

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

Tuesday the 9th day of May, Two thousand and Seventeen.

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

A.P.No.3/2017 D2

Between

K. Nazeem

...Appellant.

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.

4. P.M. Santhanapper.

..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 in Na.Ka.no.7132/2015 passed u/s.80 of the act.

Order in D.Dis.A.P.No.3/2017 D2 dated: 09.05.2017

The above appeal petition came up for final hearing before me on 04.04.2017 in the presence of Thiru.S.Subbiah, Counsel for the appellant and Thiru.R.Raja, counsel for the 3rd respondent and perused the relevant records. 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 was filed u/s.81 of the Act against the order dated 12.11.2016 of the Joint Commissioner, Madurai passed u/s.80 of the Act.

2. The appellant has stated that he is running a ready made textile shop,

by name Nasma Garments at No.1, Town Hall Road, Madurai, which is the shop situated adjacent to the temple tank belonging to A/m.Koodalazhagar Temple, Madurai. Originally, the tenancy was in favour of one Arumugam. The rent at that point of time was Rs.207/- per month. Thereafter, one Santhanapeer, succeeded to the tenancy and was in possession and occupation of the said shop. When there was a dispute against the said Santhanapeer and one Sulthan, a suit in O.S.No.693/2005 was filed by the Department before the District Munsif Court, Madurai. The petitioner herein succeeded to the tenancy in the year 1997 and had been paying the rents to the temple promptly without any due. He has been in possession, occupation and enjoyment of the said shop since then. The Department had demanded the rental dues of Santhanapeer to the tune of Rs.11,455/- along with expenses of Rs.5,000/- towards conducting the suit in O.S.No.693 of 2005 and also a sum of Rs.25,000/- towards donation. The appellant had paid the said donation of Rs.25,000/- under the receipt dated 02.03.1998 and the other amounts aforesaid on 06.03.1998 . Based on the above payments, the Department has recognized the appellant as a tenant by letter dated 19.10.2000 and fixed the rent at Rs.805/- per month. The appellant has been paying the rents promptly and regularly without any due. When there was an attempt by the temple to dispossess the appellant, a suit in O.S.No.358 of 2003 was filed before the District Munsif Court. By Decree dated 25.07.2008, a suit was decided in favour of the appellant. By virtue of all these, the appellant has been in possession, enjoyment and occupation of the aforesaid shop for the past 40 years. He has obtained electricity for the above said shop and has been regularly paying the electricity meter charges. The respondents 1 to 3 under the guise of implementing a Court Order are now trying to dispossess the appellant from the shop. The respondents have contended that the shop of the appellant which has been in existence for the past 40 years is eclipsing the beauty of the Teppakulam (Temple Tank) and is causing hindrance for the flow of water in the Teppakulam and as such has passed the present order for eviction. The above action of the respondents is completely

contrary to the principle of Natural Justice and as such is unsustainable. There has been a long standing dispute between the Corporation of Madurai and the HR & CE Department with regard to the ownership of the land. In the said tussle, the Small Shop owners like the appellant were made to run to pillar to post. It is absolutely false to allege that the appellant was only permitted to do business in a hand cart and that the appellant without permission had put up a tin shed for selling of export garments and textiles. It is false to allege that since no lease was entered into, the tenancy could be terminated u/s.80(2) of the Act. If the above are to be considered, then it is crystal clear that a tenancy fully recognized by the department is in existence in respect of the shop and in favour of the appellant. The Teppakulam (Temple Tank) is situated more than 1 k.m. away from the temple and no daily poojas are performed in the said Teppakulam and as such the same is not a religious institution and as such no action u/s. 80 of the Act can be initiated against the appellant. In fact, the temple has leased out the lands on all the four sides of the tanks to the various individuals and now whereas, the shop owners only on the 3 sides of the tank are being harassed, while the occupants on the South side running the Vegetable shops have not been touched, which clearly shows that the respondents have indulged in bias and pick and choose. Since the shop owners are performing one day Mandaga Padi during the Theppam Festival, the Teppakulam is also a religious institution. That apart, the 1st respondent has not issued any show cause notice as envisaged u/s 80 of the HR & CE Act and as such present order of eviction dated 12.11.2016 passed against the appellant is completely against the principles of natural justice. Except for the alleged reasoning that the appellant's shop is eclipsing the beauty of the mandapam in the Teppakulam and no other reason even for name sake has been adduced by the 1st respondent in passing the present impugned order dated 12.11.2016. Even the above said reason is totally fanciful and unreasonable. The temple itself has leased out the land some 40 years back, allowed the appellant to conduct his business by recognizing his

tenancy for all these years, accepted rents for all these years without any murmur, has now suddenly done a somersault and is alleging that the shop of the appellant, which is in existence for the past 40 years is eclipsing the beauty of the Mandapam in the Teppakulam . The contention of the 1st respondent that the beauty of the Mandapam is eclipsed and the religious atmosphere of the Teppakulam is being spoiled due to the presence of the appellant shop is completely illogical and is being reeled out only for the purpose of passing the impugned order and to throw away the appellant from the recognized shop tenancy by any means. It is false to allege that the appellant was causing hindrance to the free flow of water to the Teppakulam during rainy season. The appellant shop is situated only abutting the compound wall. The said compound wall was built up by the temple itself surrounding the entire Teppakulam on all sides. Therefore, the appellant's shop in no way can act as an hindrance for the free flow of water from the road to the tank, in as much as no rain water can flow through the said compound wall.

3. In the counter affidavit, the 3rd respondent has stated that the appellant succeed the tenancy and the same was recognized by the temple is not correct he is only a subtenant. As per Tamil Nadu Hindu Religious Endowment Act, 1959 without sanction of competent authority the tenancy could not be regularized. The appellant is only aged about 47 years but he stated in the appeal he was in possession of the property is more than 40 years is totally false. The appellant is not approach this honorable court with clean hands and suppress the real fact. The appellant is only a sub tenant , the temple added as party only abundant caution. The main tenant does not come forward to file an appeal. The sub tenant 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. Hence the present appeal by the sub tenant is not maintainable and liable to be dismissed in limine. The month of Masi for two days, during the

theppam festival the urchavar of the temple came to the Teppakulam and theppam festival was conducted. The Tenant association also one of the mandagapadithars. The tenant association himself filed a writ petition to receive the mandagapadi fee for conducting mandagapadi . The theppam festival is the part and parcel of the religious nature. Hence the present case is came within the ambit of Sec 80 of the TN HR&CE Act. The appellant's main tenant himself construct a bunkstall with out permission of temple authorities it eclipse and marred the appearance of Neerali mandapam. Initially the temple authorities permit the tenant 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 cart four wheeler.
- d. The tenant is should vacate during the Theppam Festival.
- e. Moreover the tenancy come to an end after the lease period and automatically vacatee 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. The appellants himself admitted the bunk stall was constructed without permission of competent authorities. The illegal act cannot be become legal. And it clearly proves that construction itself eclipse and marred the artistic appearance of the Teppakulam. 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 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. The temple is forced to conduct the festival on the roadside. 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 are occupied by the tenants. The floating car (Theppam) cannot be pulled by devotees, there is no gap between tank and its bunds. Previously the tenants are allowed only on temporary basis. The appearance of the theppam itself is an artistic appearance. As already stated if a new person came to Madurai even stands near the Teppakulam he cannot find out the Teppakulam except on aerial view. The impugned order was passed in accordance with law. 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. This fact is very well known to the appellants. 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. The original authority has passed order of eviction after following the procedure. Moreover the artistic appearance is differ from one person view to another. It was not done by experts. There is no such expert. For example, the Tajmahal in Agra is only built with white marbles without any sculptures but it was treated as one of the seven wonder. But in Tamil Nadu temple Gopurams have lot of sculptures. And moreover some temple Gopurams in Tamil Nadu with out any sculptures. Hence the artistic appearance is differ one person to another . There is no specific parameters for that.

3. I heard Thiru.S.Subbiah, Counsel for the appellant and Thiru.R.Raja, counsel for the 3rd respondent and perused the relevant records.

4. In the areas around the Teppakulam 108 persons were temporarily permitted to do business in hand cart for 11 months only in the year 1970. The Appellant is not a tenant under the temple. He had put up a permanent structure without any written permission from the temple administration. The appellant herein and other tenants have obliterated the Teppakulam by erecting permanent structures.

5. 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 a 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 appellant.

6. The appellant had destroyed the rain water drainage channel which brings water to the tank by constructing permanent shop around the tank. He has 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.

7. 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 appellant has allowed the tank to become dry. The appellant has not only marred the artistic appearance of the tank by erecting permanent structures on the bunds of the tank, but have also made it non functional for the religious purposes for which it is intended.

8. 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 tenant has marred the artistic appearance and meddled with the religious atmosphere his tenancy was terminated u/s 80 of

the Act, by the Joint Commissioner and ordered to evict them from the suit property.

9. 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**”

10. 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 follows8

“ 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 appellant 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.

11. 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 appellant.

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

/typed to dictation/

Sd./- M.Veera Shanmugha Moni
Commissioner

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

Superintendent

To

- 1.The appellant through Thiru.S.Subbiah, Advocate, No.10, Kondi Chetty Street, Chennai-1.
2. The 3rd respondent through Thiru.R.Raja, Advocate, Royal Plaza, 22 B, Melur Main Road, Out Post 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.