



W.P.(MD) No.27272 of 2022

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.06.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.27272 of 2022

and

W.M.P(MD) No.21397 and 21398 of 2022

Dhanasekharan

... Petitioner

Vs.

1.The Joint Commissioner,
Tamil Nadu Hindu Religious and
Charitable Endowments Department,
Mayiladuthurai,
Mayiladuthurai District.

2.The Executive Officer,
Adi Kumbheshwarar Thirukkivil,
Kumbhakonam,
Thanjavur District.

3.Chandrashekar

... Respondents

(R3 is given up as per Court order dated 01.12.2022
and obtained endorsement on 12.06.2023 from the
petitioner's counsel as per the Court order dated 25.04.2023)



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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 proceedings of the second respondent through the third respondent dated 01.03.2022 and the consequential impugned proceedings of the second respondent in Na.Ka.No.02/2022 dated 10.05.2022 and quash the same as illegal.

For Petitioner : Mr.M.Mahaboob Athiff
For R1 : Mr.P.Subbaraj
Special Government Pleader
For R2 : Mr.V.Chandrasekar

ORDER

The writ petitioner has approached this Court seeking issuance of a writ of certiorarified mandamus calling for the records of the second respondent through third respondent dated 01.03.2022 and the consequential proceedings initiated by the second respondent in Na.Ka.No.02/2022, dated 10.05.2022 and quash the same as illegal.



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2.It is necessary to set out the petitioner's case in order to dispose of this writ petition:-

(i) It is the case of the petitioner that he is the tenant under the Adi Kumbheshwarar Thirukkovil. He has been in occupation of the shop in Survey No.1248, Kumbhakonam, Thanjavur District, measuring an extent of 220 sq. ft. It is the case of the petitioner that originally the shop was allotted in the name of his father, Late Krishnamoorthy and that he has been running a bakery in the said shop. The petitioner would submit that he has been very regular in the payment of the rent fixed and demanded by the temple. The petitioner would go on to state as to how under the scheme of the Act, fair rent has to be fixed in respect of the property belonging to the temple. The petitioner would quote the provision of Section 34A of the Tamil Nadu HR&CE Act 1959 (hereinafter called as 'the Act') and also quote the Division Bench Judgment of this Court reported in 2009 6 CTC 512, wherein this Court had held that although the provisions of Section 34(A) did not contemplate issuance of notice before fixation of rent, however, by telescoping the principles of natural justice into this provision, the



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lessees should be given an opportunity to submit their objections to the fair rent that has to be fixed. The petitioner would submit that the fair rent fixed by the committee alone would be in compliance of the provisions of Section 34(A) of the Act and only thereafter, would there be an obligation on the lessee to pay the enhanced rent.

(ii) However, it is the petitioner's case that such an exercise as contemplated under Section 34(A) has not been undertaken and the second respondent temple has *suo motu* enhanced the rent and the petitioner has been kept in the dark. He would further submit that the respondent without following the procedure for fixing the rent and without intimating the fixation, retrospectively enhanced the rent from 2016 and called upon the tenants to pay the same immediately, failing which, they had threatened to lock and seal the subject premises. This constrained the petitioner to file W.P(MD) No.3932 of 2022 seeking the orders from this Court directing the respondents not to take coercive steps to evict the petitioner except by following the due process of law.



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(iii) This Court by order, dated 03.03.2022, directed the respondent to consider and pass orders on the petitioner's representation. While this proceeding was pending, the third respondent on behalf of the second respondent had issued a legal notice dated 01.03.2022 terminating the tenancy and directing the petitioner to hand over the vacant possession of the premises by 31.03.2022, failing which, he would be treated as an encroacher under Section 78 of the Act. This notice is challenged in the present writ petition.

3. The learned counsel appearing on behalf of the petitioner would submit that the entire proceeding is *ex facie* without jurisdiction, since there has been no fixation of fair rent as contemplated by the provisions of Section 34(A) of the Act. This is the fulcrum and pivot, on which, the arguments of the petitioner rest.

4. The learned counsel for the second respondent has submitted a set of documents indicating the fixation of fair rent, rents paid etc. He would submit that the writ petition has been filed against the notice to



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quit issued under Section 106 of the Transfer of Property Act. He would further submit that the fixation of rent has been done as per the procedure contemplated under the Act and that apart, the petitioner himself accepted the revised rent and was paying the rent at the revised rate. Therefore, there is no merit in the writ petition in question.

5. A perusal of the documents filed by the petitioner would clearly show that on 30.05.2018, the committee as contemplated under Section 34(A) of the Act, had fixed fair rent in respect of the shops belonging to the temple. In this list of tenants, the petitioner's father is shown at Serial No.90 and corresponding fair rent is fixed at Rs.7,800/-. This document would further contain the following postscript:-

மூ.மு 7581/2018 ஈ 1 நாள் 10-18
இத்திருக்கோயிலுக்கான 94 மனைப்பகுதி
01.07.2016 முதல் நியாய வாடகை
நிர்ணயம் செய்து உத்தரவிடப்படுகிறது.

6. Further from the receipt filed by the respondents dated 06.02.2019 issued in favour of the petitioner's father, would clearly show that the petitioner's father has paid revised rent, namely, Rs.7,800/- and



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that apart, the receipt would further give the following details:-

“நியாய வாடகை நிர்ணயம் - இணை
ஆணையர் மு.மு.எண்.7581/2018/ஈ1 நாள் 31.10.2018
உத்தரவின்படி பசலி 1428 முடிய உள்ள
நிலுவையில் ஓர் பகுதியாக தொகை வரவு
(Damages for use and occupation)”

7. In the light of the above, it is clear that the case put forward by the petitioner that the fair rent has not been fixed in keeping with the provisions of Section 34(A) of the Act and that the petitioner has been kept in the dark, is contrary to the truth. Therefore, the order which is impugned is only notice to quit under Section 106 of the Transfer of Property Act and this notice to quit is challenged only on the ground that rent has not been fixed as per the procedure and without intimation to the petitioners. Therefore, this writ petition has to necessarily be fail and accordingly, the same is dismissed.

8. It is also informed by the learned counsel for the respondent temple that the petitioner has taken on sub lease of three other shops and has integrated the same into one unit. It is open to the respondents to



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initiate such action by following due process of law. No costs.

Consequently, connected miscellaneous petition is closed.

14.06.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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To

The Joint Commissioner,
Tamil Nadu Hindu Religious and
Charitable Endowments Department,
Mayiladuthurai,
Mayiladuthurai District.



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P.T.ASHA, J.

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Dated: 14.06.2023