

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

Tuesday the 4th day of April, Two thousand and Seventeen.

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

A.P.20/2016 D2

Between

1. Mr.S.Muthu
 2. Mr.P.Tilak Kumar
 3. Mr.K.S.Ravichandran
 4. Mr.S.Suresh Babu
- ...Appellants

And

1. The Joint Commissioner,
HR&CE Admn.Department, Chennai
 2. B.Balasubramaniyam (since deceased)
 3. G.Ekambara Chetty (since deceased)
 4. Mr.C.R.Palani Doss
 5. Mr.D.S. Balasundaram (since deceased)
 6. Mr.P.L.D.Elumalai
 7. Mr.M.Elangovan
 8. Mr.A.K.Gurunathan
 9. Mr.K.M.Venkatesan
 - 10.Mr.G.Gopal
 11. Mr.C.G.Lakshmi Narayana
 12. Mr.S.Gnanasekar
-Respondents

A.P.32/2016 D2

Between

1. C.R.Palanidoss
 2. V.S.Bhaskar
- ..Appellants

And

- 1.The Joint Commissioner,
HR&CE Admn.Department, Chennai
2. B.Balasubramaniam (deceased)
3. G.Ekambara Chetty (deceased)
4. D.S.Balasundaram (deceased)
5. P.L.D.Elumalai
6. K.S.Ravichandran
7. M.Elangovan
8. A.K.Gurunathan
9. K.M.Venkatesan
10. S.Suresh Babu
11. G.Gopal
12. C.G.Lakshmi Narayana

13. S.Muthu
 14. S.Gnanasekar
 15. P.Thilakumar

....Respondents

In the matter of Sri Muthukumaraswamy Devasthanam, Rasappa Chetty Street, Chennai

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 draft scheme issue in order dated 10.2.2016 of the Joint Commissioner, HR&CE Admn. Department, Chennai in O.A.3/1999 under Section 64(5)(a)&(b) of the Act.

Common Order in R.Dis.A.P.20/2016 & 32/2016 D2 dated: 04.04.2017

The above Appeal petitions came up for final hearing before me on 21.02.2017, Thiru.Mohanamurali, Counsel for the appellants in A.P.20/2016, Thiru.P.K.Sivasubramaniam, Counsel for the appellants in A.P.32/2016, Thiru.N.Kanakavelu, counsel for the 10th respondent and M/s.Sumithra, Counsel for the 11th 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 Petitions were filed under Section 69(1) of the Act against the order dated 10.02.2016 issued by the Joint Commissioner, HR&CE Admn. Department, Chennai, in O.A.No.3/1999 passed under Section 64(5)(a) & (b) of the Act.

2. I heard Thiru.Mohanamurali counsel for the appellants in A.P.No.20/2016 , Thiru.P.K.Sivasubramaniam , Counsel for the Appellants in A.P.No.32/2016, Thiru.N.Kanakavelu, Counsel for the 10th Respondent and M/s.Sumithra Counsel for the 11th respondent and perused the relevant records.

3. The counsel for the appellants argued that there was no inconsistency in the present scheme and hence there was no need to modify the scheme.

Further, for modification of a scheme, leave to be obtained from the Civil Court. The SMR was initiated on the basis of the audit report pertaining to the Fasli 1406. There was scope for rectifying the defects. No action was taken u/s.90 of the Act. There was no cause of action for modification of the scheme. Though it was initiated in the year 1999, the issue was pending for more than 15 years. The Fit person was appointed for the conduct of elections, hence it was prayed to elect Trustees and to hand over the charge to them. Hence, the order of the Joint Commissioner, was liable to be set aside.

4. The above appeal petitions were filed challenging the order dated 10.02.2016 of the Joint Commissioner, Chennai in O.A.No.3/1999, wherein the Joint Commissioner had issued the preliminary order stating his intention to modify the existing scheme of administration in the interest of the proper administration and development of the above temple. He had also invited objections or suggestions from the persons in the management of the temple, respondents in the O.A. and other persons having interest. But the appellants instead of filing their objections or suggestions before the Joint Commissioner have chosen to file these appeal petitions.

5. When these appeal petitions are pending before this forum the Joint Commissioner, Chennai has issued Drafts Scheme of administration vide order dated 01.02.2017 and also invited objections or suggestions if any on the Draft Scheme. In the judgement reported in 2002(5) CTC 786, the Hon'ble High Court has held that ***“ Application was allowed and draft scheme was framed by Deputy Commissioner. Appeal filed to the commissioner against framing of draft scheme dismissed as infructuous since the final scheme was framed in the meanwhile . Aggrieved by this order person claiming to be hereditary trustee filed suit u/s.70 of the Act. Suit was dismissed and dismissal of suit was confirmed in appeal. It was held that dismissal of appeal against draft scheme on the ground that appeal had become infructuous since the final scheme had been framed is legal and valid. Challenge against draft scheme does not survive after the framing of scheme”***.

In the case on hand, appeal petitions were filed against the preliminary order issued by the Joint Commissioner, Chennai. In the meanwhile, Draft Scheme has been issued by the Joint Commissioner, Chennai on 01.02.2017. Hence, the preliminary order does not survive after issue of the Draft Scheme. Hence the above decision squarely applies to the present appeals.

Therefore, for the foregoing reasons stated supra, nothing survives for adjudication in these appeal petitions and are liable to be dismissed as infructuous. Accordingly the appeal petitions are dismissed as infructuous. Both the appellants and the respondents are at liberty to file objections or suggestions if any on the Draft Scheme before the Joint Commissioner.

/typed to dictation/

Sd./- M.Veera Shanmugha Moni
Commissioner

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

Superintendent

To

1. The appellants in A.P.20/2016 through Thiru.K.Mohanamurali, Advocate, No.13, Law Chambers, High Court, Chennai- 600 104.
2. The appellants in A.P.32/2016 through Thiru.P.K.Sivasubramaniam, Advocate, No.99, Law Chambers, High Court Buildings, Chennai- 600 104.
3. The 10th respondent through Thiru.N.Kanakavelu, Advocate, No.43/14, Adam Sahib Street, Royapuram, Chennai-600 004.
4. The 11th respondent through M/s.G.Sumithra, Advocate, No.35, Law Chambers, High Court Building, Chennai- 600 104

Copy to

5. The Joint Commissioner, HR & CE Admn.Dept., Chennai.
6. The Assistant Commissioner, HR & CE Admn.Dept.,Chennai.
7. Extra