

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

Friday the 25th day of September, Two thousand and Fifteen.

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

A.P. 8/2015 D2

Between

**Panchamukha Sri Jayamaruthi Seva Trust
Pappanchavadi represented by its Managing
Trustee M.Kothandaraman**

...Appellant

And

**1. The Joint Commissioner
HR&CE Department,
Villupuram.**

.... Respondent

**In the matter of Arulmighu Panchamukha Sri Anjaneyar Temple,
Pappanchavadi, Vanur Taluk, Villupuram 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
11.2.2015 of the Joint Commissioner, Villupuram in O.A.10/2007 filed
under Section 63 (a) of the Act.**

Annexure to Order in R.Dis.A.P.8/2015 D2 dated: 25.09.2015

**The above Appeal petition came up for final hearing before me
on 4.8.2015 in the presence of Thiru.N.Anand Venkatesh 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 appellant contended that the Panchamukha Sri Jayamaruthi
Seva Trust is a Private Trust created in and by a Registered Trust deed
dated 19.1.2000. It is a Secular Trust. The said Trust has a Board of
Trustees. The 18 ideals articulated in the Trust Deed are purely Secular,
the Seva Trust built the said temple in its own Patta land measuring
about 0.80 acres (88 cents) purchased in the name of the Seva Trust
through a registered Sale Deed dated 30.3.2015. The temple stands**

located within a vast private complex area named as “Panchavatee kshekthram” at Pappanchavadi village. The temple was built during the year 2007 exclusively by the Trust without making any collection in cash or kind from any third parties or from the public. The said Charitable Trust is functioning within this private complex which confines all of its activities strictly attributed to its Secular natured services alone. It is well settled that looking after administrative matters of a Religious Institution cannot be out right deemed a religious service and it is secular by nature. Hence by doing the secular natured administration at in the temple, the Seva Trust can be deemed just exercising a secular service alone in the temple now and which is clear from the following clauses found in the Trust deed;

a) to construct, maintain, manage PANCHAMUGA SRI ANJANEYA TEMPLE at PANCHAVATEE KSHEKTHRAM, Pappanchavadi, Pulichapallam and carry out poojas and rituals in the temple as per scriptures for the welfare of the public at large;

b) to construct, renovate, takeover, maintain, manage and help to renovate, maintain and manage temples for the welfare of the public at large;

c) to renovate the places of public worship, prayer halls, rendering it safe to pilgrims who visit the places, providing of drinking water supply to pilgrims, provision of “q” complex with a view to avoid stampede and loss of life, protect the members of the public from health hazards by looking after the environment, cleanliness and hygiene around the places of public worship and temples;

From the above clauses in the Trust deed, it is clear that there is no mention about Hindu Religion/ Hindu customs and practices. Therefore it is evident that the Trust and Temple administration are secular in nature.

2. The Seva Trust initially did not own any property and have any income source to construct temple. Since the charitable Trust is purely secular one it cannot involve with Seva services of the Seva Trust, distending it as a third party, it offered 0.88 Acres of its own land on sale

only to the Seva Trust through a sale deed dated 30.3.2005 and the entire funds were met by the Trustees of the Seva Trust. Not only in the construction activities, but also in the continuing course maintenance activities pertain to the temple too, carried out privately and voluntarily by the Trustees of the Seva Trust themselves. No kind of canvas or collection ever been made in respect of nay need of this temple. All are met privately by the Trust. In so far as Sri.Panchamuga Anjaneya Swami temple is concerned, it owns no property or gets no income from any of its own source. All is financial or administrative needs are under the care and control of the Seva Trust and is funded by the Trustees. Therefore the temple has no active official or administrative business or income of its own. The general maintenance of the entire area of the temple has been maintained by the Seva Trust at their discretion as desired by the Trustees. The Seva Trust itself exercises its right to restrict entry of the public into the temple and public cannot enter without the permission of the Trust. With gracious sentiments and good will, allow the public to make worship in this temple and only until the private charitable Trust generously allows the public to approach the temple passing through its private land, the public can make approach to this temple for worship. Both the Trusts have been carrying out purely secular natured ideals as enumerated in the Trust deed, such as, offering educational, medical, cultural and other social services to the poor and needy strictly without any discrimination shown on the beneficiaries on the basis of caste, creed, religion. Therefore, by no stretch of imagination or interpretation sri jayamaruthi Seva Trust, which is additionally looking after the responsibility of maintaining the temple as one among the several of its secular responsibilities, can be treated as a body solely standing for the purpose of administering the temple as a "Trustee" ignoring its wider and innate secular and private characterization. When once the administering body of a temple is, a such secular and private, the temple under its caretaking control shall not be a public charitable institution within the scope of the Hindu Religious and charitable Endowment Act 1959 read

with section 1(3). To prove undeniably that the appellant temple stands in a private property that the establishment of the said temple was made out purely from the personal funds of the Trustees of the Seva Trust (Ex.A.13 to 15, 21, 22, 24,25, 31 etc) without receiving any contribution from any third party or public that the Seva Trust does not have any membership pattern to receive mass contributions through them or to make indirect collections through them for the temple either for its establishment or for its maintenance; and that even after its establishment within a decade ago from now, all upkeep and maintenance of the temple have been done out of the personal funds of the Trustees of the Seva Trust alone (Ex.A 6,7,8,17,23) clear and indisputable documentary and oral evidences were adduced by the appellant before the Joint Commissioner. Found on various oral and documentary evidences adduced by the appellant to prove that this temple on the above reasons to be completely outside the scope of the Hindu Religious and Charitable Endowment Act 1959, the Joint Commissioner, HR&CE Department, Villupuram ought to have allowed the Original Application filed by the appellant herein under section 63(a) of the HR&CE Act 1959 upholding that said the Act does apply to this temple. But the Joint Commissioner dismissed it on flimsy reason that he was unable to be convinced that the applicant Trust can exercise restriction on the right of the public to make worship in the temple standing near the Highway as if it is the only criterion to decide whether a temple falls outside the scope of the said Act or not. No oral or documentary evidences disproved that and in fact, the appellant proved with abundant oral and documentary evidences to prove such restrictions exercised by the Trust in this temple. In addition, for dismissing the Original Application the lower court appears to have placed much reliance on few unauthenticated evidences such as Kumbabhishegam invitation issued by the third party, local news paper cuttings., sthalvaralaru book not issued by the temple etc., which were secured by the Court through its administrative subordinate and marked as court evidence. In fact the court itself has accepted that they cannot be firmly put against the claim

of the original applicant/ the appellant herein in the absence of corroborative evidences showing they were issued by or made at the instance of the temple authorities. Further the administrative subordinate who fetched the documents marked as court evidences, during his oral submission as court witness, deposed he just fetched them on the directive of the superior authority and he did not enquire and verify the facts contained in them locally with any corroborative factual. The beneficiaries of the temple are the specific individuals, the Trustees of the Trust. General public or a section thereof are not the beneficiaries of the temple. Hence it is proved beyond doubt that it is a private temple. This temple is not a Hindu public religious institution. The appellant Trust never allows the Hindu public or any section thereof as a matter of right. This temple has never been dedicated or for the benefit of or used as of right by the Hindu community. Therefore it is proved that the temple in question will not come under the purview of Section 6 (20) of the HR&CE Act.

3. I heard Thiru.N.Anand Venkatesh Counsel for the appellant and perused the relevant records.

4. The Joint Commissioner Villupuram dismissed the Original Application on the following grounds:

(a) The temple built near busy Highway and being familiar to the public in the surroundings. The news about the events in the temple being routinely published in the newspapers. Hence the contention of the Trust that it has been enforcing restriction towards the "right of public to worship" in the said temple nor they can enforce such "restrictive right" on the public to worship in the said temple is not acceptable.

(b) The Exhibits C2-C9 made a strong impact to decide the case against the prayer of the Original applicant.

5. The appellant mainly contended that,

(a) The suit temple has been constructed in private land using contribution from the members of the Trust and no donation was collected from general public.

(b) The temple has been maintained and managed by the Trust from the personal funds of the Trust members

(c) The temple never dedicated for the benefits of Hindu community or any section thereof.

(d) The mandate of Trust cause for that temple to be maintained for the benefit of the public at large instead of benefit of public or Hindu public.

(e) The documents relied upon by the Joint Commissioner were not issued by the temple authorities but it was issued by the 3rd parties. Hence the same cannot be put against the temple.

(f) The temple exercises its right to restrict the entry of the public into the temple.

6. In the decision reported in AIR 1976 Madras 26 the Hon'ble Judge Ramaprasad rao J summarized the norms to decide the character of the religious institution with reference to the decided cases as detailed below:

(a) The existence of Moolasthanam, Mahamandapam, idols of Chief and other deities, utsavamurthis, daily poojas, special poojas and procession during festive occasions, worship by the local public belonging to different communities without any let or hindrance, are all factors which give the impression that the temple is a public one.

(b) If the temple is being used as a place of public religious worship, if there is no dedication of the temple to and for the benefit of the Hindu community or any section thereof, if it is not used generally by the Hindu community as of right as a place of public religious worship, if there is no hundi and no collections are made from the public for the performance of any festival connected with the temple or for its maintenance and no member of the public has come forward to say that he has contributed any amount for the maintenance or any of the related poojas to the deity therein, the temple will not be a public temple, but a private one.

(c) The origin of the temple, the manner in which its affairs are managed, the nature and extent of the gifts received by it, rights exercised

by devotees in regard to worship therein, the consciousness of the manager and the consciousness of the devotees themselves as to the public character of the temple, are factors that go to establish whether a temple is a public or a private one and in each case both the documentary and oral evidence have to be considered as is whole while keeping in view the above principles.

(d) An inference whether a religious institution is a public one or a private one can be drawn from the usage and customs of the institution or from the made in which the properties have been dealt with as also the other established circumstances.

(e) The essential since qua non to make a temple a public temple appears to be that the public should claim the right to worship the deity installed therein as of right. If the origin of the temple is very well known as a private temple, then the clearest possible evidence is necessary for converting that temple into a public temple. As worshippers are naturally welcome and as the sentiment of a Hindu would not prevent another from making offerings or to turn away a worshipper and as there is an innate desire in persons in charge of private temples not to discourage popularity of the deity, the mere circumstance that the people in the locality were visiting the temple and were worshipping the deity may not take away the character of the temple from a private temple to a public temple. In all such cases worship of outsiders is preferable to the leave and license granted by the owner and cannot be indicative of any, dedication to the public.

(f) A temple will not be a public temple within the scope of the Act because in the absence of an express dedication for the benefit of the public, user by the public as of right must be established and such user as of right is far different from the Trustees being willing to welcome the public to come and worship in the temple. If a temple had no garbagraham, mahamandapam and if there was no dwajasthambam, no prakaram, no hundi and if no kanikkai or any collection was made by the

temple and if the utsava idols were not taken in procession in the street then the temple is not a public one.

(g) If the public do not worship the idol as of right and simply because some poojas are performed in a temple and certain members of the public are allowed to participate in the pooja, the temple cannot be said to be a public temple.

7. In the decision reported in 2003(1) CTC 5 the Hon'ble High Court has formulated the following four tests to determine whether the temple is private or public.

(a) Whether the user of the temple by members of public as of right.

(b) Whether the control and management vest either in large body of person within the member of public and the founder does not retain any control over the management

(c) Whether the dedication of properties is made by the founder who retain the control and management and whether the control and management of the temple is also retained by him,

(d) Where the evidence show that the founder of the endowment did not make any stipulation of offerings or contribution to be made by the members of the public to the temple.

8. On the back round of the above decisions, the facts of this case is analyzed as detailed below:

(a) It is the case of the appellant that the temple is dedicated to public at large not to Hindu Community or any section thereof. In the object itself it has been clearly stated that,

“To construct, maintain, manage PANCHAMUGA SRI ANJANEYA TEMPLE at PANCHAVATEE KSHEKTHRAM, Pappanchavadi, Pulichapallam and carry out poojas and rituals in the temple as per scriptures for the welfare of the public at large”

So, the author of the Trust deed cleverly “omitted” to include the word “Hindu” to evade from the purview of the HR&CE Act 1959. If the intention of the Trust is to construct a place of Religious worship for the welfare of the public at large irrespective of Religion, they should not have

constructed Anjaneyar Temple, as Lord Anjaneyar is a Hindu God. The temple is constructed as per agamas and poojas and festivals are performed as per Hindu Sastras. Further the Trust is also named after Lord Anjaneyar. As per the Trust deed, the suit temple has been constructed and maintained for the public at large and not for the benefit of the Trust members alone. The temple has been absolutely dedicated for the benefit of the public.

(b) The temple is constructed in the private land belonging to the appellant Trust. The temple was constructed from the funds of the members of the Trust. There is no evidence to prove that the public have made any contribution for the construction of the temple. The temple is also being maintained by the appellant Trust from the personal funds of the Trust members.

(c) Further there is no hundial and no collections are made from the public for the performance of any pooja and festival or for its maintenance. And no member of the public has stated that he has contributed any amount for the maintenance or any of the poojas to the deity.

(d) Further the property wherein the temple is located stands in the name of the Trust. The property was not dedicated in favour of the idol. The Trust retains the control over the property and the management of the temple is also vested with the Trust. The Trust does not make any stipulation of offerings or contribution to be made by the members of the public to the temple.

(e) Further even in the exhibits relied upon by the Joint Commissioner, there was only an invitation to the public to donate for the Trust. There is no mention that the donations are to be made any purpose related to the temple. Even in the Ex C9, the receipt issued by the "Charitable Trust" does not indicate any purpose connected with the temple. In all the exhibits, donations were not sought for any purpose connected with the temple. The Trusts are involved in various secular and charitable activities. Hence, we cannot presume that the donations were

received only for the maintenance of the temple. Further, as the sentiment of a Hindu would not prevent another from making offerings to the temple or to turn away a worshipper. Hence Ex C2 to C9 could not be held against the appellant.

(f) No independent witness of member of the public had come to say that he was visiting the temple as of right and performing the poojas pursuant thereto. The mere presence of the worshippers on certain occasions by itself is not conclusive to show that the public were having ingress into the temple as a matter of right.

(g) The mere circumstance that the people in the locality were visiting the temple and were worshipping the deity may not take away the character of the temple from a private temple to a public temple.

(h) Seva Trust and Charitable Trust are separate legal entities, maintained and managed by separate Trust Boards. Construction and maintenance of temple is also one of the charitable activities of the Trust meant for the spiritual welfare of the general public.

(i) The Inspector who caused local enquiry on the Original Application failed to enquire and obtain statement from the public who worshipped the deity to prove that they contributed any amount for the conduct of poojas.

(j) No public have endowed or dedicated any property in favour of the idol. The idol does not own any property

9. The suit temple is of recent origin. It is not the right time to decide the nature of the institution. Cogent and corroborative evidences are necessary for converting the temple into a public temple. The documents relied upon by the Joint Commissioner are not sufficient to decide the nature of the temple.

Even though the temple has been dedicated to the public, there is no evidence to prove that the temple has been managed and maintained from the contribution made by general public. It is proved with cogent evidences that the temple has been constructed, maintained and managed by the appellant Trust. Therefore the order dated 11.2.2015 of the Joint

Commissioner, Villupuram made in O.A.10/2007 is hereby set aside and it is declared that Arulmighu Panchamukha Sri Anjaneyar Temple, Pappanchavadi, Vanur Taluk, Villupuram District is not a public religious institution and accordingly the Appeal Petition is hereby allowed.

/typed to dictation/

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

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

Superintendent