



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.03.2022**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P. (MD) No.24554 of 2019

WEB COPY

1.M.Gurusamy Nadar (died)

2.G.Chithiraikani

3.G.Siddarthan

4.G.Vivekanandan

5.G.Aravindan

(Petitioners 2 to 5 have been impleaded
vide order dated 11.03.2022)

... Petitioners

/vs./

1.The Joint Commissioner,
Hindu Religious and Charitable Endowment Board,
Madurai.

2.The Deputy Commissioner/
Executive Officer,
Arulmigu Kallalagar Thirukovil,
Alagarkovil,
Madurai.

3.The Sub Registrar,
The Joint Registrar Office No.4,
Palanganatham,
Madurai South,
Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the 3rd respondent to remove the 1st respondent interim attachment entry on petitioner's house property in old S.No.7/1A, New S.No.7/1A1, Dwelling house bearing D.No.4.15.16/6, Plot No.109, Aaniyur Village, Madurai North Taluk, Madurai Corporation, Ward No.3, Madurai Town and consequently direct the 3rd respondent to register the copy of the order passed in CRP.No.982/2016 dated 27.6.2018 and order passed in Review Number 157/2018 dated 07.08.2019.

For Petitioner : Mr.J.John

For R1 & R3 : Mr.P.Subbaraj

Special Government Pleader

For R2

: Mr.K.R.Laxman



ORDER

The writ petition has been filed for a Mandamus to lift the order of attachment of the personal property of the petitioners.

2. During the pendency of the present writ petition, the 1st petitioner died and thereafter, the legal heirs of the 1st petitioner have been impleaded as petitioners 2 to 5. The deceased petitioner was the tenant of the 2nd respondent temple. The 1st petitioner had earlier initiated certain proceedings against arrears of rent fixed for the period between 01.07.1997 and 30.09.2017.

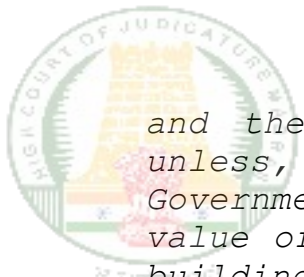
3. It appears that on 06.12.2013, the temple authorities had demanded a sum of Rs.32,12,987/- as arrears of rent up to the aforesaid period. Aggrieved by the same, the deceased petitioner had preferred an appeal before the appellate Commissioner under Section 34 A (3) of the HR & CE Act, 1959. The said appeal was however not entertained in the absence of a mandatory pre-deposit of arrears of rent in terms of the aforesaid provisions.

4. Under these circumstances, the deceased petitioner filed W.P.No.8285 of 2013. By an order dated 27.08.2015, this Court allowed the said writ petition by directing the petitioner therein to deposit a sum of Rs.3,00,000/- for the purpose of numbering and entertaining the appeal. By an order dated 28.03.2016, the deceased petitioner's appeal in A.No.27 of 2015 was disposed of by the Commissioner, HR & CE. Aggrieved by the same, the deceased petitioner filed CRP(MD) No.982 of 2016.

5. As a collateral proceedings, the temple authorities took possession of the property, which housed the goods of a sub tenant. The sub tenant also filed a writ petition for clearing the goods stored in the premises of the 2nd respondent, which was originally rented out to the deceased petitioner. By order dated 28.06.2018 in W.P.(MD) No.18875 of 2017, a conditional order was passed, by directing the sub tenant to deposit a sum of Rs.10,00,000/- for removing the goods that were in the property under seal from the sub tenant in the aforesaid premises, which was rented on lease to the petitioner.

6. During the interregnum, CRP(MD) No.982 of 2016 was also disposed of by this Court, by a common order dated 27.06.2018 along with other cases including W.P.No.18875 of 2017 filed by the sub tenant. The relevant portion from the aforesaid order reads as under:-

"18. It is relevant to mention the one important aspect of this matter in this context is that the guidelines issued by the Government indicated that the fair rent should be on the basis of the value of the building or on the basis of market rate, whichever is higher. The value of the building



and the land need not be on the basis of market value, unless, there is a specific direction in this case by the Government. Having regard to the position that 0.06% of the value of the building can be the monthly rent for commercial building let out by the temple authorities, this Court is of the view that the fair rent may be even more than what it was fixed by the Committee earlier. Since the Committee has fixed fair rent in this case without notice to the tenant, this Court is of the view that the fair rent in respect of the property occupied by the petitioner as tenant is fixed arbitrarily and in violation of principles of natural justice. Without affording any opportunity, the demand notice dated 11.09.2009 was sent through RPAD, which is a clear violation of principles of natural justice. **Hence the impugned order of the Commissioner, HR & CE Department, Chennai, in A.P.No.27 of 2015, D2, dated 28.03.2016, is set aside. It is open to the temple authorities to fix the fair rent w.e.f., 01.05.2008 following the guidelines issued by the Government, vide G.O.Ms.No.456, dated 09.11.2007 or any other subsequent guidelines or amendment in accordance with law, after giving an opportunity to the petitioner to raise his objection with regard to the basic factors, which are to be taken into account for the purpose of fixing fair rent w.e.f., 01.05.2008.**

19. Though the Commissioner, HR & CE Department, Chennai, has confirmed the order of the Joint Commissioner, HR & CE Department, Madurai approving the rent suggested by the Fixation Committee, the third respondent, namely, **the Executive Officer of the Temple is directed to place the matter before the Committee or the officers concerned, after issuing notice to the petitioner informing the petitioner about the basic factors, namely, the extent of land, extent of the building, probable market value of the land, cost of construction and other details, which are proposed to be taken by the Committee or the Officers concerned to fix the fair rent and after hearing whether he has any objection regarding the fixation of fair rent.** Hence, the Civil Revision Petition is allowed and disposed of accordingly.

20. As regards W.P.(MD)No.21856 of 2017, the petitioner has challenged the order of attachment by which the movables then found inside the demised premises, which was in the occupation of the tenant for selling the articles attached by public auction, in case the petitioner did not pay the arrears of rent within 15 days. This Court has earlier set aside the order regarding the fixation of fair rent. This Court has already pointed that the tenant is liable to pay fair rent w.e.f., 01.05.2008. It is not in dispute that the tenant has collected a sum of Rs.15,000/- as rent from a sub-



tenant in respect of a portion of the premises. Having regard to the extent of land and the area of construction, this Court can deduce that the rent for enjoyment of building and it cannot be less than Rs.10,000/- from 2008. Considering the facts and circumstances in this case, this Court of the view that the tenant can be directed to pay at least a reasonable amount towards rent, so as to maintain status-quo, till a decision regarding the fixation of fair rent is taken as per the direction of this Court in the connected Civil Revision Petition. Hence, this Court is inclined to pass the following order.

"The petitioner is directed to pay a sum of Rs.15,00,000/- (Rupees fifteen lakhs) to the third respondent within a period of two months from the date of receipt of a copy of this order and upon payment within the time stipulated, the respondent shall hand over all the movables that were taken from the petitioner's premises as per the inventory list attached to the impugned order, leaving the items which were earlier released by the respondent pursuant to the order of this Court in the connected writ petition."

21.W.P. (MD) No.18875 of 2017, has been filed by a stranger claiming to be in enjoyment of the property and carrying on business as a sub-tenant under the petitioner in other cases. The petitioner has filed the Writ Petition for directing the respondents 1 and 2 to hand over the seized papers belonged to the petitioner, which are taken away by the respondents on 28.09.2017 from the property bearing D.No.46, North Perumal Maistry Street, Madurai. No doubt, the respondents can exercise the power of Collector under the Tamil Nadu Revenue Recovery Act, 1864, to recover the arrears of rent from the tenants of the properties of the Temple. However the power cannot be enlarged to seize the goods or articles belong to any third party within the premises of the Temple. Hence the seizure of papers and articles that belongs to the petitioner is not authorised under any provisions of law. This Court has earlier passed an order in W.M.P. (MD) No.15223 in W.P(MD) No. 18875 of 2017, directing the petitioner to take the papers and materials belong to the petitioner upon payment of Rs.10,00,000/- to the Executive Officer of the Temple, as the petitioner has come forward that the goods available within the demised premises were worth about Rs.50,00,000/- as per invoices and that allowing the goods under the custody of temple authorities may result in deterioration of the value of the goods. It was in that circumstances, the second respondent was directed to hand over the goods, however, on condition.



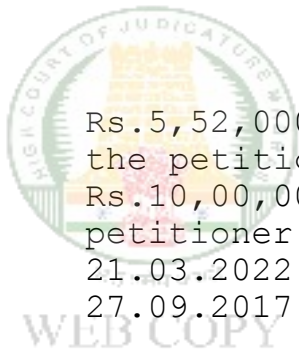
22. Now the money to be deposited by the writ petitioner is available with the respondents. The temple authorities may not be aware of the ownership of the goods seized from the premises. Hence, upon satisfying the Executive Officer of the temple as to the ownership of the goods that were taken by the second respondent from the petitioner, the second respondent is directed to pay the amount collected from the writ petitioner pursuant to the direction of this Court. Since the petitioner was a sub tenant under the main tenant, without the consent of the temple authorities, the temple authorities is directed to make payment out of money which is to be collected from the petitioner pursuant to the direction of this Court, in the connected writ petitions. It is open to the temple authorities to approach this Court for further direction in this regard, in case any clarification is required in the event of any unforeseen circumstances.

23. In fine, (a) Civil Revision Petition in C.R.P. (NPD) (MD) No.982 of 2016 is allowed and disposed of in terms of para 18 and 19 of this order; (b) W.P(MD) No.11977 of 2016 is dismissed as infructuous; (c) W.P(MD) Nos.18371 and 18372 of 2017 are dismissed; (d) W.P(MD) No.18875 of 2017, is allowed with directions as indicated above in para 20 of this order; and (e) W.P. (MD) No.21806 of 2017, is disposed of with directions as indicated in para 22."

7. The deceased petitioner thereafter filed an application to review the order in CRP(MD) No.982 of 2016 in Rev.Apln.No.157 of 2018. By an order dated 07.08.2019, the aforesaid review application was disposed of with the following directions:-

"6. In such circumstances, the amount fixed by the Court, namely, Rs.15,00,000/- is only by way of interim arrangement till the fair rent is fixed by the Commissioner. Since this Court has only observed that the fair rent cannot be less than Rs.10,000/- from May'2008 till the fair rent is fixed, the petitioner is liable to pay a sum of Rs.15,00,000/- less the amount the petitioner has paid towards rent for the period from May'2008. Hence, paragraph 20 of the order dated 26.07.2018 is clarified that the petitioner is liable to pay a sum of Rs.15,00,000/- after deducting the amount paid by the petitioner till the disposal of the writ petition towards rent or any lump sum payment towards the rent payable from May'2008."

8. Though the Court directed the petitioner therein to deposit a sum of Rs.15,00,000/- for being adjusted towards the arrears of rent to be re-worked while setting aside the order of the temple and the Commissioner, impugned in the above Civil Revision Petition. The 1st petitioner (since deceased) appears to have paid another sum of Rs.5,52,000/-. In all, the 1st petitioner (since deceased) appears to have thus paid a sum of Rs.8,52,000/- (Rs.3,00,000/- +



Rs.5,52,000/-) as against the amount that was directed to be paid by the petitioner for a sum of Rs.15,00,000/-. Over and above, a sum of Rs.10,00,000/- has been adjusted towards rent payable by the petitioner. The official respondents have now passed an order dated 21.03.2022 fixing the fair rent for the period between 01.05.2008 to 27.09.2017.

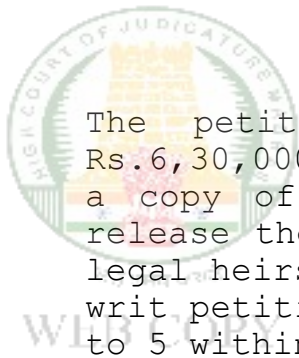
9.As per the aforesaid order, the arrears of rent payable by the deceased petitioner, whose interest is now represented by the legal heirs, who have been impleaded as petitioners 2 to 5 is Rs.36,51,640/-. The order has however not given the details as to whether the amount collected from the 1st petitioner for a sum of Rs.8,52,000/- and the amount collected from the sub tenant for a sum of Rs.10,00,000/- pursuant to an interim order dated 13.02.2018 in W.P. (MD) No.18875 of 2017 have been adjusted or not?

10.The learned counsel for the petitioners submits that the petitioners 2 to 5 are willing to pay another a sum of Rs.6,48,000/-. It is therefore submitted that the petitioners are agreeable to deposit a sum of Rs.15,68,852/-, (Rs.8,52,000/- + Rs.6,48,000/-) in compliance of the order of the Court dated 01.12.2017 as modified by an order dated 27.06.2018.

11.After hearing the learned counsel for the petitioners, learned Special Government Pleader for the respondents 1 and 3 and the learned counsel for the 3rd respondent, this writ petition is disposed of considering the fact that the 2nd respondent temple is having a sum of Rs.10,00,000/- as security for use and occupation by the sub-tenant namely, Muthu Ramalingam, who was directed to pay the aforesaid amount by the Division Bench of this Court in its order dated 14.03.2019 in W.A.(MD) No.1260 of 2018, which was filed against the order dated 27.06.2018 in W.P.(MD) No.18875 of 2017. The aforesaid amount of Rs.10,00,000/- was to be refunded back subject to the deceased petitioner paying the aforesaid amount to the 2nd respondent temple.

12.The learned counsel for the 2nd respondent has today produced a complete chart of the amounts paid by the petitioner for the period in dispute, which amounts to Rs.8,70,000/-. The aforesaid amount paid by the deceased petitioner falls short of Rs.6,30,000/- as was ordered by this Court on 27.06.2018 as modified by the review order dated 07.08.2019.

13.Thus as against the gross amount of Rs.36,51,640/-, the 2nd respondent temple is currently having a sum of Rs.8,70,000/- paid by the deceased petitioner and another Rs.10,00,000/- paid by the sub-tenant. Therefore, the petitioners 2 to 5 are directed to pay the balance amount after adjusting a sum of Rs.8,70,000/- + Rs.10,00,000/- to the credit of the 2nd respondent temple within a period of 10 days from the date of receipt of a copy of this order.



The petitioners 2 to 5 are directed to deposit a sum of Rs.6,30,000/- within a period of 15 days from the date of receipt of a copy of this order. On such payment, the 2nd respondent shall release the machineries of the deceased petitioner forthwith to the legal heirs, the petitioners 2 to 5, who have been impleaded in this writ petition. The balance amount shall be paid by the petitioners 2 to 5 within a period of 45 days thereafter.

14. On balance payment of Rs.11,51,640/- (Rs.36,51,640/- (-) (Rs.15,00,000 + 10,00,000/-)), the impugned attachment order shall stand vacated. Liberty is also given to the petitioners 2 to 5 to challenge the determination of fair rent of Rs.44,427/-. Liberty is given to the sub-tenant to recover the arrears of Rs.10,00,000/- from the petitioners 2 to 5. Pending the aforesaid payment, no further coercive steps shall be taken by the 2nd respondent to sell the house of the petitioners.

15. The writ petition is disposed of, in terms of the above observations. No costs.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar(CS)

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To

1. The Joint Commissioner,
Hindu Religious and Charitable Endowment Board, Madurai.

2. The Deputy Commissioner/
Executive Officer,
Arulmigu Kallalagar Thirukovil,
Alagarkovil, Madurai.

3. The Sub Registrar,
The Joint Registrar Office No.4,
Palanganatham,
Madurai South, Madurai.

+1 CC to M/s.K.R.LAXMAN, Advocate (SR-14654[F] dated 25/03/2022)

+1 CC to M/s.G.JEREMIAH, Advocate (SR-14751[F] dated 28/03/2022)

+1 CC to M/s.SPL GP (SR-14503[F] dated 25/03/2022)

W.P. (MD) No.24554 of 2019

24.03.2022

MGJ(19.04.2022) 7P 7C