



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.06.2022

CORAM

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

W.P. (MD) .No.3849 of 2022

and

W.M.P (MD) Nos.3331 & 3332 of 2022

T.Subramanian

... Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
No.119, Nungampakkam High Road,
Chennai-34.

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

3.Arulmighu Varatharajaperumal Temple,
Represented by its Executive Officer,
Melaveeraragavapuram,
Tirunelveli Junction,
Tirunelveli.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned notice issued by the third respondent, dated 25.02.2022 and quash the same as illegal and consequently direct the respondents to re-fix the fair rent in accordance with law.

For Petitioner	:	Mr.R.J.Karthick
For R-1 & R-2	:	Mr.M.Lingadurai Special Government Pleader.
For R3	:	Mr.C.Guha Seelarupan.

ORDER

The present Writ Petition has been filed to call for the records of the impugned order issued by the third respondent, dated 25.02.2022 and quash the same as illegal and consequently direct the respondents to re-fix the fair rent.

2. The contention of the petitioner is that the petitioner's
<https://hcservices.courts.mys/gov/hcservices/> temple
was selected as a tenant by the third respondent temple



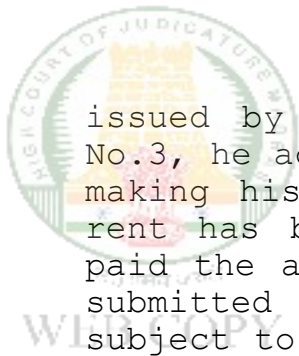
herein for the shop, bearing door No.51/A, belonging to the third respondent's temple, measuring to an extent of 490 Sq.ft in T.S.No.195/1, Block No.17, Ward 10, Tirunelveli Corporation, Tirunelveli. After the demise of the petitioner's father, the petitioner is running his father's business in the name and style "Central Sound Service" and the petitioner has been recognized as a tenant by the third respondent and he was paying the rent without any default, as per the conditions stipulated by the respondents. The petitioner was assisting his father and after his father's demise he is continuing the business. Thus, the petitioner and his family are tenant under the temple for the past thirty years without any default.

3. Suddenly, the third respondent herein issued a notice demanding a sum of Rs.6,31,753/- as arrears of rent. On 25.02.2022 prior to it, the petitioner was not put to notice and he was not aware about what was the modalities and conditions considered while refixing the rent for maintaining the building, the petitioner has spent a huge sums for renovation.

4. The primary contention is that no prior notice was given to the petitioner and further he was not called for to give his explanation. Prior to it, he was not served with the working sheet for refixing the rent. Thus, grossly violating the conditions stipulated under Section 34 A of the HR&CE Act. Further, the rent has been fixed retrospectively from the year 2019 onwards, which is not proper. Hence, the present Writ Petition.

5. He further submitted that without prejudice to his rights he has deposited the refixed amount. He further produced the proceedings of the Commissioner issued in Na.Ka.No.4551/2022/M2, dated 10.03.2022, wherein the Commissioner considering that there has been a barrage of cases pending before the Commissioner as well as the various Courts questioning the modality and the procedure adopted by the Executive Officers as well as the Joint Commissioner in re-fixing of rent under Section 34A. Hence, four questions were formulated and considered. One of the question is that refixing of the rent for a prior period cannot be arbitrarily fixed. Thereafter, he had issued a guidelines invoking powers under Section 23 of the HR&CE Act, where he has given broad guidelines of XI, by circular, dated 10.03.2022. The petitioner submits that the impugned notice is not in conformity with the guidelines issued by the Commissioner. Hence, the same to be quashed. The respondent Nos.1 and 2 submitted that the Commissioner, considering the difficulties faced by the tenants and augment the revenue of the temples, issued a broad guidelines in circular, dated 10.03.2022.

6. The learned Counsel for the third respondent, Executive Officer submitted that the petitioner having participated in re-fixing of the rent proceedings cannot now make a turn around and
<https://hcservicescourts.gov.in/hcservices> was not given opportunity. Referring to the notice

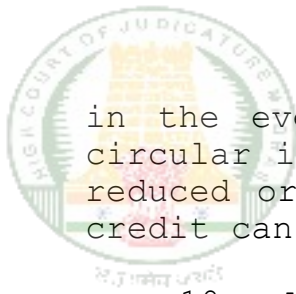


issued by the petitioner, dated 02.09.2021 wherein, in paragraph No.3, he accepts about his participation in the proceedings and also making his objections. Thereafter, considering the same, the fair rent has been fixed. He fairly submitted that the petitioner now paid the arrears of refixed enhanced amount as on date. He further submitted that the petitioner to continue pay the refixed amount subject to the circular passed by the Commissioner and if any other G.O passed pursuant to the same and in the event of the petitioner getting any benefit of deduction of the rent, the amount already paid shall be adjusted for future rents.

7. He further submitted that the petitioner as a lessee/tenancy has been terminated by issuance of notice, dated 16.02.2022 under Section 34B(1) and 34B(3) and thus, now the petitioner has become an encroacher.

8. The petitioner further submitted that the notice, dated 16.02.2022 issued by the petitioner terminating his tenancy, he had issued a refutal wherein, it clearly stated that the procedure adopted by the petitioner terming as an encroacher is not proper. This Court in the case of **2009 (3) LW 728 (Arulmigu Angala Parameswari and Kasivishwanathaswami Temple Adimanaiveal House Owners Asso. & Another Vs. The State of Tamil Nadu represented by its Secretary to Government & Others)** clearly held that termination of the tenancy on the dispute for re-fixation and thereafter terminated as an encroacher is not proper. Further for arbitrarily fixing rent, he had relied upon the conditions proposed by this Court in the judgment reported in 2018 (3) MWN (Civil) 167.

9. Considering the submission and perusal of the petitioner, it is not in dispute that the petitioner's father was a tenant for the past thirty years and thereafter, the petitioner continues his family business and he is the tenant. Further as on date, there is no arrears of rent even for the re-fixed amount. The petitioner questioning the re-fixation would not automatically make the petitioner tenancy liable to be rejected and declared as an encroacher. Further, the Commissioner considering the obstacles faced by the tenants in arbitrarily re-fixation of the tenancy amount had issued the circular in Na.Ka.No.4551/2022/M2, dated 10.03.2022 under Section 23 of the HR&CE Act. In view of the same, the impugned notice issued against the petitioner is hereby quashed. The third respondent by following the present guideline issued by the Commissioner to re-fix the lease amount. The petitioner is to be given an opportunity and the reason for enhancement before the re-fixation of lease, to be issued to the petitioner, objections, if any to be received, thereafter, to take appropriate steps in refixing the rent. The petitioner had already paid the refixed amount but without prejudice. In view of the same, the petitioner to continue to pay the re-fixed amount till fresh steps taken for rent re-fixation following the Commissioner guideline, dated 10.03.2022



in the event of the petitioner getting any benefit based on the circular issued by the Commissioner or any other G.O. and his rent, reduced or modified. The excess amount if any lying to petitioner, credit can be adjusted in future.

10. With the above directions, the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

/07/2022

Sub Assistant Registrar(CS)

btr

To

1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
No.119, Nungampakkam High Road,
Chennai-34.

2.The Joint Commissioner,
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3.Arulmighu Varatharajaperumal Temple,
Represented by its Executive Officer,
Melaveeraragavapuram,
Tirunelveli Junction,
Tirunelveli.

+1 CC to M/s.C. GUHASEELARUPAN, Advocate (SR-25533[F] dated 14/06/2022)

+1 CC to M/s.SPL.GP. (SR-25607[F] dated 14/06/2022)

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SRR(CO)
KB(04.07.2022) 4P 6C