

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2022

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.NO.891 OF 2015

AND

MP NO.1 OF 2015

1. P.Anbalagan
2. M.Sundar Rajan
3. A.C.Chinnasamy

... Petitioners

Vs.

1. The Commissioner,
H.r. & C.E. (Admn.) Department,
Having its Office at Nungambakkam High Road,
Chennai-600 034.
2. The Joint Commissioner,
H.R. & C.E.(Admn) Department,
Kotaimaraiaimman Temple Complex, Salem.
3. T.Sampath,
S/o.Thiruvengadam, Semmanur Village,
Aranganaur Post, Mettur Taluk, Salem
District-636 451.

... Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records relating to the impugned order passed by the Commissioner HR & CE (admn) 1st respondent Chennai issued in R.C.No.47486/2014 D2 on 18.12.2014.

For Petitioner : M/s.Gayathri for
Mr.P.B.Balaji

For Respondent : Mr. Arun Natarajan
SGPC for HR&CE
for R1, R2
Mr.P.Mani for R3

O R D E R

This writ petition has been filed challenging the order passed by the Commissioner of HR&CE dismissing the petition filed to condone the delay of 434 days in filing the appeal against the order passed by the Joint Commissioner, Salem in recording the succession under Section 54(1) of the Hindu Religious and Charitable Endowments Act, 1959 (hereinafter called as the "Act").

2. Heard the learned counsel for the petitioners and Mr. Arun Natarajan, learned SGPC for HR&CE and Mr.P.Mani for learned counsel appearing for 3rd respondent.

3. The 3rd respondent filed an application under Section 54(1) of the Act and sought for the recording of succession as a hereditary trustee on the basis of a decree obtained in a civil suit. The 2nd respondent by an order dated 18.05.2011 allowed the application.

4. The petitioners aggrieved by the said order, filed an appeal before the 1st respondent with a delay of 434 days. This condone delay petition came to be dismissed by the 1st respondent through an order dated 18.12.2014. Aggrieved by the same, the petitioners have filed the present writ petition.

5. The issue involved in the present writ petition is squarely covered by the judgement of the Hon'ble Supreme Court in [Ganesan Vs. The Commissioner, the Tamil Nadu Hindu Religious and Charitable Endowment Board and others] reported in 2019 3 CTC 469. The Hon'ble Supreme Court held that the Commissioner of HR&CE while dealing with the appeal does not attain the character of a Court and hence, Section 5 of the Limitation Act will not apply and the Commissioner does not have the jurisdiction to condone the delay in filing the appeal. The above judgement was followed up by this Court in WP (MD) No.7657 of 2021 and by order dated 09.04.2021, it was held as follows :-

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 above judgement squarely applies to the facts of the present case and the 1st respondent is not vested with the power to condone the delay in filing the appeal and hence, there is no ground to interfere with the order passed by the 1st respondent.

7. In the result, this writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner,
H.R. & C.E. (Admn.) Department,
Having its Office at Nungambakkam High Road,
Chennai-600 034.
2. The Joint Commissioner,
H.R. & C.E.(Admn) Department,
Kotaimaraiamman Temple Complex, Salem.

+1cc to Mr.P.B.Ramanujam, Advocate, S.R.No.39715

+1cc to Mr.P.Mani, Advocate, S.R.No.38606

W.P.No.891 of 2015

RK(CO)
RLP(06/07/2022)