



W.P.(MD)No.24971 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.24971 of 2018

and

W.M.P.(MD)Nos.22633 to 22635 of 2018

K.Radhakrishnan

... Petitioner

Vs.

1. The Commissioner,
Hindu Religious and Charitable
Endowments Department,
No.119, Nungambakkam High Road,
Chennai – 600 034.
2. The Joint Commissioner,
Hindu Religious and Charitable
Endowments Department,
Madurai.
3. The Executive Officer,
Arulmigu Kalakatheshwara Swamy Thirukoil,
Dindigul – 624 001.

... Respondents



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PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records of the impugned order passed by the 2nd Respondent in Na.Ka.No. 9427/2017/A4 dated 16.11.2017 and the consequential notice issued by the 3rd Respondent on 24.11.2018 and quash the same as illegal and consequently, direct the Respondents to refix the fair rent in accordance with law.

For Petitioner : Mr.K.Mahendran
For Respondent : Mr.T.Amjadkhan
Government Advocate for R1 & R2
Mr.Muthu Geethaiyan

O R D E R

Challenging the impugned order passed by the 2nd Respondent dated 16.11.2017 and the consequential notice issued by the 3rd Respondent dated 24.11.2018 and for consequential direction to the Respondents to refix the fair rent, this Writ Petition has been filed.

2. The Petitioner is a tenant under the 3rd Respondent Temple. The Petitioner originally paid a rent of Rs.6,000/- which was enhanced to Rs.10,529/-, which enhancement, according to the Petitioner, is contrary to



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G.O.(Ms)No.456, Tamil Development and Culture, Hindu Religious Department dated 09.11.2007, which provides for fixation of fair rent once in every three years. While so, the 2nd Respondent / Joint Commissioner passed an common impugned order dated 16.11.2017 directing the 3rd Respondent to place material particulars before the fair rent fixing committee within 15 days for fixation of the fair rent. It is submitted that the order dated 16.11.2017 of the 2nd Respondent containing the above direction was not served on the Petitioner. Pursuant to the above direction of the 2nd Respondent vide order dated 16.11.2017, the 3rd Respondent has increased the fair rent from Rs.10,529/- to Rs.27,500/-, without putting the Petitioner on notice nor furnishing particulars of any calculation. On the basis of the enhanced rentals, the 3rd Respondent has also proposed to cancel the license of the Petitioner while threatening to initiate action under Section 78 of the Act. Aggrieved by the same, the Petitioner submitted a representation before the 1st and 2nd Respondents on 20.07.2018 and 24.07.2018 respectfully, there was no response. An appeal was preferred before the 2nd Respondent on 10.10.2018. The representations and the appeal filed by the Petitioner against the enhancement of rent from Rs.10,529/- to Rs.27,500/- is still



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pending consideration. While so, the 3rd Respondent had issued a notice on 01.11.2018 followed by the show cause notice under Section 78 of the Act dated 24.11.2018, to which, the Petitioner has responded, vide reply dated 29.11.2018.

3. To the contrary, it is submitted by the learned counsel for the 3rd Respondent that originally, a batch of Writ Petitions was filed by 56 tenants, out of total 86 tenants. This Court was pleased to remand the matters back subject to the condition of deposit of 50% of the fair rent fixed. Subsequent to that, fair rent was reduced from Rs.56,790/- to Rs.27,500/-. The Petitioner is now before this Court challenging the re-fixation of fair rent of Rs.27,500/- on the premise that that no notice was issued while fixing the fair rent of Rs.27,500/-. He further submitted that Rs.27,500/- itself is a re-fixation and a reduction was made from the rent originally fixed at Rs.56,790/- to Rs.27,500/-. Therefore, the Petitioner cannot have any legitimate grievance. He further submitted that as a matter of fact, since three years have elapsed and the fair rent was last fixed in the year 2018 they are proposing to re-fix the fair rent.



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4. I find, this Court had repeatedly held that fixation of fair rent, must be in compliance with principles of natural justice. Failure to comply with the principles of natural justice, may prove fatal. 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 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.



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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.”



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5. It may also be relevant to note that during the pendency of the present Writ Petition, by way of an interim arrangement, the Petitioner has paid a sum of Rs.15,000/- (Rupees Fifteen Thousand only) per month. The above arrangement shall continue and the Petitioner shall pay a sum of Rs.15,000/- (Rupees Fifteen Thousand only) per month. It is open to the Petitioner if there is any excess rent paid, to adjust towards the future rentals.

6. In view of the same, the impugned order dated 16.11.2017 and the consequential notice dated 24.11.2018 are set aside. It is open to the Respondents to refix the fair rent from the year 2021 taking into account the outcome of the fair rent that will be refixed by the Committee for the period from 2018 onwards.

7. The photographs of the premise show that it seems to be in very bad condition and if the Petitioner intends to repair the premise, he may approach the Respondents. The Respondents on such representation or request shall pass orders within a period of eight weeks from the date of



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receipt of such representation seeking permission for carrying out repair work

8. In the event, the Petitioner fails to comply with the above conditions set out, the 3rd Respondent is at liberty to take action in accordance with law.

9. Accordingly, this Writ Petition is 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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