



W.P.(MD)No.15640 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :18.10.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).No.15640 of 2018

and

W.M.P(MD).Nos.14043 of 2018

The Nagercoil Club and
S.M.R.V.Reading Room(Regd)
Rep by its secretary,
M.S.Road,
Vadasery,
Nagercoil,
Kanyakumari District.

... Petitioner

Vs.

1.The Hindu Religious and Charitable
Endowments Board,
Rep by its Chairman,
Chennai.

2.The Executive Officer,
Arulmigu Aathimula Vinayagar Temple,
Ozhuginasery,
Nagercoil,
Kanyakumari District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records relating to impugned proceedings issued by the 2nd Respondent in his proceedings in



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Na.Ka.No.1/2017 dated 08.11.2017 and the consequential impugned order issued by the 2nd Respondent dated 27.04.2018.

For Petitioner :Mr.Ajmal Khan
Senior Counsel
For Respondents :Mr.J.Ashok
Additional Government Pleader for R1
:Mr.VR.Shanmuganathan for R2

ORDER

This writ petition is filed challenging the impugned order passed by the 2nd Respondent vide his proceedings in Na.Ka.No.1/2017 dated 08.11.2017 and the consequential order dated 27.04.2018.

2.It is submitted that the petitioner's society is a Society registered under the Travancore-Cochin literary Scientific and Charitable Societies Registration Act 1955 (Act XII of 1955) under Registration No.77 of 1971. though the society was registered on 16.10.1971, the said society was established as early as on 21.07.1890 at Nagercoil under the name of Thirumoolarangam for the purpose of improving the standard of living and to inculcate reading habit and physical activity to the residents of the locality.



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3.It is submitted that the petitioner advised to state that the Tamilnadu Hindu Religious and Charitable Endowments Board is a State instrumentality within the meaning of Article 12 of the Constitution of India. The club with the consent of the 2nd Respondent temple put up a structure in the said land by leveling the same for the purpose of a library, reading room, Gymnasium, Shuttle & Tennis Court. Since, the inception of the club it has been serving the society on a non profit basis with a noble object of furthering physical education and to provide for a library.

4. The rent which was originally fixed at Rs.15/- was increased periodically and presently a rent of Rs.1,000/- is being paid. While so, the 2nd Respondent issued a notice on 08.11.2017 proposing to fix the rent under Section 34 A of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 from 01.07.2016, on the basis of guide lines which was amended and called upon the petitioner to submit his objections within a period of seven days. The petitioner submitted his objections of the impugned notice dated 08.11.2017, inter alia, challenging the proposed fixation while so, the consequent impugned order has been passed by the 2nd



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Respondent dated 27.04.2018. It is submitted by the learned counsel for the petitioner that on 02.05.2018 lease amount was fixed at Rs.4,57,000/- for the period commencing from 01.07.2016 until 30.06.2018 and calling upon the petitioner to pay the arrears of Rs.1,08,58,000/- failing which coercive action would be taken.

5.The impugned order is challenged in the present writ petition primarily on the ground that the Executive Officer has passed the impugned order fixing the rent, contrary to Section 34 A of the Tamil Nadu Hindu Religious and Charitable Endowments Act. Section 34 A of the Tamil Nadu Hindu Religious and Charitable Endowment Act provides that the lease rent payable shall be fixed by the Committee consisting of Joint Commissioner, Executive Officer and the Board of Trustees, taking into account, prevailing market value and the guide lines, the lease rent shall be fixed by the said Committee. Further, it is submitted by the learned counsel for the petitioner that the impugned proceedings issued by the 2nd Respondent is without jurisdiction inasmuch as the authority to fix the rent in terms of Section 34 A of the Tamil Nadu Hindu Religious and Charitable Endowments Act, vest



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with the committee and not with the 2nd Respondent. It was thus submitted that the fixation of rent and the consequential demand by the 2nd Respondent is in excess of jurisdiction.

6. 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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7. This Court finds that a reading of Section 34 A of the Tamil Nadu Hindu Religious and Charitable Endowments Act, that the rent shall be fixed by the Committee and it is not open to the 2nd Respondent to fix the rent. As a matter of fact, this Court finds that the fair rent that has been fixed does not even containing the signature of the committee members, but only contains a working sheet/calculation sheet. It is informed that if it was fixed by the Committee the signature of the members of the committee ought to have been affixed. Failure to do so, is again indicative that the present impugned demand is not pursuant to the fixation by the Committee, but was unilaterally determined by the 2nd Respondent, which is unsustainable. 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



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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.”

8.This Court finds that there is merit in the submissions made by the petitioner, hence, the impugned orders issued by the 2nd Respondent is



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liable to be set aside. The learned counsel for the respondent suggested that the petitioner are in occupation of more than 1 acre and 17 cents in prime locality and therefore would submit that this Court may as a interim exercise fix rent until the rent is fixed in terms of Section 34 A of the Tamil Nadu Hindu Religious and Charitable Endowments Act. During the course of the hearing, it was suggested by the learned counsel for the petitioner that though the Division Bench of this Court had granted an interim direction to pay a sum of Rs.5,000/- per month in W.P.(MD).No.1088 of 2014 dated 18.09.2014. Taking into account, the fact that more than 7 years have gone by a rent of Rs.20,000/-, shall be paid by the petitioner until the rent is fixed in compliance of the procedure and by the appropriate authority in terms of Section 34 A of the Tamil Nadu Hindu Religious and Charitable Endowments Act.

9.It is open to the respondents to fix the lease rent after complying with the procedures contemplated under Section 34 A of the Tamil Nadu Hindu Religious and Charitable Endowments Act. The above rent of Rs. 20,000/- is only by way of an interim order and may not be treated as



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final/binding by the Committee or the Respondent. It is open to the Committee to take into account, the relevant factors and decide the rent, in terms of Section 34 A of the Tamil Nadu Hindu Religious and Charitable Endowments Act. The above exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order, after affording a reasonable opportunity to the petitioner and other stake holders/interested parties, if any.

10. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Speaking Order : Yes / No

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To

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MOHAMMED SHAFFIQ, J.

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