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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.12723 of 2023
and WMP No.12525 of 2023

1. C.Ramalingam
2. C. Sampath

... Petitioners

vs.

1. The Secretary,
Tourism, Culture and Religious Endowment Department,
Fort St. George, Chennai 600 009.
2. The Commissioner,
Hindu Religious and Charitable Endowments Department,
Numbakkam High Road, Chennai 600 034.
3. The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Numbakkam High Road, Chennai 600 034.
4. The Assistant Commissioner/Executive Officer,
Arulmighu Kapaleeswarar Thirukoil,
Mylapore, Chennai 600 04.
5. Rex Fashions,
Old No.14, New No.33, 1st and 2nd Floor,
Luz church Road,
Mylapore, Chennai 600 004.

[R5 suo motu impleaded vide order dated 25.04.2023
made in WP No.12723 of 2023 by NAVJ]

... Respondents



Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the respondents to dispose of the petitioner's representation dated 10.02.2023.

For Petitioner : Mr.J.Ram
For Respondents : Mr.N.R.R.Arun Natarajan
Special Government Pleader for
R1 to R4
Mr.V.Srikanth for R5

ORDER

This writ petition has been filed for the issue of writ of mandamus directing the respondents to dispose of the representation made by the petitioners on 10.02.2023, wherein the petitioners have requested the respondents to fix the fair rent for the subject property in line with the order passed by the Commissioner dated 19.09.2017 in AP No.35 of 2017.

2. The case of the petitioners is that they are the tenants in the subject property and the 4th respondent had initiated an enquiry and ultimately, the rent was fixed in an arbitrary manner. Aggrieved by the same, the petitioners filed an appeal before the Commissioner of HR&CE in AP No.35 of 2017. The Commissioner by order dated



19.09.2017 disposed of the appeal in the following terms :-

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7. Therefore the impugned notices issued by respondent temple suffer from infirmity as stated above and liable to be set aside. Accordingly, the notices dated 20.06.2012 and 30.01.2013 of the respondent temple are hereby set aside and the matter is remanded to the respondent temple for fresh consideration. The appellants are directed to file their objections along with supporting documents within 15 days from the date of receipt of this order. The respondent temple should place the same before the fair rent committee to take a decision in accordance with law within 15 days thereafter. The decision of the fair rent fixation committee supported with reasons shall be communicated to the appellants within 7 days from the date of meeting of the fair rent committee. If the appellants failed to submit their objection with supporting documents within the stipulated time, the fair rent committee shall take a decision in accordance with the provisions of the Act and the guidelines issued in various Government Orders. The appeal petition is hereby disposed of with the above directions.

3. After the above order, the petitioners also made representations to the 4th respondent to commence the proceedings



for fixation of fair rent by the committee. Since, the same did not evoke any response, the present writ petition has been filed before this Court seeking for appropriate directions.

4. Heard Mr.J.Ram, learned counsel for the petitioner and Mr.N.R.R.Arun Natarajan, learned Special Government Pleader for respondents 1 to 4 and Mr.V.Srikanth, learned counsel for 5th respondent.

5. When the matter came up for hearing on 25.04.2023, this Court passed the following order :-

Heard the learned counsel for the petitioners and the learned Special Government Pleader appearing on behalf of the respondents.

2.The main grievance that has been expressed by the petitioners is that in spite of the earlier orders passed by this Court, the Department has not fixed any fair rent till date. Hence, representation was given and since the same was not considered, the present writ petition has been filed before this Court.



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3. It is brought to the notice of this Court that the petitioners had sub let the property in favour of Central Bank of India (Ground Floor) and Rex Fashions (First Floor). The Department had fixed a fair rent and directed the Central Bank of India and Rex Fashions to pay the same.

4. The learned Standing Counsel submitted that the Central Bank of India did not even pay a penny and they conveniently vacated the property. The above said Rex Fashions has paid the fair rent only for a period of four months. Thereby, the Department claims that approximately there is a rental arrears due and payable from the year 2019 to 2023 to the tune of approximately Rs.2.5 Crores. It is also brought to the notice of this Court that the portion that was occupied by the Central Bank of India has been locked and sealed and it is now under the control of the HR & CE Department. The petitioners have initiated eviction proceedings against Rex Fashions and the same is pending before the Small Causes Court.

5. In the light of the above developments, this Court deems it fit and proper to implead Rex Fashions, Old No.14, New No.33, 1st and 2nd Floor, Luz Church Road, Mylapore, Chennai - 600 004 as



the 5th respondent in this writ petition. A final order can be passed in this writ petition only by impleading Rex Fashions.

6.The Registry is directed to carry out the necessary amendment in the cause title.

7.The learned counsel for the petitioners is directed to take notice to the impleaded 5th respondent both through Court and privately, returnable by 06.06.2023.

8.Post this case under the caption 'For Orders' on 06.06.2023. In the meantime, the learned Special Government Pleader shall file a status report giving the dates and events and also the amount that is due and payable towards rent for the subject property.

6. Pursuant to the above order, the status report came to be filed by the 4th respondent. On going through the same, it is seen that there is a total rental arrears of Rs.3,80,29,280/- for the subject property and this amount had been arrived at based on the fair rent that was fixed by the fair rent Committee through proceedings dated

22.08.2019.



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7. This Court has carefully considered the submissions made on either side and the materials available on record.

8. In the considered view of this Court, this is a case where some of the officials belonging to the HR&CE Department have acted against the interest of the temple and have caused huge loss to the temple and it has deprived the temple from earning income for the last so many years. The facts that are stated hereunder will demonstrate as to why such an observation was made by this Court.

9. It is seen from records that the property measuring 24 grounds comprised in Survey No.3333 at Luz church road, Mylapore, Chennai, was leased out to one Soundararaja Iyengar through a lease deed dated 06.01.1898 for a period of 99 years. The lease period came to an end on 05.01.1997. After the demise of Soundararaja Iyengar, his wife sold the superstructure along with the unexpired lease hold right in the land measuring 3600 Sq.ft. to one Srinivasan in the year 1946. The said Srinivasan sold the



superstructure along with the lease hold right in the land to one T.K.Natarajan in the year 1954. The said T.K.Natarajan through a sale deed dated 08.09.1967 sold the superstructure with the lease hold rights to one Duraisamy Chettiyar. The said Duraisamy Chettiyar bequeathed the superstructure along with the lease hold right in favour of the petitioners. Thus, the petitioners came into the scene in the year 1975 by virtue of the release deed executed in their favour.

10. The petitioners had leased the property to Central Bank of India and Modi Electricals Manufacturing Co. Ltd., Subsequently, the 5th respondent came into the scene in the place of Modi Electricals Manufacturing Co. Ltd.. It is to be pointed out that the temple had never recognised the occupation of the property by persons to whom the petitioners had leased the property and insofar the temple is concerned, they are only in the status of encroachers.

11. It is further seen from records that fair rent was fixed by

the 4th respondent through proceedings dated 20.06.2012 and



aggrieved by the same, the petitioners filed an appeal before the Commissioner of HR&CE in AP No.35 of 2017. This appeal was disposed of by an order dated 19.09.2017 and the operative portion of the order has already been extracted supra.

12. The petitioners have taken a stand that even pursuant to the order passed by the Commissioner, no steps were taken to place the matter before the Rent Fixation Committee. To substantiate the same, the learned counsel for the petitioner brought to the notice of this Court the representation made by the petitioners on 01.12.2017 and the subsequent representation made on 24.02.2020. There is no dispute with regard to the fact that the petitioners were receiving the rents from the occupier of the property till Jan 2019 and the same is apparent from the affidavit filed by the 2nd petitioner in Distress application No.2 of 2020 before the Small Causes Court at Chennai. The petitioners were receiving the rent from the 5th respondent at the rate of Rs.1,30,000/- per month till January 2019. This fact has been admitted by the petitioners. On the contrary, there is not a single averment in the affidavit filed in support of the



writ petition or the documents filed by way of typed set of papers to prove that the petitioners had in turn paid any rent to the temple. If really the petitioners had paid rent to the temple, they would have certainly mentioned about it in the affidavit and necessary documents would have been filed by way of typed set of papers. In the absence of the same, this Court must only draw an adverse inference on the conduct of the petitioners who were enriching themselves by receiving the rents from the occupiers of the property and were not paying the rents in turn to the temple.

13. The questionable conduct on the part of the officers belonging to the HR&CE Department comes to light only at this stage. There was already an order passed by the Commissioner directing the fair rent to be fixed by placing the matter before the Fair Rent Committee and it is quite curious as to why this order was not acted upon and taken to its logical end.

14. The learned Special Government Pleader appearing on behalf of the official respondents submitted that a Public Interest



Litigation was filed before this Court in WP No.8185 of 2019 and the Division Bench of this Court was informed about the occupation of the property by the bank and the 5th respondent. That apart, it was also informed to the Court that there was huge arrears to be collected from the bank and the 5th respondent. Considering the same, the petition was disposed of by an order dated 25.03.2019 directing the fair rent fixation committee to finalise the process initiated within two months. The learned Special Government Pleader submitted that the petitioners were not co-operating for the enquiry for fixation of fair rent and therefore, the department proceeded to fix the fair rent and notice was also issued to the bank and the 5th respondent in this regard directing them to pay the fair rent that was fixed by the committee through proceedings dated 22.08.2019.

15. In the first instance, the occupiers of the property viz., the bank and the 5th respondent are not recognised as tenants by the temple. Therefore it is not known as to how the department will ask those occupants to pay the fair rent. The next point is that if the



petitioners were not co-operating for the fixation of the fair rent and they are not paying any rent to the temple, the authorities ought to have initiated proceedings under Section 78 of the Hindu Religious and Charitable Endowments Act (hereinafter called as the Act”) against the petitioners since the petitioner will automatically become encroachers for occupying the property without paying any rents. Admittedly, this step was not taken.

16. The Fair rent that was fixed through proceedings dated 22.08.2019 always remained in the paper and it was never paid either by the petitioners or by the occupants.

17. It is quite curious that the HR&CE Department has not even initiated proceedings under Section 78 of the Act as against the occupiers and as a result, the property has been occupied by encroachers in the eye of law. Proceedings were initiated against the petitioners under Section 78 of the Act and these proceedings never reached its logical end. This inaction on the part of the Department has deprived the temple a sum of Rs.3,80,29,280/- up to May 2023 as



claimed in the status report filed by the 4th respondent.

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18. The bank which was in occupation of a portion of the property had wound up their business without paying a penny to the temple and as a result, a sum of Rs.1,60,05,320/- is completely lost and which can never be recovered.

19. This Court does not find any bonafides on the part of the petitioners and they have been happily receiving huge rents by sub-leasing the property and they in turn never paid any rents to the temple. The petitioners are now trying to take advantage of the order passed by the Commissioner in the year 2017. If really the petitioner was genuine enough, they should have knocked the doors of this Court immediately if the department did not initiate steps for fixation of fair rent. Whereas, this Court only finds one representation in the year 2017 made by the petitioners after the order was passed by the Commissioner. The next representation was made only on 10.02.2020 after nearly 2 ½ years. On receipt of this representation, a detailed reply was given by the temple and the



petitioners were specifically informed that there is no subsisting right for the petitioners in the property and that steps will be taken to remove the occupants from the property by initiating proceedings under Section 78 of the Act. Even after receiving this reply from the temple where the very right of the petitioners has been questioned, the petitioners waited till the year 2023 and the present writ petition was filed by them during April 2023. It is therefore apparent that the petitioners want to hold on to the property by taking advantage of the order passed by the Commissioner in the year 2017.

20. It was already brought to the notice of this Court that the portion that was occupied by the Central Bank of India was locked and sealed and it is now under the control of the Department. When the earlier order was passed on 25.04.2023, it was brought to the notice of this Court that the petitioners initiated eviction proceedings against the 5th respondent and the same is pending before the Small Causes Court. It is not necessary for this Court to go into the dispute between the petitioners and the 5th respondent. The same is irrelevant insofar as the issue under consideration before



this Court.

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21. The learned Special Government Pleader submitted that out of the 24 grounds that was originally leased, the department has already taken possession of nearly 18 grounds by initiating proceedings under Section 78 of the Act. Out of the balance six grounds, 3 ¼ grounds was acquired by CMRL and the compensation amount of Rs.42.50 Crores was paid to the temple. The balance 2.75 grounds is now the subject matter of the present writ petition. The learned Special Government Pleader submitted that the HR&CE Department had taken all steps to safeguard the interest of the temple.

22. The observations made by this Court supra on the conduct of some of the officers, only pertained to the facts of the present case. It should not be understood that this Court has expressed its concern as against the entire department. Obviously, some of the officers of the department wantonly failed to take steps to evict the occupiers and as a result, the temple has lost a huge income.



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23. The records reveals that the petitioners had never been in occupation of the property and right through they had only sub-let the property and were happily collecting the rents without paying anything to the temple. The petitioners have lost their right in the subject property and they have unnecessarily permitted others to occupy the property. Hence, the petitioners cannot be allowed to take advantage of the order passed by the Commissioner and it is too late in the day for the petitioners to seek for fixation of the fair rent. Obviously, such a step has been taken by the petitioners since they are not receiving any rents from the occupants and hence, they want to once again revive their so called right and utilise the property. Such conduct on the part of the petitioners will never be entertained by this Court and this Court finds that there is absolutely no bonafides on the part of the petitioners and there are no merits in this writ petition.

24. Insofar as the 5th respondent is concerned, it is left open to the 4th respondent to proceed further in accordance with law.



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25. In the result, this writ petition is dismissed. No costs.

Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation Case : Yes/No

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To
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- 1 The Commissioner,
Hindu Religious and Charitable Endowments Department,
No 119, Uthamar Gandhi salai ,
Nungambakkam, Chennai 600 034
- 2 The Assistant Commissioner,
Hindu Religious and Charitable Endowments Department,
128, Yadaval street Padi, Chennai 600 050
- 3 Shri Thuvi Raja Anugraha Ganapathy and Shri Shiridi Saibaba
Temple, Rep by it Manager, Kottivakkam Kuppam Road ,
Thrivalluvar Nagar, Thiruvanmiyur, Chennai 600 041
- 4 Annadanam Matrum Paropakaaram trust,
Rep by its Managing Trustee, No 6 ,
1st Floor, Long Beach Apartment, 4th Seaward road,
Thiruvanmiyur, Chennai 600 041



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N. ANAND VENKATESH, J.
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