

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

Monday the 18th day of August, Two Thousand and Fourteen

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

A.P. 48/2013 D2

Between

- 1. D.S.A. Sivaprakasam.**
 - 2. P.V. Pichumani.**
 - 3. V. Ponraj.**
 - 4. P.R.M. Muthuraman.**
 - 5. P.V. Pooraj.**
- .. Appellants.**

And

- 1. The Joint Commissioner,
H.R. & C.E. Admn.Dept.,
Tirunelveli.**
 - 2. M.V.S. Rajendranath.**
 - 3. The Executive Officer, Arulmighu
Muthalamman Temple, Mukkudal village,
Ambasamudram Taluk, Tirunelveli District.**
- .. Respondents.**

**In the matter of A/m.Muthumalaiamman Temple, Mukkudal,
Tirunelveli 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 26.8.2013
of the Joint Commissioner, H.R. & C.E. Admn.Dept., Tirunelveli in
dismissing the O.A. 6/2001 filed under Section 64 (1) of the Act.
Annexure to Order in R.Dis. A.P.48/2013 D2 dated : 18.08.2014.**

**The above appeal petition filed under Section 69(1) of the Act
against the order dated 26.8.2013 of the Joint Commissioner, Tirunelveli
in dismissing the O.A. 6/2001 filed under Section 64(1) of the Act.**

2. The case of the appellants is that Arulmighu Muthumalaiamman Temple, situated in Mukkudal Village, Ambasamudram Taluk, Tirunelveli District dedicated to persons belonging to Hindu Nadar Community in Mukkudal village. The deity is their Kuladeivam and in 1911 , the said community people constructed and consecrated the deity. The temple is founded, established, maintained, managed by the community. They used to collect Mahamai funds and donation from and among the members of the Hindu Nadar Community residing in Mukkudal village and carrying on the affairs of the community temple. The day to day expenses and all festival expenses of the temple are borne by the community members only. The religious festivals like Aani festival and Thaiposam, Thiruvadhirai, Thirukarthigai are being conducted by them. Therefore, it is clear that the management of the community temple is only by the community people ever since from the inception of the temple. The community people have earlier filed O.A.No. 493/81 and obtained a decree on 13.8.1984 that the Institution is a denomination in character, later, it was withdrawn. The community persons filed O.A. 6/2001 and got a scheme framed on 28.10.2009. The draft scheme has been accepted by final scheme after hearing the objections. In order to modify clause-4 of the scheme, by a sheer mistake, an appeal was filed before the Commissioner, HR & CE, Chennai in A.P.No.22 of 2011, wherein, the Commissioner has set aside the scheme itself instead of modifying the Clause-4 of the scheme or rejecting it but, however, the Commissioner

remanded the matter for fresh disposal and passed the order on 28.12.2012. And on remand, the Joint Commissioner, HR & CE, Tirunelveli took up the matter and dismissed the O.A. on the ground that there is no need for framing a scheme for this community temple, which is not only against law but also against all probabilities of the case. The temple has no property but the one Acre of land where the temple itself is located is the property of the temple and therefore, a scheme could be framed and even otherwise, a scheme can be framed for the temple for its proper management. The Court below has failed to appreciate the Exhibits A1 to A7 which establish undoubtedly the community character of the Institution in question and the non-examination of the documents will led to denial of justice. The Joint Commissioner failed to understand the scope of the remand made by the Commissioner in A.P. 22 of 2011 dated 28.12.2012 wherein, the Commissioner did not set aside the scheme totally but the matter has been remanded to consider the modification of Clause-4 in the scheme but, however, the Joint Commissioner has misconceived the issue and totally dismiss the O.A. 6/2001 which is against law.

3. In the counter affidavit the 2nd respondent has stated that the administration of the temple has been vested with the H.R.& C.E. Department and no particular member or community have any exclusive right over the temple vis-à-vis management and administration of it. Besides that, the locality where the temple exists is prone to communal disturbances if the appellants who involved in anti temple activities by

installing separate hundials over and above the temple hundials and involved in printing thereon receipts in the name of the temple using Temple logo to attract and cheat innocent public and collected huge amount. The fund so collected is not brought into the accounts of the temple but used it for their personal end. So, if these Appellants are allowed to manage the temple would certainly disturb the communal harmony. The appellants being members of the community have instead of affording or supporting in the proper administration of the institution, they have acted in adverse to the interest of the temple. They have unlawfully enriched themselves by collecting money from the people and devotees in the name of the temple and even issued receipt of the collection in the name of their sangh. In the Writ petition filed by the 2nd respondent herein before the Hon'ble High Court in W.P. 8535 of 2013 to consider the representation dated 25.3.2013 the Hon'ble High Court has directed to conduct enquiry into it and to pass order within four weeks. Pursuant to the directions of the Hon'ble High Court, a detailed enquiry has been conducted visand orders have been passed in the said enquiry vide order dated 21.8.2013 in Pro.No. 4667/2013 A3 after affording sufficient opportunity to the concerned parties. Through the enquiry, the 1st Respondent have found that the appellants and their men have acted themselves as trustees and collected donation from the public and divided the amount to their Nadar Magamai sangam and further found that the said D.S.A. Sivaprakasam and other have committed malpractice in the name of temple by themselves forming

festival committee to collect amount from the devotees in the name of the temple for their sangam. The title of the temple land have been transferred to the Nadar Magamai Sangam without the knowledge of the temple authorities. The documents have been filed to substantiate the above malpractices and on cumulative consideration of the same, the 1st respondent has conducted that the appellants along with members of the community have involved in misappropriation of temple funds and accordingly, the 1st respondent has passed an order so as to safeguard the wealth of the temple in future has passed an order so as to safeguard the wealth of the temple in future has also directed the Executive Officer to take appropriate action against the appellants and others to recover the temple wealth which they have illegally collected and also directed the Executive Officer to transfer the title of the temple land from Nadar Magamai Sangam to the name of the deity.

4. In the counter affidavit, the 3rd respondent/Executive Officer has stated that the administration of the temple has been vested with the H.R. & C.E. Department for the temple is a public temple, no particular community have any exclusive right over the temple in the management and administration of it. If any particular community is vested with the powers to manage the public temple exclusively in the said locality would certainly disturb the communal harmony prevailing in the area. The appellants have miserably failed to establish their exclusive right of management so as to substantiate their claim. The appellants have failed to prove that their community would form religious denomination

as contemplated under Section 51, 64 proviso and 107 of the Act so as to claim any right as a religious denomination. It is necessary to point out that, members of the said community earlier one D.S.A. Chiniyya Sivaraj along with 2 others, had filed a suit in O.S.No.493/1981 before the District Munsif Court, Ambasamudram to declare the temple as denomination one especially belonging to Mukoodal Hindu Nadar Community. The suit has been decreed in their favour. Thereafter an appeal in A.S.No. 58 of 1985 has been preferred by the H.R. & C.E. Department before the Sub-Court and the appeal was allowed by set aside the Judgment and decree of the lower court made in O.S.No. 493/1981. However, liberty was given to the parties to file fresh suit. Subsequently, no suit was filed by them for the said relief which safely transpires that the temple is a public one within the purview of Act 22 of 1959 and no community has exclusive right over the temple under the guise of religious denominations. The appellants and members of their community have instead of affording or supporting in the proper administration of the institution, they have acted in adverse to the interest of the temple. They have unlawfully enriched themselves by collecting money from the people and devotees in the name of the temple and even issued receipt for the collection in the name of their Sangh. Every year, the festivals of the month of Aani have been celebrated in a grand manner. During the festivals conducted in the moth of Aani, huge devotees would gather at one place and considerable income will be generated to the temple by way of hundial collection. For the past

several years, without obtaining any orders from the department, the Appellants herein and their community members have formed themselves a festival committee and thereby collected donations from the public and devotees at large and enriched themselves illegally. Besides that, they even installed their own hundial in the temple premises. Since they were very influential and dominating in the vicinity, the authorities were not able to physically prevent them from doing such illegalities except approaching the police authorities. Accordingly, the 3rd respondent Executive Officer of the temple had lodged a complaint to the authorities to the rank of Superintendent of Police about the atrocities committed by the Appellants herein and their community members. The title of the temple lands have been clandestinely transferred into the name of the Sangh and its members. The above fraudulent act was brought to the knowledge of the authorities and accordingly, they have given application before the revenue authorities to rectify the mistake done by the fraudulent act of some of the members of the Sangh. Besides that, the appellants and members of the sangh have leased out the temple to various willing persons to erect shops, rattinams and other allied businesses venturing at the time of festivals and the money generated by such illegal lease have never been accounted by the Appellants or the members of their community to the temple. Akin, money generated through illegal collection or through hundial which they have kept inside the temple premises have never been accounted to the temple and the same was apportioned by themselves. The above facts

would elucidate that the appellants are not interested in the welfare of the temple or its administration but their intention is malafide and under the guise of obtaining an order of scheme, they want to swindle the temple wealth for their personal benefits. The appellants are not interested in the welfare of the temple, but however, they are interested in swindling the wealth of the temple, as such, they are not at all entitled to maintain the application under Section 64 (1) of the Act before the Joint Commissioner. The relief sought by the Appellant do not come within the ambit and scope of Section 64 (1) of the Act since they do not form part of the religious denominations as envisaged under the Act. Even assuming that they have such right the remedy lies before the competent Civil Court and not before the statute created authority. Besides that, the Joint Commissioner has prima facie concluded that the management of the temple and considering the geographical existence of the temple and to safeguard communal harmony in the area conferring any exclusive right of management to the particular community is inappropriate that too when the members of the community has failed to establish the exclusive right of management over the temple. The Joint Commissioner is the original authority in the Act to declare, cancel or modify the scheme to the temple and to his subjective satisfaction alone, a scheme can be framed to a temple. In the present case, the Joint Commissioner has prima facie not subjectively satisfied over the rights of the Appellants over the temple to frame a scheme exclusively vesting the management on the particular community and accordingly invoking his

power under Section 64 (1) of the Act as rightly dismissed the application.

5. I heard Thiru M. Rukmangathan, Counsel for the appellants, Thiru M. Azmal Azzath, Counsel for the 2nd respondent, Thiru E. Ganesh, Counsel for the 3rd Respondent/Executive Officer and perused the relevant records. The appellants herein have filed O.A. 6/2001 under Section 64 (1) of the Act before the Joint Commissioner to settle a scheme with a permanent provision to appoint non-hereditary trustees from Mukkoodal Hindu Nadar Community. The said O.A. was allowed and settled a scheme as prayed by the appellants by order dated 28.10.2009. The appellants herein have filed appeal in A.P. 22/2011 to modify the clause 4 of the said scheme. Since, some of the provisions of the said scheme was not in consonance with the provisions of the Act, this forum has set aside the order dated 28.10.2009 of the Joint Commissioner, Tirunelveli and remit the case for fresh disposal and enquiry. On remand, after conducting enquiry, the Joint Commissioner has dismissed the O.A. Aggrieved over the said they have filed this appeal petition previously one D.S.A. Chinniya Sivaraj along with 2 others belongs to the appellants community had filed a suit in O.S.No.493/1981 before the District Munsif Court, Ambasamudram to declare the temple as denomination belongs to Mukoodal Hindu Nadar Community. The suit has been decreed in their favour . But in the appeal preferred by the department in A.S. 58/1985 lower court order

was set aside with liberty to the plaintiff to file fresh suit. But they have not filed any suit.

Section 64 (1) of the Act read as follows:

“64. Power of Joint Commissioner or Deputy Commissioner to settle schemes.—(1) When [the Joint Commissioner or the Deputy Commissioner, as the case may be, has reason to believe that in the interest of the proper administration of an institution, a scheme should be settled for the institution, or when not less than five persons having interest make an application, in writing, stating that in the interest of the proper administration of an institution a scheme should be settled for it, the Joint Commissioner or the Deputy Commissioner, as the case may be, shall consult in the prescribed manner the trustee and the persons having interest and if, after such consultation, he is satisfied that it is necessary or desirable to do so, he shall, by order, settle a scheme of administration for the institution.”

As per the said provision, the Joint Commissioner should satisfy that the settlement of a scheme is necessary or desirable for the proper administration of the Institution. But in this case, the Joint Commissioner held that the appellant have acted in adverse to the interest of the Institution. During the Aani festival, the appellants and their community members have constituted a festival committee without approval of the department and collected donations from the public. And they have install their own hundial in the temple premises. They prevent the Executive Officer from performing his duty. Further the amount collected by the Nadar Magamai through Hundial and donations have never been accounted to the temple, but diverted to Nadar Magamai Sangam. And the lands belongs to the temple have been

transferred to the said Sangam. All the above facts proves that the appellants and their community members have acted adverse to the interest of the suit temple and they have misappropriated temple funds under guise of Nadar Magamai Sangam. Hence, the Joint Commissioner rightly held that framing of scheme as prayed by the appellants would affect the interest of the temple and he was not subjectively satisfied that framing of scheme is necessary for the proper administration of the suit temple.

Further, in the Judgment reported in 1960 (II) MLJ 205, the Hon'ble High Court held that "under Section 58 of the Madras H.R. & C.E. Act, 1959 the Deputy Commissioner has to be satisfied that it is necessary or desirable to frame a scheme of administration for the institution. The statute provides a remedy by way of suit where this subjective satisfaction exists and the authorities proceed further to frame or alter, modify or cancel it. But the failure of the authority to be satisfied is not a justifiable matter. While the power to institute a suit against the order of the Commissioner may not be in dispute, the court has no power to direct the Deputy Commissioner to be satisfied that a scheme should be framed or to direct him to frame a scheme when the Deputy Commissioner was not so satisfied originally". As held by the High Court, the appellants has to convince the Joint Commissioner to satisfy that scheme is necessary for the better administration of the temple. When the satisfaction has been made the essential condition

under the provisions of the Act for the Joint Commissioner to settle a scheme, this forum cannot direct the Joint Commissioner to satisfy.

Therefore, for the foregoing reasons stated supra, I find no valid reason to interfere with the order passed by the Joint Commissioner and it deserves to be confirmed. Accordingly the order dated 26.8.2013 of the Joint Commissioner, Tirunelveli is hereby confirmed and the appeal petition is dismissed as devoid of any merit.

/typed to dictation/

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

/true copy/by order/

Superintendent