



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 24.07.2018
CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

WEB COPY

C.R.P. (MD) (PD) No.1055 of 2018
and
CMP (MD) No.4550 of 2018

1. M.Kandhammal
2. A.M.Sakthi Vel
3. S.Kalyanaraman
4. A.Balamurugan
5. T.G.P.Venkat Raman

.... Petitioners/Appellants

-Vs-

1. The Commissioner,
Hindu Religious and Charitable Endowments,
Department, Nungambakkam,
Chennai.

2. The Joint Commissioner,
Hindu Religious and Charitable Endowments,
Department, Trichy.

3. The Executive Officer,
Arulmigu Kalyana Pasupatheswar Temple,
Karur Town, Karur District.

.... Respondents/ Respondents

Revision filed under Section 34-A(5) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 against the order passed by the first respondent in R.C.No.66739 of 2017, dated 10.4.2018.

For Petitioners : Mr.I.Vel Pradeep

For Respondents : Mr.Aayiram K.Selvakumar
Additional Govt. Pleader
(for R1 and R2)

Mr.P.Athimoolapandian
(for R3)

ORDER

This revision is filed under Section 34-A(5) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 against the order passed by the first respondent in R.C.No.66739 of 2017, dated 10.4.2018.



2. The facts in a nutshell are as under: The petitioners herein are running business of selling flowers, garlands and pooja articles in Sannathi Street, Karur Town in the shops that belong to Arulmigu Kalyana Pasupatheswar Temple and the same is under the control and administration of the third respondent. It is their case that they are running their business in the said shops for the past 47 years based on the lease agreement entered into with the third respondent and they had paid the monthly rentals without any default.

3. It is averred that when things stood thus, the second respondent passed an order vide Sa.Mu.Pa.No.12432/2013/E1, dated 11.12.2013 re-fixing the rent of the shops and directed the petitioners to pay the same with retrospective effect from 1.11.2001. As per the above re-fixation, the third respondent directed the first petitioner to deposit arrears of a total sum of Rs.1,13,070/-; the second petitioner to deposit a sum of Rs.60,630/-; the third petitioner a sum of Rs.55,570/-; the fourth petitioner a Rs.45,570/- and the fifth petitioner to pay a sum of Rs.68,936/- on or before 27.3.2018.

4. It is the case of the petitioners that the above said communication had been belatedly sent to them, i.e., after lapse of two years and nine months, by the third respondent vide communication dated 8.9.2016 and there is no basis for reckoning the period to pay the revised rent from 1.11.2001.

5. Assailing the above said order, the petitioners preferred an appeal before the first respondent, who by order dated 28.2.2018 directed the petitioners to pay the deposit amount in full as ordered by the second respondent on or before 3.4.2018 and inasmuch as the petitioners failed to comply with the said conditional order, the appeal preferred by the petitioners was dismissed vide order dated 10.4.2018.

6. Calling in question the said order, the present civil revision petition is filed.

7. The learned counsel appearing on behalf of the petitioners vehemently contended that Section 34-A(3) of the Act contemplates deposit of the lease rent for entertaining the appeal, but in this case, the re-fixation of the lease rent is with retrospective effect, that too since 2001 (for almost 18 years) and, therefore, the respondents ought not to have insisted on depositing the entire amount for entertaining the appeal.

8. He further contended that the petitioners have been paying the rents periodically and they are bound to pay arrears if any as per the existing tariff and tariff cannot be revised retrospectively for the past 18 years.



9. The learned counsel appearing on behalf of the respondents reiterated the reasons that weighed with the respondents in passing the impugned order and prayed for dismissal of this revision.

10. I heard Mr.I.Vel Pradeep, learned counsel for the petitioner, Mr.Aayiram K.Selvakumar, learned Additional Government Pleader for the respondents 1 and 2 and Mr.P.Athimoolapandian, learned counsel for the 3rd respondent and perused the documents available on record.

11. The guidelines issued by the Commissioner, HR & CE Department in Na.Ka.No.40651/2008/M3, which is based on an earlier Government Order No.353, Tamil Development and Culture, Hindu Religious Department, dated 4.6.1999 and G.O.No.456, dated 9.11.2007 contemplates that the basis for determining the lease amount should be communicated to the parties, but, it has not been complied.

12. In an identical case, a Division Bench of this Court in Arulmigu Angala Parameswari and Kasivishwanathaswami temple Adimanaiveal House Owners Asso. & Another v. The State of Tamil Nadu rep. by its Secretary to Government & Others, 2009 3 LW 728, had clearly indicated that the above guidelines should be followed and the relevant paragraphs reads as follows:

"16. The Government also noted that if guidelines are not followed, then the lease rent fixed by the committee is quashed either in appellate proceedings or by proceedings before the High Court wherein deficiency are pointed out. It was also noted that this only leads to the delay and loss to the lease rent for the temple and therefore, three strict guidelines were issued and it was also indicated that if they were not followed, stringent action would be initiated. Following this, further proceedings dated 2.2.2009 as per which, additional and clarificatory guidelines were issued and therefore, it is found that opportunity of raising objections is given to the lessee.

17. It was clarified that it is not necessary for the lessees to appear in person and that it is sufficient for them to submit their written objection to the temple authorities, who will take note of the objection before fixing the final rent and then it will go before the committee which will pass the order as per sub Section (2) of Section 34A of the Act for fixing the lease rent and intimate the same to the lessee. Therefore, the Committee consisting of the Joint Commissioner and the Executive Officer or Trustees or Chairman of the Board of Trustees as the case may have to take note of the prevailing market value and the guidelines and then they will fix the lease rent or refix the lease rent as the case may be once in three years. The explanation to sub



section (1) of Section 34A of the Act also makes it clear that what is meant by prevailing market value. The Executive Officer thereafter shall fix the lease rent. He is given the discretionary power to take note of what the Committee had recommended and then he shall fix the lease rent and intimate the same to the lessee. By virtue of the circular extracted above, the evidence submitted by the lessee will form part of the material for determining the lease rent. Therefore, we are of the opinion that lessees have been given sufficient opportunity to place before the committee the materials regarding fair rental value and it is only thereafter, that the lease rent would be fixed. Therefore, the complaint that principle of natural justice is violated, has been answered by the proceedings dated 2.2.2009. The direction contained therein shall be compulsorily followed."

13. In the case on hand, admittedly, the respondents have not followed the guidelines laid down by the Commissioner, HR & CE Department in Na.Ka.No.40651/2008/M3 and they had neither followed the directions issued by the Division Bench in Arulmigu Angala Parameswari and Kasivishwanathaswami temple Adimanaiveal House Owners Asso. & Another, supra. The very basis for directing the petitioners to pay the lease rentals with retrospective effect from 2001 (for almost 18 years) by re-fixing the lease amount, is not communicated to the petitioners in due compliance of the guidelines referred supra. On this score alone, the impugned order is liable to be set aside.

14. In view of the above, the order under challenge is set aside. The matter is remitted to the first respondent with a direction to consider the appeal filed by the petitioners in terms of Section 34A of the Act and the guidelines laid down by the Commissioner, HR & CE Department in Na.Ka.No.40651/2008/M3 and the directions issued by the Division Bench in Arulmigu Angala Parameswari and Kasivishwanathaswami temple Adimanaiveal House Owners Asso. & Another, supra. The petitioners, if they seek personal hearing, shall be given personal hearing.

The Civil Revision Petition is allowed by way of remand. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/



To

1. The Commissioner,
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Department, Nungambakkam,
Chennai.
2. The Joint Commissioner,
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Department, Trichy.
3. The Executive Officer,
Arulmigu Kalyana Pasupatheswar Temple,
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+1CC to Mr.I.Vel Pradeep, Advocate, SR.No.74979

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VSV

ES/SKN/RSK/SAR 3/26.10.2018/5P/5C