

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

Friday the 5th day of May, Two thousand and Seventeen.

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

A.P.No.33/2016 D2

Between

1. N.Sathan
2. K.Sathan

...Appellants.

And

- 1.The Joint Commissioner,
HR&CE Admn.Department, Sivagangai
2. Sathappan Poosari
K.Pudupatti, Thamaraipatti post,
Puzhuthipatti via Thirupathur Taluk,
Sivagangai District

..Respondents.

In the matter of Arulmigu Malayala Sastha Ayyanar Periya Karuppusamy Kovil, K.Puthupatti, Thamaraipatti post,Puzhuthipatti via Thirupathur Taluk,Sivagangai District

The Appeal Petition filed under Section 53(5) of the Tamil Nadu H.R. & C.E. Act, 1959 (Tamil Nadu Act 22 of 1959) against the order dated 16.9.2016 of the Joint Commissioner, HR&CE Admn Department, Sivagangai in dismissing the Hereditary Trustees under Section 53(2) of the Act.

Order in D.Dis.A.P.33/2016 D2 dated: 05.05.2017

The above Revision petition came up for final hearing before me on 21.03.2017 in the presence of Thiru.Y.Arul Manickam, Counsel for the appellants and Thiru.E.Ganesh, counsel for the 2nd 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 was filed u/s.53(5) of the Act against the order dated 16.09.2016 of the Joint Commissioner, HR&CE Admn. Department, Sivagangai in dismissing the appellants from Hereditary Trusteeship u/s.53(2) of the Act.

2. The appellants have stated that they were Hereditary Trustees of

Arulmigu Malayala Satha Ayyanar Periya Karuppusamy Kovil at K.Puthupatti, tharmapatti Post, Puzhuthipatti via. thitripathur Taluk, Sivagangai District. The temple is neither listed u/s.46 nor notified under section 71 of Hindu Religious and Endowment Charity Act 1959. It is a small temple. The appellants and the other hereditary Trustee who are cousins/coparceners and descendants of their fore father who founded the temple of Arulmigu Malayala Satha Ayyanar Periya Karuppusamy Kovil around 100 years ago. Lands measuring about 14 Acres in the village of K.Puthuatti were endowed to the temple. The descendants of the founder of the temple have been functioning hereditary trustees and poosaris of the temple right from the foundation of the temple. For many years the family members of the appellants and their cousins were working on the lands endowed to the temple in addition to laboring in their own land and managed the temple with the produces obtained from agriculture. While the families of the appellants and their cousins had been exclusively managing and maintaining the temple for generations, based on the false complaints made and misinformation spread by certain people inimical to the temple. The department of H.R&C.E tried to bring the temple under ambit of the H.R.&C.E Act and to take over the administration of Arulmigu Malayala Sastha Aiyandar Kovil. The Hon'ble Sub Judge of Sivagangai was pleased to pass Decree and Judgment dated 26-08-1996 allowing the suit filed by the Trustees. As per the decree the appellants herein, Mr.A.L.Sathan, S/o Azhagar, Mr.V.Thenan slo Vellaisamy and Mr.T.Sathan S/o Thalaiyari were declared as Hereditary Trustees of Arulmigu Malayala Satha Aiyandar Kovil and permanent injunction was granted against the department from interfering with the administration of the temple. It is pertinent to note that no appeal was preferred by H.R.& C.E department against the Decree and the Judgment passed in O.S. No.12511993. Among the hereditary trustees declared by the Hon 'ble court Mr.T.Sathan died long ago and another Trustee Mr.A.L.Sathan who had been head of the Trustees passed away later. At present the appellants and another Trustee Mr.V.Thenan, who also has been removed by the impugned order are managing the temple affairs in the capacity of the

hereditary trustees. The legal heirs of the deceased hereditary trustees have to be included to the Trust. Till 2005 a person belonging to the families of the Trustees had been the poosari of the temple Arul Migu Sastha Aiyandar Kovil. In the year 2005 one Mr.Nachan was functioning as the poosari of the temple. He was nephew of then Trustee Mr.T.Sathan S/o Thalairyari. Since he could not perform his duties actively because of his illness the Trustees appointed the second Respondent Mr.Sathappan, as Poosari even though he did not belong to family of the Trustees. In 2012 received complaints from the worshippers against the second respondent Mr.Sathappan, the poosari that he was showing discrimination in distributing the prasadam and performing rituals. Further more he was disobedient to the instruction of the Trustees especially related to conducting pooja every monday except in case of some death in the village and to render accounts of offerings made by worshippers. Since the second respondent did not mend his ways and it appeared that he was in collusion with the people who used to be inimical to the temple, the Trustees were constrained to remove the second respondent from being poosari of the temple. Since the second respondent Mr.Sathappan was instigating trouble makers and was creating unpleasant situation in the Village, the Thasildhar of Thirupathur Taluk convened peace committee meeting. Keeping in mind the necessity of peaceful functioning of the temple, the appellants and other Trustees including Mr.V.Thenan attended the peace committee meeting convened by Thasildhar. However the second respondent did not attend the peace committee meeting and instead he approached Hon'ble High Court, Madurai Bench and filed W.P No.6299 of 2012 to restrain the Thasildhar from convening the peace committee meeting. While the Writ petition was pending the second respondent attended the peace committee meeting convened again by the Thasildhar of Thirupathur Taluk and he undertook to obey the instruction of the Trustees and perform his duties in the proper manner. Based on the decision taken at the peace committee meeting the Hon'ble High Court of Madras disposed the writ petition W.P.No.6299 of 2012. Being keen to maintain peace and decorum of the temple the Trustees agreed to the

arrangement of the Thasildhar of Thirupathur. However the second respondent remained recalcitrant and failed to turn away from his misconducts. Hence he was removed from the service by the unanimous decision of the Trustees after duly communicating the decision to the Thasildhar of Thirupathur Taluk. It is evident from the order dated 18-05-2012 issued by Thasildhar of Thirupathur. The second respondent has lodged the complaints before the H.R.&C.E making false and baseless allegations against the appellants. The appellants fully cooperated with the enquiry conducted by the Joint Commissioner of H.R.&C.E department, Sivagangai. On 09-06-2016 while the enquiry was pending on the file of the first respondent herein, a meeting was conducted in the presence of the First respondent, Joint Commissioner, H.R.& C.E. Sivagangai. The advocates of the appellants and that of the second respondent and general public resulting in a compromise agreement between the appellants and the second respondent. As per the said compromise agreement the four hereditary trustees and poosari Sathappan would function as poosari of the temple in turns. Each would function as poosari for one year. Following the said compromise in the presence of the same officials and the public the Will of the deity was sought by throwing lots. As result of the will of the deity shown in the lot the first Appellant herein would be the first poosari followed by A.Raja Son of former hereditary Trustee Mr.Azhagar, K.Sathan S/o Kodangi, S.Sathan Slo Sathan and Sathappan the second respondent. The above said compromise was also acted upon by the parties concerned. The second respondent handed over the movable properties of the temple to the first appellant in the presence of Inspector of H.R.&C.E Department on 15-07-2016. The First Appellant has been performing the functions of the poosari since then. Despite the aforesaid compromise made by and in the presence of the officials of the H.R.& C.E, instead of closing the enquiry, the first respondent has passed the impugned order dated 16-09-2016. The learned Joint commissioner, H.R. & C.E, Sivagangai has held that they are responsible for the law and order problem and lack of poojas for more than one year based on subjective oral evidence adduced by the second respondent and witnesses brought by him without

considering document evidences such as Writs issued by Hon'ble High Court, proceedings of the Thasildhar of Thirupathur and othe such documents. In holding that the appellants have mismanaged the proceeds of sale of cattle offered to the temple, the learned Joint Commissioner, H.R.& C.E department, Sivagangai has erred in not examining the person to whom the money was actually entrusted but recording evidence of a person who was not at all connected with the said fact. The learned Joint Commissioner, H.R.& C.E department, Sivagangai has attached weightage to the deposition of the hostile Hereditary trustee but he has failed to notice the fact the removal of the second respondent from the post of poosari was done unanimously by all the trustee in the presence of villagers after seeking the will of the deity. 'Even though no contra evidence was adduced by the second respondent or any other witness regarding the income of the temple, the learned Joint Commissioner has wrongly held as the appellants have misrepresented about the same and failed to adhere to Section 86(1) of the Act.

3. In Counter Affidavit the 2nd respondent have stated that the origin of the above temple has been lost in antiquity and the temples are believed to be in existence for more than 400 years. The land measuring an extent of 14 acres of nanja lands and 3 acres of punja lands comprised in S.No.216/2, 216/5 and 216/6, Karisalpatti village classified as Devadayam endowed for the purpose of daily Poojas in A/m. Malayala Sastha Ayyanar Temple. The management and administration of all the group of temples has been vested with the members of the above said K. Pudupatti Village. The expenses for the repair works and maintenance of the temple has been met out from the contributions of the members of the said village. The primary festivals of the temple and daily Poojas have been performed by the collective contribution of the villagers. Similarly as far as conduction of renovation works to the temple, Tirupani Committee was constituted to the temple by the jurisdictional Assistant Commissioner during the year 1973 and as well as in the year 1993 comprising of various communities including Pillaimar, Konar,

Chettiar, Muthuraiyar, Servai, Achari etc. The Appellants herein, one V. Thenan, Son of Velaichamy, A.L. Sathan, Son of Alagan and T. Sathan Son of Thalaiyari were utilizing the lands of the temple, but however, they have not made any contribution for the day to day affairs of the temple and for the celebrations of the festivals. As such, in the year 2001, the elders and members of the above village sought the appellants to provide the account relating to the income derived from the above lands. However, they have refused to produce the details of the income and on the other hand, due to the questioning by the villagers about the exploitation of the temple lands, they developed the enmity with the villagers and they have refused to handover the idols of urchavamurthy and other gold articles to perform festivals, thereby they prevented the villagers from conducting the festivals to the temple and created communal disharmony and law and order issue. In the meanwhile, as per the customary usage and practice prevailing in the temple, kodangi was called by the villagers and as per the god wish by Arul Vakku and Thiruvakku, the Respondent has been nominated as the poojari of the temple, but however, the appellants and other alleged trustees have interfered and prevented the Respondent from performing the Poojas to the temple. To resolve the issue, in the year 2003, the peace committee meeting was held and in the Peace committee, it was resolved that the appellants were restrained from making disturbances. Thereafter, the festivals were celebrated but however the appellants have refused to hand over the idols and gold articles of the deities. Again in the year November 2004, the villagers took concrete steps to recover the idol of urchavar and other gold ornaments to perform puravi eduppu festivals. A panchayat was organized among the villagers only, at that juncture, the appellants and other alleged trustees except T. Sathan, Son of Thalaiyari who demised earlier, have disclosed that they have already obtained a judgement and decree in O.S. No. 125/1993 dated 26.8.1996 from the Sub-Court Sivagangai whereby they have got declaration as hereditary trustees of the temple. The Judgement and Decree in O.S. No. 125/1993 has been obtained fraudulently, dishonestly,

clandestinely and behind the back of the villagers by suppressing the relevant material facts. Subsequent to the disclosure of the appellants, the Villagers have taken due legal advice and in order to regularize the management of the temple, the villagers including the Respondent comprising of all factions and communities have filed an application in O.A. No. 15/2012 before the Jurisdictional Joint Commissioner, to frame a scheme for the administration of the above subject temple and 15 other temples in the said village, seeking the authority to exercise its powers in terms of Section 64(1) of the Act. The said application O.A.No.15/2012 is pending before the Learned Joint Commissioner, HR & CE, Sivagangai for favorable orders. In the year 2005, again a peace committee meeting was arranged by the District Collector, Sivagangai, Tahsildar, Thirupathur and during the said meeting, the poojariship of this Respondent has been recognized and order have been passed in this regard. The Hon'ble Forum through the proceedings dated 10.2.2015 in O.Mu.No. 67967/2014/A2 has directed the 1st Respondent to initiate disciplinary proceedings against the hereditary Trustees in terms of Section 53 of the Act. Considering the above aspects and based on the available records and report, the 1st respondent has initiated disciplinary proceedings against the appellants and remaining Trustee V. Thenan by framing 10 charges against them. The gravity of charges includes the unlawful sale of the cattles, given to the temple as offering by the devotees, to the 3rd parties instead of sending it to the Kosalas, causing revenue loss to the temple by not regularizing and utilizing the lands of the temple for income, not auditing the income of the temple and not preparing the budget etc, causing law and order problem in the affairs of the temple by preventing the villagers and the poojari from conducting poojas and festivals to the temple. During the course of the inquiry in the disciplinary proceedings, the appellants and the remaining trustee V. Thenan have given sufficient opportunity to meet out the charges. The respondent and other persons who are interest in the welfare of the temple have themselves appeared before the enquiry and gave deposition vis-a-vis misconduct and misappropriations

committed by the appellants. Ironically, the remaining Trustee V.Thenan himself has admitted the misappropriations and misconduct committed by the appellants. Considering the deposition and material evidence in its appropriateness, the Learned Joint Commissioner, HR & CE, Sivagangai has held that hereditary trustees are guilty of 9 charges except charge no. 8. Considering the gravity of the misconduct and misappropriations committed by the hereditary trustees, the Learned Joint Commissioner, HR & CE, Sivagangai has removed them from service.

4. I heard Thiru.Y.Arul Manickam, Counsel for the appellants and Thiru.E.Ganesh, counsel for the 2nd respondent and perused the relevant records.

5. The appellants were the Hereditary Trustees of the suit temple. Based on the complaint preferred by the 2nd respondent herein the Joint Commissioner, Sivagangai had initiated disciplinary proceedings u/s.53 of the Act by framing 10 charges against the appellants. After conducting a full fledged enquiry by affording opportunity to the appellants to meet out the charges, the Joint Commissioner, has dismissed the appellants from the Hereditary Trusteeship.

6. The charges related to illegal sale of cattle given as offering by the devotees instead of sending it to the Ghosala, failed to lease out the lands, non submission of budget and causing law and order problem by preventing the villagers and poojaris from conducting poojas and festival to the temple.

7. It is pertinent to point out that one of the Hereditary Trustees Thiru.V.Thenan had also made such allegations against the appellants. Further the villagers had also appeared before the Joint Commissioner and deposed about the misconduct and misappropriation committed by the appellants.

8. It was not proved by the appellants that the lands belonging to the temple were leased out in public auction. But they themselves admitted that, some of the lands are enjoyed by them. Further they never maintained proper accounts. From the deposition given by the villagers, it was proved that the

cattle received as offering were sold by the appellants instead of sending it to the Ghosalas as instructed by the department and the Hon'ble High Court. Further, due to the rift between the Trustees and the poojaris regular poojas and festivals were not performed in the temple.

9. As per Sec 28 of the Act “ **the trustee of every religious institution is bound to administer its affairs and to apply its funds and properties in accordance with the terms of the trust, the usage of the institution and all lawful directions which a competent authority may issue in respect thereof and as carefully as a man of ordinary prudence would deal with such affairs, funds and properties if they were his own**”

The appellants herein have acted adverse to the interest of the temple and failed to administer the temple and its properties in accordance with the provisions of the Act. Hence, they were dismissed from the Hereditary trusteeship after due enquiry.

Therefore for the foregoing reasons stated supra, I find no infirmity in the order passed by the Joint Commissioner, Sivagangai and it is liable to be confirmed. Accordingly the order dated 16.09.2016 of the Joint Commissioner, Sivagangai is hereby confirmed and the appeal petition is dismissed as devoid of merits.

/typed to dictation/

Sd./- M.Veera Shanmugha Moni
Commissioner

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

Superintendent

To

1. The appellants through Thiru.Y.Arul Manickam, Advocate, No.221, 6th Street, Vallalar Colony, Anna Nagar West, Chennai-600 040.
2. The 2nd respondent through Thiru.E.Ganesh, No.61/23, Sakthi Avenue, South Lock Street, Kottur, Chennai-85.

Copy to

3. The Joint Commissioner, H.R. & C.E. Admn.Dept., Sivagangai.
4. The Assistant Commissioner, HR & CE Admn.Dept., Paramakudi.
5. Extra.