

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2018

CORAM

THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.No.27711 of 2013
in MP.Nos.1, 2 & 3 of 2013

1.R.Jeevakanthan
2.M.Sivakami

... Petitioners

Versus

The Executive Officer,
A/m Vaikunta Perumal Thirukoil,
Big Kancheepuram.

... Respondent

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for records and quash the notice dated 08.09.2013 issued by the respondent and consequently direct the respondent to fix the fair rent after affording due opportunity to the petitioners.

For Petitioners: Mr.D.Baskar

For Respondent : Mr.Maharaja
Special Government Pleader (HR&CE)

O R D E R

This writ petition has been filed challenging the show cause notice issued by the respondent dated 08.09.2013.

2. The case of the petitioner is that one Mr.Manicka Mudaliar became a tenant of the property to an extent of 1710 Sq.ft of vacant land at Vaikuntha Perumal Sannathi Street, Kancheepuram. Subsequently, he had put up a construction and enjoying the property. While so, the first petitioner purchased the superstructure measuring 627 Sq.ft and the second petitioner purchased the superstructure measuring 1083 Sq.ft from the original lessee and they have reconstructed the superstructure of the property purchased by them.

3. It is further stated that the lease amount between 01.11.2001 to 30.6.2004 was Rs.750/-, per month and it was increased on 30.6.2012. It is further stated that on 17.7.2012, the respondent issued a notice demanding arrears of Rs.61,056/-, which was also paid by the petitioners and when the representation of the first petitioner dated 23.8.2012 was pending for transfer of the tenancy, impugned notice has been issued.

4. Mr.D.Baskar, learned counsel appearing for the petitioners submitted that the petitioners have become the owners of the superstructure, by virtue of sale deed dated 31.10.2005 and 12.02.2006. There is no guide line for fixing the amount for the superstructure.

5. It is further contended that Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, contemplates that before fixing the lease amount, the respondent has to constitute a committee and only after providing an opportunity to the petitioners, the lease amount can be fixed in accordance with law. In the case on hand, no such committee was constituted and the lease amount was fixed in violation of principles of natural justice. In support of the contentions reliance was placed on the decisions of this Court in Arulmigu Angala Parameswari and Kasivishwanathaswami Temple Adimanaiveal House Owners Asso. Vs. State of Tamil Nadu [(2009) 4 MLJ 1223].

6. Per contra, the learned Standing Counsel appearing for the respondent submitted that the impugned order is only a show cause notice and the petitioner was given fifteen days time to set out the explanation. Instead of submitting an explanation or filing an appeal before the Commissioner, straightaway the petitioner has come to this Court by filing this writ petition and prayed for dismissal of this writ petition.

7. In the case on hand, admittedly the land belongs to the respondent-Temple and one Manicka Mudaliar, was the tenant. On a perusal of the records reveal that on 17.7.2012, the respondent directed the tenant Mr.Manicka Mudaliar to pay arrears of Rs.61,056/- and impugned notice was also issued in the name of the original tenant. The petitioners are not recognized as tenant by the respondent and their representations for transfer of the tenancy is still pending before the authorities. Section 34-A deals with fixation of the lease amount and the Section 34-A(3) stipulates filing an Appeal by the person aggrieved by the order.

8. In the instant case, the respondent has enhanced rent by 15% following the G.O.Ms.No.456, Tamil Development, Religious Endowments and Information Department, dated 09.11.2007 and directed the tenant to pay amount within a period of 15 days. The grievance of the petitioners is that before fixing the rent, they were not provided an opportunity of hearing. The Division Bench of this Court in an unreported judgment in W.A.Nos.1058 to 1086 of 2017, has held that the lessees do not have any say in fixation of rent. In view of the latest judgment, with great respect, I am not able to follow the decision relied on by the learned counsel for the petitioners.

9. In my considered view, the petitioners have no locus standi to file a Writ Petition for the reasons that they are not recognized yet as lessees and the original tenant has an alternative remedy of Appeal under Section 34-A(3) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. In that view, the Writ Petition fails and the same is dismissed. There is no order as to costs.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

ms
To

The Executive Officer,
A/m Vaikunta Perumal Thirukoil,
Big Kancheepuram.

+1cc to Mr.D.BASKAR, Advocate, S.R.No. 12578
+1cc to the Government Pleader, S.R.No. 12257

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TR(08/03/2018)

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