

(2008) 01 MAD CK 0156

In the Madras High Court

Case No : Writ Petition No. 19793 of 1999

Shembayee Ammal

APPELLANT

Vs

The Assistant Commissioner, HR and CE Admn. Department
and The Executive Officer A/m. Koodal Azhagar Temple

RESPONDENT

Date of Decision : 24-01-2008

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1951 —
Section 63, 64(1)

Citation : (2008) 01 MAD CK 0156

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : R. Subrmanian, for K. Jayaraman, for the Appellant; T. Chandrasekaran, Special Government Pleader for Respondent No. 1 and M.C. Swamy, for the Respondent

Judgement

P. Jyothimani, J.—Heard Mr. R. Subramanian learned Counsel appearing for the petitioner, Mr. T. Chandrasekaran, learned Special

Government Pleader (Hr &CE) for first respondent and Mr. M.C. Swamy, learned Counsel appearing for the fit person who has been appointed.

2. The case of the petitioner is that Arulmigu Kallupillaiyar Koil at Narimedu in Madurai Town was established by Periya Karuppan Servai who is

the father-in-law of the petitioner, as early as in the year 1944 and improvements have been made. After his death, the petitioner's husband

became the trustee and he has also made improvements. The petitioner's husband also died on 15.6.1991 leaving behind the petitioner as his wife,

five sons and two daughters as his legal heirs. According to the petitioner, the temple belongs to Agamudiar community and the petitioner's

husband along with four others of the said community have filed a petition u/s

64(1) of the Hindu Religious and Charitable Endowments Act in

O.A. No. 11 of 1987 before the Deputy Commissioner, HR & CE , Madurai and the same was dismissed and there was a further appeal in A.P.

No. 800/1987 before the Commissioner, HR & CE, Madras and the same was dismissed as not pressed. Thereafter, the petitioner on advice, has

filed an application u/s 63(b) of the HR & CE Act in O.A. No. 11 of 1993 before the Deputy Commissioner(Now Joint Commissioner), HR &

CE, Madurai for declaration that the petitioner and his sons are hereditary trustees of the said temple. In the meantime, the Assistant

Commissioner, HR &CE, Madurai the first respondent herein has passed the impugned order by appointing the second respondent herein as a fit

person to the said temple. The appointment of second respondent as a fit person is challenged in this writ petition on the ground that the petition

filed u/s 63(b) of the HR & CE Act for declaration that the petitioner and her sons are hereditary trustees and hence the order of the first

respondent appointing the 2nd respondent as a fit person to the said temple is not valid in law.

3. Learned Counsel appearing for the petitioner would fairly submit that subsequent to the filing of the writ petition, the said petition u/s 63(b) of

HR & CE Act was dismissed on 18.7.2005. It was as against the order of dismissal, the petitioner has filed an appeal in A.P. No. 7 of 2006

before the Commissioner, HR & CE, Madras and the same is pending.

4. In view of the above stated facts that the petitioner has not been declared as hereditary trustee, the order of the first respondent appointing the

second respondent as fit person to the temple, cannot be set aside at this stage. In any event, only after the disposal of the appeal which is pending

before the Commissioner, HR & CE Department, Madras, any further action will be taken. In view of the same, the petitioner is not entitled to any

relief as claimed in this writ petition.

5. The writ petition is disposed of with a direction to the Commissioner, HR & CE Department, Madras to take up the appeal in A.P. No. 7 of

2006 filed against the order in O.A. No 11 of 1993 dated 18.7.2005 passed by the Deputy Commissioner (Now Joint Commissioner), HR & CE

Department, Madurai and pass orders in accordance with law, as expeditiously as possible, in any event within a period of six months from the

date of receipt of a copy of this order. No costs.