

**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.23/2017 D2

Between

V.Jagadeesan

2. R.Vishnudass(died)

3. V.Rajendra Kumar

...Appellants

And

The Joint Commissioner

HR&CE Department,

Trichy.

...Respondent

In the matter of Arulmigu Sarathammal Temple, Thennur, Trichy.

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 27.02.2017 of the Joint Commissioner, HR&CE Admn Department, Trichy in O.A.No.9/2002 filed u/s.63(a) of the Act.

Annexure Order in R.Dis.A.P.No.23/2017 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, Thiru.A.Balaguru, counsel for the appellants. Upon hearing his 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.69(1) of the Act against the order dated 27.02.2017 of the Joint Commissioner, Trichy in dismissing the O.A.No.9/2002 filed u/s.63(a) of the Act.

2. The appellants have stated that the property measuring 1 acre 49 cents in TS No 2103 Thennur village was owned by one Meeran Mohideen. The 10 persons had purchased the said property, under a registered sale deed No 242/1965 dated on 14.01.1965. The second appellant herein purchased the

vacant land from the original owner Parvathi ammal W/o of Jeevarathinam. In the vacant site measuring about 90 X 41 feet they have constructed Vinayagar temple in the year of 1982. The expenses for the construction of the said temple was met by the joint owners. They never intended the temple for public worship. The Sringeri Sankarachariyar Swamigal, gifted marble statue of Arulmigu Sarathaammal idol which was consecrated in the temple and kumbaabishekam was performed in the year 1983 for which entire expenses were met by appellants, and no donations received even from the site owners who are residing adjoining to the temple. In the year 1995 Maha mandapam was constructed with the help of land owners and kumbaabishekam was performed on 6/2/1995. Two columns of pooja are being performed every day and the expenses are being met by the appellants as well as their family members. There is no public worship other than the members of the appellants family. The temple has no dwajasthambam, no hundial , no festivals, no kattalias and no other features as public temple and no immovable properties owned by the temple. Ever since from the date of construction, the temple has been treated as private temple and intended for the worship of the joint owners of the landed property. The existing small bell also gifted by the members of the founder family who are residing adjoining to ,the temple ,as it intended to invite them at the time of performance of pooja. The appellants relying on the decision of the Madras High Court in Kuppusamy Vs The commissioner HR&CE and another (2011) 1 LW 351 it is not in dispute that generally the burden of proof is on the plaintiff to prove the case with regard to the status of temple whether it is public or private temple. The burden is on the HR&CE Dept to prove the temple is public temple. In the decision of the Madras High Court in Channammal Vs Commissioner HR&CE 1973 MLJ 442 the court have observed that: "The main characteristic of a public temple is that it is intended for the use of the public or a section thereof. On the other hand, private temples are intended for the worship by the members of the family of the donor exclusively. The mere fact that outsider are allowed to worship in a temple cannot necessarily mean that the temple was dedicated to

the public as no Hindu will ever prohibit strangers from offering worship to the deity enshrined in his private temple. In all such cases worship by outsider is referable to the leave and license granted by the owner and cannot be an indicative of any dedication to the public.

3. I heard Thiru.A.Balaguru, counsel for the appellants and perused the relevant records.

4. The appellants claim that (i) the suit temple is a private temple

(ii) It is intended for the worship of the Joint owners of the landed property.

(iii) The temple has no characteristic features of public temple such as dwajasthanam, hundial and festivals not conducted.

5. In most of the small public temple in the state of Tamil Nadu , no hundial was installed. Further, presence of physical features such as Dwajasthambam, Mandapam etc is not a main criteria to decide the public nature. The conscience and belief of the worshipping public about the presence of divine force in a particular place is enough to prove the nature of the temple. Worshipping of Nature is commonly prevalent in the state of Tamil Nadu. In most of the village temples, idols are housed in thatched huts and some temples have no roof and idols are consecrated in open space. Stones, Trees, bows etc., are consecrated and worshipped by the people. Hence, a common definition could not be drawn for the temple based on the physical features. That is why, while enacting the TNHR&CE Act, the law makers have defined the term temple u/s. 6(20) as follow:- 'Temple' means a place by whatever designation known used as a place of public religious worship and dedicated to or for the benefit of or used as of right by the Hindu Community or of any section thereof as a place of public religious worship.

6. The appellants have purchased the lands from Parvathi Ammal. The suit temple was constructed in the land earmarked for the construction of the temple by the vendor of the appellants. The suit temple was not constructed by the appellants alone but from the contribution made by the all the purchasers of the plots, they constitute a part of the Hindu Community. Further the idol of Sarathammal was gifted by the Sringeri Sankarachariyar Swamigal.

7. In the Judgement reported in 1966(1) MLJ 109 and (1965)78 L.W.404) The court held as follows:- ***“It is now well settled that unlike, the temples in kerala, there is a presumption that temples in South India are public and the onus of proof is on the person asserting it to prove that it is a private temple. Even a temple dedicated for the use of a particular section of the Hindu Community could also be a public temple, if the community constitutes a considerable section of the Hindu public and the members of which worship in the temple as of right.”***

8. In the Judgement reported in 1966(1) MLJ 149 and 79 L.W.34, it was held as follows:- ***“ The well known tests to decide whether a temple is a private or public one is to see whether the temple is located inside a private house or a public holding, whether the idols are permanently installed on pedestals inside the temple, whether there are permanent archakas appointed for performing puja in the temple, whether the deity is taken out in public in procession periodically and public make offerings on the occasion and so on.”***

In this case the temple is located in a public place. The idols are permanently installed on pedestals inside the temple and permanent archaka is appointed for performing pooja.

9. In the letter dated 28.02.2017 sent to the District Collector, Trichy

requested to remove the Samadhi of the one Kadhir, it was stated that

அனுப்புநர்:-

ஆர்.விஷ்ணுதாஸ், தலைவர்,

அருள்மிகு ஸ்ரீ சாராதாம்பாள் திருக்கோயில்,

எண்.67, சாஸ்திரி ரோடு, தென்னூர் , திருச்சி-17.

மற்றும் குடியிருப்பு வாசிகளும் , பக்த கோடிகளும்

“திருச்சிராப்பள்ளி மாநகராட்சி எல்லைக்குள் தென்னூர் சாஸ்திரி சாலையில் அருள்மிகு ஸ்ரீ சாராதாம்பாள் திருக்கோயில் அமைந்துள்ளது. இத்திருக்கோயிலுக்கு தினசரி நூற்றுக்கணக்கான மக்களும், தாய்மார்களும், குழந்தைகளும், பெரியோர்களும் வந்து நித்யப்படி பூஜைகள் செய்து , ஸ்ரீ சாராதாம்பாள் தாயாரை வணங்கி சேவித்துவிட்டு செல்கின்றனர். இத்திருக்கோயிலில் வாரத்திற்கு ஒருமுறை சாய்பாபா சத்சங்க பூஜைகளும், இதர நாட்கள் பல்வேறு நிகழ்ச்சிகளும் நடந்து வருகின்றன மற்றும் அமாவாசை, பெளர்ணமி நாட்கள் சிறப்பு பூஜைகள் நடைபெற்று வருகின்றன. இந்த திருக்கோயிலை சுற்றிலும் பலதரப்பட்ட குடியிருப்பு வாசிகள் நிரந்தரமாக வசித்து வருகின்றனர்”. So, it is admitted by the appellants that the suit temple has been used as place of public religious worship as of right by the Hindu Public.

10. Further, structural features of the temple is not defined any where in the Act. The structural features differ from one agama to another. The temples which are constructed as per the particular agama will have features as described in the said Agama. But in this temple, initially Vinayagar Idol alone was consecrated. Later, several idols have been consecrated and Kumbabhisegam was also performed in grand manner. Further, it is admitted by the appellants that Maha Mandapam was also constructed from the contribution made by the Joint owners. As the temple was not consecrated on the basis of any Agamic Principle, the presence of Dwajasthambam, mandapam are not a criteria to decide the public nature of the temple.

11. The appellants have failed to prove with cogent evidence that the suit temple has been founded, maintained from their own funds. Further the plan approval for the construction of the temple was obtained in the name of

a Sangam. But this petition was filed in their individual capacity claiming it as a family temple. Further, the EB Connection stands in the name of the temple. All these facts prove that the suit temple is a public temple.

Therefore, for the foregoing reasons stated supra, I find no reasons to interfere with the order passed by the Joint Commissioner, Trichy and it is liable to be confirmed. Accordingly, the order dated 27.02.2017 of the Joint Commissioner, Trichy made in O.A.No.9/2002 is hereby confirmed and appeal petition is dismissed as devoid of merit.

/typed to dictation/

Sd./- R.Jaya
Commissioner

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

Superintendent