

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.03.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

Cont.P.No.770/2019

The Executive Officer
Arulmigu Siddhi Buddhi Vinayagar
and Sundareswarar Temple
Royapettah, Chennai-14.

.. Petitioner

Versus

M/s.Jayabaratham Marketing
rep.by its Proprietor J.P.Guna
No.122, Gowdia Mutt Road
Royapettah, Chennai 600 014.

.. Respondent /
Contemnor

Prayer:- Contempt Petition filed under Section 11 of the Contempt of Courts Act, 1971, to punish the respondent for his disobedience of the orders made by this Court in WA.No.2276/2018 on 12.10.2018.

For Petitioner : Mr.D.R.Sivakumar for
Mr.S.D.Ramalingam

For Respondent : Mr.V.R.Kamalanathan &
Mr.G.Saravana Kumar

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

- (1)The respondent/contemnor claims to have taken the premises bearing Door No.122, Gowdia Mutt Road, Royapettah, Chennai-14, initially for a rent of Rs.2000/- per day and thereafter, approached the petitioner/temple for extension of lease from 05.07.2011 for another period of three years and also offered to pay a sum of Rs.2600/- per day, which worked out to Rs.78,000/- per month. The temple authorities had inspected the premises and arrived at the rent of Rs.3000/- and the respondent/contemnor also agreed to pay the said amount.
- (2)The Commissioner, Hindu Religious and Charitable Endowments [in short "HR&CE"], passed an order dated 29.06.2012, stating among other things that permission has been granted in favour of the respondent/contemnor for extension of lease under Section 116 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, with effect from 06.11.2011 to 05.07.2012 for a daily rent of Rs.4,500/-.
- (3)The respondent/contemnor, aggrieved by the exorbitant increase, filed revision in RP.No.54/2012 before the very same official, who vide order dated 09.04.2013, has dismissed the same. The petitioner, challenging the

same, filed a review petition before the Government and the Government, vide G.O.No.303, dated 25.11.2013, dismissed the Revision, confirming the order of the Commissioner, HR&CE dated 09.11.2012.

(4)The Government, while dismissing the revision, has granted liberty to the respondent/contemnor to approach the Commissioner, HR&CE, for fixing of the fair rent and accordingly, the respondent/contemnor submitted a representation dated 14.07.2015 to the Commissioner, HR&CE, to fix the fair rent of the premises at Rs.1,00,000/- and it is still under consideration. In the meanwhile, proceedings were initiated u/s.78 of the HR&CE Act, for eviction of the respondent/contemnor and he filed an application to defer the proceedings till the fixation of the fair rent and however, the Eviction Order has been passed in the main proceedings and making a challenge to the same, the respondent/contemnor filed WP.No.29276 of 2015.

(5)The said writ petition came to be disposed of on 18.07.2018 and while disposing of the said writ petition, this Court granted liberty to the petitioner/temple authority to go for a fresh auction in which the respondent/contemnor was also granted liberty to participate in the said auction. WMP.No.29315/2018 was filed praying for extension of time and a Single Bench of this Court, vide order dated 28.09.2018, has dismissed the said petition, granting liberty to the petitioner/temple authority to evict the

respondent/contemnor within 48 hours from the date of receipt of a copy of the said order and with a further direction, directing the respondent/contemnor to pay the arrears of rent to the tune of Rs.69,41,000/- within a period of four weeks from the date of receipt of a copy of the said order and in the event of default, the petitioner/temple authority was granted liberty to initiate appropriate proceedings for recovery of the rental arrears by following the procedure contemplated under law.

(6)The petitioner, aggrieved by the dismissal of the Writ Miscellaneous Petition in WMP.No.29315/2018 in WP.No.29276/2015, has filed WA.No.2276/2018 and it was entertained and subsequently came to be disposed of on 12.10.2018 and it is relevant to extract paragraph No.7 of the Judgment:-

"7. However, on the request of the appellant, instead of paying the entire arrears of Rs.69,41,000/-, on persuasion, we direct the appellant to deposit 50% of the amount i.e., Rs.35,00,000/- in two instalments within two weeks i.e., 25% with interest within one week and the remaining 25% with interest within a week thereafter. The remaining amount of 50% of arrears along with interest would be decided at the time of hearing of application by the Commissioner, seeking for review of fixation of Rs.4500/-. Since it is pleaded by the learned Standing Counsel that the premises fetches Rs.20,000/- per day as per the market value, the Commissioner shall consider the

same, without giving any scope for unnecessary litigation, within fifteen days after payment of 50% of arrears of rental with interest, as stated supra, and take a decision with regard to the rent fixed way back in the year 2012, after hearing both the parties. Nevertheless, since already the Government has rejected the request of the appellant to review the enhancement of rent, we are of the view that the matter be considered by the Commissioner on the representation made/to be made by the appellant within the stipulated time as mentioned above, after 50% of the amount with interest is paid. It is made clear that out of arrears of Rs.69,41,000/-, Rs.35,00,000/- is to be paid by the appellant within two weeks as stated above and the remaining amount along with interest within fifteen days from the date of the order, to be passed by the Commissioner, on the fixation of rent. From the day of opening of the premises for business, fresh rent would be calculated for the remaining period as well, as it is to be determined by the Commissioner, after hearing both the parties, or put to auction. The new rent shall be fixed by the Commissioner as per the prevailing market value or put to auction in accordance with law, in which the appellant also can participate. For the remaining arrears amount of Rs.34,41,000/- to be paid with interest or any amount to be paid as fixed by the Commissioner after hearing, it is for the appellant to calculate the interest at the appropriate rate for the delayed payment and pay the same within a

reasonable time i.e., within one month from the date of the order of the Commissioner, or else, the Commissioner would be at liberty to take a decision with regard to arrears of rental plus interest on the entire amount to be paid."

(7) The learned counsel for the petitioner/temple would submit that the respondent / contemnor did not comply with the above said order and in the interregnum, sought permission of the Temple Administration to remove the goods and accordingly, permission was granted and the respondent / contemnor has removed all the goods and the vacant possession is now vest with the petitioner/temple. It is the further submission of the learned counsel for the petitioner/temple that the premises as on date, is kept as vacant without yielding any revenue and since the respondent / contemnor did not comply with paragraph No.7 of the impugned Judgment dated 12.10.2018 made in WA.No.2276/2018, this Court may pass appropriate orders, punishing the respondent / contemnor for wilful disobedience and non-compliance of the order.

(8) ***Per contra***, Mr.V.R.Kamalanathan and Mr.G.Saravana Kumar, learned counsels appearing for the respondent / contemnor would submit that paragraph No.7 of the judgment dated 12.10.2018 is not clear for the reason that the petitioner/temple started claiming interest anterior to the period and some inadvertent error has also crept in and in this regard, a petition for

clarification though came to be filed in the year 2018 itself, it is yet to be numbered and even now, the respondent / contemnor is ready to comply with the order / direction passed in paragraph No.7 of the impugned judgment dated 12.10.2018 made in WA.No.2276/2018 and prays for closure of the contempt petition.

(9) This Court has carefully considered the rival submissions and also perused the materials placed before it.

(10) It is the specific case of the respondent / contemnor in their counter affidavit that they took a Demand Draft for a sum of Rs.17 Lakhs on 15.10.2018 and a cash of Rs.50,000/- and when they approached the petitioner/temple administration for removal of the seal of the premises, the interest was demanded very much anterior to the date and in the light of the said unreasonable stand, they were not able to fully comply with the order and it cannot be construed to be neither wilful nor wanton.

(11) It is also submission of the learned counsel for the respondent/contemnor that immediately on payment of the instalment, Locking and Sealing ought to have been lifted and the petitioner/temple administration need not wait till the culmination of the proceedings to be instituted by the Commissioner, HR&CE, for ascertaining the fact.

(12) This Court, upon hearing the rival submissions and on going through the

materials placed, especially, paragraph No.7 of the judgment dated 12.10.2018 made in WA.NO.2276/2018, is of the considered view that the normal interpretation is that the interest is to be payable when the arrears had fallen due. According to the petitioner/temple administration, it has fallen due from the year 2012 ; whereas, according to the learned counsel for the respondent/contemnor, it should be only from the date of judgment passed in the writ appeal.

(13) In the light of the categorical submission made by the learned counsel for the petitioner/temple, on instructions that the respondent/contemnor had removed all the goods and as on date, the premises remain vacant, the petitioner/temple administration is at liberty to use/utilise the premises being the lawful owner and they are also at liberty to institute appropriate proceedings in accordance with law against the respondent/contemnor for recovery of arrears with interest and allied relief for the reason that the said fact requires pleadings and leading of evidence by both sides.

(14) Though the learned counsel appearing for the respondent/contemnor would submit that there are some goods remain stored in the premises, in the light of the categorical stand taken by the petitioner/temple administration, this Court is of the considered view that no positive order could be passed in favour of the respondent/contemnor and as and when appropriate proceedings are

instituted by the petitioner/temple administration, it may be open to the respondent/contemnor to avail the said remedy and of course, in accordance with law.

(15)In the light of the above facts and circumstances, no further orders are necessary. Therefore, the contempt petition is closed with the above observations.

SD/-

ASSISTANT REGISTRAR(COMM.CASES)

ap

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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The Executive Officer
Arulmigu Siddhi Buddhi Vinayagar
and Sundareswarar Temple
Royapettah, Chennai-14.

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