

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

Tuesday the 14<sup>th</sup> day of November, Two thousand and Seventeen.

Present: R.Jaya, I.A.S.,  
Commissioner.

**A.P.No.16/2017 D2**

**Between**

V.R.Somasundaram

...Appellant

**And**

1. The Joint Commissioner,  
HR&CE Admn Department, Chennai.  
2. The Executive Officer,  
Raman Chetti Kattalai  
C/o.Arulmigu Maruntheeswarar Thirukkoil,  
Thiruvanmiyur,  
Chennai-41.

...Respondent

In the matter of Raman Chettiar Kattalai attached to Arulmigu  
Maruntheeswarar Thirukkoil, Thiruvanmiyur, Chennai-41.

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 20.03.2017 of the Joint Commissioner, HR&CE Admn. Department, Chennai in Na.Ka.No.12675/2016.

**Order in R.Dis.A.P.No.16/2017 D2 dated: 14.11.2017**

The above Appeal petition came up for final hearing before me on 03.10.2017 in the presence of the appellant and Thiru.C.Dharmaraj, counsel for the 2<sup>nd</sup> 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.54(4) of the Act against the order dated 20.03.2017 of the Joint Commissioner, Chennai in dismissing the representation of the petitioner dated 12.11.2016.

2. The appellant has stated that he is the General Trustee of "Raman Chettiar Kattalai" Trust attached to Arulmigu Marundeeswarar Temple, Thiruvanmiyur, Chennai. The above Charity Trust is a family Trust for the performance of certain specific endowments in Sri Marundeeswarar Temple,

Thiruvanmiyur, Chennai. The Appellant's paternal Great Grand Father Raman Chettiar was the founder of the kattalai and the same was created vide registered will dated 29.03.1924. He had appointed 3 Executors along with his adopted son to continue the performance of the specific endowments reserving his right to hold office as Founder-Cum-Hereditary Trustee in his life time. After the death of the founder his adopted son has succeeded to the office of hereditary Trusteeship of the Kattalai and has managed its day-to-day affairs throughout his lifetime. The founder of the Kattalai has chosen a successor under the Will which clearly shows that the Trustee should be a Hereditary Trusteeship. The Board of Commissioners instituted proceedings in O.A.No.521/1939 and framed a scheme. In the said scheme the descendant of the donor holds the office as hereditary trustee. Again the Board of Commissioners had modified the scheme in O.A.No.190 of 1946 dated 05.02.1947. In the said scheme also descendant of donor has got benefit as hereditary trustee. The same thing was upheld in another modified scheme in O.A.No.107 of 1981. Though the appellant comes under hereditary trustee he was appointed as trustee of the kattalai by the respondent vide its order dated 23.10.2015. Subsequently the appellant had sent a representations dated 16.06.2015, 12.11.2016, 28.09.2016, 25.10.2016 and 03.11.2016 to the concerned authorities. Since there was no response from the authorities he had approached the Hon'ble High Court in W.P.No.42922 of 2016. The Hon'ble High Court vide its order dated 08.12.2016 directed the respondents therein to consider the Appellant's representation and to pass suitable orders. As per Section 6(11) of the Act one must be construed as a Hereditary Trustee under the following circumstances

(i) Trustee of a religious institution, the succession to whose office devolves by hereditary right.

(ii) Regulated by usage.

(iii) Specifically provided for by the founder, so long as such scheme of succession in force.

The appellant is coming under all the above mentioned categories. From the foundation of the Trust to till date the descendant of the Donor have been appointed as a trustee. The appellant is one of the descendants of the donor. Since the descendant of the donor have been appointed as trustee it comes under "Regulated by usage", thereby Section 6(11) is very much applicable to the appellant herein. The application for appointment of trustees was called for by the Joint Commissioner u/s.54(1) of the HR&CE Act. The provision envisaged u/s.63(B) of HR&CE Act will not applicable to the appellant herein. The act gives power to decide only whether the trusteeship in relation to a temple was hereditary or not and cannot decide whether a particular person was entitled to function as a hereditary trustee when the hereditary nature of the trusteeship is established. The Joint Commissioner has wrongly come to the conclusion and passed the Impugned order dated 20.03.2017.

3. In the Counter Affidavit the 2<sup>nd</sup> respondent has stated that the said Kattalai attached to Arulmigu Marundheeswarar Thirukoil, Thiruvanmiyur, Chennai is a specific endowment created and founded by one late Thiru.M.Raman Chettiar vide his Will dated 29.03.1924 bequathing various properties in and around Thiruvanmiyur. According to the Will, he appointed three executors namely 1. Aru.N.Ramanathan Chettiar, 2. S.Palaniappan Chettiar, 3. Nachiappan Chettiar to perform the said kattalai after his life period. After his death in the year 1924, the Kattalai properties were managed and was performed by the executors. One Somasundaram Chettiar, who claimed as an adopted son of the founder/testator, filed a suit in O.S.No.190/28 against the executors and by a compromise decree dated 25.03.1929 the management of the Kattalai properties and its performance came in to the hands of Thiru.Somasundaram Chettiar. As he was improper and irregular in the performance of the said Kattalai and had also alienated the Kattalai properties to various third parties as if they were his own properties, the Erstwhile Board

appointed one T.M.Umapathi Desikar as Managing Trustee of the said Kattalai in the place of the Somasundaram Chettiar. The latter had preferred a suit in C.S.No.28/1953 before the Hon'ble High Court challenging the illegal sale and for recovery of the Kattalai properties. In the said suit Thiru.Somasundaram Chettiar contended that the properties are his ancestral properties and even his father/testator has no legal right to create the specific endowment and he is entitled to sell the property. Pending the constitution of the Trust Board as per the provisions of the scheme, one Mr.S.M.C.Veerappan, a descendant of the Donor/founder was appointed as a Fit Person to the said Kattalai vide orders of the then Deputy Commissioner in his Pro.Rc.No.7362/83 A1 dated 07.03.1984. The said appointment was challenged before the Commissioner in R.P.No.32/1984, by the then Executive Officer of the said Kattalai on the ground that he was an accomplice with his father Mr.Somasundaram Chettiar in the alienation of the Kattalai properties. The revision was allowed vide orders dated 22.06.1984 and as a result Mr.Veerappan, the father of the petitioner was not allowed to function as Fit person. In the meanwhile, Mr.Veerappan preferred another application in O.A.No.7/84 u/s.63(b) of the TN HR&CE Act, before the Deputy Commissioner with a prayer to declare that the office of the Trusteeship of the said Kattalai is hereditary, which was dismissed on merits vide order dated 30.10.1985. The appeal in A.P.No.28/1986 before the Commissioner was also dismissed vide orders dated 11.08.1988 and thereafter no appeal was filed, hence the matter has attained legal quietus. The following were appointed as trustees as per the orders of the Deputy Commissioner in Pro.R.C.No.11705/84 A1 dated 19.02.1987 and Commissioners Pro.R.C.No.20171/87 A1 dated 26.10.1987.

1. A.Somasundaram Chettiar.(Nagarathar)
2. S.M.C.Veerappan Chettiar.(descendant of Donar family)
3. Shanmugam, (S.C.quota)
4. R.M.Palaniappan
5. M.Subramani (both appointed by Commissioner as per Act) and the period of trust board was completed on 08.11.1990. Thereafter the Assistant

Commissioner, Chennai was appointed as Fit Person vide proceedings of the Deputy Commissioner in R.C.No.21228/90 A1 dated 28.11.1990. He/she continued as a Fit Person till the new trustees were appointed in the year 2015. The Joint Commissioner, Chennai vide notice in R.C.No.2908/2012 A1 dated 07.12.2013 called for application and pursuant to the application, three persons including the petitioner were appointed as Trustees vide order of the Joint Commissioner in Pro.Rc.No.2908/2012/A1 dated 23.01.2015 and the tenure of the Trust Board on 10.02.2017. The orders of the High Court quoted in support of the appellants claim in his petition, do not correspond to the facts of the case and if at all the appellant wants to establish his right if any, he ought to have preferred a petition under Sec 63(b) with relevant documents.

4. I heard the appellant, Thiru.C.Dharmaraj, counsel for the 2<sup>nd</sup> respondent and perused the relevant records.

5. The appellant was appointed as one of the Non-hereditary Trustee of the said Kattalai as per the scheme settled in O.A.No.107/1981 dated 29.01.1983 by the Joint Commissioner, Chennai in Pro.Rc.No.2908/2012/C1 dated 23.01.2015. But it is case of the appellant that as he is a descendant of the donor, he should be appointed as Hereditary Trustee u/s.54(1) of the Act. The said claim was rejected by the Joint Commissioner, Chennai in the impugned order.

6. The Raman Chettiar Kattalai was founded by Thiru.M.Raman Chettiar vide his Will dated 29.03.1924 for the performance of certain specific endowment in Arulmigu Marundeeswarar Temple, Thiruvanmiyur, Chennai. Since, at the time of creation of the specific endowment, his adopted son Somasundaram Chettiar was minor, 3 persons were appointed as executors of the Will.

7. After becoming major, the said Somasundaram Chettiar became the Trustee of the said Kattalai. As the said Somasundaram Chettiar had alienated the Trust property and mismanaged the Trust and its properties, for the proper administration of the Trust, a scheme was settled by the erstwhile HR&E Board

vide Board's order No.221 dated 22.01.1941 in O.A.No.521/1939. As per the said scheme the management of the said Kattalai shall vest with a Board of Trustees consist of

(i) a descendant of the donor (2) one of the executor to be selected by the Board and (3) a non-hereditary trustee to be appointed by the Board.

8. Again the said scheme was modified vide Board's order No.376 dated 05.02. 1947 in O.A.No190/1946 for the following reasons:-

(i) The scheme settled in order dated 02.01.1941 was not workable as the descendant of the donor was not evincing interest in the administration and the executor under the Will of the donor were either unwilling to accept office or were not suitable for appointment.

(ii) The properties of the kattalai were alienated without necessity and without sanction.

As per the modified scheme, the administration of the affairs of the Kattalai shall vest in one or more trustees (not exceeding three) appointed by the Board. The said scheme was in force till the year 1983. But it was not known whether Trustees were appointed as per the provisions of the said scheme.

9. In the year 1981, the appellants father Thiru.S.M.C.Veerappan had filed O.A.No.107/81 u/s.64(5) of the Act to modify the scheme framed in the year 1947 and the same was allowed by order dated 29.01.1983. The scheme was modified with a provision to constitute Board of Trustees consisting of (i) a descendant of the donor (ii) a representative of Nagarathar (iii) a member belonging to scheduled caste who shall be appointed by the competent authority under the Act 22/1959.

10. As per the provisions of the said scheme the appellant's father Thiru.S.M.C.Veerappan Chettiar was appointed as Non-hereditary Trustee by the Deputy Commissioner , Chennai in Pro.Rc.No.7362/1983 A1 dated

17.11.1983. In the said order it was mentioned that" மேற்படி கட்டளைக்கு பரம்பரை அல்லாத அறங்காவலராக இவ்வத்தரவின்படி நியமிக்கப்படுகிறார். Further it was mentioned that "மேற்படி நியமிக்கப்பட்ட பரம்பரை அல்லாத அறங்காவலர் மூன்று ஆண்டுகளுக்கு பதவி வகிப்பார்" So, it is evident that the appellant's father was also appointed as Non-hereditary Trustee for the period of 3 years only. The said appointment was not disputed by the appellant's father. Further, the scheme was modified in the year 1983 at the instance of the appellant's father. In the said proceeding he did not claim hereditary trusteeship.

11. The appellant's father Thiru.S.M.C.Veerappan was appointed as "Fit Person" by the Deputy Commissioner, Chennai vide Pro.Rc.No.7362/83/A1 dated 07.03.1984. The said order was challenged by the Executive Officer before the Commissioner u/s.21 of the Act in R.P.No.32/1984. The said Revision Petition was allowed by order dated 22.06.1984 and the order of the Deputy Commissioner, Chennai was set aside. The appellant's father Thiru.S.M.C.Veerappan, had challenged the said order in W.P.No.7728/1984 before the Hon'ble High court of Madras and the same was dismissed by order dated 30.07.1984.

12. Thereafter, the appellant's father Thiru.S.M.C.Veerappan had filed O.A.No.7/1984 u/s.63(b) of the Act praying to declare the office of the Trusteeship of the said Kattalai as hereditary and the same was dismissed by the Deputy Commissioner, Chennai by order dated 30.10.1985. In the order passed by the Deputy Commissioner, Chennai it was held that " So the founder and his descendants including the petitioner who claims a hereditary right to manage this endowment were parties to the scheme proceedings. They never put forward a claim of hereditary Trusteeship all alone. When the founder himself did not claim the hereditary right to manage the endowment the present petitioner can have no claim for hereditary Trusteeship after the intervention of the three schemes as formulated in O.A.No.521/39, O.A.No.190/46 and in O.A.No.107/1981. In 1957 II MLJ page 252 it has been

held that "When once a scheme has been framed by a court regulating the mode of appointment or election of trustees to a temple whatever might have been their rights or position prior to the framing of the scheme it cannot be said the succession to the office of the trustees even its evident sense is regulated by usage. But even in such case the succession to the office of the such usage and embodied it with required modification. But even in such cases the succession to the office of the trustee is governed by the provisions of the Scheme and not by the usages".

13. The appeal filed before the Commissioner in A.P.No.28/1986 u/s.69(1) of the Act against the order of the Deputy commissioner, Madras was also dismissed by order dated 11.08.1988. Against the order passed by the Commissioner, no appeal was filed as provided under the Act, hence it attained finality.

14. Sec 6(11) of the Act read as follows:- "**Hereditary trustee**" means the trustee of a religious institution, the succession to whose office devolves by hereditary right or is regulated by usage or is specifically provided for by the founder, so long as such scheme of succession is in force". The person who claims hereditary right should satisfy any one of the limbs provided u/s.6(11) of the Act. In this case, the administration of the trust was not vested with the family of the appellants for more than 3 generations uninterruptedly. From the year 1984 onwards, the administration was vested with the Fit person appointed by the department. The appellant has failed to prove that the trust has been managed by his family for more than 3 generations without any interference. Secondly, the succession to the office of the Trusteeship was not regulated by usage. Thirdly, the founder does not provide any scheme of succession in the Trust deed. It was not proved by the appellant with cogent evidence under which limb he is claiming hereditary Trusteeship.

15. Further, the Joint Commissioner alone is the competent authority to decide whether the office of the trustee is hereditary or non-hereditary

u/s.63(b) of the TN HR&CE Act 1959. Accordingly the office of the Trusteeship of the said Kattalai has been declared as non-hereditary u/s.63(b) of the Act by the Deputy Commissioner, Chennai in O.A.No.7/1984 in the year 1985 itself. Hence, the judgements relied upon by the appellant did not apply to his case.

16. Further, the appellant herein had applied for the appointment of Trustee, pursuant to the notification issued u/s.47 of the Act by the Joint Commissioner, Chennai in 2908/2012/C1 dated 07.12.2013, wherein the Joint Commissioner has called for application from the qualified persons for the appointment of Trustees to the said Trust as per the scheme settled in O.A.No.107/1981 dated 29.01.1983. As claimed by the appellant, if the office of the trusteeship is hereditary, then the appellant would have filed an application u/s.54(1) of the Act to record his succession. As per the death certificate produced by the appellant, his father Thiru.S.M.C.Veerappan died on 17.11.1991, but the appellant did not file any application u/s.54(1) of the Act to record his succession after the death of his father in the year 1991. But he was appointed in the year 2015 as Non-Hereditary Trustee as per the provisions of the scheme only.

17. Further, the Original Scheme settled in the year 1941 or the modified scheme, does not contain any provision making the trusteeship hereditary. Further, lastly the scheme was modified in the year 1983 only on the petition filed by the appellant's father, he filed the said petition without staking a claim to the Hereditary Trusteeship.

18. Further, the scheme provides for appointment of Trustees from the descendent of the donor. All the descendants of the donor are entitle for the appointment as Trustees and it is not restricted to one person or one family. If the descendants of the donor are more in number, the department has option to appoint any one of them as Trustee. But as claimed by the appellant if he is appointed as Hereditary Trustee, it will affect the accrued right of other descendants of the donor.

Therefore, viewed from any angle, I do not find any infirmity in the order passed by the Joint Commissioner and it does not warrant any interference. Accordingly the order dated 30.03.2017 of the Joint Commissioner, Chennai is hereby confirmed and the appeal petition is dismissed as devoid of merit.

/typed to dictation/

Sd./- R.Jaya  
Commissioner

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

Superintendent

**To**

1. The appellant through Thiru.M.Aravind Subramanian, Advocate, Caithness Hall, Second Floor, Old No.157, New No.323, Linghi Chetty street, Chennai-600 001.
2. The 2<sup>nd</sup> respondent through Thiru.C.Dharmaraj, Advocate, M-188, 9<sup>th</sup> Cross Street, Thiruvalluvar Nagar, Thiruvannamipur, Chennai-41.

**Copy to**

3. The Joint Commissioner, H.R. & C.E. Admn.Department, Chennai.(Along with the file in R.C.No.12675/2016 )
4. The Assistant Commissioner, H.R. & C.E. Admn.Department, Chennai. 5-6)Extra.