

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

Tuesday the 10th day of January, Two thousand and Seventeen.

Present: Dr.M.Veera Shanmugha Moni,

Commissioner.

A.P.No.15/2016 D2

Between

1. Ambalavana Gounder ...Appellants
2. Parimalalagan
3. Adhiyaman

And

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

In the matter of Arulmigu Thalakondan Temple, Adhiyamankottai village, Nalampalli Taluk, Dharmapuri 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 30.3.2016 of the Joint Commissioner, Salem in dismissing the O.A.25/2004 under Section 63(b) of the Act.

Annexure to Order in A.P.15/2016 D2 dated: 10.01 .2017

The above appeal petition came up for final hearing before me on 20.12.2016 in the presence of Thiru.M.Rukmangathan 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 u/s 69(1) of the act against the order dated 30.03.2016 of the Joint Commissioner , Salem in dismissing the OA.25/2004 filed u/s.64(b) of the Act.`

2. The Appellants have contended that the office of the trusteeship of the suit temple is hereditary. Though the poojaris are functioning in the temple holding the inam lands but they did not claim hereditary right. The Joint Commissioner failed to discuss the evidentiary value of the Exhibits A1 to A4. Many legal points have not been looked into by the Joint Commissioner.

3. I heard Thiru.M.Rukmangathan, Counsel for the appellants and perused the relevant records. The counsel has argued that previously this forum by order dated 22.03.2011 made in R.Dis.A.P.48 to 51/2007 had remanded the case to hold fresh enquiry but the Joint Commissioner passed the order without conducting fresh enquiry. No report was called for from the Inspector and no evidence was recorded. The Joint Commissioner failed to discuss the evidentiary value of the documents and simply rejected the documents without assigning any reasons.

4. Previously the original application filed by the appellants were dismissed by order dated 24.10.2007. The said order was set aside by this court in the order dated 22.03.2011 and the case was remanded with direction to hold fresh enquiry, discussing the evidentiary value of each and every exhibit in its true perspective and pass a speaking Judicial order strictly in accordance with definition under 6 (11) of the Act read with Sec 63(b) of the Act. But as argued by the appellant's counsel, the Joint Commissioner failed to get fresh report from the Inspector and no oral evidence was recorded. But the Joint Commissioner has passed the impugned order based on the earlier report of the Inspector and evidence recorded by her predecessor. No fresh enquiry was held as directed by this forum in the remand order. In the impugned order the Joint Commissioner has observed that "in the inam

enquiry it is very clear from the evidence of the karnam of the village that sri Ramakrishnan and 6 others are poojari cum manager of the temple” . Exhibit A1 and A2 it is proved that the poojaris are poojaris cum trustees of the temple” But she failed to examine the poojaris to decide the nature of the office of the Trustee. Further, the inspector has reported that in the year 2003, Fit person was appointed and also by order dated 06.12.2004, the Assistant Commissioner had appointed Non Hereditary Trustees. The Joint Commissioner has also failed to verify who was in the management of the temple prior to the year 2003. At the same time, the onus is on the appellants to prove that the management of the suit temple has been vested with their family for more than 3 generations with cogent evidence.

Therefore, the order passed by the Joint Commissioner, Salem suffers from infirmity as stated above and liable to be set aside. Accordingly the order dated 30.03.2016 passed by the Joint Commissioner, Salem in O.A. 25/2004 is hereby set aside and the case is remanded for fresh enquiry. The Joint Commissioner is directed to conduct enquiry by affording an opportunity of being heard to the appellants and other persons having interest and pass orders in accordance with law. The appeal petition is hereby disposed of with the above directions.

/typed to dictation/

Sd./- M.Veera Shanmugha Moni
Commissioner

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

Superintendent