



W.P.(MD) No.4646 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.03.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.4646 of 2023

CT.Kumaresan

.. Petitioner

Vs.

1.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Sivagangai.

2.Sivagangai Samasthanam Devasthanam,
Rep., by its Manager,
Sivagangai.

3.C.Alagappan

4.K.Periyasamy

5.M.Pachamuthu

.. Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the 1st respondent to process the application presented on 14.06.2018 before the 1st respondent to condone the delay in filing application to restore the O.A.No.29 of 1992 on his file, which was dismissed for default on



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14.12.2017 and pass appropriate order in the said application filed by the petitioner.

For Petitioner : Mr.V.R.Shanmuganathan
For R1 : Mr.P.Subbaraj
Special Government Pleader
For R2 : Mr.S.Madhavan

ORDER

This writ petition is filed seeking issuance of Writ of Mandamus directing the first respondent to dispose of the application presented by the petitioner on 14.06.2018 before him to condone the delay in filing the application to restore O.A.No.29 of 1992, which was dismissed for default on 14.12.2017.

2. The brief fact, which is necessary to dispose of this writ petition is as follows:

The petitioner had approached the first respondent under Sections 63(e) and 106 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as “the HR & CE Act”)



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for a declaration regarding the usage by a community for pulling the temple car rope during the car festival of Arulmighu Veerasekara and Umayambigai Temple at Sakkottai, Karaikudi Taluk, Sivagangai Disrtict.

3. The averments in the writ petition would state that this was the custom which had been going on for a considerable time, but had gone out of vogue for over four decades by reason of the fact that (a) the temple car had become dilapidated and (b) there was dispute with reference to as to who should pull the temple car. It is, in this backdrop the petitioner had moved the first respondent and several persons had impleaded themselves in the proceedings and the first respondent attempted to bring about consensus between the stakeholders. The talks ended in failure and for enquiry in the original application, the same was listed on 14.12.2017. On that date, the petitioner could not appear before the first respondent and the Advocate, whom he had engaged, was also not present. Therefore, the original application came to be dismissed for default. This order was received by the petitioner's Advocate only on 25.01.2018 and communicated to the petitioner in the month of March,



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2018. Thereafter, the petitioner had moved an application for condoning the delay of 109 days in filing the restoration application on 14.06.2018. However, the application has not been heard by the first respondent. Therefore, the present writ petition has been filed for the limited purpose of a direction to the first respondent to dispose of the said application.

4. The petitioner had set out the above facts and the learned Special Government Pleader represented that in the judgment in ***Ganesan, Rep., by his Power Agent Vs. Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments Board, Chennai*** reported in ***2019 (3) CTC 469***, the applicability of Section 29(2) of the Limitation Act is not available to the statutory authorities like the Commissioner under the HR & CE Act.

5. It is well open to the first respondent to pass orders as per law in the application filed by the petitioner for condoning the delay in filing the restoration application instead of keeping the same pending for over five years on date. Therefore, this Writ Petition is allowed. The first



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respondent is directed to consider the application to condone the delay of 109 days in filing the restoration application within a period of three weeks from the date of receipt of a copy of this order. No costs.

06.03.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes

abr

To

The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Sivagangai.



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P.T.ASHA, J.

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