

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

Monday the 12th day of October, Two thousand and Fifteen.

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

A.P.14/2015 D2

Between

S.M.Sundaram and 8 others.

.. Appellants.

And

1. The Joint Commissioner,
HR&CE Department, Chennai 34.
2. The Assistant Commissioner,
HR&CE Department, Chennai 34.
3. S.Pandithurai
4. D.Krishnan
5. S.Sundararajan
6. U.Sambandan
7. M.C.Srinivasan
8. B.Radhakrishnan
9. S.Manoharan

.. Respondents.

In the matter of Arulmighu Vasantha Vinayagar Temple, Vasantham Colony, Anna Nagar west, Chennai.

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 29.10.2014 of the Joint Commissioner, Chennai in allowing impleading petition filed by the respondents 3 to 9 in O.A.3/2014 filed under Section 64(1) of the Act.

Order in R.Dis.A.P.14/2015 D2 dated: 12.10.2015

The above Appeal petition came up for final hearing before me on 15.9.2015 in the presence of Thiru.N.Kanakavelu Counsel for the appellants and M/s.Jayanthi Sekar Counsel for the Respondents R3 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 Act against the order passed by the Joint Commissioner, Chennai in allowing

the impleading petition filed by R3 to 9 in the O.A.3/2014 filed under Section 69(1) of the Act.

2. The appellants contended that the appellants had filed an Original Application 3/2014 under Section 64(1) of the Tamil Nadu HR&CE Act 1959 before the 1st respondent to frame a scheme for the temple, a permanent provision to the appoint of trustees from and among the members of the Sangam. Initially while issuing the notice for enquiry the 1st respondent in his notice Original Application No.3/2014 C1 dated 5.2.2014 fixed the date of enquiry and requested the appellants only to appear either in person or by duly authorized advocate at the time of the enquiry. But, the 3 to 9 respondents did not show their face at that time and took no interest in exposing them directly in the enquiry. Then the 2nd respondent viz., the Assistant Commissioner, HR&CE, Chennai who took forcible methods to snatch the temple administration and drive away the appellants over night by appointing fit person hide behind the scene and induced and enticed the respondents 3 to 9 and ill advised them to agitate the genuine claim of the appellants by getting themselves impleaded in the Original Application pending enquiry before the 1st respondent. The respondents 3 to 9 herein did not choose to implead themselves in the writ petition stated above or the Revision Petition filed before the Commissioner. They cannot construe themselves as a necessary party to get impleaded in the present Original Application. Allowing the petitioners to get impleaded will rise to a new cause of action or will confer right for further cause of action, which could not be allowed. There is no affiliation between the said VC welfare association and the administration of the suit temple. Now the temple is absolutely under the control of the "Arulmigu Vasantha Vinayagar Alaya Sangam" who are legally bound to run the temple administration within the parameters of the Tamil Nadu Hindu Religious and Charitable Endowments Act. Neither the said VC welfare Association nor the above respondents 3 to 9 who got themselves by virtue of the impugned orders have no connection with the administrative affairs of the temple in dispute and their impleadment as party respondents 3 to

9 is with ulterior motive and just to dilute and drag on this Original Application. The 1st respondent who is expected to act judicially is shielding person aiming false complaints and rubbing the appellants of the wrong way by way of impleadment.

3. In the counter affidavit Respondents 3 to 7 and 9 have stated that the temple is pre-dominantly run by way of public donations amounting to not less than Rs.2 lacs and the appellants are in no way responsible for the day to day running of the temple which is clearly evident from the documents of accounts submitted by them. Meanwhile, the representations were made by the VC welfare association and also by the residents of the Vasantham Colony to the Commissioner, HR&CE Chennai expressing dissatisfaction over the functioning of the present Alaya Sangam and requesting for the takeover of the temple by the Department of HR&CE. They were not at all aware of the enquiry conducted by the 2nd respondent herein. Had there been any knowledge about the enquiry conducted by the 2nd respondents, the respondents would have participated in the enquiry and expressed their grievances over the conduct of the affairs of the temple. They were not aware of the legal proceedings relating to the temple, till the order in the writ petition No.20929/2014 was displayed by the appellants in the temple notice board. The reason adduced by the Hon'ble High Court for setting aside of the appointment of fit person in the W.P.No.20929/2014 is that the appellants herein have not been given an opportunity to show their cause. The VC welfare association is the only registered association functioning in the Vasantham Colony and is representing the majority sentiments of the residents. It got every right to question the affairs of the temple though the temple is said to have been managed by the appellants sangam. There need not be any affiliation between the said VC welfare association and the administration of the temple said to have been held by the appellants sangam to question about the irregularities committed by them. Anybody who is aggrieved by the management of the affairs of the temple is entitled to raise questions in view of the public religious character of the temple.

The respondents do not want to dilute and drag on this Original Application but they want its immediate dismissal and that is why they have got themselves impleaded in this Original Application and are fighting their legal battle bravely. The reason for setting aside the orders of the 2nd respondent in appointing a fit person is also based on the Laws of Natural Justice as no opportunity was given to them to show their cause and the orders of the Hon'ble High Court has not commended upon impleading necessary parties in the Original Application. In fact the Hon'ble High Court has directed to hear all the necessary parties in the Original Application, As the respondents are necessary parties, the 1st respondent has rightly impleaded them.

4. I heard Thiru. N.Kanakavelu Counsel for the appellants and M/s.Jayanthi sekar counsel for the R3 to 7 and 9. I perused the written arguments submitted by both the counsels.

5. The appellants are members of Arulmigu Vasantha Vinayagar Alaya Sangam. They have filed O.A.3/2014 before the Joint Commissioner, Chennai to frame a scheme of administration with permanent provision to appoint trustees form and among the members of the sangam. The Respondents 3 to 9 are members Vasantham colony welfare association have filed petition to implead them as party/respondent in the said Original Application. They have made several allegations against the appellants herein. After hearing both sides the Joint Commissioner allowed the said petition.

6. The Joint Commissioner having been vested with statutory power as a quasi judicial authority is justifiable in impleading the R3 to 9 as proper and necessary party for adjudicating the case. By merely impleading the respondents as party respondent, the appellants rights will not be prejudiced as the appellants has got every right to cross examine the respondent or contest the documents to be filed by them before the Joint Commissioner.

7. The Hon'ble Supreme Court of India in their decision reported in Maria Margarida Sequeria Fernandes Vs. Erasmo Jack de Sequeria, AIR

2012 SC 1727, held that Court deciding dispute is duty bound to find out the truth and every endeavor should be made to find out the truth. In paragraph 52, the Supreme Court held thus:-

52. Truth is the foundation of justice. It must be the endeavor of all the judicial officers and judges to ascertain truth in every matter and no stone should be left unturned in achieving this object. Court must give greater emphasis on the veracity of pleadings and documents in order to ascertain the truth”.

By impleading the respondents 3 to 9 herein as proposed respondents, truth of the facts if any shall be unearthed from the parties which will be helpful for the authority to decide the case on its own merits. The respondents 3 to 9 herein should also be given an opportunity of being heard to put forth their case. As rightly pointed out by the learned counsel for the respondents impleading petition by persons having interest can be filed at any stage of the proceedings. There is no need to establish the right of the person in the impleading petition itself. Proceedings under Section 64 of the Act contemplated elaborate enquiry. The Joint Commissioner should consider all suggestions and objections placed before him and hear all the parties including the persons having interest. Therefore it is left open to the petitioner to put forth their case, objection, suggestions and representation before the Joint Commissioner and establish their claim and to disprove the claim of the respondents. Similarly, the respondents herein are at liberty to establish their case and to disprove the case of the petitioner.

Therefore, I see neither any infirmity nor illegality in the orders passed by the Joint Commissioner under impugned. Hence, there is no valid reason to interfere with the order dated 29.10.2014 passed in O.A.No.3/2014 by the Joint Commissioner, HR&CE Admn. Dept., Chennai and the appeal deserves to be dismissed as devoid of any merit.

Accordingly the impugned order be and is hereby confirmed and Appeal Petition fails and the same be and is hereby dismissed as devoid of merits.

/typed to dictation/

Sd./- M.Veera Shanmugha Moni
Commissioner

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

Superintendent

To

1. The Appellants through Thiru.N.Kanakavelu, 35, Law Chambers, High Court Buildings, Chennai 600 104.
2. Respondents 3 to 7 and 9 through M/s.Jayanthi Sekar, Advocate, 86, Luz Avenue, Mylapore, Chennai 600 004.
3. Thiru.B.Radhakrishnan, S/o. A.K.Balakrishnan, No.1922, Vasantham Colony 1st Main Road, Anna Nagar West, Chennai 600 040.

Copy to

9. The Joint Commissioner, H.R.&C.E. Admn. Dept., Chennai.
10. The Assistant Commissioner, HR&CE Admn.Dept., Chennai.
11. Inspector, HR&CE Department, Circle 6.
12. Extra.