



W.P.(MD).No.12742 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 25.09.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**W.P.(MD).No.12742 of 2023
and
W.M.P.(MD).No.10745 of 2023**

M.M.Vishal

... Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
No.119, Nungampakkam High Road,
Chennai – 34.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Trichirapalli.

3.Arulmigu Thayumanaswamy Temple,
Represented by its,
Executive Officer / Joint Commissioner,
Malaikottai,
Trichirapalli District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the impugned order passed by the first respondent in R.C.No.6384/2021 dated



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25.11.2022 and all other orders passed by the respondents in consequent to the impugned order and quash the same as illegal, unconstitutional and without jurisdiction.

For Petitioner : Mr.S.Ramesh

For R-1 and R-2 : Mr.S.P.Maharajan,
Special Government Pleader.

For R-3 : Mr.V.Chandrasekar

ORDER

This Writ Petition is filed to quash the order dated 25.11.2022 and all other orders passed by the respondents in consequent to the impugned order and quash the same as illegal, unconstitutional and without jurisdiction.

2. Admittedly, the petitioner was a lessee under the third respondent Temple for the Shop No.50-G comprised in S.No.3297 situated at Malaivasal inside, Trichy – 2. Originally the petitioner's paternal uncle namely, M.N.K.Padmanaban was a tenant under the third respondent. After his demise, the petitioner was continuing his tenancy till 18.05.2022. The petitioner was in possession of the subject property to an extent of 2793.80 square feet and the petitioner is running a textile shop and regularly paying the rent. The temple



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authorities have periodically enhanced the rent based on G.O.Ms.No.456 dated 09.11.2007 and Section 34(A) of the Act at 15% increase every three years as fair rent. For the concurrent period, the Fair Rent Committee was constituted by appointing the Joint Commissioner / Executive Officer (3rd respondent) as Head of the Committee. The Committee has erroneously increased the rent with retrospective effect in respect of the premises occupied by the petitioner. The third respondent has issued a notice to the petitioner dated 21.08.2020 under Section 34(A) of HR and CE Act, informing the petitioner about the fixation of fair rent and demanded the petitioner to pay the same with retrospective effect from 30.06.2016. The petitioner submitted an application dated 10.09.2020 to the third respondent Temple that he would continue the tenancy in respect of 760 square feet alone, but unfortunately, the same was not considered by the third respondent. The third respondent vide order dated 21.08.2020 had arbitrarily demanded the petitioner to pay an exorbitant amount of Rs.76,40,710/- as arrears of rent. The contention of the petitioner is that the authorities fixed the fair rent without affording an opportunity and without hearing the petitioner, thereby violated the principles of natural justice. The said amount was calculated from 01.07.2016 till the notice dated 21.08.2020. The Committee has arrived at the conclusion to fix fair rent without giving



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notice to the petitioner and without following the dictum laid down by this Court reported in 2009(6) CTC 512 in Angala Parameshwari case. Aggrieved over the same, the petitioner has filed Statutory Appeal under Section 34(3A) of the Act. The Commissioner of HR and CE has refused to entertain the appeal by raising a query regarding the maintainability of the appeal without pre-depositing the entire rent arrears fixed by the Fair Rent Committee. Hence, the petitioner has preferred C.R.P.(MD).No.1563 of 2021 and this Court partly allowed the CRP and directed the petitioner to pay the fair rent from the date of communication that is from 01.09.2020. The further contention of the petitioner is that the appellate authority has confirmed the original authority order and has fixed the rent from 01.07.2016 and for the subsequent period that is from 01.07.2019 to 01.07.2022 as per the guidelines issued in G.O.Ms.No. 353 dated 04.06.1999, G.O.Ms.No.456 dated 09.11.2007 and G.O.Ms.No.298 dated 20.07.2010 and as per instruction dated 10.03.2022. Aggrieved over the same, the present Writ Petition is filed.

3. The learned Standing Counsel appearing for the third respondent vehemently objected to the maintainability of the Writ Petition, since only revision ought to be filed under Section 34A (5) that too within 90 days before



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High Court. Instead of preparing said application, the petitioner has filed this Writ Petition for sole reason, in order to prefer revision petition before the High Court, the petitioner should deposit the entire amount. Therefore, the petitioner has preferred this Writ Petition which is not maintainable. The second objection is that the petitioner has challenged the impugned order dated 25.11.2022, but based on this order, subsequently the third respondent has issued notice calling for objection on 03.03.2023, for which the petitioner has submitted objection on 18.03.2023. Based on the objection, the third respondent has already passed order dated 28.03.2023, confirming the order of the Commissioner and demanded Rs.1,17,56,555/-. The contention of the learned Standing Counsel is that without challenging the subsequent orders, the petitioner has challenged only the order passed by the Commissioner, which cannot be entertained. However, the learned counsel appearing for the petitioner submitted that the issue of retrospective collection was never considered by the Commissioner as well as the subsequent orders by any authorities. The issue of retrospective enhancement was not dealt by Commissioner as well as the subsequent authorities. Even before the Hon'ble Court in CRP, the collection of retrospective effect of rent was not dealt with. Therefore, the petitioner submitted that he has preferred Writ Petition rather than a Revision Petition.



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4. The learned Special Government Pleader appearing for the respondents 1 and 2 submitted that the fair rent is fixed based on G.O.Ms.No. 353 dated 04.06.1999. Therefore, based on the said Government Order, the fair rent has been refixed with effect from 01.07.2016 as per Section 34-A of the Act. Hence the petitioner has not sustainable legal ground to interfere with the impugned order.

5. But fixation of fair rent by giving retrospective effect was considered by the Hon'ble Division Bench of this Court in W.A.(MD)No.503 and 509 of 2022 vide order dated 08.08.2022 in the case of *J.A.C.Raj Vs. Commissioner HR&CE*. This order is passed by following the order passed in *Arulmigu Angala Parameswari & Kasivishwanathaswami Temple Adimanaivazh House Owners' Association Vs. State of Tamil Nadu and others* reported in 2009 (6) CTC 512. The relevant paragraphs are extracted hereunder:

14.In the case of Arulmigu Angala Parameswari and Kasivishwanathaswami Temple Adimanaiveel House Owners Association vs The State of Tamil Nadu and others, reported in 2009 (6) CTC 512, an Hon'ble Division Bench of this Court considered the constitutional validity of Section 34-A of Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959. While upholding the validity of Section 34-A, the Honourable Division Bench



has observed as follows:

.....15. The grievance regarding lack of opportunity must be accepted. We agree with the view expressed in CHEMPLAST SANMAR case. But, this defect is cured by the proceedings dated 2.2.2009. Originally by proceedings in Na.Ka.NO. 40651/ 2008/ M3 dated 18.7.2008, the Government laid down guidelines for determination of lease rent and also directed that the Executive Officer should inform the lessee, the lease rent as determined as per Section 34A(2) of the Act. The Government also noted the fact that though 34 A of the Act had come into force on 10.11.2003, certain guidelines had not been followed by the committee, while determining the lease rent and the defects are as follows:-

1. சட்டப்பிரிவு 34 ஏ?ன் கீழான வாடகை நிர்ணயக் குழுவால் நியாய வாடகை நிர்ணயம் செய்யப்படுவதில்லை.
2. சில இன்களில் செயல் அலுவலர். அறங்காவலர். உதவி கோட்டப் பொறியாளர் ஆகியோர்களால் மட்டுமே வாடகை நிர்ணயித்து அறிக்கை அனுப்பப்படுகிறது.
3. பல இன்களில். மாவட்ட பதிவாளரின் இசைவுடன் வாடகை நிர்ணயம் செய்யப்படுவதில்லை.
4. சந்தை மதிப்பினை கருத்தில் கொள்ளாமல். வழிகாட்டி மதிப்பின் படி நியாயவாடகை கணக்கீடு செய்யப்படுகிறது.
5. அரசாணை எண்.353 நாள் 04.06.1999 மற்றும் அரசாணை எண்.456 நாள் 09.11.2007 ஆகியவற்றில் தெரிவிக்கப்பட்ட வழி முறைகளைக் கடைப்பிடிக்காமலே வாடகை நிர்ணயம் செய்யப்பட்டு வருகிறது.
6. அரசாணை எண்.353 நாள் 04.06.1999 பத்தி “ VIII அ”-ல் தெரிவிக்கப்பட்டவாறு வீடுகள். காலிமனைகள், கடைகள், குத்தகை வாடகையினை “வாடகை நிர்ணயக்குழு” மூலம் நிர்ணயம் செய்யப்பட்டு அறங்காவலர் குழுவின் பரிசீலனை அந்தந்த இணை ஆணையர்களால் அங்கீகரிக்கப்படுவதில்லை.
7. அரசாணை எண்.353 நாள் 04.06.1999ல் IX வது பத்தியில் தெரிவித்தவாறு மூன்றாண்டுகளுக்கு ஒருமுறை வாடகை உயர்வினை வாடகை நிர்ணயக் குழுவின் மூலம் உயர்த்தப்படுவதில்லை.
8. வாடகை நிர்ணயக் குழுவால் நிர்ணயம் செய்யப்படும் வாடகையினை கணக்கீட்டுத்தாளுடன் வாடகைதாரர்களுக்கு அனுப்பி ஒப்புதல் பெறுவதில்லை.



16. The Government also noted that if guidelines are not followed, then the lease rent fixed by the committee is quashed either in appellate proceedings or by proceedings before the High Court wherein deficiency are pointed out. It was also noted that this only leads to the delay and loss to the lease rent for the temple and therefore, three strict guidelines were issued and it was also indicated that if they were not followed, stringent action would be initiated. Following this, further proceedings dated 2.2.2009 as per which, additional and clarificatory guidelines were issued and therefore, it is found that opportunity of raising objections is given to the lessee. The proceedings dated 2.2.2009 reads as follows:-

1. வாடகை நிர்ணயக் குழுவால் நிர்ணயம் செய்யப்படும் வாடகையினை கணக்கீட்டுத்தாளுடன் வாடகைதாரர்களுக்கு அனுப்புதல் வேண்டும்.
2. கணக்கீட்டுத்தாளில் நிர்ணயிக்கப்பட்டுள்ள வாடகை, இடத்தின் பரப்பளவு, கட்டடத்தின் பரப்பளவு, நிலமதிப்பு, குடியிருப்பு வணிகத்தன்மை, வாடகை சதவீதம், புதிய வாடகை ஆகியவை குறித்து ஆட்சேபணைகள் ஏதாமிருப்பின், அதனை மெய்ப்பிக்கும் ஆவணங்களுடன், ஒருவார காலத்திற்குள் மனுதாரர்கள் பதிவை அனுப்புதல் வேண்டுமென வாடகைதாரர்களுக்கு அறிவிப்பு அனுப்பப்படல் வேண்டும்.
3. மேலே குறிப்பிட்ட விசாரணைக்கு வாடகைதாரர்கள் நேரடியாக வரவேண்டுமென வலியுறுத்த தேவையில்லை. அவர்களிடமிருந்து பதிவைப் பெற்று பரிசீலித்தாலே போதுமானது.
4. மேற்குறிப்பிட்டபடி வாடகைதாரர்களிடமிருந்து பெறப்படும் பதில், வாடகை நிர்ணயக்குழுவால் பரிசீலிக்கப்பட வேண்டும்.
5. உரிய காலத்திற்குள் பதில் ஏதும் வரவில்லையெனில், இருக்கும் ஆவண்களின் அடிப்படையில், நியாய வாடகை நிர்ணயம் செய்திட பரிசீலிக்கப்பட வேண்டும்.
6. பரிசீலனையின் அடிப்படையில் உரிய விவரங்களை பதிவு செய்து, இறுதியான வாடகை நிர்ணய உத்தரவினை வாடகைதாரர்களுக்கு வழங்கி ஒப்புதல் பெற வேண்டும் மேற்காணும் அறிகுறையின் படி, வாடகைதாரர்களுக்கு, வாடகை உயர்வு குறித்து அறிவிப்பு அனுப்பி ஆட்சேபணைகள் பெற்று இறுதியாக வாடகை நிர்ணயம் செய்வதன் மூலம், வாடகைதாரர்கள் நீதிமன்றத்தை அணுகி வழக்குகள் தொடுப்பதை தவிர்க்கலாம் எனவும் தெரிவிக்கப்படுகிறது. இச்சுற்றறிக்கையினை பெற்றுக் கொண்டமைக்கான ஒப்புதலை இவ்வலுவலகத்திற்கு அனுப்ப அனைத்து சார்நிலை அலுவலர்களும் கேட்டுக் கொள்ளப்படுகிறார்கள்.



6. In the present case, the litigation started between the petitioner and the respondents only through Na.Ka.No.918/2019/A5 dated 21.08.2020. On perusing the contents of the proceedings, it is seen that the notice was not issued prior to fixation of the fair rent. The relevant portion is extracted hereunder:

பார்வையில் காணும் திருச்சிராப்பள்ளி இணை ஆணையர் உத்தரவின்படி, சர்வே எண்.3297, மலைவாசல் என்ற முகவரியில் 2793.80 சதுர அடி இடத்தில் கட்டிடம் (வணிகம்) என்ற வகைபாட்டில் இத்திருக்கோயிலின் வாடகைதாரராக இருந்து வரும் திரு.எம்.என்.கே.புத்மநாபன் ஆகிய தங்களுக்கு 1/07/2016 முதல் மேற்காணும் இடத்திற்கான மாத வாடகையாக ரூ.1,76,370/- நிர்ணயம் செய்து உத்தரவிடப்பட்டுள்ளது.

01/07/2016 அன்று புதியவாடகை நிர்ணயம் செய்யப்பட்டுள்ள நிலையில் 30/06/2019 உடன் மூன்றாண்டுகள் நிறைவடைந்து விட்டதால், 01/07/2016 முதல் நிர்ணயிக்கப்பட்ட புதிய வாடகையில் 15% உயர்வு செய்து மாத வாடகையாக ரூ.202825/- நிர்ணயம் செய்து உத்தரவிடப்படுகிறது.

01/07/2019 - ம் தேதி அன்று தாங்கள் செலுத்த வேண்டிய புதிய மாத வாடகைத் தொகை ரூ.202825/- .

01/07/2020க்கு முன்னர் உள்ள காலங்களுக்கு தாங்கள் செலுத்த வேண்டிய வாடகை தாங்கள் செலுத்தியுள்ள வாடகை, செலுத்தவேண்டிய நிலுவைத்தொகைகள், உள்ளிட்ட விபரங்கள் அடிங்கிய கணக்கீட்டுத்தாள் இத்துடன் இணைக்கப்பட்டுள்ளது.

திருக்கோயிலுக்குச் சொந்தமான மேற்காணும் இடத்தின் வாடகைதாரரான தாங்கள் பிரதி மாதம் 5ம் தேதிக்குள் வாடகை தொகையை தவறாது செலுத்திட வேண்டும் என உத்தரவிடப்படுகிறது.

7. On perusal of the notice, it is seen that the notice was not issued at all. Even though a strong objection was raised that the petitioner ought to prefer the revision petition under Section 34-A of the Act, this Court is inclined to



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entertain this Writ Petition, for the sole reason that the initiation of the proceedings is against the dictum laid down in Writ Appeal. Moreover, the enhanced rent is fixed without hearing the petitioner and the same is violative of principles of natural justice and hence the writ petition is maintainable. Therefore, the respondents cannot further proceed to collect the rent which is fixed retrospectively. The said initiation of proceedings was from 21.08.2020 and therefore, the petitioner is liable to pay rent from 21.08.2020. It is submitted that the petitioner has vacated the premises on 18.05.2022 and hence the petitioner is liable to pay the enhanced rent until 18.05.2022. As far as the rent prior to 21.08.2020 i.e. from 30.06.2016 to 20.08.2020, the petitioner is not liable to pay the enhanced rent, since it is claimed with retrospective effect. However, the petitioner is liable to pay the regular rent for this period. If the petitioner had not paid the regular rent the same may be collected. The respondents are directed to re-calculate the enhanced rent for the period from 21.08.2020 to 18.05.2022 and collect the same. The impugned orders dated 25.11.2022 and all other orders subsequent orders passed by the respondents in consequent to the impugned order 25.11.2022 are hereby quashed. The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.



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8. When the Hon'ble Courts have repeatedly held that fair rent cannot be fixed retrospectively, then the respondents ought not to have fixed the enhanced rent retrospectively in the petitioner's case as well. Even though the Hon'ble Courts had decided the cases among the parties who were before the Courts, the ratio decidendi is that enhanced fair rent cannot be fixed retrospectively, which means the ratio is applicable in rem. But the respondents have imposed enhanced fair rent retrospectively only from 21.08.2020. The petitioner had stated the litigation by filing revision petition before the Commissioner on 09.10.2020. But the issue is already decided in Angala Parameswari's case (reported in 2009 (6) CTC 512) in the year 2009 itself. Thereafter also the petitioner was driven from pillar to post. Infact the petitioner had submitted an application to reduce the rent by allowing him to occupy 760 square feet rather 2793.80 square feet. Had that been considered, the petitioner would not have suffered increased rent which runs to crores. It is pertinent to state herein that the respondents have not issued any notice to the petitioner before fixing the fair rent. And this is the fact in almost all cases. When several litigations were filed on the question of notice not issued to the lessees, this fact was taken into account by the Commissioner, HR&CE who has issued a Circular dated 10.03.2022, wherein it has been categorically recorded that no notices were



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issued to the lessees and strictly directed to issue notice before fixing the fair rent. The temple land belongs to “Lord Thayumana Samy”, but the authorities have acted which is affront to “Thayumana Samy”.

9. In view of the above, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr

To

1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
No.119, Nungampakkam High Road,
Chennai – 34.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Trichirapalli.



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