

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

Friday the 19th day of May, Two thousand and Seventeen.

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

A.P.No.5/2017 D2

Between

1. R.Murugesan
2. Ramakrishnan
3. Asokan
4. Kandasamy
5. Murugan
6. Palanisamy
7. Rajendran
8. Jegannathan
9. Bose
- 10.Dhanapal
11. Ravi
- 12.Dhiraviam(died)
13. Muthukrishnan
- 14.Subramanian

...Appellants

And

1. The Joint Commissioner,
HR&CE Admn.Department, Madurai.
2. Sundaram
3. Nagappan(died)
4. Chidambaram
5. Durairaj
6. Veerabathran

.. Respondents

In the matter of Arulmigu Akora Veerabathrasamy temple, Natham town and taluk, Dindigul 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 16.12.2016 of the Joint Commissioner, HR&CE Admn Department, Madurai in confirming the Draft Scheme.

Annexure Order in R.Dis. A.P.No.5/2017D2 dated: 19.05.2017

The above appeal petition came up for final hearing before me on 18.04.2017 in the presence of Thiru.M.Rukmangathan, counsel for the appellants, Thiru.R.Boopathy, counsel for the respondents 2 to 6 and perused the relevant records. 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.69(1) of the Act against the order dated 16.12.2016 of the Joint Commissioner, Madurai made in O.A.No.7/2006 filed u/s.64(1) of the Act.

2. The appellant has stated that office of the Trusteeship In Arulmigu Akora Veerabathrasamy temple situated in Natham Town and taluk, Dindigul district is hereditary within the meaning of 6(11) and 63(b) of the Act, having obtained the declaration as Hereditary trustee in OA.No.8/85 and O.A.12/85 by common order dt.13.9.1987 in both original applications wherein both cousin brothers were declared as hereditary trustees. After the declaration, one Raju chettiar and others filed a scheme for the temple in question under section.64(1) which was rejected and appeal in A.P.55/90 on the file of the Commissioner, HR & CE, Chennai was also dismissed and scheme was not framed. The requirements in the scheme was to regulate the proper management of the affairs of the temple. In the present Act, there is a separate section for appointment of Non-Hereditary Trustee along with Hereditary Trustees as contemplated under section. 47(2) of the Act . Further, to accommodate community persons as Trustees In the temple, proviso to section. 64(1) of the Act was also incorporated. That a scheme cannot be framed for any other purpose. In order to remove any Trustee, Section.53(2) has been incorporated in the Act. The Provision to Section. 64(1) of the Act contemplates denominational in character, hence, the framing of a scheme cannot be made for mismanagement in the temple and the authorities under the Act can invoke section.53(2) of the Act and accordingly, there is no scheme that could be framed for a temple where hereditary Trustees are functioning. In the previous appeal A.P.20/2014 on 5.9.2014 the Commissioner passed an order while disposing of the A.P.20/2014, which runs as follows:-

The order dated 20.3.2014 of the Joint Commissioner, Madurai In 1.A.Nil/2012 in O.A.No.7/2006 is hereby confirmed. It is open to the appellants

to raise their objection before the Joint Commissioner. While deciding the O.A., the Joint Commissioner should consider the following points.

(i) The order passed by the Deputy Commissioner in O.A.8/1985 and O.A.12/1985 and order in .A.P.No.29/1988.

(ii) Whether the petitioner and respondent got declaration before the competent Civil court.

(iii) If so, whether framing of scheme is necessary when statute provides for election of Board of Trustees.

This issue, though raised before the Joint Commissioner, HR & CE, Madurai, the learned Judge did not go into the question of law, but, however, proceeded to issue a draft scheme and also a final scheme. Against the final scheme, this appeal is preferred Under Section 69(1) of the Act. The question of rotation Trustee does not contemplate in the Act and does not arise at all. And Clause-3 of the scheme wrongly stated that the, trustees consisting of members recorded as Hereditary Trustees in one year on rotation basis that cannot be done and no rotation basis is contemplated in the Act. Act alone will prevails and the scheme will not prevail. In Clause-4 of the scheme, it is stated that one person has to be selected as Managing Trustee and such an elected man, holding it one time alone and he is not to be elected for consecutive two periods and this is also not contemplated under the Act. Hence, what is not contemplated under the Act cannot be incorporated in the scheme that has been framed. So, both the clauses are contrary to the directions given by the Commissioner in A.P.20/2014. In view of the illegal position of the scheme framed in O.A.7/2006 dated 16.12.16 is required to be set aside. A scheme cannot be framed for a temple where hereditary trustees are functioning, but, to take action against the hereditary trustees, the authorities has to invoke 53(2) of the Act and section 47(2) of the Act is available for appointment of associated trustees. And according to law, the scheme framed is void and is liable to be set aside.

3. In the written submission the respondents 2 to 6 has stated that to file a petition for the purpose of framing a scheme for the suit temples as there are more number of descendants to the founder of the temple who are impleaded as parties in this proceedings. Further after death of the father of the respondents 1 to 3 the 1st appellant /respondent herein took over the management of the two suit temples with the help of unruly elements and is misappropriating the funds of the temple. The other respondents herein are assisting the 1st appellant /respondent herein to act against the provisions of the Act 22/59. The appellants are not maintaining the proper accounts for the purpose of audit by the department. The main source of income of the temple is the rent from sixteen shops belonging to the temple. The 1st appellant herein who is in management of the temple at present has not taken any steps to fix fair rent for all the sixteen shops of the temple according to the provisions of the HR&Ce Act, property register, Auction register, budget , Thittam register, stock register of jewels and inventory register are not prepared and sent for approval of the authorities of the department. The management of the two suit temples by the appellant/ 1st respondent herein from the date of death of father of the respondents 1to 3 from 26.09.1992 without giving any chance to the other descendants of the founder of the temples who are seventeen in number is also not correct and same is against the provisions of the Act. Therefore the period of management of the Hereditary trustees must be fixed and their rights, duties and liabilities must be set out by way of framing of scheme for the proper and better management and management of the two suit temples and its properties according to the provisions of the Act 22/59. Hence the framing of the scheme for proper administration of the temples is inevitable, since the hereditary trustees are seventeen in number, the right to become managing trustee of the temple maybe on rotational basis. The 4th respondent herein filed a petition to recognize the trusteeship on behalf of the deceased Muthukaruppan Chettiyar before the joint commissioner HR&CE Madurai in the year 2003. But the enquiry was not conducted but however the concerned officials sent a letter Na.Ka No. 8188/2003/Aa1 dated 25.8.2003. The above

said letter only showed 3 members are hereditary trustee but beyond the respondents are omitted in the same letter and sent to the deceased Muthukaruppan. But the letter has not concluded the election of Managing Trustee. The election of managing trustee is null and void and it is not binding the respondents. The 1st appellant filed petition for rejection of Original application under the provisions of the Resjudicata. The said application was taken for hearing without numbering and the same was dismissed on 20.03.2014 thereafter 1st appellant filed appeal in A.P.No.20 of 2014 before this commission and the same was disposed of with a direction to consider the point at the time of passing of the order. Subsequent to that detailed enquiry was conducted as per the directions of this Commission and in the meanwhile the 1st respondent has not produced any accounts statement before the Joint Commissioner. It clearly shows that the mismanagement of the both temples. The respondents have reported to the audit section of HR&CE that the 1st respondent has not filed accounts continuously after 2006. By such a way the respondents have clearly proved that the framing of the scheme is inevitable for the better administration of the temples. Accordingly the Joint Commissioner, HR&CE Department, Madurai correctly held that the framing of the scheme is inevitable for the better administration of the temples and passed order dated 18.07.2016 for framing of draft scheme for the better administration of Arulmigu Akora Veerabathrasamy temple, Natham Town and Taluk of Dindigul District and called for objections for the draft scheme. Aggrieved with the above orders the appellant had originally preferred an appeal before this Hon'ble forum in A.P. No. 26 of 2016 and the same was dismissed on 30.09.2016 by upholding the orders passed by the Joint commissioner and also observed that it is open to the appellants to file their objections if any before the Joint commissioner and the same should be considered in accordance with law. The joint commissioner also directed to consider the directions issued by this Forum in AP NO.24 of 2014 before passing any final orders in the said original application till then status quo to be maintained. In obedience of the directions issued by this forum the Joint commissioner after

issuing proper notice to the parties concerned for confirmation of the draft scheme called for objections and to that effect, necessary notices were affixed in the temple vicinity before 16.12.2016. However, at the time of calling in the open court for any objections, there was no objection from any body. This clearly shows that the 1st respondent had given sufficient opportunity to the Petitioners/ appellants. The non-filing of the proper objection for approving the draft scheme itself clearly shows that the petitioners/ appellants have abandoned their claim on their own accord and hence the said confirmation of scheme is nothing but consented could not be agitated at a later point of time. The appellants who has filed appeal before this forum against the orders of the Joint Commissioner dated 16.12.2016 had also filed a Civil Suit before the Hon'ble subordinate Court, Dindigul in O.S.No.579/2016 for the relief of declaration declaring the orders passed by this forum in A.P.No.26 of 2016 dated 30.09.2016 is unlawful and null and void and further declaration declaring the order of the Joint Commissioner, Madurai in O.A.No.7/2006 dated 18.07.2016 as unlawful and null and void and also sought for permanent injunction against the 1 to 6 respondents herein in which no interim orders have been passed and only notice was ordered and accordingly the respondents have entered their appearance on 18.02.2017 and sought time for counter in I.A.No.756 & 757 of 2016. Further to that based on the confirmation of the draft scheme passed by the 1st respondent/Joint Commissioner, the respondents already have registered deed of agreement for Administration of Temple before the SRO Natham vide document No.1 of 2017 dated 30.01.2017. In confirmation of the Draft Scheme by the 1st respondent and in view of Masi Perunthiruvizha, the 5th respondent herein has given application dated 19.01.2017 before the Assistant Commissioner, HR&CE department, Dindugal for implementation of the approved draft scheme. Accordingly, the concerned officials summoned both the parties concerned and received their respective statements of the parties. During the course of enquiry, the appellants objected the same and created ruckus. In view of claiming the right of performing the Pooja by the two rival groups which will definitely create

law and order problem, the concerned officials refused to give permission till the orders from the civil court by its order dated 20.02.2017.

4. I heard Thiru.M.Rukmangathan, counsel for the appellants, Thiru.R.Boopathy, counsel for the respondents 2 to 6 and perused the relevant records.

5. The office of the Trusteeship of the suit temple was declared as Hereditary and both the appellants and the respondents 2 to 6 were declared as Hereditary Trustees in O.A.No.8 and 12/1995 by the then Deputy Commissioner, Madurai. The respondents 2 to 6 had filed the said O.A.No.7/2006 to frame a scheme with the provision to elect managing trustees on rotational basis as the temple has been mismanaged by the appellants herein. The same was opposed by the appellants on the ground that the said Original Application was barred by principle of resjudicata, as earlier O.A.No.29/1988 filed for framing of scheme was dismissed and the appeal filed in A.P.No.55/1990 was also dismissed.

6. After hearing both the sides, the Joint Commissioner had issued a draft scheme. The same was challenged by the appellants before this forum in A.P.No.26/2016. The said appeal petition was disposed by order dated 05.09.2016 with direction to file their objection before the Joint Commissioner. But the appellants did not file any objection before the Joint Commissioner but they have filed O.S.No.579/2016 challenging the order passed in A.P.No.26/2016 and the same is pending.

7. The appellants have contended that the u/s.64(1) of the Act , a scheme can be settled to incorporate community persons as Trustees and scheme cannot be framed for any other purpose. Further, the trustees can elect one person as managing Trustee u/s.48(2) of the Act.

8. Sec 64 of the Act read as follows ***“When Commissioner or the Deputy Commissioner, as the case may be, has reason to believe that***

in the interest of proper administration of an institution, a scheme should be settled for the institution, or when not less than five persons having interest make an application, in writing , stating that in the interest of the proper administration of an institution a scheme should be the settled for it, shall consult in the prescribed manner the trustee and the persons having interest and if, after such consultation, he is satisfied that it is necessary or desirable to do so, he shall, by order, settle a scheme of administration for the institution”.

9. Accordingly, the Joint Commissioner can settle a scheme in the interest of the proper administration of an institution and its properties. There are several groups among the Hereditary Trustees. They are quarreling with each other which resulted in improper management of the affairs of the temple. The Board of Trustees is a collective body and any decision regarding the administration of the temple shall be taken collectively. But due to non-cooperation among the Trustees, the temple did not get any income from the properties. The temple owns 16 shops, but the trustees failed to lease out the shops in public auction by fixing fair rent in accordance with law. The accounts are not properly maintained and produced to audit. Due to the internal dispute between the Trustees regarding management of the temple they have failed to take care of the administration of the affairs of the temple. Hence, the Joint Commissioner has subjectively satisfied to settle a scheme in the interest of the proper administration of the temple.

10. The O.A.No.29/1988 filed for framing a scheme was dismissed as the mismanagement was not proved. The Joint Commissioner can settle a scheme of administration any time in the interest of the institution in consultation with the Trustees. In this case some of the Trustees had filed the Original Application to frame a scheme on the ground of mismanagement. The Joint Commissioner has held that the

mismanagement was proved. Hence the O.A.No.7/2006 was not barred by the principle of res judicata.

11. In the Judgement reported in I.L.T.27 mad 192, it was observed that “This argument proceeds on misapprehension that when Trust property is managed in rotation by co-trustees, the possession of the office by each during his turn is exclusive of or adverse to the other co-trustees. Though each of the co-trustees may during his turn in the rotation be regarded in a sense as the acting or executive trustee for the year (or Period) ... yet he holds the office and discharge the duties thereof on behalf of himself alone. In fact, as a general rule, even during the turn of each co-trustee, all the co-trustees are entitled, and in fact, are bound to act jointly in matters other than the ordinary routine duties”

12. In Judgement reported in 1998(3) MLJ 28 it was observed that “ It follows that whatever may be the number of trustees, the office is a joint one and the co-trustees all form as it were, one collective trustee and therefore, must, execute the duties of the office in their joint capacity. A scheme providing for management by turn amongst the members of the family would be only an arrangement *inter se*, but outside the family the co-trustees will form a corporate entity. The right of management is vested in all of them”.

The above decisions squarely applies to the case on hand.

13. Though Sec 48 of the Act provides for election or nomination of Chairman, Board of Trustees, as the Trustees are divided in two groups, it is not possible to conduct election in a peaceful manner. Considering the interest of the temple, a long term solution is needed for the proper administration of the temple. Hence, the Joint Commissioner has framed a scheme by incorporating provision to nominate Managing Hereditary Trustee

on rotation basis. Further, by the said provision, all the trustees will get an opportunity to administer the temple.

Therefore for the foregoing reasons stated supra, I find no infirmity in the order passed by the Joint Commissioner, Madurai and it does not warrant any interference. Accordingly the order dated 16.12.2016 of the Joint Commissioner, Madurai made in O.A.No.7/2006 is hereby confirmed and the appeal petition is hereby dismissed as devoid of merit.

/typed to dictation/

Sd./- M.Veera Shanmugha Moni
Commissioner

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

Superintendent