

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

Tuesday the 30<sup>th</sup> day of April, Two Thousand and Thirteen.

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

A.P. 55/2011

Between.

1. V. Olaganathan  
S/o E.R. Vaikundam Pillai.
2. K. Muruganandam  
S/o N. Kandapillai. ... Appellants.

And

1. The Joint Commissioner,  
HR&CE Admn. Department,  
Tirunelveli.
2. S.C. Thanupillai.
3. V. Eswaran Pillai.  
N. Subbaiah Pillai (Died).,
4. S. Sankaran Pillai.
5. N. Sooria Narayanan Pillai.
6. S. Sivasankara Subbu Pillai.
7. P. Shenbagavel Murugan.
8. P. Gomathinayagam Pillai.
9. S. Murugan Pillai.
10. S.M. Piramanayagam. ...Respondents.

In the matter of Arulmighu Kandukonda Vinayagar and  
Ulagamutharamman Temples, Udankudi village and Post, Tiruchendur  
Taluk, Tuticorin 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: 27.07.2010  
made in O.A.No.4/1993 by the Joint Commissioner, HR&CE Admn  
Department, Tirunelveli dismissing the original application filed by the  
Respondents 2 to 5 herein under Section 64(1) of the Act.

Annexure to Order in R.Dis.A.P.No.55/2011 ( D2) dated: 30.4.2013.

The appellants contended that the Respondents 2 to 5 herein took out an original application in O.A.No.4/1993 under Section 64 (1) of the Act praying to settle a scheme for the proper administration and better management of Arulmighu Kandukonda Vinayagar and Ulagamuthar amman Temple, Udangudi village, Thiruchendur Taluk, Thoothukudi District with provision for appointment of non-hereditary trustees from among the members of Saiva Pillaimar community of Udangudi village. But, the Joint Commissioner dismissed the application holding that appointing of trustees from all communities is desirable as per the provisions of the Act. As the respondents 6 to 10 herein though got impleaded as party respondents in the O.A remained ex-party and did not agitate the matter. In the interest of the community people they cannot now file appeal against the order of the Joint Commissioner passed in O.A.No.4/1993 dated 21.07.2010. Amongst the petitioners in the above said O.A.4/1993, after the dismissal of the said O.A.No.4/1993, they are not united in prosecuting the said Original Application, which will, certainly cause damage to the community institution and therefore, the appellants have come forward with the regular appeal as third parties-appellants.

2. Even though the appeal was filed with a delay of 6 months and 29 days, the delay in filing of the appeal was condoned and the appeal was taken up on file.

3. The case of the appellants is that the temples in question are Public Religious Institution. However, the management and maintenance had been vested with the members belonging to Saiva Pillaimar community of Udangudi village. The community members consisting of 150 houses of Saiva Pillaimar, who are permanently residing in Udangudi village from time immemorial, and the aforesaid temples have been founded and established, maintained and managed by the members

of the aforesaid community, for whose benefit the temples had been chiefly intended and maintained and at no point of time, the trust board has been constituted for the temple without the members belonging to the aforesaid Saiva Pillaimar community of Udangudi village. The properties have been purchased and endowed in the name of the temple by the aforesaid members for whose benefit the temple has been chiefly intended and maintained.

4. Earlier one Swaminatha Pillai had obtained a declaration in O.A.No.101/1951 as the person holding office as hereditary trustee on the basis of the community representation. Later he had given away their hereditary rights and trustees have been elected and constituted from and amongst the members of the aforesaid community and therefore, the present character of the temple is community in nature getting protection under proviso to section 64(1) of the Act read with section 51 and 107 of the Act.

5. All the members belonging to the aforesaid community are controlled by a sangam not registered under the society Registration Act however the trustees are constituted and appointed, selected and recommended by the members of the aforesaid community during their Mahasabai or General body meeting. Therefore, the interest of the community should be protected and a scheme should be settled with provisions for appointment of trustees from among the Saiva Pillai community of Udangudi village.

6. I heard Thiru M. Rukmangathan, Counsel for the appellants and perused the relevant records. The counsel for the appellants urged the grounds of memorandum of appeal. It is pertinent to note that the appellants herein have neither filed any Original Application before the Joint Commissioner seeking to frame a scheme under Section 64(1) of the Act now pleaded in this appeal, nor got impleaded as party-respondents in O.A.No.4/1993 and prosecuted the case. Having slept over the matter for the past so many years and a mute spectator now

chosen to file this appeal challenging the order of the Joint Commissioner at this distance of time without filing any valid materials to substantiate their contentions.

7. On a perusal of the entire file in O.A.No.4/1993, it is learnt that both the temples are separately assessed for contribution and audit fees and under the supervisory control of the Department even before 1936 and for the past over 70 years, the Department is appointing trustees to these temples calling for applications from among the Hindu public of that locality. There is no proof that one Saminatha Pillai had filed O.A.No.101/1951 before the then Deputy Commissioner, HR&CE Admn. Dept., Thanjavur and got an order as hereditary trustee. But it is learnt that one Thiru Kuthalam pillai trustee sold the temple land to one Thiru C.D.Muthukaruppan and also a land to one Thiru Shanmugam Pillai and one of the trustee K.Jeganathan Pillai had also encroached upon the temple lands and constructed a house therein and still living there. The petitioners in O.A.No.4/1993 had not denied these complaints on cross examination by the respondents counsel. PW1 in his evidence simply pleads ignorance of the same. Thus, it is clear that the non-hereditary trustee hail from Pillai community for whose interest the appellants now pleads had alienated the temple properties and misappropriated the sale proceeds. Above all one Thiru Muruganantham and another Thiru P.Meenakshi Sundaram said to have been representatives of Udangudi Pillaimar Community filed a suit in O.S.No.59/1988 against the Assistant Commissioner, HR&CE Admn. Dept., Tirunelveli for a declaration that these temples are denominational temples belongs to Pillaimar community and for a permanent injunction restraining the Department from interfering with the management of the temples and the said suit was dismissed as not pressed on 05.07.1993.

8. The Joint Commissioner has also discussed that Ex.A.1 is the kumbabisegam invitation which assures the contribution and involvement of public of other community also and there is nothing

about the pillaimar community people exclusive performance. Ex.A.2 Kumbabishegam printed accounts disclose that donation and vari were collected from other community people also, and other community people also liberally contributed for the temples kumbabishegam. The Joint Commissioner has observed that the petitioners have failed to file the minutes book to establish their claim that the elected members of their community alone had been appointed as trustees of the temple, and failure to prove their assertion that the properties owned by the temple are endowed properties of Pillaimar community and there is no vital document to prove that the Pillaimar community people had endowed properties to the temple. The temple is in receipt of Dastic Allowance from the Government for its maintenance, the permanent hundial installed in the temple also fetches considerable income to these temple and the alleged Pillaimar community had never paid even a single pie to these temples from their community funds for the upkeep and maintenance of the temple was not disproved by documentary evidence by the appellants herein. The Joint Commissioner has discussed and analyzed the evidentiary value of both oral and documentary evidence adduced and given a categorical finding that there is no reason to believe that in the interest of the proper administration of the temples, a scheme should be settled for the institution as prayed for by passing a well considered speaking order.

9. It is to be noted that the 3<sup>rd</sup> and 6<sup>th</sup> respondents herein as appellants has also filed an appeal in A.P.62/2011 challenging the very same order. The appellants therein and the other respondents have not let in any corroborative evidence to substantiate their contention that the said temples have been founded, chiefly intended or maintained by the community exclusively. Even in this appeal, the appellants herein have also not let in any corroborative evidence to substantiate their contention that the said temples have been founded, chiefly intended or maintained by the Saiva Pillai community of Udangudi exclusively. In the absence of

any such valid, reliable evidence, I find no infirmity in the order passed by the Joint Commissioner, HR&CE Admn Department, Tirunelveli which does not warrant any interference at all. Therefore, the appeal fails and the same is liable to be dismissed as bereft of any merits. Accordingly, the order dated 21.07.2010 issued in O.A.No.4/1993 by the Joint Commissioner, HR&CE Admn Department, Tirunelveli is hereby confirmed and the appeal petition is dismissed as devoid of merits.

/typed to dictation/

Sd.P. Dhanapal,  
Commissioner.

/true copy/ by order/

Superintendent.

Only TO