

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

Thursday the 23<sup>rd</sup> day of June, Two thousand and Sixteen.

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

A.P.32/2015 D2

Between

M.Ramasamy and 6 others

..Appellants

And

1. The Joint Commissioner,  
HR&CE Admn.Department, Madurai.

2. The Fit person,  
Arulmigu Sundaravalliamman Temple,  
Madurai North Taluk, Madurai.

.. Respondents.

In the matter of Arulmigu Sundaravalliamman Temple,  
Madurai North Taluk, Madurai.

The Appeal Petition filed under Section 69 of the Tamil Nadu H.R.  
& C.E. Act, 1959 (Tamil Nadu Act 22 of 1959) against the order dated  
22.9.2014 of the Joint Commissioner, Madurai in dismissing the  
O.A.11/2013 filed under Section 63(b) of the Act.

Annexure to Order in R.Dis.A.P.32/2015 D2 dated: 23.06.2016

The above Appeal petition came up for final hearing before  
me on 14.6.2016 in the presence of M/s.J.Anandavalli Counsel for the  
appellants, Thiru.E.Ganesh Counsel for the 2<sup>nd</sup> respondent. 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 of the Act against  
the order dated 22.9.2014 of the Joint Commissioner, Madurai in  
dismissing the O.A.11/2013 filed under Section 63(b) of the Act.

2. The appellants contended that they are the representative from  
seven karaikarars. The 1<sup>st</sup> appellant is a Nattamai of the village and the  
4<sup>th</sup> appellant is the second Nattamai of the village. The 3<sup>rd</sup> appellant is  
the Kanakkupillai and originally 6<sup>th</sup> appellant was a maniyakar. The

temple namely Arulmigu Sundanavalliamman Temple, Thenur, Madurai Taluk is ancient temple and is under the control of and management of 7 karai people, Thenur village. The customary practice of having the jewels and key of the temple is with the Nattamai all along. The priest will visit the Nattamai house daily and take the key of the temple from him and handover the same to him after the closure of the temple. The temple is under the management of hereditary trustees and when there was an attempt to take the key and the jewels of the temple by the department by appointing the respondent, it has become necessary for the appellant to move an application before the Joint Commissioner, Madurai under Section 63(e) of the Act for declaration that the 1<sup>st</sup> and 4<sup>th</sup> appellant are entitled to have the custody of the jewels and key of the temple as per custom and usage prevailing in the temple. There was an interference for taking the jewels from the custody of the 1<sup>st</sup> and 4<sup>th</sup> appellants and there was a complaint from the respondent to the police and key was taken from the 1<sup>st</sup> appellant by the police at the instigation of the respondent on 18.9.2013. The actions of the respondent and the police were challenged by filing a writ petition before the Madurai Bench of Madras High Court in W.P.No.1564/2014. The writ petition was disposed on 25.9.2013 directing the 2<sup>nd</sup> respondent to handover the key of the temple to the 1<sup>st</sup> respondent forthwith and the 1<sup>st</sup> respondent viz. Inspector of Police was directed to handover the key within 2 days from 25.9.2013. Except mentioning the presence of the Advocate, the order of dismissal of the Learned Authority without giving an opportunity of hearing as directed by the Hon'ble bench in W.A.No.1064/2013 is erroneous. The findings of the authority that the appellant ought to have raised their objections at the time of appointment of non-hereditary trustees is erroneous in as much as the said appointment will not take away the right of hereditary trusteeship. Even assuming without accepting that non-hereditary trustee was appointed, it is needless to mention that the appellant ought to have raised their objections at the time of

**appointment of non-hereditary trustees is erroneous in as much as the said appointment will not take away the right of hereditary trusteeship. Even assuming without accepting that non-hereditary trustee was appointed, it is needless to mention that the appellant or their family people were appointed and there was no disturbance of administration of temple thereby no necessity to challenge the same.**

**3. In the counter affidavit the Fit person/ 2<sup>nd</sup> respondent contended that the temple is an ancient temple and its origin is lost in antiquity. The temple comes under Orukala Pooja scheme and the corpus has been set apart for the same. Earlier, the temple was under the administration of the trustees appointed by the HR&CE department. In the year 1993, the then District Committee has appointed 5 persons as non hereditary trustees. The appointment was made after duly issuing notice and calling for application from the person interested and accordingly appointed 5 persons as non hereditary trustees. As such, all along the character of the temple has been declared as non hereditary and as such the appellants are not entitled to seek any relief in terms of Section 63(b) of the Act. The temple is administered by this respondent, it is well laid principle of law and in the light of the provisions of the Act, the jewels, valuables shall be in the custody of the same and despite several notice, they have not handed over the same to this respondent. Now, this respondent is taking appropriate proceedings in order to recover the same. The above factum would show that they have acted adverse to the interest of the institution and as such they are not entitled to any relief before the Court of Law. The appellants have not produced any record more so any documentary evidence to show that they are in continuous management of the temple for more than 3 generations and for 100 years. As such, the Joint Commissioner has rightly dismissed their above original application on the ground that the temple has been under the administration of non hereditary trustee earlier and for the non production of documentary evidence to substantiate their claim, as**

such the order requires no interference and it is valid in Law in all facts. The manner in which the character are nature of Trusteeship in a temple becomes hereditary has been laid down in various judgments by various courts and the common line is that succession should be in the same family or regulated by usage which is provided for by the founder. However, in the present case, all these basic ingredients are totally absent due to which it is evident the nature of Trusteeship in respect of the temple cannot be and is Non "Hereditary". It has been held by the Supreme Court repeatedly that there should be 3 types of acts to attract Hereditary Trusteeship. (a) Succession to office of Trusteeship devolved by Hereditary right (b) Succession to such office being regulated by usage (c) Succession being provided for by the founder on condition that the scheme of such succession is still in force. Unless and until these 3 conditions are fulfilled, no one can be called a Hereditary Trustee or recognized as Hereditary Trustee. Further, the phrase "regulated by usage" as contemplated in Section 6(11) of the Act must be construed along with the phrase "succession to this office". None of the requirements of this provision is satisfied in the present case. The body or association of 9 independent person or their descendants would not satisfy the requirements/ ingredients of the Hereditary Trusteeship and time and again Hon'ble Apex Court held that the body of persons cannot hold the office of the Hereditary Trusteeship in the temple.

4. I heard M/s.J.Anandavalli, Counsel for the appellants, Thiru.E.Ganesh, Counsel for the 2<sup>nd</sup> respondent and perused the relevant records.

5. The appellants herein had filed an Original Application before the Joint Commissioner under Section 63(e) of the Act to declare them as Hereditary Trustees of the temple as per custom and usage prevailing in the temple. The appellants are claiming that they are representative of seven karai of said village managing the temple. The suit temple is a public religious institution. In the year 1993 Non Hereditary Trustees

were appointed by the department. Thereafter in the year 1997 fit person was appointed in lieu of Trustees to manage the temple.

6. As per Section 6(11) of the Act, Hereditary Trustee means “the Trustee of the religious institution Succession to office of Trusteeship devolves by Hereditary right or is regulated by usage or is specifically provided for by the founder, so long as such scheme is in force. Unless and until these 3 conditions are fulfilled, no one can be called a Hereditary Trustee or recognized as Hereditary Trustee. Further, the phrase “regulated by usage” as contemplated in Section 6(11) of the Act must be construed along with the phrase “succession to this office”. None of the requirements of this provision is satisfied in the present case. Further the appellants contended that earlier there was 10 karaikarars, but now branch of other 3 karaikarars extinct. So in future the number of karaikarars may be reduced and which may cause confusion in the administration of the temple. If the temple has been managed by the representative of each karai then the appellants may file a appropriate application under Section 64(1) of the Act to settle a scheme of administration. They failed to produce any documents to prove that the temple has been managed by the karaikarars for more than 3 generations. Further the appellants may entitled to get any honours in the temple by custom and usage but it cannot be a ground to declare them as Hereditary Trustees of the suit temple.

Therefore for the foregoing reasons stated supra, I find no infirmity in the impugned order and it is liable to be confirmed. Accordingly the order dated 22.9.2014 of the Joint Commissioner, Madurai made in O.A.11/2013 is hereby confirmed and the appeal petition is dismissed as devoid of merit.

/typed to dictation/

Sd./- M.Veera Shanmugha Moni  
Commissioner

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

Superintendent