

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

Tuesday the 18th day of April, Two thousand and Seventeen.

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

A.P.36/2016 D2

Between

1. Renu Naidu
2. C.Jeyaraman
3. C. Seetharaman

...Appellants

And

1. Joint Commissioner,
HR & CE (Admn) Department,
Vilupuram.
- 2.R.Srinivasan
- 3.J. Sundar
- 4.C. Ramamurthy

...Respondents.

In the matter of Arulmigu Ramasamy Temple, Kattamaduvor Village,
Ravanthavadi post, Chengam Taluk, Tiruvannamalai 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 28.09.2016 of the Joint Commissioner, HR & CE (Admn) Dept., Vilupuram in dismissing the O.A.135/2006 filed under section 63(b) of the Act.

Annexure Order in R.Dis.A.P.36/2016 D2 dated: 18.04.2017

The above Appeal petition came up for final hearing before me on 28.02.2017 in the presence of M/s.G.Sugumaran, Counsel for the appellants 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 was filed u/s.69(1) of the Act against the order dated 28.09.2016 of the Joint Commissioner, HR&CE Admn. Department, Villupuram, in dismissing the OA No.135/2006 filed u/s.63(b) of the Act.

2. The appellants have contended that the temple namely *A/m.* Ramasamy Temple was founded by the ancestors of the Appellants about 200 years back. Their family members had been managing and administering the temple and also functioning as Trustees-cum-Poojaris. The idols Ramar, Lakshmanar, Seetha, Garuda Vahanam, Anjaneyar Vahanam were installed in the temple premises. God Ramar is their Ishta and

Kuladeivam. During Tuesday, Friday and Saturday regular poojas were performed and other temple festivals and utsavams were performed. The temple is a small village temple. The appellants ancestors were functioning as Trustees. Thus the appellants are Poojaris-cum- Trustees. Patta has been granted in favour of the temple on 04.07.1967 and also for the temple property on 05.06.1987. The temple has been electrified and Electricity supply stands in the name of the appellants and the appellants are paying electricity charges for the temple. They are regularly maintaining the accounts and also celebrating Temple Festivals. The temple own 12 acres of Punja land situated at Kattamaduvur village comprised in S. No. 35/3 -0.94.5 Hectares, 44/4 - 1.49.5 Hectares and also at Dharmapuri District! Athipadi Panchayat, Punganai Village comprised in S. No.42/1- 0.03.00 Hectares, 42/3 - 2.43.5 hectares. The appellants are paying kist to the lands and they are administering and managing the temple out of the income from the properties. After the lifetime of their forefathers the appellants are now in possession and management of the temple and also functioning as Poosaries. One Kala Pooja is being performed. They have filed application before the 1st respondent to declare them as Hereditary trustees u/s.63(b) of HR&CE Act in O.A.No.135/2006 and the first respondent by order dated 05.11.2013 dismissed the petition. Aggrieved by the said order of dismissal the appellant preferred appeal in A.P.No.32/2014. they have challenged the orders passed in O.A. No. 135/2016 dated 05.11.2013 on various grounds. Without examining the witness in the box, recording their depositions and marking the documents as Exhibits and also without examining Inspector, HR & CE as Court witness and his report, the then Joint Commissioner summarily and arbitrarily dismissed the O.A. No.135/2006. This Hon'ble Commissioner allowed the appeal A.P. No. 32/2014 on 04.03.2015 and remanded the original application back to the Joint Commissioner, Villupuram for Denovo enquiry (Fresh enquiry) in accordance with law affording opportunity to the parties. After the remand, the 1st respondent has taken the original application on file and proceeded the enquiry afresh. On behalf of the appellants P.W. 1 and P.W. 2 were examined in chief and cross examined and through them Ex.A 1 to Ex.A 55 were marked. On behalf of the Respondents 2 and 3, R.W. 1 to R.W.5 were examined and Ex. B 1 to Ex. B 12 were marked. Thereafter arguments were heard and 1st respondent by order dated 28.09.2016 dismissed the O.A. No.135/2006. The Joint

Commissioner has not followed the earlier order dated 05.11.2013 passed by the Commissioner in A.P.No.32/2014 and the impugned order is passed contrary to the order passed by the Commissioner. After remand, Thiru Chinnaraj and Thiru Rajamani were not examined as witness on the side of the appellants. Further the Inspector, HR & CE was also not summoned or called as Court witness after the remand. It is unknown to the appellant, how the 1st respondent got the above persons to this case and styled them as witnesses. The 1st respondent without looking into legal principle, that the Poojari can function in dual role and can be Poojari-cum- Trustee. The Joint Commissioner arbitrarily without taking note of element of Hereditary Trustee dismissed the original application. The 1st respondent having marked various documents which stands in the name of the petitioners and their ancestors with regard to payment of taxes, electricity receipts, patta dated 24.07.1967, 20.04.1987, 05.06.1987 and between 13.03.1940 and 15.04.1955 and particularly Ex.A 51 Old Settlement Register of the year 1870 as Ex.A 1 to A 55 failed to give credence with regard to the management of the temple. The finding of the 1st respondent that Ex.A 51, the extract of the Settlement Register which described Rangappa Naicker the manager of the temple was illegal and the 1st respondent was not conversant with the word Manager of the temple as seen in the earliest document would imply that Rangappa Naicker was managing the Temple even as earlier 1891. The 1st respondent misconstrued incidental findings given by the District Munsif Judge in O.S. No. 86/2003 with regard to Poojari. The 1st Respondent failed to note that in the Tax Receipt the name of the person need not be referred to as Trustee, but the name of the temple as described in all the receipts is enough to prove that taxes are paid in the name of the temple and this Tax Receipts are in the possession of the appellants. after remand Renu Naicker was examined as P.W. 1 and Thiru.Raja was examined as P.W. 2 except the above two witnesses, the appellants herein have not examined any other witnesses. The Appellants have not examined Chinnaraj and Rajamani who were shown in the order as P.W. 3 and P.W. 4. In the order at Page 5, the 1st respondent Joint Commissioner has recorded that Thiru.Chinna Raj, S/o. Chinnappu Naickeer was earlier examined as P.W. 3 before the matter was remanded and again Thiru. Rajamani, S/o. Chinnapaiyan was earlier examined as P. W. 4 before the matter was remanded. The Appellant respectfully submits that behind the

back of the appellant herein the Joint Commissioner on his own cited the above two persons as a witnesses and relied on their deposition. Citing the above two witnesses P.W. 3 and P.W. 4 in the order caused great prejudice to the appellants. Infact in the earlier order dated 05.11.2013 the then Joint Commissioner has not cited the above two persons as witnesses. The Appellant further submits that after the remand the local Inspector, HR & CE was not examined and not recorded the deposition of the Inspector. Even in the earlier order passed in O.A. No. 135/2006 dated 05.11.2013 the Inspector, HR&CE was not shown as Court Witness and Inspector of HR&CE was not shown or cited as witness in the order. Now the 1st respondent has shown in the order, C.W.1 and also shown Ex.C. 1 as Report of the Inspector in Na. Ka. No. 105/2002 dated 28.11.2005. Though the fit person was appointed in the year 2002 , the fit person has not taken over the administration of the temple and the order of the fit person was only a paper order. Further appointment of the Fit Person was only an interim measure till the Trustee is appointed. If the Trustee is appointed by the authorities the fit person has no role to play in the administration, when this is the position there is no impediment for the 1st respondent declaring the appellant as Trustee of the temple. Admittedly the temple is a small village temple, there is no need for poojari to maintain account books, ledgers, registers and other records as those records are being maintained by the temples having higher income. Especially the temple is opened for few hours in a day. The Joint Commissioner had decided to reject the claim of the appellant, inspite of various documents produced by the appellants, but relying on invitations for temple festivals, account books , communications from authorities as shown under the respondent's exhibits. The Joint Commissioner failed to follow the definition of Hereditary Trustee and out of three limb one of the limb is satisfied, the authority should have granted the relief. The Joint Commissioner conveniently omitted to attach the Geneology in the order which was filed along with the proof affidavit and failed to discuss their management of the temple.

3. One Thiru.R.Srinivasan has filed Caveat Petition through his counsel Thiru.A.Rajesh kanna. Hence notice of enquiry was sent to the counsel for the Caveator and other Respondents by RPAD. But there was no representation on the side of the respondents.

4. I heard Thiru.G.Sugumaran , counsel for the appellants and perused the relevant records. The counsel for the appellant reiterated the contentions made in the grounds of the appeal petition.

5. In the Original Application filed by the appellants , the Joint Commissioner had framed the following issues for consideration.

(i) Whether the petition temple was founded and constructed by the petitioners ancestors?

(ii) Whether the petition temple was managed and administered by the petitioners ancestors and the petitioner?

(iii) Whether the petitioners are entitled for the declaration of Hereditary Trustee for the management of the petition temple?

The said issues were elaborately discussed by the Joint Commissioner with reference to both the oral and documentary evidences and decided against the appellants herein.

6. The appellants have mainly contended that in the impugned order the Joint Commissioner had shown Thiru.Chinnaraj and Thiru.Rajamani were examined as witnesses but they were not examined by either side and also Inspector ,HR&CE Department did not appear and file any report after the remand. The Joint Commissioner had discussed behind the back of the appellants and dismissed the Original Application relying on the said witnesses and the report of the Inspector.

7. Earlier, the said O.A No. 135/2006 was dismissed by the Joint Commissioner, Villupuram by order dated 05.11.2013. Against the said order, the appellants herein had filed appeal in A.P.No.32/2014. In the said appeal , they had contended that the Joint Commissioner failed to mark the exhibits on both the sides and to discuss the evidentiary value of the witnesses . Hence the case was remanded for fresh enquiry by setting aside the order dated 05.11.2013. On remand, the Joint Commissioner afforded opportunity to the appellants to putforth their side. In the impugned order the Joint Commissioner had clearly stated that Thiru.Chinnaraj and Thiru.Rajamani were examined as PW3 and PW4 before the remand. Infact, they had deposed in favour of the appellants. Further, the report of the Inspector was also obtained before the remand. Hence there is no need to get fresh report from the Inspector. The appellants

had stated that in the earlier order the name of the above witnesses were not cited. As the earlier order was set aside by this forum for the reasons that no documents were marked and discussed in the said order, the appellants cannot rely upon the said defective order. Hence the above contentions of the appellants are unsustainable.

8. It is admitted by the appellants that the suit temple owns 12 acres of land. But the appellants who are claiming that the temple has been managed by their family, failed to produce any account for the income derived from the said lands. In para 1 of the appeal petition, they have stated that they are regularly maintaining the accounts. But accounts were not produced before the Joint Commissioner to prove that the temple has been all along managed by their family. Per contra in the ground No.21 in the appeal petition, they have stated that there is no need for poojari to maintain account books, ledgers, registers and other records as those records are being maintained by the temples having higher income only.

9. Further the appellants have contended that, the Fit Person appointed by the department in the year 2002 did not assume charge of the temple. But from the records it is learnt that the Fit Person has leased out the temple lands in public auction. The appellants had challenged the auction notice issued by the Fit Person Hon'ble High Court. The EB bill, Taxes are also being paid by the Fit Person. Proper accounts are maintained by the Fit Person from the year 2002 onwards. It was also proved by the respondents in the said Original Application that prior to the year 2002, the temple was managed by the villagers. One of the witness had stated that the key of the temple is with the Oor Naidu.

10. Further the appellants have relied upon the judgement reported in 84 LW 695, 1972 1 MLJ 325 and (2004) 2 MLJ 660 wherein it was held that in the case of small temple, office of poojariship and Trusteeship carried on by the same person and such person falls within the definition of Hereditary Trustee. In the judgement reported in (2001) 2 MLJ 393, (2004) 2 MLJ 668, it was observed that

“It is no doubt true that by reason of conflict between interest and duty , it would be a bad precedent for the office of Hereditary Trustee and Poojari to be combined in one and the same person but that should not be applied to small temple, where the villagers do not take any interest and everything has got to be attended to by

the poojari himself”.

In the case on hand , it was not proved by the appellants with cogent evidence that the suit temple was maintained by them. From the documents filed by the respondents and report of the Inspector, it is evident that the temple had been maintained from the contribution made by the public and the festivals are conducted by the villagers. It was not proved by the appellants that their family members have been carrying on the affairs of the temple as Poojari-Cum-Trustees for more than three generations.

11. Further Sec 6(11) of the HR&CE Act defined the Hereditary Trustee as follows:-“ ***Hereditary Trustees” means the trustee of a religious institution, the succession to whose office devolves by hereditary right or is regulated by usage or is specifically provided for by the founder, so long as such scheme of succession is in force.***

The appellants have failed to prove that their claim is falling under any one of limbs provided u/s.6(11) of the Act.

Therefore for the foregoing reasons stated supra, I find no infirmity in the order passed by the Joint Commissioner, Villupuram and it is liable to be confirmed. Accordingly, the order dated 28.09.2016 of the Joint Commissioner, Villupuram made in OA No.135/2006 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