

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

Tuesday the 30<sup>th</sup> day of September, Two thousand and Fourteen.

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

A.P.6/2014 D2

Between.

T. Rosepillai.

.. Appellants

And

1. The Joint Commissioner, H.R. & C.E.  
Admn.Department,Vellore.

2. S. Baskar

.. Respondents.

In the matter of Arulmighu Prasanna Venkatesaperumal Temple, Pappankuppam village, Siddirajakandigai Post, Gummidipoondi Taluk, Tiruvellore 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 20.9.2013 of the Joint Commissioner, HR & CE Admn.Dept., Vellore in dismissing the O.A. 13/1995 filed under Section 63 (b) of the Act.

Annexure to order in R.Dis. A.P.6/2014 D2 dated : 30.9.2014.

The above appeal petition filed under Section 69(1) of the Act against the order dated 20.9.2013 of the Joint Commissioner against the order dated 20.9.2013 of the Joint Commissioner, Vellore in dismissing the O.A. 13/95 filed under Section 63(b) of the Act.

2. The appellant contended that in O.A. No. 13 of 1995 on the file of the Joint Commissioner, H.R. & C.E. , Vellore, the appellant had declared as hereditary trustee by the learned Judge and against which, A.P. 24 of 2012 was filed by the second respondent herein as a third party, after condoning the delay in filing the appeal, the learned Commissioner, has allowed the appeal and remanded the matter for

**fresh disposal to the Joint Commissioner, HR & CE, Vellore with the following observation:**

*“It is learnt that the Joint Commissioner has had drawn inference from the records and not decided the case purely on records of evidence. Therefore, the order dated 11.4.2006 passed by the Joint Commissioner, Vellore in O.A. 13/1995 is hereby set aside and the matter is remitted back to the Joint Commissioner to hold an enquiry denova. The appellant herein and other villagers as persons having interest are at liberty to file an impleading petition within 15 days from the date of receipt of the order before the Joint Commissioner and put forth their case.”*

**The Joint Commissioner has failed to understand the very scope of the remand order and did not go into the details of the documents filed by the appellant in the lower court, to establish the hereditary character of the Institution, on the other hand, the Joint Commissioner has passed a summary order.**

**3. In the counter affidavit, the 2<sup>nd</sup> respondent has stated that the department has nominated non-hereditary trustees consisting of 5 trustees including the appellant herein as one of the non-hereditary trustee on 1.9.1994. The appellant filed the above O.A.No. 13/1995 to declare him as hereditary trustee without impleading the other four non-hereditary trustees in the above O.A. 13/1995 and without any notice to the other aggrieved persons including the said 4 non-hereditary trustees. When the founder of the temple has not been disclosed, the temple shall be managed by non-hereditary trustees unless contrary proved by documentary evidence. The Assistant Commissioner visited the temple and found that no accounts and statutory registers were maintained and issued notice to the appellant. While so the appellant gave consent to bring the temple under the control of H.R. & C.E. and assured that not to make false claim such as claim of hereditary trustee. The temple has immovable properties of 110 acres of lands for which the 2<sup>nd</sup> respondent produced relevant revenue records before the Joint Commissioner but**

the appellant herein disclosed the temple properties are only 50 acres. Further all section of people have visited the temple and performing their worship but the appellant resisted the public by saying that the temple is family temple and he managed the temple as he like.

4. I heard Thiru M. Rukmangathan, Counsel for the appellant, I. Rathinavel, Counsel for the 2<sup>nd</sup> respondent and perused the relevant records. Previously, the appellant herein was declared as Hereditary Trustee of the suit temple by order dated 11.4.2006 made in O.A. 13/1995. The said order was challenged in A.P. 24/2012 before this forum. The said appeal was allowed by order dated 18.12.2012 and the matter was remitted back to the Joint Commissioner to hold an enquiry denova. On the remand, the Joint Commissioner has dismissed the O.A. by the impugned order. I perused the annexure to order containing grounds for dismissal of the O.A. In the said order, the Joint Commissioner has observed that “.. *the petitioner did not implead any one as respondents. In the enquiry into the O.A. 13/1995, notice was not given to other non-hereditary trustees and Executive Officer. Publication of notice by affixture does not appear to have been made in the village properly and widely as prescribed. No independent witness was examined.. ..*” **Further he has observed that** “*It all goes to show that the matter was not earlier heard and decided by the then Joint Commissioner, strictly on merit surpassed by cogent oral and documentary evidence.*”. **The Joint Commissioner has exercised original side jurisdiction not appellate side jurisdiction. But he has observed as if he was sitting on the appellate side and find fault with the order passed by the previous Joint Commissioner. Since, the previous order dated 11.4.2006, suffers from infirmity as observed by the Joint Commissioner, the matter was remitted back to the Joint Commissioner to hold an enquiry denova. While sitting on original side, it is the duty of the Joint Commissioner to conduct enquiry following the procedures prescribed in the rules. If the petitioner failed to implead the non-hereditary trustees and Executive Officer as respondent, the Joint Commissioner ought to have either *suo***

*mottu* implead them as respondents or direct the petitioner to implead them as respondents.

Even though, in the impugned order, the Joint Commissioner marked 11 documents and examined 3 witnesses on the petitioner side, he failed to discuss the evidentiary value of said documents and witnesses. The Joint Commissioner without understanding the very scope of remand and passed the impugned order without conducting any enquiry.

Therefore, the impugned order suffers from infirmity as stated above and liable to be set aside. Accordingly, the order dated 20.9.2013 of the Joint Commissioner, Vellore made in O.A. 13/1995 is hereby set aside and the matter is remitted back to the Joint Commissioner to hold an enquiry denova. Further the Joint Commissioner is directed to dispose of the O.A. after affording the appellant, the respondent and other persons having interest an opportunity of being heard and pass order in accordance with law purely on records of evidence within a period of 3 months from the date of receipt of this order. With these directions the appeal petition is disposed of.

/typed to dictation/

Sd. P. Dhanapal,  
Commissioner.

/true copy/by order/

Superintendent.