



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.08.2015

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.(MD)No.8285 of 2013 and
MP(MD) NO.1/2013

M.Gurusamy Nadar

... Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable
Endowment Department,
The Administration Department,
Chennai - 34.

2.The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Madurai.

3.The Deputy Commissioner/Executive Officer,
Arulmigu Kal Alagar Tirukovil,
Azhagar Kovil, Madurai District.

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records from the 3rd respondent pursuant to his proceedings in Na.Ka.No.1059/09/B1 dated 06.02.2013 and quash the same and consequently direct the respondents to fix the lease rent to the petitioner's lease property in Door No. 46 North Perumal Maistry Street Madurai under Section 34(A) of the Tamil Nadu Hindu Religious and Charitable Endowment Act 1959 in accordance with law and pass such further or other orders.

For Petitioner .. Mr.J.John
For RR - 1 & 2 .. Mr.R.Velmurugan
Government Advocate
For R - 3 .. Mr.S.Manohar

ORDER

This writ petition has been filed praying to call for records from the third respondent, pursuant to his proceedings in Na.Ka.No.1059/09/B1 dated 06.02.2013 and quash the same and consequently direct the respondents to fix lease rent to the petitioner's lease property in Door No. 46, North Perumal Maistry Street, Madurai under Section 34(A) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 in accordance with law.

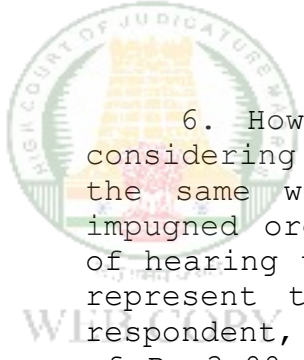


2. The case of the petitioner is that the petitioner has taken the third respondent's temple property in the year 1990 on lease, which is situated in Door No.46, North Perumal Maistry Street, Madurai - 1. The original lease period was three years and monthly rent was fixed as Rs.1,500/-. The petitioner is running a old gunny bag business in the said leased property. After expiry of three years lease period, lease period was subsequently extended for another period of three years. The monthly lease amount was enhanced from Rs.1,500/- to 1875/- for the year 1994. The petitioner has paid Rs.2,622/- per moth for the year 1995, then he paid Rs.2,268/- for the year 1996. The petitioner has paid the enhanced rent amount to the third respondent without any default. From the year 1990, the petitioner has been paying the property tax to the leased property till today. In the year 1998, the third respondent has fixed enhanced rent to the tune of Rs.12,000/- per month and the petitioner has raised written objections for the enhanced rent. The third respondent has considered the same and refixed monthly rent of Rs.6,000/- with effect from 01.07.1997 to 2001. On 02.12.2013, the third respondent has issued demand notice for the period from 01.07.2002 to 30.06.2003, claiming arrears of rent of Rs.78,324/-. Thereafter, on 24.08.2004, the third respondent has refixed fair rent to the tune of Rs.8,000/- per month. Aggrieved over the same, the petitioner has filed his objection in the year 2005, and the same was considered, and now the petitioner has been paying monthly rent of Rs.6,000/- without any default. On 06.02.2013, the third respondent has again issued a demand notice directing the petitioner to pay a sum of Rs.32,12,987/-, within seven days from the receipt of the said demand notice. Against which, the petitioner has filed an Appeal before the first respondent under Section 34(A) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 and the same was returned on 01.04.2013 for want of pre-deposit of Rs.32,12,987/-. The said arrears of rent arrived at by the third respondent is not proper and hence the present writ petition has been filed to quash the same.

3. The main grievance of the learned counsel appearing for the petitioner is that without giving an opportunity of hearing to the petitioner, the third respondent has unilaterally fixed fair rent to the tune of Rs.18,029/- and claimed arrears of rent of Rs.32,12,987. Since the said rent was fixed by the third respondent without giving an opportunity of hearing to the petitioner, the same is liable to be quashed.

4. The learned counsel appearing for the petitioner has also placed reliance upon the Judgment rendered by the Division Bench of this Court in WA No.8 of 2008 [Arulmigu Angala Parameswari and Kasivishwanathaswami temple Vs. Secretary to Government, State of Tamilnadu, HR & CE Dept., and 3 others], wherein, an opportunity of hearing was given to the petitioner, before fixing rent.

5. The third respondent has filed a detailed counter, wherein it has been clearly stated that on 04.12.2009, the petitioner requested the respondent to receive the rent to the tune of Rs.6000/- and the same was rejected and the petitioner was asked to pay rental arrears of Rs.22,76,045/- till November 2009, failing which, eviction proceedings will be initiated.



6. However, considering the factual aspects of the case and also considering the fact that the petitioner has already filed an Appeal and the same was returned, I am of the opinion that before passing the impugned order, the third respondent ought to have given an opportunity of hearing to the petitioner. Hence, this Court directs the petitioner to represent the Appeal which was already filed by him before the first respondent, challenging the order dated 06.02.2013, by depositing a sum of Rs.3,00,000/- within a period of four weeks from the date of receipt of a copy of this order. On representing such Appeal, the first respondent is directed to afford an opportunity of hearing to the petitioner and pass appropriate orders on merits and in accordance with law within a period of four weeks thereafter. The Registry is directed to return the original impugned order after getting endorsement from the learned counsel for the petitioner and taking photocopy of the same.

7. With the above direction, the writ petition is disposed of. No costs. Connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The Commissioner,
Hindu Religious and Charitable
Endowment Department,
The Administration Department, Chennai - 34.

2.The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department, Madurai.

3.The Deputy Commissioner/Executive Officer,
Arulmigu Kal Alagar Tirukovil,
Azhar Kovil, Madurai District.

Copy to: The Section Officer,
English Records,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.J.John, Advocate SR.No.49609

+1cc to Mr.S.Manohar, Advocate SR.No.49861

+1cc to The Special Government Pleader, Madurai. SR.No.49545

W.P. (MD) No.8285 of 2013
27.08.2015

mj

NS/AN-MP/11.09.2015 : 3P/8C