

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

Thursday the 24<sup>th</sup> day of August, Two thousand and Seventeen.

Present: Dr.M.Veera Shanmugha Moni,

Commissioner.

**A.P.No.14/2017 D2**

**Between**

1.K.Ramasamy

2.M.V.Sellamuthu

3.R.Arunachalam

4.R.Mani

5.R.Ramasamy

...Appellants

**And**

1.The Joint Commissioner

HR&CE Admn. Department, Salem.

2.Rajendran

S/o (Late) Kolantha Pandaram

3.Sivalingam

S/o (Late) Kolantha Pandaram

4.Alangaram

(Late) Arunachala Pandaram

5.Thiruppathi

(Late) Arunachala Pandaram

6. Manickam

(Late) Arunachala Pandaram

7. A.Udhayakumar

(Late) Arunachala Pandaram

8. A.Chidambaram

(Late) Arunachala Pandaram

9.R.Arthanari

(Late) Ramalinga Pandaram

10.Paramasivam

S/o Sengoda Pandaram

11.Palanichamy Pandaram

S/o. Kuttiyandi Pandaram

12. Arthanari

S/o. Marimuthu pandaram

13. Kandasamy

S/o. Muthusamy Pandaram

....Respondents

In the matter of Arulmigu Mariamman, Athanooramman, Chellandiamman, Periamman, Vinayagar Temples, Karumapuram Village and post, Thiruchengode Taluk, Namakkal 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 26.12.2016 of the Joint Commissioner, HR&CE Admn. Department, Salem in dismissing the O.A. NO.14/2009 under Section 64(1) of the Act.

**Annexure Order in R.Dis. A.P.No.14/2017 D2 D2 dated: 24.08.2017**

The above Appeal petition came up for final hearing before me on 01.08.2017 in the presence of M/s.Subramaniyan, counsel for the appellants, Thiru.B.Vijayakumar, counsel for the R2 to R5, R7, R8, R12 and 13<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 69(1) of the Act against the order dated 26.12.2016 of the Joint Commissioner, Salem in the dismissing the OA.No.14/2009 filed u/s.64(1) of the Act.

2. The appellants have stated that the people belonging to Vellalla Gounder Community which is a sect of Kongu Vellala caste in Tamil Nadu, mainly residing in Kongu region of the State is divided into several groups under the names, Kulams. The said people falling within a particular Kulam or Koottam established their Kula Theivam. They also donated landed properties to the deity so as to derive revenue from the same to meet out the regular expenditure towards the deity, viz., for carrying out daily poojas, annual festival, special poojas on auspicious days, etc., These people of a particular hamlet used to elect their representative, namely, periathanakarar who along with other periathanakarars of other villages jointly carry out all the activities touching the affairs of the deity and the temple. According to the aforesaid custom, the forefathers of people of Poruleentha Kula Vellala Gounder community who are, or were, residents of Karumapuram, Maravampalayam, Veppampatti, Kaanchampudur, Karuppa goundam palayam, Vattoor, Morepalayam, Pillanaththam, Sankagiri, Konganapuram and Raakkipatti established their kula theivam, namely Arulmigu Aathi Karumapuram

Sellandiamman deity in the lands situated at survey No. 151/6 of Karumapuram Village, Thiruchengode Taluk, Namakkal District. The said forefathers also donated several acres of landed properties, mostly agricultural lands, to the deity so as to use the revenue derived from the said lands to be used for the conduct of poojas, special poojas, maintenance of temples, etc., and also made arrangements for the conduct of poojas to the deity. The revenue from the lands donated for the deity as well as by collecting annual taxes from the Kudippaattukaararkal and conduct of festivals every year. For this purpose, persons belonging to pandaram community were appointed as poojaries and the poojaries continue to conduct poojaas for the deity hereditarily. Similarly, to beat drums, persons belonging to Parayar caste living in the Karumapuram were appointed and they continue to carry out the same hereditarily. Similarly, persons belonging to Pallar caste are engaged to guard the procession while taking out the utchavar deity hereditarily. The said Kudippaattukaararkal also used to maintain other common temples located in the same village, namely, Vinayaga Temple, Mariamman Temple, Athanooramman, Periamman temple, Paandeeswarar Temple, Sentraya Perumal making mainly use of the lease amount derived from the lands donated to these temples and also from the taxes collected annually from them. While this being so, without the knowledge of the people and without giving any public notice to the said Poruleentha kula people, the officers of the HR&CE without any public notice simply started treating the subject temple as a public one and appointed some of the Kongu Vellala Gounders as Tharmakarthas. Thereafter, the Inspector of HR&CE, Salem enquired the matter and has sent a report dated 26.02.1974 which clearly establishes that the temples have been under the management, supervision, maintenance and control of the Trustees belonging to the Poruleentha gula Gounders and is not public temple. The forefathers of private respondents are only poojaris and were only carrying out the poojas. While the facts being so, without any public notice or notification or conducting any public enquiry following the mandate of Order 1 Rule 8 of Civil Procedure Code 1908 after giving notice to the said Kudipaattukaararkal, the DC, HR&CE CBE issued orders on 14.02.1976 in the O.A.No.68174 filed by 10 pandarams declaring the said Pandarams as hereditary trustees, even without considering and bringing on record the said reports of the Inspector. Further, the Inam Fair Register in

respect of TD NO.829 and 830. On the face of it also depicts the respondents only as poojaris and further their claim to own said lands were rejected which can also be seen in the same document. Further, the facts that EB connection stands in the name of one of the Gounder who represented the community as Tharmakartha, admitted facts were that the funds are provided from the Poruleentha kula gounders and festivals conducted by them every year and further without any evidence of the Pandaram-respondents ever contributed even a single penny towards the maintenance of the temples. The said O.A.No.68/1974 was conducted by impleading some of the gounders on the choice of the applicants and entire the proceedings were carried out without following the principles as laid down in Civil Procedure Code 1908. which is blatant violation of the HR&CE Act and relying on the false statements of the Pandarams, ignoring the bona fide statements of the respondents. It is further learnt that the said subject temples have not been declared as Public Hindu temples under the Act till this date. As the management was not done and the temple became a dilapidated condition and the poojaris failed to be present in the temple, instead attempted to sell the properties, and hence the Kudipattukararkal vehemently opposed the said attempt and the prospective purchasers refused to purchase the lands due to the said strong protest. Further, the Kudipattukaararkal employed another pandaram to conduct poojas and the same was going on all along. Thereafter, the poojaris came to the Gounders and suggested that they may be permitted to do poojas and the management of the temples be with the Kudipaattukarrarkal as per the custom and practice existed hitherto and towards the same executed a document in the year 1995, Viz., 2223 of 1995 and registered on the file of the Sub-Registrar, Thiruchengode. Only thereafter, the Kudipaattukaararkal formed a committee known as " kovil Thiruppani Kulu" and mobilized the families who have the subject deity as their kula theivam and collected funds and reconstructed the temple on their own by spending huge amount and conducted Kumbabishekam on 15.07.2013. All the expenditure having been borne by the said Poruleentha kula Gounders, neither the HR&CE nor the private respondents contributed even a single penny towards the same. The private respondents attempted to sell the temple properties and hence after due enquiries by the 1<sup>st</sup> respondent, the hereditary trustees were suspended by the 1<sup>st</sup> respondent in their proceedings dated 01.03.2012. While the

Kudipaattukararkal, thus having reconstructed the Arulmigu Sellandiamman temple and is managing the subject temples, petitioners filed O.A.No.14 of 2009 to appoint the poruleentha kula Vellalala Gounders as trustees by framing a scheme on the file of the 1<sup>st</sup> respondent for the management of the subject temples. The respondents whose forefathers relinquished the rights of trusteeship, contested the orders on 07.09.2016. While this being so, the petitioner has been able to get the Xerox copies of the preliminary reports of the Special Inspector of HR&CE even dated 26.02.1974, namely, Ni.Mu.Report No.2381 and 2382 in respect of the subject temples and the several reports of the Inspectors disclosing the fraudulent acts of the parents of respondents 1 to 13 and the orders of 1<sup>st</sup> respondent suspending the poojaris from the office of the trustees and further to take the respondents who were parties to the execution of the said Deed in Doc.No.2223 of 1995 to prove the said deed, which has not been done. Therefore, in the interest of justice and as the Hon'ble Authority being misled by the respondents suppressing the said vital documents, the petitioner filed I.A.No. of 2016 on 23.12.2016 in the said O.A.No.14 of 2009 to reopen the matter to file the said documents. Even though the said I.A was filed on 23.12.2016 on the file of the 1<sup>st</sup> respondent, the 1<sup>st</sup> respondent after taking record of the same, after 6 days, i.e., on 29.12.2016 returned the said I.A filed by the petitioner endorsing in his proceedings N.Dis 15331/2016 DI.29.12.2016 as, "O.A14 12009 has been ordered on 26.12.2016 on merits. Hence this petition is returned". But the fact remains that the 1<sup>st</sup> respondent did not pass any orders in the eye of law till this date. The said endorsement has been made to avoid the I.A filed by the Appellants, and the 1<sup>st</sup> respondent has returned the same by incorrectly stating that the orders were passed on 26.12.2016. It is well settled law and as per Civil Procedure Code'1908 that any order pursuant to the judicial adjudication is to be passed in the open court in the presence of parties that too after giving due notice much in advance, but the 1<sup>st</sup> respondent failed to send any notice nor pronounced the orders in the open court. The HR&CE authorities have no Jurisdiction as at no point of time the subject temples were declared as Hindu religious public temples and hence the provisions of the Act cannot be extended to the subject temples and hence the interference of the 1<sup>st</sup> respondent and their officers hitherto in the management of subject temples is without Jurisdiction and hence the impugned order

passed pursuant to the illegal usurpation of Jurisdiction is liable to be set aside. The 1<sup>st</sup> respondent having rightly held that the orders dated 04.02.1976 passed in O.A.No.68/1974 will not operate as res Judicata for this O.A. has erroneously relied upon the same in passing the impugned order in dismissing this O.A. filed by the Appellants and hence the impugned order is liable to be set aside. The finding of the 1<sup>st</sup> respondent that the non-hereditary trustees cannot be appointed by framing a scheme when there are hereditary trustees appointed by the HR&CE authorities under the Act is untenable in law as the hereditary trusteeships is void ab initio and even the illegal ones which came to be an end due to permanent relinquishment of the trustees themselves and also the is barred by limitation as no legal heirs raised any claim for hereditary legal heriship within limitation. Therefore, their rights extinguished by operation of law. As the impugned order passed in O.A.No.14 of 2009 by the 1<sup>st</sup> respondent having been passed without giving notice to the Appellants and not in the open court and hence the impugned order is not an order in the eye of law and is against the mandate of Civil Procedure Code'1908 and hence it is ultra vires of Tamil Nadu HR&CE Act,1959 and hence without Jurisdiction and hence there is no judgment orders passed in the said O.A.No.14 of 2009 by the 1<sup>st</sup> respondent till this date in the eye of law.

3. In the counter affidavit, filed by the respondents R2 to R5, R7, R8, R12 and R13 has stated that the averments of the appeal are imaginary the temple in question is a public temple had been established by the ancestors of the contesting respondents and is managed by them till today as evidenced by the inam register. The case has been filed by the appellants on an imagination that the temple belongs to appellant's community and the averment that the Deity is there kuladeviam is imaginary and false. In and around karumapuram, people of different communities are residing and since the temple is a public temple member of all communities come and worship there in the capacity as common public. The kongu vellallar community people have migrated from thondai region for their livelihood as evidence by Exhibit B2. Therefore it is clear that the appellants do not have any right at kongu region and the appellants were not in management of the temple is evident from the above fact of migration. The averment that the respondents have been appointed as poojaries ancestors of the appellant's community are all imaginary. The gounder community people do not have any iota of

right as the other community people have. The public notice have been issued by exhibit 14 and 15 and in O.A.No.68/74 the respondents are people belonging to porul yeantha community people and in particular as to specify that the appellant's K.Ramasamy's father kandasamy is the respondent in O.A.No.68/74. Further inam T.D.No.829, T.D.No.830 provides for lands to be retained by the respondents herein and to safeguard and maintain the temple and the averment that the lands were allotted to the respondents herein only for conducting poojas are false and it is evident from I.F.R. column 8. Further the settlement order S.R.469 dated 15.02.1967, it has been stated that, the temple properties are possessed and enjoyed in the capacity of hereditary trustees and poojaris the karnam of the village has stated in his statement which has been referred in the settlement order. Further the temple is under the control and the management of the HR&CE Department. The ancestors of the respondent herein had filed a petition u/s.63(b). Further Section 1(3) states that " This act is applicable to all public temple". Further the temple had come to the control of the HR&CE and that in O.A.No.68/1974 the respondent there in had stated that they were appointed by the Assistant Commissioner as trustees had in Exhibit in B.17 stated in their statement. Only on the basis of proper appreciation of the document the than Assistant Commissioner had passed an order on 26.02.1974 and the same has been confirmed in the orders of the A.P.No.53/1976 and O.A.No.68/1974 without filing an appeal against the said orders how challenging the impugned order herein passed by the Joint Commissioner in the present appeal is not correct and not maintainable in law.

4. I heard Thiru.N.Subramaniyan, counsel for the appellants, Thiru.B.Vijayakumar, counsel for the R2 to R5, R7, R8, R12 and 13<sup>th</sup> respondent and perused the relevant records. The counsel for the appellant reiterated the contentions raised in the grounds of appeal petition and also filed written submissions.

5. The appellants had filed the O.A.No.14/2009 before the Joint Commissioner, Salem u/s.64(1) of the Act to frame a scheme of administration with provision to appoint non-hereditary Trustees from Poruleandha Kulam of Kongu Vellalar Community belonging to Karumapuram village. By filing the said OA u/s.64(1) of the Act, they have admitted that the suit temples are public temples. But in the appeal petition they have taken a different stand by stating that the HR&CE department has no

jurisdiction and the temples are not declared as public temple and hence the provisions of the Act cannot be extended to the suit temples. As per Sec 1(2) of the TN HR&CE Act 1959, the said Act applies to all the Hindu Public temples. The onus is on the appellants to prove that the suit temples are not public temples before the competent court of law. In the appeal petition, the appellants have admitted that persons belonging to Pandaram, Parayar and Pallar communities have been assigned works related to the temples. It proves that all the communities residing in the said village are associated with the temples. If the suit temples are not public temples as contended by the appellants, there is no need to file the said O.A. u/s.64(1) of the TN HR&CE Act for framing a scheme of administration to the said temples.

6. The counsel for the appellants has vehemently argued that Hereditary Trusteeship was obtained by the respondents by fraud and without notice to the people of Poruleentha kulam of Kongu Vellalala community. The trusteeship of the suit temple was declared as Hereditary and 10 persons were declared as Hereditary Trustees by order dated 14.02.1976 made in O.A.No.68/1976 by the then Deputy Commissioner, Coimbatore. In the said Original Application 3 persons belonging to the appellants' community were arrayed as respondents. They had also filed an appeal against the said order in A.P.No.53/1976 before the Commissioner and the same was dismissed by order dated 21.12.1976. No appeal was filed against the said order. Hence, it attained finality. The appellants are claiming that the said order was obtained by fraud. If it is so, the appellants have to prove the same before the competent court of law and get favorable order. Unless the order passed by the Deputy Commissioner is set aside by the competent court, it is legally valid. Further, the validity of the said order cannot be tested in the Original Application filed u/s.64(1) of the Act.

7. Further the appellants are relying upon the registered consent agreement deed No.2223/1995 entered between the appellants' community and Pandaram community. Both the Joint Commissioner and this forum have no jurisdiction to test the validity of the said deed. Further, the said issue was considered by the Joint Commissioner, Salem in the impugned order. The said agreement was signed by only 4 Hereditary Trustees out of 10 Hereditary Trustees. Further, the right of Hereditary Trusteeship cannot be taken away by an agreement. Any agreement entered by the

person for the time being in the office of Hereditary Trustee by relinquishing the Hereditary Trusteeship will not bind the persons who are entitled to succeed to the said Hereditary Trustee office. Hence, the appellants cannot deny the accrued rights of the respondents by seeking to frame a scheme of administration.

8. As per Sec 64 of the TN HR&CE 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 to settle a scheme of administration for any religious institution, the Joint Commissioner shall consult the Trustees of the temple and the Persons having interest. After such consultation, if he is satisfied that it is necessary or desirable, he may settle a scheme. But in this case, the Hereditary Trustees of the temples are strongly objecting to settle a scheme of administration as prayed by the appellants. Further, when the subjective satisfaction of the Joint Commissioner is made mandatory for framing a scheme, the appellants ought to satisfy the Joint Commissioner. But they had failed to satisfy the Joint commissioner to settle the scheme of administration. This forum while sitting on the appellate side cannot compel the joint Commissioner to subjectively satisfy to settle a scheme of administration. Further, the appellants did not file the said Original Application in the interest of the temple and its properties but they want to establish that the temple exclusively belongs to their community.

10. In the impugned order the Joint Commissioner had legally analyzed both oral and documentary evidences marked on both the sides and gave categorical findings on each evidence. Therefore, I find no infirmity in the order passed by the Joint Commissioner, Salem and it is liable to be confirmed. Accordingly the order dated

26.12.2016 of the Joint Commissioner made in O.A.No.14/2009 is hereby confirmed and appeal petition is hereby dismissed as devoid of merit.

/typed to dictation/

Sd./- M.Veera Shanmugha Moni  
Commissioner

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

Superintendent