



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE PARESH UPADHYAY

and

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.A(MD)Nos.331 and 332 of 2022

and C.M.P. (MD) Nos.3286, 3288, 3289 & 3290 of 2022

A.Meera Mohideen

.. Appellant in both appeals

Vs

1. The Joint Commissioner,
Hindu Religious and Charitable Endowment,
Trichy.

2. The Assistant Commissioner / Executive Officer,
Arulmigu Jambugeswarar Agilandeswari Temple,
Thiruvanaikaval,
Trichy - 620 005.

.. Respondents in both appeals

PRAYER: Writ Appeals filed under Clause 15 of the Letters Patent against the common order dated 22.12.2021 made in W.P.(MD) Nos.4173 of 2015 and 23614 of 2016.

Prayer in WP(MD). 4173 OF 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari Calling for the records relating to the impugned order passed by the 1st respondent in his proceedings Se.Mu.Pa.Mu.1No. 15392/ 2013/ E1 dated 01.04.2014 and quash the same in respect of the fair rent fixed for item no. 10 in the impugne order namely the land and building in survey No. 2072/ 6 to an extent of 2024 Sq.ft, Thiruvanaikaval, Srirangam Taluk, Trichy District as arbitrary and in violation of principles of natural justice.

Prayer in WP(MD). 23614 OF 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of certiorari calling for the records relating to the impugned order passed by the 2nd respondent in his proceedings Se.Mu.N.Ka.No.02/1426/A7 dated 01.07.2016 and quash the same as illegal and arbitrary and in violation of principles of natural justice.

For Appellant : Mr.B.Saravanan

For Respondents : Mr.P.Subbaraj
Special Government Pleader
for R1 in both the Writ Appeals

: M/s.Anwar Sameem
for R2 in both the Writ Appeals



COMMON JUDGMENT

[Delivered by R.VIJAYAKUMAR, J.]

1. The writ petitioner is the appellant. Writ petitions were filed challenging an order passed by the Joint Commissioner fixing fair rent under Section 34-A of the HR & CE Act and the consequential order passed by the Executive Officer to pay the enhanced rent. The above writ petitions were dismissed by learned Single Judge which is under challenge in the present writ appeals.

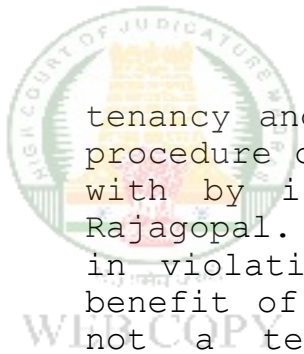
2. Learned counsel for the appellant has contended that, one Mr.Rajagopal was the original tenant of the temple, who has taken the site on lease and has put up construction. Thereafter, the present writ petitioner has purchased the said superstructure from the said Rajagopal. According to learned counsel for the appellant, though the tenancy was terminated by an order dated 15.10.2012, there was an offer from the respondent / temple that if the entire arrears amount is paid, his application i.e request for transfer of tenancy in favour of the writ petitioner would be favourably considered. Learned Single Judge while dismissing the application has held that since the lease in favour of said Rajagopal as well as against the writ petitioner has been terminated, the question of issuing notice to the writ petitioner before invoking the provisions of Section 34-A of HR & CE Act does not arise. That apart, learned Single Judge has held that, there is an effective alternative remedy for the writ petitioner under Section 34-A of the HR & CE Act by filing appeal before the Commissioner under Section 34-A (5) of the Act. As against the said orders passed in these above writ petitions, the appeals have been filed.

3. Learned counsel for the appellant has further contended that when the temple has issued notices to the writ petitioner agreeing to transfer of tenancy in favour of the writ petitioner, on payment of the entire arrears of rent, the temple can not withdraw the said offer and proceed with Section 78 of HR & CE Act.

4. Per contra, learned counsel for HR & CE Department has contended that the present writ petitioner is not paying rent from the year 2013 onwards.

5. We have anxiously considered the submissions made on either side.

6. Admittedly, the present writ petitioner is not the tenant of the temple. He is said to have purchased the superstructure from the original tenant namely, Rajagopal. Hence at no point of time, the writ petitioner can be considered to be a tenant who is entitled to the benefits under Section 34-A of the Act. On 15.10.2012, the Executive Officer has issued a notice to both the legal heir of the tenant Rajagopal as well as the writ petitioner terminating the



tenancy and calling upon them to hand over vacant possession. The procedure contemplated under Section 34-A has been strictly complied with by issuing calculation memo to the original tenant namely Rajagopal. Any offer made by the authorities at that point of time in violation of the statutory provisions will not enure to the benefit of the writ petitioner. Admittedly, the writ petitioner is not a tenant and his tenancy has been terminated. Already proceedings under Section 78 of the Act have been initiated and hence he can be treated only as trespasser of the disputed property. Hence he is not entitled to the benefits under Section 34-A of the Act.

7. Learned Single Judge has dismissed the writ petitions holding that he is not entitled for hearing under Section 34A and has issued a direction to initiate action under Section 78 of the Act. Thus, we do not find any error or illegality in the order passed by learned Single Judge.

8. In view of above, writ appeals stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)

ssm/4

To

1.The Joint Commissioner,
Hindu Religious and Charitable Endowment,
Trichy.

2.The Assistant Commissioner / Executive Officer,
Arulmigu Jambugeswarar Agilandeswari Temple,
Thiruvanaikaval,
Trichy - 620 005.

+2 CC to M/s.B. SARAVANAN, Advocate (SR-18095 & 18096[F]
dated 12/04/2022)

+1 CC to M/s.T. ANTONY ARUL RAJ, Advocate (SR-18651[F]
dated 13/04/2022)

+1 CC to M/s.SPL.GP. (SR-18384[F] dated 12/04/2022)

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