



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.09.2022

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**THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

W.P(MD).No.21540 of 2022

and

W.M.P(MD).Nos.15671 and 15672 of 2022

S.Arumugam

... Petitioner

**Vs.**

- 1.The Commissioner,  
Hindu Religious and Charitable Endowments Department,  
No.119, Uthamar Gandhi Road,  
Nungambakkam, Chennai-600 034.
- 2.The Joint Commissioner,  
Hindu Religious and Charitable Endowments (Admn.) Department,  
Tirunelveli.
- 3.The Assistant Commissioner,  
Hindu Religious and Charitable Endowments Department,  
Tirunelveli.
- 4.The Inspector,  
Hindu Religious and Charitable Endowments Department,  
Ambasamudram,  
Tirunelveli District.
- 5.The Revenue Inspector,  
Ambasamudram,  
Tirunelveli District.
- 6.The Village Administrative Officer,  
Mela Ambasamudram Village,  
Ambasamudram Taluk,  
Tirunelveli District.



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

...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 pertaining to the impugned notice, dated 30.08.2022 affixed by the 7<sup>th</sup> Respondent in the Petitioner's Shop No.17/18 at Therkku Thoppu Street, Ambasamudram Village and Taluk, Tirunelveli District and quash the same, and direct the 7<sup>th</sup> Respondent to remove the seal and handover the Petitioner's shop to him within the time frame fixed by this Court.

|                |                               |
|----------------|-------------------------------|
| For Petitioner | : Mrs.J.Anandhavalli          |
| For R1 to R6   | : Mr.M.Siddharthan            |
|                | Additional Government Pleader |
| For R7         | : Mr.V.Thirumal               |

### **ORDER**

This writ petition has been filed challenging the impugned order, dated 30.08.2022 and direct the 7<sup>th</sup> Respondent to remove the seal and hand over the possession of the Petitioner's shop to him.

2. The Petitioner is a tenant of the property belonging to the 7<sup>th</sup> Respondent temple, which is a denominational temple. The petitioner has been regularly paying rent to the 7<sup>th</sup> Respondent and was issued with rental receipts. The last agreed contractual rent was Rs.1,300/- (Rupees One Thousand and Three Hundred only). Thereafter, the 7<sup>th</sup> Respondent issued a



notice, dated 01.11.2018, calling upon the Petitioner to pay a sum of Rs.3,000/- (Rupees Three Thousand Only) allegedly representing the fair rent fixed by the Fair Rent Fixation Committee. The same was challenged by the Petitioner in O.S.No.291 of 2018 before the District Munsif Court, Ambasamudram seeking for declaration that the said notice is illegal and void and for consequential relief of permanent injunction. The 7<sup>th</sup> Respondent filed a written statement and the suit is pending. The proceedings, dated 03.10.2018 is a communication by the 2<sup>nd</sup> Respondent addressed to the Executive Officer of the 7<sup>th</sup> Respondent temple.

3. It is submitted by the learned counsel for the Petitioner that the said suit may not be maintainable and undertakes to withdraw the same within a week from today. It is submitted that in view of the default in the payment of the fair rent that has been fixed, the Petitioner was treated as an encroacher and proceedings were initiated under Section 78 of the Hindu Religious and Charitable Endowments Act. The same was challenged by the Petitioner by way of Revision Petition before the Commissioner, Hindu Religious and Charitable Endowments Department under Section 21 of the Hindu Religious and Charitable Endowments Act and the same is pending for consideration. In the meanwhile, the Petitioner had also submitted a representation before the Commissioner, Hindu Religious and Charitable Endowments Department



against the fixation of Fair Rent. The 1<sup>st</sup> Respondent in his Communication, dated 18.03.2022 indicated that the same was being forwarded to the Joint Commissioner, Hindu Religious and Charitable Endowments Department.

While matter stood thus, the Respondents have proceeded to seal the premises in terms of Section 79 of the Hindu Religious and Charitable Endowments Act with a view to take possession of the shop/premises in view of the continued default. Against this background, it is submitted by the learned counsel for the Petitioner that the proceedings under Section 34 A of the Hindu Religious and Charitable Endowments Act, stood vitiated inasmuch as the Fair Rent Fixation Committee fixed the fair rent, without issuing any notice, despite the fact that this Court has repeatedly held that fair rent must be fixed under Section 34 A of the Hindu Religious and Charitable Endowments Act in compliance with the principles of natural justice. However, the fair rent is fixed without any notice unilaterally. It was submitted that the proceedings under Sections 78 and 79 of the Hindu Religious and Charitable Endowments Act are only consequential to the proceedings under Section 34 A of the Hindu Religious and Charitable Endowments Act and failure of the Petitioner to remit the fair rent, that was fixed.



4. It is submitted by the learned counsel for the Petitioner that they are ready and willing to pay 75% of the fair rent fixed until 30.06.2022 and also undertakes to pay the entire fair rent. It was thus submitted that the fixation of fair rent apart from being contrary to the consistent view of this Court that it ought to be in compliance with principles of natural justice, the fact that the petitioner has now come forward to deposit 75% of the fair rent would demonstrate the bonafide of the Petitioner.

5. It is submitted by the learned counsel for the Respondents that they intended to fix the fair rent for the subsequent period namely for the year 2021 onwards.

6. I do not see any limitation or restriction on the authority of the Respondents to fix the fair rent in accordance with law. The Respondents are at liberty to fix the fair rent in compliance with the procedure for the subsequent period. In view of the fact that the Petitioner now come forward to pay 75% of the fair rent and also in view of the fact that originally the fixation of fair rent is contrary to the guidelines laid down by this Court in W.A.No. 503 of 2022. This Court is inclined to restore the possession to the Petitioner and direct the Respondents to remove the seal forthwith. The Petitioner shall continue to remit the fair rent fixed until the Fair Rent Fixation Committee



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completes the process of fixing the fair rent from the year 2017 onwards after providing a reasonable opportunity of being heard the Petitioner. As stated above, it is made clear that it is open to the Respondents to refix the fair rent afresh in accordance with law for the subsequent period. It is made clear that if the Petitioner does not comply with this order, the Respondents are at liberty to proceed in accordance with law.

7. With the above direction, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

**22.09.2022**

Index : Yes / No  
Internet : Yes/ No  
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**MOHAMMED SHAFFIQ, J.**

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