

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.11.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.1647 of 2011
and
M.P.No.1 of 2011**

Ramamurthy

.. Petitioner

Vs.

1.The Commissioner H.R.&C.E. Department,
Chennai.

2.The Joint Commissioner H.R.&C.E. Department,
Vellore.

3.The Executive Officer,
Arulmigu Padalathri Narashimma Perumal Temple,
Singaperumal Koil,
Kancheepuram District.

..Respondents

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the order of the Commissioner, H.R.&C.E. Department, Chennai in A.P.No.53 of 2009 D2, dated 01.06.2010, received on 12.06.2010 by confirming the order of Joint Commissioner, H.R.&C.E., Vellore made in ROC.Mu.Mu.No.2050/2008/E1 dated 24.03.2008.

For Petitioner : Mr.M.Muthappan

For Respondents : Mr.A.K.Sriram
for M/s.A.S.Kailasam & Associates (for R3)

No Appearance (for R1 and R2)

ORDER

The case of the revision petitioner is that he was a successful bidder of the vacant land belongs to the 3rd respondent herein comprised in S.No.58 measuring an extent of 4 acres at Singamperumal Kovil, which is under the control of the 3rd respondent herein for running Creaser Unit. The lease deed was entered into between the revision petitioner and the 3rd respondent herein on 24.07.1992 and the lease period was for 3 years from 01.07.1992 to 30.06.1995. The monthly rent was fixed at Rs.775/- and the revision petitioner paid advance rental amount of Rs.3,000/-. When the 3rd respondent herein taken steps to evict the revision petitioner from the vacant land leased to him, he filed a suit for permanent injunction against the respondent herein and the same was dismissed. As against the same, the revision petitioner filed appeal in A.S.No.4 of 2004 before the learned Additional Sub-Court, Chengalpattu and the same was also dismissed on 20.01.2005.

2.During the pendency of the above said civil proceedings, the

revision petitioner has paid a sum of Rs.1,000/- as monthly rent and thereafter paid Rs.1,500/- per month as per the oral instructions of the respondent herein.

3.The further case of the revision petitioner is that he was allowed to continue as Lessee with the above said enhanced rent. While so to the shock and surprise of the revision petitioner, the 2nd respondent herein namely the Joint Commissioner of H.R. and C.E., Vellore by his order dated 24.03.2008 has fixed the fair rent at the rate of Rs.20/- per sq. feet from the year 2001 which comes to Rs.10,500/- per month and directed the Joint Commissioner, H.R. and C.E. Department to pay a sum of Rs.11,82,270/- towards arrears of rent, advance amount and Donation. Aggrieved over the above said order, the revision petitioner filed appeal in A.S.No.53 of 2009 before the 1st respondent herein on the ground that before passing the impugned order no opportunity was given to the revision petitioner. Further, the enhancement of monthly rent cannot be fixed retrospectively that to without any notice.

4.The appeal filed by the revision petitioner was dismissed by order dated 01.06.2010. As against the same the revision petitioner

filed revision before the Secretary to Government, Tamil Development Charitable Endowment and Information Department, Chennai and the same was rejected by order dated 28.12.2010 on the ground that the revision before the Secretary is not maintainable and as per section 34(A)(5) of Hindu Religious and Charitable Endowment Act, as against the order of Commissioner H.R. and C.E., revision is maintainable only before the High Court. Therefore the revision petitioner has filed the present Civil Revision Petition and challenged the order of the respondents 1 and 2 herein dated 01.06.2010 and 24.03.2008 respectively.

5.I have heard Mr.M.Muthappan, learned counsel appearing for the petitioner and Mr.A.K.Sriram, learned counsel appearing for the 3rd respondent. No representation on behalf of the respondents 1 and 2.

6.According to the revision petitioner, he was a lessee under the 3rd respondent herein for the vacant land belongs to the H.R. and C.E. The monthly rent was fixed at the rate of Rs.775/- at the time of lease and the petitioner herein regularly paid the monthly rent. While so, the 2nd respondent herein enhanced the monthly rent at the rate of Rs.10,500/- without any notice to the petitioner herein. The Joint

Commissioner of H.R. and C.E. has no right to enhance the rent retrospectively from the year 2001. Further, the land Leased to the revision petitioner is a vacant land and in which he is running a crusher unit. That apart, the respondents herein cannot demand the enhanced rent from the year 2001 as per G.O.Ms.No.456 dated 09.11.2007, since the Minister for H.R. and C.E. in the floor of Assembly announced that the demand of fair rent would be only from the year 2007 and not from the year 2001. But the respondents have not considered the same and without applying their mind had mechanically passed the impugned order.

7.The revision petitioner further contented that there is no provision under the H.R. and C.E. Act or any other law to collect donation from the Lessee. In this case the 2nd respondent herein has demanded a sum of Rs.1,57,500/- towards donation from the revision petitioner and the same is highly arbitrary and illegal. The further attack on impugned order by the revision petitioner is that no opportunity was given to him before passing the original impugned order and thereby the respondent have violated the principles of natural justice.

8.Per contra, the respondents herein contented that the monthly rent was enhanced at the rate of Rs.10,500/- to the land Leased to the revision petitioner is as per Government Order made in G.O.Ms.No.456 dated 09.11.2007 and there is no irregularities in fixing the fair rent. Apart from that the enhanced rent was claimed retrospectively from the year 2001 also as per the government order referred above. Further, the petitioner herein was given the Lease of vacant site measuring vast extent of 4 acre in Singaperumal Kovil which is located in a prime area and therefore the fair rent fixed only in accordance with the Government order. Hence the impugned order of the authorities not warranted interference by this Court.

9.A bare reading of the original impugned order of the 2nd respondent herein dated 24.03.2008 disclosed that no prior notice was given to the revision petitioner before fixing / enhancing the rent to the vacant land Leased to the revision petitioner. Therefore it is made clear that no opportunity was given to the revision petitioner and he was not being heard before passing the original impugned order of the 2nd respondent herein. Hence on the sole ground of violation of principles of natural justice this Civil Revision Petition can be allowed.

10. Article 14 of the Constitution of India enshrined that no order affecting the life of the person shall be passed without hearing the person going to be affected. This was considered by this Court and the Hon'ble Apex Court in various cases.

11. In a Judgment reported in **2014 3 MLJ 315 (T. Rajasekar and Another v. The Commissioner, Hindu Religious and Others)** wherein in paragraph 12 it is held as follows:

“12. A careful perusal of the order passed by this Court in W.P.No.1193 of 2012 would also show that the enquiry was not dispensed with. It only directed the third respondent to consider the explanation and pass appropriate orders on merits and in accordance with law. It goes without saying that the law requires conducting of an enquiry to prove the charges. Admittedly, in this case, no enquiry was conducted. The impugned order came to be passed based on the charges and the explanation. Hence, I am of the view that the impugned orders were not passed in accordance with law as the principles of natural justice was not followed in its full application. Accordingly, the same is liable to be set aside for remitting the matter back

to the third respondent. Since this Court is setting aside the impugned order only on the ground of not conducting the enquiry, no other view is expressed on the merits and contentions of the rival parties in respect of the charges leveled against the petitioner as well as the explanation submitted by him”.

12. In view of the above discussion and in the light of the Judgment of the Hon'ble Apex Court, the impugned orders are liable to be set aside for remitting the matter back to the second respondent. Since this Court is setting aside the impugned orders only on the sole ground of violation of principles of natural justice, no other view is expressed on the merits of the case and the same is left open to the petitioner herein to agitate the same before the authorities.

13. In the result:

(a) this Civil Revision Petition is allowed by setting aside the order of the Joint Commissioner, H.R. and C.E. Department, Vellore, in ROC.Mu.Mu.2050/2008/E1/dated 24.03.2008 and appeal order of the Commissioner, HR and CE Department, in AP 53/09D2, dated 01.06.2010 and the matter is remanded back to the second

respondent to pass fresh order by giving opportunity of hearing to the petitioner;

(b) the said exercise shall be done within a period of three months from the date of receipt of a copy of this order. No cost. Consequently, connected miscellaneous petition is closed.

25.11.2016

Note: Issue order copy on 03.07.2017

Internet: Yes

Index: Yes

vs

To

1. The Commissioner H.R.&C.E. Department,
Chennai.
2. The Joint Commissioner H.R.&C.E. Department,
Vellore.

M.V.MURALIDARAN, J.

VS

**Pre-Delivery order made in
CRP(NPD)No.1647 of 2011
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