



W.P.(MD)No.24954 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :03.11.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.24954 of 2022

and

W.M.P.(MD).Nos.19061 & 19062 of 2022

M.Jeyaraj
S/o.Muthu Maya Thevar,
The president,
Nagai Mavatta Thirukovilkal Vadakaitharargal
matrum Anaithy Vithaman Payanpattalargal
Nala Sangam,
Reg.No.25/2022
Nagapattinam District.

... Petitioner

Vs.

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

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

3.The Executive Officer,
Arulmigu Kayaroganaswami and
Neelayathatchiyamman Temple,
Nagapattinam Taluk and District.

... Respondents



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PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the entire records pertaining to the impugned proceedings in செ.மு.மு.மு.எண். 9390/2020/ஆ3 dated 14.10.2020 issued by the 2nd respondent in respect of the properties belonging to the 3rd respondent's temple and quash the same and consequently direct the 2nd respondent to permit the petitioner to put forth his case before taking a decision of fixing a fair rent for the said property.

For Petitioner :Mr.Anand.R
For Respondents :Mr.J.Ashok
Additional Government Pleader for R1 & R2
Mr.V.Chandrasekar for R3

ORDER

The present writ petition is filed challenging the impugned proceedings dated 14.10.2020 issued by the 2nd respondent in செ.மு.மு.மு.எண்.9390/2020/ஆ3.

2.The short question that arises relates to the legality of fixation of fair rent without putting the petitioner on notice and without affording any opportunity to the petitioner prior to the fixation of fair rent.



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3.It is submitted that the above issue as to whether it is permissible to fix the fair rent without putting the petitioner on notice is no longer res integra. There is no doubt that it is open to the Respondents to fix the fair rent. However, any fixation of fair rent ought to be in compliance with the principles of natural justice and after taking into account the relevant factors and the procedures set out under Section 34-A of the Tamil Nadu Hindu Religious and Charitable Endowments Act. This Court has consistently stated that before fixation of fair rent, it may be necessary for the tenant to be put on notice and the fixation ought to be made in terms of Section 34-A of the Tamil Nadu Hindu Religious and Charitable Endowments Act, which reads as under:

“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.”



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4. In this regard, it is relevant to refer to the Judgment of the Division Bench of this Court W.A(MD)Nos.503 and 509 of 2022, wherein, it was held as under:

“9. Even though Section 34 (A) of the Act does not contemplate the issuance of notice before arriving at a fair rent, the observance of principles of natural justice is mandatory as the outcome of the proceedings affects the civil rights of parties. Therefore, the impugned demand notice fixing fair rent by the committee cannot be sustained. Even though this Court expresses its concern and questions the propriety of fixing the fair rent with retrospective effect, the learned counsel appearing for the third respondent fairly admits that the lease rent that was increased earlier was taken note of and that the existing lease as per the lease agreement till 31.12.2018 will not be enhanced. It is represented that a proposal has also been submitted to the Joint Commissioner to the effect that the enhancement of fair rent will be with effect from 01.01.2019.

10. Taking into consideration the submissions of the learned counsel appearing for the third respondent and the fact that the fair rent has been fixed without issuing show cause notice to the appellants as to the



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factors which had been taken into account by the Committee while fixing the fair rent, this Court is of the view that the orders of the learned Single Judge of this Court in W.P(MD)Nos.4729 of 2019 and 4687 of 2019 dated 18.03.2022 are liable to be set aside and the orders of the Joint Commissioner fixing fair rent in respect of the premises occupied by the appellants are also quashed.

11. It is open to the respondent Nos.2 and 3 to initiate fresh proceedings to fix the fair rent with effect from 01.01.2019. Before fixing fair rent, the second respondent is directed to issue show cause notice specifying the proposed enhancement and the basic factors which are relevant and taken for fixing fair rent as contemplated under Section 34(A) of the TN HR & CE Act. Only after considering the objections and the documents that may be filed by the appellants in response to the show cause notice, the Committee shall pass appropriate orders fixing the fair rent.”

4.It is submitted by the parties that the fair rent is fixed at Rs. 20,235/- for the period from 01.07.2016 till now. At this juncture, it is submitted by the learned counsel for the petitioner that out of the total sum



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of Rs.17,22,605/-, a sum of Rs.7,00,000/- will be paid in three monthly installments (i.e.,) Rs.2,50,000/-, Rs.2,50,000/- and Rs.2,00,000/-, which installments fall on 15.12.2022, 15.01.2023 and 15.02.2023 respectively. In the event of non-compliance, it is open to the respondents to take appropriate action against the petitioner in accordance with law.

5.It is found that upon fixation of the fair rent, if the petitioner had paid any excess amount, the same shall be adjusted towards the amount payable by the petitioner for the future dues. In case, there are any dues pursuant to the fixation of fair rent from the petitioner, it is open to respondents to recover the same in accordance with law. It is made clear that the payments are being made without prejudice to the objections that may be raised by the petitioner against the fixation of the fair rent.

6.In view of the same, the impugned proceedings of the second respondent dated 14.10.2022 is set aside. It is open to the respondents to initiate fresh proceedings to fix the fair rent. However, before fixing the fair rent, a show cause notice shall be issued by the respondents specifying the



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proposed enhancement and the basic factors which are relevant and taken for fixing the fair rent, as contemplated under Section 34(A) of the TN HR & CE Act. The show cause notice shall be issued by the respondents within a period of eight weeks from the date of receipt of a copy of this order and the petitioner shall file his objections, if any, within a period of four weeks from the date of receipt of a copy of the show cause notice and orders shall be passed by the respondents within a period of eight weeks thereafter. The petitioner shall in the meanwhile pay the admitted rent within the period stipulated in paragraph 4 of the above order.

7. With the above directions, this Writ Petition stands disposed of.

No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Speaking Order/Non Speaking Order

sbn



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MOHAMMED SHAFFIQ, J.

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