

**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. 77/2011/ D2

Between.

1. K. Selvaraj.
2. D. Selvaraj.
3. V. Alagirisamy.
4. S. Kanthasami.
5. P. Murugan. (Dead).

..Appellants.

And

The Fit Person,
Arulmighu Mariamman Temple,
Sivarakkottai.

.. Respondent.

In the matter of Arulmighu Mariamman Temple, Sivarakkottai,
Thirumangalam Taluk, Madurai 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: 19.7.2011 of the Joint Commissioner, HR & CE Admn.Dept.,
Madurai dismissing OA.No.1/2001 filed under Section 64 (1) of the Act
seeking to frame a scheme of administration for the above said
temple.

Annexure to Order in R.Dis. A.P.77/2011 (D2) dated: 28.12.2012.

The above appeal has been filed against the order dated
19.07.2011 passed by the Joint Commissioner, HR&CE Admn.

Department Madurai, dismissing O.A.No.1/2001 filed under Section 64 (1) of the Act by the appellants, seeking to frame a scheme of administration to the above said temple.

2. The case of the appellants is that the appellants and their ancestors have been the trustees of the temple from time immemorial being elected for life by the villages following the custom obtaining in this regard. Besides being the trustees of the temple, the first appellant and his fore-fathers have been recognized as the 'Peria Gounder' or 'Perudanakarar' of the village. They have been arranging for the worship, performance of poojas by poojaris paid by them and celebrating festivals during Tamil month of Panguni. They have also carried out Thiruppani works followed by Kumbabishegam and their kin donated Panchaloga Idols of Vinayagar and Mariamman. For proper and better administration, they took out an Original Application under Section 64 (1) of the Act for framing a scheme of administration before the Joint Commissioner, HR&CE Admn Department Madurai in O.A.1/2001. After due enquiry, having satisfied, the Joint Commissioner issued a draft scheme by order dated 21.12.2009 calling for objections, suggestions and representations. No objections or suggestions were ever received. But instead of confirming the draft scheme, the Joint Commissioner dismissed the O.A. stating that the petitioners have not shown care to impress the forum that they all are the persons having interest of the petition mentioned temple.

The Counsel for the appellants would therefore canvass that having directed the issue of a Draft Scheme, implying that the Joint Commissioner was satisfied that a scheme should be settled, erred in dismissing the application holding that he was satisfied that no scheme is necessary or called for. The Joint Commissioner has failed to see that the tribunal is a creature of the Statue and in the absence of a

power of Review expressly conferred on it, its action is liable to be quashed and ultra-vires.

3. I heard Thiru M. Subramanya Rao, Counsel for the appellants and perused the records. It is seen from the records that the Joint Commissioner issued notice O.A.1/2001 C.1 dated 21.12.2009 that he is satisfied that in the interest of the proper and better administration of the above institution to settle a scheme under section 64(1) of the Act. But the annexure to order, containing the grounds upon which he has reasons to believe to take such a decision is not available. It is not known how after due enquiry, but without any decision is having satisfied and ordered to issue a draft scheme calling for objections, suggestions and representations. It is not known whether any objections or suggestions have been received on the draft scheme. But, now in the impugned order, the Joint Commissioner came to a conclusion that all other exhibits are self serving in nature and all the witnesses have deposed only with regard to the honor given to the 1st and 2nd petitioners during festival and there is no semblance of evidence produced or adduced by the petitioners regarding the method of administration of the petitioner mentioned temple. The Joint Commissioner has simply enumerated certain documents filed without any legal analysis or discussion of its evidentiary value, how far the said documents support or un-support the case of the appellants by applying his mind judiciously before arriving at his subjective satisfaction and taking such a decision. The Joint Commissioner has not stated any thing as valid reasons for his deviation from his earlier decision. If the Joint Commissioner has strong reasons to believe to deviate from his earlier decision, then he ought to have provided sufficient opportunity to the parties concerned. The Joint Commissioner simply dismissed O.A. only on the ground that

the appellant herein have failed to prove that they are the persons having interest of the temple. It is not a valid ground for dismissing the O.A. after issuing the draft scheme. Therefore, the order dated 19.07.2011 made in O.A.No.1/2001 by the Joint Commissioner, HR&CE Admn. Dept., Madurai suffer from infirmity and uncertainty as stated above and deserves to be set aside, 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 the same on merits and in accordance with law within a period of 3 months from the date of receipt of a copy of this order. The appellants shall also co-operate for an expeditious disposal of the O.A. enquiry without any default. With these directions, the appeal petition is disposed of.

/typed to dictation/

Sd. P. Dhanapal,
Commissioner

/true copy/by order/

Superintendent.