

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

Friday the 10th day of October, Two Thousand and Fourteen

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

A.P. 16/2014

Between

AL.Thiagarajan

Appellant.

And

**1. The Executive Officer,
Arulmigu Navaneethaswaraswamy Temple,
Sikkal, Nagappattinam Taluk.**

**2. The Joint Commissioner,
HR&CE Admn Department,
Thanjavur**

.....Respondents

**In the matter of Arulmighu Arulmigu Navaneethaswaraswamy
Temple,Sikkal, Nagappattinam Taluk.**

**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
10.02.2014 of the Joint Commissioner, HR&CE Admn. Department,
Thanjavur in dismissing the O.A.No10/2011 filed under Section 63 (b) of
the Act. .**

Annexure to order in R.Dis. A.P. 16/2014 (D2) dated : 10.10.2014

**The above appeal petition filed under Section 69(1) of the Act
against the order dated 10.02.2014 of Joint Commissioner, Thanjavur in
dismissing the O.A.10/2011 filed under Section 63(b) of the Act.**

**2) The appellant contended that his ancestors in view of their
contribution to the Temple consecrated and constructed the temple, who
were persons in management of the said temple for over a century who**

were the family members of petitioner's ancestors in Hereditary succession. The genealogy showing the relationship of the petitioner's ancestors who were in hereditary succession more than hundred years ago and the temple was under the management of the family of the members of the petitioner. After the Hindu Religious Charitable endowment Board came into existence a scheme was settled by the Board by its order No.468 dated 25.02.1935. Provided that if there was to be one trustee, a member of the family of Alagappa Chettiyar was to be preferred. If However the Board should decide the member of trustees were to be three, then two of them should be from the family of Alagappa Chettiyar the above scheme was modified by the board order No.3848 dated 5.10.1944, since the modified scheme in so far as it is related to the appointment of non Hereditary Trustees, ignoring the right of the Hereditary Trustees which was challenged by the petitioners great grandfather K.R.T.M.TT.Alagappa Chettiyar before the District Court East Thanjavur at Nagaaappattinam in O.S.17/1945 which was dismissed K.R.T.M.TT.Alagappa Chettiyar preferred an appeal to High Court at Madras in A.S.No.42/1947. The High Court partly allowed the Appeal by directing the following clause to be added to clause (6) of the scheme. One of whom shall be a member of the family of Muthu Alagappa Chettiar provided that if he is competent and suitable person to be appointed as Trustee. In the year 1957 Thiru Kalyanasundaam Chettiyar the grandfather of the petitioner here in his capacity as the chairman Board of Trustees, filed a suit before the District Court East Thanjavur at Nagappattinam in O.S.12/1957 for the modification of Scheme. The District Court by its decree and judgment 21.6.1957 approved the draft scheme clause (4) provided as follows: The temple and its properties shall be administrated by one or more trustees not exceeding five in number, appointed by appropriate authority one of whom shall be members of the family of the Muthu Alagappa Chettiyar, if in the opinion of the appropriate authority he is competent and suitable

person to be appointed as trustee. Since the petitioner is the direct male descendant of Muthu Alagappa Chettiar eligible to be appointed as Hereditary Trustee for the said temple, applied for the appointment of Hereditary Trustee, the Government of Tamil Nadu by its order G.O.D.No.191 and C.T&RE dated 26.07.2004 appointed five non hereditary trustees including the petitioner herein as non hereditary trustee ignoring the directions of the High Court at Madras in A.S.42/1947 and the degree and judgment of the District Court in O.S.12/1957, since he is an eligible petitioner to be appointed as Hereditary Trustee, as well as the member of the ancestors family. It is also contended that whoever from among the members of the family of Muthu Alagappa Chettiyar is to be appointed as Trustee of the Temple, he has to be categorized as Hereditary Trustee distinguished from the appointment of any Non-Hereditary Trustee from outside the family". It is also further contended that since the petitioner herein is the direct male descendant of Sri Alagappa Chettiyar who was holding the office as Hereditary Trustee, and therefore eligible for appointment as Trustee in Hereditary Succession and also the petitioner is in no way disqualified from being appointed as the Hereditary Trustee. The remaining other four lineal descendants of the Muthu Alagappa Chettiar as family members are giving consent also giving no objection Affidavit. There was no discussion in the order of the 2nd respondent regarding both oral and documentary evidence of the Plaintiff to declare that the Appellant is not disqualified to be as Hereditary trustee of the temple., The 2nd Respondent has ought to have noted and failed to observe that it was settled in law the definition of the term Hereditary Trustee contemplates three possibilities and as such the second possibility, succession to the office must be regulated by usage and the said ingredients were established by the members of the petitioners family into to. The 2nd respondent erred in not following the law laid by the Honorable High Court in various cases.

3) I heard A. Balaguru Counsel for the appellants and perused the relevant records. The counsel for the appellant reiterated and narrated the grounds of appeal. The appellants contended that the suit temple was constructed by his ancestors. But the Inspector who caused local enquiry on the original application has reported that the suit temple was built by Kochangha Chozhan in 4th century. As per the scheme settled by the District Court, Nagai in O.S.12/1957, "the temple and its properties shall be administrated by one or more trustees not exceeding five in number appointed by the appropriate authority, one of whom shall be a member of the family of Muthu Alagappa Chettiar, provided in the opinion of the appropriate authority, he is competent and suitable person to be appointed as trustee. Accordingly one of the members of the family of the Muthu Alagappa Chettiar was appointed as non-hereditary trustees whenever non-hereditary trustees were appointed in the suit temple. The appellant was also appointed as one of the non-hereditary trustees in the year 2004. The appellant contended that their ancestors renovated the temple and performed Kumbhabishegam periodically from their funds. But a donor cannot claim management right in the temple and it cannot be valid ground to declare the office of the trusteeship as Hereditary. However due regard has been given to the appellant's family in the scheme. Further, the various courts have decided that the office of the Trusteeship of the suit temple is non-hereditary one and settled a scheme with permanent provision for appointment of non-hereditary trustees. During the course of enquiry, the appellant has filed no objection and consent affidavit of the family members belonging to Karumuthu Alagappa Chettiar. But there is no valid documents filed to declare the office of the trustees as hereditary. As per the Trustees Register maintained in the temple, the management of the suit temple has been vested within non-hereditary trustees from the year 1899 onwards. The contention of the appellant that the succession to the office of the Trusteeship is regulated by usage is not correct. The

appellant failed to prove that the management of suit temple has been vested with their family for more than three generations.

As per the scheme, one of the appellant's family members is entitled for being appointed as non-hereditary trustee. Now descendents of Karumuthu Alagappa Chettiar have filed consent affidavit to appoint the appellant as Hereditary Trustee. Hence, it is open to the appellant to approach the Joint Commissioner, Thanjavur to invoke Section 64 (5) of the H.R. & C.E. Act for modification of the scheme settled in O.S. 12/1957.

Therefore, for the foregoing reasons stated supra, I find no infirmity or illegality in the order of the Joint Commissioner and it deserves to be confirmed. Accordingly the order dated 10.02.2014 of the Joint Commissioner, Thanjavur made in O.A.10/2011 is hereby confirmed and appeal petition is dismissed as devoid of any merit.

/typed to dictation/

**Sd. P. Dhanapal,
Commissioner.**

/true copy/by order/

Superintendent.