



W.P(MD)No.4098 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.08.2022
PRONOUNCED ON : 29.09.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P(MD)No.4098 of 2022 and
W.M.P(MD)Nos.3500, 3501 & 3502 of 2022

S.D.Ponseelan

... Petitioner

Vs.

1.The Executive Officer,
Arulmighu Vaikundapathi Thirukoil,
Thoothukudi.

2.The Joint Commissioner,
H.R & C.E., Board,
Thoothukudi.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the Impugned Demand Notice, dated 14/12/2021 on the file of the 1st respondent demanding a sum of Rs.46,98,540/- as an enhanced rent from 01/07/16 till 30/06/21 for the shops and vacant land in Door No.35/1, 35/1A, 35/1A1, 35/1A2, west car street, Thoothukudi – 628 002 and quash the same and further directing the respondents to permit the petitioner to run the shop on the rent enhanced at the rate of 15% every 3 years.

For Petitioner : Mr.G.Prabhu Rajadurai

For R1 : Mr.M.Muthugeethayan,
Standing Counsel



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For R2 : Mr.Lingadurai,
Special Government Pleader

ORDER

This Writ Petition has been filed to quash the impugned demand notice, dated 14.12.2021 issued by the 1st respondent, demanding a sum of Rs.46,98,540/- as enhanced rent from 01.07.2016 to 30.06.2021 for the shops and vacant land in door Nos.35/1, 35/1A, 35/1A1 & 35/1A2 west car street, Thoothukudi and further direct the respondents to permit the petitioner to run the shop on the rent enhanced, at the rate of 15% every 3 years.

2.The case of the petitioner is that the 1st respondent is a public temple under the supervision of the 2nd respondent, the 1st respondent temple owns vacant land to the extent of 7235.37 sq.ft in Thoothukudi with an intention to augment the income of the temple. The 1st respondent let out the portions of the said premises to four persons viz., (i)P.L.Kalpana (800 sq.ft), (ii)P.L.Susila (800 sq.ft), (iii)A.R.Palaniappan (800 sq.ft) and (iv)P.Ganapathi Santhanam (3158.37 sq.ft). Out of the



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said four tenants, the said P.L.Kalpana and P.Ganapathi Santhanam put up structures for their use and the other two tenants used the premises as vacant lands. Till the year 2009, the said persons were possessing the tenanted premises on a monthly rent of Rs.525/- except the said P.Ganapathi Santhanam, who paid a monthly rent of Rs.1,700/-. In the year 2001, there have been demand for enhancement of rent. Again, in the year 2016, there was enhancement of rent retrospectively, hence, the petitioner had sent his objection on 08.01.2018 pointing out that already the 1st respondent was enhancing the rent for every three years as per the agreement. Due to enhancement of rent, the said four persons did not want to continue their tenancy and surrendered the same to the petitioner and thereafter, the petitioner made an application to the then Joint Commissioner of HR and CE, Tirunelveli to transfer the said four tenancies in his favour, which was considered and by order, dated 06.11.2009, the petitioner was permitted to transfer of tenancy in his favour with certain conditions that (i)A sum of Rs.15,00,000/- to be paid to the said temple as donation (ii)The rent as enhanced from the year 2001 to be paid (iii)A deposit of 10 times of the enhanced rent to be paid.



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3.The petitioner has complied with all the above said conditions and the condition specifically provides that every three years, the rent would be further enhanced by 15%. Thereafter, the petitioner was enjoying the possession of the property as the tenant of the 1st respondent by paying the rent as demanded without fail and without any arrears. As agreed, the rent was enhanced every three years at the said rate. At this juncture, the monthly rent of Rs.1,525/-, Rs.1,525, Rs.2,900/- and Rs. 21,700/- for the said premises were paid. This being so, the petitioner was shocked to receive four notices, dated 02.01.2018 from the 1st respondent revising the tenancy rates with interest from 01.07.2016 and the petitioner made his objections for the proposed enhancement of rent. The said notice though referred an order of the 2nd respondent, dated 09.12.2020, the petitioner did not receive any such order or did not participate in any enquiry before the 1st respondent. Hence, the petitioner contacted the 1st respondent, but the 1st respondent was evasive in his reply and thereafter, he contacted the office of the 2nd respondent, but the petitioner failed to produce any order of the 2nd respondent, dated 09.12.2020. The petitioner is categorical that he did not participate in any enquiry and served with any order earlier. This being so, on



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07.02.2022, the respondents came to the premises, locked the door and sealed the premises. In view of the same, the petitioner's business came to grinding halt. The petitioner is running a fancy gift store for women and children and that the shop is now sealed with all his stocks inside. The shop further contained packed food time like milk power which has an expiry date and are perishable. Hence, challenging the demand notice, dated 14.12.2021 issued by the 1st respondent, this Writ Petition has been filed.

4.The learned counsel for the petitioner submitted that the impugned demand notice, dated 14.12.2021 and the consequent sealing of the shop bearing door Nos.35/A and 35/1A are illegal and arbitrary. The petitioner was not served with the order, dated 09.12.2020 enhancing the rent. As per the earlier agreement, once in three years, the rent has to be enhanced. Further, there is huge difference between the enhancement notice, dated 02.01.2018 and 29.10.2020 both fixing the rate retrospectively from the year 2016. The respondents have no right to demand the rent retrospectively, since the enhancement can take effect only from date it is enhanced after hearing the objection of the tenant.



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The respondents failed to consider the fact that for the past two years, the shops kept locked due to COVID-19 lock down and even thereafter, there was some restrictions in public movement.

5.The learned counsel further submitted that the 2nd respondent in his proceedings in Na.Ka.No.17630/09/E3, dated 06.11.2009 referring the petitioner's request and G.O.Ms.No.131, dated 18.05.2005 and G.O.Ms.No.277, dated 02.12.2005 and the letter of the Commissioner, Chennai in Na.Ka.No.23000/08/V3, dated 31.05.2008, had recommended and issued tenancy in the name of the petitioner with certain conditions. As per the proceedings, all the conditions were complied by the petitioner without fail. Thus, from the year 2009, the petitioner is the tenant under the 1st respondent and without any default, has been making regular payment. While this being so, on 02.01.2018, a notice for enhancement of rent under Section 34A of the Hindu Religious and Charitable Endowment Act has been issued by the 1st respondent. On receipt of the same, the petitioner immediately sent his reply on 09.01.2018, following the same, the petitioner sent another objection dated 17.02.2018. Without considering the reply and objections of the



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petitioner, the 1st respondent suddenly on 29.10.2020 another notice has been issued by the 1st respondent, for which, again the petitioner has sent his reply on 06.11.2020. Finally, the impugned demand notice has been issued to the petitioner on 14.12.2021.

6.The learned counsel further submitted that the petitioner while sending his objection and reply, had informed the payment of donation of Rs.15,00,000/- and also informed that as per the agreement, only 15% of enhanced rent would be collected for every three years, contrary to the same, the 1st respondent enhanced the rent unreasonably. The petitioner also informed that the prevailing market rent was much more lesser. For nearby St.Patrick Church, commercial premise, which is just opposite to the 1st respondent's property, the rental charge was much lesser. Before enhancing the rent, the petitioner was not called for enquiry and the respondents acted unilaterally, which is against the settled principles of law. In the case of “*Arulmigu Angala Parameswari and Kasivishwanathaswami Temple Adimanaiveal House Owners Association Versus the State of Tamil Nadu, rep. by its Secretary to Government, Hindu Religious and Charitable Endowment*”



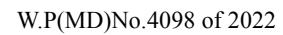
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Department, Fort St.George, Chennai and others reported in 2009 (6)

CTC 512”, the Hon'ble Division Bench of this Court issued guidelines to the temple authorities about the manner in which the rents to be revised under Section 34A of the Hindu Religious and Charitable Endowment Act. Further, he relied upon the decision of this Court in the case of ***“Rane Engine Valve Limited rep. by its direction Mr.L.Lakshmanan and other Versus The Collector, Chennai District Chennai and others reported in 2015-2-L.W.638”***.

7.He further submitted that the petitioner already executed the bank guarantee in favour of the temple for Rs.10,00,000/- (Rupees Ten lakhs only) on 08.04.2022, the copy of the same is produced before this Court. The petitioner filed an affidavit of undertaking before this Court that for the present, the petitioner agrees to pay the enhanced rent from 14.12.2021 to 31.08.2022, except for the period from 07.02.2022 to 11.04.2022 when the shops were closed by the respondents. The petitioner already gave a letter informing that he intends to vacate the land measuring 3158.37 sq.ft and three other portions each measuring 800 sq.ft belonging to the temple, since the enhancement of rent is done



8.Mr.M.Muthugeethayan, learned Standing Counsel appearing for the 1st respondent submitted that the petitioner on receipt of the demand notice, sent his objection and participated in the Fixation of Fair Rent. The Fixation of Fair Rent has been done following the procedures contemplated in law. The petitioner is a tenant under the 1st respondent and, running commercial establishment in the temple property. The petitioner is the tenant for two shops and two open space area and using the same for commercial purpose. The enhanced rent for shop No.35/1 with effect from 01.07.2016 is Rs.69,100/-, for shop No.35/1A is Rs.



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22,200/-, for shop No.35/1A/1 is Rs.8,500/- and for shop No.35/1A/2 is Rs.8,500/-. The learned counsel produced the proceedings of the Fair Rent Fixation in Na.Ka.No.12478/2020/E5, dated 09.12.2020 along with working sheets. The petitioner having received the notice and the said proceedings, now taking a stand that as though no notice was served to him and he is not aware about enhancement of rent, which are contrary to the facts. In support of his submission, the learned counsel for the 1st respondent placed reliance on the orders of this Court in “***W.A.No.425 of 2007, dated 15.03.2007 in the case of K.Narayanan Versus the Joint Commissioner, HR & CE, Nungambakkam, Chennai-34 and another***” for the principle that if any person is aggrieved for enhancement of rent or violation of procedure under Section 34A of Hindu Religious and Endowment Act, it is for them to approach the Commissioner of Hindu Religious and Endowment by filing appropriate petition. Since the disputed facts are involved, the same cannot be decided in Writ Petition. In the batch of Writ Petitions in W.P.Nos.16785 of 2017 etc., in “***G.Ramasamy and others Versus the Executive Officer, Arulmigu Kalahatheeswara Swamy Temple and another, dated 14.09.2017***, this Court following the case of “***Arulmigu Angala Parameswari and***



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Kasivishwanathaswami Temple Adimanaiveal House Owners

Association reported in 2009 (6) CTC 512” had directed the temple authorities to provide copy of the order of Fair Rent Fixation Committee to the petitioners therein and also directed the petitioners therein to deposit 50% of the enhanced amount.

9.He further submitted that the petitioner not disputed his tenancy under the 1st respondent. While being so, he cannot take a technical plea as though no notice was served to him and he was not aware about enhancement of rent. In this case, the petitioner has already sent his objections and reply and the same were considered before sending the demand notice. Again a copy of Fair Rent Fixation Committee proceedings furnished to the petitioner. But the petitioner failed to make any payment. To safeguard the interest of the temple, the bank guarantee of Rs.10,00,000/- of the petitioner, to be retained till the petitioner settle all his dues to the temple. Therefore, he prayed for dismissal of this Writ Petition.



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10.The learned Special Government Pleader appearing for the 2nd respondent submitted that the Fair Rent Fixation Committee consisting of the 1st respondent, the District Registrar (Administration), Thuthukudi and the Joint Commissioner, Hindu Religious and Charitable Endowment, Thuthukudi/2nd respondent enhanced the fair rent on 19.11.2020 and thereafter, the 2nd respondent, by his proceedings in Na.Ka.No.12478/2020/E5, dated 09.12.2020 referring various Government Orders, the report of the 1st respondent, dated 16.10.2020 and the proceedings of the Fair Rent Fixation Committee, dated 19.11.2020, fixed the enhanced Fair Rent as per Section 34A of the Hindu Religious and Charitable Endowment Act and observed that steps to be taken as per the Amendment Act 25/2003 following Sections 34A and 34D of the Hindu Religious and Charitable Endowment Act. Hence, the Fixation of Fair Rent is proper and the same has been done following the procedures.

11.This Court considered the rival submissions and perused the materials available on record.



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12. In this case, the petitioner not disputed the tenancy under the 1st respondent. He admitted that he is a tenant for both built up area and open area, which are used for commercial purpose. In fact, the petitioner's tenancy has been approved, regularized on 06.11.2009 with conditions in Na.Ka.No.17630/09/E3. All the conditions complied by the petitioner. The condition No.3 is that as per G.O.Ms.Nos.355 & 456 and as per the Rules of the Hindu Religious and Charitable Endowment Act, every three years 15% of increase in rental amount would be collected from the petitioner. While this being so, now, invoking Section 34A of Hindu Religious and Charitable Endowment Act and enhancing the rent manifold, is contrary to the terms and conditions of the agreement. Hence, the petitioner has got objection in the manner by which the fair rent is fixed. His further objection is that he was not given proper opportunity to make his objection before Fixation of Fair Rent and no notice was served to him. The petitioner not aware of any Fair Rent Fixation Committee, its deliberation before demanding fair rent.

13. The learned counsel for the 1st respondent produced the proceedings of the Fair Rent Fixation Committee in Na.Ka.No.



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12478/2020/E5, dated 09.12.2020 along with worksheet and the same handed over to the petitioner. Hence, there is no doubt on the Formation of Fair Rent Committee and Fixation of Fair Rent was done as per procedure contemplated. The only grievance of the petitioner is that as per original undertaking, the petitioner was to pay 15% of enhanced rent, for every three years and not abnormal increase of rent that to manifold, without giving any opportunity and finding from the petitioner whether he intends to continue with his tenancy. Further, the enhancement of rent retrospectively without giving opportunity, is now become a disputed question of fact, which cannot be decided in this Writ Petition. The petitioner to show his bonafidy, already executed the bank guarantee No. 001BG2022000738, dated 08.04.2022 in Tamilnad Mercantile Bank, Thoothukudi Main Branch for Rs.10,00,000/- (Rupees ten lakh only), which would be in force till the petitioner settles all his dues to the temple. The petitioner, as per undertaking, to handover the vacant possession of temple property by 31.08.2022 without fail.

14.This Court on many occasions had relaxed the period of limitation for the concerned to approach the Commissioner, Hindu



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Religious and Charitable Endowment, by filing appropriate petitioner or revision. In the case of “*N.V.Krishnan Versus the Special Commissioner, Hindu Religious and Charitable Endowment Department, Uthamar Gandhi Salai, Chennai*” in batch of Writ Petitions in W.P.Nos.8831 of 2003 etc., dated 29.07.2008, this Court had given direction to the Commissioner, Hindu Religious and Charitable Endowment to entertain the petition filed under Section 34-A(3) of the Hindu Religious and Charitable Endowment Act, within a period of three weeks without reference to the limitation and on merits. The petitioner to be given similar relief. Hence, it for the petitioner to seek his remedy by approaching the Commissioner, Hindu Religious and Charitable Endowment as against the order passed under Section 34A of Hindu Religious and Charitable Endowment Act in Na.Ka.No.12478/2020/E5, dated 09.12.2020. The Commissioner not to raise any objection on the point of limitation and to entertain the appeal of the petitioner and decide the same independently on its own merits. The appeal to be filed within a period of three weeks from the date of receipt of a copy of this order. Without availing such remedy, this Court cannot entertain this Writ Petition.



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15.In the light of the above discussion, this Writ Petition stands dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

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Internet : Yes / No

Index : Yes / No

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To

1.The Executive Officer,
Arulmighu Vaikundapathi Thirukoil,
Thoothukudi.

2.The Joint Commissioner,
H.R & C.E., Board,
Thoothukudi.



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M.NIRMAL KUMAR, J.

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PRE-DELIVERY ORDER IN
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