

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 28.01.2020
CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

Writ Petition No.19111 of 2013
and
MP Nos.1 and 2 of 2013

1.M.Lakshmanan
2. M.Balaji

... Petitioners

Vs

1. The Commissioner,
Hindu Religious & Charitable
Endowments (Admn.) Department,
Uthamar Gandhi Salai,
Nungambakkam,
Chennai - 600 034.

2. The Joint Commissioner,
Office of the Joint Commissioner,
Hindu Religious & Charitable Endowments department,
Vellore, Vellore District.

3. The Executive Officer,
Arulmighu Sri Sundareswarar Thirukoil,
Kovur Village,
Sriperumbudur Taluk,
Kancheepuram District.

.... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus to call for the records of the first respondent which culminated in the impugned order in R.P.No.43 of 2012 dated 21.05.2013, quash the same and forbear the respondents from taking any action based on calculation to be made on the guideline value prescribed as on 01.04.2012.

For petitioners : Mr.E.Ganesh

For R1 and R2 : Mr.R.Venkatesan
Government Advocate -
HR & CE for R1 & R2

ORDER

This writ petition has been filed challenging the order of the first respondent dated 21.05.2013 directing the petitioners to pay the fair rent for the leased premises in accordance with the fair rent fixed by the Fair Rent Fixation Committee based on the guideline value of the property as on 01.04.2012. Under the impugned order dated 21.05.2013, the first respondent has observed that transfer of tenancy rights in favour of the petitioners in respect of the rented premises will be done only if the petitioners accept the fair rent fixed in the year 2012 by the Fair Rent Fixation Committee and if they fail to pay the said fair rent, the impugned order stipulates that the Executive Officer is at liberty to implement the impugned order. Aggrieved by the same, this writ petition has been filed.

2. Heard Mr.E.Ganesh, learned counsel for the petitioner and Mr.R.Venkatesan, learned Government Advocate appearing for respondents 1 and 2.

3. The learned counsel for the petitioners drew the attention of this Court to the impugned order of the first respondent, which was passed under Section 21 of the Tamil Nadu H.R. & C.E. Act, (hereinafter referred to as HR & CE Act), 1959. According to him, aggrieved by the order dated 21.08.2012 passed by the Joint Commissioner, HR & CE, Vellore under Section 78 of the HR & CE Act declaring the petitioners as encroachers, the petitioners preferred a revision under Section 21 of the HR & CE in RP No.43 of 2012 D2 before the first respondent.

4. The learned counsel for the petitioner drew the attention of this Court to the observation made by the first respondent in the impugned order, dated 21.05.2013 wherein, in paragraph 3 of the said order, it has been observed that the petitioners have paid the entire arrears of rent subsequent to the filing of RP No.43 of 2012 D2 before the first respondent. According to him, having paid the entire arrears of rent, the petitioners have been recognised as a Lessee by the Temple in place of the deceased father M.Muthu, who was the original Lessee. According to the learned counsel for the petitioners, the petitioners have been paying the rent till date in accordance with G.O. Ms.456, dated 09.11.2007, which provides for enhancement of rent by 15% every three years. He also referred to the earlier G.O. Viz., G.O. Ms.353, dated 04.06.1999, which is not beneficial to the petitioners and

other tenants, since the earlier G.O.Ms.No.353, dated 04.06.1999 provides for enhancement by 33.3% for every years. According to him, the Government thought it fit that the property will not fetch such a high rent and therefore reduced the enhancement and accordingly, they issued G.O.Ms.456, dated 09.11.2007, which is beneficial to all the tenants. According to the learned counsel for the petitioners, arbitrarily without following the due procedure provided under the HR & CE Act, 1959, the petitioners have been called upon to pay the rent as per the fair rent fixed by the Fair Rent Fixation committee in the year 2012, which came into effect on 01.04.2012.

5. According to the learned counsel for the petitioners, no notice was given to the petitioners before calling upon the petitioners to pay the fair rent in accordance with the fair rent fixed by the fair rent fixation committee in the year 2012, which is based on the guideline value of the property as on 01.04.2012. According to the learned counsel for the petitioners, the respondents have violated the principles of natural justice without affording any opportunity to the petitioner to state his objections with regard to the fixation of the fair rent.

6. The learned counsel appearing for the petitioners also drew the attention of this Court to the judgment of a Division Bench of this Court in the case of Arulmigu Anghla Parameswari and Ors. Vs. The State of Tamil Nadu and Ors. reported in 2009 (6) CTC 512 and submitted that sufficient opportunity should be given to the tenants before fixation of fair rent. According to him, since the petitioners have not been afforded sufficient opportunity with regard to the fixation of the fair rent, the impugned order of the first respondent calling upon the petitioner to pay the fair rent, as fixed by the Fair Rent Fixation Committee in the year 2012, based upon the guideline value of the property as on 01.04.2012 is arbitrary and illegal. Further, it is submitted by the learned counsel for the petitioners as against the fixation of fair rent under Section 34-A of the HR & CE Act, 1959, the petitioners have got the remedy to file a statutory appeal under Section 34-A(3) before the Commissioner and further revision under Section 34-A(5) before the High Court. According to the learned counsel for the petitioners, in view of the arbitrary fixation of fair rent, the petitioners have lost the opportunity to file the statutory appeal as well as the statutory revision provided for under Section 34-A of the TN HR & CE Act, 1959.

7. Per contra, the learned counsel appearing for the respondents would submit that the impugned order has been passed only in accordance with law following the due procedure as provided under the TN HR & CE, 1959.

Discussion :-

8. Admittedly, the petitioners have settled the entire arrears of rent after filing of RP No.43 of 2012 D2 before the first respondent complying with the conditions for grant of stay of the impugned order, dated 21.08.2012 passed by the Joint Commissioner, HR & CE Administration department, Vellore in PRO RC No.4221 of 2012/E1. This being the case as rightly contended by the learned counsel for the petitioners, the petitioners have been recognised as tenants by the respondents. Admittedly, the petitioners have been paying the rents in accordance with the fair rent fixed by the Fair Rent Fixation committee in the year 2007. In accordance with the said fixation, G.O. Ms. No.456, dated 09.11.2007 was issued and in accordance with the same, the petitioners have been paying the rent.

9. As per G.O. Ms.No.456, dated 09.11.2007, the enhancement of the rent can be made by the Temple for every three years at the rate of 15%. However, as per G.O. Ms.No.353, dated 04.06.1999, the enhancement of rent can be made by the Temple every three years at the rate of 33.33%.

10. The Government thought it fit considering the market rates applicable that the rent has to be reduced and accordingly, G.O. Ms.No.456, dated 09.11.2007 was issued reducing the rate of enhancement of rent by every three years. Admittedly, the petitioners have been paying the rent in accordance with G.O. Ms. No.456, dated 09.11.2007. The arrears of rent subsequent to the filing of RP No.43 of 2012 D2, before the first respondent was also paid by the petitioners only in accordance with G.O. Ms.No.456, dated 09.11.2007. The first respondent has also observed in its order that the entire arrears of rent have been paid by the petitioners. But all of a sudden, the petitioners have been called upon to pay the rent as per the Fair rent fixed in the year 2012, which was fixed based on the guideline value of the property as on 01.04.2012. Admittedly, no notice was given to the petitioners before fixation of fair rent in the year 2013, based on the guideline value of the property as on 01.04.2012.

11. The judgment of the Division Bench of this Court reported in 2009 6 CTC 512 referred to supra relied upon by the learned counsel for the petitioners is squarely applicable to the facts of the instant case. The Division Bench has held that sufficient opportunity must be granted to the petitioners before

fixation of fair rent and due notice will have to be issued to the tenants.

12. In the case on hand, no notice has been issued to the petitioners before passing of the impugned order demanding payment of fair rent in accordance with fair rent fixed by the Fair Rent Fixation Committee, based on the guideline value of the property as on 01.04.2012.

13. For the foregoing reasons, it is clear that the first respondent has violated the principles of natural justice before demanding the fair rent as per the rates fixed in the year 2013 based on the guideline value of the property as on 01.04.2012.

14. In the result, the impugned order dated 21.05.2013 calling upon the petitioners to pay the fair rent as per the fair rent fixed by the Fair Rent Fixation committee in the year 2013 based on the guideline value of the property as on 01.04.2012 is hereby quashed and the matter is remanded back to the second respondent for fresh consideration in accordance with law and the second respondent shall give sufficient opportunity to the petitioners as well as the third respondent including granting them the right of personal hearing before passing final orders on merits and in accordance with law.

15. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

vsi2

To

1. The Commissioner,
Hindu Religious & Charitable
Endowments (Admn.) Department,
Uthamar Gandhi Salai,
Nungambakkam,
Chennai - 600 034.

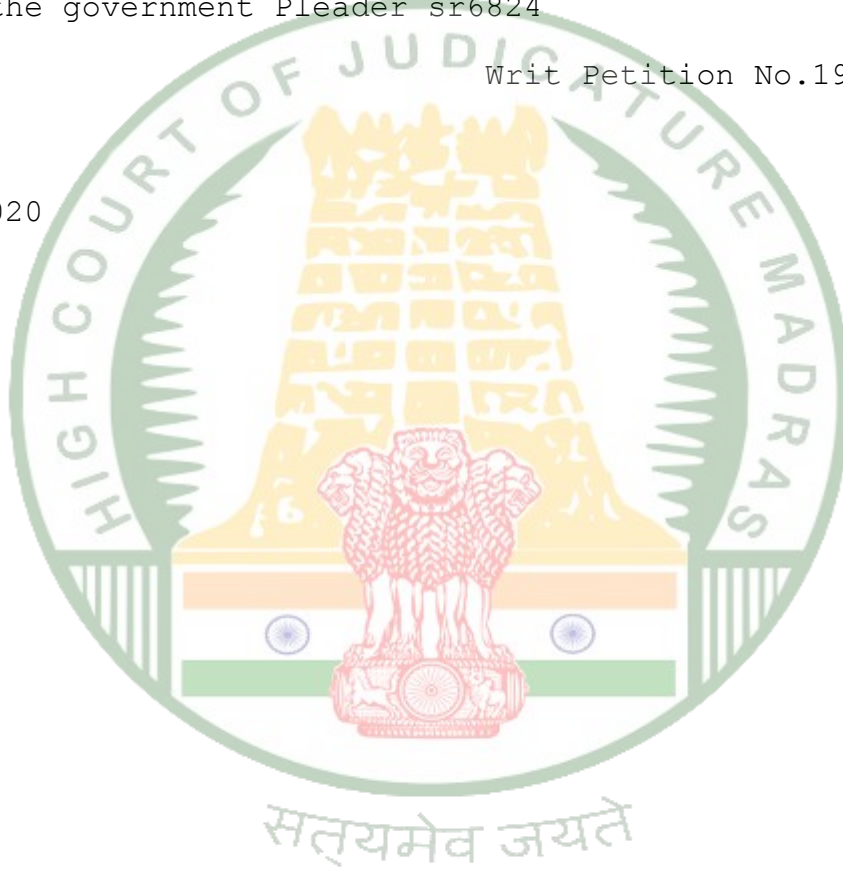
2. The Joint Commissioner,
Office of the Joint Commissioner,
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Vellore, Vellore District.

3. The Executive Officer,
Arulmighu Sri Sundareswarar Thirukoil,
Kovur Village,
Sriperumbudur Taluk,
Kancheepuram District.

+1 cc to M/s.E.Ganesh Advocate sr6126
+1 cc to the government Pleader sr6824

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