

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

Monday the 20th day of August Two thousand and Eighteen.

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

A.P.27/2017 D2

Between

Dr.A.S.Venkatachari

...Appellant

And

The Joint Commissioner
HR&CE Department,
Trichy.

...Respondent

In the matter of Arulmigu Vishnu Durga Temple, Kauverykarai, Amma Mandapam, Thimmaraya Samudhiram, Srirangam, 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 31.03.2017 of the Joint Commissioner, HR&CE Admn Department, Trichy in O.A.45 of 2005 filed u/s 63(b) of the Act.

Annexure to Order in R.Dis.A.P.27/2017 D2 dated:20.08.2018

The above Appeal petition came up for final hearing before me on 20.03.2018 in the presence of Thiru.K.Jayaraman, counsel for the appellant. Upon hearing his argument 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 under Section 69(1) of the Act against the order dated 31.03.2017 of the Joint Commissioner, Trichy in O.A.No.45/2005 filed u/s.63(b) of the Act.

2. The appellant has stated that he had constructed a temple for "Sri Vishnu Durga" on the banks of River Cauvery adjoining river steps at No.7, Thimmaraya Samuthiram Village, Srirangam Taluk, Trichy District in the year 2004 with the help of the public and performed the Kumbabhishekam of the temple on 08.07.2004. Further the Mandalabishekam was also performed on

03.09.2004. The above temple is situated only in a poramboke land in T.S.No.1423/1B of the Srirangam Town, adjoining the river bed. The appellant has obtained electric service connection for the temple and the local Village Administrative Officer has issued certificate confirming the construction of the temple and its management by the appellant. The temple is situated beyond the "Amma Mandapam" on the banks of River Cauvery. The temple administration of Arulmigu Sri Ranganathasamy Temple by their letter dated 29.09.2004 have stated their administrative control is only with regard to the said "Amma Mandapam" and does not extend to temples/properties/structures beyond the same. He had opened a Bank Account in the name of the deity and has been depositing the Hundial collections regularly. The temple does not have or own any properties and that the appellant alone was administering the temple and its affairs. Since he was the founder of the temple and had been in exclusive management of the temple as well as performing the daily poojas and other special or regular Aradhanas, filed an application in O.A.No.45/2005 u/s.63(6) of the Tamil Nadu Hindu Religious and Charitable Endowment Act before the Joint Commissioner, Trichy, to declare him as the hereditary trustee of Sri Vishnu Durga Temple. The Joint Commissioner on erroneous consideration of facts and circumstances and in complete negation of the various documents and evidences produced by the appellant and in complete misreading of the provisions of the Act had dismissed the above O.A.No.45 of 2005 by order dated 31.03.2017. The 1st respondent has erroneously interrupted the Judgment in Babu Gurukul's case reported in 1964(1) MLJ Page 384 and accepted the Judgment in AIR 2016 SC Page 1433.

3. I heard Thiru.K.Jayaraman, counsel for the appellant and perused the relevant records. The appellant claims that suit temple was constructed and maintained by him from the contributions of the public.

4. In the original application Joint commissioner/Executive Officer of Arulmigu Aranganathaswamy Temple was arrayed as party- respondent. But in the above appeal, the appellant has failed to implead him as respondent. As the Joint Commissioner/Executive Officer of the above temple is claiming that the suit temple is situated in the Amma Mandapam which belongs to Arulmigu Aranganathaswamy Temple, he is necessary party to the said proceedings. Hence, the appeal petition itself deserves to be dismissed for non-joinder of necessary party.

5. It was admitted by the appellant that the temple is situated in Poromboke land. The temple was constructed on the riverbed of the Cauvery which is under the control of PWD- Water Resources Department. The appellant has constructed the above temple without obtaining No Objection Certificate from the said department. Further the Amma Mandapam and its adjoining area on the river bed is used by the Arulmigu Aranganathaswamy Temple for the performance of certain rituals. Hence if such type of construction is regularized , it will leads to commercialization of said area and also pollute the river Cauvery.

6. Further, the suit temple was constructed in the year 2004 and Original Application was filed in the year 2005. It was admitted by the appellant the temple was not constructed from his own funds. But it was constructed and maintained from the contribution made by the general public.

But the appellant is claiming Hereditary Trusteeship as he is doing pooja and maintaining the temple. The counsel for the appellant has filed several reported judgment in support of the appellant's claim, where it was held that in case of small temples both the poojariship and Trusteeship vested with same person and then he can be constructed as Hereditary Trustee of the said temple.

7. Sec 6(11) of the HR&CE Act 1959 read as follows:- “Hereditary trustee” means the trustee of a religious institution, the succession to whose office devolves by hereditary right or is regulated by usage or is specifically provided for by the founder, so long as such scheme of succession is in force;

Therefore, it is for the person who claims Hereditary Trusteeship to prove that his claim falls under any one limb of the said provision. But in the case on hand, the temple is of recent origin and constructed in the year 2004 only. In general “Hereditary” means “of or by inheritance”. The Trusteeship was not inherited by the appellant. The appellant has failed to prove that he is entitled for declaration under any one of the limb has provided u/s.6(11) of the Act. When the temple is of recent origin, it is not the right time to decide the hereditary nature of the office of the Trusteeship.

8. In the impugned order, the Joint Commissioner has legally discussed, analyzed the both oral and documentary evidence filed by the appellant and given her findings on each evidence. Therefore, I find no infirmity in the order passed by the Joint Commissioner, Trichy and it does not warrant any interference.

Therefore for the foregoing reasons stated supra, the order passed by the Joint Commissioner, Trichy is liable to be confirmed. Accordingly the order dated 31.03.2017 of the Joint Commissioner, Trichy made in O.A.No.45/2005 is hereby confirmed and the appeal petition is dismissed as devoid of merits.

/typed to dictation/

Sd./- R.Jaya
Commissioner

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

Superintendent