

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

Monday the 24th day of October, Two thousand and Sixteen.

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

A.P.11/2016 D2

Between

1. M.Murugesan
2. A.Muniappan
3. P.Dhanapal
4. Marudhan
5. Alagesan

...Appellants

And

The Joint Commissioner,
HR&CE Admn.Department, Salem

.. Respondents

In the matter of Arulmigu Nallayee, Ravuthayee,
Karuppannaswamy Madurai Veeran and Eri Karuppannaswamy Temple,
Pandamangalam, Namakkal Taluk and 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 28.9.2015 of the Joint Commissioner, HR&CE Admn Department,
Salem in dismissing the O.A.8/2010 passed under Section 64(1) of the
Act.

Annexure to Order in R.Dis.A.P.11/2016 D2 dated: 24.10.2016

The above Appeal petition came up for final hearing before me on
20.9.2016 in the presence of M/s.K.Jayaraman, Counsel for the
petitioner. Upon hearing his 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 28.9.2015 of the Joint Commissioner, Salem in
dismissing the O.A.8/2010 filed under Section 64(1) of the Act.

2. The appellants have contended that the suit temples were
founded by the ancestors of the 1st appellant for the benefit of the
Uppiliya Naicker Melatheruvar Vagaira community of Pandamangalam to
which they also belonged to, and were managed by them. The
community has renovated the temple. The expenses for the maintenance

of the temple are met with by the community from out of collections from among themselves. The major amount was paid by the family of the 1st appellant. Even the department appointed trustees only from the members of the family of the 1st appellant and the community. None outside the community were ever in management of the temple. There is no building for the deities of Nallayee and Ravuthayee. There is only a Puthukkan representing the deity of Nallayee and formless stone representing the deity of Nallayee and formless stone representing the deity of Ravuthayee under a neem tree. Poojas are performed by the community people only. The community has electrified the said Sri Karuppannaswamy Temple and the electricity charges are paid by the community. The community has built shops in the poramboke land near the temple and has leased the same to augment the income of the temple. The community is paying the property tax for the shops. The community is celebrating the annual festival and the expenses for the same are met with by collections from the community people. No amount is collected from other community people. While so, it is understood that steps are being taken for the appointment of trustees to the temples. If any trustees are appointed from outside the community, the rights of the community in general and the rights of the 1st appellant will seriously be affected. Hence in order to safeguard the rights of the community and the interest of the institutions, the appellants filed an application in O.A.8/2010 before the Joint Commissioner, Salem under Section 64(1) of the Act for framing a scheme making provisions for the appointment of trustees from the community by giving one representation to the 1st appellant's family hereditarily. The appellants hail from the community and are very much interested in the affairs of the temples. The learned Joint Commissioner dismissed the application by means of a common order dated 28.9.2015. The Joint Commissioner erred in not properly appreciating the oral and documentary evidence adduced by the appellants. There is absolutely no reason to disbelieve the evidence of PW 3 to 5 who belong to other communities. There is no contra evidence. The

1st appellant's hereditary rights had not been denied by his community people. The evidence of CW1 who had categorically stated in his cross examination that there is no evidence to show that the appointed trustees took charge and that no body objected the rights of the community and that of the 1st appellant. The Joint Commissioner erred in not giving an opportunity to the appellants to cross examine the Assistant Commissioner and hence no reliance can be placed on the Assistant Commissioner's report.

3. I heard M/s.K.Jayaraman, Counsel for the appellants and perused the relevant records. The counsel for the appellants reiterated the contentions made in the grounds of the appeal petition.

4. The appellants herein had filed the O.A.8/2010 praying to frame a scheme making provisions for the appointment of trustees from Uppiliya Naicker Malatheruvar Vagaira community of Pandamangalam by giving one representation to the family of the 1st appellant herein Hereditarily. The appellants have filed EB receipts, Tax receipts and festival invitations to prove their claim but they were rejected by the Joint Commissioner as they were of recent origin. The Joint Commissioner has also rejected the deposition of the independent witnesses as they were hostile witnesses. The Joint Commissioner has discussed the evidentiary value of both oral and documentary evidences and rejected the same by adducing valid reasons.

5. The appellants are claiming that the suit temples were founded by their ancestors and maintained by their community. But they did not produce any documents to prove that the temples were founded by their ancestors. The origin of the temples was not known. The Joint Commissioner has verified the Trustees Register maintained by the Assistant Commissioner, Salem and found that Non-Hereditary Trustees from other communities were appointed from the year 1979 onwards. The appellants failed to produce documents to prove that the suit temples are being managed by their community all along. Further no evidence was adduced by the appellants to prove that the 1st appellant's

family was managed the temples uninterruptedly for more than 3 generations, to declare him as Hereditary Trustee of the suit temple.

6. Section 64(1) of the TNHR&CE Act read as follows: **64. Power of Joint Commissioner or Deputy Commissioner to settle schemes.**—(1) *When the Joint Commissioner or the Deputy Commissioner, as the case may be], has reason to believe that in the interest of the proper administration of an institution, a scheme should be settled for the institution, or when not less than five persons having interest make an application, in writing, stating that in the interest of the proper administration of an institution a scheme should be settled for it, 2 the Joint Commissioner or the Deputy Commissioner, as the case may be, shall consult in the prescribed manner the trustee and the persons having interest and if, after such consultation, he is satisfied that it is necessary or desirable to do so, he shall, by order, settle a scheme of administration for the institution.*

As per the said Section, the subjective satisfaction of the Joint Commissioner is made mandatory to settle a scheme of administration. This forum while sitting on appellate side cannot compel the Joint Commissioner to subjectively satisfy to settle a scheme. The appellants ought to have satisfy the Joint Commissioner with clinching evidence. But they failed to establish their case.

Therefore for the foregoing reasons stated supra, I find no infirmity in the order passed by the Joint Commissioner, Salem and it does not warrant any interference. Accordingly the order dated 28.9.2015 of the Joint Commissioner, Salem is hereby confirmed and the Appeal Petition is dismissed as devoid of merits.

/typed to dictation/

Sd./- M.Veera Shanmugha Moni
Commissioner

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

Superintendent