



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.08.2019

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THE HONOURABLE MR. JUSTICE S.S.SUNDAR

REV.APLC (MD) No.157 of 2018
in
C.R.P. (MD) No.982 of 2016

M.Gurusamy Nadar ... Petitioner/Petitioner

Vs

1.The Commissioner,
Hindu Religious and Charitable
Endowment Department,
The Administration Department,
Chennai - 34.

2.The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Madurai.

3.The Deputy Commissioner,
Executive Officer,
Arulmighu Kallalagar Thriukovil,
Alagarkovil, Madurai.

... Respondents/Respondents

Prayer: The Review Application filed under Section 114 and Order 47 and Rule 1 of Code of Civil Procedure, to review the aggrieved portion of the common order passed in C.R.P.(NPD) (MD) No.982 of 2016, dated 27.06.2018.

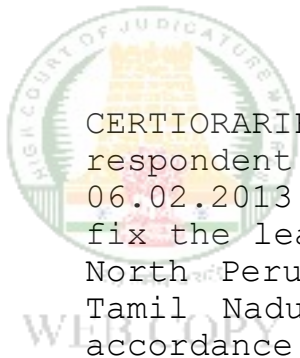
Prayer in CRP(MD). 982/ 2016 :

Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records pursuant to the impugned order passed by the 1st respondent in A.P.No.27 of 2015 D2 dated 28.03.2016 and set aside the same and consequently direct the 1st respondent to fix the fair rent as per the Tamil Nadu Hindu Religious and Charitable Act and Rules and as per G.O.Ms.456, dated 09.01.2007 and the norms stipulated in the writ passed in W.P(MD) No.8285 of 2013 dated 27.08.2015 and thus render justice.

Prayer in WP(MD). 8285/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF

<https://hcservices.ecourts.gov.in/hcservices/>



CERTIORARIFIED MANDAMUS to call for the records from the 3rd respondent pursuant to his proceedings in Na.Ka.No.1059/09/B1 dated 06.02.2013 Quash the same and consequently direct the respondents to fix the lease rent to the petitioners lease property in Door No. 46, North Perumal Maistry Street, Madurai under Section 34(a) of the Tamil Nadu Hindu Religious and Charitable Endowment Act 1959 in accordance with law and pass such further or other orders.

For Applicant : Mr.J.John

For R3 : Mr.S.Manohar

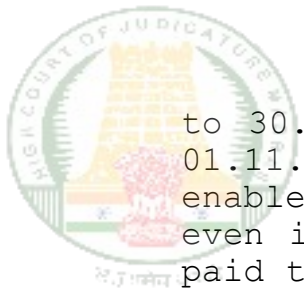
ORDER

Heard the learned Counsel appearing for the petitioner and the third respondent.

2.This Court, while passing the order in the batch of cases, including C.R.P.(MD)No.982 of 2016, has observed as follows:

"16.In the order passed by the Commissioner, HR & CE Department, Chennai, it is stated that the rent has been fixed arbitrarily at Rs.6,000/- in the year 1998. When the Executive Officer of the temple has fixed the fair rent at Rs.6,000/- and that was the agreement till 2008, the tenant cannot be asked to pay more than what is agreed. Even, when the respondent is authorised to revise the rent, that cannot be with retrospective effect, as the tenant has indefeasible right to vacate the property, in case he is incapable of paying rent. The tenant cannot be mulcted by fixing rent arbitrarily with retrospective effect. Under the Transfer of Property Act, 1882, the rent should be primarily agreed between the parties. Except by agreement or a specific contract, there is no legal obligation on the part of the tenant to pay any rent that may be asked by the landlord.

17.It is no doubt true that the Government can issue guidelines for the purpose of fixing fair rent. In this case also, the Government originally framed guidelines in 1998 and thereafter, on 04.06.1999, vide G.O.Ms.No.353 and subsequently the guidelines were revised by G.O.Ms.No.456, dated 09.11.2007. As per the Government Orders, the increase in rent once in three years was restricted to 15%. It was only on account of the fact that the previous Government Order issued in 1999 was implemented only w.e.f., 01.11.2001, a direction was issued to the temple authorities to revise the rent w.e.f., 01.11.2001. Since the revision of rent was suggested from 1998, a further direction was issued to revise the rent w.e.f., 01.07.1998



to 30.10.2001 by reducing the fair rent fixed by 15% from 01.11.2001. This Government Order cannot be interpreted to enable the temple authorities to revise the fair rent fixed even in a case where the fair rent was fixed earlier and paid till it was revised for the first time in 2008. Having regard to the settled principles of law, this Court is of the view that fixing the fair rent with retrospective effect is impermissible in law. However, the proceedings for fixing the fair rent was initiated for the first time in 2008, and it was promptly approved by the Joint Commissioner, HR & CE Department, by proceedings dated 29.04.2008. The tenant is liable to pay the rent fixed by authorities in terms of the Government Order, w.e.f., 01.05.2008. As pointed out earlier, the fair rent in this case was fixed by the Committee without issuing any prior notice to the tenant and without giving any opportunity to raise his objection with regard to extent of land in his enjoyment or with regard to value of the property.

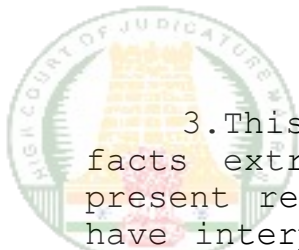
18.It is relevant to mention the one important aspect of this matter in this context is that the guidelines issued by the Government indicated that the fair rent should be on the basis of the value of the building or on the basis of market rate, whichever is higher. The value of the building and the land need not be on the basis of market value, unless, there is a specific direction in this case by the Government. Having regard to the position that 0.06% of the value of the building can be the monthly rent for commercial building let out by the temple authorities, this Court is of the view that the fair rent may be even more than what it was fixed by the Committee earlier. Since the Committee has fixed fair rent in this case without notice to the tenant, this Court is of the view that the fair rent in respect of the property occupied by the petitioner as tenant is fixed arbitrarily and in violation of principles of natural justice. Without affording any opportunity, the demand notice dated 11.09.2009 was sent through RPAD, which is a clear violation of principles of natural justice. Hence the impugned order of the Commissioner, HR & CE Department, Chennai, in A.P.No.27 of 2015, D2, dated 28.03.2016, is set aside. It is open to the temple authorities to fix the fair rent w.e.f., 01.05.2008 following the guidelines issued by the Government, vide G.O.Ms.No.456, dated 09.11.2007 or any other subsequent guidelines or amendment in accordance with law, after giving an opportunity to the petitioner to raise his objection with regard to the basic factors, which are to be taken into account for the purpose of fixing fair rent w.e.f., 01.05.2008.



19.Though the Commissioner, HR & CE Department, Chennai, has confirmed the order of the Joint Commissioner, HR & CE Department, Madurai approving the rent suggested by the Fixation Committee, the third respondent, namely, the Executive Officer of the Temple is directed to place the matter before the Committee or the officers concerned, after issuing notice to the petitioner informing the petitioner about the basic factors, namely, the extent of land, extent of the building, probable market value of the land, cost of construction and other details, which are proposed to be taken by the Committee or the Officers concerned to fix the fair rent and after hearing whether he has any objection regarding the fixation of fair rent. Hence, the Civil Revision Petition is allowed and disposed of accordingly.

20.As regards W.P.(MD)No.21806 of 2017, the petitioner has challenged the order of attachment by which the movables then found inside the demised premises, which was in the occupation of the tenant for selling the articles attached by public auction, in case the petitioner did not pay the arrears of rent within 15 days. This Court has earlier set aside the order regarding the fixation of fair rent. This Court has already pointed that the tenant is liable to pay fair rent w.e.f., 01.05.2008. It is not in dispute that the tenant has collected a sum of Rs.15,000/- as rent from a sub-tenant in respect of a portion of the premises. Having regard to the extent of land and the area of construction, this Court can deduce that the rent for enjoyment of building and it cannot be less than Rs.10,000/- from 2008. Considering the facts and circumstances in this case, this Court of the view that the tenant can be directed to pay at least a reasonable amount towards rent, so as to maintain status-quo, till a decision regarding the fixation of fair rent is taken as per the direction of this Court in the connected Civil Revision Petition. Hence, this Court is inclined to pass the following order.

"The petitioner is directed to pay a sum of Rs.15,00,000/- (Rupees fifteen lakhs) to the third respondent within a period of two months from the date of receipt of a copy of this order and upon payment within the time stipulated, the respondent shall hand over all the movables that were taken from the petitioner's premises as per the inventory list attached to the impugned order, leaving the items which were earlier released by the respondent pursuant to the order of this Court in the connected writ petition.""



3.This Court is not inclined to elaborate the facts, as the facts extracted in the order, dated 27.06.2018 are clear. The present review application has been filed, because the respondents have interpreted the order to mean that the Temple authorities are entitled to the fair rent, even for the period prior to 2008.

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4.The learned Counsel for the petitioner further submitted that the payment made by the petitioner was not given credit and hence, the order, dated 27.06.2018 should be clarified. He further submitted that this Court has directed the petitioner to pay a sum of Rs.15,00,000/- to the third respondent towards rent for a period from 01.05.2008 without deducting the actual amount, that was paid by him towards rent. Since the direction to pay Rs.15,00,000/- is without taking into account the amount paid as per the contractual rate, there is an error apparent and hence the order should be clarified.

5.Having regard to the order that was passed by this Court earlier on 26.07.2018, as it reflects from the paragraphs above referred to, this Court has categorically held that the tenant is liable to pay the fair rent to be fixed by the Commissioner only from May'2008 and the rent payable by the review applicant upto to May'2008 is only the contractual rent, that was in vogue prior to the proceedings initiated for fixing fair rent. It is also admitted that the third respondent is collecting a sum of Rs.6,000/- for the period prior to 2008 and that no arrears could not be claimed from the tenant for the period prior to 2008.

6.In such circumstances, the amount fixed by the Court, namely, Rs.15,00,000/- is only by way of interim arrangement till the fair rent is fixed by the Commissioner. Since this Court has only observed that the fair rent cannot be less than Rs.10,000/- from May'2008 till the fair rent is fixed, the petitioner is liable to pay a sum of Rs.15,00,000/- less the amount the petitioner has paid towards rent for the period from May'2008. Hence, paragraph 20 of the order dated 26.07.2018 is clarified that the petitioner is liable to pay a sum of Rs.15,00,000/- after deducting the amount paid by the petitioner till the disposal of the writ petition towards rent or any lump sum payment towards the rent payable from May'2008.

7.Accordingly, this Review Application is allowed only to the extent indicated above. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)



To

1.The Commissioner,
Hindu Religious and Charitable
Endowment Department,
The Administration Department,
Chennai - 34.

2.The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Madurai.

3.The Deputy Commissioner,
Executive Officer,
Arulmighu Kallalagar Thriukovil,
Alagarkovil, Madurai.

+1 CC to M/s.G.JEREMIAH, Advocate (SR-80456[F] dated 07/08/2019)

+1 CC to M/s.S.MANOHAR, Advocate (SR-81059[F] dated 09/08/2019)

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