

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.19445 of 2016

and WMP.No.16857 of 2016

A.Sureshkumar

.. Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable
Endowment Department,
Uthamar Gandhi Salai,
Nungambakkam,
Chennai-600 034.

2.The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Uthamar Gandhi Salai,
Nungambakkam,
Chennai-600 034.

3.The Executive Officer,
Arulmigu Rathina Vinayagar and
Durgai Amman Temple,
Whites Road,
Royapettah, Chennai-600 014.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings of the second respondent calling for the entire records relating to the impugned proceedings of the 2nd respondent initiated pursuance to the notice dated 12.01.2016 in Na.Ka.No.4570/2009/A2 and quash the same and consequently direct the 1st respondent to dispose of the Appeal Petition represented vide N.Dis.No.3964/2009 and 3965/2009 within a time frame fixed by this Court.

For Petitioner : M/s.V.Srikanth

For Respondents : Mrs.Rita Chandrasekar
Special Govt. Pleader (HR&CE)

O R D E R

By consent, this writ petition is taken up for final disposal.

2. The petitioner would state that Rathina Vinayagar and Durgai Amman Temple situate at Whites Road, Royapettah, Chennai-600 014 owns vacant land in T.S.No.325/7 bearing Door No.35, Whites Road, Royapettah, Chennai-600 014, admeasuring to an extent of 1200 Sq.ft. and the father of the petitioner took it on lease through registered Lease Deed dated 29.12.1970 in Doc.No.1305/1970. Initially, rent for the land was fixed at Rs.7.50/- per month and the terms of the lease permitted the lessee to put up superstructure over the said vacant and accordingly, the father of the petitioner put up superstructure admeasuring to an extent of 350 Sq.ft for commercial use and 850 Sq.ft for residential purpose. The petitioner would further state that during the year 1983, the land rent was increased to Rs.11.25/- per month and thereafter, it was increased to Rs.300/- per month from August 1995 onwards and till date, the land rent fixed by the authorities has been paid by his father till his demise and subsequent to the demise of his father, the petitioner has been paying the rent without any default.

3. It is further stated by the petitioner that third respondent has issued a notice dated 15.04.2004 in and by which the third respondent informed that the fair rent for the said premises has been fixed retrospectively from 01.11.2001 at Rs.18,240/- and the third respondent demanded Rs.5,20,560/- towards land rent for the period from 1.11.2001 to the date of notice as well as Rs.1,09,440/- towards advance, aggregating to a sum of Rs.6,30,000/- and it has also been indicated that if the amount is not paid, father of the petitioner will be treated as trespasser and action will be initiated under Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 [in short 'HR & CE Act']. The father of the petitioner, challenging the said notice, filed W.P.No.12870/2004 and it was dismissed on 02.07.2008, granting liberty to him to avail alternative remedy of filing an appeal under Section 34(A)(3) of the HR&CE Act and accordingly, the father of the petitioner filed the appeal before the first respondent dated 10.11.2008 in N.Dis.Nos.63451/2008 and 63452/2008 and it was returned for certain compliance on 26.11.2008 and after complying with the defects, it was represented before the first respondent on 21.01.2009 and due to return, it was again represented for the second time on 25.03.2009 in N.Dis.No.3964/2009 & 3965/2009 and thereafter, the revisional authority did not process and number the matter.

4. The petitioner would further submit that to his shock and surprise, the second respondent has sent a communication dated 12.1.2016 calling upon him to appear and for eviction,

for the reason that his possession is treated as unauthorized and subsequently, a revised notice dated 29.01.2016 was issued under Section 78 of the HR&CE Act calling upon the petitioner to appear for enquiry on 05.02.2016, wherein it was brought to the knowledge of the second respondent that the father of the petitioner is no more. The petitioner, challenging the legality of both the notices, filed the present writ petition.

5. Mr.V.Srikanth, learned counsel appearing for the petitioner would contend that unless Fair Rent is fixed in accordance with law, demand cannot be made calling upon the petitioner to pay the revised Fair Rent and therefore, impugned notices are not in consonance with the relevant provisions of the HR&CE Act. It is further submitted by the learned counsel appearing for the petitioner that a Division Bench of this Court, in the judgment dated Arulmigu Aghla Parameswari and Kasivishwanathaswami Temple, Adimanaiveal House Owners Asso. v. The State of Tamil Nadu [2009(6) CTC 12] has considered the scope of Sections 34A and 78 of the HR&CE Act and given certain guidelines and though the first respondent was a party to the said decision, it has not been followed and on that ground also, the impugned notices have to be quashed and prays for interference.

6. Per contra, Mrs.Rita Chandrasekaran, learned Special Government Pleader (HR &CE) appearing for the respondents 1 and 2, on instructions, would submit that though the petitioner claims that the revision papers were represented on 25.03.2009, the fact remains that no such papers are available in the office of the first respondent and it is for the petitioner to re-put up the matter and number it and admittedly, it has not been done so. Insofar as merits of the claim, it is the submission of the learned Special Government Pleader that in response to the impugned notice dated 29.01.2016, the petitioner has submitted a written explanation dated 03.02.2016 and the remedy open to the petitioner is to appear before the second respondent and make his submissions and persuade the said official not to demand Fair Rent with a consequential order of eviction and prays for dismissal of this writ petition.

7. This Court has considered the rival submissions and also perused the materials placed before it.

8. A Division Bench of this Court in the above cited judgment has considered the scope of Sections 34A as well as G.O.Ms.No.353, Tamil Development and Culture, Hindu Religious Department dated 04.06.1999 and in para 16 observed as follows:

"16. It was clarified that it is not necessary for the lessees to appear in person and that it is sufficient for them to submit their written objections to the temple authorities, who will take

note of the objection before fixing the final rent and then it will go before the committee which will pass the order as per sub section 2 of Section 34A of the Act for fixing the lease rent and intimate the same to the lessee. Therefore, the committee consisting of the Joint Commissioner and the Executive Officer of trustees or Chairman of the Board of Trustees as the case may have to take note of the prevailing market value and the guidelines and then they will fix the lease rent or re-fix the lease rent as the case may be once in three years. The explanation to sub-section 1 of Section 34A of the Act also makes it clear that what is meant by 'prevailing market value'. The Executive Officer thereafter shall fix the lease rent. He is given the discretionary power to take note of what the Committee had recommended and then he shall fix the lease rent and intimate the same to the lessee. By virtue of the circular extracted above, the evidence submitted by the lessee will form part of the material for determining the lease rent. Therefore, we are of the opinion that lessees have been given sufficient opportunity to place before the committee the materials regarding fair rental value and it is only thereafter that the lease rent would be fixed. Therefore, the complaint that principle of natural justice is violated, has been answered by the proceedings dated 2.2.2009. The direction contained therein shall be compulsorily followed".

9. The petitioner, in response to the second impugned notice dated 29.01.2016, has submitted his explanation dated 03.02.2016.

10. In the light of the above facts and circumstances, this Court, without going into the merits of the claim projected either by the petitioner or by the official respondents directed the second respondent to consider the written explanation dated 03.02.2016 submitted by the petitioner to the second impugned notice dated 29.01.2016 on merits and in accordance with law, after providing an opportunity of personal hearing to the petitioner and pass orders within a period of eight weeks from the date of receipt of a copy of this order and till then, defer further proceedings with regard to the arrears of rent as well as eviction of the petitioner from the premises in question. If the petitioner is so advised, he is at liberty to pursue his remedy under Section 34-A(3) of the HR&CE Act before the competent forum.

11. This Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

jvm

To

1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Uthamar Gandhi Salai,
Nungambakkam,
Chennai-600 034.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Uthamar Gandhi Salai,
Nungambakkam,
Chennai-600 034.

3.The Executive Officer,
Arulmigu Rathina Vinayagar and
Durgai Amman Temple,
Whites Road,
Royapettah, Chennai-600 014.

1 cc to Government Pleader, sr.31263

1 cc to V.Srikanth, Advocate, sr.31164

सत्यमेव जयते

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