



WEB COPY



W.A(MD)No.786 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.08.2022

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
AND
THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

W.A(MD)No.786 of 2022
and C.M.P.(MD) No.6706 of 2022

N.K.Ram Vishnu Raja

... Appellant/Writ Petitioner

Vs.

1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Chennai.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Sivagangai.

3.The Executive Officer,
Arulmigu Mayuranathasamy Thirukoil,
Pethavanallur,
Rajapalayam Taluk,
Virudhunagar District.

... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order dated 21.03.2022 in W.P(MD)No.3519 of 2022 and allow the Writ Appeal.

For Appellant : Mr.H.Velavadhas

For Respondents 1 & 2 : Mr.M.Lingadurai
Special Government Pleader

For 3rd Respondent : Mr.P.Mahendran
Standing Counsel



J U D G M E N T

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

The writ appeal is directed against the order of learned Single Judge, dated 21.03.2022, dismissing the Writ Petition filed by the petitioner in W.P(MD)No.3519 of 2022 with a direction to the appellant to challenge the order impugned in the writ petition before the Commissioner, HR & CE Department, Chennai and pursue the appeal paying substantial amount out of the total demand made by the third respondent.

2. Heard Mr.H.Velavadhas, learned counsel for the appellant, Mr.M.Lingadurai, learned Special Government Pleader, who accepts notice on behalf of the respondents 1 and 2 and Mr.P.Mahendran, learned Standing Counsel appearing for the third respondent. By consent, the appeal is taken up for final disposal at the admission stage.

3. Brief facts that are necessary for the purpose of disposal of this appeal are as follows:-

3.1 This matter relates to fixation of fair rent for the vacant land measuring an extent of about 61 cents belonging to a public temple known as "Arulmigu Mayuranathasamy Thirukoil" at Pethavanallur Village, Rajapalayam Taluk.



3.2 The appellant has taken lease of a vacant land measuring an extent of about 61 cents from the third respondent in the year 1976. It is the case of the third respondent that the property leased out to the appellant is situated at Rajapalayam – Tenkasi main road. The lease of the land was for the purpose of establishing a retail petrol outlet.

3.3 It is also admitted that the rent till 2017 was Rs.35,551/- per month. However, proceedings were initiated for the fixation of fair rent by issuing notice in 2017, by which, the second respondent fixed fair rent at Rs.1,74,660/- from 01.02.2017. Earlier, this order was challenged before the Commissioner, HR & CE Department, Chennai and the Commissioner remanded the matter to the Fair Rent Fixation Committee to refix the fair rent based on the guideline value with certain directions. Thereafter, it is stated that the Fair Rent Fixation Committee has revised the fair rent from Rs.1,74,660/- to Rs.78,500/-. Challenging the said order, the appellant has filed the writ petition.

3.4 The writ petition was disposed by the learned Single Judge with the following directions:-

“19. Considering all these facts and circumstances, I am inclined to dismiss this writ petition by giving liberty to the petitioner to challenge the aforesaid fixation of fair rent of Rs. 78,500/- before the Appellate Commissioner within a period of three months from the date of receipt of copy of this order. The fixation of rent



WEB COPY



W.A(MD)No.786 of 2022

at Rs.78,500/- by the Fair Rent Fixation Committee for a period commencing from 01.02.2017 can be valid only for a period of three years. There should have been a further upward revision of rent under Section 34 A of the Act, which has not been done. Instead the arrears have been demanded at Rs.78,500/- per month.

20. Therefore, I direct the petitioner to pay the arrears of rent calculated at Rs.78,500/- for a period commencing from 01.02.2017 as has been demanded. If the petitioner pays the arrears of rent of Rs.78,500/- for a period of three years from 01.02.2017, the proposed appeal of the petitioner may be entertained by the Commissioner and disposed in accordance with law. Liberty is given to the temple and temple authorities and other respondents to approach the Fair Rent Fixation Committee to revise and refix the fair rent for a period after 01.03.2020 following the procedure contemplated under Section 34 A of the Hindu Religious and Charitable Endowments Act. No costs. Consequently, the connected Miscellaneous Petition is closed."

Aggrieved by the same, the above appeal has been preferred by the writ petitioner.



WEB COPY

4. Learned counsel for the appellant submitted that as per the Government Orders in G.O.Ms.No.353 Tamil Development and Culture, Hindu Religious Department dated 04.06.1999 and G.O.Ms.No.456 Tamil Development, Hindu Religious and Charitable Endowment News, dated 09.11.2007, earlier fair rent has been increased by 15% once in three years and that the rent can never be enhanced from Rs.35,551/- to Rs.78,500/- and that therefore, the fair rent fixed by the Committee is exorbitant and contrary to the Government Orders.

5. Learned counsel for the appellant further submitted that the appellant was not given any opportunity by the Fair Rent Fixation Committee before passing the order enhancing the fair rent from Rs.35,551/- to Rs.78,500/- per month. Referring to the order passed by the Commissioner, HR & CE Department - 1st respondent, learned counsel then submitted that the Committee by the impugned order has not even followed the directions of the first respondent.

6. Learned Special Government Pleader appearing for the respondents 1 and 2 and the learned Standing Counsel appearing for the third respondent contended that the impugned order is strictly in accordance with Section 34-A of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as the Act).



7. It is to be noted that the fair rent payable for any immovable property belonging to any religious institution, has to be fixed by a Committee consisting of the Joint Commissioner, the Executive Officer or the Trustee or the Chairman of the Board of Trustees, as the case may be, of the religious institution and the District Registrar of Registration Department. Under Rule 17 of the Religious Institutions (Lease of Immovable Property) Rules, 1963, a fair rent to the site and buildings belonging to the religious institutions shall be revised periodically at least once in three years by a Committee. Similarly, the fair rent has to be fixed in accordance with the market value of the land and the cost of building worked out as per the Code of Public Works Department.

8. Section 34-A of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, reads as follows:

“34-A. Fixation of lease rent.—The lease rent payable for the lease of immovable property belonging to, or given or endowed for the purpose of, any religious institution, shall be fixed by a Committee consisting of the Joint Commissioner, the Executive Officer or the Trustee or the Chairman of the Board of Trustees, as the case may be, of the religious institution and the District Registrar of the Registration Department in the district concerned taking into account the prevailing market rental



value and the guidelines, as may be prescribed and such lease rent shall be refixed in the like manner once in three years by the said Committee."

9. Rule 17 of the Religious Institutions (Lease of Immovable Property) Rules, 1963, reads as under:-

"17. Fixation of fair rent to buildings belonging to the religious institutions. - Fair rent to the site and buildings belonging to the religious institutions shall be revised periodically at least once in three years by a Committee constituted for each Deputy/Joint Commissioner's division by the Commissioner. If there is an Executive Officer appointed for the religious institution, he shall also be associated with the work of the Committee. If there is no Executive Officer appointed for the religious institution, the trustee or Chairman, Board of Trustees shall be associated with the work of the Committee. The fair rent shall be fixed in accordance with the market value of the land and the cost of building worked out as per the Code of Public Works Department."

10. Reading of the above Section and Rule does not indicate any prior opportunity to be given to the tenant / lessee before passing an



order fixing fair rent, even though the person aggrieved by the order of Committee or fixation of fair rent has a remedy of an appeal before the Commissioner. The rent or fair rent has to be fixed in accordance with law under the provisions of HR & CE Act. The procedure for fixing fair rent is available under the Act and hence, the jural relationship between the lessee and the temple should also be subject to the rights and obligations of parties under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Hence, every lessee, who has taken the property of Temple on lease is liable to pay fair rent fixed in accordance with the provisions of the Act. Even though there is no provision under the Act to the effect that the lessee is entitled to prior notice before the order fixing lease /rent, the provision will be constitutional only when principles of natural justice is also read into it.

11. This aspect is reiterated by this Court as well as the Hon'ble Supreme Court in several cases. Following the judgment of the Hon'ble Supreme Court in ***Swadeshi Cotton Mills vs Union of India*** reported in ***1981 AIR 818***, a Full Bench of this Court in P.C. ***Thanikavelu vs The Special Deputy Collector*** reported in ***AIR 1989 Mad 222*** has observed as follows:-

"6. The supreme Court has held in ***Swadeshi Cotton Mills vs Union of India*** reported in ***1981 AIR 818*** that even in the



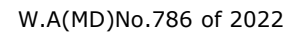
WEB COPY



W.A(MD)No.786 of 2022

absence of express reference to observation of principles of natural justice, such principles should be followed whenever it affects the rights of parties. It cannot be gainsaid that when the lands of an individual are acquired, albeit he may be paid compensation, his civil rights may be affected. It is therefore elementary that, to be consistent with the principles of natural justice, such a person should be put on notice before his lands are acquired and his objection heard and considered. The enquiry contemplated under S. 5-A of the Act would be full and complete only when the person who is really interested in the land is put on notice. But, at the same time, it is made clear that individual notice is mandatory only to those persons whose names are found in the revenue records or who are found by the Collector as persons interested on information received through reliable source."

Therefore, this Court is of the view that the fair rent fixed by the Committee without issuing a prior notice to the lessee giving an opportunity to the tenant to submit his objection regarding the factors proposed to be taken and considered by the Committee cannot be sustained, especially when the substantial right of appellant as a lessee is affected.



12. Learned Standing Counsel for the third respondent submitted

13. It is well settled that the principles of natural justice should



14. It is to be noted that the Commissioner, HR & CE Department, Chennai - 1st respondent, while allowing the appeal filed by the appellant earlier in Appeal No.19 of 2017 has observed as follows:

"7. As per the Sec. 34A of the Act "Prevailing market rental value" means the amount of rent paid for similar type of properties situated in the locality where the immovable property of the religious institution is situated". But in this case, the fair rent was fixed only based on the guideline value and other relevant issues were not examined. Now, because of reduction in guide line value, as a policy, the appellant is approaching for modification. The fair rent shall be fixed once in 3 years taking into account the prevailing market rental value. The respondent temple has failed to fix the fair rent as per 34A of the Act. Hence, the case is remitted to fair rent fixation committee for reconsideration. The fair rent committee shall reconsider the issue under the provisions of Sec 34A of the Act, revision of Guide Line value and the Government Orders for fixation of rent. Such exercise shall be completed within a period of 3 months from the date of receipt of this order. Till then the appellant shall pay the revised rent and excess payment if any made will be refunded after the rent is refixed. Even after reconsideration, if there is no change in fair rent value, then the appellant will be bound by the



W.A(MD)No.786 of 2022

decision. The appeal petition is hereby disposed of with the above directions.”

WEB COPY

15. Even the order of the Commissioner was not followed while passing the fresh order. It is to be seen that fair rent has been arrived at Rs.78,500/-. The calculation sheet gives an indication that the value of the building has also been taken into account for purpose of calculation of fair rent. It is admitted that no portion of the building was constructed by the respondents. The fair rent cannot be fixed for the building constructed by the tenant / lessee. Consequently, the fair rent was fixed by deducting a sum of Rs.35,551/- being the rent payable as per the rate before 2017. The actual rent paid by the lessee / the current rent need not be deducted from the fair rent calculated by the respondents. Therefore, the calculation made also gives an indication that the Committee has not calculated the fair rent in the manner required in law.

16. As pointed out earlier, the appellant / lessee is entitled to be heard before fixing the fair rent. Unless the particulars, based on which the respondents proceeded to revise the rent are furnished to the appellant, he will not be in a position to put forth his case efficiently and the Committee cannot proceed to fix the fair rent without such notice giving opportunity as otherwise it will amount to fixing the fair rent unilaterally. Even with regard to the provisions of the Act, when the



lessee is required to pay the fair rent fixed by the Committee, the order fixing the fair rent by the Committee cannot be treated as an administrative order as there is an adjudication involving civil rights. The proviso to Section 34A gives an indication that the lessee can maintain the appeal only if it is accompanied by satisfactory proof of deposit of the lease rent so fixed or refixed. Therefore, this Court is of the view that the Committee can fix fair rent only after issuing a notice informing the lessee of all the factors / details that are taken into account for revising or refixing the fair rent.

17. In the result, this Writ Appeal is allowed and the order of learned Single Judge is set aside. The second respondent is directed to constitute a Committee as contemplated under Section 34A of the Act and fix the fair rent after issuing notice to the appellant as to the proposed revision. The show cause notice to the appellant should clearly indicate the facts which will be taken into consideration for fixation of fair rent. The Committee shall pass appropriate orders within three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

18. The appellant is paying the old rent from 2017 onwards. The rent arrived at by the Committee was around Rs.1,18,405/- and if the



W.A(MD)No.786 of 2022

value of the building is deducted the fair rent comes to Rs.1,15,535/-.

Assuming that the appellant / lessee may dispute the amount which was taken as market value, this Court is unable to find materials to reduce the fair rent below Rs.57,000/- per month. Hence, the appellant is directed to pay the difference amount between Rs.35,551/- and Rs.57,000/- from 01.02.2017 within a period of six months from the date of receipt of a copy of this order. The appellant is also directed to pay Rs.57,000/- per month as lease amount till such time the Committee fixes the fair rent as per the above directions.

19. If there is a dispute with regard to construction of building, the same shall be considered by the Committee. It is clarified that the respondents are entitled to calculate the fair rent including the value of building also in case the building was constructed by the respondents and handed over to the lessee. In case the appellant has constructed the building, the respondent is not entitled to calculate fair rent by adding the value of building.

[S.S.S.R.,J] [S.S.Y.,J.]
01.08.2022

Index :Yes/No
Internet :Yes/No
sj



W.A(MD)No.786 of 2022

To

- 1.The Commissioner,
Hindu Religious and Charitable Endowment Department,
Chennai.
- 2.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Sivagangai.



WEB COPY



W.A(MD)No.786 of 2022

S.S.SUNDAR,J.
and
S.SRIMATHY,J.

sj

W.A(MD)No.786 of 2022

01.08.2022