



W.P.No.13295 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

W.P.No.13295 of 2015

&

M.P.No.1 of 2015

Kantilal Jain

...Petitioner

Vs.

1.The Commissioner
Hindu Religious and Charitable Endowment Board
Uthamar Gandhi Road
Nungambakkam
Chennai-600 034

2.The Executive Officer
Chennai Ekambareshwar Devasthanam
No.315, Mint street,
Chennai-600 003

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified mandamus to call for the records from the file of the 1st respondent made in A.P.No.27 of 2014 dated 12.01.2015 and quash the same and further direct the 2nd respondent to collect the rent from the petitioner as being collected from the tenants of shop Nos.5 and 6 of Ekambareshwar Agraharam, mint street, Chennai-600 003.



WEB COPY



W.P.No.13295 of 2015

For Petitioner : Mr.S.Pushpakaran

For Respondents : Mr.N.R.R.Arun Natarajan,
Spl.GP (HR&CE) for R1

Mr.Wilson
for
M/s. A.S.Kailasam Associates for R2

ORDER

This Writ Petition is filed to issue a Writ of Certiorarified mandamus to call for the records from the file of the 1st respondent made in A.P.No.27 of 2014 dated 12.01.2015 and quash the same and further direct the 2nd respondent to collect the rent from the petitioner as being collected from the tenants of shop Nos.5 and 6 of Ekambareshwar Agraharam, mint street, Chennai-600 003.

2. The main ground on which the petitioner assailed the order of the Appellate Authority is that fair rent has not been fixed. According to him, the rent has to be enhanced only by 15% every three years. Whereas by proceedings dated 01.07.2010, the 2nd respondent demanded to pay a sum of Rs.7,338/- per month, which is arbitrary and unsustainable as per the prevailing Government order and besides they also demanded the arrears of



W.P.No.13295 of 2015

Rs.4,60,217/- . According to him, the rent has not been fixed taking into account the reality and the guideline value of the street, where the shop is situated.

3. It is the case of the respondents that fair rent has been fixed from 01.11.2011 onwards and 15% enhancement is made once in three years. The shop in the occupation of the petitioner is very near to the mint street and the fair rent is fixed by taking into account the cost of construction and the guide line value of the land. While fixing the fair rent notice dated 19.01.2008 was served on the petitioner and the same has been acknowledged by him. Pursuant to the same, the petitioner has sent a letter dated 16.09.2008 seeking to reduce the rent besides he also sent reply notices. The temple has also sent notices dated 20.03.2013 and 20.06.2013, However, despite receiving the notices the petitioner has not paid the rent. According to them the fair rent has been fixed as per the guidelines and rules taking into account the guide line value. Therefore, disputed the claim of the petitioner.

4. It is relevant to that the learned counsel appearing for the



W.P.No.13295 of 2015

petitioner would mainly contend that fair rent has not been fixed based on the guideline value of the Agraharam street whereas the guideline value of the mint street has been adopted. Therefore, the order impugned is to be set aside Appellate authority has to properly consider the same.

5. It is the specific contention of the learned counsel for the respondents that the shop in occupation of the petitioner is behind the entrance of the temple and is very near to the mint street. The guideline value has been properly adopted and the fair rent has been fixed from the year 2008 onwards and every three years 15% has been enhanced. What was challenged is only the impugned notice in the year 2013 of enhancing 15% rent on the fair rent fixed. The fixation of fair rent has not been challenged. Therefore, the impugned notice cannot be challenged as on today the petitioner is having arrears to the tune of Rs,29,93,018/-. Though the petitioner has filed an affidavit to surrender the possession, if the surrender is accepted the payment of rent cannot be recovered. Hence, opposed the Writ Petition.

6. I have perused the entire records.



WEB COPY

7. From the records filed before this Court particularly the proceedings for the year 2008, it is not in dispute that the fair rent has been fixed in the year 2008 itself and the same has not been challenged. The petitioner has not challenged the above proceedings. The fixation statements also served on the petitioner. The petitioner's property is situated in Sowcarpet, the commercial locality in Chennai. After receipt of the proceedings of fixation of fair rent, no challenge has been made in the year 2008, whereas only a representation to reduce the rent was sent. Thereafter, as per rules and Government Orders, once in three years 15% has been enhanced. Subsequently, by impugned notice, another 15% of rent has been enhanced and the demand has been made. Only the impugned notice enhancing 15% is alone that has been challenged. The fair rent proceedings are not even challenged.

8. In such view of the matter, once the enhancement has been made as per the rules of the Government orders under the pretext of challenging the impugned notice, the entire fair rent proceedings, which reached finality in the year 2008, cannot be challenged indirectly. At this



W.P.No.13295 of 2015

stage, learned counsel appearing for the petitioner would submit that he may be permitted to challenge the recent fixation of fair rent. It is for him to take appropriate legal recourse.

9. In such view of the matter, I do not find any merits in the Writ Petition. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

20.12.2022

kpr

Internet: Yes

Speaking/non-speaking order

To

1. The Commissioner
Hindu Religious and Charitable Endowment Board
Uthamar Gandhi Road
Nungambakkam
Chennai-600 034

2. The Executive Officer
Chennai Ekambareshwar Devasthanam
No.315, Mint street,
Chennai-600 003



WEB COPY



W.P.No.13295 of 2015

N. SATHISH KUMAR, J.

kpr

W.P.No.13295 of 2015
&
M.P.No.1 of 2015

20.12.2022