

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

Tuesday the 16<sup>th</sup> day of April, Two thousand and Thirteen.

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

A.P.83/ 2010 D2

Between.

S. Somu alias Somasundara Achari. .. Appellant.

And

1. The Assistant Commissioner/Thakkar(officiating)  
Sri Shanmuga Selva Vinayagar Thirukoil,  
Kachaleeswarar Thirukoil, Armenian Street,  
Chennai. 1.
2. The Executive Officer,  
Shri Shanmuga Selva Vinayagar Thirukoil,  
Mallegeswarar Thirukoil,  
No.277, 278, Lingi Chetty Street, George Town,  
Chennai. 1.
3. T. Ganesa Achari,  
S/o V.M. Thiyagaraja Achari,  
No. 12, Drowpathy Amman Koil Street,  
Mittanamalli, I.A.F., Avadi, Chennai 600 055. ... Respondents

In the matter of Arulmigu Shanmuga Selva Vinayagar Temple,  
No.277, 278, Linghi Chetty Street, George Town , Chennai. 1.

Appeal Petition under Section 54(4) of the Tamil Nadu HR&CE Act,  
1959 (Tamil Nadu Act 22 of 1959) against the order dated 26.07.2010  
made in Pro.Rc.No.11426/2006 C1 on the file of the Joint Commissioner,  
HR&CE Admn Department, Chennai filing up of vacancies in the offices  
of hereditary trustee under Section 54 (1) of the Act.

Order in R.Dis.A.P.No.83/2010 (D2) dated : 16.04.2013.

The above Appeal Petition having come on for final hearing before  
me on 05.02.2013 in the presence of Thiru M/s.Jothivani, Counsel for  
the Appellant, Thiru S.D.Ramalingam, Counsel for the 2<sup>nd</sup> Respondent

and Mrs.S.L.Kalavathy, Counsel for the 3<sup>rd</sup> Respondent and upon hearing their arguments and after perusing the records and the matter having stood over for consideration till this day the following order is made:-

ORDER.

The above appeal petition has been filed under section 54(4) of the Act against the order dated 26.07.2010 passed by the Joint Commissioner, HR&CE Admn Department Chennai, in Pro.Rc.No.11426/2006 C1, filing up of vacancies in the offices of hereditary trustee under Section 54 (1) of the Act.

2. The case of the appellant is that the petitioner's great grandfather Sri Venkatagiri Shanmuga Achari @ V.K.Shanmuga Achari created a Trust by Trust Deed registered as Document No.2453 of 1916 in favour Sri Selva Vinayagar Temple, and the trusteeship shall be hereditary among the descendants and relations who will be next heir in accordance with the law of primogeniture. On the death of the author of the Trust his eldest son One Venkatagiri Rathina Achari, and after him second son Venkatagiri Murugavel Achari and after him by Venkatagoro Dharmalinga Achari held the office as hereditary trustees. One V.M.Thiyagaraja Achari who also held the post of trusteeship of the temple died on 01.03.2004. In the said vacant place, the elderly male members available in the family of the petitioner and the descendants of Thiru V.K.Shanmuga Achari including Shri V.M.Gopalsamy Achari nominated the petitioner for appointment as the trustee for the temple on 16.08.2009. But, to the shock and surprise of the petitioner, it is learnt that the official respondents have appointed the 3<sup>rd</sup> respondent as trustee for the temple leaving the claim of the petitioner herein. Therefore, the petitioner has filed this application challenging the appointment of the 3<sup>rd</sup> respondent as hereditary trustee for the temple as violative of the covenants of the deed of trust executed by the author in an illegal and arbitrary exercise of power.

3. The 3<sup>rd</sup> Respondent in the counter affidavit denied all the averments of the Appellant. The 3<sup>rd</sup> Respondent contended that there was no notice for the alleged meeting held on 16.9.2009 to him. It is an absolute falsehood to allege that the appellant has been selected as trustee. The 3<sup>rd</sup> respondent does not aware of any Writ Petition filed against the Board and the 3<sup>rd</sup> respondent was not made as party in the Writ Petition. Further the W.P.No.6431/2010 related to return of movable and immovable property and not for appointment or selection of Hereditary Trustee, and prayed to dismiss the appeal as devoid of any merits.

4. I heard S.S.Jothivani, Counsel for the appellant, S.D. Ramalingam, Counsel for the 2<sup>nd</sup> Respondent and Mrs. S.L. Kalavathy, Counsel for the 3<sup>rd</sup> Respondent and perused the relevant records. The office of trusteeship was declared as hereditary in O.A.No.258/1947 dated 15.12.1947. In M.P.No.46/1965 dated 20.07.1966, Thiru V.M.Thiyagaraja Achary was recorded as the next in the line of succession to the office by the then Deputy Commissioner. In the impugned order, the Joint Commissioner has observed as follows:

“ ஆவணங்களின் அடிப்படையில் திரு.டி.கணேசன் என்பவரை பரம்பரை அறங்காவலர் பதவி வகிக்க சட்டப்பிரிவு 54(1)ன் கீழ் உரிமையுடையவர் என்று தீர்மானிக்கப்பட்டு அவ்வாறே பதிவு செய்யப்படுகிறது.....மேற்கண்ட விசாரணையில் தங்களை ஈடுபடுத்தி கொள்ளாததாலோ வாரிசுச் சான்று அளிக்காததாலோ விண்ணப்பித்துக் கொள்ளாததாலோ சட்டமுறை வாரிசுதாரர்களில் எவரேனும் பதிவு செய்ய விரும்பமிருப்பின் எதிர்காலத்தில் அவர்கள் உரிமை கோர இவ்வுத்திரவு எவ்விதத்திலும் தடையாக அமையாது”. Therefore, if the appellant wants to recognize him as the next in the line of succession to the office of Hereditary Trustee, he is at liberty to file necessary application before the Joint Commissioner, Chennai under Section 54 (1) of the Act with relevant documents.

On the other hand if the appellant has rival claim to office against the 3<sup>rd</sup> respondent herein, this is not the right forum to decide the rival claim and such matters shall be decided only by competent Civil Court.

Moreover, under section 54(4) of the Act any person aggrieved by an order of the Joint Commissioner of the Deputy Commissioner, as the case may be under sub section (3) may, within one month from the date of receipt of the order by him, appeal against the order to the Commissioner. But this appeal is filed against the order passed by the Joint Commissioner under section 54(1) of the Act. Therefore, the appeal as filed is not maintainable as per the provisions of the Act and is liable to be dismissed as not maintainable. Accordingly, the appeal is dismissed as not maintainable. However, the appellant is at liberty to approach the competent Civil Court to make out his case if so advised.

/typed to dictation/

Sd. P. Dhanapal  
Commissioner.

/true copy/by order/

Superintendent.

To

1. The Appellants through M/s. Jothivani, Advocate, 293, New Addl.Law Chambers, High Court Buildings, Chennai 600 104.
2. The 1<sup>st</sup> Respondent/The Assistant Commissioner/Thakkar (officiating), Sri Shanmuga Selva Vinayagar Thirukoil, Kachaleeswarar Thirukoil, Armenian Street, Chennai. 1.
3. The 2<sup>nd</sup> Respondent/Executive Officer, Shri Shanmuga Selva Vinayagar Thirukoil, Mallegeswarar Thirukoil, No. 277, 278, Lingi Chetty Street, George Town, Chennai.1/ through M/s.S.D.Ramalingam, Advocate New 321, Old156, Linghi Chetty Street, Chennai.1
4. The 3<sup>rd</sup> Respondent through Mrs. S.L. Kalavathy, Advocate, 55, Law Chambers, High Court buildings, Chennai.104.

Copy to:

5. The Joint Commissioner, HR & CE Admn.Dept., Chennai.
6. The Inspector, HR & CE Admn.Department, Circle II, Chennai.
7. The Assistant Commissioner, HR&CE Admn.Department, Chennai.
8. Extra.