

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

Wednesday the 2nd day of March, Two thousand and Sixteen.

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

A.P. 28/2015 D2

Between

P. Murugesan

...Appellant

And

1. Joint Commissioner

Madurai,

.... Respondents.

2. Fit Persion

Arulmighu Mariamman Temple,

Alampadi, Vendasandur Taluk,

Dindigul District

**In the matter of Arulmighu Mariamman Temple, Alampadi,
Vendasandur Taluk, Dindigul District**

**The Appeal Petition filed under Section 53(5) of the Tamil Nadu
H.R. & C.E. Act, 1959 (Tamil Nadu Act 29 of 1959) against the order
dated 27.09.2015 of the Joint Commissioner Madurai in appointing fit
person under section 54(3) of the Act in Proceeding R.C.No.11132 of
2013 / B 1**

Order in d.Dis.A.P.28/2015 D2 dated: 02.03.2016

**The above Appeal petition came up for final hearing before me on
16.2.2016 in the presence of E.Ganesh Counsel for the Appellant,
Thiru.K.Sakthivel 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 53(5) of the
Act against the order dated 27.9.2015 of the Joint Commissioner, HR &
CE Admn.Dept., Madurai in appointing fit person.**

**2. The appellant contended that the appellant's father late
K.Ponnusamy Pillai was appointed as the Hereditary Trustee by the**

Department. The lands in survey No.715 measuring 3.46 acres was sold by the appellant's father vide registered sale deed dated 22.9.1966 in document No.2658 of 1966 on the file of SRO, Vedasandur for upkeeping the temple. The remaining lands were barren lands which did not yield any income and the family members of the erstwhile trustees of the temple were enjoying the lands wherein the appellant's family is holding an extent of 2.55 acres in survey No.806 and has been trying to make out an income in order to maintain the temple. Appellant's father, late K.Ponnusamy Pillai has passed away on 16.11.2009, and thereafter the family members had called upon the appellant to administer the temple as Hereditary Trustee. The appellant or family members were not aware of the proceedings in which the appellant's father late K.Ponnusamy Pillai was appointed as the Hereditary Trustee by the then Deputy Commissioner, HR&CE Department, Madurai and the appellant did not have knowledge with the said order had to be re-agitated before the concerned authority in the HR&CE Department to get himself appointed as the Hereditary Trustee in the place of his father. The Inspector of Temples, HR&CE Department Vedasandur had used periodically visited the temple and also verified the accounts book submitted by the appellant and signed in the said accounts book and thereafter the appellant was of the belief that the temple was a private temple in which the family members had nominated him to function as Hereditary Trustee and there was no need to approach the Department for getting appropriate orders. One of the family members namely, N.Gopalakrishnan who had developed enmity with the appellant and wanted to enjoy the temple lands seemed to have made complaint before the Joint Commissioner Madurai with false averments and the copy of the complaint was also not made available to the appellant, but the Assistant Commissioner, Dindugul by communication dated 20.10.2014 had sought for details in respect of the said lands and the appellant also personally appraised to the Assistant Commissioner about the income

derived from the lands and also produced the accounts book. Once again, the appellant received a notice from the Joint Commissioner, HR&CE Department dated 19.3.2015 calling upon the appellant to explain in respect of the five charges. The appellant furnished reply on 13.4.2015 along with records and again furnished another reply on 11.9.2015. But the first respondent by order dated 27.9.2015 suspended the appellant from the post of Hereditary Trustee and temporarily appointed the fit person to the said temple directing the fit person to take charge from the appellant. The entire proceedings have been conducted in a hurried manner, based upon the instigation of the above said N.Gopalakrishnan who is also one of the family members of the appellant on having failed in his attempt to claim ownership over the lands belonging to the temple. The appellant immediately filed W.P.(MD).No.18726 of 2015 before the Madurai Bench of Madras High Court challenging the order of the Joint Commissioner dated 27.9.2015 and the Hon'ble High Court by order dated 14.10.2015, disposed of the said writ petition, directing the appellant to file appeal under Section 53(5) of the Act and further granted one week time to file the appeal from the date of receipt of the said order in the writ petition. The Joint Commissioner further failed to see that under Section 54 of the Act whenever there is a permanent vacancy occurring in the office of the Hereditary Trustee of a Religious Institution the next in the line of succession shall be entitled to succeed to the office. In the case on hand the appellant being the son of late K.Ponnusamy pillai, who has been appointed as Hereditary Trustee has every right to continue as the Hereditary Trustee as the next line of succession. The provisions of the HR&CE Act and as well as various judgments of the High Court time and again have categorically held that when any action taken as per the Act while appointing the fit person the authority should consider the members of the family of the previous Hereditary Trustees who are entitled to succession to act as the Hereditary Trustee and after giving

due regard to the claims of the members of the family of the previous trustee, if the authority feels that there is no one competent person to fulfill such requirements thereafter he can proceed to appoint fit person. The first respondent miserably failed to appreciate the fact that the consequence of the impugned order would result in the deprivation of the appellant's valuable administrative rights over the said temple which involves Honour and dignity of the Appellant, as such the law required that when such deprivation of right is to be adjudicated, if it is all more is necessary that the parties should be given opportunity to put forth their contention and without giving such opportunity the appellant's valid administrative right over the temple ought not to be disturbed.

2. In the counter affidavit the 2nd respondent has contended that only the lawful trustee either appointed or recorded in a manner known to law can alone be suspended by a competent authority as per the provisions of the HR&CE Act. The appellant herein was not a lawful Trustee and so he was not suspended by any authority as per the provisions of the HR&CE Act. As there is no suspension order under Section 53(4) of the Act, there could not be an appeal under Section 53(5) of the HR&CE Act. The power of the authority to fill up the vacancies in the office of the Hereditary Trustee is provided under Section 54 of the Act, which contemplates that when a permanent vacancy occurs in the office of the Hereditary Trustee of a Religious Institution, the next in the line of succession shall be entitled to succeed to the office. Sub-Clause (3) provides that Joint Commissioner or the Deputy Commissioner as the case may appoint a fit person for the following four reasons. (i) when a permanent or temporary vacancy occurs in such an office and there is a dispute respecting the right of succession to the office, (ii) such vacancy cannot be filled up immediately. (iii) When a Hereditary Trustee is a minor and has no guardian fit or there is a dispute who is entitled to act as guardian. (iv) when a Hereditary trustee is un soundness of mind. Hereditary office is vacant for more than six years. None has filed

petitions for recording themselves as a Hereditary Trustee as the next in the line of succession, as per Section 54(1) of the Act. No Trust/ temple can function without a trustee. Vacuum will never revamp the administration. Perpetual vacuum in the office of the Hereditary Trustee will hamper the administration of the temple and injures the right of the deity. The appellant was neither recorded as a Hereditary Trustee nor appointed as a Trustee of the temple and he is nothing but a person sitting on the fence. A person who has been appointed as a Trustee legally as per the provisions of the Act, cannot expect the right beyond his boundary. Always, law fulfills the legitimate expectation of a legal trustee. A person who has been facing the enquiry from 6.1.2014 and willfully failing to record his own trusteeship right from 16.11.2009, is not entitled for any notice separately for the appointment of fit person.

3. I heard Thiru.E.Ganesh Counsel for the appellant and Thiru.M.Sakthivel counsel for the 2nd respondent/ Fit person and perused the relevant records. In the impugned order the Joint Commissioner has appointed the Fit person as an interim measure in the interest of the temple. The office of the Trusteeship of the suit temple has been declared as Hereditary by order dated 26.12.1988 made in O.A.11/1988 and the appellant's father was declared as Hereditary Trustee. Appellant's father had passed away on 16.11.2009. In the permanent vacancy occurred due to the death of appellant's father, his legal heirs including the appellant failed to record their succession under Section 54(1) of the Act. Hence there is vacuum in the office of the Trustees. Further, the appellant admits that his father sold the lands in S.No.715 measuring 3.46 acres in the year 1966 and the appellant is in possession of 2.55 acres land in S.No.806. The appellant who is claiming that he is managing the temple after demise of his father failed to take action to retrieve the properties sold by his father and lease out the remaining properties in public auction as per Rules. Hence in order to take action to retrieve the property illegally sold by the then Trustee and

lease out the temple lands, the Joint Commissioner has appointed Fit person as an interim measure. Further the appointment of Fit person will not deprive the right of the appellant to succeed to the office in accordance with law.

Therefore I find no infirmity in the impugned order and it does not warrant any interference. Accordingly, the order dated 27.9.2015 of the Joint Commissioner, Madurai is hereby confirmed. However, the appellant is at liberty to file application under Section 54(1) of the Act to record his succession within 15 days from the date of receipt of this order. In any such application is filed, the Joint Commissioner should decide it on merits and pass orders in accordance with law within a period of 3 months. With the above observations the appeal petition is dismissed.

/typed to dictation/

Sd./- M.Veera Shanmugha Moni
Commissioner

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

Superintendent

To

1. The Appellant through M/s.R.Bharani Dharan, Advocate, No.222, New Additional Law chambers, High Court Building, Chennai - 104.
2. Fit Persion through K.Sakthivel, Advocate, 369, Additional Law Chambers, High Court, Madras 104.

Copy to

3. The Joint Commissioner, H.R. & C.E. Admn.Dept., Madurai.
4. The Assistant Commissioner, HR & CE Admn.Dept., Dindugal.
5. Inspector, Vedasandur, Dindugal District
6. Extra.