



S.A.(MD).No.750 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.07.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

S.A.(MD).No.750 of 2021

and

CMP(MD)Nos.7158, 7449 and 10062 of 2024

1.M.Devasena

2.S.Lalaram

.. Appellants/Appellants/
Defendants

Vs.

Arulmigu Koodal Alagar Temple,
Madurai Through its Assistant Commissioner /
Executive Officer, Office at
Arulmigu Koodal Alagar Temple,
Madurai.

... Respondent/Respondent/
Plaintiff

PRAYER:- Second Appeal filed under Section 100 of the Civil Procedure Code, to call for the records and set aside the decree and judgment dated 20.12.2019 in A.S.No.61 of 2017 on the file of the II Additional Subordinate Judge, Madurai, by confirming the Judgment and Decree, dated 03.04.2017 made in O.S.No.629 of 2012 on the file of the Principal District Munsif Court, Madurai Town.

For Appellants : Mr.M.Kannan
for Mr.V.B.Sundhareshwar

For Respondent : Mr.S.Manohar



S.A.(MD).No.750 of 2021

JUDGMENT

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This appeal has been filed against the decree and judgment dated 20.12.2019 in A.S.No.61 of 2017 on the file of the II Additional Subordinate Judge, Madurai, confirming the Judgment and Decree, dated 03.04.2017 made in O.S.No.629 of 2012 on the file of the Principal District Munsif Court, Madurai Town.

2.The brief averments made in the plaint are as follows:-

2.1.The property belongs to the plaintiff/Temple. The first defendant namely N.Devasena became a lease holder for residential purpose for a monthly rent of Rs.1,090/-. It is a English Calendar month basis of tenancy. To that effect a written lease agreement was also entered on 16.12.2009. One among the condition is that he should not sublease the premises and other usual conditions also imposed upon the first defendant. Against the terms and conditions, she sublet the property to the second defendant for non residential purpose, not only that she also put up unauthorized construction in the property without the permission of the plaintiff.



S.A.(MD).No.750 of 2021

2.2.The legal notice was issued on 09.12.2011 terminating the tenancy of the first defendant with the end of 31.12.2011 and direction to hand over the vacant possession by 01.01.2012. That was received by the first defendant. But, the second defendant did not receive the same. Apart from that notice was also issued to the first defendant to remove the unauthorized construction on 15.03.2011. It was replied by the first defendant which contains false and frivolous allegations.

2.3.The Thakkar of the temple passed a Resolution on 24.05.2012 to file a suit against the defendants. So the suit is laid for recovery of possession, damages for use and occupation till delivery as per Order 20 Rule 12 of CPC and for costs.

3.The brief averments made in the written statement filed by the defendants:

3.1.The statement was filed by the defendants jointly which contains the following averments: The tenancy is admitted. The allegation that the first defendant sublet the property to the second defendant is denied. So also the alleged unauthorized construction.



S.A.(MD).No.750 of 2021

3.2.The Assistant Commissioner/Executive Officer of the plaintiff temple permitted the plaintiff to demolish the suit property, which was in a damaged and dilapidated condition and construct a new building at her cost. A condition was imposed upon the first defendant that she should gift the building to the second defendant and fair rent must be paid to be fixed by the Assistant Commissioner. Only on that basis, the first defendant put up a construction, which was approved by the Temple Authorities. In the construction, she put up second and third floor at her own cost and applied for ratification of the construction.

3.3.A gift deed was executed on 09.06.2011 in favour of the plaintiff, which was also handed over. She remitted the penalty charges to the Corporation for putting up construction in the property. The Joint Commissioner, Hindu Religious and Charitable Endowment Department, Madurai, by his proceedings, dated 03.08.2011, directed the Assistant Commissioner / Executive Officer of the temple to take action for getting the electricity connection, fixing the fair rent and collecting the same. But, the Assistant Commissioner / Executive Officer did not implement the proceedings. So, the first defendant filed W.P.(MD).No.13934 of



S.A.(MD).No.750 of 2021

2011 against the Joint Commissioner / Executive Officer and Assistant Engineer. That was disposed of with a direction.

3.4. In the written statement, it has been wrongly stated that a condition was imposed upon the first defendant to gift the property to the second defendant. But, already condition was imposed upon the first defendant to gift the building to the plaintiff after making the completion. Unfortunately, no amendment petition was filed by the defendant to correct the mistake. Now, whatever it may be, it is the case of the first defendant that the above said condition was imposed upon her, only in pursuance of the above said condition and permission she put up the construction of the second and third floor.

4. On the basis of the above said pleadings on both sides, the trial Court has formulated the following issues as narrated below:-

1. *Whether the plaintiff is entitled to the relief of recovery of possession as prayed for?*
2. *Whether the plaintiff is entitled to the relief of damages as prayed for?*
3. *To what other relief the plaintiff is entitled to?*



S.A.(MD).No.750 of 2021

5.In order to substantiate the case, on the side the plaintiff one witness was examined and 10 documents were marked. On the side of the defendant, the first defendant was examined as DW1 and 3 documents were marked.

6.At the conclusion of the trial process, by the Judgment dated 03.04.2017, the suit was decreed as prayed for with cost, directing the appellant herein to vacate and hand over the vacant possession, within a period of two months. With regard to the mesne profits, it was relegated to a separate proceedings Under Order 20 Rule 12 CPC.

7.Against the Judgment and decree of the trial Court, the defendants filed appeal before the appellate Authority namely II Additional Sub Judge, Madurai, in Appeal Suit No.61 of 2017. It was also came to be dismissed concurring the findings recorded by the trial Court by the Judgment and Decree dated 20.12.2019. Against which, this second appeal is preferred.

8.At the time of admission, the following substantial question of law was framed.



S.A.(MD).No.750 of 2021

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1. Whether the respondent is prevented by the law of estoppel after accepting the gift deed executed by the appellants in favour of the respondent?
2. Whether the plaintiff suppressed the material facts in the plaint?
3. Whether the plaintiff has proved his case by adducing oral and documentary evidence?
4. Whether the lower Court has come to the conclusion without referring to the oral and documentary evidence of the defendant in favour of the plaintiff?
5. Whether the lower Court decided the issues without applying the Evidence Act and is it correct?
6. Whether the lessee continuing to be in possession of the property let out to him could be considered to be illegal occupation and as such whether he would be liable to be thrown away from the property otherwise than in accordance with law?
7. Whether the act of the plaintiff in approaching the civil Court by circumventing the provisions of S.78 of Tamil Nadu HR and CE Act is legally justifiable?



S.A.(MD).No.750 of 2021

8. Whether the civil Court has any jurisdiction despite the express bar u/s.34B and 34D of the Tamil Nadu HR and CE Act?

9. When there is a specific provision for eviction under Section 78 under the special enactment namely Tamil Nadu HR and CE Act, whether the suit is maintainable?

Additional Substantial Question of Law on 21.12.2022.

1. Whether the suit filed by the plaintiff is maintainable in law without getting prior permission by the executive officer of the plaintiff temple from the Commissioner in the light of dictum laid down in Sri Arthanareeswarar of Thiruchengode by its Present Executive Officer Vs. T.M.Muthuswamy Padayachi, ETC and others, 2003(1) LW 386 (DB)?

9. During the course of hearing, with the permission of the Court the appellant submitted additional substantial question law, which were also framed after hearing both sides as narrated below on 13.06.2024.

1. Whether the Courts below were right in holding other tenancy was not protected without considering the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959?



S.A.(MD).No.750 of 2021

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2. Whether the respondent were not estopped from evicting the appellant immediately after having obtained a Gift Deed for the superstructure with promise to fix the fair rent and continuance of tenancy in favour of the appellant?

10.A simple issue, but dragged on for several years without conclusion for one or other reason. The reason being that at one point of time a proposal was made by the appellant to make a compromise. Even fair rent proceedings were proposed to be initiated by the appellant. But, some how or other did not give any result. The reason for this proposal is that the appellant had, incurring the cost for put up the construction in the property leased out, according to them, on the basis of the permission granted by the respondent authorities with a condition to gift the constructed property back the respondent. Now according to the appellant, the authorities failed to keep their promise and now, they are estopped from denying the right of the appellants to remain in possession of the property by paying proper fair rent.



S.A.(MD).No.750 of 2021

11. Per contra, it is a contention on the part of the respondent, there is no question of estoppel against illegal activity. The property was leased out to the first appellant for residential purpose. But, against that she converted the same into non residential purpose, not only that she put up second and third floors and without proper permission or ratification as the case may be and not only she also sublet the same to the second defendant. So according to the respondent, there is no question of estoppel against the illegal activity. The appellants are precluded from claiming such sort of claim. It is further submitted that it is a public property which belongs to the public Endowment Department meant for welfare of the public, individual cannot take advantage of his possession and convert the same to his own advantage to keep the possession for ever. According to him, such sort of attempt on the part of the appellant should not be given approval by this Court. It is further submitted that since it is a case of concurrent finding, no interference is called for at the instance of the appellant herein.

12. CMP(MD)No.7158 of 2024 is filed seeking leave of this court to produce the petition mentioned documents as additional evidence. In



S.A.(MD).No.750 of 2021

the affidavit it has been stated that a representation was made by the petitioners to fix the fair rent, which is dated 15/03/2011, before the Joint Commissioner, HR & CE, Madurai. Proceedings were initiated to seek guideline value from the Sub Registrar, Madurai. Based upon the promise made the respondent for fixing the fair rent, he executed a gift deed dated 09/06/2011. That was not produced before the trial court. So there is a delay in producing the document.

13.For just decision of the case, these documents must be received as additional evidence and mark on the side of the appellants/the defendants. There was no counter filed by the respondent. Heard along with the second appeal.

14.These are admitted documents by both sides. For just decision of the case, these documents can be marked by condoning the delay on the side of the appellants/Defendants as Exs.B4 to B7. Accordingly, CMP(MD)No.7449 of 2024 is **allowed**.

15.Let us go to the arguments advanced by both sides.



S.A.(MD).No.750 of 2021

16.A preliminary plea of estoppel must be taken for consideration.

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17.The judgement on the point of law of estoppel is available in
INDIRA BAI Vs. NAND KISHORE (1990(4)SCC 668). We can extract
the relevant portion:-

“1.1 Estoppel is a rule of equity flowing out of fairness striking on behaviour deficiency in good faith faith. It operates as a check on spurious conduct by preventing the inducer from taking advantage and assailing forfeiture already accomplished. It is invoked and applied to aid the law in administration of justice. But for it great many injustice may have been perpetrated.

1.2.....

2.2 There can be no estoppel against statute. Equity usually follows law. Therefore, that which is illegal cannot be enforced by resorting to rule of estoppel. Such an extension may be against public



S.A.(MD).No.750 of 2021

policy. The distinction between validity and illegality or the transaction being void is clear and well known. The former can be waived by express or implied agreement or conduct. But not the latter. Shalimar Tar Products Ltd. v. H.C. Sharma, AIR 1988 SC 145; Equitable Life Assurance Society of the United States v. Reed, 14 AC 587; Bishan Singh v. Khazan Singh, AIR 1958 SC 838 and Radha Kishan v. Shridhar, AIR 1960 SC 1369, referred to.

18.In that judgment, another important principle was also laid. The plea of estoppel can be taken as a weapon of defence, but that defence is available only in case of private contractual liability.

19.I can extract the word spoken by the Hon'ble Supreme Court in that judgment “*the test to determine the nature of interest, namely, private or public is whether the right which is renounced is the right of party alone or of the public also in the sense that the general welfare of the society is involved. If the answer is latter then it may be difficult to*



S.A.(MD).No.750 of 2021

put estoppel as a defence. But if it is right of party alone then it is capable of being abnegated either in writing or by conduct.”

20.This observation of the Hon'ble Supreme Court assumes importance in the light of the argument advanced by the respondent as noted above to the effect that this, the interest of the public is also involved. Since the interest of the public is also involved, the plea of estoppel cannot be taken as a defence against eviction.

21.Now let us go further on this aspect of estoppel.

22.In R.S.Madanappa Vs. Chandramma (AIR 1965 SC 1812), it was held that its object is to prevent fraud and secure justice between the parties by promotion of honesty and good faith. It was therefore, further held that when one party makes a representation to the other about a fact he would not be shut out by the rule of estoppel if that other person knew the true state of facts and must consequently not have been misled by the Misrepresentation.



S.A.(MD).No.750 of 2021

23.In Pratima Chowdhury Vs. Kalpana Mukherjee (AIR SC 1304),

this position is clarified more.

“While considering Section 115 of the Evidence Act, this Court held that four salient conditions are to be satisfied before invoking the rule of estoppel. Firstly, one party should make a factual representation to the other party. Secondly, the other party should accept and rely upon the aforesaid factual representation. Thirdly, having relied on the aforesaid factual representation, the second party should alter his position. Fourthly, the instant altering a position, should be such, that it would be iniquitous to require him to revert back to the original position. After holding so, it was further held that the doctrine of estoppel would apply only when, baed on a representation by the first party, the second party alters his position, in such manner, that it would be unfair to restore the initial position.



24.Further, this position is clarified in B.L.Shreedhar Vs.

25. Now coming back to the judgment of the Hon'ble Supreme

26. With these principles in mind, let us go to the factual position



S.A.(MD).No.750 of 2021

Hindu Religious and Charitable Endowments Act, 1959, in the light of the submission made by the learned counsel appearing for the appellants.

27.We will go to the provisions as to whether the appellants right is protected under the provisions of the Act.

28.As stated in the pleadings portion, it is a clear violation of the conditions imposed upon the appellants with regard to the user.

29.It is admitted that it was let out for residential purpose, later converted to non residential purpose without permission of the respondent herein. I will extract the relevant portion in the later portion of the judgment.

30.Now, we will go to section 34-B of the Act, which is relied by the appellant.

31.Section 34-B of the Act reads as under:-

“34-B. Termination of lease of immovable property.-(1)The lease of immovable property



belonging to, or given or endowed for the purpose of, any religious institution shall be liable to be terminated on the non-payment of the lease rent or on violation of any of the conditions imposed in the lease agreement after giving a reasonable opportunity of being heard.

(2)No proceeding to terminate the lease shall be initiated, if ---

(i)the time for appeal or revision under sub-section (3)or sub-section (5), as the case may be, of Section 34-A has not expired; or

((3)On the termination of the lease under sub-section (1), the property shall vest with the concerned religious institution free from all encumbrances and the Executive Officer, the Trustee or the Chairman of the Board of Trustees, as the case may be, of such religious institution shall take possession of the property including the building, superstructure and trees, if any.

32.Here, notice was issued for violation of the terms and conditions. Now the learned counsel appearing for the appellants would



S.A.(MD).No.750 of 2021

rely upon sub- section 2 of Section 34-B and would submit that appeal provision is available against the order of eviction; During the proceedings, they would have been given reasonable opportunity of being heard; That opportunity was denied to them; Not only that, appeal remedy was denied to them. So, according to him, issued notice under section 106 of the Transfer of Property Act is not legal and without invoking the provision of section 34-B of the Act their right is seriously interfered.

33. So the question, which arises for consideration is whether such a contention can be accepted.

34. Invoking section 106 of the Transfer of Property Act and the jurisdiction of the civil Court for eviction in the light of section 34-B of the Act is not barred as clarified in K. Viswanathan Vs. Arulmighu Aadhi Solaiammal (MANU/TN/2885/2016). In that judgment, it was held that option is available to the temple to choose either of the two Acts.



S.A.(MD).No.750 of 2021

35.The next aspect, soon-after termination of notice received by the lessee, section 78 of the Act will come into operation.

36.Section 78 of the Act, reads as under:-

“78.Encroachment by persons on land or building belonging to charitable or religious institution or endowment and the eviction of encroachers-(1)Where the Assistant Commissioner having jurisdiction either suo motu or upon a complaint made by the trustee has reason to believe that any person has encroached upon (hereafter in this section referred to as “encroacher”) any land, building, tank, well, spring or water-course of any space wherever situation belonging to the religious institution or endowment (hereinafter referred to as “the property”) he shall report the fact together with relevant particulars to the Joint Commissioner having jurisdiction over the division in which the religious institution or endowment is situated.”



S.A.(MD).No.750 of 2021

37.By virtue of the above said provision, even improvements made by the lessee in the property will vest with the temple free from all encumbrances. Here, the gift was executed by the appellants in favour of the respondent temple in respect of the superstructure. In effect, it has no validity because of section 78 of the Act. Now, she has become a trespasser by virtue of section 78 of the Act.

38.Again whether this plea is available has been answered by the Division Bench of this Court in A.N.Kumar' Vs. Arulmighu Arunachaleswarar Devasthanam (Assistant Commissioner), Tiruvannamalai & Others (2011-2-LW-1), which is extracted hereunder:-

“ 25. Point No.3:- The learned counsel for the appellant contended that specific provisions for recovery of possession of the properties belonging to charitable or religious institutions or endowments and the eviction of encroachers have been provided in Tamil Nadu H.R. & C.E.Act, 1959 and hence the suit filed by the plaintiff Devasthanam for recovery of possession of the land and building in the Civil Court is not maintainable and that the



S.A.(MD).No.750 of 2021

same is barred under [Section 108](#) of H.R.& C.E.Act. In support of his contention, the learned counsel placed reliance upon judgement of single Judge in [B.SHAJI VS. SREE PRAVARASWAMY DEVASTHANAM](#), 2010(3) CTC 851, wherein the learned single Judge held that "provisions have been made for the removal of encroachment by the Joint Commissioner under [Section 78](#). The bar provided under [Section 108](#) of the Act will come into play to prevent a suit being filed straight away in a Civil Court for recovery of the property. The above contention is liable to be rejected on two simple grounds: Firstly, H.R. & C.E.Act, 1959 came into force on 2.12.1959 and in the case on hand, the lease is of the year 1937 and therefore provisions of H.R. & C.E.Act, 1959 are not applicable. Secondly, [Section 78](#) was inserted by amendment under Tamil Nadu Act 39 of 1996, which came into force on 9.12.1996 and the suit - C.S.No.1486 of 1988 was filed way back in 1988 and [Section 78](#) inserted by [Amending Act](#) 39 of 1996 is not applicable.

26. After extracting Sections 78 and 79, in B.Shaji's case (2010(3) CTC 851), the learned single Judge held that



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S.A.(MD).No.750 of 2021

"since a specific provision has been made for the eviction of the encroacher, no suit can be directly instituted in any Court of law except and in conformity with the provisions of the Act as per [Section 108](#) of Tamil Nadu H.R. & C.E.Act, 1959." In [B.Shaji's](#) case (2010(3) CTC 851), the learned single Judge further held that in view of [Section 108](#) of the Act, the Civil Court loses its jurisdiction to entertain the suit for recovery of possession and the learned judge has taken the view that a suit for recovery of possession squarely falls within the ambit of "administration or management of a religious institution or any other matter or disputes determining or deciding for which provision is made in the Act shall be made instituted.

27. Since the above findings of the learned single Judge in [B.Shaji's](#) case (2010(3) CTC 851) pertaining to the temple properties would adversely affect the number of suits filed by the Temples, we would like to analyse [the said judgment](#) to demonstrate that the view taken by the learned single judge is not a correct interpretation of Chapter VII and [Sections 78](#) and [79](#) of the Act.



28. Chapter VII of 1959 Act containing [Sections 77 to 85](#) is in the Statute book from the commencement of H.R. & C.E.Act, 1959. Chapter VII is introduced as new Chapter under the head "Encroachments". [Section 77](#) deals with "Transfer of lands appurtenant to or adjoining religious institutions prohibited except in special cases." [Section 77](#) starts with "Notwithstanding anything contained in [Section 34](#), no trustee of the Religious institution shall lease or mortgage with possession or grant a licence for the occupation of:-

(a) any land belonging to the religious institution which is appurtenant to or adjoins the religious institution, or any sacred tank, well, spring or water course, appurtenant to the religious institution whether situated within or outside the precincts thereof, of

(b) any space within or outside the prakarams, mantapams, Courtyards or corridors of the religious institution."

The Section itself is explanatory. In [Section 77](#), there is nothing express or implied barring the jurisdiction of the Civil Court

29. [Section 78](#) of the H.R. & C.E.Act deals with jurisdiction of Assistant Commissioner to remove encroachment by persons on land or building belonging to charitable or religious institution or endowment and the eviction of encroachers. [Section 78](#) envisages a situation where encroachment of any land, building,



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S.A.(MD).No.750 of 2021

sacred tank, well, spring or water course or any space, wherever situation belonging to the religious institution or endowment". As per explanation (b) of [Section 78\(1\)](#), an encroacher includes any person, who continues to remain in the property after the expiry or termination or cancellation of the lease, mortgage or licence granted to him. Thus, [Section 78](#) squarely deals with "encroachments". [Section 79](#) deals with "Mode of eviction on failure of removal of the encroachment as directed by the Joint Commissioner." As per [Section 79](#), if within the period specified in the Order under [Section 78\(4\)](#) the encroacher has not removed the encroachment and has not vacated the property, by taking police assistance, the Assistant Commissioner may remove the encroachment and obtain possession of the property encroached upon. [Section 79\(1\)](#) contemplates taking police assistance for the purpose of eviction. Proviso to [Section 79](#) expressly prohibits the suit instituted by a person who is let into possession of the property or who is a lessee, licensee or mortgagee of the religious institution or endowment. [Section 79](#) also provides that a person aggrieved by the order of the Joint Commissioner under sub-[section 4](#) of [Section 78](#) can institute a suit in a Civil Court to establish that the religious institution or endowment has no title to the property.



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30. In [B.Shaji's](#) case, (2010(3) CTC 851), the learned single judge has also held that similar provision has been made in [Section 80](#) of the Act for eviction of a lessees, licensees or mortgagees. In our considered view, [Section 80](#) deals with eviction of lessees, licensees or mortgagees with the possession only in certain cases.

31.As per [Section 80\(2\)](#), the Joint Commissioner or the Deputy Commissioner on being 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 concerned, shall issue show cause notice. [Section 80\(4\)](#) enables the Joint Commissioner or the Deputy Commissioner to pass orders on being satisfied when he decides that the artistic appearance or the religious atmosphere of the religious institution has been marred or ia likely to be marred by the action of the lessee, licensee or mortgagee. Close reading of [Section 80 \(1\)](#) would show that eviction contemplated under [Section 80](#) only relates to the lease made by the authorities of which lessee,licensee or mortgagee has taken any action which has marred or is likely to mar



WEB COPY



S.A.(MD).No.750 of 2021

the artistic appearance or the religious atmosphere of the religious institution.

32. Chapter VII of the Tamil Nadu Hindu Religious and Charitable Endowments Act,

1959 specifically speaks about

"Encroachments". Sections 78 and 79 provide for

mechanism to remove the encroachment. They merely

speak about the powers and duties of the Assistant

Commissioner and the joint Commissioner to take

appropriate action under the Act to remove an

encroachment. A perusal of Section 78 would make the

position very clear that the action can be initiated by

the Assistant Commissioner either suo motu on his own.

In order to exercise such power, the Assistant

Commissioner concerned will have to act when an

alleged encroachment of a property belonging to the

temple coming under the purview of the Act comes to

his knowledge. Similarly, action can be taken on a

complaint made by the trustee concerned. It is

important to note that Section 78 speaks about a



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S.A.(MD).No.750 of 2021

complaint by the Trustee, which means after a complaint has been given by the trustee, then the further action will have to be taken by the Assistant Commissioner. When it is brought to the knowledge of the Assistant Commissioner by the Executive officer, then that information can be the basis of a suo motu action. Similarly, when a complaint is made by a trustee to an Officer appointed by an authority under the Act, then it can be taken as a complaint. Therefore, the role of the trustee or an Officer In-charge is limited to the extent of giving a complaint. The question that arises for consideration is in a case where the Assistant commissioner has not pursued the complaint or not exercises his suo motu powers in spite of the encroachment having been brought to his knowledge, what would be the remedy available to protect the property of the temple to an authority, who is competent to do so. The officer, in our considered view, is to have recourse to the Civil Court. The Executive officer, being



an Officer appointed by a competent authority, is duty bound to protect the property of the temple. Therefore, it is incumbent on him to file a suit and protect the right of the temple.

33. Sections 78 and 79 provide for a mechanism to evict an encroacher. Section 79 specifically provides an opportunity to the encroacher to approach the Civil Court. It is pertinent to note that such a clause has not been provided to an authority representing the temple. Therefore, there is no express bar under Sections 78 and 79 for an authority acting on behalf of the temple to approach the Civil Court. Such a bar can only be applied to the encroacher by having recourse to section 79(2) of the Act. In our considered view, the bar of jurisdiction of Civil Court under second proviso to Section 79 is the express bar in respect of suits instituted only by a lessee, licensee, or mortgagee of the religious institution or endowment.

34. Sections 77 to 85 provide for special mechanism empowering the Joint Commissioner/Deputy Commissioner to pass order of removal of encroachment or passing order of eviction against the



S.A.(MD).No.750 of 2021

lessees/licensees/mortgagees, whose action has marred or likely to mar the artistic appearance or the religious atmosphere of the religious institution. For facilitating eviction, under [Section 79\(1\)](#) or under [Section 81\(5\)](#), the Joint Commissioner or the Deputy Commissioner may seek police assistance for evicting the persons in possession on failure to removal of encroachment, as directed by the Joint Commissioner. Section 79-A deals with encroachment by group of persons on land belonging to charitable and religious institutions and their eviction. Section 79-B stipulates levy of penalty for offences in connection with encroachment. Section 79-C deals with recovery of moneys due to religious institution as arrears of land revenue. A close reading of Chapter VII containing [Sections 78 to 85](#) would show that Chapter VII contains an inbuilt mechanism empowering the officers of Hindu Religious and Charitable Endowments to take speedy action for removal of encroachment and also to take action against those lessees, licensees or mortgagees, whose action has marred or is likely to mar the artistic appearance or the religious atmosphere of the religious institution.

35. In the [Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959](#), no express provision



S.A.(MD).No.750 of 2021

is made to recover possession from tenant, licensee, lessee or mortgagee, which the temple intends to take possession after terminating the lease. Since no express provision is made to recover possession from tenants, licensees, lessees or mortgagees the bar under [Section 108](#) is not attracted by filing ejectment suit by the temple.

36.The crucial question in these appeals is, whether for ejectment suit filed by the temple, jurisdiction of the Civil Court is expressly barred.

37.The normal rule of law is that Civil Courts have jurisdiction to try all suits of civil nature except those of which cognizance by them is either expressly or impliedly excluded as provided under [Section 9](#) of the Code of Civil Procedure but such exclusions are not readily inferred and the presumption to be drawn must be in favour of the existence rather than exclusion of jurisdiction of the Civil Courts to try civil suit. The test adopted in examining such a question is (i) whether the legislature's intention to exclude arises explicitly or by necessary implication, and (ii) whether the statute in question provides for adequate and satisfactory alternative remedy to a party aggrieved by an order made under it. However, where a statute gives finality



to the orders of the special tribunals, jurisdiction of the Civil Courts must be held to be excluded, if there is adequate remedy to do what the civil Courts would normally do in a suit and such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure (vide [STATE OF ANDHRA PRADESH VS. MANJETI LAXMI KANTHA RAO](#), AIR 2000 SC 2220 = (2000) 3 SCC 689).

.....42. It is a settled position of law that until and unless the jurisdiction of the Civil Court is ousted either expressly or impliedly, an affected party cannot be prevented from approaching it. As observed above, [Sections 78 and 79](#), which deal with encroachment, merely embark upon a procedure for removing an encroacher of a temple property. They do not put any fetters on the power of the authority acting as a guardian of the temple property to have recourse to the Civil Court. The jurisdiction of the Civil Court is plenary in nature. Hence, unless the suit is barred either expressly or by necessary implication, it cannot be non-suited. (see [NAHAR INDUSTRIAL ENTERPRISES LTD. VS. HONG KONG AND](#)



S.A.(MD).No.750 of 2021

SHANGHAI BANKING CORPORATION, ((2009) 8 SCC 646) and RAJASTHAN SRTC VS. BAL MUKUND BAIRWA(2) ((2009) 4 SCC 299)).

43. When the temple has not chosen to go under the purview of the Act, then it cannot be said that the suit is barred. In other words, it is for the temple to choose either the common law remedy by way of filing a regular suit or invoke the provisions of the Act by approaching the authorities concerned. When such an action is taken against an encroacher, it cannot be questioned on the ground of lack of jurisdiction. Because initiation of the action ultimately lies with the temple.

44. As discussed above, Section 79 does not provide for any mechanism for the temple to approach the Civil Court. Therefore, the remedy is given only to the encroacher for passing an order against him. Hence, the bar certainly would apply to the case of the encroacher in directly filing the suit against the temple.

45. The decision to elect a particular procedure lies with the owner of the property, being the temple. Considering the object of the introduction of Chapter VII, which only demarcates the procedure for removing the encroachment by the Officers of the Department, we have no hesitation in holding that the said procedural



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S.A.(MD).No.750 of 2021

law will not bar the filing of the suit by the temple to recover and protect its own property.

46. Therefore, a reading of [Sections 78 and 79](#) with the right available in seeking remedy under the common law would show that there is no inherent or implied inconsistency between the remedies provided therein. What would be the best course for the temple will have to be decided by the Person In-charge. It is further to be seen that when the encroacher has been given a right to approach the Civil Court after an order has been passed by the Deputy Commissioner against him, there cannot be a bar for the temple to file a suit. After all, the object sought to be achieved either under Section 78 and 79 of the H.R. & C.E. Act or by filing the suit is one and the same. Hence, the remedy sought for being one, the suit filed on behalf of the temple is very much maintainable. After all, procedural law will have to make way for the substantial justice to be rendered between the parties.

47. In our considered view, in [B.Shaji's case](#) (2010(3) CTC 851), the learned single Judge has not correctly interpreted Chapter VII containing [Sections 78, 79 and 80](#) and the learned single Judge has not correctly laid down the law on the ejectment suits filed by the temples and the judgment in [B.Shaji's case](#)



(2010(3) CTC 851) would adversely effect the pending ejectment suits filed by the temple and it would have the affect of paralysing the proper administration of the properties of the temple. In our considered view, the decision in [B.Shaji's](#) case (2010(3) CTC 851) has not been rendered on proper interpretation of Chapter VII and the view taken by the learned single Judge is not a correct view.

48.During the course of arguments, it was submitted that about 6500 eviction petitions are pending before the Joint Commissioner, H.R. & C.E.Act, out of which only few cases have been disposed. If the temples are to approach the Joint Commissioner in all the cases for filing eviction petitions, the very object of H.R. & C.E.Act would be defeated. Having regard to the number of eviction petitions, keeping in view the interest of temple and the temple properties, it would be in order if the Government appoints more Officers to deal with the eviction petitions.

49. We summarise our conclusions as under:

So far as the suits filed by the temple for eviction of tenants/licensees/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 H.R. & C.E. Act vests with the Temple.



S.A.(MD).No.750 of 2021

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 1st proviso to [Section 79](#).”

39.This will fix the issue, again option is given to the temple to invoke either of these two Acts. Now the respondent has chosen to take the aid of section 106 of the Transfer of Property Act. So, the contention on the part of the appellants that there is violation of section 78 and they have been given protection under section 78 is out of place and cannot be accepted.

40.The main contention on the part of the appellants is that the Assistant Commissioner was directed to fix the fair rent and that was not the complied by him. But without complying the same, termination notice has been issued, which according to him, is not fair. The order was passed by the Joint Commissioner.



S.A.(MD).No.750 of 2021

41. Whether that can be taken advantage by the appellants is the next question.

42. The Joint Commissioner proceedings, dated 03/08/2011 and 24/10/2011 were marked as Exs.B1 and B2. The resolution was passed on 24/05/2012 under Ex.A7. The Commissioner directed the Assistant Commissioner to file a suit for eviction against the appellants herein, which is dated 24/04/2012. In pursuance of which only, Ex.A7 resolution was passed. Whether Exs.B1 and B2 will override the proceedings of the Commissioner in Na.Ka.No.16308/12, dated 24/04/2012, if considered, it will not.

43. In this aspect, we can refer to section 78 (5) of the Act. By that provision, during the course of the proceedings under section 78 of the Act, the Joint Commissioner can order the encroacher to deposit a specified amount for use and occupation.

44. No doubt that the Joint Commissioner has passed the order before the order passed for filing the suit. But it must be taken note that it



S.A.(MD).No.750 of 2021

was passed subsequent to the gift deed executed by the appellants in favour of the temple, on 09/06/2011. So this will not give any right to the appellants herein to say that they were permitted to pay the fair rent by the Joint Commissioner forever. Such a contention is completely out of place and cannot be accepted. The order of the Joint Commissioner to fix the fair rent might have been issued without prejudice to the right of the temple to take action for eviction. So, that proceedings must be understood only in that way and not in favour of the appellants for converting permanent tenancy.

45.Regarding the rights and liabilities of the lessor or lessee, he will refer to section 108 of the Transfer of Property Act. Since the demised property and leasehold interest is not protected under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act namely the old Act or any other Act as the case may be, the provision of the Transfer of the Property Act applies, apart from the provisions of the Tamil Nadu Hindu Religions and Charitable Endowments Act.



S.A.(MD).No.750 of 2021

46. Now we will go to section 108 of the Transfer of Property Act.

Section 108(o) and (p) of the Act reads as under:-

“(o) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell or sell timber, pull down or damage building belonging to the lessor, or work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto:

(p) he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes.”

47. A conjoint reading of two provisions makes the position clear.

The appellants were not permitted to erect the new structure namely 2nd and 3rd floors. Without consent of the lessor, those structures were erected. Now it has been stated that only at the consent of the lessor namely the respondent herein, they erected the new structure. On that account, they want permanent tenancy.



S.A.(MD).No.750 of 2021

48. With regard to the change of character of the property, now it is admitted by the appellants themselves that it is leased out to them for residential purpose. But now the character has been changed as non residential purpose. This is the finding of the trial court as well as the appellate court.

49. Whether there was any consent on the part of the respondent in converting the character of the property is a matter of evidence.

50. Now according to the respondent, no such permission was granted to the appellants to convert the user namely the character of the user. Absolutely no documentary evidence was put forth. The judgment of the appellate court gives clarity on the issue than that of the trial court.

51. Para 20 and 21 of the appellate court judgment can be extracted hereunder:-

“20. Admittedly, the temple authorities granted permission to the 1st defendant to demolish the old building in the suit land and construct a new building



S.A.(MD).No.750 of 2021

in suit land consisting of two floors I.e., ground floor and first floor. But, the 1st defendant constructed a new building in the suit land consisting of four floors namely ground floor, first floor, second floor and third floor. The 1st defendant had not obtained any permission from the temple authorities for the construction of second and third floor. The specific case of the defendants is that the 1st defendant applied for ratification of the said two floors constructed in the suit property. But, there is no document to show that the said construction was ratified by the temple authorities. Hence, it is clear that, without the permission of plaintiff, 1st defendant put up authorised construction for two more floors in the suit land.

21.In view of Ex.A1, it is noted that there is a specific condition in the lease deed that the 1st defendant should use the suit property only for



S.A.(MD).No.750 of 2021

residential purpose. During course examination of DW1 I.e., 1st defendant, she clearly and categorically admitted that she has been doing business in the suit property by joining hands with 2nd defendant. In the course of examination, the 1st defendant clearly and categorically deposed that she is not using the suit property for residential purpose. Hence, it is clear that the 1st defendant violated the terms of lease agreement and using the suit property for non-residential purpose. In such circumstance, the termination of lease by the plaintiff is just and proper.”

52. Reading of the appellate court finding fixes the issue, even though permission was granted to the appellants to demolish the old building and put the ground floor, no permission was granted to change the character of user, so also for the additional construction of the second and third floor. Simply because, the appellants paid penalty to the Corporation for the violation of the plan, that will not give any right to



S.A.(MD).No.750 of 2021

the appellants herein against the respondent. Imposing penalty by the Corporation for unauthorized construction is entirely different from the terms and conditions of the lesser, which governed the duties and responsibilities of the appellants and the respondent herein.

53.Now the change of user itself is sufficient enough to terminate the tenancy. Of course, after the gift in favour of the respondent, within a short time, the respondent issued notice terminating the tenancy. As discussed, estoppel or promissory estoppel is not available to the appellants for the reasons stated above.

54.During the course of hearing, the appellants paid Rs.30,00,000/- towards arrears of rent.

55.But contra is the submission of the respondent and a calculation memo is filed in the typed set of papers, which according to the learned counsel appearing for the respondent, the arrear is more than one Crore. At the second appellate stage, without any evidence on the amount due, it may not be proper to record any finding on this aspect. So, this court



S.A.(MD).No.750 of 2021

does not make any observation or record a finding on the arrear amount and the rent to be payable by the appellant.

56. None of the substantial questions of law framed favours the appellant. His right and interest is not protected and in fact he violated the conditions with impunity.

57. In the light of the above said discussion, the second appeal fails and the same is **dismissed** with costs. The judgment of the trial court as confirmed by the first appellate court requires no interference by this court and are confirmed. Consequently, connected Miscellaneous Petitions are closed.

12/07/2024

Index : Yes / No
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S.A.(MD).No.750 of 2021

To

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- 1.The II Additional Subordinate Judge, Madurai.
- 2.The Principal District Munsif, Madurai Town.
- 3.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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S.A.(MD).No.750 of 2021

G.ILANGO VAN,J.

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S.A.(MD).No.750 of 2021

12/07/2024