

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

Monday the 29<sup>th</sup> day of May, Two thousand and Seventeen.

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

**A.P.No.4/2009 D2**

**Between**

K.Shanmugavel Mudaliyar

...Appellant

**And**

1. The Joint Commissioner,  
HR&CE Admn.Department,  
Chennai.

2. M. Aruleesan,

3. Tmt. S. Varalakshmi

4. Tmt. Sundari

5. Tmt. M. Gnanasundari,

6. Tmt. R. Ambika

7. Tmt. V. Padmavathi,

8. M. Sarveswaran

... Respondent

In the matter of Arulmighu Agastheeswarar Temples, Pozhichalur, Chennai 600

074.

The Appeal Petition filed under Section 53(5) of the Tamil Nadu H.R.& C.E. Act 1959 (Tamil Nadu Act 22 of 1959) against the order dated 18.02.2009 in Rc.No.1336/2009 of the Joint Commissioner, H.R. &C.E. Admn. Department, Chennai.

**Annexure Order in R.Dis. A.P.No.4/2009 D2 dated: 29.05.2017**

The above appeal petition came up for final hearing before me on 25.04.2017 in the presence of the appellant and Thiru.W.C.Thiruvengadam, counsel for the 2 to 8 respondents and perused the relevant records. Upon hearing their arguments 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 was filed u/s.69(1) of the Act against the order dated 18.02.2009 in Rc.No.1336/2009 of the Joint Commissioner, Chennai in rejecting the OA filed u/s.63(e) of the Act.

2. The appellant has stated that he filed a petition u/s.63(c) of TN HR&CE Act filed before the respondent. On receipt of the petition, notice was sent to the counsel for the appellant for appearance on 11.02.2009 in the name of enquiry questioning the maintainability of the above petition for admission and adjudication.

The counsel appeared on 11.02.2009 made his statement and sought for some more time for production of documents that are required by the respondent for perusal before passing of the orders. The respondent did not choose to give a further date of hearing to the appellant for production of documents or for verification with reference to the documents that are secured by him voluntarily from the department suo-motto prior to passing of the order. Immediately within a week from the date of first hearing he called for documents from the department on his own without the consent and knowledge of the appellant and passed orders on 18.02.2009 his own and sent order copy to the counsel for the appellant by dismissing the application holding that H.R. & C.E. Department is all along having control over the administration of the temple and its property for all these years. While so, knowing fully well with all the above facts, the petitioner has now chosen to file petition under Section 63(c) of the H.R. & C.E. Act. Which is not at all maintainable and the petition filed by the appellant is with ulterior motive with some objection to squat on the property. Thereby the petition was dismissed at the admission stage itself. The order of the respondent in hurrying for deciding the petition filed by the appellant is deliberate and willful and without application of mind. The respondent had deliberately observed in his order as though the respondent sought for some clarification with regard to Exhibits C1 to C9, but the counsel for the petitioner has not given any statutory reply. The reason for such observation and order is unwarranted and deliberate and willful and the same is being observed only with a view to substantiate the orders passed by him hurriedly. The order of the respondent is without proper application of mind as to the documents filed namely Exhibits C-1 to C-9. Since the respondent did not choose to verify the entire documents filed prior to passing of the order especially with reference to the appointment of the Executive Officer under Section 45(1) and subsequent orders passed in this regard. The order of the respondent is erroneous in view of the fact that the same executive officer though appointed did not choose to exercise his option to hold the office of the executive officer. Thereby the order of appointment dated 28.02.1991 has not been acted upon till this date. In fact the Commissioner appointed a person under Se.Mu.Na.Ka.No.95017/91/L1 dated 23.12.1991 as Fit Person. The reveals that the temple was not governed by the

Executive Officer, but by Fit Person. It will thus be seen that the earlier Order dated 28.02.1991 appointing an Executive Officer had worked itself out. Further the order passed by the Joint Commissioner in Se.Mu.Na.Ka.No.2741/2003/A1, dated 07.12.2005 by suspending the appellant and appointing the fit person was stayed by the Hon'ble High Court in W.P.M.P.No.42683 of 2005 in W.P.No.39812 of 2005, order dated 13.12.2005. The order of stay still in force and the W.P. & W.P.M.P. are pending. The order of the respondent is erroneous for the reason that the withdrawal of the functions of the Executive Officer was made immediately on appointing the appellant as the hereditary trustee. The order of the respondent did not find place as to the nature and character of the temple of the appellant in holding the post as hereditary trustee. The appellant having approached the department under 63 (b) and sought for appointment of hereditary trustee, the present petition is not maintainable, in view of invoking the jurisdiction of the H.R. & C.E. Act. There is a bar under section 108 to approach civil forum for the relief under section 63(b) of the Act. Hence the O.A.No.100/72 was filed before the Department. Further in the said O.A.No.100/72, the character of the temple and it's properties was not decided. The character of the temple and it's properties only be decided under sections 63(a) & 63 (c) of the Act. Further mere approaching the Department for the relief under section 63(b) of H.R. & C.E. Act does not confer any consent or jurisdiction to the Department for assuming the temple is falls within the meaning of the Act under sections 6(17) & 6(20). The respondent failed to see that the temple Situated in survey number 210/2, which is the Grama Natham land. The revenue records do not described the property as temple site or any other village poromboke to presume the temple as public temple. The Grama Natham land does not falls within the meaning of H.R. & C.E. Act. The respondent failed to see that the above properties are not approved under section 29 of the Act by the Commissioner to decide the properties are controlled by the Department. The respondent wrongly stated in his Order that the appellant had filed a petition under section 54(1) of the Act before the Department. The appellant did not filed any petition under section 54(1) of the Act. In fact the order dated 08.10.1998 was passed by the Department by themselves under section 54(1) of the Act and the same was set aside by the Hon'ble High Court in W.P.No.2341/1999. The Order the

Hon'ble High Court itself clarifies that the appellant was appointed as hereditary trustee on the basis of succession. The respondent failed to observe that the W.P.No.28398/2008 preferred as against the G.O.Ms.No.371/08 was withdrawn by the appellant with a view to file the present petition under section 63 of the Act and for filing civil suit. Further the respondent failed to observe that the order in G.O.Ms.No.371/08 disclose that the appellant was not preferred any petition under section 63(a), hence the appellant preferred the present petition under section 63 of the Act. Further the appellant challenged the validity of the Government Order in Civil court.

3. In the counter statement the respondents 2 to 8 has stated that the office of the Trusteeship in the above said temple is Hereditary within the meaning of Sec.6(11) & 63(b) of the Act. A statutory declaration was granted in O.A.No.100/72 dated 24.09.1973 on the basis that the temple is a public temple and is being worshipped by all public. The declaration was granted in favour of five persons and the appellant herein is the descendants of one Hereditary Trustees and the respondents 2 to 8 are the descendants of other Hereditary Trustee in office. The appellant got an order of recording his succession to the office of the Hereditary Trusteeship u/s.54(1) of the Act and has been functioning as the sole Hereditary Trustee in the temple. Now after the death of the respective Hereditary Trustee, their heirs got themselves impleaded as party respondents. The contention of the appellant that the properties of the temple will not come under the ambit and the provisions of the HR&CE Act is basically anomaly, and such an allegations are wild thinking and equally not based on facts. The lands belonging to the temple are Inam lands by character, granted by the ancient rulers of our country and are confirmed by the British rulers in respective title deeds and thereupon, after the abolition of minor inams, settlement Tahsildar granted pattah in favour of the deity. The lands belonging to the temple are neither endowed by the ancestors of the Hereditary Trustees nor by the father of the appellant herein and therefore, the claim u/s.6(17) and 63(c) of the eye of law, especially, after the declaration of Hereditary Trustees granted in O.A.No.100/72 dated 24.09.1973. The appellant has been coming up with false claims and acting adverse to the interest of the Institution by filing such frivolous

petition u/s.63(c) and 6(17) of the Act. The court below has tried the prior litigation chronologically which clearly establishes the sinister motive of the appellant in claiming rights u/s.63(c) of the Act. The Joint Commissioner, is therefore, rightly rejected the claim of the appellant and in view of the elaborate order passed by the Joint Commissioner, Chennai the appeal is liable to be rejected and dismissed.

4. I heard the appellant, Thiru.W.C.Tiruvengadam, counsel for the Respondents 2 to 8 and perused the relevant records.

5. In the order dated 11.01.2017 made in W.A.No.1161/2009 the Hon'ble High Court has ordered as follows:-

***“We are informed that the appeal is still pending and has not been decided as per the impugned order in view of the stay order granted by this court on the ground that the officer concerned dealing with the matter would be hearing it. This grievance does not survive on account of the passage of time as the officer is changed and thus, we direct that the appeal be disposed of within a maximum period of two months from today”.***

Accordingly, notice of enquiry in A.P.18/2009 was issued to the parties concerned and enquiry was held on 14.03.2017, 28.03.2017 and 11.04.2017 in A.P.No.18/2009. After hearing the both sides the said appeal in A.P.No.18/2009 was closed for orders. At that time it was brought to the knowledge of this forum that by order dated 08.04.2009 made in W.A.No.398/2009, the Hon'be High Court has ordered to hear the said appeal along with the two appeals pending before the Commissioner. Hence, the said appeal petition was reopened and posted along with A.P.No.4 and 5/2009 for hearing on 25.04.2017.

5. As the Hon'ble High Court has fixed 2 months time to dispose of the appeals, all the 3 appeal petitions were reserved for orders after hearing both the sides. Thereafter, the petitioner had filed a petition to reopen the A.P.No.4 and 5/2009, to amend the main appeal petition and to file additional documents. The Impleading Petitions filed by the respondents 2 to 8 were allowed in the year 2009 itself. But the appellant did not take any steps to file amended petition for the past 8 years. The documents related to sale of lands by the respondents are not necessary to decide this case. Further, if any lands are sold by the respondents, it is the duty of

the Hereditary Trustee to take suitable action against them to recover the property. Further, the appellant has filed petition to reopen the A.P.No.4 and 5/2009 only. He has not filed any petition to reopen the A.P.No.18/2009. Hence, it is clearly evident that the appellant is not interested in conducting the case but wants to drag on the proceedings. Hence the petition filed to reopen the case is hereby rejected.

6. The appellant had filed a petition u/s.63(e) of the Act to declare that the properties comprised in survey No. 122,129, 132,133, 135, 169, 210/2, 268 and 292 at Pozhichalur village, Tambaram Talum, Kanchipuram District are not Religious Endowments as contemplated u/s.6(17) of the HR&CE Act and declare that the institution in the question is not coming within the purview of the HR&CE Act as contemplated u/s.63(c) of the Act HR&CE Act 22 of 1959.

7. The suit temple was founded by the erstwhile Chola kings. The lands were granted by the erstwhile rulers for the maintenance of the temple. There was no record to prove that the lands were endowed by the ancestors of the appellants. In the Survey and Resettlement register of the village of Polichalur, in column 14 it has been mentioned as "Manager for the time being of Agatheeswarar swamiyar temple". The column 14 was captioned as "Number of patta or Inam title deed, name of the pattador or Inamdhar or the manager of the institution to which the land belongs g£lh mšyJ ĩdh« r®nt e«g® g£lhjhu® mšyJ ĩdh«jhuUila bga® mšyJ äy« vijç rh®ªjn j mªj rªÂu« nfhæš Kjèait ä®thf« g©Q« khnd#® bga®" So, it is clearly evident that the inam was granted in favour of deity and the trustee has only the right to manage the property for the beneficial use of the deity.

8. In sec 6(17) of the Act the term Religious endowments has been defined as follows:- ***“Religious endowment” or “endowment” means all property belonging to or given or endowed for the support of maths or temples, or given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity; and includes the institution concerned and also the premises thereof, but does not include gifts of property made as personal gifts to the archaka, service holder or other employee of a religious institution”.***

9. The appellant is claiming that the properties are personal inam. If it is so, in the RSR register, the name of the inam holder should have been shown as Inamdhar or

pattadharar but it had been shown only as “Manager for the time being of Arulmigu Agathiyar temple”. The above properties were given for the support of the said temple by the erstwhile rulers. Further, the appellant himself has sought permission from the department for sale of lands in the year 2004. The same was rejected by the department and the Government in the appeal. It is very strange and vexatious that the appellant is suddenly claiming the temple to be his personal property and that it is private in nature. The appellant is only abusing the process of law.

10. The properties were not given for the performance of any service in favour of the **service holder** or the employees of the religious institution. Further the appellant is not doing any service in the temple. Hence, the properties cannot be construed as personal inam granted to the appellant. The appellant and his ancestors are only entitled to manage the properties and they can have no beneficial interest in the said properties. The above petition was filed by appellant with intention to grab the properties belonging to the minor deity.

Therefore for the foregoing reasons stated supra, I find no infirmity in the order passed by the Joint Commissioner, and it does not warrant any interference. Accordingly the order dated 18.02.2009 of the Joint Commissioner, Chennai made in Rc.No.1336/2009 is hereby confirmed and the appeal petition is dismissed as devoid of merits.

/typed to dictation/

Sd./- M.Veera Shanmugha Moni  
Commissioner

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

Superintendent