

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

Tuesday the 7<sup>th</sup> day of August, Two thousand and Eighteen.

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

**A.P.20/2017 D2**

**Between**

1.A. Dhanapal

2.A. Vijaya

...Appellants

**And**

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

2. The Assistant Commissioner  
HR&CE Department, Salem

3. The Executive officer,  
Arulmighu Angalamman temple, Kalvadagam,  
Sangagiri Taluk, Salem District.

4. M.Periasamy

5. Velusamy

... Respondents

In the matter of Arulmigu Angalamman temple, Kalvadagam, Sangagiri Taluk, Salem District

The Appeal petition filed under Section 54(4) of the Tamil Nadu H.R. & C.E. Act, 1959 (Tamil Nadu Act 22 of 1959) against the order dated 22.03.2017 of the Joint Commissioner, HR&CE Admn Department, Salem in M.P.No.5/2016 filed under section 54(1) of the Act.

**Order in D.Dis. A.P.No.20/2017 D2 dated:07.08.2018**

The above appeal petition came up for hearing before me on 13.02.2018 in the presence of Thiru.M.Elango, counsel for the appellants, Thiru.N.Kanagavelu, counsel for the 3<sup>rd</sup> respondent, Thiru.M.Rukmangathan counsel for the 4<sup>th</sup> and 5<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 u/s.54(4) of the Act against the order dated 22.03.2017 of the Joint Commissioner, Salem in M.P.No.5/2016 filed u/s.54(1) of the Act.

2. The appellants have stated that the Joint Commissioner has appointed the 5<sup>th</sup> respondent as a Hereditary Trustee of Arulmigu Angallamman Thirukoil, Kalvadagam, Sangagiri Taluk, Salem District. Thiru.Periyasamy poosari and Thiru.Muthusamy Poosari were appointed as a hereditary Trustee of the said temple by the Joint commissioner in Original Petition No.47/1979 dated 18.01.1979. The 4<sup>th</sup> respondent ought to have obtained no objection certificate from the petitioners in order to file application seeking to appoint hereditary trustee. However the 4<sup>th</sup> and 5<sup>th</sup> respondent with ulterior motive and malafide intention have not shown the petitioners' father as a legal heir to the 4<sup>th</sup> respondent. As per Section 54(2) of the Act, the consent of the legal heirs for appointing hereditary trustee is mandatory. Without the consent of petitioners, the Joint Commissioner has no jurisdiction to appoint the 5<sup>th</sup> respondent as a hereditary trustee of said temple. Therefore the 1<sup>st</sup> petitioner on 06.04.2007 has filed an objection petition before the 1<sup>st</sup> respondent with regard to the appointment of hereditary trustee. The 4<sup>th</sup> respondent filed a petition before the 1<sup>st</sup> respondent u/s.54(1) of the act seeking to appoint the 5<sup>th</sup> respondent as a hereditary trustee, stating that due to the ill health and overage he could not perform the duty of hereditary trustee. The 5<sup>th</sup> respondent is none other than the son of 4<sup>th</sup> respondent. During the course of enquiry before the 1<sup>st</sup> respondent, the 4<sup>th</sup> and 5<sup>th</sup> respondents had filed a no objection certificate given by the Legal heirs of the 4<sup>th</sup> respondent viz., Jayammal, Rajendran, Sampooram, Chithayee for appointment of the 5<sup>th</sup> respondent as a hereditary trustee of said temple.

3. In the Counter Affidavit the 3<sup>rd</sup> respondent has stated that the office of the trusteeship of the temple was declared as hereditary as early in the year 1977 in O.A.No.47/1976 dated 18.01.1977 by the then Deputy Commissioner, HR&CE Department in terms of Section 63(b) of the Tamil Nadu HR&CE Act and one Periasamy Poosari and Muthusamy Poosari were declared holding the office of the trusteeship as the hereditary Trustees. After the demise of one of the Hereditary Trustee Muthusamy Poosari his son M.Mahibalan who was the eligible legal heir next in line of succession was recorded as Hereditary Trustee u/s.54(1) of the Tamil Nadu HR&CE Act by the then Joint Commissioner, HR&CE Department, Coimbatore, in M.P.No.5/1991 dated 05.07.1991. Due to the conflict between the two hereditary trustees the matter was taken before the Hon'ble High Court , Madras by means of W.P.No.33648 of 2017, and after hearing the Writ Petition the Hon'ble High Court, Madras passed final orders dated 30.11.2010 and directed that the two Hereditary Trustees should act as Hereditary Trustees of the said temple on alternative English calendar year under rotation. However, pooja and festivals shall be supervised by both Hereditary Trustees jointly. During the year 2016 one of the Hereditary Trustees viz., Periasamy Poosari informed that he could not look after the administrative affairs of the temple due to his old age and his son viz., P.Velusamy took this matter before the 1st respondent along with necessary evidences to record him as the hereditary trustee in lieu of his father Periasamy Poosari who could not discharge his administrative duties as Hereditary

Trustee due to his old age and medical conditions. The 1st respondent after getting administrative report from the 2nd respondent and Inspector, Sankagiri and after careful consideration of the documents placed before him, had passed the impugned orders recording the 5th respondent viz., P.Velusamy, as successor to the office of the trusteeship by virtue of next in the line of succession. The 1st respondent is empowered by the statute to record line of succession which is an administrative exercise and the petitioners did not raise any genuine grounds to set aside the impugned order which was passed after careful consideration with reference to relevant records. The petitioners did not allege any disqualification against the 5th respondent as contemplated u/s.26 Tamil Nadu HR&CE Act and all the procedures were followed by the 1st respondent prior to passing the impugned order. Moreover, the permanent vacancy in the office of the trusteeship surfaced only due to the inability of the erstwhile Hereditary Trustee Periyasamy Poosari who was unable to discharge his duties and suggested that the 5th respondent to be replaced in his place. The 5th respondent is the legal heir and the other legal heirs have no objection to record him as Hereditary Trustee. So, the impugned order is perfectly valid and correct in law.

4. In the Counter Affidavit the 4<sup>th</sup> and 5<sup>th</sup> respondent has stated that the 4<sup>th</sup> respondent Mr.Periasamy is holding office as Hereditary Trustee but was ill and is not in a position to perform his duties as Hereditary Trustee in the temple. Mr.Periasamy had six children i.e.3 daughters and 3 sons and out of the six children one of his son namely Mr.Annadurai died the first

appellant herein is the son of late Annadurai and he has got a right to claim Hereditary Trusteeship when the line of succession is opened u/s.54(1) of the Act but Periasamy, due to his illness has chosen his son namely, Mr.Velusamy, the 5<sup>th</sup> respondent herein to function as Hereditary Trustee in his place wherein all other 4 children have given their consent and acceptance for giving hereditary trusteeship from Periasamy to Velusamy. When Periasamy dies, it is open to the appellants to make a claim along with others by filing petition u/s.54(1) of the Act. Hence, at this stage, challenging the order of the Joint Commissioner, HR&CE (ADMN) Department, Salem issued in M.P.No.5/2016/A1 dated 22.03.2017 u/s.54(1) of the Act is illegal and premature.

5. I heard Thiru.M.Elango, counsel for the appellant, Thiru.N.Kanagavelu, counsel for the 3<sup>rd</sup> respondent, Thiru.M.Rukmangathan counsel for the 4<sup>th</sup> and 5<sup>th</sup> respondent and perused the relevant records.

6. The office of the Trusteeship of the above temple was declared as hereditary by the then Deputy Commissioner by order dated 10.01.1977 made in O.A.No.47/1976 filed u/s.63(b) of the Act and one Periyasamy and Muthusamy were declared as Hereditary Trustees. After demise of Thiru.Muthusamy, his son M.Mahibalan was recorded as Hereditary Trustee u/s.54(1) of the Act by order dated 05.07.1991. As per the order of the Hon'ble High Court dated 30.11.2010 made in W.P.No.33648/2007, the two Hereditary Trustees are managing the temple on alternate English Calendar year in rotation.

7. Another Hereditary Trustee Thiru.Periyasamy has following 6 legal heirs:-

- (i) P.Annadurai
- (ii) P.Jayammal
- (iii) P.Rajendran
- (iv) P.Sampoornam
- (v) P.Sithayi
- (vi) P.Velusamy

Thiru.P.Annadurai is father of the appellants herein. He died in the year 1977 itself. Due to his old age Thiru.Periyasamy made an application to record his younger son P.Velusamy, as Hereditary Trustee in his place. After getting no objection certificate from all the legal heirs except legal heirs of deceased P.Annadurai, Thiru.P.Velusamy was recorded as Hereditary Trustee by the Joint Commissioner, Salem.

8. On perusal of the impugned order, I find following infirmity in the said order:-

(i) Periyasamy Poosari has not submitted any resignation letter to the Joint Commissioner. Hence no permanent vacancy has arisen in the office of the Hereditary Trustee.

(ii) No application was made by Thiru.P.Velusamy u/s.54(1) of the Act to record his succession.

(iii) Thiru.Periyasamy cannot file an application in favour of one of his legal heirs.

(iv) The Joint Commissioner, Salem has failed to obtain No Objection Certificate from all the legal heirs of Thiru.Periyasamy, as all legal

heirs are entitled for succession to the permanent vacancy caused in the office of the Hereditary Trustee.

(v) In the counter filed by Periyasamy, he has stated that, as he is still alive, the line of succession is not open. It clearly proves that the 4th respondent/Periyasamy poosari neither resigned nor relinquished his trusteeship. But in the impugned order the Joint Commissioner has stated that “இரண்டாம் மனுதாரர் திரு.வேலுச்சாமி என்பவரை வாரிசுதாரர் என்ற அடிப்படையில், சட்டப்பிரிவு 54(1)-ன் கீழ் next in the line of succession என்ற முறையில் பரம்பரை அறங்காவலர் திரு.பெரியசாமி பூசாரியரின் இடத்தில் பரம்பரை அறங்காவலராக பதிவு செய்து ஆணையிடப்படுகிறது” Sec 54(1) read as follows:- “ **When a permanent vacancy occurs in the office of the hereditary trustee of a religious institution, the next in the line of succession shall be entitled to succeed to the office**”. So, it is clearly evident that the 5<sup>th</sup> respondent was recorded in the permanent vacancy in the office of the Trusteeship. As per law, all the legal descendents are entitled to succeed to permanent vacancy in the Hereditary Office. The Joint Commissioner ought to have called for no objection from all the legal heirs of Periyasamy poojari. After the death of the appellants’ father P.Annadurai the right to succession, automatically devolves upon the appellants. It cannot be taken away by the respondents.

Therefore the impugned order suffers from infirmity as stated supra and liable to be set aside. Accordingly, the order dated 22.03.2017 of the Joint Commissioner, Salem is hereby set aside. If the 4<sup>th</sup> respondent is unfit to

perform the function and discharge the duties of a trustee, he may resign his trusteeship. If any such resignation is received from him, the Joint Commissioner, Salem should pass suitable orders on the same in accordance with law. The appeal petition is hereby disposed with above directions.

/typed to dictation/

Sd./- R.Jaya  
Commissioner

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

Superintendent

**To**

1. The appellants through Thiru.Elango, Advocate, No.128, Additional Law Chambers, High Court Buildings, Chennai-600 104.
2. The 3<sup>rd</sup> respondent through Thiru.N.Kanakavelu, Advocate, No.43/14, Adam Sahib Street, (1<sup>st</sup> floor) Royapuram, Chennai-600 013.
3. The 4<sup>th</sup> and 5<sup>th</sup> respondent through M.Rukmangathan, Advocate, No.67/20, Canal Bank Road, Raja Annamalaipuram, Chennai-600 028.

**Copy To**

4. The Joint Commissioner, HR & CE Admn.Department, Salem. (along with file in M.P.No.5/2016)
5. The Assistant Commissioner, HR & CE Admn.Department, Salem.
- 6-7) Extra.