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W.A.No.105 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 29.01.2025	Delivered on 24.02.2025
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CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**
AND
THE HONOURABLE MR.JUSTICE **C.KUMARAPPAN**

W.A.No. 105 of 2025
and CMP. Nos. 582 and 586 of 2025

T.R.Ramesh

.. Appellant

Vs.

1. The Commissioner,
Hindu Religious & Charitable
Endowments Department,
119 Mahatma Gandhi Road,
Nungambakkam, Chennai-600 039.

2. The Executive Officer,
Sri Somanathaswamy Temple, Kolathur,
Sannathi St, Sarojini Nagar,
Kolathur, Chennai 600 099.

...Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 03.10.2024 made in Writ Petition No. 29684 of 2024.



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For Appellant : Mr.T.R.Ramesh
Party-in-person

For Respondents : Mr.R.Shanmuga Sundaram, Senior Counsel
Asst. by Mr.N.R.R.Arun Natarajan
Special Government Pleader

J U D G M E N T

*(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)*

The appellant is aggrieved by the dismissal of the Writ Petition in WP No.29684 of 2024, challenge in which was to the notice published in ‘Makkal Kural’ a Tamil Daily on 08.09.2024. The said notice was published by the first respondent calling for objections from the Public to the proposed lease of land of an extent of 2.40 acres belonging to the second respondent to Arulmigu Kapaleeswarar Temple for housing the Arts and Science college run by the said Temple. The Lease was proposed to be for a period of 25 years.



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2. The said publication was made in compliance with the requirements of the proviso to Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as “*the Act, 1959*”). It was the primary contention of the petitioner before the Writ Court is that the publication is not in conformity with the requirements of the provisions of the Alienation of Immovable Trust Property Rules, 1960, framed under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

3. The short facts that are required for the disposal of the Appeal are as follows:

3.1. An extent of 2.40 acres of land in Kolathur Village belongs to the second respondent viz. Sri Somanathaswamy Temple at Kolathur. Arulmigu Kapaleeswarar Temple, a major temple in Chennai had started a Arulmigu Kapaleeswarar Arts and Science College in Kolathur from the Academic Year 2021-2022. At present there are 743 students pursuing both Under Graduate and Post Graduate Courses in the said Institution. The said

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Institution is now being run in a Private rented building.

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3.2. In order to facilitate construction of own Buildings for the said College, the Government had allotted an extent of 1.44.20 hectares of land. As the said land was insufficient, it was decided to take on lease the land measuring about of 2.45 Acres in TS No.12, Old Survey No.89/4, Block 25 of Kulathur village belonging to the second respondent Temple. Originally the first respondent approved the lease for a period of 5 years vide proceedings dated 27.11.2023. The fair rent payable was fixed at Rs.3,19,000/- per month by the Fair Rent Fixation Committee by order dated 03.10.2022.

3.3. The Education Department, however, required a lease for a period of not less than 25 years to enable it to grant permanent recognition to the College. Therefore, a request was made by the Management of the College for lease for a period of 25 years which resulted in initiation of action under Section 34 of *the Act of 1959*. Section 34 of the *Act, 1959* provides that any exchange, sale or mortgage and any lease for a term

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exceeding 5 years of any immovable property belonging to a Hindu

Religious Institution shall not be valid unless it is sanctioned by the

Commissioner. Proviso to Section 34 of *the Act of 1959* requires a publication to be made by the Commissioner inviting objections and suggestions with respect to the proposal for sale or lease of immovable property for a period more than 5 years.

3.4. The Government has framed Rules under the Rule making power providing for the modalities for making such publication. These Rules are called the Alienation of Immovable Trust Property Rules, 1960. The Rules laid down the procedure to be followed by the Commissioner in granting sanction under Section 34 of *the Act of 1959*. It is the claim of the appellant that these Rules have not been strictly followed and the publication made does not confirm to the requirements of Rule 2 of the Rules.

4. According to the appellant, the violations have prevented the public from making out well informed objections or suggestions for the proposal to lease out the lands belonging to the Temple. The appellant



would also contend that the guideline value of the property has not been properly adverted to while fixing the rent.

5. The Writ Petition was resisted by the respondents contending that the purpose for which the land is to be leased is also a public purpose and meant for welfare of the public. The requirement of the Rules have been substantially complied with and therefore, the Writ Court will not interfere under Article 226 of the Constitution of India. The Writ Court, however, dismissed the Writ Petition on the ground that the object being a benevolent one, the procedural irregularities or deviations will not vitiate the purpose. Aggrieved the appellant is before us.

6. We have heard Mr.T.R.Ramesh, the appellant appearing in person and Mr.R.Shanmuga Sundaram, learned Senior Counsel instructed by Mr.N.R.R.Arun Natarajan, Special Government Pleader appearing for the respondents 1 and 2.



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7. Mr.T.R.Ramesh, the appellant appearing in person would reiterate the submissions made by him before the Writ Court and contend that the Writ Court was not justified in concluding that the procedural violations pointed out by him will not vitiate the transaction.

8. Contending contra Mr.R.Shanmuga Sundaram, learned Senior Counsel appearing for the respondents 1 and 2 would submit that when the actual cause viz. construction of a Arts and Science College is for common good and it is the surplus funds of the temple that are being used for educational purposes, the violations if any cannot be construed to have the effect of vitiating the entire process. He would also point out that after enactment of Section 34(A) of *the Act of 1959* with effect from 10.05.2003 any transaction relating to lease of temple property is done after getting the Fair Rent Fixation Committee to fix fair rent for the temple property. Therefore, the claim that the requirements of Rule 2 of the Alienation of Immovable Trust Property Rules, have not been complied with may not invariably result in the transaction being prejudicial to the temple



concerned.

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9. The entire proceedings have also been placed before us. It is seen there from that on 27.09.2022, the Fair Rent Fixation Committee constituted under Section 34(A) of the Act had fixed the fair rent for the land measuring about 1,04,544 sq. feet at Rs.3,19,000/-. Thereafter, on 27.11.2023, the Commissioner, HR & CE has permitted lease of the land for a period of five years. However, since the lease for 5 years was found insufficient for the purposes of grant of recognition, the Trustees of the Arulmigu Kapaleeswarar Temple passed a resolution on 08.07.2024 offering to take the land on a long lease for a period of 25 years. This proposal was accepted by the Trustees of the second respondent Temple by a resolution dated 31.07.2024. Thereafter, the Commissioner, HR & CE Department viz. the first respondent had issued the impugned advertisement calling for objections. Therefore, according to the learned Senior Counsel Mr.R.Shanmuga Sundaram, the requirements of law have been substantially complied with and therefore, the contention of the appellant has been rightly rejected by the Writ Court.



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10. Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 which deals with Alienation of Immovable Trust Property Rules, reads 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 objections and suggestions with respect thereto; and all objections and suggestions received from the trustee or other persons having interest shall be duly consider by the Commissioner:

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

Explanation.—Any lease of the property above



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

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



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in respect of any exchange, sale, mortgage or lease of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution and the Commissioner shall give effect to all such directions.

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

The procedure that is to be followed in granting a sanction under Section 34 is detailed in the Alienation of Immovable Trust Property Rules, 1960. The said rules read as follows:

*“1. These rules may be called the ***Alienation of Immovable Trust Property Rules.****

2. (1) Notice of the proposals for any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property belonging to or given or endowed for the purpose of any religious institution shall contain particulars, in respect of the following, namely:-

(a) nature of the proposed transaction;

(b) correct description of the properties relating to the



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proposed transaction with information regarding the survey number, extent and boundaries and ward number and door number also in the case of properties within the limits of municipalities and the City of Chennai

(c)the revenue assessed on the properties relating to the proposed transaction by way of land revenue, cess, quit-rent, ground-rent, property tax, etc.;

(d)any encumbrance to which the properties relating to the proposed transaction are subject;

(e)if the proposal is for mortgage, the amount for which the properties are proposed to be mortgaged;

(f)if the proposal is for sale or lease, the probable price or the rental, as the case may be, that is expected;

(g) the purpose for which the amount so raised is to be utilised.

The notice shall specify a reasonable time, being not less than 30 days from the date of the issue of the notice, within which objections or suggestions may be sent. It shall also specify the date on which an enquiry, if any, is proposed to be held to consider the objections or suggestions. A copy of the notice shall be served in person or sent by registered post, with acknowledgement due to the trustee or trustees of the



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religious institutions concerned, and where the properties belong to a specific endowment, also to the trustee or trustees of the temple or math to which the specific endowment is attached. Any refusal or evasion to receive the notice shall be deemed to be sufficient notice.

(2) A copy of the notice shall be published by affixture –

(a) on the notice board of the office of the Commissioner and the Assistant Commissioner having jurisdiction over the area in which the math or temple concerned is situate;

(b) on the notice board of the front door of the math or temple concerned;

(c) on the notice board of the office of the Municipal Council including the Corporation of Chennai or the Village Chavadi or the Panchayat Union Council and if there is no Village Chavadi or Panchayat Union Council, in some other public place in the village in which the math or temple concerned is situate;

(d) in another conspicuous place in the locality which may be selected by the Commissioner in his discretion; and



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(e) in at least one daily newspaper published in the language of the locality where the math or temple concerned is situate:

Provided that where the proposal is in respect of a specific endowment, the properties of which are not situate in the village in which the temple, or math is situate, the notice shall be published also in the village or villages in which the properties are situate.

3. A copy of the [order sanctioning an exchange, sale or mortgage, or lease for a term exceeding five years shall be communicated by the Commissioner in the form of proceedings under section 34 duly signed by him to the trustee or trustees and the person having interest, if any, who appeared in the proceedings and shall be published in the manner laid down in clauses (a) to (e) of sub-rule (2) of rule 2] for the publication of the notice. The order shall also be published-

(a) in the District Gazette in the language of the district concerned in the case of the math or temple or specific endowments attached to a math or temple situated in the district; or

(b) in the Tamil Nadu Government Gazette in the case of a math or temple or specific endowments attached to a math or temple situated in the City of Chennai or



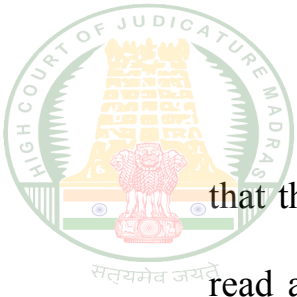
to specific endowments attached to maths or temples situated in more than one district.”

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11. It is the contention of the appellant that the details, required under Clause (c) and Clause (f) of Rule 2, have not been set out in the publication thereby preventing him from making well-meant and substantial objections to the proposed alienation of the land belonging to the Temple. It is the contention of the Mr.R.Shanmuga Sundaram, learned Senior Counsel that the object of a publication is only to inform the people of the proposal and invite objections and if there are procedural infractions, the same will not vitiate the entire proceedings.

12. While Mr.Ramesh, the appellant, would strongly rely upon the language of Sub Rule (1) of Rule 2 which uses the word ‘Shall’ and contend that the requirements are mandatory and if there is a failure to comply with the requirements, the entire transaction will have to be nullified. Mr.R.Shanmuga Sundaram, learned Senior Counsel appearing for the respondents would *inter alia* contend that a mere infraction of the Rules may not lead to the transaction being nullified. He would also submit

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that the word 'Shall' appearing in these kind of Procedural Rules has been read as may and there is a long line of judicial precedents to justify such construction. He would also invite our attention to various judgments of this Court as well as the Privy Council and the Hon'ble Supreme Court in support of his contentions.

13. We have considered the rival submissions.

14. The sum and substance of the grievance of the appellant is that the requirements of Sub Rule (1) of Rule 2 of the Alienation of Immovable Trust Property Rules, 1960 have not been complied with in its letter and spirit. No doubt certain requirements particularly the requirements in Clauses (c) and (f) have not been set out in the impugned publication. The question that arises is whether the failure to comply with the requirements would lead to the transaction being nullified by the Court.

The object of the lease is for establishment of an Educational Institution by the Arulmigu Kapaleeswarar Temple, Mylapore, Chennai 4. As seen from the facts that the College has been established even in the year 16/30



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2021 – 2022 and there are 743 students pursuing various Courses in the said College. The Government has already transferred an extent of about 3.56 acres of Government land for the purposes of the construction of the College. The land belonging to the second respondent Temple measuring about 2 acres and 40 cents is the subject matter of the lease transaction.

15. After the impugned publication, the first respondent has passed an order on 29.10.2024 after considering the objections sanctioning the proposed lease and the Government has also issued a Government Order in G.O.Ms. No.511 dated 17.12.2024 approving the sanction so granted. The said Government Order takes care of the requirement that the rent should be increased by 15% once in three years. Therefore, the only question that falls for consideration is whether the noncompliance with the requirements of Rule 2 would vitiate the entire proceedings.

16. No doubt Rule 2 uses the word ‘shall’ which normally means that the provision is mandatory. However, as rightly contended by Mr.R.Shanmuga Sundaram, learned Senior Counsel appearing for the



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respondents, the effect of the term ‘shall’ used in a statute or a rule can also be held to be directory depending upon the object that is sought to be achieved. The learned Senior Counsel would point out that the objects sought to be achieved by enactment of Section 34 of *the Act, 1959*, is only to curb unauthorized alienation or long term lease of Temple properties by the Trustees. If provisions of the Rules are examined with the object in mind, according to the learned Senior Counsel, the word ‘shall’ used in Rule 2 of the Alienation of Immovable Trust Property Rules, could only be read as directory and not mandatory.

17. The learned Senior Counsel would also invite our attention to the judgment of Privy Council in *Montreal Street Railway Company v. Normandin*, reported in *AIR 1917 PC 142*. In the said decision, the Privy Council considered the principles that have been adopted in construing statutes where a public Authority or a public functionary is invested with a public duty and a failure on the part of the such public functionary works serious inconvenience or in justice to persons who have no control over such public functionary. The Privy Council also considered the situation



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where the consequence of non-compliance was not spelt out in the enactment itself. We have already extracted Section 34 of *the Act, 1959*, as well as the Rules neither of them provide for the consequence of non-compliance with the proviso to Section 34 of *the Act of 1959*. The proviso to Section 34 *the Act of 1959*, obliges the public functionary viz. the Commissioner, HR & CE Department, to make a publication before granting sanction for alienation of immovable trust properties.

18. The Rules prescribe the content of the publication and the manner in which it has to be published. The failure on the part of the Commissioner to comply with the requirements of the Rules would definitely lead to considerable prejudice to the Arulmigu Kapaleeswarar Temple which is the beneficiary of the lease. The compliance with the Rules is not within the control of the said Arulmigu Kapaleeswarar Temple. While considering a like situation, the Hon'ble Privy Council in the judgment, referred to supra, has held as follows:

“6. It is necessary to consider the principles which have been adopted in construing statutes of this character and the authorities so far as there are



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any on the particular question arising here. The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statutes must be looked at. The cases on the subject will be found collected in Maxwell on Statutes, 5th. ed. p. 596 and following pages. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done. ...”

19. Similar question was considered by the Hon’ble Supreme Court in ***M/s. Sainik Motors, Jodhpur and others v. State of Rajasthan***, reported in ***AIR 1961 SC 1480***, wherein the Hon’ble Supreme Court at paragraph 12



had held as follows:

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“12. It is, however, contended that though the section creates an option, the Rules and the notification make the payment compulsory, and attention is drawn to the word “shall” used both in Rules 8 and 8-A and the notification whereas the words in the two provisos to Section 4 are “may accept”. The word ‘shall’ is ordinarily mandatory, but it is sometimes not so interpreted if the context or the intention otherwise demands. In In re Lord Thurlow Ex Parte Official Receiver [1895 1 QB 724] Lord Esher, M.R. observed at p. 729 that “the word ‘shall’ is not always obligatory. It may be directory”, and Lopes, L.J. at p. 731 added:

“It is clear that the word ‘shall’ is not always used in a mandatory sense. There is abundance of authority to the contrary in cases where it has been held to be directory only.”

It was thus that the word “shall” was held to be directory only, in that case, by Coutts Trotter, C.J., in ManikkamPattar v. NanchappaChettiar[(1928) MWN 441] by Russel, J., in In re Rustom [(1901) ILR 26 Bom 396 : (1901) 3 Bom LR 653] by VenkatasubbaRao, J., in JethajiPeraji Firm v.



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Krishnayya [(1929) ILR 52 Mad 648, 656] and by the Judicial Committee in Burjore and BhavaniPershad v. MussumatBhagana [(1883) LR II IA 7] .

20. Again in *Ganesh Prasad SahKesari and another v. Lakshmi Narayan Gupta*, reported in *AIR 1985 SC 964*, the Hon'ble Supreme Court considered the import of the word 'shall' used in Section 11A of the Bihar Buildings (Lease, Rent and Eviction) Control Act (3 of 1947) and the Hon'ble Supreme Court in Para 8 of the said judgment held as follows:

“8.The statute in which the expression is used is the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947. It is a statute enacted with a view to providing a fetter on the right of a landlord to evict tenant at his whim or fancy. The long title of the Act shows that it was enacted to regulate the letting of buildings and the rent for such buildings and to prevent unreasonable eviction of tenants therefrom in the province of Bihar. A provision in such a statute primarily enacted for the protection of tenants against unreasonable eviction that the court is required to find out whether the word “shall” was



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used as to make the provision mandatory or imperative. Obviously if one ascertains the intendment of the legislature, the purpose for which the provision was enacted, the beneficent nature of the statute and to protect the harassed tenant obviously it does not require long argument to hold that the expression “shall” was used not with a view to making the provision mandatory or imperative but it was to be directory. Such a construction would advance the purpose for which the Act was enacted namely the protection of tenants. It will also not render the court powerless in the face of harsh facts where striking off the defence would be nothing short of miscarriage of justice.”

21. A similar issue emerged again before the Hon’ble Supreme Court in *Ammal Chandra Dutt v. II Additional District Judge and Others*, reported in *AIR 1989 SCC 255*, and there also the Hon’ble Supreme Court held that the term ‘shall’ used in Rule 18(1) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972. A Division Bench of this Court had an occasion to consider a similar question in *K. Subbiah Pandian and Ors. Vs. The Assistant Director of Panchayat, Tirunelveli*

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District and others reported in **2009 Writ L.R. 984**, wherein the Division Bench after referring to the judgment in **Ammal Chandra Dutt v. II Additional District Judge and Others**, referred to *supra*, held that in the absence of a stipulation with regard to the consequences of violation of the Rule is an indication that the Rule is only directory and not mandatory. In doing so, the Division Bench held as follows:

“48. As we have seen earlier, Rule 11 uses the expression "shall", while prescribing the period for which a lease of fishery rights could be granted. Therefore it is to be seen if the Rule is mandatory and inviolable.

49. In State of Punjab v. ShamlalMurari, reported in 1976 (1) SCC 719, the Supreme Court pointed out that the word "shall" (a word of slippery semantics) in a rule is not decisive and the context of the statute, the purpose of the prescription, the public injury in the event of neglect of the rule and the conspectus of circumstances bearing on the importance of the condition, have all to be considered before condemning a violation as fatal.

50. In a catena of decisions, the Supreme Court held that the use of the word "shall" in a statute does



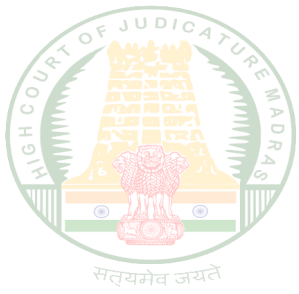
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not always indicate that the provisions are mandatory in character. In Ammal Chandra Dutt v. Second Additional District Judge, 1989 (1) SCC 1, the Supreme Court held that where the situation and the context warrants it, the word "shall" used in a section or rule of a statute has to be construed as "may". Again in Rubber House v. Excelsior Needle Industries Pvt Ltd 1989 (2) SCC 413, the Supreme Court pointed out that though the word in its ordinary import is obligatory, it need not be given the same connotation, but can be interpreted as directory.

51. In the case on hand, the Rules issued under the Tamil Nadu Panchayats Act, regulating the grant of lease of fishery rights, does not indicate the consequences of the failure to make the period of lease as 5 years. In other words, neither Rule 11 nor any other Rule, makes a lease for a period lesser than 5 years, void or voidable. The absence of a stipulation with regard to the consequences of a violation of Rule 11, is an indication that the Rule is only directory and not mandatory. Once it is concluded that the Rule is only directory and not mandatory, the participation of the Petitioner in the auction in pursuance of the notification, would bind him to the terms and conditions of the tender



notification and would operate as estoppel.”

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22. From the above judicial pronouncements, it is clear that the word ‘shall’ used in a statute or a rule can also be read as directory depending upon the object that is sought to be achieved by the enactment of the Rule, more so, when the Rule does not prescribe the consequence of failure to adhere to it. We have extracted both Section 34 of *the Act, 1959*, and the Rules *supra* neither of them prescribed the consequence of any infraction of the proviso to Section 34 of *the Act, 1959*, or the provisions of Rule 2 of the Rules.

23. As we could gather from the provisions, the object that is sought to be achieved is only to prevent indiscriminate lease or sale of Temple properties by the Trustees. Therefore, once the Commissioner, HR & CE, a public functionary, is ceased of the entire matter and he had applied his mind in sanctioning the lease procedural infractions like ones pointed out by the appellant cannot nullify the entire transaction as pointed out by the Privy Council, even in the year 1917 and infraction of a Rule by a public



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functionary, who is entrusted with a duty having a very serious effect on a person who has no control over the said public functionary will have to be viewed leniently by the Courts and this has been the view taken by the Courts for long is also evident from the very language used by the Privy Council, wherein it observes that it has been the practice to hold such provisions to be directory only and the non adherence to them will not affect the validity of the acts done. No doubt there are certain procedural infractions in the publication that is impugned in the Writ Petition, but when the same are weighed with the advantages, the advantages definitely outweigh the procedural infractions. We are therefore of the considered opinion that this is not a fit case for this Court to interfere with the proposed transaction.

24. For the foregoing reasons, the Appeal fails and it is accordingly **dismissed**. We however make it clear that the respondents will follow the directions issued by the Division Bench of this Court in its interim order dated 15.11.2021 made in WP No.24156 of 2021 and the entire transaction will also be subject to the result of the said Writ Petition. The parties will



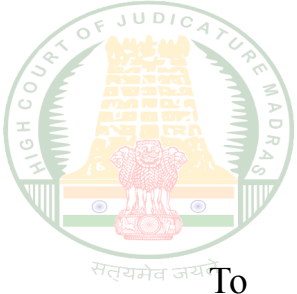
bear their own costs. Consequently, the connected miscellaneous petitions
are closed.

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(R.SUBRAMANIAN, J.) (C.KUMARAPPAN, J.)
24.02.2025

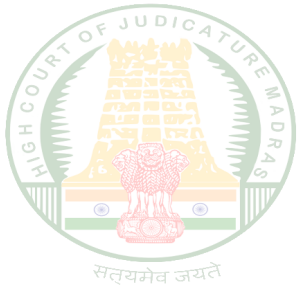
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Index : Yes
Neutral Citation : Yes
Speaking Order



To
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1. The Commissioner,
Hindu Religious & Charitable
Endowments Department,
119 Mahatma Gandhi Road,
Nungambakkam, Chennai-600 039.
2. The Executive Officer,
Sri Somanathaswamy Temple, Kolathur,
Sannathi St, Sarojini Nagar,
Kolathur, Chennai 600 099.



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