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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29-09-2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP.NO.19258 OF 2021

AND

WMP.NOS.20571, 20572 AND 20573 OF 2021

- 1.Mrs.P.Jayanthi
- 2.Mrs.P.Malini
- 3.Dr.(Mrs.) Sasikala Rao
- 4.Dr.(Mrs.) Latha Bhatt

.. Petitioners

vs.

- 1.The Commissioner,
Hindu Religious and Charitable Endowment
(HR&CE) Department,
No.119, Uthamar Gandhi Road,
Nungambakkam, Chennai - 600 034.

- 2.The Joint Commissioner Chennai,
Hindu Religious and Charitable Endowment
(HR&CE) Department, No.128, Yadaval Street,
Padi, Chennai - 600 050.

- 3.The Assistant Commissioner,
Hindu Religious and Charitable Endowment
(HR&CE) Department, No.119, Uthamar Gandhi Road,
Nungambakkam, Chennai - 600 034.

- 4.The Executive Officer,
Arulmigu Gangadeeswarar and Connected Temples,
Gangadeeswarar Temple, Purasawalkam,
Chennai - 600 084.

..Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the second respondent in connection with order dated 09.03.2017 in proceedings No.Se.Mu.Na.Ka.No.2004/2017/A3, on the file of the said respondent and quash the same so far as it relates to the late father of the petitioners 1 to 4 Mr.P.Lakshmi Narayana Bhat, No.6, Gangadeeswarar Koil Street, Purasawalkam, Chennai-600 084 in the table enclosed to the impugned order.



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For Petitioners : Mr.R.Srinivas for
Ms.Mythili Srinivas.

For Respondents : Mr.N.R.R.Arun Natarajan,
Government Advocate.

ORDER

The proceedings dated 09.03.2017 issued by the second respondent-Joint Commissioner in fixing the fair rent, is under challenge in the present writ petition.

2. The main grievances of the petitioners are that without giving any notice to the petitioners and without providing any opportunity, the fair rent is fixed and the demand is made. The fourth respondent-Executive Officer has sent a demand notice dated 16.08.2021, demanding the arrears of rent to the tune of Rs.1,34,68,291/- nomenclaturing the same as damages for use and occupation. Apart from the demand notice of fixing the fair rent, the respondents have initiated proceedings under Section 78 of the Hindu Religious and Charitable Endowments Act, 1959 [hereinafter referred to as the 'Act', in short] for eviction of the petitioners from the temple premises.

3. The learned counsel for the petitioners reiterated that the demand notice fixing the fair rent unilaterally, is in violation of the provisions of Section 34-A of the Act. The petitioners are entitled for an opportunity before fixing any such fair rent under Section 34-A of the Act. In view of the fact that no such opportunity had been given to the petitioners, the order impugned dated 09.03.2017 is liable to be set aside.

4. The petitioners state that a Lease Deed was executed on 23.11.1983 by the temple based on the resolution of the then Board of Trustees, the lease was granted in favour of the father of the petitioners late Mr.Lakshmi Narayana Bhatt. The father of the petitioners started running a hotel in the temple property in the name and style of 'Raj Bhavan'.

5. The petitioners state that their father demolished the dilapidated lease superstructure and constructed a building for the purpose of running his hotel business. The lease was extended by the then Board of Trustees on 21.07.1999 for a period of three years. However, after the demise of the father of the petitioners, the Lease Deed was not extended nor the lease was granted in the name of the petitioners. Even the name transfer is not effected.

6. The fourth respondent filed a civil suit in O.S.No.4266 of 2001 to evict the father of the petitioners. The said suit was filed for eviction of tenant and for claiming damages.



7. The petitioners state that such a suit against the valid Lessee is not maintainable and during the pendency of the suit, the father of the petitioners died. Subsequently, the mother and the petitioners were brought on record as the Legal Representatives of the deceased Mr. Lakshmi Narayana Bhatt. The mother of the petitioners also died during the pendency of the suit. The suit was decreed in favour of the temple and against the petitioners. Thus, they preferred an appeal suit in A.S.No.132 of 2017 and the said appeal suit is pending.

8. The Executive Officer issued a notice on 26.04.2016, by stating that the Lessee died and the possession of the temple property is to be restored. It was stated that the construction has been done without permission and the father of the petitioners and the petitioners were considered as encroachers. Again a notice was issued on 13.05.2016.

9. The learned counsel for the petitioners mainly contended that the petitioners are continuing the possession of the said property belongs to the temple and they are regularly paying the rent as fixed. There is no default in payment of rent. It is contended even the fair rent fixed in the year 2001 was being paid and some of the receipts are also enclosed in the additional typed set of papers filed by the petitioners along with this writ petition. Thus, it is contended that the petitioners are paying the fair rent fixed by the Authorities without any default and therefore, in respect of the demand notice now made based on the fixation of fair rent, the petitioners are entitled for an opportunity before such fixation.

10. In reliance, the learned counsel for the petitioners cited the judgment of the Hon'ble Division Bench of this Court in the case of Arulmigu Angala Parameswari and Kasivishwanathaswami Temple Adimanaiveal House Owners Association vs. The State of Tamil Nadu represented by its Secretary to Government, Hindu Religious and Charitable Endowments Department and others [2009 (6) CTC 512], wherein in paragraph-25, it has been observed as under:-

"25. In view of the proceedings dated 2.2.2009, it is clear that the Government intends to give an opportunity to the lessees before the rent is fixed. Therefore, Writ Petitioner is given one week time from the date of receipt of copy of this order to give their objections supported by whatever documents they have in their possession and on receipt of the same, the authorities may fix or re-fix the lease rent in accordance with law."

11. It is contended that based on the Division Bench judgment of this Court (cited supra), the learned Single Judge has also granted the relief in similar circumstances. Thus, an opportunity to the Lessee is to be granted before fixing the fair



rent and in the present case, no such opportunity was given to the petitioners and thus, the impugned demand notice is liable to be set aside.

12. This Court is of an opinion that the Hon'ble Division Bench of this Court recorded the intention in view of the proceedings dated 02.02.2009. Therefore, the said case was decided on its own merits and further, there is no discussion regarding the scope of Sections 34 and 34-A of the Act.

13. The learned counsel for the petitioners reiterated that the Authorities have initiated action simultaneously in violation of the provisions of the Act, more specifically, in the matter of fixation of fair rent, issuance of demand notice and eviction notice under Section 78 of the Act. Thus, the continuous illegalities and irregularities being committed by the Authorities, cannot be allowed and consequently the writ petition is to be considered.

14. The learned Government Advocate, appearing on behalf of the respondents, disputed the contentions raised on behalf of the petitioners, in entirety. It is contended that the petitioners are the illegal occupants and they are not the recognized Lessees in respect of the temple property. No doubt, the father of the petitioners executed the Lease Deed with the Trustees in the year 1983 and it was extended during the year 1999 for three years. Thereafter, there was no extension of lease till the death of the father of the petitioners and after the demise of the father of the petitioners, no name transfer was effected in favour of the petitioners nor a fresh lease has been entered into between the petitioners and the temple Authorities. Thus, the petitioners are continuing as an unauthorised occupants and therefore, there is no irregularity regarding the initiation of proceedings under Section 78 of the Act, for the purpose of evicting the illegal occupants.

15. The learned Government Advocate for the respondents further contended that the petitioners have not paid the fair rent fixed by the Authorities. In view of the fact that the petitioners have not paid the fair rent as against which actions were initiated.

16. At this juncture, the learned counsel for the petitioners contended that there was no fair rent fixation periodically as per the provisions of the Act. However, as per the Lease Agreement, which was extended in the year 1999, 15% enhancement is contemplated once in three years.

17. The said reply made by the petitioners is again disputed by the respondents by stating that under Section 34 of the Act, such an agreement is illegal and impermissible. Fair rent is to be fixed by following the procedures as contemplated under Section 34-A of the Act and against the interest of the temple, the Trustees cannot fix the rent on permanent basis, which is null and void under Section 34 of the Act.



18. Further, the term of the lease cannot be extended beyond the period of five years without the approval of the Commissioner of the Hindu Religious and Charitable Endowments Department. No such approval or permission was granted by the Commissioner. Therefore, the lease extended for a period of three years in the year 1999 expired and the same was not valid beyond the period of five years and thus, the petitioners are the illegal occupants and therefore, there is no irregularity in the matter of initiation of eviction proceedings under Section 78 of the Act.

19. The learned Government Advocate for the respondents made a submission that the contention raised by the petitioners that they were put to no notice before fixation of lease rent, is also not correct. The father of the petitioners was the Lessee of the subject property based on the Lease Deed dated 23.11.1983 signed and executed by the Board of Trustees of the temple. The said lease automatically came to an end on 22.11.1988, since as per Section 34 of the Act, any lease exceeding 5 years shall be null and void unless it is sanctioned by the Commissioner of Hindu Religious and Charitable Endowments Department. There was no valid arrangement between the father of the petitioners qua with the fourth respondent-temple. The father of the petitioners was not having any valid arrangement with the fourth respondent-temple. The petitioners cannot make any claim based on the Lease Deed executed by their father, while he was alive.

20. The respondents have stated that the father of the petitioners was treated as an encroacher under Section 78(1)(a) and (b) of the Act. When the father of the petitioners was considered as an encroacher of the subject property, the petitioners are also to be considered as encroachers. It is stated that the petitioners have not submitted any application for name transfer or claim leasehold rights in respect of the subject property. Therefore, the petitioners are not entitled for any notice before fixation of any lease rent.

21. It is further stated that under Section 34-A of the Act, no such prior show cause notice, before fixation of fair rent, is contemplated and therefore, the contention raised in this regard, is liable to be rejected. The respondents have stated that under Section 78 of the Act, proceedings were initiated against the father of the petitioners as he was not willing to pay the lease rent of Rs.69,135/- fixed as per the earlier order dated 01.11.2001. Thereafter, again on 09.03.2017, the fixation of lease rent was revised. During the lifetime of the father of the petitioners, he had not paid the lease rent fixed and therefore, the contention raised by the petitioners deserves no further consideration.

22. Considering the arguments as advanced by the respective learned counsel for the petitioners and the learned Government Advocate, appearing on behalf of the respondents, the issues to be considered are that:



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(1) Whether the petitioners are the recognised leaseholders/ tenants in respect of the subject temple property ?

(2) Whether the fair rent fixation is being done periodically and in accordance with Section 34-A of the Act or not ?

(3) Whether show cause notice is required to be issued under the provisions of the Act, before fixing the fair rent under Section 34-A of the Act ?

ISSUE NO.1:

23. In respect of the leasehold rights, it is an admitted fact between the parties that the temple property was leased out in favour of the father of the petitioners through the Lease Deed dated 23.11.1983 signed and executed by the then Board of Trustees of the temple.

24. As per the petitioners, the said Lease Deed was extended for another three years only during the year 1999. However, no such Lease Deed executed is enclosed or submitted before this Court for verification. But it is admitted between the parties that the Lease Deed was executed in favour of the father of the petitioners on 23.11.1983. The respondents have not recognised any such extension of lease by the Authorities in the year 1999.

25. Contrarily, the respondents in their counter, have stated that the Lease Deed is valid for a period of five years at the maximum as per Section 34 of the Act and therefore, the said Lease Deed dated 23.11.1983 came to an end on 22.11.1988. The respondents have further stated in their counter that there was a valid arrangement between the temple Authorities and the deceased father of the petitioners. In the absence of any documents to establish any such extension of lease period, this Court cannot consider the subsequent arrangements, if any, made between the parties. Even presuming that the subsequent arrangement is during the year 1999 was in existence, then also the said arrangement should be only for a period of another five years as per Section 34 of the Act. Even the 1999 arrangement is presumed, the petitioners cannot have any leasehold rights beyond the period of 2004. Thus during the lifetime of the father of the petitioners, the respondents have construed the father of the petitioners as an encroacher in view of the fact that the Lease Deed expired and the father of the petitioners have not agreed to pay the fair rent fixed by the Authorities in the year 2001.

26. It is not in dispute that the fair rent was fixed on 01.11.2001 and thereafter it was revised on 09.03.2017 and in between 2001 and 2017, there was no fixation of fair rent as contemplated under Section 34-A of the Act. The rental receipts issued by the fourth respondent would establish that on 15.04.2010, the petitioners have paid a sum of Rs.34,91,350/- towards damages and occupation and the same was received without prejudice to the actions initiated under Section 78 of the Act for eviction.



27. Further, the receipts issued during the year 2014 reveal that the petitioners have paid a sum of Rs.69,136/-. Thus, it is made clear that the fair rent fixed on 01.11.2001 was paid only from the year 2014. This Court is not clear whether the fixation of fair rent on 01.11.2001 was fixed by following the procedures contemplated under Section 34-A of the Act or it is a revision made by the Competent Authorities. In either of the case, it is admitted between the parties that the fair rent was revised in the order dated 01.11.2001 and the rent was fixed as Rs.69,136/- per month and further, it is admitted that in the year 2014, the fair rent was paid by the petitioners.

28. It is not in dispute between the parties that the temple property is measuring approximately about five grounds (12,000 sq. ft.) in the prime locality at Purasawalkam Main Road, Chennai. The value of the property will be running into several crores. The petitioners are running hotel business in that locality and admittedly, the petitioners have paid the rent amount of Rs.69,136/- per month from the year 2014 and it is contended that from the year 2017, the petitioners are paying a sum of Rs.79,506/- per month towards rent. It is an admitted fact that for many years fair rent has not been fixed by the Competent Authorities under the provisions of the Act and the actions initiated for eviction are also pending for several years. It is admitted that the leasehold rights are not extended in favour of the petitioners and no name transfers are effected after the death of the father of the petitioners. Thus there is no leasehold right exists in favour of the petitioners as of now.

29. The petitioners are unable to establish that they are the recognised Lessees of the subject property belongs to the temple. The petitioners are continuing their occupation in the premises of the temple along with the dispute between the temple Authorities and the HR&CE Department. However, the issues are being prolonged and protracted one way or the other at the instance of either of the parties, ultimately, affecting the rights of the idol in the temple, which is in the position of a minor.

30. The idol of the temple is in the position of a minor and whoever commits any illegality or irregularity against the interest of the minor idol and temple, the Constitutional Courts are duty bound to step-in and protect the interest of the minor idol. If the idol is left in lurch by the custodian/Trustees or Competent Authorities, the Court is the Authority to step-in and initiate all further actions against all such persons, who all are committing such illegalities and irregularities or causing loss or damages to the properties belong to the temple. This being the principles, the issues are to be considered in that perspective.

31. Regarding the rights of the petitioners as Lessees, the facts are not in dispute. The petitioners are unable to establish that they are the valid leaseholders in respect of the



temple properties. The eviction proceedings were initiated and the same is sub judiced. The petitioners are paying the rent, but not the fair rent as fixed. However, this Court is of an opinion that such rent is improperly fixed by the Authorities and therefore, the Competent Authorities have also committed illegalities and irregularities in not fixing the fair rent periodically once in three years as per Section 34-A of the Act.

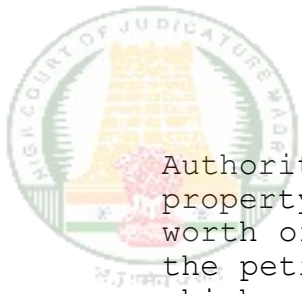
32. The petitioners state that while extending the lease in the year 1999 for a period of three years, it was agreed that an enhancement of 15% on rent once in three years is to be made. Such a condition is in violation of Section 34 of the Act. When Section 34 of the Act contemplates that the lease period cannot be extended beyond the period of five years without the approval of the Commissioner, the Authorities Competent or the Trustees cannot have any power to agree that 15% enhancement on rent is to be made once in three years. By prescribing an illegal clause, no one can extend the lease period, which is otherwise impermissible under Section 34 of the Act. Since the period of lease is fixed as five years, no person can extend the lease period beyond five years without the approval of the Commissioner as contemplated under the Act.

33. Admittedly, the Commissioner, HR&CE Department has not granted any approval for extension of lease. Thus, the arrangement between the Temple Authorities and the father of the petitioners in violation of the provisions of the Act, is undoubtedly null and void. No one is permitted to act against the interest of the temple and its properties. Leasing out the property, fixation of fair rent, period of lease, all such aspects are unambiguously governed under the provisions of the Act. While-so, any illegality or irregularity resulting disadvantage to the interest of the property of the temple, must be viewed seriously.

34. The Persons/Authorities dealing with the temple property are bound to follow the provisions of the Act and the Rules scrupulously without any deviation. Any violation, if noticed, then the Authorities/ Custodian of the temple properties are responsible and accountable. Section 34-A of the Act contemplates the procedure for fixation of fair rent once in three years. The 'Prevailing Market Rental Value' is to be taken into consideration for fixing the fair rent. The Committee consisting of the Joint Commissioner, Executive Officer or the Trustees or the Chairman to the Board of Trustees, as the case may be, is empowered to constitute the Committee and fix the fair rent.

35. This being the provisions of the Act, it is the duty of the Commissionerate and its officials to monitor and review the actions of Fair Rent Committee and their functionings periodically, so as to ensure that fair rent is fixed once in three years, actions are taken on the expiry of the lease period and ensure that the fair rent fixed is properly collected from the Lessees/Tenants.

36. Undoubtedly, large scale active and passive collusion between the greedy men and the Temple Authorities and Departmental



Authorities are identifiable. Taking the present case, the subject property situate in very prime location in Chennai City and the worth of the property is running into several crores. The father of the petitioners granted with a lease in the year 1983 and the rent, which was being paid, is undoubtedly not in commensuration with the actual market rental value in Purasawalkam High Road at Chennai. It is most unfortunate that financial loss running to several crores are being caused for the Deity and to the temple properties. The Authorities are expected to act in swift manner in such circumstances.

37. Based on the admitted facts and on application of the provisions of the Act, there is no difficulty in forming an opinion in the present case that the petitioners are the illegal occupants and not holding any valid Lease Agreement in respect of the temple property. They are paying some amount as rent, however, not in proportionate with the actual market rental value prevailing in that locality.

38. It is ridiculous that some greedy people are paying some amount as per their own choice in respect of the property belongs to the minor idol and continuing in possession and earning huge profits by doing business in the said property and the Authorities are not vigilant in initiation of action. For the sake of maintaining the files, the actions are taken just with a view to save their official position, but the manner in which the actions are pursued, is a serious question to be considered.

39. As per the parties to the lis on hand, the rent was revised on 01.11.2001. Thereafter, it was revised in the year 2017. The revised rent of the year 2001 i.e., Rs.69,136/- was not paid by the father of the petitioners for long years. Even as per the receipts produced, the said rent was paid by the petitioners only during the year 2014. The revised fair rent amount was fixed in the year 2017 as Rs.2,94,000/- with effect from 01.07.2016, as per the proceedings issued by the Joint Commissioner of HR&CE Department, dated 09.03.2017.

40. The said amount was not fixed as rent as far as the petitioners are concerned. It was fixed as usage and damage for occupation per month. Thus, it is made clear that even while fixing the fair rent, based on the market rental value, the respondent-Department, has not recognised the petitioners as Lessees/Tenants, in view of the fact that the encroachment proceedings and litigations are pending between the parties and thus, the Department fixed a sum of Rs.2,94,000/- per month towards usage and damage for occupation. Thus, the petitioners, at no circumstances, are considered as recognised Tenants/Leaseholders in respect of the subject property of the temple. The illegal occupation continued on account of the dispute between the parties and such illegal continuation can never be considered in favour of the petitioners for the purpose of further continuance in the temple property.



41. Based on the rent fixation by the Joint Commissioner in proceedings dated 09.03.2017, the Department demanded the arrears of usage and damage for occupation to a sum of Rs.1,34,68,291/-. Even the said fixation and the arrears has not been paid by the petitioners so far. Contrarily, the petitioners are erroneously attempting to portray that they are paying the fair rent of Rs.79,506/- per month from the year 2017 and paid a sum of Rs.69,136/- per month during the year 2014. However, the petitioners could not able to establish that their father or themselves paid the said rent amount of Rs.69,136/- from the year 2001 onwards. At every stage, there is illegality or irregularity in the matter of fixation and payment of rent. The approach of Authorities in respect of the subject property of the temple and the manner in which it was dealt, without even fixing the fair rent for about 16 years from the year 2001 itself is in violation of the provisions of the Act. Thus, the petitioners are not holding any leasehold rights and they are in illegal occupation of the temple property. The petitioners have not even paid the rent fixed and further failed to pay the usage and damages for occupation. The arrears of Rs.1,34,68,921/- is also not paid by the petitioners. Thus, the petitioners are in illegal occupation and liable to be evicted from the subject property of the temple. The Issue No.1 is answered accordingly.

ISSUE NO.2:

42. Regarding the second issue, the fixation of fair rent was not fixed in accordance with the Act, till the order passed by the Joint Commissioner in the year 2017, fixing a sum of Rs.2,94,000/- per month towards usage and damage charges.

43. Sub-Section 3 to Section 34A contemplates that "*any person aggrieved by an order passed under sub-section (2) within a period of 30 days from the date of receipt of such order, appeal to the Commissioner, in such form and in such manner, as may be prescribed.*" Therefore, the provision contemplates fixation of lease rent and communicate the demand notice and in the event of filing any objections, if it is considered, then a revised notice may be issued. The objections are filed and thereafter final order is passed confirming or modifying the fair rent fixed. If the lessee is aggrieved from and out of the said final order, then the right of appeal lies under Section 34-A(3) of the Act. This being the procedures contemplated under the provisions of the Act, the present writ petition is filed challenging the demand notice and therefore, the same is not maintainable.

44. If at all any arrangement is made between the Trustees/ Executive Officer with the Lessees, running counter to the provisions of the Act, then all such consented arrangement or agreements are null and void. Sub Section (1) to Section 34 of the Act, enumerates that "any exchange, sale or mortgage and any lease for a term exceeding five years of any immovable property, or given or endowed for the purpose of, any religious



institution shall be null and void unless it is sanctioned by the Commissioner as being necessary or beneficial to the institution". Section 34-A deals with fixation of lease rent. Accordingly, the Committee constituted must ascertain the prevailing market rental value of the temple property and accordingly, re-fix the rent in the like manner once in three years. Thus, the rent is to be re-fixed once in three years by the Committee constituted for this purpose. The legislative intention in respect of Section 34 and Section 34-A are that the temple properties are being protected and the income should be derived in a just manner for the benefit of the temple. The language adopted in Section 34-A is "Prevailing Market Rental Value". Thus, the prevailing market rental value is to be ascertained through various factors and accordingly the fair rent is to be fixed.

45. Pertinently the phraseology "prevailing market rental value" contemplated under sub-section has been explained in Explanation to sub section (1). The said explanation stipulates that "for the purpose of this sub section "prevailing market rental value" means the amount of rent paid for similar types of properties situate in the locality, where the immovable property of the religious institution is situated.

46. Therefore, the Act defines the phrase "prevailing market rental value". In this regard, the Rent Fixation Committee is bound to make a comparative study with reference to the amount of rent paid for similar types of properties situate in the localities, where the immovable properties of the religious institution is situated. Therefore, the Act contemplates complete protection of the temple properties and fixation of lease rent by the Committee. The Department is not fixing the rent in the manner prescribed under the Act, is the concern of this Court. The Executives are bound to implement the provisions of the Act scrupulously in its letter and spirit. It is not as if the Executives can deal with the temple properties in a lackadaisical or casual manner.

47. The Temple and Departmental Authorities in their capacity as the Guardian and Controller of the Temple, are duty bound to fix the prevailing market rental value as fair rent in a just manner and for the benefit and interest of the temple and most importantly to honour the wishes of those Donors, Great Souls, who had donated their hard earned valuable properties to do services to the temple and its Devotees.

48. Sub Section (2) to Section 34-A provides an appeal by an aggrieved person if the Executive Officer or the Trustee or the Chairman of the Board to Trustees, as the case may be, of the Religious Institution concerned, passed an order fixing the lease rent and intimate the same to Lessee specifying a time within which such lease rent shall be paid. Under Sub Section (3) to Section 34A of the Act, any aggrieved person may prefer an appeal to the Commissioner.



49. This being the Scheme of the Act, the contention of the petitioners that they are paying 15% enhanced rent as per the arrangement made in the year 1999, cannot be accepted and any such arrangement made between the parties are in violation of Section 34-A of the Act and the same is null and void.

50. Considering the facts and circumstances of the case on hand, this Court is of the considered opinion that there was an active or passive collusion between the parties even in not fixing the fair rent once in three years as contemplated under Section 34-A of the Act. Even the approach of the Authorities in dealing with illegal occupants are also not upto the satisfaction. Thus, this Court has no hesitation in arriving a conclusion that the fair rent in respect of the subject property of the temple, has not been fixed in accordance with the provisions of the Act till the year 2017, and the Joint Commissioner has fixed the usage and damage for occupation charges of Rs.2,94,000/- per month in proceedings dated 09.03.2017 with effect from 01.07.2016. The said fixation alone is to be construed as in consonance with the provisions of the Act. The Issue No.2 is answered accordingly.

ISSUE NO.3:

51. Regarding the third issue, whether show cause notice is required to be issued under Section 34-A of the Act, the petitioners have mainly relied on the ground that no show cause notice was issued and no opportunity was provided to the petitioners before fixing the fair rent under the Act. The impugned notice in the present case is not a 'show cause notice', but a 'demand notice'.

52. It is to be borne in mind that demand notices are issued only after fixing the fair rent by following procedures as contemplated under Section 34-A of the Act. Similarly, such demand notices are issued in property tax, water charges in respect of the properties under the provisions of Municipalities Act, Chennai City Corporation Act, Metro Water Board Rules etc. Thus, a distinction is to be drawn between 'show cause notice' and 'demand notice'. Show cause notices are issued in respect of initiation of certain actions based on complaints or allegations. But demand notices are issued in accordance with the provisions of the Act, informing certain fixation/proposal to the persons concerned, seeking their objections, if any, the procedures are contemplated for fixing the fair rent and issue of demand notice. When the Competent Committee is empowered to fix the fair rent, issuance of notice would arise only after fixing such fair rent and not before that.

53. The rights of the landlord and the tenants are to be demarcated in clear terms. The rights of the landlord in fixing the rent is prerogative and, in the present case, the property, being a temple property, strictly in accordance with the provisions of the Act. However, the right of the Lessee or the Tenant, would arise only on fixation of fair rent and after communication of such fair rent. Thereafter prefer an objection and an appeal under sub



Sections (2) and (3) to Section 34-A of the Act. Thus, undoubtedly, the principles of natural justice has been complied with in respect of procedures and opportunities provided under the Act itself.

54. Demand notice can never be compared with the show cause notice. Even in case objections are not considered by the Competent Authorities in respect of the fair rent fixation in the demand notice, an appeal is also contemplated. Thus, the demand notice is the first notice and such notice is to be issued after fixing the fair rent by the Competent Committee by following the procedures as contemplated.

55. It can never be an accepted proposition that a tenant should be given an opportunity for fixing the fair rent under the provisions of the Act. No tenant will agree for any enhancement of rent. In the present day situation, any tenant will argue for reduction of rent. Thus, the law contemplates the manner in which the fair rent is to be fixed and the demand notice is to be issued. If the objections submitted by the tenants are reasonable and convincing, then the Authorities Competent are empowered to revise the fair rent. Further, an opportunity of appeal is also provided before the Commissioner.

56. This being the Scheme of the Act, the very contention raised on behalf of the petitioners that no show cause notice was issued before fixing the fair rent by the Competent Committee is unsustainable. Therefore, regarding Issue No.3, the ground raised by the petitioners that no show cause notice was issued before fixing the fair rent, is untenable and not in consonance with the provisions of the Act and further opposed to the settled legal propositions.

57. Considering the findings and over all consideration of the facts and circumstances of the case on hand, the petitioners are in illegal occupation and have not paid the fair rent and further by running a profitable business, causing damages and financial loss to the minor idol and to the temple and therefore, the petitioners have no right to continue in the subject property of the temple and they are liable to be evicted without any further delay.

58. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Svn

-sd/-
Assistant Registrar

True Copy

Sub-Assistant Registrar



To

- 1.The Commissioner,
Hindu Religious and Charitable Endowment
(HR&CE) Department,
No.119, Uthamar Gandhi Road,
Nungambakkam, Chennai - 600 034.
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Chennai - 600 084.

+1 C.C. to M/S.MYTHILI SRINIVAS, SR.NO.51086

+1 C.C. to GOVERNMENT PLEADER, SR.NO.51357

WP.NO.19258 of 2021

RSV(CO)
TP(21/10/2021)

29-09-2021