

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

Tuesday, the 23rd day of July, Two thousand and Thirteen.

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

A.P.15/2013 D2

Between.

1. T.P. Arumuga Mudaliar.
S/o Pachianna Mudaliar.
2. K. Vadivel,
S/o Kandasamy Mudaliar.

.. Appellants

And

1. The Joint Commissioner,
HR&CE Admn. Dept., Salem.4.
2. S. Ashok Kumar,
3. S. Rajendran,
4. S.K. Mani (died),
5. C. Ramasamy,
6. T.M. Shanmugam,
7. M. Natarajan, S/o Marimuthu
8. M. Natarajan, S/o Muthu Konar.
9. M. Muthusamy.
10. B. Palanichamy.
11. Kumaresan,
12. T.P. Sakthivel.
13. Raja
14. P.A. Pachiannan.
15. V. Arunkumar.
16. P. Sekar.
17. P. Murugesn.
18. Semmalai.
19. A.N. Balakrishnan.
20. P. Pachiannan.
21. P. Annamalai.

.. Respondents.

In the matter of Arulmighu Pachiamman Temple, Tiruchengodu
Town and Taluk, Namakkal District.

Appeal petition under Section 69(1) of the Tamil Nadu H.R.& C.E. Act, 1959 (Tamil Nadu Act 22 of 1959) against the order dated 28.12.2012 made in I.A.No.2/2012 in O.A.No.4/2012 B.1 on the file of the Joint Commissioner, H.R. & C.E. Admn. Department, Salem allowing the Interlocutory Application filed under Section 64(4) pending modification of Scheme under Section 64(5) of the Act.

Annexure to Order in R.Dis.A.P.15/2013 (D2) dated :23.07.2013.

This appeal arises out of the order of appointment of Fit Person made in the interlocutory application filed in scheme modification proceedings initiated under section 65(4) of the Act.

The brief facts leading to filing of this appeal runs thus:-

A scheme was settled for the administration of the above temple under Section 64(1) of the Act in O.A.No.4/1997 on 04.11.2009 on the application filed by the appellants and three others, which was got published in the District Gazette, Namakkal on 04.01.2010 as per Section 64(6) and the rules framed there under. Subsequently, the Assistant Commissioner, HR&CE Admn. Department, Namakkal appointed the appellants as Non-Hereditary Trustees to the above temple.

2. Aggrieved by the order dated 04.11.2009 passed in O.A.No.4/1997, the respondents 14, 18, 19, 20 and 21 herein preferred an appeal under Section 69(1) of the Act in A.P.No.5/2010 before this forum, which was dismissed by order dated 14.09.2010 confirming the

scheme framed in O.A.No.4/1997 dated 04.11.2009. The Respondents 11 to 21 herein also filed another O.A.No.27/2002 under Section 63(b) of the Act which was dismissed by order dated 04.11.2009 and confirmed in A.P.4/2010 dated 14.09.2010. Thereafter, the Respondents 14 to 21 herein filed a civil suit in O.S.No.6/2011 on the file of the Sub Court, Thiruchendgode for a declaration that the suit temple is a family deity of the plaintiffs and 6th defendant and they are entitled for the appointment of hereditary trustees and to direct the defendants 1 to 3 to modify their orders in O.A.No.4/1997 and 27/2002.

3. Simultaneously, O.A.No.4/2012 was also filed before the Joint Commissioner, HR&CE Admn. Dept., Salem under Section 64(5) of the Act, seeking to modify the scheme framed in O.A.4/1987, and pending modification of the scheme, the respondents 2 and 3 herein took out an interlocutory application in M.P.2/2012 in O.A.No.4/2012 seeking to appoint the Department official as Fit Person to discharge the functions of a trustee as the tenure of the Board of Trustees came to an end on 23.09.2012, alleging that there is dispute between rival factions and public tranquility is thereby disturbed.

4. But the Joint Commissioner without proper appreciation of the facts of the case, the power to be exercised under the Statute and the jurisdiction, passed the impugned order allowing the interlocutory application in appointing no body as Fit Person.

5. It was contended by the appellants that the Joint Commissioner has failed to appreciate the fact that a scheme of administration was already settled in O.A.No.4/1997 dated 04.11.2009 and got published in the Namakkal District Gazette on 04.01.2010 and has come into force, and the appeal preferred in A.P.5/2010 was also dismissed by the appellate authority; that the Joint Commissioner erred in appointing Fit Person under Section 64(4) of the Act, which empowers the authority to exercise the jurisdiction pending settlement of the scheme and not pending modification of scheme; that the Joint Commissioner has failed to appreciate the fact that it is the jurisdictional authority to appoint the Fit Person under Section 49 of the Act and not by the forum under Section 64(4) of the Act pending modification of the scheme.

6. I heard Thiru C. Dharmaraj, Counsel for the Appellants and T.S. Vijayaraghavan, Counsel for the Respondents and perused the relevant records.

Section 64(4) of the Act runs thus *“Pending the settlement of a scheme for an institution, the Joint Commissioner or the Deputy Commissioner, as the case may be may appoint a fit person to perform all or any of the trustees thereof and define his powers and duties”*.

No such provision is available under Section 64(4) of the Act for appointment of fit person pending modification of the scheme under Section 64(5) of the Act as stated in the impugned order which runs

thus: ஒரு திருக்கோயிலிற்கும் நிர்வாகத்திட்டம் ஏற்படுத்துதல் தொடர்பாக வழக்க நடைபெற்றுக்கொண்டிருக்கும் நிலையில், நிர்வாகத்திட்டம் உறுதி செய்யப்படுவதை எதிர்நோக்கியும், நிர்வாக நலனை கருத்தில் கொண்டும் சட்டப்பிரிவு 64(4) ன் கீழ் தக்கார் நியமனம் செய்ய இணை ஆணையர் நீதிமன்றத்திற்கு அதிகாரம் உள்ளது. எனவே, இடைக்கால மனு எண்.2/2012 அனுமதிக்கப்பட்டு உத்தரவிடப்படுகிறது. **The scheme in O.A.4/1987 was settled, confirmed and got published in the District Gazette, neither modified nor cancelled by the competent Court. Further, the prayer in I.A.No.2/2012 in O.A.No.4/2012 is “வழக்கிடை கோவிலுக்கு இந்து சமய அறநிலையத்துறை அலுவலர் ஒருவரை தக்காராக நியமித்து அவரை இந்த கோவிலின் முழு நிர்வாகப்பொறுப்பில் இருத்துமாறு”. But, it is seen from the impugned order that no official has been appointed as Fit Person. Therefore, the order of the Joint Commissioner suffers from the infirmities as stated above and hence the impugned order is liable to be set aside and accordingly the impugned order be and is hereby set aside and the appeal stands allowed.**

However, this order will not preclude the competent authority under the Act to pass appropriate orders in accordance with the provisions of the Act.

/ typed to dictation/

**Sd/-P.Dhanapal
Commissioner.**

/True Copy/Forwarded by Order/

Superintendent