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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.17649 of 2018

and

W.M.P(MD)No.15520 of 2018

Duraipandi

... Petitioner

Vs.

The Joint Commissioner/Executive Officer,
Arulmighu Meenakshi Sundareswarar Temple,
Madurai.

....Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the records of the respondent, dated 24.05.2018 in proceedings in Na.Ka.No.809/2018/E3, quash the same, as the same is arbitrary, ultravires and consequentially direct the respondent to fix the fair rent in respect of Shop No.103-104, East Chitrai Street, Madurai, in compliance with Section 34-A of HR & CE Act, 22 of 1959 taking into consideration the prevailing market rental value on the basis of the lease deed produced by the petitioner in respect of the private buildings in the same locality.

For Petitioner : Mr.R.G.Shankar Ganesh

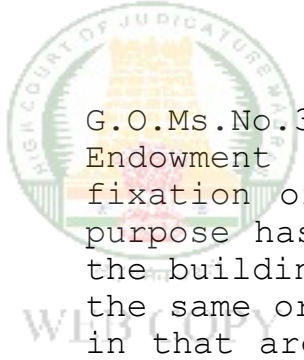
For Respondent : Mr.VR.Shanmuganathan,
Special Government Pleader.

ORDER

This Writ Petition has been filed seeking a writ of Certiorarified Mandamus, to quash the order of the respondent, dated 24.05.2018 in proceedings in Na.Ka.No.809/2018/E3 and further direct the respondent to fix a fair rent in respect of Shop No.103-104, East Chitrai Street, Madurai, in compliance with Section 34-A of HR & CE Act, 22 of 1959 taking into consideration the prevailing market rental value on the basis of the lease deed produced by the petitioner in respect of the private buildings in the same locality.

2.The case of the petitioner is as follows:-

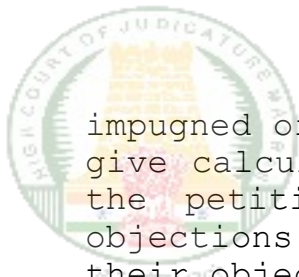
2.1. The petitioner is running a shop in No.103-104, East Chitrai Street, Madurai belonging to Arulmighu Meenakshi Sundareswar Temple, Madurai, as a tenant and he has been paying the monthly rent of Rs.14,304/- without fail till date.



G.O.Ms.No.353, Tamil Development, Hindu Religious and Charitable Endowment News, dated 04.06.1999 came into existence, wherein fixation of fair rent in respect of buildings used for commercial purpose has been taken into consideration according to the value of the building and that the rent can be fixed at the rate of 6% out of the same or by taking into consideration the present rent prevailing in that area whichever is higher. As per the said G.O, the rate of rent was enhanced at the rate of 33.3% once in three years. Several objections were raised by the tenants for the said G.O.Ms.No.353. Due to the objections raised, G.O.Ms.No.456, Tamil Development, Hindu Religious and Charitable Endowment News, dated 09.11.2007 was passed, wherein rate of interest has been reduced from 0.20% to 0.10% in respect of the properties used for residential purpose. However, in respect of the commercial purpose, in the said G.O., the Government has chosen to make guidelines for fixation of fair rent on the basis of the land value as in the year 2001 and enhanced the same by 15% once in three years. The rate of rent fixed by the Government was accepted by the petitioner and other tenants and as per the same, rent will be enhanced once in three years. That apart, the petitioner used to pay the rent of Rs.14,304/- without any arrears.

2.3. When the petitioner approached the respondent for payment of rent for the month of January 2018, the authorities refused to accept the same stating that a notice would be issued for fixing the fair rent and an impugned order came to be passed on 30.12.2017, wherein the rent was fixed on the basis of the prevailing market value as in the year 2017. The rent has been fixed by the Fair Rent Fixation Committee presided over by a committee headed by the respondent. The respondent is not entitled to fix the rent on the basis of the market value as in the year 2017 and the fair rent can be fixed only on the basis of the land value as in the year 2001 by enhancing once in three years at the rate of 15%. The proceedings in Na.Ka.No.94/2017, dated 27.10.2017 was not served to the petitioner and no calculation sheet has been served as to how the fair rent has been fixed and the said impugned order has been enhanced by 300% taking into consideration of the prevailing market value, which is contrary to the stipulations envisaged in G.O.Ms.No.456, dated 09.11.2007 read with Section 34-A of Act 22 of 1959. Apart from that, arrears of rent has been calculated from 01.07.2016 till November 2017 on the basis of the enhanced amount and the same was directed to be paid by the petitioner.

2.4. Since no prior notice was issued to the petitioner calling for objections, the Joint Commissioner, Hindu Religious and Charitable Endowment Department, Madurai, has violated the principles of natural justice before passing such order. As per the impugned order a sum of Rs.4,20,126/- has to be paid by the petitioner as an arrears, the petitioner has filed a Writ Petition in W.P.(MD) NO.1449 of 2018 on the file of this Court. This Court by order, dated 25.01.2018, directed the respondent to treat the



impugned order as a show-cause notice and directed the respondent to give calculation memo to the petitioner and on receipt of the same, the petitioner and other tenants are directed to submit their objections within one week and directed the respondent to consider their objections, within a period of two weeks thereon.

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2.5. As per the direction of this Court, the petitioner and other tenants have raised their objections and explanations were given to the respondent/the Joint Commissioner. The respondent has not considered the objections raised by the petitioner and passed an order mechanically.

2.6. Some of the tenants had filed writ Petitions in W.P(MD) Nos.13556 to 13571 of 2018 and by order dated 24.07.2018 this Court disposed of the Writ Petitions directing the petitioners to deposit 50% of the arrears of fair rent fixed by the authority and directed the petitioner to prefer an appeal within fifteen days. The petitioner has also approached this Court for a similar order.

3. Heard the learned counsel appearing on either side and perused the materials available on record.

4. It is seen from the records that the petitioner has approached this Court without exhausting appeal remedy available as per Section 34-A(3) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and without exhausting the same, the petitioner cannot file a Writ Petition under Article 226 of the Constitution of India and seek for a prayer and the Writ Petition is not maintainable. But, on considering the fact of the petitioner's case, the petitioner is at liberty to approach the concerned authority on or before 30.11.2018 to prefer an appeal before the appellate authority on condition that the petitioner deposits 50% of the arrears of fair rent fixed by the authority concerned and continues to pay 50% of the fair rent every month without default till the disposal of the appeal. On such deposit, if appeal is preferred, the appellate authority is directed to dispose of the appeal on merits and in accordance with law, after affording an opportunity of personal hearing, within a period of four months thereafter.

5. With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CRL.SIDE)

/True Copy/



To தமிழ்நாடு உயர் நீதிமன்றம்

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The Joint Commissioner/Executive Officer,
Arulmighu Meenakshi Sundareswarar Temple,
Madurai.

- 1 CC TO Mr.R.G.SHANKAR GANESH , ADVOCATE IN SR No.95551.
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W.P (MD) No.17649 of 2018
13.11.2018