

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

Monday the 21<sup>st</sup> day of January, Two thousand and thirteen.

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

**A.P.76 and 77/2009 D2.**

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| 1. P.G. Jayavel.     | .. 1 <sup>st</sup> Appellant alone is the |
| 2. K. Vajravel.      | appellant in A.P.76/2009                  |
| 3. P.G. Janakiraman. |   |
| 4. P.S. Kesavan.     | ..Appellants 1 to 5 are appellants        |
| 5. M. Shanmugam.     | in A.P. 77/2009                           |

In the matter of Arulmigu Karaga Samundiamman, Thimmarayaswamy, Pattalamman, Perumal Thimmarayaswamy, Ramalingaswamy and Varadharajaperumalswamy Temples, Periyampatti village, Palacode Taluk, Dharmapuri District.

Appeal Petition filed under Section 69(1) of the Tamil Nadu HR&CE Act 22 of 1959 against the common order dated 20.03.2008 passed by the Joint Commissioner, HR & CE Admn. Dept., Salem dismissing both the O.A.No.8/2000 filed under Section 64(1) of the Act to frame a scheme of administration and O.A.No.9/2000 filed under Section 63 (b) of the Act to declare the office of trusteeship as hereditary.

Common Annexure to Order in R.Dis. A.P.Nos. 76 and 77/2009 (D2) dated 21.1.2013.

1. The above appeal petitions have been filed under Section 69(1) of the Act against the common order dated 20.03.2008 passed by the Joint Commissioner, H.R.&C.E. Admn. Dept., Salem dismissing both the O.A.8 and 9/2000 filed under section 64(1) and 63(b) respectively and holding that the temples are public one belongs to all community people.

2. The Appellants in A.P.No.77/2009 as petitioners filed O.A.No.8/2000 under Section 64 (1) of the Act, before the Joint Commissioner, H.R.&C.E. Admn. Dept, Salem, seeking to frame a

scheme of administration for the better management of the temples in question with provisions for appointment of non-hereditary trustees from among the 24 Manai Telugu Chettiar Community people alone.

3. Whereas the First Appellant in A.P.77/2009 and Appellant in A.P.No.76/2009 alone filed O.A.No.9/2000 under section 63(b) of the Act, before the Joint Commissioner, H.R.&C.E. Admn. Dept, Salem, to declare that the office of trusteeship of the temples as Hereditary and his family should be given a representation hereditarily.

4. The Joint Commissioner after due enquiry, recording the oral testimony of P.W.1 to 4, C.W.1, after marking documentary evidence Ex.A.1 to A.32 adduced by the petitioners and Ex.C.1 to C.4 on the side of the Court witness and after examining the oral and documentary evidence adduced, finally dismissed both the O.As stating that non-hereditary trustees from all community people have so far been appointed to the above temples by the appropriate authorities under the Act, from 1979. The petitioner in O.A.No.9/2000 was also got appointed as one of the non-hereditary trustees by the Assistant Commissioner in the year 1997. The documents produced by the petitioners relate to the period of trusteeship held by them and they have failed to make out a case as prayed for.

5. The appellants contended that the Joint Commissioner failed to see that the claim of the appellants is based on the custom and usage and hence the right need not descend from father to son. Whosoever became the 'Oor Chettiar' will be in management of the Temples. The Joint Commissioner has also failed to consider the evidence of PW 1 who had categorically stated in his cross examination that there is no evidence to show that the appointed trustees took charge. The Joint Commissioner erred in not properly appreciating the oral and documentary evidence adduced by the appellants. There is no contra evidence also. The Joint Commissioner failed to consider

that the Inspector had not obtained statements either from the appellant or from anybody. No opportunity was given to cross-examine the Assistant Commissioner and hence no reliance can be placed on the Assistant Commissioner's report marked as Ex.C3 and C4. Hence, the impugned orders is liable to be set aside.

6. I heard Thiru K.Jayaraman, Counsel for the appellants and perused the relevant records. The Counsel for the appellants argued that the appointment of the appellant as one of the Trustees and mismanagement were reasons stated by the Joint Commissioner to dismiss both the O.As. He relied upon the judgments reported in AIR 1972 Madras 119 & 2008-1-L.W. 945. In the 1<sup>st</sup> Judgment, the Hon'ble Court has held that in an application for declaration that the plaintiffs are hereditary Trustees the question of mismanagement on the part of plaintiff is irrelevant. In another case, the Hon'ble High Court held that even after the appointment of trustees by the department, he can claim hereditary trusteeship, if he is entitled to claim such right, based on the evidence. But in this case, the first appellant herein has failed to prove his hereditary right with sufficient authenticate evidence tracing the genealogy and the custom and usage that was said to be in existence in the community and in the temple.

7. It is seen from records that the appellants are not so confident with their prayer and so they have chosen to file different Original Applications both under Section 63 (b) and 64 (1) of the Act, one claiming hereditary trusteeship right and another claiming a scheme with provision for appointment of trustees exclusively from their community alone. On perusal of the annexure to order passed by the Joint Commissioner, it is seen that non-hereditary trustees from public, not from a particular community have been appointed by the Department from the year 1979 onwards. All these times, the appellants remained as mute spectator without raising any objection or

protest. Now they claim exclusive management right to their community alone which is unsustainable in law. Not even any one of the limb under section 6(11) was satisfactorily proved by the appellants. The 1<sup>st</sup> appellant herein was also got appointed as one of the trustee by the department in the year 1997. In the impugned order, the Joint Commissioner has elaborately discussed the documents filed by the petitioners and the court witness. Most of the documents have been found of recent origin and relate to the trustee period held by the appellant. The appellants have failed to prove that the suit temples have been founded, established, chiefly intended for the benefit, managed and maintained by their ancestors or community with substantial evidence. There was nothing on record to prove that the management of the suit temple vested with the appellant's family or the community as claimed. On the contrary, the management of the temples vested with the non-hereditary trustees appointed by the department for several decades.

8. Hence, I find no valid reasons to interfere with the common order passed by the Joint Commissioner, HR&CE Admn.Dept, Salem in O.A.Nos.8 & 9/2000. For the reasons stated supra, the common order passed by the Joint Commissioner, HR&CE Admn. Dept., Salem dated 20.03.2008 made in O.A.Nos.8 & 9/2000 warrants no interference and the same be and is hereby confirmed. In the result the appeal petition fails and the same deserves to be dismissed as devoid of merits and accordingly the same is dismissed as devoid of any merits.

/typed to dictation/

Sd. P. Dhanapal,  
Commissioner.

/true copy/by order/

Superintendent.