



W.P(MD).No.20239 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 14.09.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD).No.20239 of 2018

and

W.M.P(MD)Nos.18003 and 18004 of 2018

T.Elangovan

... Petitioner

Vs.

- 1.The Commissioner,
Hindu Religious and Charitable Endowments Board,
Chennai.
- 2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Neelgrieswarar Thoppu,
Srirengam,
Trichy.
- 3.The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
Neelgrieswarar Thoppu,
Srirengam,
Trichy.
- 4.The Executive Officer/Thakkar,
Arulmigu Semmalai Kannimar Mariyamman
Karuppasamy Vagaiyara Thirukkivilgal,
Kambalathupatty, Sekkanam Village,
Manpparai Taluk,
Trichy District.

...Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records of the fourth respondent, dated 23.05.2018 and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.P.Ganapathi Subramanian
For R1 to R3 : Mr.T.Amjadkhan
Government Advocate
For R4 : Mr.A.N.Ramanathan

ORDER

This writ petition has been filed challenging the fixation of fair rent on the premises 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.

2. The Petitioner was allotted a vacant site in the Respondent temple in the year 2012 and paid Rs.5,000/- (Rupees Five Thousand only) as advance amount. Initially, the rent was fixed at Rs.600/- (Rupees Six Hundred only), which was periodically revised and on the date of filing of the writ petition, the petitioner was paying a monthly rent of Rs.1,000/- (Rupees Thousand only). While so, the Petitioner was served with the impugned notice from the 4th Respondent, dated 23.05.2018 calling upon the Petitioner to pay the rent, which was re-fixed at Rs.4,250/-(Rupees Four Thousand Two Hundred and Fifty only) per month from 01.01.2017 onwards.



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 Tamil Nadu Hindu Religious and Charitable Endowments Act. 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.”

4. 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

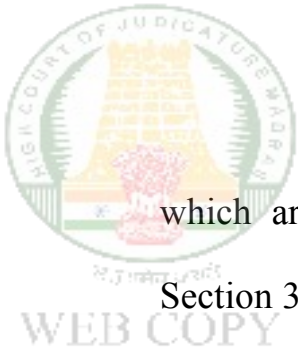


principles of natural justice is mandatory as the outcome of the proceedings affects the civil rights of parties. Therefore, the impugned demand notice fixing fair rent by the committee cannot be sustained. Even though this Court expresses its concern and questions the propriety of fixing the fair rent 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.

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 notice, dated 23.05.2018 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



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which are relevant and taken for fixing fair rent as contemplated under Section 34(A) of the TN HR & CE 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 show cause notice and orders shall be passed by the Respondents within a period of eight weeks from the date of receipt of copy of this order. 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, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No

Internet : Yes/ No

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MOHAMMED SHAFFIQ, J.

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