

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

Thursday the 10<sup>th</sup> day of October, Two thousand and thirteen.

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

A.P.6/2010 D2

Between

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|---|-------------------------|
| 1. M.Ramasamy S/o Muthiah Mudaliar.         | ..Appellant.            |
| 2. V.P. Ganesan S/o V. Palaniyandi Mudaliar | Impleaded<br>Appellant. |

And

The Joint Commissioner,  
HR & CE Admn.Dept.,Tirunelveli. .. Respondent

In the matter of Arulmighu Veerabadran and Annamalaiyar Temple,Tirunelveli Town and District.

Appeal Petition filed under Section 69(1) of the Tamil Nadu H.R.& C.E. Act 1959 (Tamil Nadu Act 22 of 1959) against the order dated 9.11.2009 of the Joint Commissioner, HR & CE Admn.Department, Tirunelveli in dismissing the O.A. No.2/05 filed under Section 63(a) of the Act.

Annexure to Order in D.Dis. A.P..No. 6/2010 D2 dated : 10.10.2013.

The above appeal petition filed under Section 69(1) of the Act against the order dated 9.11.2009 of the Joint Commissioner, Tirunelveli in dismissing the O.A. 2/2005 filed under Section 63 (a) of the Act.

2. The appellants contended that there is a private place of worship situated in East Car Street, Tirunelveli town, which is known as Veerabadrassamy and Annamalaiyar place of worship, which is exclusively in existence for the members of Sengundar Mudaliar Community, who are permanently residing in Big Street, Middle Street,

Vembadi Street and Pattapathu area and Pazhayapettai area for whose benefits, the aforesaid two idols are kept in a platform and being worshipped by the members of the aforesaid community, while attending to their community affairs or a general body or for discussion while promoting their business. There is a big house constructed by the members of the aforesaid community for their personal purpose in their personal lands wherein, the clay idol of Veerabadran and Annamalaiyar are, just, kept on a simple diocese constructed by brick and cement. In short, the aforesaid two idols are not consecrated, in the Karpagraham, so that the said two idols can construed and attract the definition of Section 6 (20) of the H.R. & C.E. Act 22 of 1959. The temple would come within the purview of the H.R. & C.E. Act provided the Hindu God and Goddess are consecrated in accordance with the Agama Sasthras and is being worshipped by the public at large. So that, such a place of worship could be construed and declared as a public temple. In the instant case, the aforesaid two idols are kept on a diocese, which has been personally supervised by the Joint Commissioner, H.R. & C.E., Tirunelveli, while O.A. 2/2005 has been pending for the last 3 years. In the said building, the activities are purely secular in nature and which is in existence for the benefits of Senguntha Mudaliar for whose benefits, the house was founded, established, managed and maintained. At any stretch of imagination, this god could be treated as a temple coming under 6 (20) of the Act which is neither a specific Endowment under Section 6 (19) of the Act or a religious institution under Section 6 (18) of the Act 22 of 1959. While the character stands in this manner, due to in-flight between the members of Sengundar Mudaliars located in 5 streets, the matter was taken up for judicial review. The then persons in charge of the building wrongly filed 63 (e) petition and agitated the matter upto High Court of Judicature of Madras where all the courts have taken the view that the house situated and in existence for the benefits of the Senguntha Mudaliar is nothing but a religious institution coming under the Act. While deciding the matter in L.P.A. 108/84, the then Division Bench consisting of Mr. Justice Sathiadev and Justice Bellie have come to the

conclusion that the petition was wrongly filed and there was no proper adjudication in the matter. In view of the aforesaid direction, there is no question of resjudicata in the present case and therefore, fresh application under Section 63(a) of the Act was filed and fresh evidence was let in and also filed relevant documents to decide the private character of the Institution. The learned Joint Commissioner, H.R. & C.E. , Tirunelveli, on a wrong application of law, without a legal and judicial mind had come to the conclusion that the matter cannot be agitated in the present original application, in view of the fact that the previous litigation ended against the members of the community.

3. I heard Thiru W.C. Thiruvengadam, Counsel for the appellant and perused the relevant records. As observed by the Joint Commissioner, the Character of the Institution has been already decided and declared as “religious endowment”. In the order dated 20.9.1988 passed in L.P.A. 108/1984, the Division Bench of the Hon’ble High Court has observed as follows: *“It appears a previous trustee had filed O.S. No. 266 of 1982 on the file of the District Munsif Court, Tirunelveli against one Sankaran Pillai for recovery of a portion of the suit property which he has occupying as a tenant. Ex.B3 is the certified copy of the plaint in the said suit. The suit was filed by the said Trustees in a representative capacity on behalf of the Vadakku Vamsathar Sect. In paragraph 4 of the plaint it has been clearly stated that the site of the suit first schedule property was purchased with the common funds of Vadakku Theru Vamsathar Senguntha Mudaliar for installing their titular deities and later constructions were made and a titular deity Annamalaiyar was installed therein and daily poojas were performed. That suit was decreed. This evidence is indeed a strong piece of evidence and there is absolutely nothing to discredit it and this shows that the suit first schedule property was purchased for installing deities which means for having a temple there. Ex.B5 is a certified copy of the leas deed dated 18.2.1869 between one Kulaskaram Pillai and the persons who were then in the management of the suit properties. Therein a mention has been made about a stone Mandapam where Swami Annamalaiyar was installed and the community*

*Guru used to stay. It is also stated therein that the tenant should not give any obstruction to the Poojari who had been appointed for performing poojas to Swami Annamalaiyar. This certified copy has been received even in 1929. Ex.B6 is a copy of another document dated 16.1.1865 between a Poojari and the trustees of the suit properties. Under this the Poojari has been appointed for performing poojas to Swami Annamalaiyar and Swami Bairavar. It appears the originals of Exs.B5 and B6 have been produced in the earlier suit O.S.no.114 of 1933 and therefore certified copies have been filed here. Therefore, there is no reason to discard these Exs.B5 and B6 i.e., certified copies of lease deeds and they also indicate that there were deities installed in the first schedule property and poojas were performed.*

*The learned single Judge and the trial court have pointed out that the plaintiff himself has in paragraph 8 of the counter filed by him in O.A.No.53 of 1964 which is marked as Ex.B-8 admitted by the poojas to the deities in the Mandapam were regularly performed. The learned Single Judge and the Trial Court have also pointed out that even in the application O.A. No.50 of 1967 (Ex.B7) filed by the present plaintiff and another it is admitted in paragraph 6 that in the building in the first schedule property the community deity Annamalaiyar has been installed. From all these it is clear that the plaint schedule properties are being used as a religious endowment.”*

From the above observation, it is evident that poojas to the deities in the mandapam were regularly performed. Poojari has been appointed for performing poojas.

5. Further, fit person has been appointed by the department under Section 49(1) of the Act. It was challenged in O.S. 33/87 on the file of the Sub-Court, Tirunelveli and the same was dismissed by order dated 19.12.1988. Appeal in A.S. 154/90 filed against the said order was also dismissed by the Hon'ble High Court in order dated 13.3.2002. All these facts show that the community people filed various cases before

different forums to take over the administration of the temple and its properties but they lost their battle before all forums. They are also attempting to change the character of the institution by leasing out the temple premises for various commercial activities.

For the foregoing reasons, I find no infirmity in the order passed by the Joint Commissioner, Tirunelveli and appeal petition deserves no merits. Accordingly the order dated 9.11.2009 of the Joint Commissioner, Tirunelveli passed in O.A. 2/2005 is hereby confirmed and the appeal petition dismissed as devoid of merits.

/typed to dictation/

Sd. P. Dhanapal,  
Commissioner.

/true copy/ by order/

Superintendent.