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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2021

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THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. NO. 28623 OF 2018 AND
W.M.P. NO. 33408 OF 2018

M.Vijayan

... Petitioner

-vs-

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

2. The Joint Commissioner,
Hindu Religious Charitable Endowments Department,
119, Uthamar Gandhi Salai,
Nungambakkam,
Chennai - 600 034.

3. The Executive Officer,
Arulmighu Madhavaperumal Koil Street,
Mylapore, Chennai - 600 004.

... 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 relating to the impugned proceedings issued by the third respondent dated 20.09.2018 and to quash the same and consequently directing the respondents to arrive at the fixation of fair rent in accordance with law and by providing opportunity to the petitioner.

For Petitioner : Mr.G.Sankaran

For Respondents: Mr.NRR.Arun Natarajan
Special Government Pleader for R1 & R2
Mr.A.K.Sriram
for M/S.AS.Kailasam & Associates for R3



O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings issued by the third respondent dated 20.09.2018 and to quash the same and consequently directing the respondents to arrive at the fixation of fair rent in accordance with law and by providing opportunity to the petitioner.

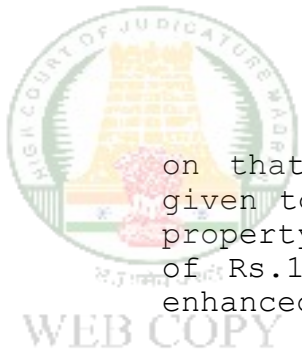
2. That the residential house in Survey No.1923/B having an extent of 1173.25 sq.ft. bearing Old No.27, New No.43, Madhava Perumal Koil Street, Mylapore, Chennai - 600 004 belongs to the third respondent temple (hereinafter called as 'said property').

3. The said property was let in for rent to the paternal uncle of the petitioner one Sowmiya Narayanan several years back. However, the said Sowmiya Narayanan also died in the late 1950's. After the demise of the said Sowmiya Narayanan, the paternal aunt of the petitioner one Kamalam has continued as a lessee in the said premises. The said Kamalam, i.e., paternal aunt of the petitioner was also died in the year 2003. Thereafter, the petitioner had been residing by continuing the lease unilaterally. He is a retired Government Servant and he has been residing in the said property for all these years.

4. While that being so, in the year 2013, a notice was given on 10.03.2013 by the third respondent Temple that, the tenancy should be registered in the name of the petitioner, if at all the petitioner wants to continue, otherwise action would be taken against the petitioner under Section 78 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Thereafter, on 09.12.2016, in order to revise the rent as per Section 34-A of the Hindu Religious and Charitable Endowments Act, 1959 (hereinafter called as 'the Act'), the Committee, constituted in this regard having considered the parameters to enhance the rent, has proposed to enhance the rent per month to Rs.9,650/-. Accordingly, the said proposal has been issued by way of notice dated 09.12.2016, requesting the lessee, i.e., Mrs.Sowmiya Narayanan to give response or objection within seven days.

5. Though the said notice dated 09.12.2016 was issued in the name of the said Mrs.Sowmiya Narayanan, since who was no more as she died in the year 2003, on receipt of the notice, the petitioner, who has already been in occupation of the said property, has responded to the said notice by his reply dated 11.01.2007, where he has raised the following objections :-

"I am submitting my objection to the residential portion occupied by me.



on that ground, since there has been no such opportunity was given to the petitioner, who is the present occupier of the said property, the impugned demand dated 20.09.2018 demanding a sum of Rs.1,43,800/- as on 31.08.2018 by taking into account, the enhanced monthly rent of Rs.7,300/- per month is unsustainable.

10. He would also submit that, insofar as the accepting and recognizing the petitioner as a lessee in the said property, though the petitioner has given some representation in the year 2013, the same has not been considered. Therefore, in this regard, first the respondents should come forward to accept and recognize the petitioner as a lessee to continue in the said premises and then only, they have to make a demand, that too after giving an opportunity of being heard to the petitioner before making any enhancement and without adopting the said procedure, since the impugned demand notice directly has been issued by the third respondent Temple, which is to be interfered with, he contended.

11. Per contra, Mr.NRR.Arun Natarajan, learned Special Government Pleader appearing for the first and second respondents would submit that, first of all, the petitioner cannot seek any such indulgence as has been sought for in this Writ Petition, because admittedly he is not a lessee, since he has never been recognized or accepted by the respondents Department as a lessee for the said property. Since it is an admitted case of the petitioner that, he stepped into the shoes of the paternal uncle and subsequently paternal aunt of the petitioner, as the property was let in only to the paternal uncle one Sowmiya Narayanan of the petitioner for rent, once he died, thereafter, if the wife of the said Sowmiya Narayanan, namely Kamalam occupied the premises and continued as a lessee and even she died in 2003, thereafter, the property should have been handed over by the legal heirs or the heirs like the petitioner to the third respondent Temple by paying the rental arrears upto date, instead, since the petitioner continued even today as an occupier, he can very well be thrown out by invoking the provisions of Sections 78 and 79 of the Act.

12. The learned Special Government Pleader would also contend that, insofar as the plea raised by the petitioner that, the revision of rent is not fairly undertaken is concerned, the fact remains that, not only the petitioner's premises, but also other premises in the same locality have been taken into account by the Committee constituted in this regard under Section 34-A of the Act and accordingly, the guideline value as well as the market value of the property concerned was taken into account for fixing the revision of rent. In respect of the said property as per the guideline value, the rent has been fixed as



Rs.6,555/- and as per the market value, it was fixed as Rs.7,300/-. He would also submit that, since under Section 34-A of the Act, the prevailing market rental value and the guideline as may be prescribed, the lease rent shall be re-fixed in the right manner since has been contemplated, adopting the said procedure only the Committee has fixed the rent at Rs.7,300/- by taking into account the market value. Therefore, insofar as the fixation of the rent is concerned, absolutely there is no infirmity and therefore, that cannot be questioned.

13. Insofar as the plea of the petitioner that, he should be accepted and recognized as a lessee is concerned, no such request has ever been made by the petitioner to the respondents H.R.&C.E., Department and if at all, any representation is given to any other authority as claimed by him in the year 2013, that would not be taken into account for the purpose of even to consider the same. Therefore, the question of recognizing or accepting him as a tenant at this juncture does not arise. Hence, after collecting the rental arrears from the petitioner not as a lessee but being as an occupier to pay the said rent amount in lieu of the use and occupation, the Department, i.e., H.R.&C.E., Department would take a decision as to whether the petitioner can be accepted or recognized as a lessee and that decision can be independently taken by the H.R.&C.E., Department under the provisions of the Act, the learned Special Government Pleader contended.

14. Heard Mr.A.K.Sriram, learned counsel appearing for the third respondent Temple who pointed out that, insofar as the plea raised by the petitioner that, before enhancement of the rent, no opportunity was given to the petitioner is concerned, he submitted that, there has been a notice given on 09.12.2016. In the said notice, the proposed enhancement at the rate of Rs.9,650/- per month as proposed by the Committee has been mentioned specifically and after having mentioned the same, the third respondent Temple issued the said notice to the then lessee to offer the remarks, reply or objection within seven days time.

15. Having accepted the said notice, the present petitioner who has been in occupation of the said property has given a detailed reply on 11.01.2007, where several objections have been raised. Those objections having been considered by the Committee constituted in this regard, the Committee has come to the conclusion to fix the rent at Rs.7,300/- per month, which is more than Rs.2,000/- lesser than what has been proposed by the Committee as reflected in the notice dated 09.12.2016. Therefore, these factors clearly demonstrate that, the Committee has considered the objections raised by the petitioner even though he is not entitled to raise it, because he is only an



occupier, objectively, and accordingly, come to the conclusion that, the revised rent can be fixed at as Rs.7,300/- per month. Therefore, the said plea raised by the petitioner that, no opportunity was given to the petitioner also is untenable. Apart from that, the learned counsel would submit that, there is no specific explicit provision available in the Act to give any personal opportunity of being heard to the petitioner and therefore, the question of giving any further personal opportunity to the petitioner does not arise for two reasons. First reason is that, there is no such provision available in the Act and moreover, the petitioner is not a lessee admittedly, hence an occupier need not be given even a minimum notice before enhancing the rent by the Committee, that is the reason why even the 09.12.2016 notice was addressed only to the original lessee, i.e., paternal aunt of the petitioner and not to the petitioner. Therefore, the learned counsel appearing for the third respondent would contend that, there is absolutely no ground or reasons available for the petitioner to challenge the impugned demand successfully and therefore, the learned counsel seeks dismissal of this Writ Petition.

16. I have considered all these rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

17. It is an admitted case on the part of the petitioner that, originally the property was leased out to the paternal uncle one Sowmiya Narayanan, who had been in occupation for several years and in late 1950's, since he died, his wife one Kamalam, who is the paternal aunt of the petitioner had been in continuous occupation and possession of the property as a lessee and since she also died in 2003, thereafter, the petitioner with his family started living in the said property and he claimed that, the petitioner had paid the admitted rent, i.e., rent before the enhancement every month without fail till the impugned demand is made.

18. Though the learned counsel appearing for the petitioner has raised a point that, before making the enhancement in the year 2016, opportunity of being heard should have been given to the petitioner, this Court after having gone through the language used in Section 34-A of the Act is of the view that, if a notice is given to the lessee / occupier of the premises to seek for reply or objections with regard to the proposed hike or enhancement of rent by the Committee under Section 34-A of the Act and if that is responded or after receipt of the same, it is not responded, that is enough to come to a safe conclusion that, the minimum opportunity was given to the lessee or the occupier concerned.



19. Here in the case in hand, such a notice was given admittedly on 09.12.2016 to the lessee namely Mrs.Sowmiya Narayanan, the paternal aunt of the petitioner and since she was no more, at the time, having receipt of the same or obtained the same, the petitioner has chosen to give reply or objections and content of the objections given by him dated 11.01.2007 quoted herein above, where all plausible objections that could be raised in respect of the property concerned have been raised.

20. After having considered those objections only, the fixation has been made by the Committee, where, as has been rightly pointed out by the learned counsel appearing for the third respondent, the proposed rent of Rs.9,650/- per month has been reduced to Rs.7,300/- by taking into account the market value and accordingly, the present enhancement has been made from the year 2016 to the extent of Rs.7,300/- per month only.

21. Therefore, insofar as the procedure adopted by the Committee in fixing the revised rent is concerned, this Court is not able to find any plausible reason to interfere.

22. But at the same same, the learned counsel appearing for the petitioner is vehement in his contention that, if a further opportunity is given to the petitioner, further input could be supplied by the petitioner to establish that in between the rent fixed on the basis of the guideline value and on the basis of the market value, certainly there could be some downward revision is possible for which, materials can be produced by the petitioner.

23. Normally, that kind of second show cause notice or second opportunity is not given in these kind of cases, as that has not been contemplated under the provisions of the Act also, insofar as the present case is concerned, since the learned counsel appearing for the petitioner has also canvassed the point that, insofar as the rent fixed in respect of the other property or premises in the same locality belongs to the third respondent Temple, some lesser calculation has been made and lesser rent has been fixed, the same has been requested to be adopted in the present case also. Therefore, that opportunity since he has sought for, this Court feels that, such kind of second opportunity in this case for the aforestated specific reason can be given to the petitioner.

24. But at the same time, this Court also feels that, insofar as the indication of the rent at the rate of Rs.6,555/- per month based on the guideline value can never be reduced, because the guideline value fixed by the Government is a fixed one and no one can question it. Therefore, this Court feels that, atleast a sum of Rs.6,555/- per month can very well be



fixed as the rent per month for the said property before comes to a final conclusion to fix the rent according to the market value. Therefore, insofar as the arrears payable by the petitioner is concerned, the rent at the rate of Rs.6,555/- can be taken as a basis and based on which, the entire arrears till date can be calculated and such arrears, if a calculation is given by the third respondent Temple, shall be paid by the petitioner within a shortest possible period which would be indicated in the later part of this order.

25. Once the petitioner come forward to pay the entire arrears by calculating the rate at Rs.6,555/- per month within a time frame to be stipulated in this regard, it is open to the petitioner to make a proper application to the respondents H.R.&C.E., Department to accept and recognize him as a tenant or lessee in the said property and if any such application is made by the petitioner, that can be very well considered by the respondents H.R.&C.E., Department objectively and orders can be passed therein on merits in accordance with law within a reasonable time.

26. Insofar as the enhancement of the rent for the period from 2016 is concerned, only the aforesaid procedure has been indicated and once after giving the second opportunity to give his objections and reply to the petitioner, ultimately, the Committee comes to the conclusion that, a particular rent can very well be fixed as a monthly rent for the petitioner from 2016 onwards, it is needless to mention that, such fixation would be prevailing only for the next three years, i.e., from 2016 to 2019 and thereafter, the further revision can very well be made by the respondents from the year 2019 onwards.

27. In view of the aforesaid facts and circumstances of the case, this Court is inclined to dispose of this Writ Petition with the following orders :-

"(i) that the third respondent temple shall calculate the arrears of rent payable by the petitioner in respect of the said property till date based on the monthly rent at Rs.6,555/- and shall be calculated and be intimated to the petitioner within a period of two weeks from the date of receipt of a copy of this order. On receipt of such intimation, the petitioner shall pay the said amount in one lumpsum without fail within a period of two weeks thereafter. Once such amount is paid as indicated above, it is open to the petitioner to make an application in proper manner to the concerned officials of the H.R&C.E., Department seeking to accept or



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recognize him as a lessee of the said premises and once such application is filed, it is open to the respondents H.R.&C.E., Department to decide the same on merits and in accordance with law within a reasonable time, i.e., as early as possible preferably before three months from the date of receipt of such application.

(ii) Insofar as the further enhancement of rent on the basis of the market value of the premises is concerned, it is open to the petitioner to make a further objection or reply within two weeks period from the date of receipt of a copy of this order and on receipt of the same, that shall be objectively considered by the respondents H.R.&C.E., Department / Committee constituted in this regard and accordingly, the revised rent can be fixed based on the market value. Once revision is fixed based on the market value, that would be prevailing between 01.07.2016 and 31.6.2019, thereafter in the year 2019 for the further or next three years period, further enhancement can also be fixed by adopting the same procedure by the respondents H.R.&C.E., Department / Committee constituted in this regard."

28. With all these directions, this Writ Petition is disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vji / sp

To

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



2. The Joint Commissioner,
Hindu Religious Charitable Endowments Department,
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Nungambakkam,
Chennai - 600 034.

3. The Executive Officer,
Arulmighu Madhavaperumal Koil Street,
Mylapore, Chennai - 600 004.

+1cc to Mr.G.Sankaran, Advocate, S.R.No.61314

+1cc to M/S.AS.Kailasam & Associates, Advocate, S.R.No.61858

+1cc to the Government Pleader, S.R.No.61415

W.P. No. 28623 of 2018
and

W.M.P. No. 33408 of 2018

KSM(CO)
PM/14/02/2022