

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

Monday the 21st day of January, Two thousand and Thirteen.

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

A.P. 2/2011.

Between.

S. Manivanna Bhattachariar

..Appellant

In the matter of Arulmigu Audikesavaperumal Temple,
Kadukkalur village and post, Cheyyur Taluk, Kanchipuram 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:10.08.2010 passed by the Joint Commissioner HR&CE Admn.
Dept., Vellore dismissing the O.A.17/1999 filed under Section 63(b) of
the Act.

Annexure to Order in R.Dis.A.P.2/2011(D2)Dated : 21.1.2013.

The above Appeal petition has been filed against the order dated
10.08.2010 passed by the Joint Commissioner, HR&CE Admn. Dept.,
Vellore, dismissing the O.A.17/1999 filed by the appellant herein,
under Section 63 (b) of the Act, seeking to declare the office of
trusteeship of the temple as hereditary and the petitioner is holding
the office as Hereditary Trustee of the said Temple.

2. The appellant herein as petitioner took out an Original
Application in terms of section 63(b) of the Act for the declaration as
stated above. The Joint Commissioner dismissed the above O.A. on the

grounds that the petitioner has not proved that his family members alone have continuously held the management of the said temple without any interruption from outsiders for more than three generations and the petitioner has not proved the genealogy of his family with adequate evidence.

3. The appellant contended that Arulmighu Audikesavaperumal Temple, situated at Kadakkalur village, Cheyyur Taluk, Kancheepuram District is a small village temple and the income from the rain-fed Inam Lands is hardly sufficient to meet out the routine expenses of the temple. The members of the family of the appellant have been in management of the temple as trustee-cum-poojari in an unbroken line of succession for more than four generations; that no one outside the family members of the appellant had at any time interfered with the management of the temple; that the villagers of Kadukkaloor have till this day acquiesced in their management and that no non-hereditary Trustees was ever appointed under the provisions of the Act. In spite of the notice issued in the village as per Rules seeking objections, no one in the village choose to oppose the claim of the Appellant and there was absolutely no evidence contra. The appellant examined himself as P.W.1 and produced 15 documents marked as Ex.A.1 to A.12. In addition P.W.2 and Court witness C.W.1 was also examined and Ex.C.1 was also marked. But, the Joint Commissioner has failed to see that the terms of Section 101 of the Evidence Act, a party will not be required to prove so much of his allegations in respect of which there is any presumption of law in his favour. The Joint Commissioner has failed to appreciate that the trustee in possession is usually described as defacto trustee, unless and until declared by a competent court. The

Inspector of the department made detailed enquiry in the village has also reported that the claim of the appellant is well founded and that no non-hereditary trustees ever been appointed for the temple and no one in the village has chosen to oppose the claim of the appellant.

4. I heard Thiru M. Subramanya Rao, Counsel for the appellant and perused the records. The counsel for the appellant stressed and reiterated the grounds of memorandum of appeal and prayed to remand the matter for fresh disposal. On perusal of the annexure to order passed by the Joint Commissioner, he has simply enumerated certain documents filed without discussing its evidentiary value how for the said documents lend support to the case of the petitioner or not. The Joint Commissioner has stated that in most of the documents filed by the appellant, he and his father were noted as trustee or defacto trustee not as Hereditary Trustee. As pointed out by the counsel for the appellant, the Joint Commissioner has erred in rejecting the documents filed by the petitioner holding that the appellant and members of the family has been described only as trustees or defacto trustees and not as Hereditary Trustee. The Joint Commissioner has failed to discuss the evidentiary value of the documents filed by the petitioner, how far the said documents support or not support the case of the petitioner by applying his mind judicially before taking such a decision.

5. Hence, the order of the Joint Commissioner dated 10.08.2010 suffers from infirmity as stated above and deserves 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 dispose of the same on merits and in accordance with law. The appellant and other persons having interest if any, shall also co-operate with the Joint Commissioner for expeditious disposal of the O.A. without fail. With the above direction, the appeal petition is disposed of.

/typed to dictation/

Sd. P. Dhanapal,
Commissioner.

/true copy/by order/

Superintendent.

Only TO