

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

Tuesday the 16th day of April, Two Thousand and Thirteen.

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

A.P.No. 57 of 2012 / D2

Between.

- 1. A.M. Kuppuraj,
S/o Meyyandi Gounder.**
- 2. A.M. Raja,
S/o Meyyandi Gounder.**
- 3. A.M. Rajendran,
S/o Meyyandi Gounder.**

... Appellants.

And

**The Joint Commissioner,
HR&CE Admn. Department,
Salem.**

... Respondent

**In the matter of Arulmighu Ellaipidari Amman Temple,
Kumarasamyetti, Salem Taluk and District.**

**Appeal Petition under Section 69(1) of the Tamil Nadu HR&CE Act,
1959 (Tamil Nadu Act 22 of 1959) against the order dated: 27.04.2011
made in O.A.No.16/1999 by the Joint Commissioner, HR&CE Admn
Department, Salem dismissing the Original Application filed under
Section 63(e) of the Act.**

Annexure to Order in R.Dis.A.P.No.57/2012 (D2) dated: 16.04.2013.

**The above appeal petition has been filed against the order dated
27.04.2011 made in O.A.No.16/1999 by the Joint Commissioner,
HR&CE Admn Department, Salem dismissing the Original Application
filed under Section 63 (e) of the Act.**

2. The appellants as petitioners filed Original Application No.16/1999 under section 63(e) of the Act, claiming hereditary right to have certain privileges and honours in the temple viz., 1) Taking Sakthi Poojai (சக்தி பூஜை எடுத்தல்) 2) to touch the urchavar and take for procession 3) At the time of wearing of Mangalya Tharanam (மாங்கல்ய தாரணம்) celebrations are done by the petitioner's family during Thirukalyanam of Amman, and 4) ritual ceremony of wearing Kanganam (கங்கணம் கட்டுதல்). But, the Joint Commissioner without proper appreciation of the evidence on record dismissed the application which is liable to be set aside.

3. The appellants contended that they are holding office as poojari in Arulmighu Ellaipidari Amman Temple, Kumarasamypettai, Salem District. They and their ancestors have been performing pooja service in the temple by turn system and are also entitled for certain emoluments and certain rights to perform poojas in the temple on the basis of the usage and customs that has been prevailed in the temple for the past 3 to 4 generations. There were two families of poojaris in the temple and those poojaris are entitled to possess a separate right for the performance of Sakthi Pooja in the temple. These poojaris also possess the right of meddling of Utsavar idol and except this poojaris, others have no right to touch the Utsavar Idols in the temple. These poojaris have also possessed the right of holding Mangalya Thali for those celebrate the marriage in the temple and possessed the right of Kanganam Kattuthal.

4. During the festival times, these poojaris are entitled to bring the materials required for the performance of pooja from their house. They are also entitled for carrying on the Agni Kundam and they are performing the aforesaid pooja service in the temple regularly without any interference from outsiders and as such they are entitled to hold

office as Hereditary Trustees for the performance of these services in the temple as laid down under Section 63 (e) of the Act. Six witnesses have been examined during enquiry. The Inspector, who deposed in that case has brought to the notice of the authorities under the Act that these services are performed by the poojaris. All the witnesses have also spoken to the effect that these poojaris are entitled to do pooja service in the temple.

5. The appellants further contended that without properly appreciating the oral and documentary evidence, the Joint Commissioner has erroneously rejected the claim of the appellants which is liable to be set aside. In regard to their services and the emoluments the appellants are entitled to do the pooja service in the temple as laid down under Section 63(e) of the Act and therefore their claims are very genuine and it has to be dealt with in accordance with law.

6. I heard Thiru M.Rukmangathan, Counsel for the appellant and perused the relevant records. The Counsel for the appellant reiterated the grounds of memorandum of appeal. The appellants as poojaris claim hereditary right of certain privileges and honour in the temple, such as performance of Sakthi Poojai, meddling of utsava idol, Mangalya Tharanam, Ganganam Kattudal etc. Admittedly, the appellants are poojaris of the temple. All the rights, privileges and honours as claimed by them relate to the duties enjoined to the post of poojaris and whosoever appointed as poojari has to perform such duties. The appellants have not stated what is the emolument or perquisites received by them as honour in reciprocal for discharge of their duty. Under Section 63(e) of the Act, "Whether any person is entitled, by custom or otherwise, to any honour, emolument or perquisite in any religious institution; and what the established usage of a religious institution is in regard to any other matter." The essentials of a custom are that it should

be ancient, or of remote antiquity or long established, certain, invariable, uniform, continuous and reasonable and not open to objection on the ground of public policy or otherwise and not opposed a statute. But, the appellants have not proved anything about the custom that prevailed in the temple through satisfactory documentary evidence supported and corroborated by oral evidence. The Joint Commissioner has categorically discussed that “மனுதாரர்கள் தங்களது மனுவில் கோருவது சரியல்ல. மனுக்கோயில் அரசு கட்டுப்பாட்டில் உள்ள கோயிலாகும். பூசாரிகள் ஆலய நிர்வாகத்திற்கு கட்டுப்பட்டவர்கள் ஆவர். ஆலய நிர்வாகத்தின் மூலம் சம்பளம் பெறுவதும் கிடையாது. வருட உற்சவத்தில் குலுக்கு சீட்டு போட்டு அதில் வரும் நபர்கள் அந்தந்த பணியை செய்வது வழக்கம் ஆகும். ..மனுவில் கோரியவாறு பூஜை மற்றும் சடங்குகள் செய்வது குறித்து விளம்பல் (Declare) செய்ய வேண்டியது அவசியமில்லை. அப்படி மனுதாரர்களுக்கு அவர்களது கோரிக்கையை விளம்பல் செய்தால் ஆலய பணிகளை செய்து வரும் மற்ற நூற்றுக்கணக்கான பணியாளர்களும் அவர்களது பணிகளை விளம்பல் செய்ய கோரிக்கை வைப்பார்கள்”. So, there is objection to the claim of the appellants amongst the public. The 1st appellant who deposed as P.W.1 before the Joint Commissioner has stated that “அரசு கோயிலை எடுத்த பிறகு விழாக்குழு போட்டு வசூல் செய்து திருவிழா செய்கின்றனர். எனக்கு பூசாரி உரிமை வேண்டும் என்று மனு தாக்கல் செய்துள்ளேன். மனுப்படி உத்தரவாக கேட்டுக் கொள்கிறேன்.” Therefore, the appellants have thoroughly misconstrued and misconceived the provisions of the Act and the original application as such filed under section 63(e) of the Act is neither maintainable under law nor sustainable on facts.

7. From the averments contained in the original application, the claims are all duties of the poojari and such a claim cannot be made under section 63(e) of the Act. However, the Joint Commissioner has erred and observed that “...திருக்கோயிலின் பழக்கவழக்கப்படி தான் நடைமுறைப்படுத்தப்பட வேண்டுமென” and dismissed the case. Therefore, the

order of the Joint Commissioner is liable to be set aside and the matter to be remitted back to the Joint Commissioner for fresh disposal in accordance with law. Before taking up the matter on file, the Joint Commissioner has to find out whether the claim of the appellants can be entertained under section 63(e) of the Act and to take a decision and proceed thereafter in accordance with law. With the above direction the appeal petition is disposed of.

/ typed to dictation /

**Sd. P. Dhanapal,
Commissioner.**

/ true copy/ by order/

Superintendent.