

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

Tuesday the 18th day of November, Two thousand and Fourteen.

Present : Thiru P. Dhanapal, M.A.,B.L.,
Commissioner.

A.P.26/2005 and A.P.23/2006

Between

1. R.M. Ponnalagu Pattar S/o Ramiah Pattar,
2. K.N. Chinniah Pattar S/o Nagalinga Pattar. ... Appellants
3. G. Chinniah Pattar S/o Govinda Pattar.

And

1. The Joint Commissioner, HR & CE
Admn.Department, Sivagangai.
2. Muthuvairava Pattar. ...Respondents.

In the matter of Arulmigu Jayamkonda Nayaki alias Poonkundra nayaki Amman Temple, Mahibalanpatti, Thirupathur Taluk, Sivagangai District.

Appeal Petition filed under Section 53(5) of the Tamil Nadu HR&CE Act 1959 (Tamil Nadu Act 22 of 1959) against the order dated 22.7.2005 and 2.1.2006 in Pro. Rc.No. 7570/2003 D1 of the Joint Commissioner, H.R.& C.E.Admn.Department, Sivagangai.

Common Order in D.Dis. A.P. 26/2005 and A.P.23/2006 D2
dated: 18.11.2014.

The above Appeal Petitions having come on for final hearing before me on 7.11.2014 in the presence of M/s. P. Madhan, Counsel for the appellants and Thiru N. Raghavachari, Counsel for the 2nd Respondent. Upon hearing their arguments and perusing the connected records the following order is made:-

ORDER.

1. The appeal petition A.P. 26/2005 filed under Section 53 (5) of the Act, 1959 against the order dated 22.7.2005 in Pro.Rc.No.

7570/2003 B1 of the Joint Commissioner, Sivagangai in ordering the interim suspension of the appellant herein from the hereditary trusteeship.

2. The A.P. 23/2006 filed under Section 53 (5) of the Act against the order dated 2.1.2006 in Pro. Rc. 7570/2003 of the Joint Commissioner, Sivagangai in removing the appellant from hereditary trusteeship.

3. Previously, the said appeals were allowed by the Commissioner by order dated 10.4.2009. Against which one Muthuvairava pattar/2nd respondent herein filed Writ Petition in W.P. 8955/09. The Writ petition was dismissed by order dated 29.3.2012. Against which he filed Writ Appeal in W.A.No. 958/2012. The said writ appeal was allowed by the Hon'ble High Court by remitting the matter to the Commissioner with a direction to issue fresh notice to the appellant as well as the contesting respondents and hear them and pass fresh orders on merits in accordance with law within a period of eight weeks from the date of receipt of the order. Accordingly, notice of enquiry was issued to both appellants and respondents.

4. The case of the appellant is that the suit temple is managed by hereditary trustees, that there are five hereditary trustees in management, that in a special meeting convened by the Assistant Commissioner, H.R.&C.E., Paramakudi on 28.4.2004 and the appellant was unanimously elected as the Chairman, Board of Trustees. His election was approved by the Joint Commissioner, Sivagangai in D.Dis.3109/2004 A.1 dated 25.5.2004 and his term of office was for 3 years from 28.4.2004. The 2nd respondent herein was earlier holding the charge of the suit temple as managing hereditary trustee. He refused to hand over charge to the first appellant, after he was elected as the Chairman Board of Trustees. The Joint Commissioner, Sivagangai directed him in Rc.No.5077/2004 A.1 dated 18.6.2004 to hand over charge to the first appellant. But, he did not hand over charge and illegally continued in office. The Inspector, Tirupathur was directed by

the Joint Commissioner, H.R.&C.E., Sivagangai to enquire into the matter and send a report. The Inspector submitted a report to the Joint Commissioner, Sivagangai in Rc.No.98/2004 dated 30.7.2004 stating that it was a fact that the second respondent was refusing to hand over charge. Thereafter the Joint Commissioner, Sivagangai again directed the second respondent herein to hand over charge to the first appellant failing which disciplinary action under Section 53 of the Act will be taken against him. But, the second respondent did not comply with the order. While the matters stood there, neither the second respondent herein has handed over charge nor the Joint Commissioner, Sivagangai has taken any action against him. But, surprisingly, the Joint Commissioner, Sivagangai had issued a notice in Rc.No.7570/2003 E.1 calling upon the first appellant herein to appear on 27.6.2005 for an enquiry into certain complaints made against him by the second respondent on 10.5.2003. The appellant states that he had categorically denied the complaints and explained that the complaints were made by the second respondent out of personal animosity. The explanation was not accepted by the Joint Commissioner. The Joint Commissioner framed 5 charges against the appellants and placed all of them under suspension, besides directing them to submit their explanations within one week. The appellants preferred an appeal before the Commissioner in A.P.26/2005 against the order of suspension, requesting to call for the records in C.No.7570/2003 (1) E.1 dated 22.7.2005 from the Joint Commissioner and set aside the order of suspension. It is pending. The appeal was admitted and notice ordered to the respondents. The Joint Commissioner, then, issued a notice on 10.11.2005 asking the appellants to appear for an enquiry on 29.11.2005. The appellants appeared for the enquiry on 29.11.2005 and submitted their reply answering all the charges framed against them. The Joint Commissioner without considering their explanations passed the impugned order permanently removing them from the hereditary trusteeship of the suit temple. Hence, these appeal petitions.

5. I heard Thiru P. Madhan, Counsel for the appellants and Thiru N. Raghavachari, Counsel for the 2nd respondent and perused the relevant records. The allegation made against the appellants relates to installing pot hundials temporarily during the 'Chithra Pournami' festival on 16.4.2003 and 17.4.2003 on top of the permanent hundials, and having appropriated the hundial collections unauthorisedly and having divided the same among poosaris. From the local enquiry conducted by the Inspector of the department and the Joint Commissioner in the impugned proceedings it could be seen that along with the permanent hundials during festival occasions temporary pot hundials were used to be kept and after the festival was over, the proceeds were utilized for expenses of suit temple and for paying remunerations to several poosaris of the suit temple, who were not paid any salary for their service.

6. The contention of the appellants that the election for Chairman Board of Trustees was held on 28.4.2004 and from which the appellants are deemed to have been inducted into office of the trusteeship, so the framing of charges based on the alleged installation of temporary Pot hundials on 16.4.2003 and 17.4.2003 is baseless and lacks jurisdiction is not acceptable. Succession to Hereditary trusteeship is automatic one. First appellant's father A.L. Ramasami Pattar was died on 2.9.1998, 3rd appellant father died on 8.10.1995. Hence the appellants have deemed to be succeeded to the permanent vacancy arose by the death of their father from the date of death itself. They have sent the representation dated 17.5.2003 to the Joint Commissioner to take action against the 2nd respondent herein in the capacity of hereditary trustees. They have participated in the Hundial opening and signed the Hundial Assortment register as Hereditary Trustees of the temple. Further in the letter sent by N. Chinniah pattar to Joint Commissioner, Sivagangai requesting to direct the Inspector to attend the Hundial opening to be held on 16.5.2003, he has signed the letter as "Trustee". So, all the above documents clearly prove that at the time of occurrence of the alleged incident, they had functioned as Hereditary Trustee. Therefore, the Joint

Commissioner has jurisdiction to initiate proceedings under Section 53 (5) of the Act.

7. The main allegation against the appellant was installing temporary Pot Hundials during the 'Chitra Pournami' festival on 16.4.2003 and 17.4.2003. In the deposition given by the 3rd appellant herein before the Inspector, he has stated that "16.4.2003 மற்றும் 17.4.2003 பூச்சொரிதல் விழாவில் பழைய கால வழக்கப்படி தவறுதலாக எங்களுக்குத் தெரியாமல் எங்களது பங்காளிப் பையன்கள் (உதவி பூசாரிகள்) சிறிய உண்டியலை நிரந்தர உண்டியல் அருகில் வைத்து இருந்தார்கள். 2002 வரை இதுபோல புகார் மனுதாரர் உட்பட அனைவரும் ஒற்றுமையாக இருந்து இதுபோல் உண்டியல் வைத்து திருவிழாவை சிறப்பாக நடத்தி வந்தோம்." The above statement clearly proves that Assistant Poojaris employed by the appellant had kept temporary hundial. The appellants along with said Assistant Poojaris misappropriate the hundial receipts. They had acted adverse to the interest of the Religious Institution. Section 28 (1) of the Act reads as follows:

"28. Care required of trustee and his powers.—(1) Subject to the provisions of the [Tamil Nadu] Temple Entry Authorisation Act, 1947 (1[Tamil Nadu]Act V of 1947), the trustee of every religious institution is bound to administer its affairs and to apply its funds and properties in accordance with the terms of the trust, the usage of the institution and all lawful directions which a competent authority may issue in respect thereof and as carefully as a man of ordinary prudence would deal with such affairs, funds and properties if they were his own."

But in this case both the appellants and 2nd respondent have shared the Hundial income among them and cheated the minor idol. They used to level counter allegations against each other ignoring the interest of the temple.

In a decision reported in (2007) 7 SCC 482, the Hon'ble Supreme Court observed that "**the property of deities, temple and Devaswom Board require to be protected and safeguarded by their trustees/archakas/shebait/employees. Instances are many while**

persons entrusted with the duty of managing and safeguarding the properties of temple, deities and Devaswom Boards have usurped and misappropriated such properties by settling up false claims of ownership or tenancy or adverse possession. This is possible only with the passive or active collusion of the authorities concerned. Such acts of “fences eating the Crops” should be dealt with strictly. The Government, member or Trustee of Board/ Trusts, and devotees should be vigilant to prevent any such corruption or encroachment. It is also duty of courts to protect and safeguard the property of religious and charitable institution from wrongful claim of misappropriation’. Though the Hon’ble Supreme Court have

made the above observation in the case related to land belonging to temple, the said observation also applies to the case of the appellant. In this case, the appellants and the 2nd respondent functioning as both Hereditary Trustees as well as poojaries of the temple. The power to punish the erring poojari is vested with Hereditary Trustee. Till the year 2002, they were able to swindle the Hundial receipts because they were united. But no action was taken against erring poojaries because they themselves double as Hereditary Trustees and Poojaries. Since there was dispute arose between them, they made counter allegations against each other and it lead to framing of charges against the appellant. However, the 2nd respondent is also equally responsible for the loss incurred by the religious institution by way of installing temporary hundial till the year 2002. In the representation dated 17.5.2003, the appellants have made allegations against the 2nd respondent. Hence, the Joint Commissioner is directed to take necessary action on the representation dated 17.5.2003 given by the appellants.

8. The appellants not denied the installation of the temporary hundials. But they claim only the 2nd respondent was responsible because he was the managing trustee at the time of occurrence of the alleged incident. This explanation is not acceptable. Because in the deposition given before the Inspector, they have admitted that their Pangalis (Assistant Poojaries employed by them) kept the Hundial.

Accordingly, the Joint Commissioner rightly held that all the charges were proved.

Therefore, for the reasons stated supra, the impugned orders do not warrant any interference and liable to be confirmed. Accordingly, the impugned orders are hereby confirmed and the appeal petitions are dismissed as devoid of any merit.

/ typed to dictation/

Sd. P. Dhanapal,
Commissioner.

/true copy/by order/

Superintendent.

To

1. The appellants through Thiru P. Madhan, Advocate, No. 17, Law Chambers, High Court Buildings, Chennai 600 104.
2. The 2nd Respondent through M/s V. Raghavachari, Advocate, Advocate, No. 337 (Old No164), Singapore Plaza, 1st floor, Linghi Chetty Street, Parrys, Chennai-1..

Copy to:

3. The Joint Commissioner, HR&CE Admn. Department, Sivagangai. (The file in Rc. 7570/2003 A1 (pages 1 to 834) is returned herewith by Regd.Parcel).
4. The Assistant Commissioner, HR & CE Admn.Dept., Paramakudi.
5. The Inspector, HR&CE Admn. Department, Thirupathur-2, Sivagangai District.
6. N5 – Section at Head Office.
7. Extra.