

**(2011) 09 MAD CK 0018**

**In the Madras High Court**

**Case No :** Writ Petition No. 30923 of 2008 and M.P. No's. 1 to 1 of 2008

A. Ramamurthy

APPELLANT

Vs

The Commissioner, The Joint Commissioner, The Assistant  
Commissioner Hindu Religious and Charitable Endowments  
and The Executive Officer-cum-Fit Person Arulmighu  
Selliamman Thirukoil

RESPONDENT

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**Date of Decision :** 06-09-2011

**Acts Referred:**

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 78,  
78(2), 78(4)  
Transfer of Property Act, 1882 — Section 106

**Citation :** (2011) 09 MAD CK 0018

**Hon'ble Judges :** T. Raja, J

**Bench :** Single Bench

**Advocate :** Mr. T.P. Prabakaran, for the Appellant; Mr. R. Kannan, Government  
Advocate for R1 to R3 and Mr. P.V. Arulphazam Nee, for R4, for the Respondent

**Final Decision :** Allowed

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## Judgement

The Honourable Mr. Justice T. Raja, J.—These three writ petitions are filed separately by the petitioners against a common order passed by

the 2nd respondent-Joint Commissioner, Hindu Religious and Charitable Endowments Department in Na.Ka. No. 4717/2006/E1 dated

18.12.2008 u/s 78 of the Hindu Religious and Charitable Endowments Act 1959 and to quash the same as illegal and invalid.

2. All these three Petitioners claim to be the tenants since they have been granted lease of an extent of 70 feet x 33 1/4 feet of the property

comprised in S. Nos. 10/1 and 11/1 belonging to Arulmighu Selliamman Temple situated at the bank of River Palar at Vellore coming under the

control and management of the Tamil Nadu Hindu Religious and Charitable

Endowments Department.

3. The Learned Counsel appearing for the Petitioners submits that these three Petitioners were granted lease of the above said land just adjacent to

the said temple Arulmighu Selliamman Thirukkoil. Therefore, they erected a workshop to carry on the trade of repairing of lorries and trucks etc in

the year 1981. From the date of lease of the land in question they have been making regular payment without default though the 4th Respondent-

Executive Officer, HR&CE Department is not in the habit of issuing any rental receipt. When the matter stood as above, in the month of June 2005,

the Vellore District Administration and the Vellore Municipality decided to shift the bus station from its original location opposite to the Vellore

Fort to the NAFED ground situated West of the Arulmighu Selliamman Temple in view of the necessity caused by the heavy traffic congestion,

severe safety problems and inadequate amenities. Accordingly, the bus station was shifted to the NAFED ground situated right behind the temple.

Since access to the said bus station was unavailable from the New Vellore-Chittoor Road, the temple authorities were requested in the year 2005

to provide access through the temple land. In turn, the temple authorities made a request to the Petitioners. At the request of the temple and the

District Administration as well as the Vellore Municipality, all these three writ Petitioners (1) A. Ramamurthy (2) V.B. Jay Raman and (3) S.V.S.

Mani agreed to vacate their respective workshops and allowed the same to be demolished to serve the public cause. In this process, the

Petitioners lost their only source of income and incurred huge loss on account of demolition of the work shop. In appreciation of the immediate

gesture of help in serving the public cause, the District Collector of Vellore as well as the temple authorities have come forward to grant alternative

sites to the Petitioners admeasuring in 33 1/4 feet by 70 feet to each of the Petitioner at the place adjacent to the entrance of the bus stand. But, in

view of exigency of time, no lease deed was executed. However, a monthly rent was fixed at Rs. 1,000/- by the 4th respondent in consultation

with the first and the third Respondents.

4. The Learned Counsel appearing for the Petitioners has also made his submissions by the immediately adverting the counter filed by the 4

respondent. In para 2 of the counter it has been admitted by the 4th

respondent that the Petitioners were provided with alternative site measuring about 70" x 33 1/4" in Survey Nos. 10/1 and 11/1 belonging to the fourth Respondent temple, at the intervention of the then Collector of Vellore District due to urgency of public purpose of formation of new bus stand for Vellore Town, the alternative site was provided to the Petitioners tentatively by the then Executive Officer on condition that the Petitioners should neither sublet nor alter their purpose of business of running motor mechanic shed and pay Rs. 1,000/- till the higher official of HR &CE Department accept them as tenants, by fixing fair rent in accordance with the rules and Regulations and accepting the Petitioners as lessee of the new site. 5

5. The Learned Counsel further added that as the new bus stand has become functional, the Petitioners could not carry on the old trade of repairing heavy motor vehicles. Since the approach to the bus stand was so congested and choked with human and vehicular movement with atleast six policemen regulating the traffic round the clock, the Petitioners could not function continuously for the reason that the vehicles' owners could not bring the vehicles for repairs on account of additional traffic congestion which has made the entire area under heavy control of the traffic police.

Further, a huge transformer put up by the Electricity Department also prevented free access to the Petitioners' newly let out premises. Frequent intervention of the police on account of the traffic rules caused the Petitioners' workshop business completely dwindled day by day. In view of that all the three Petitioners decided to start a new hotel catering vegetarian food. On that basis and they started a hotel by informing the 2nd

4 respondents regarding the change in business. They then put up a hotel and after some time, the 4 respondent issued a legal notice dated 14.7.2005

u/s 176 of the Transfer of Property Act. The Learned Counsel further submitted that in the said notice dated 14.7.2005 having safely admitted the case of the Petitioners that they are the tenants of Arulmighu Selliamman Koil on a monthly rent of Rs. 1,000/- it goes without saying that the

Petitioners are not encroachers. Therefore, the Petitioners issued a reply notice dated 22.7.2005 categorically refuting the contentions made in

the notice given by the 4 respondent that they cannot deal with the petitioners as encroachers as they have become tenants on payment of monthly

tenants. However, in the the meanwhile, the 4respondent filed a O.S. No. 526/2005 on the file of the learned Additional District Munsif, Vellore categorically admitting the case of the Petitioners that they are all tenants in the property of the temple. The Petitioners also filed a written statement and the same was posted for trial. In these circumstances, during the pendency of the Civil Suit when the Petitioners' legal status as tenants was accepted by the Respondent, the Petitioners met the first Respondent-Commissioner, Hindu Religious and Charitable Endowments on 29.8.2005 and on 30.11.2005 and explained their position and in the course of discussion, the Petitioners also agreed to pay the enhanced rent. rd Accepting the said proposal, the first Respondent also referred the Petitioners to the 3respondent-Assistant Commissioner, Hindu Religious and Charitable Endowments, Vellore and called for his remarks. rd The 3respondent also conducted enquiry by examining the Petitioners and thereafter, he recommended the Petitioner's proposal to the second Respondent. But no final decision was taken on the said proposal. At this juncture, the Joint Commissioner of Vellore assumed charge. After some time, his activities have attracted a public outcry. Therefore, some people pasted posters implicating his wrong doing in all prominent places of the town. But, unfortunately, the Joint Commissioner, H.R.&C.E., Vellore suspected the Petitioners were behind such publication of the posters that were struck by various other persons, called upon the Petitioners to his office under the wrong impression that the Petitioners were behind the publication of such notices and informed the Petitioners to vacate the land in question, failing which, he threatened that the Petitioners would be evicted despite the CivilSuit was pending against them. Subsequently, police also enquired with regard to the publication and sticking of posters. As the Petitioners explained to them that they had nothing to do with such publications, they were issued with a notice dated 30.6.2006 u/s 78(2) of the HR&CE Act by initiating the eviction proceedings as though the Petitioners are encroachers, particularly, when the matter is pending on the file of the learned Additional District Munsif, Vellore. Under those circumstances, the Petitioners were compelled to file a W.P. Nos. 22132, 22133 and 22134/2006 and the same were pending on the file of this Hon''ble Court. In WPMP No. 1 of 2006 in the said writ petitions, interim stay was granted. However, this Hon''ble Court was pleased to vacate the order of stay subsequently

permitting the second Respondent to proceed with the enquiry u/s 78 of the HR&CE Act. Again the Petitioners filed W.P. No. 2868/2008

challenging the constitutional validity of the provisions of Section 78 of the HR & CE Act. The said writ petition was also dismissed at the

admission stage. Thereafter, once again a notice dated 16.9.2008 was issued. Accepting the said notice the Petitioners attended the enquiry

specifically disputing the allegations that they were not defaulted in making the monthly rent to the Respondent. The second Respondent finally

posted the matter for enquiry on 16.12.2008 and thereafter, without properly conducting the enquiry passed the impugned order evicting the

Petitioners from the premises vide order dated 18.12.2008. The said order was sent by registered post on 18.12.2008 to the Petitioners.

Aggrieved by the said orders, the present writ petitions have been filed by the Petitioners separately.

6. By narrating the above facts the Learned Counsel for the Petitioners placed the following submissions:

(i) When the 4th respondent-the Executive Officer-cum-Fit Person in his counter affidavit categorically admitted the status of the Petitioners that

they were all provided with an alternative site measuring about 70 feetx 33 1/4 feet in Survey Nos. 10/1 and 11/1 belonging to the 4th respondent

temple at the intervention of the then Collector of Vellore District due to urgency and public purpose of formation of new bus stand for Vellore

Town, on condition that they should pay the rent oars. 1,000/-, that goes without saying that the Petitioners are statutory tenants and therefore,

they cannot be construed as encroachers.

(ii) Secondly, when the Respondents issued a legal notice dated 14.7.2005 calling upon the petitioners u/s 106 of the Transfer of Property Act

terminating the tenancy, once again they admitted the case of the Petitioners that the Petitioners are all statutory tenants.

(iii) Thirdly, when the 4th respondent filed a suit O.S. No. 526/2005 on the file of the learned Additional District Munsif, Vellore seeking permanent

injunction restraining the Defendant from putting up any construction, whatsoever, over the suit property without the permission of the plaintiff and

mandatory injunction directing the Defendant to remove all the constructions put up on the suit property by him and in case of his failure to do so,

to have the constructions removed through the process of court, it is not open to the Respondents to call the Petitioners as encroachers.

(iv) By relying on the judgment of a Division Bench rendered in W.A.(MD) No. 694/2009 dated 23.02.2010 (K.V. Lakshmi Ammal v. The Joint

Commissioner, Hindu Religious and Charitable Endowment department, Madurai and Anr. it was heavily contended by the Learned Counsel

appearing for the petitioners that enquiry as contemplated u/s 78(4) of the HR&CE Act is that the authority should give the necessary opportunity

to the Petitioners concerned including that of cross-examination of witnesses, production of documents, summoning of witnesses and also availing

of the help of lawyer. It is more or less a full-fledged enquiry of that of a Civil Court that the proceedings are covered by the Act. When there has

been a full-fledged enquiry contemplated, without giving any full-fledged enquiry as per the order passed in W.A.(MD) 694/2009 dated

23.2.2010, summarily rejecting the petitioners from the land in question that was given as an alternative by the 4th respondent is not only contrary

to law, but also running contrary to the provisions of Section 78(4) of the HR&CE Act.

7. (i) In reply, the Learned Counsel appearing for the second Respondent-Joint Commissioner, HR&CE submitted that it was false to state that the

District Collector and the temple authority granted alternative site in view of giving way to the bus station and neither the Collector nor the temple

authority has got any power to grant alternative site.

(ii) Further, it was contended by the Learned Counsel appearing for the second Respondent that the Petitioners had never got any consent from

the second Respondent regarding change of business since the 4TH respondent had no power to permit or sanction or allow to make any alteration

in the area or other terms of a lease without getting the approval of the first Respondent-Commissioner, HR&CE. On that basis, it was contended

that the Petitioners are in unlawful possession and therefore, the termination of tenancy is necessary and on that basis the 4th respondent issued

notice to the petitioners calling upon them to vacate and hand over the vacant possession since they continued as encroachers.

(iii) When the Petitioners challenged the notice dated 30.6.2006 in W.P. Nos. 22132, 22133 and 22134 of 2006, the M.P. Nos. 1/2006 were

dismissed by this Court on the ground that they were not maintainable as they challenged the show cause notices. Once again the Petitioners filed

another set of W.P. Nos. 24557, 24558 and 24559 of 2006 before this Court by challenging the validity of Section 78 of the HR&CE Act XXII

of 1959 in respect of removal of unauthorised occupants. Those writ petitions were dismissed on 1.12.2009 in the light of the order passed by this

Court in W.P. No. 10447 of 1999 upholding the validity of the said provisions. After dismissal of the said writ petitions, the Executive Officer,

HR&CE reported that a sum of Rs. 6,03,468/- was remaining unpaid upto 31.8.2008 by the temple as arrears of rent for the use of temple

property by the Petitioner. After taking all these factors into consideration, the Joint Commissioner, HR&CE Department, Vellore had issued

a further notice to all the three unauthorized occupants in his R.C. No. 4717/2006/C1 dated 16.09.2008 to show cause as to why they should not

be evicted from the temple property. Thereafter, the petitioners, also filed their counter dated 25.11.2008 before the Joint Commissioner, HR&CE

Department, Vellore through their counsel. Thereafter, since the enquiry contemplated under Section 78(2) of the HR&CE Act XXII of 1959 is a

summary eviction proceeding, the Joint Commissioner, HR&CE Department in exercise of his power u/s 78(4) of the Act, passed the impugned

order dated 18.12.2008 evicting the Petitioners from the temple property.

(iv) The Learned Counsel appearing for the second Respondent also submitted that the Joint Commissioner, HR&CE Department also

supported the case of the 4th respondent that the HR&CE Act is a Special Act and that is only applicable for a religious institution under its

purview. Hence, the provisions of the Special Act will prevail over in respect of the religious institutions, the provisions of the general law, namely,

Transfer of Property Act and further he mentioned that the very purpose of the new provision u/s 78 of the HR&CE Act is to reduce the burden

of Civil Courts from trying several lakhs of cases of encroachments in the properties belong to religious institutions. On this basis, the Learned

Counsel justified the impugned order passed u/s 78 of the HR&CE Act for removing the Petitioners as encroachers.

8. The submissions made by the Learned Counsel appearing for the 4th respondent in support of the submission made by the Learned Counsel

appearing for the second Respondent taking the stand that the procedure contemplated u/s 78(2) is only a summary proceeding, is running

contrary to the judgment of the Division Bench rendered in W.A.(MD) No. 694/2009 dated 23.2.2010 in the case of K.V.Lakshmiammal v. The

Joint Commissioner, HR&CE Dept., Madurai and Another.

9. First of all, let us be clear on the status of the Petitioners whether they are encroachers or tenants. The answer lies in the counter filed by the 4th

respondent-The Executive Officer-cum-Fit Person. The relevant portion of the counter filed by the 4th respondent is extracted hereunder:

2. I submit that when the administration of A/M Selliamman Thirukoil, Vellorecame under the control of Hindu Religious and Charitable

Endowments Department in the year on and from 15.09.2004, the Petitioner herein is in occupation of the land belonging to the said temple on the

banks of river Palar, and wherein he was running a workshop for repairing vehicles etc., that in the year 2005, when the said land was acquired by

Govt. of Tamil Nadu for entrance of the new bus stand of Vellore, the Petitioner herein was provided with an alternative site measuring about

70"x33 1/4" in Survey No. 10/1 and 11/1 belonging to the fourth respondent temple, at the intervention of the then Collector of Vellore District

due to urgency of public purpose of formation of new bus stand for Vellore Town, that the alternative site was provided to the Petitioner

tentatively, by the then executive officer, on condition the Petitioner should neither sublet nor alter their purpose of business of running motor

mechanic shed and pay Rs. 1,000/- till the higher official of HR & CE Department accept them as tenant, fixing fair rent in accordance with the

rules and Regulation of the department and accepting the Petitioner as lessee of the new site,

A reading of the counter goes to show that the Petitioners were inducted as tenants in the land in question admeasuring 70"x33 1/4" in Survey

Nos. 10/1 and 11/1 belonging to the 4TH respondent at the intervention of the then Collector of Vellore District. Therefore, once the Petitioners"

status as tenants is admitted by the 4th respondent, then they cannot proceed with, as though, they are the encroachers. Subsequently, when

notices were issued calling upon the Petitioners to clear their arrears of rent, the Petitioners admittedly paid their rent clearing of the arrears and it is

also admitted by the parties that till now there is no outstanding arrears pending against the Petitioners.

10. The admission of the 4th respondent that they should be evicted by way of summary proceedings in pursuant to the impugned notice dated

16.9.2008 naming them as unauthorised occupants, also cannot be legally maintainable in the light of the judgment of the Division Bench of this

Court in W.A.(MD) No. 694/2009 dated 23.2.2010 in the case of K.V.Lakshmiammal v. The Joint Commissioner HR&CE Dept., Madurai and

Another. Paragraphs 13, 14, 15 and 16 of the said judgment are extracted hereunder:

13. On a reading of the rules, it is very clear that the enquiry as contemplated u/s 78(4) is that the authority should give the necessary opportunity

to the petitioner concerned including that of cross-examination of witnesses, production of documents, summoning of witnesses and also availing of

the help of lawyer. It is more or less, a full-fledged enquiry of that of a Civil Court, when the proceedings are governed by the Act. The

apprehension of the Petitioner at this point of time even at the show cause notice stage itself is totally unacceptable. The Petitioner knowing fully

well that the remedy is given under the Act itself, has unnecessarily chosen to file writ petition to drag on the proceedings.

14. In fact, even in the writ petition, the learned Single Judge has very specifically stated that the first Respondent is directed to complete the

proceedings initiated by him, by way of the impugned notice, dated 19.01.2009, u/s 78(2) of the Hindu Religious and Charitable Endowments Act,

1959, after giving an opportunity of hearing the Petitioner, the second Respondent temple as well as to the other parties concerned. It is not known

why the appellant has chosen to file this appeal itself. The only reason being to squat on the property, she filed writ. If really she has the right over

the property, it is always open to the Petitioner to establish her right in respect of the property, in the manner known to law in the enquiry before the

competent authority, wherein she would have an ample opportunity to produce documents, produce evidence and to submit the same even through

a legal counsel. Under those circumstances, as rightly pointed out by the learned Single Judge, the writ petition is not at all maintainable.

15. The Learned Counsel for the Appellant relied upon a decision report in State of Rajasthan Vs. Padmavati Devi (Smt) (Dead) by Lrs. and

Others, for the proposition that if there is a bona fide dispute, summary procedure should not be imposed for evicting even from the public premises, eviction from the unauthorised occupation.

16. As stated supra since the Act contemplates specific procedure, whereby it is not a summary in nature it is an enquiry to be conducted ""as far as practicable"" like a suit, it cannot be treated as a summary procedure.

A reading of the abovementioned four paragraphs of the judgment deals with Section 78(4) of the HR&CE, 1959 holding that enquiry as

contemplated u/s 78(4) is not summary in nature and it is an enquiry to be conducted as far as practicable like a suit. The impugned order passed

by the respondent, namely, the 2nd and 4th respondents that the Petitioners have been dealt with under an enquiry by way of summary procedure,

is required to be interfered with. As held earlier that the petitioners even as per the admission of the 4th respondent in their counter have become

statutory tenants and therefore, they should be dealt with by a full-fledged enquiry u/s 78(4) of the HR&CE Act by giving reasonable opportunities

including that of cross-examination of witnesses, production of documents, summoning of witnesses and also availing of the help of lawyer. It is

more or less, a full-fledged enquiry of that of a Civil Court, when the proceedings are governed by the Act.

11. In the decision rendered in W.P. Nos. 10447 to 14377, 14388 to 14391, 15358, 15359, 983 of 1999 dated 28.10.2008, this Court has held

that the Joint Commissioner of Hindu Religious and Charitable Endowments, who is the competent authority, must have information whether a

person is an encroacher or a tenant so as to give him a procedural right of hearing so that he could have a reason to believe that a person has

encroached upon the property of the religious institutions. Only after reaching the conclusion that a person is an encroacher in terms of Section

78(2), he could decide whether a person should be given an enquiry which is summary in nature or a full-fledged enquiry like the suit. But, in the

case on hand, the very admission of the Respondents that the Petitioners were given the land in question by way of lease makes the case of the

Petitioners that they became lawful tenants. Therefore, they cannot be dealt with as encroachers by way of summary procedure.

12. It is the case of the Respondents that they have filed a Civil Suit in O.S. No.

526/2005 on the file of the learned Additional District Munsif,

Vellore categorically admitting the status of the petitioners as tenants in the property of the temple. The suit is filed and the matter is posted for trial,

but the said suit, of course, in view of judgment of this Court in B.Shaji v. Sree Pravaraswamy devasthanam 2010 (3) CTC 851), the Civil Suit for

recovery of possession filed by the Respondent department is not maintainable. Therefore, the stand taken by the Respondents in the suit accepting

the status of the Petitioners as tenants goes against the way in which the Respondents have summarily rejected the Petitioners by treating them as

unauthorised occupants without giving them a full-fledged enquiry.

13. In view of the above, the impugned order directing the Petitioners to be evicted byway of summary proceeding is set aside and the

Respondents are directed to give them a full-fledged enquiry and proceed with them in accordance with law.

14. Consequently, all these three writ petitions are allowed. No costs. Connected pending M. Ps. are disposed of.