

**BEFORE THE COMMISSIONER, H.R.&C.E. ADMN. DEPARTMENT,
CHENNAI.34.**

Tuesday the 21stday of March, Two thousand and Seventeen.

Present :Dr.M.Veera Shanmugha Moni,
Commissioner.

A.P.37/2016 D2

Between

1. M.K.N.M.Pandi Nadar &Co

...Appellant

And

1.The Joint Commissioner,
HR&CE Admn.Department,
Madurai.

2. The Assistant Commissioner,
HR&CE Admn.Department,
Madurai.

3. The Joint Commissioner/Executive Officer,
Arulmigu Meenakshi Sundereswarar Temple,
Madurai.

...Respondents

In the matter of Arulmigu Meenakshi Sundereswarar Temple,
Madurai.

The Appeal Petition filed under Section 81(1) of the Tamil Nadu H.R. & C.E. Act, 1959 (Tamil Nadu Act 22 of 1959) against the order dated 07.11.2016 of the Joint Commissioner, HR&CE Admn Department, Madurai in Na.Ka.No.2385/2016 passed u/s.80 of the Act.

Order in D.Dis.A.P.37/2016 D2 dated: 21.03.2017

The above Appeal petition came up for final hearing before me on 21.02.2017 in the presence of Thiru.E.Ganesh counsel for the appellant and Thiru.P.Gopalan, counsel for the 3rd Respondent. Upon hearing their arguments and having perused the connected records and the matter having stood over for consideration till this day, the following order is passed.

ORDER

The above Appeal Petition filed under Section 81(1) of the Act against the order dated 07.11.2016 of the Joint Commissioner, Madurai passed u/s. 80 of the Act.

2. The case of the appellant is that the premises bearing Door No. 87, Shop NO.8 A, (old Shop No. 157) at East Masi Street, Madurai measuring an extent of 349 Sq.ft. belongs to the said temple. The above premises has been given for tenancy for the commercial purpose to the appellant on 28.06.1926. Initially, the name of the tenant was Mr. Mukuntha Nadar, the great grand father of present proprietor Mr.Mukuntharajan and subsequently, the name of the tenancy transferred to the name of the Appellant and the temple authorities admitted the name transfer in by its letter dated 11.10.1952. Till date, the Appellant is prompt in paying the rent and at present, there is no arrears of the rent. The above premises is a part of the Theradi Mandapam. Theradi Mandapam is not a temple but below the Staircase, which is used to carry the Deity A/m Sundereswarar and Priyavedai Ammal to the Chariot for the procession on the subsequent day of the Thirukalyanam. It is a Hall below the Staircase. In the above premises, on the rear side wall, the Statute of the karuppaswamy is concaved and every year, before the Chariot with Aim Sundereswarar and Priyavidai Ammal is moved in procession, camphor will be lighted for the karuppaswamy statute. Knowing that, for the nine decades, in advance, the Appellant used to clean the premises for the occasion. Barring the above occasion, a few minutes in a year, there is no other poojas or ritual to the above karuppaswamy Statute. The shop premises where the appellant is conducting the business does not possess any characteristics of the Temple. The top of the Shop premises used by the temple authorities as a godown for the purpose of stocking the decorative materials of the Chariot. At any point of time, the Agama and Sastric injunctions are not followed in the premises. There is no worship in the premises. The public are not offering any worship. There is no abhisekam or pooja to the statute. There is no Kalasam, Vimanam or other Idols to the premises. There is no utchavams or any public processions in the said institution. There is no hundial or ticket collection or collection of revenue or article in any form in the premises. There is no Palipeedam or Nandikeswara. As like the Meenkshi Temple, there being no land granted in the form of inam or any other endowment for its upkeep and its maintenance of the above premises. Further the premises

under question do not satisfy the tests laid down by the Hon'ble High Court and Hon'ble Supreme Court of India to determine the institution is a public religious institution. In the Meenakshi Sundereswarar temple, regularly renovation has been made and Kumbhabisekam has been conducted, but in the said premises, no Kumbhabisekam is conducted for the past hundred years. Thus, in the premises no characteristics or features of the temple. When the matter stood thus, in the year 2012, the 3rd respondent has issued a notice dated 21.05.2012 in Na.Ka.No.1884/2012/E3 whereby the 3rd respondent alleged that the appellant has causing hindrance to the public worship and instructed the appellant to vacate the premises within 30 days of the receipt of the notice. Thereafter, challenging the notice, the appellant approached the Hon'ble High Court by preferring a Writ Petition in W.P.No.7731/2012. In the above Writ Petition, the Hon'ble High Court by its order dated 08.06.2012 directed the parties to treat the notice as show cause notice and directed the appellant to render explanation to the said notice. Further, directed the temple to pass order after considering the explanation and till then, the appellant shall not be vacated from the said premises. Pursuance to the Writ order, the appellant has given a detailed explanation and thereafter the 3rd respondent has called for an enquiry on 17.07.2012 but however the 3rd respondent has not conducted any enquiry on the said date instead directed the Manager of the temple to collect any records submitted by the appellant. Since the appellant required few records from the temple, he has submitted a Memo to that effect. Thereafter, there was no further communication from the temple nor any enquiry has been conducted Viz-a-Viz the notice dated 21.05.2012 which safely transpire that the temple has satisfied with the explanation and dropped further proceedings. While this being so, the appellant has received a notice dated 24.03.2016 from the 1st respondent whereby it was brought to the knowledge of the appellant that the 1st respondent is initiating eviction proceeding against the appellant. The above notice stated to be issued by the 1st respondent in terms of Section 78(2) of the Tamil Nadu Hindu Religious Charitable Endowment Act, 1959. Challenging the said notice, the appellant preferred a Writ Petition in W.P.No.7781 of 2016. Since it was a

show cause notice, the Hon'ble High Court vide its order dated 21.04.2016 has directed the appellant to raise all his pleas before the 1st respondent. As per the direction, the appellant has given a detailed reply treating the notice has been issued for the eviction of the appellant in terms of Section 78 of the Act. Thereafter, both sides filed written arguments and the proceedings was closed for orders. Subsequent to that, the 1st respondent again issued a notice under Section 80 of the Act on 29.8.2016 which again forced the appellant to approach the Hon'ble High Court for his redressal. During the hearing of the above Writ petition in W.P. No. 19250 of 2016, the Counsel for the respondents contended that the entire proceedings is initiated against the appellant under Section 80 of the Act alone and not under Section 78 of the Act. Thus, the Honb'e High Court disposed the above Writ Petition directing the appellant to appear before the 1st respondent and raise all his objections. Further the Hon'ble High Court has directed the 1st respondent to pass orders on merits after considering the objections of the Appellant and giving due opportunity to him. Pursuance to the Writ order, the Appellant filed additional objections whereby inter alia, it was brought to the indulgence of the 1st respondent that the above premises is a commercial building and at no point of time, it was treated as a temple. Thereafter, just prior to the conclusion of the proceedings, the 1st respondent reluctantly given the copy of the Assistant Commissioner report and concluded the proceedings summarily. While this being so, on erroneous consideration of law and facts involved in the case, with predetermined and perceived mind, the 1st respondent passed an order dated 07.11.2016. Even assuming without conceding that the premises is place of worship of Karuppasamy, the tenanted premises remains secluded and does not disturb the darshan, if any to be performed, and it would not hide, hinder or obstruct the ingress, egress or any idol or artistic installations. The very presence of the shop of the petitioner is not affecting any artistic appearance or marred or is likely to mar the artistic appearance or the religious atmosphere of the religious institution for the past 100 years, they have depended upon the income derived from the said premises for their and its staffs livelihood and as such terminating the appellant's

leasehold right has deprived their rights and eventually their livelihood is left in peril.

3. In the Written submission filed by the 3rd respondent it was stated that the schedule property, namely, shop portion of an extent of about 349 Sq.ft. bearing Door No.S7, Shop No.S-A (Old No.157) East Masi Veedhi, Madurai is actually a portion of a Mandapam called the 'Theradi Mandapam' and inside the Mandapam, there is a diety called the 'Theradi Karuppanaswamy and there is also a 'Sannadhi' for the said Diety. From time immemorial, on certain occasions, poojas are performed for the said 'Theradi Karuppanaswamy'. As the name of the diety suggests, particularly, on the day when the Diety is carried in the decorative chariot first poojas are performed for the 'Theradi Karuppanaswamy and only then , is the chariot started in procession. The said diety has thus more significance in the successful running and conduct of the decorative chariot and the deities blessings are invoked for the smooth conduct of the 'Ther'. The Mandapam and diety inside the Mandapam are as old as the Temple itself. The Petitioner herein is running a shop and as per temples MDR, the name of the tenant is 'M.K.N. Pandia Nadar' and it has come to the notice of the temple that his relative, the Petitioner herein is running the shop selling iron items and iron fences. Petitioner herein has dumped all the iron materials partly inside and mostly outside the shop and has thus, totally obliterated the path or way for worshipping the diety. The Appellant himself has admitted before the JC, HR & CE, Madurai and before this Court that poojas are performed and camphor is lighted before the Diety on some occasions. The entire rusted iron fences, iron railings and other iron materials which are stored in the said premises have totally marred the artistic appearance of the whole mandapam and unusually large sized name board of the appellant-shop has totally covered the artistic appearance of the said place and the dumped materials are a hindrance to the worshipping Public. After following all the rigors as mandated under Section 80 of the HR & CE Act and after following all the due procedures as contemplated under the Act, the JC, HR & CE, Madurai

clearly found that the appellant herein has marred the artistic appearance of the Religious Institution and passed an order directing him to deliver possession of the property which is the subject of the lease. The Joint Commissioner has also verified the photographs filed by the appellant herein and found that the photos also clearly show that the artistic appearance has been marred. Further, from the photographs and evidence filed by the appellant herein, it was verified that the appellant herein has been tying 'Parivattam' and has been decorating the Idol with a garland daily and thereby, only the appellant herein has been worshipping the said Diety and has deprived and prevented other genuine worshippers from worshipping the Diety by dumping all his iron wares in and around the said shop.

4. I heard Thiru.E.Ganesh Counsel for the appellant, Thiru.P.Gopalan, Counsel for the 3rd respondent and perused the relevant records.

5. It is admitted by the appellant that the suit property belongs to the 3rd respondent temple. The Joint Commissioner has passed the eviction order u/s.80 of the Act, as the appellant has marred the artistic appearance and religious atmosphere of the suit property. The appellant mainly contended that the suit property is not a temple and no regular pooja was performed to the Arulmigu Karuppananaswamy idol. The suit property is known as "Theradi Mandapam". The statute of Karupannaswamy was consecrated in the said mandapam. During the car festival first pooja is performed for the "Theradi Karupannaswamy". This fact was not denied by the appellant. The appellant himself admits that the idol is worshiped by him and his ancestors. As contended by the 3rd respondent, he has deprived and prevented other devotees from worshipping the deity, by which the appellant is marring the religious atmosphere of the suit property .

6. Further, in the suit premises the appellant is running a shop selling Iron materials. The appellant by dumping the Iron wares in and around the Mandapam and placing large size name board of the shop on the top of the building, has marred the artistic appearance of the building.

7. Sec 80 of the HR&CE Act read as follows:-

“(1) Eviction of lessees, licensees or mortgages with possession in certain cases.- Where the Assistant Commissioner having jurisdiction over the area in which the religious institution is situated is of the view that the lessee, licensee or mortgagee with possession of any land belonging to the religious institution, (Wherever it is situated) or sacred tank, well, spring and water-course, appurtenant to the religious institution, whether situated within or outside the precincts thereof or any space within or outside the prakarams, mantapams, courtyards or corridors of the religious institutions has taken any action which has marred or is likely to mar the artistic appearance or the religious atmosphere of the religious institution, the Assistant Commissioner shall report the fact together with relevant particulars to the Joint Commissioner or the Deputy Commissioner as the case may be having jurisdiction over the area in which the religious institution is situated.

(2) The Joint Commissioner or Deputy Commissioner as the case may be, if satisfied that the artistic appearance or the religious atmosphere of the religious institution has been marred or is likely to be marred by the action of the lessee, licensee or mortgagee with possession shall cause to be served on the lessee, licensee or mortgagee concerned a notice calling on him to show cause before a certain date why an order terminating the lease or license or canceling the mortgage and requiring the lessee, licensee or mortgagee, as the case may be, to deliver possession of the property which is the subject of the lease ,licence or mortgage to the trustee before a date specified in the notice should not be made. A copy of the notice shall also be sent to the trustee of the religious institution concerned.

3) The notice referred to in sub-section(2) shall be served in such manner as may be prescribed.

(4) After considering the objections, if any, of the lessee, licensee or mortgagee, received within the period specified in the notice referred to in sub-section (2), (the Joint Commissioner or the Deputy Commissioner, as the case may be) , may , if he decides that

the artistic appearance or the religious atmosphere of the religious institutions has been marred or is likely to be marred by the action of the lessee, licensee or mortgagee by order terminate the leases or licensee or cancel the mortgage and require the lessee, licensee or mortgagee to deliver possession of the property which is the subject of the lease, licensee or mortgage to the trustee before a date specified in the order.

(5) The order of (the Joint Commissioner or the Deputy Commissioner, as the case may be), shall be in writing and shall contain the grounds on which he has passed the order.”

8. In this case the suit premises is a Theradi Mandapam intended for performance of certain religious activities connected with the Car festival. The appellant by dumping iron materials, has marred the artistic appearance and religious atmosphere of the said Mandapam. Hence, the Joint commissioner has rightly ordered to evict the petitioner from the suit property.

Therefore for the forgoing reasons stated Supra, I find no infirmity in the order passed by the Joint Commissioner, and it is liable to be confirmed. Accordingly the order dated 07.11.2015 of the Joint Commissioner, Madurai is hereby confirmed and the Revision petition is dismissed as devoid of merit. However it is made clear that the suit premises should not be let out in future for any commercial activity and the 3rd respondent temple, should make necessary arrangements for conducting regular pooja.

/typed to dictation/

Sd./- M.Veera Shanmugha Moni
Commissioner

/t.c.f.b.o./

Superintendent

To

1 The Appellants through Thiru.E.Ganesh, No.61/23, Sakthi Avenue, South Lock Street, Kottur, Chennai.

2. The Respondents through Thiru.P.Gopalan, Advocate, 55 Law Chambers, High court Building, Chennai 600 104.

Copy to

3. The Joint Commissioner, H.R. & C.E. Admn.Dept., Madurai.
4. The Assistant Commissioner, HR & CE Admn.Dept., Madurai.
5. Extra.