

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

Friday, the 11th day of October, Two Thousand and Thirteen.

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

A.P.66/2011/ D2

Between.

- 1. T.S.P. Sridharan, S/O S. Padmanabha
Iyengar.**
 - 2. T.G. Achutha Raghavan S/O T.R. Govinda
Ragavan.**
- Appellants**

And

- 1. The Joint Commissioner, HR&CE,
Villupuram.**
- 2. T.R. Govindaraghavan (died)**
- 3. Executive Officer, Am. Devanathaswami
Temple, Thiruvahindrapuram, Cuddalore 607
401.**
- 4. Neelamega Battachariar S/O Krishnamoorthi
Battachariar.**
- 5. Thirumalai Aravamudhan (died),**
- 6. M. Srinivasachariar (died).**
- 7. V. Srinivasachariar S/O Varagaswamy
Iyengar.**
- 8. R. Nadamuni S/o Rajappasami.**
- 9. A.V. Srinivasachariar (Died)**
- 10. D. Devanathan, S/o Durairaghavachariar.**
- 11. G. Arvindhan S/O Gopalan.**
- 12. Sampathkumar S/o Late Srinivasan
(Impleaded as per order dated 12.3.2013) .. Respondents.**

**In the matter of Arulmigu Devanathasami temple,
Thiruvahindrapuram, Cuddalore.**

**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:
25.7.2011 of the Joint Commissioner, HR&CE Admn. Department,**

Villupuram in Suomotu O.A. 121/06 under Section 63 (e) of the Act regarding certain honors.

Annexure to Order in R.Dis. A.P.66/2011 (D2) dated: 11.10.2013.

The above appeal petition filed under Section 69(1) of the Act against the order dated 25.7.2011 of the Joint Commissioner, Villupuram in S.M.R. OA 121/06 under Section 63 (e) regarding certain temple honours.

2. The appellants contended that the title of "Sri Padam" and Mirasi were conferred on the family of the appellants from time immemorial and that it cannot be traced out. The Joint Commissioner erred in wanting the origin of the title rather than seeing the reason for such title being conferred which cannot be but for the service rendered as 'SriPadamthangi'. There could be no origin for custom and that is why it is a custom. The Joint Commissioner failed to see that 2 rights were peculiar to this family and while so, on the same principle the first right also should have been upheld. The very fact that 1st and 2nd front left side stand allotted to appellants shows that they had the first right. The Joint Commissioner failed to consider the appellants' family is only family having hereditarily rendered service, are being adorned the first honour. The other claimants, the temple and Bhattacharya have taken different and inconsistent stands and also that this itself will prove that their stand is wrong. The other sharers have given up their right which clearly shows the lack of dearness of the right, the Joint Commissioner failed to consider that the 6th claim and is not at all in Tiruvahindrapuram for the past more than 45 years and other claimants who are available avoided the box. The Joint Commissioner submitted gross error in relying upon an understated statement of the

Bhattachariar who was not permitted for cross examination. The Joint Commissioner should have obeyed the directions of the Commissioner. The Joint Commissioner failed to refer the claim statement of the 7th claimant supporting the appellant. Other claimants have not filed even a single scrap of paper against the abundant and overwhelming evidence produced by appellant.

3. I heard Thiru R. Gururaj, Counsel for the appellant, Thiru C. Umashankar, Counsel for the 4th Respondent, Thiru V.K. Vijayaraghavan, Counsel for the Respondents 7, 10, 11 and 12 and Thiru M.Sudarsan, Counsel for the 9th Respondent and perused the relevant records. I perused the counter filed by the 4th respondent and written arguments filed by counsels for appellants and Respondents 7,10,11&12.

4. The claim of the appellants are that the appellants' ancestors are continuously doing Sripadam Thangi Sevai and the first and second front lift side stand allotted to appellants. Hence, they are entitle for first Sadari and Thulasi Saram" honour. They claim Satari and Theertham should be given first to them and Thulasi Saram should be given to them alone. Others are not entitle for Thulasi Saram.

5. The following issues have to be decided in this case.

- (1) Whether the appellants entitle for first honour by custom as claimed by them?**
- (2) Whether the appellants' family is service holder of the temple and whether Section 55(2) applies to the case of the appellant?**

Issue No.1:

The appellants filed 203 documents before the Joint Commissioner in support of their claim. Almost in all the documents the word "SriPadam" was either prefixed or suffixed with the name of individual persons. It is not in dispute whether the appellants' forefathers had

done SriPadam Thangi sevai. But the dispute to be resolved in the O.A. and this appeal is whether the appellants are entitle for honours as claimed by them. But the numerous documents filed by the appellants could not help them to prove their claim. The appellants contended that they are entitled to receive such honours as per the established custom and usage. But the appellants failed to prove the custom with documentary evidence. In the O.A., the 1st appellant had deposed that “நான் தாக்கல் செய்துள்ள எந்த ஆவணங்களிலும், எங்களுக்குத்தான் முதல் மரியாதை வழங்கப்படவேண்டும் என குறிப்பிடப்படவில்லை என்றால் சரி”. The appellant himself admit that there is no documentary evidence to prove that the appellants’ ancestors were given first honor. Even if it is assumed as per the established custom, they are entitle for such honour, it should be proved with cogent evidence, oral evidence is not sufficient. This fact is admitted by the appellant in the written arguments. In para 115 of the written arguments, it is stated that “when speaking about custom, the courts have held that reliance should not be place on oral testimony of Partisans”

A custom in order to be binding must derive in force from the fact that by long usage it has obtained the force of law. It is admitted by the appellants that festivals are celebrated for more than 250 days in a year in the said temple and they are doing Sripadam Thangi Sevai” for only 50 days in a year. Most of time the said service has been done by persons other than appellants. In the appeal petition, the appellants have contended that other claimants are not residing at Thiruvahindrapuram and they are working somewhere else. Hence, they are not doing the service continuously. The appellant failed to note that the same logic is apply to the appellants also. The 1st appellant is working in Chennai and permanently residing at Chennai. His brother is working in a Bank, but he is not available to do this service throughout the year. The 2nd appellant is also permanently residing at Chennai. Originally the S.M.R.

O.A. was initiated at the instance of one T.R. Govindaraghavan, father of the 2nd appellant who was resided at Chennai for more than 50 years till his death. Hence, it is clearly evident that the appellants used to do the service occasionally. In the deposition the 1st appellant has stated that “நான் சென்னையில் பணிபுரிந்து வருகிறேன். எப்போதெல்லாம் மாதம் ஒருமுறை அடிக்கடி நேரில் வந்து இந்த கைங்கர்யத்தைச் செய்வேன். மற்ற நாட்களில் எனது தம்பி செய்வார்” **In the cross examination Thiru T.V. Srinivasachariar has stated that “மலைக்கோயிலில் 300 நாட்கள் உற்சவம் நடக்கும். இந்த 300 நாட்களிலும் சுவாமி புறப்பாடு இருக்கும். ஸ்ரீதர் மற்றும் அவரது குடும்பத்தினர் அத்தனை புறப்பாட்டிலும் கலந்துகொண்டதில்லை. ஸ்ரீதர் தம்பி பெயர் பாபு. அவர் பாரத மாநில வங்கியில் பணிபுரிந்து வருகிறார். அவர் பணியில் இருப்பதால் அதீகபட்ச நாட்கள் கலந்துகொள்ள முடியாது. ஸ்ரீதர் சித்தப்பா சென்னையில் குடும்பத்தோடு வசித்து வந்தார். எனக்கு நினைவு தெரிந்த வரையில் வந்து கைங்கர்யம் செய்ததில்லை”** **Further in the deposition of Executive Officer, he has stated that “சுவாமி புறப்பாட்டின் முன்பும், பின்னரும், மரியாதையை யாருக்கு செய்ய வேண்டும் என்பது குறித்து எவ்வித திட்டமும் நிர்வாகத்தில் இல்லை. ஸ்ரீதரன், அவரது சகோதரர் பாபு ஆகிய இருவரும் எல்லா காலங்களிலும் ஸ்ரீபாதம் தாங்குவது இல்லை”.** **Therefore it is evident that the Sripadamthangi Sevai was not done continuously by the appellants’ family. When the appellants are not available to do the said service, the temple administration has to depend upon other persons to do the said service. When the appellants themselves admitted that they are doing the sevai occasionally, how can they expect the temple administration to give first right to them. In the absence of any evidence to prove their claim, they are not entitle to such right. This issue is decided accordingly.**

Issue No.2:

The appellants’ claim that they are occupying the ‘office’ of the SriPadam Thangi and they are service holder. In the O.A., the 1st appellant has deposed that “எங்களுக்கு கோயில் ஊழியம் மானியம் என

வழங்கப்பட்டுள்ளது. எங்கள் குடும்பத்தை தவிர மற்ற நபர்களுக்கு இனாம் நிலம் வழங்கப்படவில்லை.” **Further in the cross examination he has stated that** “ஸ்ரீபாதம் தாங்கி என்பது ஆலயத்தில் செய்யவேண்டிய பணிகளில் ஒரு பணி. இறைபணி. நான் திருக்கோயில் ஊழியர் அல்ல. இந்து சமய அறநிலையத்துறை விதிமுறைகளுக்கு நான் கட்டுப்பட்டவன் எங்களுக்கு இந்த பணிக்காக நிலம் கொடுத்துள்ளார்கள். சுமார் 61.00 சென்ட் சரியாக ரூபகமில்லை. அந்த நிலம் தற்சமயம் எனது சித்தப்பா வசம் உள்ளது. அந்த வருமானத்தை எங்களது குடும்பம் மட்டும் அடைகிறது. ஊழியம் இல்லை” நாங்கள் இரு நபர்கள் செய்யும் ஸ்ரீபாதம் பணிக்காக மட்டும் மேற்படி நிலம் எழுதிவைக்கப்பட்டதாகும்” “ஸ்ரீபாதம் தாங்கிக்கான பணிக்கு உபயதாரர்கள் பணியின்போது தொகை வழங்குகிறார்கள். நிர்ணயம் இல்லை. அன்றைய தினத்தில் முறையினை யார் செய்கிறார்களோ அவர்களுக்கு சமமாக பிரித்துக் கொடுக்கப்படும். பணமாக இருந்தாலும், பொருளாக இருந்தாலும் பிரித்துக் கொடுக்கப்படும். எனது தகப்பனார் மயிலாடுதுறை இணை ஆணையர் முன்பு எந்த சன்மானமும் வேண்டாம் என எழுதிக் கொடுக்கவில்லை” .. “சுவாமி தாங்கும் நபர்கள் அனைவரும் ஒன்று சேர்ந்து 1.9.83ல் தேவநாதசுவாமி கோயில் தர்மகர்த்தாவிற்கு மனு கொடுக்கப்பட்டது. அந்த மனுவில் நாங்கள் செய்யும் பணிக்கு ஊழியமாக கொடுக்கப்படும் அரிசியினை வழங்காமல் தட்டுப்பாடு ஏற்பட்டதால், அதற்கு ஈடாக பணம் பெற சம்மதித்து எழுதிக்கொடுக்கப்பட்டது என்றால் சரிதான்” **From the above statements it is evident that the said service is not a honorary one but attached with some emoluments. In Para 10 of the written arguments it is admitted by the appellants that “an office could even be honorary. The office need not carry any emoluments. But in this case, the office or service carry emoluments inasmuch as the aforesaid things are paid in kind and even in cash is paid, though it is meager by present day standout. Under Rule 2 (c) of the Tamil Nadu Hindu Religious Institutions (Officers and Servants) Service rules, 1964, “Employee” means the officer and servant of a religious institution who holds an office in the religious institution and remuneration in cash or in kind from the funds of the religious institution or without any remuneration and including a person who holds an office to which an inam is granted, confirmed or recognized by**

the Government". This definition squarely applies to the case of the appellants.

The Section 55 (2) states "No person shall be entitled to appoint to any vacancy referred merely on the ground that he is next in the line of succession to the last holder of the office. Accordingly, the appellants are not entitled to do the service merely on the ground that they are next in the line of succession to the last holder of the office. This issue is decided accordingly.

6. In the cross examination, the 1st appellant has deposed that "ஸ்ரீபாதம் தாங்கிகள் பணிக்கு மொத்தம் எட்டு நபர்கள். யாரேனும் ஒருவர் இயற்கை எய்தினால் அப்பணியிடம் எவ்வாறு நிரப்பப்படுகிறது அதுபற்றி எனக்கு தெரியாது. இறைபணி செய்ய எட்டு நபர்கள் என்பது சமமானது. இந்த எட்டு நபர்கள் இனத்தில் எவ்வித பாகுபாடும் கிடையாது. தகுதி அடிப்படையில் எவ்வித பாகுபாடும் கிடையாது. ஸ்ரீபாதம் தாங்கிக்கு சடாரி, மாலை மரியாதைகள் அனைத்தும் பெயர் குறிப்பிட்டு வழங்கப்படவேண்டும் என நான் தாக்கல் செய்து தஸ்தாவேஜுகளில் இல்லை" **Hence, it is an admitted fact that there is no discrimination among the Sripadam Thangis on the basis of caste or qualification and there is no documentary evidence to prove that the appellants' family entitle for first honour as claimed by them.**

7. The appellants mainly placed reliance upon the direction given by the Commissioner in Rc.No. 54605/93 H3 dated 16.7.1993, wherein the Commissioner has instructed the Executive Officer of the temple to continue the honours given to the 'Sripadam Thangis' as per the custom and usage. But the said direction was given without conducting any enquiry under Section 63 (e) of the Act. Further, it was not specifically mentioned in the said communication that first right should be given to the appellants. Therefore, it is decided that all the 'Sripadamthangis'

should be treated equally and there is no evidence to show that the appellants enjoys preferential right over others.

In view of the foregoing discussion, I find no infirmity in the order of the Joint Commissioner, Villupuram and it does not warrant any interference. Accordingly the order dated 25.7.2011 of the Joint Commissioner, Villupuram is hereby confirmed and the appeal petition is dismissed as devoid of merits.

/typed to dictation/

Sd. P. Dhanapal,
Commissioner.

/true copy/by order/

Superintendent