

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

Tuesday the 4th day of December, Two thousand and twelve.

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

A.P. 44 of 2009 D2

Between

1. A. Mariappan
2. K. Nagaraj
3. V. Natesan.
4. P. Madhappan

....Appellants.

And

1. K. Kandasamy
2. K. Subramaniam.
3. P. Karuppannan.
4. P. Veerappan.
5. A. Govindan.

.....Respondents.

In the matter of Arulmigu Mariamman, Chengapidariamman Temple, Pazhankottai, Virudhachampatti, Mettur Taluk, Salem District.

Appeal Petition filed under Section 69(1) of the Tamil Nadu HR&CE Act, 1959 (Tamil Nadu Act 22 of 1959) against the order dated 16.03.2005 made in O.A.No.9/2002 of the Joint Commissioner, HR&CE Admn Department, Salem allowing the Original Application filed by the Respondents herein under Section 63(b) of the Act.

Annexure to Order in R.Dis.A.P.44/2009(D2)Dated: 4.12.2012.

The above Appeal Petition has been filed against the order dated 16.03.2005 of the Joint Commissioner, HR&CE Admn Dept., Salem, allowing the Original Application No.9/2002 filed by the Respondents herein under Section 63 (b) of the Act and declaring them as hereditary trustees of the above said temple.

2. The appellants herein as persons having interest has filed this appeal and would contend that the respondents herein are from different communities and did not belong to one family; that the respondents are not hereditary trustees and there is no documents relating to the hereditary rights have been filed by the Respondents before the Joint Commissioner. The Joint Commissioner failed to follow the mandatory provision of Section 6 (11) of the HR&CE Act while dealing with rights of the Hereditary Trustee. The Joint Commissioner failed to note that the O.A.46/1975 and the order passed therein only pertain to the right of receiving vibuthi and not the Hereditary right of managing the affairs of the temple. Further no notice was given to the appellants who are Hereditary Trustees of the petition mentioned temple. No opportunity was given to put forth their objection. Therefore, the order of the Joint Commissioner HR&CE Admn Dept., Salem made in O.A.No.9/2002 dated 16.03.2005 is liable to be set aside.

3. The above appeal petition was posted for hearing on 09.10.2012, 30.10.2012 and 20.11.2012. But, neither the appellants and their counsel nor the Respondents and their counsel appeared and remained ex-parte and they having been called absent. I perused the relevant records. On a perusal of the annexure to order passed by the Joint Commissioner containing the grounds for the above decision in O.A.No.9/2002, the Inspector of the department has deposed that non-hereditary trustees were appointed to this temple by the Department. Thiru Arumugam Pillai, father of the 5th petitioner in O.A. was appointed as a Trustee by the Department. The appointment order was marked as Ex.2. In the Original Application the Respondents herein as petitioners claimed that the temples were founded and established by their ancestors. But, no proof for that was adduced by the respondents. Further, from the averments made in the original application the

respondents as petitioners claimed right to distribute Vibudhi to the devotees, breaking of coconuts etc., and no records about their continuous management in the temple from their predecessors was not even filed to substantiate their claim. No steps have been taken through filing documentary evidence to trace the genealogical table as claimed by them. For the declaration of the hereditary trusteeship, one should establish with valid evidences that the management of the temple is vested in their family for more than three generations. But, in the present case the Joint Commissioner has simply marked certain documents mechanically, filed without analyzing, discussing its evidentiary value, how far the said documents tend to support the case of the petitioners by applying his mind judicially before taking such a decision. The Joint Commissioner simply relied upon the earlier order passed by the Deputy Commissioner, Coimbatore in O.A.46/75 which filed under Section 63 (e) wherein the right to receive vibhuthi in order has been given to the petitioner's family. The petitioners in O.A. belong to different family and not from a common ancestor. The Joint Commissioner failed to analyze how the management of the temple vested with persons belonged to different families as claimed. Not even any one of the limb under section 6(11) read with section 63(b) has been satisfied.

4. Further, the respondents are placed under suspension based on certain charges framed against them under section 53 of the Act by the Joint Commissioner, HR&CE Admn. Dept., Salem in Pro.Rc.No.4802/2008 A2 dated 21.1.2008, against which, the respondent herein also filed A.P. 16/2009 before this forum. Thiru Karuppannan, one of the Hereditary Trustee, gave deposition before the Assistant Commissioner stating that, Trust Board meeting was not held. The Election of the Chairman Board of Trustees was not conducted. There is no active co-operation between the trustees. They failed to conduct the festivals. Temple lands are in the

possession of the trustees. They failed to take action to lease out the property in public auction. Mariamman Temple is in dilapidated condition and the respondents did not take any positive steps to renovate the temple. Hence, the order declaring the Respondent as Hereditary Trustee is liable to be set aside and the temple has to be declared as Public Temple. Hence, it is evident that all the trustees have acted against the interests of the temple which attracts disqualification under Section 26 of the Act.

For the reasons as stated above, the order dated 16.03.2005 of the Joint Commissioner, HR&CE Admn. Department, Salem in O.A.9/2002 deserves to be set aside and accordingly, it is hereby set aside and the office of the Trusteeship of the said temple is declared as non-hereditary one. The appeal petition stands allowed.

/typed to dictation/

Sd. P. Dhanapal,
Commissioner.

/true copy/by order/

Superintendent.