



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.06.2022

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**

and

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

W.A(MD)No.557 of 2022

and

C.M.P(MD)No.4850 of 2022

S.Malliga

... Appellant/Petitioner

Vs.

1.The Commissioner, H.R. & C.E., Department,
Chennai-34.

2.The Joint Commissioner, H.R. & C.E., Department,
Madurai.

3.Arulmighu Vandi Kaliyamman Thirukoil,
Thadikombu Road, Dindigul,
through its Executive Officer. ... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent, to call for the records and set aside the order in W.P(MD)No.8415 of 2018, dated 16.02.2022 and allow the Writ Appeal with costs.

Prayer in WP(MD). 8415/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus to call for the impugned notice dated 08.03.2018 on the file of the 3rd respondent and quash the same as illegal, incompetent and without jurisdiction and consequently direct the respondents to conduct proper enquiry in accordance with the directions of this Honble Court in W.P.(MD).No.14971 of 2017 and as per law under Section 34 (A) of the HR and CE Act 1959 and by affording adequate opportunity to the petitioner and thereafter fix the fair rent.

For Appellant	:Mr.H.Lakshmi Shankar
For R1 and R2	:Mr.M.Linga Durai
	Special Government Pleader
For R3	:Mr.A.K.Baskara Pandian



JUDGMENT

(Judgment of the Court was delivered by **S.S.SUNDAR, J.**)

Challenging the order passed by the learned Single Judge of this Court in W.P.(MD)No.8415 of 2018, dated 16.02.2022, the above Writ Appeal is filed.

2.Heard Mr.H.Lakshmi Shankar, learned Counsel for the appellant, Mr.M.Linga Durai, learned Special Government Pleader, who takes notice on behalf of respondents 1 and 2 and Mr.A.K.Baskarapandian, learned Counsel, who takes notice on behalf of third respondent.

3.Brief facts that are necessary for the disposal of this Writ Appeal are as follows:

3.1.Pursuant to the notice issued by the third respondent, directing the appellant to pay the fair rent at the rate of Rs.1,02,100/- per month with effect from 01.07.2016, the appellant/Writ Petitioner filed a Writ Petition in W.P.(MD)No.14971 of 2017. The said Writ Petition was heard along with few other Writ Petitions. After finding that the fair rent has been fixed without proper notice to the tenants contrary to the judgment of this Court reported in **2009 (6) CTC 512**, a learned Single Judge of this Court disposed of the Writ Petitions by a common order, dated 21.09.2017 in the following lines:

"7. In view of the submissions made by the learned counsel for the 3rd respondent, following the judgment of the Hon'ble Division Bench of this Court referred to supra and also taking into account the proceedings issued by the State dated 02.02.2009, the following directions are issued in these writ petitions:

i) the 3rd respondent is directed to provide a copy of the order of the Fair Rent Fixation Committee presided over by the Joint Commissioner, Hindu Religious and Charitable Endowment Department dated 11.04.2017 as well as the calculation sheet to the petitioners forthwith, if not already given;

ii) This Court, normally while granting interim orders, would uniformly direct the petitioners/lease holders to deposit 50% of the enhanced rent immediately (as in the case of W.P.(MD) Nos.16785 to 16794 of 2017 and 13383 to 13392 of 2017) and in view of final disposal of all these writ petitions, the petitioners shall at the first instance, deposit 50% of the enhanced amount, if not already remitted and thereafter file their objections supported by whatever documents they have in their



possession on or before 11.10.2017 to the concerned authorities; and

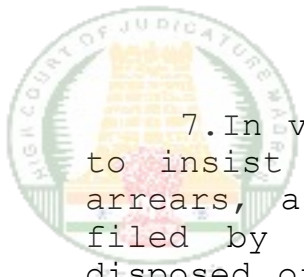
iii) the authorities, upon satisfaction of the remittance of the 50% of the amount by the petitioners, on scrutiny of the documents produced by the petitioners and upon considering their objections, shall fix or refix the lease rent in accordance with law, within a period of two weeks thereafter."

3.2.Though the appellant/Writ Petitioner was directed to pay 50% of the enhanced amount, there was no direction to pay arrears. The petitioner remitted only 50% of revised rent for one month and requested the respondents to furnish the copy of order fixing fair rent and the working sheet. However, the respondents did not serve the order fixing fair rent or working sheet, but issued only the impugned demand notice, dated 08.03.2018 challenged in the Writ Petition. The learned Counsel for the third respondent admitted that the demand notice, which is impugned in the present Writ Petition, is only a demand of 50% of the fair rent, that was demanded in the previous demand notice, which is the subject matter of the previous Writ Petition.

4.The question, whether the appellant/Writ Petitioner is liable to pay 50% of the entire arrears of fair rent or not is not relevant, in view of the subsequent developments we have noticed while hearing the Writ Appeal.

5.First of all, the fair rent, that was fixed earlier as per the demand notice impugned in the previous Writ Petition, has given a go by, because of the subsequent proceedings, by which the fair rent was revised by the Joint Commissioner. As pointed out by the learned Counsel for the appellant, the fair rent was subsequently reduced to Rs.85,650/- for the same premises by a subsequent communication. It was thereafter, the fair rent was again reduced to Rs.61,250/- by a subsequent proceedings. Therefore, the direction issued by this Court in the previous Writ Petition by order, dated 14.09.2017 has lost its significance to insist the petitioner to pay 50% of the demand calculating arrears as per the fair rent earlier fixed.

6.It is further represented before this Court that the appellant/Writ Petitioner, by a subsequent communication, dated 08.11.2018, has expressed her willingness to vacate the premises, if she is required to pay the fair rent, as fixed by the Joint Commissioner. As a matter of fact, the third respondent has now taken possession of the premises, which was leased out to the appellant/Writ Petitioner on 18.10.2019 pursuant to eviction proceedings initiated under Sections 78 and 79 of Tamil Nadu Hindu Religious and Charitable Endowments Act.



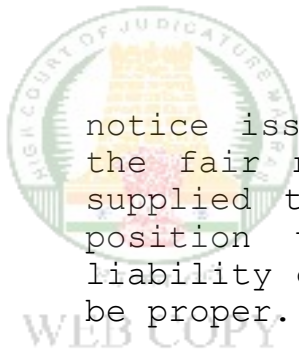
7. In view of the subsequent developments, this Court is unable to insist the petitioner to remit 50% of the demand calculating arrears, as per the direction of this Court in the Writ Petition filed by the appellant in W.P.(MD)No.14971 of 2017, which was disposed of by this Court by order, dated 21.09.2017, especially, when the petitioner has suffered the consequences for not remitting 50% of enhanced rent. When the petitioner requested the respondents to serve a copy of proceedings fixing fair rent and the working sheet, the Executive Officer served only a demand notice demanding a sum of Rs.10,23,549/-, as arrears for the period upto 28.02.2018. Hence, the petitioner filed the present Writ Petition challenging the said demand notice alleging that the petitioner was not furnished with the copy of order fixing fair rent or the working sheet as per the direction of this Court earlier. However, the Writ Petition is dismissed giving liberty to the appellant/writ petitioner to file an appeal before the Commissioner under Section 34A(3) of the Tamil Nadu HR & CE Act, 1989, ignoring the fact that the order fixing fair rent is not served on the Writ Petitioner/appellant.

8. In the peculiar circumstances of the case, this Court is of the view that the direction of the learned Single Judge by order, dated 16.02.2022 in W.P.(MD)No.8415 of 2018, cannot be sustained. Taking into account the conduct of the respondents in passing different orders, this Court is unable to sustain the impugned demand notice, dated 08.03.2018, as this Court is of the view that a fair rent cannot be fixed with retrospective effect, as the rent payable for any premises, either it is owned by a temple or any individual, is a contractual liability. Unless there is a contract to the contrary, a fair rent cannot be fixed without *consensus ad idem* for the past period.

9. In this case, the liability cannot be fixed on the appellant/Writ Petitioner to pay the fair rent with retrospective effect, as such liability is not authorised by any law or any statutory provision. From the impugned notice, it is seen that fair rent was demanded with effect from 01.07.2017 to 28.02.2018 without serving the proceedings, by which the fair rent was fixed.

10. The learned Counsel for the appellant pointed out that pursuant to an order of eviction passed by the Joint Commissioner on 04.10.2019, the premises in question was handed over to the Joint Commissioner on 18.10.2019. It is also admitted before this Court that the premises is not let out to any other persons for want of prospective tenant, who would accept to pay the fair rent fixed in respect of the same premises. Hence, this Court is of the *prima facie* view that fair rent fixed by the respondents is on the higher side.

11. From the records available and produced before this Court, this Court is unable to find any previous notice or a show cause



notice issued to the appellant/Writ Petitioner before arriving at the fair rent. Unless the basis for assessment of fair rent is supplied to the appellant/Writ Petitioner, she will not be in a position to respond. Any other opportunity, after fixing the liability of the petitioner on the basis of working sheet, will not be proper.

12.Hence, this Court is inclined to pass the following order:

(1)The order of the learned Single Judge in W.P(MD) No.8415 of 2018, dated 16.02.2022 is set aside;

(2)The respondents are directed to fix the fair rent with effect from 11.04.2017 after issuing notice to the appellant with regard to the basic factors that will be adopted or taken to fix the fair rent;

(3)After hearing the appellant/Writ Petitioner, final order can be passed by the Joint Commissioner with regard to the actual fair rent payable by the appellant for the period from 11.04.2017 to 18.10.2019, when the respondents took possession of the premises;

(4)Upon service of notice with all particulars, including the proceedings by which fair rent was arrived at, which are required for the appellant/Writ Petitioner to respond, the appellant is directed to file her objection/explanation along with the documents, if any, in support of her objection within a period of three weeks from the date of receipt of copy of proceedings and working sheet and other relevant documents; and

(5)The second respondent is directed to pass appropriate orders fixing fair rent after giving an opportunity of personal hearing to the appellant/Writ Petitioner on merits and in accordance with law within a period of eight weeks from the date of submission of the explanation by the appellant along with the documents.

13.With the above directions, this Writ Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/07/2022

Sub Assistant Registrar(CS)

cmr



To

1.The Commissioner, H.R. & C.E., Department,
Chennai-34.

2.The Joint Commissioner, H.R. & C.E., Department,
Madurai.

+1 CC to M/s.A.K.BASKARAPANDIYAN, Advocate (SR-26951[F] dated
20/06/2022)

+1 CC to M/s.H. LAKSHMI SHANKAR, Advocate (SR-27063[F] dated
21/06/2022)

+1 CC to M/s.SPL.GP (SR-27183[F] dated 21/06/2022)

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