

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

Friday the 31st day of May, Two Thousand and Thirteen.

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

A.P. 18/2011 D2

Between.

1. K.P. Pitchai alias Natchakone
2. P. Rajendran.
3. P. Munnamalai.
4. N.K.Veeranakone.
5. N. Pitchai.
6. N.KR. Ramakrishnan.
7. M. Kanthimathi.
8. V. Muneeswaran.
9. V. Selvam.
10. N. Vijayan.
11. N. Arjunan.
12. T. Krishnan.
13. V. Sivakumar.
14. K.P. Ganapathy.
15. N. Athi Kone.
16. M. Ramesh Munnamalai.
17. N. Munnamalai @ Natcha Kone.
18. V. Yogeswaran.

.. Appellants.

And:
Nil

.. Respondents

In the matter of Arulmigu Selvavinayagar Temple, Arumbanur,
Madurai North Taluk, Madurai District.

Appeal Petition under Section 69(1) of the Tamil Nadu HR&CE Act,
1959 (Tamil Nadu Act 22 of 1959) against the order dated 10.03.2001
made in O.A.No.25/1993 on the file of the Joint Commissioner, HR&CE
Admn Department, Madurai dismissing the original application filed
under Section 63(a) of the Act.

Annexure to Order in R.Dis.A.P.18/2011(D2)Dated: 31.5. 2013.

1. The appellants contended that the predecessors of the appellants had built a small Vinayagar temple in their own land out of their own funds for the benefit of their family more than 80 years ago. It is enclosed by a compound wall on all the four sides. The entrance gate is under lock and key. The Key and full control of the temple is with the appellants. Except the appellants and their family members no one else have any access to the temple. There is no other deity in the temple. The temple is not intended for Public worship and not worshipped by the public. The temple has no gopuram, no tank, no praharam, no hundial, no uthsavamoorthy, no procession and no dharmakartha for the temple. No prasadam is being distributed to the public at any time. The poojaris appointed by the appellants is being paid by them. The appellants' predecessors had earmarked 2.68 acres of land for the maintenance and upkeep of the temple. As per the evidence on record, the irresistible conclusion is that the temple is not a public temple. But, the Joint Commissioner erroneously dismissed the application, which is contrary to law. Therefore, the order of the Joint Commissioner is liable to be set aside as illegal.

2. The above appeal petition was filed with a delay of 134 days which was condoned on 08.03.2011 and taken on file and stood posted for hearing on 07.06.2011, 27.07.2011, 03.01.2012, 13.03.2012, 19.06.2012, 16.10.2012 and 19.3.2013. But on all the times neither any one of the appellants nor their counsel appeared for enquiry. The appellants and their counsel having been called absent and remained ex-parte. The reason as to why they abstain from appearing for the enquiry is not known. There is no representation on their behalf. Hence, on the basis of the available evidence on record, the matter is decided on its own merits.

3. I perused the grounds of appeal and perused the relevant records. The appellants claimed both in the original application as well as in the appeal that the temple was built in their own land and the appellant's predecessors had endowed property to the temple. As per the 1-15 registers prepared by the Special Tahsildar (Temple Lands), HR&CE Admn Dept., Madurai and approved by the Commissioner of this Department, the temple is situated in S.No.45 on an extent of 0.06 cents comprised in 1.92 Acres of lands classified as "Oorani Poramboke" land. Therefore, the averment that the temple was built in the own land is disproved by solitary evidence. In the Judgment reported in AIR 2001 SC 3389, the Hon'ble Supreme Court held that in the absence of other evidence as to who founded or established the temple, the fact that the temple has been built on a poramboke land, it may be a circumstance pointing in favour of the temple being a public temple.

4. The contention that the ancestor of the appellants had endowed 2.68 acres of lands for the upkeep and maintenance of the temple is also not proved and supported by any piece of document. There is no answer as to how vast extent of landed properties stands in the name of the deity, how it acquired and who endowed?

5. The next contention that the temple has no gopuram, no tank, no praharam, no hundial, no uthsavamoorthy, no procession and no dharmakartha for the temple and no prasadams distributed to the public at any time and as per the evidence on record, the irresistible conclusion is that the temple is not a public temple deserves no consideration because the definition of 'temple' in the Act is so comprehensive as to include any place irrespective of installation of idols or buildings or a tower etc. Some of the tests to be applied to decide whether a 'temple' is public or 'private' has been discussed in 1963 2 MLJ 280 "In order to constitute a temple as defined in Section 6(17) of the HR&CE Act, 1951, it has to be proved that the place was and is being used for public religious worship and that it has been dedicated to and for the benefit of or used

as of right by the Hindu community or any section thereof as a place of religious worship". Therefore, suffice is that if the place is used as a place of 'public religious worship' by the Hindu Community or a section thereof and dedicated as such, it becomes a temple and a religious institution and if the Hindus or a section of Hindus believe that there is divine presence in an idol irrespective of the fact that such idol had been installed or consecrated according to Hindu rituals and ceremonies enjoined by Agama Sastras and also believe that by worship of such idols they acquire material and spiritual benefits and with that object worship such idols, they become object of public religious worship as was decided by the Hon'ble Court of Record.

6. It has been held in 1957-2-MLJ (NRC) 34 that "It is not necessary that the worship should be by the entire Hindu community. Even user of the place by a particular section of the Hindu community as of right and a dedication for the benefit of a particular section of the community will suffice to attract the definition". 1964-1-MLJ 239, it has been held that "Even if it is shown that the temple was founded for the use of a particular section of the case which consists of several families not shown to be otherwise than very distantly related to one another, then they can be considered only as a section of the Public". It is seen from the statement given before the Inspector under Ex.C.1, the 1st appellant have stated that the temple is being administered by turn system for each year among the 18 pangali families, who are also a section of the Hindu Public.

7. The employment of a paid archaka is one of the strong presumptions of a public temple. The temple has been under the supervisory control of the Department and contribution and audit fee was also levied from fasli 1387 to 1400 under section 92(1) & (2) of the Act. In 2001 (2) CTC 513 it was held that where a person alleges that the temple under consideration is a private temple and not a public temple, the onus of proof is on the person alleging that it is a private temple. But

the appellants herein did not produce any documents to prove that the suit temple was founded in their own land and lands dedicated by their predecessors by adducing cogent satisfactory evidence both oral and documentary. In the absence of any records about the origin of the temples and endowment of property for its support, the Joint Commissioner has rightly decided the Original Application and I see no iota of evidence to interfere with the said order. The appellants have failed to make out a case as claimed. In fine, the appeal petition deserves no merits and is liable to be dismissed. Accordingly, the order dated 10.03.2001 made in O.A.No.25/1993 passed by the Joint Commissioner, HR&CE Admn Department, Madurai is hereby upheld and confirmed and the appeal petition is dismissed as devoid of any merits.

/ typed to dictation/

Sd. P. Dhanapal,
Commissioner.

/ typed to dictation/

Superintendent.