

Monday the 31st day of August, Two thousand and Fifteen.

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

A.P. 3/2015 D2

Between

T. Venugopal S/o Thangavelu.

.. Appellant.

And

- 1. The Joint Commissioner,
HR & CE Department, Thanjavur.**
- 2. Sivasamy, S/o Velayutham.**
- 3. Krishnamoorthy, S/o Karumayirapadayachi.**
- 4. Thangaraj S/o Rengasamy.**
- 5. Jayabal, S/o Govindasamy.**
- 6. Gunasekara, S/o Ramaiyan.**

.. Respondents.

**In the matter of Arulmighu Selliamman and Ayyanar Temple,
Koonancheri, Papanasam Taluk, Thanjavur District.**

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 28.7.2014 of the Joint Commissioner, Thanjavur in dismissing the O.A. 10/1990 filed under Section 63 (b) of the Act.

Annexure to Order in R.Dis.A.P.3/2015 D2 dated: 31.08.2015

The above appeal petition came up for final hearing before me on 28.7.2015 in the presence of Thiru.V.K.Vijayaragavan Counsel for the appellant. Upon hearing his 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.28.7.2014 of the Joint Commissioner, Thanjavur in dismissing the O.A.10/1990 filed under Section 63(b) of the Act.

2. The case of the appellant is that the Joint Commissioner did not see carefully the report of Inspector who gave the details on factual matter. The report proves the Management of the Temple by the Petitioner

and his predecessors. Continuity of Management of the temple and succession without break are available for a period beyond 60 years. On that basis the right of appellant has been established factually and this was not seen properly. The Lower Court did not consider the evidence given by PW2 and PW3 for accepting appellant's case. The Lower Court has erred in observing that document was necessary to show for the formation of temple. The temple was founded by the appellant's ancestors and it has been managed hereditarily and customarily by the family and this was not seen. The Lower Court has erroneously observed about the alienations. For the occupation patta was given which land was sold and the appellant did not act adverse to the temple interest. Assuming alienation took place the hereditary right available to the family will not get extinguished and this fact was not considered.

3. The respondents were set exparte in the Original Application. In the appeal, notice have been sent to the respondents. But they were returned as deceased. As per provisions under Order XLI R14 of the CPC;

“provided that the appellate Court may dispense with service of notice on respondents who have remained absent, against whom the suit has proceeded ex-parte in the Court from whose decree the appeal is preferred or who have been declared absent by the said Court.”

Accordingly service has been dispensed with and the respondents are set exparte.

4. I heard Thiru.V.K.Vijayaragavan, Counsel for the appellant and perused the relevant records. The Original Application was filed by the appellant to declare the Office of the Trusteeship as Hereditary. The said claim was negated by the Joint Commissioner on the ground that the appellant failed to prove with documentary evidence that the administration of the suit temple has been vested with their family. The appellant filed copy of the ROR and SLR for the village. In the ROR, the name of the appellant's grandfather Thiru.Ponnusamy Pillai was mentioned. In the SLR, the appellant's father Thiru.Thangavel Pillai was shown as Manager and Hereditary Poosari of the suit Temple.

5. The appellant Counsel argued that the Joint Commissioner is only competent to decide whether office is hereditary. And the properties are intact, except small extent. Even there is mismanagement of property, the Joint Commissioner may proceed against the appellant in accordance with the provisions of the Act and it cannot be a ground to negative the claim of the appellant. There is no document to prove when and by whom the temple was founded. The Inspector of the department has stated that non-hereditary trustees were not appointed by the department and temple has been managed by the appellant's family without any interference. There is no contra evidence available to prove that suit temple has been managed by persons other than family members of the appellant. The Joint Commissioner concluded that the appellant and his ancestors have been functioned as poojaris of the temple.

6. In the AIR 1972 Madras 119, the Hon'ble High Court held that *"There is nothing illegal in the hereditary poojariship and the trusteeship vesting in the same individuals, especially in the case of small temples with meager income. There is nothing inconsistent in the Hereditary Trusteeship being vested in one family whose members were also Poojari's along with the members of the other families in the village."*

Further, the Hon'ble High Court held that *"In an application under Section 57 of the Act for a declaration that the Plaintiffs are the hereditary trustees, the consideration that the Plaintiffs are not fit person to be the trustees on basis of their mismanagement and malpractice is not relevant. If the Plaintiffs are guilty of the mismanagement and malpractice, it is open to the appropriate authority to take appropriate action either for remand or the appointment of non-hereditary trustees along with the Hereditary Trustees in order to safeguard the interest of the temple"*.

In the case on hand, if there is mismanagement of properties by the appellants, the Joint Commissioner may initiate appropriate action against him under provisions of the Act to safeguard the interest of the institution. But the same cannot be a ground to decide the nature of the Office of the Trusteeship.

7. Further in the Muthusamy Gurukkal Vs. Aiyasamy Thevar case reported in 1964 2 MLJ 560, the Hon'ble Court held *"There is nothing illegal in hereditary trusteeship and pujariship being combined in the same person especially in the case of small temples where there has been no interference or control by any of the villagers of the place. In the case of small village temples, where the temple property is of insignificant value and the income is hardly sufficient even to meet the routine expenses of the temples, if the archaka or the poojari is left in management of the temple lands and the affairs of the temple without any interference by any of the villagers for a long number of years. It has to be presumed that with the consent and acquiescence of the worshippers of the village the poojari in the trustee as well. In such a case it must be held that the poojari managing the land and affairs has made out his right to hereditary trusteeship and the interests of the temple are not likely to suffer, when the person concerned admits that the lands are temple lands and has never set up any rights to them as his own property"* .

In this case, the appellant and his forefather were the poojaries of the temple who have been in management of the temple and its property and at no point of time, the villagers or any 3rd party interfered with their management. The Joint Commissioner failed to examine the above facts and negated the claim of appellant on erroneous grounds.

Therefore the impugned order suffers from infirmity as stated above and liable to be set-aside. Accordingly the order dated 28.7.2014 of the Joint Commissioner, Thanjavur made in O.A.10/1990 is hereby set-aside. The appeal petition is hereby allowed by declaring the Office of the Trusteeship of the suit temple is Hereditary and the appellant is holding the trusteeship of the suit temple hereditarily.

/typed to dictation/

Sd./- M.Veera Shanmugha Moni
Commissioner.

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

Superintendent.