

BEFORE THE COMMISSIONER, H.R.&C.E.ADMN.DEPARTMENT,CHENNAI 84.

Friday the 5th day of July, Two Thousand and thirteen.

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

A.P.13/2012 D2.

Between.

1. Sri Venkatesaperumal Temple Arakkattalai
rep.by its President J. Gopinath S/o
Jagannathan.
 2. K. Rajkumar, S/o Late Kesavelu Naidu
 3. Mrs. K. Radha Ammal W/o Late Kesavelu
Naidu.
- Appellants.

And.

1. The Joint Commissioner, HR & CE
Admn.Dept., Chennai.34.
 2. G. Achuthan.
 3. P.S. Srinivasan.
 4. E. Money.
 5. R. Natarajan.
 6. S.G. Gopalakrishnan.
 7. S. Mani.
- .. Respondents.

In the matter of Arulmighu Venkatesaperumal Temple, 76, Radha
Avenue Main Road, Vaidyantharavakkam, Chennai 87.

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:
31.1.2012 of the Joint Commissioner, HR & CE Admn.Dept., Chennai in
dismissing the O.A. 10/2008 filed under Section 63 (a) of the Act.

Annexure to Order in R.Dis. A.P. 13/2012 (D2)

dated: 5.7.2013.

The above appeal petition filed against the order dated 31.1.2012
of the Joint Commissioner, Chennai in dismissing the O.A. 10/2008
filed under Section 63(a) of the Act.

2. The Joint Commissioner dismissed the above O.A. stating that
all the deities are common to Hindu Sect and poojas to the deities being

performed by the Bhattachariars. The petitioners has stated that there is no Rajagopuram, but Exhibits B5 and B11 will prove that the temple. Arakkattalai requested the public to contribute liberally for construction of Rajagopuram and Arakkattalai has informed the public in the invitation published by the temple's festival for the year 2006 that the temple has to be converted to the status of Thirupathy. So, only with the help of public, interested ubayadars and donors, the temple is being maintained and administered by the Arakkattalai.

3. The appellants contended that the institution is a very recent one. It has no lands of its own. This private temple has been constructed in the personal property of land belonging to the 3rd appellant. The land has not been dedicated to the deity. Arulmighu Venkatesaperumal Temple, Arakkattalai is an association, which is in existence for the benefit of certain members belonging to the Arakkattalai which cannot attract the provisions of the M.R. & C.E. Act. The public at large, as a matter of right, can enter into the premises of Arakkattalai either for worship or for any other purpose. No contribution has been received from the public either for the construction of the private temple or for its subsequent management. In short, the private temple is being managed by the Arakkattalai through its President and Secretary and its members. The appellants have cited nearly 20 judgments in support of their Character, Court below has neglected it. The Joint Commissioner failed to decide the private character of the institution on the line of Principle laid down by Supreme Court of India in T.D. Gopalan Vs. State of Madras. An ordinary Hindu sentiment is not prohibit any worshipper from worshipping the temple even though the temple was intended mainly for the worship of their family or association.

4. I heard Thiru W.C. Thiruvengadam, Counsel for the petitioner and Thiru N. Sathyamoorthy, Counsel for the Respondent and perused the relevant records. On a perusal of the annexure to order passed by the Joint Commissioner, containing the grounds for the above decision,

the Joint Commissioner has analysed all the documents, depositions and judgments relied upon by the appellant in detail and gave categorical findings on each items. In the impugned order, the Joint Commissioner has discussed all the contentions raised by the petitioner in O.A. The Inspector, who caused the local enquiry, has submitted a detailed report with valuable and supporting documents to disprove the claim of the appellants herein. In the impugned order, the Joint Commissioner has dealt with all the ingredients laid down by the Hon'ble Supreme Court to decide the private nature of the institution.

5. (a) The object and purpose of the said Arakkattalai is as follows:

“இந்து மக்களின் தெய்வ வழிபாடுகளுக்காக ஸ்ரீவெங்கடேசுவரருமாள் திருக்கோயில் ஒன்று நிர்மாணம் செய்யும் எண்ணத்துடன்”

So, the purpose of foundation of temple is for the worship of General Hindu Public and not for the worship of members of the Arakkattalai alone.

(b) In the said deed, it is stated that “இந்த அறக்கட்டளையின் உறுப்பினர்கள் ஆலோசனைப்படி சீவால்களையும் மண்டபத்தையும் கட்டி முடிக்க செயல்படவேண்டும். இதற்காக கட்டிடப்பட்டுப் பொருள்களான செங்கல், சிமெண்ட், மணல் இரும்புக் கம்பிகள், மரம் மற்றும் தேவையான பொருட்கள் நன்கொடையாகப் பெற்றுக் கொள்ளலாம்.”

In the stone inscription installed in the temple and in the Kumbabishegam invocation name of the donars who contribute for construction have been mentioned. This proved that the suit temple was constructed from the funds donated by the general public.

(c) In the said temple, various “கட்டணச் சேவைகள்” like Archana, Arghya Pooja, Vehicle Pooja, Neivedya donation, Special entrance Fees etc. are in force. If the contention of the appellants that an ordinary Hindu sentiment is not prohibiting any worshipper from worshipping the temple even though the temple was intended mainly for the worship of their family or association is true, then they should not levy fees for the Sevas performed in the temple.

(d) In the festival invitation, it is printed as follows:

“ சென்ற ஆண்டு விழாவின்போது கலந்து கொண்டு விழாவில் உபயதாரர்களாக பங்கு கொண்டவர்கள் மற்றும் பொருள் உபயம் செய்தவர்கள், உடல் உழைப்பு தந்தவர்கள், பணம், கோடிகள் அனைவருக்கும் அறக்கட்டளையின் சார்பாக எங்கள் நன்றியைத் தெரிவித்துக் கொள்கிறேன். பக்த கோடிகள் அனைவரும் இந்த ஆண்டும் விசேஷ விழாக்களில் கலந்து கொண்டு எம்பெருமானின் திருவருளைப் பெற்று ஆனந்த மயம் வேரூடுமா ய் கேட்டுக் கொள்கிறோம்” It is an open invitation to all the devotees to take part in the festivals conducted in the temple.

In the judgment reported in 1962 Sup (2) SCR 276, the Hon'ble Supreme Court held that “the institution in suit will be a temple if two conditions are satisfied, one is that it is a place of public religious worship and the other is that it is dedicated to or is for the benefit of, or is used as of right, by the Hindu community or any section thereof as a place of religious worship.

From the documents, it is clear that the foundation of the temple is for the worship of General Hindu Public and the temple is founded and maintained by the contributions made from the public and worshipped by the public as a matter of right. The said Kattalai is managing the temple from the offerings Kanikkai and donations received from the public. The temple has all the ingredients of a public temple. The order of the Joint Commissioner is a detailed and self explanatory one.

6. The counsel for the appellants filed a compilation of judgments to support their case. The counsel for the appellant placed reliance upon the following judgments.

In Privy Council P.C.A. No. 3/1937 dated 26.7.1934, it is held that “In the greater part of the Madras Presidency, where private temples are practically unknown, the presumption is that the temples and their endowments form Public Charitable Trust. But the presumption does not apply in the case of temple in Malabar. Hence, in the case of a temple in Malabar, the decision of the

question whether the temple is a public or private temple really depends on the inferences derived from the evidences as to the way in which the temple endowments have been dealt with and the evidence as to the public use of the temple”

But this decision will apply only to temples in Malabar State

(2) In A.I.R. 1966 (Madras) 99, it was observed that

“ A temple dedicated for the use of particular section of the Hindu Community can be a public temple, as defined in Section 6 (17) of the Act. Even if the temple is founded by a section of Hindu Community which claims exclusive right of worship in it”

But, in the object of the Trust itself, it is stated that “இந்து மக்களின் வழிபாடுகளுக்காக ஸ்ரீவெங்கடேசப் பெருமாள் திருக்கோயில் நிர்மானித்தல்”. Hence, the temple is completely dedicated for the use of the Hindu Community alone.

(3) The decision reported in A.I.R. 1976 dated 28.2.1976 related to temple founded by a family and inside the compound of founder's family, which in no way supports the claim of the appellant.

(4) The decision in C.A. 111/1971 dated 26.10.1976 related to “Religious Endowment” only.

(5) In MLJ 1970 17 LW dt. 26.7.1963, It was observed that,

“A temple was proved to have been founded by the plaintiff's family who had settled property for its use and benefit, there was no evidence on record to show that any member of the public either offered money or endowed any property to the temple The temple was situated not only adjacent to the plaintiff house, but the plaintiffs have access and entered to the temple directly from their house and the gate will be always locked except when poojas performed by the Archaka.”

But the suit temple was constructed from the donations collected from the public and regular poojas are performed. Public worship the deity as a matter of right. Various paid sevas are performed in the temple.

(6) In MLJ 1973 dated 18.7.1978, it was held that the main characteristic of a public temple is that it is intended for the use of the public or a section thereof. On the other hand, Private temples are intended for the worship by the members of the family or deity exclusively. The mere fact that outsiders are allowed to worship in a temple cannot necessarily mean that the temple was dedicated to the public, as no Hindu will ever prohibit strangers from offering worship to the deity enshrined in his private temple. In all such cases worship by outside is referable to the lease and licence granted by the owner and cannot be indicative of any dedication to the public.”

But the suit temple is founded for the worship of general public and not for the worship of members of the Arakkattalai alone and various கட்டணச் சேவைகள் like “Archana, Nityapooja, Special entrance” are in force. Devotees are invited to take part in the festivals conducted in the temple. And some other judgments were related to trusts only not to public temple. On analyzing the said judgments, they are in no way supports their claim because from the available documents, the public nature of the temple is proved beyond doubt.

However, it is open to the appellants to file a petition under Section 64 (1) of the Act to frame a scheme of administration to the suit temple.

Hence, for the foregoing reasons as find no valid reasons to interfere with the order of the Joint Commissioner and appeal petition is liable to be dismissed as devoid of merits. Accordingly, the order dated 31.1.2012 of the Joint Commissioner, Chennai is hereby confirmed and the appeal petition is dismissed as devoid of any merits.

/ typed to dictation /

Sd. P. Dhanapal,
Commissioner.

/true copy/ by order/

Superintendent.