

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.972 of 2020

His Holiness Sri-La-Sri Kasivasi
Muthukumaraswamy Thambiran Swamigal,
rep. by Power Holder Srimath Sundaramurthi,
Thambiran Swamigal,
Joint Head of Kasimadam,
Kasimadam,
Thirupanandhal-612 504. ... Appellant

Vs.

- 1.The Government of Tamil Nadu,
rep. by its Additional Chief Secretary to Government,
Tourism, Culture and Religious Endowments Department,
Secretariat, Chennai - 600 009.
- 2.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungambakkam,
Chennai - 600 034.
- 3.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Mayiladithurai.
- 4.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Thanjavur.
- 5.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Tirunelveli.
- 6.The Sub-Registrar,
Office of the Sub-Registrar of Registration Department,
Boothapandi,
Kanyakumari District. ... Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent
against the order dated 20.01.2020 made in W.P.No.1920 of 2015.

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, relating to the order in suo motu revision No.03/R.E.4-1/2015, dated 13.01.2015 and quash the same.

For Appellant : Mr.K.Doraisamy
Senior Counsel
for M/s.Muthumani Doraisamy

For Respondents : Mrs.Rehna Begum
Government Advocate (HR&CE)
for respondent Nos.1 to 5
: Mr.T.M.Pappiah
Spl. Government Pleader
for respondent No.6

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

The challenge here is to an order dated January 20, 2020 passed on a writ petition. The subject-matter of the writ petition was an order dated January 13, 2015 passed by the first respondent herein by which an old and concluded matter was sought to be re-opened some eight years later. The appellant-writ petitioner questions the very propriety of the steps initiated eight years after the matter had been given a quietus. The Writ Court declined to interfere. Hence the appeal.

2. By an order dated March 30, 2007, the then Special Commissioner and Commissioner in the Hindu Religious and Charitable Endowments (Administration) Department of the State Government found in favour of the writ petitioner herein or the Thirupanandal Sri Kasi Mutt that the writ petitioner represents. Sufficient reasons were indicated in the order and land was discovered to be in the name of Kasi Mutt that were not part of what the State controlled through its HR&CE Department.

3. By an order dated January 13, 2015, the Additional Chief Secretary to the State Government purported to re-open the matter on rather specious grounds as contained in his order which was questioned by the writ petitioner in the proceedings under Article 226 of the Constitution. By such order of January 13, 2015, the Additional Chief Secretary directed an inquiry to be conducted by another Additional Chief Secretary and directed the writ petitioner herein and others interested to appear in person or through their authorised representatives before such other Additional Chief Secretary. For good measure, the order of January 13, 2015 recorded that in default of appearance

before the other Additional Chief Secretary, the matter would be disposed of ex parte.

4. It is such notice that the writ petitioner sought to question, primarily on the ground that no reason was indicated as to why it was necessary to re-open the issue. The challenge was repelled by the Writ Court on the ground that the provision permitting a decision to be revised within the relevant department was not governed by any period of limitation. At paragraph 12 of the impugned judgment and order of January 20, 2020 the learned Single Bench held that the first respondent to the writ petition had suo motu power to review any order passed by the Commissioner, HR & CE Department. The learned Single Judge also recorded that Section 114(a) of the HR & CE Act, 1959 does not prescribe a period within which such suo motu power ought to be exercised.

5. On the basis of such reasoning, the writ petitioner's grievance was disregarded and the order impugned before the learned Single Bench was left undisturbed.

6. The appellant herein refers to a judgment reported at (2007) 11 SCC 363 (State of Punjab and others v. Bhatinda District Cooperative Milk Producers Union Limited) and places reliance on paragraphs 17 to 19 and 24 and 25 of the said judgment. The principle has been recognised at paragraph 18 of the report, to the effect that if no period of limitation has been prescribed, every statutory authority should act within a reasonable period of time, though what is reasonable would vary from case to case. It was also noted in the report that the question of limitation being a jurisdictional question, when such an issue arises, a writ petition would lie.

7. In the instant case, there is no period of limitation prescribed and, indeed, as Advocate for the relevant department points out, there is Section 109 to the Act which prohibits the application of Limitation Act, 1963 "to any suit for possession of immovable property belonging to any religious institution or for possession of any interest in such property."

8. It may do well to notice that in the relevant statute that was considered by the Supreme Court in Bhatinda District Cooperative Milk Producers Union, there was no period of limitation prescribed, but the Supreme Court observed, nonetheless, that it did not imply that however delayed the action or the measure taken was, no complaint on the ground of the limitation could be entertained. At paragraph 19 of the report, the Supreme Court said that the revisional jurisdiction should ordinarily be exercised within three years. In this case, the authority was sought to be exercised nearly eight

years after the matter had been decided.

9. It is possible that a subsequent event triggers off a fresh inquiry and in course of such inquiry something else is discovered that had not been noticed earlier. Especially in departmental action, this is quite possible. However, when it comes to judicial functioning, when there is no prescribed period of limitation, the Supreme Court has advised the three-year outer limit to be a good mark to go by. In the circumstances, the revision could not have been entertained or mooted beyond three years of the original order of March 30, 2007 being passed.

10. The respondent authorities say that, in effect, the previous order has been reviewed as sufficient reasons existed therefor. It is not necessary to go into the review fashioned since it does not appear that in this case there was any doubt, so to say, or any reasonable doubt raised by anyone qua the order of March 30, 2007. It is true that only a further inquiry was directed to be undertaken but even for that, there has to be a basis. If a matter has been allowed to remain for a period of eight years after a decision was rendered by a government department or any quasi-judicial proceedings, the same cannot be set to naught after a long period and without there being any specific reason ascribed therefor.

11. For the reasons aforesaid, the judgment and order dated January 20, 2020 passed in W.P.No.1920 of 2015 is set aside. The order of January 13, 2015 challenged in the writ petition is quashed. No inquiry need be commenced.

12. The writ appeal, W.A.No.972 of 2020, is allowed as aforesaid, but without any order as to costs. The writ petition succeeds to the extent indicated above. Consequently, C.M.P.Nos.11831 and 11834 of 2020 are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Additional Chief Secretary to Government,
Government of Tamil Nadu,
Tourism, Culture and Religious Endowments Department,
Secretariat, Chennai - 600 009.

2.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungambakkam,
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6.The Sub-Registrar,
Office of the Sub-Registrar of Registration Department,
Boothapandi,
Kanyakumari District.

+1cc to Mr.Muthumani Doraisami, Advocate, S.R.No. 7176

+1cc to the Government Pleader, S.R.No. 7205

W.A.No.972 of 2020

JP (CO)
GN (23/02/2021)



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