

Wednesday the 17th day of June, Two thousand and Fifteen.

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

A.P.31/2014 D2

Between.

1. M.M. Kandasamy.
2. M.S. Ponnusamy.
3. V.C. Muniappan.
4. P. Chinnusamy.
5. P. Chandrasekaran.

... Appellants.

And

1. The Joint Commissioner,
H.R. & C.E. Admn.Department, Salem.
2. G. Muniappan.
3. K. Arthanari.
4. K. Allimuthu.

... Respondents.

In the matter of Arulmighu Selliamman Temple, Modamangalam, Tiruchengodu Taluk, Namakkal District.

Appeal petition filed under Section 69(1) of the Tamil Nadu HR&CE Act, 1959 (Tamil Nadu Act 22 of 1959) against the Order dated.21.4.2014 of the Joint Commissioner, HR&CE Admn. Dept., Salem in dismissing the O.A.10/2009 filed under Section 64(1) of the Act.

Annexure to Order in R.Dis.A.P.31/2014 D2 dated:17.06.2015

The above Appeal Petition having come on for final hearing before me on 2.6.2015 in the presence of Thiru.E.Ganesh, Counsel for the appellant. Both the respondent and their counsel called absent. Upon hearing the arguments of appellants counsel and upon perusing the connected records the following order is made:-

ORDER

The above appeal petition filed under Section 69(1) of the Act against the order dated.21.4.2014 of the Joint Commissioner, Salem in dismissing the O.A.10/2009 filed under Section 64(1) of the Act.

1. The appellant contended that the origination of the temple has been lost in antiquity. The temple has been chiefly founded for the benefits of the members of the two sets of Kongu Velala Gounder community of Modamangalam Village, Tiruchengodu viz., Anthuvankulam and Sembankulam. As per the customary practice and usage, the temple has been managed by the family members of the Oor Gounder family on behalf of the said community. All along though the temple has been managed by the Oor Gounder, the members of the two

sects of Kongu Velalar community have been assisting them and actively involved in the affairs of the management of the Temple. The members of the said community has renovated the temple and they have electrified the temple and all along the electricity charges have been paid by the members of the community. In the annals of the history of the temple, no outsiders except the Oor Gounder in assistance with members of the said community are in management of the temple. The temple has no sources of revenue or income and the expenses of the temple are borne out by the contributions of the members of the said community. The members of the said community with the Oor Gounder form a religious denomination in terms of proviso of Section 64(4), Section 51 and 107 of the Tamil Nadu Hindu Religious and Charitable Endowments Act 1959. In order to safeguard their rights over the temple and have regularization of the management under the purview of provisions of the Act, the Appellants along with one V.Subbraya Gounder had filed an Original Application in O.A.No.10 of 2009 on the file of the Joint Commissioner, Salem for a declaration to settle a scheme for the administration of the Temple inter alia to constitute a Board of Trustees consisting of 5 making the selection exclusively one representation from the Oor Gounder family hereditarily and remaining two from Andhuvankulam and Sembankulam of Konguvelala Gounder community. During the course of the enquiry, the Appellants produced as much as five documents on their part to be marked as Exhibits. After the entire enquiry was completed, objections have been filed by respondents 2 to 4. Subsequent to the conclusion of the enquiry, the 1st Respondent in pursuance to the objections has again instructed the departmental witness, Inspector, Tiruchengodu to file a detailed report on the objection petition. The earlier appointment of non-hereditary Trustees also will not be an impediment to frame a scheme to the temple since the appointment of earlier non-hereditary Trustees are all belongs to said community except one Mr.Karuppasamy who belongs to Schedule Caste community however he also categorically stated that he has never taken charge of the temple and affirmed that the temple administration was all along vested with the members of the two sects of community. The objections of the objectors and as well as the report of the Inspector all are homogeneous in nature and dealt with the rights of the Public over the temple in rendering worship to the deity and conducting festivals to the temple. However, the entire genesis of the application filed by the Appellants before the Joint Commissioner is pursuance to the management of the day to day affairs of the temple, for which neither the objections nor the adverse report of the Inspector have any relevance to it. The Leaned Joint Commissioner has not correctly understood the scope and ambit of the Section 64(1) of the Act which states that the Joint Commissioner shall settle a scheme for the institution for the interest of proper administration of the institution, a scheme shall be settled for the institution, when not less than five persons having interest make an application in writing stating that in the interest of the proper administration of the institution a scheme shall be settled for it. On such scenario, the learned Joint Commissioner shall consult in the prescribed manner the Trustee and the person having

interest and if after such subjectively get satisfied that it is necessary or desirable to do so, he shall be or settle a scheme to administration for the institution. The Learned Joint Commissioner traversed beyond the scope of jurisdiction thereby the impugned order is unsustainable in the eyes of law and demands the interference from this higher forum to set right the legal proposition in this regard by setting aside the Impugned Order.

2. In the written arguments filed by the Counsel for the Respondents it is stated that the land in which suit temple situated is a poramboke land. The temple has got two items of landed property in Survey No.112 to an extent of 0.43.0 hectare wet and in Survey No.209/1 to an extent of 1.93.5 hectare dry. Assuming that the 1st Petitioner's family is managing the temple hereditarily, he would have come out with the Inam fair extracts and settlement orders of suit temple lands to prove his claim. The Inspector, Thiruchengode has clearly reported that suit temple was renovated and Kumbabisegam was performed on 08.06.2006 without obtaining any permission of the Department in collecting a sum of Rs.10 lakhs as donations from all community people. In the Kumbabisegam invitation it was clearly state that the said temple is common to all community people. There is annathanakoodam in the temple and a sum of Rs.8,000/- being collected from all community people during amavasai. Thiru.K.Arthanari and 4 others belonging to the objector's community have filed O.S.No.2/2009 before Principle District Munsif, Thiruchengode praying a decree in favour of them for worshipping the suit temple and offering pongal and the same is pending. Under such circumstances parallel proceedings initiated by the appellants is not maintainable.

3. I heard E.Ganesh, Counsel for the appellants. Respondents and their Counsels called absent. I perused the relevant records. Originally appellants filed application under Section 64(1) of the Act in O.A.10/2009 to frame a Scheme of administration by appointing one person from the family of the first appellant hereditarily in the capacity of Oor Gounder and two persons each from Anthuvankulam and Sembankulam of Kongu Vellalar Community.

4. The appellants contend that the suit temple has been chiefly founded for the benefits of the members of the two sets of Kongu Vellalar Community. But the appellants did not adduce any evidence to prove that the suit temple was founded by their community and all along administered by the Community. The documents filed by the appellants were of recent origin.

5. Section 64(1) of the HR&CE Act 1959 read as follows:

“When the Joint Commissioner or the Deputy Commissioner, as the case may be, has reason to believe that in the interest of the proper administration of an institution, a scheme should be settled for the institution, or when not less than five

persons having interest make an application, in writing, stating that in the interest of the proper administration of an institution a scheme should be settled for it, the Joint Commissioner or the Deputy Commissioner, as the case may be, shall consult in the prescribed manner the trustee and the persons having interest and if, after such consultation, he is satisfied that it is necessary or desirable to do so, he shall, by order, settle a scheme of administration for the institution.”

As per said section, the Joint Commissioner may settle a scheme for proper administration of the temple. But in this case, there is dispute between two communities in conducting festival which leads to law and order problem in the village. Hence, if the scheme is settled as prayed by the appellant, it will create problem in the administration of the temple.

6. Further the Inspector who caused local enquiry on the petition filed by the appellants has reported that festivals have been conducted by collecting funds from the public and Kumbabhisekam was performed from the contribution of General public. And the General Public of 16 villages are worshipping the temple. on-Hereditary Trustees were appointed from all the communities and Orukalapooja Scheme was implemented in the temple. All the above facts proves that the suit temple belongs to all community and maintained from funds contributed by all general public.

7. Further, as per Section 64(1) of the Act, the Joint Commissioner should subjectively satisfy that settlement of Scheme is necessary or desirable for the proper administration of the religious institution. When subjective satisfaction of the Joint Commissioner is made condition precedent to settle a scheme, this forum while sitting on appellate side cannot compel the Joint Commissioner to subjectively satisfy. Further, the person who prays for settlement of scheme should satisfy the Joint Commissioner with clinching documentary evidence that the suit temple has been founded and chiefly intended and maintained for their benefits. But in the case on hand, the appellant failed to prove their claim by adducing cogent and documentary evidence.

8. Further, the temple is claimed to be ancient one, the name of the founder, mode of management prescribed by the founder are not made known. The Joint Commissioner has arrived at a conclusion that the exhibits marked on the side of the petitioners are not substantive evidence to prove that the appellants community were in exclusive management of the suit temple continuously for a long period. Hence in the absence of any valid proof of evidence to show that the suit temple was founded, intended and maintained for the benefit of Anthuvankulam and Sembankulam sects of Kongu Vellalar Community. Hence, the Joint Commissioner rightly rejected the claim of the appellants.

Therefore, for the foregoing reasons stated supra, I find no infirmity in the order passed by the Joint Commissioner, Salem and it does not warrant any interference. Accordingly the order dated.21.4.2014 of the Joint Commissioner, Salem made in O.A.10/2009 is hereby confirmed and appeal petition is dismissed as devoid of merits.

/typed to dictation/

**Sd./- M.Veera Shanmugha Moni,
Commissioner**

/true copy/by order/

Superintendent