



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. (MD) No.22789 of 2019

and

W.M.P. (MD) No.19554 of 2019

WEB COPY

A.Muthukrishnan

... Petitioner

/vs./

1.The Commissioner,
Tamil Nadu Hindu Religious and Charitable
Endowment Department,
Nungambakkam,
Chennai.

2.The Joint Commissioner,
Tamil Nadu Hindu Religious and Charitable
Endowment Department,
Trichy.

3.Balakrishnan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the 1st respondent dated 30.08.2019 in proceedings R.C.No.21113/2019 D2 set aside the same as the same is contrary to Sec.54(4) of Act 22/1959 and consequentially direct the 1st respondent to suo motu initiate proceedings against the order dated 17.02.2011 passed by the 2nd respondent.

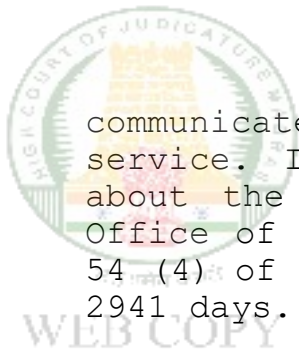
For Petitioner : Mr.R.G.Shankar Ganesh
For R1 & R2 : Mr.P.Subbaraj
Special Government Pleader
For R3 : Mr.S.Madhavan

ORDER

The petitioner has challenged the impugned order of the 1st respondent/the Commissioner, HR & CE, Chennai, dated 30.08.2019.

2.By the impugned order, the 1st respondent has rejected the appeal filed by the petitioner under Section 54 (4) of the Hindu Religious and Charitable Endowment Act, 1959 (*herein after referred to as 'Act'*) against the order of the 2nd respondent/the Joint Commissioner dated 17.02.2011 on the ground of limitation.

3.It is the specific case of the petitioner that the order of the 2nd respondent dated 17.02.2011 was secured by the 3rd respondent by suppressing the facts and that the said order was not



communicated to the petitioner as the petitioner was in Railway service. It is submitted that after the petitioner came to know about the same, the petitioner obtained certified copy from the Office of the 2nd respondent and thus filed an appeal under Section 54 (4) of the Act along with an application to condone the delay of 2941 days.

4.It is a specific case of the petitioner that the limitation is to be computed from the date of communication of the order, as Section 54 (4) of the Act gives a time for one month from the date of receipt of a copy of the order to appeal against the order of the 2nd respondent before the 1st respondent. It is therefore submitted that the rejection of the application filed by the petitioner to condone the delay of 2941 days in filing the appeal was liable to be interfered.

5.It is submitted that the order that has been secured by the 3rd respondent from the 2nd respondent dated 17.02.2011 was behind the back of the petitioner and the petitioner being the elder son of late.Alagirisamy, who was the Hereditary Trustee and died on 10.11.1987, was to be appointed as the Hereditary Trustee in terms of Section 54 (4) of the Act.

6.Opposing the prayer, the learned counsel for the 3rd respondent submits that after the death of the petitioner and the 3rd respondent's father on 10.11.1987, the 3rd respondent has been officiating in the temple as the Hereditary Trustee and that the right to officiate as the Hereditary Trustee of the temple was duly recognized by the 2nd respondent on 17.02.2011, pursuant to an application dated 10.12.2004. It is submitted that the petitioner had also consented and therefore, it is not open for the petitioner to now disturb the post of the Hereditary Trustee held by the 3rd respondent. It is therefore submitted that it was for the 3rd respondent after the demise of the petitioner and the 3rd respondent's father, late.Alagirisamy to officiate in the capacity of the Hereditary Trustee of the aforesaid temple. However, the petitioner abdicated his privilege in favour of the 3rd respondent. It is therefore submitted that there is no merits in this writ petition.

7.The learned counsel for the 3rd respondent has placed reliance on the decision of the Hon'ble Supreme Court in Civil Appeal No.4582 of 2019 (**Ganesan Vs. The Commissioner, HR & CE Board and others**) dated 03.05.2019 and the reasoned judgment of this Court in W.P.(MD) No.7657 of 2021 (**E.Muthusamy Vs. The Commissioner, HR & CE Department, Chennai**) dated 09.04.2021, wherein the aforesaid decision of the Hon'ble Supreme Court has been followed.

8.The learned counsel for the official respondents submits that the appeal before the Appellate Commissioner under Section 54 (4) of



the Act was time barred and therefore the application filed for condoning the delay of 2941 days has been rightly rejected.

9.I have considered the arguments advanced by the learned counsel for the petitioner, learned counsel for the official respondents and the learned counsel for the 3rd respondent.

10.The petitioner is aged about 69 years and has now woken up to challenge the position of the 3rd respondent as the Hereditary Trustee, though the father of the petitioner and the 3rd respondent, Alagirisamy, who was the Hereditary Trustee of the aforesaid temple, has died as early as 10.11.1987.

11.The learned counsel for the petitioner had mentioned that the petitioner was working in Railways. Thus, the petitioner would have retired atleast 11 years prior to the filing of the writ petition and at the time when the petitioner's father died, the petitioner would have been still in service. It is quite possible that the petitioner was not interested in taking the mantle as the Hereditary Trustee of the temple after the death of his father. The petitioner has thus woken up quite late to exercise his right as the Hereditary Trustee as the next in line of succession.

12.Further, the petitioner's preoccupation in his employment meant that that the petitioner has given up his right in favour of his younger brother. The application filed by the petitioner for condoning the delay also does not clearly state that he has not given a no objection for recognizing the 3rd respondent as the Hereditary Trustee. The application merely states that the 3rd respondent obtained an order stealthily without impleading the other legal heirs. Merely because the order was not communicated to the petitioner on an earlier date would not mean that the petitioner had not been put to notice. On the other hand, what is evident, is that the petitioner was not interested in taking up the mantle of a Hereditary Trustee after the demise of his father. In my view, there is no merits in the present writ petition. The order passed by the 1st respondent while rejecting the application for condoning the delay of 2914 days is well reasoned and requires no interference. Therefore, the writ petition deserves to be dismissed.

13.The writ petition thus stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

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/ /2022

Sub Assistant Registrar(CS)



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Endowment Department,
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Chennai.

2.The Joint Commissioner,
Tamil Nadu Hindu Religious and Charitable
Endowment Department,
Trichy.

+1 CC to M/s.SPL GP (SR-13865[F] dated 23/03/2022)

+1 CC to M/s.R.G.SHANKAR GANESH, Advocate (SR-14137[F] dated
24/03/2022)

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SRR(CO)
KB(04.04.2022) 4P 5C