

**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. 26/2009

Between

**1. Thirumal Thevar @ Periaswamy, .. Appellant.
2. Kasi @ Sankara Thevar**

And

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

**In the matter of Arulmigu Pethannaswamy Temple and Chinna
Karuppuswamy Temple, Mangalapuram, 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.4/1989 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. 26/2009 (D2) dated 9.4.2013.

**The case of the appellants 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 temples Pethannaswamy Koil and
Chinna Karuppannaswamy Koil at Mangalapuram are treated as one
group and situate close to each other and being worshipped by the
surrounding villagers irrespective of all castes. These temples situate in a**

poramboke land in S.Nos.185/6 and 188/1 of an extent of 2.08.5 hectares comprising thope and land. Hundials have been installed in the temple and managed by a Managing Committee consisting of all the community members. There is a rivalry among Thevar community and due to rivalry the committee is not able to administer the temple. Being a public temple, the management of the temple could be streamlined by the Department and therefore prayed to declare that the temple is a religious institution as defined under the provisions of the T.N.HR&CE Act. The then Deputy Commissioner allowed the application on 18.09.1989.

2. The appellants herein took the matter in appeal in A.P.No.50/1990 and the matter was remanded back to the 4th respondent herein. After remand, the appellants adduced evidence that Arulmighu Pethanaswamy Koil and Chinna Karuppannaswamy Koil at Mangalapuram situate in the same compound and the temples in question belong to Thevar community and they have been in management of the temples right from their predecessors-in-interest and as such no property standing in the name of the Temple. A Civil Suit instituted by the rivals of the Appellant's community, it was admitted that the temple being a Private temple belonging to Thevar Community members. Demand notices, receipts for payment of additional security deposits etc. towards Electricity stands in the name of Thirumal Thevar and only the Pangalis of the Thevar Community alone are worshipping the temples and since the Temples aforesaid exclusively belong to the Thevar Community members. But, the 4th respondent without considering the scope of the provisions of Section 63(a) of the Act and Section 6(18) of the Act, and without framing the points for determination in accordance with the Statute erroneously allowed the application, forgetting the fact that the respondent have not established and proved their claim that the temples in question are Religious Institutions within the meaning of the Act. The Joint Commissioner erred in not applying the law laid down by the Hon'ble

Supreme Court reported in AIR 1972 S.C.1716 and followed by the Division Bench of Madras High Court in 2001-1 CTC 65. Hence, the order impugned passed by the 4th respondent 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 appellants argued that the Joint Commissioner has failed to consider the case of the Respondents and the evidence adduced by the Appellants herein in the light of the above decision.

4. I considered the arguments of the counsel for the appellant. On a perusal of the annexure to order, the appellants herein as R.W.1 and R.W.2 in O.A.No.4/1989 have appeared and deposed. R.W.1 during chief and cross examination has deposed that the temple Pethannasamy is within the compound where there is Chinnakaruppanasamy temple also. Both the temples are not separate temple but within the same compound. Festival will be performed during Vaigasi month by collecting head tax from the pangalis. There is a hundial in Pethannasamy Temple.

“மனுக்கோயில்கள் ஒரே அமைப்பில் உள்ளன. ஊருக்கு வடபுறம் சீலைக்காரியம்மன், சின்னக்கருப்பசாமி தென்புறம். வரிவசூல் நான் தான் செய்வேன். கமிட்டி நான் தான் தலைவர். பல கிராமத்திலிருந்தும் வந்து சாமி கும்பிடுவார். பங்காளிகள் தான். பெத்தண்ணசாமி கோயிலில் உண்டியல் உண்டு. உண்டியலில் எங்கள் பங்காளிகள் தான் போடுவார். சொத்து ஒன்பது ஏக்கர் உள்ளது. இரு கோயில்களும் ஒரே அமைப்பு. எல்லா கோயில்களிலும் எங்கள் பங்காளிகள் தான் கும்பிடுவார். உண்டியலில் ரூ.500/- வரும். மூன்று கோயில்களுக்கும் பொதுமக்கள் சாமி கும்பிடுவார்கள். பெத்தண்ணசாமி நகை, பூசை சாமான் என் வசம் உள்ளது. பல ஊர்களிலிருந்து இக்கோயிலுக்கு சாமி கும்பிட வருவர்”. Similarly, 2nd appellant herein as R.W.2 in chief and cross examination has deposed that “ திருவிழா வைகாசி, ஆடி திருவிழா பெருமாள் தேவர் நடத்துவார். வரி வசூல் செய்து நடத்துவார். கோயிலில் உண்டியல் இருக்கிறது. உண்டியலில் பொதுமக்கள் காசு போட மாட்டார்கள். பங்காளிகள் மட்டும் தான் போடுவார்கள். திருவிழக்களில் பங்காளிகளிடம் மட்டும் வசூல் செய்வோம்.

5. In Ex.B.2, certified copy of affidavit filed in I.A.No.206/90 in O.S.No.337/1990 on the file of the Sub Court, Madurai wherein it was admitted that “மேற்படி கோவிலை நாங்கள் எங்கள் தரப்பில் வாரந்தோறும் செவ்வாய், வெள்ளிக்கிழமைகளில் கும்பிடுவதுடன் வருடப்பிறப்பு, மாதப்பிறப்பு சிவன் ராத்திரி, ஆடி அமாவாசை போன்ற முக்கிய நாட்களிலும் கும்பிடுவதுண்டு. வருடாந்திர பூஜை தவிர பல வருடங்களுக்கு ஒரு முறை அனைவருக்கும் சரியான தகவல் கொடுத்து விராளம்பட்டி மண்டுவில் கூட்டம் கூடி தேதி நிர்ணயம் செய்த தலைக்கட்டு வரி வசூல் செய்து பெரியளவில் ஐந்து நாள் உற்சவமாக கப்பரை உற்சவம் என்ற ஒரு பெருவிழாவும் நடத்துவதுண்டு. **Therefore, the appellants have not denied that there is no religious worship in the temples. What they claimed before the Joint Commissioner was that the temples in question belong to Thevar Community and they have been in management of the temples right from their predecessors-in-interest...Thevar community alone are worshipping the temple since the temples aforesaid exclusively belong to the Thevar community members, the provisions of the TNHR&CE Act will have no application to the facts of the case.**

6. 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.4/1989. The collections made, festivals performed and pooja articles box kept for such temple 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.

7. The evidence adduced by the Respondents 1 to 3, and the admissions made by the Appellants herein and other witnesses may be sufficient to decide the case, as it involves to 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.4/1989 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.4/1989 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.