



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.11.2021

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THE HON'BLE Mr.JUSTICE M.SUNDAR

W.P(MD) .No.18845 of 2021

and

W.M.P(MD) .No.15665 of 2021

M.Maruthiah Pandian

... Petitioner

-Vs.-

1. The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Nungambakkam High Road,
Chennai.

2. The Executive Officer,
A/M. Kailasanatha Swamy Thirukovil,
Kailasapuram, Tirunelveli Junction. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records related to the impugned order passed by the first respondent in R.C.No.20122/2021/D2 dated 29.04.2021 and the consequential communication of the second respondent dated 22.09.2021 and quash the same.

For Petitioner : Mr.S.Meenakshi Sundaram,
Senior Counsel
for Mr.M.Sengu Vijay

For Respondents : Mr.T.Amjad Khan,
Government Advocate for R1
Dr.C.Guhaseelarupan for R2

O R D E R

Mr.S.Meenakshi Sundaram, learned Senior Counsel appearing on behalf of the counsel on record for the writ petitioner, Mr.T.Amjad Khan, learned Government Advocate appearing on behalf of the first respondent and Mr.C.Guhaseelarupan, learned private counsel on behalf of the second respondent (Executive Officer of the Temple) are before this Court.

2. With the consent of all the aforementioned counsel and
<https://hcservices.courts.gov.in/hcservices/> captioned main writ petition is taken up as the



matter turns on a very narrow compass and a acute legal angle.

3. 'Arulmigu Kailasanatha Swamy Thirukovil, Kailasapuram, Tirunelveli Junction, Tirunelveli District' (hereinafter 'said Temple' for the sake of convenience and clarity) is the temple which forms subject matter of the captioned writ petition. 'Land comprised in Survey No.114 admeasuring 0.96 acres or thereabouts situate in Keela Veeraragavapuram Village at Palayamkottai' (hereinafter 'demised land' for the sake of convenience and clarity) belongs to said Temple.

4. Learned Senior Counsel submits that writ petitioner is a tenant under the said Temple qua demised land.

5. A communication dated 20.09.2019 was sent by the second respondent to the writ petitioner wherein it was mentioned that lease rent for said land has been fixed under Section 34-A of 'the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959)' [hereafter 'TNHR&CE Act' for the sake of convenience and clarity]. In and by this communication, second respondent called upon the writ petitioner to pay arrears of rent as well as further rent in accordance with the lease rent that has been fixed under Section 34-A of TNHR&CE Act. Assailing this communication, the writ petitioner filed a statutory appeal under Section 34-A(3) of TNHR&CE Act before the first respondent vide R.c.No.20122/2021/D2. This Court is informed that the statutory appeal had not been taken on file and assigned a number as R.c. refers only to the filing number and it is not the appeal number. It may not be necessary to dilate further on those aspects of the matter. It will suffice to say that first respondent who is the appellate authority under Section 34-A(3), without hearing the appellant or the respondent, directed the second respondent (lone respondent before the first respondent in the appeal) to calculate unpaid arrears at the existing rate till the date of intimation of revised rent, arrears at the revised rate from the date of intimation of revised rent till 30.04.2021 and communicate the same to the writ petitioner before 10.05.2021. More importantly, the first respondent has listed the matter on 08.06.2021 to file undertaking affidavit along with proof of deposit arrears.

6. Learned Senior Counsel submits that the aforementioned order made on 29.04.2021 ('impugned order' for the sake of convenience and clarity) has been made without hearing the appellant. Pursuant to the aforementioned order, the second respondent has sent a communication dated 22.09.2021 calling upon the writ petitioner to pay arrears.

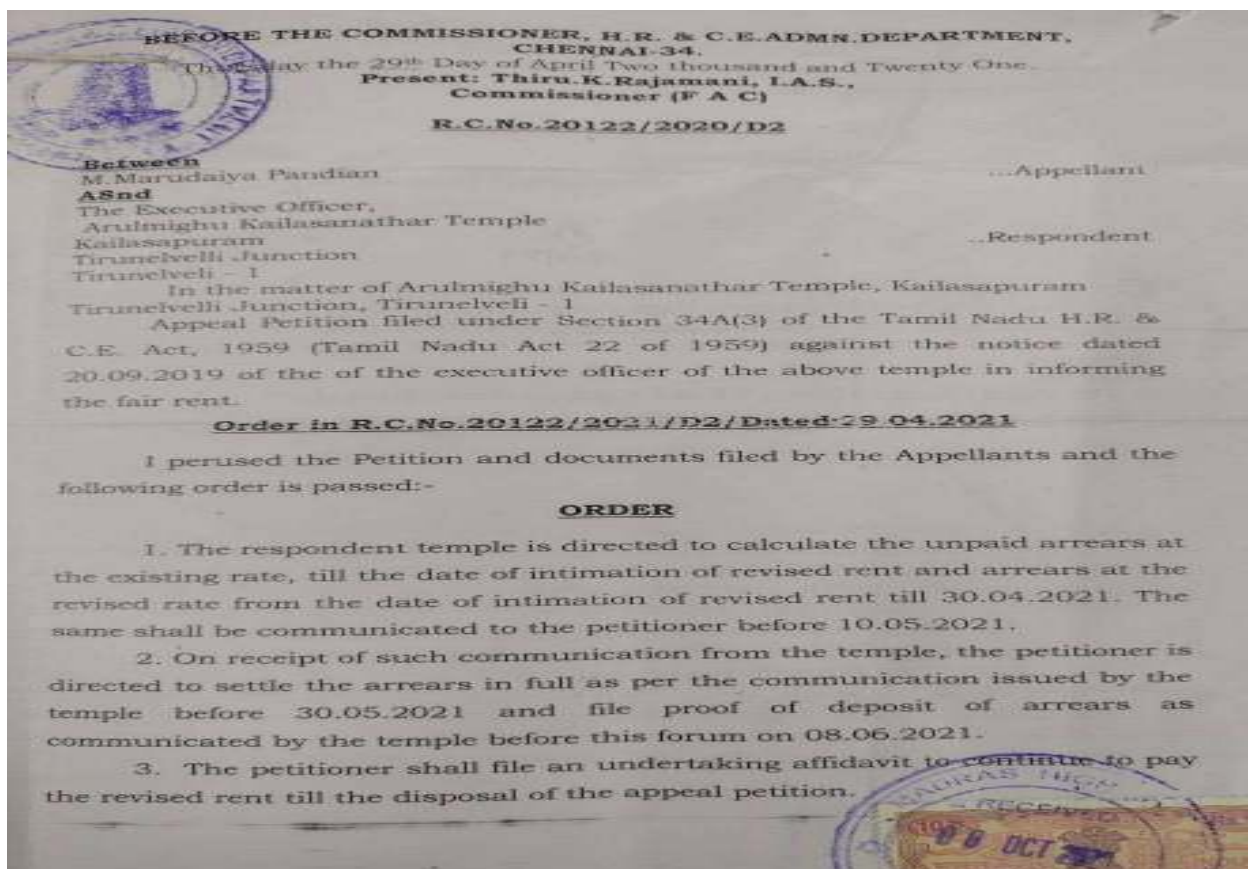
7. The aforementioned counsel before me are unable to tell this Court as to what happened on 08.06.2021. However, from the order it appears that the Commissioner (first respondent) has embarked upon



the exercise of making the impugned order in the light of common proviso to Sub-sections (3) and (5) of Section 34-A. Common proviso to Sub-sections (3) and (5) of Section 34-A is clearly a pre-deposit condition for entertaining the appeals. When an appellant presents an appeal before the Commissioner under Section 34-A(3) or 34-A(5), the appeal should be accompanied by proof of deposit as contained in the proviso. If this is not the case, the Commissioner's office i.e., the Registry therein will have to simply returned the appeal stating that the pre-deposit condition has not been complied or calling upon the appellant to produce proof of pre-deposit.

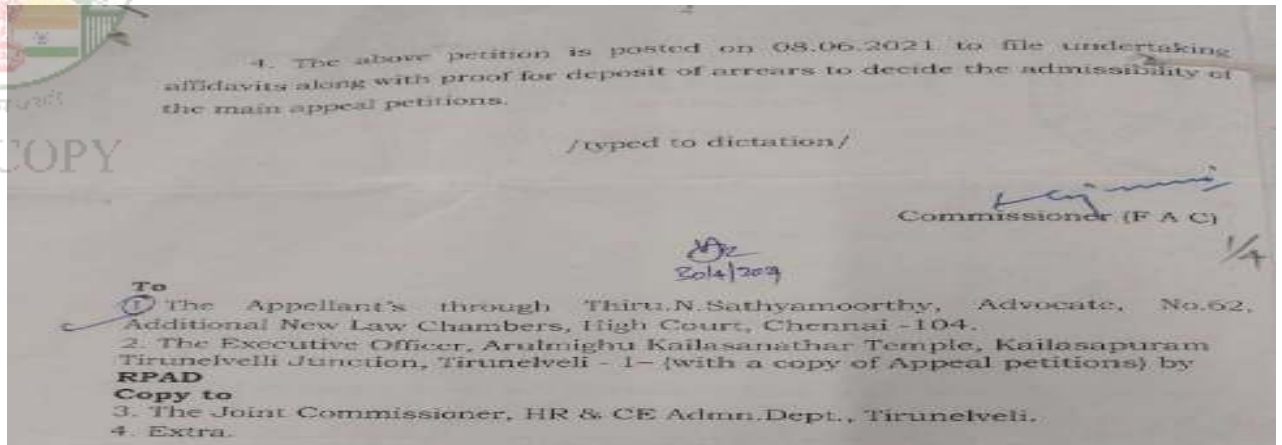
8. The difficulty or 'situation' if one may say so in this case has arisen because the first respondent has chosen to pass a quasi judicial order and qua pre-deposit missing the point that it is a condition precedent for the very entertaining of the appeal. In other words first respondent has put the cart before the horse and that has lead to the argument that there is violation of NJP (Natural Justice Principles).

9. For convenient, I deem it appropriate to extract and reproduce the terse order made by the first respondent Commissioner. I do so and the same is as follows:





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10. As the matter has not been taken on file, I deem it appropriate to set aside the impugned order and the consequential communication from the second respondent dated 22.09.2021 without expressing any opinion on the merits of the matter with a directive to the first respondent to have the appeal presented by the writ petitioner examined by his office more particularly, with regard to whether it satisfies the common proviso to Sub-sections (3) and (5) of Section 34-A and do the needful/communicate to the writ petitioner suitably as expeditiously as the business of the first respondent would permit and in any event within four weeks from today i.e., on or before 15.12.2021.

11. As this Court has set aside the consequential communication of the second respondent, it will be open to the second respondent to issue a fresh communication or re-issue the communication depending on the decision of the first respondent-Commissioner/his office within the aforementioned four weeks time frame. It is made clear though obvious.

12. Captioned matter is disposed of with the above directive. The first respondent-Commissioner and his office will do well to follow the above procedure in the days to come with regard to pre-deposit under proviso to Sub-section (3) of Section 34-A as it is a condition precedent for entertaining the very appeal. Consequently, W.M.P(MD) No.15665 of 2021 is disposed of as closed. Curtains on the captioned writ petition. In other words captioned main writ petition is disposed of in above said manner. Consequently, captioned WMP is also disposed of as closed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)



1. The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Nungambakkam High Road,
Chennai.

2. The Executive Officer,
A/M. Kailasanatha Swamy Thirukovil,
Kailasapuram, Tirunelveli Junction.

+1 CC to M/s.C. GUHASEELRUPAN, Advocate (SR-35077[F] dated
18/11/2021)

+1 CC to M/s.SPL GP (SR-34961[F] dated 18/11/2021)

+1 CC to M/s.M. SENGUVIJAY, Advocate (SR-35016[F] dated
18/11/2021)

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RD (26.11.2021) 5P 6C