
(2014) 08 MAD CK 0192

In the Madras High Court

Case No : W.P. (MD) No. 13804 of 2013 and M.P. (MD) Nos. 1 and 2 of 2013

Ganesan

APPELLANT

Vs

The Commissioner

RESPONDENT

Date of Decision : 22-08-2014

Acts Referred:

Limitation Act, 1963 — Section 10, 11, 12, 12(2)
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 115,
63(3), 69, 69(1)

Citation : (2014) 08 MAD CK 0192

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Judgement

T.S. Sivagnanam, J.—The petitioner seeks for issuance of a writ of certiorari to quash the order, dated 31.07.2013 in A.P. No. 28 of 2013, passed by the first respondent. By the impugned order, dated 31.07.2013, the first respondent allowed the application filed by the third respondent herein granting leave to the third respondent to file appeal petition, under Section 69(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter, referred to as "the Act"), against the order, dated 31.12.2010, passed by the second respondent, in O.A. No. 7 of 2008, filed under Section 63(3) of the Act, by condoning the delay of 266 days in filing the appeal petition.

2. With the consent of both the parties, this writ petition is taken up for final hearing.

3. This Court elaborately heard Mr. M. Mahaboob Athiff, learned counsel appearing for M/s. Ajmal Associates for the petitioner, Mr. N.S. Karthikeyan, learned Additional Government Pleader for the respondents 1 and 2 as well as Mr. M.O. Thevan Kumar, learned counsel for the third respondent.

4. Though there had been several writ petitions filed before this Court on earlier occasion, this Court would refer to the factual details, which are required for the purpose of examining the validity of the impugned order, dated 31.07.2013. The

second respondent Joint Commissioner, H.R. & amp; C.E. Department, passed an order, dated 31.12.2010, in O.A. No. 7 of 2008. By virtue of which the application filed by the writ petitioner was allowed whereby the writ petitioner came to be entitled to certain respect in the temple festival as "Ambalathaar".

5. Two writ petitions were filed before the Honourable Division Bench of this Court in W.P. (MD) Nos. 14382 of 2011 and 185 of 2012 by Mr. M. Radhakrishnan and Mr. R.M. Madhavan respectively. In W.P. (MD) No. 14382 of 2011, the writ petitioner herein was the seventh respondent and his wife Mrs. Rukmani was the sixth respondent in W.P. (MD) No. 185 of 2012 (this writ petition has been filed by the petitioner represented by his wife as power of attorney agent). The Honourable Division Bench of this Court, by a common order, dated 10.01.2012 dismissed both the writ petitions. While doing so, the Honourable Division Bench has observed that if the writ petitioner was aggrieved by the order passed by the second respondent, the proper course would be to pursue the appeal filed by him before the first respondent. Further, the Honourable Division Bench refused to issue writ of mandamus to forbear the respondents 1 to 3 or the petitioner herein as the Ambalam to receive Ambalam during Pongal festival from 14.01.2012 to 17.01.2012.

6. One M. Lakshmanan filed writ petition in W.P. (MD) No. 379 of 2012, wherein the present writ petitioner was the sixth respondent and in that writ petition an interim order was granted by this Court granting stay of the Order, dated 31.12.2010, passed by the second respondent. Subsequently, the writ petition was dismissed as withdrawn by Order, dated 25.06.2012. The third respondent herein filed an appeal petition before the first respondent herein challenging the order, dated 31.12.2010, in O.A. No. 7 of 2008, passed by the second respondent herein. Since the third respondent was not party to the proceedings before the second respondent, he filed an application seeking leave to file third party appeal and challenged the said order, dated 31.12.2010, and prayed for condoning the delay of 266 days in filing the appeal. In the meantime, the petitioner herein filed another writ petition in W.P. (MD) No. 143 of 2013, before this Court, praying for direction to provide police protection for the pongal festival, in the light of the order, dated 31.12.2010, in O.A. No. 7 of 2008, passed by the second respondent herein and the Order, dated 10.01.2012, passed by the Honourable Division Bench of this Court in W.P. (MD) Nos. 14382 of 2011 and 185 of 2012.

7. In the said writ petition, a direction was given to the Superintendent of Police, Sivagangai District, to provide police protection to the writ petitioner by observing that the second respondent passed an order stating that the petitioner alone is the Ambalam of the Village and he is entitled to receive the first honour of the temple as well as based on the observation made by the Honourable Division Bench of this Court. Since the appeal petition filed by the third respondent was pending before the first respondent, the third respondent filed a writ petition in W.P. (MD) No. 3379 of 2013 before this Court for a direction to

dispose of the appeal petition filed by him within a time frame and for a consequential relief. A direction was issued by this Court to the first respondent to take up the stay petition at the first instance, since the festival was scheduled to be held on 12.03.2013. Thereafter, the first respondent took up consideration the application filed by the third respondent for grant of leave to file appeal against the order, dated 31.12.2010, passed by the second respondent, and for condoning the delay of 266 days in filing the appeal.

8. The petitioner herein resisted the application on facts as well as on legal issues. On facts, the petitioner contended that the application is not maintainable and the third respondent is not entitled to maintain the appeal and such other matters. On the legal issue, the petitioner contended that the appeal can be filed under Section 69 of the Act, within a period of 60 days from the date of publication of the order or of receipt thereof by any aggrieved party and beyond the period of 60 days, there is no power vested with the first respondent to entertain any application for condonation of delay. In this regard, reliance was placed on the decision of the Honourable Supreme Court in the case of Prakash H. Jain Vs. Ms. Marie Fernandes, .

9. The second contention of the petitioner was that the third respondent has not shown sufficient cause and he has made a false statement that he was sick and could not instruct his counsel. Infact, he was a party to a peace committee meeting held on 14.01.2011 and he was aware of the order passed by the second respondent even prior to the expiry of 60 days period and he has expressed in the peace committee meeting that he will challenge the order, dated 31.10.2012, passed by the second respondent. But thereafter, he did not challenge the same and set up other parties to file writ petitions and when the third respondent had been attending various peace committee meetings and filing writ petitions before this Court, during the period between 31.12.2010 and the date of filing of the application to condone the delay, the plea raised by the third respondent is a superfluous plea. Further, it was submitted that the delay, reason of incapacitation to file appeal within the time and each and every day delay has not been explained. Therefore, it was contended that the delay should not be condoned, as the third respondent has not shown sufficient case for condoning the delay.

10. The first respondent, by the impugned order, dated 31.07.2013, on the aspect as to whether he has power to condone the delay of 266 days, held that Section 5 of the Limitation Act is applicable to his proceedings and in support of such conclusion, reliance was placed on the decision of the Honourable Supreme Court in the case of N. Balakrishnan Vs. M. Krishnamurthy, . As regards the reasons assigned by the third respondent in the condone delay petition, it was observed that there can be some lapse on the part of litigant, this alone is not enough to turn down his plea and to shut the door against him and if the explanation does not smack of mala fide or put forth as a part of dilatory tactics, the Court must show utmost consideration to the litigant. Therefore, the first

respondent held that the delay is neither willful nor wanton and refusal to condone the delay would prevent the third respondent/appellant from putting forth his case and liberal approach should be adopted while entertaining the application for condonation of delay as held by the Honourable Supreme Court in the case of the Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , passed by the first respondent, the present writ petition has been filed.

11. The learned counsel for the petitioner, after elaborately referring to the facts, submitted that Section 5 of the Limitation Act has no application to the proceedings before the first respondent and in support of his contention reliance was placed on the decision of the Honourable Supreme Court in the case of Om Prakash Vs. Ashwani Kumar Bassi, . On facts, the learned counsel referred to the counter affidavit filed by the first respondent in the condone delay petition and emphasised before this Court that the Court should look into the conduct of the party and when the third respondent has been filing writ petitions before this Court and appearing before peace committee meetings, nothing prevented him to file appeal within a period of 60 days, when he was aware of such order and the explanation offered by him is false and therefore the impugned order, dated 31.07.2013, passed by the third respondent is liable to be set aside.

12. Per contra, the learned counsel for the third respondent submitted that the legal issue as to whether the provisions of Section 5 of the Limitation Act are applicable to the proceedings before the first respondent has been settled in several decisions and relied on the decision of this Court in the case of Nagarajan and Others Vs. The Commissioner, Hindu Religious and Charitable Endowments (Administration) Department and Others, and N.M. Palanimuthu Vs. The Commissioner HR and CE (Admn.) Dept. and five others, . The learned counsel also placed reliance upon the unreported decision of this Court in W.P. No. 4140 of 2008, dated 08.09.2009, wherein liberty was granted to file an appeal before the first respondent in somewhat identical case as that of the present case.

13. Further, the learned counsel, by referring to the decisions of the Honourable Supreme Court in the cases of Mangu Ram Vs. Municipal Corporation of Delhi, and Union of India Vs. M/s Popular Construction Co., and the decision of the Honourable Division Bench of this Court in the case of Rethinasamy Vs. Komalavalli and Another, , submitted that there is an important difference between the Limitation Act, 1963 and the Limitation Act, 1908 and the 1963 Act has been enacted for the purpose of determining the period of limitation prescribed for any suit or application or appeal by any special or local law the provisions contained in Sections 4 to 24, which would include Section 5, shall apply insofar as and to the extent to which they are not expressly excluded by such special or local law. Therefore, the learned counsel submitted that the special law, which is the H.R. & C.E., Act having not excluded the power under Section 5 of the Limitation Act, 1963, the provisions of Section 5 would be applicable to the proceedings before the first respondent. On the factual aspect,

the learned counsel, by referring to the affidavit filed before the first respondent in the condone delay petition, submitted that the third respondent has shown sufficient cause and he was unable to contact his counsel to give instructions due to ill-health and the delay is neither willful nor wanton and beyond the control of the third respondent and therefore in the interest of justice, the delay should be condoned.

14. Further, it is submitted that the second respondent passed an arbitrary order, which the third respondent has challenged before the first respondent in the appeal, without issuing notice to the opposite party and it is an ex parte order without hearing any person and in this regard the learned counsel referred to certain portions of the said order passed by the second respondent and submitted that the findings rendered by the second respondent are obnoxious and it is in total violation of principles of natural justice. Therefore, it was pleaded that the third respondent should be allowed to adjudicate the matter on merits before the first respondent.

15. After hearing the learned counsel for the parties and perusing the materials placed on record, this Court has no hesitation to hold that the provisions of Section 5 of the Limitation Act are applicable to the proceedings before the first respondent. This conclusion is supported by the following reasons:

The legal issue involved in this writ petition is no longer *res integra* and has been decided by this Court in several cases on earliest as being relied upon by the learned counsel for the third respondent in the case of *Nagarajan* (cited *supra*), wherein an identical objection was raised and this Court, after considering the rival contentions, held that the provisions of Section 5 of the Limitation Act would be applicable to the proceedings before the first respondent. At this stage, it would be beneficial to refer the operative portion of the said decision:

?The next point to be considered is, whether Section 5 of the Limitation Act would be applicable. Once a finding is arrived at that he is a Court for the purposes of Limitation Act, there is no conceivable difficulty in holding that Section 5 could be invoked by him while entertaining appeals alone, and he can grant relief, provided sufficient cause is shown. In the event of holding that he is not a Court to what extant the provisions of the Limitation Act could be availed of, is considered hereunder, in the light of arguments advanced on this aspect.

The point evolved by relying upon these decisions is that unless there is express exclusion, by referring to any of the sections 4 to 24, they would be applicable. This contention can no longer be sustained, in view of the decision rendered in *Hukumdev Narain Yadav Vs. Lalit Narain Mishra*, , wherein it was held that, it would suffice to look into the scheme of the special law and the nature of remedy provided, and if the intention of the Legislature is made out that it is a complete code by itself, then the provisions of the Limitation Act would necessarily be excluded.

Section 115 of T.N. Act, is to the following effect. (Omitted) It is identical to

Section 12(2) of 63 Act. By referring to this section, it is claimed that when a special provision is found dealing with limitation, all the sections from 4 to 24 cannot be invoked, even if the Commissioner is to be treated as a Court. This is a contentions in extremism, because Section 115 can in so sense be understood as to embrace all the aspects covered by those Sections. The only one sub-section that would stand excluded, is Section 12(2) of 63 Act. There is no express reference made in the Act for excluding anyone of those provisions. Looking into the sections in T.N. Act to find out whether the scheme and the nature of the Act is such as to exclude the applicability of Limitation Act, unlike the Representation of the people Act, this Act cannot be termed as a code by itself proving for everyone of those contingencies which are available under Section 4 to 24 of the Limitation Act. Hence, an attempt made that even if Commissioner is a Court, none of the provisions of Section 4 to 24 of Act would be available, has to be rejected.

Considering the provisions of T.N. Act and on what has been stated above that except Section 115, which is similar to Section 12(2) of 63 Act, there being no other provision, or scheme of the Act envisaging exclusion of the applicability of Sections 4 to 24; applying the principles and precautions spelt out by Supreme Court, it is held that Section 5 would apply, when Commissioner exercises appellate powers.

It was contended on behalf of some of the petitioners that even if the Commissioner is not a Court and Section 5 would not be applicable, still he would have the inherent power and excuse delay, if no justice, equity and good conscience, there were good reasons for it, and for this purpose, reliance was placed on Venkai Marbon v. Dakshinamoorthy (1981 I MLJ 275) and Raj Chopra Vs. Shanno Devi and Others, . If such an approach is to be made, then there is no need even to look at the existence or otherwise of the Limitation Act and as to whether the special or local or itself provides for excusing the delay or not. In the light of what has been held in The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur, , the Court has to trace the power with in the ambit of the Acts and not on grounds of equity and good conscience.?

16. A similar view was taken by this Court in the case of Palanimuthu, N.M. (cited supra), after following the decision in the case of Nagarajan (cited supra) and it has been held that:

6. Therefore whether sections 4 to 24 of the Limitation Act is attracted to a suit under section 70 of the Endowments Act or not depends upon the scheme of the Endowments Act. I have already held that the suit under section 70 of the Endowments Act is a continuation of the proceedings commenced under section 63 of the said Act and the suit referred to above is not equated to a regular suit known as a suit in the common legal parlance. Section 108 of the Endowments Act creates a bar of suits in respect of matters provided therein. The said section states as follows: No suit or other legal proceedings in respect of the administration or management or a religious institution or any other matter or

dispute for determining or deciding which provision is made in this Act shall be instituted in any court of law, except under, and in conformity with, the provisions of this Act.

A reading of the above mentioned section would make it clear that the bar created under that section is absolute subject to the provision for a suit being provided under the Act itself. Section 70 of the Endowments Act is an exception to the bar created under section 108 of the said Act. Section 115 of the Endowments Act inherently indicates in a crystal clear manner that to a suit provided for under the said Act, the period of limitation prescribed therefore can be extended. Section 115 of the Endowments Act reads as follows:

115. Limitation: In computing the period of limitation prescribed under this Act for any proceeding, suit, appeal or application for revision against any order of decree passed under this Act, the time requisite for obtaining a certified copy of such order or decree shall be excluded.

There is more or less a corresponding provision in the Limitation Act as well and that is found in section 12 of that act, of course with a slight variation on a material and vital point. Section 12(2) of the Limitation Act reads as follows:

12. Exclusion of time in Legal Proceedings:

(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.

The difference between section 115 of the Endowments Act and section 12(2) of the Limitation Act is of such a magnitude that it cannot be lost sight of in deciding the question whether section 5 of the Limitation Act is applicable to a suit under section 70 of the Endowments Act and whether the scheme of the Endowments Act itself either expressly or by implication excludes the operation of sections 4 to 24 of the Limitation Act. The difference that could be noticed in the two sections is that while computing the period of limitation for the purpose of filing a suit under the Endowments Act, the time requisite for obtaining a certified copy of the order challenged shall be excluded, such an exclusion in respect of a suit to be filed is not found in section 12(2) of the Limitation Act, though in all other aspects it is similar to section 115 of the Endowments Act. It is a conspicuous omission thereby making it clear and beyond any realm of doubt that in computing the period of limitation for any suit the only period that can be excluded under the Limitation Act is the day from which such period is to be reckoned and not any other period. But on the other hand, under section 115 of the Endowments Act in computing the period of limitation prescribed under this Act for any proceeding, suit, appeal or application for revision against any order or decree passed under this Act, the time requisite for obtaining a certified copy of such order or decree shall be excluded. The conspicuous inclusion in this

section is the 'suit'. It may be usefully noticed here that under Section 70 of the Endowments Act, the time of 90 days starts running from the date of the receipt of the order of refusal by the Commissioner by the aggrieved party thereby meaning that the time taken in furnishing the copy to the aggrieved party shall be excluded. That position is re-affirmed in Section 115 of the Endowments Act. In other words, even in respect of suits prescribed under the Endowments Act under section 115 of the said Act, the time requisite for obtaining the copy of the order shall be excluded, which is not the case under section 12(2) of the Limitation Act. Therefore section 115 of the Limitation Act is at variance with section 12(2) of the Limitation Act regarding the manner in which the period of limitation for filing a suit shall be computed. The learned single Judge of this court in the judgment reported in Nagarajan and Others Vs. The Commissioner, Hindu Religious and Charitable Endowments (Administration) Department and Others, on a construction of section 115 of the Endowments Act and provisions of the Limitation Act held that the former section under the Endowments Act excludes only section 12(2) of the Limitation Act. The learned Judge has also held that there is no express reference in the Endowments Act excluding any one of the other provisions of the Limitation Act. Therefore it is clear that the very scheme of the Endowments Act does not exclude the applicability of section 5 of the Limitation Act to a suit under section 70 of the Endowments Act. If exclusion of such a provision is thought of by the Legislature, then they would not have included in section 115 of the said Act, the suit while prescribing the manner in which the period of limitation should be computed for filing such a suit as provided for under the said Act. Inclusion of a suit under section 115 of the Endowments Act is also a clear indication to hold in unequivocal terms that section 5 of the Limitation Act is not excluded but it is made applicable.

7. Under these circumstances, I have no hesitation to set aside the order and decretal order dated 20.1.1995 in I.A. No. 471 of 1994 in the unnumbered suit on the file of the Sub-Court, Salem. Accordingly the revision is allowed and there will be no order as to costs. But at the same time it must be noticed that while disposing of I.A. No. 471 of 1974, the learned trial Judge had not gone into the question whether the petitioner before him has made out any sufficient cause at all for condonation of the delay. In fact the disposal of the said application was purely on the question of law addressed in this judgment. The learned senior counsel for the petitioner and the learned counsel for R5 and R6 would state that when that is the factual position, the said application should be remitted back to the learned Sub-Judge for disposal in accordance with law, applying section 5 of the Limitation Act. There is some force in the said submission. Accordingly I.A. No. 471 of 1994 in the un-numbered suit on the file of the Sub-Court, Salem will stand remitted back to the learned Sub-Judge, Salem for a fresh disposal in accordance with law on the premises that section 5 of the Limitation Act is attracted to such a suit. If any of the parties to that application is desirous of adducing oral or documentary evidence, then the learned Sub-Judge Salem is directed to provide such an opportunity to both the parties concerned, of course

to be complied with within as short a time as possible.

17. The learned counsel for the petitioner placed much reliance on the decision in the case of Prakash H. Jain (cites supra), which infact was also cited before the first respondent. However, the said decision was rendered by the Honourable Supreme Court, while interpreting Section 43(4)(a) of the Maharashtra Rent Control Act, 1999. In the context of the said provision, the Honourable Supreme Court held that the competent authority constituted under a particular chapter in that Act, is not a Court. Even prior to rendering such finding on fact, the Honourable Supreme Court observed that the question as to whether the nature and character of the authority, regarding it is a Court or not, should be examined by considering the scheme underlined by the Act concerned and the nature of powers, extent thereof or the limitations, if any, contained therein with particular reference to the intention of the legislature as well, found expressed therein. Therefore, the decision in the said case does not render any support to the case of the petitioner.

18. Similar finding was rendered in the case of Om Prakash (cited supra) considering the provisions of East Punjab Urban Rent Restriction Act, 1949, wherein the statute itself prescribed within what time an application for leave to contest has to be filed and while considering the said provision, the Honourable Supreme Court while examining the provisions of the said Act held that Section 5 of the Limitation Act has no application to the proceedings before the Rent Controller. Therefore, the above cited decisions i.e., Prakash H. Jain and Om Prakash referred to by the learned counsel for the petitioner are clearly distinguishable on facts.

19. As noticed above, this Court has held that the provisions of Section 5 of the Limitation Act are applicable to the proceedings before the first respondent, after analyzing the scheme of the Limitation Act, 1963 and that the special statute does not exclude the provisions of Section 5 of the Limitation Act. Therefore, it is held that Section 5 of the Limitation Act is applicable to the proceedings before the first respondent. Accordingly, the question is answered against petitioner and in favour of the third respondent.

20. The next question would be as to whether the third respondent has made out case for condonation of delay in filing the appeal petition before the first respondent. It was contended that the third respondent has been attending various peace committee meetings, filing writ petitions before this Court and was aware of the order passed by the second respondent and there is no justification for not filing the appeal petition within the period of limitation of 60 days. When the minutes of the peace committee meeting, held on 13.01.2011, are perused, it is seen that the third respondent stated that he does not know anything about the order passed by the second respondent and he has not been furnished any copy of the said order and after obtaining the copy of the order, he will challenge the same. This has been recorded by the Revenue Divisional Officer, Devakkottai, in the proceedings dated 14.01.2011, which is the minutes of the peace

committee meeting held on 13.01.2011. Therefore, it is clear that the third respondent did not state that he was in possession of the copy of the order passed by the second respondent. Hence, the participation of the third respondent in the peace committee meeting held on 13.01.2011 cannot be put against him as he has not made any admission regarding receipt of the copy of the order passed by the second respondent.

21. Secondly, it was contended that the third respondent had been filing writ petitions before this Court, contesting the same and nothing prevented him from filing appeal petition within time. On perusal of the entire records placed before this Court, it is seen that the third respondent had not filed any writ petition before this Court. However, it is alleged that the other writ petitioners were all belonging to the same group of persons of the third respondent and he had set up those petitioners to file the writ petitions. However, this issue cannot be gone into at this stage, except to state that the third respondent is not the petitioner in the earlier writ petitions. Therefore, the question, which arises for consideration, is as to whether the delay of 266 days is liable to be condoned and whether the first respondent properly exercised discretion in the matter.

22. It is a settled legal position of law that law of limitation founded on public policy is not made to destroy the rights of the parties, but to see that the parties do not resort dilatory tactics. The Honourable Supreme Court has held that in a situation where there has been no gross negligence or deliberate inaction or lack of bona fides, the Supreme Court has always taken a broad and liberal view so as to advance substantial justice, instead of terminating the proceeding on technical ground of limitation. Unless explanation furnished for the delay is wholly unacceptable or if no explanation whatsoever is offered or if delay is inordinate and third-party rights had become embedded during interregnum courts should lean in favour of condonation of delay (see *State of Rajasthan and Another Vs. Bal Kishan Mathur (D) through L.Rs. and Others*, .

23. Further, it has been settled by the Honourable Supreme Court that sufficient cause should be construed liberally on facts without any hard-and-fast rule. However, no premium can be given for total lethargy or utter negligence that too on the part of the State. (See *Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai*,

24. The term sufficient cause has always been interpreted to be elastic enough to sub-serve ends of justice. The starting point of limitation shall be the date of knowledge and the procedural law being handmade justice, it would be rather unreasonable to terminate the proceedings on the technical ground of limitation, when an explanation has been given. It is equally true that liberal approach while considering an application under Section 5 of the Limitation Act should not override the substantial laws of limitation and the conduct of the parties is also very relevant.

25. Bearing the above legal principles in mind, if the facts are analyzed, it is to

be noted that the third respondent is a third party to the proceedings. He was not a party respondent before the second respondent in O.A. No. 7 of 2008. Therefore, he sought leave to file appeal petition. In such circumstances, the crucial question would be as to when the limitation starts to run. Obviously, it would be from the date of knowledge and receipt of the order to be challenged. The petitioner would submit that the third respondent had knowledge of the proceedings even as on 13.01.2011 in a peace committee meeting convened by the Revenue Divisional Officer, Devakottai. On a perusal of the peace committee meeting, it is seen that the third respondent has stated that he does not know about the order passed by the second respondent and he has not been served any copy of the order and as and when he gets, he will challenge the same. Thus, the finding rendered by the Revenue Divisional Officer, Devakkottai, in the peace committee meeting, does not in any manner give any lead that the third respondent was in possession of the order passed by the second respondent and had full knowledge and deliberately preferred the appeal belatedly. As noticed above, the third respondent was not a writ petitioner in earlier writ petitions before this Court. Hence, this Court is of the view that a person, who has not been made as a party respondent before the second respondent in O.A. No. 7 of 2008, has subsequently preferred appeal along with leave petition, is entitled to an opportunity to question the correctness of the order passed by the second respondent invoking its power under Section 63(3) of the Act.

26. From a perusal of the order, dated 31.12.2010, passed by the second respondent, it appears that there was no respondent to the application. This is evident from the cause title in O.A. No. 7 of 2008. However, in the body of the order, the second respondent stated that one Madhavan is an aggrieved person, but he has not been made as a party respondent. Despite such observation, the second respondent proceeded to examine the contention of the petitioner and passed an order on 31.12.2010. In such circumstances, this Court is of the view that the first respondent was right in granting leave to the third respondent to file appeal petition and condoning the delay in filing the appeal. Further, it is seen that there has been series of litigation between the parties and the order passed by the second respondent is the basis of the disputes, since the petitioner asserts his rights as Ambalathaar based on such order, which is being contested by the another set of people including the third respondent. The right of appeal provided under H.R. & C.E. Act before the first respondent is statutory and a very valuable right, since H.R. & C.E. Act is a special enactment having its own procedures. Therefore, the third respondent should not be shut out from exhausting the appeal remedy at the very threshold and the matter requires to be examined on merits.

27. For all the above reasons, it is held that the impugned order, dated 31.07.2013, passed by the first respondent is perfectly valid, justified and advances substantial justice and since the matter in controversy requires to be examined on merits and for the reasons assigned, the matter should not be terminated on the technical ground of limitation. Therefore, the exercise of

discretion by the first respondent is perfectly valid as the first respondent has power to invoke the provisions of Section 5 of the Limitation Act. That apart the delay is not inordinate especially when the third respondent was not a party to the proceedings before the second respondent. Further, the petitioner has not established that the third respondent deliberately filed the appeal belatedly for mala fide reasons and the cause pleaded by the third respondent that he was unwell has not been established to be absolutely false by providing any evidence before the first respondent.

28. In the result, it is held the petitioner has not made out any case for interference with the impugned order, dated 31.07.2013, passed by the first respondent and accordingly, this writ petition fails and the same is dismissed. The first respondent is directed to hear the parties and decide the appeal on merits and in accordance with law as expeditiously as possible. Consequently, connected miscellaneous petitions are closed. No costs.