

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD) Nos.1848 to 1853 & 2165 of 2014
M.P.Nos.1 and 2 of 2014 (12 MPs)

CRP (PD) 1848 of 2014

E.Sundarraaj ... Petitioner

Vs.

1.The Commissioner
Hindu Religious and Charitable
Endowments Department,
Nungambakkam,
Chennai – 34.

2.The Joint Commissioner
Hindu Religious and Charitable
Endowments Department,
Palayamkottai
Thirunelveli District.

3.The Executive Officer,
Arulmigu Thirukutralanathaswamy Temple
Coutallam
Tenkasi Taluk
Thirunelveli District.

... Respondents in all CRPs

PRAYER in C.R.P.(PD)No.1848/2014: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 19.02.2014 passed in A.P.No.36 of 2013D2 by the learned Commissioner of Hindu Religious and Charitable Endowments Department, Chennai – 34.

COMMON ORDER

Civil Revision Petitions are filed against the orders dated 19.02.2014 passed by the first respondent. The issues and parties in all the Civil Revision Petitions are one and the same and therefore, they are disposed of by this common order.

2. The petitioners are tenants of shops belonging to the third respondent temple. The respondents 1 & 2 directed the third respondent to fix the fair rent as per G.O.Ms.No.353 (Tamil Nadu Culture and Religious Endowment Department) dated 04.06.1999 and G.O.Ms.No.456 (Tamil Nadu Culture and Religious Endowment Department) dated 09.11.2007 and implement the same w.e.f 01.11.2011. As per the said direction, the third respondent issued notice with regard to the rent payable by the tenants. Some of the tenants filed W.P.Nos.9308 to 9320 of 2009 before the Madurai Bench of this Court which by order dated 16.09.2009 disposed of the writ petitions directing the third respondent to place the representation given by the petitioners before the Fair Rent Committee constituted in terms of Circular to the Commissioner of Hindu Religious & Charitable Endowments Department dated 02.02.2009 and thereafter directed the Fair Rent Committee to conduct enquiry and pass fresh orders, in accordance with law,

within a period of eight weeks from the date of receipt of copy of the order and also directed the petitioners to co-operate with the enquiry to be conducted by the Fair Rent Committee.

2(a) As per the order of this court, the third respondent received the representation from the tenants. Some of the tenants agreed to pay 15% enhanced rent for every three years and agreed to pay the property tax payable by the third respondent, as fixed by the District Munsif Court, Tenkasi in the suit pending with regard to payment of property tax between the third respondent and Executive Officer, Town Panchayat, Kuttralam. In view of such statement, the third respondent demanded property tax from 01.10.1993 to 31.12.2010. Most of the tenants informed the third respondent that they will not pay the property tax from 01.10.1993 but shall pay only from 01.11.2001. Some of the tenants refused to pay the property tax. The third respondent placed the representation before the Fair Rent Committee. On 26.04.2012, the Fair Rent Committee, fixed the fair rent at Rs.7.31 per sq.ft. and the same was approved by the Joint Commissioner, HR&CE Department, Tirunelveli. The third respondent calculated the rent payable by each tenant by proceedings dated 14.02.2013 bearing Na.Ka.No.86/1421/A2 demanding the fair rent from the petitioners

and other tenants from 01.11.2001 to 31.12.2012, till 30.06.2013 with an increase of 15% for every three years.

2(b) The petitioners filed appeal under Section 34 (A)(3) of Tamil Nadu Hindu Religious & Charitable Endowments Act 1959 (Tamil Nadu Act 22 of 1959) before the first respondent. According to the petitioners -

(i) Fair Rent Committee did not follow G.O.Ms.No.353 (Tamil Nadu Culture and Religious Endowment Department) dated 04.06.1999 and G.O.Ms.No.456 (Tamil Nadu Culture and Religious Endowment Department) dated 09.11.2007 and various circulars issued by the Department.

(ii) The Fair Rent Committee has not adopted prevailing market rental value but adopted the rent paid by one Sankaranarayanan (PAGE 1) who is not a leasee or in possession of the temple property.

(iii) the rent fixed by the committee is arbitrary and erroneous. The Executive Officer, Town Panchayat, Kuttralam furnished the information dated 29.11.2013 obtained under RTI Act to one of the tenant regarding the

prevailing market rental value situated at Kutralam in the year 2001. In view of the same, the rent fixed by the committee at Rs.7.31 per sq.ft. is arbitrary and erroneous. The committee did not take into consideration the order passed by this court but confirmed the fair rent already fixed.

2(c) The third respondent filed counter affidavit and contended that committee has fixed the fair rent only as per G.O.Ms.No.353 (Tamil Nadu Culture and Religious Endowment Department) dated 04.06.1999 and G.O.Ms.No.456 (Tamil Nadu Culture and Religious Endowment Department) dated 09.11.2007 and some of the petitioners, after receiving the notice filed W.P.No.9313 of 2009 before the Madurai Bench of this Court. This court disposed of the writ petition directing the third respondent to receive the objection and place before the committee and directed the committee to conduct the enquiry and pass fresh orders. As per the order of this court, objections were received from the tenants and the same was placed before the Fair Rent Committee. The committee passed a resolution on 26.04.2012 fixing the fair rent at Rs.7.31 sq.ft. By the notice dated 14.02.2013, the third respondent informed the petitioners to pay the arrears of rent payable by them from 01.11.2001. The petitioners failed to pay the arrears of rent

and current rent from 01.03.2013. By proceedings dated 31.08.2013 license was cancelled as petitioners failed to pay the arrears of rent and current rent from 01.03.2013. The petitioners did not handover the possession. It was recommended to initiate proceedings under Section 78 of HR&CE Act against all the tenants including the petitioners. The shop belonging to the temple is in the centre of the town and number of general public are visiting the place. The fair rent was fixed taking into consideration the land value, property tax, cost of living, Government orders and circulars of the first respondent.

3. The first respondent, considering the grounds of appeal, counter affidavit filed by the third respondent and arguments of the learned counsel for the petitioners and the third respondent Executive Officer, by impugned orders dated 19.02.2014 dismissed the appeals.

4. Against the said orders of dismissal dated 19.02.2014 passed by the first respondent, the present Civil Revision Petition s are filed by the petitioners.

5. The learned counsel for the petitioners reiterated the averments made in the ground of appeal and revision. In addition

to that, the learned counsel for the petitioners contended that the third respondent did not follow the direction of this court as per the order passed in W.P.No.9308 of 2009 etc. batch. The third respondent received the objection from the petitioners but did not place the same before the committee. The third respondent did not convene meeting with the committee and without any meeting, the fair rent was fixed. The rent fixed by the committee is arbitrary to the guidelines contained in G.O.Ms.No.353 (Tamil Nadu Culture and Religious Endowment Department) dated 04.06.1999 and G.O.Ms.No.456 (Tamil Nadu Culture and Religious Endowment Department) dated 09.11.2007. As per the above G.Os, the committee has to consider the guideline value, market value, prevailing market rental value and fix the fair rent based on the rent whichever is higher.

5(a) The learned counsel for the petitioners further contended that the Commissioner, without following the said guidelines, fixed the fair rent according to his *whims and fancies*. The committee fixed the rent taking into consideration the alleged rent paid by one Sankaranarayanan. There is no such person occupying the portion of the temple property. He is neither a leasee nor in possession of the temple property. The rents fixed by the Town Panchayat for

Stall Nos.1 & 2 are not applicable to the rest of the petitioners. The said stalls are very near to main falls and it is very small extent. The shop in occupation of the petitioners are far away from the main falls and situated in the residential area. For the stall near the falls and for the stall in the bus stand, lesser amount is fixed. The rent fixed for petitioners' shop by the Fair Rent Committee is erroneous, arbitrary and is on the higher side. The petitioners will get profit only during saral seasons and will not get business on any other days.

6. Per contra, the learned counsel for the third respondent contended that the objection received from the petitioners were placed before the Fair Rent Committee in the meeting held on 26.04.2012. The committee, considering the guideline value, prevailing market rent, government orders, circulars of the first respondent and the rent paid in that locality, fixed the fair rent. The committee has followed the procedures and directions given by this court was complied with. Some of the tenants objected for payment of property tax and some of the tenants obtained information from the Executive Officer, Town Panchayat, Kuttralam. The rent fixed by the Town Panchayat is higher than the rent fixed by the Fair Rent Committee for the third respondent. Shops under the occupation of

the petitioners are in heart of the town and rental value is more than the prevailing rent for the stalls near the falls. The rent fixed is not arbitrary. The rent was fixed by the committee taking into consideration the land value, property tax, cost of living, guideline value, government orders and circulars. This court directed the petitioners to pay the arrears of rent from 01.09.2009 as a condition for stay. The petitioners have not complied with the said order. Huge amounts are due and payable by the petitioners to the temple. The third respondent is entitled to take possession of the shop from the petitioners and lease out the same to third parties at the present prevailing market rent. Otherwise the third respondent temple will be put to irreparable loss and hardship.

7. Heard the learned counsel for the petitioners, Mrs.A.Madhumathi, learned Additional Government Pleader (CS) appearing for the respondents 1 & 2 and the learned counsel for the third respondent.

8. The point for consideration in this Civil Revision Petition is ***whether the rent fixed by the Fair Rent Committee is arbitrary and contrary to the guidelines issued by the government, government orders as well as circulars of the***

first respondent.

9. It is admitted fact that the petitioners are in possession of the shops belonging to the third respondent temple for a long time. The third respondent fixed the fair rent after obtaining approval from the respondents 1 & 2 informing the petitioners to pay the same. Some of the petitioners / tenants challenged the said order by filing writ petitions before the Madurai Bench of this Court on the ground that the third respondent has fixed the fair rent without receiving any objection from the petitioners and the fair rent fixed by the committee is not correct. This Court, by order dated 16.09.2009 directed the third respondent to receive the objection from the petitioners and place the same before the committee and directed the committee to fix the rent after enquiry. As per the orders of this court, the third respondent received objection from the petitioners and placed the same before the committee. The committee, in the meeting held on 26.04.2012, fixed the market rent at Rs.7.31 per sq.ft. In view of the same, the contention of the learned counsel for the petitioners that the committee did not meet and without considering the objection, the rent fixed at Rs.7.31 per sq.ft. is without merits. As per G.O.Ms.No.353 (Tamil Nadu Culture and Religious Endowment Department) dated 04.06.1999

and G.O.Ms.No.456 (Tamil Nadu Culture and Religious Endowment Department) dated 09.11.2007 and circulars of first respondent, the fair rent has to be fixed. Considering the guideline value, market value and prevailing rent in the same locality, the highest rent among the three has to be fixed as fair rent.

10. From the materials on record, it is seen that in year 2001, the guideline value is very low and market value is very high in the locality. In view of the same, the committee has fixed the fair rent taking into consideration the prevailing rent in the locality. The shops under the occupation of the petitioners are in and around the temple and general public visit the temple regularly. The shops near the temple cannot be compared for fixing the rent as they are far away and they do business only during saral season. Further from the information obtained by one of the tenant under Right To Information Act from the Executive Officer, Town Panchayat, Kuttralam itself shows that the rent fixed by the Town Panchayat is higher than the rent fixed by the Fair Rent Committee.

11. As far as shops in the bus stand mentioned by the petitioners are concerned, the petitioners have not stated how far the bus stand is from the shops under their occupation. The first respondent has mentioned the rent payable in the shops within the radius of 1.6 kms. can be considered for fixation of fair rent. In the present case, the committee has fixed the fair rent following the guidelines contained in the GOs and circulars. Considering the above facts, it cannot be said that the committee has fixed the fair rent in arbitrary manner without following the guidelines, GOs and circulars. The learned counsel for the third respondent submitted that the petitioners failed to pay the arrears of rent as directed by this Court as condition for stay. However, the learned counsel for the petitioners submitted that they have already paid the rent, as directed by this Court.

12. It is admitted fact that the shops under the occupation of the petitioners belong to the third respondent temple. The petitioners failed to pay the rent fixed by the Fair Rent Committee. The petitioners are squatting on the property of the third respondent causing loss to the temple. This attitude of the tenants like petitioners should be deprecated at the initial stage. The

Appellate Court has considered the above aspects and also taking note of the fact that the petitioners admitted before the first respondent that they shall deposit 50% of the arrears of rent on or before 27.09.2013 for admitting the appeal but failed to deposit the same.

13. From the chart submitted by the learned counsel for the third respondent on 25.08.2014, it is seen that huge amounts are due by the petitioners as on 30.06.2014 towards arrears of rent.

14. Considering all the above facts, I hold that there is no illegality or irregularity warranting interference by this Court in the order impugned in this revision.

15. In the result, all the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

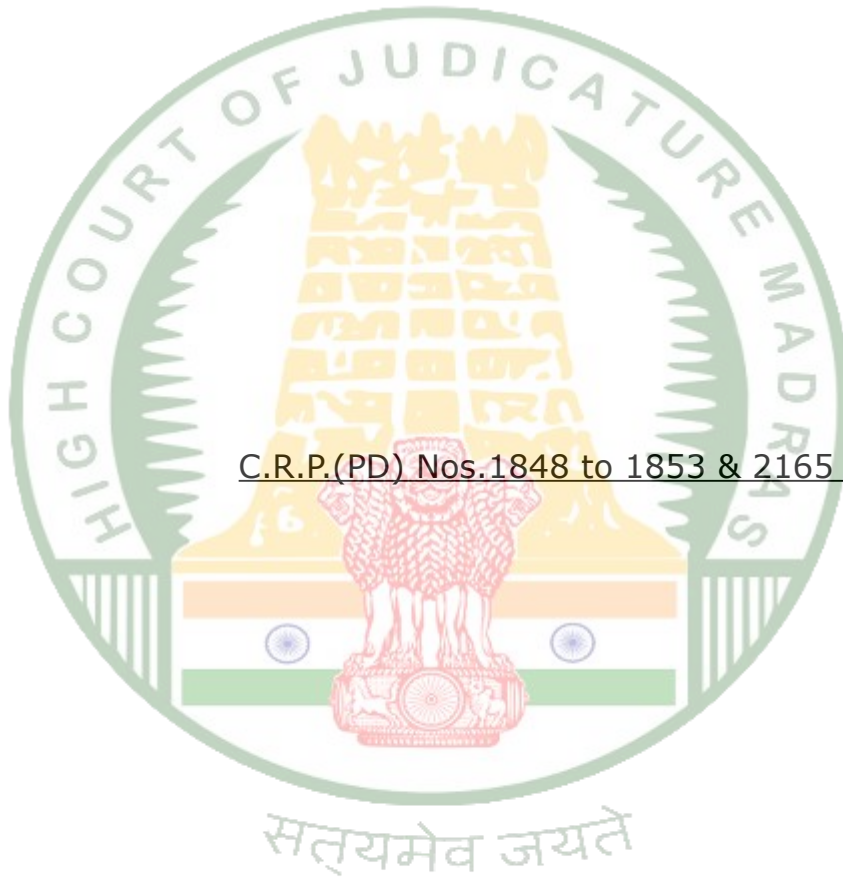
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Index : Yes/No

V.M.VELUMANI, J.

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