

BEFORE THE COMMISSIONER, H.R. & C.E.ADMN.DEPARTMENT, CHENNAI-34.

Friday the 19<sup>th</sup> day of August, Two thousand and Sixteen.

Present: Dr.M.Veera Shanmugha Moni,  
Commissioner.

A.P. 2/2002 D2

Between

Thiruvallargal

- 1.R.Dhakshinamoorthy (died)
2. K.Karuppa Pillai (died)
3. N.Krishnan (died)
4. K.Durairaj
5. V.Shanmugam Pillai
6. K.S.Suresh (died)
7. K.Rajendran
8. K.Gurumoorthi
9. K. Kalidass

...Appellants

And

1. The Joint Commissioner

HR&CE Department, Madurai.

.... Respondents

In the matter of Arulmigu Badrakaliamman Temple,  
Sholavandan, Vadipatti Taluk, Madurai District.

The Appeal Petition filed under Section 69(1) of the Tamil Nadu H.R. & C.E. Act, 1959 (Tamil Nadu Act 22 of 1959) against the order dated 25.10.2000 of the Joint Commissioner, Madurai in dismissing the O.A.No.44/1993 filed under Section 63(a) of the Act

Annexure to Order in R.Dis.A.P.2/2002 D2 dated: 19.08.2016

The above Appeal petition came up for final hearing before me on 5.8.2016 in the presence of Thiru.N.Senthil Kumar Counsel for the appellants. Upon hearing his argument and having perused the connected records and the matter having stood over for consideration till this day, the following order is passed.

ORDER

The above Appeal Petition filed under Section 69(1) of the Act against the order dated 25.10.2000 made in O.A.44/93 filed under Section 63(a) of the Act. The said appeal petition was dismissed by my predecessors by order dated 23.3.2010. One of the appellant has filed

**W.P.(MD) No.23366/2015 challenging the said order. The Hon'ble High Court set aside the said order on the ground that order was passed without assigning any reason and disposed the writ petition with direction for passing fresh order on merits and in accordance with law, after affording opportunity of hearing to the appellant. Though my predecessor had passed an annexure to order containing reasons for dismissing the appeal petition, the said fact was suppressed before the Hon'ble High Court. However in view of the High Court order, the matter was taken up for hearing to the appellant.**

**2. The appellants contended that the Joint Commissioner has not analyzed the evidence in proper perspectives. The judgment of the Civil Court was simply rejected by the Joint Commissioner. There is no public contribution or participation in the temple. There is no Gopuram, Dwajasthambam, Prakaram, Nagara and Hundial. The assessment of contribution or payment of contribution to avoid complication and on account of illiteracy of the appellants cannot be a ground for rejection of the petition. The observation of the Joint Commissioner that the appellants would have opted for a scheme for administration is not correct. The admission of appellants that the temple is of 700 years old and the claim of the appellant relative will not amount to worshipping by public. The two donors of the petitioners community has set apart some piece of land in favour of the deity will not make it as a public temple. There was no evidence to show that the public is worshipping. The Inspector report does not state prima facie any dedication to the public.**

**3. I heard Thiru.N.Senthil Kumar, Counsel for the appellants and perused the relevant records. The counsel for appellant has contended that**

- (i) The temple is 700 years old, belonging to the appellants family.**
- (ii) Only on 3 occasions contribution was paid to the department.**
- (iii) No public worship. Only community people are worshipping the temple.**

**(iv) No public contribution, only community people are contributing to the temple.**

**(v) There is no hundial.**

**(vi) Gnaniar Samadhi is also there**

**The counsel also filed written argument along with several reported judgments in support of the case.**

**4. Though the appellants are claiming it as their family temple, they did not file Genealogy tree to prove their relationship. It is not known whether the appellants are belonging to the same family. Further the appellants themselves admitted that the suit temple was 700 years old. But it was not proved by the appellants with cogent evidence when and by whom the temple was founded. In the absence of any evidence, they cannot claim that the temple was founded by their ancestors.**

**5. The appellants relied upon several reported judgments in support of their claim. The *Ratio decidendi* laid down in the said Judgments are summarized as follows:**

**(i) There shall be an express dedication for the benefit of the public.**

**(ii) Public worshipping the deity as a matter of right.**

**(iii) No dedication of property**

**(iv) No contribution from public but maintained from the private funds .**

**(v) It must be a place of public religious worship.**

**(vi) It must have been dedicated for the benefit of the Hindu Community or any section thereof.**

**6. As per Section 6(20) of the Act, “temple” means “a place by whatever designation known, used as a place of public religious worship and dedicated to, or for the benefit of, or used as of right by, the Hindu Community or of any Section thereof, as a place of public religious worship”. In the enquiry before the Joint Commissioner, PW2, PW3, PW4, PW5 had deposed that “.....பிள்ளைமார்**

ஜாதியில் உட்பிரிவான கந்தவார் வகையறாக்கு சொந்தமான கோயில்.....” **Further in the settlement deed executed by one Ramasamy Pillai, he had stated that** “.....மதுரை தாலுகா சோழவந்தானில் இருக்கும் பாண்டியற்கு கந்தவார் வகையறா குல தெய்வமாகிய பத்ரகாளியம்மன் திருக்கோயிலுக்கு.....” **So, it is clearly evident that the suit temple has been worshipped by the members of Kandava section of pillaimar community as of right. Further two persons one Ramasamy Pillai and Tmt.Badali Ammal have settled properties in favour of the temple. It is not proved by the appellants that they are belong to one family. As per definition under Section 6(20), if a place is used as a place of public religious worship, as of right by a Hindu community or any Section thereof, it is a public temple. Kanthava Section of Pillaimar community is also constitute a Section of Hindu Community. The members belonging to the Kanthava of Pillaimar section community are used to worship in the suit temple as of right.**

**7. In the judgment reported in 1966(1) MLJ 109, it was held that** *“It is now well settled that unlike, the temples in Kerala, there is a presumption that temples in South India are public and onus of proof is on the person asserting it to prove that it is a private temple. Even a temple dedicated for the use for a particular section of the Hindu Community could also be a public temple, if the community constitute a considerable section of Hindu public and the members of which worship in the temple as of right”.* **The above decision squarely applies to the present case.**

**8. Further, the presence of Gopuram, Dwasjasthambam, Nagara etc may be a criteria to decide the public nature of the temple if the temple was constructed as per Agamas. But no agama was followed in the suit temple and it was not consecrated as per any Agama. Hence, absence of Gopuram, Dwajasthambam, etc is not a ground to declare the temple as a private one.**

9. Further the suit temple was not constructed in the land belongs to the appellants family. The patta stands in the name of the temple. The properties were endowed in the name of the deity by one Thiru. Ramasamy pillai and Tmt.Badali Ammal. The appellants ancestors had filed suit only in the capacity as manager/ Trustee of the temple to protect the property. Hence the Judgments rendered in S.A.1478/1944 and O.S.46/1978 are not supporting the claim of the appellants.

10. The suit temple was brought under the control of the department in the year 1972 itself. The temple was also assessed for payment of contribution and audit fees till fasli 1396. Departmental dues were also collected from the person in the management. When the Assistant Commissioner has issued notice for appointment of Non-Hereditary Trustees as per the provisions of the Act, one Manickam pillai had filed O.A.60/73 under Section 63(a) of the Act. The same was dismissed for default. After lapse of 20 years, the appellants have filed O.A.49/1993 to restrain the department from appointing Non Hereditary Trustee. In the impugned order the Joint Commissioner legally analyzed oral and documentary evidences on the side of the petitioners and gave categorical findings on each evidence. There is no evidence to show that the suit temple was founded by the ancestors of the appellants and exclusively belongs to the appellants family. The documents filed by them may help to prove their management not to declare it as a private temple. Therefore viewed from any angle, I see no valid reasons to interfere with the impugned order. Accordingly the order dated 25.10.2000 made in O.A.44/1993 is hereby confirmed.

However, as the suit temple is being worshipped and maintained from the contributions made by the Kanthava Section of Pillaimar Community people, in order to protect their right and interest, they may opt for settlement of scheme under the provisions of the Act with a permanent provision to appoint Trustees from the said community. Accordingly, the appellants are directed to approach the Joint

**commissioner for framing a scheme by filing an appropriate application under Section 64(1) of the Act. The appeal petition is hereby disposed of with the above directions.**

**/typed to dictation/**

**Sd./- M.Veera Shanmugha Moni  
Commissioner**

**/t.c.f.b.o./**

**Superintendent**