

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

Friday the 19th day of August, Two thousand and Sixteen.

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

A.P.13/2016 D2

Between

1. A.Baskar
2. M.Subramaniya Devar
3. Thanikkodi Devar
4. M.Ramanathan Devar
5. A.Anbalagan Devar
6. S.Manoharan Devar
7. M.Pakirisamy Devar
8. M.Kanthasamy Devar
9. V.Ramalingam Devar

...Appellants

And

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

.. Respondent

In the matter of Arulmigu Mariamman Temple, Ayakaranpulam 1,
Vedharanyam, 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 21.2.2012 of the Joint Commissioner, HR&CE Admn Department,
Thanjavur in dismissing the O.A.2/2010 filed under Section 64(1) of the
Act.

Annexure to Order in R.Dis.A.P.13/2016 D2 dated: 19.08.2016

The above appeal petition came up for final hearing before
me on 5.8.2016 in the presence of M/s.G.Sumitra Counsel for the
appellants. 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 21.2.2012 of the Joint Commissioner, Thanjavur
in dismissing the O.A.2/2010 filed under Section 69(1) of the Act.

2. The appellants contended that the appellants are Hereditary Trustee of Arulmigu Sri Mariamman Temple, Ayakkaranpulam Village, Vedaranyam, Nagapattinam District. The subject temple is situated in R.S.No.72/2 extent 0.50.0 at Ayakkaranpulam 1st Sethi Village, Vedaranyam Talum, Nagapattinam District and is in existence form the commencement of the 21st century. As per the compromise decree passed in O.S.No.92 of 1918 dated 5.9.1918, the right of administration and management was vested with the appellants 9 villager's and identified as kuthagai in following manner:

1. Periyakuthagai
2. Palaiya agaram Kuthagai
3. Ellapparetti kuthagai
4. Muthaliar Kuthagai
5. Papuretti Kuthagai
6. Kochu Kuthgai
7. Chettiyar Kuthagai
8. Vadakku Kuthagai and
9. Therkku Kuthagai.

The Joint Commissioner has held that the comprise decree passed before Independence cannot be valid one at the present circumstances. The above observation of the Joint Commissioner is complete derogation of article 14 of the Constitution of India where we have undertaken to adhere to the pre Independence decrees and judgments. If such a contrary view is taken by the Joint Commissioner it would be a case of constitutional violation. As there was no enquiry conducted before the order dated 15.3.2010 was passed. As audit report ought to have been called at the instance of the Audit Officer, HR&CE but the Joint Commissioner also has failed to excise such an attempt to verify as there was mismanagement or oppression of funds based on audit report. There was no compliance from any quarters that, there was communal discrimination committed by the appellants. In such circumstances relaying on communal non representation will not be a valid one for the reasons that, there is no other section of people available within the hamlet of temple. The present day migrations and the migrated people do not have much patronage to the temple or to its administration. The appellants have properly maintained the temple account records regarding the income and expenditure and submitted same to the

concerned HR&CE auditors who are the competent authority to deal the accounts. The HR&CE auditors have also sent their report regarding the appellants temple through their proceeding E.Sa.Ka.NO.93/2009 dated 1.6.2009. The appellants have properly sought permission from the Inspector, HR&CE, Vedaranyam, to print kattana seetu. There is no marriage hall available in the temple and a dining hall alone available in the temple. The amount donated by the marriage party has been properly credited and the same has been audited by the HR&CE audit department. The temple lands has been cultivated by the tenants who are all cultivate the lands Hereditarily as tenants. The appellants have not sold any temple lands and Savakku trees.

3. I heard M/s.G.Sumitra, Counsel for the appellants and perused the relevant records. The appellants had filed O.A.2/2010 under Section 69(1) of the Act. In the said Original Application they had prayed to frame a scheme declaring the Nine Kuthagaikarars of Ayakkaranpulam 1 and 2 Sethi are entitled to become the Trustees of the suit temple on rotation basis as per the compromise recorded in O.S.92/1918 before the DMC, Thiruthuraipoondi. The Joint Commissioner dismissed the said Original Application on the ground that in O.S.92/1918 compromise was entered between the two parties and the same will not bind the department as the department was not a party in the said proceedings. Further the prayer of the petitioner was contrary to the Section 47 of the Act.

4. The temple owns several acres of lands. Though it is claimed by the appellants that the temple and its properties are being managed by the Trustees elected from 9 Kuthagaitharars, they failed to lease out the property in public auction as per the provisions of the Act. As complaints were received about the mismanagement of the temple, after due enquiry the Assistant Commissioner, Nagai has appointed fit person to the temple by order dated 13.3.2010. Thereafter, the appellants had filed O.A.2/2010 for framing a scheme of administration.

5. As per Section 64(1), when the Joint Commissioner has reason to believe that in the interest of the proper administration of an Institution, shall settle a scheme of administration for the institution in consultation with the Trustee and the persons having interest. But in the Original Application the petitioners have prayed to settle a scheme in the interest of the temple. But in the Original Application they have stated that "...unless suitable scheme is framed for protecting the interest of the nine Kuthagaitharars who are mirasidars of Ayakkaranpulam 1st and 2nd Sethi village, the petitioners would be seriously prejudiced". So, it is clearly evident they want to settle a scheme to protect their interest only not the temple.

6. Further as per Section 47 read with Section 50 and 51 of the TNHR&CE Act, every Board of Trustees constituted under the provision of the Act, shall consist of not less than three and not more than five person, of whom one shall be a member of Scheduled Castes or Schedule Tribes and another one shall be a woman. But the appellants prayed to settle a scheme with permanent provision to appoint trustee as per the compromise recorded in O.S.No.92/1918. As per the said compromise, the nine Trustees from Nine Kuthagaitharars belonging to Ayakkaranpulam village 1st and 2nd sethi village are entitled to manage the suit temple on yearly rotation basis except chettiyar Kuthagai, said chettiyar Kuthagai entitled to manage the temple two years continuously. The said term is contrary to the provisions of the Act. Section 118(B) of the HR&CE Act read as follows: *"(i) if any provision contained in any scheme settled or deemed to have been settled under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1926 (2[Tamil Nadu] Act II of 1927), including a scheme settled under section 92 of the Code of Civil Procedure, 1908 (Central Act V of 1908), and in force immediately before the 30th September 1951 is repugnant to any provision contained in this Act or the rules made*

thereunder, the latter provision shall prevail, and the former provision shall, to the extent of the repugnancy, be void ;”

Accordingly the prayer of the appellants is inconsistent with Section 47 read with 50 and 51 of the TNHR&CE Act.

7. Section 64(1) of the Act read as follows: *64(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, 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 above Section, the Joint Commissioner should subjectively satisfy to settle a scheme, when the subjective satisfaction of the Joint Commissioner is made mandatory, this forum while sitting on the appellate side cannot compel the Joint Commissioner to subjectively satisfied for framing a scheme. The Hon'ble High Court has made similar observation in the decision reported in 1960(11) MLJ 205.

“I find it quite impossible to conceive how the Court can be clothed with a power to compel on administrative authority to be subjectively satisfied as to a certain matter, when the satisfaction has been made the essential condition under the law for the authority to proceed further..” Therefore the burden vested with the appellants to convince the Joint Commissioner to satisfy how framing of scheme of administration prayed by them will be necessary in the interest of the proper administration of the temple. But in this case, the

appellants failed to satisfy the Joint Commissioner. Hence the Joint Commissioner has rejected the claim of the petitioner.

Therefore for the foregoing reasons stated supra, I find no infirmity in the order of the Joint Commissioner and it does not warrant any interference. Accordingly the order dated 21.2.2012 of the Joint Commissioner, Thanjavur is hereby confirmed and the Appeal Petition is hereby dismissed as devoid of merit.

/typed to dictation/

**Sd./- M.Veera Shanmugha Moni
Commissioner**

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

Superintendent