

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

Thursday the 23rd day of August Two thousand and eighteen.

Present: Tmt.R.Jaya, I.A.S.,
Commissioner.

A.P.11/2018 D2

Between

S.Shanmugam

...Appellant

And

1. The Joint Commissioner
H.R&C.E., Admn Department,
Vellore.
2. The Assistant Commissioner
H.R&C.E., Admn Department,
Kanchipuram.
3. The Executive officer,
Arulmighu Ekambaranathar Temple
Kanchipuram.

... Respondents

In the matter of Arulmigu Ekambaranathar Temple, Kanchipuram

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 13.02.2018 of the Joint Commissioner, HR&CE Admn Department, Vellore in Pro.Rc.No.2035/2017 passed u/s.80 of the Act.

Order in D.Dis.A.P.No.11/2018 (D2) dated :23.08.2018

The above Revision petitions came up for hearing before me on 02.07.2018 in the presence of Thiru.E.Ganesh, counsel for the petitioners and Thiru.N.Kanakavelu, Counsel for the 3rd respondent. Upon hearing their arguments and having perused the connected records 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 13.02.2018 of the Joint Commissioner, Vellore passed u/s 80 of the Act.

2. The appellant has stated that there is a four pillar open mandapam outside the temple campus. In the pillars, there are few carvings of the God, but however, there is no religious worship on it. Abutting the mandapam, the

appellant has put up a small shop with ACC roof measuring about 100sq.ft. He is in lawful occupation for the past 50 years and has been regularly remitting the land rent fixed/claimed by the temple authorities. While this being so, the 1st Respondent has sent a notice dated 16.03.2017, u/s 80(2) of Tamil Nadu Hindu Religious & Charitable Endowments Act, 1959. As per Rule 3 and 4 of the Removal of encroachments on lands or buildings belonging to Religious Institution Rule, the statutory form required to be issued by the Joint Commissioner to initiate proceedings u/s 80 of the Act shall be form C of the schedule annexed to the relevant Rule but the notice dated 16.03.2017 correlated to the ingredients of Form C instead contained with the allegations that the Appellant has been unauthorisedly occupying the above subject premises. Further the Joint Commissioner has not disclosed any reasons vis-a-vis action of the appellant which is marring of the artistic appearance or the religious atmosphere of the religious institutions. Subsequent to that, the 1st respondent has initiated the termination proceedings against the Appellant u/s 80(2) of Tamil Nadu Hindu Religious & Charitable Endowments Act, 1959. In the meanwhile, the Appellant has also filed a suit before the District Munsiff Court, Kancheepuram seeking a permanent injunction restraining the Respondents, jurisdictional District Collector and the Commissioner, Kancheepuram Municipality from dispossessing the Appellant without exerting due process of Law and the above suit is subjudice and pending for adjudication. The Joint Commissioner seems to have passed an ex-parte order dated 13.02.2018, observing that he is an encroacher u/s 80 of the Act and

instructed the Appellant to vacate the premises within 15 days from the subject premises. The Joint Commissioner has observed that he has initiated the proceedings in terms of Section 80 of the Act on the basis of the report of the 2nd Respondent. However it transpires by the perusal of the order that the alleged report has not been disclosed whether the nature of the occupation of the Appellant over the subject premises would raises the cause of auction to initiate the proceedings in terms of Section 78 of the Act or in terms of Section 80 of the Act. The Joint Commissioner miserably failed to consider that Sub clause 2 of Section 80 of the Act mandates that, the jurisdictional Joint Commissioner shall satisfy, that the act of the lessee has marred or likely to mar the artistic appearance or the religious atmosphere of the religious institution, prior to causing of any notice, calling upon any lessee to show cause why the order terminating the lease shall not be passed. The Joint Commissioner has failed to consider the fact that the section 80 of the Act does not apply to the encroacher of the temple land but however it applies only to the lawful lessee or licensee alone. The Learned Joint Commissioner has thoroughly confused over the Section 78 and Section 80 of the Act.

3. I heard Thiru. E.Ganesh, Counsel for the appellant, Thiru. P.V. Arul Phazam Nee, Counsel for the 3rd respondent and perused the relevant records.

4. The sum and substance of the argument of the counsel for the appellant is as follows:

- i. No opportunity was given to the appellant.

- ii. The Joint Commissioner has termed the appellant as an encroacher u/s 78 of the Act, but order was passed u/s 80 of the Act.
- iii. Proceedings u/s 80 can be initiated against the lessee only.
- iv. The Joint Commissioner has failed to explain how the appellant is marring the Artistic or the religious atmosphere of the temple.

5. The Joint Commissioner has issued notice to the appellant vide notice dated 2038/2017 C1, dated 16.03.2017. Again notices were issued to the appellant for enquiry on 26.05.2017, 13.06.2017, 30.06.2017, 11.07.2017 and finally on 28.07.2017. But the appellant has never appeared before the Joint Commissioner. Hence, the contention of the appellant that opportunity was not given to him before passing the impugned order is unsustainable.

6. In paragraph 6 of the impugned order the Joint Commissioner has stated that

“எனவே, மேற்கண்ட விவரங்களை உற்றுநோக்கும் போது இந்த எதிர்மனுதாரர் இந்து சமய அறக்கொடைகள் சட்டம் 78-ல் குறிப்பிட்டுள்ள ஆக்கிரமிப்பாளர்களுக்குரிய அடையாளங்களை கொண்டிருப்பதால் இவரை ஆக்கிரமிப்பாளராக கருத வேண்டியுள்ளது. இப்போரூள் குறித்து நன்கு கவனமுடன் பரிசீலனை செய்ததில், எதிர்மனுதாரர் இரண்டாம் மனுதாரருடைய சொத்துக்களை ஆக்கிரமிப்பு செய்துள்ளது தெள்ளத்தெளிவாக உறுதி செய்யப்படுகிறது. இந்த ஆக்கிரமிப்பு இடமாகிய கலையழகோடு கூடிய இந்த மண்டபத்தின் தோற்ற பொலிவினை கெடுக்கும் வகையில் எதிர்மனுதாரரின் வணிகரீதியான செயல்பாடுகள் அமைந்துள்ளதால் தொடர்ந்து இவரை அங்கு இருக்க அனுமதிக்க முடியாது. எனவே, இந்து சமய அறக்கொடைகள்

சட்டப் பிரிவு 80-ன் கீழ் இணை ஆணையருக்கு வழங்கப்பட்ட அதிகாரத்தை கொண்டு இந்த விசாரணையின் முடிவாக எதிர்மனுமாரரை ஆக்கிரமிப்பாளராக உறுதிசெய்து வெளியேற்றிட உத்தரவு பிறப்பிக்கப்படுகிறது.”

The Joint Commissioner has concluded that the appellant is an “encroacher” as contemplated u/s 78 of the Act. When the appellant was declared as an encroacher, the proper course of action to evict him from the suit property is available u/s 78 only. The Joint Commissioner ought to have issued notice u/s 78 only.

7. As contended by the counsel for the appellant, the proceedings u/s 80 shall be initiated against the lessee/tenant only. After concluding the appellant as an encroacher, the Section 80 cannot be invoked against him.

Therefore, the impugned order suffers from infirmity as stated above and liable to be set-aside. Accordingly, the order dated 13.02.2018 of the Joint Commissioner, Vellore is hereby set-aside and the matter is remanded to Joint Commissioner for fresh enquiry. The Assistant Commissioner, Kancheepuram is directed to inspect the property and temple records and file a fresh report about the status of appellant within 15 days from the date of the receipt of this order. On receipt of the report, the Joint Commissioner should peruse the report and issue notice to the appellant under correct provision by giving minimum 15 days time for his appearance and filing objection if any. On receipt of notice, the appellant is directed to appear before the Joint Commissioner and file his objection, if any. The appellant should not adopt any dilatory tactics. The Joint Commissioner is directed to pass order in

accordance with law after affording an opportunity of hearing to the appellant within 4 months from the date of receipt of this order. If the appellant fails to cooperate, the Joint Commissioner may pass orders based on the available records.

The appeal petition is hereby disposed of with the above direction.

/typed to dictation/

Sd./- R.Jaya
Commissioner

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

Superintendent

To

1. The appellant through Thiru.E.Ganesh, Advocate, No.61/23, South lock street, Kottur, Near Kotturpuram MRTS Railway station, Chennai-82.
- 2.The 3rd Respondent through Thiru.Arul Phazam Nee, Advocate, No.18, Law Chambers, High Court buildings, Chennai-104.

Copy to

3. The Joint Commissioner, HR & CE Admn.Dept., Vellore
4. The Assistant Commissioner, HR & CE Admn.Dept., Kanchipuram
5. Extra.