

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

Friday the 5th day of September, Two Thousand and Fourteen

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

A.P.3/2014 D2

Between.

T.S. Govindaswamy, S/o Late Thiruvengadam.

.. Appellant

And

**1. The Assistant Commissioner,
Hindu Religious and Charitable
Endowments Department,
Nungambakkam, Chennai.34.**

**2. The Joint Commissioner, Hindu Religious
and Charitable Endowments
Administration Department,
Nungambakkam, Chennai 600 034.**

.. Respondent.

**In the matter of Arulmighu Om Sakthi Vinayagar Temple,
Umperson Street, Chennai-108.**

**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
22.8.2008 of the Joint Commissioner, HR & CE Admn.Dept., Chennai in
dismissing the O.A. 8/1997 filed under Section 63 (b) of the Act.**

Annexure Order in R.Dis. A.P.3/2014 D2 dated : 5.9.2014.

**The above appeal petition filed under Section 69(1) of the Act
against the order dated 22.8.2008 of the Joint Commissioner in
dismissing the O.A. 8/1997 filed under Section 63 (b) of the Act.**

**2. The appellant contended that the Learned Joint Commissioner
acted with material irregularity in holding that the Appellant had failed**

to prove his claim and that the Original Application filed under Section 63 (b) of the Act deserves to be dismissed in the fact of the material evidence produced before him in proof of the fact that the Appellant is the founder cum Dharmakartha of Arulmighu Sri Om Sakthi Sithi Mukthi Vinayagar Temple. The Joint Commissioner erred in holding that the appellant had not produced any document to prove that he is the founder of the Temple in the fact of the Exhibit A1 to A6 filed before him. The finding of the Learned Joint Commissioner that the petitioner/appellant had not produced any account from the date Kumbabishegam till date is patently erroneous as it was duly explained that the records pertaining to the account in respect of the performance of Kumbabishegam was lost. Moreover the appellant did not expect the present situation would arise and that he should have preserved and kept those accounts and other documents pertaining to performance of Kumababishegam of the temple held in the year 1967. The other documents viz. Exhibits A2 and A4 would establish that such a performance of Kumbabishgam of the temple had taken place at the initiative and effort of the appellant. During the process of enquiry the appellant was examined as P.W.1 and that Exhibit A1 to A6 were marked through him when oral evidence of PW1 was not permitted to be abused and that the appellant was not at all examined in the said proceedings before the Joint Commissioner. The appellant was not at all given an opportunity to give oral evidence in proof of the establishment of the temple, celebration of Kumbabishegam as well as the daily conduct of poojas and punarpoosam from and out of his own funds. The appellant was examined as PW1 and that one Thulasingham, Inspector of Circle IV was examined as CW 1, when such examination of witnesses had not at all taken place in the enquiry conducted by the Joint Commissioner. On the other hand the Learned Joint Commissioner declined the request of Counsel for the petitioner/appellant for letting in oral evidence in proof of his case and insisted upon the documents being given to him for

consideration of the application filed by the appellant. The copy of the inspection report dated 30.04.1998 of the Inspector, Circle IV was not served on the appellant and no opportunity was given to controvert the report with proper evidence. In such event, the reliance of the copy of the report of the Inspector, Circle IV is not at all proper and it is against the principles of natural justice. The Joint Commissioner erred in not considering the Exhibits A1 to A6 in proper perspective while deciding the vital issue that the appellant is the founder-cum-dharmakartha of the temple in question. The Joint Commissioner acted with material irregularity in relying upon the resolution No. 76 dated 10.10.1994 of the Tamil Nadu Temple District Committee and his proceedings dated 18.11.1994 in declaring the temple in question as non-schedule temple, when the resolution as well as the proceedings were created without the knowledge of the appellant and without giving an opportunity to be heard before passing of such resolution and proceedings. The resolution and the proceedings having been passed in violation of principles of natural justice are not binding upon the appellant. In such event, the reliance of the proceedings and the resolution by the Joint Commissioner for accepting the version of the Assistant Commissioner that the appellant was appointed as a trustee and that a Thakkar was appointed for the temple and that the management of the temple was taken over from the appellant. Moreover the appellant is an illiterate. He does not know to read and write. He would only sign his name in Tamil. Taking advantage of his illiteracy and ignorance the Respondents had created documents as if the Appellant has knowing and consciously agreed to become Trustee of the Temple. On the other hand the Appellant has been continuing to be the Founder-cum-Dharmakartha of the Temple.

3. The appellant appeared in person. I heard the appellant and perused the relevant records. On a perusal of the annexure to order passed containing the grounds for the dismissal of the Original Application, the Joint Commissioner has simply enumerated certain

documents filed without discussing its evidentiary value, how far the said document supports or not supports the case of the petitioner by applying his mind judicially before taking such a decision. Therefore, the order dated 22.8.2008 passed by the Joint Commissioner suffers from infirmity as stated above and deserved to be set aside and accordingly it is hereby set aside and the matter is remitted back to the Joint Commissioner to hold an enquiry denova after affording the appellant and others an opportunity of being heard and dispose of the same in accordance with law within a period of three months from the date of receipt of a copy of this order. With the above directions, the appeal petition is disposed of.

/typed to dictation/

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

/true copy/by order/

Superintendent.