



W.P. (MD) No. 1309 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.02.2023

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESSAVU

W.P. (MD) No. 1309 of 2020

and

W.M.P. (MD) Nos. 1058 and 1059 of 2020

P.Subburaj (Died),

Kanagalakshmi

(Petitioner substituted vide order dated 06.02.2023

passed in W.M.P. (MD) No. 18412 of 2022)

... Petitioner

Vs.

1.The Commissioner,

Hindu Religious and Charitable Endowment Admn. Department,

Nungampakkam,

Chennai.

2.The Executive Officer,

Arulmigu Kailasanathar Temple,

Kailasapuram,

Tirunelveli Junction,

Tirunelveli – 1.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the constitution of India, to issue a Writ of Certiorari, calling for the records relating to the order of 1st respondent in RC.No.62333/2019/D2 dated 18.11.2019 confirming in nature the order of 2nd respondent dated 20.9.2019 and quash the same.

For Petitioner : Mr. S.Meenakshi Sundaram



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Senior Counsel
for Mr. N.GA.Natraj

For Respondents : Mr. P.Subbaraj (for R1)
Special Government Pleader

Mr. C.Guhaseelarupan (for R2)

ORDER

Heard Mr. S.Meenakshi Sundaram, Learned Senior Counsel appearing for the Petitioner, Mr. P.Subbaraj, Learned Special Government Pleader appearing for the First Respondent and Mr. C.Guhaseelarupan, Learned Counsel for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Original Petitioner, viz., P.Subburaj was a tenant in respect of the property of an extent of 13,966.80 Sq.ft in S.No. 1009 in T.S. No. 7, situated in Salai Street, Kokkirakulam, Palaymkottai Taluk, Tirunelveli, belonging to the Second Respondent, viz., Arulmigu Kailasanathar Temple, Kailasapuram, Tirunelveli District. Aggrieved by the notice dated 20.09.2019 sent by the Second Respondent claiming fair rent for the said property, the Original Petitioner had filed an appeal under Section 34-A(3) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (Tamil Nadu Act 22 of 1959)



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before the First Respondent in which the following order was passed:-

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“ 1. The Respondent temple is directed to calculate the unpaid arrears at the existing rate, till the date of intimation of revised rent and arrears at the revised rate from the date of intimation of revised rent till 31.12.2019. The same shall be communicated to the Petitioner before 15.12.2019.

2. On receipt of such communication from the temple, the Petitioner is directed to settle the arrears in full as per the communication issued by the Temple before 15.12.2019 and file proof of deposit of arrears as communicated by the Temple before this forum on 06.01.2020.

3. The Petitioner shall file an undertaking affidavit to continue to pay the revised rent till the disposal of the appeal petition.

4. The above petition is posted on 06.01.2020 to file an undertaking affidavit along with proof for deposit of arrears to decide the admissibility of the main appeal petition.”

The Original Petitioner has challenged the said order in this Writ Petition.

3. Since the Original Petitioner viz., P.Subburaj, died on 18.05.2021 after



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the filing of the Writ Petition, his wife viz., Kanagalakshmi, has been substituted in his place in the Writ Petition by order dated 06.02.2023 in W.M.P (MD) No. 18412 of 2022 passed by the Court.

4. It has been brought to notice that after the filing of the Writ Petition, the First Respondent by proceedings in R.C. No. 62332/2019/D2 dated 29.12.2022 has passed a final order in the said appeal holding as follows:-

“ 8. Admittedly the Petitioner, is a tenant of the Respondent temple, and is enjoying properties belonging to the Temple. The Respondent Temple has issued notice informing about the fair rent fixation, and the same has been challenged here.

9. In the impugned notice, fair rent has been re-fixed w.e.f 01.07.2016 as per Section 34 A of the act, based on the prevailing market rental value in the said locality. Previously, from the year 2001, the rent was re-fixed for every three years by enhancing at 15% of previous rent based on the guidelines issued in various G.O's. The validity of the said guidelines were tested in various Writ Petitions and Writ Appeals. In the judgment dated 29.07.2008 made in W.P. No. 8831/2008 and



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other Writ Petitions, the following questions were raised:-

“(i) Whether the Executive Officer can collect the enhanced rent without there being fair rent fixation as directed under Section 34-A of the Act.

(ii) Whether G.O. Ms. No. 353, Tamil Nadu Development and Culture, Hindu Religious Department, dated 04.06.1999 in directing the market rent to be fixed and also an upward revision to be made once in three years was valid and

(iii) Whether the authorities can rely upon the Government Order without going through the process of fair rent fixation, contemplated under Section 34-A of the Act. In some other individual cases, complaint is made that the copies of the upward revision fixed by the Committee was not furnished and therefore, they are handicapped in challenging such fixation.”

10. The above questions were decided as follows based on the



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decision made in various Writ Appeals,

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“1. The relationship between the Petitioners and the Temple is only contractual in nature and therefore, the court cannot interfere with any dispute between them.

2. G.O. Ms. No. 353, Tamil Development and Culture, Hindu Religious Department dated 04.06.1999 is a guideline, which can be validly adopted by subordinate officers and executive officer of the Temple

3. Section 34-A of the Act is only an enabling provision in constituting the committee and the Executive Officers can either act upon such a revision or can by the general guidelines made by the Government.

4. If any party, who is aggrieved by such fixation on the ground that either the guidelines were not followed or it is exorbitant, there is remedy provided under Section 21 of the Act and therefore, without availing such remedy, this Court cannot



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entertain the Writ Petition.”

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11. As per the above judgement, the subordinate officers and Executive officers can either fix the rent as per Section 34 A of the act or based on the guidelines issued by the Government in the G.O's.

12. In this case, previously the rent was revised for every three years as per the guidelines issued in various G.O's from the year 2001. The said fixations were accepted by the tenant and rent was paid without default. The procedure followed for the past 15 years cannot be changed suddenly without any valid reasons. Due to change of procedure from the year 2016, the tenants have stopped the payment of rent, which leads to accumulation of arrears. Further, the subsequent revisions in the year 2019 and 2022 was also not done.

13. In view of the above discussions, and also after considering the arguments advanced by the counsels, perusing the records, the following directions are issued:-

- 1) The Respondent Temple should re-fix the fair rent with effect from 01.07.2016, 01.07.2019 and 01.07.2022, as per the guidelines issued in G.O*



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(Ms) No. 298 dated 20.07.2010, and the instruction issued in Rc.No.4551/2022/M2, dated 10.03.2022, whichever is applicable, and communicate the same to the Appellant along with the calculation sheet and details of arrears within 15 days from the date of receipt of this order.

2) The Appellant may file his objections, if any, only with regard to the value of the property or extent of area of the property, within 15 days from the date of receipt of this order, before the Respondent Temple.

3) The Respondent Temple is directed to consider the objections, only with regard to the value of the property or extent of area of the property, and issue reply within 15 days from the date of receipt of the objections from the Appellant. If no objection is received from the appellant herein, it is deemed that he has no objection whatsoever.

4) The Appellant is directed to settle the arrears in



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12 equal monthly installments.

5) The rent paid in excess based on the earlier fixation, if any, shall be adjusted against the future payments.

6) If the Appellant violates any one of the above conditions, it is open to the Respondent Temple to initiate action to vacate the appellant and restore the property, in accordance with law as it may deem fit and proper.

7) If the Appellant fails to settle the arrears, action shall be initiated under Section 79-C of the Act.

The Appeal Petition is hereby disposed of with the above directions.”

Since the Petitioner viz., Kanagalakshmi claims to be the legal heir of the Original Petitioner viz., P.Subburaj, it shall be incumbent upon her to make necessary application for treating her as legal heir of the Original Petitioner to continue lease for the property and the Second Respondent would have to take necessary action following the prescribe procedure in that regard.



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5. It is needless to clarify here that inasmuch as the letter dated 02.02.2009 from the Government of Tamil Nadu specifically provides that the extent of the land occupied by the tenant would have to be specified while calling for objections from them, the Second Respondent has to mention the extent of the land in occupation of the Petitioner in the notices issued before fixation of fair rent for the respective premises occupied by her, and in turn, while submitting her objections, the Petitioner would have to show the actual extent held by her with supporting materials, if she does not accept the measurements as claimed by the Second Respondent. While taking final decision, the Second Respondent, after proper verification with specific details, has to advert the correct extent of land in occupation of the Petitioner for fixation of fair rent for the property leased to her.

6. In such circumstances, the Petitioner and the Second Respondent would have to carry out the directions issued by the First Respondent in the Order dated 29.12.2022 R.C. No. 62332/2019/D2 for fixation of fair rent for the property in the aforesaid manner in accordance with law.



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In the result, the Writ Petition is disposed on the aforesaid terms.

Consequently, the connected Miscellaneous Petitions are closed. No costs.

13.02.2023

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Index : Yes/No

Note: Issue order copy by 23.06.2023

To

1. The Commissioner,
Hindu Religious and Charitable Endowment Admn. Department,
Nungampakkam,
Chennai.

2. The Executive Officer,
Arulmigu Kailasanathar Temple,
Kailasapuram,
Tirunelveli Junction,
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P.D.AUDIKESAVALU,J.

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