



W.P.(MD)No.25558 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :10.11.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.25558 of 2022

and

W.M.P(MD)No.19645 of 2022

M.Sankar

... Petitioner

Vs.

- 1.The Commissioner,
Hindu Religious and Charitable
Endowment Department,
No.119, Nungampakkam High Road,
Chennai-34.
- 2.The Joint Commissioner,
Hindu Religious and Charitable
Endowment Department,
Theppakula Street,
Behind Kariya Maleeswarar Temple,
Thiruvani Kovil,
Trichy-620005.
- 3.The Assistant Commissioner,
Hindu Religious and Charitable
Endowment Department,
Neelivaneswar Thoppu,
Thiruvanaikovil,
Trichy-620005.
- 4.Arulmigu Krishnan (alias)
Venkatesa Perumal Temple,
Through its Executive Officer,
Arulmigu Naganatha Swamy Temple,
Nandhi Kovil Street, Trichy.

... Respondents



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PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for the records relating to the impugned demand cum eviction notice dated 12.10.2022 passed by the 4th Respondent.

For Petitioner :Mr.K.Vijayanand
For Respondent :Mr.J.Ashok
Additional Government Pleader for R1 to R3

ORDER

This writ petition has been filed challenging the demand cum eviction notice dated 12.10.2022 passed by the 4th Respondent, on the premise 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.On 12.10.2022, a demand cum eviction notice was issued by the 4th respondent stating that according to G.O.No.456 dated 09.11.2007, a fair rent was fixed at Rs.7,5000/- from 01.07.2016, therefore the petitioner has to pay rent of Rs.75,000/- per month from 01.07.2016 to 30.06.2019 and Rs. 86,250/- from 01.07.2019 to 01.06.2022 with retrospective effect. The rent



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due for the above period works out to Rs.58,05,000/-.After adjustment of the rent a sum of Rs.4,19,160/- which the petitioner had paid and a sum of Rs.53,85,840/- remains due and payable by the petitioner in terms of the fair rent fixed and now challenged by the petitioner. The impugned notice further states that all earlier demand notice sent by the 4th respondent would cease to have any effect with the issuance of the impugned notice.

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 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 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



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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.”

5. In this regard, it is relevant to refer to the judgment of the Division Bench of this Court in 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



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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



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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.”

6.The learned Additional Government Pleader would submit that the petitioner is presently paying the rent is very low compared to the current market value. At this juncture, it is submitted by the learned counsel for the petitioner that out of the total sum of Rs.53,85,840/-, a sum of Rs. 15,00,000/- will be paid in three monthly installments.

7.In the circumstances, this Court directs the petitioner to pay a sum of Rs.15,00,000/- in three equal installments (i.e) Rs.5,00,000/-, Rs. 5,00,000/- and Rs.5,00,000/-, which installments would fall on 10.12.2022, 10.01.2023 and 10.02.2023 respectively. In the event of non-compliance of the above condition, it is open to the respondents to take appropriate action against the petitioner in accordance with law.



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6. In view of the same, the impugned notice, dated 12.10.2022 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 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 four 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 thereafter.

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

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