

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30-10-2018

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.12206 of 2014

And

M.P.No.2 of 2014

1.M.Balasaraswathi  
2.S.Umangani  
3.M.Langalingam  
4.S.R.Subangani  
5.K.Suyambukani

.. Petitioners

..Vs..

1.The State of Tamil Nadu,  
Represented by its Secretary,  
Tourism, Culture and Hindu Religious and  
Charitable Endowment Department,  
Fort St. George,  
Chennai-600 009.

2.The Commissioner,  
Hindu Religious and Charitable Endowment,  
Uthamar Gandhi Salai,  
Chennai-600 034.

3.The Joint Commissioner,  
Hindu Religious and Charitable Endowment,  
Uthamar Gandhi Salai,  
Chennai-600 034.

4.The Arulmigu Kurungaleeswaran And  
Vaikuntavasaperumal Temple,  
Represented by its Executive Officer,  
Koyambedu,  
Chennai-600 107.

.. Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the orders of the first respondent in G.O.Ms.No.46, dated 21.3.2014 and in G.O.Ms.No.14 dated 23.1.2012 as confirming the orders of the second respondent in R.P.No.33/2004/D2 dated 17.12.2004 and of the third respondent proceedings in Na.Ka.2712/2002A3/19.9.2003 and the proceedings of fourth

respondent dated 29.10.2003 and quash the same and direct the respondents to recognise the petitioners as the Lessees in respect of land in 1 acre and 67 cents in S.No.133/2 and 133/3 measuring an extent of 1.67 acres in Sivan Koil Street, Koyambedu Village.

For Petitioners : Mr.R.Thiagarajan,  
Senior Counsel for  
Mr.M.S.Soundararajan.

For Respondents-1to3 :Mr.M.Maharaja,  
Special Government Pleader  
(HR&CE).

For Respondent-4 : Mr. Sriram for  
M/s.A.S.Kailasam and Associates.

#### O R D E R

The order of rejection passed by the Appellate Authority in G.O.Ms.No.46, dated 21.3.2014 and in G.O.Ms.No.14, dated 23.1.2012, confirming the orders of the second respondent in R.P.No.33/2004/D2 dated 17.12.2004 and the third respondent in proceedings in Na.Ka.2712/2002A3/19.9.2003 and the proceedings of the fourth respondent dated 29.10.2013, are under challenge in the present writ petition. Further a direction is sought for to recognise the writ petitioners as the Lessees in respect of the land in 1 acre and 67 cents in S.No.133/2 and 133/3 measuring an extent of 1.67 acres in Sivan Koil Street, Koyambedu Village.

2. The learned Senior Counsel, appearing on behalf of the writ petitioners, made a submission that the writ petitioners are in lawful possession and enjoyment of the property in question. The father of the writ petitioners was the original Lessee in respect of the land in question, which belongs to the fourth respondent-Temple i.e., Arulmigu Kurungaleeswaran and Vaikuntavasaperumal Temple.

3. The lease period expired during the year 2004 and thereafter, the lease was not renewed in spite of the request made by the writ petitioners. However, the respondents allowed the writ petitioners to continue in the premises and collected the rent. The writ petitioners were also paying the rent punctually as per the fixation done by the Competent Authorities. Thus, the writ petitioners must be allowed to continue in the premises and the writ petitioners are willing to pay the rent as fixed by the Department.

4. The learned Senior Counsel appearing for the writ petitioners is of the opinion that the fair rent fixed and

calculated by the respondents are erroneous and the calculations were not in accordance with the procedures contemplated under law. On account of such erroneous calculations, an exorbitant amount is claimed by the respondents towards the rent from the writ petitioners. Thus, the writ petitioners are constrained to move before the Appellate Authorities, who in turn have not considered the claim of the writ petitioners and, thereafter the present writ petition is filed.

5. The writ petitioners are mainly on the ground that the fixation of fair rent and calculation of fair rent with retrospective effect is not in accordance with the provisions of the Act and the Rules. Even in the case of fixation of fair rent, the same must be effected prospectively and not retrospectively, so as to affect the occupation of the Lessees, who were in possession and paying the rent punctually without any default. Thus, the inaction of the respondents for many years cannot be a ground to impose fair rent with retrospective effect. If the rent is enhanced periodically as per Rules, the writ petitioners would not be in a position to dispute the same. Contrarily, the fair rent was fixed belatedly and the effect was given with retrospective effect, overburdening the writ petitioners in respect of the arrears of rent to be paid to the respondents.

6. The learned Special Government Pleader, appearing on behalf of the Hindu Religious and Charitable Endowment Department, dispute the contentions of the learned Senior Counsel for the writ petitioners, by stating that the fair rent was not fixed at all for a long period. Thus, the Department has fixed the fair rent and accordingly, made a demand with the writ petitioners. The writ petitioners instead of paying the fair rent fixed as per the procedures, approached the Appellate Authority. Thus, the delay caused was at the instance of the writ petitioners and not by the Department.

7. The Department is entitled to fix the fair rent in commensuration with the market rent prevailing in that locality. The Committee constituted for the purpose of fixation of fair rent, shall consider the delay and all the grounds raised by the writ petitioners and pass orders. Thus, there is no infirmity or irregularity in the fixation of fair rent by the Committee, if the writ petitioners are willing to pay the fair rent as fixed by the respondents. This apart, as of now, the writ petitioners are not Lessees and the lease granted to them was not renewed. Therefore, the writ petitioners should be construed as an unauthorised occupants with reference to Section 78 of the HR&CE Act. When lease is not in force, any person in occupation of the property belongs to Religious Institutions, the writ petitioners are construed as encroachers or unlawful occupants. Thus, the writ petitioners are liable to be evicted by the Department by

invoking the procedures contemplated under Sections 78 and 79 of the HR&CE Act.

8. The learned counsel, appearing on behalf of the fourth respondent-Temple, also contended that the writ petitioners undoubtedly, were paying the rent. However, such rent paid was not in commensuration with the market rent prevailing in that locality. The property in question is situated in the main place near Koyambedu market. The dispute in respect of the fixation of fair rent with reference to the place of property is immaterial in view of the fact that the writ petitioners are possessing an automobile show room in Poonthamallee High Road, Chennai and the access to the temple properties is through the main road itself. Thus, the refixation of fair rent by the Competent Authorities are in consonance with the procedures contemplated under the Act and the writ petitioners cannot be allowed to continue based on the rent fixed long back.

9. This Court initially was of the opinion that in respect of the fixation of fair rent, the same cannot be adjudicated in the present writ petition under Article 226 of the Constitution of India. Such complex facts cannot be adjudicated with reference to the market rent prevailing in that particular locality during the relevant point of time. In order to provide an opportunity to the parties to the lis on hand, to arrive a consensus, the matter was adjourned on several occasions and certain proposals were submitted on behalf of the writ petitioners as well as by the fourth respondent-Temple. The learned Special Government Pleader (HR&CE) also has taken sincere efforts to fix the quantum of arrears of rent to be paid to the fourth respondent-Temple.

10. As per the counter-affidavit filed by the fourth respondent-Executive Officer, the arrears of rent to be paid by the writ petitioners, as per the fair rent fixed as on 30.6.2016, is Rs.4,58,29,268/-. Thereafter, further fair rent fixation is to be done by the Competent Authorities. Thus, the writ petitioners have to pay the entire rent upto date and therefore, the present writ petition is liable to be rejected.

11. The suggestion made by the learned Senior Counsel, appearing on behalf of the writ petitioners, initially that the writ petitioners are willing to pay Rs.2 crores as full quit cannot be considered in view of the fact that it is far less than that of the claim made on behalf of the fourth respondent-Temple as well as by the HR&CE Department. The calculation made as per the Executive Officer, even as per the fair rent fixation, was Rs.4,58,29,268/-.

12. However, after 1.7.2016, the writ petitioners were continuously paying the monthly rent of Rs.2 lakhs. Admittedly, as per the interim orders granted by this Court and further the writ petitioners have made a deposit of Rs.1 crore with the fourth respondent-Temple. Thus, the writ petitioners are paying a monthly rent of Rs.2 lakhs as of now pursuant to the interim orders granted by this Court and further made the deposit of Rs.1 crore with the fourth respondent-Temple. In order to decide the matter with the balancing approach, this Court has to consider the facts and circumstances now placed by the respective learned Senior Counsel as well as the learned Special Government Pleader appearing for the HR&CE Department and the learned counsel appearing for the fourth respondent-Temple.

13. Admittedly, the lease period was expired in the year 2004. Thus, the writ petitioners are not entitled to continue in the premises as per Section 34 of the HR&CE Act. Section 34 of the Act, enumerates that any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, belonging to, or given or endowed for the purpose of, any religious institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution. Thus, the period of lease fixed as per the Statute is five years. The lease must be renewed after the expiry of five years by the Competent Authorities. Admittedly, the lease entered into between the father of the writ petitioners as well as the competent officials of the Department had not renewed after the year 2004.

14. Thus, it is to be construed that the writ petitioners are in unlawful occupation of the premises. However, taking note of the fact that the respondents have allowed the writ petitioners to continue in the premises and collected the rent without any renewal of lease is also an irregularity. This Court is of an opinion that the Competent Authorities on expiry of lease period is bound to initiate appropriate action for eviction of the leaseholders. Contrarily, the Executive Officers, without initiating any action under the provisions of the Act, allowing all such unlawful occupants to continue in the premises and collecting the existing rent. These all are the irregularities being committed by the Department as well as by the Temple Authorities. Such irregularities are to be averted in view of the fact that the valuable properties like the present property in question were donated/gifted by some great souls for the benefit of the temple and for the benefit of the devotees. Such properties are gifted with the noble idea to serve the devotees and to conduct poojas and other festivals in the temples. If the very purpose and the object of such donors and their ideas are defeated, this Court is of an opinion that the persons concerned are not only violating the provisions of the

Act and that they are committing a greatest sin.

15. This Court is of a strong opinion that the properties belong to the Temples and the Religious Institutions, are to be preserved and protected in the manner prescribed under the provisions of the Act and the Rules. There is a growing trend that the Temple properties are mostly misused and abused by few greedy men and the land grabbers. Such land mafias are encroaching and misusing the temple properties and other public properties and grabbing the same for their personal gains and for their unlawful enrichment. Such offenders are to be dealt with properly and with iron hand. There cannot be any leniency or misplaced sympathy in respect of dealing with such temple properties and the properties belonging to the Religious Institutions.

16. This Court would like to ask one question both with the writ petitioners and with the respondents. If the property in question belongs to the writ petitioners or to the respondent-Commissioner, whether they will agree for such a rent to be paid by the tenant or not? Such a question is the natural one to be asked. If the property belongs to the writ petitioners, then they will fix the highest prevailing rent. So also if the property belongs to the Commissioner, he will not definitely allow such a lower rent to be paid for years together. When the HR&CE Department is the Trustee of the property belonging to the Temple, the law requires that they have to act in a prudent manner, so as to see that the properties are maintained as if the same belongs to a person.

17. Therefore, in all respects such an approach must be adopted by the officials, while dealing with the properties. That is the reason why the Courts have repeatedly held that the public officials are supposed to perform their duties and responsibilities with devotion to duty. The devotion means that the actions of the Executives must not only be fair but also reasonable in accordance with the prevailing practice and the other procedures. Therefore, any other contrary actions are to be considered as omission or in violation of the very spirit of the provisions of the Act and the Rules.

18. The concept of "reasonableness" requires that the Competent Authorities shall act in consonance with the laws in force. The concept of "reasonableness" has got a definite meaning that the authorities while fixing the rent and renewing the lease must be cautious and should initiate that the temple and its income are not affected on account of any such fixation or otherwise. This being the principles to be followed, this Court is of an opinion that the consensus expected to be arrived between the parties has not been arrived in the present writ petition.

19. The learned Senior Counsel for the writ petitioners fairly made an undertaking on behalf of the writ petitioners that the writ petitioners will vacate the premises and hand over the possession to the fourth respondent-Temple, within a period of four months from the date of receipt of a copy of this order. This apart, during the course of the arguments, it was agreed that an amount of Rs.4 crores shall be settled towards the arrears of rent to be paid to the fourth respondent-Temple by the writ petitioners. In view of the undertaking and the agreement, this Court is inclined to pass the following orders in the interest of the temple as well as considering the fact that the writ petitioners were allowed to continue in the premises by the Department, even in the absence of a valid lease period for about 13-1/2 years:-

(i) The relief, as such, sought for in the present writ petition stands rejected;

(ii) The writ petitioners are directed to pay the arrears of rent of Rs.4 crores by way of four equal monthly instalments (Each month Rs.1 crore) commencing from 15<sup>th</sup> November 2018. Each instalment is to be paid on or before 15<sup>th</sup> day of every succeeding month;

(iii) The writ petitioners undertake that they will vacate the premises and hand over the possession to the fourth respondent-Temple, within a period of four months from the date of receipt of a copy of this order;

(iv) The respondents are directed to conduct a fresh open auction by following the procedures contemplated under law, after taking a decision by the Competent Authorities. In such an event, the writ petitioners also shall be permitted to participate in the auction to be conducted and the highest bidder shall be given the benefit of lease by following the procedures.

20. With the above directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Today, this matter has been listed under the caption "for being mentioned" at the instance of the learned counsel for the petitioner, the following modifications are made:-

(1) In paragraph No.10 of the order dated 30.10.2018, in the third line, the date "30.06.2016" is wrongly typed instead of "31.07.2018".

(2) In paragraph No.12 of the order dated 30.10.2018, in the first line, the date "01.07.2016" is wrongly typed instead of "01.05.2014".

(3) In paragraph No.19 (ii) of the order dated 30.10.2018, has modified and the same is reads as follows:

"(ii) The writ petitioners are directed to pay the Damages for use and occupation as on date of Rs.4 crores by way of four equal monthly instalments (Each month Rs.1 crore) commencing from 15<sup>th</sup> November 2018. Each instalment is to be paid on or before 15<sup>th</sup> day of every succeeding month;"

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

Svn  
To

- 1.The Secretary,  
State of Tamil Nadu,  
Tourism, Culture and Hindu Religious and  
Charitable Endowment Department,  
Fort St. George,  
Chennai-600 009.
- 2.The Commissioner,  
Hindu Religious and Charitable Endowment,  
Uthamar Gandhi Salai,  
Chennai-600 034.
- 3.The Joint Commissioner,  
Hindu Religious and Charitable Endowment,  
Uthamar Gandhi Salai,  
Chennai-600 034.

+2 Ccs to Mr.S. Sounthararajan, Advocate sr 76949 & 74227.  
+1 CC to Mr.A.S. Kailasam Associates sr 74242.

WP No.12206 of 2014

SP(20/11/2018)