

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

Monday the 12th day of January, Two Thousand and Fifteen.

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

A.P. 36/2014 D2

Between.

Shanmuga Bhattar

.. .. Appellant.

And

1. The Executive Officer / Joint Commissioner,
Arulmigu Subramaniaswamy Temple, Thiruchendur

2. M.V.Muthu Bhattar

3. M.Subramania Bhattar

. Respondents.

In the matter of Arulmighu Subramanyasamy Temple,
Tiruchendur, Tuticorin 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
6.5.2014 of the Joint Commissioner/Executive Officer, Tiruchendur
Pro.Rc.1102/2014 regarding pooja murai.

Annexure to Order in R.Dis.A.P.36/2014 D2 dated :12.1.2015.

The above appeal petition filed under Section 69(1) of the Act
against the order dated 6.5.2014 of the Joint Commissioner/Executive
Officer of the above temple regarding pooja murai.

2. The appellant contended that he is the Archakar doing poojas
in the Shanmugar Sannadhi in Arulmighu Subramaniaswamy Temple.
He is performing the poojas in and as in the capacity of Archakar without
any blemish and to the utmost satisfaction of the devotees at large.
Prior to the appellant, his father Late Maharaja Bhattar was the
Archakar for the Shanmugar Sannadhi for the period from 11th to 15th of
every Tamil month. Even during the tenure of his father as Archakar,
the appellant alone assisted his father in performing poojas to the
Sannadhi. Acknowledging his prominent role in assisting his father in

performing poojas to the Sannadhi, the Appellant has been appointed as the sole Archakar of the Shanmugar Sannadhi in the place of his demised father Late Maharaja Bhattar for the period of 11th to 15th of every Tamil month by order of the 1st Respondent made in Pro. Rc.8143/93 dated 18.10.1993. Prior to passing of the order, the appellants other two brothers, the 2nd and 3rd Respondent herein have executed a letter and filed the same before the 1st respondent wherein they have categorically permanently relinquished and conceded their rights, if any remained on them on the vacancy arises on the death of their father and also rendered no objection to pass an order in favour of the Appellant to perform pooja Kainkaryams as Archakar to the Shanmugar Sannadhi for the period from 11th to 15th of every Tamil month in the place of his father Mr. Maharaja Bhattar. No one is challenged the said order and the order has become final in all aspects. From the demise of his father, the appellant alone is performing poojas exclusively for Shanmugar Sannadhi during the period of 11th to 15th of every Tamil month and now he is assisted by his son Santosh Kumar in performing poojas to the Sannadhi. The 2nd and 3rd Respondent using the name of their mother who was seriously unwell and so not in a position to move filed a Writ Petition in W.P. No. 4651/2014 against the Appellant and the 1st Respondent, as if they have collectively given an undated representation to the 1st respondent and that no order was passed therein. The 2nd and 3rd respondent had deliberately suppressed the material facts about earlier relinquishment and that the appellant alone is performing poojas to the Sannadhi and on the facts presented before the Hon'ble High Court, Madurai Bench directed the 2nd and 3rd Respondent to give fresh representation and directed the 1st respondent to pass an order within 6 weeks from the date of receipt of the copy of the order. Unfortunately the above order has been passed without notice to the Appellant as such he was not in a position to bring the earlier relinquishment to the knowledge of the Hon'ble High Court. The above

order has been passed on the basis of the false and concocted facts placed by the 2nd and 3rd respondent whereby they have alleged that they are also performing poojas with the Appellant. The above allegations is utter falsity and no concrete evidence more so any documents so as to prove such factum has been produced by the 2nd and 3rd Respondent before the 1st respondent. Further assuming not admitting, if it were done so, the Respondent 2nd and 3rd would not have kept quiet for over two decades without claiming their rights. Furthermore, the fact that they have not claimed their right over two decades would clarify that their right if any remains to them is also extinguished by efflux of time. The 1st respondent is not vested with any powers to pass orders in relation to performance of poojas by the Archakar and as such the order is void *ab initio* and as per the order of the Hon'ble Hhigh Court, it has to be taken as subject matter of this appeal and on such preliminary issue of jurisdiction, the appeal has to be dismissed in limine. The 1st respondent failed to consider the fact that the 2nd and 3rd respondent have expressly permanently relinquished the right of performing the poojas, if any remains to them, through their consent letter. While one of the Respondent is incompetent to perform the pooja due to his disability and other is doing a pooja in the Temple in Thuttukudi. Though it was brought to the notice and knowledge of the 1st respondent, he miserably failed to consider the same in its appropriateness. The 1st respondent miserably failed to consider the fact that the Respondent 2 and 3 never participated in the pooja service either during the life time of the father of the Appellant Late Maharaja Bhattar or after his demise to till date.

3. In the counter affidavit, the 1st respondent/Executive Officer has stated that W.P.No.4651/2014 was filed by the mother and 2 brothers of the appellant and the Hon'ble Madurai Bench of Madras High Court by its order dated 17.3.2014 directed the petitioners to give a fresh representation and the 1st respondent to dispose of the same in

accordance with law. Based on the same, an opportunity was given to all parties concerned and an order dated 6.5.2014 was passed pursuant to which the rights of the 2 brothers of the appellant were recognized. The Revision petitioner and Respondents 2 and 3 are sons of late Maharaj Bhattar and as per the law of inheritance, they are entitled to step into the shoes of their late father Maharaj Bhattar. The contention that the Respondents 2 and 3 have given their consent letter in favour of the Revision petitioner is an issue between the Appellant and Respondents 2 and 3, but as per the records available in the Temple and the same having been verified and inspected again reveals that the Appellant as well as Respondents 2 and 3 have been performing poojas and the factual assertion of the appellant that he has been doing poojas exclusively without the intervention of Respondents 2 and 3 is incorrect. The above averment is also fortified and confirmed by the report dated 5.5.2014 of the ulthurai Superintendent. The respondent denies the averment that the appellant alone have been performing the poojas as false. The custom and usage under Section 63 has to be proved in the manner known to law and as laid down by the various ratios of the Hon'ble High Court as well as the Supreme Court in this regard and merely because the Revision petitioner was doing "Murai" for certain period will not take away the right which is vested in Respondents 2 and 3. The order passed by the respondent is reorganizing the manner in which the poojas have been done and the same will not amount to a decision based on custom and usage. Any relinquishment can be made by a Deed and not by any letters and as such as letter given by the Respondents 2 and 3 will not bind the IDOL since it is purely an internal matter. Further the custom and usage is being pleaded by the Revision Petitioner, it is for the Revision Petitioner to prove the same by cogent evidence from time immemorial and any evidence for short period will not assist the Revision Petitioner to succeed in custom and usage.

4. In the counter affidavit the 2nd and 3rd respondents contended that no poojaris will have a prerogative right in the performance of pooja service, in view of the abolition of hereditary poojariship under the Act 2 of 1971 by the Government of Tamil Nadu. Maharaja Battar was performing puja murai in Shanmuga Sannadhi for 5 days from 11 to 15 of every Tamil Month. After the death of Maharaja Battar, all the 3 sons of Maharaja Battar performing pooja service in the temple for 5 days and enjoying their honours thereon. After the death of Maharaja Battar all his 3 sons are all entitled to perform 2/3rd pooja murai system for the 5 days during Tamil month 11th to 15th in Shanmuga Sannadhi. In a litigation between Ramasamy Battar and others in the family, it made necessity to inform the court that the orders may be passed in favour of eldest of Maharaja Battar. And there is no relinquishment of their rights by the 2 other sons of Maharaja Battar. A letter relating to relinquishment clearly indicates that as eldest son of Maharaja Battar, he can perform pooja service on behalf of Maharaja Battar and it does not mean that the other 2 sons have lost their rights once for all. It is admitted that Maharaja Battar was performing pooja service in the Shanmuga Sannadhi for 5 days during Tamil month from 11 to 15 and after his death, the appellant and 2 other sons are jointly performing pooja service and in the place of appellant now, his son namely, Santoshkumar is performing pooja service and in the same manner, Senthil Rajaram, Son of Subramania Battar is also assisting his father and performing pooja service and therefore, the order passed by the Joint Commissioner/Executive Officer of the temple dated 6.5.2014 is perfectly valid. The relinquishment is not in favour of relinquishing his pooja murai, it was only relating to the fact that the department can pass orders in favour of the eldest son but that it does not mean that the respondents 2 and 3 have lost their rights permanently.

5. I heard Thiru E. Ganesh, Counsel for the appellant, M/s A.S. Kailasam Associates, Counsel for the 1st respondent/Executive Officer,

Thiru M. Rukmangathan, Counsel for the 2nd and 3rd Respondents and perused the relevant records. The dispute is between the brothers regarding right to perform pooja murai in the suit temple. The appellants father Late Maharaja Battar had performed pooja in Shanmugar Sannadhi for the period from 11th to 15th of every Tamil month. After the demise of the said Maharaja Bhattar the appellant has been permitted to perform pooja by the Joint Commissioner/Executive Officer in Pro. Rc.No. 8143/93 dated 18.10.1993. Subsequently, the appellant's mother and his brother filed a W.P. (MD) 4651/2014 before the Hon'ble High Court. The court has directed the petitioners to give a fresh representation and directed the Joint Commissioner/Executive Officer to dispose of the same in accordance with law. The Joint Commissioner/Executive Officer after hearing all the parties has passed the revised order permitting the appellant and 2nd and 3rd respondents herein to perform pooja during the period from 11th to 15th of every Tamil month in the impugned order.

6. It is admitted by all the counsels that in view of the Tamil Nadu Act 2/1971, no person shall be entitled to appoint to any vacancy merely on the ground that he is next in the line of succession to the last holder of the office. But in this case, the appellant and 2nd and 3rd respondent are claiming only on the ground that they are next in line of succession to the last holder of the office. The Joint Commissioner/Executive Officer has allowed their claim, which is against the provisions of the Act. Further custom and usage should be followed in performing pooja, festivals etc. But there should not be any custom and usage in the appointment of Archakas, poojaris etc. Appointment to any vacancies should be made following the rules and regulations prescribed under the provisions of the Act. Previous order passed by then Joint Commissioner/ Executive Officer itself is illegal. An irregularity can be rectified and ratified. But an illegality cannot be rectified. Hence the

order dated 18.10.1993 passed by then Joint Commissioner/ Executive Officer is void one.

7. The counsel for the 2nd and 3rd respondents argued that their claim is not on the ground that they are next in the line of succession to the last holder of the office, but they are qualified to hold the post of Archakar. But the impugned order was passed without following the procedures prescribed under the Act and Rules. As per the Act, the trustees/Fit person is the competent authority to fill up any vacancy in the religious institution in accordance with provisions of the Act. But, in this case, the Joint Commissioner Executive Officer has passed the order without getting approval of the fit person of the temple. Previously, in order dated 12.5.2013 made in R.P.100/2013, this forum has held that no person entitled to poojamurai on the basis of hereditary succession and directed the fit person and the Joint Commissioner/Executive Officer of the temple take necessary action to fill up the vacancy in accordance with the provisions of the Act and Rules. But the same was not considered by the Joint Commissioner/ Executive Officer while passing the impugned order. Therefore, the order dated 18.10.1993 passed by the then Joint Commissioner/Executive Officer and revised in the impugned order suffers from infirmity as stated above and liable to be set aside. Accordingly it is hereby set aside. The Joint Commissioner/ Executive Officer is directed to take necessary action to fill up the vacancy in accordance with the provisions of the Act and Rules. With the above direction the appeal petition is disposed of.

/ typed to dictation /

Sd. P. Dhanapal,
Commissioner.

/true copy/ by order/

Superintendent.