

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2020

CORAM

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRP.No. 2686 of 2010
and M.P.Nos. 1 & 2 of 2010

R.Jayabalan

..Petitioner

Vs

1.The Commissioner,
HR & CE Department,
Mahatma Gandhi Road,
Nungambakkam, Chennai -600034.

2.The Executive Officer,
Arulmigu Ekambareswarar Temple,
No.80, Mint Street, Chennai -600 003.

..Respondents

Prayer : Civil Revision Petition is filed under Section 115 of CPC r/w Section 34A(5) of the H.R & C.E Act to set aside the orders dated 01.06.2010 made in A.P. 42/08 D2 passed by the Commissioner, H.R & C.E Chennai 600034 in confirming the order of the Executive Officer, Arulmigu Ekambareswarar Temple, Chennai 600003, dated 19.01.2008.

For Petitioner : Mr.S.Parthasarathy SC,
for M/s.J.Ramakrishnan

For Respondents : Mr.Y.T.Aravind Gosh, GA- R1
Mr.D.R.Shivakumar - R2

सत्यमेव जयते
ORDER

The Civil Revision Petition is filed to set aside the orders dated 01.06.2010 made in A.P. 42/08 D2 passed by the Commissioner, H.R & C.E Chennai 600034 in confirming the order of the Executive Officer, Arulmigu Ekambareswarar Temple, Chennai 600003, dated 19.01.2008.

2. The petitioner is tenant under the respondent. The 2nd respondent issued notice of demand on 19.07.2008 for fixation of fair rent. Challenging the said order, the petitioner has filed a writ petition in W.P.No. 6288 of 2008 and the said writ petition was disposed of by this Court and set aside the said order and also directed the 2nd respondent to pass orders in

accordance with law and granted liberty to the petitioner to prefer appeal. Based on the directions, the petitioner has filed an Appeal in AP.42/2008(B)II under Section 30(A)(3) HR & CE Act. The 1st respondent had passed order dated 01.06.2010, confirming the order of the 2nd respondent. Hence, this Civil Revision Petition.

3. The learned counsel for the petitioner would submit that though it is an admitted fact that the petitioner is a tenant under the 2nd respondent/Land lord, without giving notice to the petitioner and without giving opportunity to the petitioner to raise his objections, the 1st respondent has enhanced the rent literally from 01.11.2001 to 30.06.2004 and 01.07.2004 to 30.06.2007 and 01.07.2007 to 30.06.2010 by citing G.O.Ms.(Rt) No. 456, dated 09.11.2007 and issued a notice of demand dated 19.01.2008. Therefore, the order passed by the 2nd respondent violates the principles of natural justice.

4. The learned counsel for the petitioner in support of his submissions, has relied upon para 13 of the judgment of Madurai Bench of Madras High Court reported in 2018 (3) MadWN (Civil) 167 in the case of M.Gurusamy Nadar & Others Vs.The Commissioner, Hindu Religious and Charitable Endowment Department, Chennai & Others (CRP.(NPD)(MD) No. 982/2016). The relevant Portion is extracted below;

13.As regards C.R.P.(NPD)(MD)No.982 of 2016, this Civil Revision Petition is filed by the revision petitioner challenging the order of the Commissioner, HR & CE Department, Chennai, in A.P.No.27 of 2015, dated 28.03.2016. By order dated 28.03.2016, the Commissioner, HR & CE Department, Chennai, has confirmed the order of the fair rent fixed by the Committee, dated 29.04.2008 and the notice of demand dated 06.02.2013. It is not in dispute that fair rent was fixed by the Committee for the first time in 2008 and communicated to the tenant on 11.09.2009. No notice was issued to the petitioner before fixing fair rent for the premises occupied by him. In 2008, fair rent has been fixed for the period from 01.07.1998 to 30.06.2010. When fair rent is fixed, the tenant should know the basic facts which were taken into account by the Committee, for the purpose of determining the fair rent. The proceedings filed before this Court by the revision petitioner and the table signed by the members of the Committee, is not disputed before this Court. As per the table, it is found that the extent of land in the occupation of petitioner is stated as 2786.62 sq.ft., and the value as per Sub-Registrar of Registration Department is taken as Rs.790 per sq.ft. From this, the fair rent has been arrived at Rs.18,093/- per month from 01.07.1998 till

31.10.2001 and fair rent was fixed at Rs.21,286/- from 01.11.2001 to 30.06.2004. This Court is unable to see on what basis the fair rent was arrived at and how it is possible to arrive at the fair rent on the basis of so called guideline value of Sub Registrar. The tenant has every right to raise his objection, with regard to basic facts that are to be taken while fixing fair rent. Admittedly, in this case, no notice was issued to the tenant before fixing the fair rent by the Committee. The fact that the tenant was paying only a sum of Rs.6,000/- till March'2008 is not in dispute.

5. The learned counsel appearing for the 2nd respondent would submit that a Committee has been constituted as per G.O.Ms. No. 353 dated 04.06.199 and the Committee members have fixed the fair rent as per the guideline value for the premises as per G.O. Ms.No. (Rt) 456, dated 09.11.2007 and issued notice of demand to the petitioner on 19.01.2008. The learned counsel further submitted that along with the said notice, they have also forwarded the calculation statement showing outstanding dues liable to be paid by the petitioner, therefore the order passed by the 2nd respondent is correct and there is no violation as contended by the petitioner.

6. Heard both sides and perused the documents available on record.

7. Admittedly the petitioner is tenant under the 1st respondent. The 2nd respondent had issued notice dated 19.01.2008 to the petitioner by fixing fair rent to the premises occupied by the petitioner for the following periods;

- i. From 01.11.2001 to 30.06.2004 - Rs.10,160/- per month
- ii. From 01.07.2004 to 30.06.2007 - Rs.11,684/- per month
- iii. From 01.07.2007 to 30.06.2010 - Rs.13,437/- per month.

8. Challenging the said notice dated 19.01.2008, the petitioner had earlier filed a writ petition in W.P. No.6288 of 2008 before this Court and this Court by order dated 12.03.2008 had disposed of the said writ petition and granted liberty to the petitioner to file a statutory appeal under Section 34-A(5) of the Act before the concerned Appellate Court. The petitioner has also filed an appeal before the 1st respondent in A.P.No. 42 /08-D2 and the 1st respondent after hearing both sides, passed an order dated 01.06.2010 dismissing the appeal preferred by the petitioner.

9. On a careful perusal of records, it is seen that in the order passed by the 1st respondent, there is no mention about the issuance of notice to the petitioner to appear before the committee constituted for revising the fair rent. Therefore, it

is clear that the petitioner was not given any opportunity to raise his objections while fixing the fair rent by the Committee. Further, in the additional typed set of papers submitted by the respondents, it is stated that the Committee has fixed the fair rent as per the guideline value prevailing at that time. The Hon'ble Supreme Court and this Court has time and again reiterate that 'while fixing the fair rent, the market value of the property alone should be taken into account and the guideline value is fixed only for the purpose of calculating the stamp duty and it has no statutory base or force'. Whereas the order impugned itself shows that the fair rent has been fixed as per the guideline value which is not valid under law.

10. Since the respondents had failed to issue notice to the petitioner to appear before the Committee and to raise his objections before fixing fair rent and fixed the fair rent as per the guideline value instead of market value which is against the principles laid down by the Hon'ble Supreme Court and this Court, the said act of the respondents can very well be construed as violation of principles of natural justice. Therefore this Court with no hesitation, has come to the conclusion that the order passed by the 1st respondent is liable be set aside. Accordingly, the following order is passed;

- i. The order passed by the 1st respondent dated 01.06.2010 is set aside and the same is remand back to the 1st respondent to consider afresh.
- ii. The 1st respondent shall afford opportunity to the petitioner by way of notice and decide the matter in accordance with law by taking into consideration the market value.
- iii. The entire process shall be completed within a period of three (3) months from the date of receipt of a copy of this Order.
- iv. With the above directions, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner,
HR and CE Department,
Mahatma Gandhi Road,
Nungambakkam, Chennai-034.

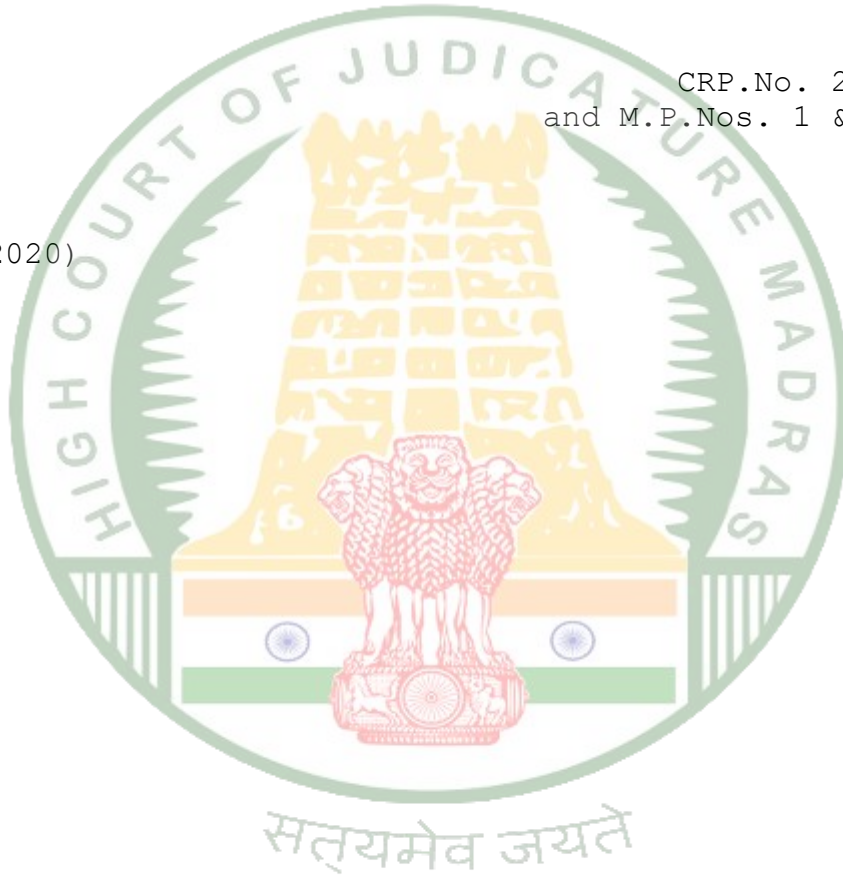
2. The Executive Officer,
Arulmigu Ekambareswarar Temple,
No.80 mint Street, Chennai-600 003.

+lcc to M/s.J.Ramakrishnan, Advocate in SR.NO..26411

+lcc to the Government Pleader, in SR.NO..26240

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SAI (CO)
RV(20/10/2020)



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