

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

Wednesday the 19<sup>th</sup> day of July, Two thousand and Seventeen.

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

**A.P.No.38/2016 D2**

**Between**

G.Solaiyya Naicker

...Appellant.

**And**

1.S.Solaiyaraj Naicker,  
2.S.Alagarsamy Naicker  
3.G.Sethu @ Sethuraman  
4.K.Ramasamy Naicker

..Respondents.

In the matter of Arulmigu Sri Kaliyamman, Muthallamman, Ammachiyar, Ayyanar Temple, Ponmuniyandi Temples, Kappaloor village, Thirumangalam Taluk, Madurai.

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 18.11.2016 of the Joint Commissioner, HR&CE Admn Department, Madurai in dismissing the O.A.5/2014 filed u/s.63(e) of the Act.

**Annexure Order in R.Dis. A.P.No.38/2016 D2 D2 dated: 19.07.2017**

The above Appeal petition came up for final hearing before me on 27.06.2017 in the presence of M/s.J.Anandhavalli, counsel for the appellant, Thiru.E.Ganesh, Counsel for the respondents. 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 18.11.2016 of the Joint Commissioner, Madurai in dismissing the O.A.No.5/2014 filed u/s.63(e) of the Act.

2. The appellant has stated that the original application was filed u/s.63(e) of the TN HR&CE Act 1959 seeking for declaration that he alone is entitled for the first honour under the branch of Solama Naicker Vagaiyara. The case of the appellant is that, it was he who was receiving the 1<sup>st</sup> First Honour and share under the branch of Solaman Naicker all along and since the same has been disturbed by the respondent in the year 2013, the application came to be filed by him. In so far as the temple is concerned, every year during the tamil month of purattasi on fridays and

saturdays festival is being conducted. The said festival starts on the previous day of purattasi Friday and begins with community pongal. In so far as the persons who are getting the honours at the time of festival, they are 7 in number namely:-

1. Adi Chokkappa Naicker Vagaiyara – Thalaimai Mudhamai Karar at present received by S.N.Varadharajan

2. Solama Naicker Vagaiyara – Hereditary Mudhanmaikarar at present received by Solayya Naicker.

3. Periya Thevar Vagaiyara at present received by Thiru.Dharmathupatti Thavamani Naicker.

4. Melatheru Thevar Vagaiyarar at present received by Thiru.Mahalingam S/o.onnaiyya Thevar.

5. Keelatheru Puluva Thevar Vagaiyara at present received by Thiru.Vijayakumar S/o.Aiyar Thevar

6. Nattamai Vagaiyara at present received by Thiru.Bose S/o.Irulappa Pillai

7.Kaaval Vagaiyara at present received by Thiru.Santhanam S/o.Guruvuservai.

In so far as, 1<sup>st</sup> and 2<sup>nd</sup> Honours are concerned, the same has to be given to the eldest male member of the same family is to be honoured with Chokkappa Naicker and Solama Naicker Vaigaiyara. In so far as the Honours in 3-7 are concerned, it is by rotation every year. The Honour that is being given to the appellant for the 2<sup>nd</sup> vaigaiyara is because of the fact that, there was no legal heirs for Solama Naicker and therefore the said honour is being given to the appellant after the death of Solama Naicker, that too by way of a deed executed by Solama Naicker in favour of appellant for receipt of first honour. At the time of death of Solama Naicker, as the appellant was a minor, the said honour was given to the father of the appellant to receive the honour as guardian of the appellant. After attaining majority, it is the appellant who has been receiveing the honour from around 1979. In the year 1988, Kumbabishekam took place in the temple and a plaque was also installed in the temple wall wherein the honour that was being received by the appellant under the branch of Solama Naicker is also inscribed therein. The 3<sup>rd</sup> respondent claiming that he comes

under the branch of Subba Naicker and being the son Gopalraj Naicker, claims the Honour on rotation basis and denying the plea of sole claim made by the appellant. In so far as the respondents 1, 2 and 4 are concerned there is no relevant pleadings or evidence to seek the right of honour on rotation. They have also pleaded about another document dated 03.06.1923 Ex.B1 and Ex.B2 by which Subba Naicker undertook the expenses for the construction work in the temple. It is relevant to note that the above said two documents are unregistered documents and have no relevance to the claim of the respondent. These documents are all created for the purpose of the case, in as much as Ex.B2, one Subba Naicker wherein he describes himself as very old and sick whereas it is recited that his son one Gopalraj Naicker being of young age is to be handed over to him when the same is claimed by him. The document further recited that "temporarily the honour has already been transferred to you". There is no explanation given by the respondent either oral or in document as to when the said Subba Naicker died; Whether he had other sons if not whether the alleged Gopalraj Naicker is the eldest male to seek for that right. Except the self-explanatory statement of DW1/3<sup>rd</sup> defendant which was also destroyed in the cross examination, the receipt of honour by the alleged Gopalraj Naicker has not been established. Merely because the other Vagaiyaras, namely 3 to 7 are receiving the honour on a rotational basis will not deprive the right of the other vagaiyaras, either as hereditary or by eldest male member. In so far as 1<sup>st</sup> vaigaiyara is concerned, thought the case of the appellant is that the honour is being received only by the eldest male member, if it is on behalf of the eldest member, some other person is receiving that also will not take away the right of the appellant. DW1/3<sup>rd</sup> defendant has categorically admitted in his cross examination that, it is the appellant who was receiving the honour and he was aware of the installation of plaque in the temple in the accession of Kumbabhishekam. The Respondents have also produced patta to prove their relationship with original holder of Honour. Based on the oral and documentary evidence, the appellant sought for declaration that he alone is entitled to the 1<sup>st</sup> Honour in the 2<sup>nd</sup> branch namely the Solama Naicker Vagaiyara. The Joint Commissioner erroneously rejected the application of the appellant by his order dated 18.11.2016 which is challenged in the above appeal.

3. In the Written Submission the respondents have stated that the appellant has preferred the present appeal challenging the order dated 18.11.2016 of the Learned Joint Commissioner, HR&CE made in O.A. No.5 of 2014 whereby the claim made by the Appellant to hold the first honour exclusively under the branch of Solama Naicker Vagaiyara during the festivals conducted in the tamil months of Purattasi and Panguni in the temple called Arulmigu Sri Kaliyamman Muthalamman Ammachiar Avvanar Temple and Ponmuniandi Temple, situate at Kappalur Village, Thirumanagalam Taluk, Madurai District has been rejected. In order to substantiate his claim, the appellant alleges that he secured such right hereditarily. On the other hand he also claims that he acquired the right from the earlier holder by virtue of Sale Deed dated 3.3.1967 for consideration. The appellant further alleged that out of above said seven branches, in the Chokkappa Naicker vagayara and Solama Naicker vagayara, the right of receiving first honour has been enjoyed by the eldest male descendant alone and in the remaining branches they adopt rotational system. In order to prove that such right has been vested on him hereditarily, the appellant alleged that originally the right has been enjoyed by one Solama Naicker and thereafter the right revolved upon his only son Subba Naicker. Thereafter, on the demise of Subba naiocker, the right alleges to be devolved upon one Chellandi Naicker. Subsequent to that, on the demise of said Chellandi Naicker, the said right devolved upon his son Solama Naicker. The appellant further alleged that said Solama Naicker has died issueless and prior to his demise, he has executed a Sale Deed dated 3.3.1967 whereby he has sold the right of first honour in favour of the Appellant. The appellant has no exclusive right of first honour during the said festivals in the subject temple. The appellant has not proved that the claim is a honour and he is alone entitled to claim such honour either by custom or by usage. Moreover, he has also not claimed or pleaded that such right accrued to him by virtue of customs and usage, the mere fact would prove that the claim is unsustainable in terms of Section 63(e) of the Act. The mere nomenclature 'vagayara' would reveal that such right not vested on the eldest male decendant. The appellant claims such honour on the ground that he has purchased such right from one Solama Naicker for a valid Sale consideration by virtue of a Sale Deed dated 3.3.1967. The test to claim such right in terms of Section 63 (e) of the Act is to prove that such person holds the right of first

honour by virtue of custom and usage alone whileso by the mere fact that the appellant claimed such right on the basis of a sale deed would disentitled the appellant from seeking such relief. On the other hand, the appellant alleges that such right vested on him hereditarily, for that, he contended in his the pleadings that such right he claims through his grandfather Chellandi Naicker. Whileso, he filed a genealogical tree in support of the case would show that he alleges one Alagar Naicker as his grandfather. No records have been produced to prove the genealogy. On the other hand, mere fact that the names have been given wrongly by the appellant would prove that the genealogy has been fraudulently created by the appellant to suit his case. Further, strangely the appellant alleges that all the his ancestors had one children alone which also creates irrebutable suspicion over such genealogy. When it is proved beyond any doubt that all other branches enjoy the right of honour on rotational basis, the falsity of the claim of the appellant has been exposed. Besides that, no evidence more so concrete evidence has been produced by the appellant to prove his case. On the other hand, these respondents have proved vide the pleadings and exhibits marked on their side that they are also belongs to the Solama Naicker Vagayara and enjoying such honours. Besides that, it is also proved that the festivals itself commence only after lifting the Vel from the 1<sup>st</sup> respondent's home and the same was also admitted by the appellant in his cross examination. The grounds raised by the appellant that he alone collects Thalaikattu Vari would itself contradicts his own contention that in solama Naicker Vagayara there is one family alone survives. Besides that, he claimed that he is collecting such vari from 2005 onwards and other hand he claims that on the death of his father he obtained the right. He himself contended that his father was died in the 1979 ass such the contradictory in the statements of the appellant would itself prove the falsity of the claim. The Stone tablet which the appellant relies is no way help his case on other hand it would prove the right of the others. For an instance, it is admitted by the Appellant that in the Stone tablet the name of the 7 vagaiyara's has been depicted. Since such depiction certain names alone in the stone tablet is infringes the rights of the others and as suc, a decision has been made in the village to remove the names and accordingly the other branches have deleted their name from the stone tablet. The Appellant alone has adamantly not removed his name with oblique motive. Considering

the above facts, pleadings, documents filed in support of both sides in the light of the relevant provisions of the Act, with cogent reasons, the Learned Joint Commissioner has rightly dismissed the application filed by the appellant which does not warrant any interference from this Honb'le Forum.

4. I heard M/s.J.Anandhavalli, counsel for the appellant, Thiru.E.Ganesh, Counsel for the respondents and perused the relevant records.

5. The appellant has filed an application in O.A.No.5/2014 before the Joint Commissioner, Madurai u/s.63(e) of the Act for declaration that he alone is entitled to receive first honour under the branch of Solama Naicker Vagaiyara. The respondents are claiming that all the members of the said Vagaiyara are entitled to receive first honour on rotational basis.

6. The following seven branches are entitled to receive honours in the temple. (i) Chokkappa Naicker Vagaiyara (ii) Solama Naicker Vaigaiyara (iii) Periya Devar Vagaiyara (iv) Melatheru Ramadevar Vagaiyara (v) Keelatheru Puluva Devar Vagaiyara (vi) Nattamai Vagaiyara and (vii) Kaval Vagaiyara. The appellant contends that except the 1<sup>st</sup> and 2<sup>nd</sup> branches, in other 5 branches honour has been received in rotational basis. In the first two branches, the eldest male member alone is entitled to receive the honour.

7. It is pertinent to point out that the petitioner claims that he acquired the right from the earlier holder by virtue of sale deed dated 03.03.1967 for consideration. U/S.63(e) of the Act, the Joint Commissioner shall have power to inquire into and decide whether any person is entitled, by custom or otherwise, to any honour, emolument or perquisite in any religious institutions and what the established usage of a religious institution is in regard to any other matter. But in this case the appellant failed to prove as to what is the established custom and usage of the temple with regard to receiving of the first honour among the seven branches. The appellant claims that the eldest male member of the Solama Naicker Vagaiyara alone is entitled to receive the first honour. But he failed to prove that it is the established custom and usage followed in the temple.

8. The appellant claims that one Solama Naicker had executed a deed in his favour vide document dated 03.03.1967 and as he was minor at that time, his

father Gurusamy had received the first honour on his behalf till the year 1979. The right to receive the first honour cannot be considered totally as a hereditary right and is also not alienable as a matter of routine. It is an ascribed right to all the members of the branch and cannot be acquired by way of sale deed. Further, if it is the established custom of the temple that only the eldest male member is entitled to receive first honour as claimed by the appellant. After the death of Solama Naicker, the eldest male member of the said branch alone is entitled to receive the 1<sup>st</sup> honour. If there is no male member elder to the appellant, then only the appellant is entitled to receive the said honour. It is pertinent to point out that at the time of execution of deed, the appellant was a minor. It is not proved by the appellant, that no elder was alive in the year 1967.

9. Further in all other branches, the honour has been received on rotational basis. The appellant failed to prove with cogent evidence that in the 1<sup>st</sup> and 2<sup>nd</sup> branches eldest member alone is entitled to receive the honour. The genealogy table filed by the appellant was not supported with documentary evidences. Further, the documents filed by the appellant are not sufficient to prove the established custom and usage of the temple with regard to first honour. The appellant, who is claiming an exclusive right which excludes other members of the said branch, should prove his claim with clinching evidence.

10. In the impugned order, the Joint Commissioner had legally analyzed both the oral and documentary evidence filed in the Original Application and gave categorical findings on each evidence. After a detailed discussion, the Joint Commissioner has rejected the claim of the appellant by adducing valid reasons.

Therefore for the foregoing reasons stated supra, I find no infirmity in the order passed by the Joint Commissioner, Madurai and it does not warrant any interference. Accordingly the order dated 18.11.2016 of the Joint Commissioner, Madurai is hereby confirmed and appeal petition is dismissed as devoid of merit.

/typed to dictation/

Sd./- M.Veera Shanmugha Moni  
Commissioner

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

Superintendent