

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.11.2016

CORAM

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

WP.Nos.39992 to 39994/2016 & wMP.Nos.34049 to 34054/2016

J.Baskar .. Petitioner in
WP.No.39992/2016

P.Dharmalingam .. Petitioner in
WP.No.39993/2016

A.A.Ismail ... Petitioner in
WP.No.39994/2016

Versus

1.The Commissioner
Hindu Religious & Charitable
Endowment Administration
Department, Uthamar Gandhi
Road, Nungambakkam,
Chennai 600 034.

2.The Joint Commissioner/Enquiry Officer
Hindu Religious & Charitable
Endowment Administration
Department, Uthamar Gandhi
Road, Nungambakkam,
Chennai 600 034.

3.The Executive Officer
A/M Kabaleeswarar Temple
Mylapore, Chennai 600 004.

.. Respondents in all
the writ petitions

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Writ petitions filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records relating to the proceedings of the 1st respondent in RP.Nos.127/2016 ; 128/2016 ; and 129/2016 dated 19.08.2016 confirming the order of the 2nd respondent dated 03.03.2016 in N.L.N.Ka.NO.5866/2013/A2 and quash the same and direct the 3rd respondent to fix the Fair Rent only in respect of the portions of the land of 123.75 sq.ft., 585 sqf.t., and 646.25 sq.ft.,

respectively in occupation and enjoyment of the petitioners in Door No.38, RK Mutt Road, Mylapore, Chennai-4, within the time fixed by this Court.

For Petitioners in
all the writ petitions : Mr.K.Sukumaran

For RR 1 & 2 in all
the writ petitions : Mr.M.Maharaja, Spl.GP
{HR&CE}

COMMON ORDER

Heard the learned counsel for the petitioners and Mr.M.Maharaja, learned Special Government Pleader [HR&CE] who accepts notice on behalf of the respondents 1 and 2 and with the consent on either side, the writ petitions are taken up for final disposal.

2 The case of the petitioners is that

[a] The petitioner in WP.No.39992/2016 is in occupation of the building to an extent of 123.75 sq.ft., and is carrying on cane business for more than 34 years and that his father had purchased the superstructure of the property together with the leasehold right of the land on 23.02.1994 vide Doc.No.413/1994 registered on the file of the office of the Sub Registrar, Mylapore, from the original lessee of the 3rd respondent, viz., Visalatchi.

[b] The petitioner in WP.No.39993/2016 is in occupation of the building to an extent of 585 sq.ft., and is residing in the said premises for more than 35 years and that he had purchased the superstructure of the property together with the leasehold right of the land in his wife's name on 24.04.1989, vide Doc.No.649/1989 registered on the file of the office of the Sub Registrar, Mylapore, from the original lessee of the 3rd respondent, viz., Visalatchi.

[c] The petitioner in WP.No.39994/2016 is in occupation of the building to an extent of 646.25 sq.ft., and is carrying on business in the said premises for more than 45 years and he had purchased the superstructure of the property together with the leasehold right of the land

on 11.05.1994 vide Doc.No.1088/1994 registered on the file of the office of the Sub Registrar, Mylapore, from the original lessee of the 3rd respondent temple, viz., Visalatchi.

3 It is the further case of the petitioners that they were paying respective monthly rents to the 3rd respondent / temple and receipts were also issued to them in the name of the said Visalatchi. The 2nd respondent herein issued proceedings to the petitioners dated 21.12.2015 u/s.78[2] of the Tamil Nadu Hindu Religious and Charitable Endowment Act, calling for their objections to the proceedings dated 14.08.2013 ; enquiries were conducted and orders were passed to deposit the entire arrears. On 21.01.2016, the petitioners were called for to attend the enquiry and on the other hand, the 3rd respondent, without issuing any notice whatsoever to the petitioners, directed them to pay Rs.15,000/- per month as rent for the entire tenancy of 3213 sq.ft., from the month of November 2013 till a decision is taken on the petitioners' request and as directed by the 3rd respondent, the petitioners are paying the monthly rent of Rs.15,000/- regularly from November 2013.

4 In the interregnum, the petitioners appeared for the enquiry on 21.01.2016 before the 2nd respondent and they were informed that arrears of Rs.30,24,561/- towards fair rent, is pending in respect of 3213 sq.ft., to be paid by the petitioners along with one Nagaraj and Visalatchiammal and that the petitioners were directed to pay the said amount on or before 04.02.2016 and according to the petitioners, they were not given an opportunity to put forth their objections and since they did not deposit the arrears amount, the 2nd respondent vide order dated 03.03.2016, declared the petitioners as encroachers and were directed to evict the said building and to hand over the possession of the same to the 3rd respondent / temple and the revision filed by the petitioners in this regard, in RP.Nos.126, 127 and 128/2016 before the 1st respondent also ended in dismissal as devoid of merits vide impugned order dated 19.08.2016. Challenging the legality of the same, the petitioners are before this Court, by filing the present writ petition.

5 The learned counsel for the petitioners would submit that since the petitioners were in occupation of their respective portions of land for quite a long time, they may be directed to pay the rent fixed by the 3rd respondent earlier and that the arrears of rent would equally be paid by the petitioners.

6 The learned Special Government Pleader {HR&CE} appearing for the respondents 1 and 2 would submit that since the petitioners were in occupation of the 3rd respondent / temple land for quite long years and that they have not paid the fair rent fixed by the temple for quite some time ; that the arrears of fair rent is to the tune of Rs.30,24,561/-, the 2nd respondent has rightly passed an order on 03.03.2016 evicting the petitioners and that the 1st respondent has also affirmed the order of the 2nd respondent by dismissing the revisions filed by the petitioners

on 19.08.2016 and hence, prays for dismissal of the writ petitions.

7 This Court carefully considered the rival submissions and also perused the materials placed before it including the impugned orders of the respondents 1 and 2 dated 19.08.2016 and 03.03.2016 respectively.

8 Considering the fact that the petitioners are in occupation of the 3rd respondent / temple land for a long time without even properly paying the fair rent fixed by the authorities, this Court is of the considered view that by increasing the monthly rent to be paid by the petitioners and by apportioning the arrears of fair rent among the petitioners according to their occupation of their respective portion of land, would meet the ends of justice.

9 Accordingly, the writ petitions are disposed of with the following directions:-

[A] The petitioner in WP.No.39992/2016, viz., Mr.J.Baskar, is directed to pay a sum of Rs.6,00,000/- [Rupees Six lakhs only] towards his share of the arrears of fair rent to the 3rd respondent and also is directed to pay a sum of Rs.10,000/- [Rupees Ten thousand only] towards monthly rent from 01.11.2016 onwards, with an annual increase at the rate of 5% per annum.

[B] Each of the petitioners in WP.Nos.39993 and 39994/2016, viz., Dharmalingam and Ismail, are directed to pay a sum of Rs.12,00,000/- [Rupees Twelve lakhs only] each to the 3rd respondent, towards their share of the arrears of fair rent and also, they are directed to pay a sum of Rs.20,000/- [Rupees Twenty thousand only] each towards monthly rent from 01.11.2016 onwards, with an annual increase at the rate of 5% per annum.

[C] It is made clear that the lease agreement will be for a period of three years and the petitioners shall remit their respective shares of arrears of fair rent after deducting the amounts already paid, if any.

No costs. Consequently, the connected miscellaneous petitions are closed.

AP

Sd/-

Assistant Registrar (CS III)

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Sub-Assistant Registrar

To

1.The Commissioner
Hindu Religious & Charitable
Endowment Administration
Department, Uthamar Gandhi
Road, Nungambakkam,
Chennai 600 034.

2.The Joint Commissioner/Enquiry Officer
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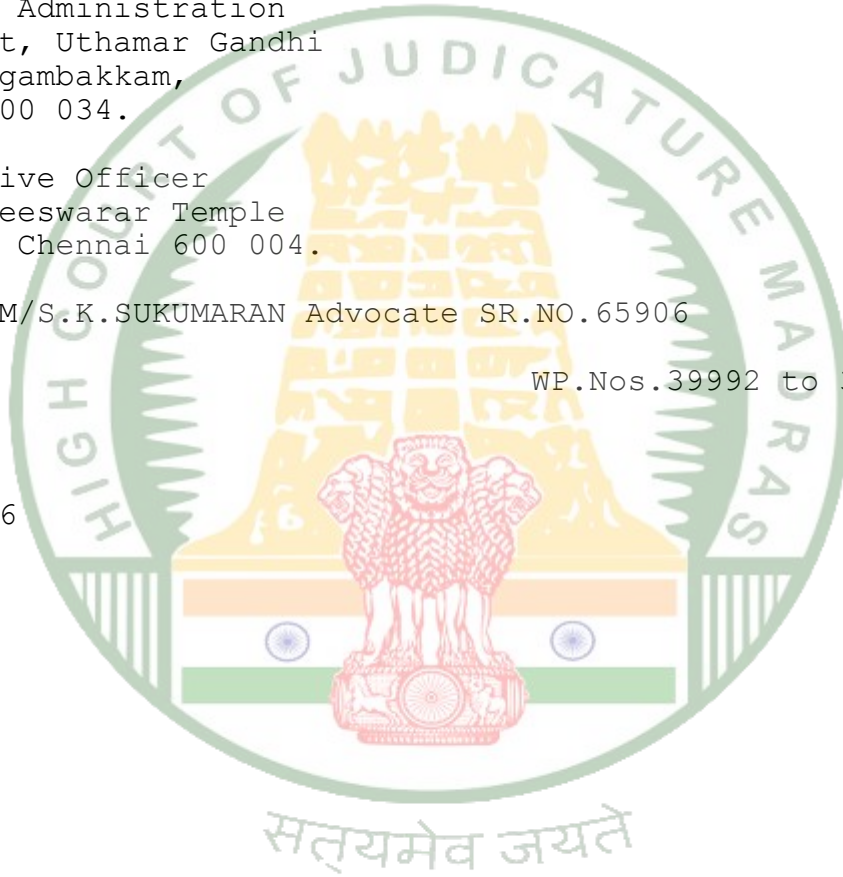
3.The Executive Officer
A/M Kabaleeswarar Temple
Mylapore, Chennai 600 004.

+3CC to M/S.K.SUKUMARAN Advocate SR.NO.65906

WP.Nos.39992 to 39994/2016

AP[CO]

MK:30/12/2016



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