

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

Friday the 30th day of September, Two thousand and Sixteen.

Present: Dr.M.Veera Shanmugha Moni,
Commissioner.

A.P.28/2016 D2

Between

V.Muruganandam

...Appellant

And

1. The Joint Commissioner
HR&CE Admn.Department, Thanjavur.

2. Selvaganapathy.

.... Respondents.

In the matter of Arulmigu Sri Rajathagirisarawamy Temple, Keezhvelur Taluk, Velankanni, Nagapattinam District.

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 30.12.2015 of the Joint Commissioner, HR&CE Admn.Department, Thanjavur in rejecting the petition filed under Section 63(b) of the Act.

Order in R.Dis.A.P.28/2016 D2 dated: 30.09.2016

The above Appeal petition came up for final hearing before me on 23.8.2016 in the presence of Thiru.S.Sithirai Anandam, Counsel for the petitioner and 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 filed under Section 69(1) of the Act against the order dated 30.12.2015 of the Joint Commissioner, HR&CE Admn.Department, Thanjavur in rejecting the petition filed under Section 63(b) of the Act.

2. The appellant contended that Sri Rajathagiriswaraswamy Temple originally belonged to the appellant great grandfather namely one

Kailasanathar. He had two sons namely Dakshinamoorthy Devar and Veerapa Devar. After demises of the said Kailasathevar, the above said Dakshinamoorthy Devar and Veerappa Devar are maintained the said temple. The nature of proof required for establishing the administration and maintain the same in the sculpture of the said temple. In the year 1915, the said Dakshinamoorthy son namely Vairappa Devar and Veerappa Devar's son Kandaswamy Devar were created sale deed in favour of the above said temple. After the demise of the said Vairappa Devar and his son namely Kailasa Devar and Dakshinamoorthy Devar. At the same time, the said Kandaswamy Devar's son namely Chockalinga Devar being his legal heirs namely Kandaswamy Devar, Veerappa Devar, Vairappa Devar, Vellimalai Devar and Kailasa Devar who have right to maintain the said temple. After the Endowments Act came into force, the said Kailasa Devar administered the temple as a sole trustee for more than 4 decades. One Dakshinamoorthy Devar was appointed as a Hereditary Trustee on the request made by the Kailasa Devar. After demises of the said Dakshinamurthy Devar sons namely Vairamuthu Devar and Veerasinga Devar. As per the appointment of Hereditary Trustee is concerned by the all family members of the appellants and the 2nd respondent, the said Vairamuthu Devar has appointed as Hereditary Trustee herein. Taking advantages of the said Vairamuthu Devar had filed the suit against the 1st respondent for declared as a Hereditary Trusteeship of the said temple and other reliefs. The appellant's ancestors has managed the said temple and continuously exercised by the members of the family members who claims hereditary rights without any objection or hindrance from any source, but in case on hand, without proper consent of the other members of the Trusteeship, the 2nd respondent in an illegal manner obtained the Hereditary Trusteeship in the year 2007 which was confirmed by the 1st respondent vide

proceeding dated Joint Commissioner dated 1.7.2003 on the file of the Joint Commissioner, HR&CE in Nee.Mu.16699/98 E2. When the above said order came to the knowledge of the appellant, he filed an application under Section 63(b) of the TNHR&CE Act seeking to set aside the order of the 1st respondent and pass order including the appellant herein as a Trustees of the above said temple on 1.12.2014 in unnumbered O.A. The 1st respondent has not properly construed the scope and ambit of Section 63(b) of the TNHR&CE Act and passed orders against the appellant herein. The Joint Commissioner failed to note that already 42 years one Dakshinamurthy Devar has functioned as Hereditary Trustee and therefore the 2nd respondent appointed as the Hereditary Trustee on that basis came to the conclusion which is totally misconstrued in both law and on facts. The order of the Joint Commissioner, the 2nd respondent had appointed only in the year 2011 and therefore, it is not continued the same within the knowledge, the appellant had preferred O.A.before the Joint Commissioner has not been numbered.

3. I heard Thiru.S.Sithirai Anandam Counsel for the appellant. The delay of 105 days in filing the appeal petition is condoned and main appeal petition was taken up for hearing with the consent of the appellant and the 2nd respondent.

4. The appellant herein filed an application under Section 63(b) of the Act to declare him as Hereditary Trustee of the suit temple. The said application was dismissed by the Joint Commissioner on the ground that already one V.E.Dakshinamoorthy was declared as Hereditary Trustee in the year 1973, hence after lapse of 42 years the petition filed by the petitioner to declare him as Hereditary Trustee was not maintainable.

3. Under Section 63(b) of the Act, the Joint Commissioner can decide only the nature of the office of the Trusteeship. Accordingly, the office of the Trusteeship of the suit temple was already declared as

Hereditary by order dated 26.5.1973 in O.A.34/1972 filed under Section 63(b) of the Act by the then Deputy Commissioner, Thanjavur. The Joint Commissioner has no jurisdiction to decide the rival claims. Hence, the Joint Commissioner rightly rejected the application filed by the appellant under Section 63(b) of the Act.

4. In the Judgment reported in (1968) MLJ 119, the Hon'ble High Court held that, *"The Jurisdiction of the Deputy Commissioner under Section 57(b) is confined to a decision whether a trustee holds or held office as a Hereditary Trustee. In other words, the Deputy Commissioner can only decide as to the status of the office of the Trusteeship, namely, whether it is Hereditary. He is not competent to go into the further question as to which of the competent claimants is a Hereditary Trustee or whether both are Joint Hereditary Trustees. That is a matter not covered by Section 57 of the Act and has to be decided only by a separate unit"*.

5. Similar decision was rendered by the Hon'ble High Court in the Judgment rendered in 2000 MLJ 544, wherein has been held as follows: *"The Deputy Commissioner, HR&CE has only jurisdiction to decide the question as to whether trustee hold or held office as Hereditary Trustee and Section 63(b) of the Act does not confer on him power to decide the question as to as who among the rival claimants are entitled to hold office as Hereditary Trustee. In view of the limited scope provided under Section 63(b) naturally the Deputy Commissioner has no jurisdiction to decide with regard to the internal dispute, among rival claimants for holding the office of the Trusteeship of the Hereditary Trusteeship of the temple"*.

In the case on hand, the office of the Trusteeship was already declared as Hereditary in the year 1973, hence the Joint Commissioner has no jurisdiction to decide the claim of the appellant to recognize him as Hereditary Trustee under Section 63(b) of the Act. It has to be decided only by a competent civil Court.

Therefore I find no reason to interfere with the order passed by the Joint Commissioner, Thanjavur and it is liable to be confirmed. Accordingly the order dated 30.12.2015 of the Joint Commissioner, Thanjavur is hereby confirmed and appeal petition is dismissed as devoid of merit.

/typed to dictation/

Sd./- M.Veera Shanmugha Moni
Commissioner

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

Superintendent

To

1. The Petitioner through Thiru.S.Sithirai Anandam, Advocate, No.255, Law Chambers, High Court Buildings, Chennai 104.
2. Thiru.S.Selvaganapathy, S/o. Vairamuthu Thevar, No.2/100, Chettiar Street, Velankanni, Keezhvelur Taluk, Nagapattinam.

Copy to

3. The Joint Commissioner, HR & CE Admn.Dept., Thanjavur.
4. The Assistant Commissioner, HR & CE Admn.Dept., Nagapattinam.
5. The Inspector II, HR&CE Admn. Department, Nagapattinam.
6. Extra.