

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

Friday the 1st day of August, Two Thousand and Fourteen

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

A.P.7/2014 D2

Between.

- 1. R. Sambandam.**
- 2. S. Krishnaswamy.** .. **Appellants**

And

- 1. The Joint Commissioner,
HR & CE Administration Department,
Nungambakkam, Chennai 600 034.**
- 2. G. Venugopal,**
- 3. Jayamohan,**
- 4. V.K. Subramanian.**
- 5. R. Gopalan.**
- 6. B.L. Kailasanathan.**
- 7. M.S. Mathurubutham.**
- 8. Arulmighu Ashta Siddhi Vinayagar Temple,
rep.by its Trustee S.H.R. Subramanian,
No.7, V Cross Street, Dhanalakshmi
Nagar, Selaiyur, Chennai 600 073.**
- 9. Rathna Ramalingam.** .. **Respondent.**

**In the matter of Arulmighu Astha Siddhi Vinayagar Temple, Sree
Rajeswari Nagar, Selaiyur, Chennai 73.**

**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
23.12.2013 of the Joint Commissioner, HR & CE Admn.Dept., Chennai
in confirmation of draft scheme in O.A. 7/2002.**

Annexure to Order in R.Dis. A.P.7/2014 D2 dated : 01.08.2014.

**The above appeal petition filed under Section 69(1) of the Act
against the order dated 23.12.2013 of the Joint Commissioner, Chennai
in allowing the O.A. 7/2002 filed under Section 64(1) of the Act.**

2. The appellants contended that the temple have been founded, established, maintained and managed by the villagers of Sri Rajeswari Nagar, Selaiyur, Chennai-73, for whose benefits the temple had been chiefly intended and maintained. The origin of the temple is a recent one. The Real Estate Promoter namely S.V.K. Real Estates was the promoters of Rajeswari Nagar Lay out. They have allotted 2 ½ grounds for construction of a Public temple for the sole benefits of members permanently residing in Rajeswari Nagar, Selaiyur, Chennai-73. In the year 1976 a Committee was formed by the villagers, in that Committee Shri Parthasarathy, Muthu, Narayana Iyengar, Yegnaswamy and Chakrapani were the members of the Committee. The said committee members have collected funds from the villagers and constructed the Villagers and constructed the Vinayagar Temple. Originally the temple was in a thatched shed and daily poojas were carried on. In the year 1982, the residents desired to have a permanent Vinayagar Temple and efforts were taken for construction of the temple. A committee was formed under the Chairmanship of Shri Jayaraman Naidu, a Senior resident of the village, and collected donations from the public and the temple was constructed, Kumabishegam was performed in July, 1983. A Committee was formed and they had managed and maintained the temple. The H.R. & C.E. Department has appointed one Guruswamy Reddiar as Non-hereditary Trustee in the year 1993 and he was looking after the affairs of the temple. The Association namely, GANESALYA is

nothing to do with the establishing, managing and maintaining of the temple. The Joint Commissioner erred in ordering a Scheme in favour of an Association named "Ganesalya" who was not a petitioner before the Court. The case has to be decided only on the basis of the pleadings and evidence, and without reference to the pleadings and evidence the case cannot be decided on mere presumption and imagination. The trial court erroneously held that the Ganesalya members are to be appointed as Non-hereditary Trustees to manage the affairs of Arulmighu Astha Siddhi Vinayagar Temple, Selaiyur. Neither the Ganesalya nor the Astha Siddhi Vinayagar Temple are the petitioners in O.A. 7/2002 and on this ground, the order of the Joint Commissioner is liable to be set aside. The order of the Joint Commissioner is bad in law and he has summarily stated in a paragraph 11 (iii) of the Annexure to the order "that all the above pleadings, documents and evidences are carefully examined. After thorough examination I am of the opinion that the petitioners Trust should have due regard to the Chairman or the appointment of Non-hereditary trustee in Arulmighu Ashta Siddhi Vinayagar temple, Vidyalakshmi Street, Selaiyur, Chennai 73. Therefore I came to the conclusion that the temple is established, maintained and managed by the petitioner Trust. Framing a scheme as prayed by the petitioners is beneficial for the betterment of the Institution. Hence, a scheme should be settled by making such provision for the administration of the above temple. A scheme is approved hereunder." The Joint Commissioner has

not stated anywhere about the proof of evidence which necessitates such a conclusion. The Joint Commissioner failed to note that a petition for framing a scheme under Section 64(1) of the Act without furnishing the Schedule of the property appended thereto is not maintainable in law in other words, a scheme of a temple without any property is not sustainable in law.

3. In the counter affidavit, Respondents 2, 3, 4, 5 and 8 stated that the appellants herein have no locus standi to prefer this appeal before this Hon'ble Authority against the order passed in O.A.No. 7 of 2002 dated 23.12.2013 by the learned Joint Commissioner, H.R. & C.E. Chennai by invoking Section 69 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The very provision of Section 69 thereof demands appeal being laid by the person aggrieved and not by any other person. There is no pleading anywhere in the affidavit or in the memorandum of Grounds of Appeal stating that the appellants are aggrieved persons who are directly and immediately affected by the order passed by the Joint Commissioner in O.A. 7/2002 dated 23.12.2013. There is no scope for entertaining any statistical appeal for appeal sake. The appeal should emanate from the petitioners who are aggrieved by the order under challenge by reason of having suffered legal injury and direction order passed by the lower authority. The appellants herein have made wrong and incorrect pleadings before the Commissioner in the appeal proceedings contrary to the pleadings and stand raised before

the original authority in O.A. No. 7/2002 and that therefore, the claim of the petitioners/appellants herein have to be negative in as much as the pleadings assume much importance in the adjudication of Civil claim. The appellants herein are disqualified persons even as per their own Trust deed dated 7.2.1979 bearing the nomenclature of Sree Seetharama Bakthha Samajam in as much as Section 64 (1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 demands the application for framing up a scheme for administering religious institution only from a person interested in the administration of the religious institution. Sri Seetharama Baktha Samajam is founded for other purposes excepting the administration and management of the religious institution. Their claim for framing up a scheme was rejected by the Joint Commissioner in O.A. 1/2008 by order dated 18.6.2013. There are several Sannadhis and deities consecrated inside the precincts of Sree Ashtha Siddhi Vinayagar Temple of which Sree Sathya Varadaramar Sannathi is one of such. Their claim has been considered in detail by the Joint Commissioner and found on assessment of evidence that such claims are acceptable and tenable in law for better management and administration of Sri Ashtha Siddhi Vinayagar temple. The HR & CE Department is controlling the entire affairs of Sri Ashtha Siddhi Vinayagar temple, Rajeswari Nagar, Selaiyur and that the inspection is being periodically done by the officials of the H.R. & C.E. Department but whereas the appellants herein are adopting otherwise

process of law without admitting to inspection. Hence, the claims of the appellants are liable to be rejected.

4. I heard Thiru M. Rukmangathan, Counsel for the appellants and Thiru R. Natarajan, Counsel for the respondents and perused the relevant records. The respondents mainly argued that the appellants have no locus standi to file this appeal because they are not aggrieved person as laid down under Section 69 of the Act. As per Section 64 of the Act, the Joint Commissioner or Deputy Commissioner, as the case may be shall consult in the prescribed manner the trustees 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". Further, as per Section 6 (15) (b) of the Act, "*person having interest means*" –

(b) in the case of a temple, a person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple, or who is entitled to partake or is in the habit of partaking in the benefit of the distribution of gifts thereat."

Accordingly the appellants are worshippers of the temple and they used to attend the performance of worship in the temple. The impugned scheme provides for appointment of Trustees from the members of the Ganesalaya Trust only, which excludes other general public for being appointed as Trustees. And it deprives the right of public for being appointed as the Trustee of the suit temple. In turn the right of

the appellants for being appointed as Trustee of the suit temple is also affected by the impugned scheme. Hence they are aggrieved by the impugned order. Further, the appellants were impleaded as respondents in the O.A. 7/2002. Hence, they have every right to file this appeal petition. Therefore, the objection of the respondents is not sustainable.

5. The contention of the appellants that ordering a scheme in favour of "Ganesalaya" which was not a petitioner in the O.A. is not correct. For framing a scheme of administration, it is sufficient to make an application by not less than 5 persons having interest. In the original application, petitioners have stated that they are the office bears of the said "Ganesalaya" and also they prayed to settle a scheme of administration with a permanent provision for appointment of non-hereditary trustees from the members of "Ganesalaya". Hence, the above contention is hereby rejected.

6. But on a perusal of the annexure to order passed by the Joint Commissioner containing the grounds for the above decision, the Joint Commissioner has simply enumerated certain document filed without discussing its evidentiary value, how far the said documents supports or not supports the case of the petitioners by applying her mind judicially before taking such a decision.

Therefore, the order dated 23.10.2013 passed by the Joint Commissioner, Chennai suffers from infirmity as stated above and deserves to be set aside and accordingly, it is hereby set aside. The

matter is remitted back to the Joint Commissioner to hold an enquiry denova after affording the appellants and respondents an opportunity of being heard and dispose the same in accordance with law within a period of 3 months from the date of receipt of a copy of this order. With these directions, the appeal petition is disposed of.

/typed to dictation/

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

/true copy/by order/

Superintendent