

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

Friday the 16th day of November, Two thousand and twelve.

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

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.
9. K.M. Kandasamy

.. 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 made in O.A. 17/2007 filed under Section 64 (1) of the Act.

Annexure to Order in R.Dis. A.P. 38/2010 (D2) dated : 16.11.2012.

The above Appeal Petition has been filed against the order dated 5.5.2010 of the Joint Commissioner, HR & CE Department, Salem made in O.A. 17/2007 filed under Section 64 (1) of the Act cancelling the draft scheme already issued on 6.1.2010 calling for objections, suggestions and representation if any therein and ordered Arulmigu Ponkalamman Temple, Kumaramangalam village, Thiruchengode Taluk, Namakkal District as a public temple.

2. The Appellants have contended that the above said 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 with suitable provision to safeguard the interest of the temple that the trustees may be selected and elected once in three years from among the people of "Thoorankula Koottam of Kongu Vellalar" of Kumarangulam village and surrounding villages. After considering the evidence on records and after enquiry in the above O.A, the Joint Commissioner, Salem has issued a draft scheme inviting objections suggestions and representation from the public on the draft scheme. The 2nd Respondent herein is the only person objected the framing of a scheme without any evidence, and no valid reasons had been filed by him. But the Joint Commissioner by the impugned order on an erroneous appreciation of facts instead of confirming the draft scheme, dismissed the Original Application and held that the temple is a public temple worshipped by all community. The Joint Commissioner has no jurisdiction to dismiss the O.A. after framing a draft scheme without relying on adequate evidence and records to establish that the temple is being worshipped by all the members of the community. The appellants have further contended that the above order of the Joint Commissioner may be rejected and the matter may be remanded back 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 2nd 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 2nd 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 appellants to cross-examine the 2nd respondent herein. The counsel for the 2nd 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 cancelling the scheme". And the appellants herein themselves admit in the reply affidavit filed before the Joint Commissioner, that other community people are

doing service in the temple and pooja and festivals are conducted by collecting money from the members/devotees of Thooran Kulam Pangalis.

4. I perused the records. The Joint Commissioner was satisfied and came to a premature conclusion to settle a scheme of administration as prayed for by the appellants and issued a draft scheme calling for objections, suggestions and representations. Subsequently, he dismissed the O.A. and cancelled the draft scheme on the basis of the objections raised by the 2nd Respondent.. As pointed out by the Counsel for the appellants, the Joint Commissioner did not record any evidence and analyze the documents if any filed by the 2nd Respondent, and his finding to over rule his earlier decision, No opportunity was given to the appellants herein to cross-examine the objector/2nd Respondent. Before arriving at a subjective satisfaction deviating from the earlier decision, the Joint Commissioner has to afford reasonable opportunity to the parties concerned. Therefore, the order dated 5.5.2010 of the Joint Commissioner, Salem suffers from infirmity as stated above and is liable 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 appellants and others a reasonable opportunity of being heard, record their evidence 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 appellants 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/

Sd. P. Dhanapal,
Commissioner.

/ true copy/ by order/

Superintendent.