

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

.....day the                      day of November,Two thousand twelve.

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

**A.P. 37/2010.**

**Between**

1. K.M. Chinnu Gounder.
2. G.A. Palanisamy.
3. S. Raja.
4. K.M. Kandasamy.
5. P. Rathinasabapathy.                      ..                      Appellants.

**And**

1. The Joint Commissioner, HR & CE Admn.Dept., Salem.
2. T.K. Rajeswaran, S/o T.M. Kalianna Gounder.                      ..                      Respondents.

In the matter of Arulmigu Pathinettupatti Mariamman Temple, Kumaramangalam village, Thiruchengode Taluk, Namakkal District.

Appeal petition filed under Section 69(1) of the Tamil Nadu HR&CE Act 22 of 1959 (Tamil Nadu Act 22 of 1959) against the order dated 5.5.2010 of the Joint Commissioner, HR & CE Admn.Dept., Salem in cancelling the draft scheme issued in O.A. 16/2007 filed under Section 64 (1) of the Act.

**A.P. 38/2010.**

**Between**

1. G.A. Palanisamy.
2. N. Sadhasivam.
3. S. Thangavelu.
4. N. Kandasamy.
5. K.M. Chinnu gounder.
6. C. Palanisamy.
7. S. Raja.
8. N. Muthusamy.                      ..                      Appellants.

**And**

1. The Joint Commissioner,HR & CE Admn.Dept., Salem.
2. T.K. Rajeswaran, S/o T.M. Kalianna Gounder.                      ..                      Respondents.

In the matter of Arulmigu Ponkalamman Temple, Kumaramangalam village, Thiruchengode Taluk, Namakkal District.

Appeal petition filed under Section 69(1) of the Tamil Nadu HR&CE Act 22 of 1959 (Tamil Nadu Act 22 of 1959) against the order dated 5.5.2010 of the Joint Commissioner, HR & CE Admn.Dept., Salem in cancelling the draft scheme issued in O.A. 17/2007 filed under Section 64 (1) of the Act.

**Common Annexure to Order in R.Dis. A.P. 37 and 38/2010 D2 dated : 11.2012.**

The above Appeal Petition has been filed against the order dated 5.5.2010 of the Joint Commissioner, HR & CE Department, Salem in O.A. 16/2007 and O.A. 17/2007 filed under Section 64 (1) of the Act canceling the draft scheme and ordered the above temples as a public temple.

2. The Appellants have contended that the above institution is a community temple, coming within the meaning of Section 51 read with Section 64 (1) of the Act. The above Temple has been maintained and managed by the members belonging to Thoorankulam sect a sub-sect of Kongu Vellalars, who are permanently residing at Kumaramangalam village, Tiruchengodu Taluk, Namakkal District, for whose benefits the institution has been chiefly intended and maintained. The appellants have filed O.A. 17/2007 before the Joint Commissioner, HR & CE Admn.Dept., Salem under Section 64 (1) of the Act for framing a scheme to incorporate a permanent provision to appoint non-hereditary trustees from and amongst the members belonging to Kongu Vellala Community, who are permanently residing in Kumaramangalam village. After considering the evidence on records, having established the community nature and after enquiry in the above O.A, the Joint Commissioner, Salem has issued a draft scheme

inviting objections from the public for issuing final scheme. The 2<sup>nd</sup> Respondent herein has the only person objected the framing of a scheme without any evidence. The Joint Commissioner has no jurisdiction to dismiss the O.A. after framing a draft scheme. The appellants have further contended that the above order of the Joint Commissioner may be rejected and the matter has to be remanded to the Joint Commissioner, Salem for confirmation of the above draft scheme.

3. Thiru W.C. Thiruvengadam, Counsel appeared for the appellants. Thiru C.M. Krishnakumar, Counsel appeared for the 2<sup>nd</sup> Respondent. I have heard the counsel and perused the connected records. The Counsel for the appellant argued that against the draft scheme no appeal was preferred under Section 69 (1) of the Act by anybody. The 2<sup>nd</sup> respondent herein did not file any documents to substantiate his objection. No enquiry was conducted by the Joint Commissioner. No opportunity was given to the appellant to cross examine the 2<sup>nd</sup> respondent herein. The counsel for the 2<sup>nd</sup> respondent has argued that as per Rule 2 ( c ) of the framing of Scheme Rules, all representations submitted in time by the trustee or the Assistant Commissioner, if any or persons having interest shall be taken into consideration by the Joint Commissioner/Deputy Commissioner in settling modifying or canceling the scheme. And the appellant herein themselves admit in the reply affidavit filed before the Joint Commissioner, that Vettuva Gounder are doing service in the temple and pooja and festivals are conducted by collecting money from the Pangalis.

4. I perused the records. The Joint Commissioner is satisfied and came to a premature conclusion to settle a scheme of administration as prayed by the appellants and issued draft scheme. Subsequently, he dismissed the O.A. confirming the scheme, without adducing any valid reasons. As pointed out by the Counsel for the appellant, the Joint Commissioner did not specify the documents filed by the 2<sup>nd</sup> Respondent if any.

And no opportunity was given to the appellant herein to examine the objector/2<sup>nd</sup> Respondent and documents. Before revering his earlier decision, the Joint Commissioner has to conduct fresh enquiry after affording reasonable opportunity to the parties concerned. The Joint Commissioner witho9ut adducing/analyzing the evidences, passed the impugned order ..... Therefore, the order dated 5.5.2010 of the Joint Commissioner, Salem suffers from infirmity as stated above and deserved to be set aside and accordingly, it is hereby set aside. The matter is remitted back to the Joint Commissioner to hold an enquiry denova after affording the appellant and others an opportunity of being heard and dispose of the same in accordance with law within a period of 3 months from the date of receipt of a copy of this order. The appellant and respondent shall also co-operate for the expeditious disposal of the O.A. enquiry without any default. With the above directions, the appeal petition is disposed of.

/typed to dictation/

Commissioner.