

BEFORE THE COMMISSIONER, H.R. & C.E. ADMN. DEPARTMENT, CHENNAI.34.

Tuesday, the 6th day of August, Two Thousand and Thirteen

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

A.P.10/2011 D2

Between.

1. S. Mariyappan
2. Chinnathambi.
3. V. Mandiri.
4. R. Sengodan. ... Appellants.

And

1. P. Rathinavelu.
2. Joint Commissioner, HR & CE , Salem. ... Respondents

A.P.11/2012 D.2.

Between.

1. Ayyanna Gounder
2. M. Ayyanar
3. M.V. Rathinam.
4. Chinnayan .. Appellants.

And.

P. Rathinavelu .. Respondent.

In the matter of Arulmigu Ayyanarappan Temple, Vembaneri,
Sankari Taluk, Salem District.

Appeal Petition filed under section 69(1) of the Tamil Nadu HR &
CE Act, 1959 (Tamil Nadu Act 22 of 1959) against the order dated
11.4.2007 of the Joint Commissioner, HR & CE Admn.Department,
Salem in allowing the O.A.23/1993 filed under Section 63(b) of the Act.

Common Annexure to Order in R.Dis. A.P. 10/2011
and A.P. 11/2012 (D2) Dated: 6.8.2013.

The above appeal petitions filed under Section 69(1) of the Act
against the order dated 11.4.2007 of the Joint Commissioner, Salem in
allowing the O.A. 23/1993 of the Act and declaring the Respondent as
Hereditary Trustees of the said temple.

2. The appellants in A.P.10/2011 are villagers and Poojaries of the temple. They have contended that the first respondent and his father were only looking after the account works of the temple. The Joint Commissioner without taking into consideration of the findings of the Commissioner in S.M.R. 1/1992 proceeded to hold that the 1st Respondent as Hereditary Trustee of the temple. No proper opportunity were given to the Respondent therein before passing of the exparte order. The document produced by the 1st Respondent is not true and correct document and one prepared for the purpose of this case. The Civil Court order relied upon by the Joint Commissioner is no related to subject matter of the O.A. The Joint Commissioner failed to consider that the first respondent has misappropriated the funds of the temple.

3. The appellants in A.P. 11/2012 who are also respondent in O.A. 23/1993 have contended that the temple was founded by one Aanai Gounder in 4.04.05 hectares of lands has been granted as Inam for the temple. After Aanai Gounder, his son managed the temple. The public of Arasa Padayachi of Seven villages acted as managers of the temple. The poojaries have been given possession and enjoyed the inam lands in lieu of remuneration for doing pooja service. The appellants remained exparte only in I.A. 1/2005 and hence without notice to them in O.A. 23/1993 an exparte order cannot be passed. The Joint Commissioner without going into the contents of the judgment and decree in O.S. No.4/1991, erroneously allowed the O.A. The Joint Commissioner failed to take into consideration Ex.B1 and B2 which disproves the contents of the petition. The Joint Commissioner relied on unproven Will dated 23.10.1922 which has extracted in is order may at best about a specific endowment and not the hereditary trusteeship of the temple. And there is no evidence to prove that the management by the respondents' family over three generations.

4. I heard Thiru N. Sathyamoorthy, Counsel for the appellants in A.P. 10/2011 and Thiru K. Jayaraman, Counsel for the appellants in A.P. 11/2012 and Thiru K. Inian Senthil, Counsel for the respondent in both appeals and perused the relevant records. On perusal of the

records, it reveals that the respondents in O.A. was remained exparte only in I.A.No.1/2005. But the Joint Commissioner without issuing any notice to them passed the exparte order. On perusal of the annexure to order containing grounds for allowing the O.A., the Joint Commissioner recorded the evidence of two witnesses on the respondent side and also marked two documents on the side of respondent. But he failed to analyse the above evidentiary value of the said witnesses and documents in the impugned order.

5. Previously, the Deputy Commissioner, Coimbatore in order dated 9.9.1983 allowed the O.A. No.149/82 filed under Section 63 (b) of the Act and declare the father of the respondent as Hereditary Trustee of the Temple. In S.M.R. 1/1992 initiated under Section 69(2) of the Act, the Commissioner has remitted the matter for fresh enquiry. The matter was remitted on the following grounds.

(1) It is seen from the document dated 4.12.1921, it is revealed that 1) Manthiri Gounder S/o Manthiri Aanai Gounder 2) Ayyamperumal Gounder S/o Chinnayya Gounder 3) Ariyaputhra Gounder S/o Aana Gounder were holding the office of the trusteeship in the year 1921. But the case of the petitioner in O.A. is that his father Ayyamperumal Gounder S/o Seperumal Gounder was holding the office as trustees at this particular period.

(2) The documents filed by R1 to R6 speaks that there were persons outside the family of the petitioner were in management of the suit temple in 1921.

(3) The petitioner failed to file genealogy to prove the inheritance to the office of the trusteeship in his family in a continuous way.

And also order for denova enquiry and for fresh disposal according to law with reference to the documents filed by the respondent 1 to 6 in the Suo Motu Revision.

But the Joint Commissioner failed to analyse the above facts in the impugned order. The above facts were not disproved by the petitioner in OA with valid documentary evidence. The Joint Commissioner failed to consider the witnesses and documents on the side of respondents in O.A.

The matter was remitted to the Joint Commissioner in the year 1993, but impugned order was passed on the year 2007 only. The respondents attend the enquiry regularly except on 26.10.2005. Thereafter no notice was sent to the respondents and no opportunity was given to them and impugned order was passed on 26.10.1995 only. I.A. 1/2005 posted for hearing and respondent remained exparte in the above I.A. only. The Joint Commissioner ought to have issued notice to the respondent to conduct fair trial. Further the Joint Commissioner passed the impugned order without taking into consideration of findings of the Commissioner given in S.M.R. 1/1992.

Therefore, the order dated 11.4.2007 of the Joint Commissioner, Salem suffers from infirmity as stated above and deserves to be set aside. Accordingly, the order dated 11.4.2007 passed in O.A. 23/1993 is hereby set aside. The matter is remitted back to the Joint Commissioner to hold an enquiry denova after affording the appellants and others an opportunity of being heard and for fresh disposal in accordance with law with reference to the order dated 19.1.1993 in S.M.R. 1/1992. It is open to the appellants in A.P. 10/2011 to file impleading petition and get themselves impleaded in the O.A. With these directions, both the appeal petitions are disposed of.

/ typed to dictation/

Sd. P.Dhanapal,
Commissioner.

/ true copy/ by order/

Superintendent.