

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 27.06.2022**

**CORAM**

**THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR**

**W.P.(MD)No.10895 of 2022  
and  
W.M.P.(MD)No.7864 of 2022**

S.Gomathiammal

... Petitioner

Vs.

1. The State of Tamil Nadu,  
Represented by its Principal Secretary to Government,  
Department of Tourism, Culture and Hindu Religious  
and Cultural Affairs,  
Secretariat,  
Chennai.
2. The Commissioner,  
Tamil Nadu Hindu Religious and Charitable Endowment  
Administration Department,  
Gandhi Road,  
Nungambakkam,  
Chennai.
3. The Joint Commissioner,  
Hindu Religious and Charitable Endowments  
Administration Department,  
Dindigul West,  
Dindigul District.

4. The Executive Officer,  
Arulmighu Muthuthalamman and  
Bagavathiamman Thirukkivil,  
Dindigul,  
Dindigul District.

... Respondents

**PRAYER:** Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned notice issued by the fourth respondent vide his proceedings Nil dated 04.02.2022 and the consequential impugned notice dated 14.03.2022 and quash the same as illegal and consequently, forbear the respondents or their subordinates from in any way dispossessing the petitioner except by following the procedure established by law.

For Petitioner : Ms.H.Jasima Yasmin  
for M/s.Ajmal Associates

For Respondents : Mr.M.Lingadurai  
Spl. Govt. Pleader for R1 to R3  
Mr.Muthugeethaiyan  
Standing Counsel for R4

### **O R D E R**

Vide notice dated 04.02.2022, the petitioner was termed as an encroacher, since the dues till 31.12.2021, a sum of Rs.7,24,019/- and further the monthly rent of Rs.24,000/- have not been paid, vide notice dated 14.03.2022, the lease agreement was terminated by invoking Section

34B of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (herein after referred to as 'the Act') and calling the petitioner to hand over the property and for appearance on 29.03.2022. Seeking to quash the said notices issued by the fourth respondent / Executive Officer, this Writ Petition has been filed.

2. The contention of the petitioner is that the petitioner is a tenant under the fourth respondent Temple. She had constructed and running a small steel shop in the name and style of 'Sangar Steel'. She has been paying a rent of a sum of Rs.5,550/- per month as agreed between her and the respondents without any default. When that being so, on 18.12.2017, the fourth respondent issued a notice and calling for objection to the proposed fair rent of Rs.56,000/- per month, alleged to have been fixed by a Committee constituted under Section 34A of the Act. The petitioner immediately submitted her objection on 02.01.2018, stating that the proposed rent is exorbitantly high and she would be ready and willing to pay the rent fixed fairly. Thereafter, the fourth respondent Temple issued

another notice dated 01.02.2018, calling for objection to the proposed rent of Rs.56,000/- per month. She has also submitted her objection on 21.02.2018, stating that the proposed rent is exorbitantly high and the same is ten times higher than the existing rent.

3. As per the scheme of the Tamil Nadu Hindu Religious and Charitable Endowments Act, the rent in respect of the Temple is to be fixed by a Committee comprising of the jurisdictional Joint Commissioner, Executive Officer and District Registrar etc., as provided under Section 34A of the Act. The said Committee alone is empowered to refix the rent. Further, she relied on the judgment of the Hon'ble Division Bench of this Court in the case of *Arulmighu Angalaparameshwari Kasiviswanatharswamy Temple Adimanai House Owners Association v. the State of Tamil Nadu* reported in *2009 6 CTC 512*, where this Court held that though Section 34A does not contemplate issuance of notice before fixation of rent / re-fixation of rent by the Committee, by import of the principles of natural justice and in consonance with the guidelines

issued by the Government of Tamil Nadu vide proceedings in Na.Ka.No. 40651/2008/M3 dated 18.07.2008 as well as the proceedings dated 02.02.2009, wherein it has been clarified that the lessees are to be provided with an opportunity to submit their objections before fixation of final rent. After considering the said objections, the Committee would have to fix / refix the lease rent taking note of the prevailing market value and the guidelines and then fix the lease rent once in three years.

4. The further contention of the petitioner is that as per the calculation sheet furnished by the fourth respondent, it is seen that the proposed rent had not been fixed by such a Committee comprising of the jurisdictional Joint Commissioner, Executive Officer and District Registrar etc., as provided under Section 34A of the Act. Per contra, the same is fixed only by the fourth respondent viz., the Executive Officer of the Temple and the Assistant Divisional Engineer, Hindu Religious and Charitable Endowments Department, Madurai and as such, the same is without jurisdiction. Hence, the entire exercise of fixing the proposed rent is not

proper. No action seems to have been taken by the fourth respondent thereafter. Be that as it may, the fourth respondent has chosen to straight away issued another notice dated 13.02.2019 under Section 78 of the Act alleging that the petitioner has been in due of arrears of rent of Rs.5,44,019/- from January '2019 onwards. The said notice claimed that the fair rent was fixed with effect from 01.07.2016. It further claimed that the petitioner would be considered as an encroacher, if she failed to pay the said arrears of rent within a period of 15 days thereon. Immediately, the petitioner has sent a representation to the fourth respondent stating that the rent was fixed retrospectively without any fixation of rent as contemplated under the scheme of Section 34A of the Act and as such, the same has to be fixed fairly in accordance with law. However, without considering any objections and representations, the fourth respondent issued notices dated 05.11.2020, 24.08.2021 and 19.01.2022 that the petitioner is in arrears of rent and that the rent was fixed at Rs.24,000/- per month. Neither furnishing any calculation nor calling for any objection from the petitioner, the monthly rent was fixed at Rs.24,000/- per month, which is caused prejudice

to the petitioner. Even after the impugned notices, the petitioner paid a sum of Rs.3,41,000/-. Further, it is also relevant to note that the power to declare a tenant to be an encroacher by the fiction under Section 78 of the Act or any of the powers for removal of a tenant can be exercised only by the jurisdictional Joint Commissioner. However, in the present case, the impugned order declaring the petitioner as an encroacher under Section 78 of the Act has been made by the fourth respondent. Hence, the impugned notices is without jurisdiction and liable to be quashed. Therefore, this petition.

5. In response, Mr.M.Lingadurai, learned Special Government Pleader appearing for the respondents 1 to 3 submitted that the petitioner in her affidavit at paragraph No.3 admitted that a Committee has been constituted under Section 34A of the Act and it has fixed the rent of Rs.56,000/- per month. Thereafter, the objections were received from the petitioner. Further, calculation sheet have also been submitted in this regard. Thereafter, on consideration of the objection, the rent has been reduced from

Rs.56,000/- to Rs.24,000/- per month. The petitioner is a tenant of 16000 sq.ft. of a vast area, which is situated in a prime location. The petitioner is in possession and enjoyment of the property and earning for the past several years. Initially, the petitioner agreed with the rent, however, since she sought time, the same was granted. Thereafter, she had been paying arrears of rent regularly. Even after the impugned notices, the petitioner has paid a sum of Rs.3,41,000/-. Further for 16000 sq.ft., the rent is only Rs.24,000/- which is admittedly Rs.1.50 per sq.ft.

6. Mr.Muthugeethaiyan, learned Standing Counsel appearing for the fourth respondent / Temple, submitted that the petitioner is a tenant under the Temple of 16000 sq.ft of vacant land. Thereafter, the petitioner has put up a Steel shop using the entire place and is earning. The petitioner was earlier paying Rs.5,550/- per month and thereafter, fair rent was fixed at Rs.56,000/-, which was objected to by the petitioner and a worksheet was provided. After considering her objections, the rent was fixed at Rs.24,000/-. The petitioner thereafter approached the Temple Authorities

and agreed to pay the arrears of enhanced rent and the present rent. She had paid almost the entire arrears and cleared the same. As on 31.05.2022, she had paid part of arrears and also agreed to pay the revised enhanced rent of Rs.24,000/- per month. When that being so, this petition has been filed during June 2022 and thereafter, she failed to pay the rent.

7. The learned counsel for the petitioner objected the contention of the learned Standing Counsel by stating that calculation of arrears cannot be done beyond the period of notice. As regards the enhancement of rent of Rs.24,000/-, it has been regularly paid.

8. I have considered the rival submissions made by the learned counsel appearing for the parties and perused the materials placed before this Court.

9. It is seen that under Section 34B of the Act, the Executive Officer finds that the petitioner has failed to make the payment of rent. For

the purpose of termination, the said notices are given. If the petitioner has any objection with regard to the notices, she has to file appropriate petition before the concerned Authority under Section 34B of the Act challenging termination the lease of the property in question. It is also seen that the petitioner had admitted the fixation of rent and sought time for payment of arrears. In view of the same, the Temple Authorities, pursuant to the order passed under Section 34B of the Act, proceeded further and also took action for removal of encroachment in the property by following the procedures. If the petitioner has got any objections, she has to file a petition under Section 21A of the Act before the Joint Commissioner within a period of three weeks from the date of receipt of a copy of this order. Thereafter, the Temple Authorities would take appropriate action, if the petitioner was found to be an unauthorised occupier. Therefore, the Executive Officer is directed to proceed further by approaching the Assistant Commissioner of Hindu Religious and Charitable Endowments Department to inspect the property in question and file a report to the Joint Commissioner under Section 78 of the Act. Thereafter, the Joint Commissioner shall conduct an

enquiry and conclude the same and pass appropriate orders under Section 79 of the Act within a period of two months from the date of receipt of the report from the concerned Assistant Commissioner.

10. With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

**27.06.2022**

Index : Yes / No

Speaking Order : Yes / No

vji

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