

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

**Thursday the 8<sup>th</sup> day of March, Two thousand and Eighteen.**

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

**A.P.28/2017 D2**

**Between**

- 1. A.Murugan**
- 2. P.Shanmugam**
- 3. P.Ponnusamy**
- 4. P.Duraisamy**

**...Appellants**

**And**

- 1.The Joint Commissioner  
HR&CE Department, Trichy.**
- 2. The Fit Person/Inspector  
H.R&C.E. Admn Department,  
Manapparai 1.**

**...Respondents**

**In the matter of Arulmigu Vellala Krupu Alias Masiperiyanna Karuppusamy Temple, Pannaiyar Kalathu Patti, F. Keezhaiyoor village, Manapparai Taluk, Trichy 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 27.02.2017 of the Joint Commissioner, HR&CE Admn Department, Trichy in dismissing the O.A.12 of 2011 filed u/s 63(b) of the Act.**

**Annexure to Order in R.Dis. A.P.No.28/2017 D2 dated: 08.03.2018**

**The above appeal petition came up for hearing before me on 23.01.2018 in the presence of Thiru.A.Balaguru, counsel for the appellant. Upon hearing his 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.69(1) of the Act against the order dated 27.02.2017 of the Joint Commissioner, Trichy in dismissing the O.A.No.12/2011 filed u/s.63(b) of the Act.**

- 2. The appellants have stated that the Arulmigu Vellala Karupu**

**Alias Masiperiyanna Karuppasamy and Muppuli Karuppasamy Temple consecrated and constructed 300 years ago by a devotee from vellalar community in Pannaiyar Kalathu Patti, F.Keezhiyoor village. It is situated in SF No.301/2, measuring about 0.12.0 Ares of Government poromboke land. The founder of the said temple left to kollimalai for worshipping Masiperiyanna samy and brought a part of the soil and constructed the said temple and worshiped the same. Thereafter ancestors of the appellants along with the members of the gounder community worshipped the temple. Members of the vellalar community created horse and the same was worshipped by them. The founder of the said temple, due to his old age was not able to look after the affairs and administration of the said temple and hence handed over the administration and poojariship to the forefathers of the appellants. The same was followed by their family members as per the customs and usage. The administration and its affairs of the temple along with the performance of the pooja was carried out by Subramaniya Gounder for more than 150 years. The documents in respect of the construction and consecration are not available due to non preservation of the document. The said Subramaniya Gounder has constructed a cement concrete stage and two deities has been installed by using horse and also a cage installed there for lighting Deepam for the said deities. The devotees have donated the iron rod and scythe and the same were worshiped by them. After the death of the said Subramaniya Gounder, his legal heir Alaga Gounder administrated and performed pooja till 1904. After his death his legal heir Palaniyandi Gounder performed pooja till the year of 1974. After his death, his sons 1.Alaga Gounder 2. Shanmuga Gounder 3. Ponnusamy Gounder and 4. Duraisamy Gounder are looking after administration and its affairs of the temple in addition to the performance of the pooja of the afore said temple. Since, the said Alaga Gounder became old, his son A.Murugan along with his uncle are looking after the administration and affairs of the temple. During their tenure new mandapam was constructed and electricity connection was obtained and the pooja and other expenses are met out from their own funds. One hundial was installed and a sum of**

Rs.75,000 is derived as income per annum. Aadi festival is conducted every year. During the 10 day festival and 1<sup>st</sup> day of Tuesday, large numbers of devotees gather and worship the deity. As per the tradition and customs of the temple the old horse has been replaced by new soft horse by the worshippers during the said festival. For preparation of new horse the soil offered by the devotees are used. Since, the administration and its affairs of the temple has been looked after for four generations by the members of the founder family and performing pooja, it was prayed to declare them as hereditary trustees under section 63(b). The appellants are relying on the decision by the Honorable High Court at Madras as reported in 2004 LW 695 where it was held that the affairs of the temple work have been managed by the contributions received from the public. The office of poosariship and trusteeship are carried on by the same person. The court held that such person falls within the definition of hereditary trustee.

3. I heard Thiru.A.Balaguru, counsel for the appellants and perused the relevant records.

4. The appellants herein have filed the O.A.No.12/2011 to declare them as Hereditary Trustee of the above temple. The term Hereditary Trustee has been defined u/s.6(11) of the TN HR&CE Act. *Accordingly, the "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;*

*The definition of this term "hereditary trustee" enumerates three methods of devolution which qualify a trustee to be known as a "hereditary trustee". They are :*

- (i) succession to whose office devolves by hereditary right ;*
- (ii) is regulated by usage; and*
- (iii) is specifically provided for by the founder, provided the scheme of such succession is still in force".*

5. In this case it is admitted by the appellants that the suit temple is situated in poromboke land and not founded by them. The temple is maintained from the funds collected from general public. The succession to the office of trustees of the temple was not specifically provided by the founder. No proof was filed by the appellants that the succession is regulated by any usage. It was not proved by the appellants with cogent evidence that the office of the trustees has been held by their family for more than 3 generation without any interruption. Further, the genealogical table filed by them was not supported with documentary evidence.

6. In the Judgement reported in 2009(4) CTC 563, the Hon'ble High court has held that the "*Admittedly, the respondent/plaintiff has not established how he got the hereditary trustee-ship whether it is by way of devolution or directly by the founder of the temple by usage. It has been held in earlier judgments of this Honourable Court that if the management of the temple was done without anybody interference, for more than three generations then a person can be declared as hereditary trustee of the temple in the absence of any other evidence. In this case, except the oral evidence of P.W.1, there is no proof that the plaintiff and his ancestors were in exclusive management and looking after the affairs of the temple. Therefore, it cannot be held that the plaintiff is a hereditary trustee of the temple and he is entitled to that declaration*". The above decision squarely applies to the present case.

7. The Hereditary right is a valuable right which excludes other general public from the administration of the temple. The person who claims such right should establish his claim with supporting documentary evidence. But in this case, the appellants did not produce any documents to prove their claim.

8. The counsel for the appellant has relied upon judgment dated 29.04.2011 made in A.S.No.683/2009. Wherein it was held that "On coming to the instant case on hand, the plaintiff's grandfather Kuppanda Gounder had installed the Vinayagar Idol and protected the same by erecting the thatched shed and made it for public worship and he was also looking after the day-to-

day affairs of the temple as founder –cum-Hereditary Trustee and looked after the management till his death and thereafter the plaintiff's father Krishnaswamy Gounder had succeeded the office of the hereditary trusteeship and continued to hold office as hereditary trustee in the temple till his death and after his demise the plaintiff being his son had succeeded to the office of the hereditary trusteeship. According to the case of the plaintiff he has been in active management till date and that the office of trusteeship in the temple in question has always been vested in the family of the plaintiff and his ancestors in an unbroken line of succession from father to son as decided in the above cited decision.”

In this case, the temple was not founded by the appellant's forefathers. No proof has been produced by the appellants to prove the administration of the temple has been vested with their family for more than 3 generations.

9. It is admitted fact that in case of small temple the office of poojariship and trusteeship are vested with same person. The same should be established with sufficient documents. But the appellants did not produce any documents except the certificate issued by Panchayat President. It was not a valid document to prove the hereditary right enjoyed by a family for more than 3 generation as the same was not issued on the basis of any documentary evidence. Hence it is inadmissible evidence.

Therefore for the foregoing reasons stated supra, I find no infirmity in the order passed by the Joint Commissioner, Trichy and it does not warrant any interference. Accordingly, the order dated 27.02.2017 of the Joint Commissioner, Trichy is hereby confirmed and the appeal petition is dismissed as devoid of merit.

/typed to dictation/

Sd./- R.Jaya  
Commissioner

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

Superintendent