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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.11535 of 2021

Rajendran

.... Petitioner

-Vs-

The Commissioner,
Hindu Religious & Charitable Endowment
Department,
Nungambakkam, Chennai - 600 034.

.... Respondent

Prayer:Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondent to dispose the unnumbered Suo motu proceedings of review petition in R.P/A.P.No.____ of 2019 filed on 30.10.2019 in the manner known to law in time bound manner.

For Petitioner :Mrs.V.S.Usha Rani

For Respondent :Mr.S.Yashwanth
Additional Government Pleader

O R D E R

The prayer sought for herein is for a writ of Mandamus, to direct the respondent to dispose the unnumbered Suo motu proceedings of review petition filed on 30.10.2019 in the manner known to law within the stipulated time.

2.The case of the petitioner is that there is a temple called Thazhuthadi Amman Temple situated at Thiruvudaiyarpatti Village, Sivaganga District. The petitioner belongs to the said Village and he is not only a devotee of the temple but also the petitioner along with other persons doing all festivals and functions in the temple regularly.

3.According to the petitioner, it is a family deity of the petitioner also. However, one Mr.Ganesan, S/o. Chinnaiya of the same Village in order to get the honour, i.e. Ambalam in respect



of the said temple to and in favour of him had filed an original application under Section 63(e) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 [in short 'the H.R.&C.E. Act']].

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4.The said OA was numbered as O.A.No.7 of 2008 and came to be decided by the Joint Commissioner of H.R.&C.E. Department concerned by order dated 31.12.2010, in which, the said OA filed by the said Ganesan was allowed.

5.Against the said order, some writ petition has been filed by one Ramanathan and during the pendency of the writ petition, an appeal also had been filed against the order in O.A.No.7 of 2008 before the respondent, i.e. the Commissioner, H.R.&C.E. Department and in filing the said appeal, there has been a delay of 266 days which has to be condoned. Therefore, in order to condone the said delay, an application has been filed and the respondent, i.e. the Commissioner, H.R.&C.E. Department by order dated 31.07.2013 allowed the said application by condoning the delay of 266 days in filing the appeal.

6.As against the said order passed by the Commissioner allowing the condone delay application, writ petition has been filed before this Court and ultimately, the matter has gone to the Hon'ble Supreme Court as the said Ganesan filed SLP in Civil Appeal No.4582 of 2019 questioning the delay condoned by the Commissioner.

7.The said proceedings before the Hon'ble Supreme Court was allowed in favour of the said Ganesan, thereby the order passed by the Commissioner condoning the delay has been set aside.

8.However, the Hon'ble Supreme Court has observed that since the Commissioner, H.R.&C.E. Department is empowered under Section 69(2) of the H.R.&C.E. Act to suo motu review whatever the order passed by the authorities like the Joint Commissioner or the Deputy Commissioner, by exercising its suo motu power, that kind of suo motu exercise can also be made.

9.Taking clue from the said observation made by the Hon'ble Supreme Court, the petitioner has filed a suo motu review application under Section 69(2) of the H.R.&C.E. Act, 1959 in order to trigger the Commissioner, H.R.&C.E. Department, the respondent herein to entertain such review and to exercise his power conferred on him by way of suo motu review.



10. Though this review application was filed by the petitioner on 30.10.2019, so far the same has not even been numbered and no orders have been passed and it has been still kept pending at the office of the respondent according to the petitioner. Therefore, in order to issue a suitable direction by way of Mandamus to number the suo motu proceedings, i.e. the review proceedings under Section 69(2) of the H.R.&C.E. Act filed by the petitioner in the year 2019 and decide the same on merits and in accordance with law within the time frame that may be stipulated by this Court, the petitioner has moved this present writ petition with the aforesaid prayer.

11. Reiterating the aforesaid, Mrs.V.S.Usha Rani, learned counsel appearing for the petitioner seeks indulgence of this Court to issue a direction.

12. Heard Mr.S.Yashwanth, learned Additional Government Pleader appearing for the respondent, who would submit that even though delay was condoned earlier in entertaining the appeal against the order of the Joint Commissioner in O.A.No.7 of 2008 dated 31.12.2010, the said order has been set aside by the Hon'ble Supreme Court and thereafter the Commissioner so far has not exercised his suo motu review power vest in him under Section 69(2) of the H.R.&C.E. Act.

13. When that being the position, whether the petitioner's application now sought to be considered can set the law in motion by triggering the Commissioner to exercise his suo motu power under Section 69(2) of the H.R.&C.E. Act is a question. Any how, if this Court feels that the respondent, Commissioner, H.R.&C.E. Department can suo motu exercise power under Section 69(2) of the H.R.&C.E. Act by entertaining the review application now filed by the petitioner, that would be taken into account and accordingly, it would be decided on merits, he contended.

14. I have heard the said rival submissions made by the learned counsel for the parties and have perused the materials placed before this Court.

15. In so far as the order passed in O.A.No.7 of 2008 is concerned, though an appeal has been filed belatedly for which condone delay petition filed by them was allowed by the Commissioner, H.R.&C.E. Department, the same was set aside by the orders of the Hon'ble Supreme Court as stated supra.



16. Therefore, the question of filing any regular appeal against the order made in O.A.No.7 of 2008 does not arise at this stage.

17. However, it is the observation made by the Hon'ble Supreme Court by evaluating the suo motu power conferred on the Commissioner, H.R.&C.E. Department under Section 69(2) of the H.R.&C.E. Act, under which the Commissioner can suo motu review any order passed by any authority under him.

18. Normally, that kind of suo motu power could have been exercised by the Commissioner, H.R.&C.E. Department but since he has not come forward to exercise the same, the interested party like the petitioner when make a move by way of filing a review application to trigger the Commissioner, H.R.&C.E. Department to invoke his suo motu power under Section 69(2) of the H.R.&C.E. Act, this Court feel that, taking that situation or grab that opportunity, the Commissioner, H.R.&C.E. Department can very well invoke his suo motu power under Section 69(2) of the H.R.&C.E. Act and can very much entertain such a review being filed by any interested party like the petitioner.

19. In that view of the matter, this Court feel that there can be absolutely no impediment for the respondent Commissioner, H.R.&C.E. Department to invoke his suo motu power under Section 69(2) of the H.R.&C.E. Act by entertaining the application for review filed by the petitioner in this regard dated 30.10.2019 and decide the same on merits and in accordance with law within a time frame.

20. In view of the aforestated discussion and the reasons, this Court is inclined to dispose of the writ petition with the following order, that there shall be a direction to the respondent to take up the suo motu proceedings filed by the petitioner dated 30.10.2019 against the order passed by the Joint Commissioner, H.R.&C.E. Department concerned dated 31.12.2010 in O.A.No.7 of 2008 and accordingly number the said suo motu review proceedings under Section 69(2) of the H.R.&C.E. Act and decide the same on merits and in accordance with law by giving an opportunity of being heard to the petitioner as well as other interested persons including the person in whose favour O.S.No.7 of 2008 was allowed by the Joint Commissioner, which is the order impugned in suo motu proceedings and pass final orders thereon, on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.



21. With this direction, the writ petition is disposed of.
However, there shall be no order as to costs.

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SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

cse
To

The Commissioner,
Hindu Religious & Charitable Endowment
Department,
Nungambakkam, Chennai - 600 034.

+1cc to the Government Pleader Sr.3501

W.P.No.11535 of 2021

ssv[co]
srg 25/02/2022