

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

Tuesday the 21st day of March, Two thousand and Seventeen.
Present :Dr.M.Veera Shanmugha Moni,
Commissioner.

A.P.39 to 41/2016 D2

Between

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| 1. S.Subramanian | ...Appellant in A.P.39/2016. |
| 2. R.S.Babuji | ...Appellant in A.P.40/2016. |
| 3. O.K.Gunasekaran | ...Appellant in A.P.41/2016. |

And

- | | |
|--|-----------------|
| 1.The Assistant Commissioner
HR&CE Department
Madurai. | |
| 2. The Assistant Commissioner/ Executive
officer, Arulmigu Koodalalagar Temple,
Madurai. | ...Respondents. |

In the matter of Arulmigu Koodalalagar Temple, Madurai.

The Appeal Petition filed under Section 81 of the Tamil Nadu H.R. & C.E. Act, 1959 (Tamil Nadu Act 22 of 1959) against the order dated 12.11.2016 of the Joint Commissioner, HR&CE Admn Department, Madurai Passed u/s.80 of the Act.

Order in D.Dis.A.P.39 to 41/2016 D2 dated: 21.03.2017

The above Appeal petition came up for final hearing before me on 21.02.2017 in the presence of ThiruR.Srinivasan, counsel for the appellant and Thiru.R.Raja, counsel for the 2nd Respondents. 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 Petitions filed under Section 54(4) of the Act Challenging the order dated 12.11.2016 of the Joint Commissioner, Madurai passed u/s. 80 of the Act.

2. The appellants contended that the Joint Commissioner, HR&CE Madurai has misconstrued the provisions of law. He has failed to note that

the religious institution Arulmighu Koodal Alager Perumal Thirukoil is situated at Koodal Alager Perumal Koil Street, Madurai and the sacred Tank belong to the religious institution is situated at Town Hall Road, Madurai far away from the religious institution and further failed to note that sacred tank not appurtenant to the religious institution and the tank is not situated within or outside the precincts thereof and is not situated on any space within or outside the prakarams, mantapams, courtyards or corridors of the religious institution which has marred or is likely to mar the artistic appearance or the religious atmosphere of the religious institution. Thus, the Joint Commissioner, HR&CE has misconstrued the provisions of Section 80(1) of the Act. The lower forum has failed to note that the 2nd respondent has allowed the appellants as tenant after by receiving rent to the suit shops without making any objection and without taking any eviction proceedings against him for his unauthorized use and occupation and now the 2nd respondent herein is estopped from denying the same by applying the principle of estoppel by conduct. While passing the order dated 12/11/2016 against the appellants herein and like others, the Joint Commissioner, HR&CE, Madurai should have tilted the balance in a fair manner and he has failed to note that the tenants who have believed the 2nd respondent herein and his inaction against them for violating any norms regarding the tenancy, continued their livelihood by doing business in the suit shop for the past several years and now they are in their last part of their life, they cannot start another business or start the same business in some other rented premises by paying huge amount as pagadi and advance and rent. In the said circumstances, if they are vacated from the suit shop, they will be the ultimate sufferers. The Joint Commissioner, HR&CE, Madurai has failed to note that the tenants who have occupied the suit premises have not caused any nuisance to the sacred tank premises and they are protecting the same from causing nuisance by the public. It is pertinent to note that mainly for that purpose, the suit premises was let out to various tenants. The Joint Commissioner, HR&CE, Madurai has failed to note that the persons who have occupied the market portions of the suit tank have caused all such nuisance and not the shop owners who have

occupied the remaining portion of the suit tank.

3. In the counter affidavit the 2nd respondent has stated that only due legal process has been adopted by the Department after giving due notice. Hence the appellants have no locus standi to be in possession of the property and they are in occupation of the property only knowing the rights of the temple. The respondent has taken eviction proceedings against all occupiers around the temple tank and all the allegations that the tank is away from the temple precincts has no relevancy and the temple has every legal right to take eviction proceedings under the Act and after following the procedures. The original authority has passed order of eviction after following the procedure. The respondent has taken proceedings for eviction as per the orders of Honourable High Court of Madras – Madurai Bench in W.P.(MD)No.1451 of 2011 and eviction orders have been passed. The appellants have no legal right to squat on the temple property without any right. It is settled law that receipt of rent by way of damages will not give any right to the occupier or tenant after termination of tenancy and the respondent has taken legal action against all occupiers and hence there is no valid ground in the Appeal.

4. I heard Thiru.R.Srinivasan Counsel for the appellant, Thiru.R.Raja, Counsel for the 2nd respondent and perused the relevant records.

5. The appellants are challenging the impugned order on the following grounds:

- i) They are the tenants recognized by the temple.
- ii) The tank is not appurtenant to the temple but located far away from the temple.
- iii) They never caused any nuisance but are only protecting the tank from causing nuisance.
- iv) If they are evicted, it will affect their livelihood.

6. In the areas around the Theppakulam Thiru.S.Subramanian, Thiru.M.Kaja Mohideen and Thiru.Sethu Madhavan were temporarily permitted to do business in hand cart for 11 months only in the year 1970. Appellants in AP No. 40 and 41/2016 are not tenants under the temple.

They had put up a permanent structure without any written permission from the temple administration. The appellants herein and other tenants have obliterated the Theppakulam by erecting permanent structures.

7. Though the tank is located away from the temple, it is a symbol representing the heritage and culture of the temple and annual festivals were held there. As contended by the respondent, in many temples, Temple tanks are located away from the temple. The above tank is sacred one and intended for the temple use only. The devotees used to have a holy dip in the tank. The float festival used to be celebrated in the temple tank. All these had not been denied by the appellants.

8. The appellants have destroyed the rain water drainage channel which brings water to the tank by constructing permanent shops around the tank. They have also polluted the tank by dumping garbage. The public and devotees could not get a view of the tank due to the shops constructed around it.

9. As contended by the respondent, the perception about artistic appearance is differs from person to person and it is not a measurable parameter. For a devotee/public a temple tank with full of water is not only an artistic beauty, but also a place where festivals and religious ceremonies are held. By obstructing water inlet channels, the appellants have allowed the tank to became dry. The appellants have not only marred the artistic appearance of the tank by erecting permanent structures on the bunds of the tank and but have also made it non functional for the religious purposes for which it is intended.

10. The tank is mainly intended for the use of temple and for conducting annual float festival. By destroying the rain water drainge channels, the tank has become dry and hence the float festival was not conducted in the tank. As the tenants have marred the artistic appearance and meddled with the religious atmosphere their tenancy was terminated u/s 80 of the Act, by the Joint Commissioner and ordered to evict them from the suit property.

11. In the Public Interest litigation petition filed in W.P.(MD)1451/2011 the Hon'ble High Court has issued following direction

on 24.10.2016 “ **since this matter pertains to the complaint of improper maintenance of the banks and even drainage water is allowed to stagnate. We deem it appropriate to issue direction to the Joint Commissioner, HR&CE Madurai to hold enquiry and pass final order in both the proceedings within a period of three weeks from the date of receipt of a copy of this order**”

12. Another W.P.(MD)No.11982/2011 filed by Madurai Town Hall Road perumal Teppakulam Annaithu Siruviyabarigal sangam was closed on **21.10.2011 with following observation.**

“However , the learned counsel appearing for the respondents produced a copy of the minutes of meeting held on 03.10.2011 under the chairmanship of the District Collector, for renovation the temple tank coming under the control of Hindu Religious and Charitable Endowments Department and for strengthening the rain water harvest scheme. The official of the Hindu Religious and Charitable Endowments Department, Tourism Department, Archeological Department and Public Works Department have participated in the said meeting. One of the decisions taken in the said meeting reads as follows

“ அருள்மிகு கூடலழகர் பெருமாள் கோவிலுக்குச் சொந்தமான திருக்குளம் டவுன் ஹால் பகுதியில் உள்ளது. அக்குளத்திற்கான வரத்துக் கால்வாய்களை கண்டறிந்து, ஆக்கிரமிப்புகளை அகற்ற ஒரு வாரத்திற்குள், மாவட்ட வருவாய் அலுவலர் மற்றும் இணை ஆணையர், இந்து சமய அறநிலையத்துறை நடவடிக்கை எடுக்க முடிவு செய்யப்பட்டது”.

“A reading of the above decision shows that the respondents have merely taken a decision to remove the encroachment to that the temple tank can be cleaned. It was stated by the learned counsel for the respondents that the same would be done only in accordance with law, as per the provisions of the various statutes and that there is no proposal to throw out any lawful lessee without taking due process of law”.

The Joint Commissioner has ordered to evict the appellants from the suit premises by conducting full fledged enquiry as per the

procedures prescribed under the provisions of Sec 80 of the Act and rules framed thereof.

13. It is the duty of every citizen to preserve the nature. Temple tank is a main water resource to maintain the ground water level in that locality. It is the prime duty of every citizen and public authority to protect and preserve the artistic features and religious atmosphere of the religious structure. Accordingly the Joint Commissioner has rightly ordered to evict the appellants.

Therefore, for the forgoing reasons stated supra, I find no reason to interfere with the orders passed by the Joint Commissioner, Madurai and is liable to be confirmed. Accordingly the orders dated 12.11.2016 passed by the Joint Commissioner, Madurai are hereby confirmed and the appeal petitions are dismissed as devoid of merit.

/typed to dictation/

Sd./- M.Veera Shanmugha Moni
Commissioner

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

Superintendent

To

1. The Appellants through Thiru.R.Srinivasan, Advocate, No.120/46, T.V.Lane, West Masi Street, Madurai -625.
2. The Respondents through Thiru.R.Raja, Advocate, Royal Plaza, 22B Melur Main Road, Out Post Tallakulam, opposite. to Madurai Corporation, Madurai.

Copy to

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