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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2022

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THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.28627 of 2013
and MP No.1 of 2013

E.Gopal

....Petitioner

Vs.

1. The Secretary to Government,
Tamil Development Religious Endowments
and information Department,
Fort St. George,
Chennai 600 009.
2. The Commissioner,
Hindu Religious and Charitable
Endowment Department,
Uthamar Gandhi Road,
Nungambakkam, Chennai 600 034.
3. The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Sathuvachari, Vellore District.
4. The Executive Officer,
Arulmigu Vaikanda Perumal Thirukoil,
Kancheepuram Office at
Kachebeswarar Temple,
Nellukara Street,
Kancheepuram District

..Respondents

Prayer:- Writ petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records relating to the impugned demand dated 08.09.2013 and the termination of the tenancy dated 19.09.2013 passed by the 4th respondent herein and quash the same.

For Petitioner : Mr.M.Sriram

For Respondents : M/s.Geetha Tamaraiselvan
Special Government Pleader
for R1 to R3
M/s.K.Hari Haran for R4



O R D E R

This writ petition has been filed challenging the impugned demand raised by the 4th respondent temple dated 08.09.2013 and the consequential termination of tenancy order dated 19.09.2013 passed by the 4th respondent.

2. The case of the petitioner is that his father was a tenant in the property which belongs to the 4th respondent temple. He died in the year 1996 and the petitioner continued to be a tenant in the said property and was paying the rent for the vacant site.

3. The further case of the petitioner is that he was paying the rent regularly to the 4th respondent and all of a sudden, a notice dated 12.07.2012 came to be issued by the 4th respondent wherein a fair rent was fixed at the rate of Rs.1045/- per month for the portion occupied for residential purposes and a sum of Rs.3025/- per month for the portion occupied for commercial purposes. By virtue of this notice, the petitioner was informed that he has to pay an arrears of Rs.5,64,208/-. The petitioner disputed the above said notice mainly on the ground that there was a factual error while determining the portion that was occupied by the petitioner for the residential and commercial purposes. Accordingly, the petitioner issued a notice on 17.07.2012 through his counsel and informed the 4th respondent that there is no arrears of rent since the notice was devoid of particulars and agreed to pay the existing rent.

4. Thereafter, the impugned demand notice dated 08.09.2013 came to be issued by the 4th respondent in the name of the father of the petitioner. By virtue of this notice, the 4th respondent demanded a total arrears of Rs.7,22,108/-. This was once again contested by the petitioner through a legal notice dated 17.09.2013. As a consequence of not having complied with the demand notice issued by the 4th respondent, the tenancy was terminated by the 4th respondent through the impugned notice dated 19.09.2013. Aggrieved by the same, the present writ petition has been filed before this Court.

5. The respondents have filed separate counter affidavits. The main stand that has been taken by the respondents is that the rent was fixed as per the relevant Government orders and if the petitioner was really aggrieved by the fixation of rent, he had an alternative remedy under Section 34A (3) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter called as the Act) and without exhausting this remedy, the petitioner cannot maintain a writ petition before this Court. The respondents have also pointed



out the exorbitant arrears that is due and payable by the petitioner till January 2020 amounting to a sum of Rs.13,22,737/-. Accordingly, the respondents have sought for the dismissal of the writ petition.

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6. Heard Mr.M.Sriram, learned counsel for the petitioner and Mrs.Geetha Tamaraiselvan, learned Special Government Pleader for Respondents 1 to 3 and Mr.K.Hari Haran, learned counsel for 4th respondent.

7. It is seen from the demand notice issued by the 4th respondent that the fair rent has been fixed as per the relevant Government order viz., G.O.Ms.No.456 dated 09.11.2007. Even during the pendency of this writ petition, the subsequent enhancement of rent has been claimed and it is stated in the counter affidavit that the petitioner is due and payable a sum of Rs.13,22,737/- till January 2020. The rental arrears has been fixed by taking into consideration the monthly rent as Rs.11,915/- per month.

8. On carefully considering the submissions of the learned counsel for the petitioner, the only area of controversy seems to be the factual determination of the area that is occupied by the petitioner for residential purpose and the area occupied for commercial purpose. According to the petitioner, the 4th respondent ought to have given an opportunity to the petitioner in order to properly determine the area under commercial use and thereafter, the fair rent ought to have been fixed. Since this was not done, the petitioner claims that the 4th respondent has erroneously fixed the fair rent by fixing a larger area as if it is under commercial use.

9. In the considered view of this Court, the issue with regard to how much area is occupied by the petitioner for residential purpose and how much area is occupied for commercial purpose, is a factual dispute which cannot be gone into by this Court in exercise of its jurisdiction under Article 226 of Constitution of India. If the petitioner was really aggrieved by the fixation of the fair rent on this ground, the proper remedy for the petitioner would have been to file an appeal before the Commissioner as provided under Section 34 A (3) of the Act. Admittedly, the petitioner has not exhausted this remedy.

10. Availability of an alternative remedy is always considered to be a bar to maintain a writ petition except under certain circumstances. In the present case, the petitioner claims that he should have been given an opportunity to put forth his case and establish the area that has actually been put to commercial use. The dispute that has been raised by the



petitioner is something which requires ascertaining facts and the appellate remedy will be an appropriate forum to undertake this exercise. Hence, this Court is not inclined to interfere with the demand notice and the consequent termination of tenancy notice issued by the 4th respondent and this Court deems it fit to send this matter for determination before the 2nd respondent, who is the Appellate Authority. The Appellate Authority can go into the dispute that is raised by the petitioner and deal with the grievance of the petitioner.

11. The learned counsel for the petitioner submitted that this Court while granting interim orders, directed the petitioner to pay 25% of the amount indicated in the notice dated 08.09.2013 and it is stated that this order has been complied with by the petitioner. Even during the pendency of this writ petition, there was a subsequent enhancement of fair rent and admittedly, this has not been paid by the petitioner on the ground that an order of stay is operating in his favour. The counter affidavit of the respondents shows that the petitioner is due and payable a sum of Rs.13,22,737/- till January 2020. The rental arrears has been calculated by taking the monthly rent as Rs.11,915/- pm. If the very same amount is taken into consideration and the arrears of rent is calculated from February 2020 to May 2022, it amounts to a sum of Rs.3,33,620/-. If this amount is added to the existing arrears, it works out to a total sum of Rs.16,56,357/-.

12. In order to strike a balance and to provide an opportunity to the petitioner and at the same time not to deprive the 4th respondent the rental income, this Court is inclined to dispose of this writ petition with the following directions :-

(a) The petitioner is directed to deposit a sum of Rs.10,00,000/- before the 4th respondent within a period of eight weeks from the date of receipt of the copy of this order. While depositing this amount, the amount that has already been paid by the petitioner to the 4th respondent shall be given credit and the balance amount shall be deposited before the 4th respondent.

(b) The petitioner is directed to pay the monthly rent at the rate of Rs.7,500/- pm starting from July 2022 before the 4th respondent and the rent shall be paid on or before 5th of every month.

(c) The petitioner is directed to file an appeal before the 2nd respondent under Section 34 A (3) of the Act, within a period of 15 days from the date of



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receipt of a copy of this order and the 2nd respondent shall entertain the appeal and deal with the same on merits and in accordance with law after affording an opportunity to the petitioner.

(d) If the petitioner fails to comply with any of the conditions mentioned herein above, it is left open to the 4th respondent to proceed further by treating the petitioner as an encroacher and invoke the relevant provisions of the Act for the eviction of the petitioner.and

(e) If the petitioner complies with all the aforesaid conditions, the 2nd respondent is directed to pass orders on the Appeal filed by the petitioner strictly in accordance with law and the relevant government orders, within a period of three months from the date of filing of the Appeal by the petitioner and till then, the present status quo shall be maintained.

Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

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Sub Assistant Registrar

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To

1. The Secretary to Government,
Tamil Development Religious Endowments
and information Department,
Fort St. George,
Chennai 600 009.
2. The Commissioner,
Hindu Religious and Charitable
Endowment Department,
Uthamar Gandhi Road,
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3. The Joint Commissioner,
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Endowment Department,
Sathuvachari,
Vellore District.



4. The Executive Officer,
Arulmigu Vaikanda Perumal Thirukoil,
Kancheepuram Office at
Kachebeswarar Temple,
Nellukara Street, Kancheepuram District.

+1cc to Mr.M.Sriram, Advocate, S.R.No.32169
+1cc to the Government Pleader, S.R.No.32680

W.P.No.28627 of 2013
and MP No.1 of 2013

NRJK (CO)
SB(16/06/2022)