IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2017

CORAM :

The Hon'ble Mr.JUSTICE M.SUNDAR

W.P. No.18151 of 2004

M.Mohamed Farook .. Petitioner

Vs.

1.The Joint Commissioner,
Hindu Religious and Charitable Endowment,
Mayiladuthurai.

2.The Executive Officer,
Arulmighu Anumar Thirukoil,
Big Bazaar Street,
Kumbakonam Taluk. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the records of the second respondent in the order-cum-demand notice dated 20.5.2004 and to quash the same.

For Petitioner : No appearance

For Respondents : Mr.M.Maharaja,
Special Government Pleader
Assisted by Mr.M.Ganesh,
Government Advocate for R-1
No appearance for R-2

ORDER

This writ petition arises under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Act 22/1959), which is hereinafter referred to as 'TNHR&CE Act' for the sake of brevity.

2 When the matter is called today, there is no representation for the writ petitioner. Mr.M.Maharaja, learned Special Government Pleader (HR&CE), assisted by Mr.M.Ganesh, learned Government Advocate is present on behalf of respondent No.1, namely, jurisdictional Joint Commissioner of Hindu Religious and Charitable Endowments Department (hereinafter referred to as 'TNHR&CE Department' for the sake of brevity).

The second respondent is the Executive Officer of a temple, which goes by the name Arulmighu Anumar Thirukoil. Though the second respondent has been duly served and has entered appearance through a counsel, whose name is shown in the cause list, no one is present.

3 The matter was passed over and called half an hour later. There is no representation in the second call also, both for the writ petitioner as well as for the second respondent Executive Officer.

4 The writ petition is pending for nearly 13 years in this Court. To be precise, the writ petition was filed on 24.6.2004 . An interim order was also granted in favour of the writ petitioner on 14.7.2004. On 8.4.2005, the vacate stay petition was rejected, interim order granted on 14.7.2004 was clarified and the clarified interim order was made absolute. The interim order is also operating for over 12 years now. A perusal of the records also shows that the matter turns on a very narrow compass. Therefore, I am taking up the writ petition and disposing of the same on merits on the basis of the records / papers placed before me and after hearing the submissions of learned Special Government Pleader Mr.M.Maharaja, assisted by Mr.M.Ganesh, learned Government Advocate, appearing for respondent No.1.

5 A shop portion admeasuring 22 feet length and 10 feet breadth (220 square feet) is the subject matter of the writ petition and the same is hereinafter referred to as the 'demised shop' for the sake of convenience and clarity.

6 Admittedly, the demised shop belongs to Arulmighu Anumar Thirumkoil in Big Bazaar Street, Kumbakonam Taluk, which is hereinafter referred to as the 'said temple' for the sake of brevity and clarity. The said temple is under the control, administration and management of TNHR&CE Department.

7 As set out supra, admittedly, the demised shop belongs to the said temple. When a property belongs to the said temple, it vests in the idol. Law is well settled that the idol is in the status of a minor. Courts qua idol, which is a minor, are parentis locus and custodia legis of minor's (idol) properties. This is another reason which has impelled me to take up the writ petition on merits and dispose of the same on merits, notwithstanding the fact that there is no representation for the writ petitioner today.

8 As stated supra, respondent No.1 is the jurisdictional Joint Commissioner of TNHR&CE Department, i.e., Joint Commissioner, Mayiladuthurai.

9 It is the case of the writ petitioner that he is a lessee under the said temple in respect of the demised shop. It is the case of the writ petitioner that he became a lessee in respect of the demised shop under the said temple way back in 1971 on a monthly rent of Rs.25.00 only.

10 The writ petitioner would also submit that he is a qualified Dental Surgeon and that he is running a dental clinic in the demised shop. It is the further case of the writ petitioner that the rent of Rs.25.00 per month was increased from time to time and that it stood at Rs.260.00 per month on the date of filing of the writ petition, i.e., 24.6.2004.

11 When things stood as above, the second respondent, i.e., Executive Officer of the said temple has issued a demand notice dated 20.05.2004 calling upon the writ petitioner to pay arrears of rent. A sheet in the nature of memo of calculation, giving computation on the basis of which rental arrears has been arrived at has been appended to the notice. This notice dated 20.5.2004 issued by the second respondent together with the appended computation sheet is called in question in this writ petition and is, therefore referred to as the 'impugned notice'.

12 It is evident from the impugned notice that rental arrears of Rs.34,694.30 has been demanded. The impugned notice states that the said sum of Rs.34,694.30 is the rental arrears as it stood on 30.4.2004.

13 In the writ petition, assailing the impugned notice, the writ petitioner has averred that he is paying rent at the rate of Rs.260.00 per month without default upto the date of filing of the writ petition. The writ petitioner would further contend that the rent for the demised shop has been increased from Rs.260.00 per month to Rs.1205.00 per month with effect from 1.11.2001 with a rider that there shall be a further increase of 10% per annum as is evident from the impugned notice, particularly the computation sheet, which forms part of the impugned notice.

14 In the grounds in the writ affidavit, the writ petitioner would contend that such an increase of rent for the demised shop from Rs.260.00 per month to Rs.1205.00 per month is arbitrary and that there is no mention in the impugned order as to how the same has been arrived at.

15 In sum and substance, the crux and gravamen of the complaint of the writ petitioner is that the methodology and the basis on which the rent for the demised shop was increased from Rs.260.00 per month to Rs.1205.00 per month has not been set out in the impugned notice.

16 In the counter affidavit dated 3.12.2004 that has been filed by the second respondent, it has been averred that the fair rent committee inspected the property, took measurements, got particulars of the value thereof from the concerned Sub Registrar Office, took into account the location of demised shop, the use for which it was being put to, etc. and thereafter arrived at fair rent for the demised shop.

17 Mr.M.Maharaja, learned Special Government Pleader would point out that the counter affidavit also refers to G.O.Ms.No.353, dated 4.6.1999 and it has also been followed in fixation of fair rent. The relevant portion of the counter affidavit in this regard is paragraph 5 and the same is extracted herein below for convenience. Paragraph 5 of the counter affidavit of the second respondent reads as follows :

> "5.This respondent did not enhance the rent to suit his convenience. But the Fair Rent Committee had inspected the property, taking out its measurements, got the particulars of the value thereof from the concerned Sub Register's Office, taken the consideration of the area and location of the demised premises and the purpose of its user etc., had fixed the Fair Rent. The same was also approved by the 1st Respondent herein. Only then as the lessor, this respondent had informed the petitioner about the Fair Rent fixed and demanded its remittance. The petitioner did not challenge the G.O."

18 Adverting to the same, learned Special Government Pleader would contend that fair rent has been fixed for the demised shop of the said temple, in accordance with the TNHR&CE Act. He would also submit that the impugned notice is only a demand notice post determination of the lease rent and that fixation of the lease rent has not been assailed.

19 Fixation of lease rent is an official act. All official acts are presumed to have been done officiously unless the contrary is proved, This principle is well settled inter-alia in a catena of judgments {Vide : Pushpa Devi M.Jatia Vs. M.L.Wadhawan [(1987) 3 SCC 367] and Devender Pal Singh Vs. State (NCT of Delhi) [(2002) 5 SCC 234]}.

20 To be noted, the writ petitioner has not filed any rejoinder to the above counter affidavit of the second respondent dated 3.12.2004, refuting the contents therein, though it has been contended in the writ affidavit that the lease rent for the demised shop has not been fixed in accordance with the statute by applying parameters and determinants set out therein.

21 Therefore, there is an inevitable presumption that the lease rent has been fixed in accordance with the statute, namely, TNHR&CE Act and more particularly, Section 34A of the TNHR&CE Act, which came into force with effect from 10.05.2003. It is also to be noted that Section 34A of the TNHR&CE Act has an inbuilt mechanism, wherein an appeal has been provided to the Commissioner and a further revision has been provided to this Court.

22 More over, even on a thumb rule approach, it is to be noticed that the demised shop admeasures 220 square feet. It has been put to commercial use and the rental fixed is Rs.1205.00 per month. Even on a thumb rule, it does not appear to be excessive or exorbitant. This however is only a prima facie view that is being expressed by me conscious of the fact that it is not for this court to fix the fair rent in a writ petition. Suffice to say that there is nothing to show that fair rent / lease rent has not been fixed in accordance with Section 34A of the TNHR&CE Act and therefore, the only ground on which the writ petition has been predicated, namely, the basis on which fair rent has been computed has not been set out in the impugned notice does not find favour with this Court. To be noted, I have also noticed that the impugned notice is only a demand notice.

23 Owing to all that have been stated supra, the writ petition fails and is dismissed. No costs.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

vvk

To

The Joint Commissioner,
Hindu Religious and Charitable Endowment,
Mayiladuthurai.

W.P.No.18151 of 2004

RSK(CO)
NR 08/08/2017