

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.6/2015 D2

Between

M.R.G.Chandramouli and 5 others

..Petitioner.

And

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

.. Respondent.

In the matter of Arulmighu Kasi Viswanathaswamy Temple,
Nasarathpettai, Poonamallee Taluk, Chennai.

The Appeal Petition filed under Section 54(4) of the Tamil Nadu H.R. & C.E. Act, 1959 (Tamil Nadu Act 22 of 1959) against the order dated 13.3.2014 of the Joint Commissioner, H.R&C.E.Admn Department, Vellore in M.P.5/2012 filed under Section 54(1) of the Act.

Order in D.Dis.A.P.6/2015 D2 dated: 23.07.2015

The above Appeal Petition came up for final hearing before me on 7.7.2015 in the presence of Thiru.M.Rukmangathan, Counsel for the petitioner. Upon hearing his argument 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 13.3.2014 of the Joint Commissioner, Vellore in dismissing the M.P.5/2012 filed under Section 54(1) of the Act.

2. The appellants contended that Arulmigu Kasi Viswanthaswamy Temple situated at Nasarathpettai, Poonamallee taluk, Chennai, is governed by the Decree and Judgment dated 5.11.1997 passed in O.S.No.1755/1990 on the file of the District Munsif Court, Poonamalle wherein the father of the first petitioner herein Mr.R.Ganapathi chettiar got declared as Hereditary trustee where the Commissioner was party to the above suit and also an order of injunction has been granted not to interfere with the management of the Hereditary Trustee in office. Thus, it is clear that the office of the

Trusteeship is hereditary within the meaning of Section 6(11) of the HR&CE Act and it is decided by the High Court of Chennai wherein His Lordship had laid down a law that even a civil court can declare the Hereditary trusteeship in a temple and it is not necessary that Section 63(b) of the HR&CE Act has to be invoked since the Commissioner was the defendant in the above O.S.No.1755 of 1990. There was no appeal against that decree and Judgment and therefore, it has become final. R.Ganapathi chettiar was managing the affairs of the temple throughout his life time and expired on 13.6.2008 and even while he was alive, the first appellant has been associated with him as his only son and looked after the affairs of the temple. And in view of the death occurred on the original declarant on 13.6.2008, a permanent vacancy caused under Section 54(1) of the Act and accordingly, the next in the line of succession is entitled to succeed to the office of the Hereditary Trusteeship in the temple in question under Section 54(1) of the Act. The succession under the Endowment Act is based on Hindu law and accordingly, on the death of Ganapathy chettiar, his heirs are automatically entitled. The recording of succession is not related to one person only. The Legislature has not viewed the question of law in the manner, which the Joint Commissioner has taken it as question of law. The Joint Commissioner did not go into the records filed by the petitioners in this case and rejected the application in a manner unknown to law.

3. I heard Thiru.M.Rukmangathan counsel for the appellants and perused the relevant records. Appellants are claiming that they are entitle to succeed to the permanent vacancy arise in the office of the of the Hereditary Trustee due to the death of their father Thiru.R.Ganapathi Chettiar. They contended that their father was declared as Hereditary Trustee by decreed and judgment dated 5.11.1997 passed in O.S.No.1755/1990. The said suit was decreed as follows:

முடிவில் ஸ்ரீபெரும்புதூர் தாலுகா, நசரத்தேட்டையில் உள்ள சமுதாய கோயிலான “அருள்மிகு காசி விஸ்வநாதசுவாமி கோயிலுக்கு, வாதி, வம்சாவளி மூலம் வந்துள்ள பரம்பரை அறங்காவலர் என்று விளம்புகை பரிகாரம் வழங்கியும் அதன் தொடர்பாக பிரதிவாதிகளும் அவர்களது ஆட்களும், முகவர்களும், வேலையாட்களும் வாதி சமுதாயத்தினரைச் சேர்ந்தவரைத் தவிர வேறு எந்த நபரையும் அந்த சமுதாய கோயிலின் பரம்பரை அறங்காவலராக நியமிக்கக்

கூடாது என்றும், வேறு எந்த விதத்திலும் பரம்பரை அறங்காவலராக செயல்படும் வாதியின் உரிமையில் அக்கோயிலின் அன்றாட வேலைகளை நிர்வகிப்பதில் தலையிடக்கூடாது என்றும் நிரந்தர உறுத்துக்கட்டளை வழங்கியும் தாவாவில் கோரியவாறு செலவுத் தொகையுடன் தீர்ப்பாணை வழங்கி தீர்ப்பளிக்கப்பட்டது.”

So, in the said judgment it is clearly stated that only person belonging to the plaintiffs community should be appointed as Hereditary Trustee. The said suit was filed against the notice issued by the Assistant Commissioner in calling for application for appointment of non Hereditary Trustee to the suit temple.

4. Further, whether the office of the trustee is Hereditary can be decided only by the Joint Commissioner or Deputy Commissioner under the H.R&C.E.Act not by a civil court. But the appellants counsel relied upon the decision reported in 2012(2) CTC 531 has contended the even civil court can declare the Hereditary Trustee in a temple. In the above case, the dispute is between the private parties and temple is a private temple. Hence the Hon'ble High Court held that “the dispute between the two parties is a private one which do not require the interference by the department. The dispute is between two private parties and the temple is a private temple and the provisions mentioned under the Act would have no play on the relief that has been sought for by the respondents...”

But in this the suit temple is a public temple and the dispute is not between private parties. Hence the above decision does not support the claim of the appellants.

5. In the decision reported in 1966 (79) LW 672, it was observed that

“The jurisdiction of the Deputy Commissioner under Section 57(b) is confirmed to a decision whether a trustees holds or held office as a Hereditary Trustee. In other order, the Deputy Commissioner can only decided as to the status of the office of the trusteeship, namely whether it is hereditary. High Court is competent to go into the further question as to which the competing charity is a Hereditary Trustee or whether both are Joint Hereditary Trustee. There is a matter not conveyed by Section 87 of the Act and has to be decided one by a separate suit”.

6. In this case the nature of the office has not been decided by the Joint Commissioner under Section 63(b) of the Act, Further in O.S.1755/1990, it has been held that person belonging to Beri Chettiar community alone to be appointed as Hereditary Trustee but without deciding the nature of the office. Further, In the said suit appellants father himself admitted that the suit temple has been maintained and managed by the Beri Chettiar community. The Hereditary right is a valuable right which excludes the whole Hindu community from the management of the suit temple. Hence, the appellant cannot claim exclusive right over the management of the suit temple excluding other members of the Beri Chettair community. Further in the interest of the temple and to streamline the administration of the temple a fit person has been appointed to the suit temple. The fit person has taken appropriate legal action to retrieve the properties illegally alienated by the appellants father. Appellants family instead of protecting the properties of the minor idol illegally alienated for their personal gain. The Joint Commissioner after considering all the above facts has rejected the appellants claim.

Therefore for the foregoing reasons stated supra, the impugned order does not suffer from any infirmity and appeal petition deserves no merits. Accordingly the order dated 13.03.2014 of the 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 Petitioner through M.Rukmangathan, Advocate, No.65 Law chamber, High Court Buildings, Chennai 104.

Copy to

2. The Joint Commissioner, HR & CE Admn.Dept., Vellore. (along with file in M.P.5/2012) by RPAD

3. The Assistant Commissioner, HR & CE Admn.Dept., Kanchipuram.

4. The Inspector, H.R. & C.E. Admn.Dept., Sriperumpudur.

5. Extra.