

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

Monday the 7th day of September, Two thousand and Fifteen.

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

A.P.11/2015 D2

Between

M.Vellaichamy and 4 others.

.. Appellants.

And

1. The Joint Commissioner,
HR&CE Department, Madurai.
2. Thangamuthu Pillai.
3. Palanimuthu Pandian.
4. Sethu @ Sethuramalingam.
5. Muthumani Servai.
6. Krishnan Konar @ Krishnan.

.. Respondents.

In the matter of Arulmighu Pattalamman Muthiahswamy Temple,
Melmangalam, Periyakulam Taluk, Theni 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.26.11.2014 of the Joint Commissioner, Madurai in dismissing the
O.A.1/1997 filed under Section 64(5) of the Act.

Annexure to Order in D.Dis.A.P.11/2015 D2 dated: 07.09.2015

The above Appeal petition came up for final hearing before
me on 4.8.2015 in the presence of Thiru.E.Ganesh, Counsel for the
appellant and M/s.S.Lakshmanan Counsel for the respondents 2 to 6.
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 Act
against the order dated 26.11.2014 of the Joint Commissioner Madurai
in dismissing the O.A.1/1997 filed under Section 69(5) of the Act.

2. The case of the appellant is that there is a temple dedicated to
the worship of Goddess Amman viz., Arulmigu Pattalamman

Muthiahswamy temple, situated at Melmangalam Village, Periakulam Taluk, Theni District. The temple is an ancient temple which is in existence for more than 100 years and its origin is lost in antiquity. It is a public temple worshipped by all the members of Hindu Community of the village of Melmangalam. The said village consist of four main streets namely (1) Ammapatti Street, (2) Keela Theru, (3) Mela Theru and (4) Agraharam. In Ammapatti Street, the predominant members, Raja Kula Agamudayar Community of which there are 300 families. In Agraharam Street, there are about 200 families of the Brahmin Community. In Keela Theru, most of the members belong to Ambalams, Servai, Pandarams, Konars and Pillaimars constituting 200 families. In Mela theru, there are Naickers, Sowrashtras, Asarimars, Nattu Kallars, Pillaimars, Maravars and Harijans who constitute about 500 families. All the members of Melmagalam Villages from the above said communities are worshipping the suit temple as of right all these years. Poojas are performed twice a week on Tuesdays and Fridays. The annual festival is celebrated in the Tamil month of Purattasi every year. On the first day of the festival, the entire villagers participate. On the second day, the the residents of Keelatheru and Ammapatti Street used to celebrate the festival. On the third day, the Ammapatti Raja Kula Agamudayars Community people used to take a mud horse from Vedugapatti village in procession to the suit temple. Similarly, Keelatheru people also used to have a separate mud horse procession. From ancient days, Rajakula Agamudaiyars of Ammapatti Street, play a major role in arranging the annual festival and participate in the administration of the temple in general. During Purattasi festival in the year 1995 they were obstructed by Keelatheru people from celebrating the annual festival proclaiming that the suit temple exclusively belonged to them. On enquiry they have made to understand that a scheme of administration has been settled under Section 64 (1) of the Tamilnadu Hindu Religious and Charitable Endowment Act, 1959. The said five communities can never constitute a

“Religious Denomination”, whose rights cannot said to have been enshrined under the Constitution in terms of Section 107 of the Act. The provision made under clause 3 of the scheme is totally repugnant to the spirit of 64 of the Act. A settling of a scheme to a temple is the outcome of subject to satisfaction of the 1st respondent for the better and proper administration of the temple management. In the present case, the then Deputy Commissioner has not prima facie subjectively satisfied about the claim of the Petitioners therein. The same is reflected in his order dated 20.08.1975 in O.A.No.8 of 1976. However, contrary to his own findings and observations, the 1st Respondent has vested exclusive rights to the members of the above five communities in the final scheme. Clause 3 of the Scheme has provided the right to manage the temple exclusively on the members of the above said five communities of the Keelatharu, Melmangalam Village, Periyakulam Taluk, Madurai District. The Appellants herein filed an application under Section 64(5) of the Act before the 1st Respondent in O.A.No.1 of 1997 for the modification of the earlier scheme framed in O.A.No.8 of 1976. Earlier the original application in O.A.No.1 of 1997 filed by the Appellants herein was dismissed. Aggrieved over the order dated 28.11.2007 made in O.A.No.1 of 1997 passed by the 1st Respondent, the Appellants herein have preferred appeal before this Hon'ble forum in A.P.No.4 of 2008. Considering the merits of the contentions of the Appellants, this Hon'ble' forum was pleased to allow the appeal and set aside the scheme in its entirety on the ground that the 1st Respondent has framed the scheme without affording reasons about his subjective satisfaction over the claim that, aggrieved over the said order, the 2nd Respondent along with 4 others preferred Writ Petition in W.P.No.2002 of 2009 before the Hon'ble' High Court of Madras. The writ Petition was allowed whereby the matter was remitted back to Hon'ble forum to hear the appeal in A.P.No.4 of 2008 afresh. The sole reason for the remand by the Hon'ble' High Court is that since the Hon'ble' Commissioner failed to take note of

the fact that the application filed by the Appellants herein itself is only for modification and not to cancel the scheme. Pursuance to the directions of the Hon'ble' High Court, this Hon'ble' forum again heard the appeal afresh and passed the order dated 03.03.2010 whereby directed the 1st respondent herein to reconsider the whole matter for modification of the scheme afresh. The 2nd respondent and others have preferred a Writ Petition in W.P.No.8521 of 2010 seeking to set-aside the order of this Hon'ble' forum made in A.P.No.4 of 2008 dated 03.03.2010. The Hon'ble' High Court has rightly dismissed the above Writ Petition vide its order dated 03.08.2010. The 2nd Respondent and 4 others took up the issue to the Writ Appeal in W.A.No.1913 of 2010 before the Division Bench of the Hon'ble' High Court to set-aside the order made in W.P.No.8521 of 2010. The Division Bench of the Hon'ble' High Court dismissed the Writ Appeal. Aggrieved over it they preferred the special leave petition in C.A.No.4254 of 2014 before the Hon'ble' Supreme Court of India. The Hon'ble' Supreme Court has directed the 1st Respondent herein to consider the application O.A.No.1 of 1997 seeking modification of the scheme to examine whether the scheme originally framed requires any further modification. The operative portion of the order of the Hon'ble' Supreme Court in C.A.No.4254 of 2014 is as follows: "In the facts and circumstances of the case, we deem it appropriate to dispose of the appeal with a direction to the Joint Commissioner who is the authority to consider the application seeking modification of the scheme to examine whether the scheme originally framed in the year 1982 requires any further modification, without being influenced by any of the order passed in this litigation at various levels either by the Commissioner in Appeals or by the High Court at different stages and pass an appropriate order in accordance with law". In the course of the proceedings, one Mr.Balasubramanian, Temple Poojari filed an application to implead him as party Respondent to the above proceedings. The appellant also made to understand that the said

Balasubramanian has also filed an independent application to declare the office of the Trusteeship of the Temple as hereditary in terms of 63(b) read with 6(11) of the Act and same is pending for adjudication. Despite lapse of more than a year, no orders have been passed in the impleading application. Further, the 1st Respondent is well aware of the fact that the claim of the impleading petitioner is rival in nature vis-à-vis management of the Temple to that of the petitioner and Respondents 2 to 6 herein. However, surprisingly the 1st Respondent has neither dismissed the above impleading application nor conducted any enquiry in the said application. The above factum of pendency of impleading application was brought to the knowledge of the Joint Commissioner by the parties to the proceedings. However, instead of adjudicating the impleading application, he has stated in the open Court Hall that he knows how to deal with the impleading application and the Appellants need not bother about it and insisted them to conduct the hearing of the case. The Joint Commissioner during the course of one of the hearing on 4.10.2014 has stated in the open Court that he has already prepared the final order and he is going to pass the same before his retirement on 30.11.2014. Even prior to conclusion of evidence from both sides and advancement of argument on either side, such a daring statement has been made by the 1st Respondent in the open Court which created irrebuttable suspicion about his impartiality in disposing the case. Undoubtedly, in the light of Section 110 and other provisions of the Act, any enquiry conducted by the Joint Commissioner in terms of Chapter V deems to be quasi judicial proceedings. As such, the presiding Officer ought to conduct the proceedings judicially in an unbiased manner. The cardinal Principle of Law is that justice not only to be done but seen to be done. Appellants approached this Hon'ble Forum has heard the transfer application in detail and reserved the case for orders. Thereafter this Hon'ble' Forum passed the final order in M.P.No.1/2014 vide in order dated 21.11.2014 and the true copy of the order prepared and signed by the

Superintendent on 4.12.2014 and subsequently communicated by the registry of the Hon'ble Forum to all the parties. The operative portion of the order of this Hon'ble' Forum in M.P.No.1/2014 as follows: "The Joint Commissioner is directed to conduct the enquiry in accordance with the provisions of the Act and also to give reasonable opportunity of hearing to both the parties and persons having interest. Further both the Petitioners and Respondents are directed to co-operate with the Joint Commissioner for earlier disposal of the O.A. without seeking further adjournment. With the above directions, the Miscellaneous Petition is disposed off" in the meanwhile, considering the fact that there was an order of Staus Quo, the 1st Respondent has not conducted the case on 5.11.2014. While this being so, the 1st Respondent has passed an order dated 26.11.2014, 4 days prior to his retirement and the same was communicated to the parties through Registered Post on 2.12.2014, whereby the 1st Respondent has dismissed the modification application filed by the Appellants herein in O.A.No.1/1997. The impugned order has been pronounced prior to completion of the evidence of the petitioner therein and prior to arguments advanced on the part of the petitioner therein. The impugned order claimed to be passed by the 1st respondent alleging the petitioner, has passed the impugned order by invoking his powers under Order 17 of CPC. The order of Status Quo granted on 31.10.2014 by this Hon'ble' Forum in M.P.No.1/2014 was intact till 14.11.2014 and on the said date, the Court has conducted the hearing of the case and closed it for orders. It is well laid procedure under Law that when the Interim Order was intact on the date of final hearing of the case and the case is closed for orders, the interim order construed to be extended and intact till the final orders pronounced in the said case. The Learned Joint Commissioner has taken a absurd technical plea for passing a judicial order on 26.11.2014 by stating that the order of Status Quo is not extended beyond 14.11.2014. It is a clear case of pleading ignorance of Law by Quasi Judicial authority who is expected to be aware

of the judicial procedure. The above Impugned Orders has been passed without considering the Interim orders as well as the final orders passed by this Hon'ble' Forum in M.P.No.1/2014 and on that score alone the order is liable to be set aside. Further the 1st Respondent has not provided any opportunity to the petitioners therein to produce further evidence and also to advance argument on their side which violates all canons of justice more particularly violates golden principal of natural justice. The appellant has not deliberately avoided argue the case but however since they lost the trust over the Presiding officer in providing impartial order, they were awaiting for the orders of this Hon'ble' Forum in Transfer application. As such, the bald allegation that appellants have not co-operated in conducting the case is false and ridiculous and invoking the provisions of Order 17 CPC in the present case is unwarranted and unsustainable. The 1st respondent has failed to consider the fact that the powers of modification has been granted in order to bring the existing scheme into conformity with the provisions of the Act and the Rules made thereunder.

3. In the written arguments Counsel for the respondent has stated that the above matter is 18 years old and a case was remanded by Supreme Court. The respondents are all senior citizens and the 2nd respondent is about 75 years. The appellants in one way or other drag on the case for personal gain and not intended for peace in the village. The said O.A.No.1 of 1997 itself is unwarranted as other villagers are agreeable to said scheme except the petitioners/ appellants who intend to dominate the village and to take over the temple administration into their hands. The above temple is a public temple and worshipped by all the communities of the village but administration and management is vested only with the persons duly appointed as trustees as per scheme order passed in O.A.No.8/1976. Even prior to said order, the management and administration of the temple was vested only with the Keezhatheru community people viz. the respondents communities which

consist of Ambalam, Servai, Pandaram, Konar and Pillai. Except these five communities of Keezhatheru, none other has any right to manage the temple. This system of arrangement of administration has been time in vogue but regulated under Scheme framed and settled in O.A.No. 8 of 1976. Secondly, the appellants have not proved their numerical strength before any forum so far. Strength of a community is irrelevant for settling or modifying scheme for a temple. Due regard has to be given only to the persons having interest in the affairs of the temple and contributed to the betterment of the temple. A scheme for a temple to be settled or modified only with sole object of better administration of the temple and street wise representation is not an ingredient. Above all, the appellants have their temple Raja Kaliamman. In Melatheru, there is another Pattlamman and Muthiaswamy temple and agraharam street have perumal temple. All such temples are controlled by residents of each street without interfering with another's right. Therefore, the present litigation itself in ill-motive to disturb the peace of harmony of the Melmangalam village. The 1st respondent has acted within the limit of law that too as emphasized by Hon'ble Supreme Court in C.A.4254 of 2014 arising out of SLP (C)No.26595/2012 preferred by the respondents herein. The present litigation is also going on endless and a lot of time and money of the institution is being wasted in the unwarranted litigation. Therefore, the order of the 1st respondent need not be interfered. The averments with regard to "status quo" is totally inappropriate. The order of Status quo passed in M.P.No.1 of 2014 in a transfer application had in force till 14.11.2014 only and not extended thereafter. As there is no prohibitory order on the date of passing the impugned order, the point of raising Status quo is a misnomer. The presiding officer of this Hon'ble Court in fact not intended to extend the order of status quo. If that be so, appropriate order would have been passed to continue status quo till disposal of Transfer Petition. The final order passed in Transfer application also reflects the view of the Court not inclined to extend the

interim order. In view of dictum of Supreme Court as laid down in re M/s.Shiv Cotes v.Trigun Auto plast Pvt.Ltd and others., the 1st respondent is also correct in invoking Section 17 of the Civil Procedure Code. The Supreme Court has held in above case that “The past conduct of a party in the conduct of the proceedings is an important circumstance which the courts must keep in view whenever a request for adjournment is made. A party to the suit is not at liberty to proceed with the trial at its leisure and pleasure and has no right to determine when the evidence would be let in by it or the matter should be heard. The parties to the suit, whether plaintiff or defendant – must cooperated with the Court in ensuring the effective work on the date of hearing for which the matter has been fixed. If they don’t, they do so at their own peril.”. It is not known why the petitioners shown much interest in the petition filed by the third parties whose father has already contested the case O.A.No.34 of 79 but conceded for framing/ settling scheme in O.A.No.8/1976 original scheme petition. It is also wonder, why the petitioners himself not added that third parties in O.A.No.1 of 1997. The petitioners/ appellants cannot step into the shoes of third parties or vice versa or third parties cannot be used either as a shield or sworn in the present case where petitioners/ appellants claims regard for their own and not for other communities or residents of other streets. The petitioners/ appellants not stated anything about the filing of Transfer petition during the hearing of the case by the 1st respondent. These respondents also had no knowledge of said transfer petition but assume of order of status quo only serving of notice.

4. I heard Thiru.V.Srikanth Counsel for the appellants and Thiru.S.Lakshmanan Counsel for the respondents and perused the relevant records.

5. Counsel for the appellant argued that the 5 communities can never constitute a “Religious denomination”. The Joint Commissioner passed order based on the report of Inspector filed in the

year 1999. In the year 2014 demography of the area may be change. As per Section 64(1) of the Act the Joint Commissioner ought to consult persons having interest before framing a scheme. The impleading petition filed by poosaris is not decided. Enquiry not conducted as per Section 110 of the Act. There was no discussion about the filing of the transfer application in the impugned order.

6. Counsel for the respondent argued that the Hon'ble Supreme Court directed the Joint Commissioner to examine whether the scheme needs any modification without influence of order passed by the Commissioner, and High Court. The Commissioner not extended the status quo in the miscellaneous petition. The appellants not serious in conducting the case and sought many adjournment. Hence the Joint Commissioner passed the impugned order invoking order 17 of CPC. There is no inconsistency of Section 47 of the Act. The Original Application filed only for their personal gain.

7. Originally a Scheme of administration has been settled in O.A.8/1976 by then Deputy Commissioner with a provision for appointment of non-hereditary trustees from the members of the Ambalam, Servai, Pandaram, konar and Pillaimar Community residing at Keelatheru of Melmangalam Village. The appellants who belongs to Rajakula Agamudaiyar Community residing at Ammapatti Theru filed O.A.1/1997 under Section 64(5) of the Act seeking modification of the scheme. The same was dismissed by the Joint Commissioner. Against which they preferred appeal before the Commissioner under Section 69(1) of the Act. After several rounds of litigation as explained in the affidavit of the appellants, the Hon'ble Supreme Court remitted the matter to the Joint Commissioner, Madurai by order dated 31.3.2014. The order of Supreme Court is extracted below: *"In the facts and circumstances of the case, we deem it appropriate to dispose of the appeal with a direction to the Joint Commissioner who is the authority to consider the application seeking modification of the*

Scheme to examine whether the scheme originally framed in the year 1982 requires any further modification. without being influenced by any of the order passed in this litigation at various levels either by the Commissioner (Appeals) or by the High Court at different stages and pass an appropriate order in accordance with law.”

In pursuant to the order of the Hon'ble Supreme Court, the Joint Commissioner conducted fresh enquiry, in the above Original Application. During the pendency of the enquiry in the said Original Application, appellants filed miscellaneous petition under Section 22 of the Act before this forum, to transfer the said Original Application to some other Joint Commissioner levelling some allegation against the Joint Commissioner Madurai. My predecessor ordered status quo till 14.11.2014. And after hearing both sides, Orders reserved on 14.11.2014 in the said M.P. But the Joint Commissioner without waiting for the orders, passed the impugned order. The appellants filed the said transfer petition levelling some allegation against the Joint Commissioner. Then the Joint Commissioner ought to wait for the disposal of the said petition. But he passed the impugned order in a hurried manner on the ground that status quo was not extended after 14.11.2014. The stand taken by the Joint Commissioner is not sustainable.

9. Further one Thiru. S.Balakrishnan and 2 others have filed I.A. to implead them as party in the said O.A. claiming them as poosaris of the suit temple and the same was numbered as I.A.32/2014. But the Joint Commissioner neither allowed nor dismissed the said I.A. He failed to discuss about the said application in the impugned order.

10. Further on perusal of the Hearing sheet in the O.A.1/1997. The matter was lastly called on 15.10.2014, on that day the Joint Commissioner has made following note in the hearing sheet:

“Reopened. Petitioner witnesses examined in Chief and cross examined. For further evidence and also for argument call on 5.11.2014.”

But thereafter the matter was never taken up for hearing, Even in the impugned order the Joint Commissioner failed to state when the matter was taken up for final hearing. From this it is clear that the Joint Commissioner passed the impugned order without hearing the arguments of both sides.

11. Further while disposing the transfer petition, my predecessor has directed the Joint Commissioner to conduct the enquiry in accordance with the provisions of the Act and also to give reasonable opportunity of hearing to both the parties and persons having interest. But the impugned order has been passed in violation of the above directions.

12. Further as per Section 110 of the HR&CE Act an enquiry under Chapter V shall be made as nearly as may be, in accordance with the procedure applicable under the Civil Procedure Code 1918 to the trial of suits. Accordingly the Joint Commissioner should conduct enquiry without giving any room to suspicion. He should provide reasonable opportunity to all the parties to let their evidence and make arguments in support of their side. At the same time as held by the Hon’ble Supreme Court, the party to the proceedings should not proceed with the trial at its leisure and pleasure and has no right to determine when the evidence should be let in by it or the matter should be heard. They should extend their fullest cooperation to the presiding officer for the early disposal of the proceedings.

13. The primary function of the Court is to adjudicate the dispute to render substantial justice and the rights of the party shall not be destroyed as avowed principle of public policy. When one party filed petition seeking transfer of case to some other Joint Commissioner levelling personal allegation against the presiding officer, he ought to

stay away or to await for the result of the said application. But the Joint Commissioner without doing so, passed the impugned order in a hurried manner.

Therefore, the impugned order suffers from infirmity as stated above and liable to be set aside. Accordingly the order dated 26.11.2014 of the Joint Commissioner made in O.A.1/1997 is hereby set aside. And the matter is remanded to Joint Commissioner for fresh enquiry. The Joint Commissioner is directed to consider the Original Application as per the direction given by the Hon'ble Supreme Court in the order dated 31.3.2014 made in C.A.4254/2014 and dispose the same in accordance with law. The appeal petition is disposed of accordingly.

/typed to dictation/

Sd./- M.Veera Shanmugha Moni
Commissioner.

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

Superintendent.