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W.P. No. 30981 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2022

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 30981 of 2022

and

W.M.P. Nos. 30380 and 30381 of 2022

M.ShanmugaSundaram

... Petitioner

-VS-

1. The Commissioner
Hindu Religious and Charitable Endowment
No.119, Uthamar Gandhi Road
Nungambakkam, Chennai – 600 034.

2. The Joint Commissioner
Hindu Religious and Charitable Endowment
VII Street, Gandhi Nagar
Thiruvannamalai District.

3. G.Sathyamoorthy
Respondents

...

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, call for the records pertains to the impugned order passed by the First Respondent bearing reference No. Na.Ka.No. 4627/2022/A2 dated 13.04.2022 and quash the same as illegal, consequently direct the Second Respondent to recognize the Petitioner as hereditary trustee of the said mariamman Temple at Agaram Village, Thiruvannamalai District considering the Petitioner's application dated 10.03.2020 and pass order thereon on merit and in accordance with law within



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a stipulated time.

For Petitioner : Mr. P.R.Thiruneelakandan

For Respondents : Mr. M.Bindran,
Additional Government Pleader (For R1 & R2)

ORDER

Heard Mr. P.R.Thiruneelakandan, Learned Counsel for the Petitioner and Mr. M.Bindran, Learned Additional Government Pleader, who takes notice for the First and Second Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the Order in Na. Ka. No. 4627/2022/A2 dated 13.04.2022 passed by the First Respondent, viz., Commissioner, Hindu Religious and Charitable Endowment, Nungambakkam, Chennai, to the Second Respondent, viz., Joint Commissioner, Hindu Religious and Charitable Endowment, Thiruvannamalai District, to examine as to whether the matter could be taken as *suo motu* appeal.

3. The primordial attack on the impugned order by Learned Counsel for the Petitioner is that no prior opportunity of personal hearing has been afforded to the Petitioner before it has been passed by the First Respondent, which causes



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prejudice to the Petitioner in this case. In this context, it must be highlighted

that the power to take up *suo motu* appeal has been conferred on the First Respondent, who has merely asked the Second Respondent to examine whether the same deserves to be entertained, which cannot be said to cause any prejudice to the Petitioner at this stage of the proceedings. In any event, it has been brought to notice that an enquiry in that regard is conducted by the Second Respondent, who has already heard the same on 09.09.2022, 19.10.2022 and 11.11.2022, which has been adjourned to 13.12.2022, after due notice to all concerned parties including the Petitioner and the Third Respondent. This would obviously mean that the Petitioner can raise all his contentions before the Second Respondent, who would have to duly consider the same and pass reasoned orders following the prescribed procedure on merits and in accordance with law.

4. The next plea raised on behalf of the Petitioner is that a time limit of one month has been fixed for preferring revision against the order dated 20.06.1991 in O.A. No. 223 of 1987 passed by the Deputy Commissioner, Hindu Religious and Charitable Endowments Department Salem and after the lapse of the said period, the Petitioner cannot circumvent that statutory bar by requiring the First Respondent to exercise the powers of *suo motu* revision after that lapse of time.



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At this juncture, reference must be made to the decision of the Hon'ble Supreme

Court of India in ***Ganesan -vs- Tamil Nadu Hindu Religious and Charitable***

Endowments Board [(2019) 7 SCC 108], where it has been clarified that there is no limitation for exercising the powers of *suo motu* revision under the relevant provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, by the Commissioner without prejudice to any other remedy open to the aggrieved person in law.

5. Though it is true that prior to the aforesaid ruling, in the decision in ***S.A.Ponnuswami -vs- Deputy Commissioner, HR & CE (Admn) Department, Coimbatore*** [(1994) 1 MLJ 155] cited by Learned Counsel for the Petitioner, the Division Bench of this Court has taken a view that action for *suo motu* appeal should be taken within a reasonable time, the determination as to what is the 'reasonable time' is a question of fact, which would vary from case to case and has to be considered taking into account all relevant facts and circumstances and it is not possible to lay down any specific time limit for the same. It is hastened to add here that it is incumbent upon the First Respondent to expressly deal with the question as to whether powers of *suo motu* appeal has been exercised within a reasonable time having due regard to the rival contentions of the contesting parties in that regard before taking a final decision



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in the matter.

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6. In the result, the Writ Petition is disposed on the aforesaid terms.

Consequently, the connected Miscellaneous Petitions are closed. No costs.

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Maya

Index: Yes/No

Note: Issue order copy by 03.01.2023.

To

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P.D. AUDIKESAVALU, J.

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