

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. 33 /2011 D2

Between

1. P. Venkatachalam Achari.
2. V. Karuppiah Achari.
3. M. Natarajan Achari.
4. . Murugiah Achari.
5. V. Subramania Achari.
6. P. Selvam.
7. S. Venkatachalapathi

... Appellants.

And

Nil

... Respondent.

In the matter of Arulmigu Karpaga sundara vinayagar Temple,
Thenkasi Town, Tirunelveli 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 23.11.2010 passed in O.A.No.5/2003 by the Joint Commissioner, HR & CE Admn.Department, Tirunelveli dismissing the Original Application filed under Section 64 (1) of the Act, seeking to frame a scheme of administration to the above temple.

Annexure to Order in R.Dis. A.P. 33/2011 (D2) dated: 23.4.2013.

The above appeal petition has been filed by the appellants herein under Section 69(1) of the Act, aggrieved by the dismissal order dated 23.11.2010 made in O.A. No. 5/2003 by the Joint Commissioner, H.R. & C.E. Admn.Department, Tirunelveli declining to frame a scheme of administration for the proper administration of the above temple under Section 64 (1) of the Act.

2. The appellants as petitioners filed Original Application No. 5/2003 under Section 64 (1) of the Act seeking to settle a scheme for the proper administration with a provision to appoint non-hereditary trustees exclusively from among the seven pangalies of Viswakarma community (Carpenter). The Joint Commissioner dismissed the above Original Application stating that the petitioners' community has not contributed anything for the development of temple and proper administration of the temple and its properties, and there is no reason to believe a scheme should be settled to the institution as prayed for and the provisions available under the Act for appointment of Non-hereditary trustees from all the communities will pave way for better management. Though the petitioners exercised control over the temple, they failed to maintain and produce proper accounts for the income received through rental collection from the shops owned by the temple, the amount realized as donation from the community people for the maintenance, upkeep the festival of the temple, and the expenses defrayed from such income and further failed to take appropriate action to collect the lease amount in kind from the tenants who are in possession and enjoyment of the properties of the temple.

3. The appellants contended that the Joint Commissioner, having accepted that the appellants are the trustees of the temple and the temple was constructed and maintained only by the community, ought not to have dismissed the application. The Joint Commissioner has failed to note that the patta and electricity connection are also in the name of the appellants, and also the appellants proved their case beyond doubt. The Joint Commissioner failed to consider the Civil Court Judgment and the Order. The only point considered by the court below is that no account books are maintained by the temple that there are no details about the rents collected and how the rent is utilized. The appellants also contended that the Inspector has clearly stated that the temple is getting a monthly rent of Rs.2750/- from the shops. The

Inspector has erroneously stated in his report that the priest of the temple is being paid Rs. 100/- per month and Rs. 1200/- per year. Actually, the evidence given by the Petitioner PW1 is that the Temple priest is being paid a sum of Rs. 100/- daily, for purchasing camphor, oil, flowers and other pooja articles like coconut, plantain, beetles etc. The temple is spending more than Rs. 3000/- p.m. for conducting day to day pooja in the temple. But the income from the shop is Rs. 2750/- only. That is why no separate account is maintained. The Appellants are spending considerable amount from out of their pocket for preparing prasadam and other temple festivals. It is only a private temple being run and managed by Achari caste people alone and there is no Hundi in the temple and is being managed by the Hereditary Trustee.

4. The above Appeal Petition came up for hearing on 17.8.2011, 12.10.2011, 24.4.2012, 11.12.2012 and 29.1.2013. On all occasions neither the appellants nor their counsel on record appeared and having been called absent and remained ex-parte. There is no proper representation on their behalf. The reason as to why they abstained from the enquiry is also not known. This shows their reluctant attitude to pursue their case in the proper perspective. Therefore, in their absence, on the materials available on file, the matter is considered and orders passed on merits.

5. I perused the order and annexure to the order passed by the Joint Commissioner. When once, the Joint Commissioner has come to a conclusion that the documents filed by the petitioners goes to reveal that the temple administration vests with 7 pangalies of Viswakarma (Carpenter) community residing at Thenkasi, the reason assigned by whom and how they have been elected is not proved and whether they were in continuous management of the temple from its inception, and non-maintenance of the accounts, will not be the only ground for rejecting their prayer. If the Joint Commissioner is having any such doubts, he ought to have directed the petitioners to produce the evidence

on that respect and decided the case on its merits. Further a scheme of administration is framed to any religious institution for its proper and better administration only. If it was brought to the notice and knowledge of any of the authorities under the Act that the management of a temple is not properly administered in accordance with the provisions of the Act, then it is the bounden duty of that authority to guide the persons in the management of the religious institution properly by explaining the various provisions of the Act, who may be unaware of such provisions and the need for maintenance of proper records, registers and returns and its submission as per the Act. In the absence of any such instruction issued to the petitioners, the decision that it is not advisable in the interest of development of the temple to entrust the management of the temple to the petitioner's community is not just and proper. Under Section 51 of the Act, the appropriate authority shall have due regard to the claims of persons belonging to the religious denomination for whose benefit, the institution concerned is chiefly intended or maintained. Therefore, it is clear that the Joint Commissioner has not properly considered the case of the appellants in its proper perspective which deserves to be remitted for reconsideration afresh for the discussion made supra. Therefore, the order of the Joint Commissioner stand set aside and the matter is remitted back to the Joint Commissioner for denova enquiry on the basis of the records produced and if any to be produced by the appellants and other persons having interest if any. Such exercise shall be exercised within a period of three months from the date of receipt of a copy of order. With the directions, the appeal is disposed of.

/ typed to dictation/

Sd. P. Dhanapal,
Commissioner.

/ true copy/ by order/

Superintendent.