



W.P.No.29630 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 01.4.2025	Delivered on: 08.4.2025
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Writ Petition No.29630 of 2019
& WMP.No.29528 of 2019

Canara Bank, Asset Recovery
 Management Branch, II Floor,
 Circle Office Building, 563/1,
 Anna Salai, Teynampet,
 Chennai-18, Rep. by its Assistant
 General Manager Mr.P.Saravanan

...Petitioner

Vs

1.The Commissioner, Hindu
 Religious & Charitable
 Endowment, Nungambakkam,
 Chennai-34.

2.The Sub-Registrar,
 Kodambakkam.

3.M/s.Jayabharatham Lifespaces
 International Pvt. Ltd., rep.by
 its Managing Director
 Mr.E.Srinivasan

4.Mr.E.Srinivasan
 5.Mr.D.Karunagaran

...Respondents



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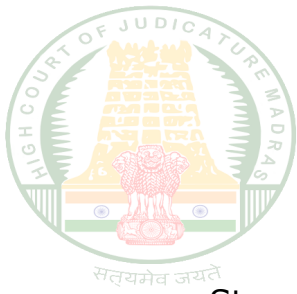
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PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus directing the first respondent to issue NOC to the petitioner bank to register the sale certificate dated 18.5.2019 issued in favour of the fifth respondent pertaining to the property at Old Door No.14, New Door No.10, Tank Street, United India Colony, Kodambakkam, Chennai-24 forming part of Puliyur Village, Egmore – Nungambakkam Taluk, Chennai District comprised in Survey No.19, T.S.No.73/8, Block No.44 and as per the present revenue records T.S.No.73/10 measuring an extent of 4,560 sq.ft.

For Petitioner	: Mr.M.L.Ganesh
For R1	: Mr.S.Ravichandran, AGP
For R2	: Mr.B.Vijay, AGP
For R4	: Mr.P.Jesus Moris Ravi
R3	: Not ready in notice
For R5	: No appearance

ORDER

This writ petition has been filed seeking for the issuance of a Writ of Mandamus directing the first respondent to issue a no objection certificate to the petitioner so as to enable them to register the sale certificate dated 18.5.2019 issued in favour of the fifth respondent pertaining to the property at Old Door No.14, New Door No.10, Tank



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Street, United India Colony, Kodambakkam, Chennai-24 forming part of Puliur Village, Egmore – Nungambakkam Taluk, Chennai District comprised in Survey No.19, T.S.No.73/8, Block No.44 and as per the present revenue records T.S.No.73/10 measuring an extent of 4,560 sq.ft.

2. Heard the respective learned counsel on either side.

3. When the writ petition came up for hearing on 24.3.2025, this Court, upon hearing the learned counsel on either side, passed the following order :

"Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing on behalf of the first respondent-Temple.

2. The case of the petitioner-Bank is that the subject property originally belonged to the Temple and the superstructure was owned by one Govindasamy Naicker. He subsequently conveyed the same in favour of Elumalai Chettiyar, who is the father of the fourth respondent, through a registered sale deed dated 26.08.1967, registered



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as Document No.2336/1967. After the purchase of the said property, Elumalai Chettiyar settled the property in favour of the fourth respondent by a registered settlement deed. Thereafter, an Ejectment Suit was instituted in Suit No.61/1974 by the then Hereditary Trustee of the Temple against the said Elumalai Chettiyar. The said Elumalai Chettiyar filed an application in CMP.No.3116/1974 under Section 9 of the Tamil Nadu City Tenants Protection Act. This application came to be allowed by the concerned Court on 20.08.1976, and a direction was issued to the Hereditary Trustee of the Temple to execute a sale deed in favour of the fourth respondent after receiving the sale consideration. Accordingly, a sale deed dated 15.12.1978 was executed in favour of the fourth respondent and this document was registered as Document No.4341/1978. Thus the fourth respondent became the absolute owner of the subject property. The legal heirs of fourth respondent, namely his wife and children also released/relinquished their respective rights in his favour under the Deed of Release dated 09.10.2013 registered as Document No.3796/2013.

3. The third respondent had availed a credit facility from the petitioner Bank. The fourth



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respondent stood as a guarantor and deposited the original title deeds with an intention to create an encumbrance over the property. The fourth respondent executed a MOD dated 30.12.2013 and the same was registered as Document No. 4770/2013. Subsequently, there was a default in repayment of loan amount and the account was categorized as 'NPA', and proceedings were initiated under SARFAESI Act by the petitioner-Bank. Ultimately, the subject property came to be sold in an e-auction conducted on 13.05.2019. The auction purchaser was the fifth respondent. He remitted the entire sale price and a sale certificate dated 18.05.2019 was issued in favour of the fifth respondent. When the sale certificate was presented for registration before the second respondent, the same was refused to be registered on the ground that the petitioner must obtain an NOC from the first respondent. It is under these circumstances, the present writ petition came to be filed before this Court.

4. The learned counsel for the petitioner submitted that the fourth respondent became the absolute owner of the subject property pursuant to the order passed under Section 9 of the Tamil Nadu City Tenants Protection Act, and a sale deed came to be executed by the Temple on 15.12.1978



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itself. In view of the same, there is no question of insisting that the petitioner must get an NOC from the first respondent. It was further submitted that in the meantime, the Temple had challenged the order passed in favour of the fourth respondent by filing an appeal in A.S.No.14/1977 to A.S.No.19/1977, which was also dismissed by the Small Causes Court, Chennai. Subsequently, the release deed that was executed by the legal heirs of the fourth respondent in favour of the fourth respondent was entertained and it was registered as Document No.3796/2013. Not stopping with that, the fourth respondent stood as a guarantor for the third respondent and executed a MOD, which was registered as Document No.4770/2013 dated 30.12.2013. In view of the same, the second respondent cannot insist the petitioner to get an NOC from the first respondent and that the sale certificate that was issued in favour of the fifth respondent by the petitioner Bank must be directed to be registered without insisting for an NOC.

5. Per contra, the learned Additional Government Pleader appearing on behalf of the first respondent placing reliance upon the order passed in W.P.No.7220 of 2022 dated 06.06.2022 [M/s.Super Good Films Pvt. Ltd., Vs. The



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Commissioner, Hindu Religious and Charitable Endowments Department], which was subsequently confirmed in an appeal in W.A.No. 2001/2022 dated 20.03.2024, submitted that even though the sale was done under Section 9 of the Tamil Nadu City Tenants Protection Act, the same will not bind the Temple since the sale itself is illegal by virtue of the fact that no permission was sought for under Section 34 of the HR&CE Act. The learned Additional Government Pleader submitted that the case on hand is squarely covered by the judgment that was cited supra.

6. The learned counsel for the petitioner seeks for some time to go through the judgment and make his submissions.

Post this case under the same caption 'part heard' on 01.04.2025."

4. The learned counsel for the petitioner submitted as follows :

(i) The sale deed was executed in favour of the fourth respondent, by A/M Sri Vengeeswarar Sri Alagar Perumal and Sri Nagathamman Temple, Vadapalani, Chennai (for short, the temple) through the Hereditary Trustee pursuant to the orders passed by the competent Civil Court under Section 9 of the Madras City Tenants Protection Act



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(for short, the Tenancy Act). The entire sale consideration was paid and only thereafter, the sale deed came to be executed in favour of the fourth respondent and it was registered as doc.No.4341 of 1978 on the file of the second respondent. This sale deed was never challenged at any point of time and the fourth respondent became the absolute owner of the subject property and it was further confirmed after the execution of the release deed dated 09.10.2013 in his favour.

(ii) That apart, when the fourth respondent stood as a guarantor for the credit facilities availed by one M/s.JFI Interfurn Corporation Private Limited and the third respondent namely M/s.Jayabharatham Lifespaces International Private Limited, a memorandum of deposit of title deeds dated 30.12.2013 was executed by the fourth respondent and it was entertained and registered by the second respondent. Even before that, the release deed dated 09.10.2013 was already entertained and registered by the second respondent. In such an event, the second respondent cannot, for the first time, insist upon for a no objection certificate from the first respondent at this length of time.



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(iii) When the sale deed was executed pursuant to the orders passed by the competent Civil Court under Section 9 of the Tenancy Act, there was no question of getting the consent of the Commissioner of the Tamil Nadu Hindu Religious and Charitable Endowment (HR & CE) Department under Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 (for brevity, the HR & CE Act). If any such permission is insisted upon, it will have a deleterious effect since the competent Civil Court will have to get the concurrence of the Commissioner, HR & CE Department before passing the order in an application filed under Section 9 of the Tenancy Act. This will touch upon the independence of the Judiciary, which cannot be made subordinate to the Executive.

(iv) The order passed in **W.P.No.7220 of 2022 dated 06.6.2022**, which was confirmed by the Division Bench in **W.A.No.2001 of 2022** vide judgment dated **20.3.2024**, virtually makes the Civil Court subordinate to the Commissioner, HR & CE Department. At this length of time, even without the sale deed executed in favour of the fourth respondent being put to challenge in a



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manner known to law, the same cannot be held to be non-est in a collateral proceeding.

(v) Reliance is placed upon the common order dated **26.4.2013** passed in **C.R.P.(NPD) Nos.1559 and 1560 of 2006** for the contention that once (a) the condition imposed by the Civil Court under Section 9(1)(b) of the Tenancy Act is complied with, (b) the amount is deposited within the time fixed, (c) the Civil Court passes an order directing conveyance and (d) a sale deed is also executed, then the proceedings itself will come to an end and such a sale deed cannot be questioned by the temple at a future point of time.

5. Per contra, the learned Additional Government Pleader, relying upon the counter affidavit filed by the HR & CE Department, submitted as follows:

(i) The temple in question is a listed public religious temple, which was originally administered by the Hereditary Trustee and on 12.9.2019, the Executive Officer was appointed to administer the temple. The father of the fourth respondent occupied the subject property without any sanction from the temple or the HR & CE



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Department and due to non-payment of the rents, the ejectment suit came to be filed by the then Hereditary Trustee against the father of the fourth respondent. The fourth respondent claimed to be the owner of the building and sought for the sale of the land under Section 9 of the Tenancy Act.

(ii) The application filed in C.M.P.No.3116 of 1974 before the Small Causes Court, Chennai was heard and allowed by order dated 20.8.1976 and the sale deed was executed by the Hereditary Trustee representing the temple in favour of the fourth respondent after receiving the sale consideration of Rs.20,176/-. The suit proceedings itself was a collusive one and the Hereditary Trustee, without obtaining permission from the HR & CE Department, proceeded to execute the sale deed in favour of the fourth respondent. The sale deed itself is illegal and non-est in the eye of law since it was executed without the approval/sanction of the Commissioner, HR & CE Department as mandated under Section 34 of the HR & CE Act.

(iii) In order to substantiate his submissions, he relied upon the following :



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(a) judgment of the Hon'ble Apex Court in the case of ***Joint Commissioner, HR & CE Admn. Department Vs. Jayaraman [reported in 2006 (1) SCC 257];***

(b) order passed by the learned Single Judge of this Court in the case of ***M/s.Super Good Films Pvt. Ltd. Rep. by its Managing Director Mr.R.B.Choudhary & another Vs. Commissioner, HR & CE Department & Others [W.P.No.7220 of 2022 dated 06.6.2022];*** and

(c) judgment of a Division Bench of this Court in the case of ***M/s.Super Good Films Pvt. Ltd. Rep. by its Managing Director Mr.R.B.Choudhary & another Vs. Commissioner, HR & CE Department & Others [W.A.No.2001 of 2022 dated 20.3.2024].***

6. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record.



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7. The primary issue that arises for consideration in this writ petition is as to whether the order under Section 9 of the Tenancy Act passed by the Small Causes Court, Chennai in C.M.P.No.3116 of 1974 dated 20.8.1976, pursuant to which, the sale deed was executed in favour of the fourth respondent by the then Hereditary Trustee representing the temple, should be treated as null and void in view of a lack of prior approval/permission from the Commissioner, HR & CE Department under Section 34 of the HR & CE Act.

8. The other important issue to be considered is as to whether the judgment of the Division Bench of this Court in the case of ***M/s.Super Good Films Pvt. Ltd. Rep. by its Managing Director Mr.R.B.Choudhary*** is a binding precedent and as to whether this writ petition must be dealt with in line with this judgment.

9. To answer the aforesaid questions, it is first necessary to set out the relevant provisions of the Tenancy Act.

10. Section 9(1)(a)(i) of the Tenancy Act reads as follows:



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"Any tenant who is entitled to compensation under Section 3 and against whom a suit in ejectment has been instituted or proceeding under Section 41 of the Presidency Small Cause Courts Act, 1882, taken by the landlord, may, within one month of the date of the publication of Madras City Tenants' Protection (Amendment) Act, 1979 in the Tamil Nadu Government Gazette or of the date with effect from which this Act is extended to the municipal town, township or village in which the land is situate or within one month after the service on him of summons, apply to the court for an order that the landlord shall be directed to sell for a price to be fixed by the court, the whole or part of, the extent of land specified in the application."

11. The Hon'ble Apex Court, in the case of **S.R.Radhakrishnan Vs. Neelamegam [reported in 2003 (10) SCC 705]**, culled out the following four conditions, which must be cumulatively satisfied before the relief is granted to a tenant under Section 9 of the Tenancy Act :

- *He should be a tenant in possession of the land.*
- *He should have erected a superstructure on the land in respect of which he would be entitled to claim compensation under Section 3.*



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- *A suit or proceeding for eviction should have been taken by the landlord against him.*
- *He should have applied to the court for direction in that regard within one month from the date of service of summons in such suit.*

12. If the aforesaid conditions are satisfied, then Clauses (1)(b) & (3)(a) & (b) of Section 9 of the Tenancy Act come into operation.

They read as follows:

"9.

(1).....

(b) On such application, the court shall first decide the minimum extent of the land which may be necessary for the convenient enjoyment by the tenant. The court, shall then fix the price of the minimum extent of the land decided as aforesaid, or of the extent of the land specified in the application under Clause (a) whichever is less. The price aforesaid shall be the average market value of the three years immediately preceding the date of the order. The court shall order that within a period to be determined by the court not being less than three months and not more than three years from the date of the order, the tenant shall pay



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into court or otherwise as directed the price so fixed in one or more instalments with or without interest.

.....

(3)(a) On payment of the price fixed under Clause (b) of Sub-Section (1) the court shall pass an order directing the conveyance by the landlord to the tenant of the extent of land for which the said price was fixed. The court shall by the same order direct the tenant to put the landlord into possession of the remaining extent of the land, if any. The stamp duty and registration fee in respect of such conveyance shall be borne by the tenant.

(b) On the order referred to in Clause (a) being made, the suit or proceeding shall stand dismissed, and any decree or order in ejectment that may have been passed therein but which has not been executed shall be vacated."

13. The question as to whether the provisions of the Tenancy Act would apply to the lands owned by the temples and the religious charitable institutions has been persistently visiting the portals of this Court for over a century. Soon after the enactment of the Tenancy Act, the question came up before the Division Bench of this Court



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consisting of **Spencer and Venkatasubba Rao, JJ** in the case of **Parthasarathi Aiyangar Vs. Doraisawmi Naicker [reported in 1923 (44) MLJ 91]**, which reads as follows :

"Whether a tenant in occupation of trust lands belonging to a temple or mosque can enforce a compulsory sale under section 9 of the Madras City Tenants Protection Act and require the temple or mosque to deliver the land to him on a valuation to be made by the Court."

The Division Bench answered the question by holding that the power of sale under Section 9 of the Tenancy Act is subject to the requirement of necessity i.e. it must be shown that such a sale was necessary for the benefit of the temple/mosque.

14. This interpretation was, however, overruled by a Full Bench decision of this Court in the case of **Doraivelu Mudaliar Vs. Natesa Gramani [reported in AIR 1925 Mad 7]** wherein the question that arose for consideration before the Full Bench was as follows:

"Does the Madras Act III of 1922 apply to landlords who hold their land as trustees of a religious institution?"



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Coutts-Trotter, CJ answered the question in the affirmative and held as hereunder:

"A trustee landlord can convey the interest of the trust in certain given circumstances. Two of those circumstances have been already referred to, —necessity and benefit for the trust, —and I think there is added a further one by this new Act III of 1922, namely, when a tenant has been in possession of the land and has put up a superstructure on the land and to eject whom would be in certain circumstances plainly inequitable without compensation, and in other circumstances, such as the one contemplated by the section would be inequitable without giving him an opportunity of acquiring the land for himself on payment. That consideration appears to dispose of this case.

We cannot accede to the, contrary opinion of Spencer and Venkatasubba Rao, JJ in Parthasarathi Aiyangar Vs. Doraisawmi Naicher [(1923) I.L.R., 46 Mad., 823.] and must answer the reference, not in the form of a direct answer to the question put but by saying that in our opinion section 9 of the Madras Act III of 1922 applies to landlords who hold their land as trustees of a religious institution."



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15. However, in the case of **Vasudeva Pillai Trust, Madras Vs. Neelavathy Ammal [reported in 1962 (1) MLJ 116], Jagadisan,J** held that a tenant holding under a trustee, a lease hold property and claiming the benefit of the Tenancy Act can only obtain the benefit where such purchase is a matter of necessity for the Trust or will result in a benefit to the Trust. The Court concluded that the tenant cannot have an absolute right in the matter.

16. This decision was, however, overruled by a Division Bench of this Court in the case of **Sundareswarar Devasathanam Vs. S.V.Marimuthu [reported in AIR 1963 Mad. 369]** wherein **Ramachandra Iyer, CJ** observed that the provisions of Section 9 of the Tenancy Act were applicable to a religious institution irrespective of the question of necessity. It was further observed as follows :

"As we have pointed out a sale under S. 9 can never be regarded as one for the benefit of the institution; even if there is necessity, a provision which compels a sale at a price which might turn out to be less than the market price cannot be regarded as justified. Therefore the option to purchase conferred on the tenant must be



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irrespective of any benefit to the institution. The Legislature evidently thought that there was a superior equity in favour of the tenant and he should be enabled to purchase the property where he comes within S. 9 of the Act. To construe the section as authorising a sale only in cases of necessity would be practically to make it a dead letter so far as vacant lands belonging to religious institutions are concerned. We are therefore with great respect unable to share the view expressed by Jagadisan, J., in Vasudeva Pillai Trust v. Neelavathi Ammal(1), that S. 9 could be invoked by the tenant only if there is to be either necessity or benefit to the institution by the sale, in our opinion none of those circumstances need exist; it would be enough if the tenant of the land had put up a superstructure prior to the date of the Act in the cases where the land is not part of the temple or mosque etc."

17. At this juncture, a question may arise as to whether a sale under Section 9 of the Tenancy Act is subject to Section 34 of the HR & CE Act, which prohibits the sale of lands of religious and charitable endowments without the prior sanction of the Commissioner.

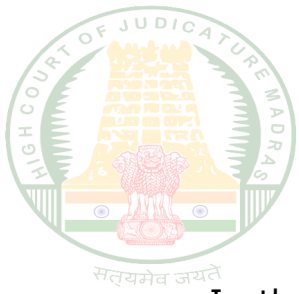


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18. A similar provision existed in Section 36-A of Waqf Act, 1954 (presently Section 51 of the Waqf Act, 1995). In the case of **Madhi Hussain Khan Ashurkhana Vs. Manivanna Naicker [reported in 1973 (1) MLJ 74]**, the question that arose for consideration was as to whether Section 36-A of the Wakf Act operated as a bar to invalidate a sale made under Section 9 of the Tenancy Act. Considering the two provisions, it was held that a bar under Section 36A of the Wakf Act only operated in respect of a voluntary sale and not in respect of an involuntary sale under Section 9 of the Tenancy Act. It was further held as follows:

"It is next contended by the learned counsel for the appellant that S. 36-A of the Wakf Act prohibits the sale of wakf property by a mutavalli, without the previous sanction of the Board and, that, therefore, S. 9 of the City tenants Protection Act could not be invoked. In my opinion, S 36-A is not a bar for the applicability of S. 9 of the City Tenants Protection Act. S. 36-A prohibits voluntary transfer without the previous sanction of the Board and not involuntary transfers or transfers by orders of court."



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In the context of Section 34 of the HR & CE Act, this Court had also observed thus:

"It may also be noticed that there is a similar prohibition of sale or mortgage by a trustee of Hindu Religious and Charitable Endowments under S. 34 of the Madras Hindu Religious and Charitable Endowments Act. In spite of this prohibition, it has been held in a number of cases, including in Sundareswarar Devasthanam v. Marimuthu(2) that S. 9 of the City Tenants Protection Act is applicable to lands held by Hindu Religious and Charitable endowments."

19. Thus, a reading of the decisions in the case of **Sundareswarar Devasathanam** and **Madhi Hussain Khan Ashurkhana** would leave no manner of doubt that Section 9 of the Tenancy Act was applicable to the lands held by the temples under the HR & CE Act. The prohibition contained in Section 34 of the HR & CE Act is directed against a voluntary sale and not against an involuntary sale, which is effected by the Court under a statute.



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20. At this stage, it is necessary to take note of an important amendment viz., the Madras City Tenants Protection (Amendment) Act, 1994 (for short, the Tamil Nadu Act 2 of 1996), which received the Presidential assent on 05.1.1996 and came into force from 11.1.1996. It contains 3 Sections. Section 1 inserts Clause (f) to the Proviso to Section 1(3), which declares that the provisions of the Act will not apply to the lands owned by certain bodies. After the Tamil Nadu Act 2 of 1996 inserting Clause (f) to the Proviso, Section 1(3) reads as follows:

"Section 1(1).....

(2).....

(3) This Act shall apply, -

(a) in the areas in which this Act is in force on the date of the publication of the [Chennai] [Substituted for the word 'Madras' by the City of Madras (Alteration of Name) Act, 1996 (Tamil Nadu Act 28 of 1996).] City Tenants' Protection (Amendment) Act, 1979 in the Tamil Nadu Government Gazette, only to tenancies of land created before that date; and

(b) in any other area, only to tenancies of land created before the date with effect from which



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this Act is extended to such area by notification under clause (b) of sub-section (2):]

*Provided that **nothing contained in this Act shall apply** to tenancies of land owned*

(a).....

(b).....

(c).....

(d).....

(e).....

(f) by any religious institution or religious charity belonging to Hindu, Muslim, Christian or other religion

Explanation. - For the purpose of this clause,-

(A)"religious institution" means any-

(i) temple;

(ii) math;

(iii) mosque;

(iv) church; or

(v) other place by whatever name known, which is dedicated to, or for the benefit of, or used as of right by, any community or section thereof as a place of public religious worship;

(B) "religious charity" means a public charity associated with a religious festival or observance of religious character (including a wakf associated



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with a religious festival or observance of religious character), whether it be connected with any religious institution or not;"

21. After inserting Clause (f) in Section 1(3) of the Tenancy Act, Section 3 of the Tamil Nadu Act 2 of 1996 proceeded to declare as under:

"Every proceeding instituted by a tenant in respect of any land owned by any religious institution or religious charity belonging to Hindu, Muslim, Christian or other religion and pending before any Court or other authority or officer on the date of the publication of this Act in the Tamil Nadu Government Gazette, shall, in so far as the proceeding relates to any matter falling within the scope of the principal Act, as amended by this Act, in respect of such land, abate, and all rights and privileges which may have accrued to the tenant in respect of any such land and subsisting before the said date shall in so far as such rights and privileges relate to any matter falling within the scope of the principal Act, as amended by this Act, cease and shall not be enforceable;

Provided that nothing contained in this section shall be deemed to invalidate any suit or



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proceeding in which a decree or order passed has been executed or satisfied in full before the said date."

22. The Constitutional validity of Section 3 of the Tamil Nadu Act 2 of 1996 was upheld by a Full Bench of this Court in the case of ***Sreedharan Nair Vs. State of T.N. [reported in 2000 (3) MLJ 616]***, which was also affirmed by the Hon'ble Supreme Court in the case of ***Mylapore Club Vs. State of T.N. [reported in 2005 (12) SCC 752]***. The Hon'ble Supreme Court, while upholding Section 3 of the Tamil Nadu Act 2 of 1996, had concluded as under:

"Reading Section 3 of the amending Act 2 of 1996, it could not be said that it is a legislative intervention with a judicial decision. The proviso has saved concluded transactions based on judicial adjudications. All that Section 3 does is to make it explicit that the amendment is intended to apply to pending proceedings. In the context of Section 6 of the General Clauses Act, unless it is shown that any right has accrued to the claimant under Section 6 of the General Clauses Act, such a provision making it clear that the Act could not be applied any more to pending proceedings is not in any way invalid or incompetent. Unless the



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*proceedings have concluded and the rights of the landlord have passed to the tenant, no right accrues to the tenant. He is only in the process of acquiring a right, the process having been set in motion at his instance. When pending proceedings are affected by an amendment, it is open to the legislature to provide that the said process cannot continue. That alone has been done by Section 3 of the amending Act of 1996. **As far as concluded judicial proceedings are concerned and cases where orders for possession have been executed or decrees satisfied in full before the date of the amendment, they have been saved by the proviso thereby ensuring that there was no interference by the legislature with judicial proceedings which had reached a conclusion, even though that judicial proceeding related to a religious or charitable institution exempted by the amendment from the purview of the Parent Act. We are, therefore, not in a position to find any merit in challenge to Section 3 of the amending Act.***



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23. From a reading of Section 3 of the Tamil Nadu Act 2 of 1996 and the decision of the Hon'ble Supreme Court in the case of **Mylapore Club**, the following propositions emerge:

- All pending proceedings under Section 9 of the Tenancy Act concerning tenancies in the lands owned by religious institutions shall abate on and from 11.1.1996 i.e., the date, on which, the Tamil Nadu Act 2 of 1996 came into force.
- Any proceeding pending as on 11.1.1996, where an order under Section 9 of the Tenancy Act has not been executed by executing a sale deed and/or handing over possession, would also stand abated and any rights accrued to the tenant until that point would cease to be enforceable.
- Any decree passed under Section 9 of the Tenancy Act on or after the said date i.e., 11.1.1996 concerning a tenancy in lands owned by the religious institutions would



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resultantly be a nullity in law (***See Bagirathi Ammal Vs. Palani Roman Catholic Mission [reported in 2009 (10) SCC 464]***).

- All concluded proceedings ie., where sale deeds have been executed in favour of the tenants, etc., these decrees and the deeds executed thereunder are saved by the Proviso to Section 3 of the Tamil Nadu Act 2 of 1996. This implies that such orders/decrees and sale deeds executed in favour of tenants prior to 11.1.1996 i.e., prior to the coming into force of the Tamil Nadu Act 2 of 1996 remain legal and valid.

24. In the instant case, Mr.Elumalai Chettiyar filed an application in CMP.No.3116 of 1974 under Section 9 of the Tenancy Act, which came to be allowed on 20.8.1976. A direction was issued to the Hereditary Trustee of the Temple to execute a sale deed in favour of the fourth respondent after receiving the sale consideration.



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Accordingly, a sale deed dated 15.12.1978 was executed in favour of the fourth respondent and this document was registered as document No.4341 of 1978. Thus, the proceedings under the Tenancy Act stood concluded in 1978 itself with the result that these proceedings would be ring-fenced by the protection granted by the Proviso to Section 3 of the Tamil Nadu Act of 1996. As a consequence, it must necessarily follow that the proceedings under the Tenancy Act and the sale in favour of the 4th respondent are valid and saved by the Proviso to Section 3 of the Tamil Nadu Act 2 of 1996.

25. The aforesaid conclusions should normally have sufficed to dispose this case but for the fact that Mr.S.Ravichandran, learned Additional Government Pleader appearing for the first respondent had brought to the notice of this Court a decision of a Division Bench of this Court in the case of ***S.M.Subramaniam and K.Rajasekar,JJ*** in the case of ***M/s.Super Good Films Pvt. Ltd. Rep. by its Managing Director Mr.R.B.Choudhary.*** According to the learned Additional Government Pleader, this decision would show that the Tenancy Act was inapplicable to the lands covered under Section 34 of the HR & CE



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Act and any order under Section 9 of the Tenancy Act passed in respect of such lands is a nullity. This Court has closely examined this decision and finds, with regret, that the Division Bench has not taken note of any of the decisions of this Court and the Hon'ble Supreme Court and more importantly, the provisions of the Tamil Nadu Act 2 of 1996.

26. In the decision in the case of ***M/s.Super Good Films Pvt. Ltd. Rep. by its Managing Director Mr.R.B.Choudhary***, the Division Bench of this Court begins by observing that the HR & CE Act is a special law and the Tenancy Act is a general law and that as a consequence, the provisions of the former would prevail over the latter. The attempt to invoke a rule of interpretation, which goes by the name of ***generalia specialibus non derogant***, is unfortunately misconceived for the reason that such a rule can apply only when the provisions of a special law clash with those of a general law. In such a situation, the provisions of the general law must yield to those of the special law. The provisions of the HR & CE Act and the Tenancy Act obviously do not clash, which is why the provisions of the the Tenancy



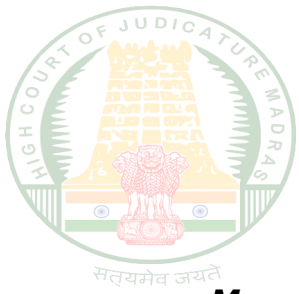
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Act were made applicable to the lands covered under the HR & CE Act as could be seen from the decisions of this Court in the cases of **Sundareswarar Devasathanam** and **Madhi Hussain Khan Ashurkhana**.

27. That apart, it is only because the provisions of Section 9 of the Tenancy Act were applicable to the temple lands that the Tamil Nadu Act 2 of 1996 came into force with effect from 11.1.1996 to remedy the mischief by making the provisions of the Tenancy Act inapplicable to the lands owned by the religious institutions. If the theory propounded by the Division Bench of this Court in the case of **M/s.Super Good Films Pvt. Ltd. Rep. by its Managing Director Mr.R.B.Choudhary** is to be accepted, there would have been no need for enacting the Tamil Nadu Act 2 of 1996. The proper maxim to apply in such cases is that the Legislature cannot be presumed to act mistakenly or ignorantly by enacting the futile laws.

28. Reverting to the judgment of the Division Bench of this Court in the case of **M/s.Super Good Films Pvt. Ltd. Rep. by its**

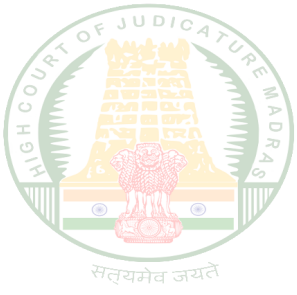


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Managing Director Mr.R.B.Choudhary, this Court is surprised to find the following observations:

"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. 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."



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29. Unfortunately, for the Division Bench, the correct legal position is exactly the converse of what it has declared in the aforesaid paragraph. Prior to 11.1.1996, a petition under Section 9 of the Tenancy Act was maintainable in respect of a tenant, who had put up a superstructure on the lands belonging to the religious institutions as is evident from the decision of the Full Bench in the case of ***Doraivelu Mudaliar*** and the decision of the Division Bench in the case of ***Sundareswarar Devasathanam***. In the case of ***M/s.Super Good Films Pvt. Ltd. Rep. by its Managing Director Mr.R.B.Choudhary*** before the Division Bench of this Court, the order under Section 9 of the Tenancy Act was passed on 29.3.1990 and the sale deed was executed on 11.10.1990. Consequently, the case was squarely covered by the Proviso to Section 3 of the Tamil Nadu Act 2 of 1996. However, the Division Bench has not noticed any of those previous cases and more importantly has not noticed the provisions of the Tamil Nadu Act 2 of 1996 and the decision of the Hon'ble Supreme Court in the case of ***Mylapore Club***.



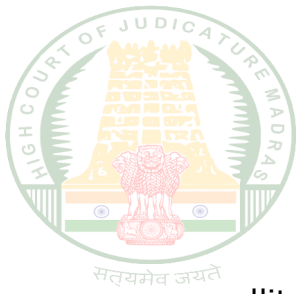
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30. Consequently, the decision rendered by the Division Bench of this Court in the case of ***M/s.Super Good Films Pvt. Ltd. Rep. by its Managing Director Mr.R.B.Choudhary*** is clearly and obviously per incuriam and cannot be said to be a good law. This is the obvious consequence in the light of the decision of the Hon'ble Supreme Court in the case of ***Sundeeep Kumar Bafna Vs. State of Maharashtra [reported in 2014 (16) SCC 623]*** wherein it was held as under:

"A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench;"

31. Consequently, as the entire foundation of the Division Bench judgment in the case of ***M/s.Super Good Films Pvt. Ltd. Rep. by its Managing Director Mr.R.B.Choudhary*** is based on a completely erroneous understanding that the Tenancy Act could never be applied to the temple properties at all, the declaration made by the Division Bench that a decree passed under Section 9 of the Tenancy Act is a



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nullity is in direct conflict with the Proviso to Section 3 of the Tamil Nadu Act 2 of 1996.

32. In the face of a clear statutory provision, what then is the effect of the declaration made by the Division Bench? The answer is simple: **nothing**. It is and remains as ineffectual as the command given by King Canute, who ordered the seas to recede from his feet.

33. Another aspect of the reasoning given by the Division Bench of this Court in the case of ***M/s.Super Good Films Pvt. Ltd. Rep. by its Managing Director Mr.R.B.Choudhary*** is found in the following paragraphs:

"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



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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."

34. Having read Section 111 of the HR & CE Act, this Court is left puzzled. When a petition is filed under Section 9 of the Tenancy Act, the tenant is not challenging the lease. As a matter of fact, the tenant cannot challenge the lease for the simple reason that the protection under Section 9 of the Tenancy Act was available only if the tenant admitted the tenancy and not otherwise. There are at least 25 decisions of this Court, which reiterate this elementary proposition. Therefore, to say that Section 111 of the HR & CE Act bars a challenge to the lease and consequently a petition under Section 9 of the Tenancy Act appears to make no apparent sense at all, is, in fact, a contradiction in terms.



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35. The Division Bench of this Court in the case of ***M/s.Super Good Films Pvt. Ltd. Rep. by its Managing Director Mr.R.B. Choudhary***, has, thereafter, gone on to conclude as under:

"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."

36. With all due respect to the Division Bench, these are general observations. Of late, this Court has encountered a few decisions of this Division Bench lamenting the presence of greedy men looting resources of the community etc. By citing and relying on these passages, learned counsel would attempt to extoll and persuade this

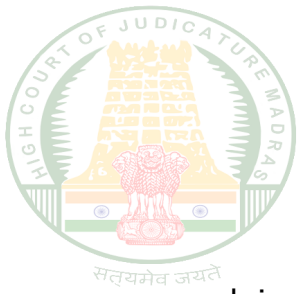


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Court that the interpretation of law must be influenced by the fact that the world has fallen into evil times. But, the presence (or omnipresence) of greedy men (and women) swarming the world is not a new phenomenon. It has always existed from time immemorial.

37. For instance, the **Bible** says at Luke 12:15 “**Be on your guard against all kinds of greed; for one's life does not consist in the abundance of possessions.**” Similarly, from the classic **Mahabharata**, we know that Duryodhana's greed was a major factor, which led to the battle and subsequent massacre that followed. Therefore, the omnipresence of greedy people can scarcely serve as an excuse for the Court to give effect to the plain words of the law. After all, it is the law that binds and not the perception of judges. Consequently, merely because in “**many instances, people entrusted with the duty of safeguarding the temple properties have misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession,**” it cannot serve as a ready excuse for Judges not to apply the plain letter of law when the facts of concrete instances before them are clear and



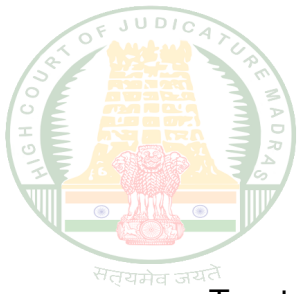
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plain. On facts, this case cannot be thrown out citing the perception of **"many instances"** of people misappropriating funds and claiming false ownership etc.

38. This Court is also reminded of what the Hon'ble Supreme Court held in the case of ***Union of India Vs. Bharat Fritz Werner Ltd. [reported in 2022 (13) SCC 362]***, which reads thus :

"Even otherwise, on the basis of a solitary case, general observations could not have been made by the High Court that the Indian bidders are being discriminated against. We advise the High Courts not to make general observations which are not warranted in the case. The High Courts shall refrain from making sweeping observations which are beyond the contours of the controversy and/or issues before them."

39. As stated, supra, it is not in dispute that the application under Section 9 of the Tenancy Act was allowed on 20.8.1976. The appeals filed at the instance of the temple in A.S.Nos.14 to 19 of 1977 were also dismissed. A sale deed was executed by the then Hereditary



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Trustee in favour of the 4th respondent pursuant to the orders of the Court on 15.12.1978. By virtue of the Proviso to Section 3 of the Tamil Nadu Act 2 of 1996, the order dated 20.8.1976 and the sale deed dated 15.12.1978 are protected and recognized as legitimate transactions.

40. It must also be pointed out that another document dated 09.10.2013, being a deed of release executed by the family members of the 4th respondent in his favour, was also registered by the second respondent. The 4th respondent had, thereafter, stood as a guarantor for the 3rd respondent for the loan borrowed by the latter from the petitioner bank. The 4th respondent has also executed a mortgage deed dated 30.12.2013 in favour of the petitioner bank and the same was also registered as document No.4770 of 2013. The 3rd respondent having defaulted, the property of the 4th respondent was brought to sale under the SARFAESI Act, 2002 concluding with the issuance of a sale certificate in favour of the 5th respondent - auction purchaser. It is at this juncture that the second respondent has woken up and



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demand a no objection certificate from the temple preventing registration and forcing the secured creditor to approach this Court.

41. There is another aspect of the matter. At this distance of time, it may not be open to the temple to contend that the order dated 20.8.1976 and the sale deed dated 15.12.1978 pursuant to proceedings under Section 9 of the Tenancy Act are not binding on it. The temple was undoubtedly a party to those proceedings. It is settled law that a decision *inter partes*, which has attained finality, will operate as a *res judicata inter partes* (See **Neelima Srivastava Vs. State of U.P. [reported in 2021 (17) SCC 693]**). As has been discussed in the earlier paragraphs, the order dated 20.8.1976 and the sale deed dated 15.12.1978 are protected by the Proviso to Section 3 of the Tamil Nadu Act 2 of 1996. Consequently, the question of nullity could never arise in a case of this nature.

42. That apart, the 1st respondent cannot be permitted to collaterally challenge the correctness of the sale and that too in a writ petition filed by the petitioner bank. This is so especially when the



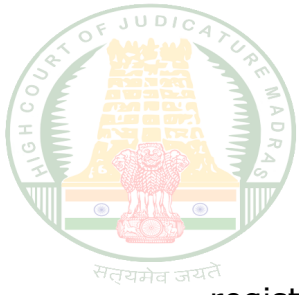
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temple itself had filed appeals in A.S.Nos.14 to 19 of 1977 challenging the order under Section 9 of the Tenancy Act and lost. For these reasons, this Court finds that the course adopted by the Division Bench of this Court in the case of **M/s.Super Good Films Pvt. Ltd. Rep. by its Managing Director Mr.R.B.Choudhary** is not capable of emulation when the legal position is otherwise.

43. From the above discussions, it is clear that the question of obtaining a no objection certificate from the temple does not arise at all. The temple lost its title as far back as in 1978, pursuant to the orders of the Court in an application under Section 9 of the Tenancy Act. In this view of the matter, there can be no question of the second respondent demanding a no objection certificate from the petitioner to register the sale certificate issued under the SARFAESI Act, 2002 in favor of the fifth respondent - auction purchaser.

44. In the result, the writ petition is disposed of and there shall be a direction to the petitioner bank as well as the 5th respondent - auction purchaser to present the sale certificate for registration before the 2nd respondent. Upon such presentment, the 2nd respondent shall



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register the same after collecting the applicable stamp duty and the registration charges alone. This exercise shall be completed forthwith. No costs. Consequently, the connected WMP is closed.

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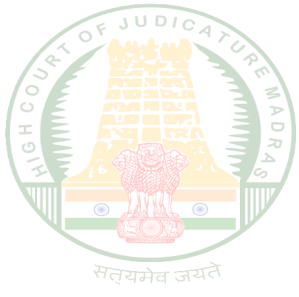
Index : Yes
Neutral Citation : Yes

To

1.The Commissioner, Hindu
Religious & Charitable
Endowment, Nungambakkam,
Chennai-34.

2.The Sub-Registrar,
Kodambakkam.

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N.ANAND VENKATESH,J

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WMP.No.29528 of 2019

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