

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

Tuesday the 30th day of April, Two Thousand and thirteen.

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

A.P. 8/2011 D2

Between

1. N. Subburathinam
S/o Muthusamy Gounder.
2. N.S. Palanisamy
S/o N. Subbaraya Gounder.
3. P. Balasubramaniam
S/o Periasamy Gounder. ...Appellants.

And

1. The Fit Person /Executive Officer,
Arulmigu. Subramaniaswamy Temple,
Sivanmalai, Kangeyam Taluk.
2. The Joint Commissioner,
HR&CE Admn Department,
Coimbatore.
3. R. Ponnusamy Gounder
S/o Ramasamy Gounder. ...Respondents.

In the matter of Arulmigu Perianayakiamman Temple, Pappini village, Kangeyam Taluk, Thiruppur District.

Appeal Petition under Section 69(1) of the Tamil Nadu HR&CE Act 22 of 1959 (Tamil Nadu Act 22 of 1959) against the order dated 24.01.1994 made in O.A.No.42/1990 by the then Deputy Commissioner, HR&CE Admn Department, Coimbatore settling a scheme of administration to the above said temple under Section 64 (1) of the Act.

Annexure to Order in R.Dis. A.P. 8/2011 (D2) dated 30.4.2013.

The case of the appellants is that the institution in question is a community in character and the rights of the community members are

well protected under Section 51 read with provision to Section 64 and 107 of the Act. A scheme was framed by the 2nd respondent-Deputy Commissioner under clause 4 with permanent provision for appointment of non-hereditary trustees from the members of three particular sub sects of Kongu vellalar gounders viz., Thodaikulam, Kannanthaikulam and Kadaikulam. The scheme was gazette on 28.07.2009 in the District Gazette of Erode. While framing a scheme and incorporating clause 4 of the scheme, the appellants are not affected because the character of the institution has been decided and accepted in the said scheme but however, clause 4 of the scheme, requires some more alteration or modification so that, the rights of the members of the community would be safeguarded in accordance with law. Therefore, the following sentence has to be added to clause 4 of the scheme that “The trustees to be appointed from 3 kulams, it should be the persons duly selected or elected in the general body of the members belonging to the aforesaid 3 kulams and such of those names recommended by the community shall have to be appointed as trustees under the Act.” Hence, the appeal.

2. The counsel for the appellants contended that, if the above said provision is not added to the Clause 4 of the said Scheme, there will be difficulty in picking and choosing of trustees in community temple. The object of framing of O.A. 42/1990 has become null and void. In view of the fact that anyone can represent as person belonging to a particular Sect and claim for the appointment of trustees in the temple. On the other hand, if a safeguard provision is incorporated in the clause 4 of the scheme, the scheme will have its strength and it will be easy for the members of the community while exercising the provisions of the scheme and maintain and manage the affairs of the temple in accordance with the provisions of the scheme. No one will be prejudiced by inserting the aforesaid sentence in addition to clause 4 of the scheme since, because the interest of the community temple would be protected and it will be managed in a proper way.

3. I heard Thiru W.C.Thiruvengadam, Counsel for the appellants and perused the relevant record. The appellants, 3rd respondent herein along with another had filed an O.A.42/1990 to frame a scheme of administration to the temple under section 64(1) of the Act with a provision to appoint non-hereditary trustees to the above said temple from among the 3 sub-sects of the Kongu Vellala Gounder Community. The petitioners did not make a plea in the said original application as now claimed in this appeal. The then Deputy Commissioner on examination of the evidence adduced ordered to issue a draft scheme dated 18.08.1993 calling for objections, suggestions and representation thereon and followed by that a confirmed scheme was issued by the then Deputy Commissioner by order dated 24.01.1994 in O.A.No.42/1990 and the said scheme was also got published in the District Gazette as required under section 64(6) of the Act. The appellants herein remained mute spectator without raising any suggestions or representation all the time and after publication of the confirmed scheme in the District Gazette has now chosen to file this appeal after thought. Even though this appeal petition is not filed challenging the above said confirmed scheme order but to add some more sentences to Clause 4 of the said Scheme, yet there is provision made under section 64(5) of the Act to modify the scheme already settled. The appellants have not exhausted the remedy as provided under the Act, but straight away filed this appeal. It is learnt that an application under Section 64 (5) of the Act in O.A.No.42/2009 seeking to modify the scheme framed in O.A.42/1990 is pending before the Joint Commissioner, HR&CE Admn. Department, Coimbatore and in such circumstances it is not advisable to entertain this appeal before this forum.

4. Further, more the prayer now made in this appeal also seems to bring out compulsion on the part of the authorities under the Act to appoint only those persons who will be selected or elected in the general body of the members belonging to the aforesaid 3 kulams and such of

those names recommended by the community, irrespective of the fact whether they suffers from any of the disqualification mentioned under section 26 of the Act or not. The Act does not also contemplate the appointment of trustees on capricious or purely communal consideration. Appointment of trustees to religious institutions is regulated by Section 47 and 49 of the Act and no provision in the scheme shall be in contravention to that provision. Therefore, the prayer made in the above appeal is inadmissible in law, cannot be conceded and against the letter and spirit of the provision of the Act. Therefore, the appeal petition deserves to be dismissed as not entertainable, maintainable and devoid of any merits as the regularity, correctness, legality or propriety of the decision or order passed by the Joint Commissioner is not to be tested in the appeal. Accordingly the appeal petition deserves to be dismissed as not entertainable, maintainable and devoid of any merits, and the same is ordered to be dismissed as not entertainable, maintainable and devoid of any merits.

/typed to dictation/

Sd. P. Dhanapal,
Commissioner.

/ true copy/ by order/

Superintendent.