

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.32024 of 2012
and
W.M.P.No.25433 of 2016

Tmt.Farida Shaukath

.. Petitioner

Vs.

1. Secretary to Government
Government of Tamil Nadu,
Revenue Department,
Fort St.George,
Chennai-600 009.
2. The Collector,
Office of the Collectorate,
Thiruvallur-602 001.
3. The Tahsildhar,
Madhavaram Taluk Office,
No.217/211, Red Hills Road,
Rasimandapam,
Chennai-600 060.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents to enter into a Lease Agreement with the petitioner on a monthly rent of Rs.98,925/- per month.

For Petitioner : Mr.S.Mothilal

For Respondents : Mr.Akhil Akbar Ali, Govt. Advocate

ORDER

The petitioner has come forward with the above Writ Petition praying for issuance of a Writ of Mandamus to direct the respondents to enter into a Lease Agreement with the petitioner on a monthly rent of Rs.98,925/- per month.

2. According to the petitioner, she is the owner of the premises bearing No.217/211, Rasimandapam, Madhavaram Red Hills Road, Madhavaram, Chennai-600 060. In December 2009, she was approached by the Revenue Officials of the Government of Tamil

Nadu seeking for lease of the said premises for the purpose of establishing a Taluk Office in Madhavaram. After discussion, it was agreed that there will be monthly rent of Rs.1,20,000/- for letting out the premises. Though initially, the petitioner feared with regard to the letting out of the premises to the Government, however, on the assurance given by the Revenue Officials that the approval has already been obtained from the Government for establishing the Taluk Office in Madhavaram and that the lease agreement would be entered into for monthly rent of Rs.1,20,000/-, the petitioner has given consent for letting out the premises. On 22.12.2009, the Tahsildar, by name Pugalendhi, entered into the premises and took possession and stated that the Taluk Office is required and establishment of Taluk Office was of great urgency and that inspite of protest, it has been stated that the lease agreement would be entered in due course. Further, acknowledgement for taking on lease of the premises on 22.12.2009 was given by signing on the letter issued by the petitioner. The Revenue Inspector also issued a letter confirming the functioning of the Taluk Office in the premises of the petitioner with effect from 23.12.2009.

3. It is further stated by the petitioner that no action has been taken with regard to the entering into lease agreement, but whenever enquiries were made with the third respondent, the reply that was given was that the approval would be obtained shortly. It is further submitted that in February 2011, the petitioner visited the office of the third respondent to make enquiry regarding the rental arrears, but the petitioner was informed by the third respondent that the Public Works Department (PWD) has fixed the monthly rent at Rs.98,925/- and that report has been sent with a covering letter of the second respondent, dated 31.01.2011. The petitioner has voiced protest stating that the rent was initially agreed at Rs.1,20,000/, but unilaterally, the amount has been fixed at Rs.98,925/-.

4. According to the petitioner, not even a single pie has been paid to the petitioner since the petitioner's visit in February 2011 till the date of statement made in the affidavit in this writ petition, dated 19.11.2012. She further stated that the respondents are in possession, enjoyment and occupation of the property. Even though the petitioner is entitled for higher amount of rent, even the amount agreed upon has not been paid. The petitioner has made a representation, but of no avail. According to the petitioner, action of the respondents in entering into the premises on lease, without entering into lease agreement and not paying any amount as agreed at Rs.1,20,000/-, is illegal and that the third respondent, despite taking out the possession of the petitioner's premises, continued to be in default in payment of rent. The petitioner submitted that atleast agreed amount may be paid by calculating the rent at Rs.98,925/- from 23.12.2009 till 30.10.2012. It is stated by the

learned counsel for the petitioner that after filing of the Writ Petition, pursuant to the interim orders of this Court, the rent upto May 2016 had been paid. The petitioner submitted that there should be a lease agreement entered into between the petitioner and the first respondent or such other competent authority.

5. The second and third respondents have filed counter affidavit, dated 08.04.2013 stating that the property belongs to the petitioner and even though the petitioner has requested for monthly rent of Rs.1,20,000/- for letting out her premises, it is stated that the amount would be finalised only after obtaining a fixation of fair rent by the PWD and the petitioner has given consent for the same. Based on that, the Taluk Officer started functioning. It is further stated that only after taking consent from the petitioner verbally, the electricity supply meter reading has been noted and the possession has been taken by the Revenue Inspector of Madhavaram, namely Pugalendhi and not the Tahsildar as stated by the petitioner and that the fair rent was arrived at Rs.98,925/- with effect from 23.12.2009. It is further stated that the Collector of Thiruvallur has called for a report as to whether any agreement deed has been executed and any amount of Rs.1,50,000/- initially allotted, had been utilised for the said premises as rent per year. It is further stated that the Superintending Engineer, PWD in his letter, dated 11.09.2012, has fixed the revised rent per month as Rs.62,275/- with effect from 23.12.2009 to the said premises and in this regard, the report has also been submitted to the District Collector in the proceedings, dated 24.09.2012 requesting for sanction of amount of Rs.24,46,804/- till March 2013 as arrears of rent payable to the petitioner. It is further stated that the Executive Engineer, PWD, in the letter dated 30.09.2010, has fixed the monthly rent of Rs.98,925/- with effect from 23.12.2009 and in the said letter, the Executive Engineer, PWD has given the break-up value of the rent to the above premises as: (i) rate of rent for building and amenities at Rs.20,375/- and (ii) the rate for only the land cost at Rs.78,550/-, both totalling to Rs.98,925/-.

6. It is further averred in the counter affidavit that the delay in payment of rent occurred due to non-submission of related documents by the petitioner and also the procedures to be followed for fixing the fair rent. Now that the rent has also been fixed. As per the procedures, an agreement has to be executed between the petitioner and the third respondent for sanction of the amount due, and necessary action is being taken to enter lease deed between the petitioner and also settle the rent amount due. The amount due would be settled after the same was sanctioned by the first respondent, since the District Collector is having financial power to sanction upto Rs.8,000/- to Rs.12,000/- as per G.O.Ms.No.329, Finance (Salaries) Department, dated 30.08.2001. The Tahsildar therefore sent a

proposal to the District Collector and thereafter, it should be forwarded to the Additional Chief Secretary and Commissioner of Revenue Administration and thereafter, it should be sanctioned by the Revenue Secretary after getting concurrence from the Finance Department. Therefore, according to the respondents 2 and 3, it would take some time to settle the arrears of rents to the petitioner.

7. Heard both sides and perused the materials available on record.

8. It is not in dispute that the land belongs to the petitioner. It is also not in dispute that the respondents have commenced the functioning of the Taluk Office in the premises of the petitioner without entering into any lease agreement/deed. The contention of the respondents is that for want of documents, the fair rent could not be fixed. He has also stated that the fair rent has been arrived at and that there should be a procedure adopted and it has got to be followed for execution of the lease agreement. Admittedly, from the date of grabbing the premises in 2009, the first payment of rent was made only in 2009 and thereafter, there were arrears of rent and it is stated that pursuant to the interim orders of this Court, the rent has been paid upto May 2016. For more than one year, the rent has not been paid. Moreover, the counter affidavit of the respondents 2 and 3, is dated 08.04.2013. More than four years have gone by and the respondents have not evinced any interest to enter into the lease agreement.

9. As the facts are admitted, more particularly, the land belongs to the petitioner and that the Taluk Office is functioning in the premises of the petitioner and that the arrears of rent had to be paid and the lease agreement has got to be entered into between the petitioner and the respondents and the petitioner being an old Muslim lady, aged about 67 years, driving her from pillar to post is not justified and the action of the respondents on the issue is perfunctory.

10. Hence, this Court finds that there is prima-facie substance in the contentions of the petitioner. The Writ Petition is allowed. The lease agreement shall be entered into between the petitioner and the concerned respondent(s)/competent authority, within a period of 30 days from the date of receipt of a copy of this order and the arrears of rent from May 2016 till the date of entering into the agreement, has got to be paid and the monthly rent shall be paid on or before 5th of every subsequent month. Similarly, the arrears of rent will have to be paid within 30 days from the date of receipt of a copy of this order. The above time limit as sought for by Mr. Akhil Akbar Ali, learned Government Advocate appearing for the respondents, is granted and the same shall be strictly adhered to.

11. This Court makes it clear that the concerned person who is holding the post in the cadre of the first respondent, should ensure that the subordinates do their work assigned to them promptly and if any issue arises, the same is brought to the attention of the first respondent by them, pursuant to which, the concerned staff should be shown the doors and the Chief Secretary to Government of the State of Tamil Nadu shall take necessary steps in that regard.

12. It is also to be observed that till such time the lease agreement containing the periodical revision of the lease amount, if agreed upon by the petitioner, is entered into and the arrears of rent as on date is cleared, all the three respondents shall not draw any salary and the Government shall not disburse their salary to them. After clearing of the arrears of rent and after entering into the lease agreement, as directed above, the entire salary, including the salary arrears, shall be disbursed to the respondents.

13. In view of the above order passed in the main writ petition, no orders are necessary to be passed in the miscellaneous petition seeking for payment of entire arrears of rent, which is accordingly closed. No costs. Consequently, W.M.P. is closed.

14. The Registry shall communicate a copy of this order to the Chief Secretary to Government of the State of Tamil Nadu, and the Registry shall ensure that the copy of this order reaches the Chief Secretary by tomorrow, as the date of payment of salary for this month falls on 28.09.2017 (Thursday) to the Government employees.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

CS

To

1. The Chief Secretary to Government,
Secretariat,
Government of Tamil Nadu,
Fort St.George,
Chennai-600 009.

WEB COPY

2. The Secretary to Government,
Revenue Department,
Fort St.George,
Chennai-600 009.

3. The Collector,
Office of the Collectorate,
Thiruvallur-602 001.

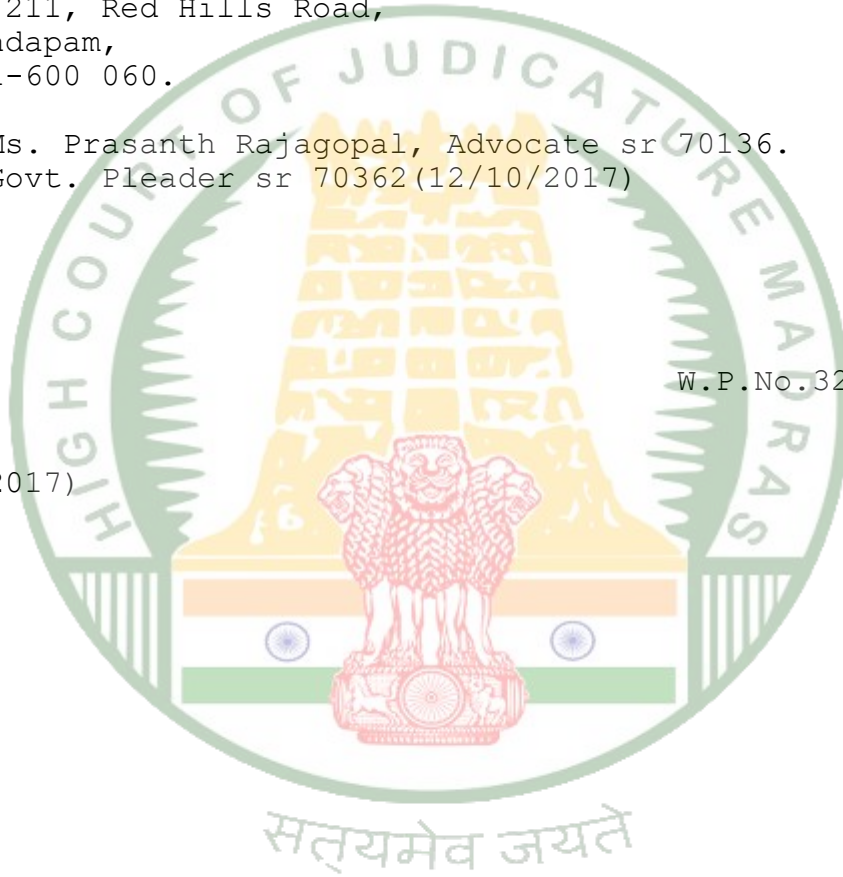
4. The Tahsildhar,
Madhavaram Taluk Office,
No.217/211, Red Hills Road,
Rasimandapam,
Chennai-600 060.

+1 Cc to Ms. Prasanth Rajagopal, Advocate sr 70136.

+1 Cc to Govt. Pleader sr 70362(12/10/2017)

W.P.No.32024 of 2012

RSI (CO)
sp(25/09/2017)



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