

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

Friday the 10th day of May, Two thousand and Thirteen.

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

A.P.65/2009 D2

Between

1. L. Venkidusamy
S/o Lakshmana Chettiar.
2. T. Chinnasamy
S/o Thirumalai Chettiar.
3. R. Selvaraj
S/o Rengasamy
4. V. Srinivasan
S/o Venkatraman.
5. R. Nallusamy
S/o Ramasamy.

.. Appellants.

And

1. The Joint Commissioner,
HR&CE Admn Department,
Tiruchirappalli.
2. P.K. Rengasamy,
S/o Krishnasamy.
- V.R. Veerasamy (deceased).
3. K.R. Venkidusamy
S/o Ramasamy.

...Respondents.

A.P. 9/2010.

Between

K.R. Venkidusamy
S/o Ramasamy

... Appellant.

And

1. The Joint Commissioner,
HR&CE Admn. Department,
Tiruchirappalli.
2. L. Venkidusamy,
S/o Lakshmana Chettiar.
3. T. Chinnasamy,
S/o Thirumalai Chettiar.
4. R.Selvaraj,
S/o Rangasamy.
5. V. Srinivasan.
S/o Venkatraman.
6. R. Nallusamy,
S/o Ramasamy.
7. P.K. Rengasamy
S/o Krishnamoorthy.

...Respondents.

In the matter of Arulmigu Pidariamman and Mariamman Temple, Vellalapatti village, Musiri Taluk, Tiruchirappalli District.

Appeal Petitions under Section 69(1) of the Tamil Nadu HR&CE Act, 1959 (Tamil Nadu Act 22 of 1959) against the order dated 20.03.2009 made in O.A.No.11/2000 by the Joint Commissioner, HR&CE Admn. Department, Tiruchirappalli allowing the Original Application filed under Section 63(e) of the Act and deciding the custom and usage in the said temple during festival.

Common Annexure to Order in R.Dis.A.P..No.65/2009 & 9/2010
(D2) dated 10.5.2013.

Appeal Petition No.65/2009 has been filed by the Appellants therein under Section 69(1) of the Act, against the order dated 20.03.2009 passed in O.A.No.11/2000 by the Joint Commissioner, HR&CE Admn Department Tiruchirappalli denying the custom prevailing

in the temple and without any basis passed orders in favour of the 4th respondent herein taking Thirumangalyams from a different place to the Institution in question, against the very custom and usage that has been prevailing in the temple for more than 300 years.

2. Similarly, Appeal Petition No.9/2010 has also been filed by the Appellants herein against the order dated 20.03.2009 made in O.A.No.11/2000 by the Joint Commissioner, HR&CE Admn. Department, Tiruchirappalli in having allowed the original application filed by the Respondents 2 to 6 herein under section 63(e) of the Act claiming some custom and usage in the temple prevalent during festivals.

3. As both the appeals has been filed challenging the very same order dated 20.03.2009 made in O.A.No.11/2000 passed by the Joint Commissioner, HR&CE Admn Department, Trichirappalli, a common order is being passed as detailed below:-

4. The Respondents 2 to 6 in A.P.No.9/2010, impleading the 7th respondent and two others as respondents 1 to 3 filed O.A.No.11/2000 under Section 63(e) of the Act claiming certain custom and usage prevalent in the conduct of the festivals in the temple. It was averred in the original application that the temple have been in exclusive management of Kavara chettiar community and looked after by its representatives of the community. One Nallusamy Chettiar and another Desai Muthu Chettiar in 1976 claimed hereditary trusteeship right over the management of the temple filed civil suit in O.S.No.133/1976 on the file of the District Munsif Court, Thuraiyur which ended against them and then moved before the Deputy Commissioner, HR&CE Admn Dept., Tiruchirappalli under section 63(b) of the Act in 1980 which was also finally rejected. Some of their close relatives, friends of the same community have started making noval claims regarding the conduct of festivals in the temples. In view of breach of peace in conduction of festival, the festivals were conducted as per the decision of the peace committee formed in the village. The 1st respondent was the trustee and

the other respondents 2 & 3 are the representatives of rival group. The Aadi festival will commence by Kappukattu on the 4th or last Sunday in the Tamil month of Aani. On the 1st Sunday of Aadi, the temple trustee would take two Mangalyams from the temple to the temple-well situated on the western side of the temple, perform special pooja and take back the same to the temple. On the same night the poosari would take Karagam to the temple-well and perform pooja and take back the Karagam to the temple. On the next day, Sri Mariamman will be taken in procession in horse vahanam in the Bajanai Madam vedhi, North street, South street, Nadu Street and finally to Harijan street in the north from where it will be taken to the Mariamman Temple. Similarly in the month of Masi, Masi festival would be conducted in the same manner. Contrary to the usage and custom, respondents 2 and 3 have been claiming that the Two Mangalyams should be taken to the houses of the above rival group and then taken in procession to the temple. This procedure was never in vogue at any point of time and the novel claim of the rival group has been obstructing the peaceful conduct of the festivals. Therefore, the custom and usage prevalent in the conduct of festivals in the temples should be decided and confirmed. But the Joint Commissioner without proper appreciation of the evidence on record, contrary to the usage and customs, allowed the application which is liable to be set aside.

5. As the issue now raised by the appellants in A.P.No.65/2009 is that the 4th Respondent in A.P.No.65/2009/Appellant in A.P.No.9/2010, took up a hostile attitude and set up a new custom by claiming that two Thirumangalyams will have to be taken from Malthiamman Temple house to Mariamman Temple well, rather than from the temple to the Temple well and perform special poojas. This new custom has no basis and has no records. The Joint Commissioner, however allowed the original application, but took a different stand denying the stand taken by the appellants.

6. But, the Appellant in A.P.9/2010 has contended that it is the admitted case of the parties that the Aadi festival of the temple commences in the 4th last Sunday in the Tamil month of Aani by Kappupattu on that night. Abishekams will be performed on the following days. Special poojas will be performed in the 1st Sunday of the Tamil month of Aadi and Special poojas will be conducted. In this aspect, the 1st respondent has wrongly stated that the Aadi festival of the temple commences on the last and 4th Sunday of the Aadi. In so far as the custom of the Thirumangalyam to be taken, the 1st respondent herein has not stated the custom that has been followed in the temple and erred in not accepting the custom pleaded by the appellant. Likewise Clause 4 in the order impugned in this appeal is not correct. Thus the order passed by the 1st Respondent relating to the custom and usage to the conduction of festival in the temple in so far as it relates to the above three grounds are not correct and therefore the same has to be set aside.

7. I heard Thiru W.C. Thiruvengadam, Counsel for the appellants in A.P.65/2009/Respondents 2 to 6 in A.P.No.9/2010 and of M/s J.Anandavalli, counsel for the 4th respondents in A.P.65/2009/Appellant in A.P.No.9/2010 and perused the relevant records. On a perusal of the annexure to order containing the grounds for the above decision, the Joint Commissioner without perusing any evidentiary value of documents relating to the existence of the alleged custom and usage in the suit temple simply on the basis of the depositions given by PWs came to a conclusion and passed the impugned order. The appellants in both the appeal petitions have stated that the Aadi festival commenced in the 4th and last Sunday in the Tamil month of Aani by Kappukattu. But the Joint Commissioner without applying his mind held that Kappukattu would be conducted on 4th and last Sunday of Aadi Tamil month. In Clause 3 of the order, the Joint Commissioner has observed that "on the Kappukattu vizha night, the person in temple management should take two Thirumangalyams from Malthiamman temple to Mariamman Temple

well, situated on the west of temple to temple, after performing special poojas” without any documentary evidence.

8. While exercising the power to resolve the dispute relating to rituals, rites and ceremonies in temples, claimed on the basis of usage and custom, the Joint Commissioner have incidentally to find out what the usage about the ritual is even if he has no power to decide directly, what a certain right or a religious observance is, or if two trustees quarrel among themselves about a ritual or religious observance and the temple administration suffers thereby and the Joint Commissioner will have incidentally to go into the question as to which of the trustee’s view or contention is correct.

9. Custom and usage are not synonymous and they must be distinguished. Usage, when it has the force of law ripens into a custom. The essentials of a custom are that it should be ancient or of remote antiquity or long established, certain, invariable, uniform, continuous and reasonable and not open to objection on the ground of public policy or other wise and not opposed a statue. The custom to be valid must also be obligatory or compulsory in the sense that it must not be in the option of any person whether he would conform to it or not. The custom must be immemorial; have continued without interruption since its origin; must be reasonable and certain in respect of its nature generally as well as in respect of the locality where it is alleged to obtain and the persons whom it is alleged to affect. Any valid custom and usage should be proved beyond doubt by oral and documentary evidences. In this case, the Joint Commissioner failed to state or discuss the evidences relied upon by him to come to a conclusion to settle a dispute raised by rival claimants in the matter of rituals, rites and ceremonies in the conduct of festival in the temple and what the established usage of the religious institution is in regard to any other matter. The Joint Commissioner has failed to examine the report of the Court witnesses to the effect that no festival was conducted so far after dispute till date and further failed to

examine any independent witnesses to ascertain the prevalent of the alleged usage and custom in the conduct of festival in the above temple. The Joint Commissioner failed to apply his mind judicially before taking such a decision.

Therefore, the order dated 20.03.2009 passed in O.A.No.11/2000 by the Joint Commissioner, HR&CE Admn. Department, Tiruchirappalli suffers from infirmity as stated above and deserves to be set aside and accordingly, it is hereby set aside. The matter is remitted back to the Joint Commissioner to hold an enquiry denova after affording the appellants, respondents herein and other persons having interest if any in the above matter an opportunity of being heard and dispose of the same in accordance with law. The appellants/Respondents shall also cooperate for the expeditious disposal of the O.A. enquiry without any default. With these directions, the appeal petition is disposed of.

/ Typed to dictation/

Sd. P. Dhanapal,
Commissioner.

/ true copy/ by order/

Superintendent.