



W.P.(MD)No.21802 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.09.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.21802 of 2022

and

W.M.P.(MD)Nos.15963 and 15964 of 2022

A.M.Abdul Kareem

... Petitioner

Vs.

1. The Commissioner,
Hindu Religious and Charitable Endowment Department,
Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034.

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

3. The Executive Officer,
Arulmighu Manomani Amman Temple
Pudukkottai.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for the records of the 2nd Respondent in Se.Mu.Pa.Mu.No.7573/2016/A2 dated 19.03.2018 and quash the same.



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For Petitioner : Mr.S.I.Muthiah
For Respondents : Mr.P.Subbaraj
Spl. Govt. Pleader for R1 & R2
Mr.G.Mathavan for R3

ORDER

This Writ Petition has been filed challenging the fixation of fair rent on the premise that the fair rent was fixed without complying with the procedure set out under Section 34-A of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as 'the Act').

2. The Petitioner is a tenant of the 3rd Respondent Temple. The 3rd Respondent Temple has fixed a sum of Rs.3,000/- (Rupees Three Thousand only) as monthly rent in the year 1996. Thereafter, the 3rd Respondent Temple has raised the rent periodically and the Petitioner was paying the same without any default. During the year 2013, the 3rd Respondent Temple increased the monthly rent from Rs.7,000/- (Rupees Seven Thousand only) to Rs.10,000/- (Rupees Ten Thousand only). Pursuant to the said increase, the Petitioner had been paying a sum of Rs.10,000/- (Rupees Ten Thousand



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only) as monthly rent. During the year 2018, the 3rd Respondent Temple informed the Petitioner that the fair rent for the Temple shops has been revised and fair rent has been fixed as Rs.24,000/- (Rupees Twenty Four Thousand only). But the order fixing the fair rent by the 2nd Respondent was not served on the Petitioner. The Petitioner had obtained the same under the Right to Information Act, 2005 and the same was received on 09.10.2019 vide letter of the 2nd Respondent dated 03.10.2019. Hence, challenging the same, the Petitioner had filed an appeal before the 1st Respondent on 05.12.2019 and the same has been rejected by the Registry of the 1st Respondent on the ground of delay.

3. It is submitted by the learned counsel for the Petitioner that no notice whatsoever was given before the re-fixation of the fair rent. 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 Act. This Court has consistently stated that before fixation of fair rent, it may be necessary for the tenant to be put on



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notice and the fixation ought to be made in terms of Section 34-A of the 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.”

4. In this regard, it is relevant to refer to the judgment of the Division Bench of this Court in 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



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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 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.



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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.”

5. In view of the same, the impugned order, dated 19.03.2018 is set aside. It is open to the Respondents to initiate fresh proceedings to fix the fair rent. However, before fixing fair rent, a show cause notice shall be issued by the Respondents 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 Act. The show cause notice shall be issued by the Respondents within a period of four weeks from the date of receipt of copy of this order and the Petitioner shall file his objections, if any, within a period of two weeks from the date of receipt of copy of the



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show cause notice and orders shall be passed by the Respondents within a period of eight weeks from the date of receipt of the objections, if any, or eight weeks from expiry of the two weeks period granted for filing objections. The Petitioner shall in the meanwhile pay the admitted rent within a period of two weeks from the date of receipt of copy of this order.

6. With the above direction, this Writ Petition stands disposed of.
No costs. Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes / No

Speaking Order : Yes / No

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MOHAMMED SHAFFIQ, J.

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