



W.P. No7220/2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
19.04.2022	06.06.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.7220 OF 2022

AND

W.M.P. NOS.7246 & 7247 OF 2022

1. M/s. Super Good Films Pvt. Ltd.
Rep. by its Managing Director
Mr. R.B.Choudhary
S/o Ratanlal Choudhary
No.16/27, 9th Street
Dr. Radhakrishnan Road
Mylapore, Chennai 600 004.

2. Mrs. M.E.Siddiqua

.. Petitioners

- Vs -

1. The Commissioner
Hindu Religious & Charitable
Endowments Department
No.119, Uthamar Gandhi Salai
Nungambakkam, Chennai 600 034.

2. The Executive Officer
Arulmigu Agastheeswarar Prasanna
Venkatesa Perumal Thirukkcoil



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11, North Mada Street
Nungambakkam, Chennai 600 034.

3. The Joint Sub Registrar II
District Registrar Cadre
Thousand Lights
Chennai 600 006.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records on the file of the 3rd respondent vide his proceedings more specifically the Refusal Order No.60 of 2022 dated 28.02.2022 and quash the same and consequently direct the 3rd respondent to permit the petitioners to again present the returned sale deed dated 8.12.2021 for registration.

For Petitioners : Mr. D.Saikumaran

For Respondents : Mr. N.R.R.Arun Natarajan
Spl. GP (HR & CE) For RR-1 & 2
Mr. Yogesh Kannadasan, Spl. GP for R-3

ORDER

Assailing the impugned order of refusal to register the sale deed presented by the petitioners, who are the buyer and seller of the property, the present petition has been filed.



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2. It is the case of the petitioner that the property situate at Door No.7, Jayalakshmipuram 3rd Street, Seetha Nagar, Nungambakkam, Chennai, comprised in Survey Nos.341, 477/18, 477 (Part), Nungambakkam Village, belonged to Arulmigu Agastheeswarar Prasanna Venkatesa Perumal Thirukkoil and the predecessors in-title, viz., N.Meeran and N.Sheriff, were the tenants in the aboe referred to property. The hereditary trustee of the temple, viz., Valliammal, filed a suit for possession against the predecessors in-title, after terminating the tenancy, in O.S. No.5802 of 1987 before the XII Assistant Judge, City Civil Court, Madras. The predecessors in-title to the petitioners, claimed protection u/s 9 of the City Tenants Protection Act by filing I.A. No.15824 of 1987 in O.S. No.5802 of 1987 and by order dated 29.3.1990, the court directed the temple to execute the sale deed in favour of the predecessors in-title to the petitioner.

3. It is the further case of the petitioner that further to the said order, sale deed in Document No.806/1990 dated 11.10.1990 was executed by the hereditary trustee, viz., Valliammal in favour of Meeran and Sheriff, S/o



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Nagarkani. It is the further case of the 1st petitioner that the said Meeran and Sheriff are none other than the predecessors in-title of the 2nd petitioner.

4. It is the further case of the petitioners that the 2nd petitioner purchased the property from the said Meeran and Sheriff by way of a registered sale deed in Document No.782 of 1992 dated 27.6.1992. It is the further case of the petitioners that the 2nd petitioner, since the purchase of the property in the year 1992, has been paying all the taxes to the Government, including property tax, water tax, etc. and that the patta stands mutated in the name of the 2nd petitioner. It is the further case of the petitioners that the 2nd petitioner intended to settle the property in favour of her daughter by executing a settlement deed, which, when presented, was returned along with a refusal letter dated 13.9.2021 stating that the 2nd respondent has requested the 3rd respondent not to entertain any documents for registration pertaining to the temple properties comprised in survey Nos.359, 451, 452, 465, 466, 467, 469, 472, 477 and 480 situated at Nungambakkam Village.



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5. It is the further averment of the petitioner that the 2nd petitioner, when approached respondents 1 and 2, came to learn that the pendency of the contempt petition No.1331 of 2019, the requisition made to the 3rd respondent cannot be revoked. Thereafter, the 2nd petitioner has been closely following the proceedings and learnt that Contempt Petition No.1331 of 2019 was closed by this Court on 21.10.2021. Once again, the petitioner gave a representation stating that W.P. No.9336 of 2018 as also the Contempt Petition No.1331 of 2019 have attained finality and, therefore, the 2nd respondent may recall the requisition given to the 3rd respondent. Since the said representation did not evoke any response, the 2nd petitioner filed W.P. No.25544 of 2021 assailing the impugned check slip and this Court by order dated 1.12.2021 directed the 3rd respondent to register the settlement deed after conducting an enquiry.

6. Pending the said enquiry, the 2nd petitioner executed the sale deed in favour of the 1st petitioner, which is kept as pending Document dated 8.12.2021. Pursuant to the same, it is further averred that the 1st petitioner has paid the requisite stamp duty and other charges to the 3rd respondent for registration and release of the document. Pending the registration of the document, notice was



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received by the petitioners to appear on 28.1.2022 for an enquiry before the 3rd respondent along with all the original records.

7. It is the further averment of the petitioners that prior to 1996, HR & CE Department has no say with regard to the sale deeds executed by the Temple Devasthanam, prior to the amendments to Section 9 of the City Tenants Protection Act in respect of temple properties. It is the further averment of the petitioners that since the execution of the lands in favour of the tenants pursuant to the order passed by the XIII Assistant Judge, by the hereditary trustee of the Temple Devasthanam, HR & CE Department has become *functus officio* and, therefore, after a span of over three decades, respondents 1 and 2 cannot initiate any legal action against the innocent purchasers.

8. It is the further averment of the petitioners that it is within the powers of the respondents 1 and 2 to initiate any proceedings with regard to the property belonging to the temple, which would be faced by the petitioners in accordance with law, but that cannot be the reason to refuse registration of the document by the 3rd respondent and stall the registration of the document



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presented by petitioners 1 and 2 on the basis of the letter given by respondents 1 and 2. The act of the 3rd respondent in refusing to register the document vide the refusal order citing objections submitted by respondents 1 and 2 is wholly erroneous.

9. It is the further averment of the petitioners that the claim of respondents 1 and 2 with regard to the land being temple lands is not being disputed by the petitioners. But it is the claim of the petitioners that the title to the said lands have changed hands since the order passed by the XIII Assistant Judge in I.A. No.15824/1987 in O.S. No.5802/1987 and the sale deed having been executed by the hereditary trustee of the temple pursuant to the said order and further sale has also taken place pursuant to the said sale transaction between the tenants and the temple Devasthanam.

10. The letter of respondents 1 and 2 is colossally bad and is against the principle of equality laid down in the Constitution and respondents 1 and 2 cannot issue a letter, as the one, put in issue in the present case to the 3rd respondent and if at all respondents 1 and 2 are aggrieved with regard to the



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sale of temple lands, the course open to respondents 1 and 2 was to bring to the notice of all the registering authorities and it cannot be done only insofar as the 3rd respondent alone is concerned and such an act by the respondents 1 and 2 is grossly, illegal, irregular and perverse and the same deserves to be set aside and further direction should be issued to the 3rd respondent to register the sale deed presented by the petitioners.

11. Learned counsel appearing for the petitioners submitted that the predecessors in-title of the 2nd petitioner, had purchased the property way back in the year 1990, much before the amendment to the City Tenants Protection Act and that prior to 11.2.1996, lands belonging to various religious institutions have been sold. It is the further submission of the learned counsel that based on the application of the vendors of the 2nd petitioner filed u/s 9 of the City Tenants Protection Act, in I.A. No.15824 of 1987 in O.S. No.5802 of 1987, which is much before the enactment of Tamil Nadu Act 2 of 1996, and the sale having been effected based on the orders of the Court in the aforesaid petition filed u/s 9, the same cannot be said to be illegal or vitiated or perverse.



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12. It is the further submission of the learned counsel that Section 9 prescribes the minimum extent required by the tenant for convenient enjoyment of the schedule property, which ought to be conveyed by the landlord on the basis of the consideration so fixed by the Court. It is the further submission of the learned counsel that Advocate Commissioner was appointed as contemplated u/s 9 (1)(b) of the City Tenants Protection Act to decide on the minimum extent of land required for the tenant for his peaceful occupation and upon submission of report and carefully considering the same, the court below had directed execution of sale deed in favour of the vendors of the 2nd petitioner.

13. It is the further submission of the learned counsel that even inspite of the affirmative direction passed by the Division Bench in W.P. No.9336 of 2018 that only insofar as the lands, which have been sold in violation of Section 34 of the Hindu Religious & Charitable Endowments Act (for short 'HR & CE Act') recovery of the said lands have been ordered. However, it is the case of the petitioners that the lands were sold on the basis of the order passed in I.A. No.15824/87 and, therefore, the said sale cannot be questioned by respondents 1 and 2, as they are not vested with any power or locus to question the said sale.



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It is the further submission of the learned counsel that inspite of the order passed by the learned single Judge in W.P. No.25544 of 2021 filed by the 2nd petitioner, though the 3rd respondent was directed to register the document after conducting enquiry, however, relying upon the same letter of respondents 1 and 2, which precluded the 3rd respondent from registering the sale, the 3rd respondent has rejected the document of the petitioners, which order suffers the vice of illegality and perversity.

14. It is the further submission of the learned counsel that the prohibition for sale imposed u/s 34 of the HR & CE Act and the non-impleadment of the HR & CE Department in the application filed u/s 9 of the City Tenants Protection Act is baseless and frivolous as Section 9 of the City Tenants Protection Act permits the tenant, in case of a suit for ejectment, to file appropriate application u/s 9 for purchase of the minimum extent of land for his convenient usage and it does not mandate impleadment of the HR & CE Department while filing the application u/s 9.



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15. It is the further submission of the learned counsel that even in the written statement filed in O.S. No.5802 of 1987, it has been averred by the defendants therein that without prejudice to their rights, the plaintiff cannot pray for delivery of possession without offering to pay compensation for the superstructure and constructions standing on the land leased, which had been put up by the defendant's father. That being the case, without payment of compensation for the superstructure and also not parting with the property by executing the sale deed, the act of the hereditary trustee, was rightly appreciated while passing the order in I.A. No.15824/1987.

16. It is the further submission of the learned counsel that respondents 1 and 2 are trying to reagitate their rights, after a lapse of 30 years and without filing any appeal against the order passed in I.A. No.15824/1987. It is the further submission of the learned counsel that the fixation of value of the property is based on the application filed u/s 9 of the City Tenants Protection Act and the higher sale consideration in which the property was sold within a span of two years cannot be a ground to claim that the sale is a voidable sale.



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17. In fine, it is the submission of the learned counsel that there being strict compliance with Sections 9 and 3 of the City Tenants Protection Act and on the basis of the order passed by the court below, the sale deed having been executed by the hereditary trustee in favour of the vendors of the 2nd petitioner, respondents 1 and 2 cannot, after a lapse of more than thirty years, claim that the sale is a fraudulent transaction and is in contravention of Section 34 of the HR & CE Act and the consequential letter and the act of the 3rd respondent in not registering the sale deed and passing the order impugned is wholly perverse, illegal, arbitrary and irregular and the same deserves to be quashed.

18. In support of his submissions, learned counsel for the petitioner placed reliance on the following decisions :-

- i) *V.M.Subramania Mudaliar & Sons. – Vs – Sir Bhavasarakshriya Seva Samaj (1997 (1) CTC 102);*
- ii) *G.B.Adhilakshmi Ammal – Vs – The Special Deputy Collector (Stamps (2002 (3) CTC 490);*
- iii) *BPCL & Anr. – Vs – N.R.Vairamani & Anr. (2004 (5) CTC 74);*
- iv) *Arulmigu Kasi Viswanathaswamy Devasthanam – Vs – Kasthuriammal (MANU/TN/89/2006);*



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- v) *Arulmigu Selvavinayagar Temple – Vs – Vincent Company Pvt. Ltd. (MANU/TN/7977/2007);*
- vi) *S.Bagirathi Ammal – Vs – Palani Roman Catholic Mission (2009 (10) SCC 464);*
- vii) *C.Balakrishnan – Vs – Arulmigu Vishwanathaswamy Temple (2017 (2) CTC 536); and*
- viii) *C.Krishnan – Vs – Arulmigu Apparsamy Temple & Ors. (MANU/TN/3591/2016)*

19. Per contra, learned Special Government Pleader appearing for respondents 1 and 2 submitted that the father of the 2nd petitioner's vendor was a tenant under the temple and that he breathed his last on 14.10.186 and within a period of four months the tenancy was terminated by issuing legal notice on 28.2.1987. It is the submission of the learned Special Government Pleader that no material whatsoever was filed by the 2nd petitioner's vendor to prove that they were tenants consequent upon the death of their father.

20. It is the further submission of the learned Special Government Pleader that the 2nd petitioner, subsequent to the order passed in W.P. No.25544/2021, had executed the sale deed in favour of the 1st petitioner which was kept



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pending. It is the submission of the learned counsel that the 2nd petitioner had settled the property in favour of her daughter, which document, when sought to be registered, was rejected in view of the letter of respondents 1 and 2 and against which W.P. No.25544/21 was filed. In the said writ petition, order was passed to register the said settlement deed after conducting an enquiry. It is the submission of the learned Special Government Pleader that without giving effect to the said order by representing the settlement deed, the 2nd petitioner had conveyed the property in favour of the 1st petitioner and presented it for registration, which act of the 2nd petitioner is wholly in contravention of the order passed in W.P. No.25544/21.

21. It is the further submission of the learned Special Government Pleader that when enquiry was sought to be conducted by the 3rd respondent in compliance of the order of this Court in W.P. No.25544/21, the petitioner had conveyed the subject property in favour of the 1st petitioner. It is the further submission of the learned Special Government Pleader that by letter dated 27.1.2022, the petitioners have addressed the 3rd respondent that after execution of the sale deed in favour of the vendor of the 2nd petitioner in the year



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1990, the temple authorities have lost all their rights by efflux of time. It is the submission of the learned Special Government Pleader that without waiting for the enquiry to be conducted by the 3rd respondent pursuant to the order passed in W.P. No.25544/21, the 2nd petitioner had alienated the property in favour of the 1st petitioner, which reveals the suspect conduct of the petitioner.

22. It is the further submission of the learned Special Government Pleader that the sale consideration between the sale effected to the vendors of the 2nd petitioner and the purchase made by the 2nd petitioner clearly reveals that within a span of about two years, an increase of twenty-five times the value of the land purchased has been shown in the sale made to the 2nd petitioner, which clearly shows that the then hereditary trustee, had acted hand in glove with the vendors of the 2nd petitioner to transfer the property in favour of the vendors of the 2nd petitioner. It is further placed before this Court that the HR & CE Department had initiated detailed enquiry by framing charges against the then hereditary trustee for the fraudulent acts.



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23. It is the further submission of the learned Special Government Pleader that the hereditary trustee, without complying with Section 34 of the HR & CE Act had sold the property in favour of the vendors of the 2nd petitioner, which action is wholly illegal and against the statute and this Court, definitely, has to interfere with the said transaction by invocation of its extraordinary jurisdiction under Article 226 of the Constitution.

24. It is the further submission of the learned Special Government Pleader that even if Section 9 of the City Tenants Protection Act clothes the vendors of the 2nd petitioner for buying the portion of the land of the temple for convenient enjoyment, still the said provision has to be followed only after satisfying Section 34 of the HR & CE Act and any infraction thereon would render the sale void and a fraudulent one. Further, it is the submission of the learned Special Government Pleader that only on the basis of the directions issued by the Division Bench of this Court in W.P. No.9336 of 2018, action has been taken by respondents 1 and 2 to recover the properties belonging to the temple, which have been sold in violation of Section 34 of the Act and in such backdrop, the action of respondents 1 and 2 and the consequential action of the 3rd respondent



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on the basis of the letter of respondents 1 and 2 cannot be said to be bad, vitiated or perverse and the same does not warrant any interference.

25. Learned Special Government Pleader appearing for respondents 1 and 2 placed reliance on the following decisions :-

i) Joint Commissioner, HR & CE – VS – Jayaraman & Ors. (Appeal (Civil) No.1913 of 2004);

ii) K.Thangappa Pillai & Ors. – Vs – Arulmigh Srinivasa Devasthanam & Ors. (A.S. No.901 of 1993);

iii) S.Bagirathi Ammal – Vs – Palani Roman Catholic Mission (2009 (10) SCC 464);

iv) C.Balakrishnan & Anr. – Vs – Arulmighu Vishwanathaswamy Temple (2017 (2) CTC 536);

The Nungambakkam Muslim Welfare Association – Vs – Arulmighu Agastheeswarar Prasanna Venkatesa Perumal & Ors. (Manu/TN/0029/2017).

26. Learned Special Government Pleader appearing for the 3rd respondent, insofar as the act of the 3rd respondent in not registering the property, concurred with the submissions advanced on behalf of respondents 1 and 2 and submitted that only on the basis of the letter of respondents 1 and 2,



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which is only the basis of the directions issued by the Division Bench in W.P. No.9336 of 2018, the 3rd respondent has denied to register the sale deed executed by the 2nd petitioner in favour of the 1st petitioner and the said act of the 3rd respondent is in consonance with the power of the registering authority/3rd respondent and the said act cannot be said to be illegal or perverse.

27. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record as also the various decisions relied on by the learned counsel for the parties.

28. Before advertng to the facts and the contentions in issue, the relevant provisions of law, which have a bearing on the present case and which much reliance and stress was made by the learned counsel appearing on either side requires to be considered.

29. The learned counsel for the petitioners rest their case on Sections 3 and 9 of the City Tenants Protection Act to submit that the sale deed having been



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executed before the amendment to the said Act, the respondents cannot claim any right over the said property. For better appreciation, the relevant provisions are extracted hereunder :-

“3. Payment of compensation on ejectments. - Every tenant shall, on ejectment, be entitled to be paid as compensation the value of any building, which may have been erected by him, by any of his predecessors in interest, or by any person not in occupation at the time of the ejectment who derived title from either of them, and for which compensation has not already been paid. A tenant who is entitled to compensation for the value of any building shall also be paid the value of trees which may have been planted by him on the land [and of any improvements which have been made by him].

9. Application to Court for directing the landlord to sell land. - (1)[(a)](i) Any tenant who is entitled to compensation under section 3 and against whom a suit in ejectment has been instituted or proceeding under section 41 of the Presidency Small Cause Courts Act, 1882 (Central Act XV of 1882), taken by the landlord may, [within one month of the date of the publication of the [Chennai] City Tenants' Protection (Amendment) Act, 1979 (Tamil Nadu Act 2 of 1980) in the Tamil Nadu Government Gazette or of the date with effect from which this Act, is extended to the municipal town, township or village in which the land is situate,] or within [one month] after the service on him of summons, apply to



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the Court for an order that the landlord shall be directed [to sell for a price to be fixed by the Court, the whole or part of, the extent of land specified in the application.]

(ii) Notwithstanding anything contained in clause (a)(i) of this sub-section, any such tenant as is referred to in sub-clause (ii)(b) of clause (4) of Section 2 or his heirs, may within a period of two months from the date of the publication of the Madras City Tenants Protection (Amendment) Act, 1973 apply to the Court [whether or not a suit for ejectment has been instituted or proceeding under Section 41 of the Presidency Small Cause Courts Act, 1882 (Central Act XV of 1882) has been taken by the landlord or whether or not such suit or proceeding is pending] having jurisdiction to entertain a suit for ejectment or in the City of Madras either to such Court or to the Presidency Small Cause Court, for an order that the landlord under the tenancy agreement shall be directed to sell for a price to be fixed by the Court the whole or part of the extent of land specified in the application.]

[(b) On such application, the Court shall first decide the minimum extent of the land which may be necessary for the convenient enjoyment by the tenant. The Court shall, then, fix the price of the minimum extent of the land decided as aforesaid, or of the extent of the land specified in the application under clause (a), whichever is less. The price aforesaid shall be the average market value of the three years immediately preceding the date of the order. The Court shall order that within a period to be determined



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by the Court, not being less than three months and not more than three years from the date of the order, the tenant shall pay into Court or otherwise as directed the price so fixed in one or more instalments with or without interest.]

(2) In default of payment by the tenant of any one instalment, the application [under clause (a) of sub-section (1)] shall stand dismissed, provided that on sufficient cause being shown, the Court may excuse the delay and pass such orders as it may think fit, but not so as to extend the time for payment beyond the three years above-mentioned. On the application being dismissed, the Court shall order the amount of the instalment or instalments, if any, paid by the tenant to be repaid to him without any interest.

[(3) (a) On payment of the price fixed under clause (b) of sub-section (1), the Court shall pass an order directing the conveyance by the landlord to the tenant of the extent of land for which the said price was fixed, The Court shall by the same order direct the tenant to put the landlord into possession of the remaining extent of the land, if any. The stamp duty and registration fee in respect of such conveyance shall be borne by the tenant.

(b) On the order referred to in clause (a) being made, the suit or proceedings shall stand dismissed, and any decree or order in ejectment that may have been passed therein but which has not been executed shall be vacated.

Explanation. - 'Land' means the interest of the landlord in the land and all other interests which he can convey under any power



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and includes also the full interest which a trustee can convey under the power possessed by him to convey trust property when necessity exists for the same or the alienation of the property is for the benefit of the estate or trust.]

[3A) Notwithstanding anything contained in clause (b) of sub-section (3) of this section or in section 5 of the [Chennai City Tenants' Protection (Amendment) Act, 1972 (Tamil Nadu Act 4 of 1972), or any other law for the time being in force, the Court which passed the decree or order referred to in sub-clause (ii) (b)(2) of clause (4) of section 2, shall, on application made by the tenant referred to in that sub-clause within a period of two months from the date of the publication of the [Chennai] City Tenants' Protection (Amendment) Act, 1972, (Tamil Nadu Act 4 of 1972) reopen or review the proceedings relating to such decree or order and may pass a decree or an order that the tenant referred to in the said sub-clause, is entitled to the rights under this Act and pass such other supplemental, incidental or consequential orders as are necessary for the purpose as if the [Chennai] City Tenants' Protection (Amendment) Act, 1973 (Tamil Nadu Act 4 of 1972), were in force at the time at which the decree or order was passed.]”

30. However, learned counsel appearing for the respondents submits that the Temple being governed and maintained by the HR & CE Dept., necessarily,



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the mandate provided u/s 34 of HR & CE Act needs to be complied with and failure to comply with the same renders the transaction void. For better appreciation, Section 34 of the HR & CE Act is quoted hereunder :-

“34. Alienation of immovable trust property.—(1) Any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution shall be null and void unless it is sanctioned by [the Commissioner] as being necessary or beneficial to the institution :

Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in such manner as may be prescribed, inviting objections and suggestions with respect thereto; and all objections and suggestions received from the trustee or other persons having interest shall be duly consider by [the Commissioner] :

[Provided further that the Commissioner shall not accord such sanction without the previous approval of the Government].

Explanation.—Any lease of the property above mentioned through for a term not exceeding five years shall, if it contains a provision for renewal for a further term (so as to exceed five years in the aggregate), whether subject to any condition or not, be deemed to be a lease for a period exceeding five years.

(2) When according such sanction, [the Commissioner] may impose such conditions and give such direction, as [he] may deem



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necessary regarding the utilization of the amount raised by the transaction, the investment thereof and in the case of a mortgage regarding the discharge of the same within a reasonable period.

(3) A copy of the order made by [the Commissioner] under this section shall be communicated to the Government and to the trustee and shall be published in such manner as may be prescribed.

(4) The trustee may, within three months from the date of his receipt of a copy of the order, and any person having interest may within three months from the date of the publication of the order 4[appeal to the Court] to modify the order or set it aside.

[(4-A) The Government may issue such directions to the Commissioner as in their opinion are necessary, in respect of any exchange, sale, mortgage or lease of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution and the Commissioner shall give effect to all such directions].

(5) Nothing contained in this section shall apply to the imams referred to in section 41."

31. In the light of the aforesaid provisions, which have been relied on by the respective sides, the facts in issue have to be appreciated to come to a finding as to the sustainability of the transaction.



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32. The crucial issue that arises for consideration in the present petition is *whether the non-compliance of Section 34 of the HR & CE Act would not affect the sale transaction, entered into between the trustees of the temple and the tenants, viz., the vendors of the 2nd petitioner, void in the light of the order passed u/s 9 of the City Tenants Protection Act?*

33. There is no dispute about the fact that the lands, which were alienated by the then hereditary trustee, viz., Valliammal, belonged to the temple. The vendors of the 2nd petitioner claim their right to purchase the said property by virtue of a tenancy agreement, which is alleged to have been entered into between the temple and the father of the vendors of the 2nd petitioner.

34. It is also an admitted fact that a suit in O.S. No.5802/1987 was filed by the hereditary trustee, on behalf of the temple, against the father of the vendors of the 2nd petitioner, for possession of the properties, in which the vendors of the 2nd petitioner had filed I.A. No.15824/1987 for a direction to the temple to execute the sale deed in favour of the vendors of the 2nd petitioner insofar as the



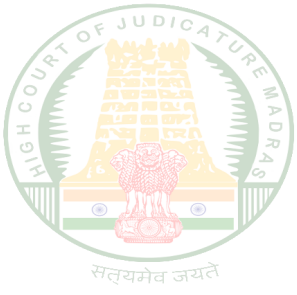
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extent of land, which is required for the convenient enjoyment of the vendors of the 2nd petitioner as provided u/s 9 of the City Tenants Protection Act.

35. While the claim of the temple for possession of the property was on account of the fact that the tenants, viz., the father of the vendors of the 2nd petitioner as also the vendors of the 2nd petitioner were not properly paying the rent due on the property, however, the claim of the vendors of the 2nd petitioner for sale of the property for their convenient enjoyment stems from their allegation that on the land, which had been leased out to the father of the vendors of the 2nd petitioner, superstructure had been put up and resultantly, the said property is required for their convenient enjoyment.

36. A perusal of the plaint filed in the suit in O.S. No.5802/1987 reveals that the plaintiff has averred that it is a Public Religious Trust governed and controlled by the Hindu Religious and Charitable Endowments Department. The plaintiff, represented by the hereditary trustee had further averred that the suit is mainly filed on the ground that the tenant, viz., the father of the vendors of the 2nd petitioner was irregular in payment of rent, which has continued with the



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vendors of the 2nd respondent as well. Therefore, the suit has been filed for recovery of possession of property.

37. Written statement has been filed by the defendant in the suit, viz., the vendor of the 2nd petitioner, in which the defendants have denied the irregular payment. The defendants have also raised a plea that their father had put up a superstructure in the year 1948-1949 and that they are continuing in the said land as tenant under the temple. However, it is not disputed by the tenants that the temple is governed and controlled by the Hindu Religious & Charitable Endowments Department.

38. In the above background, the vendors of the 2nd petitioner had filed the petition in I.A. No.15824/87 u/s 9 of the City Tenants Protection Act praying for an order fixing the minimum extent of land required by the petitioners for their convenient enjoyment of the property and for a direction to convey the property to the tenants.



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39. In the light of the above facts, on the basis of the report of the Advocate Commissioner, order has been passed in the said I.A. No.15824/87, wherein, one ground and 379 sq.ft., of land was fixed to be the land required for the convenient enjoyment of the defendants and an amount of Rs.20,842.50 was fixed as the value for the said land.

40. In the aforesaid backdrop, the provisions of the City Tenants Protection Act, more especially Sections 3 and 9 come into play. Section 3, as extracted supra, is a self-contained code giving a right to the tenant to claim on his ejectment, compensation, being the value of any building erected by him or his predecessor-in-title or any person who derived title from either of them.

41. Section 9 provides for compulsory sale by a landlord of land in the possession of the tenant on which he has put up a superstructure. It is to be pointed out that this provision in the Act is on the grounds of equity as with the sale of the land, the tenant is guaranteed enjoyment of the superstructure put up by him. However, there are certain statutory requirements, which the tenant must comply with, if he intends to avail of this benefit, which has been



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summarized by the Hon'ble Supreme Court in ***S.r.Radhakrishnan & Ors. – Vs – Neelamegam (2000 (3) CTC 488 (SC))*** and for better clarity, the conditions are as under :-

- i) *He should be a tenant in possession of the land.*
- ii) *He should have erected a superstructure on the land in respect of which he will be entitled to claim compensation under Section 3.*
- iii) *The landlord should have taken a suit or proceeding in ejectment against the tenant.*
- iv) *The tenant should have applied to the Court for direction in that regard within one month from the date of service of summons in the suit.*

42. A conjoint reading of the above provision reveals that on the filing of the suit for ejectment, the tenant may opt for either one of the reliefs, provided either u/s 3 or 9 as the case may be. In the case on hand, the vendors of the 2nd petitioners, who were the tenants under the temple, had resorted to the remedy u/s 9.



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43. However, it should not be lost sight of that the relief provided u/s 9 for purchase of the portion of the property is only for the convenient enjoyment of the superstructure put up on the property. However, the statutory right provided to the tenant u/s 9 is not an absolute right, as the Court, before whom the suit is filed for ejectment, has discretion to grant or refuse the relief for the purchase of the land. The tenant has no vested right in the property and it is a privilege granted to him by the statute, which is equitable in nature.

44. The entire scope of Section 9 and the nature of right enjoyed by the tenant has been dealt with by the Hon'ble Supreme Court in ***Bharath Petroleum Corporation Ltd. – Vs – N.R.Vairamani (2004 (5) CTC 74)***, wherein the Hon'ble Supreme Court has held that it is the mandatory duty of the Court to find out the minimum extent of land which is required for the convenient enjoyment of the tenant and further the Court must hold enquiry to determine whether the tenant requires the land for his convenient enjoyment and subject to the outcome of the enquiry, the Court, in its discretion, shall either grant or reject the prayer of the tenant.



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45. From the above, it is clear that the right which the tenant has is only a statutory right and not a vested right and further to enforce the statutory right, the Court is duty bound to conduct an enquiry before passing any order. In the aforesaid backdrop, a perusal of the order passed by the court below in I.A. No.15824/87 reveals that the enquiry, which is a mandatory prerequisite and contemplated u/s 9, has not been fulfilled. The court below, on the application of the tenant, on the basis of the report of the Advocate Commissioner has stated that the tenant is entitled for an extent of one ground and 379 sq.ft. of the property and has also fixed the value.

46. It is to be pointed out that the land belongs to the temple and the hereditary trustee is merely the custodian of the property, which belongs to the temple and it is the duty of the trustee to utilize the property for the benefit of the temple. In the case on hand, the suit has been laid by the hereditary trustee seeking recovery of possession on the ground that the rent has not been properly paid, which in effect means that the amount obtained by way of rent is to be utilized for the benefit of the temple. However, in the suit, the tenant has filed the application seeking sale of the property, which has been ordered by the



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court below. Is the suit laid by the trustee really one seeking to obtain benefit for the temple or is in effect a suit, which is filed to give benefit to the tenant so as to claim conveyance of the property in the name of the tenant.

47. A perusal of the materials available on record reveal that order was passed in I.A. No.15824/87 on 29.03.1990 and pursuant to the said order, the sale deed was executed on 11.10.1990 by the hereditary trustee. Thereafter, the materials available on record reveal that no steps have been taken by the trustee with regard to the suit and the suit had been allowed to be dismissed for default. This clearly shows that all is not well with the entire transaction as also the act of the hereditary trustee. Therefore, without any demur, it can be held that the suit has been laid with certain ulterior motive and definitely not for the benefit of the temple. It is also to be pointed out that smelling something fishy in the entire transaction, action has been taken against the hereditary trustee. The above act could only be inferred as a collusion between the hereditary trustee and the vendors of the 2nd petitioner, which alone has resulted in the filing of the suit by the trustee on behalf of the temple to give the tenant an opportunity to avail the benefit of Section 9 of the City Tenants Protection Act. Without the



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filing of the suit, the tenant would not be in a position to claim the benefit of Section 9.

48. Further, as pointed out above, Sections 3 and 9 of the City Tenants Protection Act are independent provisions and one does not lean over the other. However, two ingredients are necessary for invoking Section 9 of the City Tenants Protection Act relating to sale of the land, viz., that there should be a superstructure put up for the enjoyment of the tenant and that the Court, adjudicating the issue, should, upon holding an enquiry, be satisfied that the land is required for the convenient enjoyment of the tenant. Only upon satisfaction of these twin conditions, can the court order the land to be sold in favour of the tenant, that too only in relation to the piece of land, which alone is required for the convenient enjoyment of the tenant and nothing more.

49. However, in the case on hand, the order of the court below is bereft of any details. The order of the Court below speaks about a report of the Advocate Commissioner, yet no salient features in the report finds a place in the order, which necessitated the court below to decide in favour of the tenant. If the



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report of the Advocate Commissioner should be deemed to be an enquiry, which has been taken note of by the court below, necessarily the court below is duty bound to record the details of the report of the Advocate Commissioner in the order. However, the order of the court below is silent on the aspect of the report of the Advocate Commissioner. Further, the court below has recorded a finding that the Advocate Commissioner had submitted a report based on which the cost of the land has been arrived at Rs.20,842.50. Though the Court below has stated that the sale transactions between the years 1985 and 1988 have been taken into consideration to fix the value, but no details as to how the value has been quantified is found in the order and here too, the report of the Advocate Commissioner, which is relied upon, has not been dealt with in detail.

50. The power given to the court below u/s 9 of the City Tenants Protection Act to adjudicate the sale of the land, pertaining to the temple, to be sold to the tenant, is so vast that a duty is cast on the court to analyse in detail the various aspects relating to parting the temple of its land to its tenant. The Court cannot, merely on *ipsi dixit*, give the relief sought for without reasons, and the Court has to satisfy itself as to genuineness of the suit, as the trustee is



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merely the custodian of the property of the temple and the Presiding Deity alone is the owner of all the properties. Only in such a backdrop, the Legislature, in its wisdom, had clothed the court with the power to judiciously deal with the issue. However, the order of the court in I.A. No.15824/87 reveals that unmindful of the duties cast upon it, the court had merely directed sale of the property to the tenant. Without advertent to the details in the report of the Advocate Commissioner, which forms the basis of the order of the Court, the Court had passed the order, which is grossly irregular, illegal and perverse.

51. Further, it is to be pointed out that Section 3 of the City Tenants Protection Act specifically deals with payment of compensation to the tenant upon ejectment. Specifically dealt therein that compensation is to be paid towards the value of the superstructure put up by the tenant in the said property. From the above, it is evident that existence of superstructure is *sine qua non* to payment of compensation upon ejectment. However, there is no material available on record, either filed by the tenant or in the order of the court below to show that there existed a superstructure and towards the enjoyment of the same, the land upon which the superstructure is put up is



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necessary for the convenient enjoyment of the tenant and only in such a scenario, Section 9 of the City Tenants Protection Act comes into play.

52. As already stated above, it is not a matter of right for the tenant to seek sale of the property in his favour upon ejectment. The tenant has no vested right in the property and it is only a privilege granted to the tenant by the statute, which is equitable in nature. The said safeguard is only for the protection of the tenant from eviction, who have constructed superstructure on the land and may continue to occupy the same for purposes of their residence or business. However, as noted above, though the tenant has pleaded that their father had put up superstructure on the land, which is being used by their father and after his lifetime by the vendors of the 2nd petitioner as residence, yet no material is placed to prove that such a superstructure exists. Further, as pointed out above, the order of the court below directing the sale of the land in favour of the vendors of the 2nd petitioner is also a non-speaking order and the basis for arriving at such a finding is not clear from the said order. The said order is also silent as to the superstructure put up on the said property.



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53. Be that as it may. As already stated above, it is the unequivocal submission of the plaintiff that the temple is governed and controlled by the HR & CE Department. The said fact is not disputed by the petitioners. But the only claim of the petitioners is that the sale having taken place prior to the amendment to the City Tenants Protection Act, the said sale cannot be held to be void. This Court, even for a moment, is not subscribing to the view that the amendment to the City Tenants Protection Act is applicable to the case of the vendors of the 2nd petitioner. But *de hors* its application, would the non-compliance of the provision u/s 34 of the HR & CE Act, make the sale void is the issue that falls for determination.

54. Sub-section (1) of Section 34 of the HR & CE Act, extracted supra, mandates that in respect of any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purposes, of any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution.



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55. From the above, it is implicitly clear that insofar as any alienation of property of any nature, pertaining to any religious institution, as provided in Section 34 (1) of the HR & CE Act is involved, the prior permission of the competent authority, as provided u/s 34 of the HR & CE Act is mandatory. There is no quarrel with the proposition of law. But the stand of the petitioners is that for the purpose of sale u/s 9 of the City Tenants Protection Act, there is no requirement for the trustee to get the approval that is mandated u/s 34 of the HR & CE Act, as the sale is at the behest of the order of the court and the competent authority cannot sit over the order of a judicial authority.

56. The land was sold to the vendors of the 2nd petitioner on the basis of the order passed in I.A. No.15824/87 in O.S. No.5802/1987. The suit was filed for ejectment of the tenants and for recovery of possession by the trustee in respect of the temple, which is governed by the HR & CE Act. Therefore, it necessarily follows that the temple is governed by all the provisions of the HR & CE Act and in case of application of any of the other provisions under the City Tenants Protection Act or any other Act, necessarily the fulfillment of HR & CE Act at the first instance is mandatory. The tenant has gone before the court



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below by filing application u/s 9 of the City Tenants Protection Act, but the temple being governed and controlled by the HR & CE Department, necessarily the trustees are duty bound to act in accordance with the provisions of the HR & CE Act.

57. In the above backdrop, though the sale is upon an order passed by the court below in a suit for ejectment, however, it is to be pointed out that on the application of the tenant u/s 9 of the City Tenants Protection Act, necessarily, the trustees of the temple ought to have taken it to the knowledge of the HR & CE Department for getting necessary permission for complying with the order passed by the court below for the sale of the temple lands to the tenant even at the very first instance.

58. In this background, the explanation provided to the word '*Land*' in Section 9 of the City Tenants Protection Act assumes significance. '*Land*' means the interest of the landlord in the land and all other interests which he can convey under any power and includes also the full interest which a trustee can convey under the power possessed by him to convey trust property *when*



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necessity exists for the same or the alienation of the property is for the benefit of the estate or trust.

59. From the above explanation, it is evident that the alienation of the land or conveyance of the land by way of sale should be for the benefit of the trust or estate and the trustee, being the custodian of the property, is necessarily to see that the benefit of the trust or the estate is the priority when the land is sold and the same is not jeopardized or compromised. The land being the property of the temple, the trustee being the custodian of the property, necessarily the proceeds should be for the benefit of the temple. The suit is filed pleading that rent has not been properly paid by the tenant, which in effect means that the money was not available, by way of rent, for being utilised for the benefit of the temple.

60. The trustee has not filed any petition for enhancement of rent, as provided u/s 7 of the City Tenants Protection Act. It is not the case of the vendors of the 2nd petitioners, who were the tenants under the temple that they have paid the rent due to the temple regularly, as it is the specific case of the



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trustee, while filing the suit, that the tenants have been irregular in payment of rent. In fact, the tenants have not averred anything in their written statement that they have been paying the rents regularly. Further, it is also not the stand of the tenants that the excessiveness of the rent fixed was the reason for its non-payment, as otherwise, the tenants would have invoked Section 7-A of the city Tenants Protection Act for fixation of fair rent. However, the tenants have not taken any such step for fixation of fair rent, which clearly shows that the tenants had no quarrel with the rent fixed by the temple.

61. In the aftermath of the irregular payment of rent, the suit for ejectment u/s 9 of the City Tenants Protection Act has been filed. As stated above, the entire sequence of events from the filing of the suit till its dismissal for default clearly shows that it is only on account of the collusive act between the trustee and the tenants, which has resulted in the filing of the suit. Only to avoid such collusive act between the trustee and the tenants, leading to erosion of the valuable assets of the temple, the HR & CE Act contemplates the approval of the appropriate authority involving alienation of any property belonging to the temple.



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62. The main ground on which the petitioners as also their vendors claim their right and title to the property is on the basis of Section 9 of the City Tenants Protection Act, which stood as it was prior to the amendment. However, irrespective of the amendment to Section 9, compliance with Section 34 of the HR & CE Act is a mandatory condition to be fulfilled by the Trustee insofar as the temples, which are governed under the HR & CE Act. As already pointed out above, the plaintiff temple is governed by the provisions of the HR & CE Act and in fact, the petitioners are also not questioning its application to the temple. Such being the case, alienation of the property belonging to the temple, even if it is on the basis of the court orders, necessarily permission has to be obtained by the trust before selling the property to the tenant.

63. The necessity for approval mandated u/s 34 is to weed out collusive acts between the trustees and the tenants which results in the temple property being usurped by unscrupulous elements. If there exists no collusion, tenants would not have any grievance with regard to advertance to Section 34 of the HR & CE. Only to weed out collusion, not only necessary permission from the



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competent authority has been made mandatory, but also appeal remedy is provided under Section 9-A of the City Tenants Protection Act. When suit has been filed for recovery of possession by the Trust and when an order has been passed on the application of the tenant u/s 9 of the City Tenants Protection Act, the natural course for the Trust is to resort to the appellate remedy provided u/s 9-A. However, without filing any appeal, the Trustee had gone ahead with the execution of the sale deed. Had the intention of the Trust really been to safeguard the property of the temple, necessarily the Trust would have resorted to the appellate remedy. However, without resorting to filing the appeal provided u/s 9-A of the City Tenants Protection Act, sale deed has been executed. Only with a view to curb out such illegal acts by collusion of the trustee with the tenant, approval from the competent authority u/s 34 of the HR & CE Act is provided.

64. From a careful reading and analysis of the above provision, it is emphatically clear that the approval u/s 34 is a mandatory condition to be followed by the Trust irrespective of the order of the court below directing execution of the sale deed. Further, it is to be pointed out that complying with



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the condition u/s 34 of the HR & CE Act would in no way have a bearing on the order u/s 9 of the City Tenants Protection Act, if really the order had been passed in consideration of all the materials. However, the facts and circumstances and the materials adverted to by this Court above, clearly reveals that the whole act of parting with the property of the temple to the vendors of the 2nd petitioner for a paltry sum, though quantified by the Court, is nothing but an illegal act on the part of the Trust, in total negation to the benefit of the temple. In such circumstances, the non-compliance of Section 34 of the HR & CE Act, definitely has a telling effect on the sale, though on the orders of the Court, and the same definitely warrants interference of this Court by exercise of its extraordinary jurisdiction under Article 226 of the Constitution.

65. The lands have been given to the temple for the benefit of the temple and the Presiding Deity being the owner of the said lands and the HR & CE Department is only acting on behalf of the temple to maintain the properties by appointing trustees for the benefit of the temple. Further, only to avoid unscrupulous acts, such as the one noted above, the permission of the competent authority of the HR & CE Department is provided u/s 34 of the HR &



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CE Act. It should not be lost sight of that the value of the property was quantified at Rs.20,852.50 and the lands were sold in favour of the vendors of the 2nd petitioner in the year 1987 but within a period of two years, in the year 1989, the lands were sold for a price of Rs.5.50 Lacs. Though this Court is not concerned with the sale consideration with regard to the two different sale transactions, however, the enormity of the second sale transaction definitely has a bearing as it affects the larger interests of the temple. The interest of the temple is of paramount consideration, more so, when the property of the temple, which is put in the hands of the trustee for being utilized in a proper manner for the benefit of the temple, is sold for peanuts unmindful of the interest of the temple and in such a scenario, a duty is cast upon this Court to invoke its extraordinary jurisdiction to interfere with the sale transaction, else not only the larger interest of the temple would be jeopardized, but justice would also be denied for the temple and the Presiding Deity, which is the owner of the temple. The scales of justice definitely tilts in favour of the temple and calls for the invocation of this Court's extraordinary jurisdiction.



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66. On a holistic consideration of the issue, the fact that no approval has been obtained u/s 34 of the HR & CE Act, definitely renders the sale void, even if the said sale has been at the instance of the Court, as even the trial court cannot restrict the plaintiff from obtaining the requisite permission as mandated u/s 34 of the HR & CE Act. Extraordinary situations warrant invocation of extraordinary powers, which is vested on this Court by virtue of Article 226 of the Constitution of India and, accordingly, this Court, invoking its extraordinary jurisdiction is inclined to set aside the order passed by the trial court in I.A. No.15824/87 in O.S. No.5802/87 as perverse and unreasonable, and in the absence of approval u/s 34 of the HR & CE Act, the alienation of the lands by way of sale to the tenants, viz., the vendors of the 2nd petitioner by the trustees, viz., the plaintiff, is void and the said sale also deserves to be set aside. Consequent upon the said finding, the subsequent sale entered into by the vendors of the 2nd petitioner with the 2nd petitioner and the sale of the said lands by the 2nd to the 1st petitioner are without valid title and the said sale transactions also deserve to be declared as void. In view of the above, this Court does not find any error in the order passed by the 3rd respondent/registering authority and, accordingly, the said refusal order is confirmed.



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67. For the reasons aforesaid, this Court passes the following order :-

- i) *The writ petition is dismissed ;*
- ii) *The alienation of the lands by way of sale to the tenants, viz., the vendors of the 2nd petitioner by the trustees of the temple as ordered in I.A. No.15824/87 in O.S.No.5802/1987 is perverse and unreasonable and the said sale is accordingly set aside;*
- iii) *The subsequent sale entered into by the vendors of the 2nd petitioner with the 2nd petitioner and the further sale of the said lands by the 2nd to the 1st petitioner are without any valid title and the said sale transactions are declared as void.*
- iv) *In view of the cancellation of sale entered into between the temple and the tenants, viz., the vendors of the 2nd petitioner, the order passed by the 3rd respondent does not suffer the vice of any illegality and the same is confirmed.*



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v) *Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.*

06.06.2022

Index : Yes / No

Internet : Yes / No

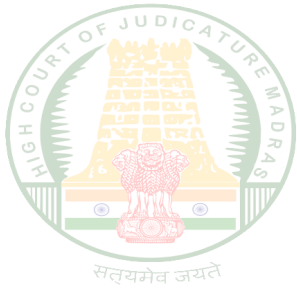
GLN

To

1. The Commissioner
Hindu Religious & Charitable
Endowments Department
No.119, Uthamar Gandhi Salai
Nungambakkam, Chennai 600 034.

2. The Executive Officer
Arulmigu Agastheeswarar Prasanna
Venkatesa Perumal Thirukkoil
11, North Mada Street
Nungambakkam, Chennai 600 034.

3. The Joint Sub Registrar II
District Registrar Cadre
Thousand Lights
Chennai 600 006.



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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NO.7220 OF 2022**

**Pronounced on
06.06.2022**