



W.P.No.2649 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	03.12.2024
Delivered on	09.12.2024

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.2649 of 2015

and

M.P.No.1 of 2015

The Clarke School for the
Deaf and Mentally Retarded,
A registered Society,
Represented by its Director,
No.3, 3rd Street, Dr.Radhakrishnan Salai,
Mylapore, Chennai.

... Petitioner

Vs.

1.The Executive Officer,
Arulmigu Senganmaleeswarar Temple,
Senganmal Village,
At Arulmigu Nithya Kalyanaswami Temple,
Thiruividanthai Post, Chingleput Taluk,
Pincode – 603 112
Kanchipuram District.

2.The Commissioner
Hindu Religious & Charitable Endowments
Department,
Nungambakkam, Chennai – 600 034.

... Respondents



W.P.No.2649 of 2015

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the first respondent culminating in the order dated 24.12.2014 quash the same and direct the respondents to consider the petitioner's representation dated 03.01.2015 to the first respondent and to fix the fair rent following the guidelines set out in the Government Order 456 dated 09.11.2007 for the property occupied by the petitioner in S.No.1378/2A in Senganmal Thiyor Village, Thiruporur Taluk and Kanchipuram District.

For Petitioner	: Mr.N.L.Rajah, Senior Counsel for M/s.R.Kumar
For Respondents	: Mr.S.Kandasamy for M/s.A.K.Kailasam Associates for R1 Mr.Arun Natarajan Special Government Pleader for HR & CE for R2

ORDER

This writ petition has been filed challenging the proceedings of the first respondent dated 24.12.2014 and for a direction to the respondents to consider the representation given by the petitioner dated



W.P.No.2649 of 2015

03.01.2015 and fix a fair rent following the guidelines set out in

G.O.(Ms.) No.456, dated 09.11.2007.

2.The issue involved in the present writ petition and the various developments that took place during the pendency of this writ petition is reflected in various orders passed by this Court during the pendency of this case.

3.Those orders were all captured in the order passed on 14.06.2024 and the same is extracted hereunder:

“This writ petition was filed challenging the order passed by the 1st respondent through proceedings dated 24.12.2014 and for a direction to the respondents to consider the representation dated 03.01.2015, made by the petitioner and to fix the fair rent following the guidelines set out in G.O.No.446 dated 9.11.2007, for the subject property.

2.When the matter came up for hearing on



W.P.No.2649 of 2015

23.6.2022, the following order was passed by this Court

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“The grounds that have been raised in this writ petition requires a counter affidavit to be filed by the 1st respondent. In the meantime, even in the impugned order passed by the 1st respondent, 24.12.2014, it has been stated that out of 8.24 acres which is in the occupation of the petitioner School, only two acres has been put to use and the remaining 6.24 acres is unutilised and hence, a proposal was given to the School to hand over the unutilised portion of the land so that the 1 st respondent will be able to fix a lease amount for the land which is actually in the occupation of the petitioner. The learned Senior Counsel appearing on behalf of the petitioner seeks for sometime to take instructions in this regard.

2.Post this writ petition under the caption “adjourned cases” on 07.07.2022.

3.The case was thereafter listed for hearing on 28.7.2022 after the counter affidavit was filed by the respondent and a reply affidavit was filed by the petitioner and the following order was passed by this



W.P.No.2649 of 2015

Court.

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Pursuant to the earlier orders passed by this Court, the petitioner has filed an affidavit. The petitioner has made the following offer in the affidavit.

a) I state that the Respondent vide their communication dated 14.08.2012 (appended hereto) have set out details as to how the arrears of rent have been calculated in the present case and had informed the petitioner that a sum of Rs.5,63,338/- (Rupees Five Lakhs Sixty Three Thousand Three Hundred and Thirty Eight only) is the arrears of rent pending till 14.08.2012 as per the said calculation of the respondent. I state that the petitioner to resolve issues amicably is agreeable to the said communication sent by the respondent on 14.08.2012 and is agreeable and willing to pay the said amount of Rs.5,63,338/- (Rupees Five Lakhs Sixty Three Thousand Three Hundred and Thirty Eight only) within a period of four weeks from today as rent due till 2012. It is noticed that the said sum has been arrived after giving credit to the payments made by the petitioner.

b) I further state that with regard to the rent for the period pertaining to 2012 to 2022 on the same basis may be calculated by the fee fixation committee after giving the petitioner an opportunity to represent their



W.P.No.2649 of 2015

case to the fee fixation committee in a manner known to law.

c) From March 2020 to till March 2022 the petitioner has been unable to run the school because of Covid19 pandemic. This Hon'ble Court may direct the respondents to grant waiver of rent for these two years.

d) I state that the petitioner has appended a plan to this affidavit where they have shaded the portion of land which they are willing to retain and submit that they are agreeable to surrender the rest of the leased lands back to the Respondent. The shaded portion is only indicative as parties have not jointly measured the area. The understanding in this affidavit is that the petitioner will surrender 50% of the area but the exact location will be measured and identified.

e) I state that the Respondent may execute a fresh lease agreement after the extent mentioned above is surrendered and rent may be fixed for the balance area to be retained by the petitioner on the same basis as done by the Respondent vide their communication dated 14.08.2012.

f) It is further respectfully prayed that this Hon'ble Court may be pleased to pass an order directing the respondent to extend the lease for a further period of 30 years on the basis as stated above and pass such further or other orders as this Hon'ble



W.P.No.2649 of 2015

Court may deem fit and proper in the facts and circumstances of the case and thus render justice.

2. The learned Special Government Pleader appearing on behalf of the respondents submitted that he needs some time to take instructions and make his submissions on the affidavit filed by the petitioner.

3. In the considered view of this Court, the petitioner has volunteered to pay arrears of rent amounting to a sum of Rs.5,63,338/- which will cover the arrears till 14.08.2012. The petitioner has sought for some time to make this payment. There is no dispute with regard to this amount and since the petitioner has volunteered to make this payment, there shall be a direction to the petitioner to deposit the amount of Rs.5,63,338/- within a period of 4 weeks from the date of receipt of copy of this order.

4. The learned Special Government Pleader shall specifically take instructions on the offer that has been made by the petitioner in Clause (b) to (e). Insofar as the request made by the petitioner seeking for an extension of lease for a period of 30 years, it is brought to the notice of this Court that the Division Bench of this Court had issued certain directions in this regard in W.P. No.574/15 etc., by order dated 07.06.2021. The directions issued by the Division Bench will have to be taken into consideration before taking a decision on the



request made by the petitioner in clause(f). Post this case under the caption "Part heard cases " on 04.08.2022 at 2.15 p.m.

4.The writ petition was once again listed for hearing on 10.8.2022 and the following order came to be passed by this Court:

Pursuant to the earlier order passed by this Court on 04.08.2022, the matter was taken up for hearing today. The learned Special Government Pleader appearing on behalf of the second respondent submitted that in so far as the request made by the petitioner in Clause (b) in the affidavit filed before this Court, the matter may be referred to the Fee Fixation Committee and some time limit may be fixed for the Committee to determine the rent payable by the petitioner for the period from 2012 to 2022. The learned Special Government Pleader further submitted that in so far as the request made by the petitioner in Clause (c) in the affidavit, the petitioner and the first respondent can be directed to approach the second respondent and the second respondent can hear them and take a decision on the request made by the petitioner. This leverage is given to the petitioner considering the service oriented activity in which the petitioner is involved.



W.P.No.2649 of 2015

2.The learned Special Government Pleader further submitted that once the rent is determined and it is finalized between the petitioner and the first respondent, the petitioner can be directed to pay the arrears of rent. Thereafter, the request made under Clause (d) and (e) in the affidavit can be taken into consideration.

3.The learned Special Government Pleader also brought to the notice of this Court, the communication dated 09.08.2022, that was sent by the Joint Commissioner, Kanchipuram to the second respondent in this regard.

4.In view of the specific stand that has been taken by the respective parties, there shall be a direction to the petitioner to submit their application along with all the relevant documents to the first respondent on or before 25.08.2022. The first respondent on receipt of the same, shall place it before the Fee Fixation Committee. The Fee Fixation Committee shall hear the parties and shall fix the rent and issue proceedings within a period of six weeks thereafter.

5.The proceedings of the Fee Fixation Committee shall be placed before this Court. If the rent fixed by the Committee is acceptable to the petitioner and the first respondent, appropriate orders can be passed by this



Court by fixing some time limit to the petitioner to pay the arrears of rent. If the petitioner is aggrieved by the rent fixed by the Fee Fixation Committee, this Court will pass appropriate orders giving liberty to the petitioner to file an appeal before the second respondent.

6.In so far as the request made by the petitioner in Clause (c) in the affidavit, the petitioner shall make an application before the first respondent on or before 25.08.2022 and the first respondent shall place the application before the second respondent and it is left open to the second respondent to hear the parties and take a decision on the request made by the petitioner. The second respondent shall take a decision within a period of four weeks and the same shall also be informed to the Fee Fixation Committee.

7.The request made by the petitioner in Clause (d) and (e) in the affidavit will be considered by this Court after the above process gets over.

8.A cheque for a sum of Rs.5,63,338/- was handed over to the learned counsel appearing on behalf of the first respondent. On encashment of this amount/cheque, the rent arrears till 14.08.2012 will be cleared and the first respondent shall also issue a receipt to the petitioner.



W.P.No.2649 of 2015

9. *Considering the nature of activity in which the petitioner/School is involved, their possession shall not be disturbed till the entire process gets over.*

10. *Post this Writ Petition under the caption “For Passing Further Orders” on 31.10.2022.*

11. *The learned Senior Counsel appearing on behalf of the petitioner, the learned counsel appearing on behalf of the first respondent/Temple and the learned Special Government Pleader appearing on behalf of the second respondent submitted that since I have already dealt with this case substantially, the Writ Petition can be posted for further orders before me. If in case there is any change in portfolio, it will be left open to the learned counsel appearing on either side to circulate a letter to the Hon'ble Chief Justice and make a request for posting this Writ Petition before me. Depending upon the administrative order passed by the Hon'ble Chief Justice, the Registry can post this Writ Petition for hearing before me.*

5. *After the above order was passed, based on the administrative order passed by the Hon'ble Acting Chief Justice, the matter was listed before me as specially ordered case and the order passed on 16.6.2023 is*



WEB COPY



W.P.No.2649 of 2015

extracted hereunder:

Pursuant to the earlier orders passed by this Court on 27.04.2023, the matter was posted for hearing today.

2. The learned Special Government Pleader submitted that the petitioner has surrendered an extent of 5.24 acres and it is now under the control of the temple. In view of this development, one of the directions issued by this Court has been complied with.

3. The other important issue that requires consideration of this Court is the arrears of rent that is payable by the petitioner from the year 2012 till the surrender of some portion of the land, for the total extent of 8.24 acres. The fee fixation committee has fixed the rent at the rate of Rs.10,76,803/- per month by taking into consideration the guideline value of the property as on 01.04.2012. The learned Special Government Pleader submitted that the rental arrears must be calculated from 2012 till 2023 up to the date on which 5.24 acres was surrendered by the petitioner.

4. Apart from the above, the fair rent payable by the petitioner for the lands retained to an extent of 2.27 acres has been determined at Rs.2,96,643/- per month. This determination has been done by taking into



W.P.No.2649 of 2015

account the earlier fixation done for the year 2012.

5. The learned Senior counsel appearing on behalf of the petitioner submitted that the rent ought to have been fixed by increasing it at the rate of 15% once in three years as it prevailed from the year 2012 onwards and that the fee fixation committee went wrong in determining a fresh rent from the year 2012 onwards. It was further submitted that the same calculation must be carried forth even for the land retained by the petitioner to an extent of 2.27 acres.

6. The learned Senior counsel further submitted that the Commissioner of HR&CE is yet to take a decision on the request made by the petitioner for the waiver of the rent during the pandemic period from 2020 to 2022.

7. This Court will go into the fixation of fair rent during the next date of hearing. There shall be a direction to the petitioner to furnish the calculation of the rent if it is increased by 15% once in three years from the year 2012 onwards. This Court will attempt to strike a via media by safeguarding the interest of the petitioner and the temple

8. Insofar as the request made by the petitioner for the waiver of the rent for the period 2020 to 2022, the same will be decided by this Court.



W.P.No.2649 of 2015

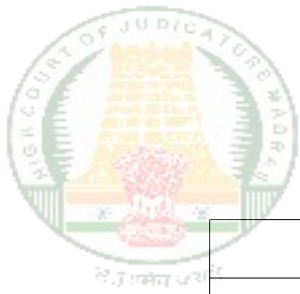
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hearing' on 11.7.2024 at 2.15 p.m., and the learned counsel on either side shall confine their arguments only to the above issue."

4.Pursuant to the above order, the only issue that requires the determination of this Court is with regard to the arrears of rent that is payable from 01.09.2012 and the further rent that has to be paid by the petitioner for the extent of 2.27 acres which is retained by the petitioner after surrendering 5.97 acres.

5.Heard the learned Senior Counsel appearing on behalf of the petitioner, the learned counsel appearing for the first respondent and the learned Special Government Pleader appearing for the second respondent.

6.Insofar as the arrears of rent that is payable, memo of calculation was filed on the side of the petitioner for the period from 01.09.2012 up to 31.03.2024 and the same is extracted hereunder:



W.P.No.2649 of 2015

Period	Rent	Months	Total
Amount to be paid upto 31.08.2012 as per the letter from Temple on 14.08.2012			563338
01.09.2012 to 31.03.2013	8472	7	59304
01.04.2013 to 31.03.2016 @ 15% increase	9743	36	350748
01.04.2016 to 31.03.2019 @ 15% increase	11204	36	403344
01.04.2019 to 31.03.2022 @ 15% increase	12885	36	463860
01.04.2022 to 31.03.2024 @ 15% increase	14818	24	355632
			2196226
Amount paid from 01.10.2012 to 31.03.2022			268380
Amount paid via court on 02.08.2022			563338
Amount paid via court on 02.08.2022			1364508

7.The learned Senior Counsel appearing on behalf of the petitioner submitted that some concession can be given for the pandemic period from 01.04.2020 to 31.03.2022 and if the rent for that period is waived, the balance amount payable by the petitioner towards arrears of rent will work out to Rs.10,08,876/-.



W.P.No.2649 of 2015

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8.The learned Senior Counsel further submitted that insofar as the rents that are payable from 01.06.2023, it has to be calculated on the reduced area of 2.27 acres which corresponds to the monthly rent of Rs.4,082/-. Since the extension will be for a period of three years, this rent is payable up to 30.06.2025. If the calculation is done on this basis, the rent payable till 31.12.2024 has to be recalculated in the following manner:

	Rent	Months	Total
			563338
01.09.2012 to 31.03.2013	8472	10	84720
01.07.2013 to 30.06.2016 @ 15% increase	9743	36	350748
01.07.2016 to 30.06.2019 @ 15% increase	11205	36	403380
01.07.2019 to 30.06.2022 @ 15% increase	12885	36	463860
01.07.2022 to 30.05.2023 @ 15% increase	14818	11	162998
From 01.06.2023 to 30.06.2024	4082	13	53066
From 01.07.2024 to 31.12.2024		6	24492
Amount paid from 01.10.2012 to 31.03.2022			268380
Amount paid via court on 02.08.2022			563338



W.P.No.2649 of 2015

Balance to pay upto 31.12.2024			1250392
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9.The learned Senior Counsel further submitted that for the present, the extension can be given for the period of three years from 2023 to 2025. Thereafter, the petitioner will apply to the Commissioner and/or the Government and seek for a long lease.

10.The learned Special Government Pleader submitted that even if the calculation given by the petitioner is taken to be correct, it can be extended only up to 31.05.2023. The learned Special Government Pleader submitted that there cannot be any waiver for the pandemic period since already sufficient concession has been given to the petitioner. Insofar as the lease from 01.06.2023, it will be for an extent of 2.27 acres and hence, a fresh lease has to be entered into with the petitioner. For determining the monthly rent payable, it has to be calculated at the rate of 0.1% of the market value. If the same is taken into consideration, it works out to Rs.3,000/- per square feet and for the entire extent, a monthly rent of Rs.2,96,644/- must be paid by the



W.P.No.2649 of 2015

petitioner. The learned Special Government Pleader further submitted that the Temple is getting an annual income of only Rs.10,00,000/- and the property is situated in a prime locality in OMR. Therefore, if a lesser rent is fixed for the petitioner, it will become very difficult for the respondents to fix an appropriate rent for the balance extent of property that has been surrendered by the petitioner. Consequently, the income of the Temple will drastically reduce and it will go against the interest of the Temple. Therefore, the learned Special Government Pleader submitted that a fresh lease deed will be entered into with the petitioner from 01.06.2023 for a period of three years and the petitioner must pay a monthly rent of Rs.2,96,644/-.

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

12.This Court has already taken note of the yeoman service rendered by the petitioner School for the differently abled and special children. Hence, the service rendered by the petitioner will be appreciated even by God who is manifesting as an idol in the Temple and who



W.P.No.2649 of 2015

manifests in the hearts of the differently abled and special children. This

Court must also take into consideration the fact that the petitioner has already surrendered 5.97 acres and what has been retained is only 2.27 acres.

13.Insofar as the arrears of rent is concerned, considering the fact that already sufficient concession is given to the petitioner, the petitioner has to necessarily pay the amount of Rs.13,64,508/- and this Court is not inclined to give any further waiver for the pandemic period.

14.The next issue is as to whether a fresh lease has to be entered into by the petitioner with the Temple. The petitioner was originally occupying an extent of 8.24 acres and the petitioner has surrendered 5.97 acres and is retaining the balance 2.27 acres. Therefore, there is no need for entering into a fresh lease agreement with the petitioner. Such fresh lease agreement may arise if the petitioner is given extra extent of land and in which case, the area under occupation itself increases and therefore a fresh lease must be entered into. Such a requirement may not arise where the area has shrunk to 2.27 acres.

20/25



W.P.No.2649 of 2015

Hence, the corresponding rent for the reduced area must only be fixed which is payable by the petitioner every month. Considering the same, starting from 01.04.2024 the petitioner shall pay a monthly rent of Rs.4,082/- (the rent for the period from 01.07.2022 to 30.06.2025 after 15% escalation is Rs.14,818/- per month for 8.24 acres. The rent per acre is Rs.1,798/- per month. For 2.27 acres it works out to Rs.4,081.46/- rounded of to Rs.4082/-). The above monthly rent for the reduced area of 2.27 acres will be payable up to 30.06.2025.

15.Insofar as the period starting from 01.07.2025, it is left open to the petitioner to make a representation to the Commissioner of HR & CE and/or the Government of Tamil Nadu seeking for a longer lease. To sum up, the following directions are issued to the petitioner:

(a) The petitioner shall pay the arrears amount of Rs.13,64,508/- within a period of six weeks from the date of receipt of a copy of this order to the first respondent;

(b) The petitioner shall pay the arrears of rent



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W.P.No.2649 of 2015

from 01.04.2024 to 31.12.2024 at the rate of Rs.4,082/- per month for 2.27 acres and the total amount of Rs.36,738/- shall be paid to the first respondent on or before 05.01.2025;

(c) The lease shall continue for 2.27 acres up to 30.06.2025. In the meantime, the petitioner shall make an application before the Commissioner of HR & CE and/or the Government of Tamil Nadu and seek for a long lease; and

(d) This order cannot be taken as precedent in any other case since some concession has been given by the Court considering the yeoman service rendered by the petitioner School for the differently abled and special children for a long number of years. Therefore, when the rent is fixed for the adjacent land which has been surrendered, the rent fixed by this Court for the petitioner should not be taken as a precedent and it is left open to the respondents to fix an appropriate rent considering the locality in which the property is



W.P.No.2649 of 2015

situate.

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16.This Writ Petition is disposed of with the above directions. Consequently, connected miscellaneous petition is closed.
There shall be no order as to costs.

09.12.2024

NCC	:	Yes
Index	:	Yes
Internet	:	Yes
PKN		



W.P.No.2649 of 2015

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- 1.The Executive Officer,
Arulmigu Senganmaleeswarar Temple,
Senganmal Village,
At Arulmigu Nithya Kalyanaswami Temple,
Thiruividanthai Post, Chingleput Taluk,
Pincode – 603 112
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- 2.The Commissioner
Hindu Religious & Charitable Endowments
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Nungambakkam, Chennai – 600 034.



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W.P.No.2649 of 2015

N.ANAND VENKATESH,J.

PKN

W.P.No.2649 of 2015

Dated: 09.12.2024