



W.P.No.19558 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	02.09.2022
Pronounced On	10.10.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.19558 of 2022

and

W.M.P.No.18852 of 2022

Latha Bhatt

... Petitioner

Vs.

- 1.The Joint Commissioner Chennai,
Hindu Religious and Charitable
Endowment (HR & CE) Dept.,
No.128, Yadaval Street,
Padi, Chennai – 600 050.
- 2.The Assistant Commissioner,
Hindu Religious and Charitable
Endowment (HR & CE) Dept.,
No.119, Uthamar Gandhi Road,
Nungambakkam, Chennai – 600 034.
- 3.The Executive Officer,
Arulmigu Gangadeeswarar
& Connected Temples,
Gangadeeswarar Temple,
Purasawalkam, Chennai – 600 084.
- 4.P.Jayanthi



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5.P.Malini

6.Sasikala Rao

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the first respondent in connection with his order dated 14.07.2022 in I.A.No.1/2021 in M.P.No.50/2017 and quash the same.

For Petitioner	: Mr.R.Srinivas for M/s.Mythili Srinivas
For R1 & R2	: Mr.S.Yashwanth Additional Government Pleader
For R3	: Mr.A.K.Sriram for M/s.A.S.Kailasam Associates

ORDER

In this Writ Petition, the petitioner has challenged the impugned order dated 14.07.2022 passed by the first respondent/Joint Commissioner. By the impugned order dated 14.07.2022, the first respondent/Joint Commissioner has dismissed I.A.No.1 of 2021 in M.P.No.50 of 2017 filed by the petitioner.



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2. M.P. No.50 of 2017 was filed by the second respondent/Assistant Commissioner before the first respondent/Joint Commissioner under Section 78 of the Hindu Religious and Charitable Endowments Act, 1959 (H.R. & C.E. Act) against late. Mr.P.Lakshminarayana Bhat who was the tenant of the third respondent Arulmigu Gangadeeswarar Temple represented by its Executive Officer.

3. The petitioner and the private respondents herein namely, the fourth to sixth respondents are the legal heirs of late.Mr.P.Lakshminarayana Bhat who had taken the land belonging to the third respondent Temple on lease way back in 1983. There were issues between the petitioner and private respondent's father late.Mr.P.Lakshminarayana Bhatt with the third respondent Temple represented by its Executive Officer.

4. The third respondent Temple therefore filed O.S.No.4266 of 2001 before the V Assistant City Civil Court. It appears that earlier O.S.No.3079 of 1999 was filed by the petitioner's and the private respondents' father late.MrP.Lakshminarayana Bhat praying for a



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permanent injunction restraining the third respondent Temple from interfering with peaceful possession of the property. The petitioner's and private respondent's father Mr.P.Lakshminarayana Bhat died on 20.12.2010 during the pendency of the suits.

5. The suit filed by the third respondent Temple in O.S.No.4266 of 2001 was decreed and the suit filed by the petitioner's and the private respondents' father late.Mr.P.Lakshminarayana Bhat in O.S.No.3079 of 1999 was dismissed by the V Assistant City Civil Court, on 31.01.2017.

6. Prior to the Judgment and Decree being passed in the above suits, it appears that the third respondent Temple had issued a notice dated 13.05.2016, directing the petitioner to vacate the property. The petitioner rushed to this Court and filed W.P.No.20160 of 2016.

7. In the said proceedings before this court, the case of the petitioner was that the suit filed by the petitioner's and private respondent's father late.Mr.P.Lakshminarayana Bhat in O.S.No.3079 of 1999 along with the suit filed by the third respondent Temple in



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O.S.No.4266 of 2001 was pending before the V Assistant City Civil Court.

8. This Court after considering the arguments advanced on behalf of the petitioner and the respondents had disposed of the Writ Petition on 27.07.2016 with the following observations:-

“7.In the light of the said submission of the learned counsel appearing for the first respondent coupled with the counter affidavit, the petitioner is granted liberty to respond to the impugned notice of the first respondent dated 13.05.2016, which is to be treated as show cause notice for which the petitioner is at liberty to respond by sending a reply within a period of two weeks from the date of receipt of a copy of this order and the first respondent, on receipt of the same, is directed to consider the said representation and pass orders in accordance with law within a period of two weeks thereafter and communicate the decision taken, to the petitioner. It is also made clear that any action taken to evict and dispossess the petitioner shall be strictly in accordance with law.”

9. Thereafter, a notice under Section 78 of the Hindu Religious and Charitable Endowments Act, 1959 was issued to the petitioner on 24.03.2017 by the second respondent Assistant Commissioner of H.R. &



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C.E. Thereafter, M.P.No.50 of 2017 was filed by the second respondent under Section 78 of the HR & CE Act before the first respondent. In the said proceedings also, the petitioner had taken a similar plea.

10. Meanwhile, O.S.No.3079 of 1999 filed by the petitioner's and the private respondents' father was dismissed, whereas, O.S.No.4266 of 2001 was decreed by the V Assistant City Civil Court by a common Judgment and Decree dated 31.01.2017.

11. Thereafter, the petitioner had filed an appeal in A.S.No.132 of 2017 before the III Additional City Civil Court against the Judgment and Decree dated 31.01.2017 passed by the V Assistant City Civil Court in O.S.No.4266 of 2001 filed by the third respondent Temple. In the said appeal proceedings, the petitioner has obtained an interim stay in AS.No 132 of 2017 from the III Additional City Civil Court on 15.11.2018.

12. Meanwhile, the proceedings initiated under Section 78 of the HR & CE Act were proceeded with. It is the specific case of the petitioner that the remedy under Section 78 of the Act is not available to the third



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respondent Temple in view of the decision of this Court in **A.N.Kumar**

Vs. Arulmighu Arunachaleswarar Devasthanam Thiruvannamalai,

Rep by its Executive Officer (Asst.Commissioner) Thiruvannamalai

and others, 2011 (2) L.W. 1, wherein, the Hon'ble Division Bench of this

Court has summarized the law as follows:-

“So far as the suits filed by the temple for eviction of tenants/licenses/lessees/mortgagees for filing of the ejectment suit, the Civil Court's jurisdiction is not barred. The decision to approach Civil Court or invoke the provisions of HR & CE Act vests with the Temple. In cases of encroachers, temple authorities can either resort to the provisions under Sections 78, 79, 79-A, 79-B or to approach the Civil Court. The decision to elect a particular procedure lies with the owner of the property, being the Temple. In view of the express bar under 2nd proviso to Section 79, in so far as the suits by the encroachers/lessees/licensees/mortgagees, the bar under Section 108 will get attracted excepting in instances specifically stated in the Ist Proviso to Section 79.”

13. It is submitted that the third respondent Temple has also the Authorities acting under the Act have to elect the remedy either under a civil suit or under Section 73 of H.R. & C.E. Act, 1959. The third respondent Temple having chosen to elect the remedy by way of Civil Suit



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in O.S.No.4266 of 2001, the first respondent Joint Commissioner cannot invoke Section 78 of the H.R. & C.E. Act, 1959. A reference was also made to another decision of this Court in **Genshipping Pacific Line Pvt Ltd, Rep by their Steamer Agents, A.S.Shipping Agencies Pvt Ltd Vs. Thangam Traders, Rep by Subrogee @ Power Agents, United India Insurance Company Limited** 2021 SCC Online Mad 5076, wherein, in para 57, it was observed as under:-

“The Doctrine of election comes into play in the instant cases. The Doctrine of election postulates that when two legal remedies are available for the same relief, the aggrieved party has the option to elect either of them, but not both. In the case on hand, the respective plaintiffs had initially chosen the legal option for filing consumer complaints and only due to the fact that subsequent to the initiation of the same, by virtue of the decision rendered by the Hon'ble Supreme Court in Oberai Forwarding Agency's case reported in (2000) 1 CTC 556, the respective plaintiffs had to file Civil Suits. Only if the plaintiffs had initiated both the legal remedies at the same time, the question of the suits filed by the respective plaintiffs getting barred by law will arise and when such is not the position in the case on hand, the applicability of Section 14 of the Limitation Act to the suits filed by the respective plaintiffs cannot be questioned as it has been validly instituted in good faith, bonafides and in accordance with law.”



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14. That apart, the learned counsel for the petitioner has placed reliance on a Circular No.Na.Ka.No.46437/2021/D2 dated 12.08.2021 issued by the Commissioner, H.R. & C.E. Department. It is submitted that the views expressed by this Court have been reiterated in Paragraph 3 of the said Circular and it is for the second respondent Assistant Commissioner as also the third respondent Temple to withdraw the suit proceedings and thereafter initiate fresh proceedings under Section 78 of the H.R. & C.E. Act. It is therefore submitted that the proceedings under Section 78 of the Act cannot be simultaneously pursued.

15. Opposing the prayer, the learned counsel for the third respondent Temple would submit that the proceedings initiated before the Trial Court in O.S.NO.4266 of 2001 merely declared the petitioner's and private respondent's father was an encroacher as the lease had come to an end. Thereafter, there was no embargo under Section 78 of H.R. & C.E. Act, 1959 to initiate further proceedings against the petitioner.

16. It is submitted that the petitioner is an encroacher within the meaning of Explanation to Section 78 of the Act. That apart, it is



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submitted that as per Section 34 of the Act also, any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution shall be null and void unless it is sanctioned by the Commissioner.

17. That apart, a reference was made to an order of this Court in W.P.No.4875 of 2022 dated 08.03.2022, wherein, this Court held as follows:-

“8. From the impugned order it is seen that, the 1st respondent has not considered the objections raised by the petitioner and the counter affidavit filed by the 3rd respondent and has passed the impugned order rejecting the objection petition without giving any reason and said order is a non-speaking order. The 1st respondent being a Quasi Judicial Authority has to consider the objection raised by the petitioner, counter affidavit filed by the 3rd respondent and the arguments of the petitioner as well as the 3rd respondent and pass orders by giving reasons. The 1st respondent has failed in exercising his power as a quasi judicial authority by dismissing objection petition by passing non-speaking order. In view of the same, the impugned order dated 10.02.2022 in M.P.No.50 of 2017 passed by the 1st respondent is liable to be set aside and the same is hereby set aside. The matter is remanded back to the 1st respondent. The 1st respondent is directed to consider the objection petition along with counter



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affidavit, and written arguments filed by the petitioner and pass detailed order in M.P.No.50 of 2017 by giving reason for either accepting or rejecting the petition, within a period of three (3) weeks from the date of receipt of a copy of this order.

9.The 1st respondent has initiated proceedings under Section 78 of the Act in the year 2017 and the petitioner has also filed objection petition in the year 2017 itself. The 1st respondent is directed to conduct enquiry and pass orders in the proceedings initiated under Section 78 of the Act, taking into consideration the order passed in W.P.No.19258 of 2021 dated 29.09.2021 and W.A.No.2806 of 2021 dated 26.11.2021, within a period of two (2) months from the disposal of the objection petition.” Post this case on 08.08.2022.

18. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the first and second respondents and learned counsel for the third respondent Temple.

19. The point for consideration in this Writ Petition is whether the petitioner who is the legal heir of late Mr.P.Lakshminarayana Bhatt can insist upon the third respondent Temple to withdraw the suit proceedings in A.S.No.132 of 2017 pending before III Additional City Civil Court,



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Chennai against the Judgment and Decree dated 31.01.2017 in O.S.No.4266 of 2001 on the strength of Circular dated 12.08.2021 bearing reference No.Na.Ka.No.46437/D2 issued by the Commissioner of H.R. & C.E. before proceeding under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959?

20. The fact on record indicates that after the original Lease Deed dated 23.11.1983 was executed between the petitioner and the private respondents' father late Mr. P.Lakshminarayana Bhatt and the third respondent/Executive Officer of the Temple, there was no renewal. It was for a period of five years.

21. Thereafter, though there was no fresh renewal of the lease, it is the case of the petitioner that the Board of Trustees of the third respondent Temple had extended the lease for a period of three years. The Temple also allowed the petitioner to occupy the same. There are no documents to substantiate that the lease was extended for a period of three years after the lease period in Lease Deed dated 23.11.1983 had expired on 22.11.1988.



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22. It appears that the late Mr. P.Lakshminarayana Bhatt had started to put up constructions on the leased land. It was opposed by the temple administration. Under these circumstances, late Mr. P.Lakshminarayana Bhatt filed O.S.No.3079 of 1999 before the V Asst. City Civil Court for a permanent injunction to restrain the third respondent Temple from interfering with the peaceful possession of the leased land.

23. The temple later terminated the lease on 16.02.2001 and thereafter filed O.S.No.4266 of 2001 to evict late Mr. P.Lakshminarayana Bhatt from the temple land leased out to him during his lifetime in 1983. During the interregnum, the construction was completed.

24. In the said suit, an application under Order 7 Rule 11 of CPC was filed to reject the plaint. This was dismissed by the Trial Court on 30.07.2007. No further appeal was preferred by late Mr. P.Lakshminarayana Bhatt.



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25. Thereafter, Trial Court, after examining the pleadings, framed the following issues in O.S.No.3079 of 1999 and O.S.No.4266 of 2001:-

Sl. No.	O.S.No.3079 of 1999	O.S.No.4266 of 2001
1	Whether the suit is bad for non joinder of parties?	Whether the plaintiff is entitled to the relief of declaration that the notice of termination of tenancy is null and void?
2	Whether the plaintiff is entitled for declaration as prayed for?	Whether the plaintiff is entitled to the relief of permanent injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit property?
3	Whether the plaintiff is entitled for injunction as prayed for?	Whether the plaintiff is entitled to the consequential injunction restraining the defendant from interfering with the construction work in the suit building?
4.	To what other relief is the plaintiff entitled for ?	

26. However, before these suits could be disposed, Mr.P.Lakshminarayana Bhatt died. Thus, the petitioner and the private respondents were impleaded in these Suits as the legal heirs of late Mr.P.Lakshminarayana Bhatt to represent his interest.

27. The fact on record also indicate that during the pendency of



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O.S.No.3079 of 1999 and O.S No 4266 of 2001, a notice dated 13.05.2016 was issued by the third respondent/Executive officer of the Temple. The petitioner challenged the same before this Court in W.P.No.20160 of 2016.

28. After considering the overall facts and circumstances of the case, the Court disposed W.P.No.20160 of 2016 vide order dated 27.07.2016 with liberty to the petitioner to respond to the Show Cause Notice dated 13.05.2016, within a period of two weeks from the date of receipt of the said order. The first respondent therein was directed to pass a fresh order in accordance with law.

29. Thereafter, the petitioner replied to the Show Cause Notice dated 13.05.2016 pursuant to the direction/order dated 27.07.2016 in W.P.No.20160 of 2016 of this Court. However, no order was passed.

30. Meanwhile, the Trial Court, after examining the issues, decreed the suit filed by the third respondent in O.S.No.4266 of 2001 and dismissed O.S.No.3079 of 1999 filed by the petitioner's and the private



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respondents' father by its common Judgment and Decree dated 31.01.2017.

31. The petitioner is running a hotel business in the property in place of her father and still continues to possess of the temple property though the Commissioner has not extended the lease under Section 34 of the HR&CE Act, 1959 during the period of last 21 years.

32. Thus, the second respondent initiated proceedings under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 for eviction of the petitioner and private respondents on 24.03.2017 before the first respondent.

33. In the said proceedings, the petitioner has filed an objection petition vide I.A.No.1 of 2021 in M.P.No.50 of 2017 for dismissal of the proceedings initiated under Section 78 of the Act. I.A.No.1 of 2021 in M.P No 50 of 2017 was dismissed by an order dated 14.07.2022.



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34. Meanwhile, the petitioner secured an interim stay from the Appellate Court in A.S.No.132 of 2017 dated 15.11.2018 against Judgment and Decree in O.S.No.4266 of 2001. However, till date, the appeal has not been disposed of.

35. Meanwhile, the first respondent issued an order dated 09.03.2017 in the Proceeding No.Se.Mu.Na.Ka.No. 2004/2017/A3 and demanded rent for use and occupation of the land towards illegal occupation. Thus, the petitioner and her siblings the private respondents herein filed W.P.No.19258 of 2021 to quash the same. This Court vide order dated 29.09.2021 dismissed W.P.No.19258 of 2021.

36. The above decision of the learned Single Judge in W.P.No.19258 of 2021 dated 29.09.2021 was challenged before the Hon'ble Division Bench in W.A.No.2806 of 2021. The Hon'ble Division Bench dismissed W.A.No.2806 of 2021 by its order dated 26.11.2021. The petitioner is thus paying amounts for use and occupation.



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37. Meanwhile, the Commissioner of H.R. & C.E. issued Circular dated 12.08.2021 bearing reference No.Na.Ka.No.46437/D2. This Circular was intended to ensure that there is quicker disposal of the eviction proceeding. Therefore, it clarified that wherever suits have been instituted, they could be withdrawn, so that, proceeding under Section 78 of the HR &CE Act, 1959 could be completed without delay.

38. The first respondent proceeded to pass an order dated 10.02.2022 in M.P.No.50 of 2017 under Section 78 of the Act. It was however without any reasoning perhaps on account of the fact that O.S.No.4266 of 2001 had been decreed on 31.01.2017 and no reasoning was required. The order dated 10.2.2022 was thus challenged before this Court in W.P.No.4875 of 2022 by the petitioner. The said Writ Petition was allowed vide order dated 08.03.2022 with the following observations:-

9. The 1st respondent has initiated proceedings under Section 78 of the Act in the year 2017 and the petitioner has also filed objection petition in the year 2017 itself. The 1st respondent is directed to conduct enquiry and pass orders in the proceedings initiated under Section 78 of the Act,



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taking into consideration the order passed in W.P.No.19258 of 2021 dated 29.09.2021 and W.A.No.2806 of 2021 dated 26.11.2021, within a period of two (2) months from the disposal of the objection petition.

10. With the above directions, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

39. The suit having been decreed by the Trial Court on 31.01.2017, it cannot be said that the second respondent along with the third respondent could not invoke the jurisdiction of the first respondent Joint Commissioner under Section 78 of the H.R. & C.E. Act, 1959. It concludes that the petitioner is in occupation of the temple land without any authority.

40. As per Explanation to Section 78 of the Act, any person who is in occupation of property without the approval of the competent authority (sanctioning lease or mortgage or licence), and any person who continues to remain in the property after the expiry or termination or cancellation of the lease, mortgage or licence granted, such person shall be construed as an encroacher. Thus, the petitioner who is in possession of the land of the



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third respondent Temple *prima facie* is an encroacher as per Explanation to Section 78 of the Act.

41. In this case, though a remedy under Section 78 of the Act was always available to the respondents, O.S.No.4266 of 2001 was filed. However, the fact remains that suit has been decreed and that there has been no renewal of the lease after the five years lease period came to an end on 23.11.1988. There are no records to show that the lease period was extended. No oral lease in favour of the petitioner can be inferred contrary to the restriction under the provisions of the HR&CE Act, 1959.

42. That apart, as per Section 34(1) of the H.R. & C.E. Act, 1959, any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution.



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43. Therefore, the continued possession beyond the restriction under Section 34 of the H.R. & C.E. Act, 1959 was clearly unwarranted.

The petitioner cannot expect the Courts to close its eyes to allow the petitioner to continue in illegal possession on account of the unnecessary and vexatious litigation initiated hitherto.

44. The petitioner is prolonging the possession by taking advantage of the time the courts take to bring closure to litigation. Clearly, the court proceedings initiated so far by the petitioner are nothing but an abuse of court proceeding to prolong the possession with a view to defeat the rights of the Temple to re-possess the land despite a favourable decree in O.S.No.4266 of 2001 as early as 31.01.2017. The plaintiff has clearly overstayed in the temple property for over two decade.

45.It is not open for the petitioner to prolong the longevity of possession based on the expired lease by invoking the doctrine of election particularly after the suit was decreed. Further, doctrine of election does not arise as the proceedings have not been initiated simultaneously. Had the second respondent initiated the proceedings simultaneously after the



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suit was filed in O.S.No 4266 of 2001 by the third respondent Temple, the ratio in decision of this Court in **A.N.Kumar** case referred supra, may have attracted. Therefore, it is not proper to say that the initiation of eviction proceedings under Section 78 of the Act was without jurisdiction.

46. The proceedings initiated under Section 78 of the H.R. & C.E. Act, 1959 particularly in the light of Explanation to Section 78(1) of the Act are in order. Merely because, during the pendency of the proceedings, the third respondent Executive Officer demanded amounts towards use and occupation of the land also *ipso facto* would not mean that the proceedings under Section 78 of the Act were incompatible or there was any acquiescence on the part of the temple administration.

47. The impugned order passed by the first respondent dismissing I.A.No.1 of 2021 is well reasoned and requires no interference. In view of overall facts and circumstances of the case as discussed above, I do not find any merits in the present Writ Petition. Therefore, this Writ Petition deserves to be dismissed.



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48. Nothing further is required to be decided on merits except to give time to the petitioner to vacate the premises. Therefore, the first respondent Joint Commissioner, Chennai who is seized of the proceedings in M.P.No.50 of 2017 is directed to pass final order after duly complying with the due process of law and principles of natural justice, within a period of six months from the date of receipt of a copy of this order.

49. Considering the fact that the petitioner's family has been in occupation of the land since 1983 though illegally after 2001 in absence of fresh renewal in accordance with Section 34 of the H.R. & C.E. Act, 1959 and without any authorization but for the intervening litigations, liberty is given to the petitioner to apply for a fresh lease of the land.

50. The first, second and third respondents are therefore directed to initiate proceedings to bring the property for a fresh lease strictly in accordance with the provisions of Section 34 of the H.R. & C.E. Act, 1959 and the prescribed Rules. The petitioner may participate in the proposed auction if lease is for a period above five years. In case the petitioner qualifies and makes a highest bid, the lease may be extended in



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favour of the petitioner strictly in accordance with the Section 34 of the
H.R. & C.E. Act, 1959.

51. This Writ Petition stands dismissed with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

10.10.2022

Internet : Yes/No

Index : Yes / No

Jen

To

- 1.The Joint Commissioner Chennai,
Hindu Religious and Charitable
Endowment (HR & CE) Dept.,
No.128, Yadaval Street,
Padi, Chennai – 600 050.
- 2.The Assistant Commissioner,
Hindu Religious and Charitable
Endowment (HR & CE) Dept.,
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C.SARAVANAN, J.

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Pre-Delivery Order
in
W.P.No.19558 of 2022 and
W.M.P.No.18852 of 2022

10.10.2022