



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.11.2021

CORAM

THE HON'BLE Mr.JUSTICE M.SUNDAR

W.P(MD).Nos.19849 to 19858 and 19986 to 20012 of 2021

and

W.M.P(MD).Nos.16559 to 16564, 16554 to 16557, 16672, 16673, 16675, 16678, 16698, 16700, 16679, 16690, 16691, 16701, 16695, 16680, 16686, 16687, 16676, 16682, 16683, 16674, 16677, 16681, 16702, 16685, 16684, 16689, 16688, 16703, 16692, 16693, 16696, 16697, 16704, 16699, 16705, 16706, 16708 and 16709 of 2021

Meenabharathi	... Petitioner in WP(MD). 19849 of 2021
Valarmathi	... Petitioner in WP(MD). 19850 of 2021
Seenivasan	... Petitioner in WP(MD). 19851 of 2021
Rajangam	... Petitioner in WP(MD). 19852 of 2021
Ganga	... Petitioner in WP(MD). 19853 of 2021
Devadoss	... Petitioner in WP(MD). 19854 of 2021
Pounraj	... Petitioner in WP(MD). 19855 of 2021
Vijayalakshmi	... Petitioner in WP(MD). 19856 of 2021
Saroja	... Petitioner in WP(MD). 19857 of 2021
Rengammal	... Petitioner in WP(MD). 19858 of 2021
Raja	... Petitioner in WP(MD). 19986 of 2021
Selvam	... Petitioner in WP(MD). 19987 of 2021
Lakshmi	... Petitioner in WP(MD). 19988 of 2021
Elanchezhian	... Petitioner in WP(MD). 19989 of 2021
Kasthuri Ammal	... Petitioner in WP(MD). 19990 of 2021
Paulraj G	... Petitioner in WP(MD). 19991 of 2021



Nagaiah
Sugapriya.M
Elanchezhian
Kala.A

... Petitioner in WP(MD). 19992 of 2021
... Petitioner in WP(MD). 19993 of 2021
... Petitioner in WP(MD). 19994 of 2021
... Petitioner in WP(MD). 19995 of 2021
...Petitioner in WP(MD). 19996 of 2021
... Petitioner in WP(MD). 19997 of 2021
... Petitioner in WP(MD). 19998 of 2021
... Petitioner in WP(MD). 19999 of 2021
... Petitioner in WP(MD). 20000 of 2021
... Petitioner in WP(MD). 20001 of 2021
... Petitioner in WP(MD). 20002 of 2021
... Petitioner in WP(MD). 20003 of 2021
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... Petitioner in WP(MD). 20006 of 2021
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... Petitioner in WP(MD). 20008 of 2021
... Petitioner in WP(MD). 20009 of 2021
... Petitioner in WP(MD). 20010 of 2021
... Petitioner in WP(MD). 20011 of 2021
... Petitioner in WP(MD). 20012 of 2021

vs

The Executive Officer
Arulmighu Puttu Urchava Vagaiyara Kattalai,
Arulmighu Sokkanathar Thirukovil,
Puttuthoppu, Madurai - 625 016. .. Respondent (in all cases)



Common Prayer

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus to call for the records of the impugned orders of the respondent dated 26.07.2021, 20.09.2021, 07.10.2021 and 23.09.2021 and quash the same as illegal and consequently directing the respondent to re-fix the fair rent in accordance with the Law and to pass such further or other orders as this Honble Court may deem fit and proper in the above facts and circumstances.

For Petitioner : Mr.M.Kannan (in all W.Ps)

For Respondent : Mr.M.Saravanan (in all W.Ps)

COMMON ORDER

This common order will govern the captioned thirty seven main writ petitions and the captioned writ miscellaneous petitions (W.M.Ps) therein.

2. Mr.M.Kannan, learned counsel for the writ petitioners in all the thirty seven main writ petitions and Mr.M.Saravanan, learned private counsel who accepts notice on behalf of the lone respondent in all the thirty seven captioned main writ petitions are before me.

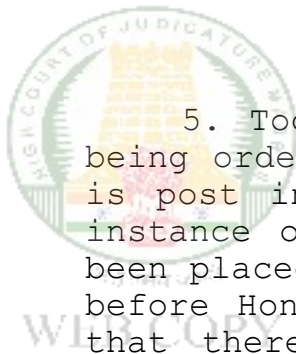
3. To be noted, the lone respondent in all the captioned matters is 'Executive Officer' of a Temple under 'the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959)' [hereafter 'TNHR&CE Act' for the sake of convenience and clarity].

4. Read this in conjunction with and in continuation of earlier proceedings made in previous listing on 08.11.2021 which reads as follows:

'Mr.M.Kannan, learned counsel fairly submits that in similar matters i.e. W.P. (MD).Nos.19606 to 19615 of 2021, another Hon'ble Single Judge of this Court has disposed of the Writ Petitions vide order dated 01.11.2021 (this Court is informed that there were minor changes in the order on 02.11.2021 when the matter was listed under the caption 'For Being Mentioned') relegating the writ petitioners to alternative remedy

2. Learned counsel requests for a short accommodation to produce a copy of the order. Request acceded to.

3. List under the caption 'Adjourned Admission' on 22.11.2021.'



5. Today, copy of the order made by Hon'ble Predecessor Judge being order dated 01.11.2021 (this Court is informed that this copy is post incorporation of minor changes made on 02.11.2021 at the instance of oral mentioning by learned counsel on both sides) has been placed before me. To be noted, the same set of two counsel were before Hon'ble Predecessor Judge also. Both learned counsel submit that there is no disputation or disagreement that the captioned thirty seven main writ petitions are akin to the writ petitions disposed of by this earlier order made by Hon'ble Predecessor Judge (in ten writ petitions i.e., W.P(MD).Nos.19606 to 19615 of 2021). Therefore, with the consent of learned counsel on both sides, captioned thirty seven main writ petitions are taken up.

6. Before I proceed further, I deem it appropriate to make the following clear:

(a) In the captioned thirty seven writ petitions, three different sets of communications are assailed. One set is dated 26.07.2021 (Page No.40 of typed set of papers) second set is dated 20.09.2021 (Page No.50 of typed set of papers) and third set is dated 07.10.2021 (Page No.62 of typed set of papers).

(b) This Court is informed that captioned writ petitions have been filed in this Court within thirty days from the date of receipt of the aforementioned communications by the respective writ petitioners and/or thirty days have not elapsed.

(c) This order, therefore will not serve as a precedent for extension of time statutorily prescribed.

(d) This order is being made as Hon'ble Predecessor Judge has already made the aforementioned order in ten writ petitions with regard to ten other similarly placed writ petitioners qua the same temple / same issue which means departure from that view may result in placing similarly placed litigants in dissimilar situations qua court orders.

(e). To be noted, regarding extension of statutorily prescribed time period, I have already taken a different view following **Rukmani Ganesan case [Ganesan, represented by its power agent G.Rukmani Ganesan v. Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments Board and others]**, decided by Hon'ble Supreme Court and reported in **(2019) 7 SCC 108**, but as I am not making a departure I refrain from making a reference in this case (preserving such a course for a case if it becomes imperative in days to come) in the light of the aforementioned points. Therefore, it has been made clear that this order will not serve as a precedent for extension of statutorily prescribed time frame, more particularly, under TNHR&CE Act.



7. The aforementioned 01.11.2021 order of Hon'ble Predecessor Judge reads as follows:

'In all these writ petitions, the respective petitioner assails an order of refixation of fair rent with effect from 01.07.2016. Consequential orders for initiation of proceedings under Sections 78 and 79 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (the Act of 1959) are also under challenge.

2. The respective petitioner assails the order of refixation of fair rent primarily on the ground that such fair rent has been refixed with retrospective effect. By relying upon an order passed in N.Gurusamy Nadar and Others v. The Commissioner, Hindu Religious and Charitable Endowments Department, 2018 (3) MWN (Civil) 167, it is contended that the Court categorically held that fixation of fair rent with retrospective effect is impermissible in law. Therefore, the respective petitioner contends that the impugned order of refixation of fair rent is unsustainable. Although an appellate remedy is provided for under Section 34A(3) of the Act of 1959, it is submitted that these writ petitions are maintainable in view of the failure of the respondent to take into account the above mentioned order. The respective petitioner also contends that great prejudice would be caused if these writ petitions are not entertained inasmuch as the proviso to Section 34A(5) mandates that the refixed rent should be paid and satisfactory proof thereof submitted before an appeal is entertained.

3. On the contrary, the respondent submits that the constitutional validity of Section 34A of the Act of 1959, including in particular, the proviso to Section 34A(5) was upheld by a Division Bench of this Court in the judgment in Arulmigu Angala Parameswari and Kasivishwanathaswami Temple, Adimanaiveal House Owners Association v. The State of Tamil Nadu, 2009-3-L.W.728. Therefore, it is submitted that the present writ petitions are not maintainable.

4. Upon considering the rival contentions, it should be noted that a statutory remedy is provided for. In addition, there are disputed questions of fact as to whether the delay in fixation of fair rent is attributable to the respective petitioner as contended by the respondent. In these circumstances, the respective petitioner is not entitled to discretionary relief under Article 226 of the Constitution and should avail of the statutory remedy. At the same time, the contention of the respective petitioner that the order



of this Court, which was reported in 2018 (3) MWN (Civil) 167, has not been taken into consideration by the respondent is a contention that warrants consideration. Therefore, the appellate authority shall take the same into account while disposing of the appeals. In addition, it is just and necessary that the appeals be disposed of expeditiously.

5. Accordingly, all these writ petitions are disposed of by permitting the respective petitioner to present an appeal before the Commissioner in terms of Section 34A(3) of the Act of 1959. The respective petitioner is permitted to present such appeals within four weeks from the date of receipt of a copy of this order. If such appeals are presented within the said time limit, the Commissioner is directed to receive such appeals and dispose of the same on merits within a period of two months from the date of receipt thereof without going into the question of limitation. There will be no order as to costs. Consequently, connected W.M.P(MD).Nos.16300 to 16305, 16307, 16308, 16309, 16310 of 2021 are closed.'

8. In the light of the above, there being no dispute or disagreement between the parties that the captioned writ petitions are akin to the ten writ petitions in which aforementioned order has been made, captioned writ petitions will also stand disposed of on the same lines. For convenience, I reproduce the operative portion, namely paragraph 5 (though the entire order has been reproduced supra) and the same is as follows:

'5. Accordingly, all these writ petitions are disposed of by permitting the respective petitioner to present an appeal before the Commissioner in terms of Section 34A(3) of the Act of 1959. The respective petitioner is permitted to present such appeals within four weeks from the date of receipt of a copy of this order. If such appeals are presented within the said time limit, the Commissioner is directed to receive such appeals and dispose of the same on merits within a period of two months from the date of receipt thereof without going into the question of limitation. There will be no order as to costs....'

Consequently, captioned writ miscellaneous writ petitions are disposed of as closed. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



PS: After the order was dictated, learned counsel for writ petitioners request for return of the original of the impugned order in all the captioned matters for the purpose of enabling him to file/present a statutory appeals before the appellate authority, namely Commissioner-Hindu Religious and Charitable Endowments Department, No.119, Uthamar Gandhi Salai (previously Nungambakkam High Road), Chennai-600 034. Registry to return the impugned orders in all the captioned matter forthwith to the counsel on record for the writ petitioners under due acknowledgment. It is also made clear that the aforementioned order made by Hon'ble Predecessor Judge has been given quietus by the parties i.e., there are no intra-court appeals.

To
The Executive Officer,
Arulmighu Puttu Urchava Vagaiyara
Kattalai,
Arulmighu Sokkanathar Thirukovil,
Puttuthoppu, Madurai-625 016.

Copy to

1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
No.119, Uthamar Gandhi Salai, Chennai-600 034.

2. The Section Officer,E.R.Section,
Madurai Bench of Madras High Court, Madurai.

+2 CC to M/s.M. KANNAN, Advocate (SR-35440 & 35441)

+2 CC to M/s.M. SARAVANAN, Advocate (SR-35433 & 35434)

W.P(MD).Nos.19849 to 19858 and 19986 to 20012 of 2021

22.11.2021

SRK(CO)
TR(13.12.2021) 7P 8C