

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

**Friday the 5<sup>th</sup> day of September, Two Thousand and Fourteen**

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

**A.P. 20/2014**

**Between**

- 1. Murugesan.**
- 2. Ramakrishnan.**
- 3. Asokan.**
- 4. Kandasamy.**
- 5. Murugan.**
- 6. Palanisamy.**
- 7. Rajendran.**
- 8. Jeganathan.**
- 9. Dhanapal.**
- 10. Dhiraviam.**
- 11. Muthukrishnan.**
- 12. Subramanian.**

**.. .. Appellants.**

**And**

- 1. The Joint Commissioner,  
HR&CE Admn Department,  
Madurai.**
- 2. Sundaram.**
- 3. Nagappan (died)**
- 4. Chidambaram.**
- 5. Durairaj.**
- 6. Veerabathran.**
- 7. Bose.**
- 8. Ravi.**

**.. Respondents**

**In the matter of Arulmighu Akora Veerabathraswamy Temple,  
Natham Town and Taluk, Dindigul 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  
20.03.2014 of the Joint Commissioner, HR&CE Admn. Department,  
Madurai in I.A. - /2012 in O.A. 7/2006 filed under Section 64 (1) of the  
Act. .**

**Annexure to Order in R.Dis. A.P. 20/2014 D2 dated : 5.9.2014**

The appeal petition filed under Section 69(1) of the Act against the order dated 20.3.2014 of the Joint Commissioner Madurai in dismissing the I.A. /2012 in O.A. 7/2006 filed under Section 64 (1) of the Act.

2. The appellants contended that the office of Trusteeship has been declared as hereditary in the suit temple. A statutory declaration has been obtained in O.A.No. 8/1985 and O.A. 12/1985 declaring that both the appellants and respondents 2 to 6 herein are hereditary trustees and thereby declaring that all are entitled to function as such hereditary trustees in the temple. On earlier occasion, a petition under Section 64 (1) of the Act was filed in O.A. 29/88 which was dismissed on 22.1.1990 for framing a scheme for the temple in question was rejected. The respondents 2 to 6 herein have jointly filed O.A. 7/2006 on the file of the Joint Commissioner, HR & CE, Madurai and prayed for framing a scheme and allow for rotation of management in the temple on the ground that all are not getting chance to function as Poojari-cum-Hereditary Trustee in the temple. This O.A. 7/2006 has been pending for a long time together with I.A. claiming that new O.A. is not maintainable under the Act since an earlier OA filed under Section 64 (1) of the Act has already been rejected. Now the question involved in this Appeal is one Resjudicata. Framing of a scheme under Section 64 (1) can be done for any temple under the Act, but, there cannot be any scheme for making arrangement for the rotation of office of the hereditary trustees in a temple. A hereditary trustee, even there are more than one hereditary trustee, they are entitled to function jointly, and according to Section 48 (2) of the Principal Act 22 of 1959, one has to get himself elected as a Chairman and therefore, the rotation of hereditary trusteeship in a particular temple, is not available under the Act. Hence, the order passed by the Joint Commissioner, Madurai in I.A. Nil dated 20.3.2014 is liable to be set aside.

3. In the counter affidavit, the respondents contended that the present situation has been warranted to maintain the better administration of the temples in which the respondents 2 to 6 filed a petition in O.A. 7/2006 under Section 64 (1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act before the 1<sup>st</sup> respondent against the appellant herein for framing a scheme for proper and better administration and management of Arulmigu Akora Veerabathraswamy temple at Natham Town and Taluk of Dindigul District and Arulmigu Muppili Karuppasamy Temple at Velampatty village, Natham taluk, Dindigul District giving due regard to the descendants of the founder of the temple who are seventeen in number and declared as Hereditary trustees of the temples with a provision that the managing trusteeship of the temple may be on rotational basis. Due to the non co-operation of the appellants herein the said petition is pending more than 8 years. The appellants filed their written statement on 24.3.2009. In the said circumstances, with untenable and unreasonable reasons the appellants filed a petition in unnumbered I.A.No. of 2012 and questioning the maintainability of the OA 7 of 2006 at the time of trial stage after filing our proof affidavits. The reasons adduced by the appellants are not raised in their written statement and subsequently in order to drag the proceedings has come forward with present petition and appeal. In order to expedite the proceedings in OA.No. 7/2006 a writ petition in W.P.No.14615 of 2013 on the file of the Hon'ble Madras High Court, Madurai Bench and the Hon'ble High Court directed the 1<sup>st</sup> respondent to dispose of the matter within a period of twelve weeks from the date of receipt of a copy of the order after issuing notice to all the parties. The principles of Res Judicata will not be applicable to the present case of the respondents. In the earlier litigations, most of the present parties are not the parties to the earlier litigations. Further the present petition filed to frame a scheme not only for the Arulmigu Akora Veerabathrasamy Temple but also to

**Arulmighu Muppili Karuppasamy temple which is not the subject matter of the earlier litigations. Further, no findings were given by denying scheme to the temples.**

**4. I heard Thiru M. Rukmangathan, Counsel for the appellants, A. Haja Mohideen, Counsel for the Respondent and perused the relevant records. The Respondents herein have filed O.A. 7/2006 under Section 64 (1) of the Act to frame a scheme of administration with a provision to manage the temple by a managing trustee among trustees on rotation basis. But the appellant contended that previously O.A. 29/1988 filed praying for similar relief was dismissed and appeal also dismissed by the Commissioner, hence the present O.A. is barred by resjudicata and not maintainable. In the O.A. 8/85 and 12/1985, the then Deputy Commissioner has declared the office of Trusteeship of the suit temple as Hereditary one by order dated 30.9.1987. The appeal in A.P. 29/1988 filed before the Commissioner to delete Para 9 in the above order has been allowed. In Para 9, the Deputy Commissioner held “that it is not proper for the appellant herein to look after the administration of the affairs of the temple exclusively by himself in view of the decree in A.S.104/77, Madurai and the legal heirs of the founder should also be given opportunity to participate in the administration of the temple.” In the said appeal, the Commissioner has held that the jurisdiction of the Deputy Commissioner ended with nature of office of the trusteeship only and the provisions of the status do not empower him to make any further observation under Section 63 (b) of the Act. In the O.A., the Deputy Commissioner held that “எனவே மேலே விவரிக்கப்பட்டபடி, தாவாக் கோயிலை தோற்றுவித்த முத்துகருப்பு செட்டியார் அவரது மகன் நல்லுவீரன் செட்டியாரின் வாரிசுகள் அனைவரும் பரம்பரை பாத்தியதை கோர உரிமை உள்ளவர்களாகும். எனினும் தாவாக் கோயிலின் நிர்வாகம் பரம்பரை தன்மையுடையது என்று மட்டுமே விளம்புகை செய்யப்படுகிறது” . Therefore the persons who are claiming the hereditary trusteeship should establish their right before the competent civil Court.**

**But in this case, it is not known whether both the appellants and the respondents have established their right before the competent Civil Court. Previous O.A. filed under Section 64 (1) of the Act for the similar relief was dismissed in view of the order passed by the Commissioner in A.P. 29/1988. The said O.A. was not dismissed on merits. Hence, the said order could not act as resjudicata. Hence, the impugned order is hereby confirmed. It is open to the appellants to raise their objection before the Joint Commissioner. While deciding the O.A., the Joint Commissioner should consider the following points.**

**(1) The order passed by the Deputy Commissioner in O.A. 8/1985 and 12/1985 and order in A.P. 29/1988.**

**(2) Whether the petitioner and respondent got declaration before the competent Civil Court.**

**(3) If so, whether framing of scheme is necessary when statute provides for election of Board of Trustees.**

**With the above directions, the appeal petition is disposed of.**

**/typed to dictation/**

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

**/true copy/by order/**

**Superintendent.**