

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2018

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE P. RAJAMANICKAM

W.A.Nos.1897, 1913, 1945 & 1946 of 2018
and
CMP.Nos.15562 & 15563/2018 in W.A.No.1945/2018,
15564 & 15565 /2018 in W.A.No.1946/2018,
15427 & 20877 of 2018 in W.A.No.1913 of 2018

W.A.Nos.1897 & 1913 of 2018:

Mrs.Jotheeswari ...Appellant in W.A.Nos.1897 & 1913/2018

vs.

1.R.T.Sambandam

2.The Commissioner,
H.R.&C.E.,
Uthamar Gandhi Salai,
Nungambakkam, Chennai-34.

3.The Joint / Deputy Commissioner,
H.R.&C.E.,
Sathuvachari, Vellore.

4.Arulmigu Ekambareswarar Thirukoil,
Representated by Executive Officer,
14 A, V.O.C.Street, Chingleput.

...Respondents in W.A.Nos.1897 & 1913/2018

W.A.Nos.1945 & 1946 of 2018:

R.T.Sambandam ...Appellant in W.A.Nos.1945 & 1946/2018

vs.

1.The Commissioner,
H.R.&C.E.,
Uthamar Gandhi Salai,
Nungambakkam, Chennai-34.

2.The Joint / Deputy Commissioner,
H.R.&C.E.,
Sathuvachari, Vellore.

3.Arulmigu Ekambareswarar Thirukoil,
Representated by Executive Officer,
14 A, V.O.C.Street, Chingleput.

4.Mrs.Jotheeswari

...Respondents in W.A.Nos.1945 & 1946/2018

Prayer in W.A.Nos.1897 & 1913,1945,1946/2018:- Writ
Appeal filed under clause 15 of the Letter Patents against
the order passed by this Court dated 04.07.2018 made in
W.P.No.30545 of 2013 and WP.No.8452/2014.

Prayer in WP.NO.30545/2013:

Writ Petition under Article 226 of the Constitution of
India praying that to issue a Writ of Mandamus to Direct
the 3rd respondent to consider the petitioner
representation dated 5.8.2013 and another representation
dated 12.9.2013 through petitioner lawyer to effect
restoration of the petitioner name as Lessee, Successor in
the interest in respect of the land and owner of the
superstructure bearing No.1E, G.S.T. Road and 1E1,
Varadanar Street (Timmarajakulam Street) comprised in
T.S.No.370/1 in Ward No.3(Old) Chengalpet deleting the name
of the fourth respondent Jotheeswari as Lessee.

Prayer in WP.NO.8452/2014:

Writ Petition under Article 226 of the Constitution of
India praying that to issue a Writ of Mandamus to Direct
the respondents to implement the G.O.Ms. No.298, T.D. & R.I
Department dated 20.7.2010 on the file of Government of
Tamil Nadu and revise the rent in terms of the G.O. and
determine the monthly rent w.e.f. 9.11.2007 and renew the
lease in respect of the premises No.1E, G.S.T. Road,
Chengalpet and 1E1, Varadanar Street, Chengalpet

W.A.Nos.1945 & 1946 of 2018:

For Appellant : Mr.J.R.K.Bhavanatham for R1

For Respondents : Mr.M.Maharaja
Special Government Pleader for R1 & R2
Mr.Sriram for R3
Mrs.Uma for R4

W.A.Nos.1897 & 1913 of 2018:

For Appellant : Mrs.P.Uma

For Respondents: Mr.J.R.K.Bhavanatham

Mr.M.Maharaja
Special Government Pleader for R2 & R3

Mr.Sriram for R4

COMMON JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.,]

By consent, all these writ appeals are taken up for final disposal and disposed of by this common judgment, as the impugned order is common one passed in W.P.Nos.30545 of 2017 and 8452 of 2014 filed by the appellant in W.A.Nos.1945 & 1946 of 2018. The 4th respondent in the writ petition is the appellant in W.A.Nos.1897 & 1913 of 2018.

2. Facts leading to the present litigation have been narrated in the impugned common order, which is the subject matter of challenge in these appeals and therefore, it is unnecessary to restate the entire facts once again, except to cull out the relevant facts for the disposal of these writ appeals.

2.1. It is the case of the appellant in W.A.Nos.1945 & 1946 of 2018 that vacant site belonging to the 3rd respondent Temple namely, Arulmigu Aagambareshwarar Temple represented by its Executive Officer, Chengalpet was leased out in the year 1950 in favour of his grand father, namely Natesa Mudaliar and it admeasures to an extent of 4321 sq.ft in S.No.270/1, abutting Grant Southern Trunk Road and it is also having access to Vedachala Nagar. The grandfather of the appellant, after obtaining necessary planning permit/permission, had put up superstructure consisting of Ground and First Floors and it is also subjected to statutory levies.

2.2. It is further averred by the appellant that after demise of his grandfather, namely Natesa Mudaliar, his father, namely Rathina Mudaliar had succeeded to the said estate and continue to pay rent to the Temple and he is also recognised as lessee in respect of the site and that apart, the father of the appellant has also paid electricity consumption charges and statutory levies to the

local body, in respect of the superstructure put up by them. The appellant in W.A.Nos.1945 & 1946 of 2018, after demise of his father, became successor-in-interest and he was running a welding shop and it is also registered as a Small Scale Industries with the Directorate of Industries and Commerce. The petitioner had received a letter dated 30.08.1999 from the third respondent Temple increasing the rent at the rate of Rs.12,000/- with retrospective effect from the year 1996 and aggrieved by the exorbitant increase in rent, he filed a petition for fixation of fair rent in R.C.O.P.No.6 of 2008 on the file of the District Munsif cum Rent Controller, Chengalpet and during pendency of the said proceedings, claims to have deposited the rent and ultimately the said RCOP came to be dismissed on 02.02.2013 as not maintainable. In the interregnum, the 3rd respondent Temple, in respect of a part and portion of the site leased out to the grandfather of the appellant, for which, he became the successor in interest, apart from leasing the site, has also leased out the part of the superstructure put up by the grandfather of the appellant and in this regard he filed W.P.No.30545 of 2013.

2.3. The grievance expressed by the petitioner in the writ petition was that unless and until the 3rd respondent fix the fair rent in terms of G.O.Ms.No.298, Tamil Nadu Development, Religious Endowments and Information Department dated 20.07.2010, they cannot increase the rent very many times that too exorbitant and though he was ready to pay reasonable rent by way of fair rent, pending fixation, the 3rd respondent, by resorting into high handed methods, leased out the portion of the site as well as the superstructure in favour of the 4th respondent in the writ petition / appellant in W.A.Nos.1897 & 1913 of 2018 and therefore, came forward to file W.P.No.8452 of 2014 praying for writ of Mandamus directing the respondents to implement the said Government Order and revise the terms of the said Government Order with effect from 09.11.2007 and also renew the lease in respect of the premises bearing Door No.1E, G.S.T.Road, Chingleput and 1E1, Varadanar Street, Chingleput.

2.4. The respondent Temple had entered appearance and filed their Counter affidavit in WP.No.30545 of 2013 and took a stand that a total extent of 5676 sq.ft. comprising an extent of 4321 sq.ft and 1355 sq.ft was leased out in favour of the grandfather of the appellant in W.A.Nos.1945 & 1946 of 2018 viz., Mr.Natesa Mudaliar and on his demise, his son viz., Mr.Rathina Mudaliar, continued to be in possession of the land and after his demise, appellant viz., R.T.Sambandam continued to be in possession and the appellant and his father had leased out the above extent in

favour of the 4th respondent therein admeasuring to an extent of 4321 sq.ft and vide proceedings dated 14.03.2002, fair rent was fixed in respect of the land admeasuring to an extent of 4321 sq.ft at the rate of Rs12,000/- per month and it was never paid by his grandfather or by the appellant. It is further pointed out by the 3rd respondent Temple that having not satisfied with the fixation of the fair rent, the appellant had filed R.C.O.P.No.6 of 2008 on the file of the District Munsif cum Rent Controller, Chengalpet and the same was dismissed on 02.02.2013 as not maintainable and taking into consideration the interest of the Temple and considering the application submitted by the 4th respondent namely Jotheeshwari, appellant in W.A.Nos.1897 & 1913 of 2018, a decision has been taken to accept her as a direct tenant subject to certain condition and it was also agreed to by her.

2.5. It was further averred by the 3rd respondent that in pursuant to the direction passed in the writ proceedings, inspection was carried out on 23.05.2018 and it was found that 1355 sq.ft area under the occupation of the appellant contains two shops and the same has been sublet to third parties (a) Balaji Welding Works; and (b) Sekar for running an automobile shop and it is also consisting of Hotel, Ananda Bhavan and according to the learned counsel for the appellant in W.A.Nos.1945 & 1946 of 2018, viz., R.T.Sambandam, those business entities were run by the 4th respondent/appellant in W.A.No.1897 of 2018. The appellant R.T.Sambandam has also filed his objection to the counter affidavit of the 3rd respondent.

2.6. The stand of the 4th respondent / appellant in W.A.No.1897 of 2018, is that vide proceedings of the Joint Commissioner of HR & CE Vellore dated 09.07.2007, she became direct tenant subject to 12 conditions and initially she was paying rent at the rate of Rs.16,000/- per month and having found that the rent appears to be very exorbitant, made a request for reduction of the said rent and paying the revised rent aggregating to a sum of Rs.19,000/- between 2007 to 2014 and from the year 2014, altogether stopped to pay the rent.

3. It is the submission of the learned counsel appearing for the appellant in W.A.No.1897 of 2018, that in the event of her request being favourable considered, she is ready to pay the entire arrears of rent.

4. Mr.J.R.K.Bhavanatham, learned counsel appearing for the appellant in W.A.Nos.1945 & 1946 of 2018 would submit that the grandfather of the appellant after obtaining

necessary planning permission has put up superstructure and carrying on welding business and a portion of the premises was also used for residential purpose and the 3rd respondent Temple, acting in a highhanded method, has recognised the appellant in W.A.No.1897 of 2018 as direct tenant and also leased out the portion of the superstructure put up by the appellant in W.A.Nos.1945 & 1946 of 2018 and by drawing attention of this Court to Section 34-C of the Tamil Nadu Hindu Religious Charitable and Endowment Act, 1959 and would submit that the compensation is to be paid for the building/superstructure and admittedly, the said amount has not been paid.

5. The respective learned counsel appearing for the parties by drawing the attention of this Court to the common order passed in the writ petitions and would submit that the learned Judge, without properly appreciating the factual aspects and legal position, has issued a mandate to the respondents to evict them in accordance with the provisions of the HR & CE Act and misconstruing the same, the premises, which were in occupation of the appellants, were put under lock and seal and while entertaining the writ appeals, a conditional interim order was passed and the appellant in W.A.No.1945 & 1946 of 2018 have complied with the conditional order and partial possession of the premises was given to him and insofar as the appellant in W.A.No.1847 of 2018 is concerned, since she did not comply with the conditional order, the premises leased out to her, continue to be kept under lock and seal.

6. The learned Standing counsel appearing for the 3rd respondent would submit that original rent payable by the appellant in W.A.No.1945 & 1946 of 2018 was fixed at Rs.50/- in respect of the vast extent of prime land, which lie adjacent to the arterial road, namely Grand Southern Trunk Road and the superstructure was put up without obtaining any permission whatsoever and the appellant in W.A.Nos.1945 & 1946 of 2018 had leased out the premises in favour of the 3rd party and started collecting hefty amount and between the year 2011 to 2013, not even a paltry rent amount of Rs.50/- has been paid and on filing R.C.O.P.No.6 of 2008, the same have been deposited and the RCOP was dismissed as not maintainable and the act of the appellant in W.A.Nos.1945 & 1946 of 2018 would clearly disclose that they want to spot on the large extent of the temple property without paying any rent and leased out the premises in favour of the third party and the learned Judge has taken note of the entire aspects has rightly reached the conclusion and prays for dismissal of this writ petition.

7. This Court paid its best attention to the rival submissions and also perused the materials placed before it.

8. A perusal and appreciation of the facts disclosed in the affidavit filed in support of the writ petition as well as the counter affidavit filed by the 3rd respondent would paint a very sorry picture and vast extent of land was leased out in favour of the grandfather of the appellant at the rate of Rs.50/- and the materials placed before this Court would disclose that successor in interest of the original lessee, not even paid the paltry sum of Rs.50/- to the Temple and the appellant in W.A.Nos.1945 & 1946 of 2018, as per the counter affidavit of the 3rd respondent Temple, has also leased out the portion of the premises in favour of the third party by way of sub lease and despite receipt of reasonable amount by way of rent, did not pay anything to the said Temple.

9. It is the stand of the appellant in W.A.Nos.1945 & 1946 of 2018 that unless and until, fair rent is fixed in terms of G.O.Ms.No.298 of Tamil Nadu Religious Endowment and Information Department dated 20.07.2010, the fair rent cannot be demanded and whatever be the reasonable rent, he is willing to pay the same. In the considered opinion of this Court, it may not be termed as reasonably fair on the part of the said appellant in W.A.Nos.1945 & 1946 of 2018 for the reason that the vast extent of prime land which lie adjacent to the arterial road leased out for a low rent of Rs.50/- to the grandfather of the appellant and by succeeding to the said estate, it was obligatory on the part of the appellant to pay the said rent atleast. According to the learned counsel for the 3rd respondent, he has not even paid the said rent between the years 2011 to 2013, only during the pendency of the R.C.O.P No.6 of 2008, he deposited the rent and ultimately the said petition also came to be dismissed as not maintainable. After the disposal of the writ petition, land and building in occupation of the said appellant came to be put on lock and seal and pursuant to the interim order passed in writ appeal, in respect of the portion of the premises, lock and seal has been lifted.

10. Though it is the forceful submission of the learned counsel appearing for the appellant that the respondents are expected to follow due process of law, in the considered opinion of this Court, the said submission lacks merit and substances for the reason that being the writ petitioner / appellant in W.A.Nos.1945 & 1946 of 2018, is equally under obligation to follow the law or atleast to pay rent in respect of the temple property in which he claims to be in possession and however, he has failed to do

so and without paying the rent, by way of sublease got substantial rental amount and inspite of that, he has failed to pay atleast portion of the rent to the 3rd respondent Temple. In so far as the appellant in W.A.No.1897 of 2018 is concerned, vide proceedings dated 09.07.2007, she was recognised as a direct tenant and the lease was granted to her subject to the following conditions by the 3rd respondent Temple:

Conditions:

- 1.Rent due from 01.11.2001 to 31.06.2007 to the temple of Rs.9,44,000/- must be paid to the temple in one installment / payment.
- 2.The rent fixed at Rs.16,000/- must be paid on or before 5th day of every month without fail.
- 3.As per G.O. No:277, 15 month rent of Rs.2,40,000/- must be donated in one installment.
- 4.If the fixed rent 6 month rent to the temple of Rs.96,000/- must be deposited to the temple in one installment.
- 5.The above mentioned rent license is only for a period of 3 years.
- 6.The holder should not allow any other person to the said property for rent.
- 7.Without the permission of the owner, no changes or work can be undertaken to the said property.
- 8.The temple property must use only for the purpose for which it was rent out.
- 9.After three years rent will be hiked by 33.3%.
- 10.Before the expiry of the rent license, the application for extension of rent license must be applied. Failing to do so, on expiry of rental agreement, it must be handed to the temple.
- 11.Acceptance of rental agreement must be written by holder on his own expenses.
- 12.License will be terminated on evidences of false documents or false information. Also legal proceedings will be initiated against those involved.
- 13.All the rule of the above mentioned must be followed.

Though she initially paid the rent for some time, did not pay the lease rent amount of Rs.16,000/- per month and she paid a lesser amount aggregating to a sum of Rs.19,000/- between the year 2007 to 2014 and from the year 2014, stopped paying the rent.

11. A perusal of the materials would also disclose that he has leased out the portion of the premises to the mobile

shop as well as the Hotel. Despite the fact that he has earning a substantial income, he has failed to pay the rental amount to the 3rd respondent Temple. The learned Judge has taken note of the factual aspects and expressed anguish and also commented upon the lackadaisical attitude on the part of the Temple authorities and directed the respondents 1 to 3 to evict the writ petitioner / appellant in W.A.Nos.1945 & 1946 of 2018, as well as the 4th respondent / appellant in W.A.No.1897 of 2018 within the period of six weeks from the date of receipt of that order by following the procedures contemplated under the provisions of HR & CE Act, 1959. The impugned common order merely directs the concerned officials to follow due process of law and in the light of the above facts and circumstances, it may not be found faulted with.

12. This Court, on an independent application of mind and on going through the entire materials placed on record, is of the considered view that there is no error apparent on the face of the record or infirmity in the reasons assigned by the learned Judge in dismissing the writ petition with certain directions and finds no merit in these writ appeals.

13. In the result, all the writ appeals are dismissed, confirming the common order dated 04.07.2018 made in W.P.Nos.30545 of 2013 & 8452 of 2014. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

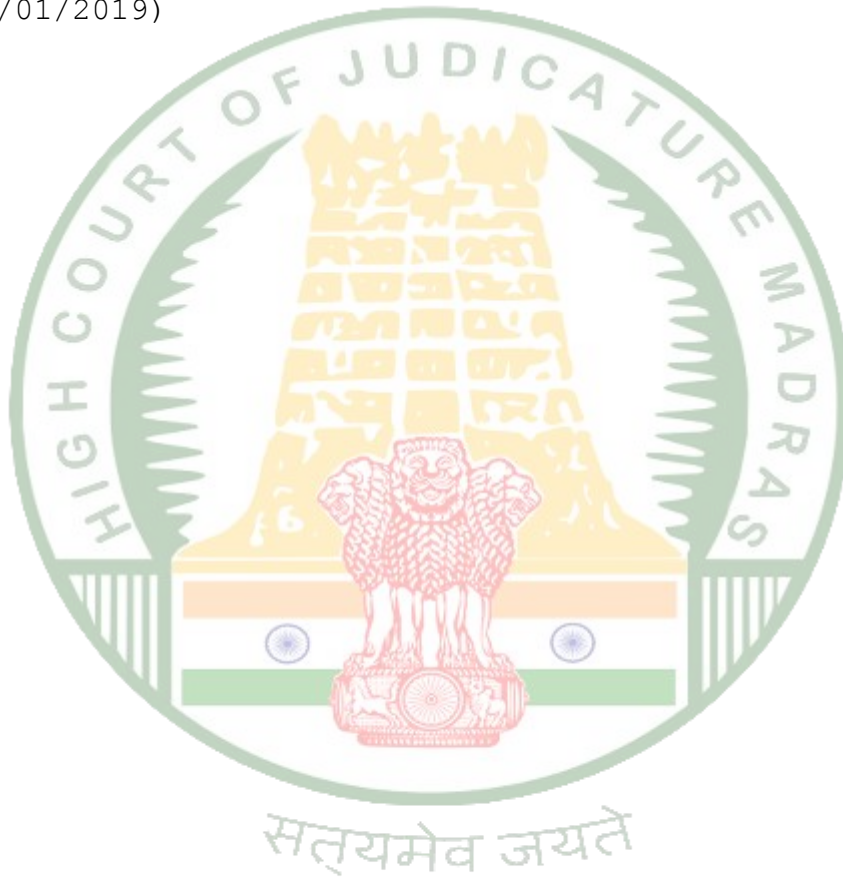
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14 A, V.O.C.Street, Chingleput.

+1cc to Mr.P.Uma , Advocate SR.No. 84174
+2cc to Mr.J.R.K.Bhavanatham , Advocate SR.No. 84304,84303
+1cc to Mr.A.S.Kailasam , Advocate SR.No. 83962
+1 CC TO GOVERNMENT PLEADER SR.NO. 85001
WA.No.1897,1913, 1945 & 1946 of 2018

A.SK(10/01/2019)



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