



W.P.No.10721 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **21.12.2022**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.10721 of 2014
and M.P.No.2 of 2014

S.Mohandas

.. Petitioner

Vs.

1. The Commissioner,
HR & CE, Admn. Department,
Chennai - 34.
2. The Joint Commissioner,
HR & CE, Admn. Department,
Salem.
3. The Executive Officer,
Arulmighu Kottaimariamman Temple,
Salem - 1.

.. Respondents

Prayer : Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus calling for the records of the third respondent herein culminating with his proceeding dated 10.03.2014 and quash the same and to direct the third respondent to fix the fair rent in accordance with G.O.Ms.No.456, dated 09.11.2007 and the donation in accordance with G.O.Ms.No.277, dated 02.12.2005 and to effect name change of the shop bearing No.437 in favour of the petitioner herein.



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For Petitioner : Mr.M.Vaidyanathan

For Respondents 1 & 2 : Mr.M.Bindran
Addl. Government Pleader (HR&CE)

For Respondent 3 : Mr.S.Kandasamy

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ORDER

Challenging the order of the third respondent dated 10.03.2014, fixing fair rent of Rs.11,920/- in respect of the Shop No.437, this writ petition has been filed.

2. It is the case of the writ petitioner that originally the above shop was under the occupation of one Palanisamy and he was continuously paying the rent. The said Palanisamy died in the year 2005 and thereafter the petitioner was all along continuing in said shop and he also gave a representation to the respondents to recognise him as a tenant and revision has also been filed before the Commissioner. His representation has also been disposed of on 12.08.2013. But the above order allowed the petitioner to continue in possession provided he clears all the rent existing at the relevant point of time and liberty was also granted to the petitioner to approach the temple authorities within 15 days from the date of receipt of that order for transfer of tenancy. Thereafter, now the communication has



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been issued on 10.03.2014 claiming fair rent at the rate of Rs.11,920/- which was impugned in this writ petition.

3. It is contended by the respondents that the petitioner has deposited some amount and that apart as of now the petitioner has to pay a sum of Rs.1,10,000/- and opposed the writ petition.

4. I have heard the learned counsel on either side and also perused the entire records.

5. In the communication dated 10.03.2014, sent to the petitioner fixing fair rent, there was no details provided in the communication as to the manner in which the said amount has been fixed in the impugned notice. Further, there is no material placed before this Court as to how the respondents have fixed the fair rent. After recognising the petitioner possession in the property no notice whatsoever has been given to the petitioner in this regard.

6. It is relevant to note that a Division Bench of this Court in ***N.K.Ram Vishnu Raja Vs. The Commissioner, HR & CE*** in W.A.(MD)



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No.786 of 2022, dated 01.08.2022 in paragraphs 16 and 17 has held as

follows:

"16. As pointed out earlier, the appellant / lessee is entitled to be heard before fixing the fair rent. Unless the particulars, based on which the respondents proceeded to revise the rent are furnished to the appellant, he will not be in a position to put forth his case efficiently and the Committee cannot proceed to fix the fair rent without such notice giving opportunity as otherwise it will amount to fixing the fair rent unilaterally. Even with regard to the provisions of the Act, when the lessee is required to pay the fair rent fixed by the Committee, the order fixing the fair rent by the Committee cannot be treated as an administrative order as there is an adjudication involving civil rights. The proviso to Section 34A gives an indication that the lessee can maintain the appeal only if it is accompanied by satisfactory proof of deposit of the lease rent so fixed or refixed. Therefore, this Court is of the view that the Committee can fix fair rent only after issuing a notice informing the lessee of all the factors / details that are taken into account for revising or refixing the fair rent.



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17. In the result, this Writ Appeal is allowed and the order of learned Single Judge is set aside. The second respondent is directed to constitute a Committee as contemplated under Section 34A of the Act and fix the fair rent after issuing notice to the appellant as to the proposed revision. The show cause notice to the appellant should clearly indicate the facts which will be taken into consideration for fixation of fair rent. The Committee shall pass appropriate orders within three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed."

7. Such view of the matter, as no notice whatsoever has been given to the petitioner and fair rent has been unilaterally fixed without conducting proper enquiry, the impugned order of the 3rd respondent dated 10.03.2014 is liable to be set aside and accordingly set aside. The respondents are directed to follow proper procedure as contemplated under the HR & CE Act and after giving opportunity to the petitioner fix the fair rent and the petitioner shall continue to pay the original rent till the fair rent is fixed and the petitioner is also liable to pay the fair rent including arrears if any for the



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period fair rent is fixed. With the above observations, this writ petition is allowed. Consequently, the connected miscellaneous petition is closed. No costs.

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Index : Yes / No
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N.SATHISH KUMAR, J.

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