

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

Monday the 21st day of October, Two thousand and thirteen.

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

A.P. 45/2013 D2

Between

1. V. Dharmaraj
2. K. Baluchamy Velar.
3. V. Ilango Velar.
4. S. Srinivasa Velar.

.. Appellants.

And

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

.. Respondents.

In the matter of In the matter of Arulmighu Vadakarai Kalamman Temple, Soorakulam, Sivagangai 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 17.1.2013 of the Joint Commissioner, H.R. & C.E. Admn.Dept. Sivagangai in dismissing the O.A. 2/10 filed under 64 (1) of the Act.

Annexure to Order in R.Dis.A.P. 45/2013 (D2) dated : 21.10.2013.

The above appeal petition filed under Section 69(1) of the Act against the order dated 17.1.2013 of the Joint Commissioner, Sivagangai in dismissing the O.A. 2/2010 filed under Section 64 (1) of the Act.

2. The appellants contended that the temple has been founded by Kanna Velar and Veera Velar (hereinafter referred to as founder of the temple). Till their life time, they have managed and maintained the temple. Subsequent to their demise, their descendants have been managing and maintaining the temple. At present, the descendants of the founders are 84 in number and they are collectively administering

the temple by nominating five members among them to look after the day to day affairs of the temple. So as to regularize the management of the temple and develop it, they have floated a trust called Arulmighu Kanna Velar Veera Velar Arakkattalai. The goddess viz. Vadakarai Kaliamman is their titular deity. The descendants of the founders are following a peculiar religious customary practice and worship to the temple. The descendants of the founders performing several festivals including the annual festival. The temple is situated in Poramboke land and has no super structure or roof above the temple. The festivals of the said Temple are managed by the descendants of the founders. The institution is chiefly intended or maintained for the benefit of the descendants of the founder. With the fond of hope and expectation to obtain an order in their favour, they approached the respondent seeking relief under Section 64 (1) of the Act. The 1st Appellant herein, the second petitioner in the original application was examined as PW1 and he deposed evidence and along with him four independent witnesses were examined as witnesses and their deposition was recorded. No contra evidence was produced against the appellants. Even after issuance of statutory notice and publication of the same in the prescribed manner in the said village no one entered or impleaded themselves as person interested in the temple as contemplated under Section 6 (15) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, to depose contra evidence against the claim of the appellants. The Joint Commissioner erred in writing a summary cryptic order without marshalling the evidence tendered vis-à-vis the claims put forward before him and went in merely concluding the temple do not attract large public worship to frame a scheme for proper management.

3. I heard Thiru E. Ganesh, Counsel for the appellants and perused the relevant records. There is a delay of 173 days in filing the appeal petition. The delay of 173 days in filing the appeal petition is condoned.

4. On a perusal of the annexure to order passed by the Joint Commissioner containing grounds for the above decision, the Joint Commissioner simply dismissed the O.A. on the ground that the temple has no properties, jewels and valuable and not worshiped by public, hence the framing of a scheme is not necessary. The Joint Commissioner failed to enumerate the documents filed by the petitioners and to discuss the evidentiary value of documents, by applying his mind judicially before dismissing the O.A. The Joint Commissioner ought to have consider both the oral and documentary evidences and give his findings whether they supports or not supports the case of the petitioners.

Therefore, the order dated 17.1.2013 passed by the Joint Commissioner, Sivagangai in O.A. 2/2010 suffers from infirmity as stated above and deserves to be set aside. Accordingly, the order dated 17.1.2013 of the Joint Commissioner, Sivagangai is hereby set aside. The matter is remitted back to the Joint Commissioner to hold an enquiry denova after affording the appellants and others an opportunity of being heard and dispose of 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.