



W.P.No.13900 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated **04.12.2024**

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.13900 of 2020 and
WMP No.17272 of 2020

J.Raghavan

... Petitioner

Vs.

1. The Commissioner,
Hindu Religious and Charitable Endowment Department,
No.119, Uthamar Gandhi Salai,
Chennai 600 034.

2. The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
No.119, Uthamar Gandhi Salai,
Chennai 600 034.

3. Arulmigu Sowmiya Damodara Perumal Tirukoil,
Represented by its Executive Officer,
Villivakkam, Chennai 600 049.

... Respondents

Prayer: Writ petition filed under Article 226 of Constitution of India seeking for issuance of Writ of Certiorarified Mandamus, to call for the records to the case in respect of the impugned order dated 20.02.2020 issued by the third respondent and quash the same and consequently



W.P.No.13900 of 2020

direct the respondents to consider the representation dated 01.02.2020 made by the petitioner to ascertain the nature of the property and consequently fix the fair rent for the scheduled mentioned property.

For Petitioner : Mr.P.Siddarth
for BFS Legal

For Respondents : Mr.K.Karthikeyan
Government Advocate (HR & CE)
for respondents 1 and 2

Mr.D.R.Sivakumar
for third respondent

ORDER

This writ petition is filed challenging the communication of the third respondent, directing the petitioner to pay rental arrears of Rs.10,36,600/- for a period from 01.07.2016 to 31.01.2020. In the impugned order, the petitioner was also informed that in case of failure of the petitioner to pay the rental arrears, eviction proceedings will be taken against him under Section 78 of the Hindu Religious and Charitable Endowment Act.

2. It is the case of the petitioner that, he is the lawful occupant of



W.P.No.13900 of 2020

WEB COPY

the superstructure with door No.38C/22, Perumal Koil North Mada Veedhi, Villivakkam, Chennai 600 049, which is situated in S.No.348/1. It is the admitted case of the petitioner that the above said property belonged to the respondents Temple and the petitioner's father taken the same on lease 60 years ago. The petitioner's father had been paying the rent regularly to the third respondent till the date of his death on 30.08.2015. It is the further case of the petitioner that rent has been fixed for the property treating the same as a commercial one, when the petitioner is using it for residential purpose. The petitioner submitted a representation, after death of his father, seeking fixation of fair rent treating the property as one used for residential purpose. The said representation has not been properly considered by the third respondent and the impugned communication was sent to the petitioner stating that his request for fixation of rent treating the petitioner's property as one used for residential purpose could not be acceded to and the petitioner was directed to pay rental arrears for the period from 01.07.2016 to 31.01.2020, failing which, action would be initiated for eviction under Section 78 of the HR & CE Act.

3. The learned counsel for the petitioner submitted that the



W.P.No.13900 of 2020

WEB COPY

petitioner is using the property for residential purpose and the respondents wrongly fixed exorbitant rent treating his use as the one for commercial purpose. Therefore, the learned counsel submitted that the impugned communication of the third respondent is liable to be quashed.

4. The learned counsel for the respondents submitted that during inspection by the Fair Rent Committee, it was found that iron shop was functioning in the premises and therefore, fair rent was fixed treating the subject property as commercial one. It is also stated that the Fair Rent Committee has fixed fair rent to the petitioner's property at the rate of Rs.26,350/- per month from 01.07.2015 and the same was also communicated to the petitioner as early as in the month of November 2018 itself. However, the petitioner has not chosen to challenge the fixation of fair rent on commercial basis and also failed to pay any rent. Therefore, the impugned communication was sent to the petitioner, directing him to pay the rental arrears and aggrieved by the same, he has come before this court, without challenging original order fixing fair rent.



W.P.No.13900 of 2020

WEB COPY

5. A perusal of the counter affidavit filed by the respondents and the documents would indicate that fair rent for the petitioner's property was fixed at Rs.26,350/- per month, as early as in the month of November 2018 and it was intimated to him by the third respondent in his letter dated 26.11.2018 along with calculation sheet. However, the petitioner has not chosen to challenge the same by filing an appeal before the competent authority, namely the Commissioner of HR & CE Department. Therefore, it is clear that the order of fixation of fair rent attained finality. It is also seen from the typed set of papers that the said order was communicated to the petitioner and he himself produced the calculation sheet in the typed set. When the order of fixation of fair rent, treating the subject matter of the property as commercial property, has not been questioned by the petitioner in the manner known to law by filing an appeal, it is not open to him to say subsequently that he is using the property only for residential purpose and the respondent fixed the fair rent erroneously by treating the same as commercial property. The impugned order is only a communication, directing the petitioner to pay arrears of fair rent and in case he fails to pay, eviction proceedings



W.P.No.13900 of 2020

WEB COPY

will be initiated against him under Section 78 of the HR & CE Act.

Since the petitioner has failed to challenge the order of fixation of fair rent, he is not entitled to challenge the subsequent communication issued by the third respondent.

6. Accordingly, this writ petition stands dismissed. There shall be no order as to costs. Connected miscellaneous petition is closed. If any proceedings is initiated by the third respondent for eviction of the petitioner under Section 78 of the HR & CE Act, it is always open to the petitioner to appear in the said proceedings and raise all defences available to him under law.

04.12.2024

Index:Yes/No
Internet:Yes/No
mst

To

1. The Commissioner,
Hindu Religious and Charitable Endowment Department,
No.119, Uthamar Gandhi Salai,
Chennai 600 034.

2. The Joint Commissioner,



W.P.No.13900 of 2020

WEB COPY

Hindu Religious and Charitable Endowment Department,
No.119, Uthamar Gandhi Salai,
Chennai 600 034.

3. Arulmigu Sowmiya Damodara Perumal Tirukoil,
Represented by its Executive Officer,
Villivakkam, Chennai 600 049.



WEB COPY



W.P.No.13900 of 2020

S.SOUNTHAR, J.

mst

W.P.No.13900 of 2020

04.12.2024