

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

Friday the 10<sup>th</sup> day of May, Two Thousand and Thirteen.

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

A.P. 62/2012

Between.

1. S. Kumaraiah,  
S/o Srinivasa Nadar.
2. S. Ramasamy,  
S/o Srinivasa Nadar.

..Appellants.

And

The Joint Commissioner,  
HR&CE Admn. Department,  
Tirunelveli.2

.. Respondent

In the matter of Charitable Endowment created by Thanganna Nadar, Poosanoor village, Vadamalaisamudram Post, Vilathikulam Taluk, Tuticorin 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 22.02.2006 made in O.A.No.4/2000 on the file of the Joint Commissioner, HR&CE Admn Department, Tirunelveli dismissing the original application filed under Section 63(b) of the Act.

Annexure to Order in R.Dis.A.P.62/2012 (D2) dated: 10.5.2013.

The case of the appellants is that the above said Charitable Endowment was created by Thanganna Nadar of Poosanur through a document dated 18.04.1908 and certain properties were endowed for maintenance of Theppakulam and Madaalayam. In the said document, the founder has specifically provided for line of succession and nominated one Ramasamy Nadar to manage the affairs of the Charitable Endowment. After Thanganna Nadar, Thiru Ramasamy Nadar who was succeeded by his daughter Vellaiammal functioned in their capacity as Trustee. The Government by G.O.Ms.No.3962 Revenue Department, dated 31.12.1959 notified the Charitable Endowment and thereupon the above said Charitable Endowments comes within the provisions of the HR&CE Act.

2. The said Vellaiammal filed O.A.No.36/1976 but failed to produce the original document of dedication and on that ground the said original application was dismissed. The Appeal in A.P.No.39/1977 was also dismissed on an erroneous appreciation of law confirming the non-production of original document but accepted that a certified copy of the same was produced. There was no analysis with regard to succession or other details in regard to the norms laid down by the founder of the charitable endowment and it is clear that the character of the institution in regard to the office of the trusteeship has not been decided in accordance with law. The previous original application filed by the said Vellaiammal will not operate as Res-judicata. The appellants as sons of the said Vellaiammal filed O.A.No.4/2000 before the Joint Commissioner for a declaration under section 63(b) of the Act. But, the Joint Commissioner dismissed the original application without proper analysis of the facts and law. Therefore, the impugned order is basically defective and against law and is liable to be set aside.

3. The counsel for the appellants urged that the court below has failed to see that the claim as made out is for the temple but for the charitable endowment; that the founder of the charitable endowments died issueless and specifically provided for line of succession and nominated one Ramasamy to function as trustee, who functioned as hereditary trustee succeeded by his only daughter Vellaiammal and now by the present appellants. Therefore, the office in the Charitable Endowment is hereditary within the meaning of Section 63(b) read with Section 6(11) of the Act. The previous order passed in O.A.No.39/1976 will not operate as Res-judicata as the question of hereditary trusteeship was not gone into and decided.

4. I heard Thiru M. Rukmangathan, Counsel for the appellants and perused the relevant records. "Thangameenammal Theppakulam" and Madavalayam, Nandhavanam was created by one Thanganna Nadar to provide drinking water facility to paradesis (தெப்பக்குளம் வகையறாவில் சர்வசனம் ஜீவராசிகளின் பொது நன்மையின் பொருட்டு தர்மத்திற்கு ஆக.. மடவாலையத்தில் பிரதி தினமும் தண்ணீர் வைத்து அகுதிபரதேசிகளுக்கு தாகத்துக்கொடுத்தும் தீபம் ஏற்றி வைத்தும்) through a registered document dated

28.04.1908. The founder himself specifically provided for the line of succession and nominated one Ramiah Nadar S/o.Arunachala Nadar and his legal heirs as Huqdar of the said charitable endowment after his life time. The said charitable endowment has been notified by the Government in G.O.Ms.No.3962/Revenue dated 31.12.1959. The founder of the charitable endowment has specifically mentioned that the Huqdar should maintain proper accounts for the same and that should be verified by certain persons nominated by the founder in the deed. But no such accounts have been maintained by any one.

5. Previously, O.A. 36/1976 was filed by Vellaiammal, mother of the appellants seeking declaration under Section 63 (b) of the Act, which was dismissed for non production of any documents about the management of the institution by Ramiah Nadar and by the applicant. In the O.A.4/2000 also, the appellants herein failed to produce any piece of document i.e., accounts for the income and expenditure for the properties belonging to the charitable endowments to prove that the management of the said charitable endowment has been vested in their family for more than 3 generations. The said charitable endowment owns valuable property. The object of the charitable endowment is to maintain the Theppakulam and to provide drinking water charity in the Madavalayam constructed by him. The entire income derived from the properties of the charitable endowment is not proved to be spent for the purpose and object for which the charitable endowment was founded by the Executor, even after the same was notified by the Government for reason of its mismanagement. The founder-executor himself specified the name of persons to whom the accounts should be produced and verified.

6. In the deed, it is stated as follows:“அக்கு பாத்தியதைடைந்த பின் தபசில் கண்ட சொத்துக்களை அடமானம் விற்கிரயம் முதலியன வில்லங்கம் செய்யக்கூடாது. மேற்படி சொத்து வரும்படிகளை குடும்பச் செலவுக்காவது தூர்விஷயமான செலவுகளாகவது செய்யாமல் தர்மத்தை விருத்தி பண்ணி வரவேண்டியது. மேலே கண்ட ஷரத்துக்கு விரோதமாய் எவ்விதமான வில்லங்கம் செய்தால் அதினாலுண்டாகும் நஷ்டங்களுக்கு அக்தாருடைய சொந்த ஸ்தாபர ஐங்கமச் சொத்துக்களின் பேரிலும் சீரத்தின் பேரிலும் மேற்படி கணக்கை சரியாக்கியவர்களால் சிவில் கோர்ட்டு மூலமாய் வசூல் செய்வதோடு அக்கு பாத்தியதை ரத்து செய்து அந்த வாரிஸ்களில் பிடித்தமுள்ள

மற்றோருவரை நியமனம் செய்து மேற்படி தர்மத்தை விருத்தி செய்து வரவேண்டியது” As per the deed of endowment, the appellant did not produce any document or accounts to show that they had been performing the charities by maintaining proper accounts. It is indisputable fact that the charitable endowment owns vast extent of landed properties. Mere production of kist receipts will not prove the actual management of the charitable endowment. No attempts have been made to trace out the genealogy as filed and claimed by the appellants with reliable corroborative evidence. This appeal was filed with a delay of 2167 days of delay, however condoned.

Therefore, in the absence of any proof of accounts for the continuous management and administration of the charitable endowments and its properties by the appellants herein and their predecessors in interest as claimed and failure to satisfy any one of the features as specified under Section 6 (11) of the Act with cogent evidence, I hardly find any valid reasons to interfere with the order dated 22.02.2006 passed in O.A.No.4/2000 by the Joint Commissioner, HR&CE Admn Department, Tirunelveli. Accordingly, the impugned order is hereby confirmed and the Appeal petition fails and is liable to be dismissed as devoid of merits and accordingly, the same be and is hereby dismissed as devoid of any merits.

The Joint Commissioner, HR&CE Admn Department, Tirunelveli and the Assistant Commissioner, HR&CE Admn Department, Thoothukudi is directed to supervise and exercise such of those powers conferred by the Act for the proper functioning of the Charitable Endowment in accordance with the provisions of the Act.

/typed to dictation/

Sd. P. Dhanapal,  
Commissioner.

/ true copy/ by order/

Superintendent.