

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 04 - 01 - 2016

JUDGMENT DELIVERED ON : 29 - 02 - 2016

CORAM:

THE HON'BLE MR. SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA

Writ Appeal No. 1477 of 2013

Kongu Vellalar Matric Higher Secondary School
Rep. by its Correspondent
T.N. Chenniappan
Perundurai - 638 052 ... Appellant/5th Respondent

Vs.

1. K.S. Kuppusamy
2. The Commissioner
Hindu Religious and Charitable Endowments Department
Nungambakkam
Chennai - 34
3. The Joint Commissioner
Hindu Religious and Charitable Endowments Department
Coimbatore
4. The Assistant Commissioner
Hindu Religious and Charitable Endowments Department
Erode
5. The Executive Officer
Arulmighu Sellandiamman Thirukoil
Perundurai, Erode ... Respondents/Petitioner/R2 to 4

Prayer:-

Appeal filed under Clause 15 of the Letters Patent against the order dated 29.04.2013 made in W.P. No. 642 of 2012 presented under Art 226 of the Constitution of India to issue Writ of Certiorari to call for the records of the 1st Respondents relating to the impugned order dated 21/9/11 passed by the first Respondent in D.Dis A.P.No.42/2011 D2 and quash the same.

For Appellant : Mr. V. Raghavachari
for Ms. V. Usha Rani

For R1 : Mr. R. Ezhilarasan

For RR 2 to 4 : Mr. S.T.S. Murthi, GP
Assisted by
Mr.V.R. Kamalanathan, AGP
Mr. V. Shanmugasundar, GA

For R 5 : Mr. M. Sundar

JUDGMENT

PUSHPA SATHYANARAYANA, J.

Aggrieved by the order dated 29.4.2013 made in W.P. No. 642 of 2012 wherein and by which the impugned order dated 21.9.2011 passed by the Commissioner of the Hindu Religious and Charitable Endowments Department in A.P. No. 42 of 2011 directing payment of 25% of arrears in respect of the temple land was modified, Kongu Vellalar Matric Higher Secondary School, has preferred the instant Writ Appeal.

2. From the materials available on record, it is seen that the land to an extent of 4.02 acres out of 10.87 acres belonging to Arulmighu Sellandiamman Thirukoil at Perundurai in Erode District, along with three buildings thereon, was leased out to Kongu Vellalar Matriculation Higher Secondary School, the appellant herein in 1982 at the rate of Rs.750/- per month, which was subsequently, fixed at Rs.5,029/- for a period of three years by a registered lease deed dated 01.10.1994. Thereafter, by virtue of G.O.No. 353/TD & RE Department dated 04.6.1999, fair rent was fixed at Rs.50,812.40 per month with effect from 01.7.1997 vide order dated 14.12.2004 passed by the Executive Officer of the Temple as recommended by the Fair Rent Committee constituted under Section 34 A(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 [for short, "the Act"] and the same was confirmed by the Commissioner in R.P. No. 5 of 2005 filed at the instance of the appellant. Not satisfied with the same, the appellant preferred statutory revision before the Government invoking Section 21 of the Act and the matter was remanded back to the Commissioner vide G.O.Ms.No.19 (TDRI&I Department) dated 18.01.2010 for refixation of the rent and accordingly, the rent was fixed by the Committee for the demised land and building at Rs.54,079/- per month with effect from 01.11.2001. Further, taking into consideration G.O. Ms. No. 456 dated 09.11.2007 as per which 15% increase in the rent is to be made once in three years, the rent was fixed

as Rs.95,168/- as on 09.7.2010 and the same was communicated to the appellant by the Executive Officer vide letter dated 14.8.2010 along with the arrears amount of Rs. 64,16,024/- for land and Rs.7,40,260/- towards buildings, totaling Rs.71,56,284/- from 01.11.2001. Aggrieved by the same, the appellant School preferred appeal under Section 34-A(3) of the Act before the Commissioner in A.P. No. 42 of 2011. Though the land belongs to the temple, the Commissioner, taking into consideration the fact that the appellant is using the place for public educational purpose, by order dated 21.9.2011, directed the appellant to remit 25% of the arrears of Rs.16,04,006/- within one month from date of receipt of the order leaving liberty to the Executive Officer to take necessary action to refix the rent for the land with building by calculating on square foot basis and on per acre basis for vacant land used as play ground. Challenging the same, the first respondent herein, claiming to be the worshipper of the Temple, filed the Writ Petition.

3. The learned single Judge, on consideration of the facts and materials, and the submissions made by the learned counsel for the parties, held that since the vacant land is appurtenant land to the 12 buildings, viz., three buildings of the temple and 9 buildings built by the school, the value could be fixed per acre basis only and hence, directed the Executive Officer of the temple to work out the value on sq.ft. basis at the rate of Rs.181/- per sq.ft. for the lands on which the buildings stand and also the vacant land of 4.02 acres and to fix the lease rent at 0.20% of the value of the lands on which the buildings stand and 0.10% of the value of the vacant land. The learned Judge also directed the School to pay monthly rent at Rs.72,809/- along with arrears within a period of two months from the date of receipt of the copy of the order. Feeling aggrieved, the appellant School has preferred the instant appeal.

4. The main contention raised by the learned counsel for the appellant is that the first respondent / writ petitioner has no locus standi to file the writ petition against the order of the Executive Officer. According to him, the rent for the building built by the appellant is to be fixed at the rate of 0.10% and the 0.20% arrived at by the learned single Judge is against the guidelines issued in G.O. No. 456.

5. Indisputably, the land measuring an extent of 4.02 acres belonging to the temple was given on lease to the appellant School in the year 1984 along with three buildings. Subsequently, the appellant School had put up construction of nine buildings in the said land. It is fairly conceded by the

learned counsel for the appellant that 2.50 acres is encroached portion which is used as playground for which no rent is paid. There is no dispute with regard to the fixation of the value of the three buildings of the temple. The only issue is regarding the fixation of 0.20% in respect of the appurtenant land to the building.

6. In this regard, it would be relevant to refer to Government Order (Grade) No. 353 dated 04.6.1999 wherein the Government, on consideration of the recommendations of the Special and the Commissioner, Hindu Religious and Charitable Endowments Administration, has derived certain methods for calculating the amount. The relevant portion as found in Reference No. 6 therein is usefully extracted below:-

"For the Vacant Lands given to the Educational Institution run for social Service / Voluntary agencies run for the deprived persons, 0.10% in the market value should be charged as Lease amount."

A perusal of G.O. Ms. No. 456 dated 09.11.2007 also would show that the rent for the appurtenant land to the building is to be calculated only the rate of 0.10%.

7. It is, no doubt, true, that in the instant case, the appellant is using the place for public educational purpose. From a perusal of the records, it is seen that the Trust is imparting education to the students of 40 villages around Perundurai, which is a backward area. Significantly, the appellant also complied with the order of the Commissioner dated 21.9.2011 by remitting a sum of Rs.16,04,006/-, being 25% of the arrears.

8. A cogent reading of G.O. No. 353 dated 04.6.1999 with G.O. Ms. No. 456 dated 09.11.2007 would make it clear that in respect of lands given to the educational institution run for social service, 0.10% alone should be charged as lease amount. Therefore, it is clear that the learned single Judge has erred in adopting the guidelines laid down in G.O. Ms. No. 456 while determining the rent for the demised premises. The said finding of the learned Judge is liable to be set aside and it is, accordingly, set aside.

9. As regards the fixation of rent for the excess land other than land given on lease, it is open to the Executive Officer to recover the same in the manner known to law.

In fine, the Writ Appeals stands disposed of in the above terms. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam,
Chennai - 34.
2. The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Coimbatore.
3. The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Erode.
4. The Executive Officer,
Arulmighu Sellandiamman Thirukoil,
Perundurai, Erode.

+1cc to Mr.R.Ezhilarassan, Advocate, S.R.No.12744
+2cc to Mr.V.S.Usharani, Advocate, S.R.No.12725
+1cc to Mr.M.Sundar, Advocate sr.12952

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tej (CO)
srg(15/03/2016)