

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

Monday the 18th day of August, Two Thousand and Fourteen

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

A.P.5/2014 D2

Between.

- 1. R. Chandiran.**
- 2. A. Kasi.**
- 3. S. Raman**
- 4. S. Perumal**
- 5. A. Murugan.**
- 6. S. Subbiah (died)**

.. Appellants

And

**The Joint Commissioner, H.R. & C.E.
Admn.Department,
Tirunelveli.**

.. Respondent.

**In the matter of Arulmighu Sembalai Sudalai Madaswamy Temple,
Vijayapathi village, Koodankulam, Radhapuram Taluk, Tirunelveli
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
10.12.2013 of the Joint Commissioner, HR & CE Admn.Dept., Tirunelveli
in dismissing the O.A. 1/2007 filed under Section 64 (1) of the Act.**

Annexure to Order in R.Dis. A.P.5/2014 D2 dated : 18.08.2014.

**The above appeal petition filed under Section 69(1) of the Act
against the order dated 10.12.2013 of the Joint Commissioner,
Tirunelveli in dismissing the O.A. 1/2007 filed under Section 64 (1) of
the Act. The above O.A. has been filed by the appellants herein to frame**

a scheme of administration with a provision for appointment of non-hereditary trustee from and amongst the Yadhavar Community of Vijayapathi village.

2. The case of the appellants is that there are temples dedicated to Arulmighu Sembalai Sudalai Madasamy Temple, Situated in Vijayapathi village, Koodankulam, Radhapuram Taluk, Tirunelveli District. The institution in question is a denomination in character and has been in management for the sole benefits of the Yadhavar Community of Vijayapathi village in Koodankulam. The community people, ever since its inception, have been managing the temple which is evident from a stone inscription found in the temple. The community people have also endowed punjai lands for the upkeepment of the denomination temple. The temple is a public in nature, but the management in religious aspects is to be vested with the community itself, for which protection has been made under the Principal HR & CE Act 22 of 1959. The rights of the appellants are well settled under Proviso to Section 64 (1) of the Act read with Section 51 and 107 of the Act wherein, a Constitutional guarantee has been given. In order to frame a scheme for the temple and to incorporate a permanent clause for the appointment of Non-hereditary trustee from and amongst the Yadhavar community for whose benefits the Institution in question is chiefly intended and maintained. Accordingly, O.A. 1/2007 was filed on the file of the Joint Commissioner, HR & CE, Tirunelveli. There is nothing wrong in incorporating a community reservation as a clause in the scheme since Proviso to

Section 64 (1) of the Act contemplates such relief. The Lower court has simply marked Exhibits A1 to A5 but did not make a legal analysis on the documents, which has led to miscarriage of justice. The impact of original evidence through independent evidence has not been discussed. The court below has failed to throw any light on the Exhibit A1 which is an Accounts indicating the management of the affairs of the temple by the community people. Exhibit A2 is a series of electricity bills which establishes the management of Yadhavar community as trustees in the temple. The sale deed which referred to as Exhibit A3 has not been discussed. The Gift Deed marked as Exhibit A5 has not been discussed in detail.

3. I heard Thiru M. Rukmangathan, Counsel for the appellants and perused the relevant records. The counsel for the appellants mainly argued that the Joint Commissioner did not make legal analysis on the documents filed by the petitioner. But on perusal of the annexure to order containing grounds for the rejection of the petitioner claim, the Joint Commissioner has elaborately discussed the evidentiary value of each documents filed by the petitioner and gave clear findings on each document. In the impugned order the Joint Commissioner observed that non-hereditary trustees were appointed from the year 1966 onwards and the petitioner had not raise any objection to the said appointment. And the suit temple is now being managed by a Fit Person appointed by the department. It is not proved by the petitioners that the Yadhava Community is continuously managing the temple from their own funds.

Section 64 (1) of the 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, 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.”

As per the said provision, the Joint Commissioner should satisfy that the settlement of a scheme is necessary or desirable for the proper administration of the Institution.

In the Judgment reported in 1960 (II) MLJ 205, the Hon'ble High Court held that “under Section 58 of the Madras H.R. & C.E. Act, 1959 the Deputy Commissioner has to be satisfied that it is necessary or desirable to frame a scheme of administration for the institution. The statute provides a remedy by way of suit where this subjective satisfaction exists and the authorities proceed further to frame or alter, modify or cancel it. But the failure of the authority to be satisfied is not a justifiable matter. While the power to institute a suit against the order of the Commissioner may not be in dispute, the court has no power to direct the Deputy Commissioner to be satisfied that a scheme should be framed or to direct him to frame a scheme when the Deputy

Commissioner was not so satisfied originally". The above decision squarely applies to the case of the appellants. In this case, the appellants failed to satisfy that the Joint Commissioner with clinching documentary evidence that the scheme is necessary for the proper administration of the suit institution. Further, being an appellant authority, this forum cannot compel the Joint Commissioner to subjectively satisfy to settle a scheme of administration. Therefore, for the foregoing reasons stated supra, I find no valid reasons to interfere with the impugned order and there are no merits in the appeal petition. Accordingly the order dated 10.12.2013 of the Joint Commissioner, Tirunelveli in O.A.1/2007 is hereby confirmed and the appeal petition is dismissed as devoid of any merit.

/typed to dictation/

**Sd/-P.Dhanapal,
Commissioner**

/true copy/by order/

Superintendent