

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

Monday the 15th day of October, Two Thousand and Twelve

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

A.P. 52/2012.

Between.

Hamsammal W/o Subramaniam

.. Appellant.

And.

- 1) The Joint Commissioner,
H.R. & C.E.Admn.Department, Vellore.
- 2) The Executive Officer,
Arulmigu Bhakthavachalam Perumal Koil, Thiruvallur. ... Respondents.
3. Loganathan.
4. Nagaraj
5. Shanmugam .. Impleading Petitioners/
Respondents.

In the matter of Arulmigu Panchavarneswarar Temple, Ekkadu, Thiruvallur
District.

Appeal Petition filed under Section 53(5) of the Tamil Nadu HR & CE Act, 1959 (Tamil Nadu Act 22 of 1959) against the order dated 28.6.2012 of the Joint Commissioner, H.R. & C.E. Admn. Department, Vellore in Proc.Rc.No.1823/2012-2/B1 placing the Hereditary Trustee under interim suspension pending enquiry into charges, under Section 53(4) of the Act and appointing the 2nd respondent herein as fit person.

Order in D.Dis.A.P.No. 52/2012 (D2) Dated : 15.10.2012.

The above appeal petition having come on for hearing on 10.10.2012 before me in the presence of Thiru P. Madhan, Counsel for the Appellant; Thiru K. Thangavel, Counsel for the 2nd Respondent and Thiru S.Sugadev, Counsel for the Impleading Petitioners, upon hearing their arguments and having perused the connected records, the following order is made.

ORDER

The above appeal petition have been filed under Section 53(5) of the Act, against the order of the Joint Commissioner, HR&CE Dept., Vellore placing the appellant/

Hereditary Trustee under interim suspension pending enquiry into charges and appointing the 2nd respondent herein as fit person under Section 53(4) of the Act.

2. The case of the appellant is that she is the present Hereditary Trustee of Arulmighu Panchavarneswarar Temple, Ekkadu, Thiruvallur District. Earlier, Thiru Subramania Mudaliar, her husband was the Hereditary Trustee of the temple who was placed under suspension by the Joint Commissioner and the appellant succeeded to the office as the next in the line of succession to the hereditary trustee in the year 2002. The Joint Commissioner issued a show cause notice in Rc.No.1823/2012 B1 dated : 22.2.2012 requiring the appellant herein to show cause as to why charges should not be framed for the misfeasance and malfeasance committed in the administration of the temple and to submit explanation. The appellant gave a detailed reply immediately on 13.3.2012. The appellant presumed that the proposed disciplinary action against her would be dropped accepting her reply. But, a charge memo with 11 charges requiring to furnish explanation was issued in Proc. Rc.No.1823/2012-1 dated 28.6.2012 of the Joint Commissioner and simultaneously, the impugned order placing her under interim suspension pending enquiry into the charges, and appointing the 2nd Respondent as Fit Person to the said temple under Section 53(4) of the Act was also issued. The appellant contends that the 1st Respondent has exercised his power under Section 53 (4) of the HR&CE Act vindictively only to oust the powers of the appellant and her family members as Hereditary Trustee.

2. The appellant also filed a Writ Petition before the Hon'ble High Court, Madras in W.P.No.26023 of 2012 seeking direction to the Commissioner to dispose of the appeal and in the mean time to stay the order of the Joint Commissioner, H.R.&C.E. Dept., Vellore. The Hon'ble High Court has also disposed of the writ petition with directions directing the Commissioner to dispose of the stay petition filed by the appellant in the appeal petition, which is listed for hearing on 9.10.2012. In strict compliance of the orders of the Hon'ble High Court, the main appeal along with stay petition is taken up for hearing on 10.10.2012. The counsel for the 2nd Respondent, during the course of hearing brought it to the notice of this forum that by virtue of the impugned order passed by the Joint Commissioner, the 2nd Respondent has assumed charge of the temple on 13.9.2012 in the presence of Revenue officials and villagers. He also produced copy of the charge list and the communication sent to the appellant in this regard. Even in the impugned order, the Joint Commissioner invoking Section 53 (1) (c) and (4) of the Act has passed

orders stating that the appellant is placed under interim suspension pending enquiry into the charges framed against her. The Division Bench of the Hon'ble High Court, Madras in W.A.No.277 of 1962 has decided and held that "In a case where a trustee is placed under interim suspension, the provision does not appear to recognize that a vacancy even of a temporary nature has come to exist. It would follow therefore, that in such cases, it is not necessary for the Deputy Commissioner to choose the person next in the line of succession. That, a stranger can be appointed." It is clear that the impugned order of the Joint Commissioner is not a punishment invoking Section 53(2) of the Act, but passed under Section 53(4) of the Act. Therefore, in view of the above decision of the Hon'ble High Court, the stay petition deserves no merits and is liable to be dismissed and accordingly it is hereby dismissed.

3. I have also considered the main appeal and heard the counsel for the appellant, the Counsel for the 2nd Respondent and Impleading Petitioners. The counsel for the appellant would submit that the appellant has submitted explanation to the charge memo on 18.7.2012 and is ready to co-operate with the enquiry. As there is no impediment to take up the main appeal itself for hearing, the petition for impleadment filed by the proposed parties stand allowed. Even though the charges framed against the appellant may be grave, without going into the merits of the charges, it would be appropriate to direct the disciplinary authority to enquire into the charges and pass final orders within a time. Therefore, the Joint Commissioner is directed to enquire into the charges by affording reasonable time to the appellant and others, and pass final orders in accordance with law within a period of 90 days from the date of receipt of a copy of this order. The appellant, respondent, persons having interest and the Impleading petitioners/proposed parties are directed to co-operate with the Joint Commissioner to complete enquiry within the stipulated period. With the above direction, the appeal petition be and is hereby disposed of.

/typed to dictation/

Sd. P. Dhanapal,
Commissioner.

/true copy/by order/

Superintendent.

To

1. The Appellant through Thiru P. Madhan, Advocate, No. 17, Law Chambers, High Court Buildings, Chennai.104.
2. The 2nd Respondent through Thiru K. Thangavel, Advocate, No. 1/1, Sri Venkataraman Mansion, Allithurai Road, Puthur, Tiruchirapalli 620 017.
3. The Impleading petitioners through Thiru S. Sugadev, Advocate, No. 30, Sathyamoorthy Street, Thiruvallur.

Copy to

4. The Joint Commissioner, HR & CE Admn.Department, Vellore.
(The file in Rc.No.1823/2012 B1 pages 1-108 and records 1-464 pages is returned herewith by **Regd.Parcel**. The receipt of the records should be acknowledged by return of post.)
5. The Inspector, H.R. & C.E. Admn.Department, Thiruvallur.
6. The Assistant Commissioner, HR&CE Admn.Department, Thiruvallur.
7. Extra.