

BEFORE THE COMMISSIONER, H.R.&C.E.ADMN.DEPARTMENT, CHENNAI.34.

Monday the 15th day of December, Two thousand and Fourteen.

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

A.P. 34/2014 D2

Between.

- 1. A.P. Kandasamy S/o Ponnappa Gounder.**
- 2. T. Murugesan S/o Ponnusamy.**
- 3. C. Veerapan, S/o Chinnappa Gounder.**
- 4. V. Subramanian, S/o Valliappa Gounder.**
- 5. C.P. Ponnusamy S/o S.K. Ponnusamy Goundar. Appellants.**

And

- 1. The Joint Commissioner,
H.R. & C.E. Admn.Department,
Tiruchy.**
- 2. S. Shivaraj S/o Subbayyan. . Respondents.**

In the matter of Arulmighu Periya Ponnachi Amman and Chinna Ponnachiamman Temple, Athipalayam, Aravankurichi Taluk, Karur 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 15.5.2014 of the Joint Commissioner, HR & CE Admn.Dept., Tiruchy in dismissing the O.A. 5/2013 filed under Section 64(1) of the Act.

Annexure to Order in R.Dis. A.P. 34/2014 D2 dated : 15.12.2014.

The above appeal petition filed under Section 69(1) of the Act against the order dated 15.5.2014 of the Joint Commissioner, Trichy in dismissing the O.A. 5/2013 filed under Section 64 (1) of the Act.

2. The appellants contended that the origin of the temple lost in antiquity. Arulmighu Shri Periya Ponnachi Amman and Chinna Ponnachi Amman are the titular deities of the above two sects. The temple is chiefly founded for the benefit of the members of the two sects of Kongu Vellala Gounder community viz. Sembuthankulam and Maniankulam. All along, the members of the two sects alone are in the management and administration of the temple. The grandfather of the 2nd respondent Mr. Ponnusamy Gounder who is all along co-operated with the members of the Sembuthankulam Sect in managing the affair of the temple has clandestinely filed a suit in O.S.No. 964/1992 on the file of Munsiff Court, Karur and obtained a decree declaring him as hereditary Trustee of the temple. The above order of declaration by a Civil court has been obtained by the grandfather of the 2nd respondent without impleading the members of the above two sects or the competent authorities of the Hindu Religious and Charitable Endowments Department, besides that the Civil Court has no jurisdiction at all to grant a declaration in the nature of the hereditary trusteeship in the light of the provisions of Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959. An order obtained from the Civil Court is void ab initio, since the Civil Court is incompetent to pass an order in terms of 63 (b) of the Act, unless the same is passed by way it in a statutory appeal under Section 70 of the Act. On the basis of recording of succession of 2nd respondent and another as hereditary trustees of the temple, the Joint Commissioner has summarily dismissed the appellant's application in O.A.No. 5/2013 without adducing any reasons. The Joint Commissioner has not correctly understood the scope and ambit of the Section 64 (1) of the Act which states that the Joint Commissioner shall settle a scheme for the institution for the interest of proper administration of the institution, as scheme shall be settled for the institution, when not less than five persons having interest make an

application in writing stating that in the interest of the proper administration of the institution a scheme shall be settled for it. On such scenario, the learned Joint Commissioner shall consult in the prescribed manner the Trustee and the person having interest and if after such subjectively get satisfied that it necessary or desirable to do so, he shall be or settle a scheme to administration for the institution. While so, in the present case, in contravention to the said provision, the Learned Joint Commissioner gave important to some extraneous and irrelevant issues which did not form part of the ambit and scope of the above provision and on such erroneous consideration, she has passed the impugned order. The learned Joint Commissioner has miserably failed to understand the scope and ambit of Section 64 (1) wherein it has been specifically stated that a scheme settled for an institution may contain a provision for removing any existing Trustees whether hereditary or non hereditary and appointing a new Trustee in the place of or any addition to any existing Trustees. The impugned order has been passed by the Joint Commissioner without considering the fact that earlier application filed by the grandfather of the 2nd Respondent Mr. Ponnusamy under Section 63 (b) read with 6 (11) of the Act before the then Deputy Commissioner, Hindu Religious and Charitable Endowment Department, Trichy has been dismissed as devoid of merits which safely transpires that the office of the Trusteeship in the temple has been once for all decided as non hereditary in nature by a competent authority. They are in the management and administration of the temple and managing it to the utmost satisfaction of the devotees at large, whileso, if the 2nd respondent has permitted to interfere with the exclusive management of the members of the two sects, it would hinder their accrued valuable right of administration over the temple and also disturb the communal harmony of the locality. Further it will cause irreparable injury, anguish and prejudice the rights of the Appellants. Ends of justice and the balance of convenience favour the Appellants in the order

to obtain an order of interim injunction restraining the 2nd Respondent and his men, servant and agents from interfering with the exclusive management of the temple by the member of the above two Sects of Konguvellala Gounder community viz. Sembuthankulam and Maniankulam pending disposal of the above appeal.

3. In the counter affidavit, the 2nd respondent has contended that the 2nd respondent's grandfather namely, Mr. Ponnusamy Gounder was in administration and management of the temple as a hereditary trustee. While being so, the Assistant Commissioner of H.R. & C.E. , Trichy had attempted to appoint a non-hereditary trustee to the temple vide order dated 27.9.1992. The said order warranted the 2nd respondent's grandfather Mr. Ponnusamy gounder to file a suit before the district Munsiff, Karur in O.S.No. 964/1992, seeking with prayer to declare him as the hereditary trustee to the said temple involved in this appeal. The above said suit decreed in favour of Mr. Ponnuamy Gounder. Aggrieved by the said decree and judgment, the Assistant Commissioner, HR & CE, Karur as well as Commissioner of Chennai went on appeal in A.S.No. 63/1999 before the Principal District Judge, Karur. The said appeal was dismissed on 29.8.1999 confirming the decree and Judgment in O.S.No. 964/1992. The 2nd respondent has been running the administration of the temple to his good faith and conscious in accordance with the provisions of H.R. & C.E. Act and Rules. The above said appellants are quite stranger to the temple moved an application seeking for framing of schemes in lieu of administration of temples with false averments before the 1st respondent. The 1st respondent has no power to frame scheme for the temple when there is hereditary trustee duly recognized by the Joint Commissioner, Trichy vide order dated 21.11.2013. Moreover when there is no case of mismanagement or misadministration of the temple made against the 2nd respondent, the first respondent has rightly closed the applications for framing of scheme

to the temple as there is necessity warranted for the same. Therefore the order passed by the 1st respondent in O.A.No. 5/2013 on 15.5.2014 is valid in law.

4. I heard Thiru E. Ganesh, Counsel for the petitioner, Tmt. V.S. Usha Rani, Counsel for the 2nd Respondent and perused the relevant records. The appellant herein have filed the O.A. 5/2013 under Section 64 (1) of the Act to frame a scheme of administration. But the Joint Commissioner summarily dismissed the O.A. on the basis of recording of succession of Hereditary Trustee under Section 54 (1) of the Act without conducting any enquiry as prescribed in “the Holding of Inquiries Rules”.

Section 64 (1) of the H.R. & C.E. Act read as follows:

“64. Power of Joint Commissioner or Deputy Commissioner to settle schemes.—(1) When the Joint Commissioner or the Deputy Commissioner, as the case may be, has reason to believe that in the interest of the proper administration of an institution, a scheme should be settled for the institution, or when not less than five 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, ²[the Joint Commissioner or the Deputy Commissioner, as the case may be], shall consult in the prescribed manner the trustee and the persons having interest and if, after such consultation, he is satisfied that it is necessary or desirable to do so, he shall, by order, settle a scheme of administration for the institution.”

Accordingly, the Joint Commissioner shall consult in the prescribed manner the trustees and other persons having interest, and if, after such consultation, he is satisfied that it is necessary or desirable to do so shall settle a scheme of administration for the institution. It is not prohibited by the Act to settle a scheme of administration for the appointment of non-hereditary Trustees to the religious institution having hereditary trustee. Further, if the Joint Commissioner not satisfied to settle a

scheme of administration after consulting trustees and other persons having interest, should adduce reasons in the order. But in this case he neither conducted any enquiry in the prescribed manner nor adduced any reason in the impugned order.

Therefore, the impugned order suffers from infirmity as stated supra and liable to be set aside. Accordingly the order dated 15.5.2014 of the Joint Commissioner, Trichy is hereby set aside and the matter is remitted back to the Joint Commissioner for fresh enquiry. The Joint Commissioner, Trichy is directed to conduct enquiry and dispose of the O.A. in accordance with law after affording an opportunity of hearing to the appellants, respondents and other person having interest. With the above direction, the appeal petition is disposed of.

/typed to dictation/

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

/true copy/by order/

Superintendent.