

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

Thursday the 11<sup>th</sup> day of August, Two thousand and Sixteen.

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

A.P.8/2016 D2

Between

M.Bose

...Appellant

And

1.M.M.Thirumalaimuthu

2. The Executive Officer, Arulmigu Swyambu  
Saneeswara Bhagavan Temple, Kuchanur,  
Uthamapalayam Taluk, Theni District.

3. The Fit person,

Arulmigu Swyambu Saneeswara Bhagavan  
Temple, Kuchanur, Uthamapalayam Taluk, Theni  
District.

.. Respondents.

In the matter of Arulmigu Swyambu Saneeswara Bhagavan  
Temple, Kuchanur, Uthamapalayam Taluk, Theni 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 19.11.2014 of the Joint Commissioner, HR&CE Admn Department,  
Madurai in allowing the I.A.35/2014 in O.A.23/2012.

Order in D.Dis.A.P.8/2016 D2 dated: 11.08.2016

The above Appeal petition came up for final hearing before  
me on 26.7.2016 in the presence of Thiru.N.Eswaran, Counsel for the 1<sup>st</sup>  
respondent. Both the appellant and his counsel called absent. Upon  
hearing the 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 19.11.2014 of the Joint Commissioner, Madurai  
in allowing the I.A.35/2014 in O.A.23/2012.

1. The appellant contended that the Joint Commissioner, Madurai  
failed to consider the fact that the 1<sup>st</sup> respondent was suspended for  
misappropriation. The Hon'ble High Court has restrained the respondent

and other suspended trustees from being reinstated in W.P.33237/2014. The vacate stay petition filed by the suspended trustees have also been dismissed by a detailed order by the Hon'ble High Court on 15.7.2015. The 1<sup>st</sup> respondent has working at Sakthi Sugars, Thiruppachethi, Sivagangai District till date. He does not do any pooja works and now he is also not a trustee. The administration of the Arulmigu Swayambu Saneeswara Bhagavan Thirukoil now vests only with the respondents 2 and 3 and they are the competent persons. Permitting the 1<sup>st</sup> respondent to be made as a party in O.A.23/2012 and thereby indirectly allow him to act as a trustee will be against the spirit of the orders passed by the Hon'ble High Court restraining the reinstatement of the 1<sup>st</sup> respondent. The appellant is the dominus litus in O.A.No.23/2012 and the 1<sup>st</sup> respondent cannot be impleaded. The burden of proof lies only upon the appellant and he may examine any person including the 1<sup>st</sup> respondent if necessary. Therefore the 1<sup>st</sup> respondent is not a necessary party to the proceeding.

3. In the counter affidavit the 1<sup>st</sup> respondent contended that the respondent is a Hereditary Trustee of the temple and the disciplinary proceedings on the alleged charges were already over and final orders have been passed by this Hon'ble Court and the statutory appeal is pending before the Appellate authority. In no way this disciplinary proceedings disentitle the 1<sup>st</sup> respondent from getting impleaded in the petition filed by the appellant. As per Section 6(15)(a) of the Act 1<sup>st</sup> respondent is the person having interest and his right to offer his views in the appellant's petition is guaranteed under the Act. Since the appellant has filed petition to recognize the pooja rights, as a Hereditary Trustee of the temple the 1<sup>st</sup> respondent is the necessary party to putforth the customary practice before the court and hence the learned Joint Commissioner, Madurai impleaded this respondent as party respondent. All the allegations raised by the appellant are baseless and not necessary for impleadment in the proceedings.

4. The above appeal petition was taken up for hearing on 7.6.2016, 5.7.2016 and finally on 26.7.2016. On all the occasions both the appellant and his counsel were called absent. Hence, it is decided to pass orders on merits after hearing Thiru.N.Easwaran, Counsel for the 1<sup>st</sup> respondent and perusing the relevant records.

5. The appellant mainly opposing the impleadment of the 1<sup>st</sup> respondent herein on the ground that he is not a person having interest as he was suspended from the Hereditary Trusteeship. The appellant have filed O.A.23/2012 under Section 63(e) of the Act praying to declare his right to perform pooja as poojari in the suit temple. In the affidavit filed in the said original application the appellant has stated that "The Trust Board has for the past 15 years accepted me as the poosari of the Vinayagar Sannathi and a resolution was also passed by the Trust Board. I have been rendering the poojai properly to the satisfaction of the devotees and also the Board of Trustees". So, the appellant claiming his right on the ground that his service was accepted by the Board of Trustees. The 1<sup>st</sup> respondent is a former Trustee of the above temple. Under Section 63(e) of the Act, the Joint Commissioner shall have power to inquire into and decide "*whether any person is entitled, by custom or otherwise, to any honour, emolument or perquisite in any religious institution ; and what the established usage of a religious institution is in regard to any other matter*".

Accordingly the 1<sup>st</sup> respondent herein being a former Trustee of the temple, aware of the custom and usage of the temple. The main issue to be decided in the original application is whether the appellant is having right to perform pooja in the suit temple. Hence the presence of the 1<sup>st</sup> respondent may help the Joint Commissioner to decide the issue.

6. The Hon'ble Supreme Court of India in their decision reported in Maria Margarida Sequeria Fernandes Vs. Erasmo Jack de Sequeria, AIR 2012 SC 1727, held that Court deciding dispute is duty bound to find out the truth and every endeavor should be made to find out the truth. In paragraph 52, the Supreme Court held thus:-

***52. Truth is the foundation of justice. It must be the endeavor of all the judicial officers and judges to ascertain truth in every matter and no stone should be left unturned in achieving this object. Court must give greater emphasis on the veracity of pleadings and documents in order to ascertain the truth”.***

**Any facts putforth by the 1<sup>st</sup> respondent and also documents filed in support the facts may useful to take a decision in the said case. Further, the appellant will also get opportunity to defend the facts putforth by the 1<sup>st</sup> respondent and disprove the facts with evidences. The suspension of the 1<sup>st</sup> respondent from the post of Hereditary Trusteeship is not a valid ground to reject his impleadment.**

**Therefore for the foregoing reasons stated supra, I find no reasons to interfere with the order passed by the Joint Commissioner and it is liable to be confirmed. Accordingly the order dated 19.11.2014 of the Joint Commissioner, Madurai made in I.A.35/2014 in O.A.23/2012 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 Petitioner through Thiru.M.Purusothaman, Advocate, No.12/60, Murugappa Street, Ayanavaram, Chennai 23.**
- 2. 1<sup>st</sup> respondent through Thiru.N.Eswaran, Advocate, No.156, Thambu Chetty Street, Parrys, Chennai 1.**
- 3. The Executive Officer, Arulmigu Swyambu Saneeswara Bhagavan Temple, Kuchanur, Uthamapalayam Taluk, Theni District.**
- 4. The Fit person, Arulmigu Swyambu Saneeswara Bhagavan Temple, Kuchanur, Uthamapalayam Taluk, Theni District.**
- Copy to**
- 5. The Joint Commissioner, HR & CE Admn.Dept., Madurai.**
- 6. The Assistant Commissioner, HR & CE Admn.Dept., Theni.**
- 7. Extra**