

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

Friday the 28<sup>th</sup> day of December, Two thousand and twelve.

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

**A.P. 88/2010 D2**

**Between.**

1. D. Boovaraga Pillai,  
S/o Duraisamy Pillai.
2. Mr. Varadaraja Pillai (died) .. Appellant

**And**

1. The Joint Commissioner,  
HR & CE Admn.Dept., Villupuram.
2. R. Jayaraman Pillai.
3. K. Karuthamani Konar. .. Respondents

In the matter of Arulmigu Selva Vinayagar and Varadarajaperumal Temple, Putheri village, Thittakudi Taluk, Cuddalore District.

Appeal Petition filed under Section 69(1) of the Tamil Nadu HR&CE Act, 1959 (Tamil Nadu Act 22 of 1959) against the order dated 19.10.2010 of the Joint Commissioner, HR & CE Admn Department, Villupuram dismissing the O.A.No.31/2006 filed under Section 63 (b) of the Act for default of the petitioner.

Annexure to Order in R.Dis. A.P. 88/2010 (D2) Dated : 28.12.2012.

The facts of the appeal is that appellant as petitioner originally filed Original Application No.12/1995 under section 63(b) of the Act, before the Joint Commissioner, H.R.&C.E. Admn. Dept., Mayiladuthurai which was later transferred to the file of the Joint Commissioner, H.R.&C.E. Admn Dept., Villupuram and renumbered as O.A.No.31/2006. Regular enquiry was completed two years earlier by examining the witnesses and also filing the records. The case was adjourned for want of Inspector evidence and was finally adjourned to 19.10.2010. But, the Joint Commissioner, on 19.10.2010 dismissed

the O.A.No.31/2006 for default without even looking into the records available on file which has led to the miscarriage of justice. During trial, the second appellant has expired and in his place all his children were brought on record by filing Interlocutory Application and it was allowed by the Joint Commissioner. The amended copy of petitioner was filed into the Court, but in the impugned order dated 19.10.2010 there is no mention of the legal heirs of the deceased appellant in the cause title which is also a gross error which is apparent on the face of the record. Therefore, the order of the Joint Commissioner is liable to be set aside and remand the matter to the Joint Commissioner for passing final orders.

2) The 2<sup>nd</sup> respondent herein entered appearance and filed vakalath through his counsel but filed no counter affidavit rebutting the case of the appellant. The 3<sup>rd</sup> Respondent neither appeared in person nor through his counsel and remained ex-parte.

3) I heard Thiru W.C.Thiruvengadam learned counsel for the appellant and Thiru V.T.Srinivasan, learned counsel for the 2<sup>nd</sup> Respondent.

4) It is seen from the records, that when the matter was taken up for enquiry on 19.10.2010, there was no representation on behalf of the appellant/petitioner and the appellant/petitioner was called absent. So, the Joint Commissioner passed orders dismissing the O.A. for default of the petitioner. As the Original Application was not decided on merits and without filing necessary interlocutory application to set aside the ex-parte dismissal order and for restoration of the Original Application before the original authority, the appeal preferred by the appellant is not at all maintainable and sustainable in law. However, to meet the ends of justice, it would be appropriate that the impugned orders passed by the Joint Commissioner has to be set aside and the matter remitted back to the file of the original authority providing an opportunity to the appellants, the respondents herein and

other persons having interest, if any, to put forth their case and to decide the matter on merits and in accordance with law.

5) Therefore, without expressing anything about the merits of the case, the impugned order of the Joint Commissioner, HR&CE Admn. Dept., Villupuram dated 19.10.2010 passed in O.A.No.31/2006 is hereby set aside and the matter is remanded back to the Joint Commissioner for due enquiry providing an opportunity to the appellants, the respondents herein and other persons having interest, if any, to put forth their case and for passing final orders on merits and in accordance with Law. The appellants and the respondent shall also co-operate with the expeditious disposal of the O.A. enquiry without any default. With the above direction the appeal petition is disposed of.

/typed to dictation/

Sd. P.Dhanapal,  
Commissioner.

/true copy/by order/

Superintendent.