



C.R.P.(NPD)Nos.172, 182, 185, 187, 195, 196 and 201 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.10.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

C.R.P.(NPD)Nos.172, 182, 185, 187, 195, 196 and 201 of 2022
in CMP.Nos.971 and 975/2022 and 16540 of 2021 and 986 and 985/2022
and 16549 of 2021, 981 and 982/2022 and 16489 of 2021, 16544 of 2021,
1029 and 1030/2022 and 16485 of 2021, 1025 and 1026/2022 and 16546 of
2021 and 1041 and 1040/2022 and 16545, 6883 and 6894 of 2021

D.Senthil Kumar

...Petitioner

Versus

1.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Salem Division, Salem District – 01.

2.The Executive Officer,
A/m, Kailsanathar Temple,
Tharamangalam, Omalur Taluk,
Salem District.

...Respondents

COMMON PRAYER: Civil Revision Petition filed under Section 34A(5) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 r/w Article 227 of Constitution of India, praying to set aside the order dated 05.09.2020 passed by the Commissioner, HR&CE, Chennai, in A.P.No.14 of



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2019 confirming the fair rent fixation dated 23.10.2017 issued by the 1st respondent and impugned notices dated 05.03.2018 and 02.07.2018 of the 2nd respondent.

For Petitioner :Mr.R.Prabakar

For Respondent :M/s.Dr.S.Suriya
Additional Government Pleader
for R1 and R2

COMMON ORDER

These Civil Revision Petitions are filed challenging the order passed by the Commissioner HR&CE dated 05.09.2022 in the appeals filed by the petitioners under Section 34 A (3) of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, in A.P.Nos.14, 15, 12, 10, 18, 8 and 6 of 2019.

2. The revision petitioners are the tenants of the second respondent temple and received an intimation from the second respondent temple about fixation of fair rent for the shops let out to the revision petitioners.

3. Aggrieved by the enhancement of the rent by the second respondent, the revision petitioners filed a statutory appeal before the



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Commissioner HR&CE. At the time of hearing of the appeal, the Commissioner found that the exercise of fixation of fair rent was done without notice to the petitioners/tenants and without hearing their objections. Therefore, while disposing the appeal, the Commissioner directed the second respondent to give notice to the petitioner relating to fair rent fixation and he also directed that fixation of fair rent shop was to be done by 05.03.2018. Aggrieved by the said order, the revision petitioners have come up by way of this revision.

4. The learned counsel for the petitioner submitted that the fixation of fair rent by the second respondent without issuing notice to the revision petitioners/tenants is contrary to the judgment of this Court reported in (2009) 6 CTC 512 in Arulmigu Angala Parameswari and Kasivishwanathaswami Temple Adimanaiveal House Owners Association Vs. The State of Tamil Nadu rep. by its Secretary to Government and also the recent judgment of this Court in W.A(MD).No.786 of 2022.



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5. The learned counsel for the petitioner submitted that the Commissioner in its order found that the second respondent temple has not issued notice to the writ petitioners before revision of fair rent. But, however, without setting aside the fixation of fair rent, the Commissioner simply directed the second respondent to fix fair rent from 05.03.2018. Therefore, according to the learned counsel for the petitioner, the order of fixation fair rent without hearing the petitioner should be set aside.

6. Dr.S.Surya, learned Additional Government Pleader takes notice for both the respondents. The learned counsel for the respondent submitted that the notice was not issued to the petitioners and hence the second respondent was directed to issue notice to the petitioner to fix the fair rent. Consequently, no further orders are necessary in this revision.

7. This court in the order passed in W.A(MD).No.786 of 2022, considering the non issuance of notice to the tenants, observed as follows:

11. This aspect is reiterated by this Court as well as the Hon'ble Supreme Court in several cases.



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Following the judgment of the Hon'ble Supreme Court in Swadeshi Cotton Mills vs Union of India reported in 1981 AIR 818, a Full Bench of this Court in P.C. Thanikavelu vs The Special Deputy Collector reported in AIR 1989 Mad 222 has observed as follows:-

"6. The supreme Court has held in Swadeshi Cotton Mills vs Union of India reported in 1981 AIR 818 that even in the absence of express reference to observation of principles of natural justice, such principles should be followed whenever it affects the rights of parties. It cannot be gainsaid that when the lands of an individual are acquired, albeit he may be paid compensation, his civil rights may be affected. It is therefore elementary that, to be consistent with the principles of natural justice, such a person should be put on notice before his lands are acquired and his objection heard and considered. The enquiry contemplated under S.5-A of the Act would be full and complete only when the person who is really interested in the land is put on notice. But, at the same time, it is made clear that individual notice is mandatory only to those persons whose names are found in the revenue records or who are found by the Collector as persons interested on information received through reliable source." Therefore, this Court is of the view that the fair rent fixed by the



Committee without issuing a prior notice to the lessee giving an opportunity to the tenant to submit his objection regarding the factors proposed to be taken and considered by the Committee cannot be sustained, especially when the substantial right of appellant as a lessee is affected.

13. It is well settled that the principles of natural justice should also require lessee to be put on notice on the facts on the basis of which the fair rent is proposed to be fixed or revised. Therefore, the particulars that were taken by the respondents in the working sheet should be furnished to the appellant / lessee before fixing the fair rent. The contentions of the respondents that the working sheet was furnished to the appellant along with the impugned order is unacceptable. Therefore, the impugned order challenged in the writ petition is in violation of principles of natural justice and the same is arbitrary and hence the same cannot be sustained.

8. A reading of the judgment would suggest that without issuance of notice to the tenants and details of the working sheet, re-fixation of fair rent was done. In the case on hand, even in the impugned order passed by the Commissioner, he found that no notice was given to the revision petitioners. Hence, the fair rent fixed and intimated by the second respondent cannot be



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sustained. Therefore, the second respondent is directed to take steps for fixation of fair rent afresh by issuing notice to the tenants and after hearing the objections of the petitioners/tenants. It is open to the fair rent fixation committee to fix the fair rent in accordance with law. Any fair rent fixation shall be effective from 05.03.2018.

9. The learned counsel for the petitioner submitted that they have already paid newly fixed fair rent up to December 2021 before filing the appeal before the Commissioner.

10. The learned counsel for the respondent submits that the petitioners in C.R.P.(NPD)Nos.172, 182, 185, 187, 195, 196 and 201 of 2022 are in arrears and they have not paid the fair rent as fixed. The same is recorded.

11. In cases, where the petitioner/tenant failed to pay the fair rent within three months from the date of fixation of fair rent afresh by the fair rent fixation committee, it is open to the second respondent to take any action against them in accordance with law.



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12. Accordingly, these Civil Revision Petitions are disposed of. No costs.

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Index: Yes/ No
Speaking Order / Non-Speaking Order
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To

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S.SOUNTHAR, J.

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