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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2021

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. No. 25437 of 2021

and

W.M.P. Nos. 26871 and 26872 of 2021

P.Ramalingam

... Petitioner

-Vs-

1. The Hindu Religious and Charitable Endowment,  
Represented by its Commissioner,  
Chennai.

2. The Executive Officer,  
Joint Commissioner / Executive Officer,  
Sri Arulmigu Pachaiyamman Thirukovil,  
Anna Salai - 600 002.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records of the second respondent pertaining to the impugned Notice Letter No.46/1427 dated 13.09.2017 and notice dated 02.03.2018 issued to the petitioner's property situated in Old Door No.12/14, New No.11, comprised in Old S.No.465, New S.No.9/3, Boothaperumal Naicken Street, Anna Salai, Chennai - 600 002 and quash the same and consequently, direct the second respondent to fix the rent in accordance with G.O.Ms.No.456, Tamil Development, Culture and Religious Endowments Department dated 09.11.2007 and consequently, refund the excessive amounts collected from the petitioner.

For Petitioner : Mr.Adhitya Raj  
for M/s.P.Wilson Associates

For Respondents : Mr.S.Yashwanth  
Additional Government Pleader

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records of the second respondent pertaining to the impugned Notice Letter No.46/1427 dated 13.09.2017 and notice dated 02.03.2018 issued to the



petitioner's property situated in Old Door No.12/14, New No.11, comprised in Old S.No.465, New S.No.9/3, Boothaperumal Naicken Street, Anna Salai, Chennai - 600 002 and quash the same and consequently, direct the second respondent to fix the rent in accordance with G.O.Ms.No.456, Tamil Development, Culture and Religious Endowments Department dated 09.11.2007 and consequently, refund the excessive amounts collected from the petitioner.

2. It is the case of the petitioner that the petitioner is the tenant in the property at Old Door No.12/14, New No.11 comprised in Old S.No.465, New S.No.9/3, Boothaperumal Naicken Street, Anna Salai, Chennai, which property belongs to the second respondent Temple. The total extent of the property is 3420 sq.ft. It is the further claim of the petitioner that, the petitioner is in possession and enjoyment of the same as a lessee or tenant under the Temple for several decades.

3. In this regard, even though, certain other issues had been raised that, somebody could have settled the property in favour of some other third parties in the earlier years. However, the Temple Authorities, since the owner of the property had been entitled to receive the rent or lease amount from the petitioner, since the petitioner has failed to pay to the Temple Authorities, therefore, there was a revision of rent and the said due since had not been paid, a demand notice had been issued by the respondent Temple on 13.09.2017 and 02.03.2018. Under the said demand, a sum of Rs.2,43,000/- till 01.07.2016 at the rate of Rs.20,250/- and also a sum of Rs.2,66,705/- as on 30.08.2017 having been calculated was demanded from the petitioner to pay.

4. Challenging the said demand letters issued by the Temple, this Writ Petition has been filed.

5. Though a ground was raised by the learned counsel appearing for the petitioner that, before any enhancement of rent or lease amount is made, the procedure contemplated in Section 34-A of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, ought to have been followed and the same since has not been followed, any demand made, as has been made through the impugned order, based on such alleged revised rent or lease amount, shall not stand in the legal scrutiny, this Court, when the said Writ Petition came up for hearing earlier on 01.12.2021, after having considered the said submission made by the learned counsel appearing for the petitioner as well as the learned Additional Government Pleader appearing for the respondents, has passed the following interim order:

"In this Writ Petition, the demand of rental due payable by the petitioner by impugned notice dated



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13.09.2017 and also notice dated 02.03.2018 are under challenge.

2. In this regard, Mr.T.Chezhiyan, learned Additional Government Pleader appearing for the respondents on instructions would submit that, in view of the conduct of the petitioner where he has not paid the rent, proceedings under Section 78 of H.R&C.E., Department Act was concluded and there is a rental arrears as well as arrears of payment of charges for damages for use and occupation between 01.07.2016 and 30.11.2021 which is Rs.8,14,455/-. Hence, the petitioner is not entitled to seek for any relief.

3. However, the learned counsel appearing for the petitioner to show his bonafide has come forward to pay 50% of the said due as on 30.11.2021 and for further payment, he seeks some more time. He would also submit that this payment made by the petitioner is without prejudice to his right and contention raised in this Writ Petition.

4. Having considered the said submission made by both sides, this Court in order to test the bonafide of the petitioner, direct the petitioner to deposit 50% of Rs.8,14,455/- on or before 08.12.2021 and file a proof with regard to such deposit before this Court, depending upon such compliance, further course of action in this matter would be decided."

6. Pursuant to the said order, the Writ Petition has again come up for hearing today.

7. On behalf of the petitioner, a memo dated 08.12.2021 has been filed, where inter alia, the following has been stated:

"2. It is humbly submitted that this Hon'ble Court on 01.12.2021 had directed the following:

"this Court in order to test the bonafide of the petitioner, direct the petitioner to deposit 50% of Rs.8,14,455/- on or before 08.12.2021 and file a proof with regard to such deposit before this Court, depending upon such compliance, further course of action in this matter would be decided."

3. It is submitted that in compliance with the above order dated 01.12.2021, the petitioner had made the payment of Rs.4,07,228.50/- vide Demand Draft bearing DD No.130666429 on 07.12.2021 without prejudice to the rights of the petitioner. A copy of the receipt issued by the respondent is enclosed along with this memo as proof of payment.

4. It is therefore humbly prayed that this Hon'ble High Court may be pleased to record this memo



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let the exercise of fixation of rent, i.e., enhancement of fair rent or revised rent exercise can be undertaken by the respondents by giving an opportunity of being heard to the petitioner and thereafter, based on such fixation to be made in this regard, the arrears can be calculated and accordingly, the arrears can be demanded from the petitioner.

13. In that view of the matter, this Court is inclined to dispose of this Writ Petition with the following orders:

"(i) that the impugned order in view of the aforesaid development need not be given further effect to, as 50% of the demand as on 30.11.2021 has been admittedly paid by the petitioner of course pursuant to the order passed by this Court referred to above.

(ii) Hence, the matter is remanded to the respondents for reconsideration. While reconsidering the same, a fresh notice shall be given to the petitioner proposing to enhance or revise the rent payable by the petitioner which was due for such revision and from that day, a revision could be made after giving an opportunity of being heard to the petitioner.

(iii) After having fixed the revised rent, based on the revised rent, the rental arrears till date can be calculated and accordingly, a demand can be made from the petitioner to pay the said arrears.

(iv) It is made clear that, while making such claim or demand of payment of arrears from the petitioner, the respondents shall borne in mind that a sum of Rs..4,07,227.50/- have been paid by the petitioner. Therefore, after deducting the same, the remaining due after having been calculated can be demanded from the petitioner.

(v) The needful as indicated above shall be undertaken by the respondents within a period of eight weeks from the date of receipt of a copy of this order."

14. Accordingly, this Writ Petition is disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CCC)

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Sub Assistant Registrar



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To

1. The Hindu Religious and Charitable Endowment,  
Represented by its Commissioner,  
Chennai.

2. The Executive Officer,  
Joint Commissioner / Executive Officer,  
Sri Arulmigu Pachaiyammam Thirukovil,  
Anna Salai - 600 002.

+1cc to Mr.P.Wilson Associates, Advocate, S.R.No.65353

+1cc to the Government Pleader, S.R.No.66331

W.P. No. 25437 of 2021  
and

W.M.P. Nos. 26871 and 26872 of 2021

GPL(CO)  
SB(17/02/2022)