



W.P(MD).No.15040 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.07.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P(MD).No.15040 of 2022

and

W.M.P(MD).No.10759 of 2022

T.Kesavaraj

... Petitioner

Vs.

1.The Commissioner,

Hindu Religious and Charitable Endowments Department,
119, Uthamar Gandhi Salai,
Nungambakkam, Chennai-34.

2.The Joint Commissioner,

Hindu Religious and Charitable Endowments Department,
14/1, Trivandrum Road, Palayamkottai,
Tirunelveli-627002.

3.The Executive Officer,

Arulmighu Athimoolavinayagar and Santhana Mariyamman Temple,
Ozhuginasery,
Vadeveeswaram,
Nagercoil-629001.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records in the impugned orders dt 4.2.2022 and 19.3.2022 issued by the 3rd Respondent and Quash the same and further direct the Respondents to fix the fair rent for the period from 1.7.2021 to 30.6.2024 under section 34-A of the HR and CE Act, 1959 without demanding any arrears of rent as stated in the



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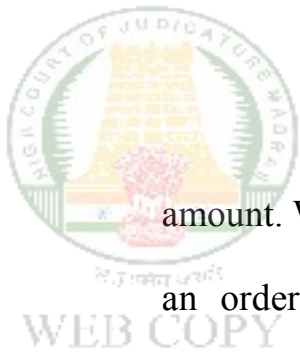
impugned notice and also by giving the credit to the Rs.6,00,000/- (Rupees Six Lakhs) paid by the petitioner as deposit for the lease of vacant site of 11 cents of land in Sy.no.16/91 of Vadasery Village, Agastheeswaram Taluk, Kanyakumari District.

For Petitioner : Mr.C.Dhanaseelan
For R1 & R2 : Mr.M.Lingadurai
Special Government Pleader
For R3 : Mr.V.R.Shanmuganathan
Standing Counsel

ORDER

The petitioner challenging the impugned notices, dated 04.02.2022 and 19.03.2022 stating that the fair rent has been fixed and the petitioner is directed to pay a sum of Rs.24,11,236/- and called upon the petitioner to pay the arrears within 15 days failing in which he termed as defaulter/encroachers and proceedings under Section 78 would be contemplated as against him.

2. The contention of the petitioner is that the petitioner paying fair rent as per order, dated 29.06.2018 in W.P.No.3487 of 2009. He further submitted that in W.P.No.3487 of 2009, an interim order was passed in M.P.No.1 of 2009 on 18.04.2009 directing the petitioner to deposit a sum of Rs.3,00,000/- and continue to pay the rent of every month from April 2009 at the rate of Rs.5,000/- per month. Thereafter, the petitioner continues to pay the said



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amount. When W.P.No.3487 of 2009 came up for final hearing on 29.06.2018, an order was passed directing the petitioner to approach a Committee established under Section 34 A of the HR&CE Act to fix lease rent payable by the petitioner. Further, the Committee was directed to give personal hearing to the petitioner and decide the issue within a period of six weeks. This being so, without issuance of notice and without hearing the petitioner, the impugned order passed and fair rent was fixed.

3. The petitioner submits that he is a tenant of 11 cents of vacant land (4850 Square feet) in Survey No.16/91, Vadasery Village, Agastheeswaram Taluk, Kanyakumari District belonging to the third respondent temple coming under the administration of HR&CE Board. During the year 2009, the petitioner's mother, namely, Gomathi Thiyagarajan was the lessee and she was paying Rs.2,000/- as ground rent. All of a sudden, the third respondent revised the monthly rent Rs.4,728/- without fixing the lease rent as per Section 34-A of the HR&CE ACT and contrary to the guidelines issued by G.O.No.456, dated 09.11.2007. As per the guidelines, every three years, rent can be increased by 15%. In such circumstances, petitioner's mother filed the above referred writ petition. Thereafter, the petitioner's mother died and the petitioner stepped in as legal heir and obtained the aforesaid orders.



4. The petitioner submits that the Commissioner, HR&CE in its proceedings, dated 30.07.2018 directed the petitioner to present along with the requisite documents to substantiate his claim. On 10.09.2018, the petitioner submitted the documents along with a resolution stating that near the petitioner's property only M/s.KKS Timber BGS Saw Mill situated and their monthly rent is Rs.20,000/- and they made a deposit of Rs.5,00,000/-. On 15.11.2017, appropriate fair rent to be fixed. Further, he gave an objection to the Fair Rent Fixation Committee on 21.07.2018 and thereafter, she obtained information through RTI for similarly situated lands of properties, the monthly rent was fixed as Rs.6,338/-. On the contrary, unreasonable amount fixed for the petitioner.

5. Further, the petitioner received a notice, dated 11.02.2020 on 16.03.2020 along with working sheet informing that from 01.07.2019 the fair rent to be fixed. Thereafter, on 04.02.2022, notice sent informing that fair rent already fixed upto 30.06.2019 to the tune of Rs.24,11,236/- followed by second notice on 19.03.2022. The petitioner thereafter received a notice, dated 19.04.2022 informing that in the earlier notice, dated 11.02.2022, there is a typographical error with regard to the extent of land in which it is wrongly stated as 3976.97 square feet, which is corrected and read as 4850 square feet. The petitioner further submitted that as per W.P.No.3487 of 2009,



the petitioner paid Rs.3,00,000/- and thereafter on 31.03.2022 paid Rs. 1,00,000/- and subsequently, on 23.06.2022 paid Rs.2,00,000/- in total amount of Rs.6,00,000/-. In view of the contrary stand taken by the Department, petitioner was not given appropriate opportunity before the Fixation of Fair Rent and not following the order passed in W.P.No.3487 of 2009, wherein, the petitioner is directed to pay Rs.5,000/- from the year 2009-2018 regularly and now wrongly assessed for fair rent is not proper. Hence, filed this writ petition.

6. The learned counsel for the third respondent produced a calculation memo before this Court, which reads as under:

<i>Periods</i>	<i>Month</i>	<i>Rent fixed by 1st respondent</i>	<i>Amounts to be paid</i>
<i>01.11.2001 to 30.06.2004</i>	<i>32</i>	<i>4,728/-</i>	<i>1,51,296/-</i>
<i>01.07.2004 to 30.06.2007</i>	<i>36</i>	<i>5,437/- (4,728+709 15% increase) (As per GO.MS.No. 456/2007</i>	<i>1,95,732/-</i>
<i>01.07.2007 to 30.06.2010</i>	<i>36</i>	<i>6,253/- (5,437+816 15% increase)</i>	<i>2,25,108/-</i>



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01.07.201 0 to 30.06.2013	36	7,191/- (6,253+938 15% increase)	2,58,876/-
01.07.201 3 to 30.06.2016	36	8,270/- (7,191+1079 15% increase)	2,27,720/-
01.07.201 6 to 30.06.2019	36	9,510/- (8,270+1240 15% increase)	3,42,360/-
01.07.201 9 to 30.06.2022	36	10,937/- (9510+1426 15% increase)	3,93,732/-
		Total accrued rent from 01.11.2001 to 30.06.2022	16,05,948/-

Rent amount paid by the petitioner:

01.11.2001 to 18.04.2009 (89 months X 2000) =Rs.1,78,000/-

01.05.2009 to 02.05.2022 (157 months X 2000) =Rs.7,85,000/-

(As per interim order in earlier W.P.No.3487 of 2009)

Total remittance of rent =Rs.9,63,000/-**Advance amount paid by the petitioner:**

15.11.2017 As per interim order in earlier WP =Rs.3,00,000/-

31.03.2022 on demand =Rs.1,00,000/-

23.06.2022 on demand =Rs.2,00,000/-

Total advance paid =Rs.6,00,000/-Total accrued rent from 01.11.2001 to
30.06.2022

=Rs.16,05,948/-

Total amount paid by petitioner

(rent + advance =9,63,000 + 6,00,000)

=Rs.15,63,000/-

Net Balance amount of arrears of rent**=Rs. 42,948/-**Current rent as on 01.07.2022 to be paid if calculated
with 15% cumulative increase from 01.11.2001 at



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*the monthly rent fixed by 1st respondent at Rs.4,728/-
as on the said date of 01.11.2001*

=Rs.12,577/-

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7. The learned counsel for the respondents submits that the period of demand for fixation of fair rent can be fixed as in three periods that is upto 2016 would be the first period, the second period is between 01.07.2016 to 30.06.2019 and the third period is between 01.07.2019 to 30.06.2022. During the year 2016, the fair rent fixation was not completed, which is pending. Though initially there was a demand made for Rs.44,000/- as revised rent and the same is yet to be fixed. The petitioner should be given notice and thereafter, fixation would be followed under Section 34-A of HR&CE Act. He further submitted that the petitioner taking umbrage under the order of this Court for the period 2009-2018 is on a wrong notion.

8. Further, in the writ petition it is only an interim arrangement and W.P.No.3487 of 2009 was filed for challenging the fair rent fixed from 01.07.2001 to 20.06.2007. It does not mean that for the period, fair rent has been finalized as well as for the subsequent periods, no fair rent is fixed, for the period from 01.07.2016 to 30.06.2019, fair rent fixed as Rs.44,000/- for which petitioner not made any objection. For the period 01.07.2019 to 30.06.2022, fair rent is yet to be fixed. The petitioner will be given notice and thereafter, hearing the petitioner and his objections, the fair rent will be



considered and fixed. He further submitted that the petitioner has been served with a notice for fixation of fair rent for the period 01.07.2016 to 30.06.2019 on 15.05.2016. Subsequently, notice has been issued on 27.04.2020 and fair rent has been fixed. The same was initiated to the petitioner for the period from 01.07.2016 to 30.06.2019. For the year 2019-2022, fair rent has been fixed and the same was communicated to the petitioner on 16.03.2020. He further submitted that letter, dated 19.03.2020, earlier notice for the period 2019-2022 was withdrawn due to some calculation error. The petitioner sent a detailed objection on 19.03.2020, which is under consideration. The learned counsel for the respondents fairly submits that the petitioner will be given fresh notice for all the three periods (2013-2016, 2016-2019 and 2019-2022), following Section 34-A of HR&CE Act, fair rent will be fixed accordingly.

9. The learned counsel for the petitioner at this stage submits that without prejudice to the petitioner's right he is ready to deposit Rs.10,00,000/- as follows:

(a) Rs.3,50,000/- on or before 31.08.2022

(b) Rs.3,50,000/- on or before 30.09.2022

(C) Rs.3,00,000/- on or before 31.10.2022

which can be credited to the petitioner account and adjusted for rental dues if in excess for future rents the same can be given credit and adjusted.



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10. In view of the same, this Court set aside the fixation of fair rent for the period from 01.07.2016 to 30.06.2019. The respondents are at liberty to consider the fixation of fair rent for all the three periods by considering the petitioner's objection and representation and the market rate of the adjoining lands. The petitioner in the interregnum he is willing to pay Rs.15,000/- as monthly payment without prejudice to his rights, in fixation of fair rent. It is for the authority to decide in fairness, fix the rent according to the market value. The petitioner is directed to co-operate with the Fair Rent Committee. On receipt of the notice without delay, the petitioner is directed to participate in the proceedings and to consider the petitioner's objections and submissions, fix fair rent within a stipulated period from the date of receipt of copy of this order. Before conclusion of three months, the Fair Rent Committee is directed to consider the petitioner's payment of Rs.10,00,000/- favorably, in the event of petitioner failing in depositing the said amount of ten lakhs as per undertaking adverse inference can be drawn against the petitioner. Immediate steps to be taken following Section 78 and 79 of the Act.



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11. The writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes/ No
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M.NIRMAL KUMAR, J.

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