

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 24TH DAY OF JULY 2018

THE HON'BLE MR.JUSTICE S.MANIKUMAR

A. No.7813 of 2014
in
C.S. No.363 of 1912

In the matter of the Trust
Estate of N.Visalakshi Ammal

1.K.Kannuswamy Pillai Merchant
residing at Kottur
Mannargudi Taluk,
Tanjore Dt.

2.N.Kamala Pillai,
Land Lord
residing at Vellore,
Thiruthuraipundi Taluk in Tanjore Dt.

3.C.Subbaraya Gurukkal, a priest residing at
No.4, Saiva Muthia Mudaly Street,
George Town, Madras. ..Plaintiffs

VS

1.1.Adipuram Pillai,
Land Lord, residing at
Tondiarpet, Madras.

2.Srinivasan Pillai
lately a Land holder
residing at No.45, Yegatha Kovil Street,
George town, Madras but now deceased.

3.V.Thiruvengadam Pillai lately a cashier
In the Mercantile Bank and now residing at
No.30, Ramasamy Street, George Town, Madras.

4.T.Subba Pillai
a minor the adopted son of
Veeraperumal Pillay, deceased, residing with
the 3rd defendant at his address aforesaid.

5.V.Ramalinga Pillai the legal representative of the Deceased 2nd defendant, living at George Town, Madras

6.Nagalingam Pillai,
the adopted son of Gopalakrishnan Pillay,
Landed Proprietor residing at No.83,
Pedariar Kovil Street,
George Town, Madras. ..Defendants

A.No.7813 of 2014:

The Official Trustee of Tamil Nadu
High Court Buildings, Chennai. : Applicant

-Vs.-

1. F.Abass Ali
S/o. Fakeer Meeran Rowther
53, Sowri Muthu Street, Chennai 600 001.

2. Thamim Ansari
S/o. Kareem
No.101, Pidariar Koil Street,
Chennai 600 001. :Respondents

Application praying that this Hon'ble Court be pleased to fix reasonable rent for the schedule mentioned properties with all usual terms and conitions.

This Application coming on this day before this court for hearing the court made the following order:-

Instant application is filed by the learned Official Trustee of Tamil Nadu seeking to fix reasonable rent for the Building bearing Door No.12/189, N.S.C. Bose Road, Chennai- 600001, measuring about 19 sq.ft, and another building bearing Door No.189, N.S.C. Bose Road, Chennai 600 001, measuring about 267.75 sq.ft, with all usual terms and conditions. The total area of the property is about 280

sq.ft.

2. Report of the learned Official Trustee, dated 02.12.2014, is extracted hereunder:

"1. The Official Trustee humbly submits that the property bearing Door No.12/189 N.S.C.Bose Road, Chennai-1, belongs to the trust estate of Visalakshi Ammal and is under the administration of the Official Trustee as per Scheme Decree Dated:22.2.1915 in C.S.No.363 of 1912.

(A copy of the Scheme Decree is submitted in the Typed Set of Papers as Document No.1.)

2. The first respondent Abbas Ali is our tenant for the rear portion of the building bearing Door No.12/189, N.S.C.Bose Road, Chennai-1 to an extent of 19 sq.ft and he is running a wall shop. On 7.3.1967, a rental agreement was executed on a monthly rent of Rs.30/- and it was periodically renewed till 1.10.1998 and the rent was also renewed upto Rs.240/- p.m. Thereafter the rental agreement was not renewed. There is no increase in the rent also.

(A copy of the rental agreement is submitted in the Typed Set of Papers as Document No.2.)

3. The Official Trustee humbly

submits that the second respondent Thamim Ansari, had entered into a partnership agreement with the first respondent Abbas Ali on 25.3.2004. He is a sleeping partner and the same was recognized by the then Official Trustee in Roc.No.1060/2005/OTHC, Dt.26.4.2005. The respondents herein are selling paper decorative materials, Polythene covers, Paper cups, PVC Cups and Plastic Plates etc.,

(A copy of the Deed of Partnership and the letter of the then Official Trustee Dt.26.4.2005 are submitted in the Typed Set of Papers as Document No.3 (Series)

4. The Official Trustee humbly submits that consequent to the partnership deed, on 1.5.2005, a rental agreement was executed by both the respondents on monthly rental basis.

(A copy of the rental agreement is submitted in the Typed Set of Papers as Document No.4.)

5. On 31.1.2007, the first respondent, Abbas Ali, has given a letter to the Official Trustee stating that both the respondents had entered into a Partnership Deed in the name and style of "Prince Decorators" and the 1st respondent retired from the above said partnership business on 28.10.2005

itself due to his old age and he has no objection for transferring the tenancy in favour of the 2nd respondent herein i.e, Thamim Ansari and for which he had given an Affidavit of Retirement of partner on 13.11.2006. He had further stated that Thiru.Thamim Ansari had approached our tenant Thiru. E.A.Karunakaran and Mr.E.A.K.Ranjith who are running M/s.Sankar Café Hotel in the same premises and expressed his willingness to use to an extent of about 300 sq.ft. in their portion which is useless for the Sankar Café and accordingly they (the Sankar Café) handed over that portion of 300 sq.ft. to the 2nd respondent herein during 2006. He had further stated that he seeks permission to the Official Trustee for the above said transaction. On perusal of the entire records, it is seen that no permission was given to both of the respondents or to the Sankar Café by the Official Trustee at any point of time. However the facts remains that Sankar Café had parted away nearly 300 sq.ft of their portion (not usable for them) to the 2nd respondent and Thiru.Thamim Ansari is also using the same portion for several years.

(A copy of the letter Dt.31.1.2007 and the Affidavit of the first respondent dt.13.11.2006 are submitted

in the Typed Set of Papers as Document No.5 (series).

6. The Official Trustee humbly submits that on 27.7.2007 the Engineer attached to our office had inspected the property and submitted a report stating that the rent has to be fixed at Rs.2240/- p.m. (at the rate of Rs.8/- per sq.ft.) instead of Rs.240/-. However, on perusal of the records, there was no further action taken. From the date of renewal of the tenancy i.e, from 01.10.1998 to till this date, both the respondents are paying only Rs.240/- p.m.

(A copy of the Engineer's Report Dt.27.7.2007 is submitted in the Typed Set of Papers as Document No.6.)

7. The Official Trustee humbly submits that both the respondents have taken out an application in A.No.1071 of 2014 to order transferring the joint tenancy in the name of the respondents in favour of 2nd respondent absolutely in respect of the shop at premises No.12/189, N.S.C. Bose Road, Chennai 600 001. While preparing report for the above application taken out by both the respondents, we have directed the present Engineer to inspect the property and to submit a report in this regard.

8. Engineer's Report

The Engineer had inspected the property along with our staff and submitted a report stating that the Sankar Café Hotel, who is our tenant to an extent of 11129 sq.ft on a monthly rent of Rs.43,000/- had parted away 267.75 sq.ft., to the second respondent herein. The Engineer had also stated in his report dt.28.2.2014 that the portion as per guideline value and other calculation, the present market rate of the portion in the occupation of the respondent i.e, 19 sq.ft. which was originally allotted by the Official Trustee to the respondents as per Document No.1, would fetch Rs.2,755/- p.m. and the excess portion annexed with an extent of 267.75 sq.ft. parted away by Sankar Café to the 2nd respondent would fetch Rs.39,600/- p.m.

(The Engineer's Report along with Photograph, Sketch and rental calculation is submitted in the Typed Set of Papers as Document No.7.)

9. The Official Trustee humbly submits that neither the Sankar Café nor the respondents herein are given permission either to part away or to receive any extent without prior written

permission or sanction from the Official Trustee. Hence both of them, have violated the terms and conditions of the rental agreement. Their act amounts to willful default in observing the conditions stipulated in the rental agreement, consequently, both of them are liable to be evicted. However, considering the fact that the respondents are our tenants for 40 years, reasonable rent may please be fixed.

The Official Trustee humbly submits that by enhancing the present rent from Rs.240/-, which the respondents are paying for the past 15 years may please be enhanced to Rs.42,355/- (Rs.2,755/- p.m. for 19 sq. ft. along with Rs.39,600/- for the annexed portion of 267.75 sq.ft)."

सत्यमेव जयते

3. Respondents in their objections dated 20.01.2015, inter alia, contended as follows:

(i) First respondent Mr.F.Abbas Ali was a tenant under the learned Official Trustee in respect of Shop at No.12/189, N.S.C.Bose Road (facing Malaya Perumal Street), Chennai - 600 001 and subsequently entered into a partnership business with the second respondent Mr.Thamim Ansari in the name and style "Prince Decorators" and the tenancy was transferred in the name of the respondents 1

and 2.

(ii) On the rear side of their shop was a vacant land belonging to the learned Official Trustee, which was leased out to M/s.Sankar Cafe, which is facing N.S.C.Bose road. The rear portion of M/s.Sankar Cafe is the back side of respondents shop. The said place was used by M/s.Sankar Cafe as a dumping yard.

(iii) That the respondents approached M/s.Sankar Cafe to permit them to use their rear portion and M/s.Sankar Cafe accepted the same and handed over possession to the respondents.

(iv) That the respondents submitted an application to the learned Official Trustee to lease out the said land of about 270 sq.ft. Based on the same, an Engineer was deputed to measure the land and accordingly the entire land was measured.

(v) Based on the report of the Engineer, the learned Official Trustee fixed the rent. But the main contention of the respondents is that they were not intimated about the fixing of rent by the learned Official Trustee. The respondents were carrying on their business in the said premises since 2006 in the Shop at No.12/189, N.S.C.Bose

Road measuring about 289 sq.ft.

(vi) That the respondents accept that their tenancy for the entire shop area was not granted by the learned Official Trustee and therefore they made representation to the learned Official Trustee. As they have not received any reply from the learned Official Trustee, they filed Application No.1071 of 2014 to transfer the tenancy in the name of the 2nd respondent.

(vii) The respondents states that after the filing of the report by the learned Official Trustee in A.No.1071 of 2014, they came to know that fair rent for their shop measuring an extent of 280 Sq.ft. at Rs.2,240/- per month (i.e. Rs.8 per sq.ft.) was fixed by the Surveyor in the year 2007 itself, but the same was not communicated to the respondents and therefore they were paying Rs.240/- per month as rent.

(viii) The respondents further state that after the filing of A.No.1071 of 2014, in the year 2014, the surveyor again inspected the premises and fixed the fair rent at Rs.2755/- per month for the area 267 sq.ft. (i.e. at the rate of Rs.19 per sq.ft.). The respondents further states that the said rent is exorbitant as the guideline value for the site is only Rs.14,500/- per sq.ft. in N.S.C. Bose road

and that their shop is facing Malaya Perumal Street.

(ix) The respondents further states that calling the respondents to pay Rs.42,000 is very unreasonable as the prevailing market rent for all shops under the control of the learned Official Trustee is only Rs.10/- per sq.ft. and not Rs.146/- per sq.ft.

(x) The respondents have also stated that M/s.Sankar Cafe is in occupation for over 11,000 sq.ft and paying a rent of Rs.43,000/-, which works out to Rs.4 per sq.ft. but for the respondents who are occupying only 280 sq.ft, the rent is fixed at Rs.42,000/-.

(xi) The respondents further state that since they are in occupation from the year 2006, they may be granted tenancy right in respect of shop at No.12/189, N.S.C. Bose Road and a reasonable rent may be fixed.

4. The application was listed before this Court on 18.04.2018. On that day, the learned Official Trustee sought permission to file additional report and therefore the matter was adjourned to 25.04.2018.

5. On 25.04.2018, when the matter came up for hearing, learned Official Trustee filed an additional report dated

25.04.2018. Learned counsel for the respondents sought time to go through the said report and file their counter. The learned Official Trustee was directed to file a statement showing as to how rent has been fixed in so far as M/s.Sankar Cafe is concerned and also place supporting materials vis-a-vis the rent fixed for the respondents and the matter was adjourned to 08.06.2018.

6. The Additional Report dated 25.04.2018, filed by the learned Official Trustee, is extracted hereunder:

"1. The Official Trustee of Tamil Nadu submits that the Office of the Administrator General and Official Trustee of Tamil Nadu is managing the Trust Estate of Nagai Visalakshi Ammal as per the Scheme Decree dated 22.2.1915 in C.S.No. 363/1912 and one of the properties of the said trust estate is situated at Door No. 12/189, NSC Bose Road, Chennai-600001.

2. The Official Trustee of Tamil Nadu further submits that the Official Trustee has preferred an application in A.No.7813 of 2014 on 2.12.2014 against the respondents for fixation of reasonable rent for the premises occupied by them. The Official Trustee of Tamil Nadu submits that this additional report may be treated as part and parcel of the report already filed

in the application preferred by the Official Trustee of Tamil Nadu.

3. The Official Trustee of Tamil Nadu further submits that the 1st respondent Mr.Abbas Ali was originally granted tenancy on 7.3.1967 in the said premises to an extent of 19 sqft, to be used for running a wall shop at a monthly rent of Rs.30/- and the same was enhanced to Rs.240/- per month from 1.10.98. The Official Trustee of Tamil Nadu further states that 1st respondent had entered into partnership with the 2nd respondent and wanted to transfer the tenancy in the name of the 2nd respondent.

4. The Official Trustee of Tamil Nadu further states that the respondents had themselves admitted that they had approached Sankar Cafe. (Tenant of the office of the Administrator General and Official Trustee of Tamil Nadu having premises, adjacent to the premises now occupied by the respondent) to use the waste land which was let out by office of the Administrator General and Official Trustee of Tamil Nadu to Sankar Cafe and the respondent had took possession of the extent of approximately 270 sqft from Sankar Cafe without any permission from the office

of the Administrator General and Official Trustee of Tamil Nadu, who is the custodian of the properties of the trust.

5. The Official Trustee of Tamil Nadu further submits that the Assistant Engineer attached to the Office of the Administrator General and Official Trustee of Tamil Nadu had inspected the premises which is now under the possession of the respondent. In her report she had stated that the possession being occupied by the respondent is 280 sqft, the details of which is tabulated below:

<u>SL. NO.</u>	<u>PREMISES UNDER OCCUPATION OF RESPONDENT</u>	<u>SQ. FT</u>	<u>RENT</u>	<u>DATE</u>
1.	Initially Granted to Respondent by the Office of the Administrator General and Official Trustee of Tamil Nadu	19	Rs.240/p.m	1967
2.	Extent occupied from Sankar Cafe without permission of the Administrator General and Official Trustee of Tamil Nadu	261	-	13.11.2006
	Total Rent paid	280	Rs.240/-	

6. The Official Trustee of Tamil Nadu further submits that the respondent is paying the rent of only Rs. 240/- per month even after possessing an extent of 280 sqft since 13.11.2006. The Official

Trustee of Tamil Nadu further states that considering the fact that the respondent is a tenant under the Office of the Administrator General and official Trustee of Tamil Nadu for the past 5 decades and that they have been in possession of an extent of 280 sqft for the past 10 years, the Office of the Administrator General and Official Trustee of Tamil Nadu has no objection in transferring the tenancy in the name of the Thamim Ansari based on the letter of requisition dated 31.1.2007.

7. The Official Trustee of Tamil Nadu further submits that in such circumstance, arrears of rent for the portion occupied by the tenant Mr. Thamim Ansari has to be paid by him as he had been occupying the premises from 13.11.2006.

8. The Official Trustee of Tamil Nadu submits that the respondents have in their objection stated that the rent for the tenant occupying adjacent premises works out to Rs.4/sqft. The Official Trustee of Tamil Nadu would submit that the rent for the premises is calculated on case to case basis and consideration is based on the age of the building, the location of the premises, the market value of the property etc. The Official Trustee of Tamil Nadu

further states that the respondent, having taken possession without the permission of Administrator General and Official Trustee of Tamil Nadu cannot expect to get the best of both worlds, by demanding to fix the rent as fixed to the adjacent tenant.

9. The Official Trustee of Tamil Nadu submits that the rent has to be fixed for the premises under his possession, for the period from 13.11.2006, based on the rent fixed to him for the extent originally leased to him. The Official Trustee of Tamil Nadu submits that by fixing the rate at Rs. 12.63/sqft for the extent occupied by the respondent, the rent payable by the respondent, every month would be as follows:

1.	Extent (possession for which Rent not fixed)	280-19=261 sqft.
2.	Rent per sqft. (Fixed for the portion let out by office)	Rs.12.63/-
3.	Therefore, rent per month fixed	261X12.63=Rs.3296.43/-

Calculation of Arrears of rent from the date of possession (i.e.) 13.11.2006 to 31.3.2018 is as follows:

<u>Sl No</u>	<u>Period</u>	<u>Rent in Rs.</u>

1.	Nov 2006 (From 13.11.2006 to 30.11.2006) = 18 days	1,978/-
2.	Dec 2006 (1 month)	3,296/-
3.	Jan 2007 to Dec 2011	3296x60m= 1,97,760/-
4.	Jan 2012 to Dec 2016	3296x60m= 1,97,760/-
5.	Jan 2017 to Dec 2017	3296x12m= 39,552/-
6.	Jan 2018 to Mar 2018	3296x 3m= 9,888/-
	Total	Rs. 4,50,234/-

12. The Official Trustee of Tamil Nadu further submits that the process of revision of rent is being carried out in the office and the rent is fixed, considering the report of the engineer, the fair rent and the rent paid by the tenant. The official Trustee of Tamil Nadu further submits that accordingly rent is fixed at Rs. 5400/- (Rupees Five Thousand and Four Hundred Only) for an extent of 272 sqft, in the adjacent premises, which is Rs.19.85/- per sqft and accordingly the rent for the premises works out to **Rs.19.85/-x280 = Rs. 5558.82/-.**

13. The official Trustee of Tamil Nadu therefore, humbly submits that the respondent may ordered to pay the arrears of rent from the period they are in possession of the premises and further to fix the enhanced rent from the month of April 2018, and to pass such other or further orders as this

Hon'ble Court may deem fit and thus renders justice."

7. On 08.06.2018, when the matter came up for hearing, as directed earlier, learned Official Trustee filed a memo dated 08.06.2018 and the learned counsel for the respondents sought time to go through the same and to get suitable instructions. Therefore, the matter was adjourned to 14.06.2018.

8. The memo dated 08.06.2018, filed by the learned Official Trustee is extracted hereunder:

"1. The Official Trustee of Tamil Nadu humbly submits in pursuance of the direction given by the Hon'ble High Court, the particulars of rent enhancement for Sankar Cafe (Adjacent property to the applicants mentioned property) is submitted below.

2. The Official Trustee of Tamil Nadu submits that for Sankar Cafe building(Total Plinth area 11884 sq.ft consist of Ground floor, First floor & Second Floor) Originally, the tenant was paying a monthly rent of Rs.43,000/-. The Official Trustee of Tamil Nadu further submits that based on the condition of the building, extent,

location, Engineer report and last enhancement, the monthly rent was enhanced to Rs. 1,50,000/- (Rs.13 per sq.ft) and the same was agreed by the tenant.

3. The Official Trustee of Tamil Nadu further submits that subsequently the tenant came with a requisition for reducing the monthly rent along with the particulars of his income and expenditure. After perusing the records, the Official Trustee of Tamil Nadu considered his requisition and reduced the rent to Rs. 1,15,000/- (Rs.10/- per sq.ft) with an instruction that the rent will be enhanced every year with an enhancement of 10% for which he agreed.

5. The Official Trustee of Tamil Nadu humbly submits that the requisition letter with particulars of Shakar Cafe is annexed with this report."

9. On 14.06.2018, when the matter came up for hearing, at the request of learned counsel for the respondents, the matter was adjourned to 22.06.2018. On 22.06.2018, the learned counsel for the respondents filed additional counter dated 22.06.2018, inter alia contended as follows:

learned Official Trustee since 1967 in respect of Shop at 12/189, N.S.C.Bose Road (facing Malaya Perumal street) on a monthly rent of Rs.30/- for the area measuring 19 sq.ft.

(ii) Application No.1071/2014 was filed to transfer tenancy for the shop measuring about 287 sq.f.t and to fix the rent.

(iii) The Engineer sent by the learned Official Trustee measured the shop which is about 287 sq.f.t and fixed the rent at Rs.2,240/- per month. The said enhanced rent was not communicated to the respondents nor there was any demand for payment of enhanced rent by the learned Official Trustee. That the respondents came to know about the enhancement of rent from Rs.240/- to Rs.2240/- only after the filing of the report by the learned Official Trustee dated 02.12.2014. The respondents further stated that if at all there was any demand made by the learned Official Trustee, the respondents would have certainly paid the enhanced rent.

(iv) That the learned Official Trustee fixed the rent for the shop measuring 287 sq.ft at Rs.2,240/- in 2007, on the basis of Engineer report, ought to have demanded the same in the year 2007 itself and should not ask the tenant now to pay the arrears of rent from 13.11.2016, which is

unfair and unjustifiable.

(v) That Rs.4/- per sq.ft. is being charged for all other shops and similarly they should also be charged. The rent fixed at Rs.12.63 per sq.ft from 13.11.2016 is a wrong calculation. The rent fixed by the Engineer in 2007 at Rs.8/- per sq.ft. which worked out to Rs.2,240/- for 287 sq.ft was not demanded by the Learned Official Trustee and now revising the rent at Rs.19 per sq.ft. from 13.11.2006 to 31.03.2018 and demanding total rent of Rs.4,50,234/- is unreasonable. None of the shop belonging to learned Official Trustee was asked to pay arrears of rent.

(vi) As regards rent payable by M/s.Sankar Cafe is concerned, the plinth area is 11,884 sq.ft. consists of ground floor, first floor and second floor and they were paying Rs.43,000/- as rent and based on the engineer's report the monthly rent was enhanced to Rs.1,50,000/- (Rs.13/- per sq.ft.) and based on the representation made by M/s.Sankar Cafe, the rent was reduced from 1,50,000/- to Rs.1,15,000/- (Rs.10/- per sq.ft) which shall be increased later on 10% every year.

(vii) The respondents submit that when rent is charged at the rate of Rs.10/- per sq.ft for M/s.Sankar Cafe for plinth area of 11,884 sq.ft. and fixing the rent at Rs.19/-

per sq.ft for the respondents is unreasonable and discriminating. The respondents further submitted that whatever rent the other tenants are paying, the respondents are ready to pay the same and they do not want to cause any loss to the Trust. That M/s.Shanker Cafe is not asked to pay any arrears of rent and only the respondents are asked to pay arrears of rent amounting to Rs.4,50,234/-.

(viii) The respondents prays to fix the monthly rent at about Rs.10/- or Rs.12/- per sq.ft.

10. Heard the learned Official Trustee and learned counsel for the respondents and perused the materials on record.

11. In the instant case, the issue is two fold, viz.,

(i) whether the respondents are liable to pay arrears of rent for the area measuring 267.75 sq.ft. with effect from 13.11.2006 to 31.03.2018 and if so, at what rate ? and

(ii) what is the monthly rent to be fixed for the respondents for the area measuring 286.75 sq.ft. payable with effect from 01.04.2018 ?

12. The undisputed facts, culled out from the material

on record, for the purpose of deciding the above issues, in nutshell, are as follows:

(i) The respondents are in possession of Shop No.12/189, N.S.C.Bose Road (facing Malaya Perumal Street), Chennai - 600 001 from 07.03.1967 onwards. Initially the extent of the shop was about 19 sq.ft. The respondents are paying monthly rent of Rs.240/- for the said 19 sq.ft. till date (i.e. at the rate of Rs.12.63 per sq.ft.).

(ii) From 13.11.2006 onwards, the respondents are in possession of an extent of land measuring 267.75 sq.ft. at No.189, N.S.C.Bose Road, Chennai - 600 001 (i.e. rear portion of their shop at No.12/189 & rear portion of M/s.Sankar Cafe shop at No.189). For the said land measuring 267.75 sq.ft. the respondents have not paid any rent from 13.11.2006 to till date.

(iii) Thus, as on date, the respondents are in occupation of an area measuring 286.75 sq.ft (i.e. 19 sq.ft. + 267.75 sq.ft.). Therefore, now, the monthly rent has to be fixed for 286.75 sq.ft. of shop premises w.e.f. 01.04.2018 and arrears of rent payable by the respondents has to be arrived at for the area measuring 267.75 sq.ft (286.75 sq.ft. - 19 sq.ft.) w.e.f. 13.11.2006 to 31.03.2018.

13. The records show that on 07.03.1967, a rental agreement was executed for the shop measuring 19 sq.ft. situated at 12/189, N.S.C.Bose Road, Chennai and the monthly rent was fixed at Rs.30/- and it was periodically renewed till 01.10.1998 and the rent as on that date was fixed at Rs.240/- p.m (i.e. Rs.12.63/- per sq.ft.). There is no dispute of fact that from the year 1998, the respondents were paying monthly rent of Rs.240/- p.m. for the area measuring 19 sq.ft. to till date at the rate of Rs.12.63/- per sq.ft.

14. Thus, from the above, it is clear that the respondents have paid rent only for 19 sq.ft. of land and not paid any amount as rent to the learned Official Trustee, for the shop portion measuring 267.75 sq.ft., from 13.11.2006 to till date and therefore, they are liable to pay arrears of rent for the shop portion measuring 267.75 sq.ft. from 13.11.2006 to 31.03.2018.

15. The learned Official Trustee in the Additional Report dated 25.04.2018, has stated that the arrears of rent has to be fixed for the premises measuring 267.75 sq.ft. under the respondents' possession, for the period from 13.11.2006, based on the rent fixed to them (@ Rs.240/- p.m.) for the extent originally leased to them i.e. at the rate of Rs.12.63/- per sq.ft. for 19 sq.ft. in

the year 1998, which the respondents were paying from the year 1998 to till date.

16. Learned counsel for the respondents has opposed the said demand at the rate of Rs.12.63/- per sq.ft. for payment of arrears of rent. Respondents in the additional counter dated 22.06.2018, has contended that none of the shops belonging to the learned Official Trustee were asked to pay any arrears of rent and therefore it is unreasonable and discriminatory.

17. The Court is not convinced with the said argument of the learned counsel for the respondents, for the simple reason that all along, the respondents were paying rent only for the area measuring 19 sq.ft and the undisputed fact remains that the respondents have not paid any amount as rent to the learned Official Trustee for the area measuring 267.75 sq.ft. and therefore, undoubtedly they are in arrears and hence they are liable to pay arrears of rent for the said area i.e. 267.75 sq.ft. in their occupation from 13.11.2006, to till date.

18. The contention of the learned counsel for the respondents that none of the tenants were asked to pay arrears for the area occupied by them is incorrect. Materials culled out from the record would show that other shop owners were all paying their due rent periodically for the area under their occupation and there is no question of

payment of arrears. The tabulated column given below would clear the doubts raised by the respondents:

DETAILS OF RENT FOR THE TENANTS UNDER THE ADMINISTRATION OF THE OFFICIAL TRUSTEE OF TAMIL NADU						
S. No	Estate Name & Premises No.	Name of the Tenant	Plinth Area in Sq.ft	Rent Rate per Sq.ft	Rent w.e.f	Rent in Rs. (paid upto the year 2017)
	N.V. AMMAL					
1	2/189 NSC Bose Road	P.R.Nathan	228	9.65	Oct-98	2,200
2	7 & 8 / 189 -do-	S.M.Moorthy	272	9.93	2-Mar	2,700
3	9 / 189 -do-	M.Natesa Chetty & Co., Rep. Selvamani	136	7.06	Oct-98	960
4	10/189 -do-	Sagbar Nisha	234	8.33	Oct-98	1,950
5	189 -do-	Sankar Café	11884	3.62	11.1.05	43,000
6a	12/189 -do-	F.Abbas Ali (Respondent)	19	12.63	Oct-98	240
6b	part of 189 -do-	F.Abbas Ali (Respondent)	267.75	No rent paid		

19. From the above, it is clear that all the tenants were paying rent for their occupied area. The respondents were paying rent only for 19 sq.ft. (at No.12/189, N.S.C. Bose Road) of land till date and therefore they are bound to pay arrears of rent for the area measuring 267.75 sq.ft.

from 13.11.2006 onwards.

20. Learned counsel for the respondents submitted that the respondents were in occupation of a portion rented out to M/s.Sankar Cafe, who was paying rent at the rate of Rs.3.62/- per sq.ft., and therefore the respondents are willing to pay Rs.4/- per sq.ft. as arrears of rent for the area measuring 267.75 sq.ft. in their occupation i.e. from 13.11.2006 to 31.03.2018.

21. Per contra, learned Official Trustee submitted that the respondents were in fact paying rent at the rate of Rs.12.63/- per sq.ft. for the extent of land measuring 19 sq.ft. all along, under their occupation and the area measuring 267.75, which came under their occupation from 13.11.2006, is on the rear portion of their existing shop and therefore the said amount of Rs.12.63/- per sq.ft. is just and reasonable.

22. A perusal of the material on record would show that rent was revised in the year 1998 and fixed at Rs.240/- p.m. for 19 sq.ft. of land and thereafter in the year 2007, the Engineer attached to the Office of the Official Trustee inspected the premises and fixed the rent at Rs.2,240/- p.m. for a total area of 280 sq.ft i.e. at the rate of Rs.8 per sq.ft., but it is stated that the same was not communicated to the respondents and therefore

the respondents were paying rent at the rate of Rs.240 p.m. for 19 sq.ft. of land only all along. The said fact is also not disputed by the learned Official Trustee. Thus, for nearly a decade, no action was taken in the matter. Even taking it for granted that there was failure on the part of the Office of the learned Official Trustee in not intimating the revised rent to the respondents and demanding the same from them, the respondents cannot be permitted to say that revised rent is not payable, because, the respondents are aware of the report filed by the learned Official Trustee, stated supra, but at the same time, at this length of time, the respondents should not be made to suffer by asking them now to pay arrears of rent for 267.75 sq.ft. of land at the rate of Rs.12.63 per sq.ft. which works out to Rs.4,50,234/- for the period from 13.11.2006 to 31.03.2018. The respondents cannot be allowed to enjoy a Trust Property for commercial purpose without paying anything in return and when the said question was posed to the learned counsel for the respondents by the Court, learned counsel for the respondents submitted that it would be fair, if the respondents are permitted to pay arrears of rent at the rate of Rs.4/- per sq.ft. for 267.75 sq.ft. of land for the period from 13.11.2006 to 31.03.2018. Submission made by the learned counsel for the respondents is placed on record.

acceptance to the said proposal made by the learned counsel for the respondents. Submission is placed on record.

24. But, the same is not acceptable to this Court. Fixing Rs.4/- per sq.ft., as rent, in the heart of the City, which is too low. Rent has been fixed at Rs.12.63/- per sq.ft. Merely because, there was no communication from the learned Official Trustee, rent cannot be fixed at a lower rate of Rs.4/- per sq.ft. Rent fixed for others ranges from Rs.7.06/- per sq.ft. to Rs.12.63/- per sq.ft. Therefore, taking into consideration the rent fixed at Rs.12.63/- per sq.ft. for the respondents and others at different rates, stated supra, it would be reasonable to fix the rent at the rate of Rs.8/- per sq.ft. for the period commencing from 13.11.2006 to 31.03.2018. The calculation for arrears of rent at the rate of Rs.8/- per sq.ft. from the date of possession, i.e. 13.11.2006 to 31.03.2018, will be as follows:

1.	Extent (possession for which Rent not paid)	286.75 - 19=267.75 sqft.
2.	Rent per sqft.	Rs.8.00/-
3.	Therefore, rent per month is	267 X 8.00=Rs.2,136/-

Calculation of Arrears of rent from the date of possession (i.e.) 13.11.2006 to 31.3.2018 :

<u>S1</u> <u>No.</u>	<u>Period</u>	<u>Rent in Rs.</u>
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1.	Nov 2006 (From 13.11.2006 to 30.11.2006) = 18 days	1,282/-
2.	Dec 2006 (1 month)	2,136/-
3.	Jan 2007 to Dec 2011	Rs.2136x60m = 1,28,160/-
4.	Jan 2012 to Dec 2016	Rs.2136x60m = 1,28,160/-
5.	Jan 2017 to Dec 2017	Rs.2136x12m= 25,632/-
6.	Jan 2018 to Mar 2018	Rs.2136x 3m = 6,408/-
	Total	Rs. 2,91,778/-

25. In view of the above, the respondents are directed to pay arrears of rent at the rate of Rs.8/- per sq.ft. for 267.75 sq.ft. of land in their possession, for the period from 13.11.2006 to 31.03.2018, which works out to **Rs.2,91,778/-** (as calculated above) to be paid on or before 01.09.2018.

26. Now let us take up the next issue of fixation of monthly rent payable by the respondents for the area measuring 286.75 sq.ft. (i.e., 19 sq.ft. + 267.75 sq.ft.) with effect from 01.04.2018.

27. Learned counsel for the respondents contended that when rent is charged at the rate of Rs.10/- per sq.ft for M/s.Sankar Cafe situated at No.189 N.S.C.Bose Road, for plinth area of 11,884 sq.ft and the respondents to pay rent at the rate of Rs.19/- per sq.ft. for plinth area of 286.75 sq.ft. is unreasonable and discriminatory. In the additional counter dated 22.06.2018, at paragraph 12, the respondents have stated that whatever rent the other tenants are paying, the respondents are ready to pay the

same and they do not want to cause any loss to the Trust property and prayed for fixing the rent at the rate of Rs.10/- or Rs.12 per sq.ft.

28. Per contra, referring to the office file pertaining to the Trust Estate of N.Visalakshi Ammal, learned Official Trustee, stated that with regard to fixation of rent of M/s.Sankar Cafe is concerned, the Engineer attached to the office of the Official Trustee has submitted a report with break-up details, which is tabulated hereunder:

Floors	Plinth area	Rate per Sq.ft. (in Rs.)	Amount
Ground Floor (RCC roof)	5593	18	1,00,674
First Floor (GI sheet roof)	5075	9	45,675
Second Floor (GI sheet roof)	608	8	4864
Total			1,51,213

Based on the above details, the monthly rent for M/s.Sankar Cafe was fixed at Rs.1,50,000/- and the same was accepted by them. But subsequently they gave a letter dated 05.03.2018, requesting reduction of rent as they did not get enough profit to run hotel business and to meet out other expenses. Learned Official Trustee has further submitted that after considering the said request, the rent was revised from Rs.1,50,000/- to Rs.1,15,000/- with an undertaking that the rent will be enhanced every year at the rate of 10%. The same is tabulated hereunder:

Floors	Plinth area	Rate per Sq.ft. (in Rs.)	Amount
Ground Floor (RCC roof)	5593	14	78,302
First Floor (GI sheet roof)	5075	7	35,525
Second Floor (GI sheet roof)	608	6	3648
Total			1,17,475

29. Thus, it is contended by the learned Official Trustee that in so far as M/s.Sankar Cafe is concerned, initially for the ground floor (Plinth area 5593 sq.ft.) Rs.18 per sq.ft. was fixed and the same was accepted by the tenant M/s.Sankar Cafe and subsequently on a representation dated 05.03.2018, given by them, the rent for revised for the ground floor from Rs.18 per sq.ft. to Rs.14 per sq.ft. Therefore, the contention of the learned counsel for the respondents is that M/s.Sankar Cafe is charged only Rs.10 per sq.ft. is not correct.

30. Learned Official Trustee further submitted that the respondents cannot take Sankar Café property alone as a benchmark for fixing the revised rent, but in the case of other shops in N.S.C. Bose Road, rent has been fixed at the rate of Rs.19.03/-, Rs.19.85/-, Rs.20.59 and Rs.17.09/- per sq.ft and all the tenants have accepted the same and

executed lease agreements. Therefore, it is wrong on the part of the respondents to claim that the rent fixed at the

rate of Rs.19/- per sq.ft. is unreasonable and discriminatory. Details of new rent per sq.ft., fixed by the learned Official Trustee, for the shops situated at N.S.C. Bose Road is tabulated hereunder :

DETAILS OF RENT FOR THE TENANTS UNDER THE ADMINISTRATION OF THE OFFICIAL TRUSTEE OF TAMIL NADU									
S. No	Estate Name & Premises No.	Name of the Tenant	Old rent w.e.f	Plinth Area in Sq.ft	Old rent Rate per Sq.ft	Old Rent in Rs.	New rent w.e.f	New rent Rate per Sq.ft in Rs.	New Rent in Rs.
	N.V. AMMAL								
1	2/189 NSC Bose Road	P.R.Nathan	Oct-98	228	9.65	2,200	1.3.18	19.3	4400
2	7 & 8 / 189 -do-	S.M.Moorthy	2-Mar	272	9.93	2,700	1.3.18	19.85	5400
3	9 / 189 -do-	M.Natesa Chetty & Co., Rep. Selvamani	Oct-98	136	7.06	960	1.3.18	20.59	2800
4	10/189 -do-	Sagbar Nisha	Oct-98	234	8.33	1,950	1.3.18	17.09	4000
5	189 NSC Bose Road	Sankar Café	11.1.05	GF : 5593 FF : 5683 SF : 608 Total : 11884	3.62	43,000	1.4.18	GF : 14 FF : 7 SF : 6	115000
6a	12/189 -do-	F.Abbas Ali (Respondent)	Oct-98	19	12.63	240	---	---	---
6b	12/189 & part of 189	F.Abbas Ali (Respondent)	---	286.75	---	---	1.4.18		

31. From the above, it is clear that for the tenants having area more or less similar to that of the respondents viz., Mr.P.R.Nathan (No.2/189 N.S.C.Bose Road) for a plinth area of 228 sq.ft., Rs.19.3/- per sq.ft has been fixed, for Mr.S.M.Moorthy (Nos.7 & 8/189 N.S.C.Bose Road) for a plinth area of 272 sq.ft., rent at Rs.19.85/- per sq.ft has been fixed, for Sagbar Nisha (No.10/189 N.S.C.Bose Road) for a plinth area of 234 sq.ft., rent at Rs.17.09/- per sq.ft has been fixed, and for M/s.M.Natesa Chetty & Co. (Nos.9/189 N.S.C.Bose Road) for a plinth area of 136 sq.ft., rent at Rs.20.59/- per sq.ft has been fixed and for M/s.Sankar cafe at the first instant, for ground floor Rs.18 per sq.ft. has been fixed and subsequently on the request made by M/s.Sankar Cafe, the rate was reduced from Rs.18/- to Rs.14 per sq.ft. for ground floor. Perusal of the details furnished for M/s.Sankar Cafe, shows that the extent of area is large and for each floor different rate, has been fixed. In so far as other tenants, occupying ground floor, revised rate fixed by the learned Official Trustee, is almost the same i.e. between Rs.17.09/- to Rs.20.59/- per sq.ft. Even in the case of M/s.M.Natesa Chetty & Co. (Nos.9/189 N.S.C.Bose Road) for a plinth area of 136 sq.ft., Rs.20.59/- per sq.ft has been fixed, which is higher than what the respondents have been called upon to pay.

32. Therefore, the contention of the learned counsel for the respondents that the demand to pay rent at the rate of Rs.19/- per sq.ft. for plinth area of 286.75 sq.ft. is unreasonable and discriminatory, cannot be countenanced. In the light of the submissions of the respondents, in their additional counter dated 22.06.2018, at paragraph 12, that whatever rent, the other tenants are paying, they are ready to pay the same and they do not want to cause any loss to the Trust property, monthly rent payable by the respondents for the area measuring 286.75 with effect from 01.04.2018 to 31.03.2019, is fixed at Rs.19/- per sq.ft.

33. In view of all the above, Application No.7813 of 2014 in C.S.No.363 of 1912, filed by the learned Official Trustee is disposed of on the following terms:

(i) The respondents are directed to pay arrears of rent for the area measuring 267 sq.ft. for the period from 13.11.2006 to 31.03.2018, at the rate of Rs.8/- per sq.ft. which works out to Rs.2,91,778/- (Rupees Two lakhs ninety one thousand seven hundred and seventy eight only) to be paid on or before 01.09.2018.

(ii) The monthly rent payable by the respondents for the area measuring 286.75 sq.ft. (19 sq.ft. + 267.75 sq.ft.) with effect from 01.04.2018 to 31.03.2019 is fixed

at Rs.19/- per sq.ft. and that the rent will be enhanced every year at the rate of 10 %.

(iii) Respondents are directed to pay the arrears of rent for the period from 01.04.2018 to 31.07.2018, working out to Rs.21,792/- (Rupees twenty one thousand seven hundred and ninety two only) on or before 01.09.2018.

(iv) After payment of Rs.2,91,778/- towards arrears of rent for the period from 13.11.2006 to 31.03.2018 and arrears of rent of Rs.21,792/- for the period from 01.04.2018 to 31.07.2018, is made by the respondents as directed above, learned Official Trustee, as directed, call upon the respondents and execute the rental agreement for the period from 01.04.2018 to 31.03.2019.

Sd./-S.M.K.J
24.07.2018

//Certified to be true copy//

Dated at Madras this the day of 2018
JJ 30/08/2018

COURT OFFICER(O.S.)

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