

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.19589 of 2016 and

WMP.No.16929 of 2016

G.Kasiammal

.. Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungambakkam High Road,
Nungambakkam, Chennai - 600 034.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungambakkam High Road,
Nungambakkam, Chennai - 600 034.

3.Arulmighu Sengazhu Neer Pillayar Thirukoil
represented by its Executive Officer,
No.131, Sengazhu Neer Pillayar Thirukoil,
Chennai - 600 001.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari Mandamus calling for the Notice of the 3rd respondent dated 28.4.08 and quash the same and consequently direct the 3rd respondent to refix the fair rent to the petitioner building as per G.O.Ms.No.298, Hindu Religious and Charitable Endowment Department dated 20.07.2010 and Commissioner, H.R. & C.E. Circular dated 3.8.2010.

For Petitioner : Mr.B.Ullasavelan

For R1 & R2 : Mr.K.V.Dhanapalan
Additional Government Pleader

ORDER

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

2

The petitioner claims that she is the owner of the superstructure admeasuring to an extent of 970 sq.ft

constructed on the 3rd respondent - temple land. Originally, a thatched shed was put up for the purpose of keeping cows and buffaloes and a portion of which was also used for residential purpose and a permanent superstructure was put up by the petitioner's husband and the petitioner continued to reside along with her husband till his demise on 22.06.2014. The petitioner would state that originally the land which was leased out, was in a low lying area and by spending huge amount, it was levelled and the petitioner's husband also obtained electricity service connection in the year 1976 and even as on today, there is no water and drainage connection. It is further stated in the affidavit that initially the rent was fixed at Rs.85/- per month and the petitioner's husband paid the same and suddenly, on 08.11.2012, they received a communication from the 3rd respondent stating that the land rent was increased to Rs.5225/- per month and asked them to pay the revised fair rent arrears of Rs.7,93,526/- and it further mentioned that the land rent was increased to Rs.7946/- per month from 01.07.2012. The petitioner's husband was bedridden at the time of receipt of the said communication and therefore, no further action could be taken to challenge the said order and however, the petitioner met the 3rd respondent and explained the difficulties and the 3rd respondent promised to do the needful. But, he thereafter did not respond. The petitioner, on receipt of another communication dated 10.06.2013, calling upon her to pay monthly rent of Rs.9138/- from 01.07.2013 and it has been indicated that arrears of Rs.8,65,040/- have to be paid.

3 The petitioner would further state that she received a communication from the 2nd respondent dated 19.02.2016 calling upon her to appear on 10.03.2016 and the petitioner's son appeared and the 2nd respondent called upon her to pay half of the fair rent immediately and then only the petitioner came to know that the premises has been classified as "commercial" and the fair rent has been increased at the rate of 33%. It is the claim of the petitioner that the building was constructed by her husband after levelling the ground and the milch cows and buffaloes were reared only for the purpose of eking out her livelihood and not for any commercial purpose and therefore, the quantification of the rent, treating the premises as commercial, is unlawful and it is also in violation of G.O.Ms.No.298, Tamil Nadu Development, Charitable and Information Department, dated 20.07.2010, and prays for interference.

4 The learned counsel appearing for the petitioner has drawn the attention of this Court to the affidavit filed in support of this writ petition and would submit that without any justification, whatsoever and also considering the pitiabile condition of the petitioner, the rent has been increased enormously on very many occasions. The

petitioner, being an illiterate lady, without the support of her husband finding it extremely difficult to eke out her livelihood and would further submit that the 2nd respondent without following the above cited Government Order, has erroneously and unilaterally fixed the fair rent and also initiated eviction proceedings under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act and therefore, the interest of the petitioner is to be protected and prays for appropriate orders.

5 Mr.K.V.Dhanapalan, learned Additional Government Pleader, who accepts notice for the respondents 1 and 2, on instructions, would submit that the petitioner has admitted the fact that she received the impugned notice dated 28.04.2008 as early as in the year 2012 and without challenging the same, has allowed the arrears to cumulate and she is also commercially exploiting the place leased out by rearing milch cows and buffaloes and since she is not poor as claimed by her and she is liable to pay the rent and the fair rent was paid only in accordance with the above cited Government Order and prays for dismissal of this writ petition.

6 This Court considered the rival submissions and perused the materials placed before it.

7 This Court, taking into consideration the above facts and circumstances, especially the fact that the petitioner is an illiterate lady, eking out her livelihood through selling milk, is of the view that one more opportunity is to be afforded to the petitioner to file a revision under Section 34-A(3) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, challenging the notice of the 3rd respondent dated 28.04.2008.

8 In the result, the writ petition is disposed of and the petitioner is at liberty to file a revision under Section 34-A(3) of the Act to the 1st respondent within a period of three weeks from the date of receipt of a copy of this order, by making a pre-deposit of a sum of Rs.3,05,000/- (Rupees three lakhs and five thousand only) and on such pre-deposit, the 1st respondent shall entertain the revision, if the papers are otherwise in order and give a disposal on merits and in accordance with law, within a further period of six weeks thereafter. The petitioner, pending disposal of the revision, without prejudice to her rights and contentions, shall pay a sum of Rs.6,000/- per month by way of rent as against the claim of Rs.9,800/- per month fixed by way of fair rent. Till the culmination of revisional proceedings, the 2nd

respondent shall defer the proceedings initiated under Section 78 of the Act. It is also made clear that the petitioner shall extend her maximum co-operation to the revisional authority for disposal of the revision petition within the stipulated time. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

AP

To

- 1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungambakkam High Road,
Nungambakkam, Chennai - 600 034.
- 2.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungambakkam High Road,
Nungambakkam, Chennai - 600 034.
- 3.The Executive Officer,
Arulmighu Sengazhu Neer Pillayar Thirukoil
No.131, Sengazhu Neer Pillayar Thirukoil,
Chennai - 600 001.

1 cc to Mr.B.Ullasavelan, Advocate, sr.31632

W.P.No.19589 of 2016

vd co
kra 22.06.2016

WEB COPY