

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.35894 of 2019
and
WMP. No.36804 of 2019

R.MOHAN
S/o.Late Rangareddy,
Old No.18 New No.24, Appasamy Thottam,
4th Street, Old Washermanpet,
Chennai 21. ... Petitioner

Vs.

1. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam, Chennai 34.
- 2 The Fit Person / Executive Officer,
A/m.Radhakrishna Mandir,
125 NSC Bose Road Mint,
Chennai 79, the Executive Officer,
is having Office at
A/m. Ekambareeswarar Temple, 315, Mint Street,
Chennai-600 003. ... Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying Writ of Certiorari to call
for proceedings of the 1st respondent R.C.No. 56953/2019/D2
dated 12.11.2019 and quash the same

For Petitioner : Mr.R.Ullasavelan

For Respondent : Mr.M.Karthikeyan, Spl.G.P.

O R D E R

The petitioner has challenged an order of the first respondent dated 12.11.2019. The Commissioner/R1 has, in the impugned order, applied the proviso to Section 34A(5) of the Hindu Religious and Charitable Endowments Act, 1959 (in short 'Act') which mandates the appellant to remit the arrears of rent fixed/refixed, in full, as a pre-deposit conditional upon which the appeal would stand admitted.

2. The impugned order reads as follows:

ORDER

1. The respondent temple is directed to calculate the unpaid arrears at the existing rate, till the date of intimation of revised rent and arrears at the revised rate from the date of intimation of revised rent till 30.11.2019. The same shall be communicated to the petitioner before 15.11.2019.

2. On receipt of such communication from the temple, the petitioner is directed to settle the arrears in full as per the communication issued by the temple before 15.11.2019 and file proof of deposit of arrears as communicated by the temple before this forum on 09.12.2019.

3. The petitioner shall file an undertaking affidavit to continue to pay the revised rent till the disposal of the appeal petition.

4. The above petition is posted on 09.12.2019 to file an undertaking affidavit along with proof for deposit of arrears to decide the admissibility of the main appeal petition.

3. Mr. Karthikeyan, learned Special Government Pleader appearing for the respondents would admit that though the Commissioner had directed the respondent - Temple to compute the unpaid arrears and supply details of the same to the petitioner, further directing the petitioner to settle the same in full before 15.11.2019, such computation was never supplied.

4. Today, a calculation sheet setting out the details of arrears of pending rent of a sum of Rs.5,20,940/- has been placed before the Court. A copy of the same has been supplied to the learned counsel for the petitioner as well in advance.

5. The provisions of Section 34A of the Act read as under:

Section 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 sub-section, "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.

6. The fixation of rent impugned by the petitioner is dated 12.11.2019 and admittedly, what has been remitted by the petitioner is the rent prior to fixation and not the refixed rent. Since the unpaid rental arrears are mandatorily to be deposited prior to admission of appeal under Section 34A(3), in the light of the proviso extracted above, the impugned order is in accordance with law and no case is made out for interference with the same.

7. Mr.Karthikeyan confirms that due credit has been given for all payments effected by the petitioner till date and the quantification circulated today reflects the amount of rental arrears as per the impugned order of fixation of rent alone.

8. The petitioner is given a period of four (4) weeks from date of receipt of a copy of this order to deposit the unpaid rental arrears. If the same are deposited within the period

aforesaid, then the appeal shall stand admitted and be heard by the Appellate Authority in due course after hearing the petitioner and in accordance with law.

9. The Writ Petition is disposed in the aforesaid terms. No costs. Connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

S1

To

1. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Nungambakkam Chennai 34.
- 2 The Fit Person / Executive Officer,
A/m.Radhakrishna Mandir,
125 NSC Bose Road Mint,
Chennai 79, the Executive Officer
is having Office at A/m. Ekambareeswarar Temple 315 Mint.
Chennai - 600 003

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MP (CO)

GMV (03/08/2020)

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