



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **29.03.2022**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P. (MD) No.3200 of 2022

and

W.M.P. (MD) Nos.2781 and 2782 of 2022

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C.Saraswathi

... Petitioner

/vs./

1.The Commissioner,
HR & CE Administration, Department,
Mahatma Gandhi Road, Nungambakkam,
Chennai 600 034.

2.The Assistant Commissioner/Executive Officer,
Arulmigu Thayumanasamy Kovil Devasthanam,
Rockfort,
Tiruchirappalli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the 1st respondent to dispose of the revision in R.C.No.51025 of 2021 dated 12.07.2021 within time bound fixed by this Court.

For Petitioner	: Mr.S.Ramesh
For R1	: Mr.P.Subbaraj Special Government Pleader
For R2	: Mr.M.Saravanan

ORDER

The petitioner has filed this writ petition for a Mandamus to direct the 1st respondent to dispose of the revision in R.C.No.51025 of 2021 dated 12.07.2021.

2.It is the case of the petitioner that the Committee contemplated under Section 34-A (3) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (*herein after referred to as "Act"*) has fixed the fair rent on 05.06.2020. Pursuant to the aforesaid fixation of fair rent, the 2nd respondent temple has called upon the petitioner to pay arrears of rent at Rs.18,980/- per month for the period between 01.07.2016 and 30.06.2019. Prior to the aforesaid period, the petitioner was paying a fair rent of Rs.10,050/- per month for 300.63 sq.ft., of the shop located in the precinct of the Arulmigu Thayumanasamy Kovil Devasthanam, Trichy in NSB Road, Trichy.

3.Aggrieved by the demand of the 2nd respondent dated 21.08.2020 fixing the fair rent, the petitioner has preferred an appeal under Section 34-A (3) of the Act before the 1st respondent, namely, The



Commissioner, HR & CE Department, Chennai. The appeal filed by the petitioner on 12.07.2021 is yet to be numbered. Hence, the present writ petition has been filed.

4.The learned counsel for the petitioner submits that the petitioner has been diligent in paying the rent all along. It is submitted that prior to 01.01.2018, the petitioner was paying the fair rent of Rs.9,330/- and thereafter, Rs.10,050/- (Rs.10,730/-) and that on 21.08.2020, the impugned communication was issued, calling upon the petitioner to pay arrears. Under these circumstances, the petitioner has preferred an appeal under Section 34-A (3) of the Act before the 1st respondent.

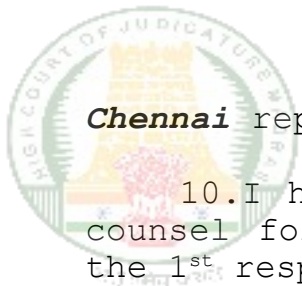
5.The learned counsel for the petitioner further submits that the fixation of fair rent and the consequential demand dated 21.08.2020 for the period between 01.07.2016 and 30.06.2019 are burdensome as it denies the petitioner's legitimate right to redress his grievance, particularly in the light of the fact that the petitioner was not in arrears of the rent that was fixed and paid by the petitioner. It is therefore submitted that the petitioner is entitled for the relief as stated above.

6.The learned counsel for the 2nd respondent on the other hand submits that there are about 44 shops in the temple premises and that about 21 tenants have deposited the mandatory pre-deposit as is contemplated proviso to Section 34-A (5) of the Act and that about 8 persons have filed C.R.P.(MD) Nos.1559 to 1563 and 1955 to 1957 of 2022 against the order of the 1st respondent, directing the temple to calculate the unpaid arrears at the existing rate till the date of intimation of the revised rent and the arrears at the revised rent from the date of intimation of the revised rent till 30.04.2021 and that about 8 persons have challenged the same in the above Civil Revision Petitions.

7.It is noticed that an order of interim stay has been granted by this Court against the operation of the order dated 29.04.2021. It is submitted that the petitioner cannot expect the appeal to be numbered without pre-deposit and therefore, the learned counsel for the 2nd respondent submits that the writ petition is devoid of merits and is also liable to be dismissed.

8.The learned Special Government Pleader for the 1st respondent submits that the appeal will be numbered subject to the petitioner's compliance of the mandatory requirements of proviso to Section 34-A (3) of the Act.

9.The learned counsel for the 2nd respondent has relied upon the judgment of this Court in the case of **Arulmigu Angala Parameswari and Kasivishwanathaswami Temple, Adimanaiveal House Owners Association Vs. The Secretary to the Government, HR&CE Department,**



Chennai reported in **2009-L.W.728**.

10.I have considered the rival submissions made by the learned counsel for the petitioner, learned Special Government Pleader for the 1st respondent and the learned counsel for the 2nd respondent.

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11.The undisputed facts of the petitioner are that the petitioner has paid the rent as determined with effect from 01.01.2016 at Rs.10,050/- as it is evident from reading of the communication dated 26.06.2020 of the 1st respondent. The aforesaid communication appears to be based on the determination of fair rent by the Fair Rent Fixation Committee under Section 34-A (3) of the Act on 05.06.2020. The arrear, for which the petitioner has been now called upon to pay, is Rs.5,00,650/- for the period between 01.07.2016 to 30.06.2019. The fixation of fair rent long after the period comes in the way of filing a statutory appeal as proviso to Section 34-A (5) of the Act contemplates that no appeal or revision shall be entertained.

12.Thus, the questions that arise for consideration are whether the fixation of fair rent by the Fair Rent Fixation Committee under Section 34-A of the Act long after the period can be the basis of pre-deposit under the proviso to Section 34-A (5) of Act and whether the petitioner was entitled to any notice before the fair rent was fixed by the Fair Rent Fixation Committee under Section 34-A of the Act.

13.The case was heard at length on the previous occasion prior to 23.02.2022 and thereafter the case was adjourned to 04.03.2022 for further continuation. Based on the submissions of the learned counsel for the petitioner, the above point for consideration was framed to be answered. However, the case was adjourned to 10.03.2022 and thereafter, the matter however did not reach and was therefore directed to be listed today.

14.Today when the case was taken up for hearing, the learned counsel for the petitioner submits that despite a solemn undertaking of the learned counsel for the respondent temple that the amount would not be demanded pending disposal of the writ petition, the respondent temple came on 21.03.2022 and has collected the entire amount from the petitioner.

15.The learned counsel for the petitioner therefore submits that such measures pending disposal of the above writ petition shake the confidence of the litigants in the system and therefore, there should be an order reviewing the conduct of the temple.

16.The learned counsel for the respondent temple submits that the petitioner has voluntarily paid the amount and there is no coercion exercised by the respondent temple. It is further submitted that the tenants, who are occupying the shops, have now



paid the arrears of the rent with a view to carry on their business and therefore, the submission of the learned counsel for the petitioner was uncalled for. In any event since the petitioner has paid the arrears of rent and since the petitioner's appeal is now pending before the 1st respondent, the petitioner should be asked to workout his remedy before the 1st respondent under Section 34-A (3) of the Act.

17.The learned counsel for the official respondents submits that since the amount has been paid, which is a mandatory requirement for the appeal to be taken up, the 1st respondent/the Commissioner may be directed to dispose of the petitioner's appeal expeditiously. It is further submitted that appropriate instructions may also be issued for bring a closure to the issue.

18.If the allegation of the learned counsel for the petitioner that the temple had forced to pay the arrears of rent by seeking law into hands particularly in the light of the fact that the present writ petition is pending, such conduct deserves to be condemned. However, that would require a detailed consideration. The fact remains that the petitioner has now paid the entire arrears. The amount that has been paid by the petitioner shall be treated as the amount paid without prejudice to the rights of the petitioner in the appeal that is pending before the 1st respondent/the Commissioner.

19.Considering the above, I direct the office of the 1st respondent to number the appeal filed by the petitioner within a period of 15 days from the date of receipt of a copy of this order and take up the same for final hearing and dispose of the same within a period of 30 days thereafter. It is needless to state that the petitioner shall also be heard before such appeal is disposed of. It is also made clear that the amount that has been paid by the petitioner on 21.03.2022 shall be treated as deposit and without prejudice to the rights of the petitioner and the appropriation of the aforesaid amount will be subject to the final outcome of the orders to be passed in the appeal.

20.The writ petition stands disposed of, in terms of the above observation. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

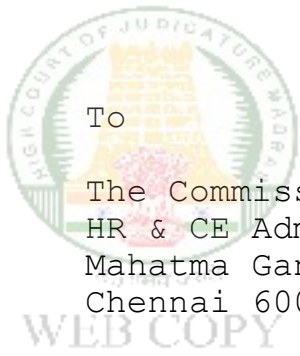
Assistant Registrar (Records)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

The Commissioner,
HR & CE Administration, Department,
Mahatma Gandhi Road, Nungambakkam,
Chennai 600 034.

+1 CC to M/s.M.SARAVANAN, Advocate (SR-15302[F] dated 30/03/2022)

+1 CC to M/s.SPL GP (SR-15363[F] dated 30/03/2022)

+1 CC to M/s.V.RAGHAVACHARI, Advocate (SR-15840[F] dated 31/03/2022)

W.P. (MD) No.3200 of 2022
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RD(28.04.2022) 5P 5C