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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.21544 of 2022
and
W.M.P(MD).Nos.15673 and 15674 of 2022

A.Mariappan ... 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.

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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 7th Respondent in the Petitioner's Shop No.14/73 at Sandhai Bazaar North Street, Ambasamudram Village and Taluk, Tirunelveli District and quash the same, and direct the 7th 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 7th Respondent to remove the seal and hand over the possession of the Petitioner's shop to him. At the outset, it may be relevant to state that the Petitioner has filed another writ petition in W.P(MD).No.22073 of 2022, which has been filed challenging the impugned order, dated 01.11.2018 and direct the 2nd Respondent to fix the fair rent as per Section 34A of the Tamil Nadu Hindu Religious and Charitable Endowment Act as per the circular, dated 10.03.2022 of the 1st Respondent, to the petitioner's shop.

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2. The Petitioner is a tenant of the property belonging to the 7th Respondent temple, which is a denominational temple. The petitioner has been regularly paying rent to the 7th Respondent and was issued with rental receipts. The last agreed contractual rent was Rs.1,250/- (Rupees One Thousand Two Hundred and Fifty only). Thereafter, the 7th 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.160 of 2019 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 7th Respondent filed a written statement and the suit is pending. 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.

3. 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

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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 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 1st 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 the 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.

4. 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 had fixed the fair rent without complying with the principles of natural justice, despite the fact that repeatedly this Court has held that notice ought to be issued in compliance with the principles of natural justice. However, notice was not issued and the fair rent was fixed unilaterally by the Fair Rent Fixation Committee. It was reiterated that they

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had filed a suit before the civil Court on an erroneous understanding that suit was maintainable and on realising that the same was not maintainable, they have filed this writ petition. 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.

5. 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 undertake to pay the entire fair rent, for the subsequent period. It was submitted that apart from the fact that the fixation of fair rent is contrary to the consistent view of this Court, inasmuch as the same was fixed without being put on notice, the fact that the petitioner has now come forward to deposit 75% of the fair rent would demonstrate the bonafide's of the Petitioner.

6. It is submitted by the learned counsel for the Respondents that they intend to fix the fair rent for the subsequent period namely for the year 2021 onwards. I do not see any limitation or restriction on the authority of the Respondents to fix the fair rent in accordance with law for the subsequent

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period viz, 2021 onwards. The Respondents are at liberty to fix the fair rent in compliance with the procedure for the subsequent period viz 2021 onwards.

7. In view of the fact that the Petitioner has now come forward to pay 75% of the fair rent and also in view of the fact that the fixation of fair rent is contrary to the consistent view expressed by this Court that any fixation must be made after issuance of notice by the Fair Rent Fixation Committee, this Court is inclined to restore possession to the Petitioner and direct the Respondents to remove the seal forthwith as the Petitioner had paid 75% of the fair rent fixed until 30.06.2022. The Petitioner shall continue to remit the fair rent fixed until the Fair Rent Fixation Committee completes the process of fixing the fair rent from the year 2017 onwards after providing a reasonable opportunity of being heard to 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 viz., 2021 onwards. For the above reason, the impugned order, dated 30.08.2022 is set aside with the above observation/ direction.

8. With the above direction, the writ petition stands disposed of. No

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costs. Consequently, connected miscellaneous petitions are closed.

22.09.2022

Index : Yes / No
Internet : Yes/ No
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Note:Issue order copy on 27.09.2022

To

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Ambasamudram Taluk, Tirunelveli District.

7.The Trustee, Arulmigu Agastheeswarar Swamy Temple,
Ambasamudram,
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MOHAMMED SHAFFIQ, J.

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