

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

Tuesday the 16th day of April, Two Thousand and thirteen.

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

A.P.65/2011/ D2

Between.

K. Pugayhenth,
S/o Kumarasamy Udaiyar.

.. Appellant

And

The Joint Commissioner,
HR&CE Admn. Dept., Villupuram.

.. Respondent.

In the matter of Chithra Pournami Kattalai attached to Arulmigu Agastheeswarar Temple, Padur village, Ulundurpet Taluk, Villupuram Dist.

Appeal Petition under Section 69(1) of the Tamil Nadu HR&CE Act, 1959 (Tamil Nadu Act 22 of 1959) against the order dated: 31.05.2011 made in O.A.No.4/2007 on the file of the Joint Commissioner, HR&CE Admn Department, Villupuram dismissing the Original application filed under Section 63(b) of the Act.

Annexure to Order in R.Dis.No.A.P.65/2011(D2) dated: 16.4.2013.

The above appeal petition has been filed under Section 69(1) of the Act against the order dated 31.05.2011 passed by the Joint Commissioner, HR&CE Admn Department, Villupuram dismissing the Original Application No.4/2007 filed by the appellant under Section 63 (b) of the Act. The Joint Commissioner dismissed the application holding that though there are evidence to prove that the applicant is presently in the management of the kattalai, but the application has not proved satisfactorily that his ancestors were in continuous and uninterrupted

management of the kattalai and the application is not maintainable as being non-joinder of necessary parties to the proceedings.

2. The appellant contended that he has clearly stated in the Original Application about his genealogical table, tracing the members as nominated by the original founder of the Kattalai, as per the Original deed dated 09.08.1905 as Exhibit A1. Evidence has been let in by the counsel on record at the time of enquiry and established that the appellant alone is the only survivor for the performance of the Chitrapournami Kattalai in the above temple. In spite of the deposition and in spite of the Ex.A1 to A7, the Joint Commissioner has come to a wrong conclusion to the effect that the petition fails for non-joinder of parties. The Original Application admittedly, does fail for Non-joinder of parties. It is an admitted fact that there are no other survivors to perform the Chitrapournami festival except the applicant herein. The Joint Commissioner has not made any legal analysis on Ex.A1 to Ex.A7, which has led to the miscarriage of justice. The Joint Commissioner did not even care to analyze the report of the Inspector. The Inspector's report clearly establishes that the appellant is holding office as Hereditary Trustee for the performance of Chithrapournami kattalai. However in the impugned order, the Joint Commissioner has stated as if the appellant is making a claim for hereditary ship, which is also blatantly illegal and is liable to be set aside.

3. I heard Thiru W.C.Thiruvengadam, counsel for the petitioner and perused the relevant records. The counsel for the appellant reiterated the grounds of memorandum of appeal. On a perusal of the annexure to order passed by the Joint Commissioner containing grounds for the above decision, the Joint Commissioner has simply enumerated certain documents filed and marked as exhibits without discussing its evidentiary value, how far they supports or do not lend support to the case of the petitioner by applying his mind judicially before taking such a decision. It is also seen that when the Joint Commissioner has come to

the conclusion that the founder of the kattalai had prescribed some eleven persons of different caste and family as trustees when the time the kattalai was founded by him, he ought to have traced the persons as found and claimed in the genealogical table filed by the appellant with the available records, how and by whom the kattalai was performed from its inception by the persons named in the deed dated 09.08.1906 and who are the persons now available to perform the kattalai and then come to a conclusion. Without doing so, it is erroneous to come to a decision that the application is not maintainable for non-joinder of necessary parties. Therefore, the order dated 31.05.2011 made in O.A.No.4/2007 passed by the Joint Commissioner, HR&CE Admn. Department, Villupuram suffers from infirmity as stated above and deserved to be set aside, and accordingly it is hereby set aside. The matter is remitted back to the Joint Commissioner to hold an enquiry denova after affording the appellant and other persons having interest if any an opportunity of being heard and to dispose of the same in accordance with law as expeditiously as possible. With these directions, the appeal petition is disposed of.

/typed to dictation/

Sd. P. Dhanapal,
Commissioner.

/ true copy/ by order/

Superintendent.