

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

Friday the 10th day of July, Two thousand and Fifteen.

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

A.P. 2/2015 D2

Between

1. L. Shanmugam S/o Late Loganatha Chettiar.
 2. L. Masilamani S/o Late Loganatha Chettiar.
- .. Petitioners.

And

1. The Fit Person/Executive Officer,
Arulmighu Selva Vinayagar and
Kothandaramar Ramar Temple,
West Tambaram, Kanchipuram District/
Fit Person, Arulmighu Desamuthu Mariamman
Tomb @ Desamma Temple (Samadhi) situate at
Old Perungalathur, Chennai 600 063.
 2. The Joint Commissioner,
HR & C.E. Admn.Dept. Chennai.
- .. Respondents.

In the matter of Arulmighu Desamuthu Mariamman Temple @ Desamma Temple, Old Perungalathur, Chennai.

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 11.6.2014 of the Joint Commissioner, Chennai in dismissing the O.A. 10/2011 filed under Section 63 (a) of the Act.

Annexure to Order in R.Dis.A.P.2/2015 D2 dated: 10.07.2015

The above Appeal Petition came up for final hearing before me on 16.6.2015 in the presence of Thiru.E.Ganesh, Counsel for the appellant and Thiru.C.Dharmaraj counsel for the fit person/1st 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 filed under Section 69(1) of the Act against the order dated 11.6.2014 of the Joint Commissioner, Chennai in dismissing the O.A.10/2011 filed under Section 63(a) of the Act.

2. The appellants contended that the idol was erected over the Samadhi which later came to be worshiped in the name of Desamuthu Mariamman. The said

worship has been taken place for more than 200 years by the members of the particular sect of Chettiyar community viz., Dadu Magarishi Gothram of Vaniya Vaishia Vaniga Chetty, the institution is neither a temple nor a Mutt or a specific endowment attached to a religious institutions. The institution is a Samadhi wherein an 11 years old girl child mortal has been buried. The said girl is neither a magan nor a pontiff or a sadhu or guru so as to attract religious worship. In the premises, there is no stone idol consecrated according to agamsastras, the institutions does not have any of the character restricted to a public religious institution. The public are not allowed to come and offer worship therein as a matter of right. However, as per Hindu Sastra, the public, if any, wants to offer worship are not prevented, on permission, they have allowed to perform worship. There is no procession of the deity as founded in public temples. Further the institutions under question does not satisfy the tests laid down by the Hon'ble High Court and Hon'ble Supreme Court of India to determine whether the institutions is a public religious institution or not. The premises have been managed by the private funds of members of the Appellants family since they are the owners thereof. The premises is assessed for the purpose of Property Tax and the same is paid by the members of the Appellants family, the Samadhi has no characteristics or features of the public temple. Even if it is supposed to have balipedam or one or more idols, they are all not intended to be the main objects of worship and they are only adjuncts to the Samadhi which came to be installed additionally after distant point of time after the Samadhi was built the lands were endowed specifically for the purpose of construction of Tomb in the memory of Desamma, hence the lands stand transferred in the name of Desamuthu Mariamma which is worshipped by the family members of the Appellants as a deity. It is clearly evident that beneficiary are the members of the Appellants family who are specified individual capable of being certain. Further, there is no other common deity any where in India known as Desamuthu Mariamma being worshipped by Hindu Public in general. In the case of the Appellants, the two test for deciding the place of worship for public or not satisfied which are (1) it must be used as a place of worship (as of right and not of permissible in nature) (2) dedication to be public for worship and hence it is evident that in order to declare a temple as a public temple, both the above two conditions 1 and 2 must be satisfied whereas it is not so, in the case of the Appellants. Since it is being a Samadhi, the festivals related to the Amman Temple viz., Aadi Koolu

Vaarthal, Karagam Journey, Aadi Padayal, Aadi Katcheri etc, are not at all performed in the said institution. Furthermore use of word temple instead of Samadhi would not change the character of the institution unless the institution possess the necessary ingredients of public religious institution as envisaged under the Act. When the matter stood thus, they had inadvertently filed O.A.No.33/1995 praying for hereditary trusteeship in terms of Section 63(b) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959. As they were not properly guided, the said original application was dismissed by the Learned Joint Commissioner by order dated 2.1.2009 made in O.A.No.33/1995. As per sub clause 3 of Section 110, any enquiry conducted by the Joint Commissioner under Chapter V is deem to be acting judicially within the meaning of the Judicial Officers protection Act 1850 (Central Act XVIII of 1850). Hence, the enquiry conducted by the Joint Commissioner in O.A.No.10/2011 being a Quasi Judicial proceeding and enquiry proceedings ought to have been administered in accordance to the provision of the Indian Evidence Act, Indian Oaths Act and Civil Procedure Code. In the present case, none of the above salutary principles governing trials in such original application has been followed by the Learned Joint Commissioner and the impugned order has been passed on presumption and surmises and on the reliance of the pleadings and without appreciating the records on both sides. Most surprisingly, even the report of the Inspector, HR&CE, the official witness has not been given to the Appellants to ascertain the veracity of it or permitted them to cross examine the official witness so as to expose any falsity in its report under due process of law. Surprisingly, the Learned Joint Commissioner though marked the Inspector report as Exhibit C1, but however the Inspector has never been examined during the proceedings before the Joint Commissioner nor granted any opportunity to the Appellants to question the validity of the report of the official witness. Furthermore though the Inspector report which the authorities usually claims to be the eye of the Court in ascertaining the factual aspects of the character of the temple but no reliance or discussion found part of the Impugned order.

3. In the counter affidavit, fit person/1st respondent contended that in the first instance, they subjected themselves to the jurisdiction of the TNHR&CE Department and preferred an application before the Tribunal below to declare them as hereditary trustees under Section 63(b) of TNHR&CE Act in O.A.No.33/1995. When

they were not able to succeed and establish their right before the Tribunal below, on its dismissal vide order dated 2.1.2009, instead of preferring proper appeal, again changed their prayer by improper filing which was also dismissed by this Hon'ble Tribunal vide order dated 26.4.2011 in Rc.No.59841/2009. Again without challenging the order of Assistant Commissioner before this Tribunal, directly approached the High Court and even before the Hon'ble High Court, only the consequential notice of the Fit person was challenged and not the appointment of Fit person. Again, followed by the directions of Hon'ble High Court, the appointment of Fit Person was challenged before this Hon'ble Tribunal in R.C.No.14/2014 and even in that revision, the Assistant Commissioner who passed that impugned order was not arrayed as a party. Thus, the activities and intention of the appellants are not bonafide so as to achieve their aim through proper and legal means, but to evade the handing over of charge of the said temple to the fit person who is legally appointed by the competent authority. It is imperative to mention here that even after the character of the institution has been confirmed by the Tribunal below as per the impugned order, the appellants are not ready to handover but hurriedly sent a notice through the advocate, to the Fit person/ the 1st respondent herein to stay away from the taking of charge since, an appeal is being preferred, whereas, the appeal is being preferred with condonation of delay. Even after the matter was closed for orders by the Tribunal below on 12.2.2014, the appellant who seeks opportunities as provided under Section 110 of the TNHR&CE Act, did not have taken a single effort to file an application for reopen the matter till the date on which the impugned order was passed i.e.11.6.2014. It is an established law that once a person having filed an application under Section 63(b) of the TNHR&CE Act, cannot turn around and contend to the contrary that the temple in question is a private temple - (2009 6 MLJ 812). Moreover, the overall intention of the appellants who rely on their alternative stand that it is not a temple but Samadhi, does not also help the appellants to release themselves from the clutches of the TNHR&CE Department in view of the amended Act, 26 of 2012 which came into effect from 27.6.2012. Moreover, it is a third round litigation before this Hon'ble Tribunal which the appellants have no case on merits.

4. I heard Thiru. E.Ganesh, counsel for the appellants, Thiru. C.Dharmaraj counsel for the fit person/1st respondent and perused the relevant records. The counsel of for the appellants without going into merits of the case

vehemently argued on the technical aspects of the case. He argued that the counsel for the petitioners in O.A. was absent and ex parte order was passed. Joint Commissioner instead of dismissing the O.A. for default, passed order on merits. Further, the petitioner filed writ petition before Hon'ble High Court Challenging the order passed by the Joint Commissioner in allowing the fit person to implead as party/respondent in the said O.A. and the same is pending. On this ground, the petitioner filed a memo to adjourn the enquiry in the O.A. till the disposal of writ petition but the Joint Commissioner without considering the same passed the impugned order.

5. On perusal of the records, it is learnt that the Hon'ble High Court by order dated 8.8.2011 made in W.P.17895/2011 had directed the Joint Commissioner to dispose off the O.A. within 3 months. The said writ petition was filed by the appellants herein. Thereafter, the Joint Commissioner afford several opportunities to the petitioner to produce both oral and documentary evidence and for argument. But the appellants counsel not interested in conducting case eventhough he knows that the Hon'ble High Court fixed time to dispose off the case. The said O.A. came up for hearing on several dates, the petitioners appeared in person but their counsel neither appeared nor interested in conducting the case, hence finally it was closed for orders on 12.2.2014 and order was passed on 11.6.2014 after a lapse of 4 months. In this gap, the appellants have not taken any steps to reopen the case. As per order IX Rule 9 of Civil Procedure Code, if there is sufficient reason for the non-appearance of the petitioner this forum can set aside the order. But in this case when the matter taken up for hearing on 12.2.2014 the petitioners appeared before the Joint Commissioner but their counsel not turned up for the hearing. Even when the counsel appeared in the previous hearings he was not interested in argue the case citing the pendency of the writ petition. No justifiable reason was putforth by the appellants for the non-appearance of their counsel and I am not convinced to set aside the impugned order on this ground.

6. Further counsel for the appellants argued that Inspector report and order made in O.A.33/1995 have been marked as Ex.C1 and C2 in the absence of the petitioner and the Joint Commissioner failed to examine the Inspector and nothing discussed about the report of the Inspector in the impugned order. The deposition given by the poojari of the temple before the Inspector has been discussed in the impugned order. The O.A.33/1995 was filed by the 1st appellant herein and his

brother under Section 63(b) of the Act. Further, in the typedset filed by the appellants before the Joint Commissioner in O.A.10/2011 they have filed the copy of the petition filed in the O.A.33/95 and copy of the order made in the O.A.33/95. Hence the appellants fully aware of the facts in the above case. Since the appellants and their counsel not cooperate with the Joint Commissioner to dispose off the O.A. within the time stipulated by the Hon'ble High Court, the Joint Commissioner decided the case based on the available records. Therefore all the contentions raised by the appellants counsel is not sustainable.

7. The suit temple was constructed in the land endowed by one Ramasamy chettiar. Patta stands in the name of the temple. Some other persons have also endowed properties to the temple. The appellant failed to explain the relationship between them and the said Ramasamy Chettiar. Genealogical table was not filed by the appellants. Further from the report of Inspector, it is learnt that one Srinivasan has been employed as poojari and one Ramalingam and his wife are working as watchman and sweeper in the temple and they are paid from the funds of the temple.

8. In the impugned order, the Joint Commissioner adduced various reasons in support of her decision. The said reasons are not rebutted by the appellants with cogent evidence. In this case, previously 1st appellant along with his brother had filed a O.A.33/1995 under Section 63(b) of the Act to declare them as the hereditary trustee of the suit temple admitting it as a public temple. Thereafter, the appellants cannot turn around and contend to the contrary that it is not a temple.

9. Further in the villages of Tamil Nadu, people used to worship of the mortal remains of deceased girl child as their Kula Deivam or Kaval Deivam. For example a pregnant lady who was killed by a king for stealing a mango has been worshiped as "MASANIAMMAN" in Anaimalai, Coimbatore District. In this case also Desamuthu Mariamman is worshiped by the Chettiyar Community as their Kula Deivam.

10. In AIR 1939 MAD 134, it was held by the Court of records that "*A temple is a place of public religious worship. The question whether the worship in an institution is religious or not must be decided with reference to the view of the class of people who take part in the worship and not as to whether it conforms to any particular school of Agama. If they believe in its religious*

efficacy bounty of super human power, it must be regarded as “religious worship”...

11. Similarly, in *ILR 1950 MAD 799* it was held that *“If the public or that section of the public who go for worship consider that there is divine presence in a particular place, and by offering worship at that place, they are likely to be the recipient of the bounty or the blessings of the God, then, you have got the essential features by a temple as defined in Section 6(17) (old section 9(12)) The presence of an idol, though an invariable feature of Hindu temples is not a legal requisite under the definition of a “temple” in Section 9(12).*

So, the definition of “temple” in the Act is so comprehensive as to include any place irrespective of installation of idols or buildings or a tower, *dwajasthambam* or a *sthupi*. Two conditions must be cumulatively satisfied. One is it must be a place of public religious worship. Secondly, it must have been dedicated for the benefit of Hindu community or any Section thereof. These two conditions co exist in the present case as admitted by the appellants brother in O.A.33/1995.

12. Further in 1953 2 MLJ 688, it was held that *“It is time that the facts that there is an utsav idol and there are processions are generally indicative of the fact that it is a public temple. But then no property has been dedicated for the upkeep of the temple. The worship is maintained and the expenses are met from out of the private funds of the respondent. In the absence of any property being dedicated for the maintenance of worship in the temple, it is difficult to hold that the temple has been dedicated to the public.”*

In this case, one Ramasamy chettiar and Kanniappa Chettiar dedicated properties for the maintenance of the suit temple. The suit temple has been maintained from the income derived from the said properties. Further, Thiru.L.Jeyachandran brother of the appellants who was one of the petitioner in O.A.33/1995 had admitted that idol has been taken in procession and festivals are celebrated in the temple. So, Joint Commissioner rightly concluded the suit temple is a public temple as defined under Section 6(20) read with Section 6(18)

Therefore viewed from any angle, I see no valid reason to interfere with the order passed by the Joint Commissioner, Chennai and the appeal deserves for dismissal as devoid of any merits. In fine the appeal fails. Accordingly the order passed

by the Joint Commissioner, Chennai in O.A.10/2011 dated 11.6.2014 is hereby confirmed and the appeal petition be and is hereby dismissed as devoid of merits.

/typed to dictation/

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

/true copy/by order/

Superintendent