

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

Thursday the 23rd day of July, Two thousand and Fifteen.

**Present :Dr.M.Veera Shanmugha Moni, I.A.S.,
Commissioner.**

A.P. 38/2014 D2

Between.

R. Sekar, S/o P.S. Ramanathan Gurukkal. Appellant.

And

- 1. The Joint Commissioner, HR & CE
Admn.Department, Vellore.**
- 2. R. Kirubanandan, S/o P.S. Ramanathan Gurukal . Respondents.**

**In the matter of Arulmighu Thiruvakeswarar Temple, Peruvayal,
Gummidipoondi Taluk, Tiruvallur District.**

**Appeal petition filed under Section 54(1) of the Tamil Nadu H.R.&
C.E. Act, 1959 (Tamil Nadu Act 22 of 1959) against the Order dated
3.7.2014 of the Joint Commissioner, HR & CE Admn.Dept., Vellore in
suspending the appellant under Section 54 (1) of the Act in Pro.Rc.No.
2069/2013.**

Order in R.Dis.A.P.38/2014 D2 dated: 23.07.2015

**The above Appeal Petition came up for final hearing before
me on 30.6.2015 in the presence of Thiru.E.Ganesh, Counsel for the
appellant and M/s. A.S.Kailasam Associates counsel for the 2nd
respondent. Upon hearing their arguments and having perused the
connected records and the matter having stood over for consideration till
this day, the following order is passed**

ORDER

**The above appeal petition filed under Section 54(4) of the Act
against the order dated 3.7.2014 of the Joint Commissioner, Vellore in
recording the succession of the 2nd respondent as Hereditary Trustee of
the suit temple.**

**2. The appellant contended that the office of the Trusteeship
in the Temple has been recognized as hereditary and the father of the**

Appellant and 2nd respondent viz., P.S.Ramanatha Gurukul has been appointed and acted as hereditary trustee of the temple. The father of the appellant and the 2nd respondent was ill health in his later part of his lifetime and the appellant assisted him in the affairs of the management of the temple since 1977. Later, the health condition of the father of the appellant and 2nd respondent was further worsened and he was bed ridden, therefore the appellant was looking after the administration of the temple besides doing daily poojas. The temple records, communications and correspondences with the department will also reflect the above factum. At that time, the 2nd respondent who was worked as a Headmaster in Government Middle School and he was relieved from the service in the year 2007 alone. Due to his other avocations, he has not interfered with the exclusive management and administration of the temple done by the appellant as sole hereditary trustee cum Poojari. Further, considering his active participation in the affairs of the Temple, the father of the appellant and 2nd respondent too has executed a Will whereby he has bequeathed the right of management of the temple in favour of the appellant. After the demise of the father of the appellant, the factum of recording of the Hereditary Trusteeship of the appellant has also effected vide the proceedings of the Joint Commissioner dated 6.1.2009 in M.P.No.288/2008, aggrieved over the recording of the succession of the appellant, the 2nd respondent preferred an appeal in terms of Section 54(4) of the Act before this Hon'ble Forum in A.P.No.54/2010, this Hon'ble Forum confirmed the order of the Learned Joint Commissioner, HR&CE made in M.P.No.288/2009 and directed the 2nd respondent to file a fresh application under Section 54(1) of the Act before the Joint Commissioner and directed the Joint Commissioner to dispose the said application after giving notice to this appellant and as well as other parties concerned. There was specific direction by this Hon'ble Forum vide its order dated 29.11.2012 made in A.P.No.54/2010 directing the 2nd respondent to file an appeal within 15 days from the date of receipt of the order. The 2nd respondent has chosen

to file an application under 54(1) of the Act belatedly and utter disregard to the directions of this Hon'ble Forum. There was no application filed by the 2nd respondent to condone the delay and the 1st respondent failed to take note of the fact that any right which is barred by limitation cannot be condoned without hearing the person whose right is to be disturbed. That the 2nd respondent has failed to claim his alleged right of Management as trustee to the trust. As on date, more than 4 decades has gone by from the date of vacancy arisen in the office of the trusteeship, by which his right if any left over the administration of the charities has been extinguished by efflux of time. As per the Section 107 of Limitation Act, when the Defendant takes possession of the office adversely to the plaintiff vis-à-vis hereditary right of the institution for 12 years or more, the right of trusteeship of the plaintiff would be barred by adverse possession and would be extinguished. Similarly the above Legal proposition is well supported by the well known legal maxim *Vigilantibus non dormientibus jura subveniunt* – The laws serve the vigilant, not those who sleep. The scope of Section 54 is merely to record the succession, it is laid down in 1990(1) Law weekly page No.144, *Premanand Vs.The Commissioner, HR&CE* wherein it is held that “whenever permanent vacancy occurring in the office of the hereditary trustee of a religious institutions, the next in line of succession shall be entitled to succeed office. There is no necessity whatever for the next hereditary trustee to make an application for being appointed under the Act. In the present case, for the aforesaid reasons, the 2nd respondent, if at all wants to record the succession, he has to establish that his right has not been extinguished under the rule of adverse possession under Section 27 read with 107 of Limitation Act 1963. Hence for all the reasons, the relief sought by the 2nd respondent needs adjudication besides his relief's declarative in nature, such relief cannot be granted or entertained by the Joint Commissioner especially invoking powers under the provision of the 54 of the Act.

3. In the counter, the 2nd respondent has stated the appellant claims that he has been acting as Hereditary trustee for more than 35 years would go to show the falsity of his case since the trusteeship was declared to be hereditary only by order dated 7.12.1984 in O.A.56/1981. He does not have a rival claim and he was only agitating his rights and not to the detriment of the rights of the Appellant. In such circumstances, if the Appellant feels that he has a rival claim, it is upto him to approach the competent Civil Court and it is only in these circumstances that the Joint Commissioner has only gone by the law of Succession in recording under Section 54 of the Act. The reference by the appellant to ILR 29 MAD 283 (PC) and 1990 LW 144 is misconceived. There has been no declaration in respect of custom and usage and secondly, such an adjudication cannot be done under Section 54 of the Act. Admittedly Ramanathan Gurukkal died on 25.2.2004 and the rights of appellant herein was recognized in M.P.No.288/2008 only by order dated 6.1.2009. It is only on 6.1.2009 that the alleged right of the appellant crystalised and therefore neither the principle of adverse possession nor the time frame required for adverse possession can be pressed into service in this case by the appellant. Even in the order of the Joint Commissioner in M.P.NO.288/2008, there has been no mention of the Will. Further, even assuming without conceding that such a Will is in existence, the question of Ramanathan Gurukkal nominating the present appellant as exclusive Hereditary Trustee is bad in law since the Hereditary Trusteeship is governed by the Law of Hindu succession unless there is custom and usage for the particular temple which has been declared so by the competent authority.

4. I heard Thiru.E.Ganesh Counsel for the appellant, M/s.A.S.Kailasam Associates counsel for the 2nd respondent and perused the relevant records.

The appellant mainly opposed the impugned order on the following grounds:

1. The appellant has been managing the temple for more than 4 decades. Hence the right of the 2nd respondent has been extinguished by efflux of time and barred by adverse possession.

2. Appellants father has executed will bequeathing the Hereditary Trustee in favour of the appellant.

3. The impugned order is silent about the right of to other legal heirs.

5. But, as contended by the 2nd respondent, the trusteeship of the suit temple has been declared as hereditary by order dated 7.12.1989 and appellants father Thiru.P.S.Ramanathan was declared as Hereditary Trustee. The said P.S.Ramanathan Gurukkal died in the year 2004 only, even assuming that the appellant has been assisting his father in the management of the temple, he is legally entitled to succeed to the trusteeship only after demise of his father permanent vacancy in the office of the trusteeship arose in the year 2004. Therefore the limitation starts from 2004 only. Further the 2nd respondent made application in the year 2007 itself. And also the succession of the appellant has been recorded in the year 2009. Therefore the right of the appellant has not been extinguished by efflux of time and not barred by adverse of possession. Under Article 107 of the Limitation Act

6. Further, Hereditary Trusteeship could not be nominated by way of Will. All the legal heirs of the Thiru.P.S.Ramanatha Gurukkal are entitled to succeed to the permanent vacancy in the office of the Hereditary Trustee. As contended by the 2nd respondent's counsel, the Hereditary Trusteeship is governed by Law of Hindu Succession unless there is established custom and usage in the temple declared by the competent authority. It is not proved by the appellant that nomination of Hereditary Trustee by way of Will is established the custom and usage of the suit temple.

7. Further, in the impugned order, the Joint Commissioner has recorded the succession of the 2nd respondent as Hereditary Trustee and it will not infringe the accrued legal right of the other legal heirs and

the appellant cannot argue for their case. If other legal heirs are aggrieved, they ought to agitate legally. The impugned order will not be an impediment to other legal heirs to claim their legal right.

8. Further as per Section 54(1) of the Act, next in the line of succession are entitled to succeed to the permanent vacancy. It is a "legal right" conferred upon all the legal heirs of the deceased Hereditary Trustee by the rule of law. The said legal right cannot be restricted by executing a will in favour of one person. Therefore, the claim of the 2nd respondent is not a rival claim. The relief claimed by the 2nd respondent is not declarative in nature. Because, as per Hindu Succession law, all the legal heirs are entitled to succeed to Hereditary office. It is a legal right conferred upon by a rule of law. The Joint Commissioner merely recognized the legal right of the 2nd respondent as previously done in the case of the appellant.

Thereafter, for the foregoing reasons stated supra, I find no illegality of infirmity in the impugned order and appeal petition deserves no merits. Accordingly the order dated 3.7.2014 of Joint Commissioner Vellore is hereby confirmed and appeal petition is dismissed as devoid of any merits.

/typed to dictation/

Sd/-M.Veera Shanmugha Moni,
Commissioner

/true copy/by order/

Superintendent

To

1. The Appellants through Thiru E. Ganesh, Advocate, No.61/23, Sakthi Avenue, South Lock Street, Kottur, Chennai-85.
2. The 2nd respondent through M/s. A.S.Kailasam and Associates, 86 Law Chambers, High Court Buildings, Chennai 104.

Copy to:

3. The Joint Commissioner, HR&CE Admn.Department, Vellore.(along with file No.2069/2013) by RPAD
4. The Inspector, HR & CE Admn.Dept., Thiruvallur.
5. The Assistant Commissioner, HR & CE Admn.Dept., Thiruvallur.
6. Extra.