

BEFORE THE COMMISSIONER, HR&CE ADMN DEPARTMENT, CHENNAI.34.

Friday the 31<sup>st</sup> day of May, Two thousand and Thirteen.

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

A.P.28/2008 D2

Between

1. K.S. Ganapathy Naidu.
2. K. Pandurangan.
3. V. Subbash Naidu
4. S.R. Kannaiyah Naidu
5. L. Babu
6. K.B. Golpalakrishnan
7. G. Viswanath

... Appellants

And

1. S. Gajapathy Naidu
2. S. Harikrishnan
3. S. Krishnamoorthy
4. S. Narayanamoorthy
5. R. Vasantha
6. S. Gunasundari

...Respondents.

In the matter of Arulmigu Radha Rukmani Sametha Sri Krishna paramathma @ Sri Prasanna Venkatesa Peruaml Temple, Gummidipoondi Town, Thiruvallur District.

Appeal Petition under Section 69(1) of the Tamil Nadu HR&CE Act, 1959 (Tamil Nadu Act 22 of 1959) against the order dated 26.02.2008 made in O.A.No.11/2006 by the Joint Commissioner, HR&CE Admn Department, Vellore dismissing the original application filed under Section 64(1) of the Act seeking to frame a scheme for the proper administration of the above temple.

Annexure to Order in R.Dis.A.P.No.28/2008 (D2) dated: 31.5.2013.

1. The appellants as petitioners took out an Original Application No.11/2006 in terms of Section 64(1) of the Act, before the Joint Commissioner, HR&CE Admn Department, Vellore seeking to frame a

scheme for the proper administration of the above temple with provisions to appoint trustees from Kavara Naidu community people permanently residing in Gummidipoondi town.

2. But, the Joint Commissioner dismissed the above original application on the grounds that the office of trusteeship of the above said temple was declared to be Hereditary in O.A.No.19/1980 and one K. Srinivasalu Naidu had officiated as its Hereditary Trustee. In the year 2005, on the death of the above said K.Srinivasalu Naidu, one Thiru S. Harikrishnan was recorded as next in the line of succession to the office of Hereditary Trustee. As there was no appeal on the said order of declaration, the decision has become final. Since the nature of the office of the trusteeship was already decided as hereditary, there is hardly any reason to believe that a scheme is necessary though the petitioners had improved the temple which will not confer any special privilege, and dismissed the original application.

3. The appellants challenged the order of the Joint Commissioner contending that the Joint Commissioner has failed to see that the memorandum dated 25.01.1928 relating to the establishment of the temple, clearly shows that the present temple which was originally built as a bajanai mutt was not established by the grandfather of the Respondents. The claim of the Respondents that their grandfather and their father had established and maintained the temple is contrary to truth as evident from the above said Memorandum dated 25.01.1928. The Committee comprised of Kavara Naidu community has made several improvements to the temple. The Joint Commissioner ought to have seen that the letter dated 02.09.1990 signed by the father of the respondents himself had handed over the administration of the temple to the committee of Kavara Naidu community people and thereby relinquished his rights if any. The non-consideration of the same vitiates the order of the Joint Commissioner. Therefore, the order of the Joint Commissioner is liable to be set aside.

4. Thiru J.Viswanathan, Counsel appeared for the appellants and Thiru M. Subramanya Rao, Counsel appeared for the Respondents. I heard both the counsels and perused the relevant records.

5. Learned counsel for the respondents relied upon a decision of the Madras High Court reported in 1960 II MLJ 205 and argued that the Court has no power to frame a scheme where this element of subjective satisfaction of the Deputy Commissioner does not exist and cannot compel an administrative authority to be subjectively satisfied as to a certain matter, when that satisfaction has been made the essential condition under the law for the authority to proceed further. The learned counsel further argued that the appellants herein alleging that the temple is maintained and governed by the Committee called Sri Prasanna Venkatesa Perumal Thirukoil Arapani Sangam, by its office bearers, filed the O.A. 11/2006 under Section 64 (1) of the Act to frame a scheme of administration with a provision to appoint non-hereditary trustees from Kavara Naidu Community. Since the office of the trusteeship of the said temple was decided and declared as hereditary by the competent authority in O.A.19/1980, and succeeded by the next in the line of succession duly recorded and recognized under the Act, the position of hereditary trustee shall not be disturbed. The temple in question is not intended for Naidu community alone but for the general public administered by hereditary trustee. Therefore, there is no justifiable reason to believe that the administration of the temple warrants framing of a scheme for its proper administration with provision to appoint Gavarai Naidu community people as its trustees, when there is a hereditary trustee in office managing the affairs properly in accordance with the Act and the terms of the Trust. Therefore, the Joint Commissioner has rightly dismissed the original application.

6. The essential condition under Section 64 (1) of the Act is that, the Joint Commissioner has reason to believe that in the interest of the proper administration of an institution, a scheme should be settled for

the institution, shall consult in the prescribed manner the trustee and the persons having interest and if, after such consultation, he is satisfied that it is necessary or desirable to do so, he shall, by order, settle a scheme of administration for the institution. Hence, it is clear that subject to the subjective satisfaction and reasons to believe that in the interest of the proper administration of the temple a scheme should be settled to that institution, the Joint Commissioner after consulting with trustees and other persons having interest may order settle a scheme. But, in the instant case, the respondents/hereditary trustees oppose to claim of settlement of a scheme to the temple, as prayed by the appellants herein. In such circumstances, I fully agree with the learned counsel for the respondent that this appellate forum cannot compel the authority to be subjectively satisfied as to a certain matter, when that satisfaction has been made the essential condition under the law for the authority to proceed further, as rightly pointed out.

Therefore, I find no substance in the appeal and find any infirmity or illegality in the impugned order passed by the Joint Commissioner and hold that the appeal petition is liable to be dismissed. Accordingly the order dated 26.02.2008 made in O.A.No.11/2006 by the Joint Commissioner, HR&CE Admn Department, Vellore, is hereby confirmed and consequently the appeal petition is dismissed.

/ typed to dictation /

Sd. P. Dhanapal,  
Commissioner.

/ true copy/ by order/

Superintendent.