

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Cr1.R.C.No.276 of 2010

- 1.M.Jaggubar Ali
- 2.A.Abdul Hakkim
- 3.A.Mohammed Sheriff
- 4.R.Subramani
- 5.S.Arifullah
- 6.S.Abudageer
- 7.M.Mohammed Ismail
- 8.J.Mohammed Sheriff
- 9.Palanisamy
- 10.Parameswaran
- 11.S.Alagiri
- 12.P.M.Mohammed Yunuz

...Petitioners

versus

- 1.The District Collector
cum District Magistrate
Salem District, Salem
- 2.The Commissioner
Hindu Religious and Charitable Endowment
Nungambakkam, Chennai
- 3.The Joint Commissioner
Hindu Religious and Charitable Endowment
Salem.
- 4.The Administrative Officer
Arulmighu Kottai Marriamman Koil
Kottai, Salem 636001

...Respondents

Criminal Revision is filed under sections 397 r/w 401 of Criminal Procedure Code, to quash the order of the first respondent passed in Na.Ka.No.8084/2009/C3, dated 05.06.2009.

For Petitioner : Mr.M.Pari

For Respondent 1 to 3 : Mr.P.Govindarajan
Additional Public Prosecutor

For 4th Respondent : Mr.M.Sundar

O R D E R

Criminal revision case is filed against the proceedings in Na.Ka.No.8084/2009/C3, dated 05.06.2009, of the District Collector cum District Magistrate, Salem, 1st respondent, who in exercise of his powers, under Section 133(1)(e) Cr.P.C., has directed to remove the dilapidated construction.

2. It is the case of the petitioners that in the abovesaid premises, belonging to Arulmigu Kottai Mariammal Koil, Salem, the petitioners are running fancy stores and other business, for several years. Totally, there are 46 shops, out of which, 21 shops are in terraced roof building and the remaining shops are in thatched roof building. The petitioners are in occupation of 12 thatched roof shops and paying rents from 1963 onwards, to the Joint Commissioner, HR & CE Department, Salem, the 3rd respondent herein. The Executive Officer of Arulmigu Kottai Mariammal Koil, Salem, 4th respondent herein, has requested (1)Rajamanickam (Shop No.36/255), (2)P.Shanmugam, (3) K.Vijaya (Shop No.36/23E), to vacate their respective shops and lateron, permitted them, to construct shops, as permanent building, with their own costs, in the same portion occupied by them. One Sheik Basha, was also permitted to construct a new shop, within the same complex.

3. It is the further case of the petitioners that a Five Member Committee has been constituted the name of "Arangavalar Kuzhu", for the administration of Arulmigu Kottai Mariammal Koil, Salem. They belong to the ruling party. They started giving troubles to the petitioners. They directed them to vacate the shops. By proceedings in Na.Ka.No.8084/2009/C3, dated 05.06.2009, the District Collector has passed orders, directing the petitioners to vacate the shops. Pursuant to the above, the Executive Officer of the abovesaid temple, 4th respondent herein, took steps to vacate the petitioners. A shortcut method was used by one Radhakrishnan, who is a close friend of Members of Arangavalar Kuzhu, by stating that the compound wall of the temple, close to the shops was causing danger to the general public. One of the Office Bearers of the Association, viz.,

"Sri Kottai Peria Mariamman Thirukoil Valaga Siru Viyaparigal Nala Sangam", having 21 shops, in the same campus, by colluding with the Arangavalar Kuzhu, has given a representation to the District Collector cum District Magistrate, Salem, 1st respondent herein, for demolition of the compound wall and shops. According to the petitioners, no notice was given to them, who are in occupation and thus, it is violative of Section 133(1) Cr.P.C.

4. In addition to the above, Mr.M.Pari, learned counsel for the petitioners submitted that the District Collector cum District Magistrate, Salem, 1st respondent herein, has erroneously invoked Section 133(1)(e) of the Criminal Procedure Code, instead of 133(1)(d) Cr.P.C., and instead of demolition, a direction to repair or support of such compound wall, could have been issued.

5. Inviting the attention of this Court to Section 137 of the Criminal Procedure Code, learned counsel for the petitioner submitted that before an order is passed, under Section 133, the Magistrate shall, on the appearance before him, of the person against whom, to be made, question and enquire him and therefore, in the absence of following the said procedure, the impugned order is liable to be set aside.

6. It is also his contention that when Section 133 Cr.P.C., contemplates a show cause notice, a summary procedure and without providing an opportunity to the petitioners, who are in occupation of the shops, for many years, the District Collector cum District Magistrate, ought not to have been passed orders for demolition, as if, the building is causing danger to the general public. It is his further contention that a conditional order ought to have been passed, under Section 138 Cr.P.C., before an order, under Section 133 Cr.P.C., is made.

7. Per contra, Mr.P.Govindarajan, learned Additional Public Prosecutor, appearing for the respondents 1 to 3, submitted that the occupants have no right to contend that they must be heard. Temple has given its No Objection Certificate, for removal of the construction, which is causing danger of the public. According to him, notice is required to be given only to the person, who owns the property. He further submitted that when the petitioners in W.P.No.17919 of 2010, sought for permission to reconstruct/repair/alter their shops, at Kottai Mariamman Koil, Salem, at their own costs, on par with the permission given to B.Shak Basha by the 3rd respondent by Letter, dated 6.2.1981 and Rajamanikkam (Shop 36/255) and K.Vijaya (Shop No.36/23E), their

request was rejected by this Court, vide order, dated 26.11.2010 in Writ Petition No.17919 of 2010 and therefore, it is not open to the petitioners to seek for any preliminary order, for repairing or alteration of the building.

8. Learned Additional Public Prosecutor further submitted that when Arangavalar Kuzhu of the abovesaid temple has consented for removal of the portion of the building, which is causing danger, there is no need to conduct a detailed enquiry, calling upon, each and every occupant, before passing an order, under Section 133 Cr.P.C.

9. Mr.M.Pari, learned counsel for the petitioners submitted that earlier in Crl.R.C.No.1029 of 2009, an Advocate Commissioner was appointed. He further submitted that the Commissioner has submitted a report, with photographs. He requested this Court to also consider the report filed along with Photograph. Considering the same, this Court has called for the records from the Registry.

Heard the learned counsel for the parties and perused the materials available on record.

10. Crl.R.C.No.1029 of 2009, has been filed, as against the order of the Executive Officer of Arulmigu Kottai Mariammal Koil, Salem, 4th respondent herein, dated 22.09.2009. Respondents 2 to 4 herein, have filed a counter affidavit to the abovesaid revision, contenting inter alia that no revision would lie against the order passed by the Executive Officer of Arulmigu Kottai Mariammal Koil, Salem, 4th respondent herein. This Court, by recording that the present revision has also been filed, challenging the order passed by the District Collector, under Section 133(c) Cr.P.C and that the same was simultaneously pending, dismissed Crl.R.C.No.1029 of 2009 on 10.03.2010, as not maintainable.

11. W.P.No.17919 of 2010 has been preferred by the present petitioners, for a Writ of Mandamus, directing the Commissioner, Hindu Religious and Charitable Endowment, Nungambakkam, Chennai and the Joint Commissioner, Hindu Religious and Charitable Endowment, Salem, respondents 2 and 3 herein, to permit them to reconstruct/repair/alter their respective shops at Kottai Mariamman Temple, Salem, at their own costs, on par with the permission given to B.Shak Basha by the Administrative Officer of Arulmigu Kottai Mariammal Koil, Salem, 4th respondent herein, by Letter dated 6.2.1981 and Rajamanikkam (Shop 36/255) and K.Vijaya (Shop No.36/23E).

12. In the said writ petition, upon notice, the learned Special Government Pleader, appearing for the respondents 2 and 3 herein, has submitted that the order of eviction has been passed, by proceedings, dated 22.9.2009 and that the same was challenged by an association in W.P.No.20332 of 2009. The said writ petition was disposed of, on 15.10.2009, in the following terms:-

"8. The learned Special Government Pleader for the respondents would submit that the portions are in dilapidated condition and the said twelve owners of the premises should undertake the responsibility for any eventuality that may happen before they deliver such vacant possession. It is needless to state that inasmuch as the portions are occupied knowing full well about the dilapidated condition, for any consequences which may happen before 25.10.2009, by which time they have agreed to vacate and deliver vacant possession, they are to take the entire responsibility."

13. Material on record shows that based on certain complaints, the District Collector, Salem, on inspection, has forwarded a letter to the respondents 2 and 3 herein, stating that a portion of the temple wall, supporting the shops was damaged and requires to be demolished, otherwise, the public would be in danger. Consequently, steps have been taken as per the recommendation of the District Collector, Salem, to demolish the shops in question, by taking action under Section 133(1)(e) of the Code of Criminal Procedure.

14. Reading of the said order further states that writ Court has taken note of the dismissal order of Crl.R.C.No.1029 of 2009, dated 10.03.2010, challenging the order, dated 22.9.2010, passed by the Administrative Officer of Kottai Mariammal Temple, the 4th respondent herein and also the pendency of the present Crl.R.C.No.276 of 2009, challenging the demolition order of the District Collector, passed under Section 133(1)(e) of the Code of Criminal Procedure.

15. Before the Writ Court in W.P.No.17919 of 2010, the learned Special Government Pleader, appearing for the respondents 2 and 3 herein, has submitted that a sum of Rs.27 lakhs has already been sanctioned for reconstruction of the shops in question, and in view of the interim order granted, funds could not be utilized for that purpose. He has also pleaded that as on date of the disposal of the abovesaid writ petition, no tenancy agreement or lease agreement subsisted between the petitioners and the temple and amounts were collected only for the use and occupation of the building in question. He has also submitted that when the condition of the building was bad and when funds were also sanctioned for

reconstruction of the building, at the intervention of the petitioners, the respondents 2 to 4 herein, cannot be prevented from putting up a new construction. Thus, the respondents in W.P.No.17919 of 2010, opposed the prayer of the petitioners therein, for reconstruction or alteration or repair of the shops.

16. Adverting to the rival submissions, a learned single Judge in W.P.No.17919 of 2010, by order, dated 25.11.2010, has observed that the relief sought for, to reconstruct/repair/alter the shops in question, cannot be granted. Admittedly, as per the report of the District Collector, Salem, the condition of the building was not sound. That is why, the District Collector has passed an order to initiate steps under Section 133(1)(e) of the Code of Criminal Procedure, to demolish the said building.

17. Learned Judge has further observed that admittedly, the association had filed W.P.No.20332 of 2009, challenging the order of eviction, wherein, this Court has issued a direction that after reconstruction, the request of the petitioners therein for allotment can be considered. The Writ Court further recorded that since the order was passed before the Diwali festival in 2009, they were permitted to continue till that festival, on the undertaking given by them. Thus, the Writ Court has recorded as follows:

"As far as this prayer is concerned, as on date, they are not even a lessee or a tenant and neither any copy of the tenancy agreement nor the copy of the lease agreement, basing on which the lease is subsisting, has been produced before this Court. Though the learned counsel for the petitioners relied on paragraph No.4 of the counter affidavit, which is to the effect that with regard to paragraph 2 of the affidavit, it is submitted that the writ petitioners are running fancy shops and other allied business in the shops belongs to the temples for so many years, and contended that this is an evidence for the continuance of the tenancy, but, in the opening of the argument itself, the learned Special Government Pleader has specifically argued to the effect that there is no tenancy or lease existing between the petitioners and the respondent temple, but amounts are received for the occupation of the building in question, and hence this argument of the petitioners that they are the tenants under the respondent temple cannot be accepted."

18. At Paragraph 6 of the order made in W.P.No.17919 of 2010, dated 25.11.2010, the Writ Court has further recorded as follows:

"6. Apart from this, the owner of the place in question is only the respondent temple. When funds have been sanctioned for reconstruction/repair/alteration of the building, the permission sought for by the petitioners to reconstruct the building on their own cannot be permitted and no provision is available under the Hindu Religious & Charitable Endowments Act for reconstruction of the building by persons who are in occupation of the same. When there is no such right given under the Act, the question of granting the said relief will not arise, and when they are not in occupation of the building as a tenant or a lessee, the relief sought for cannot be granted."

19. Though before the Writ Court in W.P.No.17919 of 2010, learned counsel for the petitioners relied on a decision of this Court in 2005-AIR(HC)-129 Madras (Raghavendra Swami Mutt. Panchapakesa Iyer) and contended that they are the lessees of the temple, the Writ Court has rejected the same and accordingly, dismissed the writ petition.

20. Though the learned counsel for the petitioners therein has contended that in view of the interim order granted in Criminal Revision Case No.276 of 2010 (present revision case), filed challenging the order of the District Collector, Salem, the petitioners' right is protected, the Writ Court, by observing that the relief sought for in that writ petition was only to permit the petitioners to carry on with reconstruction/repair/alteration of the building in question and held that the interim order granted in favour of the petitioners, would not be of any help to them.

21. Now reverting back to the revision case on hand, it is once again the contention of the petitioners that they are the tenants and in occupation for long number of years. Such a contention cannot be countenanced, in view of the earlier order, passed by this Court in W.P.No.17919 of 2010, dated 25.11.2010, wherein, this Court has already rejected such plea, by accepting the contentions of the HR & CE Department that as on date of the disposal of the abovesaid writ petition, ie., on 25.11.2010, either tenancy or lease subsisted between the petitioners and temple.

22. Section 133 of the Criminal Procedure Code, deals with a conditional order for removal of nuisance. As per Section 133(1)(d) states that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or

passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary, the Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order-

- (i) to remove such obstruction or nuisance; or
- (ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or
- (iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or
- (iv) to remove, repair or support such building, tent or structure, or to remove or support such trees; or \
- (v) to fence such tank, well or excavation; or
- (vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order; or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the Order, and show cause, in the manner hereinafter provided, why the order should not be made absolute.

23. Thus, it is a clear finding in the earlier proceedings that there was no tenancy. No material has been placed before this Court, as to whether, such finding has been reversed.

24. In *Suresh Prakash v. Krishna Swarup* reported in 1976 Cr1.L.J 462 (All), the Allahabad High Court has held that even where the tenant is in occupation of a shop in a dilapidated condition, the landlord can legally file an application under this Section for ejecting the tenant to demolish the shop.

25. In *Raj Mal v. Joginder Ram* reported in 1991 Cr1.L.J. 3059, the Punjab and Haryana High Court held that an order passed by a Magistrate is not vitiated if he personally inspects the spot for a proper appreciation of the evidence on record.

26. In Ajeet Mehta v. State of Rajasthan reported in 1990 Cr1.L.J. 1596, the Rajasthan High Court held that where health, safety and convenience of the public at large are involved, the safer course would be to accept the view of the Magistrate, who himself had seen the hazard.

27. Reading of the impugned order shows that on 03.03.2009, one of the Trustees of Arulmigu Kottai Mariammal Koil, Salem, has sent a letter, stating that there are business premises, belonging to the temple and that the shops constructed are old and in dilapidated condition, likely to fall, at any time and cause problems. Therefore, a decision has been taken to inspect the building. Thus, vide proceedings of the District Collector in Na.Ka.No.8084/2009/C3, dated 03.03.2009, has requested the Revenue Divisional Engineer, Salem; Commissioner of Salem; District Fire Officer, Fire and Rescue Department, Salem; Superintending Engineer, Public Works Department, Salem; and the Joint Commissioner, HR & CE Department, Salem, to inspect and submit a report.

28. The Executive Engineer (Buildings), Construction and Maintenance, Public Works Department, Salem, has inspected the spot and in his letter in E.Va.A1/2009/F318, dated 09.03.2009, stated that on the Southern side of the Temple, there are 21 shops in a row. Opposite to the same, there are 18 shops. The abovesaid shops were constructed in the year 1969. 18 shops have RCC (Reinforced Concrete Cement) roof. No cracks were found in the compound wall. In respect of other eight shops, Mangalore Tiles have been laid. There were damages. In the remaining 13 shops, Mangalore Tiles were not laid. On the top of the RCC roof, pipes laid for draining rain water, were broken. Due to accumulation of garbage, rain water could not be drained and hence, there was seepage of water; iron rods in the concrete were rusted; there was breakage of concrete; and dampness in the wall and therefore, in order to avert danger, defects should be immediately rectified and thereafter, the building can be used.

29. The Executive Engineer (Buildings), Construction and Maintenance, Public Works Department, Salem, in his report, has further stated that in respect of the shops, with thatched shed and brick walls, the supporting wall is without a proper basement and it was damaged. The wall is at different heights; wooden logs in the shops were damaged, broken and bent, due to which, the supporting wall was angled, at many places. There were cracks in the wall and it was in a dilapidated and dangerous condition. As the compound wall, on which, 18 shops rests, was constructed, without any basement and since the thatched roof was also badly damaged, the Executive

Engineer (Buildings), Construction and Maintenance, Public Works Department, Salem, has categorically opined that the building is not safe and unlikely to cause danger to life.

30. Reading of the impugned order further shows that the Revenue Divisional Officer, Salem has made a joint inspection, along with Vice President, Secretary and Office Bearers of Sri Periamariamman Thirukoil Valaga Siru Viyaparigal Nala Sangam. The Assistant Divisional Officer, Fire and Safety Department and Taluk Divisional Officer, Salem, have stated that the location of the shops should not cause any traffic congestion and the public should be allowed to use the platform. The Assistant Commissioner (Law and Order), Salem City (South), has stated that insofar as stability of the building and distance are concerned, decision can be taken, on the basis of the opinion of the Public Works Department. Insofar as HR & CE Department is concerned, the Regional Joint Commissioner, in his Note, has stated that as per the Public Works Department's Report, the said Department would take action. Vide letter in Na.Ka.No.1435/2009/A2, dated 27.04.2009, the Revenue Divisional Officer, Salem, has reported to the District Collector, Salem District, to take action under Section 133 Cr.P.C.

31. Now after considering the report of the Executive Engineer (Buildings), Construction and Maintenance, Public Works Department, Salem and the joint inspection report of the Fire and Safety Department, Police, HR & CE Department, Revenue Divisional Officer, Salem, Trader's Association, the District Collector cum District Magistrate, has passed an order, under Section 133(e) of the Criminal Procedure Code, for removal of 18 thatched shops. In respect of other 21 shops, the District Collector, directed inspection and for a detailed report.

32. At this juncture, it should be noticed that the Clause (e) of sub-Section (1) of Section 133, states that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public. Whereas, Section 133(1)(d) states that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary.

33. Thus, it could be seen that there is an error in quoting the provision in the impugned order. Instead of Section 133(1)(d)

Cr.P.C., the District Collector cum District Magistrate, Salem, has wrongly quoted Section 133(1)(e) Cr.P.C. It is settled law that an order passed by a competent authority, after considering the ingredients of the provision, under which, an order has been passed, need not be set at naught, merely because, a wrong provision was quoted. In the case on hand, the District Collector cum District Magistrate, is empowered to pass an order under Section 133 Cr.P.C. Useful reference can be made to few decisions,

(i) In *M.S.Mariappa Nadar vs. The State of Madras* represented by the Commercial Tax Officer, North, Madras, reported in 73 Law Weekly 183, a Division Bench of this Court held that it should be taken as well settled that even a wrong reference to a statutory provision, may not invalidate an order passed by an authority, if that authority had the requisite power to pass that order, that is the jurisdiction in the exercise of which, he could pass such an order.

(ii) It is also useful to refer a decision of the Hon'ble Supreme Court in *D.G. and I.G. of Police vs. K.Ratnagiri*, reported in (1990) 3 SCC 60, wherein the Hon'ble Supreme Court, while construing Rule 13(1) operating in Andhra Pradesh, in relation to a Government Servant of Andhra Pradesh, held that a wrong terminology in the order did not take away the power if it is available otherwise, and has further held as follows:

"7.....The Rule 13(1) empowers the authority to keep the respondent under suspension pending investigation or enquiry into the criminal charges where such suspension is necessary in the public interest. When the first information report is issued, the investigation commences and indeed it has commenced when the respondent was kept under suspension. The order of suspension cannot, therefore, be said to be beyond the scope of Rule 13(1) merely because it has used the word 'prosecution' instead of investigation into the charges against the respondent. A wrong wording in the order does not take away the power if it is otherwise available. The Tribunal seems to have ignored this well accepted principle." (Emphasis added)

(iii) In *State of Karnataka vs. Krishnaji Srinivasa Kulkarni and others* reported in 1994(2) SCC 558, the Hon'ble Supreme Court held that quoting of wrong provision does not take away the jurisdiction of authorities/Court, under the Act.

34. From the materials on record, it could be deduced that earlier, when the Association filed W.P.No.20332 of 2009, challenging

the eviction, the same was disposed of, on 15.10.2009 and it is recorded thus,

"It is needless to state that inasmuch as the portions are occupied knowing full well about the dilapidated condition, for any consequences which may happen before 25.10.2009, by which time they have agreed to vacate and deliver vacant possession, they are to take the entire responsibility."

35. Subsequently, when W.P.No.17919 of 2010, was filed, by the present writ petitioners, for a Mandamus, directing the Commissioner, Hindu Religious and Charitable Endowment, Nungambakkam, Chennai and the Joint Commissioner, Hindu Religious and Charitable Endowment, Salem, respondents 2 and 3 herein, to permit them to reconstruct/repair/alter their respective shops in Kottai Mariamman Temple, Salem, at their own costs, on par with the permission given to B.Shak Basha, by the Administrative Officer of Arulmigu Kottai Mariammal Koil, Salem, 4th respondent herein, by Letter dated 6.2.1981 and Rajamanikkam (Shop 36/255) and K.Vijaya (Shop No.36/23E), submissions have been made by the respondents therein, stating that the District Collector has already passed an order on 05.06.2009, for taking action, under Section 133(1)(e) of the Code of Criminal Procedure and that after considering the contentions made by the respondents therein that there was no tenancy agreement; the building was in a dilapidated condition; there was sanction of Rs.27 Lakhs for re-construction of shops; and that the petitioners had prevented the owner of the building to put up a new construction, at Paragraph 5 of the order made in W.P.No.17919 of 2010, dated 25.11.2010, a learned single Judge of this Court, has recorded thus,

"Admittedly, as per the report of the District Collector, Salem, the condition of the building is not sound. That is the reason why the District Collector has passed an order to initiate steps under Section 133(e) of the Code of Criminal Procedure, to demolish the said building. Admittedly, the association had filed a writ petition challenging the order of eviction wherein this Court has issued a direction that after reconstruction, the request of the petitioners for allotment can be considered."

In the abovesaid writ petition, it is the further submission of the learned Special Government Pleader that since that order was passed before the Diwali festival in 2009, the petitioners therein permitted to continue till that festival on the undertaking given by them.

36. From the reading of the order made in W.P.No.17919 of 2010, dated 25.11.2010, it could be further deduced that learned counsel for the petitioners therein, had contended that the petitioners were not the members of the said association and apart from the above, the petitioners therein have filed a review petition, with a delay and after condonation of the delay, the matter was now pending before this Court. Submission has also been made that the order made in W.P.No.20332 of 2009, dated 15.10.2009, would not bind the petitioners.

37. Upon considering the materials on record, the learned Single Judge, who disposed of W.P.No.17919 of 2010, dated 25.11.2010, while disagreeing with the contentions of the learned counsel for the petitioners, numbering 12, has categorically recorded as follows:

"As far as this stand is concerned, I am not able to agree with the learned counsel for the petitioners for the reason that a perusal of the order reveals that the petitioners in this writ petition are the petitioners in that writ petition also. Since in the opening of the order, the names of the petitioners have been mentioned specifically stating that this order relates to these petitioners, and in the revision, which is pending for a period of one year, if the petitioners are really interested, they should have got it numbered by this time and the orders would have been reviewed. But, mere filing of the review will not confer any right at all to the petitioners and apart from this, as far as the case on hand is concerned, what they now seek is to permit them to reconstruct/repair/alter the building. As far as this prayer is concerned, as on date, they are not even a lessee or a tenant and neither any copy of the tenancy agreement nor the copy of the lease agreement, basing on which the lease is subsisting, has been produced before this Court."

38. Thus, it is evident that the petitioners, numbering 12, who seemed to have filed W.P.No.20332 of 2009, in which, an order was passed, permitting them, to continue till the Deepavali festival, have filed another W.P.No.17919 of 2010, seeking for a different prayer, ie., to permit them to re-construct/repair/alter the shops.

39. Thus, it is also seen that having known the order, dated 05.06.2009 of the District Collector, directing action, under Section 133(1) of the Code of Criminal Procedure, earlier, the petitioners, in W.P.No.20332 of 2009, who had agreed to vacate the premises, after Deepavali Festival, in the year 2009, have filed the present Criminal

Revision Case, assailing the correctness of the order of the District Collector, dated 05.06.2009.

40. From the facts of the case, narrated supra, this Court is of the view that having agreed to vacate from the premises, the petitioners have filed W.P.No.17919 of 2010 and the present revision case in January' 2010, challenging the order, dated 05.06.2009. Though earlier the petitioners have filed W.P.No.20332 of 2009 and got it disposed on 15.10.2009, no where in the present revision case, there is any averment, with regard to the filing of the abovesaid writ petition. On the facts and circumstances of the case, this Court is of the view that there is suppression of material facts.

41. Sri Kottai Peria Mariamman Thirukoil Valaga Siru Viyaparigal Nala Sangam, has filed W.P.No.20332 of 2009, to quash the proceedings of the 4th respondent herein, dated 22.09.2009. In the said writ petition, the Association has made it clear that the said writ petition has been filed, only in respect of the present petitioners. After considering the rival contentions of the parties therein, a learned Judge, who disposed of W.P.No.20332 of 2009, has extracted the proceedings of the Joint Commissioner, HR & CE, Salem in Na.Ka.No.8140/2009/A1 dated 08.10.2009, in which, while discussing about the 18 shops, a notice has been given, which is as follows:

"மேற்க னும் 18 கடைகளையும் இடித்து அப்ப,றப்படுத் துவது மற்றும் புதிதாக கட்டிடங்களை கட்டுவது தொடர்பாக இத்துறை கண்காணிப்பு, பொறியாளரின் குழுவினரால் கடந்த 6.10.2009 ஆய்வ , மேற்கொள்ளப்பட்டுள்ளது. கண்காணிப்பு, பொறியாளரின் ஆய்வறிக்கையின் அடிப்படையில் ஆணையரிடமிருந்து பெறப்படும் உத்தரவின் அடிப்படையில் மேற்கா னும் கடைகள் இடித்து அப்ப,றப்படுத்தப்பட்டு ப ,தியதாக கடைகள் கட்ட தக்க நடவடிக்கை எடுக்கப்படும் எனவும், புதிய கடைகளை வாடகைக்குவிட நடவடிக்கை எடுக்கப்படும் போது பழைய கடைவாடகைதாரர்களின் கோரிக்கை குறித்து பரிசீலிக்கப்படும் என மனுதாரருக்கு தெரிவிக்கப்படுகிறது."

42. At Paragraph 5 of the order made in W.P.No.20332 of 2009, dated 15.10.2009, the learned Judge has ordered as follows:

"5. As far as the claim of the petitioner Association in respect of the 12 shop owners to have the open place for the purpose of continuing their business, the same is not permissible in view of the difficulties which may be experienced by the devotees."

43. Yet another factor to be taken note of, is that after considering the undertaking of the association given, on behalf of 12 tenants, at Paragraphs 6 and 7 of the order in W.P.No.20332 of 2009, dated 15.10.2009, the learned single Judge has ordered as follows:

"6. In the affidavit filed by the said petitioner Association, on behalf of the 12 persons, an undertaking has been given agreeing to vacate and hand over possession by 25.10.2009, after Deepavali. The undertaking is as follows:

"6. I submit that the tenants of 12 shops hereby undertake to vacate and hand over possession by 25.10.2009, after Deepavali. We are prepared to pay the present rent and put up stalls at out cost."

7. In view of the said undertaking given by the petitioner Association on behalf of the tenants of twelve shops, they are directed to vacate and hand over vacant possession to the respondents on 25.10.2009. Thereafter, it is for the respondents to proceed with the demolition and re-construction and as stated by the third respondent, after construction is over, the claim of the said twelve occupants is directed to be considered in accordance with law.

8. The learned Special Government Pleader for the respondents would submit that the portions are in dilapidated condition and the said twelve owners of the premises should undertake the responsibility for any eventuality that may happen before they deliver such vacant possession. It is needless to state that inasmuch as the portions are occupied knowing full well about the dilapidated condition, for any consequences which may happen before 25.10.2009, by which time they have agreed to vacate and deliver vacant possession, they are to take the entire responsibility."

44. Thus, having undertaken to vacate the premise in 2009, in the present revision case on hand, the petitioners have made submissions, assailing the correctness of the order made under Section 133(1)(e) Cr.P.C., stating that the District Collector cum District Magistrate, Salem, has not passed any conditional order, under Section 133 Cr.P.C., and therefore, sought for quashing the same.

45. In the earlier proceedings, it has been already recorded that the petitioners did not produce even a document to show tenancy.

The said finding of fact has reached finality. A sum of Rs.27 lakhs has already been sanctioned for reconstruction of the shops in question, in the year 2010. On behalf of the petitioners, Sri Kottai Peria Mariamman Thirukoil Valaga Siru Viyaparigal Nala Sangam, has given an undertaking to vacate. Thereafter, in W.P.No.17919 of 2010, an attempt has been made that they have not given any undertaking. Condition of the building has been found to be dilapidated and recorded by the Writ Court. The said finding has also become final.

46. In the light of the decisions, stated supra, though there is a wrong quoting of the provision, the same would not vitiate the impugned order, as the District Collector cum District Magistrate, is empowered to pass an order, under Section 133 Cr.P.C. The petitioners, who have not substantiated as tenants, are not entitled to be heard. They are squatting on the property, contrary to the undertaking given to this Court, in the year 2009 and as recorded in W.P.No.20332 of 2009, dated 15.10.2009. There is a suppression in not disclosing the material facts in the present revision case. They have not approached this Court, with clean hands. Equity cannot be extended to them. In this context, reference can be made to few decisions,

(i) In *Arunima Baruah v. Union of India* reported in 2007 (6) SCC 120, wherein, at Paragraphs 11 to 14, it held as follows:

"11. The Court's jurisdiction to determine the lis between the parties, therefore, may be viewed from the human rights concept of access to justice. The same, however, would not mean that the Court will have no jurisdiction to deny equitable relief when the complainant does not approach the court with a pair of clean hands; but to what extent such relief should be denied is the question.

12. It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its discretionary

jurisdiction. It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question.

.....

14. In Halsbury's Laws of England, 4th Edn., Vol. 16, pp. 874-76, the law is stated in the following terms:

"1303. He who seeks equity must do equity.-In granting relief peculiar to its own jurisdiction a court of equity acts upon the rule that he who seeks equity must do equity. By this it is not meant that the court can impose arbitrary conditions upon a plaintiff simply because he stands in that position on the record. The rule means that a man who comes to seek the aid of a court of equity to enforce a claim must be prepared to submit in such proceedings to any directions which the known principles of a court of equity may make it proper to give; he must do justice as to the matters in respect of which the assistance of equity is asked. In a court of law it is otherwise: when the plaintiff is found to be entitled to judgment, the law must take its course; no terms can be imposed.

* * *

1305. He who comes into equity must come with clean hands.-A court of equity refuses relief to a plaintiff whose conduct in regard to the subject-matter of the litigation has been improper. This was formerly expressed by the maxim 'he who has committed iniquity shall not have equity', and relief was refused where a transaction was based on the plaintiff's fraud or misrepresentation, or where the plaintiff sought to enforce a security improperly obtained, or where he claimed a remedy for a breach of trust which he had himself procured and whereby he had obtained money. Later it was said that the plaintiff in equity must come with perfect propriety of conduct, or with clean hands. In application of the principle a person will

not be allowed to assert his title to property which he has dealt with so as to defeat his creditors or evade tax, for he may not maintain an action by setting up his own fraudulent design.

The maxim does not, however, mean that equity strikes at depravity in a general way; the cleanliness required is to be judged in relation to the relief sought, and the conduct complained of must have an immediate and necessary relation to the equity sued for; it must be depravity in a legal as well as in a moral sense. Thus, fraud on the part of a minor deprives him of his right to equitable relief notwithstanding his disability. Where the transaction is itself unlawful it is not necessary to have recourse to this principle. In equity, just as at law, no suit lies in general in respect of an illegal transaction, but this is on the ground of its illegality, not by reason of the plaintiff's demerits."

(ii) In *Prestige Lights Ltd., v. State Bank of India* reported in 2007 (8) SCC 449, at Paragraphs 33, 34 and 35, the Apex Court held as follows:

"33. It is thus clear that though the appellant-Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a Court of Law is also a Court of Equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the Writ Court may refuse to entertain the petition and dismiss it without entering into merits of the matter.

34. The object underlying the above principle has been succinctly stated by Scrutton, L.J., in *R v. Kensington Income Tax Commissioners*, [(1917) 1 KB 486 : 86 LJ KB 257 : 116 LT 136], in the following words:

"(I)t has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts, not law. He must not misstate the law if he can help the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the Court will set aside, any action which it has taken on the faith of the imperfect statement". (emphasis supplied)

34. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a Writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible."

47. Though the learned counsel for the petitioners requested this Court to consider the reports filed in another Criminal Revision Case No.1209 of 2009, considering the conduct of the petitioners, such an exercise is not necessary. At this juncture, this Court deems it fit to consider that in *Rama Narang v. Ramesh Narang* reported in AIR 2007 SC 2029, the Hon'ble Apex Court held that violation of an undertaking given to the Court would even amount to contempt of Court.

48. Filing of successive proceedings on the same cause of action, would amount to abuse of process of law, moreso when an undertaking has already been given to this Court. Even in the order, dated 15.10.2009, in W.P.No.20332 of 2009, permission has been granted to continue, till the Diwali Festival in 2009, was over and

that too, on the sole responsibility of the petitioners. They are not entitled to squat over the building, assessed to be in a very dilapidated and dangerous condition, likely to fall and cause injury, in the neighbourhood and therefore, removal of the dilapidated construction is certainly required. The order, dated 05.06.2009, of the District Collector cum District Magistrate, Salem, 1st respondent, is sustained.

49. In the result, the Criminal Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

skm

To

1. The District Collector
cum District Magistrate,
Salem District, Salem.

2. The Commissioner,
Hindu Religious and Charitable Endowment
Nungambakkam, Chennai.

3. The Joint Commissioner,
Hindu Religious and Charitable Endowment,
Salem.

4. The Public Prosecutor,
High Court, Madras.

1 CC to Mr.M.Pari, Advocate SR.No. 41909
1 CC to Mr.M.Sundar, Advocate SR.No. 41801

CrI.R.C.No.276 of 2010

PSI (14.08.2015)