

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>01.07.2021</i>
<i>Pronounced on</i>	<i>.07.2021</i>

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

C.R.P (NPD) No.1183 of 2016
and C.M.P.Nos.6470, 6471 & 14402 of 2016

S.Murugesh

.. Petitioner

Vs.

1.The Commissioner,
Hindu Religious & Charitable Endowment Department,
Uthamar Gandhi Salai, Nungambakkam,
Chennai-600 034.

2.The Joint Commissioner,
Hindu Religious & Charitable Endowment Department,
O/o Joint Commissioner,
Hindu Religious & Charitable Endowment Admin Department,
Coimbatore-18.

3.The Executive Officer,
A/m.Ranoji Rao Arakattalai,
Kottai, Coimbatore-641 001,
Having office at A/m Sangameswarar Temple,
Kottai, Coimbatore-2.

... Respondents

PRAYER: The Civil Revision Petition is filed under Section 34A(5) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959 (TN Act 22 of 1959), seeking to set aside the order dated 20.01.2016 passed by the learned Commissioner, HR&CE, Chennai in A.P.No.12 of 2015 D2 confirming the order dated 26.05.2015 passed by the Executive Officer, A/m Ranoji Rao Arakattalai, Kottai, Coimbatore-641 001 and the order of Joint Commissioner, HR&CE, Coimbatore dated 20.5.2015 made in Na.Ka.No.10034/2013/A4 dated 20.05.2015.

For Petitioner : Mr.V.Srikanth

For Respondents : Mr.A.E.Ravichandran,
Govt.Advocate (HR&SE) for R1&R2
Mr.C.Dhamaraj for R3

ORDER

(Heard through video conferencing)

This Civil Revision Petition has been filed, challenging the order dated 20.01.2016 passed by the learned Commissioner, HR&CE, Chennai in A.P.No.12 of 2015 confirming the order dated 26.05.2015 passed by the Executive Officer, A/m Ranoji Rao Arakattalai, Kottai, Coimbatore-641 001 and the order of Joint Commissioner, HR&CE, Coimbatore dated 20.5.2015 made in Na.Ka.No.10034/2013/A4.

2. The brief facts which are necessary for disposal of the present Revision Petition, can be stated as under:

Ranoji Rao Kattalai is a specific Endowment, which is a listed Institution under Section 46(i) of the Tamil Nadu Hindu Religious and Charitable Endowments Act (in short, 'the Act'), situated at Kottai, Coimbatore Town and District. The said Kattalai owns sites and building properties, of which, the subject premises bearing Door No.1167, Big Bazaar Road, Coimbatore were leased out to the petitioner by terminating the tenancy stood in the name of erstwhile tenant who committed default in payment of lease amount. Consequently, a lease deed was executed in favour of the revision petitioner herein, vide document No.2446 of 2008 dated 21.05.2008 on the file of the District Registrar, Coimbatore for a period of 3 years from 04.02.2008 to 03.02.2011 and the rent was fixed at Rs.3,795/- p.m. Thereafter, the petitioner, after obtaining prior permission, constructed three storeyed building with zinc sheet shed in the 4th floor. Thereafter, the rent was re-fixed in respect of the premises of the petitioner at Rs.11,100/- per month by the 2nd respondent vide order dated 13.01.2012. After the completion of the initial tenancy period of 3 years, a fresh lease agreement

was executed on 10.12.2012 on the file of the District Registrar, Coimbatore for a period of 3 years from 04.02.2011 to 03.02.2014.

3. While so, the respondents/authorities had noticed that there were some discrepancies with regard to the fixation of fair rent, since the fixation was done in violation of relevant G.Os and guidelines. The following defects were pointed out by the respondents/authorities, viz.,

i) One of the members, i.e. District Registrar has not attended and consented the fixation of fair rent;

ii) Fair rent was not fixed in respect of the 4th floor of the leased premises;

iii) To assess the fair rent, 0.6% of the property value has to be taken in account as per G.O.353 dated 4.6.1999, but it was erroneously taken as 0.3% while fixing the earlier rents;

iv) Instead of collecting 15 months rent towards donation in consideration of the tenancy transfer, only 8 months rent was collected; and

v) The rent was fixed on the basis of guideline value as against the market rental value of the adjacent property.

3.1 After noticing the above, the 2nd respondent issued notice dated 12.05.2014 to the petitioner, instructing him to appear before the Rent Fixation Committee and put forth their stand in regard to rectification pertaining to the fixation of fair rent. Thereafter, the Rent Fixation Committee, after rectifying the errors in fixing the rents earlier, revised the same at Rs.21,730/- with effect from 01.02.2011 in respect of the premises of the petitioner herein. Based on this re-fixation of rents, the 3rd respondent issued a demand notice dated 26.05.2015 for claiming the arrears of rent at Rs.8,85,199/-.

4. Challenging the above said notice, the petitioner preferred an appeal in A.P.No.12 of 2015 before the Commissioner, H.R.&C.E., Admn. Department, Chennai, the 1st respondent herein. By order dated 20.01.2016, the 1st respondent dismissed the Appeal. Aggrieved by the same, the petitioner has filed the present Civil Revision Petition.

5. The learned counsel appearing for the petitioner submitted that no opportunity was given to the petitioner by the respondents/authorities before

fixing the fair rent. It is further submitted that the respondents/authorities has not properly considered the measurements and other features of the property and arbitrarily fixed the fair rent at an exorbitant rate. It is submitted that the guidelines which have to be necessarily followed while fixing the fair rent, were not followed and the first respondent without considering the grievances of the petitioner, has confirmed the fair rent fixed by the 2nd respondent and it was intimated by the 3rd respondent.

6. The learned counsel for the petitioner has placed reliance on a decision of this Court reported in “2009(6) CTC 512 (*Arulmigu Anghla Parameswari and Kasivishwanathaswami Temple, Adimanaiveal House Owners Assn. versus The State of T.N., rep by its Secretary to Govt., HR & CE, Chennai and others*)” and also relied on an order of this Court dated 27.06.2019 in C.R.P. (NPD) (MD) No.982 of 2016 (*M.Gurusamy Nadar versus The Commissioner, HR&CE Department, Chennai and others*).

7. On the other hand, the learned counsel for the respondents would submit that the Authorities have strictly followed the guidelines and the fair

rent has been fixed taking into the account of the market value and other features of the property.

8. The temple property which is in occupation of the present petitioner was leased out to them by virtue of a registered lease deed dated 21.05.2008, on a monthly rent of Rs.3795/- p.m. for a period of three years, i.e. from 04.02.2008 to 03.02.2011. After completion of the construction of the building, the same was donated to the temple. The petitioner started to utilize the building from 01.02.2011 onwards. However, the rent is sought to be paid right from 04.02.2008 on which date, the 2nd respondent has issued the sanction order. Thereafter, the rent was re-fixed on 13.01.2012 at Rs.11,100/- p.m. Despite the rent was re-fixed, again notice was issued to the petitioner on 12.05.2014 and he was instructed to appear before the Fair Rent Committee on 19.05.2014 for the purpose of re-fixation of fair rent with effect from 01.02.2011 on the basis of G.O.No.456 dated 09.11.2007. On 19.05.2014, the petitioner appeared before the Fair Rent Committee but no proceedings were conducted on the said date. Further, notices were issued to the petitioner and the petitioner was asked to appear before the Fair Rent Committee on

04.08.2014. In the meanwhile, other notices were also issued to the petitioner stating that the premises constructed in the 4th floor have been omitted to be included while fixing the fair rent. The petitioner sent reply and requested for personal appearance. But to his shock and surprise, the 2nd respondent revised the rent at Rs.21730/- for three years with effect from 01.02.2011 and at Rs.24,990/- from 1.02.2014. Further, the revision of the rent was claimed from 01.07.1998 onwards and the arrears were also demanded from the petitioner. It is submitted by the petitioner that he could not place these facts before the Fair Rent Committee by producing relevant documents, since he was not given with any hearing. The petitioner has claimed that the rents have been fixed arbitrarily without putting the petitioner under notice and without providing him any opportunity of hearing.

9. In the decision reported in 2009(6) CTC 512 (cited supra) relied upon by the petitioner, it has been held as under in paragraph 16:

“16. It was clarified that it is not necessary for the lessees to appear in person and that it is sufficient for them to submit their written objections to the temple authorities, who will take note of the objection before fixing the final rent and then it will go before the committee which

will pass the order as per sub section 2 of Section 34 A of the Act for fixing the lease rent and intimate the same to the lessee. Therefore, the committee consisting of the Joint Commissioner and the Executive Officer or trustees or Chairman of the Board of Trustees as the case may have to take note of the prevailing market value and the guidelines and then they will fix the lease rent or re-fix the lease rent as the case may be once in three years. The explanation to sub Section 1 of Section 34 A of the Act also makes it clear that what is meant by 'prevailing market value'. The Executive Officer thereafter shall fix the lease rent. He is given the discretionary power to take note of what the Committee had recommended and then he shall fix the lease rent and intimate the same to the lessee. By virtue of the circular extracted above, the evidence submitted by the lessee will form part of the material for determining the lease rent. Therefore, we are of the opinion that lessees have been given sufficient opportunity to place before the committee the materials regarding fair rental value and it is only thereafter, that the lease rent would be fixed. Therefore, the complaint that principle of natural justice is violated, has been answered by the proceedings dated 2.2.2009. The direction contained therein shall be compulsorily followed."

The above decision makes it clear that the opportunity given to the petitioner would include the opportunity given to him for giving his written objections.

In the case on hand also, the petitioner has stated that he has sent reply to the notices received by him.

10. The learned counsel for the respondents/authorities submitted that the petitioner has availed the opportunity by submitting his reply and the order of fixing the fair rent by revising the erstwhile rent was made only in accordance with the Government Orders and the guidelines issued in this connection from time to time. But the petitioner's reply seems to have been sent in response to a notice issued by the 3rd respondent on 19.04.2014. In the said notice, the petitioner was directed to remove water tanks, A/C machineries, tin sheets, etc. Even in the reply, the petitioner sought valuation statement but without furnishing the necessary details required by the petitioner, the respondents/authorities have proceeded to fix the rent and revised the same.

11. The opportunity contemplated under the Act should be a realistic and practical one, which should enable the petitioner to submit his contention with regard to the matter in issue. It appears from the above records that the petitioner was not given with a proper opportunity in order to put forth his stand, before the fair rent is fixed. In another judgment of this Court dated 27.06.2018 in CRP (NPD)(MD) No.982 of 2016 also, it is held that if the

respondents/authorities had not followed the principles of natural justice, it cannot be cured by the Appellate Authority and the entire proceedings would get vitiated.

12. The learned counsel for the respondents/authorities has submitted that the premises occupied by the petitioner were the subject matter of O.S.No.3069 of 1996 on the file of the District Munsif, Coimbatore. The said suit was filed for recovery of possession and arrears of rent from the defendant therein, who was the original tenant, since he committed default in payment of rents and arrears. After the suit was decreed, the Execution Proceedings in E.P.No.83 of 2007 were initiated. During that course, a compromise was entered into and as per the terms of the compromise, this revision petitioner was inducted as the tenant, subject to the condition that he would undertake to pay the arrears of the erstwhile tenant, who was the Judgment Debtor.

13. It is submitted by the respondent that the liability of the petitioner to pay the arrears of rents due to fixation of fair rent, would relate back to the date from which, the erstwhile tenant failed to pay the rents and hence, the

petitioner cannot contend that his liability to pay difference of rent can be claimed only from the date on which his lease agreement was executed.

14. All that which would fix the liability of the parties is based on the terms of the compromise entered into between the parties at the time when earlier execution proceedings against the erstwhile tenant ended. Had the petitioner was given with fair opportunity to make his plea and submit his contentions, it would have been possible for the Fair Rent Committee and also the authorities to pass a considered order on this aspect also.

15. But in the letter of communication dated 26.5.2015, there is no reason stated as to why the arrears of rents have been calculated from 01.07.1998 and how and on what basis the petitioner was made liable to pay the arrears from the said date. Even though the respondents submitted before this Court about the earlier suit proceedings and the consequential compromise through which the petitioner was introduced into the occupation of the premises, the matter does not seem to has been brought for consideration before the Fair Rent Committee and the 2nd respondent.

16. Apart from this, the petitioner has got other grievances to be submitted before the Fair Rent Committee. Since lot of factual issues have to be handled by the respondents/authorities and findings should also be rendered, an opportunity has to be given to the petitioner to canvass his points. Hence, I deem it fit to remand the matter to the 2nd respondent for fresh consideration after affording a reasonable opportunity to the petitioner to make his submissions and to arrive at a just conclusion with regard to the fixation of fair rent and arrears of rent thereof.

17. Accordingly, this Civil Revision Petition is disposed of, remanding the matter to the 2nd respondent to conduct a fresh enquiry by providing the petitioner an opportunity for personal hearing as well. The petitioner may be called to appear before the Fair Rent Committee and make his remarks/objections with regard to fixation of fair rent and arrears thereof. All the factual aspects of the matter including the pleas and contentions raised in this Revision Petition are left open to the parties to agitate the same with supported documents before the 2nd respondent, who in turn shall consider the same and pass appropriate orders by recording proper findings with regard to

all the contentions made and in accordance with law and also by following the norms in the matter of fixation of fair rent. Consequently, the impugned order dated 20.01.2016 passed by the Commissioner, HR&CE, Admin., Department/1st respondent herein, in A.P.No.12 of 2015 is hereby set aside. No costs. All connected CMPs are closed.

.07.2021
(1/2)

Internet: Yes/No

Index: Yes/No

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To

- 1.The Commissioner,
Hindu Religious & Charitable Endowment Department,
Uthamar Gandhi Salai, Nungambakkam,
Chennai-600 034.
- 2.The Joint Commissioner, सतयमेव जयते
Hindu Religious & Charitable Endowment Department,
O/o Joint Commissioner,
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- 3.The Executive Officer,
A/m.Ranoji Rao Arakattalai,
Kottai, Coimbatore-641 001,
Having office at A/m Sangameswarar Temple,
Kottai, Coimbatore-2.

R.N.MANJULA, J.

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Pre delivery Order in
C.R.P.(NPD) No.1183 of 2016

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