

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

Tuesday the 20th day of October, Two thousand and Fifteen.

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

A.P. 15/2015 D2

Between

R. Devanandam.

..Petitioner.

And

1. Joint Commissioner,
HR & CE Admn.Dept., Vellore.9.
 2. The Assistant Commissioner,
HR & CE Admn.Dept., Kancheepuram.
 3. Inspector, HR & CE Admn.Dept.,
Sriperumbudur.
 4. The Executive Officer,
Arulmighu Sri Devi Adhi Sakthi
Karumariamman Temple, Thiruverkadu.
 5. Person in management, Arulmighu Sri Devi
Adhi Sakthi Karumariamman Arappani
Nilayam, Thiruverkadu & P.O.
- .. Respondents.

In the matter of Arulmighu Devi Adhisakthi Karumariamman Temple, Thiruverkadu, Poonamallee Taluk, Thiruvallur District.

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 13.3.2014 of the Joint Commissioner, HR & CE Admn.Dept., Vellore in dismissing the O.A. 1/2001 filed under Section 63 (a) &(b) of the Act.

Annexure to Order in R.Dis.A.P.15/2015 D2 dated: 20.10.2015

The above Appeal petition came up for final hearing before me on 15.9.2015 in the presence of Thiru.R.Murugesan Counsel for the 5th respondent and the appellant. 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 filed under Section 69(1) of the Act against the order dated 13.3.2014 of the Joint Commissioner, Vellore in dismissing the O.A.1/2001 filed under Section 63(a) and (b) of the Act.

2.The appellant contended that the suit temple was constructed by him in the land purchased by him. He purchased the said property from one Sami Achari for a valid consideration in the year 1967. He was doing poojas and also sooth saying in the temple. Electricity connection stands in the name of the appellant and electricity charges are also being paid by him. Based on the false complaint given by the 5th respondent, the Assistant Commissioner Kanchipuram have taken over the temple. The 5th respondent Arapani Nilayam has no right over the temple.

3. In the counter affidavit 5th respondent has stated that initially Shri Devi Karumariamman Alaya Arapani Nilayam was started in the year 1964. The Arapani Nilayam collected money and instructed the appellant herein to purchase the land for the purpose of construction of the temple. But, the appellant has cunningly purchased the land in his name. When the appellant's malpractice was come to the knowledge of the Arapani Nilayam, he was sneakily left out from the temple. Thereafter the superstructure of temple was constructed in the temple property only by the association. The said material facts were established in the defence put-forth in O.S.No.691/1998 before the Hon'ble Principal District Munsif, Poonamallee. After careful consideration the same, the Hon'ble Civil Court also dismissed the above suit as devoid of merits on 10.12.2009. The appellant has no sufficient source of income either to purchase the land or construct the temple thereon. So the land was purchased and constructed the temple thereon by spending huge funds contributed by 5th respondent-Arapani Nilayam only. The appellant has no right over the land and temple. The property is standing in the name of Adi Sakthi Karumariamman Temple. The said Arapani Nilayam was registered under

societies Act in the year 1982 and renamed as Sri Devi Adhi Sakthi Karumariamman Alaya Arapani Nilayam. The temple and its property is in possession and enjoyment of Shri Devi Adhi Sakthi Karumariamman Alaya Arapani Nilayam. The appellant is not entitled the remedy under Section 63(a) of the HR&CE Act because all the relevant documents and evidence are absolutely supporting in favour of the Shri Devi Adi Sakthi Karumariamman Alaya Arapani Nilayam.

4. I heard the appellant and Thiru.R.Murugesan counsel for the 5th respondent. The appellant claims that the suit temple is a private temple. He has stated that he did poojas in the temple and also practiced Sooth saying in the temple. It proves that the public have free access to the temple as a matter of right and it is dedicated to public religious worship. It is not proved by the appellant that the suit temple was constructed and maintained from his personal funds. But the 5th respondent Arapani Nilayam claims that the temple was constructed by the association and the land was also purchased from the funds of the 5th respondent. The suit temple has been constructed and is maintained from the funds contributed by the public. The suit temple is not for the exclusive worship of the appellant's family. It is a public temple, used as a place of public religious worship and dedicated to Hindu public and used as of right by the Hindu community.

5. In the decision reported in AIR 1976 Madras 26 the Hon'ble Judge Ramaprasad rao J summarized the norms to decide the character of the religious institution with reference to the decided cases as detailed below:

(a) The existence of Moolasthanam, Mahamandapam, idols of Chief and other deities, utsavamurthis, daily poojas, special poojas and procession during festive occasions, worship by the local public belonging to different communities without any let or hindrance, are all factors which give the impression that the temple is a public one.

(b) If the temple is being used as a place of public religious worship, if there is no dedication of the temple to and for the benefit of the Hindu community or any section thereof, if it is not used generally by the Hindu community as of right as a place of public religious worship, if there is no hundi and no collections are made from the public for the performance of any festival connected with the temple or for its maintenance and no member of the public has come forward to say that he has contributed any amount for the maintenance or any of the related poojas to the deity therein, the temple will not be a public temple, but a private one.

(c) The origin of the temple, the manner in which its affairs are managed, the nature and extent of the gifts received by it, rights exercised by devotees in regard to worship therein, the consciousness of the manager and the consciousness of the devotees themselves as to the public character of the temple, are factors that go to establish whether a temple is a public or a private one and in each case both the documentary and oral evidence have to be considered as a whole while keeping in view the above principles.

(d) An inference whether a religious institution is a public one or a private one can be drawn from the usage and customs of the institution or from the manner in which the properties have been dealt with as also the other established circumstances.

(e) The essential test to make a temple a public temple appears to be that the public should claim the right to worship the deity installed therein as of right. If the origin of the temple is very well known as a private temple, then the clearest possible evidence is necessary for converting that temple into a public temple. As worshippers are naturally welcome and as the sentiment of a Hindu would not prevent another from making offerings or to turn away a worshipper and as there is an innate desire in persons in charge of private temples not to discourage popularity of the deity, the mere circumstance that the people in the locality were visiting the temple and were worshipping the deity may not take away the

character of the temple from a private temple to a public temple. In all such cases worship of outsiders is preferable to the leave and license granted by the owner and cannot be indicative of any, dedication to the public.

(f) A temple will not be a public temple within the scope of the Act because in the absence of an express dedication for the benefit of the public, user by the public as of right must be established and such user as of right is far different from the Trustees being willing to welcome the public to come and worship in the temple. If a temple had no garbagraham, mahamandapam and if there was no dwajasthambam, no prakaram, no hundi and if no kanikkai or any collection was made by the temple and if the utsava idols were not taken in procession in the street then the temple is not a public one.

(g) If the public do not worship the idol as of right and simply because some poojas are performed in a temple and certain members of the public are allowed to participate in the pooja, the temple cannot be said to be a public temple.

6. Based on the above decisions the case of the appellant is considered. In the O.S.691/98 filed by the appellant herein before the Principal District Munsif Court, Poonamallee, the Court held that "plaintiff has purchased the suit site alone. The suit temple has not been constructed out of his own income, it has been constructed by the contribution and donations from the devotees and the members of the Arappani Nilayam". It is proven fact that the temple has been constructed and maintained by the contributions and donations received from general public. The pamphlets and invitations issued by the Arappani Nilayam for conducting various festivals and functions in the temple proves that the temple has been worshipped by the general public as a matter of right. The appellant also admitted in the above suit that the temple has been built only from the contributions of the devotees. The suit property has

been used as a place of public religious worship as of right by the Hindu Community and wholly dedicated for the benefit of the Hindu Community.

7. Further where a person alleged that the temple under consideration is a private temple and not a public temple, the onus of proof is on the person alleging that it is private temple. But in this case, the 5th respondent claims that the temple has been managed and maintained by the Trust. The department has appointed fit person in the year 2000 and the temple is being managed by the fit person till date. The appellant failed to produce any document to prove that the temple has been constructed and maintained from his own funds.

Therefore for the foregoing reasons stated supra, I find no infirmity in the impugned order and the appeal petition deserves no merits. Accordingly the order dated 13.3.2014 of the Joint Commissioner, Vellore made in O.A.1/2001 is hereby confirmed and the appeal petition is dismissed as devoid of merits.

/typed to dictation/

Sd./- M.Veera Shanmugha Moni
Commissioner.

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

Superintendent.