

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

Monday the 21st day of October, Two thousand and thirteen.

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

A.P.40/2011/ D2

Between

**Erode Sivalaya Vazhi Pattukulu Arakkatalai
Trust, through**

- 1. A. Munusamy (President),**
- 2. C.Balasubramanian (Vice President),**
- 3. S.Palanisamy (Secretary),**
- 4. N.S.Somasundaram (Treasurer)**

... Appellants.

And

- 1. The Joint Commissioner,
HR&CE, Coimbatore.**
- 2. The Fit Person,
Arulmigu Sozheeswarar Thirukoil,
Vairapalayam, Karungalpalayam,
Kaveri Karai, Erode Distrcit.
at A/m.Mahaveera Anjaneya Thirukoil,
V.O.C.Park, Erode.**
- 3. P.V.Dhanapal, Additional Secretary,
Sivalaya Vazhipattu Kuzhu Trust,
A/m.Sozheeswarar Thirukoil,
Kaveri Karai, Karungalpalayam,
Erode Distrcit.**

... Respondents.

**In the matter of Arulmigu Arulmigu Sozheeswarar Temple,
Vairapalayam, Karungalpalayam, Kaveri Karai, Erode 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:
03.01.2011 of the Joint Commissioner, HR&CE Admn.Department,
Coimbatore in ordering the dismissal of O.A.35/2007 filed under Section
64(1) of the Act after issuing draft scheme.**

Annexure to Order in R.Dis. A.P.40/2011 (D2) dated: 21.10.2013.

The above appeal petition filed under Section 69(1) of the Act against the order dated 3.1.2011 of the Joint Commissioner, Coimbatore in dismissing the O.A. 35/2007 filed under Section 64 (1) of the Act after issuing draft scheme.

2. The appellants contended that the temple is being run by the trust members for over 38 years. Only the nomenclature of the trust changed over the years and turned out to be a registered trust, but the real motto of the trust to look after the welfare of the temple has not changed. The third respondent Mr. Dhanapal who originally made objections about the draft scheme, latter withdrew himself on 3.1.2011, but the appellants were not given a chance to cross-examine him and on the very same day final orders were passed by the first respondent in a hurry. Originally when the draft scheme was published, 22nd of April, 2008 was fixed as the last date of receipt of objections. No one came forward with any objections on the given date. The third respondent herein who was one of the original signatory at the time of the Trust was registered, was in total agreement of the objects of the Trust, tried his best to usurp the management of the Trust with some political support and having failed in his attempt has turned against the trust and made false allegations. The temple is surrounded on the East by river Kaveri, West by a dargah, South by a burial ground and North by a road, since it is not safe to keep the valuables such as jewels, Kavasams and other items at the temple they are all kept in safe custody of the President of the Trust at his house. A hereditary kattalai has been formed and out of the corpus that was originally collected from the trust members the affairs of the temple is taken care of. Other than that no money is collected from the general public. People from the low income group wish to perform their marriages in the temple and the Trust charges a nominal amount of Rs. 500/- for the usage of the temple premises and it

is spent/distributed to the archakar, the servant maid and the sanitary people. At the maximum 10 marriages are allowed to be performed in the temple that too only based on the certificates issued by the Village Administrative Officer of the place.

3. In the counter affidavit, the 2nd respondent/fit person has contended that the temple is an ancient one and the appellants have failed to establish to the subjective satisfaction of the Joint Commissioner about their proper administration and management of the temple thereby their application to frame the scheme for the said temple has been rightly dismissed by the Joint Commissioner, Coimbatore. One of the applicant viz., the 3rd respondent herein withdraw impliedly from the above original application under Section 64 (1) by filing objection to grant of scheme to the appellant trust, thereby the number of applicants reduced to 4, therefore the appellants are not entitled to seek any relief under Section 64 of the H.R. & C.E. Act which contemplate that not less than 5 persons should file the petition. Hence, the order of the 1st respondent is justifiable under such technical grounds also apart from meritorious aspects. The allegation of the appellants that they had performed 3 consecrations to the said temple is stoutly denied as false. The 1st respondent fairly considered the fact that the Thiruppani work for the said temple has been performed not through money derived from appellants' trust but the consecrations were performed through public funds. There are numerous donors to the said temple and out of their efforts the compound wall and electricity connections to the temple were obtained. The appellants if at all made any contributions to the temple it would only infer the right of a donor and therefore they are not entitled to claim any benefits under Section 64 (1) of the H.R. & C.E. Act. Further the 1st respondent rightly held that the temple is being in existence for more than 400 years, whereas the said trust was formed in the year 2007, thereby the appellants' contention for administrative right over a ancient temple is untenable.

The allegations made against the appellant are not a trivial one but grave in nature and warrants serious disciplinary action against them besides recovery of temple funds which they have illegally misappropriated without any authority whatsoever. The above said Mr. P.V. Dhanapal and K.C. Govindaraj are not the outsiders but they are all part of the appellant trust and their allegations have much value than the others. The appellants' trust had failed to establish their bonafides in order to prove their administration to the said temple. The management and affairs of the temple and day-to-day poojas have been performed by the temple out of public funds and not as alleged by the appellants from their trust funds.

4. I heard Thiru P. Madhan, Counsel for the appellant, Thiru E. Ganesh, Counsel for the 2nd Respondent and Thiru T. Senthil Kumar, Counsel for the 3rd Respondent and perused the relevant records. Originally the O.A. 35/2007 was filed under Section 64 (1) of the Act to settle a scheme of administration for the suit temple with a permanent provision to appoint non-hereditary trustees from the Appellants' Trust. The Joint Commissioner after enquiry, issue draft scheme and called for objections and suggestions if any. After considering the objections received from the 3rd respondent herein and other persons, the Joint Commissioner dismissed the O.A. The 3rd Respondent who was also a co-applicant in O.A. 35/2007 filed objection to settle a scheme as prayed by the appellant. Further one Thiru K.C. Govindaraj, who earlier deposed evidence in favour of the appellant also filed objection. The objectors and fit person of the temple levelled several allegations of commission of mismanagement and misappropriation against the appellant. Those allegations are not denied by the appellant herein. In the appeal petition the appellant admitted that the Jewels and valuables are kept in the custody of the President of the Trust and a nominal amount of Rs. 500/- is charged by the Trust to perform marriage in the temple. The amount collected from general public are not deposited in

the temple account but in the trust account. In the appeal petition, they have stated that “the trust accounts are maintained properly day to day and audited by Chartered Accountant. It shows that all the money received from the general public in the name of the temple are deposited in the trust account only.

5. Section 64 (1) of the Act read as follows:

“64. Power of Joint Commissioner or Deputy Commissioner to settle schemes.—(1) When the Joint Commissioner or the Deputy Commissioner, as the case may be, has reason to believe that in the interest of the proper administration of an institution, a scheme should be settled for the institution, or when not less than five persons having interest make an application, in writing, stating that in the interest of the proper administration of an institution a scheme should be settled for it, the Joint Commissioner or the Deputy Commissioner, as the case may be, shall consult in the prescribed manner the trustee and the persons having interest and if, after such consultation, he is satisfied that it is necessary or desirable to do so, he shall, by order, settle a scheme of administration for the institution.

Explanation.—For the purposes of this section, “institution” means a temple or a specific endowment attached to a temple.”

The above Section 64 (1) prescribes the following conditions are essential and to be fulfilled to settle a scheme.

- 1) Application should be made by not less than five persons.
- 2) The Joint Commissioner should consult persons having interest.
- 3) Subjective satisfaction of the Joint Commissioner.
- 4) For the proper administration of the temple.

In this case, though initially, five persons have filed original application, one of the petitioners has objected to settle scheme as prayed by them.

The General Public, devotees, one of the applicant, fit person of the temple and one of the Prosecution Witness filed objection and leveled various allegations of misappropriation against the appellants herein. Such the allegations are not denied by the appellants. But the objectors proved their statements with documentary evidence. Hence, the Joint Commissioner after considering the objection, not satisfied to settle a scheme of administration as prayed by the appellants and dismissed the Original Application in the interest of proper administration of the temple.

6. Further, the suit temple is in existence for more than 400 years, whereas the trust was founded in the year 2007. The suit temple has been worshipped by all sect of public. The trust, which consists of few members, cannot claim administrative right over the temple. They failed to state reasons as to how it is in the best interest of the institution to settle a scheme. The Joint Commissioner applied his mind and arrived at the conclusion that the fanning of the scheme as prayed by the appellant is not necessary in the best interest of the institution.

In view of the foregoing discussions, I find no infirmity or illegality in the order dated 3.1.2011 of the Joint Commissioner, Coimbatore in dismissing the O.A. 35/07 filed under Section 64 (1) of the Act and appeal petition deserves no merits. Accordingly the order dated 3.1.2011 of the Joint Commissioner, Coimbatore 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.