

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

Monday the 29th day of May, Two thousand and Seventeen.

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

A.P.No.5/2009 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

... Respondents

In the matter of Arulmighu Agastheeswarar Temples, Pozhichalur, Chennai 600
074.

The Appeal Petition filed under Section 69(1) of the Tamil Nadu H.R.& C.E. Act 1959 (Tamil Nadu Act 22 of 1959) against the order dated 18.02.2009 in Pro.Rc.No. 1335/2009 of the Joint Commissioner, H.R. &C.E. Admn. Department, Chennai.

Annexure Order in R.Dis. A.P.No.5/2009 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, Thiru.W.C.Thiruvengadam, counsel for the respondent 2 to 8. 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.1335/2009 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(a) 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(a) 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 CS, 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-8. 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 its properties was not decided. The character of the temple and its 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. I heard the appellant, Thiru.W.C.Tiruvengadam, counsel for the Respondent 2 to 8 and perused the relevant records.

4. 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 delaying 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 the day”.

Accordingly, notice of enquiry in A.P.No.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 in W.A.No.398/2009 the Hon'be High Court has ordered to hear the said appeals along with the two appeals pending before this forum. 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 appeal, 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 properties. 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 an application u/s.63(a) of the Act to declare that the suit temple is not a temple as contemplated u/s.6(20) of the Act.

7. The suit temple is an ancient temple, built by erstwhile Chola kings. Further erstwhile rulers had endowed several properties for the support of the temple. Even during the British period, the temple was under the control of the erstwhile HR&E Board. When the Assistant Commissioner, Kanchipuram had issued notice for appointment of Non-Hereditary Trustee, the appellant's father Thiru.Kumarasamy Mudaliar along with 4 others had filed OA.No.100/1972 u/s.63(b) of the Act to declare the office of the Trusteeship as hereditary and the said Original Application was allowed by order dated 24.09.1973 declaring the office of the Trustees as Hereditary. After the demise of his father, the appellant had sent several representations to the Joint Commissioner to record his succession. Considering the said representations his succession was recorded in Pro.Rc.No.2737/2009 A1 dated 08.10.1998 by the Joint Commissioner, Chennai.

8. The appellant claims that in the said OA.No.100/1972, character of the institution was not decided but the nature of the office of the trusteeship alone was decided. As per Sec 1(3) of the TN HR&CE Act, the TN HR&CE Act 1959 applies to all Hindu public religious institutions and Endowments in the State of the Tamil Nadu. The petitioners in the O.A.NO.100/1972, had admitted the public nature of the temple. Therefore, they have subjected themselves to the jurisdiction of the department by filing the said Original Application. Further, if it is a private temple, there was no need to approach the department for recording his succession u/s.54(1) of the Act. The appellant derived the right to succeed in the permanent vacancy

caused due to the death of his father, in virtue of the order passed in OA.No.100/1972. Further the appellant himself had admitted the public nature of the temple by seeking permission from the department for the sale of lands belonging to the temple for the maintenance of the temple.

9. In the judgement reported in (2009) 6 MLJ 812 it was held that ***“Insofar as the issue regarding the maintainability of the application under Section 63(a) of the Act is concerned , the learned counsel for the appellant contended that the factum of the appellant of hereditary trustee u/s.63(b) of the Act will not stand in the way of the subsequent application u/s.63(a) of the Act. The learned counsel for the appellant has also relied upon a judgement of the Division Bench of Principal Bench in C.Nallasivan Pillai .V. Commissioner, Hindu Religious and Charitable Endowments Administration Department, Madras and others (2005)3 MLJ 518, in support of his contention. This court is of the view that the Division Bench Judgment relied upon by the appellant will not be applicable to the fact of the present case. In the said case, the Government has appointed a trustee and thereafter, an application was filed u/s.63(a) of the Act. In those circumstances, the Division Bench was pleased to hold that inas much as the issue regarding the nature of temple as to whether it is a public temple or a private temple had not been gone into earlier, the subsequent application u/s.63(a) of the Act cannot be barred. However, in the present case, the appellant himself has filed an application u/s.63(b) of the Act, seeking to declare himself as the hereditary trustee. In other words, the said application has been filed and the order has been passed on the premise that the temple in question is a public temple. Thereafter, the appellant cannot turn around and contend to the contrary that the temple in question is a private temple. The mere fact that the appellant reserves his right in his application would not help the case of the appellant in view of the fact that he was the beneficiary of the order u/s.63(b) of the Act. Therefore, having enjoyed the benefit u/s.63(b) of the Act, he cannot turn around and plead to the contrary. In other words, the said attempt of the appellant would amount to challenging the very basis on which he got the benefit u/s.63(b) of the Act. Hence the contention of the learned***

counsel for the appellant deserves to be rejected counsel for the appellant deserves to be rejected and hence the same is rejected”.

The above decision squarely applies to the case of the appellant. The suit temple owns properties worth several **crores**. The said petition was filed with intention to grab the valuable properties belonging to the temple.

Therefore for the foregoing reasons stated supra, I find no infirmity in the order passed by the Joint Commissioner, Chennai and it does not warrant any interference. Accordingly the order dated 18.02.2009 of the Joint Commissioner, Chennai made in Rc.No.1335/2009 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