IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	23.11.2022
Pronounced On	23.12.2022

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.Nos.17535 & 18381 of 2020
and
W.M.P.Nos.23173, 21725 & 21726 of 2020
and 6273, 6280 & 10087 of 2021

W.P.No.17535 of 2020

1.M.Radhakrishnan

2.K.G.Sankarasubramanian (Deceased)

3.E.Sivakumar

4.Meena D. Bhattacharya

5.Gayatri Prakash ... Petitioners

(R5 impleaded *vide* order dated 27.07.2022 in W.M.P.No.18570 of 2022)

Vs.

1.The Commissioner,
HR & CE Admn. Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam, Chennai – 34.

2.K.P.Raman (Deceased) ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records and quash the order dated 05.09.2020 signed on 10.11.2020 passed by the first respondent in A.P.No.29 of 2014 against the petitioners.

For Petitioners	: Mr.A.V.Somasundaram
For R1	: Mrs.M.Geetha Thamaraiselvan Additional Government Pleader
For R2	: Mr.K.V.Subramaniam for M/s.K.V.Subramaniam

W.P.No.18381 of 2020

R.Subramanian ... Petitioner

Vs.

1.The Commissioner,
Hindu Religious & Charitable
Endowments Admn. Department,
Uttamar Gandhi Salai,
Chennai – 600 034.

2.The Joint Commissioner,
Hindu Religious & Charitable
Endowments Department,
Palayamkottai,
Tirunelveli District – 627 002.

3.K.R.Swaminathan

4.M.Radhakrishnan

5.K.G.Sankarasubramaniam (Deceased)

6.E.Sivakumar,

7.D.Meena D. Bhattacharya

8.G.Gomathi

9.Gayatri

10.K.S.Gopalakrishnan ... Respondents

(R8 to R10 impleaded *vide* order dated 27.07.2022 in W.M.P.No.17542 of 2022

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records relating to the proceedings of the first respondent dated 05.09.2020 made in A.P.No.29 of 2014 and quash the same.

For Petitioner	: Mr.T.S.Vijaya Raghavan
For R1 & R2	: Mrs.M.Geetha Thamaraiselvan Additional Government Pleader
For R3	: Mr.K.V.Subramaniam for M/s.K.V.Subramaniam

COMMON ORDER

By this common order, both these Writ Petitions are being disposed of.

2. In these Writ Petitions, the petitioners have challenged the impugned order dated 05.09.2020 passed by the first respondent Commissioner of Hindu Religious & Charitable Endowments Department, in A.P.No.29 of 2014, under Section 69(2) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 [hereinafter referred to as "*H.R. & C.E. Act, 1959*"].

3. The impugned order has been passed pursuant to an earlier order of this Court dated 16.06.2014 in W.P.No.18874 of 2013 filed by one M.Radhakrishnan which was affirmed by the Hon'ble Division Bench of this Court *vide* its order dated 11.10.2018 in W.A.No.936 of 2014.

4. By the impugned order dated 05.09.2020, the first respondent Commissioner has set aside the order dated 16.05.2012 passed by the Joint

Commissioner in Na.Ka.No.13559/2010/A2 under Section 54(1) of the H.R. & C.E. Act, 1959 recording the succession of the petitioners herein as the Hereditary Trustees of the following three temples:-

i. Arulmighu Gopala Krishnasami Temple, Tenkasi,
ii. Arulmighu Viswanathasamy Temple, Tenkasi, and
iii. Arulmighu Anjaneyarsamy Temple, Tenkasi.

5. These temples are referred to as Gopala Krishnasami allied Temples. The impugned order dated 05.09.2020 re-affirms the view taken by the Commissioner in the earlier order dated 16.04.2013 in Rc.No.54100/2012-D2, wherein, the order dated 16.05.2012 passed by the Joint Commissioner in Rc.No.13559/2010 under Section 54(1) of the H.R. & C.E. Act, 1959 was set aside assuming the power under Section 69(2) of the H.R. & C.E. Act, 1959.

6. The brief facts of the case which are relevant for a proper disposal of these Writ Petitions are narrated hereinafter.

7. The Hindu Religious and Charitable Endowments Board, by its proceedings dated 25.10.1928 under the provisions of the erstwhile Madras Hindu Religious Endowments Act, 1923, had concluded that these temples were “excepted temples” and thus were outside the purview of the Hindu Religious and Charitable Endowments Board.

8. By the aforesaid order, it was however concluded that these temples were public temples implying that members of the public were also entitled to offer their worship in the temples.

9. It appears that from the inception, these temples were managed by members from 9 different families belonging to Brahmin Community. Over a period of time, orders were passed recognizing some of the persons from the families as Hereditary Trustees in the place of the Hereditary Trustees who either resigned or died. The following dates and events are relevant:-

Date	Event
17.08.1961	One G.Ramachandran was recognized as one of the Hereditary Trustees for all three temples in the place one G.Venkateshwara Iyer who resigned.

Date	Event
04.08.1979	One K.S.Ragunatha Iyer was recognized as one of the Hereditary Trustees in the place of one K.S.Narayana Iyer who died
05.10.1981	One K.V.Gopalakrishna Iyer was recognized as one of the Hereditary Trustees in the place of K.V.Eswara Iyer.

10. During the interregnum, in the exercise of power under Section 45(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the first respondent Commissioner appointed an Executive Officer for these three Temples by an order dated 26.11.1974 bearing reference Proc.R.Dis.No.16424/1974. The facts on record also indicate that in the exercise of the power under Section 54(3) of the Act, the Joint Commissioner, by his proceedings dated 25.03.2004 bearing reference Proceedings Rc.No.443/2004, appointed a Fit Person.

11. After the Fit Person was appointed on 25.03.2004, in the year 2012, the Joint Commissioner, in his proceedings dated 16.05.2012

bearing reference Rc.No.13559/2010/A-2, has appointed the petitioners herein as Hereditary Trustees recording the succession of the petitioners as the Hereditary Trustees in the line of succession on account of "No Objection Certificate" purportedly given by the other descendants from the 9 families and on the strength of a report dated 04.09.2010 of the Executive Officer and a report dated 25.05.2011 of the Inspector.

12. Recording the succession of the petitioners as Hereditary Trustees was opposed by late K.P.Raman the second respondent in W.P.No.17535 of 2020 whose interest is represented by his son K.R.Swaminathan the third respondent in W.P.No.18381 of 2020.

13. Late K.P.Raman had earlier filed appeal in A.P.No.29/2012 with delay of 64 days before the first respondent Commissioner under Section 69 of the Act against the order of the Joint Commissioner dated 16.05.2012 bearing reference Rc.No.13559/2010/A-2 recording the succession of the petitioners as Hereditary Trustees.

14. Later, late Mr.K.P.Raman had sent a letter dated 05.01.2013 to

his counsel stating that he was withdrawing the appeal. The first respondent Commissioner permitted Mr.K.P.Raman to withdraw the appeal and dismissed the same as he was no longer a party to the proceedings. However, taking *suo moto* cognizance, a detailed order dated 16.04.2013 bearing reference Rc.No.54100/2012 D2 was passed by the first respondent Commissioner under Section 69(2) of the Act. The first respondent Commissioner set aside the order of the Joint Commissioner dated 16.05.2012 and remitted the case back to the Joint Commissioner to pass an order after fresh *de novo* consideration. Relevant portion of the said order of the first respondent Commissioner dated 16.04.2013 setting aside the order of the Joint Commissioner dated 16.05.2012 while dismissing the appeal of the late K.P.Raman and remitting the case back to the Joint Commissioner reads as under:-

> *4. They state that the appellant's counsel during the course of his argument submitted that anyone can file an appeal under Section 54(4) of the Act. There cannot be any quarrel over the rights given to a person aggrieved by an order passed under Section 54(4) of the Act. However in this case such person who is swearing to an affidavit being a stranger himself to the appeal, the same cannot be entertained even if he is alleged to be the son of the appellant. The appellant has written a letter dated*

5.1.2013 to his counsel, the original of which has been handed over to the respondents 2 to 4 and 6 (which has been filed during the course of the arguments) stating that he is withdrawing the appeal. After the appellant has withdrawn the appeal, the application seeking leave cannot be maintained and the appellant be permitted to agitate the appeal and even on this ground the appeal itself is liable to be dismissed.

5. Mr.M.Rukmangathan, Counsel appeared for the petitioner and Thiru T.S.Vijayaraghavan, Counsel appeared for the Respondents 2, 3, 4 and 6. I heard Thiru M.Rukmangathan, Vijayaraghavan, Counsel for the Respondents and perused the relevant records. The petitioner is not a party to the impugned proceedings. Hence, he filed a petition seeking leave to file 3rd party appeal. But the affidavit has been sworn in by another person, and the petitioner has not filed any document authorizing him to swear to such affidavit, which is hit by Order III Rule 1 and 2 of C.P.C as rightly pointed out by the counsel for the respondents. On this aspect alone, the petition seeking leave to appeal is liable to be dismissed as not maintainable and accordingly, leave is rejected and the petition be and is hereby dismissed as not maintainable.

6. However, after perusing the impugned order and relevant records, I am inclined to examine the correctness, legality, or propriety of the decision arrived at by the Joint Commissioner under Section 21 of the Act. The temple was declared as a public and excepted temple in B.O. 605 dated 25.10.1928 and 9 persons were recognized as Hereditary Trustees. Lastly ***one K.S.Gopalakrishna Iyer was the sole survivor of the hereditary trustees looked after the affairs and died on 25.10.2003.*** *As there* *arose vacancy in the office of hereditary trusteeship and pending filling up such vacancy, the Joint Commissioner appointed the Executive Officer of Arulmigu Muppidathiamman temple, Kadayanallur as Fit Person in Proc.Rc.No.443/2004 B.1 dated 25.03.2004. Before that an Executive Officer came to be appointed in Proc.R.Dis.16424/1974 dated 21.05.1977 of the Commissioner and the administration of the temple has been vested with Fit Person appointed under Section 47(1) of the Act and Executive Officer appointed under Section 45(1) of the Act.* ***The Legal Representatives of the Hereditary Trustees stayed away from the administration of the temple for the last 30 years allowing the public to administer the affairs.*** *During this period, the temple has been managed by the villages and they also performed renovation work and performed Kumbabishegams in the year 1993 and 2007. The Joint Commissioner failed to analyze whether the respondents are entitled to succeed to the office of the Hereditary Trustee when they are abandoned the office by nearly 30 years. The Division Bench of the Hon'ble High Court of Judicature at Madras-Madurai Bench in W.A.(MD) No.251 of 2012 dated 05.07.2012 has observed that "Article 107 of the Limitation act clearly contemplates that for possession of hereditary office, the period of limitation is only 12 years". But, the Joint Commissioner failed to consider whether the claim of the respondents was in time or lost in view of the limitation.*

For the foregoing reasons stated supra, the impugned order suffers from infirmity and is liable to be set aside. Accordingly it is hereby set aside. The matter is remitted back to the Joint Commissioner, Tirunelveli for fresh consideration. The Joint Commissioner should pass orders in accordance

> *with law after affording opportunities to both the petitioner and respondents and other persons having interest if any. The appeal petition is disposed of accordingly.*

15. Thus, the order dated 16.05.2012 of the Joint Commissioner bearing reference Rc.No.54100/2012-D2 was set aside on the ground of limitation in terms of Article 107 of the Limitation Act, 1963. The Commissioner concluded that the application for recording succession was made almost 13 years after the cause of action arose and thus, the application for recording succession was barred by limitation. The aforesaid order of the Commissioner dated 16.04.2013 was challenged before this Court in W.P.No.18874 of 2013.

16. This Court, by its order dated 16.06.2014, quashed the order of the Commissioner dated 16.04.2013 stating that there was violation of principles of natural justice and remitted the case back to the Commissioner to pass a fresh order after hearing the petitioners in the said proceedings.

17. The aforesaid order dated 16.06.2014 of the learned Single Judge in W.P.No.18874 of 2013 was also affirmed by the Division Bench of this Court in its Judgment dated 15.07.2014 while dismissing W.A.No.936 of 2014 filed by the first petitioner.

18. In the remand proceedings before the Commissioner, K.R.Swaminathan, the third respondent in W.P.No.18381 of 2019, the legal heir of late K.P.Raman the appellant in A.P.No.29/2014 D2, in which, the aforesaid order was passed by the Commissioner which was challenged before this Court and was later set aside and remitted back to the Commissioner, filed I.A.No.1 of 2019, to implead himself as a party in the proceedings. The Commissioner, vide order dated 23.05.2019, allowed the said I.A for impleading K.R.Swaminathan as the appellant in the place of his deceased father K.P.Raman and directed him to amend the appeal.

19. Against the said order of the Commissioner impleading K.R.Swaminathan, the legal heir of late K.P.Raman as the appellant in A.P.No.29 of 2014-D2, the petitioners herein filed a Revision Petition before the Government of Tamil Nadu under Section 114 of the Tamil

Nadu Hindu Religious and Charitable Endowments Act, 1959 which is said to have been pending.

20. Meanwhile, the impugned order dated 05.09.2020 has been passed by the Commissioner in the remand proceedings. Against the same, these Writ Petitions have been filed.

21. During the pendency of these Writ Petitions, the second petitioner in W.P.No.17535 of 2020 / the fifth respondent in W.P.No.18381 of 2020 died. Three legal heir of the deceased second petitioner in W.P.No.17535 of 2020 / the fifth respondent in W.P.No.18381 of 2020 were impleaded as the eighth to tenth respondents in W.P.No.18381 of 2020. However, out of them, only one legal heir was impleaded as the fifth petitioner in W.P.No.17535 of 2020.

22. It is not clear as to why only one of them namely, Mrs.Gayatri Prakash was only impleaded as the fifth petitioner in W.P.No.17535 of 2020 even though there were three legal heirs of the deceased second petitioner in W.P.No.17535 of 2020 / the fifth respondent in

W.P.No.18381 of 2020.

23. It is the contention of the petitioners that Article 107 of the Limitation Act cannot be invoked by a third party or even by the Department as the last Hereditary Trustee was in office till the year 2004 and subsequently applications were given in the year 2012 within six years from the date of a vacancy to the post of Hereditary Trustees of the temple. It was further submitted that relying on the decisions of the Apex court, the succession of the hereditary trusteeship can never be bartered away even after any number of years.

24. It is further submitted that there have been orders recording succession of Hereditary Trustees from the 9 families on four occasions in accordance with Section 118 of the H.R. & C.E. Act, 1959 and therefore, it cannot now be stated that the petitioners are not Hereditary Trustees at all.

25. The counsel for the petitioners has relied on the following

decisions:-

i. **Prem Anand** vs. **The Commissioner, HR & CE, Madras and Another**, 1989 SCC Online Mad 355.
ii. **Chettimai C. Nanjappa Chettiar and Another** vs. **S.M Kuppuswami Chettiar and Others**, 1985 SCC Online Mad 73.
iii. **Commissioner, HR &CE Department, Andhra Pradesh** vs. **Veluvali Shakthiprasada Rao and Others**, 1963 SCC Online Mad 73.
iv. **Ohene Moore** vs. **Akesseh Tayee**, 1934 SCC Online PC 48.

26. The counsel for the official respondents contended that the Joint Commissioner's order recording the succession of the petitioners was passed without following the legal provisions laid down in the Act and without verification of the genealogy filed by them.

27. It is further stated that the said order was against the report of the Executive Officer of the temple. It is the further contention of the official respondents that from the year 1994, no one acted as Hereditary Trustee of the three temples and that the application filed by the petitioners for recording of succession in the year 2010 was irrelevant. It is therefore submitted that it is barred by Article 107 of the Limitation Act which

prescribes the period of 12 years to take possession of Hereditary Office.

28. It was further submitted that term 'excepted temple' was not defined either under the Madras Hindu Religious and Charitable Endowments Act, 1951 nor the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Thus, the earlier order passed under the Madras Hindu Religious Endowments Act, 1927 is not relevant and therefore, the petitioners ought to have obtained a declaration under Section 63(b) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

29. The counsel for the official respondents has relied on the following decisions:-

i. **The Commissioner, HR & CE department** vs. **Srimathi and Others**, 2001 4 CTC 469.
ii. **S.A. Ponnuswami** vs. **The Deputy Commissioner, HR & CE department**, 1994 1 MLJ 155.
iii. **Deputy Commissioner (Judicial), HR & CE** vs. **Perumal and Others**, 2003 3 MLJ 151.
iv. **Raghupathi Naicker** vs. **The Commissioner and Secretary to the Government of Tamil Nadu and**

Others, 1996 1 MLJ 508.

30. I have considered the arguments advanced by the learned counsel for the petitioners in W.P.No.17535 of 2020 and the learned counsel for the petitioner in W.P.No.18381 of 2020 and the learned Senior Counsel for the second respondent in W.P.No.17535 of 2020 and for the third respondent in W.P.No.18381 of 2020 and the learned Additional Government Pleader for the first respondent in W.P.No.17535 of 2020 and for the first and second respondents in W.P.No.18381 of 2020.

31. As per Section 107 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, nothing contained in the Act shall, save as otherwise provided in Section 106 and in clause (2) of Article 25 of the Constitution, be deemed to confer any power or impose any duty in contravention of the rights conferred on any religious denomination or any section thereof by Article 26 of the Constitution.

32. The facts on record indicate that an Executive Officer was appointed on 21.05.1977 by the Commissioner in his proceedings bearing reference Proc.R.Dis.16424/1974 after the Tamil Nadu Hindu Religious

and Charitable Endowments Act, 1959 came into force. Orders recording of succession of Hereditary Trustees in the past was also by the Deputy Commissioner for the aforesaid temples. Not only a fit person was also appointed under Section 54(3) of the Act on 25.03.2004 *vide* Proceedings No.443/2004 but also an Executive Officer was appointed *vide* order dated 26.11.1974 bearing reference Proc.R.Dis.No.16424/1974.

33. If these temples were denominational temples, there should have been an appropriate proceeding to declare that these temples were denominational temples. Article 26 of the Constitution of India reads as under:-

> **26. Freedom to manage religious affairs.**—Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—
>
> (a) to establish and maintain institutions for religious and charitable purposes;
> (b) to manage its own affairs in matters of religion;
> (c) to own and acquire movable and immovable property; and
> (d) to administer such property in accordance with law.

34. As far as the challenge to the jurisdiction of the H.R. & C.E. Department under Section 69(2) of these Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 on the ground that the temples are denominational temples and are outside the purview of H.R. & C.E. Department is concerned, there are no records to substantiate that the subject temples are denominational temples within the meaning of Article 26 of the Constitution of India.

35. Therefore, the argument that these temples are denominational temples and were outside the purview of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 cannot be accepted. It is liable to be rejected and is accordingly rejected. Accordingly, I hold that these temples are covered by the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

36. The concept of excepted temples which were prevailing under the provisions of the Madras Hindu Religious Endowments Act, 1923 are no longer relevant under the provision of the Tamil Nadu Hindu Religious

and Charitable Endowments Act, 1959.

37. Therefore, the question whether these temples are outside the purview of the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 as they were declared as “excepted temples” under the provisions of the Madras Hindu Religious Endowments Act, 1923 is also answered against the petitioners.

38. Therefore, the only point for consideration in these two Writ Petitions is whether the first respondent Commissioner was justified in invoking Article 107 in Part IX of the Schedule of the Limitation Act, 1963. Article 107 which falls under Part IX of the Schedule of the Limitation Act, 1963 deals with suits relating to the Trust and Trust Properties. Article 107 in Part IX of the Schedule of the Limitation Act, 1963 reads as under:-

	Description of suit	Period of limitation	Time from which period begins to run
107	For possession of a hereditary office.	Twelve years.	When the defendant takes possession of the office adversely

	Description of suit	Period of limitation	Time from which period begins to run
	Explanation.—A hereditary office is possessed when the properties thereof are usually received, or (if there are no properties) when the duties thereof are usually performed.		to the plaintiff.

39. A reading of the Article 107 indicates that it prescribes for institution of a suit for possession of a "hereditary office". Explanation to Article 107 makes it clear that a "hereditary office" is possessed when the properties thereof are usually received, or (if there are no properties) when the duties thereof are usually performed.

40. A suit for "possession of hereditary office" has to be filed by a plaintiff within 12 years from the date of possession of hereditary office, against the defendant who has taken possession of the office adversely to the plaintiff. Article 107 of the Part IX of the Schedule to the Limitation Act, 1963 will apply only to a suit and not to a proceeding for recording succession to the office of a hereditary trustee under Section 54 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Thus,

the reference to Article 107 of Part IX of the Schedule to the Limitation Act, 1963 in the impugned order of the first respondent is misplaced as it would relate to *inter se* disputes between a plaintiff and defendant in a suit.

41. Limitation under Article 107 in Part IX of the Schedule to the Limitation Act, 1963 would give a right to challenge the assumption of an office by a defendant in a suit within 12 years from the date of assumption of office of Hereditary Trustees by the defendant.

42. Article 107 cannot be put against the petitioners by the Commissioner with reference to succession to office of the "Hereditary Trustees" in absence of a rival claim from any person belonging to the family. If a suit is filed before a Court against a rival party occupying the office of a Hereditary Trustee, it would be a defence available with the defendant under Article 107 in Part IX of the Schedule to the Limitation Act, 1963.

43. Section 21 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 gives power to the Commissioner to call for the

records and to pass orders against the order of the Joint or Deputy or Assistant Commissioner, or any trustee of a religious institution other than a math or a specific endowment attached to a math, whereas, Section 69 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 deals with "appeal to the Commissioner".

44. Under Section 69 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, if no appeal has been preferred within the period specified in sub-section (1), i.e. 60 days, against any order passed by the Joint Commissioner or Deputy Commissioner, as the case may be, the Commissioner may *suo motu* call for and examine the records of the proceedings examine the records of the proceedings as to satisfy himself as to the regularity of such proceedings or the correctness, legality or propriety of any decision or order passed by the Joint Commissioner or the Deputy Commissioner, as the case may be. Any such order passed by the Commissioner in respect of an order passed by the Joint Commissioner or the Deputy Commissioner, as the case may be, shall be deemed to have been passed by the Commissioner on an appeal preferred to him under Sub-Section (1).

45. For comparison, Sections 21 & 69 of the H.R. & C.E. Act, 1959 are reproduced below:-

Section 21 of the H.R. & C.E. Act, 1959	*Section 69 of the H.R. & C.E. Act, 1959*
21. Powers of Commissioner to call for records and pass order.— (1) The Commissioner may call for and examine the record of any Joint or Deputy or Assistant Commissioner, or of any trustee of a religious institution other than a math or a specific endowment attached to a math in respect of any proceeding under this Act not being a proceeding in respect of which a suit or an appeal to a court is provided by this Act or in respect of which an application for revision has been preferred under section 21-A to the Joint Commissioner or Deputy Commissioner and is pending disposal by him to satisfy himself as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order passed therein. (2) If any such decision or order	**69. Appeal to the Commissioner.—** (1) 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 thereof by him as the case may be, appeal to the Commissioner and the Commissioner may pass such order thereon as he thinks fit. (2) Any order passed by the Joint Commissioner or the Deputy Commissioner, as the case may be, in respect of which no appeal has

Section 21 of the H.R. & C.E. Act, 1959	*Section 69 of the H.R. & C.E. Act, 1959*
has been passed by any Joint or Deputy or Assistant Commissioner, or by the trustee of any religious institution other than a math or a specific endowment attached to a math and other than one included in the list published under section 46, and it appears to the Commissioner that the decision or order should be modified, annulled, reversed or remitted for reconsideration, he may pass orders accordingly. (3) (a) If any such decision or order has been passed by the trustee of any religious institution included in the list published under section 46, the Commissioner may, if he thinks fit, remit the matter together with his observations in regard thereto, to the trustee, for reconsideration of the decision or order and report to the Commissioner within a time to be specified by him in this behalf. (b) On receipt of, and after considering, such report, it shall be open to the Commissioner to modify, annul or reverse the decision or order as revised after such reconsideration, as	been preferred within the period specified in sub-section (1) may be revised by the Commissioner suo motu and the Commissioner may call for and examine the records of the proceedings as to satisfy himself as to the regularity of such proceedings or the correctness, legality or propriety of any decision or order passed by the Joint Commissioner or the Deputy Commissioner, as the case may be. Any such order passed by the Commissioner in respect of an order passed by the Joint Commissioner or the Deputy Commissioner, as the case may be, shall be deemed to have been passed by the Commissioner on an appeal preferred to him under sub-section (1). (3) Any order passed by the Commissioner on such appeal against which no suit lies to the Court

Section 21 of the H.R. & C.E. Act, 1959	Section 69 of the H.R. & C.E. Act, 1959
the case may be. (c) If the report is not received by the Commissioner within the time specified or such further time as may be granted by him, the Commissioner may modify, annul or reverse the decision or order of 4[the trustee]. (4) (a) The Commissioner may call for and examine the record of any trustee of a math or a specific endowment attached to math in respect of any proceeding under this Act (not being a proceeding in respect of which a suit or appeal to a Court is provided by this Act) to satisfy himself as to the legality of any decision or order passed therein. (b) If any such decision or order has been passed illegally by the trustee of a math or a specific endowment attached to a math and it appears to the Commissioner that the decision or order should be modified, annulled, reversed or remitted for reconsideration, he may pass orders accordingly. (5) The Commissioner shall not pass any order prejudicial to any party under sub-section (2),	under the next succeeding section or in which no suit has been instituted in the Court within the time specified in sub-section (1) of section 70 may be modified or cancelled by the Commissioner if the order has settled or modified a scheme for the administration of a religious institution or relates to any of the matters specified in section 66.

Section 21 of the H.R. & C.E. Act, 1959	*Section 69 of the H.R. & C.E. Act, 1959*
or clause (b) or clause (c) of sub-section (3) or under clause (b) of sub-section (4), without hearing him or giving him a reasonable opportunity of being heard. (6) The Commissioner may stay the execution of any decision or order of the nature referred to in sub-section (1) or clause (a) of sub-section (4), pending the exercise of his powers under sub-section (2) or sub-section (3) or under clause (b) of sub-section (4) in respect thereof. (7) Every application to the Commissioner for the exercise of his powers under this section shall be preferred within three months from the date on which the order or proceeding to which the application relates was communicated to the applicant.	

46. When a Commissioner assumes *suo motu* power under Section 69(2) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, the Commissioner has to merely examine the records of the proceedings to satisfy himself as to the regularity of such proceedings or

the correctness, legality or propriety of any decision or order passed by the Joint Commissioner or the Deputy Commissioner, as the case may be. Any such order passed by the Commissioner in respect of an order passed by the Joint Commissioner or the Deputy Commissioner, as the case may be, shall be deemed to have been passed by the Commissioner on an appeal preferred to him under sub-section (1).

47. The power that was exercised by the Joint Commissioner in his proceedings dated 16.05.2012 bearing reference Rc.No.13559/2010 recording the succession of the petitioners as Hereditary Trustees in line with the succession is purportedly based on the “No Objection Certificate” given by other descendants from 9 families and in accordance with the letter / report dated 04.09.2010 of the Executive Officer and the report dated 25.05.2011 of the Inspector.

48. Section 54 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 deals with filling up of vacancies in the offices of hereditary trustee. Section 54(3) of the Act reads as under:-

54. Filling up of vacancies in the offices of hereditary trustee.—

(1) ....

(2) ....

(3) When a permanent or temporary vacancy occurs in such an office and there is a dispute respecting the right of succession to the office, or when such vacancy cannot be filled up immediately, or

when a hereditary trustee is a minor and has no guardian fit and willing to act as such or there is a dispute respecting the person who is entitled to act as guardian; or

when a hereditary trustee is by reason of unsoundness of mind or other mental or physical defect or infirmity unfit for performing the functions of the trustee,

the Joint Commissioner or the Deputy Commissioner, as the case may be, may appoint a fit person to perform the functions of the trustee of the institution until the disability of the hereditary trustee ceases or another hereditary trustee succeeds to the office or for such shorter term as the Joint Commissioner or the Deputy Commissioner as the case may be, may direct.

Explanation.—In making any appointment under this sub-section, the Joint Commissioner or the Deputy Commissioner as the case may be, shall have due regard to the claims of the members of the family, if any, entitled to the succession.

49. Section 54(3) of the Tamil Nadu Hindu Religious and Charitable

Endowments Act, 1959 states that when a permanent or temporary vacancy occurs in such an office and there is a dispute regarding the right of succession to the office, or when such vacancy cannot be filled up immediately, or when a Hereditary Trustee is a minor and has no guardian fit and willing to act as such or there is a dispute regarding the person who is entitled to act as guardian, or when a Hereditary Trustee is by reason of unsound mind or any other mental or physical defect or infirmity unfit for performing the functions of the trustee, the Joint Commissioner or the Deputy Commissioner, as the case may be, may appoint a fit person to perform the functions of the Trustee of the institution until the disability of the Hereditary Trustee ceases or another Hereditary Trustee succeeds to the office or for such shorter term as the Joint Commissioner or the Deputy Commissioner as the case may be, may direct.

50. In **Prem Anand** Vs. **The Commissioner, Hindu Religious and Charitable Endowments, Madras and another**, 1990-1-L.W.-144, it was held as under:-

> *' 2. Under S.54 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, when a permanent vacancy occurs in the office of the hereditary trustee of a religious institution, the next in the line of succession shall be entitled to succeed to the office. There is no necessity, whatever, for the next hereditary trustee to make an application for being appointed under the Act. In this case, the petitioner had to approach the first respondent, because a fit person, was already in charge of the administration of the temple. As the first respondent had appointed the fit person, the petitioner sought a direction the fit person from the first respondent to hand over charge to the petitioner as he has become the hereditary trustee. The first respondent ought to have issued such a direction . On the other hand, the first respondent directed the petitioner to go to the Deputy Commissioner which is unwarranted by the provisions of the Act.'*

51. In **Kalyanaraghavan** Vs. **Deputy Commissioner, HR & CE**, AIR 1964 Mad 426, this Court held that under sub-section (3) of Section 54 of the Act, the deputy commissioner is competent to a appoint a fit person to perform the functions of the trustee in the following contingencies only, namely,

> (1) when a temporary or a permanent vacancy arises and there is a dispute respecting the right to succession;
> (2) when such vacant cannot be filled up immediately;
> (3) when the hereditary trustee is a minor and has no guardian fit and willing to act as such or there is a dispute respecting the guardianship; and

(4) where the hereditary trustee is affected by unsoundness of mind, or other mental or physical defect or infirmity unfitting him for the performance of the functions of the trustee. As under section 54(1), the next in line of succession is entitled to succeed in the office of the hereditary trustee.

52. A close reading of the Section 54 of the Act makes it clear that there is no stipulated time prescribed for filling up of vacancies to the post of a "Hereditary Trustee". If the vacancy cannot be immediately filled up due to the non availability of next in line, a "fit person" can be appointed. Power to appoint a 'fit person' and claim of a person entitled to succeed to the office of the Hereditary Trustee cannot be confused by invoking Article 107 in Part IX of the Schedule to the Limitation Act, 1963.

53. Power to appoint a "fit person" is not in dispute. A "fit person" has to perform the functions of a trustee of an institution until the disability of the Hereditary Trustee ceases or another Hereditary Trustee succeeds to the office. In these cases, the petitioners were appointed as Hereditary Trustees presumably on the ground that they belong to the 9 families who said to have been recognized by the Hindu Religious Endowment Board. Therefore, mere delay in recording the succession on account of the

various factors *ipso facto* would not mean that recording of succession of the petitioner to the office of the Hereditary Trustee can be denied by the respondents, even if there is a delay as long as, when there is no opposition from any other persons who were otherwise entitled for appointment as Hereditary Trustees. It is another thing to say that the petitioners do not belong to 9 families.

54. In **T.K. Manangathi** Vs. **Povagavaram**, 2001 (2) LW 529, the Court held that in order to declare a person as "hereditary trustee", the person has to adduce proper evidence to show that his ancestors were of the suit temples.

55. As long as each of the petitioners are from one of the 9 families, recording of their succession to the post of hereditary trustee cannot be interfered with by the H.R. & C.E. Department. However, there are no records to substantiate that these petitioners are indeed the descendants from the 9 families. Under Article 226 of the Constitution of India, this aspect cannot be decided.

56. Therefore, I am of the view that the impugned order deserves to be quashed and the case should be remitted back to the Joint Commissioner for a limited purpose for production of proof by the respective petitioners regarding the petitioners' status as descendants from 9 families who were recognized as "Hereditary Trustees" by the erstwhile Board.

57. The objection of Mr.K.R.Swaminathan, the legal heir of late K.P.Raman either as appellant or a devotee of temples is of no significance as long as the petitioners have a right to succeed to the office of the Hereditary Trustee. Unless the right to succeed has been extinguished, the right of the petitioners cannot be questioned if otherwise they are entitled to succeed. Merely because late K.P.Raman the father of the Mr.K.R.Swaminathan had acted in the interests of the temple and had administered the temple in the past, *ipso facto* would not give any right to Mr.K.R.Swaminathan to claim the position as that of the Hereditary Trustee for the temple as the management of the temple was vested with the Hereditary Trustees.

58. In the light of the above, the impugned order is quashed and the case is remitted back to the Joint Commissioner to pass a fresh order within a period of six months from the date of receipt of a copy of this order. It is for the petitioners to establish that they are the successors of erstwhile Hereditary Trustees by producing appropriate certificates.

59. In case the petitioners produce the appropriate proof individually to establish the same, they shall be allowed to continue to discharge the function as Hereditary Trustees of the three temples. The power of superintendence over the temple under the provisions of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 stands preserved in all time to come in case any situation arises. The Joint Commissioner can exercise power to administer the temple through "Fit Person" or an "Executive Officer" under Section 45 or under Section 54 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

60. These Writ Petitions stand allowed by way of remand. No cost. Consequently, connected Miscellaneous Petitions are closed.

23.12.2022

Internet : Yes/No
Index : Yes / No
Jen

To

1.The Commissioner,
Hindu Religious & Charitable
Endowments Admn. Department,
Uttamar Gandhi Salai,
Chennai – 600 034.

2.The Joint Commissioner,
Hindu Religious & Charitable
Endowments Department,
Palayamkottai,
Tirunelveli District – 627 002.

C.SARAVANAN, J.

Jen

Pre-Delivery Common Order

in
W.P.Nos.17535 & 18381 of 2020
and
W.M.P.Nos.23173, 21725 & 21726 of 2020
and 6273, 6280 & 10087 of 202

23.12.2022