



W.P(MD).No.3439 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

ORDER RESERVED ON : 22.11.2022

ORDER PRONOUNCED ON : 25 .11.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.3439 of 2013

and M.P(MD).Nos.3 to 5 of 2013

The Special Officer
O.1018, Sivakiri Co-operative Society
Sivakiri
Tirunelveli District

....Petitioner

Vs

1.The Executive Officer
Tmt.Rani Karuppayee Nachiar Kattalai
Sivakiri

2.The Joint Commissioner
Hindu Religious and Charitable Endowment Department
Tirunelveli

3.The Commissioner
Hindu Religious and Charitable Endowment Department
Nungambakkam High Road
Chennai 600 034

....Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the third respondent dated 13.02.2013 in R.P.No.46 of 2012.D2 and quash the same and consequently direct the respondents to execute a fresh lease rent in favour of the petitioner herein with a fair rent and



W.P(MD).No.3439 of 2013

terms as fixed therein, from January 2013 in respect of the premises which was the subject matter of the said proceedings in R.P.No.46 of 2012 D2.

For Petitioner : Mr.VR.Shanmuganathan
For R1 : Mr.D.Malaichamy
For R2 & R3 : Mr.N.Ramesh Arumugam
Government Advocate

ORDER

The present writ petition has been filed challenging an order passed by the third respondent herein under which he has confirmed the order of eviction passed by the second respondent herein under Section 78 of Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.

2.The petitioner is a Co-operative Society which is conducting a fair price shop in the temple Mandapam belonging to the first respondent from the year 1949 onwards. According to the petitioner Society, it is not regularly built commercial building. A lease agreement was entered into on 12.09.1980 with a condition that the Society had to vacate the shop for festival of the Balasubramania Swami Kovil, Sivakiri during the Tamil month of Panguni for 10 days. The society is still abiding the said Clause by spending nearly a sum of Rs.10,000/- for necessary arrangements. He had further submitted that the society is running a fair price shop and hence, it is not a commercial arrangement for profit motive.



W.P(MD).No.3439 of 2013

3. According to the learned counsel for the petitioner, the agreed rent per month is Rs.500/- and the said rent was unilaterally enhanced by the first respondent herein without constituting any committee as contemplated under G.O.No.456 dated 09.11.2007. The first respondent had mechanically fixed the rent as applicable to a commercial building for the open Mandapam which is in possession of the petitioner society.

4. The learned counsel for the petitioner had further contended that the first respondent has not issued a notice of termination of lease till date and the first respondent had unilaterally increased the rent without approval of the fair rent committee. The agreed rent which was offered by the petitioner Society was received by the first respondent till July 2007 and thereafter, the first respondent had refused to receive the amount. In the said circumstances, the first respondent had filed an eviction petition in M.P.No.4 of 2008 on the file of the second respondent seeking for delivery of possession. By an order dated 07.01.2010, the second respondent has ordered delivery of possession. Challenging the same, the petitioner Society had filed a revision petition before the third respondent herein. The third respondent had originally passed an undated order in January 2013 and uploaded the same in their web-site. As per the said order, the petitioner Society was given time till 28.02.2013 to execute an agreement bond for payment of the entire arrears amount and to execute necessary lease deed and should remit the fair rent from January 2013



W.P(MD).No.3439 of 2013

onwards as agreed. If the petitioner agrees with these directions, the respondent is directed to remove the seal and open the shop. However, suddenly on 13.02.2013, another order was up-loaded by the third respondent herein. As per the said order, the third respondent has arrived at a finding that the petitioner Society is dragging on the matter without paying fair rent fixed by the committee and proceeded to confirm the order of eviction passed by the second respondent herein. This order is under challenge in the present writ petition.

5.The learned counsel for the petitioner had further contended that the fair rent was not fixed as contemplated under G.O.No.456 dated 09.11.2007. The contention of the first respondent endowment that the monthly rent was enhanced to Rs.2811/- is not correct and no such order was passed by the committee and the same was not intimated to the petitioner society. The petitioner was not heard before passing any such order of enhancement of rent. The petitioner was regularly paying the agreed rent of Rs.500/-. Hence, the issue of non payment of arrears between 01.07.1998 and 13.09.2007 is not factually correct.

6.The learned counsel for the petitioner had further submitted the at no point of time, the arrears amount was demanded from the petitioner society and no notice for terminating the lease deed dated 01.10.2007 was ever received by the petitioner society. He had further submitted that based upon



W.P(MD).No.3439 of 2013

the said unilateral enhancement of the rent, the first respondent had approached the second respondent for an order of eviction for non payment of arrears of the enhanced fair rent. In the said application, the petitioner society has filed a counter that they have not received any notice of termination of tenancy or any order under which the enhanced fair rent was intimated to the writ petitioner. Only when the eviction proceedings were pending, the document relating to enhancement of fair rent by the fair rent committee was produced to the writ petitioner. Hence, there is no basis whatsoever for seeking eviction under M.P.No.4 of 2008 on the ground that the petitioner society has not paid the fair rent.

7.The learned counsel for the petitioner had further contended that without considering the counter filed by the writ petitioner, the second respondent has proceeded to pass an order of eviction and directed the petitioner to hand over possession. He had further stated that the petitioner had challenged the said order before the third respondent herein. The third respondent had up-loaded an order in January 2013 granting time to the writ petitioner to pay arrears amount. However, another order was uploaded on 13.02.2013 confirming the order of eviction passed by the second respondent herein. The third respondent was carried away by the fact that already tenancy has been terminated by way of a notice dated 01.07.2007, due to non payment of arrears of enhanced rent and hence, there is no other defence available to



W.P(MD).No.3439 of 2013

the petitioner society and confirmed the order of eviction.

WEB COPY

8. According to the learned counsel for the petitioner, the procedure for fixation of fair rent for a building belonging to the HR & CE Department, is no longer *res integra*. The learned counsel had relied upon a Division Bench judgment of our High Court in ***W.A.No.8 of 2008 and W.P.No.1611 of 2008 dated 06.02.2009 (Arulmigu Anghla Parameswari and others Vs. The State of Tamil Nadu and others)***. The learned counsel had further contended that the rent fixation committee should provisionally assess the enhanced rent and thereafter, put on notice calling for his objection. After receiving objection, the said committee is at liberty to pass a final assessment order which should be intimated to the concerned tenant. However, the said procedure has not been followed in the present case.

9. The learned counsel for the petitioner had further submitted that the society was not put on notice relating to the provisional assessment and no explanation or objection was called for from the petitioner society before arriving at a final assessment. The committee seems to have unilaterally decided about the fair rent. Even the said order was not communicated to the tenant. In such an event, the question of default on the part of the tenant to pay the said enhanced fair rent is not legally sustainable. The learned counsel also relied upon a judgment of this Court reported in ***2018(3) MWN (Civil) 167 (M.Gurusamy Nadar Vs. The Commissioner, Hindu Religious &***



W.P(MD).No.3439 of 2013

Charitable Endowment Department, Chennai and others) to contend that without issuing notice to the tenant, the committee cannot fix the fair rent.

10.The learned counsel for the petitioner had further contended that the petitioner Society has taken a specific stand in the counter in M.P.No.4 of 2008 filed under Section 78 of HR & CE Act that fair rent was not fixed as per the Government Order and the same was not communicated to the writ petitioner society. Only during the pendency of the eviction proceedings before the second respondent, the fair rent fixation order has been served upon the writ petitioner. Hence, the non payment of fair rent or not challenge of the said fair rent order cannot be found fault with the of the respondents 2 and 3 herein. The entire proceedings have taken place behind the back of the petitioner society and only the eviction proceedings have been conducted after issuing notice to the writ petitioner. Hence, he prayed for allowing the writ petition.

11.Per contra, the learned counsel appearing for the first respondent had contended that though the fair rent was fixed at Rs.2811/- in the schedule building w.e.f 01.07.1998 onwards, the petitioner society had not paid enhanced rent and they are in huge arrears of Rs.2,59,521/- till 30.09.2007. Therefore, the first respondent had issued a notice on 08.09.2003 calling upon the petitioner society to pay arrears of rent. Since the petitioner society did not respond, a notice dated 01.10.2007 was issued to the petitioner



W.P(MD).No.3439 of 2013

terminating the lease and directing them to surrender the schedule mentioned property. Though the petitioner had received the same on 04.10.2007, they have not vacated the premises. This had constrained the first respondent endowment to approach the second respondent by way of filing M.P.No.4 of 2008.

12.The learned counsel for the first respondent had further contended that since the first respondent had made a complaint in his counter that he is not in receipt of fair rent fixation order, the same was furnished to him pending M.P.No.4 of 2008. However, the same cannot be taken advantage by the writ petitioner. He had further contended that all the documents relating to the fixation of fair rent and the service of the said order on the writ petitioner were placed before the second respondent herein and only after considering the said documents, an order of eviction was passed by the second respondent herein. He had further contended that the undated order in January 2013 that was up-loaded by the office of the third respondent was by mistake and the said order is not enforceable. A detailed order has been passed by the third respondent on 13.02.2013. In the said order, the third respondent has specifically found that despite termination of the lease, the petitioner is squatting over the property and hence, he should be treated only as a trespasser warranting eviction proceedings under Section 78 of Hindu Religious and Charitable Endowment Act. The third respondent further found



W.P(MD).No.3439 of 2013

that the petitioner society is dragging the matter by contending a false reason without paying the entire arrears. Hence, he prayed for sustaining the order impugned in the writ petition.

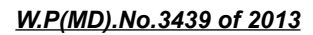
13.I have considered the submissions made on either side and perused the materials available on record.

14.There is no dispute between the relationship of the petitioner and the first respondent herein as landlord and tenant. The petitioner is a Co-operative Society running a fair price shop in the Mandapam belonging to the first respondent endowment. Agreed rent between the parties is Rs.500/- and admittedly, the said rent is being paid by the petitioner society till date without any default. The issue that has arisen between the parties is with regard to the fixation of fair rent and the non payment of the same by the petitioner society.

15.According to the learned counsel for the first respondent, the fair rent was fixed at Rs.2811/- with effect from 01.07.1998. The said order was passed by the fair rent fixation committee by their resolution dated 29.10.1998. The said resolution was also informed to the writ petitioner. Despite information about the said fair rent fixation, the petitioner society has neither challenged the same nor came forward to pay the enhanced rent.

16.A learned Single Judge of this Court in a judgement reported in

2018(3) MWN (Civil) 167 (M.Gurusamy Nadar Vs. The Commissioner,



others) in paragraph No.18 has held as follows:

17. The Hon'ble Division Bench of our High Court in a Judgement reported in ***W.A.No.8 of 2008 and W.P.No.1611 of 2008 dated 06.02.2009 Arulmigu Anghla Parameswari and others Vs. The State of Tamil Nadu and others***) has relied upon the guidelines issued by the Government on 08.07.2008 for determining the lease rent. The Hon'ble Division Bench also relied upon the proceedings of the Government dated 02.02.2009 under which the Government had directed the fair rent fixation committee to fix provisional assessment order and serve the same along with a working sheet



W.P(MD).No.3439 of 2013

to the tenant calling for his objection. After considering the objection, the fair rent committee was at liberty to proceed further and pass a final assessment order.

18.In the present case, no document has been placed on record to indicate that at any point of time the petitioner society was issued with any notice calling upon him to furnish his objection relating to the proposed enhancement of rent. Even no records have been placed before the Court with regard to the intimation of the fair rent fixed by the said committee. Hence, it is clear that the fair rent fixed at the rate of Rs.2811/- per month is clearly in violation of the guidelines issued by the Government for the fair rent fixation committee. Only for non payment of the said enhanced rent, a notice has been issued by the first respondent terminating the lease. The termination of lease is only consequential to the non payment of the alleged enhanced fair rent.

19.The entire proceedings have been initiated by the first respondent only based upon the non payment of the enhanced fair rent. Since this Court has arrived at a finding that the fair rent has not been fixed as per guidelines issued by the Government, the same cannot be enforced as against the writ petitioner society. The alleged termination of lease is also based upon the said non payment of enhanced rent. Being consequential, the same is also not enforceable.



W.P(MD).No.3439 of 2013

20. In view of the above said facts, the orders impugned in the writ petition are set aside and the following order is passed:

(i). The Fair Rent Fixation Committee is directed to serve a provisional fixation of fair rent order along with working sheet to the petitioner Society.

(ii). The petitioner Society is at liberty to submit their explanation within 7 days from the date of receipt of the said notice.

(iii). The Committee shall proceed to fix the fair rent taking into consideration the objection found in the reply given by the tenant.

(iv). The petitioner shall continue to deposit the agreed rent of Rs.500/- with the first respondent.

21. With the above said observations, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

25 .11.2022

Internet : Yes/No

Index : Yes/No

msa



W.P(MD).No.3439 of 2013

To

WEB COPY

1.The Joint Commissioner
Hindu Religious and Charitable Endowment Department
Thirunelveli

2.The Commissioner
Hindu Religious and Charitable Endowment Department
Nungambakkam High Road
Chennai 600 034



WEB COPY



W.P(MD).No.3439 of 2013

R.VIJAYAKUMAR, J.

msa

Pre-delivery order made in

W.P.(MD).No.3439 of 2013
and M.P(MD).Nos.3 to 5 of 2013

25.11.2022