BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.29852 of 2023
and W.M.P(MD).No.25759 of 2023

G.Ramesh .. Petitioner

vs.

1.The Principal Secretary,
Tourism Culture and Religious Endowments Department,
Government of Tamil Nadu,
Fort St.George,
Secretariat, Chennai-600 009.

2.The Commissioner,
Hindu Religious and Charitable Endowment Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai-600 034.

3.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Trichy Division,
Uthamar Koil Complex,
Pichandar Koil, Trichy District.

4.The Executive Officer/Joint Commissioner,
A/m. Sri Ranganathaswamy Temple,
Vellithirumutham Village,
Srirangam Taluk, Trichy District. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorari, calling for the records of the impugned order of the first respondent in G.O(Ms).No.426, Tourism Culture and Religious Endowments (RE) Department, dated 18.11.2023 and quash the same insofar as shop No.6.

For Petitioner : Mr.H.Arumugam

For Respondents : Mr.P.Subbaraj
Special Government Pleader
for R1 to R3
Mr.M.Saravanan for R4

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ORDER

The petitioner's father claiming to be a lessee was permitted to have a shop inside Arulmigu Renganathar Swamy Temple situated in Velithirumuthyam Village, Srirangam Taluk, Tiruchirappalli District and was provided space in between the pillars for having the shop and was selling pooja and other articles which were required for the devotees. The petitioner claims that his father was running the stall for more than six decades and had paid the rent regularly and there is no default in payment of the rent and the rent has also been periodically revised. While so, in the year 2014, the petitioner's father was directed to vacate the premises on account of the proposed Kumbabishekam to be conducted. The third respondent has initiated proceedings to evict the petitioner's father from the premises on the ground that the shop inside the Temple was situated between pillars and was marring the artistic appearance of the Temple. In this regard, the third respondent has issued notice to the petitioner's father, however, the petitioner's father/stall owner did not vacate the shop and thereafter, the third respondent, vide proceedings dated 31.01.2019, has directed the petitioner's father to vacate the shop, as against which, the petitioner's father has preferred appeal before the second respondent under Section 81 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, and the second respondent rejected the appeal preferred by the petitioner's father confirming the order of the third respondent. Challenging the same, the petitioner's father has filed revision before the Government under Section 114 of the said Act, 1959 and the same was also dismissed vide impugned Government Order, against which, this Writ Petition has been filed.

2. The learned counsel appearing for the petitioner submits that the petitioner's father was running the stall for more than 5 to 6 decades and after the death of his father, he is running the stall and has been paying the rent regularly. He further submits that the proceedings were initiated in the year 2014 to evict the petitioner's father from the stall at the time of conducting Kumbabhishekam for the said Temple. There was no renovation in the place where the petitioner's father is

having the stall and Kumbabhishekam was also over. Therefore, the respondents are not justified in continuing the proceedings against the petitioner's father which were initiated in the year 2014. The respondents have proceeded with the action only based on the photographs produced by the Temple Administration that in some shops, temporary extensions were made which are marring the artistic appearance of the Temple. Based on the temporary extensions made by few lessees, the respondents are not justified in initiating action as against the petitioner's father. In this regard, the learned counsel has also relied on the judgment of the Hon'ble Supreme Court of India in the case of ***S.Kumar vs. Commissioner and others*** reported in ***(2019) 5 SCC 244*** and submits that the Department ought to have considered the case of the shop owners individually and in accordance with law. However, the respondents have not considered the case of the petitioner's father individually and action has been taken against all the stall owners for the mischief played by some of the lessees. The relevant paragraphs are extracted hereunder:-

> *“ 11. In our considered opinion, the issue raised in these appeals is governed by the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (for short “the Act, 1959). Chapter VII of the Act, 1959 deals with the cases of encroachment on the land belonging to religious institutions. This chapter consists of Sections 77*

to 85.

12. Section 77 of the Act, 1959, deals with transfer of lands appurtenant to or adjoining religious institutions prohibited except in special cases. Section 78 deals with encroachment by persons on land or building belonging to charitable or religious institutions or endowments and the eviction of encroachers. Section 79 deals with mode of eviction on failure of removal of the encroachment as directed by the Joint Commissioner. Section 79A deals with encroachment by groups of persons on land belonging to charitable religious institutions and their eviction. Section 79B deals with penalty for offences in connection with encroachment. Section 79C deals with recovery of moneys due to religious institution, as arrears of land revenue.

13. Section 80 deals with eviction of lessees, licensees or mortgagees with possession in certain cases. Section 81 provides for an appeal against Joint Commissioner or the orders of Deputy Commissioner passed under Section 80. Section 82 provides for payment of Compensation. Section 83 deals with constitution of the Tribunal. Section 84 deals with suits against the award. Section 85 provides for protection of action taken under Chapter VII of the Act, 1959.

14. As mentioned above, the controversy, which is the subject matter of these appeals, is governed by the provisions of the Act, 1959. It is not in dispute that the respondents did not resort to the remedies provided to them under the Act against any of the appellants. In other words, it is not in dispute that the action taken by the respondents, which *was impugned by the appellants in the writ petitions before the High Court, was not taken under the Act, 1959.*

15. It is for this reason, we are inclined to allow these appeals, set aside the impugned order and grant liberty to the respondents to take recourse to the remedies provided to them against the appellants individually in relation to the controversy raised by them in these proceedings.

16. Needless to say, we have not gone into the merits of the claim raised by the appellants whether individually or/and severally. The respondents will, therefore, be at liberty to proceed in the matter in question against the appellants individually strictly in accordance with law uninfluenced by any observations made by this Court."

3. Without any specific allegation against the petitioner's father as to the manner in which he has marred the artistic appearance of the Temple, the respondents are not justified in passing the order under Section 80 of the said Act. It is the only avocation of the petitioner to run his family and the same is taken away by way of the impugned Government Order which would affect his fundamental rights provided under Article 21 of the Constitution of India.

4. The learned counsel appearing for the respondents submits that Section 80 of the said Act enables the Joint Commissioner to initiate action to evict the

lessees, if they are marring the atmosphere and the artistic appearance of the Religious Institution by way of putting the stalls. Though the petitioner claims that his father was permitted to have the stall for several decades, the petitioner's father has not been recognised by the Temple Administration by issuing license or lease permitting him to conduct the shop. Since the petitioner's father was in occupation, the rent was collected from him and he has extended the shops by putting some temporary extensions and thereby, the atmosphere and artistic appearance of the Temple are marring. When Kumbabhishekam was performed in the Temple in the year 2014, the Joint Commissioner has requested the petitioner's father to vacate the premises for the purpose of renovation, however, he refused to do the same and therefore, notice was issued to him.

5. The learned counsel appearing for the respondents further submits that the petitioner's father is not entitled to conduct the stall, when the Temple administration has not recognised him with any license or lease and the temporary structure made by the petitioner's father is affecting the artistic appearance of the Temple and Sannathi is also not visible due to the stall put up by the petitioner's father. He further submits that after the incident which took place at Arulmighu Meenakshi Amman Temple, a policy decision has been taken by the Temple

Administration that there cannot be any shops inside the Temple. Therefore, according to the learned counsel, the stall put up by the petitioner's father is without any authority and it affects the atmosphere and artistic appearance of the Temple.

6. This Court considered the rival submissions made by both sides and perused the materials available on record.

7. Admittedly, the petitioner's father was running the stall inside the Temple premises for more than five decades and after the death of his father, the petitioner is running the stall. Now, the respondents are directing him to vacate the premises that the shop put up by him is affecting the atmosphere and artistic appearance of the Religious Institution. A notice was issued to the petitioner's father in the year 2014 itself under Section 80(2) of the Hindu Religious and Charitable Endowments Act. After several rounds of litigation, the Government has passed the impugned order confirming the order of the Commissioner. Section 80(2) of the said Act is extracted hereunder:-

“(2) 1[The Joint Commissioner or the Deputy Commissioner, as the case may be], if satisfied that the artistic appearance or the

religious atmosphere of the religious institution has been marred or is likely to be marred by the action of the lessee, licensee or mortgagee with possession shall cause to be served on the lessee, licensee or mortgagee concerned, a notice calling upon him to show cause before a certain date why an order terminating the lease license or cancelling the mortgagee, and requiring the lessee, licensee or mortgagee, as the case may be, to deliver possession of the property which is the subject of the lease, licence or mortgage to the trustee before a date specified in the notice should not be made. A copy of the notice shall also be sent to the trustee of the religious institution concerned."

8. As per Section 80(2) of the said Act, it is the duty of the Joint Commissioner to preserve the artistic appearance or the atmosphere of the Religious Institution. However, before taking any action under Section 80(2) of the said Act, the concerned Officer has to issue a show cause notice. In this case, notice under Section 80(2) of the said Act was issued in the year 2014. Admittedly, the shop is within the Temple complex and is situated in between the pillars.

9. Arulmigu Renganathar Swamy Temple is an ancient Temple which has to be preserved by the Temple Authority. The Temple is not a commercial complex where commercial activities can be permitted. The atmosphere which is required

for any Religious Institution is to be neat, clean and peaceful environment. It is not known on what circumstances this petitioner was allowed to occupy the Temple premises and was permitted to have the shop inside the Temple. From the available materials on record, it appears that the shop is used for selling the goods other than the pooja articles. The Department has claimed that Sanathai is not visible due to the shop put up by the petitioner and the articles hanging in front of the shop. Sanathi is said to have been constructed during the period 1623 to 1659 AD. As per Archeological inspiration, during the period of Thirumalai Nayakar, Rengavilas Mandapam has totally 200 numbers of pillars and some of the shops are occupying 14 numbers of pillars. Five shops are near Nathamuni Sanathi and other shops are in the entrance of Nathamuni Sanathi, which was constructed during 14th Century. It is the duty of the Department to preserve the artistic appearance as well as the Religious Atmosphere. Section 80(2) of the said Act mandates the Joint Commissioner or the Deputy Commissioner, as the case may be, to take appropriate action to preserve the religious atmosphere and the artistic appearance. Therefore, the respondents cannot be found fault with for initiating action under Section 80(2) of the said Act on the petitioner who is having the shop inside the Temple. The notice as mandated under Section 80(2) of the said Act was duly issued and the proceedings reached its finality by the Government. The

Government has also considered the grounds raised by the petitioner's father in support of his revision petition.

10. Though the petitioner claims that he is a lessee of the Temple, he has not produced any document to substantiate his case that he was permitted by the Temple Administration with lease to have the shop inside the Temple. In the absence of any document, the petitioner cannot claim occupation of the Temple premises as a matter of right. Since the petitioner has been permitted by the Department to occupy, it would not create any right on the petitioner to occupy the shop perpetually. The receipts for collection of rent by itself cannot create an agreement between the petitioner and the Department. Mere acceptance of the rent would not automatically tantamount to renewal of the lease. It is not known as to whether the petitioner was permitted to put up the shop and whether he has been permitted to occupy the shop inside the Temple. Therefore, the petitioner cannot claim any right, as a matter of right, to continue to occupy the Temple premises.

11. The religious atmosphere is a basic requirement and paramount in any Religious Institution. The Temple must have an environment reflecting the culture and tradition of the temple. It is the duty of the Department to preserve the culture

and atmosphere of the Religious Institution. However, the Department is concentrating only in revenue from the Temple properties instead of preserving them. Permitting such shops inside Meenakshi Amman Temple has taught a very big lesson to the Department in the year 2018. Even after several years, though Meenakshi Amman Temple is having sufficient funds, the Department is not in a position to restore the damaged Mandapam to its original position. Therefore, at any point, the shops inside the Temple can never be permitted. It is the responsibility of the Hindu Religious and Charitable Endowments Department to ensure the religious atmosphere in every Temple. The Department has to take a decision not to permit any shops inside the Temple.

12. In this case, since the petitioner has not made out any case, this Court is not inclined to interfere with the impugned order of the Government. However, the petitioner claims that he was permitted to have the shop inside the Temple by the Authorities for more than five decades and based on the same, he is eking his livelihood. Therefore, the respondents shall consider the case of the petitioner sympathetically and find out any alternative place in any of the Temple lands to have the shop. The petitioner shall also be permitted to have the shop inside the Temple for a period of three months to enable him to find an alternative.

13. Accordingly, this Writ Petition is dismissed. There shall be no order as to costs. Connected miscellaneous petition is closed.

21.12.2023

Index : Yes / No
NCC : Yes / No
Internet : Yes
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To
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B.PUGALENDHI, J.

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