

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

Monday the 7th day of August, Two thousand and Seventeen.

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

A.P.24/2017 & A.P.25/2017 D2

Between

S.Johnson

...Appellant in A.P.24/2017

M.Vijayakumar

... Appellant in A.P.25/2017

And

1. The Joint Commissioner,
HR&CE Admn. Department, Madurai.

2. The Assistant Commissioner,
HR&CE Admn. Department, Madurai.

3. The Assistant Commissioner/ Executive Officer
Arulmigu Koodal Alagar Temple,
Madurai.

....Respondents in both cases

4. J.Steephan, No.19,
Perumal Theppakulam East, Town Hall Road,
Madurai-1.

....Respondent in A.P.24/2017

5. N.Veeriah, No.2, Perumal Theppakulam
East, Town Hall Road, Madurai-1.

....Respondent in A.P.25/2017

In the matter of Arulmigu Koodal Alagar 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, H.R.&C.E Admn. Department, Madurai passed u/s.80 of the Act.

Common Order in D.Dis.A.P.24/2017 & A.P.25/2017 D2 dated:

07.08.2017

The above appeal petitions came up for final hearing before me on 01.08.2017 in the presence of Thiru.K.Sakthivel, Counsel for the petitioner and Thiru.R.Raja Counsel for the 3rd respondent. 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 Petitions was filed u/s.81 of the Act against the order dated 12.11.2016 of the Joint Commissioner, HR&CE Admn. Department, Madurai passed under Section 80 of the Act.

2. The appellants have stated that they are the present lessees and enjoying the shops belongs to the above said temple and enjoying for more than 34

years continuously and paying the monthly rent as fixed by the third respondent periodically without any default. Teppakulam was misused by miscreants, since the area was higher than the road level, and it was thickened by weeds, grasses, plants, trees and bushes and it conveniently bred for misuses and mischiefs. In order to put an end to these abuses and misuses, the temple authority had divided and formed small size areas at the Eastern/Northern/Western bunds of Teppakulam and rented the sites to 108 vendors to install bunk shops for doing business. Analysing all factors, this area was rented out for commercial purpose, because on those periods, the prime responsibility of the temple was to recover the Teppakulam property from the clutches of miscreants and abusers. By renting the areas nearer to bunds for bunk shops to 108 tenants, the act of miscreants and the usage of tank as toilet came to an end. By renting this area the temple not only prevented the trespassers but also generated a sizable income by rent. The third respondent has fixed the fair rent as per the G.O.Ms.No.353 CT&RE dated 04.06.1999. G.O.Ms.No.456 CT&RE dated 09.11.2007, and G.O.Ms.No.298 T.D.C.R and information department 20.07.2010 in accordance with the enjoyment area. The rent was periodically revised and the same is being regularly remitted by the appellants without any default. The directions given by the first respondent vide his letters in Na.Ka.No 10097/99/(2)A4 dated 26.08.1999, the third respondent has also called for applications for name transfers for tenancy, vide his letter No 348/99/A3 dated 21.09.1999, 19.11.1999 and 03.12.1999 and application was made by the appellant to transfer the name of the tenancy from their former partner by paying donation, deposit along with necessary documents. But the temple authority has failed to issue orders by transferring the tenancy right in favour of the appellant. The area involving the south bund of Teppakulam is rented out to Madurai Corporation for running vegetable Market. As this market has been enjoyed by many number of vendors and public daily, it produces huge quantity of wastes namely vegetable waste, plastic bags, nylon bags and other non bio wastes. Though this market breeds huge quantity of wastes it was not cleared off regularly but shockingly the same was mounded in to the Teppakulam and causing unhygienic condition in and around the area. Though it was a permanent threat and endanger to the hygienic condition of the Teppakulam and the public, the third respondent had not taken effective steps to curb

and restrain the illegal deposit of market waste in to the Theppakulam area. However the following the recent instructions issued by the Hon'ble Madurai Bench of Madras High Court vide its W.P.(MD)No.1451 of 2011, this illegal deposit of waste into the Theppakulam has been restrained and at present, the Theppakulam wears neat, clean and hygienic look.. The Teppakulam does not contain water, due to the frequent failure of monsoon and the obstruction of rain water harvesting routes from Kochadai Kalvai, Madurai College, Kirudumal Nathi and Vaigai river which quenched the thirsty of the Teppakulam. Unchecked extraction and blocking of inlet ducts has led to the drying up of tank. However, hectic steps were taken for removing the obstruction made in the routes of rain water connecting the Teppakulam.

In W.P.(MD) No 984 of 2010 filed by the temple authority before the Madurai Bench of Madras High Court for a direction to the Madurai Corporation to stop the flow of sewage in to this Teppakulam. The Hon'ble High Court has recorded the submission made by the Madurai Corporation that steps had already taken to stop the flow of sewage and waste water in to the Teppakulam and preventive action would be taken with in three weeks. Recording this assurances the Hon'ble High Court has closed the writ Petition. Thus the flow of sewage and waste water in to the tank was also stopped. In W.P.(MD)No.1451 of 2011, the Hon'ble Madurai Bench of Madras High Court has issued an interim order on 05.12.2013 directing the Madurai Corporation and the Executive Officer the third respondent herein " to ensure that there is no drainage water seeping in to the tank and that filth, garbage, defuse etc., accumulated in the tank are cleaned immediately and the water in the tank is free from any pollution" The Hon'ble Bench also appointed two Advocate Commissioners to monitor and oversee the cleaning work of the temple tank premises . Accordingly the temple tank was cleaned. Pipelines bringing sewage water to the Theppakulam were closed with cement mix, Pathway to the south east corner of the Theppakulam was re-laid. Accumulated waste, plastic, garbage and other items were removed.The Teppakulam has 16.5 feet depth and a small Mandapam is situated in the middle of the Teppakulam and it could be seen only when the visitors went down to the Teppakulam. In the Mandapam there is no specific artistic appearance as alleged by the respondents 1-3. No expert team has reported that the Teppakulam *and* its bunds are having artistic appearances and

religious atmospheres. Moreover, at present the disposal of waste and garbage by public and others were restrained due to the existence of these shops. Otherwise the Teppakulam might have reverted back to the scenario of 1964. The Teppakulam does not wear any religious atmosphere as expressed by the respondents, since neither daily poojas are conducted nor any rituals are performed by the devotees. The Teppakulam is neither religiously ritually connected with the prime deity of the religious institution. The Teppakulam does not consist artistic appearance or wearing religious atmospheres as contemplated under section 80 of the Act. The temple as a tank within the precincts of the temple nearer to "Thayar Sannadhi" wherein Thjeerthawari, a religious function is being conducted periodically. Moreover abishegam is being done to the deities by means of water (Theertham) fetched from the pushkaran tank. This tank alone is religiously and ritually connected with the prime deity and devotees. As the tank consists and contains religious sanctity within the precincts of the temple, and certain religious and ritual performances cannot be performed without the involvement of holy water from this tank. This tank alone is related to the puranam of the temple. Wherein this "Teppakulam" is far away from the prime deity and it is not connected with any rituals or any day to day poojas. Not related to devotees or deities. It will not either purify or sanctify the devotees who are coming to the religious institution for worshipping the prime deity. As this Teppakulam does not wear any religious sanctity it cannot be construed as a sacred tank and the conditions made in Section 80(1) of the Act will not be applicable to this Teppakulam. The appellant does not obstruct the rain water connection in any way, but they cooperate with the administration for laying huge rain water pipes under the shops. For throwing wastes in to the Teppakulam, the appellants shops are not a cause and the Market run by Madurai Corporation alone was the source of all troubles, and now it was also prevented by the order of the Hon'ble Madurai Bench of Madras High court. The second respondent/Assistant Commissioner has submitted a report in respect of marring the artistic appearance u/s.80(1) of the HR&CE Act vide his R.C.No.2479/2015/B1 dated 27.07.2015. Following the report the first respondent/the Joint Commissioner has issued a notice u/s80(2) of the HR&CE Act, stating that why termination of lease could not be done and directed to appear for the enquiry in this regard the appellant before the first respondent and filed counter affidavit on

22.06.2016. However following the final arguments, the first respondent has issued the impugned order in respect of termination of lease and directed to handover the scheduled mentioned property to the temple authority, u/s.80(4) of the HR&CE Act, vide his R.C.No.7212/2015/C1 dated 12.11.2016 within thirty failing which eviction to be executed through the Assistant Commissioner, Madurai.

3. In the counter affidavit the 3rd respondent has stated that initially the temple authorities permit the tenants 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 card four wheeler.
- d. The tenant is should vacate during the Theppam Festival.
- f. Moreover the tenancy come to an end after the lease period and automatically vacate 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. As per TAMILNADU HR&CE Act the oral permission is not valid. The appellants himself admitted the bunk stall was constructed without permission of competent authorities. The illegal act can not be become legal. The other averments about the construction was made with consultation and the consent of the temple authorities is totally false. The temple authorities take action against the tenants who are acting against the interest of the temple by time to time. The other averments are created story of the appellant. The fair rent was fixed to the tenants as per due process of law. As per directions of the competent authority , the name transfer applications are dealt in accordance with law. The other averments about the temple accepting the appellants as tenant is not correct. The appellants are added as party only for abundant caution to avoid delaying tactics. It is settled law that receipt of rent by way of damages will not give any right to the occupier or tenant. 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 Teppakulam was keep clean. 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 is correct the other averments are strictly proved by the appellant. It is true 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 sare occupied by the tenants, if the floating car(Theppam) cannot be pulled by devotees, there is no gap between Tank and its bunds between these the tenants are occupied. . The appearance of the theppam itsel if an artistic appearance. 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 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 and the original authority has passed order of eviction after following the procedure. The appellant himself admitted the theppam festival is conducted in the month of Masi for two days. During the theppam festival the urchavar of the temple came to the theppakulam and theppam festivval was Theppakulam. If the theppakulam is surrounded with water it sees amazing view. The view itself artistic. Therefore the theppakulam was marred by the shops arrounded on it.

1. The appellants are not a tenant and they are only sub tenant. The sub tenant has no legal right to file appeal.

2. The appellants himself admitted the constructions are put up by themselves without legal order of competent authorities. Hence their construction of bunk stall is illegal ab initio.

3. The appellants himself admitted that the Theppa Thiruvizha is conducted in the temple tank and hence they are admitted the religious nature of the temple tank and also it is very well came in to the amit of sec 30 of TN HR&CE Act.

4. The appellants himself admitted that the temple authorities are forced to conduct the Theppam festival on the road side. The theppam festival to be conducted inside the tank only after evicting the all tenants surrounding the temple tank.

5. The eviction proceedings are initiated as per the order of the Honourable High Court, Madurai Bench by its suo moto public interest litigation in W.P.1451 of 2011. The Hon'ble High Court Bench ordered to clean the tank, it means not only inside the temple tank as well as outside the tank and also to notify the koodal Azahar perumal Theppakulam as a protected area under Tamil Nadu Ancient and Historical Monuments and Archaeological sites and Remains Act 1966. Hence the proceeding are initiated as per the directions of the Hon'ble High Court Madurai Bench. The respondent prove his before the original authority.

6. And further the Hon'ble High Court Madurai Bench directed the Joint Commissioner to dispose the proceedings with in a period of three weeks from the receipt of the order in W.P.No.1451 of 2011 dated 24.10.2011.

7. The Hon'ble High Court Madurai Bench has taken the suo moto public interest litigation in Taken up W.P.No.1451 of 2011 to notify the Koodal Azhagar Perumal Theppakulam as a protected area under Tamil Nadu Ancient and Historical Monuments And Archaeological sites and Remains Act, 1966 and the writ is also pending adjudication before the Hon'ble High Court Madurai Bench and hence question of regularization of tenancy is not arise and it will amounts to contempt of court.

8. The appellants are not law abiding citizen, they constructed permanent structure without permission of the competent authorities and his possession is illegal. The appellant himself admitted that they constructing the bunkstalls which is marring the artistic appearance of the Theppakulam.

9. The Joint Commissioner passed well considered orders in all aspects about the theppakulam is the Religious Institutions and its artistic appearance was marred by the tenants.

4. I heard Thiru.K.Sakthivel, counsel for the appellants and Thiru.R.Raja Counsel for the 3rd respondent and perused the relevant records.

5. The appellants are challenging the impugned order on the following grounds

(i) Mandatory condition for initiating action u/s. 80 of the Act are not fulfilled and technical words are not defined u/s.80 of the Act.

(ii) Teppakulam cannot be construed as a sacred tank

(iii) Teppakulam situated far away from the temple cannot be presumed as appurtenant to the temple.

(iv) An ordinary official cannot identify the artistic appearance situated in the Teppakulam

(v) Teppakulam does not have any religious atmosphere

(vi) A single person cannot act in a dual capacity for his own case

(vii) The Report of the Advocate Commissioner appointed by the Hon'ble High Court was not considered by the Joint Commissioner.

(viii) The appellants are not marring the artistic appearance and religious atmosphere.

6. Both the Assistant Commissioner and the Joint Commissioner have prima facie satisfied that all the mandatory conditions contemplated u/s.80(1) of the Act were complied, before initiating action u/s.80 of the Act. If the words used in the Act are not defined, it will have the dictionary meaning depending upon the place where it has been used.

7. The appellants have mainly contended that the Teppakulam is not a sacred one and it does not find place in the list of sacred water bodies in the State of Tamil Nadu published by the Ministry of Environment and Forests, Government of India. The said list cannot be taken as a complete list of tanks in the State of Tamil Nadu. For instance, it is admitted by the appellants that a tank called as "Hematheertham" is situated within the temple, and has religious sanctity but the said tank did not find place in the above said list. Further, Teppakulam of Arulmigu Virbhagiriswarar Temple, Virbhachalam, Arulmigu Uchipillar Temple, Trichy, Arulmigu Nambi Temple, Tirukkungudi and Arulmigu Nellaiappar temple, Tirunelveli are included in the said list. Further Teppakulam of Arulmigu Lakshmi Nara shimna swamy temple, Sholingar, which is situated 2 k.m away from the Temple was also included in the said list. Further the Teppakulams belonging to various temples are also declared as

sacred one. Further in the Oxford dictionary, the meaning of the word “sacred” has been given as “(i) Connected with God or a God or Goddess or Religion

ii) too important or special and not to be changed or harmed”.

This Teppakulam is also connected with the deity and intended for conducting float festival.

8. The erstwhile rulers had dug tanks for various purpose like irrigation, public utility, drinking water and temple purpose. The said tanks are being used for that specific purpose alone. The temple tanks are mainly intended for the purposes connected with the god and religion and considered as holy.

9. Most of the appellants are not tenants under the temple. In the year 1970, 108 persons were permitted to do business in hand cart for 11 months only. They had put up a permanent structure without any written permission from the temple administration. They have obliterated the Teppakulam by creating permanent structures. Even in the Advocate Commissioner’s report it was observed that **“On enquiry we learnt that the shop keepers have volunteered themselves in the work of ceiling the leakage and started smearing cements in the northern, eastern portion of the temple tank which is nothing but strengthen of their building. The shopkeepers by means of voluntaring have tried to smear cement all over the buildings which would strengthen their buildings and it was restrained later by the Temple Authorities. Though the scope of the Commission is limited , we feel it obligations on our part to bring the present scenario of the temple tank before this Hon’ble court. In the eastern side of the tank, we noticed loads of bricks which were brought by the shopkeepers voluntarily for the purpose of construction which was stopped by the Temple Authorites.**

The Respondent No.5/temple officials have completed the herculen task of cleaning the Tank successfully and the temple tank is now pleasant to view and garbage free. However the present stage of garbage free atmosphere can only be maintained by periodical inspection and cleaning of the Tank by the temple authority”.

The temple administration has considered that to maintain the Temple tank, garbage free by carrying out periodical cleaning work, the shops constructed in the bunds of the temple should be removed.

10. Further u/s.80 of the Act, the Assistant Commissioner having jurisdiction over the Religious Institutions may send a report to the Joint Commissioner concerned. In this case, the Assistant Commissioner/ Executive Officer of the above temple also held additional charge of the Assistant Commissioner, Madurai who had sent report to the Joint Commissioner. The Assistant Commissioner/Executive Officer has forwarded the report to the Assistant Commissioner concerned based on the resolution passed by the Fit person of the temple. She has executed the resolution of the fit person only. After verifying the report by spot inspection, the Jurisdictional Assistant Commissioner has sent report to the Joint Commissioner. On perusing the report of the Assistant Commissioner, the Joint Commissioner has prima facie satisfied and issued notice u/s 80 of the Act. She has independently exercised her duties attached to the respective posts.

11. Though the lease period was only for 11 months, they are occupying the property for more than 45 years. The tenancy is not a perpetual one as it is prohibited under the Act. The fair rent has been periodically revised to the property irrespective of the person who is in occupation of the property. The occupier is bound to pay the damages towards use and occupation of the property. Mere payment of damages will not confer any lawful right to continue with the possession. A tenant can occupy the property during the pleasure of the landlord only. The temple administration has sympathetically allowed the appellants to occupy the property for the past several decades. When the shops built by the appellants are preventing the temple from carrying out periodical maintenance work and conducting religious festivals like float festival, the appellants should vacate the property. As they have enriched themselves for the past 45 years by squatting on the temple's property, they must show their gratitude by vacating a property when the same is required by the temple. They cannot arm twist with the temple by filing several cases before various forums.

12. 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 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 appellants.

13. The appellants have destroyed the rain water drainage channel which brings water to the tank by constructing permanent shops around the tank. They have 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.

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

15. 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 tenants have marred the artistic appearance and meddled with the religious atmosphere their tenancy was terminated u/s 80 of the Act, by the Joint Commissioner and ordered to evict them from the suit property.

16. 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**”

17. 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 follows

“ mUÿäF TlyHf® bgUkhÿ nfhéYjFç brh^ajkhd ÂUjFs« Ík Ahš gFÂæš cÿsJ. mjFs«Â%ofhd tu«Jj fhsthCEfis f©lç^aJ, Mj»uä%öfis mf%ow xU thu«Â%FY, kht£l tUthCE mYty® k%W« İiz Miza®, İ^aJ rka mwäiy«Jiw eltojif vLjf Koİ brCEa%g£IJ”.

“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 appellants 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.

18. 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 appellants.

Therefore, for the forgoing reasons stated supra, I find no reason to interfere with the orders passed by the Joint Commissioner, Madurai and is liable to be

confirmed. Accordingly the orders dated 12.11.2016 passed by the Joint Commissioner, Madurai are hereby confirmed and the appeal petitions are 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 Thiru.K.Sakthivel, Advocate, 396, 3rd Floor, New Additional Law Chambers, High Court Buildings, Chennai-104.
2. The 3rd respondent through Thiru.R.Raja , Advocate, Royal Plaza, 22B, Melur Road, Outpost 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.
- 5-6). Extra