

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

Wednesday the 27th day of January, Two thousand and Sixteen.

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

A.P. 26/2015 D2

Between

P.Jeyamani

...Appellant

And

- 1. The Joint Commissioner
HR&CE Department, Chennai.**
- 2. M.Vasudevan**
- 3. G.Pencilaya**
- 4. S.Somanathan**
- 5. M.K.Dhinakaran**
- 6. B.Karthik**

.... Respondents.

**In the matter of Arulmigu Selvavinayagar
Muthumariamman Thirukoil, Velachery, Chennai 42.**

**The 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 17.6.2015 of the Joint Commissioner, Chennai in O.A.3/2012
filed under Section 64(1) of the Act.**

Annexure to Order in R.Dis.A.P.26/2015 D2 dated: 27.01.2016

**The above Appeal petition came up for final hearing before
me on 12.1.2016 in the presence of Thiru. C.Dharmaraj Counsel for
the appellant and Thiru.N.Sathiyamoorthy counsel for the
respondents. 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 is filed under Section 69(1) of
the Act against the order dated 17.6.2015 of the Joint Commissioner,
Chennai in allowing the O.A.3/2012 filed under Section 64(1) of the
Act.**

**2. The appellant contended that the Arulmigu Selvavinayagar
Muthumariamman Thirukkoil is a public religious institution and**

extent of 4 ground 0.485 sq.ft. belonging to the Tamil Nadu Housing Board, Velachery. Originally the Housing Board allotted the said plot for the purpose of common use. The residents of the "TNHB colony" Velacheri with their contribution constructed a small temple in the said area and the Ashtabandhana Maha Kumbabhishegam was performed by the Joint effort of residents of "TNHB Colony" Velacheri on 13.7.2005. The Assistant Commissioner, HR&CE Department, Chennai after enquiry, appointed the Executive Officer of Arulmigu Thandeewarar Thirukoil, Velacheri as fit person to the said temple vide Se.Mu.Na.Ka.3962/2007/A2 dated 10.5.2007. Though the appointment of fit person was made in the year 2007 fit person not took charge of the said temple. The respondents formed society in the name of "Selvavinayagar Muthumariamman Alaya Baktha Jana sabha" and registered in No 320/2007 dated 7.8.2007 after the appointment of fit person. Respondents in the name of said sabha also preferred writ petition challenging the appointment of fit person in W.P.24208/2010 which was disposed with direction to dispose the revision petition before the Joint Commissioner. Accordingly the R.P.1/2010 was also dismissed by order dated 2.6.2010. Then the respondents filed an original application to settle a scheme of administration under Section 64(1) of TNHR&CE Act in O.A.3/2012 which was also dismissed by the Joint Commissioner and appeal made under Section 69(1) was also disposed of with the order of remand. The said original application was allowed by order dated 17.6.2015 and scheme was published in the Chennai District Gazette dated 3.8.2015. The crux of the scheme is as follows: Not less than 3 and not more than 5 persons chosen from among the panel of names (one female member must be chosen form among the elected and recognized members of the sabha) recommended by Arulmigu Selva Vinayagar and Muthumariamman Temple Alaya Baktha Jana Sabha Velacheri) Chennai from its duly recognized and elected members from time to time at the general body meeting. In the above scheme, it is explicitly and daringly excluded the schedule caste member which is

clearly inconsistent provision to the statute. The Joint commissioner, while framing the impugned scheme has failed to take into account the fact that it being a public temple having common origin and it is not established and maintained by and for the people who are the members of the said sabha only. The Joint Commissioner not considered that the huge collections made by the respondents under the guise of de facto trustees and Arakkattalai Nirvagiies have not been brought into account and handed over to the fit person. The Joint Commissioner has failed to verify whether there are proper accounts with the persons who were in the de facto administration and whether they have any actual propriety to claim any right in the administration. The Joint Commissioner has also erred in settling a scheme in favour of the sabha which is a non perpetual body,that will not work out properly in future besides taking away the power of the authority in selecting the qualified persons based on their propriety. The Joint Commissioner has erred in framing a scheme which is inconsistent to the statute under Section 47(1)(c) read with of the TNHR&CE Act.

3. In the counter affidavit, the respondents contended that in the Tamil Nadu Housing Board Nagar, there are a lot of Government officials, employees and other categories of the working people in the Government living in the said Nagar, separate places were allotted in the said Tamil Nadu Housing Board Nagar for the purpose of constructing police station, community centre, Hospital, fire service station and Religious places such as temple, Mosque, and church. Muslim people have constructed mosque in the earmarked place and the Christian people have constructed Madha Koil church in the place ear marked for that purpose and they are worshipping regularly. The respondents herein and most of the Hindu people who are residing there had necessarily formed the Sabha for the construction of the temple in the place where it was allotted for the purpose of construction of the temple. The fit person was appointed to the said temple and the said fit person has taken charge from the members of

the sabha which shows that respondents were in the administration of the temple. The respondents have challenged the appointment of fit person in R.P.No.1/2010 before the Joint Commissioner, HR&CE Department. While disposing the R.P.1/2010 it has been observed by the learned Joint Commissioner, HR&CE Department that "In case the petitioner sabha thinks that it is having some of right of Management over the said temple that can well be established by due process of law prescribed in Section 64(1) of HR&CE Act". Accordingly this respondents have filed O.A.3/2012 before the Joint Commissioner.. The said O.A. was disposed of the case. As against the said order of the learned Joint Commissioner this respondents have filed appeal before the Hon'ble Commissioner and the Hon'ble Commissioner after hearing the appeal remanded the matter to the learned Joint Commissioner for fresh disposal and instructed to implead the fit person. Accordingly the fit person was impleaded in the said Original Application. The Learned Joint Commissioner after hearing both the parties and after verifying the documents was allowed the O.A.3/2012 on 17.6.2015. It has been stated in the order of the Joint Commissioner in para 4 and 9. "The terms of office and qualifications of being appointed as non hereditary trustee shall be governed by the provisions under the Tamil Nadu HR&CE Act 1959 and the Rules made under as amended from time to time". Therefore it is clear that the respondents have to follow the relevant rules and regulations as contemplated under the HR&CE Act 22/1959, while they are chosen the persons among the members of the sabha for the post of non-hereditary trustees not less than three or not more than five they have to chose one female member and one schedule caste or schedule tribe member for the post of non-hereditary trustee to the above said temple. The members of the sabha cannot go against the provisions of the HR&CE Act and the officials of the HR&CE Department cannot act against the provisions of HR&CE Act in this regard.

4. I heard Thiru.C.Dharmaraj Counsel for the appellant, Thiru.N.Sathiyamoorthy counsel for the respondents and perused the relevant records.

5. The Counsel for the appellant argued that the temple is in existence even before the formation of the Sabha. The scheme daringly excludes the schedule caste member. It is not known who are the members and how the trustees will be elected. Since there is no specific mode of appointment, it will lead to no confusion in future.

6. The Counsel for the respondents contended that the appellant is not a person having interest as defined under Section 6(18) of the Act. The appeal petition was filed with motivation. The scheme empowers the authorities to appoint trustees in accordance with the provisions of the Act. If, schedule caste member is not included in the scheme, this court may modify the scheme suitably.

7. The respondents herein had filed O.A.3/2012 to settle a scheme of administration for the suit temple. The Joint Commissioner after conducting enquiry subjectively satisfied that the settlement of scheme of administration is necessary in the interest of the temple. Accordingly allowed the Original Application and issued the draft scheme on 22.4.2015 inviting objections and suggestions from the persons having interest. Since no objection was received, the Joint Commissioner has confirmed the draft scheme by order dated 17.6.2015. Clause 3 of the said Scheme read as follows:

“Clause 3: The temple of Arulmigu Selvavinayagar and Muthumariamman Temple, Velachery, Chennai its deities, all its movable and immovable properties, hither to belonging to or hereinafter endowed dedicated or gifted or otherwise bequeathed shall always vest in the names of the deities of the temple.

“Not less than 3 and not more than 5 persons chosen from among the panel of names (one female member must be chosen from among the elected and recognized members of the sabha) recommended by the Arulmigu Selvavinayagar and Muthumariamman Temple, Aalaya

Bhaktha Jana Sabha Velachery, Chennai 42 from its duly recognized and elected members from time to time at the General Body Meeting”.

As per the Section 47(1)(C) of the HR&CE Act every Board of Trustees shall consist of less than three and not more than five persons, of whom one shall be a member of Scheduled Caste or Scheduled Tribe and another one shall be a woman. But the clause 3 of the impugned scheme contains provision to appoint woman as trustees but Scheduled Caste or Scheduled Tribe was not included in the said scheme. Therefore clause 3 of the said scheme is inconsistency with the Section 47(1)(C) of the Act.

Therefore, the impugned scheme suffers from infirmity as stated above and liable to be set aside. Accordingly the scheme framed by the Joint Commissioner Chennai in O.A.3/2012 dated 17.6.2015 is hereby set aside and the case is remitted back to the Joint Commissioner to pass orders in accordance with law. With the above directions, the appeal petition is disposed of.

/typed to dictation/

Sd./- M.Veera Shanmugha Moni
Commissioner

/t.c.f.b.o./

Superintendent.