

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2020

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.Nos.439, 575 and 864 of 2020
and C.M.P.Nos.6711, 6712, 8138,
8140 and 10805 of 2020

1.K.Krishnan
2.K.Renganathan
3.K.Jamuna
4.K.Jeyalakshmi

.. Appellants in
WAs.439 & 575/2020

1.P.Jeyalakshmi
2.P.Saravanan
3.P.Kannan

.. Appellants in
WA. 864 / 2020

-vs-

1.The Commissioner,
Hindu Religious and Charitable
Endowment, Nungambakkam,
Chennai 600 034.

2.Executive Officer,
Shri Arulmighu Bhasyakara Adhi
Chennakesava Perumal Temple,
West Mambalam, Chennai 600 033.

.. Respondents in
all WAs.

Appeals filed under Clause 15 of the Letters Patent against the orders dated 07.02.2020 made in W.P.Nos.16263, 16264 and 16265 of 2018 on the file of this Court.

Prayer in W.P.Nos.16263, 16264, 16265/2018:Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, directing to call for the entire records pertaining to the issuance of the impugned notice dated 01.03.2018 issued by the 2nd respondent and quash the same and further direct them to execute the sale deed in favour of the petitioners by virtue of the order dated 15.09.1981 passed in I.A.No.5917 of 1979 in O.S.No.8575 of 1978 on the file of V Assistant Judge, City Civil Court, Chennai, order dated

20.12.1983 passed in O.S.No.8576/1978 and 8574/1978 on the file of the IV Assistant Judge, City Civil Court, Chennai.

For Appellants	: Mr.C.Umashankar
For Respondents	: Mr.R.Venkatesh Govt. Advocate for R-1
	: Mr.A.K.Sriram for M/s.A.S.Kailasam and Associates for R-2

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

These three appeals arise out of judgments dated 07.02.2020 with a common issue, whereby two properties that are in three portions were subject matter of dispute. A certain area of land that belongs to Shri Arulmighu Bhasyakara Adhi Chennakesava Perumal Temple, West Mambalam, Chennai, was rented out to the forefathers of the appellants and they had constructed a house over the said land. It is said that rent was being paid regularly, but, in the year 1978, the Temple authorities filed O.S.Nos.8574 to 8576 of 1978 for eviction and possession in the City Civil Court, Chennai.

2.O.S.No.8574 of 1978 was filed against one Perumal Reddiar, (who is the father of the appellants in W.A.No.864 of 2020), O.S.No.8575 of 1978 was filed against one Salammal, (who is the grand mother of the appellants in W.A.Nos.439 and 575 of 2020) and O.S.No.8575 of 1978 was filed against one Kuppusamy Reddiar (who is the father of the appellants in W.A.No.439 and 575 of 2020). In all the three suits, interlocutory applications were filed by the defendants therein under Section 9 of the City Tenants Protection Act, 1921 and the applications were allowed on condition to deposit a sum of Rs.58,070/-, Rs.81,529.50 and Rs.48,000/- respectively. It is claimed that the amounts had been deposited by the appellants. The Civil Miscellaneous Appeals filed by the Temple authorities against the orders in the interlocutory applications were stated to have been dismissed.

3. Thereafter, it appears that the suits were decreed for recovery of possession by the Trial Court citing a provision of the Act II of 1996, i.e., O.S.No.8574 of 1978 was decided on 30.11.2000 and O.S.Nos.8575 and 8576 of 1978 were decided separately on 28.01.2005. Two of the suits were stated to have reached finality, i.e., O.S.No.8576 of 1978 and O.S.No.8575 of 1978, and the suit in O.S.No.8574 of 1978, was remanded back to

the Trial Court for fresh consideration and is stated to be still pending.

4.The Temple authorities, therefore, proceeded to issue a notice dated 22.02.2017, which is addressed to Mrs.Salammal, Mr.Perumal Reddy, Mr.Kuppusamy Reddy and Mr.Bakthavatchalam Reddy. One of the notices, that is common in nature in all the cases, is extracted hereinunder:-

NOTICE

Fasli 1426 dated: 22.02.2017

(This notice is being issued without prejudice to the eviction proceedings under Sections 78 and 79 of the Act and the proceedings in the civil court)

Sir,

In respect of Plot/Residence which is in the use and occupation belongs to Arulmighu Bashyakkara Adhichenna Kesavaperumal Thirukoil, West Mambalam, Chennai-33, and situate at Door No.4, Madly 2nd Street, measuring 14920 sq.ft. is fixed with a fair rent of Rs.238720/- under section 34(A) of Hindu Religious Charitable Endowments Act and as per the calculation sheet enclosed with this and proposed to be discussed by the committee for fixation of fair rent. I hereby inform that if you have any objection in this, the same shall be informed within seven days of your receipt of this notice in writing either in person or through post in the office of this temple.

Sd/- xxxx

Executive Officer

Arulmighu Bashyakkara Adhichenna
Kesavaperumal Thirukoil,
Mambalam, Chennai-33.

To:

Thiru.Salammal, Thiru.Perumal Reddy,
Thiru.Kuppusamy Reddy,
Thiru.Bakthavatchalam Reddy,
Door No.24, Madly 2nd Street,
T.Nagar, Chennai-17.

5.The aforesaid notice was accompanied by the details of the land and the fair rent at market value being claimed by the Temple. Similar notices were sent in respect of all the properties.

6.The appellants sent a reply to the said notices through their counsel on 05.03.2017, which is extracted hereinunder:-

To:-

- 1.The Joint Commissioner,
Hindu Religious and Charitable
Endowment Dept., Nungambakkam,
Chennai 600 034.
- 2.The Executive officer,
Arulmighu Bhasyakara AdiChennakesava
Perumal Temple, West Mambalam,
Chennai 600 033.

Sir/Madam,

Sub: Your notice dated 22.02.2017 received by No.2 of
you - under

sections 78 and 79 of Tamil Nadu Hindu
Religious and
Charitable Endowment Act, 1959.

Under instructions from my clients M/s.1.(a)
K.Krishnan, (b) K.Renganathan, (c) K.Jamuna, (d)
K.Jeyalakshmi, Legal Representatives of M/s.Salammal &
Kuppusamy Reddy, 2. (a)P.Jeyalakshmi, (b) P.Saravanan
and (c) P.Kannan, Legal Representatives of Perumal
Reddy, 3. (a) B.Sankaranarayanan, and (b) B.Sivagama
Sundari, residing at 24/70, 24/72, 24/68 and 24/74, 2nd
Madley Street,T.Nagar, Chennai 600 017, I hereby issue
the following reply notice to you by way of objection.

- 1) At the outset, my clients deny the allegation that
you are the Landlord to my clients. My clients
are not tenants at present either under the Tamil
Nadu Hindu Religious and Charitable Endowment
Department or under the AdiChennakesava Perumal
Temple, Chennai 600 033. Hence my clients are not
liable to pay any rent to both of you or any of
you.
- 2) Your notice is very silent about the suits filed
by your department i.e. No.2 of you against my
client. By this notice, my clients call upon you
to recollect the suits filed by NO.2 of you in
O.S.No.8574 of 1978, O.S.No.8575 of 1978,
O.S.No.8576 of 1978 and O.S.No.9132 of 1978 - all
filed before the City Civil Court, Chennai for
evicting my clients from the property in dispute.
In the said suits, my clients have filed a
petition under section 9 of Madras City Tenants
Protection Act seeking for a direction to sell the
land in dispute to them.
In the said petition viz. I.A.No.13710 of 1979 in
O.S.No.8574 of 1978, I.A.No.5917 of 1979 in
O.S.No.8575 of 1978, I.A.No.4026 of 1979 in

O.S.No.8576 of 1978 and I.A.No.1432 of 1979 in O.S.No.9132 of 1978. An order was passed by the City Civil Court, Chennai to pay the amounts for the land and in turn to execute the sale deeds. By which Mrs.Salammal was directed to pay Rs.50,000 per ground and in total she paid Rs.81,529.50 on 14.02.1986 for her area of occupation viz. for 3607 ½ Sq. feet as per their area of occupation viz. Mr.Kuppusamy Reddy for 6204 Sq.Ft. was directed to pay to Rs.1,29,250/- 2) Mr.Perumal for 2569 ½ Sq.Ft. was directed to pay Rs.60,561/- and 3) Mr.Bakthavatachalam for 2499 Sq.Ft. was directed to pay Rs.60,835/-.

- 3) As per the said order, the above said persons have paid the said amount by way of depositing the same before the Court of Law except Mr.Kuppusamy Reddy and the appeal filed by his LRs in Second Appeal No.329 of 2008 is pending in High Court, Madras, on this issue.
- 4) My clients further state that despite of the fact that they have paid the entire amount as directed by the Court of Law, the sale deeds were not executed in their favour. Thus, the above said persons legal representatives of 1) Mr.Kuppusamy Reddy, 2) Mrs.Salammal, 3) Mr.Perumal and 4) Mr.Bakthavatchalam, i.e., My clients, are taking steps for direction against you to execute the sale deed in my client's favour.
- 5) At this juncture, when the orders passed by the Civil Court have become final, the above said notice of yours to pay rental arrears is a shock to my clients. My clients wish to state that the above notice is not only mischievous but also baseless apart from illegal and against the well considered judgments of Civil Court. In the above said circumstances, my clients call upon you to withdraw the notice issued to them which is referred in the above subject within 7 days from the date of receipt of this notice and execute the sale deed in favour of my clients. If not, kindly note that my clients are approaching the High Court of Madras to get suitable direction against you with costs. Kindly avoid any unnecessary litigation in this regard.

..... "

7.The Executive Officer of the Temple, then, issued a notice dated 01.03.2018 again contained in the same format demanding an amount of Rs.47,91,730/- to be the amount of arrears of rent and damages for use and occupation of the land in question. While issuing this notice, the Executive Officer had referred to the

general directions issued in two writ petitions by the Madurai Bench of this Court with regard to encroachment on properties of Temples throughout the State of Tamil Nadu as well as other directions that were to be complied with.

8.It is challenging the aforesaid notice dated 01.03.2018 that the writ petitions giving rise to these appeals were filed with a further prayer that the Temple authorities be directed to execute the sale deeds in favour of the appellants.

9.The respondent Temple authorities contested the writ petitions urging that the appellants and their predecessors were sleeping over their rights from the year 1986 and the judgments rendered in the Appeal Suits, and the Second Appeal in one of the cases, cannot enure to the benefit of the appellants on account of promulgation of Act II of 1996, as a result whereof any protection under the City Tenants Protection Act, 1921, stood abated. Consequently, it was contested on behalf of the Temple that the appellants have no right to seek any such benefit under the judgments and decrees cited by them keeping in view the judgment of the Apex Court in the case of S.Bagirathi Ammal vs. Palani Roman Catholic Mission, (2009) 10 SCC 464.

10.The learned single Judge did find that the appellants were in possession and the previous proceedings had been conducted. But, on the issue of the plea of Section 9 of the City Tenants Protection Act, 1921, the learned single Judge proceeded to traverse the law on the subject as relied on by the Temple authorities and then came to the conclusion that in view of the judgment of the Supreme Court, even a sale deed that was executed in that case on 28.10.1996 was after the coming into force of Act II of 1996 on 11.01.1996 and therefore, the fruits of the decree could not be realised. Applying the said principle, the learned single Judge concluded that the appellants were not on a better footing, as in the instant case, no sale deed has been executed at all.

11.It is assailing the said judgment that the appellants have come up contending that so far as the issue of execution of the sale deed is concerned, the said issue can be contested by the appellants in the Execution Petition that is alleged to have been filed arising out of the judgment and decree passed by the civil Court between the parties referred to hereinabove.

12.But, the main stress of the argument of the learned counsel for the appellants is on the manner in which the Executive Officer has concluded to realise rent and damages from the appellants to the tune of Rs.47 lakhs and odd under the impugned notice dated 01.03.2018, which is contrary to the provisions of the Act itself and the notices were issued in the

name of dead persons, namely that to Mrs.Salammal, who died on 11.06.1986, Mr.Kuppusamy Reddiar, who died on 27.04.1984 and Mr.Perumal Reddiar, who died on 27.01.2011. It is trite law and settled by now that notice against a dead person would be a nullity.

13.Nonetheless, in the present case, the first notice issued on 22.02.2017 referred to above was specifically replied to by the appellants on 05.03.2017. The said reply was served on the second respondent and the learned counsel for the appellants has pointed out that the reply bears the endorsement with a seal of the respondent, Executive Officer, on the left hand side of the said response. This could not be disputed by the learned counsel for the respondents.

14.What we further find is that the notice, which is captioned as being without prejudice to the proceedings under Sections 78 and 79 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, dated 01.03.2018 impugned herein, nowhere refers to either the reply submitted by the appellants or the contentions raised by them in their reply including that of the impact of the civil litigation referred to above.

15.The proceedings appear to have been undertaken for realising market value of the rent from the appellants, the procedure whereof is provided for under Section 34(A) of the 1959 Act. The said Section is extracted hereinunder:-

"34A. Fixation of lease rent. - (1) The lease rent payable for the lease of immovable property belonging to, or given or endowed for the purpose of, any religious institution, shall be fixed by a Committee consisting of the Joint Commissioner, the Executive Officer or the Trustee or the Chairman of the Board of Trustees, as the case may be, of the religious institution and the District Registrar of the Registration Department in the district concerned taking into account the prevailing market rental value and the guidelines, as may be prescribed and such lease rent shall be refixed in the like manner once in three years by the said Committee.

Explanation. - For the purpose of this subsection, "prevailing market rental value" means the amount of rent paid for similar types of properties situated in the locality where the immovable property of the religious institution is situated.

(2) The Executive Officer or the Trustee or the Chairman of the Board of Trustees, as the case may be, of the religious institution concerned, shall pass an

order fixing the lease rent and intimate the same to the lessee specifying a time within which such lease rent shall be paid.

(3) Any person aggrieved by an order passed under sub-section (2), may, within a period of thirty days from the date of receipt of such order, appeal to the Commissioner, in such form and in such manner, as may be prescribed.

(4) The Commissioner may, after giving the person aggrieved an opportunity of being heard, pass such order as he thinks fit.

(5) Any person aggrieved by an order passed by the Commissioner under sub-section (4) may, within ninety days from the date of receipt of such order, prefer a revision petition to the High Court:

Provided that no appeal or revision shall be entertained under sub-section (3) or sub-section (5), as the case may be, unless it is accompanied by satisfactory proof of deposit of the lease rent so fixed or refixed, in the account of the religious institution concerned and such amount shall be adjusted towards the lease amount payable by the lessee as per the order passed in the appeal or revision, as the case may be."

16. The notice dated 22.02.2017 and the communication dated 01.03.2018, which is captioned as a notice, in effect imposes the liability on the appellants, and does not appear to have been a genuine exercise undertaken under the provisions aforesaid. The reason is not far to see. The notice for fixation of rent that was sent on 22.02.2017 requires the passing of an order after its fixation by a Committee as indicated in Sub-section (1) of Section 34A aforesaid. There is nothing on record to indicate that such an exercise was undertaken for fixing the market value of the rent insofar as the present case is concerned nor any such reference has been made in the notice about the fixation of any general prevailing market rent by the said Committee, which has to be done once in every three years. There is only a computation on stated particulars without disclosure of the status of assessment.

17. The Executive Officer can pass an order by specifying the lease rent. A person aggrieved by the said order can file an appeal before the Commissioner against which a revision can lie before the High Court. The communication dated 01.03.2018 reflects non-application of mind inasmuch as it does not refer to any of the facts that have been indicated by the appellants in their response dated 05.03.2017. There are no indications of

the objection taken by the appellants to the procedure of fixation of fair rent and therefore, the impugned notices dated 01.03.2018 clearly appears to be in violation of principles of natural justice.

18.The Executive Officer ought to have taken into account the contentions that were raised in the reply dated 05.03.2017 or such other material that could have been necessary for the purpose of computing the amount as contained in the impugned notices dated 01.03.2018. In the absence of any correct factual foundation for arriving at the conclusion in respect of the amount claimed, the notice dated 01.03.2018 cannot be sustained. The learned single Judge does not appear to have entered into this aspect and also did not notice that the notices were being repeatedly sent in the name of dead persons. A proceeding initiated by issuing notices against dead persons is a jurisdictional error and can be corrected in a writ of certiorari. The fact that notices and the impugned communications were issued to dead persons is apparent.

19.Accordingly, the Writ Appeals are allowed on this short ground, without prejudice to the rights of the appellants to contest their case before the appropriate forum in respect of other issues, but, so far as the fixation of fair rent and its realisation is concerned, the same has to be proceeded with the passing of appropriate orders by the Executive Officer, which does not appear to have been done in this case as observed hereinabove. The impugned judgments dated 07.02.2020 to that extent are, accordingly, set aside, with liberty to the Executive officer to pass fresh orders in accordance with law. Upon passing of such orders, in the event the appellants are still aggrieved, it will be open to them to avail of the remedies as provided for under the 1959 Act. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

sra

To

1.The Commissioner,
Hindu Religious and Charitable
Endowment, Nungambakkam,
Chennai 600 034.

2.Executive Officer,
Shri Arulmighu Bhasyakara Adhi
Chennakesava Perumal Temple,
West Mambalam, Chennai 600 033.

+2 Ccs to Mr.C. Uma Shankar, Advocate sr 32122, 32123.

+1 CC to Mr.A.S. Kailasam, Advocate sr 31769.

W.A.Nos.439, 575 and 864 of 2020

RSV(CO)
SP(04/11/2020)



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