

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

Tuesday the 25th day of April, Two thousand and Seventeen.

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

A.P.42 to 141/2016. D2

Between

- | | |
|-------------------------------|-----------------------------|
| 1. M.Zahir Hussain and others | ...Appellant in A.P.42/2016 |
| 2. T.K.Eknath | ...Appellant in A.P.43/2016 |
| 3. Gopalakrishnan | ...Appellant in A.P.44/2016 |
| 4. S.S. Premkumar | ...Appellant in A.P.45/2016 |
| 5. R. Joseph | ...Appellant in A.P.46/2016 |
| 6. S.A.Abdul Rahman | ...Appellant in A.P.47/2016 |
| 7. M.S. Kannan | ...Appellant in A.P.48/2016 |
| 8. Badhur Nisha | ...Appellant in A.P.49/2016 |
| 9. R. Elangovan | ...Appellant in A.P.50/2016 |
| 10. O.R.Dinesh Babu | ...Appellant in A.P.51/2016 |
| 11. A.Asik Ali | ...Appellant in A.P.52/2016 |
| 12. Hussain Kani | ...Appellant in A.P.53/2016 |
| 13. K.S. Madhava Rao | ...Appellant in A.P.54/2016 |
| 14. M.A. Abdul Kahder jeyani | ...Appellant in A.P.55/2016 |
| 15. Mehar Parveen | ...Appellant in A.P.56/2016 |
| 16. P.V. Sankaran | ...Appellant in A.P.57/2016 |
| 17. P. Manivannan | ...Appellant in A.P.58/2016 |
| 18. Sumar Jain | ...Appellant in A.P.59/2016 |
| 19. V. Andal | ...Appellant in A.P.60/2016 |
| 1. M. Mohammed Ansari | ...Appellant in A.P.61/2016 |
| 2. F. Jammer | ...Appellant in A.P.62/2016 |
| 3. S. Ramalingam | ...Appellant in A.P.63/2016 |
| 4. N. Selvi | ...Appellant in A.P.64/2016 |
| 5. V. Nagarajan | ...Appellant in A.P.65/2016 |
| 6. R. Shanmugavalli | ...Appellant in A.P.66/2016 |
| 7. A.S. Kumar | ...Appellant in A.P.67/2016 |
| 8. S. Shiek Raja | ...Appellant in A.P.68/2016 |
| 9. O.R. Sahila | ...Appellant in A.P.69/2016 |
| 10. T.R. Ganesh Babu | ...Appellant in A.P.70/2016 |
| 11. Samseer | ...Appellant in A.P.71/2016 |
| 12. N. Mohammed Farook | ...Appellant in A.P.72/2016 |
| 13. T.J. Gokul | ...Appellant in A.P.73/2016 |
| 14. T.Jalaludeen | ...Appellant in A.P.74/2016 |
| 15. T.R. Srinivasan | ...Appellant in A.P.75/2016 |
| 16. K.N.Subramanian | ...Appellant in A.P.76/2016 |
| 17. K.Anwar | ...Appellant in A.P.77/2016 |
| 18. Fathima Beevi | ...Appellant in A.P.78/2016 |
| 19. Ismail | ...Appellant in A.P.79/2016 |

20. M.Malk batcha	...Appellant in A.P.80/2016
21. S.N. Dawab	...Appellant in A.P.81/2016
22. K. Ravikumar	...Appellant in A.P.82/2016
23. E. Selvam	...Appellant in A.P.83/2016
24. N.S. Veerasamy	...Appellant in A.P.84/2016
25. Chandrasekar	...Appellant in A.P.85/2016
26. G. Shanmugapandian	...Appellant in A.P.86/2016
27. S. Rajaramari	...Appellant in A.P.87/2016
28. M.R. Murugan	...Appellant in A.P.88/2016
29. B. Ramakrishnan @ Ravi	...Appellant in A.P.89/2016
30. P. Krishnana	...Appellant in A.P.90/2016
31. Thangaraj	...Appellant in A.P.91/2016
32. R.S. Sundarbabu	...Appellant in A.P.92/2016
33. K.R. Murali	...Appellant in A.P.93/2016
34. R.Muthukrishnan	...Appellant in A.P.94/2016
35. S.Josph Nelson	...Appellant in A.P.95/2016
36. S. Anitha Bopsingh	...Appellant in A.P.96/2016
37. S. Simson	...Appellant in A.P.97/2016
38. B.Rajapandian	...Appellant in A.P.98/2016
39. S.Nabi	...Appellant in A.P.99/2016
40. T.L.Senthuraman	...Appellant in A.P.100/2016
41. S.V.Brindha	...Appellant in A.P.101/2016
42. M.Kadermaideen	...Appellant in A.P.102/2016
43. K.Ahamedibrahim	...Appellant in A.P.103/2016
44. Sulthan Arifa	...Appellant in A.P.104/2016
45. Nainar Mohammed	...Appellant in A.P.105/2016
46. Velliyammal	...Appellant in A.P.106/2016
47. Aresh Ali	...Appellant in A.P.107/2016
48. M. Kadermydeen	...Appellant in A.P.108/2016
49. P.Jayapandian	...Appellant in A.P.109/2016
50. J.Panchu	...Appellant in A.P.110/2016
51. Vijayarahavan	...Appellant in A.P.111/2016
52. Ramesh	...Appellant in A.P.112/2016
53. T.S. Shantharam	...Appellant in A.P.113/2016
54. M. Shahila	...Appellant in A.P.114/2016
55. K.Ramesh	...Appellant in A.P.115/2016
56. M.a. Amanullah	...Appellant in A.P.116/2016
57. Harihesapandian	...Appellant in A.P.117/2016
58. R. Balasubramanian	...Appellant in A.P.118/2016
59. J.Ibrahim @ Ribayuthin	...Appellant in A.P.119/2016
60. V.K.R.Athithlal	...Appellant in A.P.120/2016
61. Kathiresan	...Appellant in A.P.121/2016
62. S. Thangam	...Appellant in A.P.122/2016
63. P.Paulpandi	...Appellant in A.P.123/2016

64. M.G. Ravikumar	...Appellant in A.P.124/2016
65. S.Jinna	...Appellant in A.P.125/2016
66. Sundarbabu	...Appellant in A.P.126/2016
67. N.R.Sathiyam	...Appellant in A.P.127/2016
68. V.Mathansingh	...Appellant in A.P.128/2016
69. K.Gulamrasool	...Appellant in A.P.129/2016
70. S. Thangamani	...Appellant in A.P.130/2016
71. Nazar	...Appellant in A.P.131/2016
72. Mohammed Iqbal	...Appellant in A.P.132/2016
73. K.K. Saravanan	...Appellant in A.P.133/2016
74. J.R. Marishwaran	...Appellant in A.P.134/2016
75. Viyabarigal Sangam	...Appellant in A.P.135/2016
76. P. Gandhi	...Appellant in A.P.136/2016
77. C.Pandiarajan	...Appellant in A.P.137/2016
78. E.K.Kumar	...Appellant in A.P.138/2016
79. M.Ethris	...Appellant in A.P.139/2016
80. N.O. Manjula	...Appellant in A.P.140/2016
81. C.V.Ramadass	...Appellant in A.P.141/2016

And

1. The Joint Commissioner, HR&CE Department, Madurai.	
2. The Assistant Commissioner, HR&CE Department, Madurai.	
3. The Assistant Commissioner/ Executive officer, Arulmigu Koodalalagar Temple, Madurai.	..Respondents in all cases .
4. R.Govindasamy	
5. Arasappan	...Respondent in A.P.42/2016
6. T.A.Nainar	... Respondent in A.P.43/2016
7. T.S.Govardhanan	... Respondent in A.P.44/2016
8. Mahamatha Beevi	... Respondent in A.P.45/2016
9. M.Ganesh Babu	... Respondent in A.P.47/2016
10. K.A.Munab	... Respondent in A.P.48/2016
11. L.V.Loganathan	... Respondent in A.P.49/2016
12. O.P.Ramdoss	... Respondent in A.P.50/2016
13. . A.M.Mahendran	... Respondent in A.P.51/2016
14. A.Abdul Wahab	... Respondent in A.P.52/2016
15. C.K.Venkatachalapathy	... Respondent in A.P.53/2016
16. D.P.D.Mustafa,	... Respondent in A.P.54/2016
17. K.Kareem Sheriff	... Respondent in A.P.55/2016
18. . A.Abdul Kalam	... Respondent in A.P.56/2016
19. K.S.Anwar	... Respondent in A.P.58/2016
20. K.S.Anwar,	... Respondent in A.P.59/2016
21. N.Aliyar	... Respondent in A.P.60/2016
22. S.Sikkandar	... Respondent in A.P.61/2016

23. T.Perumal	... Respondent in A.P.62/2016
24. S.T.Bajan	... Respondent in A.P.63/2016
25. M.Asan Miyan	... Respondent in A.P.64/2016
26. R.Subbiah	... Respondent in A.P.65/2016
27. K.Ramanathan	... Respondent in A.P.66/2016
28. O.R.Subramanian,	... Respondent in A.P.67/2016
29. M.Chokkalinagam,	... Respondent in A.P.69/2016
30. K.S.Madhavan	... Respondent in A.P.70/2016
31. . N.Kani,	... Respondent in A.P.71/2016
32. A.Anbalagan,	... Respondent in A.P.72/2016
33. K.Dawood	... Respondent in A.P.77/2016
34. . P.Jothimani	... Respondent in A.P.78/2016
35. A.Mohammad Meeran	... Respondent in A.P.80/2016
36. T.Natarajan	... Respondent in A.P.81/2016
37. Veeriah,	... Respondent in A.P.82/2016
38. P.Sakthivel	... Respondent in A.P.83/2016
39. S.Thangapandi	... Respondent in A.P.84/2016
40. A.B.Chandrasekaran	... Respondent in A.P.85/2016
41. C.Paraman	... Respondent in A.P.86/2016
42. M.Thangam	... Respondent in A.P.87/2016
43. M.Murugesan	... Respondent in A.P.88/2016
44. Thiraiviam	... Respondent in A.P.89/2016
45. Subbia	... Respondent in A.P.90/2016
46. V.Nagarajan	... Respondent in A.P.92/2016
47. Periyamayan	... Respondent in A.P.93/2016
48. Periyamayan	... Respondent in A.P.95/2016
49. S.K.Sambamoorthy	... Respondent in A.P.96/2016
50. R.N.S.Mani	... Respondent in A.P.97/2016
51. S.Annapackiam	... Respondent in A.P.98/2016
52. G.Kamala	... Respondent in A.P.99/2016
53. R.Lakshmanan	... Respondent in A.P.100/2016
54. S.K.Thangappa	... Respondent in A.P.101/2016
55. K.V.S.Pandian,	... Respondent in A.P.102/2016
56. V.Subramanian	... Respondent in A.P.103/2016
57. N.M.Soundaram	... Respondent in A.P.104/2016
58. K.Baluchamy	... Respondent in A.P.105/2016
59. N.M.Sheriff	... Respondent in A.P.107/2016
60. P.Ramakrishnan	... Respondent in A.P.109/2016
61. T.M.Sahul Hameed	... Respondent in A.P.110/2016
62. P.L.Belix	... Respondent in A.P.111/2016
63. S.Jhanic Basha	... Respondent in A.P.112/2016
64. K.Sundaram	... Respondent in A.P.113/2016
65. J.Gardiner	... Respondent in A.P.114/2016
66. J.Jeyaseelan	... Respondent in A.P.115/2016

67. V.Raj	... Respondent in A.P.116/2016
68. K.Balasubramanian	... Respondent in A.P.118/2016
69. K.N.Thuruvan	... Respondent in A.P.120/2016
70. V.S.Mani	... Respondent in A.P.121/2016
71. K.Pitchai	... Respondent in A.P.122/2016
72. A.C.Babulal	... Respondent in A.P.123/2016
73. S.Moses	... Respondent in A.P.124/2016
74. K.Basker	... Respondent in A.P.125/2016
75. D.Saraswathi Ammal	... Respondent in A.P.127/2016
76. K.P.Rajarathinam	... Respondent in A.P.128/2016
77. P.Chelliah	... Respondent in A.P.129/2016
78. Mohammed Mustafa	... Respondent in A.P.131/2016
79. R.V.Ramesh	... Respondent in A.P.132/2016
80. Rengasamy	... Respondent in A.P.133/2016
81. Syed	... Respondent in A.P.134/2016
82. P.Velayutham	... Respondent in A.P.136/2016
83. R.Subramanian	... Respondent in A.P.137/2016
84. M.M.Samsudeen	... Respondent in A.P.138/2016
85. M.Sudalaimuthu	... Respondent in A.P.139/2016
86. K.S.Madhavarao	... Respondent in A.P.140/2016
	... Respondent in A.P.141/2016

In the matter of Arulmigu Koodalalagar Temple, Madurai.

The Appeal Petitions 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.42 to 141/2016 D2 dated: 25.04.2017

The above appeal petitions came up for final hearing before me on 14.03.2017 in the presence of Thiru.K.Sakthivel, Counsel for the petitioner and Thiru.R.Raja 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 Petitions was filed u/s.81 of the Act against the order dated 12.11.2016 of the Joint Commissioner, HR&CE Admn. Department, Madurai passed under Section 80 of the Act.

2. The appellants have stated that the Teppakulam was said to be excavated by the thirteen Madurai Nayak rulers in the 17th century namely, Thirumalai Naicker exclusively for collecting rain water from Vaigai river, Kocuadai Kalvai, Kiruthumal Nathi, and other various points during the rainy season, in order to conduct Theppam Festival in the month of Masi and to area way for adding water sources to the area encircling around the Teppakulam area. Rain water collection routes to this Teppakulam were blocked and obstructed by means of buildings, constructions, roads and by other means. Since Teppakulam was stagnated by drainage and contaminated due to dumping of garbage, it attracted all illegalities and irregularities which was a permanent threat to health and law and order. Teppakulam was misused by miscreants, since the area than the read level, and it was thickened by weeds, grasses,plants, trees and bushes and it conveniently breed for misuses and mis-chiefs. In order to put an end to this abuses and misuses, the temple authority had divided and formed small size areas at the Eastern/Northern\Western bunds of Teppakulam and rented the sites to 108 vendors to install bunk shops for doing business. The third respondent has fixed the fair rent as per the G.O.Ms.No.353 CT&RE dated 04.06.1999. G.O.Ms.No.456 CT&RE dated 09.11.2007 , and G.O.Ms.No.298 T.D.C.R and information department 20.07.2010 in accordance with the enjoyment area. The rent was periodically revised and the same is being regularly remitted by the appellant without any default. The directions given by the first respondent vide his letters in Na.Ka.No 097/99/(2)A4 dated 26.08.1999, the third respondent has also called for applications for name transfers for tenancy, vide his letter No 348/99/A3 dated 21.09.1999,19.11.1999 and 03.12.1999 and application was made by the appellant to transfer the name of the tenancy from their former partner by paying donation, deposit along with necessary documents. But the temple authority has failed to issue orders by transferring the tenancy right in favour of the appellants. All civic charges and electricity caution deposit were paid by the appellants. However by accepting the rent regularly, and filing petition under Section 80 of the HR&CE Act, the respondents 1-3 have legally accepted the appellants are a

lessees, since only against lawful lessee, action can be initiated under Section 80 of the HR&CE Act and orders can be issued under Section 80(4) of the HR&CE Act. The Teppakulam does not contain water, due to the frequent failure of monsoon and the obstruction of rain water harvesting routes from Kochadai Kalvai, Madurai College, Kirudumal Nathi and Vaigai river which quenched the thirsty of the Teppakulam. Unchecked extraction and blocking of inlet ducts has led to the drying up of tank. However, hectic steps were taken for removing the obstruction made in the routes of rain water connecting the Teppakulam. Neither appellant's shop nor other surrounded shops are obstructing the rain water collection system as alleged by the respondents 1-3, since these shops are located above the road level, and rain water harvesting pipes were fixed only at the beneath of these shops. Therefore throwing fireballs in respect of blocking rain water harvest system against the appellant and other tenants is not correct. W.P.(MD) No 9&4 of 2010 filed by the temple authority before the Madurai Bench of Madras High Court for a direction to the Madurai Corporation to stop the flow of sewage in to this Teppakulam. The Hon'ble High Court has recorded the submission made by the Madurai Corporation that steps had already taken to stop the flow of sewage and waste water in to the Teppakulam and preventive action would be taken with in three weeks. Recording this assurances the Hon'ble High Court has closed the writ Petition. Thus the flow of sewage and waste water in to the tank was also stopped. In W.P.(MD)No.1451 of 2011, the Hon'ble Madurai Bench of Madras High Court has issued an interim order on 05.12.2013 directing the Madurai Corporation and the Executive Officer the third respondent herein " to ensure that there is no drainage water seeping in to the tank and that filth, garbage, defuse etc., accumulated in the tank are cleaned immediately and the water in the tank is free from any pollution" The Hon'ble Bench also appointed two Advocate Commissioners to monitor and oversee the cleaning work of the temple tank premises . Accordingly the temple tank was cleaned. The Teppakulam has 16.5 feet depth and a small Mandapam is situated in the middle of the Teppakulam and it could be seen only when the visitors went down to the Teppakulam. In the Mandapam there is no specific artistic appearance as alleged by the respondents 1-3. No expert team has reported that the Teppakulam *and* its bunds are having artistic appearances and religious atmospheres. The second respondent has

failed to furnish any relevant particulars along with his report and he has not listed the details of artistic appearances if any, and so, he has failed to render his statutory duty as envisaged under Section 80(1) of the Act. The Teppakulam does not wear any religious atmosphere as expressed by the respondents, since neither daily poojas are conducted nor any rituals are performed by the devotees. The Teppakulam is neither religiously ritually connected with the prime deity of the religious institution. The Teppakulam does not consist artistic appearance or wearing religious atmospheres as contemplated under section 80 of the Act. This temple has a tank within the precincts of the temple nearer to "Thayar Sannadhi" wherein Thjeerthawari, a religious function is being conducted periodically. Moreover abishegam is being done to the deities by means of water (Theertham) fetched from the pushkaran tank. This tank alone is religiously and ritually connected with the prime deity and devotees. As the tank consists and contains religious sanctity within the precincts of the temple, and certain religious and ritual performances cannot be performed without the involvement of holy water from this tank. This tank alone is related to the puranam of the temple. Wherein this "Teppakulam" is far away from the prime deity and it is not connected with any rituals or any day to day poojas. Not related to devotees or deities. It will not either purify or sanctify the devotees who are coming to the religious institution for worshipping the prime deity. As this Teppakulam does not wear any religious sanctity it cannot be construed as a sacred tank. The appellants do not obstruct the rain water connection in any way, but they cooperate with the administration for laying huge rain water pipes under the shops. For throwing wastes in to the Teppakulam, the appellants shops are not a cause and the Market run by Madurai Corporation alone was the source of all troubles, and now it was also prevented by the order of the Hon'ble Madurai Bench of Madras High court. A temporary shop which had not marred artistic appearances or the religious atmosphere of the Teppakulam during the past fifty years, could not mar the same, unless and otherwise new artistic appearance flourishes in the intervening period or additional construction was made by the appellant. The Joint Commissioner has apparently failed to note that the report of the Assistant Commissioner, Madurai is noting but the report of the Executive Officer of the concerned temple which is against section 80 of the Act. While the third respondent is regularly action as Executive Officer

of the temple, holding additional charge of the jurisdictional officer, namely Assistant Commissioner, Madurai, the report was sent to the first respondent under section 80(1) of the Act, which is illegal and improper. No single person can act officially in a dual capacity for his own case. who alleges is the mother of substantiation in civil cases'. While so, the burden of Proof is always vested with the petitioner, the same cannot be transferred or transmitted to the shoulders of the innocent appellants, which is against the provisions of the Indian Evidence Act 1872

3. In the counter affidavit the 3rd respondent has stated that the averments that the appellants are tenants is denied as totally false. The most of the appellants is aged between 40 to 50 years but they stated in the appeal they are in possession of the property for more than 34 years is totally false on the face of it. The appellants not approached this honourable court with clean hands and suppressed the real fact. The subtenant has only stand only with the feet of the main tenant. In the absence of main tenant not preferred any appeal, the sub tenant has no locus standi to file appeal. Initially the temple authorities permit the tenants only for doing business in moveable hand Cart four wheels as hacker. The temple authorities are entered written tenancy agreement in the year 1970 with tenant with following conditions

- a. The tenant should not sublet the tenancy
- b. The tenancy period is only for 11 months.
- c. The tenant is permitted to doing business in moveable hand card four wheeler.
- d. The tenant is should vacate during the Theppam Festival.
- f. Moreover the tenancy come to an end after the lease period and automatically vacate and hand over possession to the temple authorities.

But the tenant constructed a bunk stall without any permission from the competent authorities and sublet and not handover possession after the lapse of lease period and thereby violating the conditions in the tenancy agreement. As per TAMILNADU HR&CE Act the oral permission is not valid. The appellants himself admitted the bunk stall was constructed without permission of competent authorities. The sub-tenants were added as party only for abundant caution to avoid delaying tactics. The temple authorities take all necessary legal steps to safeguard the temple

tank and also to obey the order of the Honourable high court Madurai Bench the Teppakulam was keep clean. The Honourable High court orders to restore the views of Teppakulam only to be cured by evicting the all tenants. The temple authorities take all necessary steps to evict all the tenants surrounding the Teppakulam. All the four sides of Teppakulam was surrounded by tenants constructing about 10 to 15 feet height walls. If the temple tank is filled with water the Theppam festival can not be conducted with out evicting the tenants, because the all tank banks sare occupied by the tenants, if the floating car(Theppam) cannot be pulled by devotees, there is no gap between Tank and its bunds between these the tenants are occupied. Therefore the previously the tenants are allowed only on temporary basis. The appearance of the theppam itsel if an artistic appearance. If a new person came to Madurai even stands near the Teppakulam he cannot find out the Teppakulam except on aerial view. The appellant himself admitted the Theppam festival was forced to conducted on the road side for want of water in the Teppakulam. The Theppam festival is connected with religious activities. Therefore the Theppam has religious atmosphere more over a small Vinayakar idol is installed on the bunds of tank for that Vinayakar idol daily poojas are done by the temple authorities. It is a common belief in Hindu all temple tank is sacred. There is no classification as sacred or unsacred. The Respondent has taken eviction proceedings against all occupiers around the temple tank and the temple has every legal right to take eviction proceedings under Tamil Nadu Act 22 of 1959 and after following the procedures and the original authority has passed order of eviction after following the procedure.

4. I heard Thiru.K.Sakthivel, counsel for the appellants and Thiru.R.Raja Counsel for the 3rd respondent and perused the relevant records.

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

(i) Mandatory condition for initiating action u/s. 80 of the Act are not fulfilled and technical words are not defined u/s.80 of the Act.

(ii) Teppakulam cannot be construed as a sacred tank

(iii) Teppakulam situated far away from the temple cannot be presumed as appurtenant to the temple.

(iv) An ordinary official cannot identify the artistic appearance situated in the Teppakulam

(v) Teppakulam does not have any religious atmosphere

(vi) A single person cannot act in a dual capacity for his own case

(vii) The Report of the Advocate Commissioner appointed by the Hon'ble High Court was not considered by the Joint Commissioner.

(viii) The appellants are not marring the artistic appearance and religious atmosphere.

6. Both the Assistant Commissioner and the Joint Commissioner have prima facie satisfied that all the mandatory conditions contemplated u/s.80(1) of the Act were complied, before initiating action u/s.80 of the Act. If the words used in the Act are not defined, it will have the dictionary meaning depending upon the place where it has been used.

7. The appellants have mainly contended that the Teppakulam is not a sacred one and it does not find place in the list of sacred water bodies in the State of Tamil Nadu published by the Ministry of Environment and Forests, Government of India. The said list cannot be taken as a complete list of tanks in the State of Tamil Nadu. For instance, it is admitted by the appellants that a tank called as "Hematheertham" is situated within the temple, and has religious sanctity but the said tank did not find place in the above said list. Further, Teppakulam of Arulmigu Virdhagiriswarar Temple, Virdhachalam, Arulmigu Uchipillar Temple, Trichy, Arulmigu Nambi Temple, Tirukkungudi and Arulmigu Nellaiappar temple, Tirunelveli are included in the said list. Further Teppakulam of Arulmigu Lakshmi Nara shimna swamy temple, Sholingar, which is situated 2 k.m away from the Temple was also included in the said list. Further the Teppakulams belonging to various temples are also declared as sacred one. Further in the Oxford dictionary, the meaning of the word "sacred" has been given as "(i) Connected with God or a God or Goddess or Religion

ii) too important or special and not to be changed or harmed".

This Teppakulam is also connected with the deity and intended for conducting float festival.

8. The erstwhile rulers had dug tanks for various purpose like irrigation, public utility, drinking water and temple purpose. The said tanks are being used for that

specific purpose alone. The temple tanks are mainly intended for the purposes connected with the god and religion and considered as holy.

9. Most of the appellants are not tenants under the temple. In the year 1970, 108 persons were permitted to do business in hand cart for 11 months only. They had put up a permanent structure without any written permission from the temple administration. They have obliterated the Teppakulam by creating permanent structures. Even in the Advocate Commissioner's report it was observed that ***“On enquiry we learnt that the shop keepers have volunteered themselves in the work of ceiling the leakage and started smearing cements in the northern, eastern portion of the temple tank which is nothing but strengthen of their building. The shopkeepers by means of voluntaring have tried to smear cement all over the buildings which would strengthen their buildings and it was restrained later by the Temple Authorities. Though the scope of the Commission is limited , we feel it obligations on our part to bring the present scenario of the temple tank before this Hon’ble court. In the eastern side of the tank, we noticed loads of bricks which were brought by the shopkeepers voluntarily for the purpose of construction which was stopped by the Temple Authorites.*”**

The Respondent No.5/temple officials have completed the herculen task of cleaning the Tank successfully and the temple tank is now pleasant to view and garbage free. However the present stage of garbage free atmosphere can only be maintained by periodical inspection and cleaning of the Tank by the temple authority”.

The temple administration has considered that to maintain the Temple tank, garbage free by carrying out periodical cleaning work, the shops constructed in the bunds of the temple should be removed.

10. Further u/s.80 of the Act, the Assistant Commissioner having jurisdiction over the Religious Institutions may send a report to the Joint Commissioner concerned. In this case, the Assistant Commissioner/ Executive Officer of the above temple also held additional charge of the Assistant Commissioner, Madurai who had sent report to the Joint Commissioner. The Assistant Commissioner/Executive Officer has

forwarded the report to the Assistant Commissioner concerned based on the resolution passed by the Fit person of the temple. She has executed the resolution of the fit person only. After verifying the report by spot inspection, the Jurisdictional Assistant Commissioner has sent report to the Joint Commissioner. On perusing the report of the Assistant Commissioner, the Joint Commissioner has prima facie satisfied and issued notice u/s 80 of the Act. She has independently exercised her duties attached to the respective posts.

11. Though the lease period was only for 11 months, they are occupying the property for more than 45 years. The tenancy is not a perpetual one as it is prohibited under the Act. The fair rent has been periodically revised to the property irrespective of the person who is in occupation of the property. The occupier is bound to pay the damages towards use and occupation of the property. Mere payment of damages will not confer any lawful right to continue with the possession. A tenant can occupy the property during the pleasure of the landlord only. The temple administration has sympathetically allowed the appellants to occupy the property for the past several decades. When the shops built by the appellants are preventing the temple from carrying out periodical maintenance work and conducting religious festivals like float festival, the appellants should vacate the property. As they have enriched themselves for the past 45 years by squatting on the temple's property, they must show their gratitude by vacating a property when the same is required by the temple. They cannot arm twist with the temple by filing several cases before various forums.

12. 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.

13. 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.

14. As contended by the respondent, the perception about artistic appearance 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 become 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.

15. The tank is mainly intended for the use of temple and for conducting annual float festival. By destroying the rain water drainage 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.

16. 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**”

17. 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 follows¹⁴

“ mUÿäF TlyHf® bgUkhÿ nfhéYjFç brh^ajkhd ÂUjFs« Îk Ahš gFÂæš cÿsJ. mjFs^aÂ%fhd tu^aJi fhšthCEfis f©lç^aJ, Mj»uäÿòfis mf%ow xU thu^aÂ%FY, khtEI tUthCE mYty® k%W« İiz Miza®, İ^aJ rka mwäiy^aJiw eltojif vLjif Koî brCEaÿgEIJ”.

15“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.

18. 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.K.Sakthivel, Advocate, 396, 3rd Floor, New Additional Law Chambers, High Court Buildings, Chennai-104.
2. The 3rd respondent through Thiru.R.Raja , Advocate, Royal Plaza, 22B, Melur Road, Outpost Tallakulam, Opp. to Madurai Corporation, Madurai.

Copy to

3. The Joint Commissioner,HR&CE Admn.Department, Madurai.
4. The Assistant Commissioner, HR&CE Admn.Department, Madurai.
5. Extra