

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

Tuesday the 16th day of April, Two thousand and Thirteen.

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

A.P. 52/2010/D2

Between.

S. Shanmugam
S/o Subbian Asari

...Appellant.

And

The Assistant Commissioner,
HR&CE Admn. Department,
Nagercoil.2

... Respondent

In the matter of Arulmigu Pillaiyar Temple, Peyankuzhi, Eraniel, Kalkulam taluk, Kanyakumari District.

Appeal petition under Section 69(1) of the Tamil Nadu HR&CE Act, 1959 (Tamil Nadu Act XXII of 1959) against the order dated 25.11.2009 passed in O.A.No.7/2006 by the Joint Commissioner, HR&CE Admn Department, Tirunelveli dismissing the original application filed by the appellant herein under Section 63(a) of the Act .

Annexure to Order in R.Dis.A.P. 52/2010 (D2) dated: 16.04.2013.

The above appeal petition has been filed against the order dated 25.11.2009 passed in O.A.No.7/2006 by the Joint Commissioner, HR&CE Admn Department, Tirunelveli dismissing the original application filed by the appellant herein under Section 63 (a) of the Act seeking to declare the institution as a private one.

2. The Joint Commissioner dismissed the above Original Application on the ground that there was no evidence on record to prove by whom the temple was built. The temple is under the Oru kala Pooja Scheme. The temple festivals

are being conducted from the contribution of general public. The Hindu Public offer worship in the temple as of right without any hindrance.

3. The Appellant contended that the institution in question does not partake of the characteristics of a religious institution as defined in the Tamil Nadu HR&CE Act, the impugned order of the Joint Commissioner is erroneous and unsustainable; that there is no material in the case to show that the institution in question is used as a place of public religious worship and dedicated to, or for the benefit of, or used as of right by the Hindu community or any section thereof, as a place of public religious worship; that the appellant's cogent oral evidence and exhibits A1 to A8 are to the effect that the institution in question is purely a private family one and there is no material in the case to contradict the same, the Joint Commissioner ought not to have held that the institution is a religious institution as defined in Section 6 (18) of the Tamil Nadu Hindu Religious and Charitable Endowments Act; that there is no evidence from any uninterested person or any person having direct knowledge of the affairs of the Institution to the effect that any public element is involved in the affairs of the temple; that the Joint Commissioner failed in not allowing the O.A. on the basis of Tax receipt in the name of the appellant.

4. The above appeal petition came up for hearing for several times, on 20.07.2011, 07.09.2011, 10.04.2012, 18.12.2012 and 29.01.2013. On all the time neither the appellant nor his counsel having been called absent, abstained from appearing for the enquiry. There is no representation on their behalf and the reason for having remained ex-parte is best known to them alone. Therefore, on the basis of available records, orders are being passed on merits.

5. I perused the original application filed by the appellant herein before the Joint Commissioner, the evidence adduced both oral and documentary, the Exhibits produced and marked, the orders of the Joint Commissioner and relevant other records. It is seen from the averments contained in the application filed in O.A.No.7/2006 that the appellant herein as petitioner

representing as Chairman of Arulmigu Peyankuzhi Hindu Viswakarma Samudaya Sree Pillayar Thirucoil has filed the said Original Application contending that the ancestors of the applicant constructed the temple and installed the idol in the said patta land for their family members who belongs to Viswakarma Community (Blacksmith only). He has also stated that this is not a religious institution and the temple is in well defined construction and under lock and key. The physical features as seen in other public temples are significantly absent in this temple. There is no hundial, vahanam, vimanam gopuram etc., No outsider can claim right of worship other than the application's family members of 4 founders at Peyankuzhi. In support of his claim, the appellant himself appeared and deposed as P.W.1 and filed 8 documents which were marked as Ex.A.1 to A.8. But no other independent witness was examined on his side to substantiate his claim. No solitary evidence was adduced to prove the foundation and the founder of the temple and also that no public would offer worship in the temple as of right. Ex.A.1 is the receipt for payment of land revenue for the land belonging to A/m.Agneeswarar pattar Ambalam vagai Under Ex.A2 it is seen that one A.Kumarasamy was appointed as a single non-hereditary trustee by the authorities under the Act as per the resolution of the District Committee to A/m.Agneeswarar and Pillaiyar Temple. Under Ex.A3 it was stated that this Thirucoil was founded only for the Viswakarma community (particularly blacksmith). Ex.A.4 to A.8 postal acknowledgement cards, copy of Secondary School Leaving Certificate and Voters Identity card are no way helpful to the case of the petitioner.

6. It is also relevant to point out here that the appellant by letter dated 06.10.2005 addressed to the Assistant Commissioner, HR&CE Admn. Dept., Nagercoil stating that “எங்கள் சமுதாயம் எண்ணிக்கையில் 29 குடும்பங்களை கொண்டதும், ஸ்ரீ பிள்ளையர் திருக்கோயிலின் பராமரிப்பு செலவினங்களை ஏற்கும் மேற்சொன்ன குடும்பங்களிலிருந்து 32 சந்தாதாரர்களையும் கொண்டது ஆகும். எங்களின் மூன்று குடும்பங்களைச் சேர்ந்த முன்னோர்கள் 1956ம் ஆண்டு தங்களது கடின உழைப்பின் வருவாயில்

ஒரு பகுதியை சில ஆண்டுகளின் கூட்டு சேமிப்பின் மூலம் மற்றும் அவர்களின் சில சக தொழிலாளி அன்பர்களின் துணையுடனும் இத்திருக்கோயில் அமையப்பெற்று, திருக்கோயிலில் வழிபட்டு வந்துள்ளனர். தமிழ்நாடு அரசின் அறிவிப்புப்படி நாங்களும் உதவித்தொகை (ஒருகால பூஜை) பெறுவதற்குரிய நிபந்தனைகளை நிறைவு செய்து 17.5.2002 லிருந்து தக்கலை கனரா வங்கியிலிருந்து நாளது 31.12.2004 வரை உதவித்தொகை பெற்றுள்ளோம். கடைசியாக 22.1.2005-ல் பெறப்பட்டு இதுவரை மொத்தம் ரூபாய் 6468.75 காசு ஒருகால பூஜை உதவித்தொகையாக பெற்றுள்ளோம்”.

7. Under Ex.C.1, the Court witnesses has reported that this temple has been under the administrative and supervisory control of the Department and has been included in the list at S.No.118 of temples getting meager income as the income of the temple was Rs.175/-. There is a hundial available in the temple and Vinayaga Chaturti, Margazhi festivals are celebrated in the temple.

8. In HRE Board, Madras Vs Rugmini AIR 1932 Mad 470 the full bench ultimately held that “If the public or that section of the public who go for worship consider that there is a Divine presence in a particular place and by offering worship at that place, they are likely to be the recipients of the bounty or blessings of God they you have got the essential features of a temple as defined in Section 9 Clause (12) of the Act. The presence of an idol, though an invariable feature of Hindu Temples, is not a legal requisite under the definition of a temple in Section 9, Clause (12) of the Act”. Therefore, the contention that the physical features as seen in other public temples are significantly absent in this temple has no legal effect. Further as admitted by the appellant himself that the above said temple was founded only for the Viswakarma community (particularly blacksmith), who are a section of Hindu Community, the decision in Koman Nair Vs Achuthan Nair reported in AIR 1934 P.C.230 that “temple dedicated for the use of a particular section of the Hindu Community can be a public temple as defined in the Act” will squarely apply to the case on hand. Moreover, the temple was already under the control of the Department as an institution getting meager income, and the appellant has also accepted the aid

of one column pooja scheme provided to the temple by the Department till 22.01.2005, trustees appointed by the Department and the poojas and festivals are conducted performed by the appellant's community in the temple will not make the temple as a private one and to be decided as not a 'religious institution' as defined under section 6(18) of the Act at this distance of time. Therefore, there is no infirmity or illegality in the impugned order passed by the Joint Commissioner, HR&CE Admn. Dept., Tirunelveli in O.A.No.7/2006 dated 25.11.2009 and the same is hereby confirmed. In fine, the appeal petition fails and is liable to be dismissed as devoid of any merits.

/typed to dictation/

Sd.P. Dhanapal,
Commissioner.

/ true copy/ by order/

Superintendent.