

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.10976 of 2016

and WMP.Nos.9567 & 9568 of 2016

Balakrishnan

... Petitioner

Vs

The Joint Commissioner
Hindu Religious & Charitable Endowment Department District
Mayiladuthurai
Nagapattinam District.

2.The Exeuctive Officer
A/m.Markasahaya Swamy Thirukoil
Moovaloor, Mayiladuthurai,
Nagapattinam District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus to call for the records of 2nd respondent in his proceedings No.Nil dated 06.01.2016 and his consequential order dated 01.03.2016 and quash the same and further direct the respondents to fix fair rent for site in occupation of petitioner in accordance with law.

For Petitioner : Mr.S.Sounthar

For Respondent : Mrs.Rita Chandrasekar,
Spl.GP (HR&CE) for R1.

सतयमेव जयते
O R D E R

With the consent of both sides, the Writ Petition is taken up for final disposal.

2.The petitioner has come up with the present writ petition for issuance of writ of certiorarified mandamus to call for the records of 2nd respondent in his proceedings No.Nil dated 06.01.2016 and his consequential order dated 01.03.2016 and to quash the same and further direct the respondents to fix fair rent for site in occupation of petitioner in accordance with law.

3.The petitioner is in lease of site with an extent of 3528sq.ft of land belongs to second respondent situated in

Survey Number ½ in Railway Cross Road, Mayiladuthurai. The lease deed was executed on 31.01.1996 and the contractual rent fixed for the site is Rs.200/- per month and the petitioner is paying the rent regularly till date.

4.While so, the second respondent sent a communication dated 11.01.2011 unilaterally determining the fair rent as Rs.1700/- p.m. for the said property and directed to pay the fair rent so determined and demanded alleged arrears of Rs.1,87,000/-. In the said communication, it is stated that on failure to make the payment of arrears within one week, the petitioner will be treated as encroacher and proceeding will be initiated under Section 78 and 79 of the HR&CE Act.

5.Challenging the said order, the petitioner filed WP.No.10682 of 2011, on the ground that no notice of opportunity was given to the petitioner before fixing fair rent. This Court by an order dated 26.04.2011, directed the second respondent herein/third respondent therein to treat the communication impugned in the said writ petition as show cause notice and permitted the petitioner to file his objections regarding proposed increase in fair rent within fifteen days and further directed the third respondent therein to pass appropriate orders within eight weeks based on the report of the Committee.

6.Accordingly, the petitioner submitted his objection against the proposed fair rent vide letter dated 09.05.2011, the same was received by the second respondent on 11.05.2011. In the said objection, the petitioner raised the question of jurisdiction of the second respondent to fix fair rent without fixation of the same by fair rent committee and failure to take into consideration, the prevailing market rent in the locality as contemplated under Section 34-A of HR&CE Act. Though, the second respondent received the objections he has not conducted any proper enquiry regarding the points raised by the petitioner and no order has been passed in fixing the fair rent based on the report of the committee.

7.While so, all of a sudden, the petitioner received the impugned communication from the second respondent dated 06.01.2016, wherein it is stated that sum of Rs.4,67,451/- is due from the petitioner towards arrears of rent from 2001 and directed to pay the same within 15days and on failure to do so, the lease in favour of the petitioner will be terminated and evicted from the lease hold land. When the petitioner approached the second respondent in person, the second respondent informed orally that the arrears payable is only

Rs.2,90,262/-. Thereafter, the second respondent issued a consequential impugned order dated 01.03.2016 terminating the lease and directing the petitioner to hand over the leasehold land within 30days, the said order was communicated to the petitioner on 09.03.2016. Hence, the petitioner filed the present writ petition to quash the impugned orders passed by the second respondent.

8.Today, when the matter is taken up for consideration, the learned counsel appearing for the petitioner submitted that this Court while disposing of the earlier writ petition in WP.No.10682 of 2011, gave a specific direction to the second respondent herein/third respondent therein to treat the impugned order as show cause notice and direct the petitioner to file the objection to the proposed increase of rent within fifteen days from the date of receipt of a copy of this order, after receipt of the said objection, the third respondent therein shall pass appropriate orders within eight weeks, based on the report of the Committee.

9.Further, the learned counsel for the petitioner contended that the objections raised by the petitioner was not duly considered and the report of the committee was also not taken into consideration. The impugned orders passed by the second respondent is a non-speaking order. The second respondent ought to have dealt with the objections filed by the petitioner and ought to have considered the committee report before passing the impugned orders.

10.I have considered the rival submissions made on both sides and perused the documents placed before this Court.

11.Considering the grievance of the petitioner that the objection raised by him and the report of the committee was not properly considered by the second respondent before passing the impugned order, I am of the opinion in the interest of justice, by setting aside the impugned order passed by the second respondent the matter could be remitted back for fresh consideration. Hence, the impugned order is set aside and the matter is remitted back to the second respondent for fresh consideration. The second respondent is directed to pass a fresh order, by considering the objection raised by the petitioner and the report of the committee, on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order, after affording opportunity of personal hearing to the petitioner.

12.The writ petition is disposed of accordingly.
Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(AS)

//True Copy//

Sub Assistant Registrar

To

1.The Joint Commissioner,
Hindu Religious & Charitable Endowment Department District,
Mayiladuthurai,
Nagapattinam District.

2.The Executive Officer,
A/m.Markasahaya Swamy Thirukoil,
Moovaloor, Mayiladuthurai,
Nagapattinam District.

+1cc to Mr.S.Sounthar, Advocate, S.R.No.18949

W.P.No.10976 of 2016

vgi (CO)
srg (07/04/2016)

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