

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

Monday the 7<sup>th</sup> day of August, Two thousand and Seventeen.

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

**A.P.No.10/2017 D2**

**Between**

1. S.Ramasamy Bhattachari
2. S.Gopalakrishna Bhattachari

...Appellants

**And**

1. The Joint Commissioner,  
HR&CE Admn.Department,  
Chennai.
2. The Assistant Commissioner  
HR&CE Admn.Department,  
Chennai.
- 3.The Fit Person/ Executive Officer  
Arulmighu Thiruvallasarar Thirukkoil,  
Padi, Chennai-50
4. Narasimha Bhattachari

.. Respondents

In the matter of Arulmighu Kariamanicka Perumal temple, P.E.Koil Street,  
Ayyanavaram, Chennai -23.

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 03.03.2017 of the Joint Commissioner, HR&CE Admn Department, Chennai in Pro.R.C.No.46/2015 dismissing the Hereditary Trustees under section 53(3) of the Act.

**Order in D.Dis. A.P.No.10/2017 D2 dated: 07.08.2017**

The above Appeal petition came up for final hearing before me on 04.07.2017 in the presence of Thiru.C.Dharmaraj, counsel for the appellants, Thiru.E.Ganesh, counsel for the 4<sup>th</sup> respondent. Upon hearing their arguments and having perused the connected records the matter having stood over for consideration till this day, the following order is passed:-

**ORDER**

The above appeal petition was filed under Section 53(5) of the Act against the order dated 03.03.2017 of the Joint Commissioner, Chennai in Pro.Rc.No.46/2015 dismissing the Hereditary Trustees u/s.53(3) of the Act.

2. The appellant have stated that the office of the Trustee of the said temple has been declared as hereditary, in O.A.No.230/1940 and one Rangasamy Bhattachariar,

the grandfather of appellants was recognized as a Hereditary trustee cum Archaga of the said temple. After the demise of Rangasamy Bhattachariar his son R.Srinivasa Battachariar i.e. the father of the appellants, was functioning as Hereditary trustee cum Archagar till his demise on 03.08.1993, when Santhana Battachari, elder brother of the appellants herein assumed office automatically as a Hereditary trustee cum Archaga. When a dispute arose between the brothers with regard to pooja services as well as the administration, the brothers came to a mutual arrangement that the pooja services shall be performed by them on a rotation basis and it is being continued without any interruption between each other till date. Thiru.Santhana Battachari being an elder, was allowed to function as managing trustee and he who was functioning as Managing Hereditary Trustee from the initial stage of their father's demise, there arose a conflict that the office of the trustee had not been properly recognized by the Department, which compelled Thiru.Santhana Battachari to handover the management to the 1<sup>st</sup> appellant, who was functioning as managing trustee with the consensus of the brothers, i.e. with the 2<sup>nd</sup> appellant and Thiru.Santhana Battachari who were the co-trustees. The 1<sup>st</sup> appellant who took charge as managing trustee by about December 2000, began to take steps for the regularization of office of the trustee as well as the maintenance of the properties within the ambit and purview of the TN HR&CE Act. The 1<sup>st</sup> appellant took much effort to conduct Thiruppani works in the said temple. Five storied Rajagopuram was constructed in the said temple as Ubayam work as per permission granted by the Commissioner vide orders in his Pro.No.63644/2007 dated 02.10.2007. Kumbabishegam was performed on 29.01.2010 after getting sanction from the competent authority vide proceedings of the Commissioner in K.Dis.No.3187/2010 dated 21.01.2010. Fair rent to the properties of the said temple was fixed by the committee and approved vide Joint Commissioners R.C.No.10759/2010 dated 01.11.2010. Thus the administration was streamlined and brought up within the purview of rules. Be that as it may, Thiru.Santhana Bhattachari through his son and grand son began to confront with the 1<sup>st</sup> appellant in each every matter for his personal gains not only with administration but also with religious activities such as performance of pooja etc. He tried to form a separate trust/society in the name of said temple with the intention of running a separate parallel administration, with an ulterior motive of wrongful

gains. When the 1<sup>st</sup> appellant did not cooperate with the Thiru.Santhana Batachari to achieve his ulterior motive, he sent a letter alleging unfounded allegations and threatened that he will make complaints in a way to harass the 1<sup>st</sup> appellant and the 2<sup>nd</sup> appellant herein. In this process the Thiru.Santhana Batachari sent a baseless personal letter dated 07.07.2103 and demanded the 1<sup>st</sup> appellant to hand over charge of the said temple to him immediately. In such circumstances, the 1<sup>st</sup> appellant replied to him that even otherwise it would be fair to hand over managing trustee to the 2<sup>nd</sup> appellant herein and not to him. Thiru.Santhana Batachari challenged the reply letter sent by the 1<sup>st</sup> appellant in his personal capacity, by way of revision petition before this Hon'ble Tribunal in R.P.No.106/2014 with a prayer to direct the 1<sup>st</sup> appellant herein who was then functioning as managing hereditary trustee, to hand over charge of the said temple to the Thiru.Santhana Batachari herein. The revision petition after detailed enquiry was dismissed vide orders dated 04.03.2015 with a direction to the hereditary trustees to elect one among them as Chairman Board of Trustees otherwise the Chariman Board of trustees will be nominated as provided under appropriate rules. In the interregnum, the Thiru.Santhana Batachari gave a petition to the 2<sup>nd</sup> respondent seeking permission to conduct the Brahmorthasavam festival through the Sabha run by his grandson when it was specifically denied by the then managing hereditary Trustee i.e., 1<sup>st</sup> appellant. Even without adhering any rules or formalities the 2<sup>nd</sup> respondent gave permission to the sabha vide orders in L.Dis.No.5184/2014 dated 31.12.2014. Since it was given on the verge of commencement of the festival, the managing trustee though it was a wrongful order, allowed it, considering the interest and in order to safeguard and to protect the fame and name of the said temple, interalia the respect of the authorities. Any how a letter of objection was submitted to the 2<sup>nd</sup> respondent vide letter dated 26.01.2015. In pursuant to the order of this Hon'ble Tribunal in R.P.106/2014 dated 04.03.2015, a special meeting for electing a chairman Board of trustees was convened by way of a notice to the trustees dated 21.03.2015 and the election was held in the premises of the said temple on 02.04.2015. In the meeting held on 02.04.2015, Thiru.Santhana Batachari made himself absent even after the grace time and then the 2<sup>nd</sup> appellant was elected as Chairman Board of Trustees and the fact was recorded vide resolution No.2 dated 02.04.2015. The 1<sup>st</sup> respondent sent a memo/notice in

R.C.No.46/2015 dated 13.05.2015 calling for an explanation to the 17 charges therein, under the guise of a report of the 2<sup>nd</sup> respondent dated 31.03.2015 on the purported complaint made by the Thiru.Santhana Batachari. Thereafter, after obtaining a statement from the appellant and others the first respondent has placed the appellants only under temporary suspension pending enquiry and asked to hand over charge of the said temple to the another Trustee Thiru. Santhana Batachari vide orders in R.C.No.46/2015 dated 17.02.2016. An appeal against the order of suspension dated was preferred in A.P.No.5/2016 in which an interim order of stay against the suspension was granted vide orders dated 22.03.2016. But is even after the stay granted by this Hon'ble Tribunal, the appellants were not allowed to resume the administration by Thiru.Santhana Batachari saying that he will hand over charge only if the 1<sup>st</sup> respondent gives a specific order. But the 1<sup>st</sup> respondent did not even to allow the innocent appellants to put forth their reasonable representation and as a result Thiru.Santhana Batachar was enjoying the administration of the said temple without any legitimate cause under the unusual shelter of the 1<sup>st</sup> respondent. Under such circumstances this Hon'ble Tribunal disposed off the appeal vide orders dated 28.04.2016 thereby allowing the appellants to continue as trustees and directed to conduct the enquiry giving notice to all the three trustees as against the earlier proceedings was initiated only against the appellants. The 1<sup>st</sup> respondent issued fresh notice to all the three trustees wherein the trustees submitted again their explanation and the matter was posted for enquiries on many dates. Thiru.Santhana Battachari who was functioning under the shelter and in good book of the 1<sup>st</sup> respondent fell in sick and came to be expired on 19.11.2016 without facing the enquiry. After his death of one month, the 2<sup>nd</sup> respondent passed an order, as if now only she came to know everything, directing the appellants to take charge of the administration of the said temple immediately and to take steps for the Hundial opening vide orders dated 19.12.2016 in her R.C.No.5052/2016. Since Thiru.Santhana Battachari who was holding charge came to be expired already, the appellants stating the facts wrote for the permission for the Hundial opening to the 2<sup>nd</sup> respondent but no permission was granted till the 1<sup>st</sup> respondent passed the impugned order on 03.03.2017 dismissing the appellants from the Hereditary trusteeship of the said temple. The charges which are very common in nature which can be applied in

almost all over the temples on vindictive occasions, such as not taking steps u/s 78 proceedings, not updating the register of properties, failure in submission of annual accounts etc which were not specific and particular had been erroneously taken as a vital consideration for passing the impugned order. The 1<sup>st</sup> respondent has abruptly failed in realizing the very basic fact that 1-15 registers to the temples are prepared by the department and not maintained by the trustees. The 1<sup>st</sup> respondent has also erred in awarding disproportionate punishment of dismissing the appellants from the Hereditary Trusteeship for the supposed mere procedural mistakes, when there was no proof of mis deeds, unlawful gain or monetary benefit to the appellants.

3. In the counter affidavit the 4<sup>th</sup> respondent has stated that based on the complaints of one Mr. Senthil Kumar and his father S. Shantana Bhattachari and other complaints received, the Learned Joint Commissioner has directed the jurisdictional Assistant Commissioner to inspect the temple and to verify the records and based on the report of the Jurisdictional Assistant Commissioner, the Learned Joint Commissioner has framed as many as 18 charges against the appellants and his father S. Shanthana Bhattachari and initiated the disciplinary proceedings against them. After affording due opportunity to the parties concerned, the Learned Joint Commissioner has passed an elaborate order dated 3.3.2017 made in R.C.No 46/2015 whereby he has held that the Appellants have found guilty of all the charges except the charge no.7 and accordingly they have been dismissed from holding the post of hereditary trustees of the temple and appointed the 3<sup>rd</sup> respondent as the fit person of the temple. In the meanwhile, since his father S. Shantana Bhattachari is demised, he has filed an application to record his succession as hereditary trustee in the permanent vacancy occurred due to the death of the hereditary Trustee S. Shantana Bhattachari. Accordingly, the Learned Joint Commissioner has recognized his right and recorded his succession. Since then, he is looking after the affairs of the temple in the capacity as hereditary trustee of the temple. Nowhere in the Appeal, the Appellants have pleaded innocence or given any reasons or explanation about the charges instead they had the audacity to say that such charges can be framed against any trustee. during the appellant's management between 2000 and to 2013, they have committed several misconducts and derelicted and neglected their duty to help the persons in

unauthorized occupation of the temple premises, thereby they have enriched themselves unlawfully. Since they have gained monetarily by their proven misconducts, with oblique motive, they have refused to hand over the management to the demised hereditary trustee late. S. Shantana Bhattachary. In the meanwhile, his father late Shanthana Bhattachar has also given a complaint to the Learned Joint Commissioner wherein he has detailed out the misappropriations and misconduct committed by the Appellants and sought for disciplinary action against them. The Learned Jurisdictional Assistant Commissioner has sent a report whereby the authority has pointed out the misconducts and dereliction and negligent of duty committed by the hereditary trustees and recommended for action. Based on the documents and the depositions and representation given by the parties concerned, the Learned Joint Commissioner decided the evidence in its appropriateness and held that the Hereditary Trustees have committed misconduct attracting disciplinary proceedings in terms of Section 53 of the Act and held that the hereditary trustees are guilty of 18 charges except charge no. 7.

The major charges which are proven against hereditary trustees would include as follows:-

i) Out of 132 premises belonging to the institution, a meager 30 premises alone has been subjected to fair rent fixation another thereby caused huge revenue loss to the temple.

ii) Nearly 100 premises have been left free from subjecting it to the fair rent fixation and eviction proceedings and thereby the hereditary trustees colluded with the unlawful occupiers and left them so squat on the temple lands without paying the proper rents.

iii) Besides that, even for the fair rent fixed premises, the rent has not been collected from the default from the persons and admittedly there was huge arrears amounting to Rs.19,54,935/- and the same was not collected and no proceedings have been initiated to recover the same.

iv) The DCB - MDR has not been properly maintained in the temple, thereby

hereditary trustees have concealed the actual number of tenants, the extent of land owned by the temple and the number of lessees and encroachers, thereby the colluded and helped the unlawful occupiers.

v) The premises bearing Door No. 31A, Bhattachari Street belong to the temple and as per temple records it is let out for the occupation of One Velu Achari who was in arrears of Rs. 38,320/-, whileso, the Appellants have permitted one Mr. Kandan who is at present in unlawful occupation of the premises to put up unauthorised superstructures over the premises. Moreover, the 1<sup>st</sup> appellant has given no objection certificate to the taxing authorities and electricity board to levy tax and electricity connection in the name of Mr.Kandan, thereby helped the third party Mr. Kandan to take over the temple property.

vi) For the purpose of granting NOC and not to interfere in the unauthorized construction, the 1st Appellant has obtained Rs, 45,000/- unlawfully. The said father in law of the demised Mr. Kandan has given deposition relating to the same before the Jurisdictional Assistant Commissioner.

vii) In the temple premises bearing Door No.31 and 27/1 the person in unlawful occupation of the premises, have permitted to put up unauthorized superstructure over it.

viii) The property register, permanent register, tree register, jewels and articles stock register, inventory register, Kanikkai Register has not been maintained in the temple.

ix) The gold and other articles register and budget has not been prepared for the fasli 1424-1425 and income and Expenditure estimate list has not been submitted.

x) They failed to install CCTV camera and to repair the alarm bell

xi) Despite 15 Despite 15 years have been lapsed, no steps have been taken to conduct the Tirupani and Kumbabishekam to the temple.

xii) The urchava idol which are older than 100 years have not been registered

with the Archeological and Survey Department.

Since the appellants have chosen to not to provide any explanation more so valid explanation and has not pleaded any innocence about the charges. Besides that, no records have been produced to disprove the charges, on the other hand, the records and evidences would reveal that the Hereditary trustees are guilty of the all the 18 charges the charge no.7. Considering the gravity of the charges, they have removed from holding the post of Hereditary Trustees.

4. I heard Thiru.C.Dharmaraj, counsel for the appellants, Thiru.E.Ganesh, counsel for the 4<sup>th</sup> respondent and perused the relevant records.

5. In the impugned order, the Joint Commissioner had dismissed the appellants from the Hereditary Trusteeship. The Joint Commissioner had framed 18 charges against the Hereditary Trustees. After conducting a full fledged enquiry, the Joint Commissioner had held that 17 charges were proved. Most of the charges related to non-maintenance of statutory records. Some of the charges related to fixation of fair rent, collection of lease rent and leasing of property belonging to the temple.

6. The appellants have failed to maintain proper accounts. The fair rent fixation committee has fixed the fair rent to 33 sites and it was communicated by the Joint Commissioner to the appellants. But they have failed to implement the fair rent fixed by the fair rent fixation committee. They did not take any steps to fix the fair rent as per Sec 34A of the Act to the remaining properties. They have leased out some of the properties for lower rent and without approval by the competent authority and they had received lumpsum amount from said persons which were not brought into the temple accounts. They did not adduce any valid reasons for the said charges.

7. From the averments made by the appellants and the 4<sup>th</sup> respondent, it is inferred that due to the misunderstanding between the three Hereditary Trustees, the affairs of the temple is not administered in accordance with the provisions of the Act and interest of the temple was completely neglected by the Hereditary Trustees. Though the 4<sup>th</sup> respondent now alleges that the appellants have miserably failed to administer the

temple and its properties, his father who was also one of the Hereditary Trustees who also had failed to protect the properties of the temple.

8. As per Sec 28 of the Act, ***“the trustee of every religious institutions 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 direction 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”***. All the trustees were collectively responsible for the administration of the affairs of the temple and its properties. But they had used the temple and its properties for their personal gains. Due to the personal enmity they used to make allegations against each other ignoring the interest of the temple. Further, in the explanation furnished by the appellants they have stated that occupiers of the properties did not allow the Trustees to measure the property and refused to pay the rent and threatened the Trustees. This shows their inability in administering the properties of the temple. Hence, I find no infirmity in the order passed by the Joint Commissioner.

9. In the vacancy caused in the office of the Trusteeship due to the dismissal of the appellants, their legal heirs are entitled to succeed to the Hereditary Trusteeship. The 4<sup>th</sup> respondent herein has already recorded in the vacancy caused due to the death of his father Thiru.Srinivasa Battachariar. Due to the personal feud between the families of the Hereditary Trustees, there is no cooperation among them in the administration of the temple. Even if the legal heirs of the Hereditary Trustees succeeded to the office, they will not be able to work collectively for the betterment of the temple. They will continue the misdeeds committed by their elders. Hence, considering the above facts, it is decided to provide an opportunity to the appellants to mend their way and work for the betterment of the temple by rectifying the defects pointed out in the charge memo. Accordingly, the operation of the order passed by the Joint Commissioner, Chennai is hereby stayed.

10. The appellants and 4<sup>th</sup> respondent herein are directed to take necessary steps to rectify the defects pointed out in the charge memo within 6 months and sent a

rectification report to the Assistant Commissioner, Chennai. Thereafter, the Assistant Commissioner should inspect the temple and its properties and verify whether the defects pointed out in the charge memo are rectified. If they have failed to rectify the defects pointed out in the charge memo within the stipulated time, the stay will stand automatically vacated and the order passed by the Joint Commissioner, Chennai will be given effect. Also an Executive officer will be appointed u/s.45 of the Act to protect the properties of the temple without further notice to the Hereditary Trustees. The appeal petition is hereby disposed of with the above directions.

/typed to dictation/

Sd./- M.Veera Shanmugha Moni  
Commissioner

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

Superintendent

**To**

1. The Appellant through Thiru.C.Dharmaraj, Advocate, M-188, 9<sup>th</sup> Cross Street, Thiruvalluvar Nagar, Thiruvanmiyur, Chennai 600 041.
2. The 4<sup>th</sup> respondent through Thiru.E.Ganesh, Advocate, No.61/23, Sakthi Avenue, South Lock Street, Kottur, Chennai-600 085.

**Copy to**

3. The Joint Commissioner, H.R. & C.E. Admn.Department, Chennai
4. The Assistant Commissioner, HR & CE Admn.Department, Chennai
5. "L5" Section at Head Office **(through Numbering)**
6. Inspector, Circle-6
- 7-8)Extra.