

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

Friday the 30<sup>th</sup> day of September, Two thousand and Sixteen.

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

**A.P. 26/2016 D2**

**Between**

Thiruvallargal

1. Murugesan
2. Ramakrishnan
3. Ashokan
4. Kandasamy
5. Murugan
6. Palanisamy
7. Rajendran
8. Jeganathan
9. Bose
10. Dhanapal
11. Dhiraviam
12. Muthukrishnan
13. Subramanian

...Appellants

**And**

1. The Joint Commissioner  
HR&CE Department, Madurai.
2. Sundaram
3. Nagappan (died)
4. Chidambaram
5. Durairaj
6. Veerabathran
7. Ravi

... Respondents.

In the matter of Arulmigu Akora Veerabathiraswamy  
Temple, Natham Town and Taluk, Dindigul 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 18.7.2016 of the Joint Commissioner, Madurai in allowing the O.A.  
filed under Section 64(1) of the Act.

**Annexure to Order in R.Dis.A.P.26/2016 D2 dated: 30.09.2016**

The above appeal petition came up for final hearing before me on  
2.9.2016 in the presence of Thiru.M.Purusothaman, Counsel for the  
appellants, Thiru.R.Boopathy, Counsel for the respondents. 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 69(1) of the Act against the order dated 18.7.2016 of the Joint Commissioner, Madurai in framing draft scheme in the Original Application filed under Section 64(1) of the Act.

2. The appellants have stated that there are temples dedicated to Arulmighu Akora Veerabathiraswamy Temple situated at Natham Town and Taluk, Dindigul District. The office of the Trusteeship has been declared as hereditary in O.A.No.8 of 1985 and O.A.No.12 of 1985 declaring that both the Appellants and the Respondents 2 to 6 herein are hereditary trustees. The Respondents 2 to 6 have filed O.A.No.7 of 2006 before the 1<sup>st</sup> Respondent under Section 64(1) for framing of a scheme with a provision that managing trusteeship may be on a rotational basis. The Appellants filed I.A.No. Nil of 2012 in O.A.No.7 of 2006 raising the preliminary objection that the O.A.No.7 of 2006 was barred by the principles of resjudicata. The Interlocutory Application was dismissed by the Joint Commissioner on 20.03.2014. Against the said order, the Appellants preferred an appeal in A.P.No.20 of 2014 before this Hon 'ble Court. This Hon 'ble Court by order dated 05.09.2014 held that persons claiming the hereditary trusteeship should establish their right before the competent Civil Court and specifically directed the Joint Commissioner while deciding the O.A.No.7 of 2006 to consider the following points:- 1. The order passed by the Deputy Commissioner in O.A.No.8/1985 and 12/1985 and order in A.P.No.29/1988. (2)Whether the Petitioner and Respondent got declaration before the competent Civil Court.(3) If so, whether framing of scheme is necessary when statue, provides for election of Board of Trustees. The O.A.No.7 of 2016 is clearly

barred by the principles of res judicata in view of the earlier order passed in O.A.No.29 of 1988 and A.P.No.55 of 1990. The Respondent failed to consider the orders passed by the Deputy Commissioner in O.A.No.8 of 1985 and 12 of 1985 and order of this Hon'ble Court in A.P.No.29 of 1988 as directed by this Hon'ble Court in A.P.No.20 of 2014 dated 05.09.2014. The respondent failed to consider the point whether the Petitioners and Respondents got declaration before the Competent Civil Court as directed this Hon 'ble Court in A.P.No.20 of 2014 dated 05.09.2014. There cannot be any scheme for making arrangement for the rotation of office of Hereditary Trustees in the temple. The Appellants alone are in possession of the temple and its properties and managing the temple and its affairs to the exclusion of all others by such long, continuous and exclusive possession and management of the temple and its affairs. The Appellants have prescribed an indefeasible right to exclusive and sole management of the temple as its present hereditary trustees. The right and interest of the Respondents 2 to 6 to claim trusteeship has got extinguished by ouster and adverse possession for over the statutory period. The 1st Respondent had no jurisdiction to decide a civil dispute whether the Respondents 2 to 6 had subsisting right to the office of the trusteeship and that without first deciding that dispute, the 1 st Respondent should not have exercised their powers under Section 64 of the Tamil Nadu Hindu Religious and Charitable Endowments Act. The 1st Respondent immediately upon passing order in O.A.No.7 of 2006 on 18.07.2016 has in a predetermined manner without enquiry prepared a draft scheme. This shows the predetermined manner in which the 1st Respondent has proceeded with the enquiry in O.A.No.7 of 2006. The 1st Respondent has framed a draft scheme providing for administration by a Board of Trustees consisting of members recorded as Hereditary Trustees in one year rotation basis which is contrary to the statutory provisions. The 1st respondent has framed the draft scheme as if in the absence of any unanimity in the

matter of choice or election of managing trustee the competent authority may appoint managing trustee and that one person selected as managing trustee cannot be elected again for two consecutive periods. There is no provision under the Hindu Religious and Charitable Endowments Act mandating such a condition. The 1st respondent has without any authority has provided for appointment of an Executive Officer for the administrative of temple in the draft scheme. Such a provision is contrary to the law laid down by the Hon'ble Apex Court in Dr. Subramaniaswamy and another Vs. State of Tamil Nadu reported in 2014 (1) CTC 763.

3. In the written statement the respondents have stated that the Appellants are not maintaining proper accounts for the income and expenditure of the temple and they are not submitting the accounts for the purpose of audit by the department. The main source of income to the temple is the rent from sixteen shops belonging to the temple. The 1st Appellant herein who is in management of the temples at present has not taken any steps to fix fair rent for all the sixteen shops of the temple according to the provisions of the HR & CE Act. Property Register, Auction Register, Budget, Thittam Register, stock register of jewels and inventory register are not prepared, and sent for approval of the authorities of the department. Management of the two suit temples by the Appellant herein from the date of the death of the father of the Respondents 1 to 3 from 26-09-1992 without giving any chance to other descendants of the founder of the temples who are Seventeen in number is also not correct and the same is against the provisions of Act. Therefore the 'period' of management of the Hereditary trustees must be fixed and their rights, duties, and liabilities must be set out by framing a' scheme for the' proper and better administration and management of the two suit temples and its properties according to the Provisions of the Act 22/ 1959. The framing of scheme for the proper administration of the suit temples has become inevitable. Since the Hereditary trustees are

seventeen in number, the right to become Managing Trustee of the temple may be on rotational basis. The 1<sup>st</sup> Appellant filed a detailed statement of objections and also filed Additional Written Statement before the lower court. But the defence has taken by the 1<sup>st</sup> Appellant is not legal and valid. The 1<sup>st</sup> Appellant stated in his oral evidence and marked exhibits R1 and R2 already marked by the Respondents 2 to 6 petitioners' side documents. The exhibit R3 to RIO has not any connection in the original Application. The Honourable Joint Commissioner, H.R & C.E, Madurai correctly understood and passed a order dated 18.07.2016 for framing a scheme for the proper and better administration.

4. I heard Thiru.M.Purusothaman Counsel for the appellants, Thiru.R.Boopathy Counsel for the respondents and perused the relevant records. The counsel for the appellants has contended that the Joint Commissioner has passed the impugned order without considering the direction issued by this forum in A.P.20/2014. Previously the appellants herein had filed appeal under Section 69(1) of the Act in A.P.20/2014 challenging the dismissal of the I.A. filed by them in O.A.7/2006 questioning the maintainability of the O.A. on the ground of res judicata. The said appeal was disposed of by order dated 5.9.2014 with the following direction:

*“It is open to the appellants to raise their objection before the Joint Commissioner. While deciding the O.A., the Joint Commissioner should consider the following points.*

*(1) The order passed by the Deputy Commissioner in O.A. 8/1985 and 12/1985 and order in A.P. 29/1988.*

*(2) Whether the petitioner and respondent got declaration before the competent Civil Court.*

*(3) If so, whether framing of scheme is necessary when statute provides for election of Board of Trustees.”*

5. Accordingly the appellants have also filed objection before the

Joint Commissioner. After perusing the materials placed before him, the Joint Commissioner has formulated 2 issues for consideration. (i) Whether the petition is barred by res judicata (ii) Whether the scheme is necessary to be framed for the temple managed by Hereditary Trustees. After elaborate discussion the Joint Commissioner decided the both issues affirmatively. Regarding the 1<sup>st</sup> issue, the Joint Commissioner held that the previous O.A. was dismissed as mismanagement was not proved but now mismanagement was clearly proved, hence the O.A. was not barred by res judicata. Regarding the 2<sup>nd</sup> issue, the Joint Commissioner has concluded that the trustees are not working jointly, it affect the welfare of the temple, hence in the interest of the temple administration a scheme should be settled.

6. Further in the impugned order the Joint Commissioner has issued only draft scheme and the scheme is not yet finalized. The Joint Commissioner has also invited objection, if any on the draft scheme. Hence it is open to the appellants to file their objections, if any before the Joint Commissioner. If any objection is filed by the appellants, the Joint Commissioner should consider the same in accordance with law. The Joint Commissioner is also directed to consider the direction issued by this forum in A.P. 20/2014 before passing any final order in the said Original Application. Till then, status quo to be maintained.

Therefore for the foregoing reasons stated supra, I find no reasons to interfere with the impugned order and it is liable to be confirmed. Accordingly the order dated 18.7.2016 of the Joint Commissioner, Madurai is hereby confirmed. The Appeal Petition is hereby dismissed with the above observation.

/typed to dictation/

Sd./- M.Veera Shanmugha Moni  
Commissioner

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

Superintendent