

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

Thursday the 23rd day of August Two thousand and Eighteen.

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

A.P.58 /2018 D2

Between

T. Punniyakotti

...Appellant

And

1. The Joint Commissioner,
H.R. & C.E. Admn. Department,
Vellore.

2. The Executive officer
Arulmighu Thirunageswaraswamy Temple,
Thirunageswaram, Kundrathur, Pallavaram
taluk, Chennai-69.

3.The Fit person/The Executive officer,
Arulmighu Thirunageswaraswamy Temple,
Thirunageswaram, Kundrathur, Pallavaram
taluk, Chennai-69

4.T.K.Mohan

5.S.Sekar

6.T.S.Veeraraghavan @ Veeravagu

7.T.Santhanam

8.T.Kirubakaran

....Respondents

In the matter of Arulmigu Thirunageswaraswamy Temple,
Thirunageswaram, Kundrathur, Pallavaram taluk, Chennai-69

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 14.02.2014 of the Joint Commissioner, H.R.&C.EAdmn.Department, Vellore in allowing the O.A.11/2009 filed u/s.64(5)(a) of the Act and issuing draft scheme.

Annexure to Order in R.Dis.A.P.58/2018 D2 dated :23.08.2018

The above petition came up for hearing before me on 26.06.2018. I heard Thiru.E.Ganesh, the counsel for the appellant M/s.A.S.Kailasam&Associates, counsel for the 2nd and 3rd respondent and Thiru.A.Kuppuswamy counsel for 4th to 8th respondents. After hearing the counsels the following order is passed:-

ORDER

The above appeal petition was filed u/s 69(1) of the Act challenging the draft modified scheme issued vide order dated 14.02.2014 in O.A.11/2009 filed u/s 64(5) (a) of the Act.

2. The appellant has stated that there is a temple dedicated to the worship of Lord Shiva viz., A/m.Thirunageswaraswamy Temple, Thiru Nageswaram, Kunrathur@kunnathur, Pallavaram Taluk, Chennai. It is an ancient temple founded by the members of the Sengunthar Mudaliyar community, the original inhabitants of the said village. By virtue of the order dated 5.8.1981 made in O.A.No.65/1980, the then Deputy Commissioner, HR&CE, Chennai, a scheme has been settled vesting the administration of the temple to the Board of Trustees not exceeding 5 and not less than 3 shall be appointed among the members of the Sengunthar Mudaliyar of the village of Thiru Nageswaram @ Kunnathur by the appropriate authorities in accordance with the provisions of the Act. So far the appointment made by the HR & CE Department in selecting the Non-Hereditary Trustee from Sengunthar Mudaliyar community of Kandrathur village is satisfactory. No one from the members of the said religious denomination has questioned it and it was never meddled up in any legal dispute. The Respondent 4 to 8 herein, have clandestinely approached the 1st Respondent for a modification of scheme by preferring an application in O.A.No.11/2009 in terms of Section 64(5)(a) of the Act, to modify the appointment process which is in vogue for more than 3 decades and sought the 1st respondent to confer the right of selecting the non

Hereditary Trustees to the Society which is newly floated by them in the year 2008. No reasons has been adduced by the respondents 4 to 8 herein for such modification except alleging that the present periodical appointment was not satisfactory. The application has also not disclosed their capacity to maintain such application. The 1st Respondent seemed to have allowed the said application vide its order dated 14.02.2014 thereby a draft modified scheme was ordered to be issued u/s 64(5)(a) of the Act and the matter has been posted for further hearing on 19.06.2014. Thereafter was no further proceedings have been conducted by the 1st Respondent in the above modification application as prescribed under the Act and the same is kept under abeyance. Even the draft modified scheme has not been given due publicity as prescribed under the Act which eventually curtailed the persons interested from resisting the above proposal for modification. Since there was no appointment made as per the original Scheme decree made in O.A.No.65/1980, during the month of November 2017, the appellant went to the office of the 1st respondent to enquire about the same. It was only that not the appellant came to know about the clandestine and fraudulent order obtained by the respondents 4 to 8 and knowing about the said order, the Appellant filed an copy application dated 08.12.2017 and obtained an order and annexure to order made in O.A.No.11 of 2009. By issuing the draft modified scheme, the Joint Commissioner, HR & CE, Vellore has made manifest error. The Appellant being aggrieved person is obliged to file the present appeal invoking the powers of this Hon'ble Forum u/s 69(1) of the Act

to set aside the order and annexure to order dated 14.02.2014 made in O.A.No.11 of 2009. He prepared an appeal on 11.12.2017, as such, there is no delay in filing the above appeal since it is filed within 60 days from the date of knowledge of the order.

3. In the counter affidavit, the respondent 6 to 8 have stated that the delay of 1335 days –in filing the appeal is unconscionable. No satisfactory reasons have been adduced for such inordinate delay except simply stating that the petitioner went to 1st respondent office during November 2017 when he came to know about the order made in O.A.No.11 of 2009. The respondent Association is not a non-descript entity but representative of majority of the Senguntha Mudaliar Community and alive to the interest of the community residing at Kundrathur. The respondents have no other axe to grind and no ulterior motive whatsoever can be attributed to them. Their prayer has been strictly and specifically confined to appoint trustees of the temple only from the persons elected by the general body of Senguntha Mudaliar Community. It has been proven from the document filed before the 1st respondent that the elected office bearers of the Maha Sabha of the Sengunthar Mudaliar community who were residents of Thirunageswaram, Kundrathur Village were appointed as Board of Trustees of A/m.Thirunageswaraswamy Temple, Thirunageswaram, Kundrathur village and that was the established procedure which was in vogue till 1997. The administration of A/m.Gothandeeswarar Temple, Thirumalisai has been vested in a Board of Trustees by recognising the persons elected by the Sengunthar community only of Thirumalisai village. The respondents

therefore prayed that similar procedure be adopted in respect of the A/m.Thirunageswaraswamy Temple also as that was the established procedure being followed till 1997. The Inspector of H.R.&C.E. Sriperumpudur had also recommended a similar scheme of administration for this temple. Even today commemoration of "Sekkilar Vizha" is being conducted by the applicant community viz. Senguntha Mudaliar. The temple is being administered and managed by the Senguntha Mudaliar Community alone and no other community other than Senguntha Community has any right whatsoever in the management of the temple. All the festivals and rituals are being conducted only by the members of the Senguntha Mudaliar Community for whose benefits the temple is strictly intended and dedicated. All the formalities required were gone through, evidences recorded and documents produced to establish the established procedure that was in vogue till 1997 to the entire satisfaction of the Joint Commissioner and having been satisfied he modified the scheme for appointment of Trustees from amongst the Members of the Senguntha Mudaliar who are "selected" from among the Members of the General body of Senguntha Mudaliar Community. In the present system of direct appointment and in the whole process of approving the members of the Senguntha Mudaliar Community as Trustees of the temple, the true spirit and intention as envisaged in the original scheme has not been materialised without any satisfaction to the community and also in terms of the wishes of the ancestors of the community. The H.R.& C.E. Department are approving the names of any member of the Senguntha Mudaliar Community mechanically without any

reference whatsoever to the guidelines prescribed in the Act which presupposes the sole benefit of the Senguntha Community for whom the temple is dedicated. The members of the community with religious fervor free from external influences like socio, political or other considerations have to be appointed as Trustees. Modification of the scheme by elections held at the Maha Sabha of the community instead of direct appointment as per the existing scheme will be conducive and beneficial to the institution but at the same time is certainly not against the institution and in no way the power of supervision and control of the affairs of the temple by the Department will be jeopardised.

4. I heard Thiru.E.Ganesh, Counsel for the appellant, M/s.A.S.Kailasam&Associates, counsel for the 2nd and 3rd respondent and Thiru.A.Kuppusamy, Counsel for the respondent 4th to 8th and perused the relevant records.

5. This appeal petition was filed against the draft modified scheme Issued in order dated 14.02.2014. The appellant has preferred this appeal with a delay of 1335 days. The appellant has stated that he came to know about the order during the month of November' 2017 and filed an copy application immediately on 08.12.2017 and obtained the order on 08.12.2017. Thereafter filed the appeal petition on 11.12.2017 within 60 days and only to satisfy the technical requirement, the delay condonation petition was filed.

6. Though draft modified scheme was issued on 14.02.2014, the same was published in the Kanchipuram District gazette only on 01.9.2016. The appellant came to know the impugned order during the month of November'2017. Thereafter he has filed this appeal petition after obtaining the certified copy of the impugned order. Every order of the Joint Commissioner passed u/s 64 shall be published as prescribed under Rule 4 of the framing of Scheme Rules. But the impugned draft Scheme was not published as prescribed under the said Rule.

7. Section 69(1) read as follows:-

“Any person aggrieved by any order passed by the Joint Commissioner or the Deputy Commissioner, as the case may be under any of the foregoing sections of this chapter, may within sixty days from the date of the publication of the order or of the receipt there or by him as the case may be, appeal to the Commissioner and the Commissioner may pass such order thereon as he thinks fit”

In this case, the appellant has received the order on 08.12.2017 and filed the appeal petition on 11.12.2017. Hence as per the said provision, there is no delay. However the appellant has filed the delay condonation petition calculating the limitation from the date of impugned order as a measure of abundant caution. Hence the delay of 1335 of days in filing the appeal petition is hereby condoned. And the main appeal petition itself taken up for hearing.

8. In the impugned order, the Joint Commissioner has allowed the O.A. and issued draft modified scheme. In the said order it was stated that "The Scheme framed and issued in O.A.65/80/B1 dated 03.06.1981 u/s 64(1) of the Act is modified as follows. Objections or suggestions are called for, to the draft modified scheme, persons having interests in the affairs of the above temple, may file their objections or suggestions in writing and file the same either in persons or through a counsel on or before 19.06.2014. If objections or suggestions are not received on or before the prescribed date the draft modified scheme issued hereunder shall be duly confirmed".

So, the Joint Commissioner has fixed 19.06.2014 as last date for filling objections or suggestions on the draft modified scheme. But the said order inviting objections or suggestions was published in the District gazette only on 01.9.2016, which shows the non-application of mind by the Joint Commissioner.

9. Further, it is learnt that the draft modified scheme is not yet confirmed by the Joint Commissioner. The provisions of the draft modified scheme have not been enforced so far. It is not known whether any objections or suggestions were received on the draft modified scheme, and whether any enquiry was conducted by the Joint Commissioner on the objections/suggestions received if any.

10. Since the order calling for objections or suggestions on draft modified scheme was published belatedly with a delay of more than 2 years from the last

date prescribed for filing objections or suggestions, it is liable to be set aside. Accordingly, the order dated 14.02.2014 of the Joint Commissioner, Vellore is hereby set aside and the matter is remanded to the Joint Commissioner.

11. The Joint Commissioner, Vellore is directed to issue fresh notice inviting objections or suggestions on the draft modified scheme. The appellant is directed to file his objections or suggestions, if any before the Joint Commissioner. If any objections or suggestions are filed by the appellant or any persons having interest, the Joint Commissioner should conduct enquiry by affording opportunity of hearing to the appellant, respondents herein and other persons having interest and pass orders in accordance with law within a period of 4 months from the date of receipt of this order.

The appeal petition is hereby disposed of with the above direction.

/typed to dictation/

Sd./- R.Jaya
Commissioner

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

Superintendent