



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 21.06.2021
CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

WEB COPY

W.P(MD)No.9245 of 2021

Udaiyappan

... Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
119, Uthamar Gandhi Salai,
Thousand Lights West,
Nungambakkam, Chennai-600 034.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
No.40, Muthusamy Nagar,
Sivagangai,
Sivagangai District-630 561.

3.The Executive Officer,
Arulmigu Silampani Vinayar Thirukovil,
Devakottai Town,
Sivagangai District-630 302.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the first respondent to number and dispose the appeal filed by the petitioner in reference N.Dis.No.60435/2019 under Section 34(A)(3) of Hindu Religious and Charitable Endowment Act 1959 on its representing the returned appeal papers by the petitioner.

For Petitioner	: Mr.A.Saravanan
For R-1 & R-2	: Mr.P.Thilak Kumar, Standing Counsel
For R3	: Mr.C.Gugaseelarupan

ORDER

This writ petition has been filed by the petitioner seeking for issuance of a Writ of Mandamus, directing the first respondent to number and dispose the appeal filed by the petitioner in reference N.Dis.No.60435/2019 under Section 34(A)(3) of Hindu Religious and Charitable Endowment Act 1959.

2.According to the petitioner, he is in possession and enjoyment of the small piece of property situated at Vellaiyan



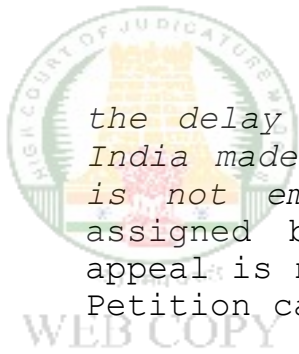
Oorani West, Perumal Kovil Street, to an extent of 600 square feet, which belongs to the third respondent temple. He is also paying a monthly rent of Rs.110/- per month for more than 15 years. The third respondent also recognized the petitioner's occupation and possession of the said site in question and also received monthly rent from him. In the year 2018, the third respondent and the concerned the then Executive Officer, namely, one Thiru.Balathandayutaham also orally informed the petitioner that in respect of his house in question, the rent has been increased from Rs.110/- to Rs.1500/- and the same was increased in the year 2016 itself. Though the petitioner filed an appeal under Section 34A of the Tamil Nadu Hindu Religious Charitable Endowment Act before the second respondent seeking for fixation of fair rent and to collect the lease amount only in the name of vacant site instead of stating as a house, the second respondent has returned the petitioner's appeal stating that he has no jurisdiction to enquire the same.. Therefore, the petitioner filed an appeal before the first respondent on 17.06.2019 and the first respondent also returned the petitioner's appeal in its letter, dated 22.08.2019 in N.Dis.No.34741 to 34750 and 34754 by citing the following reasons:-

(i)The appeal petition should be verified and signed by the appellant as like in a suit.

(ii)An authenticated or a annexure to the order should be filed-vide Rule 8 of the Rules under Section 116(2)(ii) and (iii) of the Act. G.O.Ms.No.3158, dated 29.07.1961. There is no provision for dispensing with production of the above under the rules.

(iii)No appeal shall be entertained under sub-section (3) unless it is accompanied by satisfactory proof of deposit of the rent so fixed or refixed, in the account of the religious institution concerned and such amount shall be adjusted towards the rent amount payable by the lessee as per the order passed in the appeal.

3. The further case of the petitioner is that he made an application under RTI Act on 21.01.2019 before the third respondent requesting to furnish information regarding the fixation of fair rent. Further, on 04.02.2019, the petitioner has also made another RTI application to the second respondent. On 11.02.2019, the second respondent informed him through his letter in Va.No.39/2019/Aa3, whereby and where under, the second respondent directed the third respondent to furnish the said intimation sought for by the petitioner. On receipt of copy of order for fixation of fair rent issued by the third respondent, which was furnished on 01.11.2019, the petitioner has submitted the same to the first respondent. Even thereafter, the first respondent without numbering the same and again returned by stating the same reason as originally earlier returned on 22.08.2019 by adding one more reason that "the appeal petition has been filed out of time. There is a delay of 30 days in filing. Copy of decretal order is not received to calculate



the delay if any. In view of order of Hon'ble Supreme Court of India made in C.A.4582 of 2019, dated 03.05.2019, the Commissioner is not empowered to condone the delay". However, the reason assigned by the first respondent in returning the petitioner's appeal is not legally correct and baseless. Hence, the present Writ Petition came to be filed.

4.The learned counsel for the petitioner would state that it would be suffice if a direction is given to dispose of the appeal filed by the petitioner.

5.The learned counsel for the third respondent would state that the arrears amount of the rent, which was already fixed has to be deposited by the petitioner before the appeal be taken on file.

6. Heard the submissions made on either side and perused the materials available on record.

7. Considering the submissions of the learned counsel for the petitioner as well as the third respondent and in the light of the facts and circumstances of the case, without going into the merits of the case projected by the petitioner either in his appeal or in this Writ Petition, the petitioner is directed to deposit the arrears of rent as fixed earlier, within a period of one week from the date of receipt of a copy of this order and thereafter, the first respondent is directed to dispose of the appeal filed by the petitioner in respect of the enhanced rent in reference N.Dis.No.60435/2019 on merits and in accordance with law and pass appropriate orders within a period of twelve weeks thereafter. Such an exercise shall be done after giving due opportunity to the petitioner and any other persons who may be interested in the subject matter.

8.With the above direction, the writ petition is disposed of. No Costs.

Sd/-

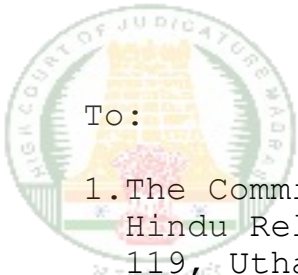
Assistant Registrar (CO)

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/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To:

1.The Commissioner,
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Sivagangai District-630 561.

+1 CC to M/s.SPL GP (SR-19893[F] dated 22/06/2021)

+3 CC to M/s.A.SARAVANAN, Advocate (SR-19840[F] dated 22/06/2021)

W.P (MD) No.9245 of 2021
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KB(29.06.2021) 4P 7C