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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.03.2024

PRONOUNCED ON : 20.03.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.No.2001 of 2022

and

C.M.P.No.14930 of 2022

1.M/s. Super Goods Films Private Limited,
Rep. by its Managing Director
Mr.R.B.Choudary,
M/Aged 72 years,
S/o.Ratanlal Choudary,
No.16/27, 9th Street,
Dr.Radhakrishnan Road,
Mylapore,
Chennai – 600 004.

2.Mrs.M.E.Siddiq,
F/Aged 60 years,
W/o A.Sathak Nizar,
No.7, Jayalakshmipuram 3rd Street,
Seetha Nagar, Nungambakkam,
Chennai – 600 034.

... Appellants

Vs.



1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam, Chennai – 600 034.

2.The Executive Officer,
Arulmigu Agastheeswarar Prasanna Venkatesa Perumal,
Thirukkcoil,
11, North Mada Street,
Nungambakkam,
Chennai – 600 034.

3.The Joint Sub Registrar II,
District Registrar Cadre,
Thousand Lights,
Chennai – 600 006.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 06.06.2022 in W.P.No.7220 of 2022 on the file of this Court.

For Appellants	: Mr.V.Raghavachari Senior Counsel For Mr.D.Saikumarran
For R1 & R2	: Mr.N.R.R.Arun Natarajan Special Government Pleader [For H.R.&.C.E]
For R3	: Mr.U.Baranidharan Additional Government Pleader



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J U D G M E N T

[Judgment was delivered by **S.M.SUBRAMANIAM, J.**]

The present Intra-Court Appeal has been instituted challenging the judgment dated 06.06.2022 in W.P.No.7220 of 2022.

APPELLANTS CASE:

2. The subject property of all that piece and parcel of land bearing Door No.7, Jayalakshmipuram, Third Street (now known as Seethanagar), Nungambakkam, Chennai – 600 0034 situate in R.S.No.477 part, O.S.No.341, Collector's Certificate No.103, bounded on the North by Jayalakshmipuram Third Street, East by R.S.No.478 Sithanagar Colony, on the South by Police Land and on the West by land leased out to Raju Pillai, measuring one ground and 379 Sq.ft. within the Sub Registration District of T.Nagar and Registration District of Chennai South belonging to the Arulmigu Agastheeswarar Prasanna Venkatesa Perumal Devasthanam. The Temple is falling under the control of the Hindu Religious and Charitable Endowments Department, Government of Tamil Nadu.



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3. The appellants claim that the subject property was purchased by Mr.N.Meeran, son of Nagoorkani and Mr.N.Sherif, son of Nagoorkani vide Sale Deed dated 11th October, 1990 in Document No.806 of 1990. Subsequently, the said Mr.N.Meeran and Mr.N.Sherif executed a Sale Deed dated 27th June, 1992 in Document No.578 of 1992 in favour of Mrs.M.E.Siddiqa, wife of A.Sathak Nizar / 2nd appellant in the present writ appeal.

4. It is not in dispute that the temple was the sole and absolute owner of vast extent of land in and around Nungambakkam and the father of Mr.N.Meeran and Mr.N.Sherif, Mr.Nagoorkani was a tenant in respect of piece of land, measuring to an extent of 1 ground and 379 Sq.ft. Situated in R.S.No.477 part, O.S.No.431, Collector's Certificate No.103 bearing New Door No.7, Jayalakshmipuram Third Street, now known as Seetha Nagar. Monthly rent of Rs.15/- was fixed for tenancy. Mr.Nagoorkani, the original tenant was irregular in payment of rent to the temple and he died on 14.10.1986, leaving behind Mr.N.Meeran and Mr.N.Sherif as surviving legal heirs. Thus, they became the tenants under the temple. The said Mr.N.Meeran and Mr.N.Sherif also committed default in payment of rent.



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5. Thereafter, a suit for recovery of possession was filed by Arulmigu Agastheeswarar Prasanna Venkatesa Perumal Devasthanam in O.S.No.5802 of 1987 on the file of XIIIth Assistant City Civil Court at Chennai. The averments made in the plaint are disputed. The 1st defendant / Mr.N.Meeran in the civil suit filed a written statement admitting that the plaintiff / Temple is the owner of the vast extent of land in and around Nungambakkam and the piece of land admeasuring about 1 ground 378 Sq.ft as described above was leased out by the temple in favour of Mr.Nagoorkani. The lease of land was on a monthly rent of Rs.15/- and it was admitted in the written statement also. However, the default committed by the original lessee was denied. The written statement states that Mr.Nagoorkani paid the ground rent of Rs.15/- without any default till his date of death on 14.10.1986. Thereafter, the defendants Mr.N.Meeran and Mr.N.Sherif have become tenants, since they were sole surviving legal heirs of Nagoorkani. The written statement further states that during the life time of lessee Mr.Nagoorkani, they have constructed a permanent super-structure on the vacant land leased out by the temple. Mr.Nagoorkani was residing in the said temple land till his death and thereafter, his legal heirs Mr.N.Meeran and Mr.N.Sherif continued to reside



in the said temple property.

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6. The written statement further states that the defendants are entitled to the benefits of the Tamil Nadu City Tenants Protection (Amendment) Act, 1996. Consequently, the defendants Mr.N.Meeran and Mr.N.Sherif filed a petition under Section 9 of Tamil Nadu City Tenant Protection Act, 1921 in I.A.No.15824 of 1987 in O.S.No.5802 of 1987. The XIIIth Assistant City Civil Court passed an order on 29.03.1990 in the petition filed by the defendants under Section 9 of the Tamil Nadu City Tenants Protection Act. The order passed in I.A.No.15824 of 1987 reveals that the value of the property was fixed at Rs.20,842.50/- and the defendants were permitted to pay the said amount in 36 monthly instalments and on receipt of the said amount, the temple shall execute the Sale Deed in favour of the defendants.

7. Pursuant to the said order passed in the Interlocutory Application, the erstwhile Trustee of Arulmigu Agastheeswarar Prasanna Venkatesa Perumal Devasthanam, Smt.R.Valliammal executed a Sale Deed dated 11th October, 1990 in Document No.806 of 1990 for a consideration of Rs.20,842.50/- .



8. Based on the above facts, the original tenant under the temple Mr.Nagoorkani claimed title over the property. Subsequently, the legal heirs of the lessee Mr.N.Meeran and Mr.N.Sherif claimed title from whom the 2nd appellant / Mrs.M.E.Siddiqa claimed title over the subject property.

9. The 2nd appellant presented a Settlement Deed for registration before the Sub Registrar under the Registration Act. Mean while, Arulmigu Agastheeswarar Prasanna Venkatesa Perumal Devasthanam Temple filed objections before the Sub Registrar to register various temple properties including the subject property. Since the Sub Registrar refused to register the document, W.P.No.25544 of 2021 was filed by the 2nd appellant / Mrs.M.E.Siddiqa. The learned Single Judge allowed the writ petition on 01.12.2021 mainly on the ground that Mrs.M.E.Siddiqa purchased the subject property vide registered Sale Deed in Document No.578 of 1992 from Mr.N.Meeran and Mr.N.Sherif. Thereafter, the 2nd appellant intended to settle the property in favour of her daughter. The order in W.P.No.25544 of 2021 reveals that the Joint Sub Registrar II, Thousand Lights was directed to conduct an enquiry on the objections raised by the temple, after giving an



opportunity of hearing to both the parties and pass an order on merits and in accordance with law.

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10. Pursuant to the directions issued by the Writ Court in W.P.No.25544 of 2021, the Joint Sub Registrar II conducted an enquiry and took a decision that the documents pertaining to the subject properties are kept pending registration in Document No.P131 of 2021 and are belonging to the temple. Therefore, the registration is refused.

11. Thereafter, the 2nd appellant along with the 1st appellant filed W.P.No.7220 of 2022. The Temple Authorities filed a counter affidavit stating that the Sale Deed was executed in a fraudulent manner and in collusion with the erstwhile trustee Smt.R.Valliammal. Such a fraudulent Sale Deed executed is not binding on the temple.

12. However, the Writ Court elaborately considered the facts in entirety and dismissed the writ petition in W.P.No.7220 of 2022 by declaring that the alienation of the temple lands by way of sale to the tenants is perverse and set aside. The subsequent sale entered into by the vendors with



the 2nd petitioner therein and further, the sale of the said lands by the 2nd petitioner to the 1st petitioner are without any valid title and the said sale transaction are declared as void. Challenging the Writ Court order, the present writ appeal has been instituted.

ARGUMENTS ON BEHALF OF THE APPELLANTS:

13. Mr.V.Raghavachari, learned Senior Counsel appearing on behalf of the appellants would submit that the title derived by the 2nd appellant is crystal clear. Reiterating the facts narrated upon, the learned Senior Counsel would contend that the Writ Court has no power to declare the registered Sale Deed as void. Such a declaration granted is beyond the scope of the power of judicial review under Article 226 of the Constitution of India. Admittedly, the subject property belonged to the temple and leased out to Mr.Nagoorkani and after his death his two sons Mr.N.Meeran and Mr.N.Sherif became the lessees under the temple. They have defended the suit instituted by the temple for ejection in O.S.No.5802 of 1987. In the said suit, lessees under the temple Mr.N.Meeran and Mr.N.Sherif filed I.A.No.15824 of 1987 under Section 9 of the Tamil Nadu City Tenants Protection Act. The said Interlocutory Application was allowed and the value of the subject property



was fixed at Rs.20,842.50/- and the lessees paid the said amount and trustee of the temple, Smt.R.Valliammal executed the Sale Deed in favour of Mr.N.Meeran and Mr.N.Sherif vide Document dated 11th October, 1990. Thus, the title transferred in favour of Mr.N.Meeran and Mr.N.Sherif from the temple and thereafter, they have executed the Sale Deed in favour of the 2nd appellant from whom the 1st appellant derived title. Thus, the title of the appellants are clear. Therefore, the relief of declaration, declaring the Sale Deed null and void issued by the Writ Court is untenable.

14. Mr.V.Raghavachari, learned Senior Counsel relied on the Full Bench judgment in the case of *Arulmigu Kasi Viswanathaswamy Devasthanam Vs. Kasthuriammal* reported in *MANU/TN/8789/2006*. In the said judgment, the Full Bench considered the issues regarding the scope of Amendment Act No.2 of 1996 in the Tamil Nadu City Tenants Protection Act. The reference was answered as follows in paragraph 50:

“50. To sum up: The Amendment Act 2 of 1996 would apply when the two conditions exist
i) The proceedings initiated by the tenant in respect of any land owned by the religious



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institution must be pending before any Court on the date of publication of the Act.

ii) The decree or order has not been executed or not satisfied in full.

In this case, on the application filed under Section 9, seeking for a direction to the landlord to sell the land by execution of the sale deed, an order has been passed under Section 9(3)(a) after compliance of the conditions imposed by the trial Court by the tenant. Therefore, the moment the order under Section 9(3)(a) is passed, it shall be construed that the proceedings got terminated and the suit stood dismissed as per Section 9(3)(b) of the Act. Accordingly, the first ingredient, namely the pendency of the proceedings is absent. Further, when once a final order under Section 9(3)(a) is passed, the deeming provision 9(3)(b) comes into play, thereby meaning that the order is fully satisfied and complied with by the tenant and the statute does not contemplate any further action in this regard. Consequently, the second ingredient also is absent. Hence, the Amendment Act 2 of 1996 would not apply to the present case. The question is answered accordingly.”



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15. Relying on the above judgment, Mr.V.Raghavachari, learned Senior Counsel would submit that the Sale Deed executed by the erstwhile temple trustee is valid and the Civil Court decree was passed under Section 9 of the Tamil Nadu City Tenants Protection Act. Therefore, such a decree granted by the Civil Court cannot be nullified by the Writ Court by invoking the power of judicial review under Article 226 of the Constitution. Thus, the order under challenge is to be set aside.

ARGUMENTS ON BEHALF OF THE RESPONDENTS 1 AND 2:

16. Mr.N.R.R.Arun Natarajan, learned Special Government Pleader appearing on behalf of the respondents 1 and 2 strenuously opposed the contentions raised on behalf of the appellants by stating that the entire sale transaction was fraudulent. The temple properties were grabbed by executing documents without reference to the provisions of the Hindu Religious and Charitable Endowments Act. The City Civil Court has not considered the fact that, the temple properties are not falling under the Tamil Nadu City Tenants Protection Act even during that relevant point of time. Admittedly, the property has been owned by the temple and Mr.Nagoorkani was the original



lessee. Monthly rent of Rs.15/- was fixed. The original lessee committed default in payment of monthly rent. After his death, his two sons Mr.N.Meeran and Mr.N.Sherif were construed as lessees and against them the temple had instituted a civil suit for recovery of possession. The facts regarding the tenancy, monthly rent fixed are not disputed even in the suit. The said Mr.N.Meeran and Mr.N.Sherif filed a written statement categorically admitting these facts and they have filed a petition under Section 9 of the Tamil Nadu City Tenants Protection Act. However, they are not entitled to claim sale of temple property under the Tamil Nadu City Tenants Protection Act.

17. The original lessee has not obtained any permission for construction of super-structure in the temple land. When there is no super-structure as per the temple records and the temple land alone was leased out for a monthly rent of Rs.15/-, the application submitted under Section 9 of the City Tenants Protection Act is not maintainable. The City Civil Court committed jurisdictional error in entertaining such Interlocutory Application and passing an order fixing the value of the property with a direction to execute the Sale Deed. The entire process was done with the collusion of the



erstwhile Trustee of the temple. The act of the Trustee was against the interest of the temple administration. The act of the erstwhile trustee is in violation of the provisions of the Hindu Religious and Charitable Endowments Act. Thus, the entire transaction became null and void. The Writ Court elaborately considered all the facts and circumstances and formed an opinion that the sale transactions between the lessee and the 2nd appellant were fraudulent and in collusion with the erstwhile temple trustee and against the interest of the temple administration. Thus, the sale transactions became null and void. Therefore, the writ appeal is to be dismissed.

DISCUSSIONS:

18. In the context of the factum established, preliminarily the maintainability of a petition under Section 9 of the Tamil Nadu City Tenants Protection Act filed in a civil suit on the file of the XIIIth Assistant City Civil Court is to be considered.

19. The legal position is that the Special enactment will prevail over the General Statute. It is not in dispute that the Arulmigu Agastheeswarar Prasanna Venkatesa Perumal Devasthanam is a temple falling under the



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control of the Hindu Religious and Charitable Endowments Department, Government of Tamil Nadu. Thus, the provisions of the Hindu Religious and Charitable Endowments Act would prevail over all other general law. Madras City Tenants Protection Act is the general law, since the subject property is admittedly a temple property falling under the provisions of the Hindu Religious and Charitable Endowments Act.

20. As per the claim of the appellants, Mr.Nagoorkani was a lessee from the year 1948 onwards. The Tamil Nadu Hindu Religious and Charitable Endowments Act enacted in the year 1959 and even before the Act, 1959, the original lessee Late Mr.Nagoorkani was a lessee under the temple property. Therefore, the Hindu Religious and Charitable Endowments Act, 1959 is not applicable. Since such a contention is raised by Mr.V.Raghavachari, learned Senior Counsel, we have traced out the relevant provisions in the old Hindu Religious and Charitable Endowments Act.

21. Originally, the Madras Hindu Religious Endowments Act, 1926 was in force (Madras Act No.II of 1927). Section 76 of the Madras Hindu Religious Endowments Act, 1926 provides alienation of immovable trust



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property and the Section reads as under:

“76. (1) No exchange, sale or mortgage and no lease for a term exceeding five years of any immovable property belonging to any [math, temple or specific endowment] shall be valid or operative unless it is necessary or beneficial to the [math, temple or specific endowment] and is sanctioned [by the Board].

(2) The Trustee of the [math, temple or specific endowment] or any person having interest may within one year of the date of the order of the Board under Sub-Section (1), apply to the Court for modifying or cancelling such order.

(3) The order of the Board under Sub-Section (1) when no application is made under Sub-Section (2) and the order of the Court when such application is made shall be final”.

22. Thereafter, the Madras Hindu Religious and Charitable Endowments Act, 1951 came into force (Act No.19 of 1951). Section 29 of Act 1951 deals with alienation of immovable trust property and reads as



under:

“29. Alienation of immovable trust property. - (1) *Any exchange, sale or mortgage and any lease of any immovable property belonging to, or given or endowed for the purposes of, any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution:*

Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in such manner as may be prescribed, inviting objections and suggestions with respect thereto; and all objections and suggestions received from the trustee or other persons having interest shall be duly considered by the Commissioner.

[Provided further that the Commissioner, if he is satisfied that owing to any emergency or for some other reason to be specified in the order according sanction, it is not reasonably practicable to follow the procedure prescribed in the foregoing proviso, may, with the previous sanction of the Government dispense with such procedure.]

(2) When according such sanction, the Commissioner may impose such conditions and give



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such directions as he may deem necessary regarding the utilization of the amount raised by the transaction, the investment thereof and in the case of mortgage, regarding the discharge of the same within reasonable period.

(3) A copy of the order made by the Commissioner under this section shall be communicated to the Government and to the trustee and shall be published in such manner as may be prescribed.

(4) The trustee may within three months from the date of this receipt of a copy of the order, and any person having interest may within three months from the date of the publication of the order, appeal to the Government to modify the order or set it aside.

(5) Nothing contained in this section shall apply to the inams referred to in section 35.”

23. Further, 1951 Act was repealed and Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 (Tamil Nadu Act 22 of 1959) came into force. Section 34 of Act 1959 enumerates alienation of immovable trust property and reads as under:

*“34. Alienation of immovable trust property.
— (1) Any exchange, sale or mortgage and any*



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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 1[the Commissioner] as being necessary or beneficial to the institution :

Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in such manner as may be prescribed, inviting objections and suggestions with respect thereto; and all objections and suggestions received from the trustee or other persons having interest shall be duly consider by 1[the Commissioner] :

[Provided further that the Commissioner shall not accord such sanction without the previous approval of the Government]

Explanation.—Any lease of the property above mentioned through for a term not exceeding five years shall, if it contains a provision for renewal for a further term (so as to exceed five years in the aggregate), whether subject to any condition or not, be deemed to be a lease for a period exceeding



five years.

(2) When according such sanction, 1[the Commissioner] may impose such conditions and give such direction, as 3[he] may deem necessary regarding the utilization of the amount raised by the transaction, the investment thereof and in the case of a mortgage regarding the discharge of the same within a reasonable period.

(3) A copy of the order made by 1[the Commissioner] under this section shall be communicated to the Government and to the trustee and shall be published in such manner as may be prescribed.

(4) The trustee may, within three months from the date of his receipt of a copy of the order, and any person having interest may within three months from the date of the publication of the order 4[appeal to the Court] to modify the order or set it aside.

(4-A) The Government may issue such directions to the Commissioner as in their opinion are



necessary, in respect of any exchange, sale, mortgage or lease of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution and the Commissioner shall give effect to all such directions].

(5) Nothing contained in this section shall apply to the imams referred to in section 41.”

24. The above provisions from the Act 1926 onwards stipulate that the Temple property cannot be alienated at the whims and fancies of the trustees. Section 76 (1) of the 1926 Act stipulates that “No exchange, sale or mortgage and no lease for a term exceeding five years of any immovable property belonging to any math, temple or specific endowment shall be valid or operative unless it is necessary or beneficial to the math, temple or specific endowment and is sanctioned by the Board”.

25. The above provision in unequivocal terms declares that any sale, lease or mortgage for a term exceeding 5 years of an immovable property belonging to the temple is invalid.

26. In the present case, the appellants are unable to establish the period



of lease granted by the temple originally in favour of Mr.Nagoorkani. They have not even produced the lease deed, which was in force even during the relevant point of time. The terms of lease were not proved before any Court of Law. Even in the suit filed by the temple, the legal heirs of the original lessee Mr.Nagoorkani had not established the period of lease. Further, it is not proved that the lease granted in favour of Nagoorkani was renewed or extended by the temple authorities in the manner contemplated under the Hindu Religious and Charitable Endowments Act. In the absence of any document to establish that the lease was extended by the temple and there was a valid lease, and the lessee has no right to alienate the property.

27. When the Hindu Religious and Charitable Endowments Act stipulates conditions for alienation of temple property and to deal with the temple properties in the manner contemplated under the Hindu Religious and Charitable Endowments Act and in the interest of the temple administration, the petition filed under Section 9 of the City Tenants Protection Act is not maintainable and the said Act has no applicability in respect of the temple properties governed under the provisions of the Madras Hindu Religious Endowment Act, 1926 and the subsequent Acts. Therefore, order passed by



the XIIIth Assistant City Civil Court in an Interlocutory Application with a direction to execute the Sale Deed is an order of nullity in the eye of law.

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Since the order passed under Section 9 of the City Tenants Protection Act is null and void, all consequent Sale Deeds executed in respect of the temple property consequentially became null and void and unenforceable.

28. Though fraudulent execution of Sale Deed and alienation of temple property raised between the parties, we are not inclined to go into those allegations. However, the petition under the Tamil Nadu City Tenants Protection Act is not maintainable. Therefore, the execution of Sale Deed, alienating the temple property pursuant to the orders passed under Section 9 of the Tamil Nadu City Tenants Protection Act is untenable and nullity in the eye of law.

29. Even the subsequent enactment, the Madras Hindu Religious and Charitable Endowments Act, 1951 provides a corresponding provision under Section 29 regarding alienation of immovable trust property. Sub Section (1) to Section 29 enumerates that “Any exchange, sale or mortgage and any lease of any immovable property belonging to, or given or endowed for the



purposes of, any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution”. Again the corresponding provision is identifiable under Section 34 of the Hindu Religious and Charitable Endowment Act, 1959.

30. The Three Judges Bench of the Hon’ble Supreme Court of India in the case of ***Joint Commissioner, Hindu Religious and Charitable Endowments Administration Department Vs. Jayaraman and Others*** reported in ***2006 (1) SCC 257*** held as follows:

“9. In either case, the permission contemplated by the respective sections was a must and the District Court lacked jurisdiction to give the permission for sale on an application under Section 34 of the Trusts Act, 1882, that too, without issuing notice to and hearing the authorities under the HR&CE Act.

10. The claimants had themselves applied under Section 63(b) of the HR&CE Act and had got themselves appointed as trustees. They had themselves held out and accepted that the HR&CE Act applies to the trust concerned. There is no case



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that the temples are not public temples and are not under the control of the HR&CE Department in terms of the HR&CE Act. At best, the contention is only that the lands were conveyed in trust not to the temples or to the deities, but to the poojaris of the temples but with an obligation to utilise the income from the properties for the poojas and the upkeep of the temples. This certainly brought in the HR&CE Act and the control of the authorities thereunder, even in respect of the administration of the trust by the claimants. The claimants were really estopped from raising a contention that the HR&CE Act had no application or that they did not need the permission of the Commissioner under the Act for alienation either under Section 34 or under Section 41 of the HR&CE Act. The claimants were disentitled to bypass the provisions of the HR&CE Act and to secure an order from the District Judge without notice to the HR&CE Department by moving an application under Section 34 of the Trusts Act, 1882. The order thus obtained cannot bind the trust or the properties, or the deities or the HR&CE Department. Similarly, no reliance can be placed on the so-called patta obtained by the claimants from the Settlement Tahsildar without



notice to the HR&CE Department.”

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31. In view of the above legal position, the entire sale transaction between the private parties regarding the alienation of temple property is null and void and unenforceable.

32. The Division Bench of this Court in Review Application (Writ) Nos.169 and 170 of 2021 dated 02.06.2023 in the case of ***The Chief Secretary, Government of Tamil Nadu Vs. The Director, Archaeological Survey of India***, held as follows:

“16. As such, the temple properties cannot be gifted away against the interest of the institution. The intention with which the charities given by the donor cannot be shun away at the pleasure of the government or the Commissioner. The Will of the donor is of paramount importance, which cannot be surpassed at executive pleasure against the interest of the temples. At this juncture, it is necessary to place on record the importance of maintenance of accounts regarding the contribution by the donors, hundi collection, expenditure and importance of independent audit



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performed by an authority not forming part of state functionary. Therefore, the alienation by the government can only be in consonance with the provisions and object of the HR&CE Act; and that, the actions taken by the HR&CE Department shall always be subject to judicial review as this Court being one of the guardians of the rights guaranteed by the constitution, is vested with such power.”

33. Section 111 of Hindu Religious and Charitable Endowments Act states that “Notifications, orders, etc., under the Act not to be questioned in Court of Law. Save as otherwise expressly provided in this Act, no notification or certificate issued, order passed, decision made, proceedings or action taken, scheme settled, or other thing done under the provisions of this Act by the Government, the Commissioner [or the Additional Commissioner] [or a Joint or Deputy Commissioner, or an Assistant Commissioner shall be liable to be questioned in any Court of Law”.

34. In view of Section 111, lease granted under the provision of the Hindu Religious and Charitable Endowments Act cannot be subjected to a civil suit nor a petition under Section 9 of the City Tenants Protection Act,



1921 is entertainable.

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35. In the present case, the facts and the legal position as discussed above would be sufficient to arrive at a conclusion that alienation of the leased out temple property in violation of the provisions of the Hindu Religious and Charitable Endowments Act are null and void. The decree of the civil suit is unenforceable, since it was issued without jurisdiction. The petition under the City Tenants Protection Act is entertainable and the order passed under Section 9 of the said Act is void *ab initio*. Consequently, all subsequent alienations became null and void in the eye of law.

36. It was also noted that in many instances, people entrusted with the duty of safeguarding temple properties have misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the concerned authorities. Such acts of 'fences eating the crops' should be dealt with sternly. The Government, members or trustees of Boards/Trusts and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of Courts to protect and safeguard the properties of religious and charitable



institutions from wrongful claims or misappropriation.

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37. Encroachments upon temple property by tenants is a serious legal issue that demands stringent enforcement of property laws and respect for religious sentiments. Temple authorities must be vigilant in protecting their land holdings, while tenants must adhere to the terms of their lease agreements. Judicial intervention, guided by established legal principles, is crucial in resolving disputes and upholding the rule of law. The judiciary can safeguard the sanctity of temple lands and uphold the rights of all parties involved.

CONCLUSION:

38. In view of the facts and circumstances, the respondents are directed to resume the subject property belongs to the temple by following the procedures as contemplated under the Hindu Religious and Charitable Endowments Act and utilize the temple property for the interest of temple administration. The said exercise is directed to be completed within a period of three (3) months from the date of receipt of a copy of this order.



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39. With the above directions, the Writ Appeal fails and stands dismissed. Consequently, connected Miscellaneous Petition is closed.

However, there shall be no order as to costs.

[S.M.S., J.] [K.R.S., J.]
20.03.2024

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Index : Yes
Speaking order
Neutral Citation : Yes

To

- 1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam, Chennai – 600 034.
- 2.The Executive Officer,
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S.M.SUBRAMANIAM, J.
and
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