



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.9667, 8457, 8458, 8459, 8460, 8461, 8462, 9457,  
9465, 9676, 9684, 9688 and 9700 of 2020  
and

WMP. Nos.10189, 10190, 10191, 10192, 10193, 10194, 10195,  
10196, 10197, 10198, 11554, 11567, 11569, 11793, 11797,  
11802, 11807, 11813 and 11824 of 2020

W.P. No.9667 of 2020

V.Chandran,  
S/o. Late K.Venugopal,  
68, East Kongalmman Koil Street,  
Erode Town.

...Petitioner

K.Arumugam

...Petitioner in WP No.8457/2020

R.Ramkumar

...Petitioner in WP No.8458/2020,  
8459/2020, 8460/2020

B.Yogaraj

...Petitioner in WP No.8461/2020

T.Sumathi

...Petitioner in WP No.8462/2020

N.R.Munavar Sulthan Begam

...Petitioner in WP No.9457/2020

S.Rajeswari

...Petitioner in WP No.9465/2020

M.Nagarajan

...Petitioner in WP No.9676/2020

M.S.Mohammed Rasool

...Petitioner in WP No.9684/2020

H.M.s.Lukman Ali

...Petitioner in WP No.9688/2020

K.Murugesan

...Petitioner in WP No.9700/2020

.Vs.

1. The Joint Commissioner,  
Hindu Religious and Charitable Endowment Department,  
Coimbatore.



2. The Assistant Commissioner,  
Hindu Religious and Charitable Endowment Department,  
Erode.

3. The Executive Officer  
A/m. Kongalamman Thirukovil,  
Erode Town and Taluk, Erode District. ...Respondents  
in all Wps.

PRAYER in WP No.9667/2020: Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, call for the records of the 3rd respondent in the impugned notice dated 29.05.2020 with respect to the petitioners premises at No.68 East Kongalamman Koil Street, Erode, quash the same and further direct the respondents from interfering with peaceful possession and enjoyment of the premises at No.68 East Kongalamman Koil Street Erode.

Prayer in WP No.8457/2020, 8462/2020, 9676/2020, 9684/2020 & 9700/2020: Pleased to issue a writ of Mandamus forbearing the respondents from taking possession of my premises at No.20-20A, 23A, 74, 71, 73, Kongalamman Koil Street, Erode Town.

Prayer in WP No.8458/2020 and 9465/2020: Pleased to issue a writ or order or Director in the nature of a writ of certiorarified mandamus to call for the recrods of the 3<sup>rd</sup> respondent in the impugned notice dated 29.05.2020 with respect to the petitioners premises at No.652, 653 and 657, Nethaji Road, Erode, quash the same and further diret the respondents from interfering with peaceful possession and enjoyment of the premises at No.652, 653 and 657, Nethaji Road, Erode.

Prayer in WP No.8459/2020 and 8460/2020, 8461/2020: Pleased to issue a writ or order or Director in the nature of a writ of certiorarified mandamus to call for the recrods of the 3<sup>rd</sup> respondent in the impugned notice dated 29.05.2020 with respect to the petitioners premises at No.88, 89, 588, Nethaji Road, Erode. Quash the same and further diret the respondents from interfering with peaceful possession and enjoyment of the premises at No.88, 89, 588, Nethaji Road, Erode.

Prayer in WP No.9457/2020: Pleased to issue a writ of Mandamus forbearing the respondents from taking possession of my premises at No.654, Nethaji Road, Erode Town.

Prayer in WP No.9688/2020: Pleased to issue a writ of Mandamus forbearing the respondent from taking possession of the petitioner's premises at No.4, Agrahara Street, Erode.



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For Petitioners : Mr.I.Abrar Mohammed Abdullah  
in all the Wps  
For Respondents : Mr.M.Karthikeyan,  
in all the Wps Special Government Pleader

### C O M M O N O R D E R

This batch of 13 Writ Petitions has been filed by the occupants of shops at Nethaji Road, Erode that belong to the Kongalamman Thirukoil, Erode (in short 'Temple').

2. The petitioners state that they have been in possession and occupation of the shops for many years and have been remitting rents in regard thereto, regularly. In 2018, the third respondent/Executive Officer (EO) had fixed the rent payable for the shops for the period 01.07.2016 to 28.02.2018 under proceedings dated 26.02.2018 and had duly communicated the same to all the occupants of the shops including the petitioners herein. Though some of the petitioners had challenged the fixation of rent by way of appeal under Section 34A of the Hindu Religious and Charitable Endowments Act, 1959 (in short 'HR & CE Act'), admittedly, the appeals were not maintainable, since the pre-deposit of the arrears of rent was not made as statutorily required in terms of the proviso to Section 34A(5) of the Act. The appeals were thus returned and have, admittedly, not been re-presented till date. The position that obtains as on date is thus, that the rent fixed as on 26.02.2018 has attained finality.

3. Consequent thereupon, the Joint Commissioner (JC) has initiated proceedings under Section 78 of the Act seeking to evict the petitioners on the ground that they are encroachers. Some of the petitioners have responded to the notices under Section 78 and proceedings are stated to be pending as on date.

4. While this is so, the EO has proceeded to issue the present impugned notices stating that the petitioners are unauthorisedly occupying the shops in question and are required to vacate and handover possession of the same within a period of seven days from date of receipt of the notices.

5. The impugned notices are challenged on the ground of lack of jurisdiction insofar as it is only the JC who is empowered to take action to evict encroachers, and that too, only under Section 78 of the Act. Since proceedings under Section 78 have already been initiated, the present orders, styled as notices, are wholly bereft of jurisdiction apart from being violative of the principles of natural justice.



6. The EO has filed a counter wherein the position as regards the fixation of rent by enhancement in 2018 and the proceedings initiated under Section 78 in 2019, are admitted. It is also admitted that the Section 78 proceedings initiated in 2019 are yet pending. The basis of the Section 78 proceedings are that the petitioners are in substantial arrears of fair rent to the Temple, despite notices calling upon them to remit the same. The details of the enhancement of fair rent, amounts remitted and arrears due qua each petitioner are tabulated below:

| Sl. No. | W.P.No.   | Fair rent<br>(Per month)<br>01.07.2016<br>To<br>30.06.2019<br>Rs. | Fair rent<br>(Per month)<br>(15% increase<br>01.07.2019<br>To<br>30.06.2020<br>Rs. | Total Fair rent<br>(01.07.2016<br>To<br>30.06.2019<br>Rs.<br>((8) X 36) | Total fair rent<br>01.07.2019<br>to<br>30.06.2020<br>Rs.((9) X 12) | Total fair rent<br>01.07.2016 to<br>30.06.2020<br>Rs.((10) +<br>(11)) | Rent paid<br>01.07.2016<br>to<br>30.06.2020<br>Rs. | Balance Rent to<br>be paid till<br>30.06.2020 Rs.<br>((12) -(13)) |
|---------|-----------|-------------------------------------------------------------------|------------------------------------------------------------------------------------|-------------------------------------------------------------------------|--------------------------------------------------------------------|-----------------------------------------------------------------------|----------------------------------------------------|-------------------------------------------------------------------|
| (1)     | (2)       | (3)                                                               | (4)                                                                                | (5)                                                                     | (6)                                                                | (7)                                                                   | (8)                                                | (9)                                                               |
| 1.      | 8457/2020 | 63,735                                                            | 73,296                                                                             | 22,94,460                                                               | 8,79,552                                                           | 31,74,012                                                             | 4,71,600                                           | 27,02,412                                                         |
|         |           | 7215                                                              | 8,298                                                                              | 2,59,740                                                                | 99,576                                                             | 3,59,316                                                              | 55,920                                             | 3,03,396                                                          |
| 2       | 8458/2020 | 64,995                                                            | 74,745                                                                             | 23,39,820                                                               | 8,96,940                                                           | 32,36,760                                                             | 14,15,475                                          | 18,21,285                                                         |
| 3       | 8459/2020 | 13,500                                                            | 15,525                                                                             | 4,86,000                                                                | 1,86,300                                                           | 6,72,300                                                              | 1,51,650                                           | 5,20,650                                                          |
| 4       | 8460/2020 | 4,680                                                             | 5,382                                                                              | 1,68,480                                                                | 64,584                                                             | 2,33,064                                                              | 49,500                                             | 1,83,564                                                          |
| 5       | 8461/2020 | 46,440                                                            | 53,406                                                                             | 16,71,840                                                               | 6,40,872                                                           | 23,12,712                                                             | 5,87,444                                           | 17,25,268                                                         |
| 6       | 8462/2020 | 9,690                                                             | 11,144                                                                             | 3,48,840                                                                | 1,33,728                                                           | 4,82,568                                                              | 87,360                                             | 3,95,208                                                          |
| 7       | 9457/2020 | 35,805                                                            | 41,176                                                                             | 12,88,980                                                               | 4,94,112                                                           | 17,83,092                                                             | 7,49,904                                           | 10,48,811                                                         |
| 8       | 9465/2020 | 1,800                                                             | 2,070                                                                              | 64,800                                                                  | 24,840                                                             | 89,640                                                                | 35,466                                             | 54,174                                                            |
| 9       | 9667/2020 | 5,040                                                             | 5,796                                                                              | 1,81,440                                                                | 69,552                                                             | 2,50,992                                                              | 95,700                                             | 1,55,292                                                          |
| 10      | 9676/2020 | 31,860                                                            | 36,639                                                                             | 11,46,960                                                               | 4,39,668                                                           | 15,86,628                                                             | 2,47,200                                           | 13,39,428                                                         |
| 11      | 9684/2020 | 17,100                                                            | 19,665                                                                             | 6,15,600                                                                | 2,35,980                                                           | 8,51,580                                                              | 1,34,420                                           | 7,17,160                                                          |
| 12      | 9688/2020 | 17,655                                                            | 20,304                                                                             | 6,35,580                                                                | 2,43,648                                                           | 8,79,228                                                              | 1,96,900                                           | 6,82,328                                                          |
| 13      | 9700/2020 | 30,090                                                            | 35,604                                                                             | 10,83,240                                                               | 4,15,248                                                           | 14,98,488                                                             | 2,13,840                                           | 12,84,648                                                         |

7. Upon a perusal of the affidavits filed in support of the Writ Petitions and counter affidavits filed in response thereto, it is seen that there is substantial identity with support to the facts and circumstances involved, with differences case to case in relation to i) whether appeals have been filed challenging the fixation of rent in 2018 and ii) whether replies have been filed to the proceedings initiated under 78 of the Act in 2019. The fixation of rent in 2018 however, binds all the petitioners since admittedly, no appeals/maintainable appeals have been filed by them challenging the fixation.

8. Be that as it may, as the present impugned action has no legs to stand for the reason that the proper authority to initiate action under Section 78 is the Joint Commissioner and



not the Executive Officer. In any event, proceedings under Section 78 have already been initiated that are pending.

9. The petitioners will remit 10% of the arrears as computed in the tabulation at paragraph-6 above within a period of two weeks from date of uploading of this order on the High Court Website, upon compliance of which, the impugned orders will stand set aside.

10. The proceedings already initiated by the HR & CE Department in terms of Section 78 of the Act will be pursued by the Joint Commissioner and for this purpose, the petitioners will appear before the 1<sup>st</sup> respondent on Thursday, the 20<sup>th</sup> of August, 2020 at 10.30 a.m. After hearing the petitioners, orders, will be passed in accordance to law, within a period of four weeks from 28.08.2020, that is on or before 28.09.2020. These writ petitions are disposed in the aforesaid terms. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-  
Assistant Registrar(CS VII)

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Sub Assistant Registrar

To

1. The Joint Commissioner,  
Hindu Religious and Charitable Endowment Department,  
Coimbatore.
2. The Assistant Commissioner,  
Hindu Religious and Charitable Endowment Department,  
Erode.
3. The Executive Officer  
A/m. Kongalamman Thirukovil,  
Erode Town and Taluk, Erode District.

+2cc to the Government Pleader, Sr.no.26238 & 26239

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