

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.07.2017

CORAM

THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.No.38612 of 2004
& W.M.P.No.46151 of 2004

Kudanthai Nagara Kudiyirupoor Nala Sangham,
Kumbeswarar Therkku Veedhi, Kumbakonam.
Rep. by its Vice President N.Chockalingam. ...Petitioner

Versus

1. The Commissioner,
Hindu Religious and
Charitable Endowment Department,
Nungambakkam, Chennai 34.
2. The Executive Officer,
Arulmighu Adhi Kumbeswara Swamy Tirukkoil,
Kumbakonam 612 001. ... Respondents

Prayers: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus forbearing the respondents from revising the rent exorbitantly and retrospectively with effect from 1.11.2001 in respect of the residential units belong to the members of the petitioner sangham and from revising the rent except by due process of law.

For Petitioner : No Appearance.
For Respondents : Mr.M.Maharaja,
Special Government Pleader
(HR&CE) (for R1)
Mr.G.Sukumaran (for R2)

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O R D E R

This petition is filed for issuance of Writ of Mandamus forbearing the respondents from revising the rent exorbitantly and retrospectively with effect from 1.11.2001 in respect of the residential units belonging to the members of the petitioner-sangham and from revising the rent except by due process of law.

2. The petitioner-Sangham is a registered society under the Tamilnadu Societies Registration Act, 1975. The case of the petitioner is that the 2nd respondent-Temple is an ancient temple and it is notified under the provisions of the Hindu Religious and Charitable Endowments Act. The members of the petitioner-Sangham are the allottees of the vacant land and they have put up huts several decades ago and they are in possession and enjoyment of the same.

3. It is further stated that they were issued notices, dated 30.06.2004, wherein the rate of rent has been enhanced exorbitantly and also demand was made from retrospective effect i.e., from 01.11.2001. According to the petitioner-Sangam, the revision of rent is arbitrary and against the principles of the natural justice. Hence, the present writ petition is filed with above prayer.

4. The second respondent filed a counter affidavit stating that the Government issued guidelines in G.O.Ms.No.353, dated 04.06.1999, for fixation of fair rent in respect of the Temple properties. According to the said G.O, a committee was constituted to ascertain the presence of the occupants and determination of their rents.

5. It is further stated that the Government order was challenged in a Writ Petition and the same was dismissed, which was also confirmed in Writ Appeal. The Division Bench directed the aggrieved persons to approach the Commissioner, HR & CE, in respect of fair rent. However, without exhausting the remedy, present writ petition is filed. Fixation of fair rent has been already intimated to the tenants.

6. Mr.G.Sukumaran, learned Special Government Pleader appearing for the second respondent would submit that the petitioner -Sangham was registered only on 28.02.2004 and the Writ petition came to be filed within a period of ten months (i.e) on 22.12.2004. It is further submitted that all the members of the petitioner-Sangham are not tenants. The original tenants have agreed to pay the fair rent fixed by the Temple and they are paying the rent.

7. The learned Counsel would further submit that the tenants have to independently challenge the fixation of fair rent and the writ petition filed by the Association is not maintainable. Further the tenants have an alternative remedy by giving representation before the commissioner, HR & CE, but by-passing the remedy, the present writ petition is filed.

8. It is seen that the present writ petition has been filed by the Sangam in the year 2004, mainly contending that the

respondent has no jurisdiction to fix the fair rent from retrospectively, i.e. from 01.11.2001. The specific case of the second respondent is that the fair rent was fixed based on the G.O.Ms.No.353, dated 04.06.1999 and hence the prayer sought for in the writ petition has become infructuous. It is not in dispute that the said G.O. was upheld by this Court and the Division Bench has issued direction to the aggrieved persons to approach the Commissioner, Hindu Religious and Charitable Endowment Department.

9. In the light of the above undisputed facts, I do not find any merits in this writ petition. Therefore, the writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

pvs/mfa

To

1. The Commissioner,
Hindu Religious and Charitable Endowment Department,
Nungambakkam,
Chennai 34.
2. The Executive Officer,
Arulmighu Adhi Kumbeswara Swamy Tirukkoil,
Kumbakonam 612 001.

+1cc to G.Sugumaran, Advocate Sr. 51877
+1cc to the Government Pleader Sr. 53017

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AR(IV)
VR(11/8/2017)