

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

Friday the 31st day of May, Two thousand and Thirteen.

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

A.P. 14/2010.

Between

N. S. Ganapathy

S/o M.N. Subbaiah Moopnar

... Appellant.

And

1. The Joint Commissioner,
HR&CE Admn. Department,
Tirunelveli.

2. The Executive Officer,
Arulmighu Arubathumoovar Guru poojai,
Annadhana Kattalai,
Pettai, Tirunelveli. 4.

... Respondents.

In the matter of Arulmighu Arubathumoovar Gurupoojai
Annadhana Kattalai, Pettai, Tirunelveli Taluk and District.

Appeal petition under Section 69(1) of the Tamil Nadu HR&CE Act,
XXII of 1959 (Tamil Nadu Act 22 of 1959) against the order dated
06.01.2010 made in O.A.No.9/2006 by the Joint Commissioner, HR&CE
Admn Department, Tirunelveli dismissing the Original Application filed
under Section 63 (b) of the Act claiming the office of trusteeship of the
institution as hereditary.

Annexure to Order in R.Dis.A.P.14/2010 (D2) Dated : 31.5.2013.

1. The appellant contended that Arulmighu Sarkarai Vinayagar
Temple situated in Sarkarai Vinayagar Koil Street, Pettai, Tirunelveli has
been declared as a denomination temple under Article 26 (1) of the
Constitution of India. The character of the Institution as denomination in
character has been decided by the High Court in the statutory Second
Appeal which has become final. Attaching to the main temple, there are
idols for Arubathumoovar Nayanmars kept inside the main temple and
Gurupooja is being performed by the Trustees of denominational

institution in question. There are no two institutions is in existence in the place, where Sarkarai Vinayagar is located. The Arubathumoovar idols having kept by the side of the main deity Sarkarai Vinayagar cannot be said and considered as a separate entity. However the performance of Gurupooja for Arubathumoovar on the Mukthi Nakshathira day and Annadhanam is being done on that day. The Trustees of the main temple are performing the Arubathumoovar Gurupoojai and Annadhanam.

2. The Appellant further contended that a valuable property has been set apart by a person through a Settlement which has been executed by the District Judge, Nagercoil for the purpose of Gurupoojai Annadhanam. That settlement cannot be considered to be a separate institution coming under the HR&CE Act. In view of the internal fight between the trustees of the main temple, an Executive Officer was appointed for Arubathumoovar Gurupooja, as if it is a separate entity not coming within the purview of the main temple in question. The Department could not interfere with the main temple as there is an order of injunction. On earlier occasion, one person, not connected with the Trust Board, seems to have filed an application which was rejected. Thereupon, at present, the appellant herein, being one of the trustee for the main temple, as person coming under the category of Denominational temple, and agitated the matter before the Joint Commissioner, HR&CE Tirunelveli claiming to hold office as Hereditary Trustee on the ground that Arubathumoovar Gurupooja kattalai is one and the same institution along with the main denominational temple. The Joint Commissioner, HR&CE Tirunelveli has dismissed the original application on the simple ground that this present original application is hit by the principle of Res-judicata. There is no Res-judicata in this case on the simple ground, that the parties of the earlier case are different from the parties of the present case. The main issue relating to this case is whether Arubathumoovar Gurupooja Kattalai is a separate entity or an institution jointed with the main temple called Sarkarai Vinayagar Temple. The Joint Commissioner has not followed or read the Deed of

Settlement. The appellant is the only person now available, according to the Deed of Settlement and therefore, he is entitled to file the original application. But, the Joint Commissioner without deciding the character of the institution and without properly appreciating the question of law involved erroneously dismissed the original application on the question of res-judicata. Therefore, the order of the Joint Commissioner is liable to be set aside.

3. Thiru W.C.Thiruvengadam Advocate appeared for the appellant and M/s. G.Sumitra Advocate appeared for the 2nd Respondent. I heard the argument advanced by both the Counsel for the appellant and the 2nd respondent and perused the relevant records.

4. It is deduced from the settlement deed registered as document No.2126, a kattalai consist of daily poojas to the idols of 63 Nayanmars and 9 upanayanmars, feedings offered to devotees and poor people during Gurupooja day of each Nayanmars was established by one Sentil Perumal Pillai, with extensive properties and income from those properties is to be spent for the above purposes. It is learnt that the said trust deed was the outcome on the basis of the judgment in the suit in O.S.No.116/1071 (ME) between the Moopanars and the said Sentil Perumal Pillai who executed the settlement for the spiritual benefit of his family members and dedicated to the public. It was argued that the temple is declared as denominational one with permanent injunction, in which the said idols of Arubathumoovar Nayanmar is also situated and there are no two institutions exist in the place. It is seen only the temple was declared as denominational one in judgment dated 03.05.1980 made in O.S.No.648/1978 on the file of the District Munsif Court, Tirunelveli and confirmed in Second Appeal No.296/1982 dated 19.08.1987. Previously, an Executive Officer was appointed under Section 45 (1) of the Act to look after the administration of both the temple and the specific endowment. As per the order dated 14.12.1990 and made in C.R.P.No.2998/1990 of the Hon'ble High Court, Madras, the management and administration of the temple alone was handed over to

the community people, but the administration of the specific endowment vests with the Executive Officer so far.

5. It is on that basis prior to the filing of the original application No.9/2006, the nature of office of trusteeship of the specific endowment was tested in O.A.No.1/1987 under Section 63(b) before the then Deputy Commissioner, HR&CE Admn. Department, Tirunelveli which was originally allowed by the then Deputy Commissioner and later reversed by the Commissioner in appeal No.4/1995 dated 30.08.1999 holding that there is no legality in the declaration granted by the Deputy Commissioner, Tirunelveli in favour of one Paradesia Pillai-respondent, and there is no proof of exclusive management of the kattalai by the respondent or his ancestors at any point of time and there is absolutely no evidence to establish that over the past five or six decades, the temple and kattalai have been held as two separate units. The said order was not challenged in the manner known to law in a suit under Section 70(1) and (2) of the Act before the Competent Civil Court and High Court and allowed to become final and conclusive and binding on the trustees of the kattalai. The present O.A.9/2006 on different footing was rightly dismissed by the Joint Commissioner holding that the present application is hit by principle of Res-judicate.

6. Under Section 63(b) of the HR&CE Act, the Joint/Deputy Commissioner is empowered to decide whether a trustee holds or held office as a hereditary trustee; and the decision should be to relation to the status of the office of the trusteeship, namely whether it is hereditary or not. That decision was already adjudicated and decided by the competent authority as per the provisions of the Act. There is no provision under the Act, that the very same matter can once again be reopened and adjudicated by that authority in the guise of a fresh application. Therefore, the orders of the Joint Commissioner did not suffer from any infirmity or illegality and deserves to be confirmed and accordingly it is confirmed.

7. It is not in dispute that the management of the Arubathumoovar Gurupooja Annadhana Kattalai vest with the 2nd Respondent-Executive Officer separately as per the judgment rendered on 25.10.2000 in O.S.No.1/1992 and O.S.No.117/1996 on the file of the Principal Sub Court, Tirunelveli, after handing over possession of the temple and its properties to the appellant community as per the orders dated 14.12.1990 and made in C.R.P.No.2998/1990 of the Hon'ble High Court, Madras. While the facts remain so, it is not known on what basis or authority the appellant claims that there is no two institutions which is in existence in the place, where Sarkarai Vinayagar is located, and he as one of the trustee of the denominational temple and also for the Arubathumoovar Gurupooja Kattalai claims a separate declaration as hereditary trustee for the Arubathumoovar Gurupooja Annadhana Kattalai. Thereby he directly or indirectly admits that the temple and kattalai are distinct entities. Therefore, when the matter was judicially and quasi judicially decided, the same matter cannot be reopened and decided afresh. Therefore, the appeal fails and deserves to be dismissed and accordingly the same is dismissed as devoid of any merits.

Therefore, for the discussions made stated supra, the order dated 06.01.2010 made in O.A.No.9/2006 passed by the Joint Commissioner, HR&CE Admn Department, Tirunelveli is hereby upheld and confirmed and the appeal petition be and is hereby dismissed.

/ typed to dictation/

Sd. P. Dhanapal,
Commissioner.

/ true copy/ by order/

Superintendent.