

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

Tuesday the 17th day of May, Two thousand and Sixteen.

Present: Dr.M.Veera Shanmugha Moni, I.A.S.,
Commissioner.

A.P.6/2016 D2

Between

S.Velayutham

...Petitioner.

And

- 1.The Joint Commissioner,
HR&CE Admn.Department, Tirunelveli.
2. Fit person, Arulmigu Thenpalaniandavar
Temple, Thenkasi, Tirunelveli.
3. S.Ganesan
4. Jamuna.

....Respondents.

In the matter of Arulmigu Thenpalaniandavar Temple, Thenkasi,
Tirunelveli.

The Appeal Petition filed under Section 38(3) 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 Joint Commissioner, HR&CE Admn Department,
Tirunelveli in M.P.No.7/2014 passed under Section 38 of the Act.

Order in R.Dis. A.P.16/2016 D2 dated: 17.05.2016

The above Revision petition came up for final hearing before
me on 29.4.2016 in the presence of Thiru.C.Dharmaraj Counsel for the
petitioner, M/s.Amardeep Counsel for the 2nd respondent and
Thiru.E.Ganesh Counsel for the 3rd respondent. 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 38(3) of the Act
against the order dated 18.11.2015 of the Joint Commissioner,
Tirunelveli passed under Section 38 of the Act.

2. The appellant contended that he is the owner of the property
bearing door No.367 and 367A comprised in S.No.700/8A1A, situated in
Thenkasi Municipality old ward No. 2 swami sannathi street. The said
property was purchased for a valid consideration from Tmt.Jamuna,

w/o. late Rengasami Naidu vide document No.1153 dated 25.3.2013 on the file of the Sub-Registrar 2 Thenkasi. When the said property was conveyed to the appellant, the said property was purportedly under the enjoyment of the 3rd respondent who was said to have been entered as tenant during the period of the husband of Tmt. Jamuna herein, predecessor in title. The 3rd respondent had been asked to vacate the demised property by Jamuna and thereafter no rent was received from the 3rd respondent herein. That when the 3rd respondent was approached by the appellant and asked him to vacate, he requested 6 months time to vacate and even after the expiry of that time undertaken to vacate, he subsequently prayed for extension of time for the same, under the purported guise of family situation. A notice from the 1st respondent was served on the appellant saying that the demised property is burdened with a charge of performing a “Thiurkappu and Thiruveethi elutharual” festival to Lord Thenpalani Andavar reigning at Arulmigu Thanpalani Anandavar Temple, Thenkasi during every Thirukarthigai uthsavam. It was a surprise to the appellant since the appellant was not aware of the same at the time of purchase or informed by the seller. The document of sale deed also does not contain any such recital or conditions. The appellant felt that as a bonafide purchaser, had been left in disguise. After coming to know the burden charged on the said property, the appellant took steps to amend the sale deed to that effect and got it be executed by the predecessor in title vide document NO.3260 dated 22.9.2014 on the file of the Joint Sub Registrar, Thenkasi and also the appellant gave his consent to pay the current expenditure of performing the above function in his capacity of that he is the person responsible in law. Though the appellant, as a person in law has consented to remit the current expenditure, the 1st respondent has passed an order in M.P.7/2014 dated 18.11.2015, directing to the 3rd respondent here only to remit the entire expenditure incurred in the said festival Rs.2,66,750/- without any mentioning of the current expenditure-or the future performance, which has created unnecessary confusion. By virtue of

impugned order, the 3rd respondent herein, is now under the impression that he alone is entitled to perform the function as burdened which will create serious repercussions in future. The Joint Commissioner/1st respondent has erred in passing the impugned order, that while the appellant who is lawfully responsible to perform the function/charities has been a party and enquired, it is he, who ought to have been directed to remit the expenditures incurred and not the 3rd respondent who is an unauthorized occupier. The Joint Commissioner/1st respondent has erred in passing the impugned order, even though the appellant has apparently consented to pay the current expenditure during the proceedings. The 3rd respondent who is none other than a third party in this matter could not have any right either to perform the charities a burdened charge or to remit the expenditure for the same as against the person responsible in law is enclosed herewith the appellant.

3. In the counter affidavit the 3rd respondent contended that the properties have been totally dedicated to the Temple for the performance of the above religious charities. In the said Deed, it has unambiguously spelt out that said Mr. Andiyapillai and his heirs would continue to perform the religious charities perpetually. Further it was covenanted in the said deed that the property is inalienable and the legal descendants has been instructed to manage the property and to utilize the rents/income for the performance of above charities. The cursory reading of the above clauses of the deed would elucidate that the said property has been dedicated for the enforcement of above said charities in the temple and the property has been vested on the legal descendants of the said Andiyapillai to manage it alone and instructed to utilize the funds generated from the said property for the performance of above said charities. Apart from that the Settlor has curtailed his legal descendants from alienating the said property. The subject property is absolutely dedicated in favour of the Minor Idol and the same is inalienable. The property shall not be encumbered in any manner or in any kind and any transfer in violation is invalid and nonest, in the eyes of Law. The reading

of the Deed dated 19.02.1930 in whole would disclose the nature of the endowment and it will be gainsaid for the Appellant to content otherwise. The ultimate beneficiary from the said property is Minor Idol and as such the authorities created under the Special Statute viz., HR&CE Act alone have been vested with powers to deal and about the said properties. The legal descendants of said Andiyapillai who all the more can act in the capacity of manager of the property cannot barter away the rights of the idol to their whims and fancies. After the demise of said Andiyapillai, the legal descendants of said Andiyapillai have illegally sold the above property to one Subramania Bhattar by virtue of a registered Sale Deed Doc No.2014/1964 but however the enforcement of above said charities was covenanted in the said deed. The said Subramania Bhattar again illegally sold the above property to one Rangasamy Naidu, the husband of the 4th Respondent vide a registered Sale Deed dated 31.01.1986 registered as Doc.No.145/1986. In the said deed also, the clauses pertaining to enforcement of the above said charity has been found place. Subsequent to the demise of said Rangasamy Naidu, his wife Jamuna, the 4th Respondent herein has illegally sold the above said property in favour of the Appellant herein by virtue of a registered Sale Deed dated 15.10.2013 registered as Doc.No.1153/2013. In the said Sale Deed, the Appellant and the 4th Respondent have collusively omitted the clauses pertaining to the enforcement of the above said charities in the said temple with a malafide intention to grab the above property. The appeal is not maintainable since the Appellant is not the affected person as provided under Section 38(3) of the Act. The wisdom of the legislation conferring right to prefer appeal in terms of Section 38(3) of the Act who burdened with any payments in terms of Section 38(1) and 38(2) of the Act. In the present case, the Appellant has bot been burdened by the authority with any payment in terms of Section 38(1) & 38(2) of the Act and as such the Appellant has no Locus Standi to prefer the appeal. The Appellant and 4th Respondent colluded with each other and tried to illegally grab the property with dedication to their personal benefits and

the Appellant even after exposed about their illegality in the proceedings before the 1st Respondent, refuse to make any payment to the institution which expose his evil intention and he has interested in unlawfully gaining from the above said property and he undoubtedly he is perpetrator of Law. As per Section 38(1) of the Act, this Respondent being the person in occupation of the said property is bound to pay the money for the enforcement of the charity and as per the direction, the same was deposited and as such nothing required to be interfered by this Hon'ble' Forum. The Appellant who claims to be the purchaser of the said property has no title over the said property, since the said property is inalienable and ipso facto, the sale deed is nullity and nonest in the eyes of law and as such the Appellant has no right title over the said property to maintain the above appeal.

4. I heard Thiru.C.Dharmaraj Counsel for the petitioner, M/s.Amardeep Counsel for the 2nd respondent and Thiru.E.Ganesh Counsel for the 3rd respondent and perused the relevant records. The 4th respondent remained ex parte.

5. The counsel for the petitioner argued that there is no absolute dedication but only charge on the property and the 3rd respondent is only a tenant, hence he has no right to perform the charities. On the other hand the counsels for the 2nd and 3rd respondents have argued that the suit property has been dedicated for the performance of the Kattalai in the suit temple and it is inalienable. There is complete dedication and it is expanding one.

5. As per the recitals in the partition deed dated 19.2.1930, the suit property has been dedicated for the performance of the certain kattalai in the said temple. In the said deed it has been stated as follows:
 “...ஷை தபசில் இரண்டாவது அயிட்ட சொத்தை தென்காசி தென்பழனியாண்டவருக்கு இப்போது வருஷம் தோறும் திருக்கார்த்திகைக்கு முன்க காப்பு சுவாமியெழுந்திருந்து முதலியது வகைக்கு யேர்ப்படுத்தி அதன் வாடகை வரும் படியிலிருந்து ரூ.30/- க்கு குறையாமல் சிலவு செய்து நடத்தி வருகிறபடியால் ஷை சொத்தை நம்மளில் ஒண்ணு லக்க நபர் அவர்களுடையவும் அவர்கள் ஸ்திரி சுந்தரத்தம்மாளுடையவும் ஆயில் வரை

அனுபவித்துக் கொண்டு அதன் வாடகை வரும்படியை வைத்து மேல்க்கண்ட விபரப்படிக்குள்ள தருமங்களை நடத்தி வர வேண்டியது. இனிமேல் நம்மளில் ஒருவரும் யெந்த காரணத்தை இட்டும் ஷை சொத்தை யாதொரு பாராதீனமும் செய்யக்கூடாது”.

Accordingly the property is inalienable. The settlor has not fixed any maximum amount for the performance of the Kattalai but his legal descendants shall perform the kattalai from the income derived from the said property. They can act as manager of the property and enjoy the property till their life time but they have no right to alienate the properties. Further, it was not specifically stated that any surplus or residue left after performance of kattalai may be used by the manager/ legal descendants for their own use. Hence, the dedication is complete and absolute. After death of the settlor the suit property absolutely vested with the beneficiary temple. As the property has been dedicated in favour of the minor idol any sale without sanction of the Commissioner and Government as contemplated under Section 34 of the TNHR&CE Act is null and void. The appellant has also purchased the property without sanction of the Commissioner as required under Section 34 of the TNHR&CE Act hence the sale is null and void and he cannot be construed as a person responsible in law to perform the kattalai.

6. Further, the properties had been alienated with covenant to perform the said kattalai but the purchasers had failed to perform the said kattalai. As per the deed the kattalai was not performed by anybody from the year 1964 to 2013. Hence, the fit person of the temple has filed a petition before the Joint commissioner to recover the expenditure from present occupier of the property. In the said petition the fit person has prayed to direct the respondents to pay the amount individually or jointly to the temple. But the appellant was not ready to pay the arrears from 1964 to 2013. During the course of the enquiry before the Joint Commissioner the appellant herein came forward to pay the current expenditure only. But the 3rd respondent has paid the 50% of the outstanding amount as directed by the Joint Commissioner and

undertake to pay the remaining amount. Hence the Joint Commissioner directed the 3rd respondent to pay the outstanding amount and also directed the fit person to take necessary action to set aside the same. Hence the appellant cannot contend that the Joint Commissioner ought to have directed the appellant to remit the expenditures incorrect.

Therefore I find no infirmity in the impugned order and it does not warrant any interference. Accordingly the order dated 18.11.2015 of the Joint Commissioner, Tirunelveli is hereby confirmed and the appeal petition is hereby dismissed as devoid of merits. Further the fit person is hereby directed to take steps to auction the property for lease on fresh terms after taking possession of the property by following due process of law and by fixing the rent at the current market value.

/typed to dictation/

Sd./- M.Veera Shanmugha Moni
Commissioner

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

Superintendent

To

1. The Petitioner through Thiru.C.Dharmaraj, Advocate, M-188, 9th Cross street, Thiruvalluvar Nagar, Thiruvannamiyur, Chennai 41.
 2. Fit person through M/s.Amardeep, Advocate, No.80, Additional Law Chambers, High Court Buildings, Chennai 104.
 3. R3 through Thiru.E.Ganesh, Advocate, No.61/23, Sakthi Avenue, South Lock Street, Kottur, Chennai 85.
 4. Tmt.Jamuna, 192, Mathangkoil, 1st street, Melapuliyur, Thenkasi Taluk, Tirunelveli District.
- Copy to
5. The Joint Commissioner, HR & CE Admn.Dept., Tirunelveli. (along with file in M.P.7/2014) by RPAD
 6. The Assistant Commissioner, HR & CE Admn.Dept., Tirunelveli.
 7. The Inspector, HR&CE Admn.Department, Thenkasi.
 8. Extra