



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.04.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD) .No.7657 of 2021

E.Muthusamy

...Petitioner

Vs.

1. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam, Chennai.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Madurai.
3. The Fit Person,
A/N. Kattumariamman Temple,
Thirumangalam,
Also the Executive Officer,
A/M. Dhandayuthapani Temple,
Nethaji Road, Madurai-1.

... Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the entire records pertaining to R.C.No.17819 of 2019 D2, order returning the petition dated 17.12.2019, by the first respondent and directing the first respondent to number the Appeal in A.P.No. Unnumbered of 2018, dated, 23.01.2018 and thereby order condoning the delay of 189 days in filing the appeal.

For Petitioner : Mr.S.Madhavan
For R-1 & R-2 : Mr.KP.Narayanakumar
Special Government Pleader

ORDER

This Writ Petition has been filed challenging the order passed by the first respondent dated 17.12.2019, wherein, the appeal petition filed by the petitioner was dismissed on the ground that it has been filed with a delay and the first respondent does not have the power to condone the delay by exercising jurisdiction under Section 5 of the Limitation Act.



2. The petitioner filed an application under Section 64 (1) of the Hindu Religious and Charitable Endowments Act, 1959, before the Joint Commissioner, H.R & C.E., Madurai and the same came to be dismissed by an order dated 12.05.2017. Aggrieved by the same, the petitioner filed an appeal before the first respondent with a delay of 189 days. The first respondent dismissed the petition on the ground that the said Authority does not have the power to condone the delay under Section 5 of the Limitation Act. Aggrieved by the same, the present Writ Petition has been filed before this Court.

3. Heard Mr.S.Madhavan, learned counsel appearing for the petitioner and Mr.K.P.Narayanakumar, learned Special Government Pleader appearing for the first and second respondents.

4. The issue involved in the present case is squarely covered by the judgment of the Hon'ble Supreme Court in the case of **Ganesan, represented by its Power Agent, G.Rukmani Ganesan Vs. 1.The Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments Board, Chennai, 2. The Joint Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments Board, Sivagangai and 3. P.R.Ramanathan, Thirupathur Taluk, Sivaganga**, reported in **2019 3 CTC 469**. The relevant portions in the Judgment are extracted hereunder:-

"60. A Special or Local law can very well provide for applicability of any provision of Limitation Act or exclude applicability of any provision of Limitation Act. The provisions of Limitation Act including Section 5 can very well be applied in deciding an Appeal by Statutory Authority which is not a Court by the Statutory scheme of Special or Local Law. We, thus, need to notice the provisions of Act, 1959, as to whether the scheme under Act, 1959, shows that enactment intended to apply Section 5 of the Limitation Act.

61. Section 110 provides for procedure and powers at inquiries under Chapters V & VI. The Commissioner hears appeals under Section 69 which is under Chapter V of the Act. Section 110 of the Act is as follows:

"Section 110. Procedure and powers at inquiries under Chapters V and VI.- (1) Where a Commissioner or a Joint Commissioner or a Deputy Commissioner makes an inquiry or hears an appeal under Chapter V or Chapter VI, the inquiry shall be made and the appeal shall be



heard, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (Central Act V of 1908) to the trial of suits or the hearing of appeals, as the case may be.

(2) The provisions of the Indian Evidence Act, 1872 (Central Act I of 1872) and the Indian Oaths Act, 1873 (Central Act X of 1873), shall apply to such inquiries and appeals.

(3) The Commissioner [or a Joint Commissioner or a Deputy Commissioner] holding such inquiry or hearing such an appeal shall be deemed to be a person acting judicially within the meaning of the Judicial Officers Protection Act, 1850 (Central Act XVIII of 1850)."

62. The mere fact that a statutory authority is empowered to follow the procedure as nearly may be in accordance with procedure under C.P.C. to the trial of suits or hearing of appeals, the statutory authority shall not become a Court. There is nothing under Section 110 which indicates that Limitation Act is also made applicable in hearing of the appeal.

63. 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.

64. 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.

65. 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.

66. 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.

67. 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."



5. It is clear from the above that the first respondent is not vested with the power to condone the delay and the law has been settled by the Hon'ble Supreme Court. Therefore, the first respondent was perfectly right in refusing to entertain the appeal filed by the petitioner.

6. The learned counsel appearing for the petitioner would submit that the substantial right of the petitioner has now been lost and hence, this Court in exercise of its power under Article 226 of the Constitution of India can test the validity of the order passed by the Joint Commissioner, H.R. & C.E., Madurai.

7. In the considered view of this Court, the above said submission made by the learned counsel appearing for the petitioner does not hold water. The appellate remedy lies before the first respondent and the first respondent was not able to exercise that power, since the appeal was filed with a delay. If this Court exercises its jurisdiction under Article 226 of the Constitution of India, the same will amount to judicial overreach and it will indirectly amount to exercise of jurisdiction which could not have been exercised by the first respondent. This Court in exercise of its jurisdiction under Article 226 of the Constitution of India, cannot exercise its discretion to such an extent and the law on this issue is well-settled.

8. In the result, this Court does not have any ground to interfere with the order passed by the first respondent.

9. Accordingly, the Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Tsg

NOTE:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam, Chennai.

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

+1 CC to M/s.S.MADHAVAN, Advocate (SR-15678[F] dated 09/04/2021)

+1 CC to M/s.SPL GP (SR-15810[F] dated 15/04/2021)

Order made in
W.P. (MD) .No.7657 of 2021
Dated: 09.04.2021

SSS (CO)
TR(28.04.2021) 6P 5C