

BEFORE THE COMMISSIONER, H.R. & C.E. ADMN. DEPARTMENT, CHENNAI.34.

Wednesday the 19th day of February, Two thousand and Fourteen.

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

A.P. 53/2012.

Between.

Raja @ Periasamy.

.. Appellant.

And.

- 1) The Joint Commissioner,
H.R. & C.E.Admn.Department, Madurai..
- 2) The Executive Officer,
Arulmigu Sathuragiri Sundaramahalingasamy
Temple and Sathuragiri Madam, situated in
Thambiahpatti, Peraiyur Taluk, Madurai District.
- 3) Fit Person, Arulmighu Subramaniasamy Temple,
Thiruparangundram, Madurai south Taluk,
Madurai District.and now appointed as Fit Person to
the above Temple.

Respondents.

In the matter of Arulmigu Sundaramahalingaswamy Temple,
Sathuragiri, Peraiyur Taluk, Madurai District.

The Appeal petition filed under Section 54(4) of the Tamil Nadu
HR & CE Act, 1959 (Tamil Nadu Act 22 of 1959) against the order dated
10.9.2012 of the Joint Commissioner, H.R. & C.E. Admn.Department,
Madurai in No. 1936/2011 B1 under Section 54 (3) of the Act.

Order in D.Dis. A.P. 53/2012 D2 Dated : 19.2.2014.

The above appeal petition having come on for final hearing before
me on 16.7.2013 in the presence of Thiru W.C. Thiruvengadam, Counsel
for the appellant and Thiru P. Gopalan,Counsel for the respondents 2&3,
and upon hearing their arguments and after perusing the connected
records and the matter having stood over for consideration till this day,
the following order is made.

ORDER

The above appeal petition has been filed under Section 54(4) of the Act against the order dated 10.9.2012 of the Joint Commissioner, Madurai in Rc.No. 1936/2011 passed under Section 54 (3) of the Act.

2. The appellant contended that there is a temple dedicated to Arulmighu Sathuragiri Sundaramahalingamsamy and a Mutt known as Sathuragiri Madam, situated in Thambiapatti village, Peraiyur Taluk, Madurai District. The office of the trusteeship in the aforesaid temple and Mutt is hereditary within the meaning of all Act, from Act 2 of 1927 to the present Act 22 of 1959. It is under the Act 2 of 1927, an order of excepted temple has been obtained under Section 9 of the Act by the Board's order No. 2549 dated 26.9.1936. Thus it is clear that under the first Act namely, Act 2 of 1927 the office of the trusteeship in the temple in the family of the Hereditary Trustee of the ancestors of the appellant herein. The line of succession has been continuing without any break. An Executive Officer was appointed by the Commissioner under Section 45 (1) of the Act, which was challenged by the hereditary Trustees in W.P.No.16514/1992 and the same has been dismissed and against which Writ Appeal was filed in W.A.No.318 of 1994 where a direction has been given to the hereditary trustees to file an Application under Section 63 (b) of the Act to regularize the trusteeship. An application in O.A. 11/1994 under Section 63 (b) filed on the file of the Joint Commissioner, H.R. & C.E. (Admn.) Dept., Madurai was dismissed. An appeal was filed by the hereditary trustees in A.P.No.12 of 2001 and the same was allowed on 31.12.2001 wherein, the Appellant's father was declared as hereditary trustee. Thereupon, the Executive Officer filed a suit in O.S.No. 101 of 2002 before the Principle Judge, Madurai challenging the order of the Commissioner passed in the above appeal. This suit is a statutory suit filed under Section 70 (1) of the Act challenging the order of the Commissioner and the said suit is still pending. In the meantime, the Joint Commissioner, with a malafide intention instituted Section 53 (1 &2) proceedings and framed charges against the hereditary trustee,

which has ended in his removal. Against the said order an appeal was filed before the Government which was also rejected. Against which the suit has been filed by the Hereditary Trustee in O.S.No.131 of 2006 and obtained stay in I.A.No. 306/2006. The stay is still in force. Against the said order of granting stay, a revision petition was filed by the Executive Officer in C.R.P. No. 443/2006 before the Hon'ble High Court wherein, the Hon'ble High Court was pleased to dispose of the revision petition by confirming the impugned order and the said suit is pending as on date along with the earlier suit filed under Section 70(1) of the Act, challenging the order of the Commissioner passed in A.P. 12/2001. Furthermore, the charges framed against the previous hereditary trustee is totally abated since he has expired therefore, the charges earlier framed cannot stand or as a bar to his son to succeed to the office of the hereditary trusteeship in the aforesaid temple. The appellant's father has written a Will and executed the Will on 9.7.2007 whereby, he has nominated his son, the appellant herein to be the hereditary trustee of the temple and he died on 8.3.2011. It is submitted that on 8.3.2011, the appellant has written a Letter to the Joint Commissioner, Madurai to record his automatic succession to the office of the trusteeship in the aforesaid temple and continue to function as hereditary trustee in the temple. The Joint Commissioner, Madurai ignoring all legal norms has now issued fresh order in Pro.Rc.No. 1936/2011 B1 dated 10.9.2012 and appointed the 3rd respondent herein as fit person for this temple, admittedly under Section 54 (3) of the H.R. & C.E. Act 22 of 1959 which is not at all applicable in this case at this juncture. When the Fit Person was appointed by the Government through G.O. dated 28.6.2011 has already been set aside by the learned Judge of the Hon'ble High Court in W.P.No.13154/2011, the Joint Commissioner, Madurai has absolutely no power to circumvent the law and again proceed to appoint the Fit Person for this temple, which is clearly establish the malafide intention and motive of the authorities under the Act. Hence, the appointment of Fit Person under Section 54 (3) of the Act is basically defective, against law, illegal and is liable to be set aside.

3. In the Written Submission, the Respondents 2 and 3 have stated that in the light of the order of the Hindu Religious Endowments Board No. 2549 passed in OA. 190 and 195/1936 dated 26.9.1936 under the Act II of 1927, the Head of the Math would function as a Trustee of the temple viz. Arulmighu Sundaramahalingaswamy Temple, Sathuragiri, Peraiyur Taluk, Madurai District by observing as follows:

“The Head of the Math is also a Trustee of the Temple. Since the succession had always been by appointment of a sishya to succeed to the office held by his predecessor. Such appointment being restricted to sishya parambarai.”

While so, the claim made by the Appellant in Para 1 of the Memorandum of Appeal that the Office of Trusteeship in the temple held in the family of the ancestors of the Appellant herein is contrary to the earlier quasi judicial order of the H.R. E. Board as aforesaid. Hence, the claim that the ancestors of the Appellant who got the order of declaration as Hereditary Trustees of the Appellant is also absolutely false. In furtherance of the order of the Government of Tamil Nadu passed in G.O.Ms.No. 763, CT & RE, dated 3.6.1976, Fit Person was appointed for administering the temple aforesaid. But after 16 years, the appointment of Fit Person was challenged by the Appellant's father in W.P. 16514 of 1992 before the Hon'ble High Court, Madras which culminated in W.A.No.318 of 1994 and by an order dated 7.3.1994, the Division Bench while dismissing the Writ Appeal observed that no record was produced to show that at any point of time, the Appellant was recognized as hereditary trustee of the Temple. However, the Division Bench directed the Appellant's father to seek appropriate remedy in accordance with law. While, so as mentioned above, the claim that the ancestors of the appellant who got the order of declaration as hereditary trustees of the Appellant is also absolutely false. In the light of the direction issued by the Division Bench aforesaid, the Appellant's father initiated proceedings under Section 63 (b) of the Act before the first Respondent in O.A.No. 11 of 1994 claiming hereditary trusteeship in the temple and after dismissal of the same, Appeal filed in A.P. 12/2001 before this Hon'ble Court was

allowed which culminated in the statutory suit filed by the Executive Officer of the Temple in O.S.No. 101 of 2002 and it is now pending on the file of Principal Sub-Judge, Madurai. As per the order of the Hindu Religious Endowments Board No. 2549 passed in OA 190 and 195/1936 dated 26.9.1936, the hereditary trusteeship is restricted to sishya parambarai. Whiles, there is no question of claiming hereditary trusteeship by the Appellant and equally there is no question of claiming nomination of hereditary trusteeship on the basis of the WILL executed by the Appellant's father. When admittedly, the appellant's father is not the founder of the Temple. Hence, the appellant's father cannot prescribe line of succession under his WILL. It is further submitted that law has also been settled by the decision of the Division Bench reported in (1989) 2 MLJ 105, which has also been upheld by the Hon'ble Supreme Court of India reported in (2000) 2 MLJ 112, wherein, it was held that the person who claims as hereditary trustee under the WILL executed by the Testator who is not a founder of the temple do not come within the meaning of the definition under Section 6 (11) of the Tamil Nadu Act 22 of 1959. In this case neither the appellant's father was functioning as a disciple from his predecessor and equally, the appellant is also not coming under the category of sishya parambarai. Hence, the nomination of the appellant under the WILL of his father cannot claim any better right.

4. I heard Thiru W.C. Thiruvengadam, Counsel for the appellant and Thiru P. Gopalan, Counsel for the Respondent and perused the relevant records. In the Board order No. 2549 (OA 190 and 195/1936) dated 26.9.1936, the temple was declared as excepted under the Act II of 1927. One P. Durairaj @ Periyasamy Paradesi filed O.A. 11/1994 under Section 63 (b) of the Act before the Joint Commissioner, Madurai for a declaration that the office of the temple was Hereditary. The said O.A. was dismissed by order dated 11.1.2001. The appeal filed in A.P. 12/2001 was allowed by Commissioner in Order dated 31.12.2001 setting aside the order of the Joint Commissioner. The Executive Officer of the Temple has filed a suit under Section 70(1) of the Act in O.S.No.

101/2002 on the file of the Principal Sub-Court, Madurai against the said order after obtaining permission from the Commissioner and the same is still pending. The foremost issue to be decided in the suit is whether the devolution of Trusteeship is by nomination of Sishya by Guru by usage and custom regarding succession to the office of the trustee or by Varisu Parambarai.

It is pertinent to point out that in the Board Order 2549/dated 26.9.1936, it was mentioned as follows:

“The Head of the Math is also trustee of the temple. Since the foundation the succession had always been by appointment of a sishya to succeed to the office held by his predecessor. Such appointment being restricted to sishya parambarai. Obviously there is a body of disciples the object being to advancement of religious” That the succession to the office is governed by the rule of sishya parambarai, but appellants and his forefather converted the succession into Varisu parambarai against the Board order. Even in the Will, it is mentioned as “என் சிஷ்யனும், வாரீசும், குமாரனுமாகிய ராஜா என்ற பெரியபரதேசி” Further the said will, there was no mention about “nomination” by it only convey the right. That the appellant claiming succession by birth and stealthily attempt to make the office of Trusteeship as a family private property.

Further, it is not known whether any math now functioning in the alleged Thambiapatti Madam, what is the object of the Math, whether that objects are carried out by the Madathipathi and whether there is disciples?. These facts should be enquired by the Assistant Commissioner concerned and a status report should be forwarded to the Commissioner.

The succession to the Hereditary Trusteeship by the Durairaj alias Periasamy Paradesi, is under challenge in O.S. 101/2002 and not yet attained finality. Hence the claim made by the appellant based on the will executed by the said Pariasamy Paradesi is not maintainable. It has held by the Hon'ble High Court reported in 1994 2 MLJ 483, “during the pendency of the suit and also safeguard the interests of both sides, the proceedings before the Deputy Commissioner need not be allowed to go

on as it would amount to duplication of the proceedings. Further, in the pressure of suit filed by the parties, the proceedings under Section 54 of the Act and further appeal under Section 69 of the Act and the order passed therein will not assume any finality. In the interest of the serving public, time and also the unnecessary hardship to the parties, the Court is of the view that the proceedings before the Deputy Commissioner can be directed to wait until the civil court decide the suit”.

In this case, the Joint Commissioner does not pass any final order in the application filed under Section 54(1) of the Act. The above petition kept in abeyance till the disposal of O.S.No. 101/2002 and O.A. 131/2006 pending on the file of the Principle Subordinate Judge, Madurai. Since the succession to the Hereditary Trustee has to be decided by the Civil Court, the Joint Commissioner invoked the power conferred under Section 54 (3) of the Act and passed the impugned order appointing Fit Person to the temple.

Therefore, for the foregoing reasons stated above, I find no illegality or infirmity in the order passed by the Joint Commissioner, Madurai. Accordingly the order dated 10.9.2012 of the Joint Commissioner, Madurai 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

To

1. The Appellant through Thiru. W.C. Thiruvengadam, No.23, Bagavantham Street, T.Nagar, Chennai.17.
2. The Respondents 2 and 3 through Thiru P. Gopalan, Advocate, 55, Law Chambers, High Court Building, Chennai. 104.

Copy to

3. The Joint Commissioner, HR & CE Admn.Department, Madurai.(along with file in 1936/2011)
4. The Assistant Commissioner, HR&CE Admn.Department, Madurai.
5. The Inspector, H.R. & C.E. Admn.Department, Peraiyur, MaduraiDist.
6. The Superintendent, S1 Section, Head Office through numbering.
7. Extra.