

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

Thursday the 10<sup>th</sup> day of October, Two thousand and thirteen.

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

A.P. 26/2013 D2

Between

G. Uma Maheswaran.

.. Appellant.

And

1. P.T. Shanmugam.
2. P.S. Thimmaiyan
3. P.M. Kariappa Gounder.
4. M. Natarajan.
5. M. Kanagarajan
6. The Joint Commissioner,  
HR & CE Admn.Dept.,  
Coimbatore-18.

.. Respondents.

In the matter of In the matter of Arulmighu Uthukuliyamman Temple, Punjaipuliyampatti, Sathyamangalam Taluk, Erode District.

Appeal Petition filed under Section 69(1) of the Tamil Nadu H.R.& C.E. Act, 1959 (Tamil Nadu Act 22 of 1959) against the order dated 14.8.2007 of the Joint Commissioner, H.R.&C.E. Admn. Department Coimbatore made in O.A. 11/1995 filed under Section 64(1) of the Act.

Annexure to Order in R.Dis.A.P. 26/2013 D2 dated : 10.10.2013.

The above appeal petition filed under Section 69(1) of the Act against the order dated 14.8.2007 of the Joint Commissioner, Coimbatore in allowing the O.A. 11/1995 filed under Section 64 (1) of the Act. In the impugned order, the Joint Commissioner has settled a scheme of administration for the suit temple with a provision to appoint non-hereditary trustees from the Okkaliga Gowder community.

The appellant contended that when both the cases O.A. 27/1992 and O.A. 11/1995 were taken up together and tried jointly and recorded common oral evidence of P.W.1 to P.W.3 in O.A. 27 of 1992 and marked Exhibits A1 to A35, the issue of draft scheme and confirmation of the same by the Joint Commissioner without discussing Ex.A1 to Ex.A35 and relying on Ex.B1 to B12 only is arbitrary, unsustainable in law and unreasonable. After recording evidences of PW1 to PW3 and making Ex.A1 to A35 ought to have given finding in O.A.No.27 of 1992 and pass speaking orders thereon. The Joint Commissioner while taking the letter dated 28.05.2002 pending enquiry after recording all evidences ought to have examined it and give finding on the veracity of the letter and also whether it is voluntary and can it be acted upon in both the proceedings after completion of evidence and marking of documents. The learned Joint Commissioner even though the deceased submitted a letter dated 28.05.2002 ought to have given full text of the order in O.A.No.27 of 1992 as it was given after completion of evidences and exhibits marked, that the orders passed by the Joint Commissioner only on the basis of Ex.B1 to B12 alone would show the biased and arbitrary attitude of the authority in granting relief of scheme though the Inspector, H.R. & C.E., CW1 did not support the application under Section 64 (1) of the Act. The order of the Joint Commissioner dated 14.8.2007 and the notification issued against the dead person is not binding on the appellant and also not binding on persons interested in the temple. The order passed against the dead person is not valid in law and cannot be given effect to and consequently the proceedings of scheme is abated. Ex.A1 to A35 would show that the subject temple was already under the control of the H.R. & C.E. Department that evidences would further disclose that non-hereditary trustees were appointed by the then Board and were functioning from 1950 onwards, that during emergency period Maniyakar was appointed as fit person by the board, that Ex.B6 would disclose that the Board demanded

contribution and audit fees, that Ex.B8 also would show that the Management was with Village Administrative Officer of the village in the year 1976, that Ex.B9 would show that the persons appointed as Trustees demanded charge from the erstwhile management, further in addition to that Ex.A18 letter from board demanding arrears, Ex.A33 dated 28.11.1984 the letter by Assistant Commissioner to P.Ganesan to appear for enquiry, all the exhibits would clinchingly proved that the department exercised their control over the management of the temple and appointment of trustees. Whileso, granting relief under Section 64 (1) of the Act in favour of Okkaliga Gowder community alone for management, as if the department never exercise its control is thoroughly against the scope of the H.R. & C.E. Act and particularly against the provisions of Section 64 (1) of the Act. By granting relief under Section 64 (1) of the Act, the Joint Commissioner excluded the powers of the Department exercised hitherto and also nullified all the orders of the Department. The Joint Commissioner ought to have dismiss the O.A. 11 of 1995 as the Management is not vest with Okkaliga Community alone and other people in the village have also participated in the management including people belong to Pandaram which is evident from Ex.A12, A13, A15 to x.A21, A29 to 31. The learned Joint Commissioner ought to have ordered and declared Thiru P. Ganesan as Hereditary Trustee of the temple when there is overwhelming oral evidence and documentary evidence.

3. I heard Thiru G. Shanmugam, Counsel for the appellant and Thiru W.C. Thiruvengadam, Counsel for the Respondents and perused the relevant records. The main contention of the appellant is that the sole respondent in O.A. 11/1995 P. Ganesan died on 10.6.2007. The factum of death was suppressed by the respondents and the impugned order is passed against the dead person. On perusal of records, it is evident that hearing in the O.A. 11/1995 was concluded on 20.3.2007

and draft scheme was issued on 10.4.2007. So, at the time of issuing draft scheme sole respondent was alive. Rule 6 of order 22 provides that “Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place”. Therefore the said P. Ganesan was alive at the time of conclusion of hearing and issuance of the draft scheme in the O.A. 11/1995. Hence, the above contention is not sustainable.

4. The appellant further argued that five persons are necessary for framing scheme but 2 petitioners were died before conclusion of the enquiry in O.A. 11/1995. The counsel for the respondents argued that 5 persons are necessary for making an application to frame a scheme under Section 64 (1) of the Act, accordingly the O.A. 11/1995 was filed by 5 persons. It is not mandatory that five persons should alive at the time of passing of final order in the O.A. In Section 64 (1) of the Act, it is provided that “or not less than 5 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”. It is not made mandatory in the Act that five persons are necessary at the time of settling a scheme. Therefore, the said contention is rejected.

5. On perusal of the annexure to order containing grounds for allowing the above Original Application, initially both O.A. 27/1992 and O.A. 11/1995 were taken up together and tried jointly, recorded common oral evidences and documents were marked. And deposition of one Karuppanna Gounder belongs to Vanniyar community and one V. Shanmugam belongs to Mudaliar Community were recorded as P.W.1

and P.W.2. On the contrary the Joint Commissioner held that “அசல் மனுவை திரும்ப வாபஸ் பெற்றுக் கொண்டுவிட்ட நிலையில் அவரது கோரிக்கை தொடர்பாக பதிவு செய்யப்பட்ட சாட்சியங்கள் மற்றும் ஆவணங்களின் மீதான தன்மை குறித்து கருதப்படவேண்டிய அவசியம் ஏதும் ஏற்படவில்லை.” In the impugned order, the Joint Commissioner marked Exhibits A1 to A35 in O.A. 27/1992, Thiru M. Kanagarajan whose deposition was recorded as R.W1 has relied upon some of the exhibits filed in O.A. 27/1992. Further he disputes the deposition of P.W.1 and P.W.2. Therefore, the Joint Commissioner ought to have considered both oral and documentary evidence filed in the O.A. 27/92 before allowing the claim of the petitioners in O.A. 11/1995. The Joint Commissioner failed to enquire any independent witness belong to other community to ascertain whether the suit temple was managed by other community people.

6. As contended by the appellant, the Joint Commissioner failed to consider the report of the inspector in detail which was marked as Ex.C1. In the said report the Inspector has stated that “மிகப் பழமையான ஸ்தலம். மூர்த்தி, தீர்த்தம் இவற்றைக் கொண்டு நாயக்க மன்னர் காலத்தில் ஸ்தாபிக்கப்பட்ட ஆலயம் என்பது எனது ஆய்வின் மூலம் தெரியவருகிறது.”

“ஆலய முன் மண்டபத்தை சுமார் 25 ஆண்டுகளுக்கு முன்பு அனைத்து தரப்பு சமுதாயத்தவர் உள்ளடக்கிய ஒரு திருப்பணிக்குழு வசூல் மற்றும் அரசு மான்யத்துடன் அமைக்கப்பட்டுள்ளது. .. “கோடை வறட்சி உண்டாயின் தீர்த்தக் கிணறு, ஊர் பொதுமக்களால் தூர்வாரி ஆழப்படுத்தப்படுவதாய் விசாரணையில் தெரியவருகிறது.”

“மான்ய பூமி வருமானத்திலிருந்து பூஜை மற்றும் ஏறபடி விசேஷம் உள்ளிட்ட ஆகிய நிர்வாக மேலாண்மை உள்ளதாக அறியவருகிறது ... ..பெருந் திருவிழா நடந்து சுமார் 70 வருடங்களுக்கு மேலாவதாக கிராம பொது விசாரணை மூலம் தெரியவருகிறது.”

Further the Inspector has stated that “இந்து சமய அறநிலைய சட்டப்படி நியமனம் செய்த அறங்காவலர் குழுவில் காலஞ்சென்ற எம். சுப்பராயலு நாயடு, ஜி. முருகேச நாயக்கர் மற்றும் பி. முருகேசன் செட்டியார் ஆகிய வெவ்வேறு சமுதாயத்தவர் இடம் பெற்றிருக்கின்றனர்”

Further, the Inspector has reported that Village Administrative Officer was appointed as Fit Person vide Assistant Commissioer, Erode Rc.No. 3827/76 A3 dated 4.6.76, the Inspector, Sathyamangalam was appointed as Fit Person vide Assistant Commissioner Rc. 7480/85 A3 dated 17.5.1985. Further one P.C. Jayaraman belongs to Schedule Caste Community was appointed as Trustees along with two others vide Assistant Commissioner's Rc.No. 7480/85 A3 dated 29.12.1987.

Further, the Inspector has stated that “மனுக்கோயில் நிர்வாகம் சம்பந்தமாக உண்மைத்தன்மையை அறியுமிடத்து பொதுமக்கள் சார்பில் இருவரிடமிருந்து வாக்கு மூலம் பெற்று பார்க்கும்போது பிரஸ்தாபஆலயத்தில் நிர்வாகம், ச.பி. 64 (1)-ன் கீழ் அமைவதற்கு நடைமுறை பழக்க வழக்கங்கள் மற்றும் ரெக்கார்ட்பூர்வமான ஆதாரங்கள் சரியாகப் பொருந்தி வரவில்லை.”

“மனுதாரர்/வாதிகள் தாக்கல் செய்துள்ள மனுவில் சொல்லப்பட்டுள்ள சங்கதிகள் அடிப்படையில் அதன் சாராம்சத்தில் கொடுத்துள்ள வாக்குமூலம் மற்றும் சான்றாவணங்கள் வைத்து பரிசீலித்தவரையில் மனுக்கோரிக்கையை சீர்தூக்கி பார்க்குமளவில் மெய்யான விளக்கம் மற்றும் ருசப்படுத்த போதுமான ஆதாரம் அவ்வளவாக இல்லை.”

From the report of the Inspector it is evident that the suit temple has not been continuously managed by the Okkaliga community.

7. Further most of the documents filed by the Petitioners in O.A. 11/1995 are of recent origin. They are not enough to prove their claim. The respondents herein did not produce any documents to prove that suit temple was founded by their ancestors. In the absence of any valid evidences to prove that the suit temple is founded and chiefly intended or maintained for the benefit of the Okkaliga Gowder Community, the order passed by the Joint Commissioner, Coimbatore is against the law and unreasonable one.

For the foregoing discussions, I find valid and justifiable reasons to interfere with the order of the Joint Commissioner. Accordingly, the

order dated 14.8.2007 passed by the Joint Commissioner, Coimbatore made in O.A. 11/1995 is hereby set aside and the matter is remanded back to the Joint Commissioner for enquiry denova after issuing notice to the respondents herein to bring to Legal Representatives of Respondents 2 and 3 herein in O.A. 11/1995 on record. The Joint Commissioner should hold an enquiry denova after affording opportunity of being heard to all the persons having interest and dispose the same in accordance with law. With these directions, the appeal petition is disposed of.

/ typed to dictation/

Sd. P. Dhanapal,  
Commissioner.

/true copy/ by order/

Superintendent.