



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **18.03.2022**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P. (MD) No.4729 of 2019

and

W.M.P. (MD) Nos.3783, 3784 and 21466 of 2019

WEB COPY

M.Curz Anthony Martin

... 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.Arulmigu Agastheeswarar Swamy Temple,
represented by its Trustee,
Ambasamudram,
Tirunelveli District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the impugned order passed by the 3rd respondent dated 01.11.2018 and the consequential impugned order passed by the 3rd respondent dated 07.02.2019 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 R1 & R2 : Mr.P.Subbaraj
Special Government Pleader

For R3 : Mr.V.Thirumal

ORDER

This writ petition has been filed for a Certiorarified Mandamus to call for the records of the impugned order dated 01.11.2018 and the consequential impugned order dated 07.02.2019 passed by the 3rd respondent, to quash the same and to direct the respondents to re-fix the fair rent in accordance with law

2.The challenge to the impugned notice is that it is illegal, un-sustainable and liable to be quashed. It is submitted that the 3rd respondent has not followed the guidelines issued by the Government



dated 02.02.2019 by giving an opportunity for raising objections to the petitioner. It is further submitted that it is contrary to the decision of the Division Bench of this Court in the case of **Arulmigu Angala Parameswari and Kasivishwanathaswami Temple Adimanaiveal House Owners Association Vs. The State of Tamil Nadu, represented by its Secretary, Chennai and another** reported in **2009 (6) CTC 512**.

3.The learned counsel for the 3rd respondent submits that there are totally 37 shops and 6 residential houses, which belongs to the 3rd respondent temple and that the petitioner was originally paying the rent of 5,620/- for the shop No.14/75 and Rs.460/- for the shop No.14/16 and that intimations were given to the petitioner on 01.12.2016 that the Fair Rent Committee had been constituted and that the Fair Rent Committee was under the process of fixing the fair rent.

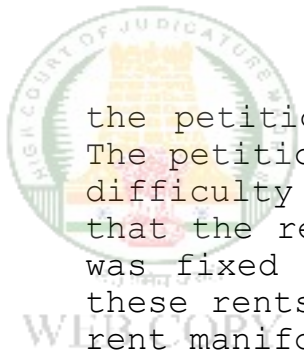
4.It is further submitted that an intimation was also given intimating that the fair rent has been fixed to Rs.85,000/- at Rs.1,500/- per month for the aforesaid shops. It is submitted that out of 37 shops, about 29 tenants have agreed to the revised rent and are paying the revised rent and that about 7 tenants out of the rest of the 9 tenants have filed appeals and 2 other tenants are before this Court by way of the present writ petition and W.P.(MD) No.4687 of 2019.

5.The learned counsel for the official respondents submits that the petitioner has an alternate remedy by way of an appeal under Section 34 A of the HR & CE Act, 1959 and therefore, the writ petition is devoid of merits.

6.The learned counsel for the petitioner by way of rejoinder submits that since the impugned order seeking to pay the revised fair rent for a sum of Rs.85,000/- at Rs.1,500/- per month for the aforementioned shops is exorbitant and without proper notice to the petitioner and in violation of the safeguards prescribed by the Court in the *Angala Parameswari case (supra)*, the impugned order is liable to be set aside. It is further submitted that the rent was revised during the subsistence of the lease period, which is normally for a period of 2 years and that the lease period would have expired only in the month of December, 2018.

7.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Special Government Pleader for the official respondents and the learned counsel for the 3rd respondent and I have also perused the interim order passed by this Court.

8.At the time of admission, the petitioner was given an interim protection by directing the petitioner to pay a sum of Rs.11,000/- per month only and in the other case in W.P.(MD) No.4687 of 2019,



the petitioner was directed to pay a sum of Rs.4,000/- per month. The petitioner has an alternate remedy by way of an appeal. The only difficulty that I am able to discern from a reading of the facts is that the rent that was fixed earlier was low and that the rent that was fixed subsequently was high and there is a huge variations in these rents. The fixation of fair rent retrospectively enhancing the rent manifold time can cause prejudice and make the appellate remedy under Section 34 A (3) of the Act illusory.

9.Considering the same, I am inclined to dispose of this writ petition by directing the petitioner to file a statutory appeal before the appellate Commissioner under Section 34A of the Act by paying arrears of rents equivalent 50% of the fair rent fixed and imposed on the petitioner. If such exercise is carried out by the petitioner, the petitioner is also entitled to have his appeal disposed by the appellate Commissioner. The petitioner is therefore directed to pay 50% of the arrears within a period of 30 days from the date of receipt of a copy of this order. The petitioner shall also continue to pay the revised rent as in force till the disposal of his appeal.

10.The writ petition stands disposed of, accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS I)

/TRUE COPY/

/ /2022
Sub Assistant Registrar(CS)

To

1.The Commissioner,
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No.119, Nungampakkam High Road,
Chennai -34.

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

+1 CC to M/s.V.THIRUMAL, Advocate (SR-13061[F] dated 18/03/2022)
+1 CC to M/s.R.J.KARTHICK, Advocate (SR-13138[F] dated 21/03/2022)
+1 CC to M/s.SPL GP (SR-13167[F] dated 21/03/2022)

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