



W.P(MD)No.12664 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.09.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD)No.12664 of 2023
and
W.M.P(MD)No.10690 of 2023

O.B.Maheswari

... Petitioner

Vs.

1.The Commissioner,
HR & CE Department,
Chennai.

2.The Joint Commissioner,
HR & CE Department,
Madurai-625 002.

3.The Executive Officer,
Arulmigu Thandayuthabani Swamy Thiru Koil,
Madurai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned official proceedings of the third respondent, dated 15.05.2023 and to quash the same and consequently direct the third respondent to re-fix the rent by following the procedures contemplated in Section 34 A of HR & CE Act and pass such other order or orders as this Court.



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For Petitioner : Mr.S.Satheesh Kumar
For R-1 & R-2 : Mr.K.S.Selvaganesan
Additional Government Pleader
For R-3 : Mr.S.Manohar

ORDER

The present writ petition has been filed challenging the notices issued by the third respondent pursuant to re-fixation of fair rent by the Fair Rent Fixation Committee in a Northern portion Part I rent of Rs.4,570/- fixed during the period 2014 to 2016 was increased to Rs.26,520/- vide proceedings, dated 15.05.2023 fixed by Fair Rent Fixation Committee. The third respondent has directed the petitioner to pay the rent for the sum of Rs.4,74,800/- in respect of Northern portion Part I in the impugned order, dated 15.05.2023. As the petitioner had failed to pay the rent of Rs.4,570/-, this Court was pleased to direct the petitioner by way of an interim order, dated 25.05.2023 to deposit the entire arrears.

2. It is submitted except for two months, the rent has been paid till date at the rate of Rs.4,570/- for the Northern Portion Part I. It is submitted that the Fair Rent Fixation Committee has enhanced the rent from Rs.4,570/- to



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Rs.26,520/- only vide order, dated 15.05.2023. However, the same is sought to be recovered from the petitioner from 01.07.2019 onwards retrospectively.

3. It is submitted by placing reliance upon the Hon'ble Division Bench of this Court in W.A(MD)Nos.503 and 509 of 2022, dated 08.08.2022, that any rent that is fixed by the Fair Rent Fixation Committee can only be implemented prospectively and cannot be given retrospective effect, wherein, in the case of ***Arulmigu Angala Parameswari & Kasivishwanathaswami Temple Adimanaiveel House Owners' Association Vs. State of Tamil Nadu and Others*** reported in ***2009 (6) CTC 512*** was referred to and it was held as under:

"16.Even, when the respondent is authorised to revise the rent, that cannot be with retrospective effect, as the tenant has indefeasible right to vacate the property, in case he is incapable of paying rent. The tenant cannot be mulcted by fixing rent arbitrarily with retrospective effect. Under the Transfer of Property Act, 1882, the rent should be primarily agreed between the parties. Except by agreement or a specific contract, there is no legal obligation on the part of the tenant to pay any rent that may be asked by the landlord....."

17.Having regard to the settled principles of law, this Court is of the view that fixing the fair rent with retrospective effect is impermissible in law..."



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4. It was submitted that in view of the above orders of this Court, the impugned demand insofar as it seeks to implement the enhanced rent with retrospective effect cannot be sustained. This Court agrees that the fair rent was fixed by the Fair Rent Fixation Committee vide proceedings, dated 15.05.2023 can only be prospective and retrospective.

5. At this juncture, the learned Counsel for the petitioner would submit that the petitioner would pay the enhanced rent for the period from 15.05.2023 onwards at the rate of Rs.26,520/- in respect of Northern Portion Part I within a period of four weeks. Any arrears prior to 15.05.2023 would also be paid within a period of four weeks at the rate of Rs.4,570/- for Northern Portion Part I, failing which, it is open to the respondent to proceed in accordance with law including initiating proceedings under Section 78 of the HR & CE Act.

6. In view thereof, the writ petition is disposed of with the following directions:

“a) The petitioner would pay the enhanced rent for the period from 15.05.2023 onwards at the rate of Rs.26,520/- in respect of Northern Portion Part I within a period of four weeks.



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b) Any arrears prior to 15.05.2023 would also be paid within a period of four weeks at the rate of Rs.4,570/- for Northern Portion Part I.

c) Failing which, it is open to the respondent to proceed in accordance with law including initiating proceedings under Section 78 of the HR & CE Act.”

7. The writ petition stands disposed of, accordingly. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

02.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

1.The Commissioner,
HR & CE Department,
Chennai.

2.The Joint Commissioner,
HR & CE Department,
Madurai-625 002.

3.The Executive Officer,
Arulmigu Thandayuthabani Swamy Thiru Koil,
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MOHAMMED SHAFFIQ, J.

BTR

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