

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

Friday the 28th day of December, Two thousand and twelve.

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

A.P. 22 /2011

Between.

1. S.A. Sivaprakasam.
2. P.V. Puchumani.
3. C. Ponraj.
4. P.R.M.Muthuraman.
5. P.V. Pooraj.

... Appellants.

And

1. The Joint Commissioner,
HR & CE Department, Tirunelveli.

... Respondents

2. M.V.S. Rajendranath S/o M.V.
Shanmuganathan (impleaded on 30.11.2011)

In the matter of Arulmighu Muthumalaiamman Temple,
Mukkudal, Ambasamudram Taluk, 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 28.10.2009 of the Joint Commissioner, HR & CE Admn. Department, Tirunelveli confirming the draft scheme issued in O.A.No.6/2001 filed under Section 64 (1) of the Act framing a scheme of administration to the temple under question.

Annexure to Order in R.Dis.A.P.22/2011(D2)dated:28.12.2012.

The above Appeal Petition has been filed under Section 69(1) of the Act against the order dated 28.10.2009 of the Joint Commissioner,

Tirunelveli confirming the draft scheme issued on 5.8.2009 filed under Section 64 (1) of the Act framing a scheme of administration to the above temple.

2. The case of the appellants is that they have filed an Original Application under Section 64 (1) of the Act for framing a scheme in respect of administration of Arulmighu Muthumaliamman Temple, Mukoodal, before the Joint Commissioner, Tirunelveli. The Joint Commissioner has allowed the O.A. 6/2001, and confirmed the draft scheme issued on 5.8.2009 by his order dated 28.10.2009. The appellants have felt that there would be confusion among the community people over clause 4 of the order of the Joint Commissioner, containing as "இந்த அறங்காவலர்கள் அந்த இனத்தைச் சேர்ந்தவர்களால் அவர்களுடைய பொதுக்குழு கூட்டத்தில் அச்சமுதாய மக்களின் தகுதி வாய்ந்த 18 வயது நிரம்பிய ஆண்கள், பெண்கள் ஆகியோர் ஓட்டளித்து தெரிவு செய்யப்படவேண்டும்", and prayed to correct clause 4 as "இந்த அறங்காவலர்கள் அந்த இனத்தவர்களின் பொதுக் கூட்டத்தில் தெரிவு செய்யப்படவேண்டும்". But, the Joint Commissioner has not agreed to change the contention as prayed for by the Appellants. Hence, the appellants have now come up with this appeal petition for modification of that portion of order of the Joint Commissioner dated 28.10.2009 contained in clause 4 of the scheme framed in O.A.NO.6/2001.

3. One Thiru M.V.S.Rajendranath has filed impleading Petition and it was allowed on 30.11.2011. The impleaded Party/Respondent has prayed to appoint Fit Person to protect the interest, right and wealth of the temple, since the Chairman of the management committee committed malfeasance, misfeasance, and breach of trust in respect of temple management and disobey the lawful order issued by the Joint Commissioner.

4. I heard Thiru N. Sathyamoorthi, Counsel for the appellants and Thiru M.Ajmal Azzath, Counsel for the impleading party /Respondent and perused the relevant records.

5. It is revealed from records that one Thatchanamoorthy and two others filed a civil suit in O.S. 493/1981 on the file of the District Munsif Court, Ambasamudram to declare the temple as a denominational one belongs to Mukkudal Hindu Nadar community and it was decreed in favour of them. On appeal preferred by the Department in A.S.58/1985 on the file of the Sub-Court, Tirunelveli, the order of the Lower Court was set aside by decree and judgment dated 5.1.1999. Thereafter, the appellants herein filed O.A. 6/2001 under Section 64 (1) of the Act before the Joint Commissioner, Tirunelveli for framing a scheme of administration for the proper and better management of the temple. After enquiry, a draft scheme was issued on 5.8.2009 calling for objections, suggestions and representation from the petitioners and other persons having interest if any. But no one including appellants herein filed any objections, suggestions and representation to the said draft scheme. Hence, the draft scheme was confirmed by the Joint Commissioner and got published in the District Gazette as required under the Act.

6. The only contention now raised in this appeal is that the representation to modify clause 4 of the draft scheme was not considered by the Joint Commissioner. The records in O.A.No.6/2001 of the Joint Commissioner was called for and perused. There is nothing on record to substantiate the version that the appellants made a representation seeking to modify clause 4 of the scheme as contended now and the Joint Commissioner has declined to accept their representation. The appellants have failed to prove that representation was given to the Joint Commissioner to correct Clause 4 of the draft

scheme before passing final order on the draft scheme. The Joint Commissioner while sending the file in O.A.No.6/2001 in his report has stated that the appellants have not raised any objections or suggestions to the draft scheme when it was published. They have made no representation to modify clause 4 of the scheme as now contended in the appeal petition.

7. It is relevant to point out that sufficient provisions has been made in the Act under section 64(5) of the Act for modification of any scheme settled before the Joint Commissioner himself. Without exhausting the available remedy as provided for under the Act and without approaching the appropriate authority under the Act, the appeal as filed is not maintainable in law and the same deserves to be dismissed as premature. Accordingly, the appeal petition is dismissed as not maintainable and premature.

However, on a perusal of the various clauses contained in the confirmed Scheme, certain ambiguity and repugnancy with the provisions of the Act is found therein. For instance, under clause 4 (a), it is stated that trustees should be selected by election. There is no provision under the Act for selection of trustees by election. It is not even specifically mentioned under whose presence and by whom such election has to be conducted and how the election is to be conducted. Similarly, under Clause 4 (b), it is stated that the trustees should be elected for every year and there is no mention about their appointment. It is against the amended provisions to Section 47(1) (3) & 49 of the Act. It is also learnt that an Executive Officer has been appointed under Section 45(1) of the Act to the above temple. But under the clause 9, it is stated that "அறங்காவலர் குழு கோவில் நலனுக்கு பாதகமாக முடிவு எடுத்தால் அவர்கள் அதன்படி செயல்படக்கூடாது." The Joint Commissioner has failed to consider Section 49.B of the Act. It is not

clear whether the term "அவர்கள்" would means 'trustees' or 'Executive Officer' of the temple.

Therefore, the order date 28.10.2009 passed by the Joint Commissioner, Tirunelveli suffers from ambiguity and infirmity as pointed out supra and deserves to be corrected in consonance with the provisions of the Act. Therefore, the impugned order of the Joint Commissioner dated 28.10.2009 made in O.A.No.6/2001 is liable to be set aside and accordingly it is hereby set aside. The matter is remitted back to the Joint Commissioner to hold an enquiry after affording the appellants, respondent and other persons having interest if any an opportunity of being heard and dispose the same in accordance with law. The appellant and other parties should also co-operate for the expeditious disposal of the O.A. enquiry without any default.

The impleading party/respondent is also directed to approach the Joint Commissioner to get his grievance redressed in the manner known to law.

The appeal petition is accordingly ordered.

/typed to dictation/

Sd. P. Dhanapal,
Commissioner.

/t.c.f.b.o./

Superintendent.