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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.07.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No. 11117 of 2023
and
W.M.P(MD)Nos.11558 & 11559 of 2023

P.Balakrishnan

... Petitioner

Vs.

1.The State of Tamilnadu

Rep. by its Principal Secretary to Government,
Department of Tourism, Culture and
Hindu Religious and Cultural Affairs,
Secretariat, Chennai.

2.The Commissioner

Hindu Religious and Charitable Endowments Department,
Gandhi Road,
Nungambakkam, Chennai.

3.The Joint Commissioner

Hindu Religious and Charitable Endowments Department,
542/30, Plot No.49, M.R.S.Nagar,
Mullippadi, Seelappadi Post,
Dindigul District.

4.The Executive Officer

Vandikaliyamman Temple,
O/o.The Sithivinayagar Kovil,
Near Railway Station,
Dindigul District.

... Respondents



PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Mandamus* directing the respondents to re-fix the lease rent *qua* the vacant land to an extent of 1800 sq.ft., situate at Door No.2/1, Thadicombu Road, Vanivilas Medu, Dindigul District, belonging to the fourth respondent temple, leased out to the petitioner vide the proceedings of the second respondent, dated 05.05.2021.

For Petitioner : M/s.A.Afritha Fathima
for M/s.Ajmal Associates

For Respondents : Mr.R.Ragavendran - for R1 to R3
Government Advocate

Mr.P.Subbaraj - for R4

ORDER

This Writ Petition is filed for *Writ of Mandamus*, directing the respondent to re-fix the lease rent, based on the vacant land to the extent of 1800 sq ft. in Door No.2/1, Thadicombu Road, Vanivilas Medu, Dindigul District.

2. The petitioner is having a lease agreement with the 4th respondent. The contention of the petitioner is that at the time of letting the land for lease the respondents have mentioned extent of land as 2100 square feet, but the petitioner claimed that only 1800 square feet is available and the



petitioner has occupied only 1800 square feet. Hence the rent fixed for 2100 sq ft is illegal. Therefore, this Court directed the respondents to take instruction.

3. Today, when the matter was taken up for hearing, the Learned Counsel for the respondents submitted that the petitioner has occupied 2081 sq. ft. But the petitioner submitted that the respondents ought to survey the land, since the petitioner has occupied 1800 sq ft only. But this contention was refuted by the respondents by stating that the available land is 2081 sq. ft. This Court is of the considered opinion that it is an admitted fact that the petitioner is not occupying 2100 square feet.

4. The next contention of the petitioner is that the respondents have fixed rent for superstructure as well which is against the terms of agreement. Infact the petitioner has put up construction after getting permission from the 4th respondent and in such circumstances the respondents cannot impose rent for the superstructure. The respondents accepted that the petitioner has put up superstructure and only the land was leased to the petitioner.



5. Therefore, this Court is of the considered opinion that the respondents without surveying the land had granted lease. Hence the respondents are directed to survey the land, then fix the rent for the occupied portion alone. Also, the respondents shall not impose the rent for superstructure. The respondents shall re-do the entire exercise, after giving opportunity to the petitioner and then fix the rent. The respondents shall consider the petitioner's case, after surveying the land.

6. With the above terms, this Writ Petition is allowed. No Costs.

Index : Yes / No

Internet : Yes

NCC : Yes / No

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S.SRIMATHY, J

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**Order made in
W.P.(MD)No. 11117 of 2023**

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