

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

Tuesday the 21<sup>st</sup> day of March, Two thousand and Seventeen

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

**A.P.21/2016 and A.P.22/2016 D2**

**Between**

1. P.Balasubramanian  
2. P.Kamatchi ..Appellants in A.P.21/2016

-Vs-

1. P.Panchatcharam  
2. The Inspector,  
HR&CE Admn.Department,  
Pudukkottai. .. Respondents A.P.21/2016.

**And**

1.K.Periyasamy Poosari (Died)  
2.P.Mariuthu Poosari  
3. P.Balasubramanian Poosari  
4. P.Kamatchi Poosari  
5.R.Kathalingam Poosari  
6.A.Shanmugam Poosari  
7.K.Ayyakannu Poosari (Died)  
8.A.Meenakshi Poosari  
9.C.Dhandayutham Poosari .. Appellants A.P.22/2016.

-Vs-

1. P.Panchatcharam  
2.M.Annamalai Poosari .. Respondents A.P.22/2016

In the matter of Arulmigu Kamatchiamman Temple, Poosathurai,  
Pudukkottai 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 30.6.2016 of the Joint Commissioner, Trichy in allowing the O.A.24/2010 and O.A.28/2010 filed under Section 63(e) of the Act.

**Annexure to Order in R.Dis.A.P.21/2016 and A.P.22/2016 D2**

**dated: 21.03.2017**

The above Appeal petition came up for final hearing before me on 07.03.2017 in the presence of M/s.Anandhavalli, Counsel for appellants in the both appeal petitions and Thiru.E.Ganesh, counsel for the 1<sup>st</sup> respondent in

both the appeal petitions. 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.

**COMMEN ORDER**

The above Appeal Petition filed under Section 69(1) of the Act against the order dated 30.06.2016 of the Joint Commissioner, Trichy in allowing the O.A.24/2010 and O.A.28/2010 filed under Section 63(e) of the Act.

2. The appellants in A.P.21/2016 have contended that the above O.A. has been preferred by the 1<sup>st</sup> respondent u/s.63(e) of the Tamil Nadu H.R. and C.E. Act, 1959 pleading that custom and usage of the temple is to be declared by the Department. The 1<sup>st</sup> respondent and the appellants belongs to the poosari family of Arulmigu Kamatchiamman Temple, Pudukkottai. It is the specific case of the appellants that the 1<sup>st</sup> respondent was not selected as per the custom and usage followed in the temple for entrusting the service of Samiyadi to a person. The Samiyadi service can be performed only by the family of Periyasamy Poosari. The father of the appellants was the only son to his father and therefore he was entrusted with the Samiyadi service. On his death, as per the custom and usage in the temple, all the sons of Periyasamy Poosari have to stand in front of the entire village people and poojaris of the temple and after the performance of initial pooja, on hearing the Udukkai music, the poojaris will find out on to whom the goddess enters and invite them for Samiyadi service. On the death of their father, the 2<sup>nd</sup> appellant was invited for the Samiyadi service and it was he who was doing the Samiyadi service from 2000 to 2003. Because he could not do it for one day in 2003, the 1st respondent was entrusted with the Samiyadi service as a temporary measure and the same is being taken advantage by the 1st respondent and thereafter he refused to give the said service to be called for by following the custom and usage in the temple. Kumbabishekam was performed in the temple in September 2004 and goddess has entered only on Kamatchi Poosari,

S/o.Periyasamy Poosari and it can easily be inferred that the statement of the 1st respondent that the goddess has entrusted him with Samiyadi service is a false statement. The petition itself having been filed by the 1st appellant since deceased, who has stated that Samiyadi service was not done by the 1<sup>st</sup> respondent pursuant to the custom and usage followed in the temple, the claim of the 1st respondent ought to have been rejected in limine. It is the 1st appellant who alone is the competent person to speak about the entrustment of Samiyadi service who himself having filed a petition against the 1st respondent, the case of the 1st respondent has to be treated as a false one. From the year 2009, except performing festival during Tamil month of Aadi and Masi, the Samiyadi service was not performed by any of the person. To substantiate the case of the appellants, the poojari of the temple was examined to speak about the custom and usage in the temple. The 1st respondent examined one Kasilingam in support of his case who, is not a poojari of the subject matter of the temple is concerned. The Joint Commissioner, H.R. and C.E., Trichy instead of declaring the custom and usage in the temple, has held that the 1st respondent alone is entitled to Samiyadi service and thereby ordered the application in favour of the 1st respondent. The alleged performance of Samiyadi service by the 1st respondent will not clothe him a right to continue the same as the said performance was not entrusted after following the custom and usage of the temple. The Joint Commissioner ought to have seen that even the 1st respondent has not stated that he was doing the Samiyadi service from 1999 whereas the deposition of Kasilingam-P.W.3 goes beyond the pleadings of the 1st respondent, which itself shows that he is a tutored witness.

3. The appellants in A.P.22/2016 have contended that the since the 1<sup>st</sup> respondent started creating problem in not permitting the villagers and poosaris in not selecting the person for Samiyaduthal as per the custom and usage and also did not obey the resolution made in panchayat, the appellants have rightly approached the Joint commissioner to declare the said custom and

usage in the said temple. The O.A, filed by the appellants was taken up along with O.A.No.24 of 2010 filed by the 1<sup>st</sup> respondent herein and a common order came to be passed by the Joint Commissioner, H.R and C.E., Trichy. For convenient reference, the parties in O.A.No.24 of 2010 were taken into consideration. The 1<sup>st</sup> respondent examine one kasilingam who was not a poojari of the temple is concerned and to prove the case of the appellants, the 4<sup>th</sup> appellant herein was examined and the appellants herein was also examined. The appellants 5 to 9 herein and the 2<sup>nd</sup> respondent herein are the poojaris of Arulmigu Kamatchiamman Temple, Pudukkottai and it is they who play the Udukkai instrument and finds a person on whom the goddess enter and called that person for doing the Samiyadi Service. This is the custom that is being followed in the selection of the person for Samiyadi service. The above said process will be conducted in the presence of villagers and poojaris of the temple. Because of the claim made by the 1<sup>st</sup> respondent that he alone is entitled to do the service, there is no other way for the appellants except to seek a declaration u/s.63(e) of the Act. The Joint Commissioner instead of declaring the custom and usage in the temple, has held that the 1<sup>st</sup> respondent herein alone is entitled to Samiyadi service and thereby ordered the application of the 1<sup>st</sup> respondent herein and has not stated anything about the O.A.No.28 of 2010.

4. In the Counter affidavit , the 1<sup>st</sup> respondent has stated that there are two groups of poojaris doing poojas in the temple and this Respondent is one of the poojari of the 1<sup>st</sup> group. As per customary practice and by long usage, the honour of performing saamiaadi service has been vested in the family of the respondent hereditarily. The respondent's grandfather was performing the said service till his demise and thereafter, on his death, the respondent's father is performing the service from the age of 15 till he got ill health during the year 1999. Thereafter, the respondent is performing the said service. The respondent's father had been performing the said service till the year 1998. During 1999, since the respondent's father was unwell and was not able to perform the service, the fourth Appellant was selected to

perform the said service. On the first day of the festival, the 2<sup>nd</sup> Appellant took the karagam but after some time, he refused to continue the karagam, stating that in the present computer era, his wife criticizing such age old "Samy aaduthal" and "Karagam Eduthal" and as such he ridiculed and refused to perform the same. In the year 2000, the respondent was nominated for the service of "Samy aaduthal" and thereafter this respondent has performed the Saamiaadi service till 2008. While so, in the year 2009, he enquired with the 2<sup>nd</sup> and 3<sup>rd</sup> appellants about the whereabouts of the Golden kalasam and other valuable articles in the temple suspecting theft of the same, which does not augured well with the 2<sup>nd</sup> and 3<sup>rd</sup> appellants and on such personal grudge, they forcibly obstructed him from performing the service of "Samy aaduthal". The Village elders held a meeting (panchayat) on 04.04.2009 to reconcile the issue. In the said meeting (panchayat) it was agreed between the parties that the respondent shall continue the saamiaadi service till any untoward incident takes place. In the panchayat, it was also decided that all the parties should withdraw the civil suits filed by them. But the brothers of the respondent did not cooperate in such withdrawals. Hence the panchayatdhar have directed the parties to approach the court, since the parties are not abiding by their decision regarding the withdrawal of cases. In the above proceedings, it was also specifically pleaded by this respondent that the father of this respondent who was admittedly ill from 1998 has not signed the application and his signature was forged one and for the above denial, the appellants have not produced any contra evidence which safely transpire that the signature of his father was forged one and he has not consented to file such application against him. The contention of the appellants that the 2<sup>nd</sup> appellant alone performed the service is untenable and contrary to the own stand taken by the 2<sup>nd</sup> appellant. He himself admitted before the inspector, HR&CE and the same reflected in the Inspector report that since he was instructed by his wife not to perform the samiaadi service and as such he refused to do so. Hence it is clear that the 2<sup>nd</sup> appellant has refused to perform the samiadi service on his own volition

and further passed the comment given by his wife about the festival and thereby he ridiculed the above belief. The contention disputing the performance of saamiaadi service by this respondent until 2008 is untenable, the themselves admitted the service performed by the respondent and further they signed in the decision taken by the panchyatars wherein the above service was allowed to be continued by this respondent.

5. I heard J.Anandhavalli, counsel for the appellants in the both appeal petitions , Thiru.E.Ganesh , counsel for the 1<sup>st</sup> respondent in both the appeal petitions and perused the relevant records.

6. The appellants and the respondent in AP.21/2016 are the legal heirs of Thiru.Periyasamy Poosari. As per the custom and usage, the right of performing samiyadi service has been vested in their family. As per the custom usage followed in the temple, all the sons of Samiyadi family have to stand in front of the villagers and poojaris of the temple, after the performance of pooja, and on hearing the udukkai, the poojaris will find out on to whom the goddess enters and invite him to perform Samiyadi Service. The person who is selected to perform service shall be entitled to perform till his death or till he is unable to perform.

7. Thiru.Periyasami poosari was selected to perform the Samiyadi Service at the age of 15. In the year 1998 as he was not able to perform, his younger son Thiru.Kamatchi was selected to perform Samiyadi service as per the custom and usage of the temple. But he had performed the said service for only one day and thereafter he never performed the said service. He has refused to perform on his own volition. Hence, Thiru.Periyasamy poosari had continued to perform the service till the year 2000. As he was not able to perform due to his ill health, the respondent herein was selected to perform the said service as per the custom and usage of the temple.

8. The appellants are mainly objecting the 2<sup>nd</sup> respondent's claim on the ground that the Karagam was temporarily handed over to the 1<sup>st</sup> respondent and that he was never invited to do the Samiyadi service as per the custom and usage in the temple. But, it is an admitted fact that from the year

2003 to 2008, Samiyadi service was performed by the 1<sup>st</sup> respondent herein. The same was never objected by the appellants herein. If the 1<sup>st</sup> respondent was not selected as per the custom and usage of the temple, the appellants should have only taken steps to select the person as per the custom and usage of the temple. But they themselves had allowed the 1<sup>st</sup> respondent to perform the Samiyadi service till the year 2008. The trouble started only when the 1<sup>st</sup> respondent questioned the appellants about the missing of Golden kavasam and other valuable articles. Due to the dispute between the appellants and the 1<sup>st</sup> respondent, "Sami Aaduthal" was stopped from the year 2009.

9. Further, in the village meeting held on 04.04.2009 to resolve the dispute it was decided as follows:

“ தற்போது சாமியாடி வரும் திரு.பஞ்சாட்சரம் காமாட்சியம்மன் சாமியாடி வர வேண்டும்”. So it is clearly evident that 1<sup>st</sup> respondent had performed Samiyaduthal during the festivals. It is admitted by all the parties that once the service is entrusted to a person, it cannot be reviewed, until his death or until he is unable to performance.

10. Further the appellants have failed to establish how the 1<sup>st</sup> respondent is unfit to perform "Samiyaduthal" during the festival. They did not make any specific allegation against the 1<sup>st</sup> respondent. Further it was not proved by the appellants beyond the doubt that the 1<sup>st</sup> respondent was not selected as per the custom and usage.

Therefore, the order passed by the Joint Commissioner, Trichy does not suffer from any infirmity and it does not warrant any interference. Accordingly the order dated 30.06.2016 of the Joint Commissioner, Trichy is hereby confirmed and the appeal petitions are hereby dismissed as devoid of merits.

/typed to dictation/

Sd./- M.Veera Shanmugha Moni  
Commissioner

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

Superintendent

