

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 12-10-2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH

AND

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

WRIT APPEAL No.2276 OF 2018

M/s.Jayabharatham Marketing
rep by its proprietor
Mr.J.P.Guna

... Appellant/Petitioner/Petitioner

-vs-

1.The Commissioner,
Hindu Religious & Charitable Endowment-
Administration Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai-600 034.

2.The Joint Commissioner,
Hindu Religious & Charitable Endowment-
Administration Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai-600 034.

3.The Assistant Commissioner,
Hindu Religious & Charitable Endowment-
Administration Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai-600 034.

4.The Executive Officer,
Arul Mighu Sithi Buthi Vinayagar &
Sundereswarar Thirukoil,
56, Muthu Mudali Street,
Royapettah,
Chennai-600 014. ... Respondents/Respondents/Respondents

Writ Appeal under Clause 15 of the Letters Patent,

against the order, dated 28.09.2018, passed in W.M.P.No.29315 of 2018 in W.P.No.29726 of 2015, on the file of this Court.

WMP.No. 29315 of 2018 in WP.No. 29276/2015: Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to Extend the Time granted for vacating the premises in order dated 18.07.2018 made in WP No.29276 of 2015 and MP No.1 of 2015 and WMP No.2944 of 2016 as 11 months instead of 3 months at the new rent of Rs.4,500/- per day so fixed by the 1st Respondent.

W.P.NO.29276 OF 2015: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, Calling for entire records pertaining to the order dated 24.8.2015 of the 2nd respondent made in Na.Da. Na.Ka. No.2134/2015/A2 and quash the same.

For appellant : Mr.V.Ayyadurai,
Senior Counsel,
for M/s.G.Saravanakumar.

For all respondents : Mr.Maharaja,
Spl.Govt.Pleader.

JUDGMENT

(Judgment of the Court was delivered by Huluvadi G.Ramesh,J.)

Heard the learned counsel for the parties.

2. This appeal is filed, challenging the order, dated 28.09.2018, passed in W.M.P.No.29315 of 2018 in W.P.No.29726 of 2015, by the learned single Judge, dismissing the prayer of the appellant to extend the time granted for vacating the premises.

3. It transpires from the affidavit in the writ petition that daily rental for the premises was Rs.2,000/- and that was paid for several years by the appellant for possession of the premises, which is not in dispute. According to the learned Standing Counsel for the respondents-Department, the said premises, belonging to the fourth respondent, fetches a rental of Rs.20,000/- per day and it measures to an extent of 3555 sq.ft. The said rental was enhanced by the authorities from Rs.2000/- to Rs.4500/- way back in the year 2012. Aggrieved over the same, the appellant preferred a revision, which was rejected by the Government. Thereafter, according to the appellant, another representation was submitted to the respondents, but, as could be seen from the records, there is no such proceeding before the authorities as on today. It appears, the appellant has paid a sum of Rs.3,00,000/- on 23.12.2015,

Rs.15,00,000/- on 29.12.2015; Rs.7,00,000/- on 31.12.2015 and Rs.8,00,000/- on 04.01.2016, totalling to Rs.33,00,000/- through Demand Drafts. However, according to the learned Standing Counsel for the Department, the remaining amount due from the appellant as on today is Rs.69,41,000/- plus interest from the day it became due to till-date.

4. It is submitted that the Commissioner has fixed the rental at the rate of Rs.4500/- per day way back in the year 2012 and the amount of Rs.33,00,000/- is paid only towards arrears, without interest. Following the order of the learned single Judge, the Department has taken possession of the premises and kept the same under its lock and seal. It is pleaded by the appellant that most of the furniture and articles are left inside the premises, which is disputed by the learned Standing Counsel appearing for the Department, stating that possession has already been delivered by the appellant himself and nothing remains in the premises. However, it is the matter to be sorted out elsewhere.

5. At present, the total amount due from the appellant is Rs.69,41,000/- plus interest. Whether the appellant would intend to continue in the premises and the Department would allow the appellant to continue therein further or the premises would be subjected to public auction for fresh lease, to fetch higher rent, or renewal of the same in favour of the appellant on filing of such a petition, seeking for either reconsideration or for continuation of the lease, as the case may be, since the lease itself is on day-to-day basis, is to be considered by the Department in the proceedings to be initiated.

6. The order enhancing the rent to Rs.4500/- per day has been passed by the Commissioner, which has been upheld by the Government. The Government did not interfere with the said fixation of rent by the Commissioner, as the premises are situated in the heart of the city viz., Royapettah, Chennai. According to the submission of the learned Standing Counsel, the said premises fetches Rs.20,000/- per day, as the same is spreading to an extent of one-and-a-half ground, in addition to having other facilities, such as car parking.

7. However, on the request of the appellant, instead of paying the entire arrears of Rs.69,41,000/-, on persuasion, we direct the appellant to deposit 50% of the amount i.e., Rs.35,00,000/- in two instalments within two weeks i.e., 25% with interest within one week and the remaining 25% with interest within a week thereafter. The remaining amount of 50% of arrears along with interest would be decided at the time of hearing of application by the Commissioner, seeking for review of fixation of Rs.4500/-. Since it is pleaded by the learned Standing Counsel that the premises fetches Rs.20,000/- per day as per the market value, the Commissioner shall consider the same, without giving any scope for unnecessary litigation, within fifteen days after payment of 50% of arrears of rental

with interest, as stated supra, and take a decision with regard to the rent fixed way back in the year 2012, after hearing both the parties. Nevertheless, since already the Government has rejected the request of the appellant to review the enhancement of rent, we are of the view that the matter be considered by the Commissioner on the representation made/to be made by the appellant within the stipulated time as mentioned above, after 50% of the amount with interest is paid. It is made clear that out of arrears of Rs.69,41,000/-, Rs.35,00,000/- is to be paid by the appellant within two weeks as stated above and the remaining amount along with interest within fifteen days from the date of the order, to be passed by the Commissioner, on the fixation of rent. From the day of opening of the premises for business, fresh rent would be calculated for the remaining period as well, as it is to be determined by the Commissioner, after hearing both the parties, or put to auction. The new rent shall be fixed by the Commissioner as per the prevailing market value or put to auction in accordance with law, in which the appellant also can participate. For the remaining arrears amount of Rs.34,41,000/- to be paid with interest or any amount to be paid as fixed by the Commissioner after hearing, it is for the appellant to calculate the interest at the appropriate rate for the delayed payment and pay the same within a reasonable time i.e., within one month from the date of the order of the Commissioner, or else, the Commissioner would be at liberty to take a decision with regard to arrears of rental plus interest on the entire amount to be paid.

8. Writ Appeal is disposed of accordingly. No costs. Consequently, the connected C.M.P.Nos.18166 and 18172 of 2018 are closed.

Sd/-
Assistant Registrar(CS VI)

//True copy//

Sub Assistant Registrar

dixit

To

- 1.The Commissioner,
Hindu Religious & Charitable Endowment-
Administration Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai-600 034.

WEB COPY

2.The Joint Commissioner,
Hindu Religious & Charitable Endowment-
Administration Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai-600 034.

3.The Assistant Commissioner,
Hindu Religious & Charitable Endowment-
Administration Department,
No.119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai-600 034.

4.The Executive Officer,
Arul Mighu Sithi Buthi Vinayagar &
Sundereswarar Thirukoil,
56, Muthu Mudali Street,
Royapettah,
Chennai-600 014.

+2cc to Mr.G.Saravana Kumar, Advocate SR.No.71008
+1cc to Mr.S.D.Ramalingan, Advocate SR.No.71673
+1cc to Special Government Pleader SR.No.71586

RSV(CO)
GN(29/10/2018)

W.A.No.2276 OF 2018



WEB COPY