



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.03.2022

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THE HONOURABLE MR. JUSTICE C.SARAVANAN

Writ Petition (MD)No.5745 of 2022

and

W.M.P. (MD)No.4597 of 2022

Thedaselvam, W/o.Late.Chellakannu

.. Petitioner

Versus

1.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Madurai.

2.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Madurai.

3.The Chairman of Trustees and Thakkar,
Arulmigu Puttu Urchava Vagayara Kattalai
Puttuthoppu, Madurai - 16.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the third respondent to follow the 15% of enhancement of rent once in three years as followed from the year 01.07.2001 onwards and to follow the procedure of enhancement of rent to the petitioner as per law and guidelines laid by the first respondent in fixation of rent and G.Os. and not to evict the petitioner from the (i) residential premises 1353 sq.ft. at 12/23-C/2 Chekkadi Street, Puttuthoppu, Madurai; (ii) commercial premises 6242 sq.ft. 17-4, Chekkadi Street, Puttuthoppu, Madurai; and (iii) commercial 1100 sq.ft. 17-C, Puttuthoppu Main Road, Chekkadi Street, Madurai properties.

For Petitioner	:	Mr.R.Ramasamy
For R1 and R2	:	Mr.P.Subbaraj
		Special Government Pleader
For R3	:	Mr.M.Saravanan



ORDER

The petitioner has filed the present Writ Petition for a wide relief as detailed below:-

"To issue a Writ of Mandamus, directing the third respondent to follow the 15% of enhancement of rent once in three years as followed from the year 01.07.2001 onwards and to follow the procedure of enhancement of rent to the petitioner as per law and guidelines laid by the first respondent in fixation of rent and G.Os. and not to evict the petitioner from the (i) residential premises 1353 sq.ft. at 12/23-C/2 Chekkadi Street, Puttuthoppu, Madurai; (ii) commercial premises 6242 sq.ft. 17-4, Chekkadi Street, Puttuthoppu, Madurai; and (iii) commercial 1100 sq.ft. 17-C, Puttuthoppu Main Road, Chekkadi Street, Madurai properties."

2.The petitioner's husband was a tenant in respect of the aforementioned properties. The rent was revised for the period between 01.07.2016 and 30.06.2019, vide the third respondent's communication dated 23.06.2018. At that point of time, the petitioner was paying the following amounts as rent and the rent was sought to be enhanced as detailed below:-

Sl.No.	Extent	Previous rent	Fair rent fixed
1	1353 sq.ft.	Rs.1300/-	Rs.4059/-
2	1141 sq.ft.	Rs.1096/-	Rs.7987/-
3	6510 sq.ft.	Rs.6242/-	Rs.45570/-

3.It is the case of the petitioner that these enhancements were made contrary to G.O.(Ms)No.353, Tamil Development - Culture and Religious Endowments Department, dated 04.06.1999 and G.O.(Ms) No.456, Tamil Development, Religious Endowments and Information (E.4-2) Department, dated 09.11.2007, respectively. It is submitted that the enhancement of rent over 300% is not contemplated under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 [hereinafter referred to as 'the H.R. & C.E. Act']] and therefore, the enhancement of rent communicated vide impugned communication dated 23.06.2018, is liable to be quashed.

4.It is further submitted that the petitioner had also sent a detailed representation to the third respondent on 22.11.2019. However, till date, no action has been taken.



5.The learned counsel for the third respondent Temple submits that the petitioner has suppressed the fact regarding the earlier Writ Petitions filed before this Court in W.P.(MD)Nos.20009 and 20010 of 2017. It is submitted that the said Writ Petitions were disposed of by order dated 31.10.2017, wherein the petitioner was directed to pay arrears of rent as on the date of the Writ Petitions and the enhanced rent to be fixed by the authorities.

6.It is submitted that after the above said order was passed by this Court on 31.10.2017, the decision of the fair rent committee was communicated to the petitioner vide communication dated 23.06.2018, as detailed above.

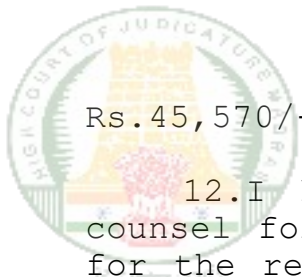
7.It is further submitted that the petitioner has accepted the rent insofar as the first two properties are concerned and in respect of the third property is concerned, the petitioner along with other tenants, had filed a batch of writ petitions before this Court and this Court, by order dated 15.04.2019, in W.P.(MD) Nos.8949 to 9047 of 2019, directed the petitioner and also the other petitioners therein, to pay the old rate plus 50% of the enhanced rent. However, the petitioner has not taken advantage of the above said order.

8.It is submitted that thereafter the rent was also revised as far as the third property is concerned, from Rs.45,570/- to Rs.39,100/- and the same was communicated to the petitioner on 26.07.2021.

9.The learned counsel for the third respondent Temple submits that the above said property is a commercial property and the petitioner has rented out the property and is receiving a huge rent from the sub-tenant. It is therefore, submitted that the present Writ Petition should be dismissed with exemplary costs as the petitioner resorted to material suppression of facts.

10.The learned counsel for the third respondent also submits that the subsequent revision of rent on 26.07.2021 was also challenged by some of the tenants and that the writ petitions were dismissed with liberty by extending the period of limitation for filing appeal before the Commissioner under Section 34-A of the H.R. & C.E. Act.

11.The learned Special Government Pleader for the respondents 1 and 2 submits that the Writ Petition is not maintainable, as the petitioner has already acquiesced to the rent fixed insofar as first two properties are concerned. It is further submitted that the petitioner was not without remedy and the petitioner ought to have filed an appeal pursuant to the communication dated 26.07.2021, by which the rent was reduced to Rs.39,100/- from



Rs.45,570/-.

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

13.Fair rent was fixed earlier on 23.06.2018 insofar as the third property, which is a commercial property. The rent has been revised. However, similar exercise was been carried out by the Temple authorities for the subsequent period also. However, the facts also remain that the petitioner was directed to pay 50% of the amount till the disposal of the writ petitions in W.P.(MD) Nos.8949 to 9047 of 2019, vide order dated 15.04.2019. The petitioner has not complied with the same. The petitioner has also not opted to work out an alternate remedy before the appellate Commissioner.

14.The Government Orders, which are in the nature of clarification, cannot run contrary to the provisions of the H.R. & C.E. Act. The Fair Rent Fixation Committee has fixed the fair rent as per Section 34-A of the H.R. & C.E. Act. Therefore, the Government Orders, which were issued in the years 1999 and 2007, are of no significance.

15.The petitioner appears to be in arrears of Rs.24,13,718/- towards arrears as on 20.09.2021 for the third property. Considering the same, I direct the petitioner to pay the above said arrears of rent within a period of six months from the date of receipt of a copy of this order. The petitioner is also given liberty to challenge the order fixing the fair rent on 26.07.2021 before the Commissioner under Section 34-A of the H.R. & C.E. Act. The appeal will be numbered and taken up for hearing at the end of expiry of six months from the date of receipt of a copy of this order and on payment of the last installment by the petitioner. The petitioner is also directed to clear the arrears as on date and to continue to pay rent at Rs.39,100/- on the third property till the disposal of the appeal by the Commissioner. It is made clear that if there is any failure on the part of the petitioner to clear arrears of rent within the time prescribed herein, and/or if no appeal is filed within 30 days from the date of receipt of a copy of this order, this order will automatically stand vacated. It is also made clear that the amount that is being directed to be paid by the petitioner pursuant to this order shall be treated as a deposit and will be subject to final appropriation in terms of the order of the Commissioner, if the petitioner files appropriate appeal within such time.



16.This Writ Petition is dismissed with the above direction.
No costs. Consequently, connected Miscellaneous Petition is
closed.

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Sd/-

Assistant Registrar (R)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

To

1.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Madurai.

2.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Madurai.

+1 CC to M/s.R.RAMASAMY, Advocate (SR-15950[F] dated 01/04/2022)

+1 CC to M/s.M.SARAVANAN, Advocate (SR-16224[F] dated 01/04/2022)

+1 CC to M/s.SPL GP (SR-16048[F] dated 01/04/2022)

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PA(12.04.2022) 5P 6C