

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

Wednesday the 8th day of May, Two Thousand and Thirteen.

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

A.P. 58/2009 D2

Between

C. Periasamy Servai
S/o Chinnan Servai

...Appellant

And:

1. M.Thangavel
S/o. Muthukumar
2. R.Angappan Maniam,
S/o. Rengasamy

...Respondent

In the matter of Arulmigu Kottai Karuppannasamy Temple,
Kannivadi, Dindigul Taluk and District.

Appeal petition under Section 26(5) of the Tamil Nadu HR&CE Act
22 of 1959 (Tamil Nadu Act 22 of 1959) against the order dated
10.07.2008 passed in M.P.No.1/2007 by the Joint Commissioner,
HR&CE Admn Department, Madurai dismissing the application filed
under Section 26 (1)(e) and (h) of the Act.

Order in D.Dis.A.P.No. 58/2009 D2 dated : 8.5.2013.

The above Appeal Petition having come on for final hearing before
me on 29.01.2013 in the presence of Thiru K.Jayaraman, Counsel for the
appellant and upon hearing his arguments and after perusing the
relevant records and the matter having stood over for consideration till
this day the following order is made:-

ORDER.

The above appeal petition has been filed by the appellant herein
against the order dated 10.07.2008 passed in M.P.No.1/2007 by the
Joint Commissioner, HR&CE Admn Department, Madurai dismissing the
application filed under Section 26 (1)(e) and (h) of the Act.

2. The appellant as petitioner in M.P.No.1/2007 took out an application in terms of Section 26(1)(e)&(h) of the Act, seeking to disqualify the respondents herein from being appointed as trustees on the basis of the irregularities pointed out in the audit reports. It was alleged that the 1st respondent committed malfeasance in one column pooja manyam and the 2nd respondent as trustee of the temple and as tenant of the temple has also caused loss to the temple and they suffers disqualification under section 26 of the Act. But, the Joint Commissioner dismissed the application stating that there is provision for surcharge to make good the loss sustained by the temple on the irregularities pointed out in the audit report; that the petition was not filed properly and the petitioner has no locus standi to file the petition and no case has been made out to initiate the proceedings.

3. The appellant contend that Arulmighu Kottai Karuppannaswamy Temple at Kannivadi, Dindigul Taluk and District is a listed temple published under Section 46 (1) of the Tamil Nadu HR&CE Act 22 of 1959. A scheme was framed under Section 64 (1) of the Act for its proper administration in O.A.36/1986 on 30.10.1987 by the then Deputy Commissioner, Madurai on a petition filed by the brother of the appellant one Palanivel Servai along with the Respondents herein and four others. Clause 3 of the Scheme provides that the temple shall be administered by not less than three and not more than five persons chosen from the elder members of the above families by the competent authority and appointed by the appropriate authority subject to the provisions of the Act. Accordingly, one Palanivel Servai, the brother of the appellant herein and the 1st petitioner in O.A.36/1986 was chosen as a trustee and he was elected as Managing Trustee in the year 1997 and as such he was functioning as Managing Trustee of the Trust board till his death on 26.04.1998. After the death of the said Palanivel servai, one Thangavel of Kanniwadi was acting as in-charge of the Managing Trustee till the expiry of the Trust Board in the year 2000. During the life time of

the said deceased Palanivel Servai, the 1st Respondent was asked to look after the accounts of the temple and to submit the accounts to the HR&CE Department for auditing by the said Palanivel servai and other trustees, since he knew very well about the accounts of the temple and he was also allowed to continue the same even after the death of Palanivel Servai. The petitioner herein was chosen as the trustee in the place of the deceased Palanivel Servai since he is the brother of the said deceased Palanivel Servai. But at the same time, the next trust board formed after the death of the said Palanivel Servai was not approved by the Department since the District Committee for Temple Administration was not constituted according to the provision of the Tamil Nadu HR&CE Act 22 of 1959 which was in force at that time. Hence the 1st Respondent himself was looking after the affairs of the temple and he handed over the administration of the temple on 19.03.2001 to the Appellant herein.

4. During the period of Palanivel Servai and after his death also the 1st respondent herein was looking after all the accounts of the temple and while he himself was submitting the accounts to the department for auditing, the 1st Respondent with some fraudulent intention and motive was submitting the accounts to the department for auditing with his signature as Managing Trustee of the temple. He designated himself as Managing Trustee without being elected as such and also without any approval of the trust board as seen from the audit report of 1401 to 1412 faslis. Further in the accounts maintained and submitted by him from Fasli 1392 to 1412, various defects were pointed out by the auditor for each and every fasli. Those defects were never rectified in the subsequent fasli and it remains as such till fasli 1412. The 1st Respondent never cared for to rectify those defects. Apart from those defects, there is also allegation of misappropriation and those amounts are to be recovered from him as stated in the audit report. Therefore it is very clear to say that he has acted against the interest and welfare of the temple. The audit report also suggested and directed for surcharge proceedings to be

initiated against the 1st Respondent herein. Hence, the petitioner is constrained to file M.P.1 of 2007 in the interest of justice, equity and good conscience and also in the interest and welfare of the temple in his capacity not only as a trustee of the temple but also as a worshipper and person having interest for a declaration that the Respondents 1 and 2 suffer from disqualification being appointed as trustee of the suit temple. But, the decision of the lower Court without giving any opportunity to the appellant to put forth his case is also against the principles of natural justice and good conscience and is liable to be set aside.

5. I heard Thiru K.Jayaraman, counsel for the petitioner and perused the relevant records. The appellant sought to disqualify the respondents based on the irregularities pointed out in the various audit reports. It is relevant to point out here that necessary provisions under section 90(2) of the Act has been provided for surcharge proceedings for making good the loss sustained by the religious institution from the person responsible after following due procedure. The objections raised in the audit report alone cannot be the only reasons to disqualify any person for being appointed as trustees. Even if the same is proved beyond reasonable doubt with evidence during the tenure of office, the recourse is under section 53 of the Act.

Further Section 26(3),(4) & (5) of the Act runs thus:

“(3) If any question arises as to whether a trustee has become subject to any of the disqualifications mentioned in sub-section (1), the question shall be referred for the decision of the Joint/Deputy Commissioner.

(4) If a hereditary trustee becomes subject to any of the disqualifications mentioned in sub-section (1), the Joint Commissioner or the Deputy Commissioner, as the case may be, may supercede the trustee.

(5) Any person affected by an order of the Joint/Deputy Commissioner under sub-section (3) or sub-section (4) may,

within one month from the date of receipt of the order by him, appeal against the order to the Commissioner.

But, the impugned order has been passed by the Joint Commissioner dismissing the petition filed under section 26(1) (e) & (h) of the Act and not under section 26(3) or (4) of the Act. Therefore, the appeal as such filed is not maintainable under the Act. Hence, the appeal petition is liable to be dismissed as not maintainable. Moreover, the appellant was declared to be disqualified from being appointed as trustees by the Joint Commissioner for the proved charges by order dated 06.03.2009 in Rc.No.1691/2007. It is learnt that the 1st respondent herein was subsequently got appointed as a non-hereditary trustee and the application filed by the appellant is only to quench his personal vendetta against the respondents and not bonafide as held by the Joint Commissioner. Therefore, I find no merits in the appeal petition as it lacks bonafide and merits. Accordingly the appeal petition be and is hereby dismissed as not maintainable and devoid of any merits.

/ typed to dictation /

Sd. P. Dhanapal,
Commissioner.

/ true copy/by order/

Superintendent.

To

1. The Appellant through Thiru K. Jayaraman, Advocate, Old No. 32-A, New No. 73, Thirumalai Pillai Road, T.Nagar, Chennai. 600 017.
2. The 1st Respondent, M.Thangavel, S/o. Muthukumar, Servar Street, Ward No.10, Kanniwadi, Dindigul Taluk and District
3. The 2nd Respondent, R.Angappan Maniam, S/o.Rengasamy, Servar Street, Ward No.10, Kanniwadi, Dindigul Taluk and District

Copy to:

4. The Joint Commissioner, HR&CE Admn Department, Madurai.1
5. The Assistant Commissioner, HR&CE Admn Department, Dindigul.1
6. The Inspector, HR&CE Admn Department, Dindigul.
- 7 & 8. Extras.