

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

Tuesday the 21st day of March, Two thousand and Seventeen.
Present :Dr.M.Veera Shanmugha Moni,
Commissioner.

A.P.35/2016 D2

Between

1. G.Raja Ram Naidu
2. D.Subramniya Goundar ...Appellant

And

1. R.Selvam
2.R.Suresh ...Respondents

In the matter of Arulmigu Pidariamman and Mariamman
Temple, Bommiampatti, Omalur Taluk, Salem District.

The Appeal Petition filed under Section 54(4) of the Tamil Nadu H.R. & C.E. Act, 1959 (Tamil Nadu Act 22 of 1959) against the order dated 18.11.2015 of the Commissioner, Salem in M.P.No.13/2012 passed under section 54(1) of the act.

Order in D.Dis.A.P.35/2016 D2 dated: 21.03.2017

The above Appeal petition came up for final hearing before me on 21.02.2017 in the presence of Thiru.G.Surya Narayanan, 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 54(4) of the Act Challenging the order dated 18.11.2017 of the Joint Commissioner, Salem passed u/s. 54(1) of the Act.

2. The appellants contended that the father of Ramasamy Naidu belonging to Logur Village in Omalur Taluk 30kms away from Bommiampatti Village was performing the pooja and also permitted him to cultivate the lands for his income. The villagers performed the yearly pooja after collecting tax from the public an village head representing Naidu and Gounder community will organize the festival from time immemorial. The appellants are the head representative of the two communities. The father

of the respondents representing himself to be Parambara archaka and dharmakartha had filed an application under Section 64 of the Act to recognize him as Trustee and without hearing the villagers, an order was passed on 15.06.77 recognizing the father of the respondents herein who had fabricated documents to get the orders and therefore an appeal was filed which was returned on 19.01.2004. Hence the appellant filed Revision which was treated as suo moto revision under S.69(2) in proceedings 5/2006 D2. However, the same was closed as having taken up out of time on 26.01.2011 and a suit had been filed by the appellant in O.S.No.84/2011 on the file of the Sub-Court, Mettur to declare the order under S.64 as well as the order in Suo moto revision as null and void and for permanent injunction restraining the respondents herein from interfering with the administration of the temple. The said suit is pending. In fact, in Act 1/1971, the appointment and continuance of Parambara Archakas is prohibited and the appointment of the father of the respondents to continue as Parambara Archakas and trustee is not in accordance with Law. The said order recognizing the respondent's father having passed after the Act having coming into force who had only claimed to have been an archaka by Parambara, the question of passing an order continuing him as Parambara archaka and under Section 64 itself is illegal and therefore the order to continue recognizing the respondents on the basis of such an order is also illegal. The respondent herein without making us party had filed an application under Section 54 to recognize him as heir of the deceased father which order has been challenged in the suit and the Joint Commissioner without considering any fact seems to have passed an order which is challenged herein. The said order is against law and equity and when the Joint Commissioner, know about the pendency of the suit as well as the dispute and the fact that the possession of the temple is not with the respondent's father and with the appellants herein, the Joint Commissioner, ought not to have passed an order without hearing us and the order passed had not also been communicated to us.

3. I heard Thiru.G.Surya Narayanan Counsel for the appellants and perused the relevant records. Both the respondents and their counsel remained absent.

4. In O.A.No. 7/1977 filed u/s.63(b) of the Act, the office of the Trusteeship of the suit temple was declared as Hereditary and the Respondents father Thiru.Ramasamy Naidu was declared as Hereditary Trustee of the temple. After the death of the said Ramasamy Naidu on 18.04.2012, the respondents have succeeded to the office in the permanent vacancy caused due to the death of their father. Their succession was recorded by the Joint Commissioner, Salem in the impugned order.

5. The appellants are opposing the said succession on the ground that the suit in O.S.No.84/2011 filed by the appellants challenging the order passed in O.A.No.7/1977 is still pending on the file of Sub Court, Mettur and in the Act 2/1971, the appointment and continuance of the parambara archaka is prohibited. But in the said suit in OS.No.84/2011, no stay or injunction was granted. The Hereditary trusteeship is a property right. It is an accrued right, and hence it cannot be taken away merely on the ground of pendency of suit. Hence, the respondents herein are legally entitled to the office as the persons next in the line of succession. Until the order dated 15.06.1977 made in O.A.No.7/1977 is setaside by the competent court, the respondents are entitled to succeed to the permanent vacancy that had arisen due to the death of their father. Further, the respondents are recorded as Hereditary Trustee only not as Hereditary Archakas. While recording the legal heirs of the deceased Hereditary Trustees, it is not necessary to hear the third parties. Unless the legal heirs suffer from any disqualification u/s.26 of the Act, they are entitled to succeed to the permanent vacancy in the office of the Trusteeship. In this case, the appellants have not raised any disqualification issue against the respondents.

Therefore, for the forgoing reason 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 18.11.2015 of the Joint

Commissioner, Salem is hereby confirmed and the appeal petition is dismissed as devoid of merit.

/typed to dictation/

Sd./- M.Veera Shanmugha Moni
Commissioner

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

Superintendent

To

1. The Appellants through M/s.G.Surya Narayanan, Advocate, No.103, Law Chambers, High Court, Chennai -104.
2. The Respondents through M/s E.K.Kumaresan, Advocate, No.7, 8th Trust cross street, Mandavelipakkam, Chennai -28.

Copy to

3. The Joint Commissioner, H.R. & C.E. Admn.Dept., Salem.(along with file in M.P.13 of 2012) **(BY RPAD)**
4. The Assistant Commissioner, HR & CE Admn.Dept., Salem.
5. The Inspector, HR&CE Admn. Department, Omalur.
6. Extra.