IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2022

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.NO.14966 OF 2022

Chellam Poosari ... Petitioner

.Vs.

1. The Commissioner,
   The Hindu Religious & Charitable
   Emdowment Board,
   Nungambakkam, Chennai.

2. The Joint Commissioner,
   The Hindu Religious & Charitable
   Endowment Board,
   Sivagangai, Sivagangai District. ... Respondents

PRAYER:-

Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned proceeding dated 21.03.2022 made in N.Dis.No.11585/2022/D2 passed by the first respondent quash the same and consequently issue direction to the first respondent to decide the appeal petition dated 08.03.2022 filed under Section 69(1) of the Hindu Religious & Charitable Endowments Act, 1959, against the order dated 14.02.2017 made in O.A.No.6/2022/E1 passed by the second respondent on merits.

For Petitioner : Mr.N.Manokaran

For Respondents : Mr.K.Karthikeyan
Government Advocate

ORDER

Mr.K.Karthikeyan, learned Government Advocate takes notice on behalf of the first respondent.

2. The petitioner has challenged the impugned communication dated 21.03.2022 issued by the Joint Commissioner (Legal Cell) on behalf of the commissioner whereby, the appeal filed by the petitioner under Section 69(1) of the Hindu Religious & Charitable Endowments Act, 1959 (herein after referred to as the HR&CE Act), against the order dated 14.02.2017 passed by the Joint Commissioner under Section 63(a) of the HR&CE Act has been rejected.

3. This writ petition is contested at the preliminary stage on the ground that the issue is now squarely covered by the decision of the Hon'ble Supreme Court in Ganesan Vs Tamil Nadu Hindu Religious & Charitable Endowment Board, 2019 (7) SCC 108, wherein, in Paragraph 68, the Hon'ble Supreme Court held as under:-

> "68. The above provision clearly indicates that provision for only computation of limitation has been made applicable to the proceedings under the 1959 Act. 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 the 1959 Act intended applicability of Section 5 of the Limitation Act to proceedings of appeal before the Commissioner. We, thus, conclude that Section 5 of the Limitation Act is not applicable as per the Scheme of the 1959 Act."

4. Attempting to distinguish the above decision, the learned counsel for the petitioner has relied on the decision of the Madurai Bench of this Court authorized by me in W.P(MD). Nos.3019, 3074 to 3087 of 2022 vide order dated 17.02.2022, wherein, it has been held as follows:-

> "13. The Court, while dealing with the power of the Court under Section 34 to condone the delay, held that Arbitration and Conciliation Act, 1996 was special law and since specific period for condoning the delay has been prescribed, the question of applying Section 5 of the Limitation Act, did not arise.
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> 14. A reading of sub-clause 7 to Section 21 of the Hindu Religious and Charitable Endowments Act, 1959, which has been extracted above, indicates that an application has to be filed within a period of three months from the date of communication of the order, which is sought to be revised before the Commissioner. There is no period prescribed for filing such application beyond the period

prescribed therein. There is no indication in the scheme of the Hindu Religious and Charitable Endowments Act, 1959 in Section 21 that principle akin to section 5 of the Limitation Act is expressly excluded.

> Section 5 of the Limitation Act reads as under:-
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> "5. Extension of prescribed period in certain cases. - Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period, if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.
>
> Explanation. - The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section."

15. No prejudice will be caused if the application under Section 21 of the HR&CE Act, filed by the petitioner for revision of the order. If the second respondent is entertained beyond the period of limitation, provided the other condition regarding pre-deposit arrears of rent is made by them before the first respondent Commissioner in terms of Section 34A of the Hindu Religious and Charitable Endowments Act, 1959.

16. Considering the same, I am inclined to allow these writ petitions by directing the first respondent to pass appropriate orders on merits and in accordance with law, subject to the respective petitioners complying with the other requirements of the Section 34A of the Hindu Religious and Charitable Endowments Act, 1959. The petitioners are therefore directed to deposit the arrears of rent within 45 days from the date of receipt of a copy of this order. If such deposit has not been already made and file a proof before the first respondent. On such deposit/filing of proof, the application filed by the respective petitioners

shall be numbered and disposed on merits and in accordance with law thereafter.”

5. The principal issue that arises for consideration in this writ petition is, even if the appeal filed by the petitioner is held to be not maintainable, in view of the aforesaid decision of the Hon'ble Supreme Court, whether, this Court can still entertain the writ petition and decide the fundamental issue as to whether Shri Ayyappan Temple established by Late Shri Sadhu Swamigal @ Govindhanandham in the year 1947, was a religious institution or not.

6. It is the specific case of the petitioner that the petitioner has been performing Poojas to the Deities and also to the Samadhi of Shri Sadhu Swamigal @ Govindhanandham. It is submitted that the Arulmighu Ayyappan Temple, the Arulmighu Vinayakar Temple and the Samadhi of Shri Sadhu Swamigal @ Govindhanandham are lying in the private properties in the name of Late Shri Sadhu Swamigal @ Govindhanandham. The Joint Commissioner, in proceedings dated 14.02.2017, has concluded that the said Temple was a religious institution within the meaning of Section 6(18) of the HR&CE Act.

7. The averments in the affidavit also seem to indicate that Late Shri Sadhu Swamigal @ Govindhanandham used to bless and treat the devotees till he died (attained Jeeva Samadhi) on 01.07.1990 and that the petitioner himself was associating with Shri Sadhu Swamigal @ Govindhanandham as an ardent disciple from the year 1973 and that since the death of the Late Shri Sadhu Swamigal @ Govindhanandham, the petitioner has been performing Poojas to the Deities and also to the Samadhi of Shri Sadhu Swamigal @ Govindhanandham.

8. Thus, the averments in the affidavit themselves clearly indicate that a religious institution is in existence and it is attracting the devotees. It is not as if the petitioner was a Member of the family of Late Shri Sadhu Swamigal @ Govindhanandham. He is himself an ardent disciple of Late Shri Sadhu Swamigal @ Govindhanandham. After the death of Late Shri Sadhu Swamigal @ Govindhanandham, the petitioner has been in the control of the affairs of the Temples.

9. The decision authored by me in W.P(MD).Nos.3019, 3074 to 3087 of 2022, in Gopal Vs The Commissioner, HR&CE Department, Chennai and others, cited by the learned counsel for the petitioner was rendered in the context of Section 21 of the HR&CE Act and not in the context of Section 69 of the HR&CE Act, 1959, whereas, the decision of the Hon'ble Supreme Court in Ganesan Vs Tamil Nadu Hindu Religious & Charitable Endowment Board, 2019 (7) SCC 108, was rendered in the context of Section

69 of the Hindu Religious and Charitable Endowments Act, 1959. Therefore, the delay in filing the appeal cannot be condoned particularly in the light of the averments and in the light of the decision of the Hon'ble Supreme Court cited supra.

10. In view of the above reasonings, I am unable to entertain this Writ Petition. This Writ Petition is therefore dismissed with the above observations. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner,
The Hindu Religious & Charitable
Emdowment Board,
Nungambakkam, Chennai.

2. The Joint Commissioner,
The Hindu Religious & Charitable
Endowment Board,
Sivagangai, Sivagangai District.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.36279

W.P.NO.14966 OF 2022

KV(CO)
PBS/11/07/2022