



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. (MD) .No.3519 of 2022

and

W.M.P (MD) .No.3075 of 2022

N.K.Ram Vishnu Raja

... Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Chennai.

2.The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Sivagangai.

3.The Executive Officer,
Arulmigu Mayuranathasamy Thirukoil,
Pethavanallur,
Rajapalayam Taluk,
Virudhunagar District.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarifi, calling for the records pertaining to the impugned notice passed by the third respondent in his notice dated 28.01.2022 which was received by the petitioner on 09.02.2022.

For Petitioner	:	Mr.H.Velavadhas
For R1 & R2	:	Mr.P.Subbaraj
		Special Government Pleader
For R3	:	Mr.P.Mahendran

ORDER

The petitioner has challenged the impugned notice dated 28.01.2022, of the third respondent temple whereby the petitioner has been called upon to pay arrears of enhanced rent amount of Rs.40,26,828/- at Rs.78,500/- per month for the period commencing from 01.02.2017.



2. The specific case of the petitioner is that the third respondent temple has proceeded to issue the impugned demand notice contrary to the order of the Joint Commissioner, dated 24.08.2017 passed by the Commissioner, Hindu Religious and Charitable Endowments Department.

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3. It is submitted that before issuing the impugned demand notice, dated 28.01.2022, the third respondent ought to have called upon the petitioner to show cause as to why the rent fixed by the Fair Rent Fixation Committee should not be imposed on the petitioner and since such exercise was not taken up, the impugned order is liable to be quashed.

4. The learned counsel for the petitioner relied on the decision of the Division Bench of this Court in the case of **Arulmigu Angala Parameswar and Kasivishwanathaswami Temple Adimanaiveal House Owners Association Vs. The State of Tamil Nadu represented by its Secretary to Government, Hindu Religious and Charitable Endowments Department and others (2009 (6) CTC 512)** wherein, it has been held as under:

"25. In view of the proceedings dated 2.2.2009, it is clear that the Government intends to give an opportunity to the lessees before the rent is fixed. Therefore, Writ Petitioner is given one week time from the date of receipt of copy of this order to give their objections supported by whatever documents they have in their possession and on receipt of the same, the authorities may fix or refix the lease rent in accordance with law."

5. Opposing the prayer, the learned Special Government Pleader for the respondents 1 and 2 and the learned counsel for the third respondent submit that earlier by an order, dated 24.08.2017, the rent fixed by the Fair Rent Fixation Committee was communicated and further a demand for a sum of Rs.1,74,659/- was made, pursuant to an order of the first respondent in Appeal No.19 of 2017 D2, dated 24.08.2017. It is submitted that the rent payable by the petitioner was substantially reduced to Rs.78,500/- from Rs.1,74,659/- and therefore, the question of calling the petitioner for a hearing or being given further opportunity of being heard, does not arise as a substantial relief has been given to the petitioner.

6. That apart, it is submitted that the downward revision of the fair rent was arrived at by the Fair Rent Fixation Committee during February 2021 in their proceedings, dated 10.12.2021 pursuant to which the impugned demand was made. That apart, it is submitted that the petitioner is having an alternate remedy by way of an appeal under Section 34 A (3) of the Hindu Religious and Charitable



Endowments Act, and therefore, on this count also, the writ petition is liable to be dismissed.

7. It is further submitted that the petitioner's intention is only to delay and defeat the rights of the third respondent temple, which is dependant on the rental income from its property. That apart, it is submitted that since 2017, another revision ought to have taken place which could not take place and therefore, the temple is being put to prejudice. It is therefore submitted that the petitioner should be directed to approach the Appellate Authority, namely, Commissioner, if the petitioner is so aggrieved by the refixation of the fair rent, vide impugned communication, dated 28.01.2022, calling upon the petitioner to pay a sum of RS.40,26,828/- being the arrears of rent at Rs.78,500/- for a period commencing from 01.07.2017 to 28.01.2022.

8. The learned counsel for the respondents has placed reliance on a decision of the learned Single Judge in **P.Jayanthi and others Vs The Commissioner, Hindu Religious and Charitable Endowments Department and others**, vide order, dated 29.09.2021 in **W.P.No.19258 of 2021**. The learned counsel for the respondents have specifically drawn attention of this Court to the third issue framed in the aforesaid case, which reads as under:

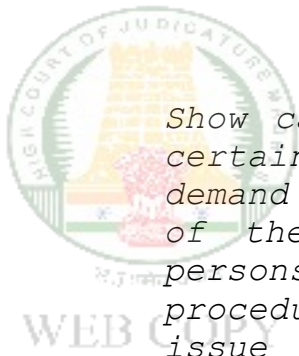
"(3) Whether show cause notice is required to be issued under the provisions of the Act, before fixing the fair rent under Section 34-A of the Act?"

9. The learned counsel for the respondents submits that after detailed examination, the aforesaid issue has been answered by the learned Single Judge as follows:

"ISSUE NO.3:

51. Regarding the third issue, whether show cause notice is required to be issued under Section 34-A of the Act, the petitioners have mainly relied on the ground that no show cause notice was issued and no opportunity was provided to the petitioners before fixing the fair rent under the Act. The impugned notice in the present case is not a 'show cause notice', but a 'demand notice'.

52. It is to be borne in mind that demand notices are issued only after fixing the fair rent by following procedures as contemplated under Section 34-A of the Act. Similarly, such demand notices are issued in property tax, water charges in respect of the properties under the provisions of Municipalities Act, Chennai City Corporation Act, Metro Water Board Rules etc. Thus, a distinction is to be drawn between 'show cause notice' and 'demand notice'.



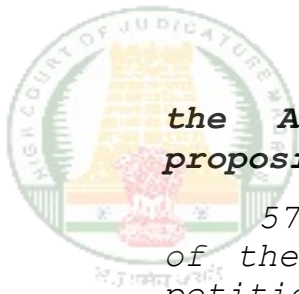
Show cause notices are issued in respect of initiation of certain actions based on complaints or allegations. But demand notices are issued in accordance with the provisions of the Act, informing certain fixation/proposal to the persons concerned, seeking their objections, if any, the procedures are contemplated for fixing the fair rent and issue of demand notice. When the Competent Committee is empowered to fix the fair rent, issuance of notice would arise only after fixing such fair rent and not before that.

53. The rights of the landlord and the tenants are to be demarcated in clear terms. The rights of the landlord in fixing the rent is prerogative and, in the present case, the property, being a temple property, strictly in accordance with the provisions of the Act. However, the right of the Lessee or the Tenant, would arise only on fixation of fair rent and after communication of such fair rent. Thereafter prefer an objection and an appeal under sub Sections (2) and (3) to Section 34-A of the Act. Thus, undoubtedly, the principles of natural justice has been complied with in respect of procedures and opportunities provided under the Act itself.

54. Demand notice can never be compared with the show cause notice. Even in case objections are not considered by the Competent Authorities in respect of the fair rent fixation in the demand notice, an appeal is also contemplated. Thus, the demand notice is the first notice and such notice is to be issued after fixing the fair rent by the Competent Committee by following the procedures as contemplated.

55. It can never be an accepted proposition that a tenant should be given an opportunity for fixing the fair rent under the provisions of the Act. No tenant will agree for any enhancement of rent. In the present day situation, any tenant will argue for reduction of rent. Thus, the law contemplates the manner in which the fair rent is to be fixed and the demand notice is to be issued. If the objections submitted by the tenants are reasonable and convincing, then the Authorities Competent are empowered to revise the fair rent. Further, an opportunity of appeal is also provided before the Commissioner.

56. This being the Scheme of the Act, the very contention raised on behalf of the petitioners that no show cause notice was issued before fixing the fair rent by the Competent Committee is unsustainable. Therefore, regarding **Issue No.3, the ground raised by the petitioners that no show cause notice was issued before fixing the fair rent, is untenable and not in consonance with the provisions of**



the Act and further opposed to the settled legal propositions.

57. Considering the findings and over all consideration of the facts and circumstances of the case on hand, the petitioners are in illegal occupation and have not paid the fair rent and further by running a profitable business, causing damages and financial loss to the minor idol and to the temple and therefore, the petitioners have no right to continue in the subject property of the temple and they are liable to be evicted without any further delay.

58. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed."

10. The learned counsel for the respondents has also placed reliance on the decision of this Court in **The Mylapore Club Vs The Joint Commissioner/Executive Officer and others** in W.P.No.471 of 2022, dated 03.02.2022. A specific reference was made to paragraph 7 which reads under:

"7. The power of judicial review under Article 226 of the Constitution of India is to ensure whether the processes through which a decision is taken by the competent authority is in consonance with the Act and Rules or not, but not the decision itself. Thus, all disputed facts and circumstances are to be adjudicated before the competent authority or before the appellate authority concerned. This certainly is the reason why the High Courts are not entertaining a writ petition against the show cause notices and competent authorities and notices. The demand notices are issued based on initial determination made by the original authorities. In the event of any objection, then an adjudication must be done with reference to the documents and evidences. In the present case, if at all any dispute arises regarding the calculation, the petitioner is at liberty to approach the competent authority or the appellate authority by preferring an appeal in the manner prescribed. However, a writ petition need not be entertained at this stage and High Court cannot adjudicate the issues relating to the fixation of rent already made by following the procedures by the respondents. Even if the procedures are not followed by the authorities in the fixation of rent, they are bound to do so in accordance with the provisions of the Act and Rules."



11. The learned counsel for the respondents has also placed reliance on the decision of the Supreme court in **A.A.Gopalakrishnan Vs Cochin Devaswom Board and others** reported in (2007) 7 SCC 482. A specific reference was made to paragraph 10, which reads under:

"10. The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their Trustees/Archaks/ Sebaites/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the concerned authorities. Such acts of 'fences eating the crops' should be dealt with sternly. The Government, members or trustees of Boards/Trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation."

12. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Special Government Pleader for the respondents 1 and 2 and the learned counsel for the third respondent.

13. The facts on record indicate that the petitioner appears to have taken about 60 cents of land of the 3rd respondent on rent in the year 1976. Earlier, the 3rd respondent had fixed a sum of Rs.1,74,659/- per month towards rent. It was questioned before the 1st respondent under Section 34 A (3) of the Tamil Nadu HR&CE Act, 1959 (Tamil Nadu Act 22 of 1959) in A.P.No.19 of 2017 D2.

14. By an order dated 24.08.2017, the monthly rent of Rs.1,74,659/- fixed by the 3rd respondent was set aside as contrary to Section 34A of the said Act. By the aforesaid order, the 1st respondent, namely, the Commissioner, directed the aforesaid Committee to reconsider the issue and fix the fair rent within a period of 3 months from the date of receipt of a copy of that order and the petitioner was also directed to pay the revised rent and the excess payment, if any, was to be refunded after the rent was fixed.

15. It further stated that even after the reconsideration, if there is no change in the aforesaid rent, then the appellant will be bound by the decision. The operative portion reads as under:-

"7.As per the Sec 34A of the Act "Prevailing market rental value" means the amount of rent paid for similar



type of properties situated in the locality where the immovable property of the religious institution is situated. But in this case, the fair rent was fixed only based on the guideline value and other relevant issues were not examined. Now, because of reduction in guideline value, as a policy, the appellant is approaching for modification. The fair rent shall be fixed once in 3 years taking into account the prevailing market rental value. The respondent temple has failed to fix the fair rent as per Sec 34A of the Act. Hence the case is remitted to fair rent fixation committee for reconsideration. The fair rent committee shall reconsider the issue under the provisions of Sec 34A of the Act, revision of Guide Line value and the Government Orders for fixation of rent. Such exercise shall be completed within a period of 3 months from the date of receipt of this order. Till then the appellant shall pay the revised and excess payment if any made will be refunded after the rent is refixed. Even after reconsideration, if there is no change in fair rent value, then the appellant will be bound by the decision. The appeal petition is hereby disposed of with the above directions."

16. The 3rd respondent now issued notice dated 28.01.2022, which is impugned in this writ petition, demanding arrears of rent amount ie., Rs.40,26,828/- for the period commencing from 01.02.2017.

17. The petitioner appears to have been paying a monthly rent of Rs.35,557/- for a period prior to 01.02.2017. The petitioner was called upon to pay a rent of Rs.1,74,659/- after the Fair Rent Fixation Committee fixed the aforesaid rent. This was the subject matter of the challenge before the Commissioner in Appeal No.19 of 2017 D2. The Commissioner by his order, dated 24.08.2017, had set aside the aforesaid rent fixed by the Fair Rent Fixation Committee and remitted the case back to the Joint Commissioner/second respondent to refix the fair rent.

18. Since the direction was given to the respondent to refix the fair rent within a period of three months, the petitioner appears to have paid the enhanced rent of Rs.1,74,659/- only for a period of three months. Thereafter, the petitioner has reverted to old rent and has been paying a rent at Rs.35,551/- that was prevailing as on 31.01.2017. All through the period, the petitioner has paid a rent of Rs.35,551/- only having there with. The Act contemplates the revision of fair rent at the end of three years. The arrears, which have now been demanded for the aforesaid period vide impugned communication for a period of five years, had been reduced to Rs.78,500/-.



19. Considering all these facts and circumstances, I am inclined to dismiss this writ petition by giving liberty to the petitioner to challenge the aforesaid fixation of fair rent of Rs.78,500/- before the Appellate Commissioner within a period of three months from the date of receipt of copy of this order. The fixation of rent at Rs.78,500/- by the Fair Rent Fixation Committee for a period commencing from 01.02.2017 can be valid only for a period of three years. There should have been a further upward revision of rent under Section 34 A of the Act, which has not been done. Instead the arrears have been demanded at Rs.78,500/- per month.

20. Therefore, I direct the petitioner to pay the arrears of rent calculated at Rs.78,500/- for a period commencing from 01.02.2017 as has been demanded. If the petitioner pays the arrears of rent of Rs.78,500/- for a period of three years from 01.02.2017, the proposed appeal of the petitioner may be entertained by the Commissioner and disposed in accordance with law. Liberty is given to the temple and temple authorities and other respondents to approach the Fair Rent Fixation Committee to revise and refix the fair rent for a period after 01.03.2020 following the procedure contemplated under Section 34 A of the Hindu Religious and Charitable Endowments Act. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

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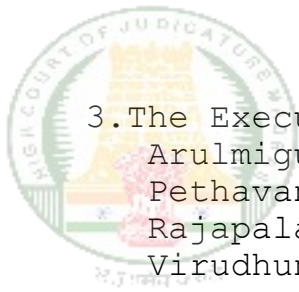
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Sub Assistant Registrar(CS)

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To

- 1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai.
- 2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Sivagangai.



3.The Executive Officer,
Arulmigu Mayuranathasamy Thirukoil,
Pethavanallur,
Rajapalayam Taluk,
Virudhunagar District.

+1 CC to M/s.P.MAHENDRAN, Advocate (SR-13254[F] dated 21/03/2022)

+1 CC to M/s.H.VELAVADHAS, Advocate (SR-13642[F] dated 22/03/2022)

+1 CC to M/s.SPL GP (SR-13497[F] dated 22/03/2022)

W.P. (MD) .No.3519 of 2022
21.03.2022

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