

(2013) 08 MAD CK 0114

In the Madras High Court

Case No : Writ Petition No. 1977 of 2010 and M.P. No's. 1 and 2 of 2010

K. Rajendran

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 05-08-2013

Acts Referred:

Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 2(6), 2(8)
Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 114, 78,
78(1), 78(2), 78(4)

Citation : (2014) 1 MLJ 428

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : M. Devendran, for the Appellant; S. Kandasamy, Special Govt. Pleader (H.R. and C.E.) for Respondents 1 to 3 and Mr. G. Sugumaran for 4th Respondent, for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J.—The Petitioner has preferred the Writ Petition praying for issuance of Writ of Certiorarified Mandamus, in calling for the

records of the First Respondent in its order in G.O.Ms. No. 24, Tamil Development, Religious and Information (A.Ni.1) Department, dated

19.01.2010 and to quash the same. Further, he has sought for passing of an order by this Court directing the Respondents 1 to 3 to recognise him

as a direct tenant under the 4th Respondent/Temple in respect of a portion in property bearing No. 173, Royapettah High Road, Mylapore,

Chennai 600 004 by fixing a reasonable rent on executing a fresh Lease Deed.

The Long Epitome of Facts:

According to the Petitioner, the property bearing No. 173, Royapettah High Road, Mylapore, Chennai 4 belonged to Arulmighu Apparswamy

Temple, represented by its Hereditary Trustee/4th Respondent. Originally, in the said property one Sakunthala Ammal was a tenant under the

temple for residential purpose on a monthly rent of Rs. 250/-. She was an occupation of the said property for well over 40 years and living alone

from the year 1963 onwards, since her son C. Dhinakar joined IPS and she staying at Bangalore.

2. The Petitioner's wife R. Selvi, who was a servant-maid of said R. Sakunthala was helping her for well over 20 years and his family was living in

the said property. During the year 2002, when said Sakunthala was experiencing in different health. She had to quite often to live at Bangalore at

her son's place and during her absence, she allowed his wife to live in the said premises. The monthly rent in respect of the property was being

paid without any default by the said Sakunthala. In fact, Sakunthala had allowed his wife R. Selvi as a permissive occupier in the said property.

Later on 31.12.2008 the said Sakunthala died at Bangalore and by virtue of the permission granted to his wife his family was residing in the said

property and also paying monthly rent to the temple and it was received regularly at the rate of Rs. 2,000/- per month.

3. Added further, on 04.03.2006, the Petitioner's wife sent a letter to the 2nd Respondent to recognise her as a direct tenant and also expressed

her willingness to pay any reasonable rent that may be fixed by the Department. Even subsequent to the said letter sent by his wife, the monthly

rent paid at the rate of 2000/- per month by his wife was received by the 4th Respondent. Till date, the said sum of Rs. 2000/- per month towards

rent is being paid by his wife to the temple authorities.

4. In spite of several notices all of a sudden a notice in R.C. No. 3779/2004/A3 u/s 78(2) of the Hindu Religious and Charitable Endowments Act,

1959 was issued to the Petitioner's wife name by the 3rd Respondent/Joint Commissioner, H.R. & C.E. Department, Chennai describing him as

an encroacher. To his shock and surprise, the 3rd Respondent, by proceedings dated 30.03.2009, withdrew all the notices issued under earlier

proceedings and issued a fresh notice to him u/s 78(2) of the said Act requiring him to submit his reply in proceedings M.P. No. 5/2007 to which

he submitted his reply on 24.05.2007 after receipt of his another reply dated 31.08.2007 in the said proceedings for the reasons best known to the

3rd Respondent the enquiry was not conducted for well over one year and suddenly the matter was posted to 13.08.2008 in which he was not

given sufficient time to make arrangement to appear through counsel.

5. However, the 3rd Respondent proceeded with the enquiry by marking certain documents produced by the temple authorities and without

affording opportunity to him to cross examine the temple authorities, further denied his right to let in evidence. As a matter of fact, the 3rd

Respondent completely failed to note the written submissions which has already filed by him. Also, the 3rd Respondent deliberately failed to assign

satisfactory reasons in arriving at a sum of Rs. 4,00,000/- towards arrears of rent and in this regard, the fact that his wife paying the rent at Rs.

2000/- per month was not taken note of and ultimately, he was termed as an encroacher by the 3rd Respondent and moreover, he was directed to

hand over to the possession of the property to the temple. Being dissatisfied with the said order, he filed Revision before the 2nd Respondent who

simply confirmed the order of the 3rd Respondent and failed to assign satisfactory, cogent reasons in categorising him as an encroacher.

6. Continuing further, the 2nd Respondent in its order erroneously held that arrears of rent was shown as Rs. 6,57,006/-, while the 3rd

Respondent stated that the arrears of rent was Rs. 4,00,000/-. Both the authorities viz., Respondents 2 and 3 failed to appreciate that the monthly

rent paid by his wife at the rate of Rs. 2000/- per month and the same was not adverted to in the orders. The increased rent at Rs. 6,025/- per

month is absolutely without any basis and the same is highly imaginary.

7. The stand taken on behalf of the Petitioner is that Respondents 2 and 3 have failed to appreciate that as per G.O.Ms. No. 277, dated

02.12.2005, the person who occupied the property belonging to the temple either through a tenant or a new person when any such representation

is made for recognising him as a direct tenant, H.R. & C.E. Department and to recognise them upon execution of fresh lease when the Lessee is

directed to pay donation to the temple and also the reasonable rent.

8. Applying the said G.O., his wife being a permissive occupier from the tenant, deceased R. Sakunthala Ammal made a representation to the 2nd

Respondent to recognise her as direct tenant after the said Sakunthala's death in and by which the letter dated 04.03.2006, but the Respondents 2

and 3 miserably failed to consider the representation dated 04.03.2006 sent by his wife and without following the proper procedure and in post-

haste they issued several notices to vacate and hand over the premises.

9. The Petitioner being the husband of R. Selvi [servant maid of deceased original tenant Sakunthala who is a permissive occupier] residing in the

premises paying the rent at the rate of Rs. 2000/- per month till now. As such, the notice issued by the 3rd Respondent as per Section 78(2) of the

H.R. & C.E. Act, describing him as an encroacher is against law. Furthermore, as per G.O.Ms. No. 456 dated 09.11.2006 the increase of rent

fixed by the temple authorities is liable to be decreased and the said G.O. was not followed. However, the 2nd Respondent in his order fixed fair

rent and enhanced the rent to Rs. 6025/- per month with effect from 01.11.2008 without any basis and therefore, the same is illegal.

10. Subsequent to the order of the 2nd Respondent dated 11.09.2009 the Petitioner projected W.P. No. 20654 of 2009 on the file of this Court

to quash the same and the said Writ Petition was disposed of by this Court through an order date 12.10.2009 wherein he was directed to file an

appeal to the Government in terms of Section 114 of the Tamil Nadu Hindu Religious and Endowments Act, 1959 within a period of 10 days from

the date of receipt of the said order. Further, the State Government was directed to consider his appeal and pass appropriate orders on merits and

in accordance with law, within a period of twelve weeks thereafter. Accordingly, the Petitioner filed an appeal and the 1st Respondent passed

orders on 19.01.2010 stating that the order of the 2nd Respondent dated 11.09.2009 does not warrant any interference and dismissed the appeal.

Further, the Petitioner was directed to pay a sum of Rs. 6,57,066/- as damages for use and occupation and also to hand over the possession of

the property.

Petitioner's Contentions:

11. The Learned Counsel for the Petitioner urges before this Court that the order of the 1st Respondent in G.O.Ms. No. 24 dated 19.01.2010 is

ex-facie illegal because of the fact that it failed to discharge its statutory duties while disposing of an Appeal as per the directions of this Court by

giving sustained reasons.

12. It is the submission of the Learned Counsel for the Petitioner that a specific

ground has been raised in the Appeal in regard to G.O.Ms. No.

277 dated 02.12.2005 which enables the person in occupation who shall have a right to be taken as a direct tenant of the temple. But this aspect

of the matter has been completely omitted to be dealt with in the said order.

13. The plea taken on behalf of the Petitioner is that while fixing the rent in terms of G.O.Ms. No. 456 dated 09.11.2007 the temple authority shall

adopt a fair rent method and also, the said G.O. contemplates reduction from the unreasonable rent so fixed.

14. The Learned Counsel for the Petitioner strenuously contends that it is incorrect to describe the Petitioner as an encroacher of the temple

property and further that he has unauthorisedly carried out structural alterations and also that he is not entitled to invoke G.O.Ms. No. 277 dated

02.12.2005.

Respondents Contentions:

15. The Learned Special Government Pleader for the Respondents 1 to 3 submits that the property bearing Door No. 173, Royapettah High

Road, Mylapore Chennai 4 belong to A/m. Apparswamy Temple and that its properties are administered and maintained by the 4th

Respondent/Hereditary Trustee and one Sakunthala was a tenant under the temple for residential purpose who was paying Rs. 250/- per month as

rent.

16. On behalf of Respondents 1 to 3, it is contended that Sakunthala had left the tenancy premises without informing the 4th Respondent and that

the Petitioner who being a road side vendor had trespassed into the premises and made alterations and the 4th Respondent lodged a police

complaint and since there was no action, Crl.O.P. No. 22274 of 2002 was filed before this Court and this Court issued direction on 17.10.2003

wherein the 4th Respondent initiated proceedings u/s 78 of the H.R. & C.E. Act before the 3rd Respondent/Joint Commissioner, Madras and the

3rd Respondent, after due enquiry and providing adequate opportunity, ordered eviction through an order dated 28.10.2008.

17. The Learned Special Government Pleader for the Respondents 1 to 3 submits that the Petitioner is in enjoyment of the temple properties

measuring an extent of 1001 sq. ft. Comprised in S. No. 1681/1 at No. 173, Royapettah High Road, Chennai 4 and the Government issued

guidelines in G.O.Ms. No. 353 dated 04.06.1999 for fixation of fair rent and in terms of the guidelines, the fair rent committee fixed the fair rent for

the said premises at Rs. 6025/- per month payable with effect from 01.11.2001.

18. The categorical stand taken on behalf of the Respondents 1 to 3 is that the encroachment proceedings issued by the H.R. & C.E. Department

u/s 78 of the H.R. & C.E. Act have been dealt with by the authorities concerned in a proper manner.

19. Further, it is submitted on behalf of the Respondents 1 to 3 that the 3rd Respondent/Joint Commissioner, H.R. & C.E. Department in M.P.

No. 5/2007 passed a detailed order inter alia stating that earlier 9 notices beginning from Rc. No. 3778/2004/A3/30.6.2004 hearing date:

10.3.2005 to Rc. No. 3778/2004/A3/6.12.2006 hearing date: 27.12.2006 were withdrawn in the Letter Rc. No. 3778/05/A3 dated 30.03.2007

etc.

20. Finally, the 3rd Respondent came to the conclusion that the Writ Petitioner is deemed to be an encroacher u/s 78 (4) of the H.R. & C.E. Act

and is liable to be evicted etc. Also, in the 3rd Respondent Order dated 28.10.2008 it is stated that if the Petitioner fails to hand over possession

of the petition mentioned property within 30 days from the date of receipt of the order, the Assistant Commissioner, Chennai has been directed to

evict the encroacher u/s 78 of the Act with the assistance of Revenue authority and police authority if necessary.

21. In effect, the contention of the Learned Special Government Pleader for the Respondents 1 to 3 is that the tenant Sakunthala expired on

31.12.2008 and that the Petitioner is now carrying on business in the property and made it as Tiffin Centre and the authorities have initiated

proceedings against the Petitioner u/s 78 of the H.R. & C.E. Act as an encroacher and that the authorities have dealt with the proceedings of

recognition of tenancy. In short, according to the Respondents 1 to 3, the Petitioner is an undeserved person to be in the temple premises.

22. On behalf of the 4th Respondent, it is contended that in respect of the property bearing No. 173, Royapettah High Road, which belong to

Apparswamy Temple, the original tenant was one Sakunthala expired on 31.12.2008 and she paid initially a sum of Rs. 250/- as rent and she

made the tenancy premises without informed him. Further, it is pleaded on

behalf of the 4th Respondent that the Petitioner is road side vendor and his wife Selvi was a servant maid in the premises of original tenant Sakunthala and Selvi's husband is the Petitioner and he trespassed into the premises and made alterations of the property.

23. It is also submitted on behalf of the 4th Respondent that the Petitioner in the premises in one portion is running a Tiffin Centre and also let out the vegetable vending fair price shop to third party on a monthly rent and that the Petitioner's wife had given a letter on 25.07.2012 to transfer tenancy in her favour and to recognise her a tenant and that was rejected by the Joint Commissioner on 12.12.2012 and the fair rent committee fixed the fair rent to the petition mentioned property in terms of G.O.Ms.353 dated 04.09.1999 payable with effect from 01.11.2001 and the same applies to all temple properties and once in three years there would be an increase of 33% rent and the Petitioner and his wife Selvi had not paid the said rent amount and whoever paid the rent that would be given credit to in the name of tenant and receipt is being issued in the name of deceased Sakunthala. Further, the 4th Respondent came to know about the death of Sakunthala only when the Petitioner filed the present Writ Petition and even now the rent receipt is in the name of deceased Sakunthala and no name transfer in favour of Selvi (Petitioner's wife) has been effected till date and from fasili 1713 the fair rent for the premises in question is Rs. 10,537/-.

24. The Learned Counsel for the 4th Respondent brings it to the notice of this Court that the temple filed O.S. No. 7570 of 2007 on the file of VII Assistant Judge, City Civil Court, Chennai seeking the relief of permanent injunction restraining the Writ Petitioner from making any alteration or addition to the suit property and also for permanent injunction from alienating or part with any portion of the premises to any third parties. Finally, after contest, the suit was decreed on 10.12.2008. It appears that appeal filed against the said Judgment and decree in O.S. No. 7570/2007 dated 10.12.2008, was also dismissed.

25. At this stage, the Learned Counsel for the 4th Respondent submits that the Petitioner is liable to pay rental arrears of Rs. 6,56,066/- [beginning from the year 1999] and that it is one thing to plead that tenancy of the Petitioner should be recognised and another thing to state that the H.R. &

C.E. Department authorities have initiated encroachment proceedings against the Petitioner.

26. The Learned Counsel for the 4th Respondent submits that the Petitioners unlawful possession of the temple residential property which is

subject matter in issue in the Writ Petition cannot be protected against the lawful owner viz., the temple and therefore, he is not entitled to get the

relief of injunction. To lend support to his contention, the Learned Counsel for the 4th Respondent relies on the decision of this Court in Alagi

Alamelu Achi Vs. Ponniah Mudaliar, wherein it is held as follows:

A person in wrongful possession of property is not entitled to be protected against the lawful owner by an order of injunction. When once a Court

finds that a plaintiff's possession of property is wrongful such possession cannot be protected by assistance of Court. The fact that if the lawful

owner were to institute a suit, he might possibly fail on the ground that he was not in possession within twelve years of suit, could make no

difference and cannot be a Justification for the issue of an injunction maintaining the wrongful possession of the plaintiff.

27. He also cites the decision in Premji Ratansey Shah and Others Vs. Union of India (UOI) and Others, wherein in paragraph 5 and 6, it is

observed and laid down as follows:

5. It is equally settled law that injunction would not be issued against the true owner. Therefore, the courts below have rightly rejected the relief of

declaration and injunction in favour of the petitioners who have no interest in the property. Even assuming that they had any possession, their

possession is wholly unlawful possession of a trespasser and an injunction cannot be issued in favour of a trespasser or a person who gained

unlawful possession, as against the owner. Pretext of dispute of identity of the land should not be an excuse to claim injunction against true owner.

6. Under these circumstances, we do not find any ground warranting interference with the judgments and decrees of the courts below. The SLP is

dismissed with exemplary costs of Rs. 30,000 which shall be payable to Supreme Court Legal Aid Committee. In case the petitioners do not pay

the costs within two months, the Supreme Court Legal Aid Committee could proceed to recover the same by resorting to execution.

28. He also seeks in aid of the decision of this Court in K.V. Pushpavalli Vs.

Arulmighu Theerthabaleeswarar Devasthanam and P. Hayath Basha

at special page 74 wherein in paragraph 19 and 20, it is, inter alia, observed and held as under:

19. The above contention has no merits. Though rent had been received under Exs.B.6 and B.7, the same was received only ""without prejudice"".

The omission to the case of the Appellant. In any event, mere receipt of the rent would not in any way amount to assent recognition of the status of

the Second Defendant as the Tenant under the Plaintiff Devasthanam. Placing reliance upon the decision reported in 2005 (3) T.L.N.J 142

(CIVIL), learned Counsel for the Plaintiff has submitted that even if the rent had been paid and received in the absence of express or implied

recognition of the Second Defendant as the Tenant, the receipt of rent would not help the Appellant. Referring to number of decisions reported in

1975 (I) M.L.J 204 , S.R. Radhakrishnan and Others Vs. Neelamegam, P.A. Thomas and Another Vs. M. Mohammed Tajuddin and Another, ,

In The Decision Reported Lease and Company, Pakkiri Devi and R. Radhakrishnan Vs. M.S.A. Mohammed Farook, Prabha Sridevan, J. has

held that the Petitioner must prove that there was express or implied recognition as Tenants. In the decision reported in Shanti Prasad Devi and

Another Vs. Shankar Mahto and Others, it was held that mere acceptance of rent will not signify assent to tenancy, nor could be the tenant claim

that he was ""holding over"". The leasehold right of vacant site was given to the First Defendant by the Plaintiff Devasthanam. Without the knowledge

of the lessor -Devasthanam, there cannot be transaction between the First Defendant and Second Defendant. Rent receipts were issued only with

endorsement ""without prejudice"". The Second Defendant cannot take advantage of omission to make an endorsement ""without prejudice"" in

Ex.B.4.

20. The above decision squarely apply to the case in hand. There is nothing to show that the Plaintiff Devasthanam has assented to the sale of the

land and the lease hold right in favour of the Second Defendant. The request of the Second Defendant to recognise her as Tenant has not been

granted till this date. When the Second Defendant has not been recognised as the Tenant, she cannot claim to be the Tenant under the Plaintiff

Devasthanam and the Second Defendant is not entitled to any protection.

29. It cannot be gainsaid that Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 speaks of "Encroachment by

persons on land or building belonging to charitable or religious institution or endowment and the eviction of encroachers". For fuller and better

appreciation of the subject matter in issue concerned in the present Writ Petition, the relevant ingredients of Section 78(1) of the Tamil Nadu Hindu

Religious and Charitable Endowments Act is extracted as under:

78. Encroachment by persons on land or building belonging to charitable or religious institution or endowment and the eviction of encroachers.--(1)

Where the Assistant Commissioner having jurisdiction either suo motu or upon a complaint made by the trustee has reason to believe that any

person has encroached upon (hereinafter in this section referred to as ""encroacher"") any land, building, tank, well, spring or water-course or any

space wherever situation belonging to the religious institution or endowment (hereinafter referred to as ""the property""), he shall report the fact

together with relevant particulars to the Joint Commissioner having jurisdiction over the division in which the religious institution or endowment is

situated.

Explanation.--For the purpose of this section, the expression ""encroacher"" shall mean any person who unauthorisedly occupies any tank, well,

spring or water-course or any property and to include:--

(a) any person who is in occupation of property without the approval of the competent authority (sanctioning lease or mortgage or licence) and

(b) any person who continues to remain in the property after the expiry or termination or cancellation of the lease, mortgage, or licence granted to

him.

30. At this juncture, a cursory perusal of G.O. (Establishment) No. 277, Tamil Development - Culture and Endowment Department, dated

02.12.2005 shows that certain guidelines have been fixed by the Government in respect of payment of donations as regards the temple own lands,

shops and houses. Further, in the said G.O., it is ordered that as per G.O. (Establishment) No. 353, Tamil Development Culture and Endowment

Department, dated 04.06.1999 in the new fair rent fixed 10 times donation is to be remitted and accordingly, the same can be determined etc.

Moreover, the earlier guidelines prescribed in G.O. (Establishment) No. 131,

Tamil Development Culture and Endowment Department, dated 18.05.2004 wherein if it is for commercial purpose, in the properties value 50%, if it is for residential purpose 25%, donation is to be made, was cancelled and further, it has been decided by the Government to follow the 10 times donation payment to be made in the new fair rent fixed as per G.O. (Establishment) No. 353, Tamil Development-Culture and Endowment Department, dated 04.06.1999 in respect of residential houses/houses in land sites. In regard to the commercial complex/land sites in respect of commercial purpose as per G.O. (Establishment) No. 353, Tamil Development Culture and Endowment Department, dated 04.06.1999 guidelines wherein new fair rent is fixed, 15 times amount will have to be paid as donation.

31. It is the submission of the Learned Counsel for the Petitioner that the Petitioner/his wife is willing to pay 15 times amount from and out of the new fair rent fixed in terms of G.O.Ms. No. 353, Tamil Development Culture and Endowment Department, dated 04.06.1999 as donation in respect of the property bearing Door No. 173, Royapettah High Road, Mylapore and as such, there can be no impediment for the Respondents to accept the same and treat the Petitioner/his wife (R. Selvi) as a new tenant in respect of the property in question. After acceptance of the Petitioner/his wife's proposal in this regard, a fresh lease can be created after prescribing necessary conditions and in this regard, the Subordinate Officers can recommend.

32. It comes to be known that the original tenant (deceased R. Sakunthala) on 12.07.2002 had addressed a letter to the Petitioner's wife mentioning that she was living in the house at No. 173, Royapettah High Road, Mylapore, Chennai during the past 45 years and his son was living with her earlier and after joined the Government Service, he had gone to stay in Bangalore. Further, she suffered ill health recently and went to Bangalore temporarily to be with him for medical treatment and rest and she would be returning to Chennai shortly to stay at the above address. That apart, it was also stated that her son was now practising as an Advocate at Bangalore. He wanted to visit Chennai for his professional work and stay in the house. Therefore, she made a request to the Petitioner's wife to stay in the house temporarily, maintain and look after it and further,

as agreed when she come to Chennai, the Petitioner's wife should vacate and leave the house and that she would be paying the monthly rent to the temple trustee regularly as usual.

33. The Learned Counsel for the Petitioner contends that the deceased Sakunthala (original tenant), during her life time, on 22.04.2004 issued a

Lawyer's Notice addressed to the 3rd Respondent (with a copy being marked to Circle V Inspector, H.R. & C.E. Administration, Office/A/M

Mathavaperumal Kovil, Mylapore, Chennai and the Petitioner's wife) whereby and whereunder, it is, inter alia, stated that R.D. Sakunthala's

health suffered a setback and she found it difficult to stay alone in the house at No. 173, Royapettah High Road, Mylapore, Chennai and hence,

she asked the Petitioner's wife R. Selvi to look after the house etc. Also that, in the said Lawyer's Notice, it is stated as follows:

In the month of August 2002 Thiru P.V. Rajkumar told Tmt. R.D. Sakuntala that he wanted to give the aforesaid house to a businessman by taking

Rs. 5 lakhs for demolishing the house and building a storeyed shopping complex and offered to pay her Rs. 1 lakh as commission if she vacated

the aforesaid house. P.R. Rajkumar told her that he had entered into similar deals in respect of other temple property. But she refused the offer and

said that she would like to retain her house till her death, which was not far off.

Thiru P.V. Rajkumar lodged a false complaint of criminal trespass in the police station and carried the litigation to the High Court unsuccessfully.

Tmt. R.D. Sakuntala sent Rs. 1000/- by M.O. towards the rent for four months from 8/2002 to 11/2002 @ Rs. 250/- per month, which Thiru

Rajkumar refused to accept. So, she did not send any further amount for the rent of the aforesaid house. The true copy of the M.O. form is

produced herewith as ANNEXURE-F. However, she is willing to pay the rent.

It would appear that Thiru P.V. Rajkumar having failed to harass Tmt. R.D. Sakuntala be lodging a police complaint and filing cases in this behalf

has lodged a false complaint of encroachment against her. She has been a tenant paying the rent for about 40 years. She is not able to pay rent

now since Thiru P.V. Rajkumar is refusing to accept the rent.

34. It transpires that on 04.03.2006 the Petitioner's wife addressed a communication to the 2nd Respondent mentioning that "The premises

bearing door No. 173, Royapettah High Road, consisting of 400 sq. ft. built up

area over land measuring 1000 sq. ft. was originally leased out to

Mrs. Sakunthala who was residing in the above said premises for over 40 years and the present rent for the said premises is Rs. 250/- per month."

Added further, it was stated that Sakunthala Ammal was earlier living with her family in the above said premises from 1963 onwards, since her son

C. Dinakar joined I.P.S. in the year 1963 and was paying the rent regularly. Also that, she was helping the said Sakunthala as her servant-maid for

over 10 to 15 years and some time in 2002, Sakunthala Ammal's health became very weak and wanted to live with her son C. Dinakar at

Bangalore for some time and till her return, she permitted her to stay with her family in the said house and requested to maintain and look after the

house till her return. Even the rent for the premises was paid by her [Petitioner's wife] which was proved from the receipt dated 13.04.2005 for

Rs. 5000/- and also, the said amount was the rent from 1.7.2002 to 28.2.2004.

35. That apart, in the aforesaid letter dated 04.03.2006, the Petitioner's wife proceeded to state that Sakunthala died on 3.12.2005 and that the

permission granted by Sakunthala for her stay in the house had enlarged into a right to become a tenant of the above premises. Since Sakunthala's

son was well settled in Bangalore and not interested to come to Chennai. According to her, she is a permissive occupier still in better position than

the sub-tenant to become a direct tenant in respect of the premises and also she was prepared to pay the arrears of rent till date of recognising her

as direct tenant at the rate of Rs. 250/- per month and she agreed to pay any reasonable rent that might be fixed by the Department after

recognising her as a direct tenant in respect of the premises.

36. The Petitioner's wife on 28.09.2006 addressed a letter to the 4th Respondent/Hereditary Trustee of the temple stating that she sent a Demand

Draft dated 27.09.2006 for Rs. 1,250/- being the rent for the period from 2006 to September 2006 at the rate of Rs. 250/- per month for the

premises under her occupation in Door No. 173, Royapettah High Road, Mylapore, Chennai. Likewise, she addressed a letter dated 13.12.2007

to the 4th Respondent/Hereditary Trustee mentioning that she sent a Demand Draft dated 13.12.2007 for Rs. 2,000/- towards rent for the month

of October 2007 in respect of the premises under her occupation.

37. It is significant for this Court to make a mention that the 4th Respondent/

Hereditary Trustee issued a receipt dated 03.10.2006 stating that a sum of Rs. 1250/- was received for the premises No. 173 (Part), R.H. Road, Mylapore, Chennai towards damages for use and occupation without prejudice to their rights and claims. On 26.03.2008, the 4th Respondent/ Hereditary Trustee of the temple addressed a letter to the Petitioner's wife stating that the Demand Draft dated 08.03.2008 for Rs. 2,000/- sent by her would be adjusted towards damages for wrongful use and occupation of the premises No. 173, Royapettah High Road, Mylapore, Chennai by her husband (Writ Petitioner) and further in respect of other Demand Draft sent by her each to Rs. 2,000/- in total Rs. 8,000/- was adjusted towards damages for wrongful use and occupation of the premises by her husband and that the receipts would be issued in the name of tenant R.D. Sakunthala and she was directed to come and collect the receipts from the temple office.

38. In R.P. No. 6 of 2009 D.2 filed by the Petitioner (as against the order dated 28.10.2008 passed by the 3rd Respondent in M.P. No. 5 of

2007 u/s 78 of the H.R. & C.E. Act, 1959) against the 4th Respondent/Temple, on 11.09.2009 the 2nd Respondent passed an order, in

paragraph 5, inter alia to the effect that "...As the rent already paid by Sakunthala was very meager i.e. Rs. 250/- p.m. Hence, as per

recommendations of the Fair Rent Fixation Committee, the rent was enhanced to Rs. 6025/- p.m. with effect from 1.11.2001. This was done

when Sakunthala, the original tenant was alive. The petitioner is not the original tenant. Yet, after the demise of Sakunthala, he continued in unlawful

occupation of the premises. Further, he has made structural alterations by removing the front wall and installed a rolling shutter. Thus he has

unauthorisedly converted the residential building into a commercial doing Hotel business without proper license from the Corporation of Chennai."

Also, in paragraph 6 of the order, it is observed that "...The petitioner has not vacated the premises and delivered possession even after a notice

was issued. Hence, he is deemed to be an "Encroacher" as per explanation given in Section 78 of the Act." Besides these, it is also mentioned that

"The Petitioner is enjoying the premises without paying rent as damages for wrongful use and occupation causing loss of revenue to the temple and

has also caused damage to the property."

39. Finally, the 2nd Respondent has come to the conclusion that the proceedings initiated by the 3rd Respondent u/s 78 of the Tamil Nadu Hindu

Religious and Charitable Endowments Act is therefore legal and the order passed on 28.10.2008 for removal of encroacher [Petitioner] is proper

and cannot be interfered with etc. and resultantly, confirmed the order of the 3rd Respondent and dismissed the Revision Petition. Further, the

Petitioner has been directed to pay a sum of Rs. 6,57,066/- only as rent and damages for wrongful use and unlawful occupation of the property

and he was directed to be evicted from the premises by the 3rd Respondent and deliver vacant possession to the temple forthwith.

40. The Petitioner filed W.P. No. 20654 of 2009 before this Court to quash the order dated 11.09.2009 in R.P.6 of 2009 D2 and to recognise

him as a direct tenant under the temple in respect of a portion in property bearing 173, Royapettah High Road, Mylapore, Chennai 600 004 by

fixing a reasonable rent on executing a fresh Lease Deed.

41. On 12.10.2009, this Court passed an order in W.P. No. 20654 of 2009 in granting liberty to the Petitioner to file an appeal to the

Government u/s 114 of the Act within a period of ten days from the date of receipt of copy of this order. Accordingly, the Petitioner preferred an

Appeal No. ... before the 1st Respondent/Government and in G.O. (Establishment) No. 24, Tamil Development, Endowments and Information

Department, dated 19.01.2010, the 1st Respondent passed an order dismissing the Appeal, inter alia, holding that in the temple property already

Sakunthala resided lawfully and further in the said property, the Petitioner's wife without permission is unlawfully residing and also had converted

the residential building into that of a commercial complex and without obtaining permission from the Chennai Corporation is running a food centre

and also that the Petitioner's wife is not a tenant and therefore, the G.O. (Establishment) No. 456, dated 09.11.2007 orders would not be

applicable to her.

42. It is brought to the notice of this Court on behalf of the Respondents 1 to 3 that the Petitioner's wife submitted a petition dated 25.07.2012

and in this regard, the report of 4th Respondent/Hereditary Trustee dated 25.07.2012 has been obtained by the H.R. & C.E. Department and on

10.12.2012 in O.Mu. No. 7552/2012/A3 the 3rd Respondent passed an order

stating that no action could be taken in accordance with law on

her petition relating to Tenant Name Transfer for the premises from R.D. Sakunthala's name to that of Petitioner's wife name.

43. It may not be out of place for this Court to make a relevant mention that Section 2(8) of the Tamil Nadu Buildings (Lease and Rent Control)

Act, 1960 means"" "Tenant" as any person by whom or on whose account rent is payable for a building and includes the surviving spouse, or any

son, or daughter, or the legal representative of a deceased tenant who:--

(i) in the case of a residential building, had been living with the tenant in the building as a member of the tenant's family up to the death of the tenant.

44. However, Section 2(6) of the Act 18 of 1960 defines ""landlord"" includes the person who is receiving or is entitled to receive the rent of a

building, whether on his own account or on behalf of another or on behalf of himself and others or as an agent, trustee, executor, administrator,

receiver or guardian or who would so receive the rent or be entitled to receive the rent if the building were let to a tenant.

45. From the definition of Section 2(8) of the Tamil Nadu Buildings (Lease and Rent Control), Act, 1960, this Court opines that the said definition

would include within its ambit not only a tenant during the "subsistence of contractual tenancy and also a tenant ""continuing in possession after the

termination of tenancy"". As a matter of fact, the said definition of tenant in wider prospective includes any individual by whom or on whose account

rent is payable for a building and even includes the surviving spouse or any son or daughter and any person continuing in possession after the

termination of tenancy in his favour. An individual who claims to be a tenant must fulfil two requisites: (a) That he or she is the surviving spouse or

any son or daughter or the legal representative of the deceased tenant; (b) The aforesaid individual ought to have been living with the tenant in the

building as a member of the tenant's family till the death of tenant.

46. Indeed, the definition in Section 2(8) of the Tamil Nadu Buildings (Lease and Rent Control), Act will only take in sons or daughters or the legal

representatives of the tenant only after the demise of the tenant and not when the tenant herself as alive. Even the definition of "tenant" u/s 2(8) of

the Act, 18 of 1960 relates to matters not only pertaining to heritable

relationship but also his or her association with the business carried out on by the deceased tenant in the petition mentioned premises till demise. Also that, the condition precedent for a legal representative of the deceased tenant to be accepted as a tenant for the purpose of the Rent Control Act is that he/she should have been living with the deceased tenant in the building as member of the tenant's family till the death of the tenant.

47. In regard to the language of Section 2(6) and Section 2(8) of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 one can safely

say that so far as the legal representatives of a tenant is concerned, such of those members of the chief tenant's family who are living with him up to

the date of his death would be the only proper legal representatives who ought to be brought on record for the purpose of further process to be

undertaken by such legal representatives of the deceased chief tenant in proceedings by the chief tenant against the sub-tenant as per the decision

A.V. Guruswami Nadar (Deceased) and Others Vs. Natesa Nadar, .

48. As far as the present case is concerned, at the risk of repetition, it is to be pointed out that the original tenant R.D. Sakunthala Ammal expired

on 31.12.2008. It appears that during her life time the said Sakunthala on 12.07.2002 has addressed a letter [to the Petitioner's wife] concerning

the property bearing No. 173 Royapettah High Road, Mylapore, Chennai wherein she requested the Petitioner's wife to stay in the house

temporarily, maintain and look after it etc. Although the Petitioner's wife addressed a letter dated 28.09.2006 to the 4th Respondent together with

rental receipts, the 4th Respondent, by his letter dated 26.03.2008, stated that for the Demand Draft paid all receipts would be issued in the name

of tenant Sakunthala and she was directed to collect the receipts from the temple office.

49. Coming to the plea taken on behalf of the Petitioner that G.O.Ms. No. 277, Tamil Development Culture and Endowments Department, dated

02.12.2005 makes a reference to G.O. (Establishment) No. 353, Tamil Development -Culture and Endowment Department, dated 04.06.1999,

in and by which, in the new fair rent fixed in respect of residential houses/land portion houses, 10 times donation should be paid to the temple, it is

to be pointed out that the payment of ten times donation as referred to in the aforesaid G.O.Ms. No. 277, dated 02.12.2005 whether to be

accepted or not is purely within the discretion of the temple authorities concerned and this Court cannot compel the temple authorities or issue

positive directions in this regard to accept the proposal of the Petitioner that he is ready to pay the 10 times donation amount from and out of the

new fair rent fixed by the temple authorities and the point is answered accordingly.

50. That apart, on going through the contents of order dated 28.10.2008 passed by the 3rd Respondent, the order dated 11.09.2009 passed by

the 2nd Respondent and finally, the impugned order dated 19.01.2010 passed by the 1st Respondent, this Court comes to an inevitable conclusion

that the occupation of the temple premises bearing No. 173, Royapettah High Road, Mylapore, Chennai as the tenant by the Petitioner's wife is

not lawful, because of the simple reason that no transfer of tenancy in her name was effected by the 4th Respondent/temple after the demise of

Sakunthala either on 31.12.2008 or till date. Also, the Petitioner's wife R. Selvi was only permitted to reside temporarily in temple premises No.

173, Royapettah High Road, Mylapore to maintain and to look after it by the original tenant Sakunthala vide letter dated 12.07.2002. However,

the Petitioner has not been permitted to reside in the premises No. 173, Royapettah High Road, Mylapore, Chennai belonging to the 4th

Respondent. As such, the finding of the authorities concerned [beginning from the order of the 3rd Respondent dated 28.10.2008, the order of the

2nd Respondent dated 11.09.2009 and finally, the order dated 19.01.2010 of the 1st Respondent] to the effect that "the Writ Petitioner (husband

of R. Selvi) has no lawful right to remain in the suit property" is perfectly legal and tenable one and very rightly, he has been described as an

"Encroacher" and accordingly, the orders were passed for his removal from the temple's property bearing No. 173, Royapettah High Road,

Mylapore, Chennai do not suffer from any impropriety or illegality in the eye of law, as opined by this Court. Also, the observations of the 1st

Respondent, in G.O. (Establishment) No. 24, Tamil Development, Endowments and Information Department, dated 19.01.2010 to the effect that

the Petitioner's wife is residing in the premises No. 173, Royapettah High Road, Mylapore, Chennai without any permission and unlawfully is

residing and further has converted the residential building into that of commercial complex and running a food centre without obtaining Chennai

Corporation's license, do not suffer from impropriety or material irregularity or patent illegality. Per contra, the same is lawful and valid in law.

Resultantly, the Writ Petition fails. In the result, the Writ Petition is dismissed, leaving the parties to bear their own costs. Consequently, connected

Miscellaneous Petitions are also dismissed.