

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :14.12.2016

Pronounced on : 19.12.2016

CORAM

The Hon'ble Mr.Justice **M.V.MURALIDARAN**

**CRP (PD) No.4651 of 2011
and
M.P.Nos.2 and 3 of 2014**

1.R.B.Chandran
2.Mrs.Kaveri Subramanian
3.R.Balachandran
4.N.A.Nagannathan (died)
5.C.R.Srinivasa Bharadwaj
6.Hemalatha Naganathan
7.Bharathraj

(Amended the petitioner 6 and 7 brought on record
as LR's of the deceased 4th petitioner vide order of
Court dated 01.09.2014 made in M.P.No.1 to 3 in
CRP.No.4651 of 2011)

.. Appellants/Petitioners

Versus

1.The Joint Commissioner,
H.R & C.E Administration Department,
Nunkambakkam High Road,
Chennai - 600 034.

2.The Assistant Commissioner,
H.R & C.E Administration Department,
Nunkambakkam High Road,
Chennai - 600 034.

3.The Managing Trustee,
Arulmigu Vedantha Desikar Temple,
Mylapore,

Chennai - 600 004.

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying against the order dated 03.05.2011 made ready on 19.07.2011 by the Commissioner HR & CE Administration Department, Chennai, in R.C.No.46013 of 2010 D2.

For Petitioner	...M/s.T.Susindran
For Respondent	...Special Government Pleader (CS) for R1 and R2 Mr.R.Parthasarathy for R3

ORDER

The instant Revision Petition has been filed against the order dated 03.05.2011 made ready on 19.07.2011 by the Commissioner HR & CE Administration Department, Chennai, in R.C.No.46013 of 2010 D2.

2. The learned counsel for the petitioner submits that the petitioner is the lessee of the schedule mentioned land and in occupation since 1932, leased out by his father. Thereafter the vacant land was developed and a building was constructed to an extent of 2068 sq.ft. Since, the date of construction, all the statutory liabilities are being paid regularly. During 1982, the leasehold right expired and a communication was sent on behalf of the petitioner to the respondents 1 and 2 with a request to extend the lease period with a minimum increase in the lease amount, which the petitioner can afford

to pay or to value the leasehold property and execute the sale deed in thier or their nominees favour for a reasonable amount.

3. The learned counsel for the petitioner submits that for the reasons best known to the respondents 1 and 2, as a handpicked cases, the sale deed was executed for a lesser price than the guideline value ignoring the various request made by the petitioner orally as well as by writing, to consider the petitioner's request also to extend the leasehold right with an option to improve the property or to sell the same, for a reasonable guideline value.

4. The learned counsel for the respondent would submit that the respondents were postponing the things for unknown reasons and during the period also the petitioner had agreed to pay interest for the agreed rate for the leasehold right to purchase the same. The respondent agreed and negotiations were going on without any concrete solution. Thereafter, the petitioner came to know that the respondents have executed sale deeds in favour of few leasehold right holders in a discriminatory fashion went to this Court by way of Writ Petition for a Mandamus directing the respondent to execute the sale deed. This Court vide order dated 05.11.1989 directed the

Commissioner (HR&CE) to pass order under Section 34 of the Act within eight weeks from the date of receipt of a copy of the said order. The first respondent failed to accord sanction as per the petitioner's request for the sale of the land. When the respondent have not taken any action for execution of sale deed, this petitioner has filed another Writ petitions and in that a counter was filed saying that right of the petitioner are governed by the lease deed.

5. The common order was passed by this Court in W.P.Nos.5365 of 1991, 20916 to 20920 of 1992, 2890 of 1993, wherein, the following observations was made by this Court which reads as follows:

"A reference was made to the exemption granted in respect of temple properties from the Madras City Tenants Protection Act and that would indicate that the properties owned by the temple could be sold only after the sanction and after the procedure prescribed under Section 34 of the Act is followed", and finally the writ petition was dismissed. Thereafter a notice was issued by the respondent calling upon the petitioners for a meeting."

6. The petitioner submits that even after the disposal of the above writ petitions, the lease amount is being paid regularly till date

without any default. The petitioner submits that as things stood thus, the petitioner received the impugned orders dated 20.12.2006 and 05.01.2007 which were sent by the 2nd respondent demanding the petitioner to pay a sum of Rs.5,040/- per month as rent and to pay the difference of the rental amount from 01.11.2001 with retrospective effect stating that the petitioner is occupying the land belonging to the 2nd respondent herein.

7. The petitioner submits that the impugned order of the 2nd respondent herein issued, demanding a sum of Rs.5,040/- per month towards rent retrospectively with effect from 01.11.2001 purportedly, is in exercise of the powers conferred under section 34A of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The petitioner submits that as the prolonged dispute has been going on since 1992, the petitioners have even asked the second respondent to dissolve the dispute by having an Arbitrator as per the provisions of the Arbitrations Act and also as per the lease agreement entered earlier by his father. But the respondents are avoiding to resolve the dispute and have not been considering the fact that the petitioners are there for more than seven decades and have put up construction, which has got a sentimental value on it. The petitioner submits that in

this notice dated 05.01.2007, enclosing the G.O., the clause 4 of which specifically states that 0.20% of the market value has to be collected on the vacant land which has been occupied by the lessee on lease. The petitioner submits that when the above percentage is collected, it can be only for annual basis as in the notice it has been specifically mentioned as 0.20% and the respondent now cannot demand for collection of the lease amount on a monthly basis. If that may be the case then the lease amount has to be collected per annum as per the guideline now prevailing. Moreover, the respondent cannot, unilaterally, without any advance notice ever at all fix the arrears from retrospective effect to be implemented as there was no formal meeting held or called by the respondent as per the original lease agreement in spite of various reminders and proceedings have taken place. Therefore, challenging the said order, petitioner has filed an appeal dated 12.02.2007 before the HR & CE Commissioner, Chennai, with a prayer to call for a meeting to fix up a fair rent; to direct the second respondent to sell the schedule land by fixing a fair price at a reasonable value; to measure the area occupied by the petitioner manually; to direct the 2nd respondent from not to implement the enhanced rent including arrears with retrospective effect from 2001; to stay the impugned order dated 20.12.2006 and 05.01.2007 till the

disposal of the above petition.

8. Though the appeal was filed, no action was taken. Therefore, this petitioner filed a writ petition in W.P.No.7864 of 2007 along with four others with a prayer to direct the HR & CE Commissioner, Chennai, to dispose of the appeal filed by the petitioner along with un-numbered stay petition.

9. This Court by an order dated 13.03.2007 passed the order as follows:

"7. Hence, the first respondent is directed to entertain the appeal subject to condition that each of the petitioners depositing the enhanced rent as ordered from the date of the order and the condition to deposit the enhanced amount retrospectively is waived. On such deposit being made, the first respondent is directed to entertain the appeals without insisting on the deposit of the amount which has been enhanced retrospectively and dispose of the appeals on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order or on production of the same by the petitioners.

10. As per the above direction given by this Court, this

petitioner states that they had deposited one month rent as ordered by this Court. It was deposited before the third respondent herein. After that all in sudden the present impugned order passed by the Commissioner of HR& CE, Administration Department, Chennai, in RC.No.46013/2010-D2, dated 03.05.2011 and it is the case of the petitioner is that without giving any opportunity of hearing or personal hearing this impugned order has been passed.

11. The petitioner also states that the petitioner filed the appeal within the time limit; that the order has been passed on 05.01.2007, challenging the said order, the appeal has been filed on 12.02.2007 i.e., within 30 days. The Commissioner of HR& CE, Administration Department, Chennai, has passed the impugned order stating that the appeal has been filed under Section 34A of the Tamil Nadu Religious and Charitable Endowments Act, 1959 and the petition filed to condone the delay of one month and 16 days in filing the Appeal Petitions against the order dated 23.02.2010, of the Managing Trustee of the Arulmigu Vedantha Desikar Temple, Mylapore, Chennai-4, fixing the fair rent as per G.O.No.456.

12. The learned Commissioner of HR & CE, Chennai, has passed

orders stating that the said appeal petition has been filed against the notice dated 23.02.2010 issued by the respondent herein fixing the fair rent for the property leased out to the petitioners herein, and belonging to Vedantha Desigar Temple, Mylapore, Chennai, demanding the petitioner herein to pay the fair rent together with arrears, in accordance with the G.O.Ms.No.456, dated 09.11.2007 and refusing to accept the cheque for the sum of Rs.7,551/- only as the same is not a proper tender. According to the petitioner, property measuring an extent of 2067 sq.ft is in his occupation since the year 1932, that there was a proposal for purchase during the year 1990 submitted by the petitioner which is still pending, that the demand raised for the enhanced rent with retrospective effect from the year 2001 is arbitrary, that the petitioner has been paying the rent due regularly without any delay or default in compliance with this Court's order and that therefore the respondents 2 and 3 may be directed to accept the rent as per calculations made in the petition and to sell the landed property at a reasonable value.

13. The learned Commissioner of HR & CE, Chennai, also states that there has been a delay of one month 16 days in filing the appeal petition which is not explained and no petition has been filed

separately to condone the delay. The petitioner is a lessee of the temple in question and so long as he continues to be so, he has a contractual liability to pay the lease amount/rent as may be fixed by the temple, following the due procedure. No notice to the tenant prior to fixation of fair rent is contemplated under Section 34 of the Act, the guidelines issued by the Government in the Government Orders are supposed to be sufficient notice. Earlier the petitioner was required to pay a rent of Rs.5,040/- as per G.O.Ms.No.353, dated 04.06.1999 together with arrears from 01.11.2001. The Government have subsequently passed another Government Order, thereby revising the enhancement of rent made earlier. By the fresh guidelines, the petitioner have the benefit of paying a reduced rent of Rs.2,520/-. After having accepted to be a tenant under the temple in question the petitioner is estopped from raising the issue of sale of the property under lease, based on a proposal alleged to have been submitted by him in the year 1990. The respondent has in clear terms already informed the petitioner in his letter dated 23.02.2010 that no lessee can claim as of right to purchase the property leased out to him and the temple authorities cannot be compelled to sell the property and the question of sale of the property in occupation of the petitioner as a tenant does not arise at all. Hence, in the appeal petition filed under

Section 34-A of the Act, the issue relating to sale is a matter absolutely out of context and the petitioner has no locus standi to raise the plea any more.

14. The learned Commissioner of HR & CE, Chennai, further ordered that the petitioner is liable to pay the rent as calculated on the basis of the guidelines prescribed in the revised G.O.Ms.No.456, dated 09.11.2007 and communicated to him in the impugned notice. The fair rent cannot be worked out according to the petitioner and it has to be strictly in consonance with the Government Order. Again the rent is calculated as per G.O. payable on monthly basis and not on yearly basis. The petitioner has not filed the appeal under section 34-A of the Act, enclosing a satisfactory proof of payment of the amount of rent refixed by the temple authority. Hence, the appeal filed is not in order. The contention raised by the petitioner/appellant do not deserve any consideration on merits. The appeal petitions, therefore, are hereby dismissed as it cannot be entertained under Section 34A(3) of the Act.

15. Challenging the said order, this petitioner approached this Court and filed the above Civil Revision Petition under Section 34A of

the Tamil Nadu Religious and Charitable Endowments Act, 1959, Section 34-A of the Act is as follows:

"Provided that no appeal or revision shall be entertained under sub-section (3) or Sub-section (5) as the case may be, unless it is accompanied by satisfactory proof of deposit of the lease rent so fixed or refixed, in the account of the religious institution concerned and such amount shall be adjusted towards the lease amount payable by the lessee as per the order passed in the appeal or revision, as the case may be".

16. When the above Civil Revision Petition was taken for admission on 02.01.2014, the third respondent has raised a preliminary objection as to the entertainment of this revision, since according to him, the revision petitioner has not deposited the enhanced rate upto the date of filing of the revision, as per Section 34-A of the Act.

17. Mr.T.L.Ram Mohan, learned Senior Counsel appearing for the revision petitioner would submit that the said fact ought to be verified and the answerable will be given in the next hearing. Meanwhile, the learned Senior Counsel wants the records of the Commissioner, HR & CE, to find out the correctness of the observation

made in the impugned order to the effect that opportunity of being heard was given to the revision petitioners. Apart from this, the learned counsel pointed out that this Court by order dated 13.03.2007 in this writ petition in W.P.No.7864 of 2007 directed the Commissioner to dispose of the appeal within a period of eight weeks but in the present impugned order dated 03.05.2011 there is no whisper about the above writ petition.

18. When this matter is taken up today, the question has been raised by the third respondent counsel that as per the above section 34-A of the Act, enclosing a satisfactory proof of payment of the amount of rent refixed by the temple authority towards lease amount payable to the lessee as per the order passed by the appeal or revision.

19. In support of his contention, he has placed the following decisions of this Court reported in **(2009) 4 MLJ 1223 Arulmigu Angala Parameswari and Kasiviswanathaswami Temple Adimanaiveal House Vs. State of Tamil Nadu, rep. by its Secretary to Government, Hindu Religious and Charitable Endowment Department, Chennai and others.**

20. Apart from this, learned Senior Counsel appearing for the revision petitioner has also produced the very same judgment, wherein it is made clear that the pre-deposit lease rent for filing revision is a valid one. Therefore, as per the above provisions the third respondent raised an objection that unless the revision petitioners deposit the arrears of rent, this revision should not be entertained.

21. Per contra, Mr. T. L. Ram Mohan, learned Senior Counsel appearing for the revision petitioner also undertakes to take steps to deposit the entire arrears of rent amount separately, fixed by the Commissioner HR & CE in the impugned order dated 03.05.2011. Hence, he sought for six weeks time for depositing. Since, the Senior Counsel states that the petitioner is ready to pay the rent as fixed by the Commissioner in the impugned order dated 03.05.2011 within the above period and stated that no opportunity was given to the petitioner at the time of hearing of the appeal dated 12.02.2007 by the Commissioner HR & CE, Chennai. Therefore, he prayed this Court to remand back the case by setting aside the impugned order dated 03.05.2011 for fresh disposal of the appeal dated 12.02.2007 by giving personal opportunity to this Civil Revision Petitioner.

22. Considering both sides arguments, I am inclined to pass the following orders, (a) this Civil Revision Petition is allowed by setting aside the impugned order in RC.No.46013/2010-D2, dated 03.05.2011, passed by the Commissioner of HR& CE, Administration Department, Chennai and the matter is remanded back to the Commissioner of HR& CE to dispose of the appeal filed under Section 34-A of the Act, without taking into account of the delay by giving fair opportunity to both parties and to pass appropriate orders, on merits, within a period of three months from the date of receipt of a copy of this order.

(b) The Revision Petitioner is hereby directed to deposit the entire arrears of rent till date, as per the order of the Commissioner passed on 03.05.2011, within a period of six weeks from the date of receipt of a copy of this order and continue to pay the rent every month. No costs. Consequently, connected miscellaneous petitions are closed.

19.12.2016

Index:Yes
Internet:Yes
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M.V.MURALIDARAN, J.

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To

The Commissioner HR & CE Administration Department,
Chennai.

**PRE-DELIVERY ORDER MADE IN
CRP (PD) No.4651 of 2011
and
M.P.Nos.2 and 3 of 2014**

19.12.2016