

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2017

CORAM :

THE HONOURABLE MR. JUSTICE P.D.AUDIKESSAVALU

W.P.Nos.38683 & 38753 of 2003
W.P.M.P. Nos.46884 & 46929 of 2003
and W.V.M.P.Nos.991 & 992 of 2004

R.Rajagopal Petitioner in both Wps

Vs.

1. Assistant Commissioner Cum
Fit Person Cum Executive Officer
Arulmigu Parthasarathi Swami Tirukoil
Triplicane, Chennai - 600 005.
2. The Commissioner
HR & CE Department
Government of Tamil Nadu. Respondents in both Wps

Prayer in W.P.No.38683 of 2003: Petition filed under Article 226 of the Constitution of India, to call for the records leading to the impugned proceedings of the respondent in Na.Ka.No.847/95 2 dated 6.6.2003 and quash the same

Prayer in W.P.No.38753 of 2003: Petition filed under Article 226 of the Constitution of India, to call for the records leading to the impugned proceedings of the respondent in Na.Ka.No.338/2003 2 dated 18.8.2003 and quash the same by issue of a Writ of Certiorari.

For Petitioner

[In both Wps] : Mr.V.K.Elango

For Respondents

[In both WPs] : Mr.T.S.Baskaran [For R1]

Mr.M.Maharaja [For R2]

Special Government Pleader

[HR&CE]

O R D E R

The writ petition challenge the fixation of fair rent for the land belonging to the first respondent Temple occupied by the petitioner in proceedings bearing No. Na.Ka.No.847/95 m 2, dated 06.06.2003 and Na.Ka.No.338/2003 m 2, dated 18.8.2003. It is noticed on a reading of the aforesaid impugned orders that the same have been passed pursuant to issuance of G.O.Ms.No.353, Tamil Development and Culture, Hindu Religious Department dated 4.6.1999 of the Government of Tamil Nadu, which has been upheld by a learned Single Judge of this Court by order dated 10.02.2000 in W.P.No.1178 of 2000 and confirmed by the Division Bench of this Court by order dated 13.03.2000 in W.A.No.402 of 2000.

2. It is accepted by the learned counsel appearing for the Petitioner as well as the respondents that the impugned orders have been passed by the first respondent in the exercise of powers under sub-section (2) of 34-A of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, which came into force with effect from 10.05.2003.

3. After hearing elaborate arguments of both sides in the matter, it has been brought to the notice of this Court by the learned counsel appearing for the respondents that by the judgment dated 02.07.2008 in Writ Petition No.36833 of 2003 etc batch, this Court had disposed a batch of writ petitions, in which the following questions arose for consideration:-

"3. (i) Whether the Executive Officer can collect the enhanced rent without there being fair rent fixation as directed under Section 34 A of the Act?

(ii) Whether G.O.Ms. No.353, Tamil Development and Culture, Hindu Religious Department, dated 4.6.1999 in directing the market rent to be fixed and also an upward revision to be made once in three years was valid ? and

(iii) Whether the authorities can rely upon the Government Order without going through the process of fair rent fixation contemplated under Section 34-A of the Act. In some other individual cases, complaint is made that the copies of the upward revision fixed by the Committee was not furnished and therefore, they are handicapped in challenging such fixation?"

After dealing with the various judgments cited and rival contentions raised it has been observed in paragraph No.10 of that judgment as follows:-

"10.The substance of the three decisions rendered by three different Benches are as follows:-

1.The relationship between the petitioners and the temple is only contractual in nature and therefore, the Court cannot interfere with any dispute between them.

2.G.O.Ms.No.353, Tamil Development and Culture, Hindu Religious Department, dated 4.6.1999 is a guideline, which can be validly adopted by subordinate officers and executive officers of the temple.

3.Section 34-A of the Act is only an enabling provision in constituting the committee and the Executive Officers can either act upon such a revision or can by the general guidelines made by the Government.

4.If any party, who is aggrieved by such fixation on the ground that either the guidelines were not followed or it is exorbitant, there is a remedy provided under Section 21 of the Act a therefore, without availing such remedy, this Court cannot entertain the writ petition."

Accordingly, the Writ Petitions in that batch of cases were dismissed with an observation that it would not preclude those Petitioners from pursuing such remedies as are available under law. It has been further held in paragraph No.15 of the said judgment as follows:-

"15.Since Mr.AR.L.Sundaresan, learned Senior Counsel for the petitioner states that if statutory remedy as provided under Section 34-A(3) of the Act has to be availed, it has to be filed within thirty days from the date of the impugned order. In the present case, since the matters have been pending for some time, their appeals may be likely to be thrown out on the ground of limitation. To avoid any such contingencies, the Commissioner, Hindu Religious and Charitable Endowments Department is hereby directed to entertain if any petition is filed in terms of Section 34-A(3) of the Act, within a period of three weeks from the date of receipt of a copy of this order without reference to the limitation and

on their merits. However, this does not mean that the petitioners can refuse to comply with the other provisions of the Act including proviso to Section 34-A (5) of the Act."

4. In the light of the aforesaid decision of this Court, the learned counsel for the Petitioner sought permission of this Court to withdraw the writ petitions with liberty to file appeals under sub-section (3) of Section 34-A of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, and has made an endorsement as follows:-

"The petitioner may be permitted to withdraw the above writ petitions with liberty file appeal against the impugned order raising all the issues."

5. In the aforesaid circumstances, the following order is passed:-

(i) The writ petitions are dismissed as withdrawn with liberty to the Petitioner to prefer appeals against the impugned orders before the second respondent/Commissioner, Hindu Religious and Charitable Endowments Department, Government of Tamil Nadu under sub-section (3) of Section 34-A of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, on or before 11.10.2017.

(ii) If such appeals are filed within the aforesaid stipulated time, the second respondent / Commissioner, Hindu Religious and Charitable Endowments Department, Government of Tamil Nadu, shall dispose of the same after affording full opportunity of hearing to all parties concerned and pass orders on merits and in accordance with law and communicate the decision to the Petitioner and the first respondent by 31.12.2017.

(iii) If the petitioner makes any application seeking interim orders staying the impugned orders during the pendency of the appeals, the second respondent shall pass appropriate orders in that regard and on such terms and conditions as may be deemed fit and necessary.

(iv) If such appeals are not filed within the aforesaid stipulated time, it shall be treated that the impugned orders stand confirmed and the first respondent shall be entitled to recover the amounts due from the petitioner under the impugned orders in the manner recognised by law.

(v) The interim order staying the impugned orders granted on 31.12.2003 in W.M.P.Nos.46884 & 46929 of 2003 stand vacated and consequently, W.M.P.Nos.46884 & 46929 of 2003 and W.V.M.P.Nos.991 & 992 of 2004 are closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. Assistant Commissioner Cum
Fit Person Cum Executive Officer
Arulmigu Parthasarathi Swami Tirukoil
Triplicane, Chennai - 600 005.

2. The Commissioner
HR & CE Department
Government of Tamil Nadu.

+2cc to Mr.T.Selvakumar, Advocate sr.68117

+1cc to Mr.M.Narayanaswamy, Advocate sr.68306

W.P.Nos.38683 & 38753 of 2003

sr(co)
ss(21/9/2017)

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