

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

Tuesday the 23rd day of April, Two Thousand and thirteen.

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

A.P. 16 /2011 D2

Between.

R. Prabhamurthy
S/o Rangaswamy.

... Appellant.

And

1. E. Narayana Reddy
S/o Elasappa

2. D. Narayanamma
W/o Thasappa Reddy.

3. A. Venkatesh
S/o Poojarappa.

... Respondents

In the matter of Arulmigu Hanumantharayaswamy Temple,
Thummanapalli, Hosur Taluk, Krishnagiri 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
08.12.2010 passed in R.Dis.No.4029/2010 B1 on the file of the Joint
Commissioner, HR&CE Admn Department, Salem, dismissing the
application under Section 63 (b) of the Act.

Annexure to Order in R.Dis.A.P.No.16/2011 (D2) dated: 23.04.2013.

The above appeal petition has been filed against the order dated
08.12.2010 passed in R.Dis.No.4029/2010 B.1 on the file of the Joint
Commissioner, HR&CE Admn Department, Salem dismissing the original
application filed by the appellant herein under Section 63 (b) of the Act
without taking it on file.

2. The appellant as petitioner took out an application in terms of
Section 63(b) of the Act before the Joint Commissioner, HR&CE Admn
Dept., Salem. The Joint Commissioner after enquiry dismissed the
original application holding that the documents filed along with the
application go to show that petitioner's ancestors had only acted as

poojaries and no document has been filed about the management of the temple and the appointment of non-hereditary trustees and fit person by the Department go to show the temple as public and the petitioner has failed to establish his case through authenticate evidence that the management vested in his family continuously for three generations.

3. The appellant contended that the order of the Joint Commissioner in rejecting the application filed under section 63(b) of the Act on the ground of maintainability without hearing the appellant is illegal, unjust, contrary and against the settled principles of law. The Joint Commissioner erred in rejecting the application without conducting proper enquiry. The Joint Commissioner failed to afford opportunity to the appellant to substantiate his case on merit. Without affording an opportunity to the applicant to present his case, the order in rejecting the application holding that the applicant has not produced the documents to substantiate the case reveals non application of mind. The order made under Section 63 (b) of the Act requires a detailed enquiry. But the Joint Commissioner has rejected the application without even numbering it on frivolous grounds makes the order perverse. The Joint Commissioner ought to have seen that the issue before him is an application under Section 63 of the Act and the same is entirely different from that of the revision filed against the order of the Assistant Commissioner in Na.Ka.653 of 2009 A3 dated 24.2.2009, when such be the case, the order of the Joint Commissioner in rejecting the application placing reliance on the reply in Revision, reveals non application of mind and per se the Joint Commissioner has failed to understand the scope of Section 63 of the Act. The Joint Commissioner failed to appreciate the fact that the applicant has presented the documents of the year 1862, viz. Inam and title deeds to substantiate that the above temple was managed, maintained and poojas were performed by the his forefathers and further the same was done by his ancestors hereditarily and hence the Joint Commissioner ought to have conducted a detailed enquiry. Therefore, the order of the Joint Commissioner is liable to be set aside.

4. The respondents entered appearance through counsel filed Vakalathnama and no counter affidavit has been filed. The above appeal petition was taken up for hearing on several dates. All the times both the appellant and his counsel having been called absent and there is no representation on their behalf. The reasons for refraining from appearing for the enquiry before this forum for the reasons best known to them is also not known.

5. I heard M/s. A.S.Kailasam and Associates, Counsel for the Respondent and perused the records. On a perusal of the impugned order of the Joint Commissioner, it is seen that the Joint Commissioner without taking the Original Application on file, assigning any number, affording any reasonable opportunity of hearing to the appellant and other persons having interest if any to adduce evidence both oral and documentary, examination and cross examination of the witnesses and marking of evidence, has simply passed the impugned order, rejecting the claim of the appellant, which is not in consonance with the Act and C.P.C. Therefore, the impugned order suffers from the procedural irregularity as stated supra and is liable to be set aside. Accordingly, the impugned order is set aside and the matter is remitted back to the Joint Commissioner for denova enquiry with a direction to take the application on file, number the same, issue notice of enquiry, hear all the parties, record their evidence both oral and documentary, obtain the report of the Inspector and the Assistant Commissioner and also hear the arguments of all the counsels and take such decision in accordance with law within a period of three months from the date of receipt of a copy of the order. With the above direction the appeal petition is closed.

/typed to dictation/

Sd. P. Dhanapal,
Commissioner.

/ true copy/by order/

Superintendent.