

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

Friday the 19th day of May, Two thousand and Seventeen.

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

A.P.No.9/2017 D2

Between

G. Arulkumar

...Appellant

And

1.The Executive Officer

Arulmighu Sarangapani Swami Thirukoil

Kumbakonam – 612001.

2. The Assistant Commissioner

HR&CE Admn.Department, Kumbakonam.

3.. The Joint Commissioner,

HR&CE Admn.Department, Mayiladuthurai.

.. Respondents

In the matter of Arulmighu Sarangapani Swami Thirukoil, Kumbakonam – 612001.

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 of the Joint Commissioner, HR&CE Admn Department, Mayiladuthurai in M.P.No.38/2016 to 46/2016 passed under section 80 of the Act.

Order in D.Dis. A.P.N0.9/2017 D2 dated: 19 .05.2017

The above appeal petition came up for final hearing before me on 18.04.2017 in the presence of Thiru.K.Rajasekaran, Counsel for the appellant and Executive Officer of the temple 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 30.01.2017 of the Joint Commissioner, Mayiladuthurai passed u/s.80 of the Act.

2. The appellant has stated that the order of the third respondent

is hit by the doctrine of res judicata as already the appellant, when the key of the shop of the appellant was in the custody of the executive officer, participated in an enquiry which was conducted by third respondent under the very same Sec.80(2) of the Tamil Nadu Act 22 of 1959 and after conducting the enquiry, the third respondent satisfied with the explanation of the appellant that the artistic appearance or religious atmosphere of the temple has not been marred or is not likely to be marred by the action of the appellant. Consequently, the key was handed over to the appellant in the first week of the May 2016 and the appellant was thus given back his possession. In such circumstance it is not open to the respondent to once again decide the very same issue and come to a different conclusion as the same is hit by doctrine of res judicata. Neither the first respondent nor the second respondent is in a Position explain' as to why the key was handed over to the appellant after the third respondent was satisfied with the explanation given by the appellant, even though they admitted the fact that the appellant locked the premises as per the orders of the temple authority at the time of Mahamagam Festival. It is not the case of the respondents also that the appellant is not doing his business in the locked premises, which has been now unlocked and is in the possession of the appellant. The order of the third respondent refers to the fact that a report was submitted by the Executive Officer with regard to encroachment and direction was also issued to the Assistant Commissioner, HR & CE Dept., Kumbakonam to inspect the report of the Executive Officer and submit his report. The order of the third respondent also refers to the report of the Assistant Commissioner, HR & CE Dept., Kumbakonam in Na.Ka.No.1479/2017/A7 Dated 11.3.2016, in which the Assistant Commissioner, HR & CE Dept., Kumbakonam recommended for taking further action against the lessees under Sec.80 of the Tamil Nadu Act 22 of 1959. Only on the basis of the report of the Executive Officer and the Assistant Commissioner, HR & CE Dept., Kumbakonam Dated 11.3.2016, the third respondent initiated the proceeding u/s.80(2) against the appellant. However neither the report of the Executive Officer, nor the recommendation of the

Assistant Commissioner, HR & CE Dept., Kumbakonam Dated 11.3.2016 was given to the appellant and therefore the entire proceedings are vitiated for not following the principles of the Natural Justice. The third respondent is confused with regard to the status of the appellant, whether he is a trespasser or lessee in the order dated 30.1.2017. In some places, the appellant has been referred to as lessee and in some places, referred to as occupier/encroacher. However, proceedings have been initiated u/s. 80 (2) of the Act which will go to show that the appellant is only a lessee and not an occupier/encroacher. If the appellant was an occupier/encroacher, then the proceedings should have been initiated u/s.78 of the Act and not u/s 80. The appellant makes it very clear that he has been a lessee of the temple since 1955 and by no stretch of imagination, the appellant could be called as occupier/encroacher. What has been leased out to the appellant is a shop portion measuring an extent of 1152.5 sq.ft, bearing door no 29 and 30, comprised in T.S No. 1125 and 1126 at Potramarai North street. But very curiously, in the order under challenge, it has been wrongly mentioned that the appellant is in occupation of 62 sq.ft only that the respondents are estopped from ordering that he appellant should vacate the shop premises measuring an extent of 62 sq.ft. as already both the Executive Office and Assistant Commissioner, HR.CE Department Kumbakonam, permitted him to carry out renovation work at the cost of the appellant, that too, after getting a report from Assistant Divisional Engineer, HR &CE Admin. Dept., Myiladuthurai. The appellant craves leave of the Hon'ble Commissioner to treat the permission granted in the order dated 24.11.2016 issued by the Joint Commissioner HR & CE Dept., Mayiladuthurai and the report of the Assistant Divisional Engineer, HR & CE Admin. Dept., Myiladuthurai and the order of the Executive Officer Dated 2.2.2107 as part and parcel of this appeal. Such permission could be granted by the Joint Commissioner himself, only after getting satisfied that the renovation work will not affect artistic value or mar the religious atmosphere of the temple. If that being so, the order passed the third respondent now is absolutely hit by the Doctrine of promissory estoppel. The order of the third respondent is not a

speaking order as it does not contain any reason at all for passing that order.

3. I heard Thiru.K.Rajasekaran, Counsel for the appellant and the Executive Officer of the temple and perused the relevant records.

4. The suit property was given on lease to one Thiru.K.S.V.Muthaia Chettiyar. The suit property is a mandapam situated with a vimanam 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 Petitioner through M/s.K.Rajasekaran, Advocate, No.162/344, Second Floor, Thambu Chetty Street, Chennai-600 001.
2. The Executive Officer, Arulmigu Saranganpani Swamy Temple, Kumbakonam.

Copy to

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