

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

Thursday the 20<sup>th</sup> day of July, Two thousand and Seventeen.

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

**A.P.11/2017 D2**

**Between**

1. M.S.Ahmed(Deceased)
2. Pallakkusanamal
3. Fariza Parveen

...Appellants

**And**

1. The Joint Commissioner,  
HR&CE Admn.Department,  
Myladudurai.
2. The Assistant Commissioner  
HR&CE Admn.Department,  
Kumbakonam.
- 3.The Executive Officer  
Arulmighu Sarangapanisamy Thirukovil,  
Kumbakonam

.. Respondents

In the matter of Arulmighu Sarangapanisamy Thirukovil,Kumbakonam

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 30.01.2017 the Joint Commissioner, HR&CE Admn Department, Myladudurai in M.P.No.38/16 to 46/16 passed under section 80 of the Act.

**Order in D.Dis.A.P.11/2017 D2 dated: 20.07.2017**

The above appeal petition came up for final hearing before me on 04.07.2017 in the presence of M/s.G.Sumithra, counsel for the petitioner and the Executive Officer of the temple. 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 filed under Section 21 of the Act against the order dated 30.01.2017 of the Joint Commissioner, Myladudurai passed u/s.78 of the Act.

2. The petitioner has stated that the deceased M.S.Ahmed had been running a small Readymade Garment shop having an extent of 62 sqft., in T.S.No.1117, situated behind the A/m.Sarangapanisamy Thiru Kovil, Kumbakonam and abutting the

Portharmaraikulam of the temple. Tile shop in question and several other shops *have* been leased out by the 3<sup>rd</sup> respondent temple to various persons including the deceased, M.S.Ahmed. The deceased M.S.Ahmed has been in possession and leased since 1982 and has been regularly paying the rents without any default. The 3<sup>rd</sup> respondent had refused to *receive* rents and tried to *evict* the deceased M.S.Ahmed from the possession of the shop and had filed O.S.No.690 of 1991 against the deceased M.S.Ahmed, on the file of the Additional District Munsif-I, Kumbakonam. The Learned Additional District Munsif was pleased to direct the deceased M.S.Ahmed to surrender possession by judgment and Decree dated 28.01.1999. The aggrieved against the above said Judgment and Decree dated 28.01.1999 in O.s.No.690 of 1991, the deceased M.s.Ahmed had filed A.S.No.92 of 2000 on the file of the Sub Judge, Kumbakonam. The Learned Sub Judge, Kumbakonam by his Judgment and Decree dated 04.02.2002 passed in the above A.S.No.92 of 2000 was pleased to dismiss the above 1<sup>st</sup> appeal. The Deceased M.s.Ahmed, thereafter had filed Second Appeal in S.A.No.688 of 2004 before the Hon'ble High Court, Madras, which later on came to be transferred to the Madurai Bench of Madras High Court. The above said Second Appeal is pending. The Deceased M.S.Ahmed died on 06.08.2015, leaving behind the appellants herein as his legal heirs. The Appellants are carrying on the business of the deceased M.S.Ahmed through their persons. At this juncture the first respondent seems to have been initiated the present proceedings under Section 80 of the Act and had issued notice only to the deceased. Immediately after the receipt of the above said notice, the appellants being Pardhanashin ladies have deputed their persons to inform the first respondent about the fact of the demise of the lessee M.S.Ahmed, the business being run by the appellants etc. The above said facts were also duly informed to the first respondent and the appellants were in the fond hope that the first respondent would be serving them fresh notices in the above said M.P.No.41 of 2016. Contrary to the expectations, the first respondent had passed the present impugned order directing the deceased M.S.Ahmed to surrender the possession of the shop. Even though the proceedings have been initiated under Section 80 of the Act, the first respondent had gone to the extent of terming the possession as encroachment which is both factually and legally unsustainable. The above impugned order was only served by hand to the

appellants by the temple staffs on 17.02.2017 and as such the above appeal is filed in time. The finding of the first respondent that Serial No.16 pertaining to M.P.No.41 of 2016 shows demand of Rs.1325/- only in the name of one M.Chinnappa pattar is absolutely false in as much as it was only the temple who had filed O.S.No.690 of 1991 as against the deceased M.S.Ahmed wherein it has been clearly pleaded by the temple that the deceased was a direct tenant under the temple. the Lessees have handed over the keys of the shop during the Mahamaham Festival and that the properties were required often for the temple and its function is completely unsustainable in the present case of the appellant in as much as the first respondent himself admit that neither the deceased nor the appellants had made any surrender of their possession. They completely depend on the income from the above said shop. If they are thrown out of the above said shop, their family would come to streets and their livelihood would be completely wiped out.

3. I heard M/s.G.Sumithra, counsel for the petitioner and the Executive Officer of the temple and perused the relevant records.

4. The suit property is a mandapam with a vimanam situated on the Potramarai kulam. It has artistic appearance. Further, the said mandapam has been used to conduct Mahamaham festival and other festivals. The shops marred the artistic appearance and the religious atmosphere of the tank and the mandapam. Further, the Hon'ble High Court has also directed the authorities to remove all the encroachments in and around the tanks in the Kumbakonam. The Joint Commissioner has passed the impugned order after considering all the above facts.

5. The Executive Officer of the temple has reported that pursuant to the order passed by the Joint Commissioner, the property was taken possession by the temple on 23.03.2017.As the impugned order was acted upon and the property was taken possession by the temple, nothing survives for adjudication in this appeal petition.

Accordingly, the order dated 30.01.2017 of the Joint Commissioner, Mayiladuthurai is hereby confirmed and the appeal petition is hereby 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 Mrs.G.Sumithra, Advocate, No.35, Law Chambers, High Court Buildings, Chennai-600 104.
2. The Executive Officer, Arulmighu Sarangapanisamy Thirukovil, Kumbakonam

**Copy To**

3. The Joint Commissioner, HR & CE Admn.Department, Myladudurai.
  4. The Assistant Commissioner, HR & CE Admn.Department, Kumbakonam.
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