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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Writ Petition No.3842 of 2022
and
W.M.P.No.3980 of 2022

M.Thiyagarajan

.. Petitioner

Vs.

1.The Commissioner
Hindu Religious & Charitable Endowments
Department
No.119, Uthamar Gandhi Road
Thousand Lights West
Nungambakkam
Chennai-600 034.

2.The Executive Officer
Arulmighu Palapattarai Mariamman Temple
Namakkal Town
Namakkal Taluk and District.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the respondents herein to consider the representation of the petitioner dated 12.02.2022 seeking for recalculation of monthly rent as Rs.14,736/- for the temple premises leased out to the petitioner situate in Namakkal Town, Door No.16/53, Mariamman Kovil street, Namakkal, opposite to Arulmigu Palapattarai Mariamman Thirukovil, having built-up area measuring an extent of 100.62 square meters as per G.O.(Ms) No.456, issued by Tamil Development, Religious Endowments and Information Department, dated 09.11.2007 and further directing the respondents, on such recalculation, to provide the petitioner herein with 6 months time for making payment of the rental arrears standing at Rs.11,43,544/- to be paid to the respondents herein till February 2022.

For Petitioner : Mr.S.Senthil

For Respondents : Mr.S.Yashwanth

Additional Government Pleader
(HR & CE)



O R D E R

The Writ Petition is filed for issuance of a Writ of Mandamus directing the respondents herein to consider the representation of the petitioner dated 12.02.2022 seeking recalculation of monthly rent as Rs.14,736/- for the temple premises leased out to the petitioner situate in Namakkal Town, Door No.16/53, Mariamman Kovil street, Namakkal, opposite to Arulmigu Palapattarai Mariamman Thirukovil, having built-up area measuring an extent of 100.62 square meters as per G.O.(Ms) No.456, issued by Tamil Development, Religious Endowments and Information Department, dated 09.11.2007 and further directing the respondents, on such recalculation, to provide the petitioner herein with 6 months time for making payment of the rental arrears standing at Rs.11,43,544/- to be paid to the respondents herein till February 2022.

2.By consent of both the learned counsel appearing for the petitioner through "Video-conferencing" as well as Mr.S.Yashwanth, the learned Additional Government Pleader, who takes notice for the respondents, the Writ Petition is taken up for final disposal at the stage of admission itself.

3.According to the petitioner, he is tenant under the 2nd respondent temple. The 2nd respondent leased out the vacant land to the petitioner, the petitioner put up RCC roof by spending a sum of Rs.15,00,000/- and gifted the same to the temple and it was leased out to the petitioner at a monthly rent of Rs.5,600/-. Subsequently, the monthly rent was enhanced by the 2nd respondent by the proceedings dated 16.12.2011 from 2001 for a period of 10 years based on G.O.Ms.No.456, Tamil Development, Religious Endowments and Information Department, dated 09.11.2007. The petitioner filed O.S.No.2 of 2012 on the file of the Additional District Munsif Court, Namakkal. The said suit was decreed. The appeal filed by the 2nd respondent in A.S.No.51 of 2016 was allowed. The 2nd respondent issued another notice dated 23.01.2019 demanding the petitioner to pay a monthly rent of Rs.26,100/- together with a sum of Rs.22,52,020/- as arrears of rent up to December 2018. According to the petitioner, he sought for explanation from the 2nd respondent as to how the rent was fixed at Rs.26,100/- per month. The 2nd respondent orally informed the petitioner that he would calculate and inform the petitioner. Without any such information, the 2nd respondent has issued notice dated 10.02.2022 demanding the petitioner to pay a sum of Rs.26,100/- as monthly rent from July 2016 together with a sum of Rs.32,17,720/- as arrears of rent up to January 2022. In the said notice, it has been further stated that if the petitioner fails to pay Rs.32,17,720/-, he will be treated as an encroacher and he will be evicted by invoking Sections 78 and 79



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of the HR and CE Act. In such circumstances, the petitioner has given representation dated 12.02.2022 to the 2nd respondent seeking the relief as stated above. Since no order was passed on the said representation, the petitioner has come out with the present Writ Petition.

4.The learned counsel appearing for the petitioner submitted that without giving any notice to the petitioner, in an arbitrary manner, the 2nd respondent has enhanced monthly rent contrary to the provisions. The learned counsel for the petitioner referred to calculation of rent stated in the affidavit and submitted that the present demand is without any merits and submitted that on 11.02.2022, the petitioner has paid a sum of Rs.12,00,000/-. According to the calculation of the petitioner, fair rent was fixed in the year 2011 and subsequent enhancement was 15% for every three years. Therefore, the balance amount to be paid by the petitioner to the 2nd respondent is only Rs.11,43,544/- and prayed for six months time to pay the said amount.

5.Mr.S.Yashwanth, the learned Additional Government Pleader appearing for the respondents on instructions, submitted that the petitioner is in arrears of Rs.32,17,720/- upto January 2022. The petitioner has not given any objection for the said calculation. The petitioner was issued notice and rent was fixed. The petitioner has to file only appeal before the 1st respondent, the present Writ Petition is not maintainable and prayed for dismissal of the Writ Petition.

6.Heard the rival submissions made by the learned counsel appearing for the petitioner as well as the learned Additional Government Pleader appearing for the respondents.

7.A similar issue was considered by this Court in the order dated 22.03.2010 made in W.P.No.3013 of 2010 [Thiruvannamalai Sevasram Educational Trust represented by its Secretary vs. The Fair Rent Committee, Represented by the Joint Commissioner, HR & CE, Villupuram] following the judgment of the Division Bench of this Court reported in (2009) 4 MLJ 1223 (Arulmigu Angala Parameswari and Kasivishwanathaswami Temple Adimanaiveal House Owners Association vs. State of Tamil Nadu represented by its Secretary to Government, Hindu Religious and Charitable Endowment Department, Chennai and others), setting aside the fair rent fixed by the temple and directed the petitioner therein to give objections to the temple authority and HR and CE Department to pass orders after considering the objections of petitioner therein on the ground that no opportunity was given to put forth his case. The ratio in the judgment of the Division Bench and order of this Court referred to above are squarely applicable to the facts of the present case. In view of the



same, the petitioner is entitled to the relief sought for in the Writ Petition.

8. The petitioner is directed to give objections for fixation of fair rent along with all the documents relied on by him within a period of four (4) weeks from the date of receipt of a copy of this order. On receipt of such objections, the respondents are directed to consider the objections in accordance with law and after giving opportunity of hearing to the petitioner, pass orders on the said objections. The learned counsel appearing for the petitioner submitted that the petitioner will pay the balance admitted amount of Rs.11,43,544/- in three instalments. In view of the same, the petitioner is directed to pay the said admitted amounts in three instalments on or before 5th of every month starting from May 2022 and pay second and third installments in June and July 2022 without fail. Till such time, the respondents are directed not to disturb the petitioner's possession till fair rent is fixed.

9. With the above directions, the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner
Hindu Religious & Charitable Endowments
Department
No.119, Uthamar Gandhi Road
Thousand Lights West
Nungambakkam, Chennai-600 034.

2. The Executive Officer
Arulmighu Palapattarai Mariamman Temple
Namakkal Town
Namakkal Taluk and District.

+1cc to Mr.S.Senthil, Advocate, S.R.No.12819
+1cc to the Government Pleader, S.R.No.12831

W.P.No.3842 of 2022
and W.M.P.No.3980 of 2022

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