

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

Friday the 16th day of November, Two thousand and twelve.

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

A.P. 51/2011 D2.

Between

1. M.Palanivel Gounder.
2. K.S. Palaniappan.
3. S. Ganapathy
4. R. Nallayyan.
5. M. Duraisamy.
6. S. Sundaramurthy

..Appellants.

And

1. The Joint Commissioner, H.R.&C.E
Admn.Department, Salem.
2. Sengoda Pandaram, S/o Kulandai Pandaram.
3. Mahalingam S/o Gurunatha Pandaram.
4. Mani S/o Subramani @ Chinnapaiya Pandaram.

... Respondents.

5. K. Ramasamy, S/o Kumarasamy

Impleading Petitioner/
Respondent.

In the matter of Arulmighu Athanooramman Temple, Siddhalanthur village,
Tiruchengode Taluk, Namakkal District.

Appeal Petition filed under Section 69(1) of the Tamil Nadu H.R.&C.E. Act
1959 (Tamil Nadu Act 22 of 1959) against the order dated 10.6.2011 of the Joint
Commissioner, HR & CE Admn.Department, Salem in dismissing the O.A. No.23/2009
filed under Section 64(5) (a) of the Act, issuing draft scheme to modify the scheme
framed in OA 9/2004 under Section 64 (1) of the Act.

Annexure to Order in R.Dis. A.P. 51/2011 D2 dated: 16.11.2012.

The above appeal petition has been filed against the order dated 10.6.2011 of the
Joint Commissioner, HR & CE Admn.Department, Salem dismissing O.A. No.23/2009
filed under Section 64(5) of the Act and issuing draft scheme to modify the scheme
already framed in O.A. 9/2004 under Section 64 (i) of the Act. .

2. The appellants have contended that the temple is absolutely belonging to the members of 3 Sects namely, Cherankulam and Kannankulam Kongu Vellalar and Pandiakula Vettuva Gounders and all these three Sects comes within the ambit of main Community namely Kongu Vellala Gounders. A scheme was framed in O.A. 9/2004 B1 dated 28.5.2007, incorporating a main provision for the appointment of non-hereditary Trustees from and amongst the members of the above Sects duly elected or selected in the General Body by the persons belonging to the abovesaid community and such elected persons to be appointed as Trustees in the above temple. Thus it is clear that the temple is a community temple. The scheme has also published in the Namakkal District Gazette.

3. The appellants have also contended that the respondents 2 to 4 herein being the Poojaris and Pandaram of the temple have filed O.A. 23/2009 for the modification of the above scheme, canceling the provision for the appointment of non-hereditary trustees from the above said Sects. The Joint Commissioner, Salem has passed order in the above said O.A. on 10.6.2011 modifying the earlier scheme by adding the rights of the Pandaram to hold office of the trusteeship without going into the question whether the Joint Commissioner possess power to cancel or modify the clause incorporated in the scheme on the basis of the provisions to Section 64 (1) read with Section 51 and Section 107 of the Act, and without legal analysis of the prayer of the respondents 2 to 4 herein and there was no discussion on the evidence.

4. Thiru W.C. Thiruvengadam, Counsel appeared for the appellants. M/s B. Vijayakumar, Counsel appeared for the Respondents 2 to 4. Thiru K. Ramasamy has filed a petition to implead him as proposed 5th Respondent through his Counsel M/s. E. Ganesh.

I heard the counsel and perused the records. Counsel for the appellants argued that against the order passed by the Joint Commissioner in O.A. 9/2004 dated 28.5.2007, neither any appeal filed under Section 69(1) nor Suo-mottu Revision Proceedings was initiated under Section 69(2) of the Act. Hence that order become final. Further the scheme framed in the O.A. 9/2004 was not inconsistent with the provisions of the Act. As per Section 51 and 107 of the Act, due regard shall be given to the claim of persons belonging to the religious denomination for whose benefit the institution concerned is chiefly intended or maintained.

5. The counsel for the Respondent argued that the temple is not a denominational one . O.A. 23/09 has been filed under Section 64 (5)(a) of the Act seeking to cancel the scheme. But after enquiry, the Joint Commissioner issued draft scheme to modify the scheme incorporating provisions to appoint trustees from the Pandaram community along with other sects. Under Section 64 (5) (a) of the Act, the Joint Commissioner has ample power to modify the scheme already settled.

6. The Counsel for the impleading petitioner argued that under Section 64 (6), scheme settled or modified under this section shall be published in the prescribed manner and on such publication shall subject to the provision of the Section 69 and 70 be binding on the trustee. As pointed out by the counsel, the draft scheme issued in the impugned order by the Joint Commissioner, Salem inviting objections, suggestions and representations has not yet been confirmed, and got published in the District Gazette as required under Law. Hence, appeal petition challenging the impugned draft modification order, inviting objections, representations is premature.

7. Therefore, it is clear that the Joint Commissioner has issued only draft modified scheme calling for objections, suggestions and representations and it is yet to be confirmed and got published in the District Gazette. If the appellants have any objections, they may be at liberty to file their objections before the Joint Commissioner, Salem within 15 days from the date of receipt of this order. Similarly, if the proposed party, impleading petitioner is also at liberty to pursue his remedy before the appropriate authority in the pending proceedings. If any objections, suggestions and representation is received or filed, the Joint Commissioner shall afford reasonable opportunity of hearing to all the parties, record their evidence and give his findings and pass orders on merits and in accordance with law.

With the above directions, the appeal petition be and is hereby dismissed.

/typed to dictation/

Sd. P. Dhanapal,
Commissioner.

/ true copy/ by order/

Superintendent.