

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

Friday the 5th day of August, Two thousand and Sixteen.

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

A.P.9/2016 D2

Between

1. K.R.Janarthanan
2. K.R.Ramesh
3. K.R.Govarthanan

...Appellants

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 Sundareswarar Temple,
Madurai.

.. Respondents.

In the matter of Arulmigu Meenakshi Sundareswarar 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 23.3.2016 of the Joint Commissioner, HR&CE Admn Department, Madurai in 8939/2013 passed under Section 80 of the Act.

Order in D.Dis.A.P.9/2016 D2 dated:05.08.2016

The above Revision petition came up for final hearing before me on 22.7.2016 in the presence of Thiru.K.Sakthivel Counsel for the petitioner. Thiru.P.Gopalan Counsel for the 3rd respondent. Upon hearing his 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 of the Act against the order dated 23.3.2016 of the Joint Commissioner, HR&CE Admn Department, Madurai in 8939/2013 passed under Section 80 of the Act.

2. The appellant contended that the appellants grandfather late Mr.K.L.Kasthuri Rengaiyer was the lessee for the shop No.159, belongs to the above said sub temple measuring 582 sq.ft with a tiled roof and carried business in the above premises before 75 years. This shop was

leased out to out grandfather by the temple before the year 1951 and the earlier rent was Rs.60/- per month and it has been increased periodically. After the demise of the appellants grandfather, the appellants father late K.L.K.Ramakrishnan took over the dye business in the year 1960. In the year 1971appeallants father remitted a sum of Rs.125 per month towards rent and it was periodically enhanced. During his life time, the appellants father applied for name transfer on 28.11.1994 infavour of his three sons citing his ill health and the same was not fulfilled though the request was recommended by the Trust Board of the temple vide resolution dated 11.11.1994. After the death of the appellants father in the year 2012, the appellants are and carrying out the business in the same premises. To complete with other traders and to survive among them, the appellants continued the business laced with two other business and paid the regular rent and arrear rent without fail. The G.O.No.277 TDC&RE dated 2.12.2005 permits for name transfer for blood relations. Besides the Commissioner has also issued many circulars in respect of name transfers and stipulated conditions and guidelines. For gearing up the issue, power vested with the commissioner was also delegated to all regional Joint Commissioners. The appellants sent a request on 27.4.2012 for transferring the lease hold right devolved among the legal heirs infavour of them by fixing the proportionate rent in accordance with the area occupied in the Shop No.159. At present, the temple authority has re fixed the monthly fair rent for this shop is Rs.8020/- and the rent is paid till the month of March 2016 without any arrear. A shop which had no marred artistic appearance or the religious atmosphere of the religious institution before seventy five years at the time of leasing out the building, could not mar the same, unless and otherwise new artistic appearance flourishes in the intervening period. A temple which is not having artistic appearances, cannot thrash the tenant, by wrongly invoking Section 80 of the HR&CE Act, which is an unique provision to eliminate the tenant in the interest of the temple and its artistic appearances. The first respondent has

mechanically issued the impugned order under Section 79 and 80 of the HR&CE Act without ascertaining the core issues either by means of his own inspection or by appointing an Advocate Commission to earth out the truth, whether the building has marred or likely to mar the artistic appearance or the religious atmosphere of the religious institution and thereby violated the rule of law. One 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. Before initiating action under Section 78 of the Act the concerned person must be presumed or declared as an encroacher, wherein under Section 80 of the Act, the person must be a lessee or licensee or mortgage with possession. But in this case termination order was issued to the appellants and termed them as “encroachers”, before filing the case under Section 80 of the Act, and in the impugned order also, the same set of persons were again legally declared as encroachers and essentially termination of lease was not done under Sections 80(4) of the Act, and thereby strangely paved way for inconsistency for determining the issue under Section 80 of the Act. For initiating action under Section 80 of the Act, the person must be a lessee, licensee or mortgage or lease holder and a termination order must be sent to the lessee, licensee or mortgagee or lease holder nor to an encroacher, since the affected person is entitled for compensation/ award fixed by the Tribunal under Section 82, which was apparently prevented and thwarted by the Joint Commissioner.

3. I heard Thiru.M.Sakthivel Counsel for the appellant, Thiru.P.Gopalan, Counsel for the 3rd respondent and perused the relevant records. The counsel for the appellants reiterated the contents made in the grounds of the appeal petition.

4. It is case of the appellants that Section 80 has to be invoked against the lessee only and if Section 80 is invoked, they are entitled for compensation under Section 82 of the Act. The suit property was given

lease to appellant's Grand father. After demise of their Grand father, the appellant's father became tenant under the temple. But he was expired in the year 2012. Thereafter, the appellants are in possession of the property. The appellants have divided the property in 3 parts and running 3 different businesses in the suit premises. After demise of their father, neither the tenancy is transferred in their favour nor they got approval from the temple authority for the partition of the property. The appellants who are occupying the suit premises are keeping their materials obstructing the entrance of the temple during the business hours. It causes nuisance to the worshipping devotees and restricting the free movement of the devotees. It affects the religious atmosphere of the temple. It is admitted fact that, Section 80 should be invoked only against the lessee. Since the original lessee was not alive, proceedings under Section 80 was initiated against the appellant as they are in possession of the property, treating them as obstructor. As they are not lawful lessees, they are not entitled for compensation under Section 82 of the Act.

5. Further the appellants have contended that the suit temple has no artistic appearance. Hence Section 80 cannot be invoked to eliminate the tenant in the interest of the temple and its artistic appearance. But proceedings under Section 80 was not initiated on the ground of marring of artistic appearance. The Assistant Commissioner who inspected the property has reported that “உள் வாடகையில் உள்ள நபர்கள் கோயில் சுற்றுப் பிரகாரத்தினை மறைத்தும், பக்தர்கள் திருக்கோயிலுக்கு நுழையும் வாயிலை மறைத்தும், பக்தர்கள் வழிபாட்டிற்கு இடையூறாகவும் திருக்கோயிலின் திருப்பணிக்கு இடையூறாகவும் கடை வைத்துள்ளார்கள்”. For the said reasons alone proceedings was initiated under Section 80 of the Act.

6. Further the appellants contended that respondent temple failed to effect name transfer of tenancy right in their favour following the instructions issued in Government Order and various circulars issued by the Commissioner. It is admitted fact that the property belongs to the temple. A owner of property has every right to decide how the property

can be used. When the property is required for bonafide temple purpose third party cannot compel the owner of the property to grant lease in their favour.

7. Even otherwise, from the averments made in the appeal petition, they themselves admitted that they are in possession of the property without any lease agreement. Hence their possession is unlawful. Even assuming but without admitting that the Section 80 was wrongly invoked against the appellants, they have no right to continue their possession as no lease subsists between the appellants and the temple in a manner known to law. Further, as it was represented before this court that the suit property was required for temple purpose, it is hereby ordered that the suit property should not be given on lease to any other person in future. After removing the encroachment, the place should only be utilized for strengthening the compound wall of the temple.

Therefore, for the foregoing reasons stated supra, I find no valid reasons to interfere with the order passed by the Joint Commissioner and it is liable to be confirmed. Accordingly the order dated 23.3.2016 of the Joint Commissioner, Madurai is hereby confirmed and 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 Petitioner through Thiru.K.Sakthivel, Advocate, 396, New Additional Law Chambers, 3rd floor, High Court Buildings, Chennai 104.
2. The Joint Commissioner/ Executive Officer through Thiru.P.Gopalan, Advocate, No.55, Law Chambers, High Court Buildings, Chennai 104.

Copy to:

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