroached upon an extent of 2101.25 sq.ft land adjoining demised land on which the superstructure of writ petitioner stands. On instructions, learned State counsel points out that this encroached land is being used for commercial purposes. Learned State counsel submits that the writ petitioner is running a bags and printing company. To be noted, Section 81 appeal also refers to writ petitioner as proprietor of Kanchi Bags Printing Company, Villupuram Town and Taluk, Villupuram District. In respect to 966 sq.ft, the payments are only towards damages and not towards rent and that too in lump sum is Executive Officer's counsel's say. Therefore, in the case on hand, this Court, considers that it will suffice to say that Serial No. 8 of the memorandum of office of first respondent dated 02.08.2021 cannot be found fault with or cannot be interfered with as it has only followed the ratio laid down by Hon'ble Supreme Court in G.Rukmani Ganesan's case. For further clarity and specificity, Section 81 appeal was erroneously filed on 26.07.2021 with a delay of 850 days (to be noted, time limit is 30 days for Section 81 appeal under Section 81(1) of TN HR&CE Act) and even if it is revision under Section 21, for which the time limit is 3 months under Sub-Section (7) of Section 21 of TN HR&CE Act, the delay is 760 days. This draws the curtains on the captioned writ petition and WMP therein.

14. In the light of the narrative thus far, discussion and dispositive reasoning set out supra, captioned Writ Petition is dismissed. Consequently, aforementioned WMP is also dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner
Hindu Religious & Charitable Department
No.119, Uthamar Gandhi Road,
Nungambakkam, Chennai-600 034.
2. The Joint Commissioner
Hindu Religious & Charitable Department
Salem-636 001.
3. The Assistant Commissioner/Executive Officer
A/M Vaikundavasa Perumal Thirukoil
Villupuram Town and Taluk.

+2cc to Mr.D.S.Thirumavalavan, Advocate, S.R.No.44082
+1cc to Mr.G.Sumitra, Advocate, S.R.No.43856
+1cc to the Government Pleader, S.R.No.43713

W.P.No.17948 of 2021
and
W.M.P.No.19161 of 2021

PMK (CO)
CB(17/09/2021)