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Writ Petition No.7552 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 3/1/2023

C O R A M

THE HONOURABLE Mr.JUSTICE N. SATHISH KUMAR

Writ Petition No.7552 of 2021

a n d

W.M.P.No.8074 of 2021

P. Kannan

...

Petitioner

Vs

1. The Commissioner
Hindu Religious and Charitable Endowment Department
119 Uthamar Gandhi Road
Nungambakkam
Chennai 600 034.
 2. The Joint Commissioner
Hindu Religious and Charitable Endowment Department
Myladuthurai
Myladuthurai District.
 3. The Assistant Commissioner
Hindu Religious and Charitable Endowment Department
Myladuthurai 609 001
Myladuthurai District.
 4. The Executive Officer
Arulmigu Manmatheeswarar Thirukoil
Kuttalam 609 801
Myladuthurai District.
- ...
- Respondents



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PRAYER : Petition filed under Article 226 of the Constitution of India

praying for the issuance of a writ of certiorarified mandamus to call for the records of the first respondent in R.P.No.331 of 2017 dated 9/3/2020 and quash the same and consequently, direct the second respondent to fix the fair rent as per the Hindu Religious and Charitable Endowment Act, 1960 and give sufficient opportunity to the petitioner on the fixation of fair rent and renewal the tenancy afresh.

For Petitioner ... Mr.U.Kathiravan

For respondents ... Mr.Bindram
Additional Government Pleader
for R.R.1 to 3.

Mr.S.Surya
for M/s.A.S.Kailasam Associates
for R.4.

ORDER

This writ petition has been filed to quash the order, dated 9/3/2020, passed by the first respondent, in R.P.No.331 of 2017, and consequently, direct the second respondent, to fix the fair rent, as per the Hindu Religious and Charitable Endowment Act, 1960.



2. Brief facts which are necessary for the disposal of this writ petition are as follows:-

Writ petitioner is a tenant in the fourth respondent Temple. He is paying the rents to the fourth respondent as well as to the Municipality for a total extent of 1600 sq.feet, comprised in S.No.176/2 from the date of allotment. When the matter stood thus, fair rent has been fixed, without notice to the petitioner and copy of the fair rent proceedings has not been served on the petitioner. The Joint Commissioner/second respondent had passed an order of eviction proceeding against the petitioner, under Section 79 of the Tamil Nadu Hindu Religious & Charitable Endowments Act, 1959, and ex parte order of eviction has been passed on three grounds, viz.,

- (i). the petitioner is not paying the rents
- (ii). Petitioner has encroached upon the temple illegally and
- (iii). Petitioner has not produced any positive evidence to prove lawful occupation.

3. Though various grounds have been raised, the main submission of the learned counsel for the petitioner is that if the copy of the fair rent



proceeding is served, he will canvass the same before the Commissioner for filing appropriate appeal. Therefore, seeks indulgence of this Court to direct the respondents to serve the fair rent proceedings.

4. The learned counsel appearing for the fourth respondent submitted that as per the fair rent fixed, total arrears would come to Rs.15,62,592/- (Rupees Fifteen lakhs sixty two thousand five hundred and ninety two only). Out of the said amount, Rs.5,00,000/- (Rupees Five lakhs only) has already been paid by way of a Demand Draft No.00449084. Yet a balance of Rs.7,30,156/- (Rupees Seven lakhs thirty thousand one hundred and fifty six only) has to be paid by the petitioner. If the arrears is paid, then the petitioner, can canvass his case before the Commissioner.

5. Learned counsel appearing for the petitioner submitted that he is ready to pay 50% of Rs.7,30,156/-.

6. Section 34 – A (3) of the Tamil Nadu Hindu Religious & Charitable Endowments Act, 1959, reads as follows:-



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“Any person aggrieved by an order passed under sun-Section (2), may, within a period of thirty days from the date of receipt of such order, appeal to the Commissioner, in such form and in such manner, as may be prescribed.

7. Considering the fact that fair rent proceeding has not been served on the petitioner and statutory appeal is also not filed, challenging the fair rent fixation, this Court is of the considered view that if the petitioner pays 50% of the balance amount of Rs.7,30,156/-, to the fourth respondent/temple, towards arrears, by way of Demand Draft, within one month from today, copy of the fair rent proceedings shall be served on the petitioner, to enable him to file an appeal, under Section 34 - A (3) of the Tamil Nadu Hindu Religious and Charitable Endowment Act, 1959. It is made clear that the petitioner can very well canvass his case before the Commissioner, under Section 34 - A (3), as per law. If the petitioner fails to pay the amount as undertaken before this Court, within the said period, he will not have any right to file any appeal.



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8. With the above direction, this writ petition is disposed of. No costs.

Consequently, the connected Miscellaneous Petition is closed.

3/1/2023

Index : Yes / No

Internet: Yes

Speaking/non speaking order

mvs.

To

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