

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

Tuesday the 14th day of November, Two thousand and Seventeen.

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

A.P.No.18/2017 D2

Between

R. Manoharan

...Appellant

And

1.The Joint Commissioner
HR&CE Department, Sivagangai.

2. Muthuramalingam

S/o. Periasamy

Sengulam Village,

Kalayarkovil Taluk, Sivagangai District.

... Respondents

In the matter of Arulmigu Muthiahsamy temple, Nariyenthal Village, Sivagangai Taluk and 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 17.01.2017 of the Joint Commissioner, HR&CE Admn Department, Sivagangai in allowing the O.A.2/2009 filed u/s.63(e) of the Act.

Annexure Order in R.Dis.A.P.No.18/2017 D2 dated: 14.11.2017

The above Appeal petition came up for final hearing before me on 19.09.2017 in the presence of M/s.J.John, counsel for the appellant, Thiru.R.Srinivasan, 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 under Section 69(1) of the Act against the order dated 17.01.2017 of the Joint Commissioner, Sivagangai in allowing the O.A.2/2009 filed u/s.63(e) of the Act.

2. The appellant has stated that he is the Hereditary Trustee-Cum-Pujari in the Arulmigu Muthiahsamy Thirukovil situated in Nariyenthal village in S.No.242/21, Poovali group then Kalayarkovil Taluk, Sivagangai District. The appellant's forefather Kalayappan Poojari was the founder of the said temple in

the year 1879. The main object of the temple is providing place of worship of Samadhi Muthappa Pujari and his successor. One of the idol itself bears the special character of Muthappa Pujari. He had only son namely Kalayappan Poojari and he had two sons namely chellappa Thevar and Muthuvaduga Thevar. The said Chellappa Thevar had four sons namely 1. Ayyasamy Thevar, 2. Periyasamy Thevar, 3. Uchiya Thevar and 4. Kulandaisamy Thevar. The appellant is one of the successor of the Muthappa Poojari's great grandson and his grandfather Kulandaisamy thevar is the hereditary poojari cum trustee of the said temple during his life time and he died in the year 2016. His coparceners are hereditary poojari cum trustee of the said temple from the time immemorial. His forefather Muthappan Poojari had attained "Mukthi" presence of Samadhi inside the temple premises. The Kalaippan Poojari had installed 24 deities in the temple there in the Revenue Adangal stands in the name of Muthiah temple. The successor of the Muthappan Poojari is only managing the said temple more than 200 years. The manager so appointed from time to time are hereditary trustee within the meaning of Section 6(2)(11) of Tamil Nadu HR&CE Endowment act. The devotees are participated in the every year kodai festival in the month of vaikasi. The hereditary trustee or managing committee have not collect any fees from devotees. Without giving any opportunity for the managing committee or hereditary trustee of temple was taken over by the department in the year 2007. The temple is not a public temple but it is a private one under the administration and control of seven family members of Muthappa Poojari Nariyenthal village. They belong to "Marava Caste" and they are acting as poojari cum Managing hereditary trustee without any disturbance for more than 200 years. The temple has no regular income and it has no properties, except this seven family members given "Thalikkattu Vari" for the purpose of celebrating the "Vaikasi" kodai festival. The said temple was taken over by the Government on 14.05.2005. The same was challenged by the appellant by way of writ petition in W.P.(MD)No.4775 of 2007 before the Hon'ble Madurai Bench of Madras High Court and initially granted interim stay and subsequently the appellant's writ petition was

dismissed by the Hon'ble High Court. Thereafter, the 2nd respondent has tried to conduct pooja in the said temple for the first time after dismissal of the appellant's writ petition. The same was objected by the appellant and other co-trustee cum poojari and thereafter peace committee meeting was conducted by the Revenue Divisional Officer, Sivagangai and he advised the 2nd respondent to approach the competent forum for his relief. Aggrieved over, the 2nd respondent has filed the application u/s.63(e) of the Tamil Nadu HR&CE Act claiming Moolasthan Poojariship in the temple for the 1st time. After knowing the said application filed by the 2nd respondent the appellant has filed his counter through his counsel in O.A.No.2 of 2009. The appellant has remained exparte due to Advocate boycott, immediately he had filed the application on 22.12.2016 to recall the 2nd respondent for the purpose of cross examination and the said application was taken on file. But the 1st respondent without hearing the recall application filed by the appellant and passed the impugned order without hearing the appellant. It is clearly violation of natural justice. The appellant has prejudiced his right to defend his case before passing the impugned order. Even though the 1st respondent has not communicated the said impugned order to the appellant. On 12.03.2017 the 2nd respondent has requested the 1st respondent to appoint the Executive Officer/ Fit Person to the said temple and he further requested to install the hundial permanently which was donated by the Muthuraman, S/o.Alagu Yadav. In his request he never claimed as Moolathana Poojari and he waived his alleged right and he has not made any objection to take over the temple by Government. The 2nd respondent or their ancestors have no such Moolathana Poojari right at any point of time in the said temple and he always residing out of village during his young age and he has not paid any Thalaikattu Vari to the temple. The 2nd respondent has not examine any of the witnesses from the village and he has not chosen to examine any of the devotees who were got blessings from the appellant and his grandfather to offering and blessings their Aruval in the bedum before cutting the goats meant for offering. The appellant and his coparceners alone blessings the Aruval in the temple premises then only the

offering goats were cut the said custom of practice were time immemorial, they were performing the pooja and providing prasatham in the temple sanctum sanctorum.

3. In the Counter Affidavit the 2nd respondent has stated that there are three kinds of poojari in the Arulmigu Muthiahamsamy Thirukovil, 1. Moolasthanana Poojari 2. Kedavettu Poojari, 3. Samiyaadi Poojari. The respondent and his forefathers are Moolasthanana Poojari. The Respondent's paternal father(late) Muthuvaduga Thevar had three sons namely 1. Periyasamy Thevar, 2. Uchimuthu Thevar and 3. Panchavarna Thevar. The male heirs of the aforesaid three persons have hereditary right to perform Moolasthanana Poojari on the rotation basis in the said temple. The aforesaid late Uchimuthu Thevar's son is Muthurasu Thevar. The aforesaid late Panchavarna Thevar's son name is Rasu Thevar's who is no longer alive and the said late Rasu Thevar only son is Murugan. Therefore the aforesaid persons namely the 2nd respondent Muthuramalingam Thevar-1, Muthurasu Thevar-2, and Murugan-3 are hereditarily entitled to act as a Moolasthanana Poojari in the said Temple on rotation basis. This hereditary custom has been prevalent for a very long time in the said temple. The Joint Commissioner of Sivagangai having thoroughly enquired about the hereditary customs of Moolasthanana Poojari in the said temple as well as on the basis of the investigation through the Inspector of HR&CE Department, Sivagangai, came to a conclusion that the 2nd respondent's vagaiyara have hereditary right to perform as a Moolasthanana Poojari in the said temple. It is pertinent to mention here, the Inspector of HR&CE , Sivagangai deposed before the Joint Commissioner about the nature of performance of Moolasthanana Poojar which includes giving vibudhi as prasatham to the devotees of the temple. The appellant herein who is the only respondent before the enquiry in O.A.No.2 of 2009/E1 , having received the summons in respect of enquiry for so many times had not preferred to appear before the enquiry conducted by the Joint Commissioner, Sivagangai. The appellant herein instead of appearing before the Joint Commissioner enquiry

with a view to substantiate his stand consciously avoided to appear before the Joint Commissioner enquiry since he did not have any iota of truth in his stand. The 2nd respondent herein filed the petition before the Joint Commissioner in O.A.No.2 of 2009/E1 u/s. 63(e) of the Tamil Nadu HR&CE Act in the year 2009. The Joint commissioner was pleased to dispose of the said petition on 17.01.2017. The aforesaid petition O.A.No.2 of 2009/E1 preferred by the 2nd respondent herein had been kept pending for 8 years because of the dilatory tactics adopted by the Appellant herein. The appellant R.Manoharan filed two writ petitions viz., W.P.(MD)Np.4775 of 2007 and W.P.(MD)No.5045 of 2008 against the Commissioner, HR&CE Administration Department, Chennai and three of his sub ordinates before the Hon'ble Madurai Bench of the Madras High Court claiming to be a hereditary trustee cum manager of the said temple so as to recognize him as the sole trustee of the said temple as well as to affirm the customary right of performing all the rituals in the said temple to the exclusion of all the other poojaris. The Hon'ble High Court of Madurai bench having considered his claim, dismissed the aforesaid two writ petitions on 28.08.2008, on the score that the appellant herein has not proved his contention that he is hereditary trustee of the said temple. As per the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act 1959, a person with criminal record is not entitled to hold any of the position in the temple which comes under the preview of the HR&CE Act. The appellant herein was arrested for selling spurious liquor and produced before the Judicial Magistrate No.2, Sivagangai. The Sub-Inspector of Police arrested him for the above charge and produced before the said court and he was remanded for judicial custody for 2 weeks. The F.I.R. in Crime No.203 of 2017 dated 19.05.2017 was registered.

4. I heard M/s.J.John, counsel for the appellant, Thiru.R.C.Srinivasan, counsel for the 2nd respondent and perused the relevant records.

5. The counsel for the appellant has made the following submissions:-

(i) The Joint Commissioner has passed the impugned order without hearing the recall application dated 22.12.2016 filed by the appellant.

(ii) The temple is a private one under the administrative control of seven family members of Muthappa Poojari.

(iii) The Joint Commissioner has no jurisdiction to decide the dispute u/s.63(e) of the Act and placed reliance upon the Judgment dated 10.08.2015 made by the Hon'ble High Court in W.P.(MD)No.11977/2015 in support of his case.

6. Regarding the 1st submission, the said original application was filed in the year 2009. Thereafter, the said matter was taken up for hearing on several dates and finally closed for orders on 22.12.2016. The appellant herein had filed an application to recall the PW1 for cross examination. The appellant had filed his objection in the said Original Application. The petitioner's side witnesses were examined and their deposition was recorded in the year 2011 itself. Thereafter the said proceeding was conducted for nearly 5 years. But the appellant was not interested to cross examine any of the petitioner side witness. In the impugned order the Joint Commissioner had observed that:-

“மனுதாரர் தரப்பு நான்காவது சாட்சியாக திரு.மை.ராமச்சந்திரன் என்பவரை விசாரணை செய்து பெறப்பட்ட வாக்குமூலத்தில் திரு.முத்துராமலிங்க தேவர் என்பவர் மூலஸ்தான பூசாரியாக உள்ளார் எனவும், இவர்தான் பக்தர்களுக்கு விபூதி பிரசாதம் கொடுக்கும் பணியை செய்து வருவதாகவும் வாக்குமூலத்தில் தெரிவித்துள்ளார். இந்த நான்கு சாட்சிகளையும் எதிர்மனுதாரர் குறுக்கு விசாரணை செய்யவில்லை”.

Further “ எதிர்மனுதாரர் நீதிமன்ற விசாரணைக்கு போதிய ஆர்வம் காட்டவில்லை. நேரடி சாட்சியங்களையும் நீதிமன்றத்தில் பதிவு செய்யவில்லை. மனுதாரர் ஆஜர் செய்த சாட்சிகளை குறுக்கு விசாரணையும் செய்யவில்லை. ஆய்வரிடம் சாட்சியங்களை ஆஜர்படுத்தவில்லை”.

So, it is clear that the appellant was not interested in cross examining the witnesses during the pendency of the said Original Application. And also he was irregular in attending the case. The appellant had filed the said recall petition intentionally to drag on the proceedings.

7. Regarding the 2nd submission, the suit temple is a public temple under the administrative control of the HR&CE department. Though the appellant claims it as a private temple and administering the temple as Hereditary Trustee, he did not get any declaration under the provisions of the TN HR&CE Act 1959 from any court of law. Further, in the W.P.(MD)No.4775/2007 filed by the appellant challenging the appointment of Fit person, the Hon'ble High Court has held that the Assistant Commissioner has jurisdiction to appoint Fit person. Further, the Hon'ble High Court has observed that ***"The petitioner's status as the Hereditary Trustee has not been sufficiently proved and it is very much disputed by the department as well as by the private respondent and hence the question of petitioner claiming any notice does not arise"***. So, it is a public temple and the appellant is not a Hereditary Trustee of the temple.

8. Regarding the 3rd submission, u/s.63(e) of the Act the Joint Commissioner can decide the dispute, whether any person is entitled by custom or otherwise to any honor or emolument or perquisite in any religious institution. If it is the case of the appellant that the Joint Commissioner has no jurisdiction and only civil court has jurisdiction to resolve the dispute, then nothing prevented the appellant to approach the competent civil court instead of filing the Appeal u/s.69(1) of the TN HR&CE Act. In the peace committee meeting convened by the Revenue Divisional Officer, Paramakudi on 07.06.2008, it was resolved that the parties should approach the HR&CE Department to establish their right under the provision of the HR&CE Act 1959. Accordingly, the 2nd respondent herein had filed the O.A.No.2/2009 u/s.63(e) of the Act.

9. The 2nd respondent has filed the said Original Application praying to declare that the Moolasthan Poojari alone is entitled to distribute vibuthi to the devotees. The said Original Application was filed to decide the dispute that who is entitled to distribute vibuthi right. But in the appeal petition, the appellant is talking about the character of the temple and nature of the office of the trusteeship. He has neither produced any document nor made any

avermment regarding disentitlement of the 2nd respondent's right to distribute the vibuthi to the devotees as Moolasthan Poojari.

10. Any person claiming a right or honour based on the established custom should establish what is the established custom and usage of the temple with supporting documentary evidence. But in the impugned order the Joint Commissioner has observed that “மனுதாரரின் கூற்றுப்படி மூலஸ்தான பூசாரியே திருக்கோயில் பூசை செய்தும், அபிஷேகம் செய்து விபூதி கொடுப்பதாக தெரிவிக்கப்பட்டது. சாமியாடி பூசாரி சாமியாடுவார், கிடாவெட்டு பூசாரி கிடாவெட்டும் இடத்தில் இருப்பார் எனவும் தெரிகிறது. மூலஸ்தான பூசாரியே , பூஜைகளை செய்து விபூதி கொடுப்பதை பிரதிவாதி தரப்பில் தாக்கல் செய்யட்ட எதிர்வழக்குரையில் இதை வன்மையாக மறுத்துள்ளார். ஆனால் இருதரப்பிலும் தங்கள் கூற்று உறுதியாக ஆவணங்கள் ஏதும் தாக்கல் செய்யவில்லை. ஆய்வரின் விசாரணையின் போதும் இருதரப்பிலும், ஆவணங்கள் ஏதும் தாக்கல் செய்யவில்லை. இதனால் இருதரப்பினரின் கூற்றும் ஆவணங்களின் மூலம் நிரூபிக்கப்படவில்லை”.

Hence ,based on the certificate dated 20.04.2009 issued by the President of Sengulam Panchayat, Report of the Inspector, HR&CE Department, Sivagangai Division and the custom followed in all the temples, the Joint Commissioner has held that Moolasthan Poosari recognized by the Fit Person alone is entitled to distribute vibuthi to the devotees.

Therefore for the foregoing reasons stated supra, I find no infirmity in the order passed by the Joint Commissioner, Sivagangai and it does not warrant any interference. Accordingly the order dated 17.01.2017 of the Joint commissioner, Sivagangai 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