

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

Tuesday the 25th day of September, Two thousand and eighteen.

Present:Thiru.T.K.Ramachandran, I.A.S.,
Principal Secretary /Commissioner

M.P.No.1/2018 in A.P.No.43/2018 and 49/2018 D2

Between

H.Elango

..Petitioner/2nd Respondent

And

1.Paul Nadar

...Respondent/Appellant in A.P.43/2018

2.R.Arumaithangam

...Respondent/Appellant in A.P.49/2018

The Joint Commissioner, Trinelveli.

3.The Fit Person/Executive Officer,

A/m.Eswari Badharakaliamman

Temple, Esanthangu, Kanyakumari.

3.C.Vaikundamani

....Respondent 3 & 4/Respondents 3 & 4

In the matter of Arulmighu Eswari Badhrakaliamman Temple,Esanthangu, Needakarai B Village, Azhikkal post, Kanyakumari District.

1. The Appeal petitions 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 23.04.2018 of the Joint Commissioner H.R&C.E., Admn Dept., Tirunelveli in allowing the O.A.04/2016 filed u/s 63(e) of the act.

2. The above M.P.1/2018 filed challenging the maintainability of the appeal without obtaining leave from this forum.

Order in M.P.No.1/2018 in A.P.43/2018 and 49/2018(D2)

dated :25.09.2018

The above Miscellaneous petition came up for hearing before me on 17.09.2018 in the presence of Thiru.C.Sathish, the counsel for the petitioner and Thiru.C.Dharmaraj, counsel for the respondent. After hearing the counsels the following order is passed:-

ORDER

The above miscellaneous petition is filed to dismiss the appeal filed by the 1st respondent as not maintainable since the appeal is filed without obtaining leave from this forum.

2. The petitioner has stated that the above appeal has been filed by the 1st respondent u/s 69(1) of the Tamil Nadu Hindu Religious & charitable Endowments Act, 1959, to set aside the order dated 23.04.2018 passed by the learned Joint Commissioner, HR&CE, Tirunelveli in O.A.No.4 of 2016, wherein the 2nd respondent has recognized the entitlement of the applicant therein to the honours, emoluments, perquisite as contained in the order as per customary practice and established usage of the religious institution. In the above O.A.No.4 of 2016, when the both sided pleadings and evidence were concluded and on the side of the petitioner, the arguments were over, at that juncture, the 1st respondent has filed an application to implead him as a party respondent on the ground that he is the worshipper and beneficiary under the temple and if any orders has to be passed in the above O.A. would infringe his rights. The above application has been dismissed by the order of the 2nd respondent dated 23.04.2018 made in I.A.No.1 of 2018 in O.A.No.4 of 2016 and order has not been challenged and it attained finality. The Joint Commissioner has also held that the 2nd respondent has not established that he is a person interested in the welfare of the religious institution and that the impleading application was filed with personal motive. On the strength of the order passed by the Learned Joint Commissioner, Tirunelveli in I.A.No.1 of 2018 in O.A.No.4 of 2016, it is proved beyond any doubt that the 1st respondent has failed to establish that his presence is required as proper or necessary for the effective adjudication of the dispute involved in the O.A.

filed in terms of Section 63(e) of the Act. The above appeal has been filed by the 2nd respondent without seeking any leave from this Forum to prefer an appeal as a person aggrieved and as such the above appeal is not maintainable before this Court and liable to be dismissed in limine for want of not obtaining specific leave from this Court to prefer an appeal u/s 69(1) of the Act. The 1st respondent is not holding good conduct and character. He was working as a Village Administrative Officer and at present, he has been suspended from the service. Further, he has inducted as a party by the vigilance department relating to a scam relating procurement of coconut. Further, he is also using the temple name, collecting huge money from the general public and issued fake receipts. Therefore the villagers lodged a complaint before the Vellichanthai Police Station for misappropriation, the police after enquiry registered the FIR in Crime No.40 of 2015 and the appellant is the 1st accused in the said FIR. As such, he cannot be construed as a person interested in the welfare of the temple. Further his intention in filing the above appeal is not bonafide and he has not raised any rival right against the petitioner but however has maintained the above appeal under the guise of worshipper of the temple.

3. The petitioner has further stated that the appellant in A.P.49/2018 has filed a application in I.A.No.1 of 2017 in O.A.No. 4 of 2016 to implead him as party Respondent. In the above application, he has contended that he is a person interested in the welfare of the temple and as worshipper and beneficiary under the above religious institution. The above application has been dismissed by the Learned Joint Commissioner vide his order dated 19.05.2017 made in I.A.No. 1 of 2017 in O.A.No.4 of 2016 holding that the 1st Respondent has failed to establish that he is a person

interested in the temple and the beneficiary under the religious institution. Aggrieved over the said order, the 1st Respondent has preferred the Writ petition in W.P.(MD)(No.11392/2017 before the Madurai Bench of Hon'ble Madras High Court. Vide the order dated 07.08.2017, the Hon'ble High Court has disposed the above Writ petition permitting the 1st Respondent to file an appeal before this Hon'ble Forum within a period of 2 weeks from the date of the High Court order against the rejection of the impleading application filed by the 1st Respondent. However, the 1st Respondent has not chosen to file any appeal and the order made in I.A.No.1 of 2017 in O.A.No.4 of 2016 passed by the Joint Commissioner, HR&CE, Tirunelveli has become final and binding on the parties.

4. I heard Thiru.C.Sathish, counsel for the petitioner, Thiru.C.Dharmaraj, counsel for the 1st respondent and perused the relevant records.

5. The counsel for the petitioner argued that the appeal petition is not maintainable on the following grounds:-

- I. The impleading petition filed by the 1st respondent/appellant in O.A.4/2016 was dismissed by the Joint Commissioner, Tirunelveli and the said order was not challenged by the petitioner.
- II. No leave obtained from this Court to file an appeal against the order passed by the Joint Commissioner in O.A.4/2016.

6. The counsel for the 1st respondent/appellant has argued that

- I. It is a Public temple.

II. The claim of Thiru.Ponmuthu Nadar grand father of the petitioner/1st respondent was rejected by various courts.

III. Under Section 69(1) any aggrieved person can file an appeal without obtaining leave.

IV. In O.A.8/2008 fixed by the petitioner, the respondent/appellant has been added as party.

7. The above appeal petitions have been filed by the 1st respondents/appellants u/s 69(1) of the Act challenging the order dated 23.04.2018 made in O.A.4/2016 by the Joint Commissioner, Tirunelveli. The said O.A.4/2016 was filed by the petitioner herein u/s 63(e) of the Act to recognize certain customary rights. The 1st respondents/appellants had filed a petition to implead them as a necessary party in the said O.A.4/2016 and the same was dismissed by the Joint Commissioner, Tirunelveli.

8. The core issue to be decided in this petition is whether the appeal filed by the 1st respondent is maintainable without obtaining leave from this forum, since the impleading petition filed by them were rejected by the Joint Commissioner on the grounds that they have failed to establish that they are persons interested in the welfare of the temple and their presence is not necessary for the effective adjudication of the dispute.

9. The Joint Commissioner has passed the order in both O.A.4/2016 and the impleading petition filed by the appellant in A.P.43/2018 on same day i.e. 23.04.2018. The appellants have chosen to challenge the order passed in the main O.A. which conferred certain rights and honours on the petitioner herein, since they are aggrieved by the said order. Though they have not raised any rival claim against the petitioner,

they claimed that the rights honors are enjoyed by the entire villagers. In the I.A.1/2018 filed by the appellant in A.P.43/2018, he has stated that “nk%ogotHj»š ou°ox gadhëfisí« nfhæèš têtgt®fisí« fŁÁ nr®jféšiy v«W«, <r< jŁL C® kjfis İªj tHj»š fŁÁ nr®jfhkš kDjhifš brCEJŸsjhfí«, jh« kD ÂUjnfhæèš xU gadhë v«W«, jdiF nfhæèš br«W têtgtj%oF«, nfhæèš midªJ fhçafšfisí« K«á«W brCEtj%oF« cçik c©L v«W«, Âujhd kDés kDjhuUjnfh mtUila FL«g eg®fSjnfh nfhæèš vªjéj Áw¥ò cçikfS« »ilahJ”. So, from the said averment it is clearly evident that the 1st respondent/appellant is opposing the claim of the petitioner. As the claim of the petitioner has been allowed by the Joint Commissioner, Tirunelveli, the 1st respondents/appellants have filed the appeals as aggrieved persons.

10. Section 69(1) of the HR&CE Act reads 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 publication of the order or of the receipt thereby by him as the case may be, appeal to the Commissioner and the Commissioner may pass such order thereon as he thinks fit”.

Further Section 70 of the HR&CE Act reads as follows:-

“Any party aggrieved by an order passed by the Commissioner.

- I. Under Sub-Section (1) of Sub-section (2) of Section 69 and relating to any of the matters specified in Section 63, Section 64 or Section 67.
- II. Under Section 63, 64 or 67 read with Sub-Section (1) (a), 2 or (4) (a) of Section 22 or u/s 65 may, within 90 days from the date of receipt of such order by him, institute a suit in the Court against such order”.

The legislation provides two appeal remedies u/s 69 and 70 of the Act against the order passed u/s 63 of the Act. But both the sections are carefully worded by the Law makers. Any person aggrieved by the order passed u/s 63 and 64, may file an appeal before the Commissioner u/s 69(1) of the Act. It is not necessary to be a party in the proceedings before the Joint Commissioner for filing an appeal before the Commissioner against any order passed by the Joint Commissioner. But the right to filing of an appeal against the order passed by the Commissioner u/s 69 is restricted to the parties before the Commissioner only. Accordingly, as persons aggrieved by the order of the Joint Commissioner, the respondents/appellants have filed these appeal petitions. There is no need to obtain leave from this forum for filing the appeal petition.

11. In the Judgement reported in (2000) 3 MLJ 37 the Hon'ble High Court has held that,

“Section 69(1) of the Tamil Nadu Hindu Religious & charitable Endowments Act talks about all the preceding sections of the Chapter and both Section 63 or 64 come under Chapter V and the appeal provision is very clear that any person aggrieved by any order passed by the Deputy Commissioner under any of the foregoing sections of the Chapter could file an appeal. In fact, the very application for leave was wholly unnecessary in view of the over-riding effect of the appeal provision u/s 69 of the Act”.

The above decision squarely applies to this case.

Therefore for the foregoing reasons stated supra, the appeal filed by the 1st respondents/appellants without obtaining leave from this forum is maintainable and the above miscellaneous petition is dismissed as devoid of merit.

The main appeal petitions along with stay petition are posted for hearing on 15.10.2018.

/typed to dictation/

Sd./- T.K.Ramachandran

Principal Secretary /Commissioner

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

Superintendent

To

1. The petitioner through Thiru.C.Sathish, Advocate, No.68, Additional law Chamber's, High Court Building, Chennai – 600 104.
2. Thiru.Paul Nadar through Thiru.C.Dharmaraj, Advocate, M-188, 9th Cross street, Thiruvalluvar Nagar, Thiruvanmiyur, Chennai -41.
3. Thiru.R.Arumaithangam through Thiru.K.Thangalvel, Advocate, Plot No.11, F2, Sridevi Building, Maharajapuram Main Road, Santhosapuram, Selaiyur Post, Chennai – 600 073.

Copy to

4. The Joint Commissioner, HR & CE Admn.Dept., Tirunelveli
5. The Assistant Commissioner, HR & CE Admn.Dept., Nagercoil.
6. The Inspector, H.R & C.E., Admn Dept., Nagercoil. (West)
7. Extra.