



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2022

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD).No.8415 of 2018

and

W.M.P(MD).No.7959 of 2018

S.Malliga

... Petitioner

Vs.

1.The commissioner,
HR&CE Department,
Chennai-34.

2.The Joint Commissioner,
HR&CE Department,
Madurai.

3.Arulmighu Vandii Kaliyamm Thirukoil,
Thadikombu Road,
Dindigul, through its Executive Officer.
...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari Mandamus, to call for the impugned notice dated 08.03.2018 on the file of the third 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 Court in W.P(MD).NO.14917 of 2017 and as per law under Section 34 (A) of the HR&CE Act, 1959 and by affording adequate opportunity to the petitioner and thereafter fix the fair rent.

For Petitioner : Mr.H.LAKSHMI SHANKAR, Advocate

For R1 & R2 : Mr.P.SUBBARAJ
Special Government Pleader

For R3 : Mr.A.K.BASKARAPANDIAN, Advocate

ORDER

Heard the learned counsel for the petitioner and the learned counsel for the respondents.



2. There is no merits in this writ petition. The petitioner had earlier filed a writ petition before this Court in W.P.(MD).No.14971 of 2017 along with two other writ petitions by separate writ petitions. These writ petitions were disposed of by a common order, dated 21.09.2017. The relevant portion of the aforesaid order is reads as under:

7. In view of the submissions made by the learned counsel for the third responden, following the judgment of the Hon'ble Division Bench of this Court referred 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:

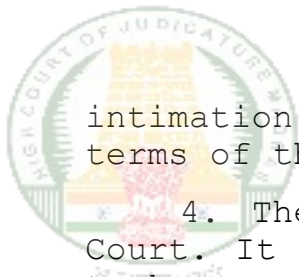
(i) The third respondent is directed to provide a copy of the order of the Fair Rent Fixation Committee presided over by the Joint Commissioner, Hindu Religious and Charitable Endowment Department dated 11.04.2017 as well as the calculation sheet to the petitioners forthwith, if not already given;

(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.

The petitioner has not complied with the above order.

3. The learned counsel for the petitioner submits that the petitioner was under the mistaken impression that she was required to pay only 50% of the one month rent and not the entire amount due. The learned counsel for the petitioner further submits that without a proper fixation rent under Section 34-A of the HR&CE Act, the petitioner cannot be asked to pay the so called arrears. There is no merits in the submission of the learned counsel for the petitioner in the light of the order, dated 21.09.2017. That apart, what has been challenged in the present writ petition is only



intimation asking the petitioner to pay a sum of RS.10,23,549 in terms of the order of the Court.

4. The official respondents have filed documents before this Court. It is also noted that on 18.04.2018, the interim order came to be passed by this Court in the present writ petition. As per the aforesaid order also, it has been observed that the petitioner bound to make payments without existing upon his bound. The paragraph 5 of the aforesaid order reads as under:

"In my view the petitioner, having suffered the order is bound to make payments instead of insisting upon the direction given by the collection sheet to prove his bonafide. Nevertheless the third respondent herein are equally bound by the order to provide by the Fair Rent Fixation Committee's order as well as the collection sheet."

5. Subsequent to the aforesaid order, during the pendency of the writ petition, the petitioner was furnished with the calculations arrived under Section 34-A of the HR&CE Act by the Fair rent Fixation Committee. The petitioner has also been issued with notice under Section 78 of the HR&CE Act, on 31.10.2018 and since the petitioner failed to pay the rent, the lease was cancelled pursuant to order dated, 20.11.2018, the petitioner has also vacated from the property on 18.10.2019. There is no further threat in terms of the impugned notice, dated 08.03.2018, as petitioner has been vacated from the property under the provisions of the Act. If at all, the respondents can initiate recovery proceedings against the petitioner for failure to pay the arrears of the rent. It is also noticed that the petitioner was originally paying a sum of Rs.2,000/- as rent in the year 1999. Subsequently, the rent for the property measuring 3403.25 square feet was enhanced vide G.O.Ms.No.353, dated 04.06.1999. Though the Government order was issued, it appears that it was not implemented in view of the several writ petitions filed by the tenants, challenges the aforesaid G.O.Ms.No.353.

6. During the interregnum, further Government order G.O.Ms.No.456, dated 09.11.20074, was issued. Thus only remedy, that is available to the petitioner was to file an appeal before the authority under Section 34-A of HR&CE Act. It is not open for the petitioner now state that there was no final determination under Section 34-A of the Act.

7. Considering the same, I am inclined to dismiss the writ petition filed by the petitioner by giving liberty to the petitioner to file an appropriate appeal under Section 34-A (3) before the Commissioner within 30 days from the date of receipt of copy of this order as the time for filing such appeal would have already expired the Commissioner shall dispose such appeal of the petitioner without reference to the limitation, if such appeal is filed within a period



of thirty days from the date of receipt of copy of this order on merits and in accordance with law. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (A.E)

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/ /2022

Sub Assistant Registrar(CS)

Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The commissioner,
HR&CE Department,
Chennai-34.

2.The Joint Commissioner,
HR&CE Department,
Madurai.

3.The Executive Officer,
Arulmighu Vandii Kaliyamm Thirukoil,
Thadikombu Road,
Dindigul,

+1 cc to Mr.H.LAKSHMI SHANK, Advocate, SR.No.6634

+1 cc to Mr.A.K.BASKARAPANDIAN, Advocate, SR.No.6582

+1CC to Spl.Government Pleader SR.No.6763

W.P (MD) .No.8415 of 2018

Date:16.02.2022

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