

**BEFORE THE COMMISSIONER, HR&CE ADMN. DEPARTMENT, CHENNAI-34.**

**Monday the 28<sup>th</sup> day of October, Two thousand and thirteen.**

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

**A.P. 36 /2011 D2**

**Between.**

- 1. K. Panchalingam**
- 2. K. Manickam.**
- 3. A. Mani @ Nagarajan**
- 4. P. Nandakumar.**
- 5. S. Krishnamoorthy**

**... Appellants.**

**And**

**The Joint Commissioner, HR & CE Admn.Dept.,  
Coimbatore.**

**... Respondent.**

**In the matter of Arulmigu Nandagopalaswamy Temple,  
Manjanaickanoor, Pollachi Taluk, Coimbatore District.**

**Appeal Petition filed under Section 69(1) of the Tamil Nadu HR &  
CE Act, 1959 (Tamil Nadu Act 22 of 1959) against the notice dated  
23.2.2010 of the Joint Commissioner, H.R. & C.E. Dept., Coimbatore in  
dismissing the O.A. 5/2008 filed under Section 63 (b).**

**Annexure to Order in R.Dis. A.P. 36/2011 (D2) dated:28.10.2014.**

**The above appeal petition filed under Section 69(1) of the Act  
against the order dated 23.2.2010 of the Joint Commissioner,  
Coimbatore in dismissing the O.A. 5/2008 filed under Section 63 (b) of  
the Act.**

**2. The appellants contended that the suit temple was in existence  
from time immemorial and it was founded chiefly for the sole benefit of  
Kannadiar Community who are residing in the area and thereabout.  
The poojariship and Trusteeship of the said temple vested with the  
Appellants' forefathers and after them, the appellants are performing**

poojas regularly and also managing the temple hereditarily without any break. They meet all expenses for Pooja and other incidental expenses. The Joint Commissioner erred in holding that the Appellants have looked after the Temple in the capacity as care-taker and person having interest. The Joint Commissioner having found that the appellants have been in management of the temple and also performed the festivals and special poojas ought to have held that they are in management as trustees. The evidence of the Inspector and his report Ex.C1 fully supports and corroborates the evidence of the Appellants. When the genealogy is not tested by anyone in the proceedings, the Respondent ought to have accepted the genealogy based on the oral evidence adduced by the appellants and the independent witness P.W.3 and P.W.4, who are regular worshippers of the deity have deposed that there is no objection for granting relief of declaration of hereditary. Though there is no opposite party in the proceedings the respondent during the course of enquiry and examination of witness, the respondent did not choose to question about veracity of the witnesses and also never tested the correctness of the genealogy table. When the evidences are unchallenged and not controverted by any one, the Joint Commissioner ought to give much weight to evidence of the witnesses and documents and allow the application under Section 63 (b) of the Act.

3. I heard Thiru G. Sugumaran, Counsel for the appellants and perused the relevant records. If the management of the temple was vested without any interference for more than three generations with the family of the persons who claims hereditary trusteeship then a person can be declared as Hereditary Trustee of the temple. But in this case the appellants failed to prove that the management of the temple is vested with their family for more than three generations. Thus the trusteeship of the suit temple is not devolves by hereditary right. Further the devolution of office of trustee for generations from son to grandson is prima facie proof of devolution of office of Trustee by succession as per

law of inheritance. But in this case, there is no proof that the appellants and their ancestors were in exclusive management and looking after the affairs of the temple. The documents filed by the appellant are of recent origin. Further Exhibits A5 and A6 which related to the year 1919 are not supports the case of the appellants. The genealogical table filed by the appellants is not supported by any documentary evidence. The definition of term "Hereditary Trustee" under Section 6 (11) of the Act focuses on three categories of Hereditary Trustee. First category is the trustee of a religious institution the succession to whose office devolves by hereditary right. Second category is succession regulated by usage and third category is succession specifically provided for by the founder, so long as such scheme of succession is in force. The appellants failed to prove that their case falls under any one of the category under Section 6 (11) of the Act and the appeal petition deserves no consideration. However, since the appellant contended that the temple was founded chiefly for the sole benefit of Kannadiyar community, they may file a petition to settle a scheme of administration under Section 64 (1) of the H.R. & C.E. Act.

For the foregoing reasons, I find no infirmity or illegality in the order passed by the Joint Commissioner, Coimbatore. Accordingly, the order dated 23.2.2010 of the Joint Commissioner 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.