IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE P.B.BALAJI

WA.No.2918/2021 & WP.No.8917/2023
and
CMP.NO.19784/2021 & WMP.Nos.9055 & 9056/2023

WA.No.2918/2021

Mr.Manish B.Shah .. Appellant / Writ Petitioner in WP.No.19714/2021

Versus

1.The Executive Officer
Arulmigu Sri Muthukumaraswamy
Devasthanam, Attached with
P.Chamundeeswari Ammal Trust
No.44, Rasappa Chetty Street,
Flower Bazaar, Chennai 600 003.

2.The Assistant Commissioner
Hindu Religious & Charitable Endowments Board
Chennai 600 050.

3.The Joint Commissioner
Hindu Religious & Charitable Endowments Board
Division – I, Chennai. .. Respondents

Prayer:- Writ Appeal filed under Clause 15 of the Amended Letters Patent, 1868, against the order passed by learned Single Judge of this Court in WP.No.19714/2021 dated 07.10.2021.

For Appellant	:	Mr.V.Raghavachari Senior Counsel for Mrs.V.Srimathy
For R1	:	Mr.R.Bharanidharan
For RR 2&3	:	Mr.R.Shunmugasundaram Advocate General assisted by Mr.N.R.R.Arun Natarajan,Spl.GP & Mr.A.G.Shakeenaa

WP.No.8917/2023

1.Navaneethakrishnan
2.Jaisankar
3.Ar.M.Arunachalam
4.K.Ramesh .. Petitioners

Vs.

1.The Commissioner
Hindu Religious & Charitable Endowments Board
Chennai 600 050.

2.The Joint Commissioner
Hindu Religious & Charitable Endowments Board
Division-I, No.127, Yadhaval Street, Padi
Chennai 50.

3.The Assistant Commissioner
Hindu Religious & Charitable Endowments Board
Division-I, No.127, Yadhaval Street, Padi
Chennai 50.

4.The Assistant Commissioner of Police
High Court, Chennai.

5.The Inspector of Police
B2 Police Station, Chennai..

6.The Executive Officer
Arulmigu Sri Muthukumaraswamy
Devasthanam, Attached with
P.Chamundeeswari Ammal Trust
No.44, Rasappa Chetty Street,
Flower Bazaar, Chennai 600 003.

7.Manish B.Shah .. Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the 3rd respondent to de-seal the premises bearing Door No.175, Thambu Chetty Street, Chennai 600 001 illegally made by the HR&CE Department, which is wholly without jurisdiction and further forbearing the respondents 1 to 5 from interfering with the petitioners peaceful possession of the property Door No.175, Thambu Chetty Street, Chennai 600 001.

For Petitioners	:	Mr.T.Mohan, Senior counsel for Mr.A.S.Balaji
For RR 1 to 5	:	Mr.R.Shunmugasundaram Advocate General assisted by Mr.N.R.R.Arun Natarajan,Spl.GP & Mr.A.G.Shakeenaa
For R6	:	Mr.R.Bharanidharan
For R7	:	Mr.V.Raghavachari, Senior counsel for Mrs.V.Srimathi

COMMON JUDGMENT

[Judgment of the Court was delivered by S.S.SUNDAR, J.,]

(1) The writ appeal is directed against the order of the learned Single Judge dated 07.10.2021 dismissing the writ petition filed by the appellant in WP.No.19714/2021 challenging the proceedings by which the 3rd respondent has initiated action against the appellant by treating him as an encroacher under section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1951 [hereinafter 'the Act' for the sake of brevity].

(2) Brief facts that are admitted before this Court by the appellant are as follows:-

(3) The appellant took the subject property on lease on 06.03.2006 under a Lease Deed dated 06.03.2006 between the appellant and the Senior Trustee of Sri Muthukumaraswamy Devasthanam @ Sri Kandasamy Temple. As per the Lease Deed, it is seen that Tmt.P.Chamundeeswari Ammal Trust attached to Arulmighu Sri Muthukumaraswamy Temple represented by its Senior Trustee is the Lessor. The property that was leased out is approximately given in the schedule. It is admitted that an extent of more than 2000 sq.ft., is in the occupation of the appellant as tenant. From the terms of the Lease Deed and the receipts produced for the previous period, the appellant was a lessee even earlier.

(4) The property that was leased out to the appellant forms part of property that is the subject matter of a Trust Deed by which a public charitable Trust which is known as Tmt.P.Chamundeeswari Ammal Trust was created. As per the Trust Deed dated 29.08.1981, the Founder, namely, Tmt.P.Chamundeeswari Ammal, wife of late Thiru.A.Balasubramaniam, has endowed the property described in the schedule to run a free medical dispensary. It

appears that the desire of the Founder of the Trust was to endow the property for the purpose of running a medical dispensary reserving unto herself, the life interest and life interest to her father to collect the income from tenants in occupation. It also appears that the desire of the Founder was to dedicate the property for a charity attached to Srimuthukumaraswamy Devasthanam @ Kandasamy temple. The Trust Deed specifically refers to the free medical dispensary to be opened in a portion of the property.

(5) The following recitals in the Trust Deed are relevant and it is extracted for convenience:-

> *"....The founder further declares that the trustees 1 to 5 being the trustees for time being of* ***"Sri Muthukumaraswamy Devasthanam shall maintain separate account immediately after the vesting*** *of the entire properties after the life time of the founder and her father and treat the said property as a "****specific endowment dedicated absolutely"*** *for the sole object of providing Medical Aid to the poor and needy. As the present trustees in the office solemnly* <u>*assured that a part of income from the Devasthanam Choultry and through the hundial installed in the temple are to be*</u>

> *fully applied for the upkeep maintenance and purchase of Medicine other needed appliances, the trustees may if the circumstances and need warrant utilize the entire building such portion thereof better, proper and effective running of the in-patients after the life time of the founder and her father Mr.P.Venugopal Chetty [P.Chamundeeswari].."*

(6) From the correspondence and the receipts produced before this Court, this Court has no hesitation to hold that the appellant has acknowledged the fact that the property is attached to the temple and that it is only the trustees of the temple who were in administration and control of the property. It is seen that the founder under the Deed of Trust, has appointed the trustees of the temple to manage the affairs of the Trust. Though a set of named trustees were also appointed as persons to supervise the administration of the Trust, the entire Trust Deed would show that the property falls under the definition of a 'religious endowment' in terms of Section 6[17] of the Act. Soon after the death of Smt.P.Chamundeeswari Ammal, the trustees by a resolution dated 14.12.2001, admitting the fact that the charitable dispensary to run

by the Temple. The trustees as per this resolution brought the property under the control of temple so that the tenants would become the tenants of the temple and governed by HR&CE Act as the temple is a religious institution comes under the control of HR&CE Department.

(7) It is admitted that in the year 2014, the temple came under the Management of a Fit Person appointed by the Assistant Commissioner of HR&CE and it is admitted that the appellant has also accepted the tenancy under the HR&CE Department and was paying regularly rent without any issues. It appears that proceedings were initiated for fixing of fair rent in terms of Section 34A of the Act with effect from 01.07.2016. Since the appellant did not pay the rent fixed in terms of the provisions of the Act, there were disputes and the lease was terminated for non payment of rent. It is now admitted that on 16.07.2019, notice terminating tenancy was issued and thereafter, a show cause notice was issued by the 3rd respondent vide proceedings dated 19.07.2021, to show cause why the appellant shall not be evicted by treating him as an

encroacher. It is seen the Assistant Commissioner and the Executive Officer of the temple have requested the Joint Commissioner, HR&CE to initiate action under section 78 of the Act against the petitioner. However, the proceedings under section 78[2] of the Act initiated by the Joint Commissioner, HR&CE, dated 19.07.2021 is challenged by the appellant in WP.No.19714/2021.

(8) In the writ petition, the fact the appellant took the property on lease from the trustees of the temple, is not disputed. However, the appellant took a stand that the Trust Deed indicates that the Trust was only for running free medical dispensary and therefore, it is not a religious endowment. The appellant challenged the competency of the 3rd respondent in the writ petition to initiate action under section 78[2] of the Act, treating the property as the property of the temple. It is contended by the appellant that as per the Trust Deed then was no vesting of title in favour of temple and therefore, the 3rd respondent is not competent to initiate proceedings under sections 78 or 79 of the Act. It was contended

that the appellant is not an encroacher and that the 3rd respondent has flouted the principles of natural justice.

(9) The learned Single Judge of this Court, considering the facts that the appellant has accepted tenancy recognising the property of public trust attached to the temple and that the appellant has participated in the proceedings under section 34A of the Act, held that the appellant is estopped from questioning the jurisdiction of 3rd respondent to initiate proceedings under section 78 of the Act. On the question whether the property was dedicated for religious endowment, the learned Judge considered the scope of Section 6[17] of the Act with reference to the corresponding provision under 9[11] of 1927 Madras Hindu Religious Endowments Act in the light of several precedents and held that the endowment in favour of a charity of public nature would also satisfy the definition of religious endowment defined under section 6[17] of the Act. The learned Single Judge further held that the appellant who took the property on lease from the erstwhile trustees of temple and thereafter, affirmed the tenancy with the Fit Person/Executive

Officer appointed by the Assistant Commissioner is estopped from denying title or right of the temple.

(10) Referring to section 116 of the Indian Evidence Act, the learned Single Judge held that the appellant has acknowledged the property as a specific endowment within the meaning of Section 6[19] of the Act and further held that the appellant is estopped from questioning the proceedings on the ground of competency or want of jurisdiction. It was thereafter the learned Judge considered the scope of section 78 of the Act. Since the lease had already been terminated, the learned Judge found that the proceedings initiated under section 78[2] of the Act is perfectly in order and therefore, the writ petition challenging the proceedings is unsustainable. As against the order, dismissing the writ petition, the above writ appeal is filed.

(11) Mr.V.Raghavachari, learned Senior counsel appearing for the appellant, referred to various provisions, particularly, section 6[17] of the Act and the recitals of the document, namely, the Trust Deed dated 29.08.1981. This Court has already extracted the relevant

portion/recitals of the Trust Deed.

(12) Section 6[17] reads as follows:-

*"6(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;*

***Explanation.—(1)** Any inam granted to an archaka, service holder or other employee of a religious institution for the performance of any service or charity in or connected with a religious institution shall not be deemed to be a personal gift to the archaka, service holder or employee but shall be deemed to be a religious endowment.*

***Explanation.— (2)** All property which belonged to, or was given or endowed for the support of a religious institution, or which was given or endowed for the performance of any service or charity of a* *public nature connected therewith or of any other religious charity shall be deemed to be a "religious endowment" or endowment" within the meaning of this definition, notwithstanding that, before or after the date of the commencement of this Act, the religious institution has ceased to exist or ceased to be used as a place of religious worship or instruction or the service or charity has ceased to be performed:*

***Provided** that this Explanation shall not be deemed to apply in respect of any property which vested in any person before the 30th September 1951, by the operation of the law of limitation."*

(13) From the reading of the Trust Deed, it is seen that the founder has endowed the property absolutely in favour of a public charity namely to run a free medical dispensary for the benefit of public irrespective of caste, creed or religion. The property was given under the management of five trustees who according to the founder permanent trustees of the religious institution, namely, Sri Muthukumaraswamy temple @ Sri Kandasamy tempe. Though providing medical aid to the poor and needy is secular, the founder wanted performance of charity not only from the income of the

property which was endowed, but also from the income from the Devasthanam Choultry and the hundial installed in the temple for charity. Therefore, this Court has no hesitation to hold that the public charity referred to by the founder is an endowment which satisfy the definition of 'religious endowment' or endowment in terms of section 6[17] of the Act.

(14) After the death of Tmt.P.Chamundeeswari Ammal, the Founder, the then trustees of Sree Muthukumaraswamy Devasthanam @ sri Kandasamy Temple have passed a resolution to the effect that the property had been brought under the control of temple. The following portion of Resolution dated 14.12.2001 is relevant and hence, extracted below:-

> "இச்சொத்து திருக்கோயிலுக்கு பாத்தியப்பட்டதால் மேற்படி வாடகைதாராகளை திருக்கோயில் வாடகைதாரர்களாக இலாகா சட்டத்திட்டங்களுக்குட்பட்டு அங்கீகரித்து வாடகை மற்றம் வாடகை வைப்புத் தொகைகளை *1.10.2001* முதல் பெறவும், இதற்கு சொத்துவரி, தண்ணீர் வரி ஆகியவைகளை செலுத்தவும்

தீர்மானிக்கப்படுகிறது."

The above resolution is found in the typed set of papers filed by the appellant.

(15) The receipts for payment of advance even before the Lease Deed in favour of appellant and the subsequent receipts issued by the then trustees would show that the trustees have issued receipts in the name of Tmt.P.Chamundeeswari Ammal Trust attached with the temple. The receipts after 2016 is issued by the Fit Person/Assistant Commissioner of HR&CE. The appellant is therefore, treated as tenant under the temple and there is no dispute for more than two decades about the nature of property. The appellant himself recognised the property as the property endowed for a public charity associated or attached or in connection with the temple.

(16) The Executive Officer sought for fixation of fair rent and the appellant participated the proceedings without any reservation and in terms of section 34A of the Tamil Nadu HR&CE Act, fair rent was fixed by the Committee and it was duly communicated to the appellant in 2018. Since the appellant did not come forward to pay

fair rent, the Executive Officer of temple terminated the lease with effect from 31.05.2019 and thereafter, approached the 3rd respondent to initiate proceeding for eviction against appellant under section 78 of the Act.

(17) Section 78 of the Act gives wide power to the Joint Commissioner once a report is received from the Assistant Commissioner. The appellant has not even challenged the facts that are referred to in the proceedings impugned in the writ petition.

(18) When the writ appeal came up for hearing, one of the points raised by the learned Senior counsel appearing for the appellant was that the impugned notice dated 19.07.2021 calling upon the appellant to give his explanation on or before 05.08.2021 is in violation of principles of natural justice. It is in the said context, without going into the merits of the issues raise by appellant, this Court passed an order on 06.12.2021 in the following lines:-

> *"6.In view of the submissions made by the learned counsel on either side, this Court permits the appellant to submit his additional explanation to the 3rd respondent within ten days from the date of receipt*

of a copy of this order and on receipt of the same, the 3rd respondent is directed to conduct enquiry after giving due opportunity of personal hearing to the appellant and pass orders on merits and in accordance with law. Till such time, the writ appeal is kept pending, the 3rd respondent is also directed to decide the issue with regard to her jurisdiction to issue the impugned notice dated 19.07.2021 while deciding the matter."

(19) Pursuant to the above direction, the 3rd respondent/Joint Commissioner passed final orders dated 13.10.2022 after elaborately considering the objections raised by the appellant. By the order dated 13.10.2022, the appellant was directed to vacate the premises within thirty days and hand over the premises to the Executive Officer of the temple. As against the order of eviction under section 79[2] of the Act, a revision petition was filed by the appellant before the Commissioner under section 21 of Tamil Nadu HR&CE Act, 1959 and by an elaborate order, dated 13.03.2023, confirmed the order of Joint Commissioner and dismissed the Revision. Writ appeal is filed challenging the order passed by the

learned Single Judge wherein proceedings of the Joint Commissioner initiated under section 78 of the Act was upheld. The learned Single Judge has considered all the issues and has rightly held that the property is a property of 'religious endowment' and that the appellant who has taken lease of the property admitting the character of property is estopped from disputing the title or character of encroachment. The temple has taken possession of the property. It is admitted that Sri Muthukumaraswamy temple is a religious institution comes under the purview of the Tamil Nadu HR&CE Act, 1959. Pursuant to the order of the Joint Commissioner, it is stated that possession of the property was taken by the temple by due process on 18.03.2023 and the whole building which was leased out to appellant, was locked and sealed by the Assistant Commissioner. In the said circumstances, this Court is unable to entertain this appeal and finds no merits in the appeal.. Writ petition in WP.No.8917/2023 is filed by persons who are in occupation as sub-lessees under the appellant, for issuance of a writ of mandamus, directing the 3rd respondent to deseal the premises which are in their occupation and forbearing the respondents from interfering with their peaceful possession.

(20) This Court has already found that the writ appeal is devoid of any merits. The appellant who admitted the tenancy and acknowledged the property as religious endowment by entering into a Lease Agreement with the trustees of the temple, is estopped from questioning the jurisdiction of the Joint Commissioner to initiate proceedings under section 78 of the Act. Since this Court has also found that the property which is the subject matter of Trust is a religious endowment, the appeal is liable to be dismissed.

(21) It is admitted that after the order passed by the Commissioner, HRCE, confirming the order of the Joint Commissioner, HR&CE, confirming the order of eviction against the appellant, the possession of the entire lease property is taken and sealed by the Executive Officer/Assistant Commissioner on 18.03.2023 following due procedure.

(22) Learned Senior counsel appearing for the appellant in WA.No.2918/2021 has requested this Court to permit the appellant

to remove the movables which are available in the portion of premises which is in the occupation of the appellant. It is admitted by the learned counsels appearing for the writ petitioners in WP.No.8917/2023 before this Court that the writ petitioners are in possession of small portions in the premises that was leased out to the appellant in the year 2006. Therefore, the appellant's grievance appears to be with reference to the small portion which is in his possession after subletting the property to the writ petitioners in WP.No.8917/2023.

(23) The appellant was directed to file an affidavit of undertaking before this Court if the appellant wants time. However, the appellant has not given any undertaking except asking for time. We are not inclined to grant any time to the appellant. The petitioners in the writ petition has no independent right and the order of Commissioner is binding on the writ petitioners. Learned Senior counsel adopted the arguments of the learned Senior counsel appearing for the appellant in the appeal. Hence, the writ petition is liable to be dismissed.

(24) The fact that the premises that was leased out to the appellant has now been taken possession by the respondents is recorded.

(25) Learned Senior counsel appearing for the appellant then requested this Court to show some indulgence by issuing suitable direction to respondents to remove his belongings which are inside the premises which has now been locked by the respondents. Learned counsel also produced photographs showing some movables. Though the learned Senior counsel requested a week's time, this Court finds that it may not take so much of time to remove those articles which belong to the appellant.

(26)

(a) The appellant in WA.No.2918/2021 is permitted to submit a representation with an undertaking that he will remove the movables kept inside the premises which was in his possession.

(b) On receipt of such representation from the appellant, the respondents may consider the same by granting the appellant, a day's time from 10.30 a.m. to 5.30 p.m., on any particular day.

(c) It is open to the respondents to videograph the entire process.

(d) It is made clear that the permission granted by this Court cannot be considered as a license or liberty to the appellant to occupy or to claim that he is still in possession of the property.

(e) The status quo as on date is that the property had already been taken possession by the respondents.

(f) As far as the petitioners in WP.No.8917/2023 are concerned, learned counsel appearing for the writ petitioners has made himself clear that he only supported the case of appellant and conceded that the writ petitioners have no independent right.

(g) In the event of dismissing the writ petition, the learned counsel appearing for the petitioners requested this Court to consider giving time to the writ petitioners till the end of June 2023, i.e., till 01.07.2023, as the writ petitioners are advocates and they may find some difficulties to guide their clients till the writ petitioners find time to get an alternative accommodation in the nearby vicinity.

(h) Each of the writ petitioners are ready and willing to pay a sum of Rs.7,500/- per month towards damages for use and occupation till June 2023.

(i) The writ petitioners have also filed individual Affidavits of Undertaking dated 11.04.2023 to that effect. The respective undertaking affidavits are recorded.

(j) This Court is inclined to consider the request of the writ petitioners and accordingly, the writ petitioners are granted time till **01.07.2023 to vacate and hand over the premises to the respondents. The writ petitioners are also expected to pay a sum of Rs.22,500/- each, towards damages for use and occupation within one month from the date of receipt of a copy of this order.**

(k) The learned Special Government Pleader [HR&CE] has filed a report indicating the specific extent of portions of premises which are in occupation of the writ petitioners. Learned counsel for the respondents have no objection with regard to portion which is in their occupation even though there is some dispute with regard to the actual extent stating that the extent mentioned in the report includes the common area which was added in the enjoyment of the writ petitioners.

(l) **The respondents are directed to deseal the premises so as to enable the writ petitioners to continue in the same premises till 30.06.2023 strictly for the purpose of their profession. However, except the premises for which desealing is directed by this Court in this common judgment, it is deemed that the respondents have taken possession in respect of the remaining portion.**

(m) It is open to the respondents to proceed with the implementation of any project which they have conceived as the property shall be deemed to in their possession for all purposes.

(n) No costs. Consequently, connected miscellaneous petitions are closed.

[SSSRJ] [PBBJ]
12.04.2023

AP
Internet : Yes

To
1.The Commissioner
Hindu Religious & Charitable Endowments Board
Chennai 600 050.

2.The Joint Commissioner
Hindu Religious & Charitable Endowments Board
Division-I, No.127, Yadhaval Street, Padi
Chennai 50.

3.The Assistant Commissioner
Hindu Religious & Charitable Endowments Board
Division-I, No.127, Yadhaval Street, Padi
Chennai 50.

4.The Assistant Commissioner of Police
High Court, Chennai.

5.The Inspector of Police
B2 Police Station, Chennai..

6.The Executive Officer
Arulmigu Sri Muthukumaraswamy
Devasthanam, Attached with
Smundeswari Ammal Trust
No.44, Rasappa Chetty Street,
Flower Bazaar, Chennai 600 003.

S.S.SUNDAR, J.,
AND

P.B.BALAJI, J.

AP

WA.No.2918/2021
& WP.No.8917/2023

12.04.2023