

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

Tuesday the 4th day of June, Two Thousand and thirteen

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

A.P.No.18/2013 D.2

Between.

K. Shanmugasundaram S/o Kulandaivel Pillai. Appellant.

And

1. The Joint Commissioner,
HR & CE Admn. Dept., Coimbatore.
2. The Thakkar, Arulmighu Kalamman Temple,
Thalavaipattinam village/Executive Officer,
Arulmighu Agastheeswarar Temple,
Dharampuram, Tiruppur District. ..Respondents

In the matter of Arulmighu Kalamman Temple, Thalavaipattinam,
Dharampuram Taluk, Erode District.

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 11.3.2013
of the Joint Commissioner, HR&CE Admn. Dept., Coimbatore in
appointing Fit Person under section 54(3) of the Act in Pro. Rc.No.
103/13.

Order in D. Dis. A.P.No.18/2013 D2 dated: 4.6.2013

The above appeal petition having come on for final hearing on
4.6.2013 before me in the presence of Thiru E. Ganesh, Counsel for the
Appellant, and upon hearing his argument and after perusing the
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 of the Act against the order dated 11.3.2013 of the Joint Commissioner, Coimbatore in appointing Fit Person under Section 54 (3) of the Act.

2. The appellant contended that the office of the trusteeship of the temple has been declared as hereditary in order dated 11.1.1991 made in O.A. 11/87. The appellant succeeded to the office of the trustee-cum-poojari in the permanent vacancy caused by the death of the hereditary trustees of the temple and he filed an application under Section 54 (1) of the Act in M.P. 24/07 before the Joint Commissioner, Coimbatore and the same is pending. But the Joint Commissioner passed the impugned order appointing fit person under Section 54 (3) of the Act without affording opportunity to the appellant or without conducting any enquiry. The Joint Commissioner failed to issue any show cause notice regarding the deficiencies in the administration of the appellant. The power to appoint a Fit Person under the section is only an enabling provision exercisable in certain contingencies, in the absence of the contingencies any order passed by the Joint Commissioner invoking his power under Section 54 (3) of the Act is non est in the eyes of law and thereby unsustainable. The appellant deny the allegations of mismanagement as false and even for such purported trivial charge, no enquiry has been conducted so far and thereby the impugned order also violates the principle of doctrine of proportionality.

3. I heard Thiru E. Ganesh, Counsel for the appellant and perused the relevant records. The petition filed by the appellant under Section 54 (1) of the Act has been pending before the Joint Commissioner, Coimbatore from the year 2007 in M.P. 24/07. No order has been passed in the above petition so far. Meanwhile, the Joint Commissioner passed impugned order appointing the 2nd Respondent as Fit Person of the temple. In the impugned order the Joint Commissioner

has stated that the appellant herein who is also performing pooja service in the temple has failed to comply with the directions given by the Joint Commissioner to install Hundial in the temple, to lease out lands in public auction and to insure the temple car. But now, the appellant counsel agreed to install the Hundial and prayed to issue necessary direction to the Joint Commissioner, Coimbatore to dispose the pending petition filed under Section 54 (1) of the Act.

Hence, the appellant is directed to install Hundial within 10 days from the date of this order and also directed to take necessary action to lease out the lands in public auction and to insure the temple car within 10 days from the date of this order. And the Joint Commissioner, Coimbatore is also directed to dispose of the pending M.P. 24/07 filed under Section 54 (1) of the Act within 15 days in accordance with law. The impugned order is hereby set aside subject to fulfillment of the above directions by the appellant and the appeal petition is allowed.

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Sd. P. Dhanapal,
Commissioner.

/true copy/ by order/

Superintendent.

To

1. The Appellant through Thiru E. Ganesh, Advocate, No. 61/23, Sakthi Avenue, South Lock Street, Kottur, Chennai.85.
2. The Fit Person Executive Officer, Arulmighu Agastheeswarar Temple, Dharapuram Town, Tiruppur District.

Copy to:

3. The Joint Commissioner, HR & CE Admn. Dept., Coimbatore..
4. The Inspector, HR & CE Admn. Department, Dharapuram.
5. The Assistant Commissioner, HR&CE Admn. Department, Tiruppur.
- 6-7. Extras.