

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

Monday the 15th day of February, Two thousand and Sixteen.

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

A.P. 16/2015 D2

Between

A.Vijayakumar

..Appellant.

And

1. Joint Commissioner,
HR & CE Admn.Dept., Coimbatore.
2. The Executive Officer,
Arulmigu Subramaniaswamy Temple, Pollachi,
Coimbatore District.

.. Respondents.

In the matter of Arulmighu Subramaniaswamy Temple, Pollachi,
Coimbatore District.

The Appeal Petition filed under Section 54(4) of the Tamil Nadu H.R.
& C.E. Act, 1959 (Tamil Nadu Act 22 of 1959) against the order dated
15.4.2015 of the Joint Commissioner, HR & CE Admn.Dept., Coimbatore
in dismissing the M.P.36/2013 filed under Section 54(1) of the Act.

Order in D.Dis.A.P.16/2015 D2 dated:15.02.2016

The above Appeal petition came up for final hearing before me
on 2.2.2016 in the presence of Thiru.E.Ganesh Counsel for the Petitioner,
Thiru.C.Dharmaraj Counsel for the 2nd respondent. 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 is filed under Section 54(4) of the
Act against the order dated 15.4.2015 of the of the Joint Commissioner,
HR & CE Admn.Dept., Coimbatore in dismissing the petition filed under
Section 54(1) of the Act.

2. The appellant contended that the originally the appellant's Grand
mother Mrs.Subbulakshmi Ammal have been recognized and acted as
Hereditary Trustee of the Temple by virtue of the Court orders. Thereafter,

due to her old age, the said Mrs.Subbulakshmi Ammal relinquished her hereditary trusteeship right in favour of her immediate heir/ father of the appellant D.Ayyasamy Gurukkal. Pursuant to the relinquishment, the father of the appellant D.Ayyasamy Gurukkal recorded his succession as Hereditary Trustee of the temple vide the proceedings dated 21.7.1978 of the Deputy Commissioner, HR&CE., Coimbatore. During the final days of his father D.Ayyasamy Gurukkal, he fell ill and as such, he relinquished his Hereditary Trusteeship right in favour of his second son viz., the appellant herein. Accordingly, the appellant filed an application in M.P.No.36 of 2013 before the 1st respondent under Section 54(1) of the TNHR&CE Act, 1959 to record his succession. Subsequent to the demise of D.Ayyaswamy Gurukkal, the appellant has inherited the right of hereditary trusteeship of the temple with the concurrence of the other legal heirs of the demised Hereditary Trustee D.Ayyasamy Gurukkal and thereby occupied/ filled the permanent vacancy occasioned on the demise of the Hereditary Trustee D.Ayyaswamy Gurukkal. Since then, he has been acting as the Hereditary Trustee of the temple and he has been in possession of the keys of valuable jewels and hundials. there is no necessity, whatever, for the next Hereditary Trustee to make an application for recording his succession and it is automatic. The above factum has been well laid down by the judicial dictum of the Hon'ble High Court in 1990-1-LW 144 wherein it was laid down that under Section 54 of the TNHR&CE Act, when a permanent vacancy occurs in the office of Hereditary Trustee of a religious institution, the next in the line of succession shall be entitled to succeed to the office. There is no necessity, whatever, for the next Hereditary Trustee to make an application for being appointed under the Act. However for the record purposes of the TNHR&CE Department and for further communications with the authorities, the appellant has filed an application before the 1st respondent under Section 54(1) of the Act in M.P.No.36/2013 to record his succession in the place of permanent vacancy occurred due to the death of his father/ Hereditary Trustee D.Ayyasamy Gurukkal. During the

course of proceedings, the appellant has marked as many as 21 documents in order to support his claim. The 2nd respondent has also filed his counter and marked 2 documents on his side. The learned Joint Commissioner, HR&CE Coimbatore has dismissed the above application on the sole ground that the appellant has acted against the institution and as such, he is disqualified under Section 26(h) of the Act. The above assumption has been made by the Joint Commissioner, HR&CE Coimbatore on the ground that the family members of the appellant are defending cases against the institution and the appellant too during his cross-examination has deposed that the 2nd respondent is wasting the temple money by filing false cases against his family members. The issue of title dispute between the purchasers of the property from Subbulakshmi ammal and the institution is irrelevant to the scope and ambit of recording of succession in terms of Section 54(1) of the Act. The Hereditary Trustees of the temple have been supporting and fighting along with the Executive Officer of the temple in defending the suits on behalf of the temple. Several resolutions have been passed to assist the Executive Officer in conducting the cases. Though, incidentally few persons resisting / defending the case against the temple were being the family members of the appellant and his father D.Ayyasamy Gurukkal, but however, the said D.Ayyasamy Gurukkal during his life time as Hereditary Trustee of the temple and subsequent to his demise, the appellant herein have been assisting the Executive Officer in defending the cases on behalf of the institution alone. Even during the cross examination of the appellant herein, on numerous occasions, he has expressed that he would cooperate with Executive Officer in conducting the cases against the family members over the subject properties. Even during the tenure of Subbulakshmi Ammal as Hereditary Trustee, she was accused of similar allegation and was once suspended from acting as Hereditary Trustee by the Deputy Commissioner and as stated supra, vide the order of this Hon'ble Forum in A.P.No.72 of 1976, the remarks of the Deputy Commissioner have been expunged. There was no iota of evidence produced or gathered in the

proceedings to show that the appellant has acted adverse to the interest of the institution during his tenure. By any stretch of imagination, mere expressing of his personal opinion about the litigation pending between the temple and his family members would not be construed as an act performed against the interest of the institution. As a Hereditary Trustee of the temple, he never intended nor acted against the interest of the institution.

3. In the counter affidavit the 2nd respondent/Executive Officer contended that Punja lands comprised in S.No.1, admeasuring to an extent of 47.92 acres, in S.No.15A an extent of 4.47 acres and 15B an extent of 45.58 acres situate at Sangampalayam village Pollachi Taluk, and in S.No.98/A2 and extent of 1.84 acres in total 99.81 acres had been recorded as devadayam inam vide T.D.No.111, to and in favour the Subramniaswami Temple, Pollachi as per Inam Register. The value of the property at present may exceed more than 500 Crore Rupees. Ryotwari patta was granted in favour of the said temple and on further appeal on production of created records the Hereditary Trustee was managed to cancel the patta issued in the name in person against the temple. The suits and further appeals have been dismissed mainly on the ground that they were made belatently and therefore barred by limitation which itself ipso-facto and res-ipso-locatio proves that the management of the temple has miserably failed to take efforts in defending the case on behalf of the Minor deity rather than they have acted in their favour by using the position they held. The properties are now mainly with the family members of the appellant whom with he resides jointly and there were pre planned, concerted movements to moot out the records in their favour and against the temple. The fact and dictum that succession of the Hereditary Trustee by the next in the line of succession is automatic, is true but only if the next in the line of succession is otherwise not disqualified as per the provisions of the TNHR&CE Act. The appellant is clearly was and is, in adverse activity against the interest of the temple which disqualifies for being appointed him as successor to the office of the Hereditary Trustee as

per Section 26(1)(h) and the 1st respondent has rightly dismissed the application vide impugned order.

4. I heard Thiru.E.Ganesh Counsel for the appellant, Thiru.C.Dharmaraj Counsel for the 2nd respondent/ Executive Officer and perused the relevant records.

5. The counsel for the appellant raised the following points for consideration.

(i) The personal opinion about the lands involved in the suit between the Institution and his family members would not amount to disqualification in terms of Section 26(h) in the proceedings under Section 54(1) of the Act without adjudicating under Section 26 of the Act.

(ii) The recording of succession of the appellant would not affect the conduct of the case in view of the subsequent development.

(iii) The appellant has no right or interest over the said lands. Original owner of the subject lands allowed to continued as Hereditary Trustee. Hence the theory of conflict of interest would not apply in this case.

(iv) The succession is automatic one. The Joint Commissioner while exercising the powers in terms of Section 54(1) of the Act. Would merely records the succession alone and not adjudicated.

6. The points raised by the appellant have been considered as detailed below:

(i) The trustee of the every religious institutions is bound to administer its affairs and to apply its funds and its properties in accordance with the terms of the Trust, the usage of the institution and all lawful directions which a competent authority may issue in respect thereof and as carefully as a man of ordinary prudence would deal with such affairs, funds and properties if they were his own. In this case, Ryotwari Patta was granted in favour of the temple by the Settlement Tahsildar. But the same was challenged by the Hereditary Trustees. The Hereditary Trustee failed to safeguard the interest of the temple, but waged legal battle against the temple. It is the Executive Officer who has been

appointed by the department is fighting all along to protect the property. Further the appellant is also member of the same family. That is why, all the legal heirs given their consent. The appellant is not parted away from his family but living jointly with other family members. Though the personal opinion about the nature of land would not amount to disqualification in terms of 26(h) of the Act. The entire family of the appellant is acting against the interest of the temple. If the appellant is really concerned about the interest of the temple, he ought to prove his bonafide by conducting the case against his family members on behalf of the temple.

(ii) If the succession is automatic one, then there is no need to file application under Section 54(1) of the Act. Though, the next line of succession is entitle to succeed to the permanent vacancy, the reason for filing of application under Section 54(1) is to verify whether the applicant is suffer from any disqualifications under Section 26 of the Act. Further the disciplinary proceedings initiated against the Tmt.N.Subbulakshmiammal was dropped in view of appointment of Executive Officer to the Temple. As the matter is pending before the Supreme Court for adjudication, the presence of the family members of the contesting respondent in the case pending before the Supreme Court in the management of the affairs of the temple will be detrimental to the interest of the temple. If the case is goes against the temple, the appellant may approach the Joint Commissioner for recording of his succession as per law.

(iii) Though the appellant has filed a undertaking affidavit to extend his fullest cooperation to conduct the case, in the interest of the temple the family members should stay away from the management till the disposal of the appeal filed by the Executive Officer of the temple before the Hon'ble Supreme Court. Though the legal battle between the Subbulakshmi Ammal and family members with the temple has been going on for nearly 7 decades, it was not defended by the Hereditary Trustees on behalf of the temple but by the Executive Officer only. The

Hereditary Trustee should not remain as a silent spectator but expected to contest the case on behalf of the temple. Merely on the ground that the appellant is not a party in the said case, he cannot claim that he never acted adverse to the temple. The appellant is having interest in the property like other legal heirs. Hence he has to wait for the outcome of the case pending before the Hon'ble Supreme Court.

Therefore for the foregoing reasons stated supra, I find no valid reasons to interfere with the impugned order. Accordingly the order dated 15.4.2015 of the Joint Commissioner, Coimbatore is hereby confirmed. The appeal petition is hereby dismissed as devoid of merits.

/typed to dictation/

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

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

Superintendent

To

- 1. Petitioners through Thiru.E.Ganesh, Advocate, No.61/23, Sakthi Avenue, South Lock Street, Kottur, Chennai 85.**
- 2. The Executive Officer through Thiru. Thiru.C.Dharmaraj, Advocate, , NO.M-188, 9th Cross Street, Thiruvalluvar Nagar, Thiruvannamiyur, Chennai 41.**

Copy to

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