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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 07.10.2021

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.19714 of 2021

and

W.M.P.No.20983 of 2021

Manish B Shan

.. Petitioner

Vs.

1.The Executive Officer,
Arulmigu Sri Muthukumaraswamy
Devasthanam,
attached with Samundeswari Ammal Trust,
No.44, Rasappa Chetty Street,
Flower Bazaar, Chennai-600 003.

2.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Board,
Chennai-600 050.

3.The Joint Commissioner,
Hindu Religious and Charitable Endowments Board,
Division-I, Chennai.

.. Respondents

This writ petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus or any other appropriate writ, direction or order, directing the third respondent to call for records in M.P.1/2021/A3, dated 19.07.2021 on the file of the third respondent and quash the same as illegal, incompetent and wholly without jurisdiction and to further direct the respondents not to interfere with the petitioner's peaceful possession of the property justice.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.R.Shanmugasundaram,
Advocate General
assisted by Mr.NRR.Arun Natarajan
Government Advocate
for respondents



ORDER

Captioned writ petition has been filed by a tenant / lessee in a portion of a 'property at No.175, Thambu Chetty Street, Chennai-600 001' {hereinafter 'said property' for the sake of convenience and clarity}, assailing a notice dated 19.07.2021 in M.P.No.01/2021/A3 issued by third respondent (hereinafter 'impugned notice' for the sake of brevity). To be noted, a portion of said property in which writ petitioner is a tenant / lessee shall be referred to as 'demised portion', for the sake of convenience and clarity.

2 This Court deems it appropriate to extract and reproduce the proceedings made in the earlier listings on 17.09.2021 and 21.09.2021 for two reasons. One is, for better appreciation of this order and the other is, for clarity qua trajectory the captioned matter has taken thus far. To be noted, there have been other listings, but as they may not be of relevance qua these two purposes, they are not extracted and reproduced. Proceedings made in the earlier listings on 17.09.2021 and 21.09.2021 are as follows:

'Proceedings dated 17.09.2021:

When the matter was taken up, Mr.V.Raghavachari, learned counsel for writ petitioner, adverted to the adjudication proceedings before the third respondent [Joint Commissioner] in proceedings under Section 78 of 'The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959)' which shall hereinafter be referred to as 'TN HR & CE Act' for the sake of convenience and clarity. Learned counsel drew the attention of this Court to 'The Removal of Encroachments on Lands or Buildings Belonging to Religious Institutions Rules (as amended on 16.07.1997)' [hereinafter 'said Rules' for the sake of brevity]. Learned counsel adverted to Page 119 of typed set of papers for the adjudication proceedings before third respondent, but that is not before this Court. It is not available in any other page in the typed set of papers either.

2. Faced with the above situation, learned counsel requested for a short accommodation to set the typed set in order. Ideally, such errors should be avoided. Request is acceded to.

3. List under the caption 'ADJOURNED ADMISSION' on Tuesday (21.09.2021).



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Proceedings dated 21.09.2021 :

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 17.09.2021, which reads as follows:

'When the matter was taken up, Mr.V.Raghavachari, learned counsel for writ petitioner, adverted to the adjudication proceedings before the third respondent [Joint Commissioner] in proceedings under Section 78 of 'The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959)' which shall hereinafter be referred to as 'TN HR & CE Act' for the sake of convenience and clarity. Learned counsel drew the attention of this Court to 'The Removal of Encroachments on Lands or Buildings Belonging to Religious Institutions Rules (as amended on 16.07.1997)' [hereinafter 'said Rules' for the sake of brevity]. Learned counsel adverted to Page 119 of typed set of papers for the adjudication proceedings before third respondent, but that is not before this Court. It is not available in any other page in the typed set of papers either.

2. Faced with the above situation, learned counsel requested for a short accommodation to set the typed set in order. Ideally, such errors should be avoided. Request is acceded to.

3. List under the caption 'ADJOURNED ADMISSION' on Tuesday (21.09.2021).

2. Today, typed set of papers has been put in order.

3. Short forms/abbreviations used in the previous proceedings will continue to be used in the instant proceedings also.

4. 'A notice i.e., a hearing notice dated 19.07.2021 bearing reference MP.No.01/2021/A3 issued by Joint Commissioner, being a notice under Section 78(2) of TN HR & CE Act' (hereinafter



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'impugned notice' for the sake of brevity) has been called in question.

5. In and by the impugned notice Joint Commissioner had directed the writ petitioner and One Thiru.Arumugam to appear for proceedings under Section 78 on 05.08.2021 at 3.00.p.m in the afternoon.

6. Learned counsel for writ petitioner assails the impugned notice on two grounds and they are as follows:

a) Property which is subject matter of impugned notice is not property belonging to 'Sree Muthukumaraswamy Devasthanam alias Sree Kandasamy Temple' (hereinafter 'said Temple' for the sake of brevity) and it belongs to 'Chamundeswari Ammal mwf;fll; is' (hereinafter 'said Arakkattalai' for the sake of convenience and clarity). Therefore, Joint Commissioner lacks jurisdiction to issue impugned notice;

b) Post impugned notice, adjudication proceedings adopted by Joint Commissioner runs contrary to 'The Removal of Encroachments on Lands or Buildings Belonging to Religious Institutions Rules (as amended on 16.07.1997)' [hereinafter 'said Rules' for the sake of brevity, convenience and clarity].

7. Before proceeding further, it is necessary to record that this Court is informed that the property in question is at No.175, Thambu Chetty Street, Chennai-600 001, this Court is further informed that the land extent is about 2000 sq.ft, superstructure thereon is about 546 sq.ft and the lone writ petitioner is in occupation of about 2000.sq.ft extent of superstructure. To be noted, impugned notice gives the extent as 53975.70 sq.ft. Be that as it may, this property shall hereinafter be referred to as 'said property' for the sake of convenience and clarity.

8. Captioned matter was in the Admission Board and Mr.NRR.Arun Natarajan, learned State Counsel accepted notice on behalf of all the three respondents. Mr.R.Shanmugasundaram learned Advocate



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General appearing on behalf of State counsel responded to the submissions of learned counsel for writ petitioner (on instructions) and a summation of his response is as follows:

a) It cannot be gainsaid that said property does not belong to said Temple as there is a resolution dated 14.12.2001 followed by a Letter dated 01.12.2005 from the writ petitioner (page no.40 of typed set of papers). Furthering his submission in this direction, attention of this Court was drawn to Lease deed dated 06.03.2006 (page no.42 of typed set of papers) entered into by writ petitioner qua said property and the rental receipts from page 50 of typed set of papers onwards. Adding on to the submissions in this direction, learned Advocate General drew the attention of this Court to proceedings dated 25.04.2018 (page 88 of typed set of papers) wherein lease rent has been fixed under Section 34-A of TN HR & CE Act qua said property, it was pointed out that the writ petitioner has accepted this and is paying rent qua quantum as per lease rent fixed. To be noted, it was emphasized that all this has been filed by writ petitioner himself as part of typed set of papers.

9. Regarding procedure adopted, i.e.,, second point, learned Advocate General on instructions submitted that writ petitioner has not demonstrated any prejudice, writ petitioner having participated in the proceedings before Joint Commissioner cannot now be here to contend that the procedure has been violated. It was also pointed out that there is no averment in this regard in the writ affidavit though learned counsel for writ petitioner submitted that paragraph 12 would tantamount to this point being raised in the writ affidavit.

10. Be that as it may, learned counsel for writ petitioner drew the attention of this Court to a Memo dated 27.08.2021 (page no.117 of typed set of papers) to which State counsel responded by saying that this was filed only on 27.08.2021 and is therefore, an after thought.



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11. Proceedings before Joint Commissioner, which is described as docket sheet order in MP.No.1/2021 is at pages 119 and 120 of typed set of papers.

12. Learned Advocate General submitted that there have been further proceedings, writ petitioner has cross-examined the petitioner i.e., Executive Officer of said Temple and the matter is next listed on Friday (24.09.2021) for further cross-examination of the Executive Officer of said Temple by writ petitioner.

13. In the above backdrop, this Court deems it appropriate to peruse the further order sheet. Let learned State counsel for respondents place the same before this Court. Learned counsel for writ petitioner wanted to circulate case laws in support of his first point. Let the same also be done before the next listing, which will be on Tuesday (28.09.2021).

14. Learned State counsel to instruct the third respondent to adjourn the proceedings listed on 24.09.2021 and await the outcome of captioned matter or further orders from this Court.

List on Tuesday (28.09.2021) in the physical hearing list.'

3 In this order, the short forms and abbreviations used in the aforementioned earlier proceedings will continue to be used for the sake of convenience and clarity. Aforementioned proceedings shall be read as an integral part and parcel of this order.

4 Impugned notice reads as follows:



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பரிசீலனைப் பட்டியல்

இந்து சமய அறநிலையத்துறை சென்னை துணை ஆணையரின் செயல் முறைகள்
முன்மாதிரி: திருமதி.சி.ஹரிப்பா, பி.எம், சி.ஜி.டி, எம்.எ.,
துணை ஆணையர்
சென்னை பண்டாயம்-1
M.P.என்.01/2021-V.ஆ.1, நாள்.15.07.2021

1. உதவி ஆணையர்,
இந்து சமய அறநிலையத்துறை,
சென்னை-50.

2. செயல் துறாவை,
அறங்கீடு ஸ்ட் முத்துக் குளரகளைக் தேவையானத்துடன்
இலாபந் திருத்தி எழுப்புவதில் அம்மான் அறக்கட்டளை,
எண்.44, இராணிய செட்டி தெரு, முக்தா நகர்,
சென்னை-600 003, —பழுவாணர்

—எதிர்—

1. திருமதி B ஐயா,
எண்.75, தம்பி செட்டி தெரு,
சென்னை-600 001.

2. திரு.அருமுகம்,
எண்.75, தம்பி செட்டி தெரு,
சென்னை-600 001. —எதிர் பழுவாணர்

இந்து சமய அறநிலைய சட்டம் 1953 சட்டப்பிரிவு 78 (2)-ல் துணை
அறிவிப்பு

மேலும்: ஆக்கிரமிப்பு திருக்கோயில் சொத்து ஆக்கிரமிப்பு - திருக்கோயில் அடிப்படை/
குடிநீர்நீர் முறையான அனுபவி எதுவிற்கு ஆக்கிரமிப்பு வரதல் - சென்னை-3
புள்ள தனி, அறங்கீடு ஸ்ட் முத்துக் குளரகளைக் தேவையானத்துடன் இலாபந்
திருத்தி எழுப்புவதில் அம்மான் அறக்கட்டளை - சட்டப்பிரிவு 78(2)-ல் கீழ்
அறிவிப்பு செய்தல் - தெரிவிக்க.

மார்க்கம்: சென்னை, இந்து சமய அறநிலையத்துறை, உதவி ஆணையர் அறிக்கை
த.ப.எண்.2048/2021-V.ஆ.1, நாள்.09.07.2021

மார்க்கப்பில் எழுதல், உதவி ஆணையர் அறிக்கையைப் பரிசீலனை செய்ததில், முதல் நோக்கில்
(Prima Facie) சென்னை-03, புள்ள தனி, அறங்கீடு ஸ்ட் முத்துக் குளரகளைக் தேவையானத்துடன்
இலாபந் திருத்தி எழுப்புவதில் அம்மான் அறக்கட்டளைக்கு சொந்தமான கிடங்கு கெட்டுப்போய்
அட்டவணைப்பில் பரிசீலிக்கப்பட்ட சொத்தில் முதலாம் எதிர் பழுவாணர் முறையான வரதல் ஒப்பந்தம்
எதுவிற்கு அத்து மீறி சட்ட விதிகளுக்கு முரணாக ஆக்கிரமித்துள்ளதும், மேலே குறிப்பிடப்பட்டுள்ள
இலாபந் எதிர் பழுவாணர் பின்புறம் சொத்தில் அனுபவிக்கிற ஆக்கிரமித்துள்ளதும் உதவி ஆணையர்
/ முதல் பழுவாணர் அறிக்கையின் மூலம் உறுதி செய்யப்பட்டுள்ளது.



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அறிவிப்பு விளக்கம்

பெயர்	புகார்	சம்பந்தம்	பதவி
பெயர்	புகார்	சம்பந்தம்	பதவி

2. பெயர்: அருண்மணி,
அருண்மணி டீர் முத்துக் குளமாலைப்படி தெவந்தாளத்துடன்
இலாசன்கு திருமதி காமாட்சியம்மாள் அபிமான அறக்கட்டளை,
சென்னை-600 003.

3. உதவி: அருண்மணி,
இந்து சபா அறங்காவலத்துறை, சென்னை - 50,
கணி பணிக் குழுப்பிட்டு விடுதல் :

4. அருண்மணி,
இந்து சபா அறங்காவலத்துறை, சென்னை - 50,

5. பிணை,

அருண்மணிக்கு 05.08.2021 அன்று பிற்பகல் 3.00 மணிக்கு சென்னை-50, பத. 127, மதுரை தெரு
பிந்து சபா அறங்காவலத்துறை, இலாசன்கு திருமதி காமாட்சியம்மாள் அபிமான அறக்கட்டளை, சென்னை-600 003
பிணைப்பதில் தனது தாய் காதலத்தொடர்புடைய அறிவிக்கப்படுகிறது.

அருண்மணிக்கு 05.08.2021 அன்று பிற்பகல் 3.00 மணிக்கு சென்னை-50, பத. 127, மதுரை தெரு
பிந்து சபா அறங்காவலத்துறை, இலாசன்கு திருமதி காமாட்சியம்மாள் அபிமான அறக்கட்டளை, சென்னை-600 003
பிணைப்பதில் தனது தாய் காதலத்தொடர்புடைய அறிவிக்கப்படுகிறது.

இதில்: 19.07.2021 அன்று முன்னிலையில் உள்ளது குறிப்பிட்டு இது காரணம் காரண
அறிவிப்பு பற்றி உதவி அருண்மணி அறிவிக்க தனது அறிவிக்கப்படுகிறது.

பதவி: 19.07.2021
இது: சென்னை-50.

பிணைப்பதில்
இலாசன்கு திருமதி காமாட்சியம்மாள் அபிமான அறக்கட்டளை
சென்னை-600 003

ச.ப.ப.ப.

பதவி:

1. அருண்மணிக்கு 05.08.2021 அன்று பிற்பகல் 3.00 மணிக்கு சென்னை-50, பத. 127, மதுரை தெரு
பிந்து சபா அறங்காவலத்துறை, இலாசன்கு திருமதி காமாட்சியம்மாள் அபிமான அறக்கட்டளை, சென்னை-600 003
பிணைப்பதில் தனது தாய் காதலத்தொடர்புடைய அறிவிக்கப்படுகிறது.

(B.P.A.T.)

05.08.2021
19/08

5 As the impugned notice has been scanned and reproduced supra, it will suffice to say that it is a notice under section 78(2) of TN HR&CE Act qua writ petitioner fixing the first hearing on 05.08.2021 at 03.00 p.m in the office of the third respondent. To be noted, there are two noticees in the impugned notice, but only one of the two noticees, i.e., first noticee has assailed the same by way of captioned writ petition. The other noticee, i.e., noticee No.2 has not assailed the same and this court is informed that he is contesting the proceedings before third respondent.

6 The impugned notice merely kick starts proceedings under section 78 of TN HR&CE Act qua demised portion in the said property, i.e., for eviction. To be noted, section 78 of TN HR&CE Act talks about encroachment and encroachers. There is an explanation in section 78(1) and clause (b) of explanation, by legal fiction makes a lessee also an encroacher under three circumstances and those three circumstances are (a) expiry, (b)



termination and (c) cancellation of lease. In the instant case, writ petitioner falls in expiry of lease category. As there is no dispute or disagreement that writ petitioner's lease qua demised portion is vide a lease deed dated 06.03.2006, lease period is three years, it is from 06.03.2006 to 06.03.2009, the lease expired on 06.03.2009 and therefore, lessee became an encroacher under section 78 of TN HR&CE Act by virtue of aforementioned legal fiction on and from 07.03.2009. There is no dispute about this legal principle qua legal fiction and the factual position qua expiry of lease. To be noted, dispute is regarding jurisdiction qua impugned notice and procedure post impugned notice as already alluded to supra elsewhere in this order.

7 There is no dispute about the legal principle that lessee becomes an encroacher under section 78 of TN HR&CE Act on expiry of lease. Likewise, there is no dispute that factually in the case on hand, the lease qua demised portion expired on 06.03.2009. However, the dispute is, said temple cannot initiate section 78 proceedings as according to writ petitioner, said property (obviously demised portion included) does not qualify as land or building belonging to charitable or religious institution or endowment. Post notice procedure is also an issue. There shall be elaboration on this infra.

8 Before this court proceeds further, advertent to earlier proceedings (extracted and reproduced supra), it is made clear that State Counsel Mr.NRR.Arun Natarajan accepted notice on behalf of all three respondents, he is led by Mr.R.Shanmugasundaram, learned Advocate General and Mr.V.Raghavachari, learned counsel appears for writ petitioner. With the consent of learned counsel on both sides, main writ petition is taken up.

9 Notwithstanding very many averments and several grounds raised in the writ affidavit, the impugned notice is assailed on two grounds (as already alluded to supra elsewhere in this order) and they are as follows:

(a) Said temple cannot invoke section 78 of TN HR&CE Act as said property (demised portion included) does not qualify as property belonging to charitable and religious institution or endowment qua said temple.

(b) Post impugned notice, adequate time and opportunity has not been given to writ petitioner and procedure contrary to said Rules has been adopted by third respondent.

10 Both aforesaid grounds are resisted by learned Advocate General and the arguments of learned Advocate General are as



follows:

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(a) It is not for writ petitioner to say that said temple is not the lessor as lease deed speaks for itself. Lease rent fixed has been accepted. Section 116 of 'the Indian Evidence Act, 1872' ('Evidence Act' for the sake of brevity) clearly estopes the writ petitioner from taking such a plea. On a demurrer, it was further submitted that in any event, said property is a specific endowment within the meaning of section 6(19) of TN HR&CE Act and on a further demurrer, definitely 'endowment' within the meaning of section 6(17) of TN HR&CE Act.

(b) The order sheet of the proceedings before third respondent makes it clear that the writ petitioner did not appear on the first hearing on 05.08.2021 and was set ex parte, but the other noticee has appeared on that day. Thereafter, writ petitioner has participated in the proceedings and it can not now be gainsaid that procedure qua said Rules has been violated. To be noted, the records of third respondent were produced in Court in the course of the hearing.

11 By way of reply, learned counsel for writ petitioner submitted that he is assailing the impugned notice. The question as to whether section 78 can be invoked is a jurisdictional issue and therefore, it can be certainly raised by the writ petitioner is learned counsel's further say.

12 This court now proceeds to deal with the elaborate submissions made by learned counsel for writ petitioner one after the other by setting out the counter submissions and also giving its dispositive reasoning thereat. They are as follows:

(a) The first point is whether writ petitioner can raise an issue that said property (demised portion included) is not amenable to section 78 of TN HR&CE Act. This argument of learned counsel for writ petitioner was predicated primarily on a trust deed dated 29.08.1981 (in the index, the date has been wrongly given as 29.08.1983) executed by Chamundeeswari Ammal. It is this deed by which said property was made corpus of said Arakkattalai attached to said temple is his say. A careful perusal of this deed which has been described as trust deed makes it clear that it is the one by which said property has been endowed in favour of five individuals, who were trustees of said temple at that point of time and there is also a mention about three



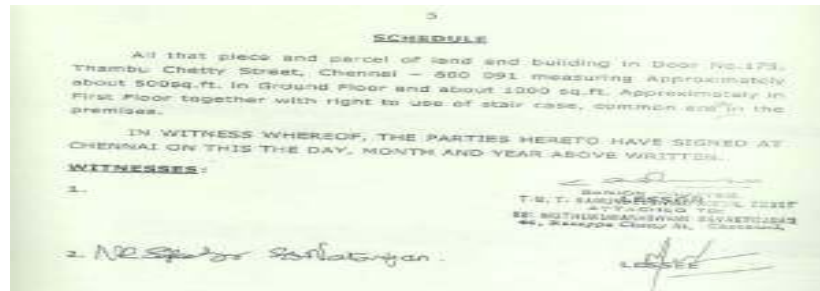
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other individuals, who have been described as individuals belonging to Beri Chetty community. In response to this, learned Advocate General posited his argument on Section 116 of Evidence Act and submitted that writ petitioner is estopped from denying that said Arakkattalai attached to said temple has title qua said property (demised portion included) having come upon any immovable property by the licence of the person in possession thereof, is estopped from making such a plea. For the purpose of resolving this point, one has to look at the lease deed dated 06.03.2006. The first and last pages of the lease deed will suffice and the same are as follows:





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A perusal of the lease deed makes it clear that the lessor has been described as 'Tmt.P.Samundeeswari Ammal Trust, attached to MUTHUKUMARASWAMY DEVASTHANAM alias Sri Kandaswamy Temple, No.44, Rasappa Chetty Street, Chennai-600 003, represented by its Senior Trustee Sri.C.R.Palani Doss'. Therefore, the writ petitioner has accepted the position that said Arakkattalai attached to said temple is the lessor qua said property (demised portion included). This takes us to payment of rent and the rental receipts issued to writ petitioner. It is not necessary to reproduce all the rental receipts, illustratively two (placed before this court by writ petitioner himself) will suffice and they are as follows:

[illegible]

The aforementioned rental receipts speak for themselves. To be noted, the rental receipts have been signed by Fit person / Assistant Commissioner of said temple. The caption is also very clear that the receipt has been issued by said temple and more particularly the charities / trust attached to said temple.

(b) Said temple has embarked upon the exercise of fixing lease rent under section 34-A of TN HR&CE Act and the writ petitioner has responded to the same in and by letter dated 12.04.2017 (filed by writ petitioner himself as part of typed set of papers at page 82) which reads as follows:



மாண்புமிகு சென்னை வந்தோர் கலாநாயகர்மன்றம் கடந்த மறுபதில்
மாதமைய உயர்நீதி கருள் செய்து மருமிகல் மேலும் ஒரு சதுக்கம்
ரு.50 ஆக மாந் மாணக் தீர்மானம் செய்துள்ளனர். ஆனால் தமதுமன்றம்
மீதம் இ-மீதில் தீர்மானம் அதன் தொகை ஒரு சதுக்கம் போகவில்லை.

தேவன் நான் கடத்த 20 ஏடா காரணாக எந்தவொரு பிரச்சனையும் இல்லாமல் சட்டத்திற்கு உட்பட்டு வேரடி கட்டாததை என சிறுவை கொண்டு பரிசூலகனின் திருவருளால் ரூ.60,00,000/-ஐ இதுவரை எண்பதில் உடாடா அடைப்பித்தும் பாதுகாப்பிற்கும் செலவு செய்து வருகின்றேன் அபிவிருத்தி மாதிரி அடக்கையையும் நினைவை ஏதாவதி கொடுத்தி ரசீதம் பெற்று உடனேயே தங்களை அனுப்பிய 05.04.2017 தேதிப்பட்ட அறிவிப்பின் மறு திரிபெடுத்து எண்பதே முறைபடுகிறதும் ஏதாவதி இல்லாமல் எட்டாகக் கொடுக்க உடாத்தவது ஒவ்வொரு உடனில் அணிகம் நடத்திவரும் எனக்கு மிகுந்த வடிக் கனவையும் மற்றும் பெரும் தாடித்தவையும் ஏற்படுத்தும் துன்பமது பண்பென்று தெரிவித்துக் கொள்கின்றேன். மற்றும் தங்களை அறிவிப்பில் கூறிய எடுத்துக்கணை ஏற்படுத்தி மட்டுமல்லாமல் எனது ஆட்சேபணைகள் மற்றும் எனது தரவுகளையும் கருத்துக்களை எழுதப்படா பூர்வமாக இதற்கும்கூட தெரிவித்துக் கொள்கின்றேன் மற்றும் நான் படை வகுப்பாளர் மிகுந்த இடத்தில் வணிகம் செய்து வருவதால் என்னை தியடுவது வேறு எல்லா தந்திரமும் எனது அணிகத்தை மற்றும் செய்ய முடியாதது என்றும் ஏற்கனவே பணத்தட்டுப்பாட்டால் எண்களும் மிகுந்த தாடித்ததை வேதகர் கொண்டு கொண்டு இருக்கின்றது எனவும்; இதற்கும்கூட எனது கருத்துக்களை பதிலு செய்து கொள்கின்றேன். ஆகையால் தயவு செய்து வேரடி அறிவிப்பை திரும்ப பெறுவதற்கு ஏற்றுத் தங்கனின் நிபந்தனைகள் நினைப்பை செய்துத் தொடுக்க அபிவிருத்தி வேண்டியவையையும் தேசில் ஆணைக் கண்டு ஆட்சேபணைகள் மற்றும் கருத்துக்களையும் எடுத்துக் கூற தயதாக உடனிலை எப்பமது இதற்கும்கூட தெரிவித்துக் கொள்கின்றேன்.

Solution

(John, William, & Mary)

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(d) A careful perusal of the lease deed, rental receipts and communication between writ petitioner and said temple regarding fixation of lease rent under section 34-A of TN HR&CE Act makes it clear that writ petitioner at no point of time has raised the issue that said property (demised portion included) is not



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immovable property belonging to or given or endowed qua said temple, i.e., said Arakkattalai attached to said temple is landlord. Therefore, estoppel plea stands buttressed. In this view of the matter, this court has no hesitation or difficulty in accepting the argument of learned Advocate General that writ petitioner is now estopped from raising jurisdictional issue by saying that said property will not be covered within the sweep of TN HR&CE Act. This by itself draws the curtains not on this point, but on the writ petition itself as the other point is post impugned notice procedure and that can hardly be a ground to dislodge the impugned notice.

(e) Though the first point qua jurisdiction has been answered, as emphasis was laid that said property (demised portion included) does not qualify as property belonging to charitable, religious institution or endowment within the meaning of section 78 of TN HR&CE Act, this Court deems it appropriate to go into that question also albeit on a demurrer.

(f) The thrust of the submission of learned counsel for writ petitioner is, said property can at best qualify as 'charitable endowment' within the meaning of section 6(5) of TN HR&CE Act and it cannot qualify as 'religious endowment' within the meaning of section 6(17) of TN HR&CE Act much less 'specific endowment' within the meaning of section 6(19). In support of this, learned counsel relied on the following judgments for the following principles and they are as follows:

Cause Title	Citation	Principles
The State of Madras Vs. The Urumu Seshachalam Chettiar Charities, Tiruchirapalli	(1960) 73 LW 794	Scope of Section 3 to bring the said property to charitable endowment
S.Kannan Vs. The All India Sai Samaj (Regd)	(1974) 87 LW 81	
T.R.Venkatarama Iyer Vs. The Government of Madras	(1967) 80 LW 613	
Mulla Gulam Ali & Safiabai D.Trust Vs. Deelip Kumar & Co.	(2003) 11 SCC 772 (II)	When Section 92 of CPC can be invoked?

The President, Hindu Religious Endowments, Madras Vs. Venkatarama Ayyangar	(1953) 66 LW 694	Whether performance of feeding charity outside the precincts of the temple would come within the meaning of the term 'Kattalai'
Vythilinga Pandara Sannadhi Vs. G.Ranganatha Mudaliar	(1934) 66 Mad LJ 98	regarding religious endowment
The President of the Board of Commissioners for the Hindu Religious Endowments, Madras Vs. Nagarathina Mudaliar	(1935) 68 Mad LJ 549	Character of 'religious endowment' and 'specific endowment'
The Board of Commissioners for Hindu Religious Endowments, Madras Vs. Marutha Naickar	(1945) 1 Mad LJ 345	What is 'religious endowment'
Narayana Ayyangar Vs. Commissioner of the Madras Hindu Religious and Charitable Endowments, Madras	(1961) 1 Mad LJ 198	Character of religious and public charity.
Nar Hari Shastri Vs. Shri Badrinath Temple Committee	AIR 1952 SC 245	The expression 'endowment' is explained.

(g) To be noted, A.Subba Naidu Vs. Rajammal alias Thayammal reported in (1976) 2 MLJ 205 and Hari Krishna Mandir Trust Vs. State of Maharashtra reported in (2020) 9 SCC 356 cases form part of the compilation, but were not pressed into service in the hearing. This is mentioned for completion of capturing the hearing as accurately as possible.

(h) A careful perusal of the trust deed makes it clear that a portion of said property, namely 'Koodam and one room only' in the ground floor has been set apart for the purpose of providing free medical aid for the poor and needy. However, the rental collections shall be used for the expenses of running free dispensary (Allopathic or Homeopathic) with the assistance of a Honorary Doctor / Medical practitioner. The person who made



endowment has reserved the life estate for herself.

(i) The answer, as rightly pointed out by learned Advocate General, lies in section 6(17) of TN HR&CE Act, which reads as follows:

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'(17) "religious endowment" or "endowment" means all property belonging to or given or endowed for the support of maths or temples, or given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity; and includes the institution concerned and also the premises thereof, but does not include gifts of property made as personal gifts to the archaka, service holder or other employee of a religious institution;'

(j) To be noted, section 6(17) of TN HR&CE Act is akin to section 9(11) of 1927 Madras Hindu Religious Endowments Act. This aspect was gone into in one of the case laws relied on by learned counsel for writ petitioner. This is vide Marutha Naickar case reported in (1945) 1 Mad LJ 345, wherein this Court made it clear that service may be secular and still it can be a religious endowment within the meaning of section 9(11) if such charitable service is connected with the temple. The dispositive reasoning of this court in Marutha Naickar case is, the expression 'connected with the temple' has not been defined. In any event, Section 6(17) defines not just 'religious endowment', but it defines 'endowment' also and talks about service or charity of public nature. As of now, Explanation (2) to section 6(17) which includes 'endowment' made in favour of entities which ceased to exist or ceased to be used as places of religious worship has also been now included and therefore, if at all sub-section (17) is to be contra-distinguished with sub-section (11) of section 9 of 1927 Act, it is now wider and width, greater and amplitude and expansive.

(k) Sub-section (17) of section 6 defines both 'religious endowment' or 'endowment' and a plain reading of section 6(17) makes it clear that the endowment can be for the purpose of any service or charity of a public nature connected therewith or of any other religious charity. Therefore, the endowment need not necessarily be for religious charity, it can be for charity of public nature also, it can be completely secular. Therefore, if a free dispensary is to be run and if free medical aid is to be provided for poor and needy, it goes without saying that it is not based on religion. It is not religious activity, it is a secular activity. Owing to the two expressions in sub-section (17), namely 'charity of a



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public nature' and 'of any other religious charity' being connected by 'or', the two are disjunctive. If they are disjunctive, it will suffice if there is endowment. In the instant case, there is clearly an endowment and that endowment has been made in favour of five trustees of said temple with three individuals given power to manage and administer.

(l) If the writ petitioner's contention is to be countenanced, writ petitioner should be able to demonstrate that there is a separate trust, such trust is carrying on activities and more importantly, the writ petitioner is lessee only under that trust and not under said temple. To state this with specificity, writ petitioner should be able to demonstrate that there is a trust which goes by the name 'Chamundeswari Ammal Trust', that trust is independent of said temple and that writ petitioner is a lessee under said trust. Absent these aspects, this contention cannot be countenanced.

(m) There is yet another facet of the matter. If the above contention is countenanced, it will tantamount to say that the writ petitioner is a lessee qua demised portion in said property as there shall be no landlord. In other words, if said temple is denuded of its contractual right of being landlord qua lease deed, then there will be no landlord for the writ petitioner. This certainly cannot be the position that can flow from the view that is taken in the matter on hand.

(n) The case laws pressed into service by learned counsel for writ petitioner have been set out supra by this court in the form of a tabulation for clarity and ease of reference. To be noted, in the tabulation, the principle for which each of the case laws were pressed into service have also been captured. The discussion and dispositive reasoning thus far and the case laws tabulation read in conjunction with one another or in other words read in the context of one another makes it clear that the case laws pressed into service by learned counsel for writ petitioner do not come to the aid of writ petitioner in the case on hand, reasons for this are inter-alia four in number and they are as follows:

(i) There is no answer, much less a convincing answer to the arguments of learned Advocate General predicated on section 116 of Evidence Act. Absent answer to the estoppel qua tenant argument predicated / posited on Section 116, the tenant cannot be heard to get contentious qua title of landlord;

(ii) Sub-section (17) of section 6 of TN HR&CE Act defines 'religious endowment' and 'endowment' and endowment (clearly) can be for



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any public purpose and therefore, the other principles qua case laws do not come to the aid of the writ petitioner;

(iii) To be noted, this sub-section (17) of section 6 of TN HR&CE Act, i.e., 1959 is akin to section 9(11) of the preceding statute. This Court in Marutha Naickar case has clearly held that a religious endowment as defined in S.9 (11) of the Hindu Religious Endowments Act can be charitable and secular.

(iv) Notwithstanding the above, as Chapter-V proceedings under TN HR&CE Act or in other words, Inquiries under Chapter-V may well be a different kettle of fish qua section 78 which is under Chapter-VII of TN HR&CE Act, a window has been provided (in this order) to the writ petitioner albeit subject to locus. To be noted, proceedings under Chapter-V and VI of TN HR&CE Act have been put in one basket and have been put in a legal huddle qua section 110 of TN HR&CE Act, whereas Section 78 finds its statutory slot under Chapter-VII of TN HR&CE Act.

(o) There is another facet of the matter which is of importance and that is section 63 of TN HR&CE Act. Section 63 forms part of Chapter V of TN HR&CE Act captioned 'INQUIRIES'. Section 63 vests Joint Commissioner with powers to decide certain disputes and matters. These are seven in number and they have been adumbrated as (a) to (g) sub clauses in section 63. Section 63 reads as follows:

'63. [Joint Commissioner or Deputy Commissioner] to decide certain disputes and matters.—Subject to the rights of suit or appeal hereinafter provided, [the Joint Commissioner or the Deputy Commissioner, as the case may be], shall have power to inquire into and decide the following disputes and matters:—

(a) whether an institution is a religious institution;

(b) whether a trustee holds or held office as a hereditary trustee;

(c) whether any property or money is a religious endowment;

(d) whether any property or money is a specific endowment;

(e) whether any person is entitled, by custom or otherwise, to any honour, emolument or perquisite in any religious institution and what the established usage of a religious institution is in regard to any other matter;



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(f) whether any institution or endowment is wholly or partly of a religious or secular character; and whether any property or money has been given wholly or partly for religious or secular uses; and

(g) where any property or money has been given for the support of an institution which is partly of a religious and partly of a secular character, or the performance of any service or charity connected with such an institution or the performance of a charity which is partly of a religious and partly of a secular character or where any property or money given is appropriated partly to religious and partly to secular uses, as to what portion of such property or money shall be allocated to religious uses.'

(p) A perusal of the above would reveal that sub clauses (a), (c) or (d) provide for an enquiry and a decision by the jurisdictional Joint Commissioner on the question as to whether a particular entity is religious institution, religious endowment or specific endowment. It is a quasi judicial legal drill. This quasi judicial legal drill entails documentary and oral evidence. To be noted, being a Chapter V enquiry section 110 kick in, but it is not necessary to dilate on this as central theme here is section 78 notice. Absent such legal drill, whatever has been expressed supra should be treated as a prima facie view. Therefore, the question as to whether writ petitioner can invoke section 63 and more particularly, sub clauses (a), (c) and (d) and go before Joint Commissioner qua said property and invite a decision regarding the character of the said property is left open. If the writ petitioner chooses to take this route, this order should neither impede such process nor serve as an impetus. Therefore, whatever has been expressed regarding locus of writ petitioner qua writ petitioner's contention on jurisdiction pertaining to impugned notice which is under section 78 of TN HR&CE Act, operates in different realm. In other words, section 63 qua 78 of TN HR&CE Act is a different kettle of fish. Their dynamics and dimensions operate in different legal realms and legal drill qua these two proceedings (though Joint Commissioner is the statutory authority in both cases) are different. To be noted, unlike section 78, section 63 is a Chapter V inquiry which will attract section 110 of TN HR&CE Act as already alluded to supra.



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Court notices that the next listing will be for cross examination of petitioner's witness by respondent, i.e., writ petitioner and the other noticee which was scheduled to be held on 27.08.2021, but owing to this writ petition, the same now stands adjourned, but in the next listing, post disposal of this writ petition, the writ petitioner's counter shall be taken on file and writ petitioner shall be given an opportunity to cross examine the petitioner if such requests is made.

(u) This Court notices that the writ petitioner is carrying on commercial venture in the demised portion and writ petitioner carrying on commercial venture in the demised portion is mentioned only for the purpose of completion of facts.

(v) Section 78 of TN HR&CE Act which was brought into the statute book on and from 09.12.1996 by way of a substitution is clearly a provision to expedite proceedings for retrieval of temple properties, be it from a rank encroacher or encroacher by legal fiction, i.e., lessees, who are squatting on temple properties even after the expiry, termination or cancellation of lease. In other words, section 78 is clearly a summary procedure as opposed to conventional suit for recovery of properties. TN HR&CE Act is a special enactment which is a departure qua Transfer of Property Act, 1882.

(w) Records of third respondent pertaining to proceedings under section 78 of TN HR&CE Act were produced. This court is informed that trustees of said temple have been suspended and a Fit person has been appointed under section 49 of TN HR&CE Act. Fit person has been functioning for a considerable length of time now. This is mentioned only for limited purpose of completion of facts and clarity or in other words, to make it clear that there are no trustees as of today. 'Fit person' is a term which has not been defined in TN HR&CE Act. In my considered view, the term 'Fit person' falls within the definition of 'trustee' as defined in section 6(22) as sub-section (22) of section 6 makes it clear that 'trustee' would be any person in whom the administration is vested by whatever designation known.

13 As a concluding remark, it is also noticed that the term 'Arakkattalai' has been loosely used, but there is nothing to demonstrate that there is a separate trust and said property (demised portion inclusive) forms part of the corpus of such trust.

14 It follows as sequititer that writ petitioner in effect



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is saying that he is lessor in the abstract. To be noted, this court put a specific query to learned counsel for writ petitioner as to who at all is the landlord (according to writ petitioner) and there was no answer with clarity and specificity to this query.

15 If there is a rival title claim by a section 78 noticee, section 79(2) is the legal route to be taken. That is not the case here. There is nothing before this Court demonstrating any other rival title claim either.

16 The writ petitioner after being visited with a section 78 notice, after submitting himself to the jurisdiction has suddenly come up with this plea of disputation of title / character of endowment (to be noted, not rival title) after more than one and half decades of tenancy / lease. It is clear that the writ petitioner is attempting to squat on said property.

17 Though there is faint reference about falling out politically, there is nothing to demonstrate even perceived bias and there is no answer to the argument of learned Advocate General predicated on section 116 of Evidence Act.

18 Owing to all that have been set out supra, captioned writ petition fails and the same is dismissed albeit providing a window for writ petitioner regarding filing of counter affidavit and further cross examination of petitioner. Consequently, connected writ miscellaneous petition is also dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

vvk

To

- 1.The Executive Officer,
Arulmigu Sri Muthukumaraswamy
Devasthanam,
attached with Samundeswari Ammal Trust,
No.44, Rasappa Chetty Street,
Flower Bazaar, Chennai-600 003.
- 2.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Board,
Chennai-600 050.



3.The Joint Commissioner,
Hindu Religious and Charitable Endowments Board,
Division-I, Chennai.

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+1cc to Mr.Raghavachari, Advocate, S.R.No.53047

W.P.No.19714 of 2021

MG(CO)
CB(02/11/2021)