

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

Tuesday the 6<sup>th</sup> day of September, Two thousand and Sixteen.

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

**A.P.10/2016 D2**

**Between**

S.Thiagarajan

...Appellant

**And**

- 1.The Joint Commissioner,  
HR&CE Admn.Department, Villupuram.
2. The Assistant Commissioner,  
HR&CE Admn.Department, Cuddalore.
3. Fit person, Arulmigu Karpagavinayagar  
Temple, Parangipettai, Cuddalore.

.. Respondents.

In the matter of Arulmigu Karpagavinayagar Temple, Parangipettai, Cuddalore.

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 18.1.2013 of the Joint Commissioner, HR&CE Admn Department, Villupuram in Pro.Rc.No.2495/2012 passed under Section 54(2) of the Act.

**Order in D.Dis.A.P.10/2016 D2 dated: 06.09.2016**

The above Revision petition came up for final hearing before me on 12.8.2016 in the presence of Thiru.M.Vijay Shankar, Counsel for the petitioner, N.Sathyamoorthy, Counsel for the 3<sup>rd</sup> 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 54(4) of the Act against the order dated 18.1.2013 of the Joint Commissioner, Villupuram passed under Section 54(2) of the Act.

2. The appellant contended that the suit temple was constructed by the people of Sozhia Vellalar Community from their own funds prior to

the year 1900. The temple was managed by Pillaimars for more than 4 to 5 generations. The temple was lastly administered by his uncle Thiru.S.Govindarajan Pillai. The Temple is not included in the list of notified Temples by the Government and therefore it is a private Temple. It is a small Temple fetching an annual income of Rs.20001- to Rs.50001- The Deputy commissioner has issued an order dated 30.10.1988 in O.A.No.2011988 declaring Thiru. S.Govindarajan Pillai to be the Hereditary Trustee of the Temple and he was managing the Temple, till his death on 26.06.2003. Thiru. S.Govindarajan Pillai had 2 daughters and one son and all were got married. The elder daughter expired some years ago and the younger was married to a doctor who is having his own clinic at Cuddalore after his retirement from Government service. The son of the deceased Govindarajan Pillai named Kaliyamoorthy was not spiritually minded and would not serve the community in any manner. Therefore the said Govindarajan Pillai has executed a will, while he was alive in favour of this appellant and the deed was registered as No. 14/2001 dated 07.06.2001, stating that after his death the temple shall be maintained by the appellant. After the death of S.Govindarajan Pillai, he had taken charge of the Temple on 26.06.2003 and informed the fact to the authorities of the Department and also informed the matter through News Paper. Nobody claimed any rights or raised any objection. The Joint Commissioner, Mayiladuthurai issued order dated 18.9.2003 appointing an Executive officer to the temple. The appellant handed over charge to him on 09.10.2003. Even though it is more than 12 years, the Joint commissioner did not take any action even to cancel the order of appointment of Executive Officer for reasons well known to him. Therefore appellant a writ Petition No. 8254 of 2012 in the High court of Madras and the High court by its order dated 23.08.2012 directed the Joint Commissioner, Villupuram to consider the representation of the

appellant dated 10.10.2011 and pass orders on merit within a period of 8 weeks from the date of receipt of the order. The appellant appeared before the Joint commissioner, Villupuram on 18.01.2013 and produced the relevant documents available with him and filed a written statement. The Joint commissioner has rejected his request and issued an order *Na.Ka.No.2495/20121B2* dated 18.01.2013 permitting the Executive officer to continue as Fit person. The High Court of Madras and the Hon'ble Supreme, court have held in several cases in appointing Fit-Person has to be done after notice otherwise it amounts to the violation of Principles of natural justice. The Joint Commissioner failed to note that the Appellant's paternal uncle had nominated the appellant because his son was not spiritually minded and wouldn't serve the Community in any manner. The Hon'ble High Court of Madras has given direction to the Government of the Tamilnadu to frame rules under Sec. 116 of the Act, regarding the reasons and circumstances under which an Executive Officer shall be appointed to the temple. The Joint Commissioner has not applied his mind in appointing the Executive Officer, which is acceptable by the Department.) The Interpretation given by the Joint Commissioner is very narrow and defeats the purpose and object of the HR&CE Act and the rules framed thereunder.

3. In the counter affidavit the 3<sup>rd</sup> respondent contended that the Hereditary Trustee by name S.Govindaraja Pillai dated on 26.6.2003 leaving behind one son and two daughters. Under such circumstances the legal heirs of the said Govindaraja Pillai who was the Hereditary Trustee of the temple alone can apply for recording succession as Hereditary Trustee under Section 54(1) of the HR&CE Act. It has also been stated in the said order that under Section 6(11) of the HR&CE Act. **“The succession to whose office devolves by Hereditary right or his**

**regulated by usage are specifically provided for by the founder”**. In the instant case it is an admitted fact, that the said Govindaraja Pillai is not the founder and he was declared only Hereditary Trustee by the competent authority of HR&CE Department in O.A.20/1988. Therefore, by reading the order passed in said O.A. no where it has been stated that the said Govindaraja Pillai is the founder of the above said temple. The appellant himself by admitted that the above said temple was constructed by the Sozhia Vellalar Community from their own funds prior to the year 1900. Under such circumstances the Section 6(11) is also not applicable to the appellant herein. It has been clearly stated by the 1<sup>st</sup> respondent in the impugned order that his claim that he is the successor of Late Govindaraja Pillai through the Will can only be decided by the Civil Court. Therefore, the 1<sup>st</sup> respondent has correctly dismissed the Appellant’s petition dated 10.10.2011. Instead of going to Civil Court to seek proper remedy, he has filed the above appeal challenging the order of 1<sup>st</sup> respondent which is not sustainable in law and the same is liable to be dismissed by this Hon’ble Authority. In the prayer column of the above appeal, the appellant. I request that the Commissioner may kindly scrutinize the records connected with the case and pass suitable orders to set aside the order of appointment of Executive Officer which is against law, violation of Rules and render justice. However the appeal is filed under Section 54(4) of HR&CE Act. The fit person was appointed even in the year 2003 and handed over the charge on 9.1.2003 and that cannot be challenged after a lapse of 12 years.

4. I heard Thiru. M.Vijay Shankar Counsel for the appellant, Thiru.N.Sathyamoorthy Counsel for the 3<sup>rd</sup> respondent and perused the relevant records. The office of the Trusteeship of the suit temple has been

declared as Hereditary and one Thiru. S.Govindaraja Pillai was declared as Hereditary Trustee. The said S.Govindaraja Pillai died on 26.6.2003 leaving behind one son and two daughters. As the legal heirs of deceased Hereditary Trustee did not file any application to record their succession in the permanent vacancy caused due to the death of his father, the Joint Commissioner has appointed the 3<sup>rd</sup> respondent as fit person by order dated 18.9.2003. The appellant has handed over the charges to the fit person. The appellant has slept over for more than 8 years without claiming Hereditary Trustee but filed petition under Section 54(1) of the Act to record him as successor to the Hereditary Trusteeship based on the Will executed by the said S.Govindaraja Pillai only in the year 2011.

5. The counsel for the appellant contended that suit temple is a private temple and legal heirs of deceased S.Govindaraja Pillai have given No Objection Certificate to appoint the appellant as Hereditary Trustee. But the Joint Commissioner has directed to approach the Civil Court though there is no rival claim.

6. The counsel for the respondent contended that the temple was established in the year 1900. It is a public temple, the office of the Trusteeship was declared as Hereditary. The temple was not founded by the deceased S.Govindaraja Pillai. If will was executed by the founder it may be accepted. If he was not a founder, only Civil Court has jurisdiction to decide the validity of the Will.

7. I considered the rival submission made by the respective counsels. Section 54(1) of the Act read as follow: .—(1) **“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”**.

Accordingly the next in the line of succession shall be entitled to succeed to the office of Trusteeship. In the case on hand, the appellant is not a lineal descendant of the deceased S.Govindaraja Pillai. He is not coming under the class I legal heir and not the next person in the line of succession entitled to succeed to the office.

8. Further the office of the suit temple was declared as Hereditary based on the uninterrupted management for more than three Generations by the deceased S.Govindaraja Pillai family. It was an ascribed status not acquired by the said S.Govindaraja Pillai. The succession devolves by Hereditary right. Hence the deceased S.Govindaraja Pillai cannot assign Hereditary Trusteeship to the persons who are not in the line of succession by way of a Will.

9. Further, it is admitted by the appellant that the suit temple was constructed by the Sozhia Vellalar community in the year 1900. So, it is an admitted fact that the deceased S.Govindaraja Pillai was not a founder of the Temple. Under Section 6(11) of the Act, the Hereditary Trustee is defined as follows: “***the succession to whose office devolves by Hereditary right or his regulated by usage or specifically provided for by the founder***”. As the said S.Govindaraja Pillai was not a founder, he cannot provide another line of succession depriving the right of the persons next in the line of succession.

10. The said temple is a public temple governed by the provisions of the TNHR&CE Act 1959. Previously the deceased S.Govindaraja Pillai had filed under Section 63(b) of the Act admitting the public nature of the Temple. Hence the appellant is estopped from claiming it as a private temple. Though the legal heirs of the deceased S.Govindaraja Pillai had given No Objection Certificate to appoint the appellant as Hereditary Trustee, the appellant could not be recognized as Hereditary Trustee as he is not a person next in the line of succession as provided under Section 54(1) of the Act. Further, In this case Executive Officer of Arulmigu Thillai Kaliyamman Temple has been appointed as fit person under Section 54(3) of the Act, not as Executive Officer under Section 45(1) of the Act. The conditions prescribed under Section 116 will applicable for the appointment of Executive Officer under Section 45(1) of the Act alone not for the appointment of fit person under Section 54(3) of the Act.

11. The appellant has relied upon the judgment of Hon'ble High Court of Madras reported in 2011(2) CWC 408 in Support of his case. The facts of the above case is totally different from the appellant's case. In the said case the dispute was between the wife and adopted son of the deceased Hereditary Trustee. He has no issues, hence he had executed a settlement deed in favour of his adopted son. Further, both of them are class I legal heirs and entitled to succeeded to the office. But the appellant herein is not a legal heir of the deceased S.Govindaraja Pillai. Therefore, the above judgment does not support his case.

12. As the office of the Trusteeship of the suit temple has been declared as Hereditary, the appellant being the brother's son of the deceased Hereditary Trustees, he should establish his right before the competent Civil Court and get him declared as Hereditary Trustee of the suit temple.

Therefore for the foregoing reasons stated supra, I find no infirmity in the order passed by the Joint Commissioner., Villupuram and it does not warrant any interference. Accordingly the order dated 18.1.2013 of the Joint Commissioner, Villupuram is hereby confirmed and the 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.M.Vijay Shankar, Advocate, 67, Additonal Law Chambers, High Court Buildings, Chennai 104.
2. The Fit person through Thiru.N.Satyamoorthy, Advocate, No.62, Law Chambers, High Court Buildings, Chennai 104.

**Copy to**

3. The Joint Commissioner, HR & CE Admn.Dept., Villupuram.
4. The Assistant Commissioner, HR & CE Admn.Dept., Cuddalore.
5. The Inspector, HR&CE Admn. Department, Chidambaram.
6. Extra.