



W.P(MD)No.31345 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 29.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.31345 of 2023 and
WMP(MD) Nos.26900,26901 & 26902 of 2023

M. Kumarasamy Health and Educational Trust,
127, Main Road,
Thalavapalayam,
Punjaithotta Kurichi Village,
Pugalur Taluk,
Karur District.

Represented by its K.R.Charan Kumar

... Petitioner

Vs

- 1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam,
Chennai 600 034.
- 2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Thiruppur.
- 3.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Karur.
- 4.The Fit Person / Executive Officer,
Arulmigu Mariamman Thirukovil,
Thalavapalayam,



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Pugalur Taluk,
Karur District.

5.Arulmigu Mariamman Thirukoil,,
Rep by its Hereditary Trustee,
K.M. Magentra Balaji,
Thalavaipalayam,
Pugalur Taluk,
Karur District.

..Respondents

(R5 is impleaded Vide Court Order Dated.16.02.2024 in WMP(MD) No.1158 of 20214 by BPJ)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 3rd respondent in Na.Ka.no.701/2022/A2 dated 14.12.2023 and the impugned order dated 03.12.2021 passed by the 1st respondent in R.C.No. 53265/2018 and the impugned order dated 23.10.2018 passed by the 4th respondent, and quash the same and consequently forbearing the respondents from demanding any arrears of rent for the land in Survey no. 143/2 measuring to an extent of 6.33 acre Punjai Thottakurichi Village, Karur District from the petitioners.

For Petitioner	: Mr.Meenakshi Sundaram Senior Counsel
For R1 to R3	: Mr.P.Subba Raj Special Government Pleader
For R4	: Mr.Aathimoolapandian



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ORDER

The petitioner is an Educational Trust, namely, M. Kumarasamy Health and Educational Trust running an Educational Institution in Karur. The petitioner Trust was in possession of a land in S.No.143/2 at Thottakurichi Village, Karur to an extent of 6.33 acres, which belongs to Arulmighu Mariamman Thirukovil, Karur/the fourth respondent herein. The petitioner claims that this land has been leased out to the petitioner trust by the then hereditary trustees of the fourth respondent temple. The petitioner has challenged the following orders in this writ petition:-

- i. The proceedings of the Commissioner, HR & CE Department in RC No.53265/19, dated 23.10.2018, directing the petitioner to pay a sum of Rs.67,44,700/- towards arrears of rent till 30.09.2018 to the fourth respondent temple.
- ii. The appeal filed by the petitioner in RC 53265/2018 before the Commissioner, under Section 34(A)(3) of the HR & CE Act,1959 challenging the notice dated



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19.05.2018 issued by the fourth respondent, claiming the fair rent from the petitioner for the subject land was dismissed by the Commissioner on 03.12.2021 that the appeal is not accompanied with the deposit amount as required to be paid by the petitioner under Section 34(A) (3) of the HR & CE Act.

iii. The order of the Assistant Commissioner in Na.Ka.No. 701/2022/A2, dated 14.12.2023, for attaching the petitioner's property towards the arrears of rent as the petitioner has failed to pay the fair rent.

2. The learned senior counsel appearing for the petitioner submits that the subject land was leased out to the petitioner by the then trustees of the fourth respondent temple for a period of 99 years. The land was utilized by the Educational Institution run by the petitioner trust. Since the fourth respondent is claiming exorbitant rent, the petitioner trust has handed over the land to the fourth respondent temple on 28.02.2022. The respondents have fixed the fair rent for the land, for the period, for which, they are in



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occupation, without considering the procedure as contemplated under Section 34 of the HR & CE Act,1959 and the Government orders issued in this regard. The learned counsel has pointed out that the fourth respondent has demanded the fair rent by proceedings dated 23.10.2018. In the said proceedings, the fair rent has been fixed for the period from 01.12.2013 to 30.06.2016 – Rs.1,08,700/- per month and for the period 01.07.2016 to 30.06.2019 – 1,25,000/- per month. According to the petitioner, the rent has been fixed for the period from 01.12.2013 to 30.06.2019 in the year 2018, by deducting 15% of the fair rent, which was fixed for the year 2018, that too, without providing any opportunity to the petitioner.

3.The learned senior counsel has relied on the judgment of the Division Bench of the Principal Seat of this Court in ***Angala Parameswari and Kasivishwanathaswami Temple Vs. The State of Tamil Nadu, represented by its Secretary***, reported in **2009 (6) CTC 512** and submits that in the above judgment certain guidelines have been issued for fixation of fair rent. According to the learned senior counsel, the respondents while fixing the fair rent, they have not



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issued any notice to the petitioner enabling him to raise his objections, if any. The learned senior counsel has also relied on the following judgments to substantiate his contentions.

- i. Order passed by this Court in ***R.Jaganathan Vs. Commissioner, HR & CE Department***, reported in **2023 (1) CTC 737**.
- ii. Judgment of by this Court in W.A(MD) Nos. 503 and 509 of 2022, dated 08.08.2022.

The learned senior counsel further submits that the orders impugned in this writ petition are liable to be set aside on the ground of violation of principles of natural justice.

4.Mr.Aathimoolapandian, learned counsel appearing for the fourth respondent temple submits that the petitioner was in occupation of the temple land without any authorization and therefore, action was initiated as against this petitioner in the year 2013. Notice was issued under Section 78 of the HR & CE Act,1959 treating him as an encroacher. In the said proceedings, the petitioner has given an undertaking that he would pay the fair rent. On the



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undertaking given by the petitioner, the proceedings initiated as against the petitioner under Section 78 of the HR & Ce Act, 1959 was dropped at the relevant point of time with a direction to the authorities to fix the fair rent. However, the concerned officer, who was in charge at that relevant point of time has not taken any initiative for fixing the fair rent. Subsequently, the fair rent has been fixed by the Committee constituted in the year 2018, after taking into account all the required parameters including the prevailing market rent and the same was communicated to the petitioner. Since there was an omission in fixing the fair rent by the Committee for the period from 2013 to 2016, it was also fixed by deducting 15% of the fair rent from the rent which has been fixed for the year 2018. The learned counsel has relied on the judgment passed in W.A.No. 425 of 2007, in K.Narayanan Vs.Joint Commissioner, HR & CE Department, dated 15.03.2007 and submits that the fourth respondent is entitled to claim arrears of rent from the petitioner and the same has been upheld by the Division Bench of this Court in *Angala Parameswari and Kasivishwanathaswami Temple Vs. The State of Tamil Nadu, represented by its Secretary*, reported in 2009



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(6) CTC 512. The learned counsel further submits that the order of the year 2018 is challenged in the year 2023 and therefore, this writ petition is liable to be dismissed on the ground of laches.

5.This Court considered the rival submissions made and also perused the materials placed on record.

6.Admittedly, the petitioner was in possession of the fourth respondent temple land to an extent of 6.33 acres in S.No. 143/2. The petitioner claims that the subject land was entrusted to this petitioner by a lease deed by the then trustees of the temple. However, this petitioner was treated as an encroacher and a proceedings was initiated as against him under Section 78 of the HR & CE Act. In the said proceedings, the petitioner has given an undertaking letter before the Joint Commissioner that he is ready to pay the fair rent as fixed by the Department. Accordingly the petition was disposed of and a direction was issued to the fourth by the Joint Commissioner to fix the fair rent for the property in possession of this petitioner. However, the fair rent was not fixed as directed by



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the Joint Commissioner at that relevant point of time and it was only fixed in the year 2018. The learned counsel for the fourth respondent temple has produced a proceedings, dated 03.04.2018, in which, the fair rent was fixed. The Committee has taken into account certain parameters as contemplated under Section 34A of the HR & CE Act and has fixed the fair rent. The fourth respondent temple claims that this order has been communicated to the petitioner. However, the learned senior counsel for the petitioner has denied that this has not been communicated to this petitioner. By the said order, dated 03.04.2018, the fair rent for the period from 01.07.2016 to 30.06.2019 was fixed as Rs.1,25,000/- per month. By the communication, dated 25.10.2018, the fourth respondent has demanded the fair rent from the year 2013 at the rate of Rs.1,08,700/- per month by deducting 15% from the fair rent, which was fixed for the year 2018. The temple authorities have to fix the fair rent as per Section 34(A) of the HR & CE Act, 1959 and the same is extracted as under:-

34-A. Fixation of lease rent.—The lease rent payable for the lease of immovable property belonging to, or given or



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endowed for the purpose of, any religious institution, shall be fixed by a Committee consisting of the Joint Commissioner, the Executive Officer or the Trustee or the Chairman of the Board of Trustees, as the case may be, of the religious institution and the District Registrar of the Registration Department in the district concerned taking into account the prevailing market rental value and the guidelines, as may be prescribed and such lease rent shall be refixed in the like manner once in three years by the said Committee.

7. In this regard, several guidelines have been issued by the Government. By discussing the guidelines and the issues, the Division Bench of this Court in *Angala Parameswari and Kasivishwanathaswami Temple Vs. The State of Tamil Nadu, represented by its Secretary*, reported in **2009 (6) CTC 512** has held 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



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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 34ஏ-ன் கீழான வாடகை நிர்ணயக் குழுவால் நியாய வாடகை நிர்ணயம் செய்யப்படவேண்டல்லை.
2. சில இனங்களில் செயல் அலுவலர் / அறங்காவலர், உதவி கோட்டப் பொறியாளர் ஆகியோர்களால் மட்டுமே வாடகை நிர்ணயித்து அறிக்கை அனுப்பப்படுகிறது.
3. பல இனங்களில், மாவட்டப் 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



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தெரிவிக்கப்பட்டவாறு வீடுகள் காலிமனைகள்/ கடைகள்

/குத்தகை/ வாடகையினை ☐வாடகை நிர்ணயக்குழு ☐ மூலம்
நிர்ணயம் செய்யப்பட்டு அறங்காவலர் குழுவின் பரிசீலனையுடன்
அந்தந்த இணை ஆணையர்களால் அங்கீகரிக்கப்படுவதில்லை.

7. அரசாணை எண்.353 நாள் 04.06.1999 IX-வது பத்தியில்
தெரிவித்தவாறு மூன்றாண்டுகளுக்கு ஒருமுறை வாடகை
உயர்வினை ☐வாடகை நிர்ணயக் குழு ☐வின் மூலம்
உயர்த்தப்படுவதில்லை.

8. வாடகை நிர்ணயக் குழுவால் நிர்ணயம் செய்யப்படும்
வாடகையினை கணக்கீட்டுத் தாளுடன் வாடகைதாரர்களுக்கு
அனுப்பி ஒப்புதல் பெறுவதில்லை ☐.

16.The Government also noted that of 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 02.02.2009 as per which, additional and clarificatory guidelines were issued and therefore, it is found that opportunity



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of raising objections is given to the lessee. The proceedings, dated 02.02.2009 reads as follows:-

1. வாடகை நிர்ணயக் குழுவால் நிர்ணயம் செய்யப்படும் வாடகையினை கணக்கீட்டுத் தாளுடன் வாடகைதாரர்களுக்கு அனுப்புதல் வேண்டும்.
2. கணக்கீட்டுத்தாளில் நிர்ணயிக்கப்பட்டுள்ள வாடகை, இடத்தின் பரப்பளவு, கட்டடத்தின் பரப்பளவு, நிலமதிப்பு, குடியிருப்பு / வணிகத்தன்மை, வாடகை சதவீதம், புதிய வாடகை ஆகியவை குறித்து ஆட்சேபணைகள் எதுமிருப்பின், அதனை மெய்ப்பிக்கும் ஆவணங்களுடன், ஒருவார காலத்திற்குள் மனுதாரர்கள் பதிலை அனுப்புதல் வேண்டுமென வாடகைதாரர்களுக்கு அறிவிப்பு அனுப்பப்படல் வேண்டும்.
3. மேலே குறிப்பிட்ட விசாரணைக்கு வாடகைதாரர்கள் நேரடியாக வரவேண்டுமென வலியுறுத்த தேவையில்லை. அவர்களிடமிருந்து பதிலைப் பெற்று பரிசீலித்தாலே போதுமானது.
4. மேற்குறிப்பிட்டபடி வாடகைதாரர்களிடமிருந்து பெறப்படும் பதில், வாடகை நிர்ணயக்குழுவால் பரிசீலிக்கப்பட வேண்டும்.
5. உரிய காலத்திற்குள் பதில் ஏதும் வரவில்லையெனில், இருக்கும் ஆவணங்களின் அடிப்படையில், நியாய வாடகை நிர்ணயம் செய்திட பரிசீலிக்கப்படவேண்டும்.
6. பரிசீலனையின் அடிப்படையில் உரிய விவரங்களை பதிவு செய்து, இறுதியான வாடகை நிர்ணய உத்தரவினை வாடகைதாரர்களுக்கு வழங்கி ஒப்புதல் பெற வேண்டும். மேற்காணும் அறிவுரைகளின்படி, வாடகைதாரர்களுக்கு, வாடகை உயர்வு குறித்து அறிவிப்பு அனுப்பி



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ஆட்சேபனைகள் 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.□

17. It was clarified that it is not necessary for the lessees to appear in person and that it is sufficient for them to submit their written objections to the temple authorities, who will take note of the objection before fixing the final rent and then it will go before the committee which will pass the order as per sub section 2 of Section 34 A of the Act for fixing the lease rent and intimate the same to the lessee. Therefore, the committee consisting of the Joint Commissioner and the Executive Officer or trustees or Chairman of the Board of Trustees as the case may have to take note of the prevailing market value and the guidelines and then they will fix the lease rent or re-fix the lease rent as the case may be once in three years. The explanation to sub Section 1 of Section 34 A of the Act also makes it clear that what is meant by 'prevailing market value'. The Executive Officer thereafter shall fix the lease rent. He is given the discretionary power to take note of what



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the Committee had recommended and then he shall fix the lease rent and intimate the same to the lessee. By virtue of the circular extracted above, the evidence submitted by the lessee will form part of the material for determining the lease rent. Therefore, we are of the opinion that lessees have been given sufficient opportunity to place before the committee the materials regarding fair rental value and it is only thereafter, that the lease rent would be fixed. Therefore, the complaint that principle of natural justice is violated, has been answered by the proceedings dated 2.2.2009. The direction contained therein shall be compulsorily followed.

8. In the same judgment, the Division Bench of this Court has also discussed with regard to the dismissal of the appeal by the Commissioner under Section 34(A) of the HR & CE Act that appeal is a creature of statute and the authorities are entitled to laid down the conditions subject to which, the appeal will be entertained. Admittedly, the petitioner has not paid the amount as required under Section 34(A) (5) of the HR & CE Act, 1959, while preferring the appeal. The right of the temple in claiming the rent retrospectively



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was already discussed by the division Bench of this Court in W.A.No.425 of 2007, K.Narayanan Vs.The Joint Commissioner and another, dated 15.03.2007 and the same is extracted as under:-

2.We tried to find out the nexus of fixing the date such as 01.11.2001 for payment of enhanced rent. It was brought to the notice of the learned single Judge that vide G.O.Ms.No.353, dated 04.06.1999, the State Government issued revised guidelines for enhancement of rent at the rate of 33.31 once in three years. While so, the Government issued another order dated 08.08.2001 addressing the Special Commissioner and the Commissioner, HR & CE referring the earlier G.O.Ms.No.353, dated 04.06.1999 and two other letters of the Government and directed the Commissioner to implement the said decision, dated 04.06.1999 with effect from 01.11.2001. The authority should have implemented the order way back in the year 1999 but it was implemented from the subsequent date that is with effect from 01.11.2001. In view of the aforesaid fact and that the property belongs to Devasthanam (temple), this Court is not inclined to interfere with the order passed by the learned single Judge. The Writ appeal is dismissed. No costs."



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9. In view of the above, this writ petition is disposed of with the following directions:

- i. The Committee, which was constituted under Section 34(A) of the HR & CE Act, 1959 shall revisit the fixation of fair rent on the subject property from the year 2013, by taking into consideration the market rent prevailing at that relevant point of time along with the calculation from the year 2013 till the date of hand over of the property by the petitioner to the fourth respondent temple, within a period of twelve weeks from the date of receipt of a copy of this order.
- ii. The fourth respondent shall communicate the rent fixed by the Department along with the calculation to this petitioner enabling him to offer his reply, if any, and thereafter finalise the fair rent.
- iii. The petitioner shall file his reply within a period of four weeks



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from the date of receipt of such information from the fourth respondent.

iv. On finalization of the fair rent, it shall be communicated to this petitioner and the petitioner shall pay the arrears of rent in six equal monthly installments.

v. The petitioner shall pay a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) within a period of eight weeks from the date of receipt of a copy of this order. The amount to be paid by the petitioner shall be adjusted from the fair rent to be fixed by the respondents.

vi. In the event of failure in making the aforesaid payment, the respondents shall proceed with the recovery proceedings.

No costs. Consequently, connected Miscellaneous petitions are closed.



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NCC: Yes/No
Index: Yes/No
Internet: Yes
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1. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam,
Chennai 600 034.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Thiruppur.
3. The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Karur.
4. The Fit Person / Executive Officer,
Arulmigu Mariamman Thirukovil,
Thalavapalayam,
Pugalur Taluk,
Karur District.



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B.PUGALENDHI, J.

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Order made in
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