

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

Tuesday the 9th day of April, Two Thousand and Thirteen.

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

A.P. 25/2009

Between
Thirumal Thevar alias Periasamy .. Appellant.

And

1. M. Kaliappan.
2. S. Erulandi.
3. M.Chinnathambi.
4. The Joint Commissioner,
HR &CE Admn. Department,
Madurai. ..Respondents.

In the matter of Arulmigu Seelaikkariamman Temple, Mangalrevu,
Usilampatti Taluk, Madurai 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 12.09.2005
made in O.A.No.50/1988 under section 63(a) of the Act, by the Joint
Commissioner, HR&CE Admn Department, Madurai declaring the
institution as a 'religious institution' as defined under Section 6(18) and
6(20) of the Act.

Annexure to Order in R.Dis. A.P. 25/2009 D2 dated 9.4.2013.

The case of the appellant is that the respondents 1 to 3 herein as
petitioners took out an original application in terms of section 63(a) of
the Act before the Joint Commissioner, HR&CE Admn Department,
Madurai for a declaration that the temple is a religious institution as
defined under the provisions of the T.N.HR&CE Act. It was stated that all
communities including Thevars, Harijans and Naickers perform worship
in the temple. Among other communities, Thevar community people are
numerically larger and attempt to dominate in the management and due
to rivalry among Thevar community people, if this temple is directly

managed by the HR&CE Admn. Department, there will not be any chance for any communal chaos.

2. Originally, without impleading the person in management of the Seelaikkari Samadhi, the respondents herein filed the above O.A. and got an order behind the back of the appellant. Thereafter, on appeal in A.P.No.5/1993, the matter was remanded back to the 4th respondent herein. After remand, the 4th respondent without considering the scope of the provisions of Section 63(a) of the Act and Section 6(18) of the Act erroneously allowed the application, forgetting the fact that the respondent have not pleaded, established and proved their claim. The Joint Commissioner has failed to consider that when admittedly, there is no temple and in any event, no idol has been installed and the existence of idol, if any, without the evidence of 'Pranaprathishta' not of any consequence and spiritual descent cannot be invoked at such places and worship around tomb of a human being does not fall within the category of religious worship. The Joint Commissioner has further failed to consider that even the amendment Act 10/2003 will have no application due to the fact that neither guru nor sadhu or saint were interned in the above Samadhi and it is only a woman Samadhi named as Seelaikkariamman Samadhi, wife of Thirumal Thevar and worshipping the tomb of the pangalis of the appellant does not fall within the category of religious worship and consequently, the provisions of the TNHR&CE Act will have no application. Hence, the order impugned passed by the 4th respondent suffers from serious infirmities and is liable to be set aside.

3. I heard Thiru P. Gopalan, Counsel for the appellant and Thiru K. Jayaraman, Counsel for the Respondents 2 & 3 and perused the relevant records. The Counsel for the appellant vehemently argued and put forth the following points for consideration and cited various judgments in support of his case.

- (1) The institution as claimed is purely a Samahi, and not a temple.
- (2) No idol has been installed over the Samadhi. It is only a tomb that

is worshipped by the pangalis of the appellant and it does not fall within the category of religious worship.

- (3) The Amended provision of Section 6(18) as per the Amended Act 10/2003 will have no application due to the fact that neither Guru nor Sadhu or Saint were interned in the above Samadhi and it is only a woman Samadhi named as Seelaikkariamman wife of Thirumal Thevar was buried in the Samadhi.
- (4) The Hon'ble Supreme Court has held that Kambar Samadhi is not a 'Temple'.
- (5) The Respondent has no proof of their claim by way of documentary evidence to show that all the ingredients for categorizing the 'Samadhi' as a 'public temple'.

4. I considered the arguments of the counsel for the appellant. On a perusal of the annexure to order, the appellant herein as R.W.1 in O.A.No.50/1988, during cross examination has deposed that “மனுக்கோயில்கள் ஒரே அமைப்பில் உள்ளது. ஊருக்கு வடபுறம் சீலைக்காரியம்மன், சின்னக்கருப்பசாமி தென்புறம். சீலைக்காரியம்மன் கோயில் சமாதி. திருமால்தேவர் வகையறா சாமி கும்பிடுவார். வரிவசூல் நான் தான் செய்வேன். பல கிராமத்திலிருந்தும் வந்து சாமி கும்பிடுவார். பங்காளிகள் தான். இரு கோயில்களும் ஒரே அமைப்பு. எல்லா கோயில்களிலும் எங்கள் பங்காளிகள் தான் கும்பிடுவார். பூசைப்பெட்டி மங்களரேவில் என் பொறுப்பில் உள்ளது. மனுக்கோயில்கள் நாங்கள் தான் உருவாக்கினோம். ஆவணங்கள் உள்ளன. மூன்று கோயில்களுக்கும் பொதுமக்கள் சாமி கும்பிடுவார்கள். சீலைக்காரியம்மன் கோயிலில் வேறு சன்னதி இல்லை. பல ஊர்களிலிருந்து இக்கோயிலுக்கு சாமி கும்பிட வருவர்”. In the Original application No.50/1988, the respondents 1 to 3 herein as petitioners have stated that there is one mud peetam and one Soolayutham. But R.W.2 during cross examination deposed that “அது பீடம் என்றால் சரியல்ல சமாதி தான்”. There is no denial about the existence of a Soolayutham being worshipped as Seelakkariamman and Chinnakaruppasamy. The Joint Commissioner has held that no documents have been filed to prove the origin of the Seelaikkariamman temple which is called as a Samadhi by the respondent therein. Without

any reliable evidence that the said institution is only the Samadhi of the said Seelaikkariamman, wife of Thirumal Thevar buried in that place, as claimed by the respondent, I am unable to accept with the arguments of the counsel for the appellant that it is only a Samadhi.

5. In A.I.R.1939 Mad.134, it was held by the Court of records that “A *“Temple” is a place of public religious worship. The question whether the worship in an institution is religious or not must be decided with reference to the view of the class of people who take part in the worship and not as to whether it conforms to any particular school of Agama. If they believe in its religious efficacy, bounty of some super-human power, it must be regarded as ‘religious worship’.* Similarly in I.L.R 1950 Mad.799, it was held that “*If the public or that section of the public who go for worship consider that there is Divine presence in a particular place, and by offering worship at that place, they are likely to be the recipient of the bounty or the blessings of God, then, you have got the essential features of a temple as defined in section 6(17) (old section 9(12)). The presence of an idol, though an invariable feature of Hindu temples, is not a legal requisite under the definition of a “Temple” in section 9(12)*”. The definition of ‘temple’ in the Act is so comprehensive as to include any place irrespective of installation of idols or buildings or a tower, dwajasthambam or a stupi. Two conditions must be cumulatively satisfied. One is it must be a place of public religious worship. Secondly, it must have been dedicated for the benefit of the Hindu community or any section thereof. These two conditions co-exist in the present case as admitted by the appellant herein in O.A.No.50/1988. Even assuming but without admitting that the institution is a Samadhi of the said Seelaikkariamman, the collections made, festivals performed and pooja articles box kept in a box for such Samadhi will prove that the place is used as a place of public religious worship by the pangalis of the alleged Thirumal Thevar who are a section of Hindu Community.

6. The next contention that the mortal remains of a Guru, Sadhu or Saint is not interned but a woman named Seelaikkariamman’s mortal

remains has been buried in that Samadhi and worship of the tomb by the pangalis of the appellant does not constitute Religious worship so as to attract the definition clause of section 6(18) is also not quite convincing as there is no explanation in the Act that the Guru, Sadhu or Saint should be a man and not a woman. By the usage, it is revealed from the evidence that the appellant and his pangalis have regarded the said Seelaikkariamman as their Guru, Sadhu or Saint and they get the blessings of the said Seelaikkariamman by offering worship and such worship will constitute Religious worship as per the explanation to amended section 6(18) of the Act.

7. The citation relied upon by the counsel for the appellant that Kambar Samadhi is not a temple and the worship of Kambar cannot be equated to divine worship has no application to the case on hand as the facts of that case is entirely different from the one now made. The evidence adduced by the Respondents 1 to 3, and the Appellant herein and other witnesses may be sufficient to decide the case, as it involves a decision as to the nature and character of the institution whether it is a 'religious institution' or not as defined under Section 6(18).

Therefore, viewed from any angle, I see no valid reasons to interfere with the orders passed by the Joint Commissioner, HR&CE Admn Department, Madurai in O.A.No.50/1988 dated 12.09.2005 and the appeal deserves for dismissal as devoid of any merits. In fine the appeal fails. Accordingly, the orders passed by the Joint Commissioner, HR&CE Admn Department, Madurai in O.A.No.50/1988 dated 12.09.2005 is hereby confirmed and the appeal petition be and is hereby dismissed as devoid of any merits.

/Typed to Dictation/

/ true copy/ by order/

Sd. P. Dhanapal,
Commissioner.

Superintendent.