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W.P(MD).No.22829 of 202



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.10.2022

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**THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

W.P(MD).No.22829 of 2022

and

W.M.P(MD)No.16955 of 2022

M.K.Subramaina Raja

... Petitioner

**Vs.**

1.The Commissioner,  
Hindu Religious and Charitable Endowments Board,  
Nungambakkam High Road,  
Chennai.

2.The Joint Commissioner,  
Hindu Religious and Charitable Endowments Board,  
Sivagangai Region,  
Sivagangai.

3.The Executive Officer,  
Hindu Religious and Charitable Endowments Board,  
Arulmighu Mayuranadhaswami Thirukkovil,  
Pethavanallur Village,  
Rajapalayam Taluk,  
Virudhunagar District.

...Respondents

**Prayer** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the proceedings dated 20.04.2022 and 26.08.2022 on the file of the Executive Officer, Hindu Religious and Charitable Endowments Board, Arulmighu Mayuranadhaswami Thirukkovil, Pethavanallur Village, Rajapalayam Taluk, Virudhunagar District, the 3<sup>rd</sup> Respondent herein and quash the same.



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For Petitioner : Mr.Y.Prakash  
For R1 & R2 : Mr.P.Subbaraj  
Special Government Pleader  
For R3 : Mr.P.Mahendran

### **ORDER**

This writ petition is filed challenging the impugned proceedings, dated 20.04.2022 of the 3<sup>rd</sup> Respondent directing the Petitioner to deposit a sum of Rs.15,62,000/- on or before 31.05.2022 and hand over vacant possession on or before 01.06.2022, failing which, proceedings would be initiated in terms of Section 78 and 79 of the Hindu Religious and Charitable Endowments Act. Thereafter, the impugned notice was issued on 26.08.2022, whereby, tenancy was cancelled while proposing to treat the Petitioner as an encroacher from 31.08.2022 and to take appropriate action.

2. It is submitted by the learned counsel for the Petitioner that the land in Door No.53B in Cotton Market, Tenkasi Road, Rajapalayam, Virudhunagar District to an extent of 10 cents belong to Arulmighu Mayuranadhaswami Thirukkivil, Rajapalayam Taluk and the same was leased out to the Petitioner 45 years back. The Petitioner had established Lathe and Welding shop in the said land after putting up constructions thereon. The Petitioner has paid the lease rent till date without any default. The proceedings were initiated by the 2<sup>nd</sup> respondent with regard to fixation of lease rent under Section 34-A of the



Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, right from the year 2003. The Petitioner received a letter, dated 26.08.2022 enclosing the notices, dated 28.01.2022 and 20.04.2022 alleging that the same were issued earlier to the Petitioner demanding payment of rental arrears to the tune of Rs.14,74,000/- as per the fair rent fixed at Rs.22,000/- per month vide proceedings dated nil.02.2021 by Fair Rent Fixation Committee.

3. It is submitted by the learned counsel for the Petitioner that the fair rent was enhanced from Rs.1,661/- to Rs.22,000/- and the Petitioner was neither put on notice nor the Fair Rent Fixation Committee intimated the same to the Petitioner. The Petitioner came to know about the enhancement only vide impugned proceedings, dated 20.04.2022, which is a notice for cancellation of lease rent and demand on the basis of fair rent, which has been fixed unilaterally resulting in a demand of Rs.15,62,000/-. It is also submitted by the learned counsel for the Petitioner that proceeding under Section 34-A of the Hindu Religious and Charitable Endowments Act has been explained by this Court on more than one occasion, as mandating a notice and ought to be made in compliance with principles of natural justice. The impugned order has been made in gross disregard to principles of natural justice and directions of this Court.



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4. 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 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.”*



5. In view of the same, the impugned orders, dated 20.04.2022 and 26.08.2022 are liable to be set aside.

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6. It is submitted by the learned counsels for both the parties that the matter can be remitted back to the Respondents in view of the fact that admittedly impugned demand has been made without complying with the principles of natural justice. It is also submitted that the Petitioner would deposit 50% of the demand raised by the impugned proceedings, dated 20.04.2022. It is further submitted that a sum of Rs.1,20,000/- was already remitted by the Petitioner, thereby, leaving a sum of Rs.14,74,000/- as due out of the impugned demand of Rs.15,62,000/-, out of which 50% would be remitted by the Petitioner. It is also consented by the learned counsels for both the parties that the same would be remitted by the Petitioner within a period of 8 weeks from the date of receipt of copy of this order.

7. Accordingly, the impugned orders, dated 20.04.2022 and 26.08.2022 are set aside. The Petitioner is directed to pay 50% of the amount within a period of eight weeks from the date of receipt of copy of this order. The Respondents are at liberty to raise fresh demand after complying with Section 34-A of the Hindu Religious and Charitable Endowments Act and the



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directions of this Court in W.A(MD)Nos.503 and 509 of 2022. 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 Hindu Religious and Charitable Endowments Act. The show cause notice shall be issued by the Respondents within a period of eight 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 show cause notice and orders shall be passed by the Respondents within a period of 12 weeks from the date of receipt of copy of this order. If the Petitioner does not comply with the condition of deposit of 50% of Rs.14,74,000/-, the impugned order, dated 26.08.2022 shall stand revived and it shall be open to the Respondents to proceed to resort to recovery proceedings in accordance with law.

6. With the above direction, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

**26.10.2022**

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

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