



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. (MD)No.15926 of 2020

and

W.M.P. (MD) Nos.13323 & 13324 of 2020

(Through Video Conference)

WEB COPY

M.Rajasekaran

... Petitioner

Vs

1) The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
B-1 Road, Ellis Nagar,
Madurai 625 016

2) The Executive Officer,
Arulmighu Kattu Pattirakaliamman Temple,
Venkatasamudram,
Thirumangalam Taluk,
Madurai District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned orders of the 2nd respondent dated 19.12.2019 and 21.08.2020 and quash the same as illegal and consequently direct the respondents to re-fix the fair rent of Rs.1.03 per square feet as per the order dated 10.09.2018 after affording reasonable opportunity to the petitioner.

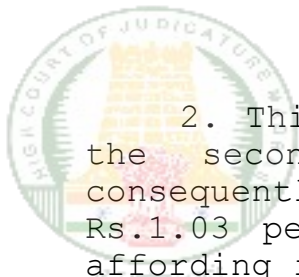
For Petitioner : Mr.R.R.Kannan

For R-1 : Mr.K.P.Narayana Kumar,
Special Government Pleader

For R-2 : Mr.S.Manohar,
Standing counsel

O R D E R

Mr.K.P.Narayana Kumar, learned Special Government Pleader accepts notice for the first respondent and Mr.S.Manohar, learned standing counsel accepts notice for the second respondent. By consent of both sides, this writ petition is taken up for final disposal at the stage of admission itself.



2. This writ petition has been filed challenging the orders of the second respondent dated 19.12.2019 and 21.08.2020 and consequently direct the respondents to refix the fair rent of Rs.1.03 per square feet as per the order dated 10.09.2018 after affording reasonable opportunity to the petitioner.

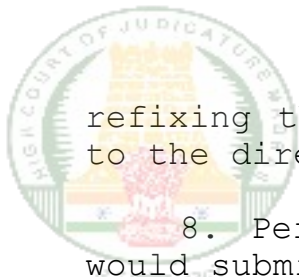
3. It is the case of the petitioner that he is the absolute owner of the property situated at Plot Nos.13 & 14 comprised in S.No.295/1C2 situated at Vadakarai Village, Thirumangalam Taluk, Madurai District. It is his case that he purchased the aforementioned property on 20.12.1990 under the sale deed registered in document No.4879/90. It is his case that he is running a match industry in the name and style of "Vijay Match Industries" in the aforementioned property.

4. According to him, all of a sudden in the year 2017, the second respondent Temple claimed that it is their property and have issued notice to him calling upon him to pay the arrears of rent. Therefore, the petitioner filed a writ petition in W.P.(MD) No.16848 of 2018 before this Court. By order dated 31.07.2018 in W.P.(MD) No.16848 of 2018, this Court allowed the writ petition filed by the petitioner and remanded the matter back to the second respondent for fresh consideration with regard to the fixation of the rent after giving sufficient opportunity to the petitioner. Pursuant to the order dated 31.07.2018 passed by this Court in W.P.(MD) No.16848 of 2018, the second respondent passed the impugned order on 19.12.2019 calling upon the petitioner to pay the rent for 11,885 sq ft. at Rs.4/- per sq ft. totally amounting to Rs.47,540/- per month. Thereafter, the second impugned order was passed on 21.08.2020 by the second respondent calling upon the petitioner to pay the arrears of rent as fixed under the impugned order dated 19.12.2019, failing which, to hand over vacant position of the property to the second respondent Temple.

5. Aggrieved by the impugned orders dated 19.12.2019 and 21.08.2020 passed by the second respondent, this writ petition has been filed.

6. The petitioner has challenged the impugned orders on the ground of violation of principles of natural justice and for not complying with the directions given by this Court in its order, dated 31.07.2018 passed in W.P.(MD) No.16848 of 2018. The petitioner has also challenged the impugned order on the ground that he is not liable to pay the rent to the second respondent Temple since he is the absolute owner of the property.

7. The learned counsel for the petitioner drew the attention of this court to the impugned orders as well as the order dated 31.07.2018 passed by this Court in W.P.(MD) No.16848 of 2018 and submitted that principles of natural justice has been violated by the second respondent while passing the impugned orders and further, he would submit that despite a clear direction being given in the order dated 31.07.2018 passed in W.P.(MD) No.16848 of 2018, that



refixing the fair rent, the second respondent has failed to adhere to the directions given by this Court in W.P.(MD) No.16848 of 2018 .

8. Per contra, the learned counsel for the second respondent would submit that the petitioner had submitted his objections before the second respondent on 23.09.2018 which was duly considered by the second respondent in the impugned orders and hence, there is no violation of principles of natural justice committed by the second respondent while passing the impugned orders. It is also submitted by the learned counsel for the second respondent that the second respondent has complied with the directions issued by this Court in W.P.(MD) No.16848 of 2018 by affording adequate opportunity to the petitioner to raise all objections with regard to the fixation of fair rent.

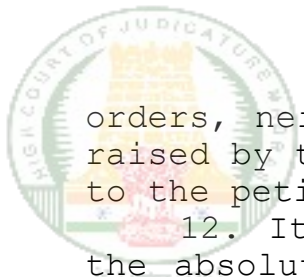
9. This Court, in its order dated 31.07.2018 passed in W.P. (MD) No.16848 of 2018 has issued the following directions:-

"6. Though the petitioner has raised various other grounds challenging the impugned orders, I am of the view that since the petitioner was deprived of the opportunity before the impugned orders came to be passed, it would be appropriate to remand back the matter to the second respondent for the purpose of fresh consideration after giving due opportunity to the petitioner. In view of such a decision, it would not be appropriate to render my finding on the other grounds.

7. In the result, the writ petition is allowed and the impugned orders, dated 14.05.2018 and 11.07.2018, passed by the second respondent, are quashed. The matter is remanded back to the second respondent for fresh consideration after giving due opportunity to the petitioner. Such an exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed."

10. As seen from the aforesaid order, adequate opportunity ought to have been given to the petitioner before fixing the fair rent. However, as seen from the impugned orders, excepting for referring to the objection letter, dated 24.01.2019 submitted by the petitioner, the objections raised by the petitioner has not been specifically considered under the impugned orders.

11. The second respondent ought to have been given sufficient opportunity to the petitioner before passing the impugned orders. The second respondent ought to have considered each and every objection raised by the petitioner in his objection letter, dated 24.01.2019 and should have also afforded him with personal hearing before passing the impugned order. However, under the impugned



orders, neither has the second respondent considered the objections raised by the petitioner nor have they afforded any personal hearing to the petitioner.

12. It is the further contention of the petitioner that he is the absolute owner ever since 1990 and only in the year 2017, the second respondent Temple has made a claim over the said property. All these objections have not been considered by the second respondent under the impugned orders. The second respondent has also not complied with the directions given by this Court on 31.07.2018 in W.P.(MD) No.16848 of 2018 in letter and spirit.

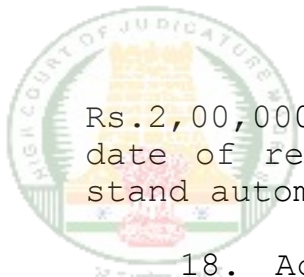
13. For the forgoing reasons, this Court is of the considered view that the second respondent has committed violation of principles of natural justice while passing the impugned orders. Even though, the petitioner claims that he is the absolute owner of the property, he has not obtained any Civil Court decree with regard to his ownership, despite the fact that the second respondent Temple has claimed that they are the owners. When there are disputed questions of fact involved, it is for the second respondent to consider the objections raised by the petitioner on merits and in accordance with law.

14. The learned standing counsel for the second respondent, on instructions would submit that the petitioner, as on date, is liable to pay more than Rs.21,00,000/- (Rupees Twenty One Lakhs only) towards the arrears of rent.

15. However, the same is disputed by the learned counsel for the petitioner and he would contend that the petitioner is not liable to pay any rent to the second respondent temple since the petitioner is the absolute owner of the property.

16. All these claims and counter claims will have to be considered by the second respondent while passing the final orders. However, in the interregnum, the petitioner should be put on terms. Accordingly, the petitioner will have to deposit with the second respondent Temple a sum of Rs.2,00,000/- (Rupees Two Lakhs only) within a three weeks from the date of receipt of a copy of this order.

17. For the forgoing reasons, the impugned orders dated 19.12.2019 and 21.08.2020 passed by the second respondent are hereby quashed on condition that the petitioner pays a sum of Rs.2,00,000/- to the second respondent within three weeks from the date of receipt of a copy of this order and on such payment, the matter is remanded back to the second respondent for fresh consideration and the second respondent shall pass final orders on merits and in accordance with law within a period of twelve weeks from the date of receipt of a copy of this order, after giving sufficient opportunities to the petitioner including granting him of right of personal hearing. It is ordered that if the petitioner fails to pay a sum of



Rs.2,00,000/- to the second respondent within three weeks from the date of receipt of a copy of this order, this Writ Petition shall stand automatically dismissed.

18. Accordingly, the Writ Petition is disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To:

1) The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
B-1 Road, Ellis Nagar,
Madurai 625 016

2) The Executive Officer,
Arulmighu Kattu Pattirakaliamman Temple,
Venkatasamudram,
Thirumangalam Taluk,
Madurai District.

+1 CC to M/s.S.MANO HAR, Advocate (SR-21979[F] dated 18/11/2020)

+1 CC to M/s.R.R.KANNAN, Advocate (SR-22003[F] dated 18/11/2020)

+1 CC to M/s.GP (SR-22199[F] dated 19/11/2020)

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11.11.2020

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<https://hcservices.ecourts.gov.in/hcservices/>