

Madras High Court

V.Thiagarajan vs State Of Tamil Nadu on 6 June, 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.06.2011

CORAM:

THE HON'BLE MR.JUSTICE P.JYOTHIMANI

WRIT PETITION NO.8270 of 2011
and connected miscellaneous petitions
..

V.Thiagarajan
President
Hindu Baktha Jana Sabai
5 Saikirupa Illam
Joseph Nagar, 1st Cross Street
Thiru Nagar, Madurai 6.

.. Petitioner

vs.

1.State of Tamil Nadu
rep. By the Secretary to Government
Religious Endowment Department
Fort St.George, Chennai 600 009.

2.The Commissioner
Hindu Religious Endowment Department
Fort St.George, Chennai 600 009.

3.The Joint Commissioner
Hindu Religious Endowment Department
Madurai.

4.The Executive Officer
Arulmigu Madanagopalaswamy Thirukoil
Melamasi Street, Madurai 1.

5.Thamburaj
Chairman Board of Trustees
Arulmigu Madanagopalaswamy Thirukoil
Melamasi Street, Madurai 1.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance

For petitioner : Mr.V.Selvaraj

For respondents : Mr.K.Ramasamy

1 to 3

Addl. Advocate General

for Mr.T.Chandrasekaran

Spl.Govt.Pleader (HR&CE)

For respondents : Mr.R.Thiagarajan, Sr.Counsel

4 and 5

for Mr.G.R.Swaminathan

..

ORDER

The writ petition is directed against the order of the second respondent, Commissioner, Hindu Religious Endowment Department, dated 21.12.2010 and the subsequent modification order dated 14.02.2011.

2. The petitioner is a President of the Hindu Baktha Jana Sabai, which is a registered Society. He is a resident of Tiruparunkundram, Madurai District and is a pious Hindu and believer in fostering inter-religious friendship and filed the above writ petition as a Hindu worshipper.

(a) Arulmigu Madanagopalaswamy Thirukoil, Madurai, is one of the ancient temples. There was an advertisement in Daily Thanthi dated 5.01.2011, calling for tenders for allotment of shops in the proposed commercial complex in the temple. It is stated that on 11.01.2011, the petitioner sent a representation to respondents 1 and 2, opposing the proposed construction and he has also asked for information regarding the sanction if any granted by the Government for the proposed commercial complex.

(b) The petitioner has received a communication from the second respondent on 24.01.2011, stating that till 24.01.2011 no final order granting sanction for the proposed construction was passed and therefore, the petitioner preferred a complaint before the Commissioner of Police, Madurai on 2.02.2011. The proposed commercial complex sought to be constructed is within the precincts of the temple, is prohibited under Section 77 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (in short, "the Act"), since the temple property cannot be converted into commercial complex with political motive and by putting up commercial complex, the Temple's appearance will be obstructed.

(c) The petitioner has received a copy of the proceedings of the second respondent dated 21.12.2010, calling for tenders, for construction of commercial complex in the temple precinct. Questioning the same the petitioner has filed W.P No. 5003 of 2011. By an order dated 1.03.2011, this Court, has permitted the third respondent to receive the tenders, but not to open the same until further orders.

(d) Respondents 4 and 5 have filed a petition to vacate the said order of stay along with counter affidavit in the above writ petition, and when the matter came up before this court, it was informed that the impugned order dated 21.12.2010, was modified by the second respondent on 14.02.2011 and therefore, the said W.P No.5003 of 2011 was withdrawn with liberty to file fresh writ petition. According to the petitioner, the impugned orders passed by the second respondent dated 21.12.2010 and 14.02.2011, which are the tender notifications, are not valid as per the provisions of the Act. There is no Scheme called as Public auction-cum- deposit-cum-donation Scheme.

3. The impugned orders are challenged on various grounds including that the property of the temple which is situated within the precinct of the temple cannot be used for putting up of a commercial complex and the Scheme framed by the second respondent dated 21.12.2010, is of a non- existence one and it is in violation of law and contrary to Section 77 of the Act. As per the impugned tender notification, the lease is for three years and thereafter, it can be renewable once in three years under Section 34 of the Act. Any lease of the property exceeding five years is null and void unless sanction is accorded and such sanction can be accorded only after calling for objections from the public and considering the same, such sanction can be accorded only with the prior approval of the Government and according to the petitioner, the Commissioner, the Joint Commissioner and the Executive Officer have jointly decided to give perpetual lease of the property, which is in violation of law and therefore, they are liable to be prosecuted under the Prevention of Corruption Act and thus, the present writ petition is filed challenging the impugned tender notifications.

4. When the matter was taken up for admission on 31.03.2011, this court has granted an order of status quo, which is continued by subsequent orders.

5. The second respondent has filed a counter affidavit along with the petition to vacate the order of status quo. According to the second respondent, Arulmigu Madanagopalaswamy Thirukoil, Madurai, is a listed temple published under Section 46(ii) of the Act and it is under the administrative jurisdiction of the Joint Commissioner, Hindu Religious and Charitable Endowment Department, Madurai. It is administered by the Executive Officer appointed under Section 45(1) of the Act and the Trust Board consisting of five non-hereditary Trustees appointed from time to time. The assessable income of the temple is Rs.23,13,338/- for the fasli year 1419.

(a) It is stated that the temple owns lands measuring 9500 sq.ft., which was in possession of Mr.C.Thangasamy. The temple filed a suit for possession in O.S.No.1840 of 1996 before the Additional District Munsif Court, Madurai, which was decreed in favour of the temple on 25.11.2003, the appeal and the second appeal filed also ended in favour of the Temple and thereafter, the property was taken possession by the temple. The property was situated in the prime locality viz., near Periyar Bus Stand.

(b) It is, to augment more income and to avoid any encroachment, the temple has proposed to build a commercial complex in the said land and the proposal was submitted to the second respondent. An estimate was prepared to build a commercial complex at the cost of Rs.4.5 crores and necessary planning permission was also obtained from the Madurai Corporation in May,2010. Since the cost of estimate was very high, the temple administration devised a plan to construct the commercial

complex from collecting deposits and donations from public.

(c) According to the plan, it is decided to conduct a public auction, fixing an amount as donation and deposit for each shop and the shops will be allotted to the donor who offers the highest amount of donation, and after completion of the construction, the allottee has to pay the fair rent to be fixed by the temple as per the existing guidelines. It is stated that the lease period was fixed at three years. The second respondent, after considering the proposal, has granted sanction on 21.12.2010 and subsequently, modified it on 14.2.2011, which are impugned in the writ petition.

(d) It is stated that by the impugned order dated 21.12.2010, the second respondent has granted permission to construct a commercial complex, and a public advertisement was also issued in Daily Thanthi on 05.01.2011, in response to which 34 applications were received by the Temple and most of them were interested in allotment of ground floor shops and only three applications were received for three floors of the commercial complex. Later, another application was received for the whole commercial complex and in total among the 4 applications, the highest offer amount of Rs.4.70 crores was quoted by one Pothiraj from Srivilliputhur.

(e) After considering the resolution of the Trust Board and recommendations of the Joint Commissioner, Madurai, the second respondent felt that instead of granting permission to different individuals regarding allotment of shops, an individual tender for whole complex is preferable, and therefore, a revised sanction was granted on 14.02.2011, which is also impugned in this writ petition.

(f) It is stated that the Scheme has been constituted for the purpose of augmenting income, especially after long battle for 14 years, for taking possession from the previous person, who was in possession. Putting up of a commercial complex does not cause any hindrance to the pilgrims and the petitioner has no locus standi to question the same. The Scheme, as formulated by the temple administration was approved by the second respondent.

(g) It is stated that the orders passed on 21.12.2010 and 14.02.2011 are well considered and self speaking orders. It is stated that the temple administration, as early as in the year 2008, after the judgment in Second Appeal No.897 of 2008 of the Madurai Bench of this Court on 05.12.2008, confirming the decree in favour of the temple in the suit in O.S.No.1840 of 1996 for recovery of possession, passed a resolution to construct a shopping complex in the place to avoid encroachment and also to augment more income for the temple and it was due to the administrative reason, there was a delay and now only it was given effect to under the impugned tender notifications.

(h) It is stated that earlier there was a rice mill in the place, which was also used for commercial purpose, and there is a reasonable space available between the temple and the proposed Commercial Complex. There are many private buildings and therefore, the commercial complex proposed to be put up will not obstruct the view of the temple. The disputed property is situated in a highly urbanized area and the construction of three storied building is not going to be a hardship to any one.

(i) It is stated that an amount of Rs.11,05,200/- was spent for planning permission, only after getting approval from the second respondent. The temple is not going to spend any amount towards construction of commercial complex and it is going to be constructed from the donation received as called for in the public auction. It is stated that calling for donation by way of public auction for putting up of a commercial complex is a new plan devised, which cannot be questioned, since the same cannot be found to be illegal. Any interested person including the petitioner can participate in the public auction.

(j) The writ petitioner has filed the earlier writ petition in W.P.No.5003 of 2011 on various false grounds, in respect of which also the second respondent has filed a counter affidavit and the present writ petition is filed with flimsy grounds. It is, because the temple is not having any further fund, the present new Scheme has been formulated. It is also stated that the place in which the commercial complex is to be constructed is outside the compound wall of the temple and hence, it is not contrary to Section 77 of the Act.

(k) The period of lease is only for three years and after three years, it is for the temple authorities to decide for extension and it is not a perpetual lease. Therefore, the applicability of Section 34 does not arise. It is stated that even otherwise, there is an alternate remedy available to the petitioner under Section 114 of the Act before the first respondent, and therefore, the writ petition is liable to be dismissed. Inasmuch as the petitioner is not able to show any illegality or infirmity in the impugned tender notifications, simply because it is a new process, the same cannot be questioned.

6. In the counter affidavit filed by respondents 4 and 5, who are the Executive Officer and Chairman Board of Trustees respectively of Arulmigu Madanagopalaswamy Thirukoil, Madurai, which is in consonance with the counter affidavit filed by the second respondent, it is stated that the writ petition is not maintainable. It is the case of the 4th and 5th respondents that the petitioner has chosen to challenge the order of the second respondent dated 14.02.2011, while a notification has already been issued on 15.02.2011, which was published in the Daily Thanthi on 16.02.2011.

(a) It is stated that the petitioner is not a regular visitor of the temple and if he has got any grievance regarding the infraction of the procedure set out under Section 34 of the Act, he can only file a Public Interest Litigation. It is also stated that the writ petition before this Court is not maintainable and if at all there is any grievance, the petitioner can file a petition before the Madurai Bench of the Madras High Court. The petitioner has not chosen to file a petition in the Madurai Bench, because he was already imposed with the costs of Rs.10,000/- for filing a frivolous petition, complaining about the encroachment of a Urani in Rajapalayam, in which costs was awarded.

(b) It is stated that Arulmigu Madanagopalaswamy Thirukoil, Mela Masi Street, Madurai is an ancient Temple, which comes under the category of *Abhimana Sthalam*. The temple is bounded on the northern side by Mela Vadampokki Street and on the northern side a number of multi-storied buildings have already come up, and Arisikara Street runs parallel to Mela Masi Street on the western side. Between the Temple and Arisikara Street, there was a rice mill functioning for a long time. The said property also belonged to the temple and a very nominal and low rent was paid every month and therefore, the temple decided to initiate action to vacate them. A suit was initiated in the

year 1996, which went up to second appeal stage and ultimately, the tenant was given 9 months time to vacate and hand over possession of the property to the temple.

(c) It is stated that 7 permanent employees are working in the temple. On account of the weak financial condition, even an employee who has put in more than 25 years of service is getting only Rs.10,000/- per month as salary. The monthly income of the temple is hardly Rs.2 lakhs and the staff salary alone comes to Rs.60,000/-. Hence, the Trustees have decided to take action for augmenting the income and therefore, when the earlier tenant was successfully evicted in the year 2008, a resolution was passed, putting the said land for proper use.

(d) After the judgment was passed on 05.12.2008, a resolution was passed for putting up of a commercial complex on 19.12.2008 and delivery of possession was taken on 05.12.2009. Thereafter, the matter was referred by the Joint Commissioner of Hindu Religious and Charitable Endowment to the Commissioner for approval. A proposal was submitted with a proper design through reputed architect. The second respondent has issued an order on 19.10.2009. On 04.08.2009, yet another resolution was passed since it was an ambitious project and it was informed to the Ministry also. The Hon ble Minister has also made an announcement on the floor of the Assembly during budget session of the year 2010-11.

(e) The Commissioner of Corporation, Madurai has granted permission on 01.04.2010. The building approval was granted by the Corporation on 14.05.2010 and subsequent resolution was passed on 09.08.2010 by the Trust Board and thereafter, the Joint Commissioner has forwarded the recommendation to the Commissioner on 23.09.2010 and on 21.12.2010, and the second respondent has approved the construction of commercial complex and that was challenged in both the writ petitions.

(f) The Board has further passed another resolution on 21.12.2010, pursuant to which public advertisement was issued on 05.01.2011. Though 34 applications were received in response to the notification dated 05.01.2011, most of them were interested in taking the shops on the ground floor and ultimately, the original proposal was modified in the interest of the temple by another resolution dated 21.01.2011 to give it to a single person instead of many number of entities and that was given permission by the second respondent and thereafter, the Trust Board passed resolution on 15.2.2011, to call for public tender notification on 16.2.2011, the notification has been published in Daily Thanthi.

(g) The last date for the tender was 2.3.2011. The commercial complex construction will not be conducted within the precinct of the temple and there is no infringement of Section 77 of the Act. The Temple has spent its own money for the preliminary formalities. Accordingly, the tenders have been called for from interested parties, they have offered a deposit of Rs.3,61,25,000/- and a sum of Rs.1,08,75,000/- will be the starting quotation for donation. Apart from the deposit, whoever offers the highest donation will be chosen as the highest tenderer.

(h) With the amount generated from the tender process, the temple will put up a 3 storied commercial complex including the ground floor. The building will be absolute property of the

temple and therefore, the temple have a valuable commercial complex in the heart of Madurai City without spending any amount. The highest tenderer will be given a lease for a period of three years and the amount will be fixed strictly in accordance with Section 34A of the Act by a Committee as per the Government Order.

(i) As of now, the Department is following the practice of renewing the lease period, when 15% enhancement of rent is agreed and paid by the tenant. It is stated that right of a lease holder for renewal once in three years is universally applied throughout Tamil Nadu with only one condition that the holder has to pay the enhanced rent.

7. According to Mr.V.Selvaraj, learned counsel appearing for the petitioner, the entire impugned orders are fraudulent in the sense that the temple has not taken any action, and it is only by the extraordinary pressure, the present new Scheme has been formulated. Even though as per the impugned tender, the lease period has been noted as three years, there is a right given for continuation thereafter, which means that it is for more than 5 years, which requires a permission under Section 34 of the Act. It is only to bye-pass the provisions of Section 34 of the Act, three years has been included, and very purpose of giving it to a single person shows that there is a political interference and the intention is not bona fide, for the interest of the temple. According to him, under Section 77 of the Act, there is no power to transfer any land appurtenant to or adjoining the religious institutions, which is prohibited except under special circumstances. There is no Scheme framed to show any special circumstances. According to him, the place wherein the construction is sought to be put up is forming part of the temple and the petitioner is a person interested. When the law does not permit anything, it means it is prohibited and inasmuch as such powers are not available under Section 23 of the Act, the Commissioner's order becomes nullity. Even the Trustees have no unguided powers as per Section 28 of the Act, and there are various regulatory provisions under the Act and the Trustees themselves cannot bye-pass the same. Even under Section 34A of the Act, fair rent has to be fixed and without fixing the fair rent, the tender called for becomes totally alien to the concept of lease. There is no administrative sanction granted by the Government. This amounts to alienation, even if the Commissioner accepts, and for such alienation as per the proviso to Section 34 of the Act, he has to make publication for getting objections. If it is a new Scheme, it should be placed before the Legislature as per Sec.116(3) of the Act and there is violation of various provisions of the Act and therefore, according to him, the entire proceedings are to be held null and void.

8. Mr.K.Ramasamy, learned Additional Advocate General appearing for the Special Government Pleader for respondents 1 to 3 would submit that the writ petition is not maintainable. The petitioner is neither an aggrieved person nor an interested person, and for that he relied upon Section 6(15)(b) of the Act. He would also rely upon the provisions of Sections 59, 64 and 65, which require a minimum number of persons to be declared as aggrieved and therefore, the petitioner cannot be deemed to be a person interested. On merits of the case, it is his submission that the tender process is only to identify the prospective lessee, Section 34(4) of the Act will come into operation only after identification of the lessee and what was granted by the Commissioner was, permission to the Executive Officer to construct a building under the Scheme and it is in the preliminary stage. According to learned Additional Advocate General, the tender has not been

challenged and no doubt, the process is a new one by way of donation before lease. The lease amount will be fixed as per the provisions of the Act, after the lease is finalized and what is decided is only to receive the application by way of donation. It is only the person who offers highest donation will be accepted and the donations by others will be returned and that will not be forfeited and therefore, the process is that the highest donation amount will be received, with which the construction will be put up and thereafter, the lease amount will be fixed as per the Act. It is stated that the petitioner has not challenged the tender notification, and there is no question of lease, since such lease has not been executed. If the contents of the lease deed do not contain any renewal clause, then the proviso to Section 34 of the Act will not apply. As far as reference to Section 77(3) is concerned, the construction is only outside the precinct of the temple and there is no blocking of the temple. According to him, donation is not alien to the Scheme of the Act. The tender notification only contemplates the donations and the conditions are not stipulated.

9. Mr.R.Thiagarajan, learned senior counsel appearing for respondents 4 and 5 would submit that the advertisement has been issued and it is a policy of the Government, since the Hon ble Minister has made a reference on the floor of the Assembly. According to him, it is like putting up of cottages in Thirumala Thirupathi Devasthanam by individual donations and thereafter, the rent will be fixed as per the provisions of the Act.

10. I have heard the learned counsel for the petitioner, apart from the learned Additional Advocate General appearing for respondents 1 to 3 and the learned senior counsel for respondents 4 and 5 and given my anxious thoughts to the issue involved in this case.

11. Since a preliminary issue is being raised on behalf of the respondents, as submitted by the learned Additional Advocate General about the locus standi of the petitioner in filing the above writ petition, which will have a bearing on the maintainability of the writ petition itself, it is incumbent on the part of this Court to deal with the said issue at the first instance.

12. The petitioner is stated to be a worshiper of the temple as a Hindu. The term Temple is defined under Section 6(2) of the Act, which is as follows:

6.(20) temple means a place by whatever designation known, used as a place of public religious worship and dedicated to, or for the benefit of, or used as of right by, the Hindu community or of any section thereof, as a place of public religious worship;

Explanation: Where a temple situated outside the State has properties situated within the State, control shall be exercised over the temple in accordance with the provisions of this Act, in so far as the properties of the temple situated within the State are concerned.

13. According to the learned Additional Advocate General, the petitioner is neither aggrieved by the issue nor he is a person interested. Whether he is aggrieved or not depends on the merits of the matter and it will be dealt with separately. It is relevant to find out, as to whether he is a person interested. Section 6(15) of the Act defines the term person having interest . Under the said provision, the person having interest in respect of a math, temple and endowment has been

separately defined. In respect of the term person having interest regarding Temple the same has been dealt with under Sec.6(15)(b), which is as follows:

6 (15) (b). in the case of a temple, a person who is entitled to attend at or is in the habit of attending the performance of worship or service in the temple, or who is entitled to partake or is in the habit of partaking in the benefit of the distribution of gifts thereat Therefore, an analysis shows that even a person who is entitled to attend or partake in the temple services is a person having interest, whether he actually exercises his entitlement or not. Being a Hindu, as stated in the affidavit, a believer of Hindu Temples, the petitioner is certainly a person entitled to worship in the temple, and therefore, the contention raised in the counter affidavit by the respondents as if the petitioner is not in the habit of visiting the present temple, viz., Arulmigu Madanagoapalaswamy Thirukoil, has little significance while considering the definition of person having interest".

14. The reliance placed on Sections 59, 64 and 65 of the Act, which contemplate a minimum number of persons to join together for certain remedies under the Act, is certainly not relevant to the facts of the present case. Section 59 of the Act relates to removal of Trustee of a Math or specific endowment, in which case the empowerment of the Commissioner or two or more persons having interest may institute a suit for removal of a Trustee. The present temple is not being a Math, Section 59 has no application.

15. Section 64 of the Act empowers the Joint Commissioner or Deputy Commissioner to settle Schemes regarding the proper administration of an institution either it is exercised suo motu or by not less than 5 persons having interest in making such application. The present issue has nothing to do with the settlement of any Scheme of any institution and therefore, requirement of 5 persons or more has no significance.

16. Similarly, under Section 65 of the Act, which empowers the Commissioner to settle the Scheme in respect of certain specific endowment attached to a Math or administration of a Math, when not less than 5 persons interested can make an application. These are all matters relating to administration of a Math, Temple or institution whatsoever and these three provisions which are relied upon by the learned Additional Advocate General for driving home that minimum number of persons affected must be available to constitute a person interested is not tenable, especially on the facts of the present case, wherein the petitioner being a simple devotee of a temple, wants to challenge a commercial transaction, which is sought to be made on behalf of the temple. Therefore, I am of the considered view that the petitioner is certainly a person having interest in the affairs of the temple and accordingly, the preliminary objection raised on behalf of the respondents about the locus standi of the petitioner, is rejected.

17. Now, coming to the facts of the case, on an over all view, especially after issuing two impugned orders of the second respondent dated 21.12.2010 and 14.02.2011, it is clear that in respect of Arulmigu Madanagopalaswamy Thirukoil, which is a temple recognized under the Act as per its Schedule, either the Board of Trustees or the second and third respondents wanted to introduce a new method as a prelude for the purpose of leasing out the temple land, where the provisions under Section 77 of the Act prohibiting the alienation of the land of the temple or appurtenant to the

temple, need not be considered at this stage. The fact remains that under the two impugned orders, there is no proposal for lease to be made out. The respondents 2 to 5 appear to have decided based on the requirement of the fund for the development of the temple and invented a novel idea of donation Scheme as a prelude for the purpose of proceeding with the lease in accordance with law. Under the Act, there is no such provision enabling either the Commissioner of the Department or the Board of Trustees to have such novel scheme to be implemented, of course without any restrictions. It is no doubt true that when a new Scheme is contemplated and it is in the interest of the institution, there cannot be any impediment, but that must be subject to the approval of law and whatever may be the laudable object, it becomes no sense if it is not approved by law. Though it is for mere monetary benefit or augmentation of income for the temple, but such augmentation must be in the manner known to law and not based on any novel idea so long as such idea has not been formulated as a Scheme approved by the State Government.

18. As correctly submitted by the learned Additional Advocate General, the time for fixation of lease rent has not yet arisen, on the facts of the present case, so as to make application under Section 34A of the Act for fixation of lease rent by the Department in that regard, and that is why, as I stated earlier, the entire impugned orders including the publication, which has been subsequently issued in Daily Thanthi on 16.2.2011, are only prelude to fixation of lease rent.

19. Before going into the propriety of such novel Scheme, which may be no doubt in the best interest of the temple, it is relevant to refer Section 34 of the Act, which imposes a restriction about the alienation of immovable Trust property either by sale, mortgage or lease etc., and Section 34 is as follows:

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 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:

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 objection and suggestions with respect thereto; and all objections and suggestions received from the trustee or other persons having interest shall be duly considered 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 though 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 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, (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 inams referred to in section 41.

20. Section 34(1) read with explanation makes it very clear that even if the term, 'lease' is stated to be for less than 5 years, and if it contains a clause for renewal for a further term, whether it is subject to any condition or not, it is deemed to be a period exceeding 5 years. Now, if we make a reference to the advertisement issued in Daily Thanthi on 16.02.2011, one of the clauses in the advertisement, viz., Clause 11, is as follows:

VERNACULAR (TAMIL) PORTION DELETED A reading of the said clause in the advertisement which of course does not form part of the two impugned orders of the second respondent, in the context of the explanation to Section 34(1) of the Act, shows abundantly clear that even if a lease is to be given at the later point of time, the same has to be treated for a period more than 5 years. If that is so, as per Section 34 of the Act, the Commissioner must not only give permission, but he must also issue publication inviting objections or suggestions in respect of the said proposal. Mere publication to an advertisement calling for tender does not mean the publication calling for objections. Therefore, the respondents cannot take refuge to show that the advertisement dated 16.02.2011 or any other advertisement published earlier should be treated as a publication calling for or inviting objections.

21. So far, no objection has been received and therefore, according to the respondents, it should be presumed that the people have accepted the same. That is not the purport of the Act. Section 34(1) says that the sanction can be granted by the Commissioner only after receiving objections in respect of granting of sanction and not for the purpose of inviting tenders. But the contention of the learned Additional Advocate General is that the said advertisement dated 16.02.2011, is not an advertisement for lease, it is only an advertisement asking for donations, and therefore, the impugned orders as well as the advertisement dated 16.02.2011, are only to select the lessee for the entire premises based on the highest offer of donation. Hence, it is an approval given to the Trustees by the Commissioner to call for donations from public by fixing the minimum amount as Rs.4.70 crores, which was made as a highest offer by one Pothiraj from Srivilliputhur based on the earlier

publication issued in Daily Thanthi dated 05.01.2011. Therefore, under the impugned orders, especially in the impugned order dated 14.02.2011, the second respondent has directed that Rs.4.70 crores quoted as donation must be the starting point for the offer from public and the highest offerer in respect of the donation will be chosen as a lessee and that donation amount will be used for the purpose of putting up the construction and the amounts given by other participants will be returned as per the terms. Therefore, it is based on the highest donation amount, the second respondent has permitted the 4th and 5th respondents to put up the construction. This is certainly a unique plan in the form of a new Scheme, and after the construction, as per Section 34A of the Act, fair rent will be fixed in respect of the portion for which the highest donation is quoted by a person and in addition to the donation already paid based on which the building is put up, the selected lessee shall pay fair rent every month. That appears to be the Scheme, but even at the time when the donation is called for under the advertisement dated 16.02.2011, an assurance has been given to the highest donor that the lease will be given for three years which will be extended for another three years on payment of 15% more of the rent fixed under Section 34A of the Act, and therefore, applying the explanation to Section 34(1) before issuing such advertisement, the public objections should have been called for, but admittedly, such objection has not been called for.

22. Be that as it may, even if the contention of the learned Additional Advocate General is to be accepted that it is only at a preliminary stage and the lease is yet to be materialised, in which event, the present novel Scheme should be treated as a Scheme which is not known to any other provisions of the Act, in so far as it relates to the temple, Section 34 of the Act has to be read along with Section 77, which is intended to avoid encroachment of temple lands. Section 77 of the Act is as follows:

77. Transfer of lands appurtenant to or adjoining religious institutions prohibited except in special cases:

(1) Notwithstanding anything contained in section 34, no trustee of a religious institution shall lease or mortgage with possession or grant a licence for the occupation of-

(a) any land belonging to the religious institution which is appurtenant to or adjoins the religious institution, or any sacred tank, well, spring or water course, appurtenant to the religious institution whether situated within or outside the precincts thereof, or

(b) any space within or outside the prakarams, mantapams, courtyards or corridors of the religious institution;

Provided that nothing contained in this sub section shall apply to the leasing or licensing of any such land or space for the purpose of providing amenities to pilgrims or of vending flowers or other articles used for worship or of holding for specified periods, fairs or exhibitions during festivals connected with the religious institution.

(2) Any lease or mortgage with possession or licence in contravention of the provisions of sub-section (1) shall be null and void.

(3) Notwithstanding anything contained in sub section (1) or (2), (The Commissioner) may sanction the lease or mortgage with possession or granting of a licence for the occupation of any such land or space as is mentioned in sub-section (1) and situated outside the precincts of a religious institution for any purpose other than a purpose mentioned in the proviso to sub-section (1).

23. The above said section imposes an embargo on the Trustee of the religious institution from leasing out, mortgaging any land belonging to religious institution, which is appurtenant or adjoining the religious institution or any space within or outside the prakaram or mantapam except it is for the purpose of providing amenities to the pilgrims. Of course, Section 77(3) empowers the Commissioner to give permission for the purpose otherwise than the amenities, and in such an event, Section 77(3) has to be read along with Section 34(1) of the Act and consequently, the Commissioner has to call for objection before deciding about the lease. Admittedly, these two provisions have not been followed. Even as submitted by the learned Additional Advocate General, such a situation has not yet arisen and it is only at the preliminary stage. If that is the case, it becomes powers of the Government to approve such unique Scheme either by way of making Rules or by issuing notification by placing it on the table of the Legislative Assembly. Section 116(3) of the Act enables such notification, which is as follows:

Section 116(3). All rules made and all notifications issued under this Act shall as soon as possible after they are made or issued, be placed on the table of (the legislative assembly) and shall be subject to such modifications by way of amendment or repeal as (the legislative assembly) may make either in the same session or in the next session.

24. A reading of Section 116(3) enables the proposal or a Scheme like that of the novel Scheme sought to be introduced in the present case to be placed before the Assembly for the elected representatives to take a collective decision. Mere making of statement by the Hon ble Minister on the floor of the Assembly is not sufficient to comply with the requirement of Section 116(3) of the Act. Section 34 is totally different from Section 116. Inasmuch as, admittedly, Section 34 or 77 is not applicable to the facts of the present case, as submitted by the learned Additional Advocate General, certainly it would come under the rule making power of the Government under Section 116 of the Act and this Scheme being a new one, is not covered under any of the provisions of the Act, unless and until the Government grants sanction for such a Scheme, whatever may be the laudable object, such Scheme cannot be held to be a lawfully enforceable Scheme.

25. At the risk of repetition, it is to be reiterated that, it is not the monetary benefit to the temple which alone is relevant, but acquiring such monetary benefit to the temple must also be as per the provisions of the Act. The contention of Mr.R.Thiagarajan, learned senior counsel for respondents 4 and 5 by comparing it to the cottages in Thirumala Thirupathi Devasthanam, is not acceptable. It is not known, under which policy or the regulations, such cottages have been constructed. In the absence of any such rules placed before this Court, inasmuch as the temple concerned is governed by the provisions of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959, I do not agree with the contention of the learned senior counsel for the respondents that it is merely a donation Scheme, under which the donation, which is not unknown donation, is to be collected for the purpose of the temple because, calling for donation for commercial purpose requires a statutory

approval, apart from transparency.

26. There is another issue to be decided, as to whether the Commissioner can decide and give the entire constructed area to a single individual, when admittedly the entire complex is going to consist of many commercial shops, simply because it is administratively inconvenient. In any event, in democracy, it is for the Government and not for the second respondent Commissioner or the 4th and 5th respondent Trustees to decide as to whether such monopolisation can be given to a particular individual, when admittedly the temple is under the control of the Hindu Religious and Charitable Endowment Department. Therefore, looking into any angle, I am of the considered view that unless and until the procedure contemplated under the Act is followed, viz., statutory sanction by the State Government, such proposed Scheme under the impugned orders or by way of advertisement issued in the Daily Thanthi dated 16.02.2011 has no legal basis to be implemented.

27. Accordingly, the impugned orders of the second respondent dated 21.12.2010 and 14.02.2011, including the advertisement issued in Daily Thanthi on 16.2.2011 in respect of Arulmigu Madanagopalaswamy Thirukoil, Madurai, calling for donation for leasing out the commercial complex to be constructed, stand set aside and the writ petition is allowed. However, as per the provisions of the Act, it is always open to the Government to take appropriate action in the manner known to law, if so advised. No costs.

Connected miscellaneous petitions are closed.

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- 1.The the Secretary to Government State of Tamil Nadu Religious Endowment Department Fort St.George, Chennai 600 009.
- 2.The Commissioner Hindu Religious Endowment Department Fort St.George, Chennai 600 009.
- 3.The Joint Commissioner Hindu Religious Endowment Department Madurai.
- 4.The Executive Officer Arulmigu Madanagopalaswamy Thirukoil Melamasi Street, Madurai 1.
- 5.Thamburaj Chairman Board of Trustees Arulmigu Madanagopalaswamy Thirukoil Melamasi Street, Madurai 1