



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **17.06.2022**

CORAM:

THE HONOURABLE **MR.JUSTICE M.NIRMAL KUMAR**

W.P.(MD).No.12174 of 2022

and

W.M.P.(MD).No.8660 of 2022

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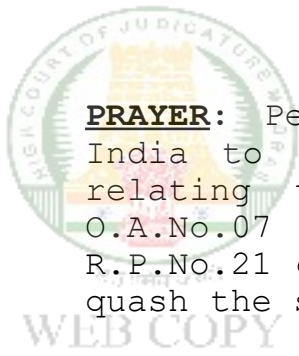
Theivam Poosari

.. Petitioner

Vs

- 1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai District - 34.
- 2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Madurai District.
(and Now transferred to,)
The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Dindigul District.
- 3.T.Childambaram Chettiar
- 4.Jeyakandhan Chettiyar
- 5.Selvam
- 6.Pithcumani
- 7.Virumandi Chettiyar(died)
- 8.Palpandi Chettiyar
- 9.Childambaram Chettiyar(Died)
- 10.Kamathciammal Chettiyar(died)
- 11.Muthukaluvayiammal
- 12.Seeni
- 13.Virumandi
- 14.Kasi
- 15.Dhanalakshmi
- 16.Pandiyarajan

... Respondents



PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certriorari, calling for the records relating to the rejection order of the second respondent in O.A.No.07 of 2013 and the order passed in the Review Petition in R.P.No.21 of 2017 conforming the order in the O.A.No.07 of 2013 and quash the same.

For Petitioner : Mr.N.Balasubramanian
For R1 and R2 : Mr.M.Lingadurai
Special Government Pleader

ORDER

The petitioner, challenging the order passed by the second respondent in R.P.No.21 of 2017 in O.A.No.07 of 2013, dated 27.11.2017, has filed this writ petition.

2.The petitioner's father filed O.A.No.7 of 2013, before the second respondent under Section 63 (e) of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, to declare him as Hereditary Poojari. During the pendency of O.A.No.7 of 2013, the petitioner's father passed away on 22.12.2016, and thereafter, the petitioner's mother filed I.A.No.2 of 2017 before the second respondent. The second respondent, by order dated 12.04.2017, dismissed the I.A.No.2 of 2017. Aggrieved against the same, the petitioner ought to have filed an appeal before the Commissioner under Section 69 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, within a period of 60 days. The petitioner, on a misconception, filed a review petition before the second respondent in R.P.No.21 of 2017, which came to be dismissed on 27.11.2017. Thereafter, the petitioner stand against the order of the second respondent dismissing the I.A.No.2 of 2017.

3.In view of the same, the limited prayer, now the petitioner seek that he may be permitted to file an appeal condoning the delay. The petitioner suffered an order dated 27.11.2017 in O.A.No.07 of 2013 and thereafter, it is almost five years, for what reason no explanation has been given for the delay. If at all, the petitioner got any possibility to give explanation, he has to file an appeal before the Commissioner and give his explanation and thereafter, it is for the commissioner to decide the same.

4.Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents 1 and 2.

5.The learned counsel appearing for the petitioner referred to the case of ***Ganesan rep. by its Power Agent G.Rukmani Ganesan Vs. The Commissioner, and others*** in ***Civil Appeal No.4582 of 2019***, wherein, the Honourable Apex Court had authoritatively laid down



that Section 5 of the Limitation Act will not be applicable as per the scheme of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

6.Further, he referred that this Court, in the case of **Guruvammal Vs. The Commissioner, Hindu Religious and Charitable Endowment Board**, in **W.P.(MD).No.3435 of 2010**, issued a positive direction to the Commissioner, Hindu Religious and Charitable Endowment Board, to consider the condone the delay. Further, this Court in the case of **Poosari Sokkan Vs. The Commissioner, Tamil Nadu Hindu Religious Charitable Endowments Department**, in **W.P.(MD).No.12536 of 2020**, referring to the judgment of the Honourable Apex Court, observed that the Commissioner has *suo motu* power under Section 69(2) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, to condone the delay.

7.In view of the above, an appeal being a statutory appeal, the petitioner cannot be denied of his statutory right. Hence, the delay can be condoned by considering the larger interest of justice.

8.Considering the submission made by the petitioner, it is for the petitioner to file appropriate petition before the Commissioner, to consider the case based on its own merits and pass appropriate orders. If he feels Section 69(2) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, to be invoked, he can do so.

9.With the above direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

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/06/2022

Sub Assistant Registrar(CS)

vsg



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The Joint Commissioner,
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Dindigul District.

+1 CC to M/s.N. BALASUBRAMANIAN, Advocate (SR-26635[F] dated
17/06/2022)

+1 CC to M/s.SPL.GP (SR-26835[F] dated 20/06/2022)

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and
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KB(28.06.2022) 4P 5C