

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

Friday the 19th day of May, Two thousand and Seventeen.

Present: Dr.M.Veera Shanmugha Moni,
Commissioner.

A.P.No.30/2016 D2

Between

1. V.Veera Rajendran
2. V.Veeramani

...Appellants

And

1. The Joint Commissioner
HR&CE Department, Madurai.
2. The Executive Officer,
Veerabadrswamy Temple, Samayanallur,
Madurai North Taluk, Madurai.
3. The fit person/ Executive Officer,
Arulmigu Dhandayuthapani Swamy Temple,
Madurai.
4. S.S.Veeramani
5. Lakshmi
6. V.Chidambaram

.... Respondents.

In the matter of Arulmigu Vinayagar and Veerabadrswamy Temple, Samayanallur, Madurai North Taluk, Madurai.

The appeal petition filed under Section 26(5) of the Tamil Nadu H.R. & C.E. Act, 1959 (Tamil Nadu Act 22 of 1959) against the order dated 9.7.2016 of the Joint Commissioner, Madurai in Pro.Rc.No.2426/2016 supercede the Hereditary Trustee of the above temple under Section 26(h)(4) of the Act.

Order in D.Dis. A.P.No.30/2106 D2 dated: 19.05.2017

The above appeal petition came up for final hearing before me on 18.04.2017 in the presence of Thiru.A.Balaguru, Counsel for the Petitioner Thiru.E.Ganesh, Counsel for the 2nd respondent, Thiru.R.Rajesh Vivekanandhan, counsel for the 4th respondent, Thiru.K.Thangavel, counsel for the 5th and 6th respondent and perused the relevant records. 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 was filed u/s.26(5) of the Act against the order dated 09.07.2016 of the Joint Commissioner, Madurai passed u/s.26(h)(4) of the Act.

2. The appellants have stated that the petitioner's father were deceased as hereditary trustees of the suit temple. The Deputy commissioner HR&CE Madurai in OA 20/1985. The 1st appellant's father was expired on 21.08.2007 following his death he was declared as hereditary trustee under the provision 54(1) of the HR&CE Act by the joint commissioner HR&CE Madurai in D.Dis No 9521120071B1 dated 7.5.2009 The second appellant's father was also Expired on 7/5/2009, following his death he was also declared as hereditary trustee under the provision of 54(1) of the said Act by the Joint Commissioner HR&CE Madurai in Pro.RC.No.9119/09 B1 Dated 19/112010. The petitioner's father consent for the appointment of Executive officer and the commissioner HR &CE in Pro.Rc.No.29511/2005 L5 dated 16/6/2005 appointed the Executive Officer under the provision of section 45(1) of the Act. The Executive officer of the said temple made certain allegations against the hereditary trustee that the hereditary trustees have not taken any steps for the removal of encroachment in respect land belongs to the temple, secondly the hereditary trustees make some hindrance for the submission of budget for fasali 1426, thirdly the hereditary trustee have failed to cooperate for the opening of hundial within the limited span of period and there by incurring loss to the temple and also they did not afford any co-operation to the Executive officer and fourthly the hereditary trustee not to cooperative for conduct of Trust Board meeting of trustees. However having received the letter showing as concocted documents that the joint commissioner was made to believe the complaints as true and initiated disciplinary proceeding against the two hereditary trustee under the provision of 26 (h) of the HR&CE Act. In the said proceedings when the enquiry was conducted on 20.06.2016, the hereditary

trustee while submitted the written explanation along with 4 documents as evidence in support of disproving the charges against them. But there was no proper enquiry by the 1st respondent and no one deposed in support of the charges framed against hereditary trustees. On the other hand all those events would go to show the 1st respondent who created events for the purpose of the case and he was motivated in punishing the appellants and the same is patent. When the enquiry conducted on 20.06.2016 no deposition was obtained from the complainant nor deposition were obtained from hereditary trustee nor even oral or documentary evidence were recorded or to cross examination of the complainant as well as hereditary trustees were took place, without observing procedure as established in law, against the principle of natural justice, and equity the joint commissioner erroneously passed the order in Pro.Rc.No.242/2016 under the provision 26(h) as resulted to superceded the hereditary trustees and there by appointed the fit person/Executive officer of Arulmigu Dhandayuthapani temple Madurai. The 1st respondent has failed to follow to procedure contemplated under the provision of HR&CE Act 22 of 1959 while appointing the fit person and filling up the of the vacancies in the office of hereditary trustee. As per the provision section 54 (2) the next line of succession shall be entitled to succeed and perform the functions of the trustee until his disability ceases and the same has not been followed. The other hereditary trustee S.Veeraiya was expired on 4/3/2012 after his death, his wife V.Laskhmi entitled to declare as hereditary trustee next in the line of succession. She has submitted an application on 8thmonth of 2013 to the 1st respondent and the same is pending. The first respondent has erred that the erstwhile executive officer dated 12/7/11 owing to the resolution passed by the appellants have taken steps for the removal of encroachments procedure contemplated under the provision of section 78 & 79 of the Act, as resulted the same was admitted by the 1st respondent proceeding RC No 2426/2016 B1 dated 1.6.2016. It is to be noticed that the altitude of the respondent is motivated. Moreover when the Executive Officer has sent a notice to the encroachers for the removal of encroachment and receipt of the same the

encroachers filed a suit before the sub ordinate court at Madurai in OS No 39/2012 in respect of the case the Executive officer and the board of hereditary trustees as Respondents 3 to 6 respectively. Since the matter is in subjudice, than the 2nd respondent who is also a party to the above suit and also failed disclose same to the 1st respondent. The impugned charges No 2 is created by the respondent for the purpose of this case. the appellants has sent a detailed reply to the letter as informed by the 2nd respondent in the letter dated on 11.5.2016 as that in the 1st agenda for the approval of budget for fasali 1426 and 3rd agenda for hundial opening and the 6th agenda for conducted the festival for which the villagers of the temple has sent a memorandum to the 2nd respondent regarding the some clarification was sought by the appellant and the same was not been sent by 2nd Respondent and the same was submitted by the appellants to the 1st respondent as in explanation by the same such charge also motivated. The 1st respondent ought not have framed charge No 3 when the 2nd respondent has sent a letter dated on 11/3/2016 also informed that proposed date of hundial opening on 18/3/2016 and the receipt of the same that the appellants has informed to the 2nd respondent on 18/3/16 has some personal work. To open hundial prior to 15 days of proposed date of hundial opening day has to be informed to the hereditary trustee to the same as requested by appellants. Such a charges is created by, the 1st respondent for the purpose of this case as the same is also motivated. With regards to articles of charge No 4 as in concurrent charges of charge No 3 and seeking time for trust board meeting by the 2nd respondent but the appellants sent letter dated on 25/05/2016 and 24/6/2016 sought some explanation in respective proposed agenda No 6 for the memorandum of the copy of letter for the conduct of festival given by the villagers of the temple but the 2nd respondent instead of sending a reply of the same purposefully neither sent any reply nor sent the copy of the same nor even taken steps for the same such charge purely motivated one.

3. In the Counter affidavit the 2nd respondent has stated that the

office of the trusteeship in the above temple has been declared as hereditary by virtue of the order dated 27.02.1988 of the then Deputy Commissioner, Madurai made in O.A.No.20/1985. By virtue of the said order, the petitioners in the above said O.A.No.20/1985 viz., 1. Veeraiah 2. Veera Sundaram 3.Veerabadharan have been declared as hereditary trustees of the temple. Originally, the above temple was under the exclusive management of the hereditary trustees of the temple and subsequently the Executive Officer has been appointed to the above temple in terms of Section 45 of the Act. The appellants have recorded as hereditary trustees of the temple as the legal descendants of Veerasundaram and Veerabadhran. One S.S.Veeramani has filed an application to record him as the hereditary trustee of the temple in the place of the dismissed Hereditary Trustee C.Veeraiah and the same is pending before the 1st respondent. The application in terms of Sec 64(1) of the Act to frame a scheme to the temple is also filed by 5 persons and sought to frame a scheme to the temple of administration by having 3 persons elected from the 60 poojari family of pandaram community in Samayanallur to act along with the appellants and the above application in O.A.No.2/2010 also pending before the 1st respondent. Ever since the appellant occupied the office, they are reluctant and negligent in discharging their duties as hereditary trustees of the temple. The 1st respondent claims to be the Chairman of the Board of Trustees, he is residing at Palani, 200 k.m. far away from the temple and he has not taken any interest in looking after the day to day affairs of the temple from such far away distance. He always acted as if he is a guest to the temple vis-à-vis affairs of the temple is concerned. Though the period of Chairman is over, the Appellants have not chosen to conduct *Board* of Trustees meeting to elect the new chairman. The steps taken by the Executive Officer was also not materialized due to the non cooperation of the appellants. The vast extent of land belongings to the temple have been subjected to encroachment by the appellants and their predecessors in title and they have neglected and failed to safeguard the temple properties. It is incumbent duty of the hereditary trustees of the temple, who are the custodian of the temple and its properties,

to protect the properties of the temple from any encroachment. But the appellants have acted as a mute spectator and thereby helped the encroachers to illegally occupy the temple lands. It is relevant to point out here that the majority of the encroacher to illegally occupy the temple lands. It is relevant to point out here that the majority of the encroachers are close relatives of the appellants. As per Section 28 and 78 of the Act, it is the duty of the appellants to lodge a complaint before the jurisdictional Assistant Commissioner seeking the authority to recommend for initiating proceedings against the encroachers. In gross violation to their duties, the appellants have neglected and have not taken any steps to remove the encroachment. On the other hand , this respondent has taken earnest steps and the proceedings have been initiated before the Learned Joint Commissioner for removal of encroachment. The suit in O.s.No.39/2012 filed by the encroachers before the sub court has no impediment or curtail the powers of the hereditary trustees to initiate eviction proceedings , since the encroachers have failed to secure any interim orders. Despite knowing the legal position, the appellant are trying to take umbrage under such plea which is unsustainable. The Appellants are continuously failed to prepare and submit the budget of the temple for the approval of the competent authority. The Appellants have failed and neglected to cooperate with this Respondent in preparing the budget despite they are bound to prepare the budget in terms of Section 86 of the Act. Further, as stated supra, the Appellants have neglected and failed to cooperate in opening the hundial and demanded and directed this respondent to refix the date of hundial opening as to their whims and fancies. since the Appellants have continuously neglected and refused to actively participate in the day to day affairs of the temple and shown deliberate non cooperation to this respondent in taking forward the welfare of the temple, this respondent is compelled to forward a complaint to the 1st respondent seeking necessary disciplinary action against the appellants. Thereafter, the learned Joint Commissioner, HR&CE, Madurai on perusal of the complaint, has the reason to believe that the appellant has acted adverse to the interest of the institution and accordingly, framed charges

and give an opportunity to the appellants to meet the charges. Subsequent to that, he has concluded the enquiry and on the basis of the enquiry, the Joint Commissioner, HR&CE, Madurai has come to the conclusion the charges has been proved against the appellants and held that the appellants have acted adverse to the interest of the institution and accordingly, superceded the appellants in lieu of the disqualification suffered by the appellants due to their misconduct.

4. I heard Thiru.A.Balaguru, Counsel for the Petitioners, Thiru.E.Ganesh, Counsel for the 2nd respondent, Thiru.R.Rajesh Vivekanandhan, counsel for the 4th respondent, Thiru.K.Thangavel, counsel for the 5th and 6th respondents and perused the relevant records.

5. The appellants were Hereditary Trustees of the suit temple. As they had failed to do their lawful duty to protect the interest of the temple, the Joint Commissioner, Madurai had framed 4 charges **against them**. The appellants were superceded from the post of Hereditary Trustee after conducting proper enquiry by affording opportunity to put forth their case.

6. The appellants are residing at Palani, 200k.m away from the temple and they have not taken any interest in the day to day affairs of the temple. In the explanation submitted by the appellants they had stated that the Executive Officer of the temple alone is responsible for the administration of the temple. They were charged with that they had helped the encroachers to illegally occupy the temple lands and failed to take action u/s 78 of the act to evict the encroachers. As per section 78 of the act the trustees of the temple shall send report to the Assistant Commissioner concerned regarding encroachments. If the appellants had resided in the same locality, they would have prevented the illegal encroachments. Further they did not cooperate with the Executive Officer to open the hundial at regular intervals. As per the rule, the Hundial is to be opened every month.

7. A Trustee should devote sufficient time to look after the day to day affairs of the temple. But by residing far away from the temple, they neglected the temple. They have stated that it is the duty of the Executive Officer of the temple to administer the affairs of the temple. But the Executive Officer is appointed only to assist the Trustees to administer the temple in accordance with the provisions of the Act. The Executive Officer of the temple shall administer the temple as per the advice of the Board of Trustees and execute the resolution passed by the trustees as per the provisions of the Act and he cannot act independently.

8. Sec 28 of the Act read as follows:- “ Subject to the provisions of the (Tamil Nadu) temple Entry Authorization Act, 1947 , the trustee of every religious institution is bound to administer its affairs and to apply its funds and properties in accordance with the terms of the trust, the usage of the institution and all lawful directions which a competent authority may issue in respect thereof and as carefully as a man of ordinary prudence would deal with such affairs, funds and properties if they were his own”.

In this case the appellants miserably failed to administer the affairs of the temple and its property in accordance with the usage of the temple. Further they have failed to exercise all the powers incidental to the provident and beneficial administration of the temple and to do all things necessary for the due performance of the duties imposed on them under various provisions of the Act. Failure on the part of the Trustees to do their lawful duty relating to the temple will also be considered as an act adverse to the interest of the institution.

Therefore, for the foregoing reasons stated supra, I find no infirmity in the order passed by the Joint commissioner, Madurai and it does not warrant any interference. Accordingly, the order dated 09.07.2016 of the

Joint Commissioner, Madurai is hereby confirmed and the appeal petition is hereby dismissed as devoid of merit.

/typed to dictation/

Sd./- M.Veera Shanmugha Moni

Commissioner

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

Superintendent

To

1. The Appellants through Thiru.A.Balaguru, Advocate, No.129/3, Ezhil Nagar, Boiler Project post, Trichy 620 014.
2. The 2nd respondent through Thiru.E.Ganesh, Advocate, No.61/23, Sakthi Avenue, South Lock Street, Kottur, Chennai-85.
3. The 4th respondent through Thiru.R.Rajesh Vivekananthan, Advocate, No.152, Thambu Chetty Street, 3rd Floor, Chennai-01.
4. The 5th and 6th respondent through Thiru.K.Thangavel, Plot No.11, F2 , Sridevi Building, Maharajapuram Main Road, Santhosapuram, Selaiyur post, Chennai-600 073.

Copy to

5. The Joint Commissioner, HR&CE Admn.Department, Madurai.
- 6.The Assistant Commissioner, HR&CE Admn.Department,Madurai.
7. The Inspector, Madurai (North)
8. Extra.