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W.P.No.17660 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2024

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

**W.P.No.17660 of 2024 &
W.M.P.No.19440 of 2024**

K.M.Abdul Rasheed

... Petitioner

Vs.

1. The Commissioner,
Office of the Hindu Religious and Charitable
Endowments Board,
119, Uthamar Gandhi Salai,
Thousand lights West
Nungambakkam, Chennai – 600 034

2. The Joint Commissioner,
Office of the Hindu Religious and Charitable
Endowments Board,
First Floor, Arcot Main Road,
Kakithapatrai, Vellore – 632 012

3. The Executive Officer,
Muthukumarasamy temple,
Thiruppathur – 635 601
Thiruppathur District

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the respondents 2 and 3 to refrain themselves from initiating coercive actions against the petitioner in the guise of recovery of outstanding rent till the conclusion and final disposal of Revision Petition No.SR550625/2024 on the file of the 1st



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respondent herein.

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For Petitioner : Mr.B.Ramprasath

For Respondents : Mr.S.Ravichandran
Additional Government Pleader HR&CE

ORDER

The present Writ Petition has been filed for issuance of a Writ of Mandamus directing the respondents 2 and 3 to refrain themselves from initiating coercive actions against the petitioner in the guise of recovery of outstanding rent till the conclusion and final disposal of Revision Petition No.SR550625/2024 on the file of the 1st respondent herein.

2. The brief facts of the case are as follows:-

(i) A lease deed was executed in favour of the petitioner by the 3rd respondent -Temple on 01.04.1995 in respect of a shop portion and the petitioner is running provisional shop and godown in it. The lease was extended on oral terms and the petitioner was prompt in payment of the rents. The petitioner never acted contrary to the terms of the temple authorities.

(ii) Subsequently, the temple authorities claimed an exorbitant rent from the year 2016 vide notice dated 27.10.2020 that the rent was increased from Rs.425/- to Rs.38,250/-. The petitioner's request for



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reduction of rent vide representation dated 05.12.2020 was not considered.

The authorities again claimed exorbitant rent on 16.03.2021.

(iii) The 1st respondent, issued circular dated 10.03.2022 for fixing fair rent and the said circular was not followed in the petitioner's case. The petitioner remitted a sum of Rs.1,00,000/- and requested the respondents for fixing a fair rent equal to that of the very next building, however the same was not considered and impugned order was passed on 26.04.2024 in M.P.No.15 of 2023. Challenging the impugned order, the petitioner preferred Revision Petition before the 1st respondent on 23.05.2024. The temple authorities issued 2nd notice for coercive action.

3. The learned counsel for the petitioner would submit that sudden increase in rent exorbitantly by the temple authorities from Rs.425/- to Rs.38,250/- that too retrospectively from the year 2016 is arbitrary and totally uncalled. Further, as per circular in Na.Ka.No.4551/2022/M2 dated 10.03.2022 before fixing the fair rent, sufficient opportunity to be granted to the tenants, but the same has not been done. Further, the petitioner was insisted to deposit a sum of Rs.15,00,000/- before 10.01.2024 on the very first hearing on 27.12.2023, thereafter, no further enquiry was conducted and on 16.05.2024, the 2nd respondent passed orders in M.P.No.15 of 2023.



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4. The learned counsel for the petitioner also submits that the order of the 2nd respondent dated 26.04.2024 was received by the petitioner on 16.05.2024 and the statutory period to appeal before the Appellate Authority against the order passed by the Joint Commissioner, HR&CE Department is 90 days from the date of receipt of the order, but the 3rd respondent, in gross violation has sent the reminder, which is pre-mature and unsustainable. Also the matter is pending before the 1st respondent by way of Revision petition and before conclusion of the same, the act of the 3rd respondent issuing reminder is prejudice, thereby pleaded that till the conclusion of the Revision Petition, the respondents 2 and 3 shall refrain themselves from initiating coercive actions against the petitioner under the guise of recovery of outstanding rent till the conclusion of Revision petition No.SR550625 / 2024.

5. Per contra, the learned Additional Government Pleader appearing for the respondents would submit that the petitioner was given an opportunity of hearing before conducting enquiry and the petitioner has not paid the amount. When the notice itself was issued on 27.10.2020 claiming a sum of Rs.19,34,175/- as rental arrears from the year 2016 onwards, the petitioner sent a reply on 05.12.2020 and he sought for reduction of the said



6. In reply, the learned counsel for the petitioner submits that without opportunity of hearing, impugned order has been passed and whether the respondents are entitled for retrospective fixation has to be considered.

7. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the documents placed on record.

8. It is to be noted that only from the date of issuance of notice, the



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fair rent to be fixed and not retrospectively and the same has been clearly indicated in Section 34(A) of HR&CE Act, for ready reference the same is extracted as follows:-

“ 34-A. Fixation of lease rent : The lease rent payable for the lease of immovable property belonging to, or given or endowed for the purpose of, any religious institution, shall be fixed by a Committee consisting of the Joint Commissioner, the Executive Officer or the Trustee or the Chairman of the Board of Trustees, as the case may be, of the religious institution and the District Registrar of the Registration Department in the district concerned taking into account the prevailing market rental value and the guidelines, as may be prescribed and such lease rent shall be refixed in the like manner once in three years by the said Committee.

Explanation. For the purpose of this sub-section, “prevailing market rental value” means the amount of rent paid for similar types of properties situated in the locality where the immovable property of the religious institution is situated.

(2) The Executive Officer or the Trustee or the Chairman of the Board of Trustees, as the case may be, of the religious institution concerned, shall pass an order fixing the lease rent and intimate the same to the lessee specifying a time within which such lease rent shall be paid

(3) Any person aggrieved by an order passed under sub-section(2), may, within a period of thirty days from the date of receipt of such order, appeal to the commissioner, in such form and in such manner, as may be prescribed.



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(4) *The Commissioner may after giving the person aggrieved an opportunity of being heard, pass such order as he thinks fit.*

(5) *Any person aggrieved by an order passed by the Commissioner under Sub Section (4) may, within ninety days from the date of receipt of such order, prefer a revision petition to the High Court.*

Provided that no appeal or revision shall be entertained under sub-section(3) or sub-section(5), as the case may be, unless it is accompanied by satisfactory proof of deposit of lease rent so refixed, in the account of religious institution concerned and such amount shall be adjusted towards the lease amount payable by the lessee as per the order passed in the appeal or revision, as the case may be."

9. It is to be noted that nothing has been indicated with regard to the retrospective effect in the Circular dated 10.03.2022 and only as per the provision, fixation of fair rent should be considered. Further, the Act is silent about fixing the rent retrospectively and only from the date of refixing, the rent can be claimed.

10. Considering the above said facts and circumstances of the case and the provisions of the Act, the respondents / authorities are directed to recalculate the arrears of fair rent only from the date of fixation of fair rent, since the Act is silent about retrospective effect, on or before 30.08.2024 and the petitioner is directed to deposit a sum of Rs.15,00,000/- [Rupees



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Fifteen Lakhs only] [Arrears of rent] on or before 15.08.2024 and thereafter, the concerned authority is directed to take up the revision during the 1st Week of September, 2024 and pass appropriate orders within a period of four weeks. Also taking note of the fact that the petitioner is in occupation of 1507 Sq.Ft., and according to the petitioner, he was paying a sum of Rs.425/- right from the year 1995, which is a meagre amount, the petitioner is also directed to pay the monthly rent Rs.37,825/- [Rupees thirty seven thousand eighty hundred and twenty five only], as fixed by the authorities without fail.

With the above observation, the Writ Petition is disposed of. Consequently, connected miscellaneous petition is closed. No costs.

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Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order
ssd

To

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Thousand lights West
Nungambakkam, Chennai – 600 034

2. The Joint Commissioner,
Office of the Hindu Religious and Charitable

<https://www.mhc.tn.gov.in/judis>



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First Floor, Arcot Main Road,
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3. The Executive Officer,
Muthukumarasamy temple,
Thiruppathur – 635 601
Thiruppathur District

V.BHAVANI SUBBAROYAN J.

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