

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

Monday the 21st day of January, Two thousand and Thirteen.

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

A.P. 8/2012.

Between.

1. Nadathoor Janarthana Swamigal
@ Aravind Swamigal,

.. Appellants

2. Hemalatha.

And

The Joint Commissioner,
H.R. & C.E. Department, Villupuram.

.. Respondent.

In the matter of Arulmighu Prathiyankara Parameswari Ashramam (Jeeva Samadhi of Nadathoor Nambi) situated in Plot No. 62, 63, Morattandi Village, Thiruchitrabalam Panchayat, Arovil Post, Vanoor Taluk, Villupuram District.

The 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: 16.08.2011 passed by the Joint Commissioner, HR&CE Admn. Dept., Villupuram dismissing O.A.No.129/2006 filed under Section 63 (a) of the Act.

Annexure to Order in R.Dis. A.P.No. 8/2012 (D2) Dated : 21.1.2013.

The above Appeal Petition has been filed against the order dated 16.08.2011 passed by the Joint Commissioner, H.R.&C.E. Admn. Dept, Villupuram dismissing the O.A.No.129/2006 filed by the appellants under Section 63 (a) of the Act.

1. The appellants herein as petitioners originally filed O.A.No.33/2005 before the Joint Commissioner, H.R.&.C.E. Admn. Dept., Mayiladuthurai under Section 63 (a) of the Act praying to declare that the petition mentioned ashramam and the building comprised in plot Nos.59 to 63 belongs to the petitioners as private property and is not a religious institution as defined under the HR&CE Act. Due to bifurcation of the territorial jurisdiction, the said O.A.No.33/2005 was later transferred to the file of the Joint Commissioner, HR&CE Admn Dept, Villupuram and renumbered as O.A.No.129/2006. After hearing and perusing the records, the Joint Commissioner dismissed the above O.A. holding that the petitioners were called absent; P.W.1, P.W.2, and C.W.1 was examined; Exhibits A.1 to A.8 and C.1 to C.5 was marked; substantial portion of the petitioners evidence was already recorded and the petitioners failed to appear on so many hearing and so the Joint Commissioner is satisfied that the evidence on record is sufficient to substantiate the petitioner's stand and for disposal of the Original Application and proceeded with the case as per the explanation to Rule 2 of Order 17 of C.P.C as if the petitioners were present.

2. While dismissing the Original Application, relying on the deposition of P.W.1 and P.W.2, the Joint Commissioner came to a decision that the said temple is used as a place of public religious worship; dedicated to and used as of right by Hindu Community as a place of public religious worship. Four hundials have been installed in the premises of the temple and the petitioners are collecting amount by way of selling tickets and also the petitioner admitted that funds from public has been utilized for construction of the temple. The petitioners are also receiving gifts from the devotees. Hence, the temple in question is not an ashramam but it is Prathiyankara Devi

Temple and the petitioners failed to produce any evidence to show that they have constructed the temple from out of their own funds.

3. The appellants contended that there is a private temple dedicated to Arulmighu Prathiyankara Parameswari Ashramam (Jeeva Samadhi of Nadathoor Nambi) situated in Plot No. 62, 63, Morattandi village, Arovil post, Vanoor Taluk, Villupuram District. It is a private temple belonging to the appellants herein. It is neither a religious institution nor a temple coming under Section 6 (18) or to attract Section 6 (20) of the Act. It is an Ashramam, wherein, the first appellant is performing "Athmartha Pooja". The institution has no ingredients of religious institution or temple, so as to attract the public at large. There is no dedication of any property. There is no deity installed or consecrated in the place, where the Ashramam is situated. There is private worship by the appellants and his family for which certain idol and photos are kept inside the Ashramam, which cannot conclude to attract the definition of Sec. 6 (20) of the Act. The place where the Ashramam is located has not been dedicated to the public. As a matter of fact, the public cannot enter into the premises since there is no place of worship in the Ashramam and it is clear that the Ashramam in question is a private property belonging to the appellants herein, who are the actual owners of the land. The Assistant Commissioner, HR&CE Admn. Dept., Cuddalore seems to have taken steps to appoint a Fit Person and subsequently withdrew the said appointment at later stage. Hence, in order to decide the character of the Ashramam, the Appellants have filed O.A. 129/2006 and also filed Ex.A1 to A8 and P.W.1 was examined. The Inspector of HR&CE was examined as 4th witness. At that time, the appellants felt that they would not get justice before the Joint Commissioner, HR&CE, Villupuram and therefore, the appellants had approached the

Commissioner, HR & CE with a petition for transfer under Section 22 of the HR&CE Act 22 of 1959. The learned Commissioner has allowed the said transfer petition in open court, but the appellant had not received any order to that effect. The order of the Commissioner passed in the transfer application took place on 17.08.2011. To the shock and surprise of the appellants, the Joint Commissioner having come to know of the order of Transfer, took law into his hands, dismissed the O.A. 129 of 2006 by putting the date on 16.08.2011.

4. The appellants further contended that the Joint Commissioner has dealt with the evidence of PW1 and 2 and also stated that Exhibits were filed but no findings has been given, but however, proceeded to dispose of the matter under Rule 2 and Order 17 of Civil Procedure Code and dismissed the O.A. It is not known under what ground the Civil Procedure Code has been invoked, especially Rule 2 and Order 17, which has no relevancy at all and prayed to set aside the order of the Joint Commissioner and remit the matter to the Joint Commissioner for fresh disposal.

5. I heard Thiru W.C. Thiruvengadam, Counsel for the appellants and perused the relevant records. On perusal of the order and annexure to order issued in the O.A., the Joint Commissioner has passed the order in a hurried manner rejecting the plea seeking adjournment by the petitioner's counsel on 09-08-2011 concluding that the evidence on record is sufficient to substantiate the petitioner's stand and for disposal of the O.A. Though the Joint Commissioner evolved various reasons to dismiss the O.A. but failed to analyze the evidentiary value of the documents filed and marked by the petitioners and the Court witness in the proper perspective. The Joint Commissioner has not discussed in his order that how far the documents filed and marked by the petitioners and the Court witness

lend support to the case of the petitioners by applying his mind judicially before taking such a decision.

6. Therefore, the order of the Joint Commissioner dated 16.08.2011 suffers from infirmity as stated above and deserves to be set aside. Accordingly, the order dated 16.08.2011 made in O.A.No.129/2006 is hereby set aside and the matter is remitted back to the Joint Commissioner for denova enquiry after affording sufficient opportunity of being heard to the appellants, other persons having interest if any and pass orders on merits and in accordance with law. The appellants and other persons having interest if any shall also cooperate with the Joint Commissioner for the expeditious disposal of the O.A. With the above directions, the appeal petition is disposed of.

/typed to dictation/

Sd. P. Dhanapal,
Commissioner.

/true copy/by order/

Superintendent.