

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 18.01.2017

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P.No.1204 of 2017

and

WMP.No.1141 of 2017

N.Natarajan

.. Petitioner

Vs.

1.The Joint Commissioner,
The Hindu Religious and Charitable
Endowments (Admn.) Dept.,
Nungambakkam,
Chennai-600 034.

2.The Joint Commissioner,
The Hindu Religious and Charitable
Endowments (Admn.) Dept.,
Salem.

3.The Assistant Commissioner,
The Hindu Religious and Charitable
Endowments (Admin) Dept.,
Dharmapuri

4.The Executive Officer,
A/m Sivasubramaniasamy Temple,
Kumarasampettai,
Dharmapuri taluk and District

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari calling for the records pertaining to the order passed by the Commissioner HR & CE (Admin.) Dept/. Chennai-34, hin D.Dis.R.P.No.264/2016 D2 dated 22.12.2016 insofar it relates to the increase of rent from Rs.416/- to Rs.5000/- for the land measuring about 200 sq.ft., and quash the same.

For Petitioner : Mr.W.C.Thiruvengadam

For Respondents : Mr.M.Maharaja,
Special Government Pleader
(HR&CE)

O R D E R

This writ petition has been filed by the petitioner challenging the impugned order passed by the Commissioner, HR & CE, (Admn.) Department, Chennai in D.Dis.R.P.No.264/2016 D2 dated 22.12.2016 insofar it relates to the increase of rent from Rs.416/- to Rs.5000/- for the land measuring about 200 sq.ft., and to quash the same.

2.Heard the learned counsel for the petitioner as well as the learned Special Government Pleader for the respondents.

3.The learned counsel for the petitioner fairly admits that he is not questioning the order of the Commissioner dated 22.12.2016 insofar as the grant of lease but he is only aggrieved over the fixation of the rent from Rs.416/- to Rs.5000/- per month. According to him, the rent has to be fixed as per Section 34 A of the HR & CE Act by the Committee. Even the Committee, can only fix fair rent but the rent fixed in this case is a huge sum. Aggrieved over the same, the petitioner has come forward with this present petition.

4.As rightly pointed out by the learned Special Government Pleader in the order dated 22.12.2016, it is very clearly stated that the rent fixed is only on the clear undertaking given by the petitioner that he had agreed to pay the revised rent. It is not the rent as fixed by the Department but it is the rent fixed on the consent of the petitioner. First of all, the petitioner is a land encroacher, he has sublet the property to third party and for the said reason, eviction proceedings were initiated invoking Section 78(2) of the Act. Since the petitioner pleaded for extension of his lease and agreed to pay the revised rent before the Commissioner, the authorities permitted the petitioner to occupy the said property for three years on certain conditions including the rent as agreed and accepted by the petitioner. In view of the aforesaid reasons, challenging the said order is not now fair on the part of the petitioner.

5.In such view of the matter, the petitioner now cannot say that the Commissioner has no power to fix the rent and contend that the rent has to be fixed only after invoking Section under 34A of the HR & CE Act.

6.It is pertinent to note that the suit filed by the petitioner in O.S.No.323 of 2014 for permanent injunction was dismissed by the learned District Munsif, Dharmapuri and the appeal filed by him in A.S.No.33 of 2014 before the Sub Court, Dharmapuri was also dismissed. By order dated 31.08.2016 in M.P.No.17 of 2013, the Joint Commissioner, Salem after invoking Section 78(2) of the Act, stated that the petitioner is an encroacher, as he had put up unauthorised construction and also, he has sublet the property to third party and passed

an order of eviction. Aggrieved over the same, the petitioner filed the revision before the Commissioner and on the request of the petitioner who agreed to pay the revised rent, the Commissioner has permitted him to continue for three years and revised the rent from Rs.416/- to Rs.5000/- taking into account, the locality of the subject property. It is also to be noted that the subject property is in a prominent and prime area at Dharmapuri and having agreed to pay the revised rent before the Commissioner, the petitioner now has before this Court challenging the order passed by the said authority which is an admitted order.

7.This Court feels that the leniency shown by the Commissioner should not have been given to such an encroacher who has now come to challenge the same only after having accepted to pay the enhanced rent. Since the order passed by the Commissioner on leniency, there is no question of invoking Section 34A of the Act and the act of the petitioner is a wrongful one going against his own admission. In view of the foregoing, the rent fixed by the Commissioner is to be increased taking into account, the locality of the subject property, which is at a prominent and prime locality of Dharmapuri. Accordingly, the rent fixed by the Commissioner at Rs.5000/- is modified to the effect that the rent is fixed at Rs.7,500/- per month. This increase is made by this Court because of his behaviour to challenge the order passed by the Commissioner which also was given as a concession by the Commissioner.

8.It is made clear that if the petitioner is not complying as per the order of this Court, then, the order of eviction passed by the Joint Commissioner, dated 31.08.2016 in M.P.No.17 of 2013, shall be confirmed.

9.With the above observations and directions, this writ petition is disposed of. Consequently, connected Miscellaneous Petition is also closed. No costs.

WEB COPY

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

DP

To

1.The Joint Commissioner,
The Hindu Religious and Charitable
Endowments (Admn.) Dept.,
Nungambakkam,
Chennai-600 034.

2.The Joint Commissioner,
The Hindu Religious and Charitable
Endowments (Admn.) Dept.,
Salem.

3.The Assistant Commissioner,
The Hindu Religious and Charitable
Endowments (Admin) Dept.,
Dharmapuri

4.The Executive Officer,
A/m Sivasubramaniasamy Temple,
Kumarasampettai,
Dharmapuri taluk and District

+ 1 cc to Government Pleader Sr.3772

+ 1 cc to M/s. W.C. Thiruvengadam, Advocate Sr.3330

W.P.No.1204 of 2017
and
WMP.No.1141 of 2017

NRI (CO)
EU 10.02.17

सत्यमेव जयते
WEB COPY