



C.R.P.Nos.3135 of 2022 etc.,

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

C.R.P.Nos.3135, 3138, 3140, 3141, 3143, 3144, 3145, 3147, 3148, 3149, 3150, 3151, 3152, 3153, 3154, 3157 and 3158 of 2022 and C.M.P.Nos.16840, 16846, 16848, 16850, 16852, 16853, 16857, 16864, 16865, 16866, 16868, 16867, 16869, 16870, 16876 and 16878 of 2022

CRP.No.3135 of 2022

Dinesh Kumar

.. Petitioner

Vs.

Arulmigu Selliamman Thirukoil,
Represented by its Executive Officer,
Velcherry, Chennai – 600 042.

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, pleaded to set aside the common order dated 07.03.2022 passed in RC.No.39857/2019/D2 on the file of the Commissioner, Hindu Religious and Charitable Endowment Department, Chennai – 600 034, against notice dated 04.06.2019 issued by the Executive Officer by allowing the above Civil Revision Petition.

For Petitioner : Mr.B.Ullasavelan

For Respondent : M/s.Dr.S.Suriya,
Additional Government Pleader



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COMMON ORDER

These Civil Revision Petitions are filed challenging the order passed by the Commissioner, (HR&CE) department dismissing the appeals filed by the revision petitioners as not maintainable on the ground that the petitioners failed to deposit the arrears of rent as a condition for entertaining the appeals as per the order passed by him dated 14.10.2019.

2. According to the revision petitioners, they have constructed superstructures in the land belongs to the respondent temple under permission from the trustees of the temple. According to them they are the lessees of the site and the superstructure was built by them by spending huge amount. It was stated by the petitioners that the respondent issued a notice dated 04.06.2019 where-under he unilaterally revised the rent payable by the petitioners from 01.07.2016. It was stated that revised rent runs into more than 10 times of the existing rent that is being paid by the petitioners. It was also specifically stated that the revised fair rent was fixed even without any notice to petitioners or without conducting any enquiry and physically verifying the economic and physical conditions of the superstructures.



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3. Aggrieved by the intimation sent by the respondent temple dated 04.06.2019, directing the petitioners to pay a revised fair rent from 01.07.2016, the petitioners preferred an appeal under Section 34 A (c) of Hindu Religious and Charitable Endowment Act, 1959 (Hereinafter referred to as 'HR&CE Act' for brevity). In view of the proviso to Section 34 A (5) of the HR&CE Act, the Commissioner passed an order on 14.10.2019, directing the petitioners to pay the unpaid arrears of rent at the existing rate upto the date of intimation of revised rent (04.06.2019). He further ordered that the arrears of rent shall be paid from the date of intimation of the revised rent at the revised rate. Having passed such an order, the Commissioner posted the matter to 04.11.2019 to file proof of deposit of arrears and to decide the admissibility of the appeals. When the matter was taken up for hearing on 29.06.2021 and thereafter on 08.09.2021, it was informed that the petitioners failed to comply with the order of the Commissioner dated 14.10.2019 and paid the arrears of rent accordingly. Consequently, as the revision petitioners failed to pay the arrears of rent as per the direction dated 14.10.2019, the appeals preferred by the revision petitioners were dismissed as not maintainable. Aggrieved by the said order, the revision petitioners are before this Court.



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4. The learned counsel for the petitioners submitted that the petitioners are very poor persons and they have put up superstructures by spending the hard earned money in the land belongs to the respondent. The respondent unilaterally revised the fair rent increasing it to more than ten times, even without issuing notice to the petitioners. It was also submitted by the learned counsel that the calculation sheet containing the details of the revision of rent was not at all furnished to the revision petitioners. The learned counsel also submitted that under Section 34 A of HR&CE Act, the fair rent shall be fixed by a Committee consisting Joint Commissioner, Executing Officer or Trustee of the Temple and District Registrar of the Registration Department. In the case on hand, in the intimation given by respondent temple, there is no indication regarding fixation of fair rent by the competent committee under Section 34 A of HR&CE Act. It is the submission of the learned counsel that the respondent, the executive officer of the temple is not entitled to fix fair rent under the Act.

5. Dr.S.Suriya, learned Additional Government Pleader appearing for the respondent temple takes notice and submitted that the deposit of arrears of rent is the condition precedent for entertaining the appeals filed by the petitioners as per proviso to Section 34 A Sub section 5 of the HR&CE Act. The learned counsel



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further submitted that, by an order dated 14.10.2019, the Commissioner directed the petitioners to pay the unpaid arrears of rent at the existing rate till the date of intimation and at the revised rate from the date of intimation. The petitioners have not challenged the said order (14.10.2019) and consequently the same had become final. Admittedly, the petitioners failed to comply with the said order and therefore appeals filed by the petitioners before the Commissioner of HR&CE were not at all maintainable. In view of the default committed by the petitioners in complying with the earlier order, the Commissioner, HR&CE Department had no other option but to dismiss the appeals.

6. Heard the arguments of the learned counsel for the petitioners and that of the learned Additional Government Pleader for the respondent. Perused the typed set of papers.

7. The reading of proviso to Section 34 A sub section 5 of HR&CE Act make it clear that any person aggrieved by an order fixing the fair rent under Section 34 A Sub section (2) of HR&CE Act can file an appeal before the Commissioner of HR&CE provided he deposits the arrears of rent till the date of filing of the appeals.



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8. Admittedly, in the case on hand the petitioners did not deposit the arrears of rent on the date of presentation of the appeals by them before the Commissioner of HR&CE. Taking lenient view of the matter, the Commissioner, HR&CE by an order dated 14.10.2019 directed the petitioners to pay the arrears of rent at the existing rate till the date of intimation of the revised rent and at the revised rate thereafter. The extract of the order passed by the Commissioner dated 14.10.2019 is as follows:-

“(i) the petitioner is directed to settle the unpaid arrears at the existing rate, till the date of intimation of revised rent and arrears at the revised rate from the date of intimation of revised rent.

(ii) The above petition is posted on 04.11.2019 to file proof of deposit of arrears to decide the admissibility of the main Appeal petition.”

9. In view of the proviso to Section 34 (A) sub section 5 of HR&CE Act, an appeal filed without deposit of arrears of rent cannot be entertained. In the case on hand, though Commissioner directed the petitioners to pay the arrears, the petitioners failed to comply with the said order. The learned counsel for the petitioners submitted that the petitioners were unable to pay the arrears of rent as directed by the Commissioner in view of the COVID-19 lockdown and resultant



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deprivation of livelihood. The learned counsel also submitted that if time is extended by this Court for complying with the order passed by the Commissioner dated 14.10.2019, the petitioners are ready to deposit the arrears as ordered.

10. The appeal remedy available to the revision petitioners is a substantial right and the petitioners also expressed their willingness to pay the arrears of rent as ordered by the Commissioner. The reading of proviso to Section 34 (A) sub section 5 of the HR&CE Act would make it clear that the petitioners should deposit the arrears of rent as on the date of the filing of the appeal. Once the petitioners deposit the arrears of rent as directed till the date of filing of the appeal, the condition precedent mentioned under proviso to Section 34 (A) sub section 5 of the HR&CE Act has been complied and there may not be any impediment for the Commissioner to entertain the appeals. In view of the difficulty expressed by the petitioners due to the COVID-19 lockdown and consequential deprivation of livelihood, this Court is inclined to extend the time for payment of arrears of rent as ordered by the Commissioner by order dated 14.10.2019 at the existing rate till the date of intimation of revised rent (04.06.2019) and at the rate of revised rate from the date of intimation of revised rent to till the date of filing of appeals. Once the petitioners deposit the entire arrears as directed above till the date of original filing



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of the appeals, the Commissioner, (HR&CE) shall number the appeals and dispose

it of in accordance with law.

11. All the Civil Revision Petitions are allowed by extending the time by four weeks from today to enable the Revision Petitioners to deposit the revised rent from the date of intimation to the date of filing of appeals, together with arrears of rent, if any till the date of intimation at the existing rate. On such deposit, the Commissioner, (HR&CE) is directed to number the appeal and dispose of the same in accordance with law.

12. In view of the above, these Civil Revision Petitions are allowed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

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Index: Yes
Speaking Order
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To



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The Commissioner,
Hindu Religious and Charitable Endowment Department,
Chennai – 600 034

S.SOUNTHAR, J.

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