

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

Wednesday the 16th day of September, Two thousand and Fifteen.

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

A.P.10/2015 D2

Between

S.M.Sundaram and 8 others.

.. Appellants.

And

1. The Joint Commissioner,
HR&CE Department, Chennai.
2. The Assistant Commissioner,
HR&CE Department, Chennai.
3. S.Pandidurai.
4. D.Krishnan.
5. S.Sundararajan.
6. U.Sambandam.
7. M.C.Srinivasan.
8. B.Radhakrishnan.
9. S.Manoharan.

.. Respondents.

In the matter of Arulmighu Vasantha Vinayagar Temple, Vasantham Colony, Annanagar West, Chennai-40.

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.22.4.2015 of the Joint Commissioner, Chennai in allowing the I.A.1/2015 in O.A.3/2014 filed under Section 64(1) of the Act.

Order in R.Dis.A.P.10/2015 (D2) dated: 16.09.2015.

The above Appeal petition came up for final hearing before me on 1.9.2015 in the presence of Thiru.N.Kanagavelu Counsel for the Appellants and M/s.Jayanthi Sekar Counsel for the Respondents 3 to 7 and 9. 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 filed under Section 69(1) of the HR&CE Act against the order dated 22.4.2015 of the Joint Commissioner,

Chennai in allowing the I.A.1/2015 in O.A.3/2014 filed under Section 64(1) of the Act.

2. The appellants contended that the suit temple has been in existence for the sole benefits of the members belonging to Arulmigu Vasantha Vinayagar Alaya Sangam. Hence the appellants filed Original Application under Section 64(1) of the Act to frame a scheme with permanent provision for appointment of trustees from the said sangam. During the process of enquiry the respondent 3 to 9 got impleaded as respondent. The respondents filed I.A.1/2015 praying to depute the Inspector to enquire them. After enquiry the Joint Commissioner allowed the said petition in the impugned order. The Joint Commissioner failed to see that there is no provision HR&CE Act to direct an Inspector to enquire the parties to the proceedings. The Joint Commissioner has not give adequate or acceptable reasons while allowing the I.A. The Inspector who took nearly 11 months to submit his 1st report has took only one week's time to submit 2nd report. This goes to prove how much pressure was exerted on the Inspector to submit report.

3. In the counter affidavit respondent have stated that the appellants neither notified about the formation of the Trust nor about the application made by them for settlement of scheme in the temple notice board with an intention to grab the scheme. The enquiry of the impleaded respondents was ordered by the Joint Commissioner based on the Laws of Natural Justice. It is also no where mentioned in the HR&CE Act that the Inspector shall not be deputed again to enquire all the parties. Neither any restriction as to then number of times nor the number of parties to be enquired has been envisaged. The Inspector report may be marked as an exhibit during the course of trial by the Joint Commissioner due to which the appellants would be placed in advantageous position rather than the respondent.

4. I heard Thiru.N.Kanagavelu Counsel for the appellants, M/s.Jayanthi Sekar Counsel for the respondents 3 to 7 and 9 and perused the relevant records. In the impugned order the Joint Commissioner allowed the I.A. filed by the respondent herein and directed the Inspector to enquire the respondent and submit report. As contended by the appellant there is no provision in HR&CE Act to depute the Inspector to enquire all the parties to the proceedings. The proceedings under Section 64(1) is being a Quasi Judicial proceedings the Joint Commissioner may record the deposition of the each parties during the trial itself. Then only, the other side will get a opportunity to cross examine the said parties. But by allowing the said petition the Joint Commissioner denied the right of the appellants to cross examine the respondent.

5. However the real intention to direct the Inspector to cause local enquiry on the application filed by the petitioners is to verify the facts stated by the petitioners by enquiring the neutral person residing in the said locality. However there is no compulsion on the Joint Commissioner to accept the said report. Further if the respondents want to putforth their case in the Original Application, they ought to depose before the Joint Commissioner as witnesses. Then only the appellants get an opportunity to cross examine them. At the same time report submitted by enquiring the respondents may help the Joint Commissioner to decide the case. If the report of the Inspector is marked as Court exhibit, the appellants would get opportunity to disprove the contention made in the said report. Hence the enquiry in the above Original Application was not vitiated by allowing the said I.A. This appeal petition is filed with intention to delay the trial in the said Original Application.

Therefore the impugned order is hereby confirmed. However in view of the principles of natural justice and to have a fair trial, If the Joint Commissioner decided to accept the report of the Inspector, then it should be marked as Court exhibit and the appellants should be afforded with

opportunity of cross examining the respondents who have deposed before the Inspector. With the above direction the Appeal Petition is disposed of.

/typed to dictation/

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

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

Superintendent

To

- 1. The Appellants through Thiru.N.Kanagavelu, Advocate, No.35, Law Chambers, High Court Building, Chennai-104.**
- 2. The respondents 3 to 7 and 9 through M/s.Jayanthi Sekar, Advocate, # 86, Luz Avenue, Mylapore, Chennai 4.**
- 3. Thiru.B.Radhakrishnan, No.1922, Vasantham Colony 1st Main Road, Annanagar West, Chennai-40.**

Copy to

- 4. The Joint Commissioner, H.R.&C.E. Admn. Dept., Chennai-34.**
- 5. The Assistant Commissioner, HR&CE Admn.Dept., Chennai-34.**
- 6. The Inspector, Circle-6, HR&CE Admn.Dept., Chennai.**
- 7. Extra.**