



WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.11.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **K.KUMARESH BABU**

W.P.(MD) Nos.20432, 22370 and 23520 of 2024
and
W.M.P.(MD) Nos.17338, 19906 and 18940 of 2024

The President,
Sri Kailash Ashrama Mahasamasthana
Trust Bangalore, Karaikudi Branch,
rep. by K.Siayegnesh

... Petitioner in all W.Ps.,

/vs./

- 1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Uthamar Gandhi Road,
Nungampakkam,
Chennai.
- 2.The Joint Commissioner,
HR & CE Department,
Sivagangai.
- 3.The Executive Officer,
Arulmigu Swayamprakasa Eswarar Temple,
Iluppaikudi Village,



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Karaikudi Taluk,
Sivagangai District.

... Respondents in W.P.(MD) Nos.20432 and 22370 of 2024

1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Uthamar Gandhi Road,
Nungampakkam,
Chennai.

2.The Joint Commissioner,
HR & CE Department,
Sivagangai.

3.The Fit Person,
Arulmigu Swayamprakasa Eswarar Temple,
Iluppaikudi Village,
Karaikudi Taluk,
Sivagangai District.

... Respondents in W.P.(MD) No.23520 of 2024

PRAYER in W.P.(MD) No.20432 of 2024: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the notice dated 31.07.2024 issued by the 3rd respondent and quash the same as ultravires to the provisions of HR and CE Act and consequently direct the 3rd respondent to take steps to fix the fair rent to the lease hold property of the petitioner trust as contemplated in section 34A of the HR and CE Act and the circular issued by the 1st respondent dated 10.03.2022.

PRAYER in W.P.(MD) No.22370 of 2024: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus,



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calling for the records pertaining to the order in Moo.Mu.No.5216/2009/A3 dated 31.07.2009 issued by the 2nd respondent and quash the same as far as lease rents fixed with respect to the petitioner trust in serial Nos.710 and 711 of it's annexure as ultravires to the provisions of HR and CE Act and consequently direct the 3rd respondent to take steps to fix the fair rent to the lease hold property of the petitioner trust as contemplated in Section 34-A of the HR and CE Act and the circular issued by the 1st respondent dated 10.03.2022.

PRAYER in W.P.(MD) No.23520 of 2024: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to the notice dated 02.12.2021 issued by the 3rd respondent to the petitioner trust and quash the same as invalid in the eye of law.

For Petitioner
in all W.Ps., : Mr.P.Subbiah

For R1 & R2
in all W.Ps., : Mr.P.Subbaraj
Special Government Pleader

For R3
in all W.Ps., : Mr.V.Chandrasekar

COMMON ORDER

The challenge in the writ petition in W.P.(MD) No.20432 of 2024 is the notice dated 31.07.2024 issued by the third respondent.



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2. The challenge in the writ petition in W.P.(MD) No.22370 of 2024 is the order passed by the second respondent in Moo.Mu.No.5216/2009/A3 dated 31.07.2009 and for a consequential direction to the third respondent to take steps to fix the fair rent to the lease hold property of the petitioner Trust as contemplated under Section 34-A of the HR and CE Act, 1959 and the circular issued by the 1st respondent dated 10.03.2022.

3. The challenge in the writ petition in W.P.(MD) No.23520 of 2024 is the notice dated 02.12.2021 issued by the third respondent.

4. The case of the petitioner is that pursuant to the order passed by the Division Bench of this Court in the case of *Arulmigu Angala Parameswari and Kasivishwanathaswami Temple Adimanaiveel House Owners' Association Vs. State of Tamil Nadu and others* reported in **2009 (6) CTC 512**, which dealt with the validity of Section 34A of the HR & CE Act, 1959, (*herein after referred to as Act*) the Commissioner, HR & CE, had issued a circular dated 02.02.2009, under which the process of fixing the fair rent had been enumerated in detail, which would indicate that whenever the Committee under Section 34A of the Act



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proposes to fix the fair rent of the property, the concerned persons should be given notice. However, in the present case, according to the respondents, a fair rent had been fixed on 06.07.2009, ie., after the circular had been issued by the Commissioner. However, the Committee without issuing any notice to the petitioner who had been a tenant for almost 50 years had proceeded to fix the fair rent behind the back of the petitioner.

5. He would further submit that the petitioner had been put in possession as a lessee by the hereditary trustee of the temple. The last of the renewal agreement was made in the year 2012 fixing the rent of Rs.21,000/- for the property occupied by the petitioner. He would further submit that the hereditary trustee had not brought it to the notice of the petitioner about the order fixing the fair rent. Only when the Department had taken action against the hereditary trustee and the Fit Person had been appointed and that too only in the year 2021, a demand was made by the Fit Person based upon the revised fair rent fixed in the year 2009. In spite of repeated demands, the said order was not furnished to the petitioner. Hence, he had filed a writ petition challenging the demand in which a direction was issued by this Court to provide the copy of the order fixing the fair rent and



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only thereafter, the petitioner had filed another writ petition challenging the same.

Therefore, he would submit that the entire proceedings had been in violation of the said judgment and the circular issued by the Commissioner, HR & CE pursuant to the said Division Bench judgment. Hence, he would seek interference of this Court to set aside the order fixing the fair rent.

6. On the contrary, Mr.K.S.Selvageanesan, learned Additional Government Pleader for the respondents 1 and 2 would vehemently contend that the order of fixing the fair rent was made in the year 2009 and the time period for challenging the same has also expired. He had also contended that the fair rent had been fixed by the Committee by taking into the market value of the property. He would further submit that when the fair rent had been fixed, the hereditary trustee of the temple ought not to have entered into the agreement with the petitioner by agreeing to receive a lesser rental value than that had been fixed by the Committee. He would further submit that the petitioner had beneficially enjoyed the possession of the property for a very long time by only paying the meagre rent and not the fair rent for the value of the property and therefore, he would pray this Court to dismiss this writ petition.



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7. I have considered the rival submissions made by the learned counsel on either side.

8. The primary contention of the petitioner is that the fair rent had been fixed by the Committee under Section 34A of the Act. Without following the guidelines laid down by the Commissioner, HR & CE, a circular dated 02.02.2009 had been issued pursuant to the directions issued by the Court in a writ petition. After having issued such a circular in compliance with the order, the Committee ought to have complied with the parameters indicated in the circular before fixing the fair rent.

9. It is the case of the petitioner that he had not been issued with any notice. The said allegation had not been assailed by the respondents by producing the minutes of the meeting of the Committee or atleast by making an averment in the counter affidavit that the petitioner and the similarly placed lessees have been put on notice and that they have not attended the hearing and therefore, the claim of the respondents that the order dated 06.07.2009 cannot be held to be a valid fair rent fixed.



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10. A perusal of the order produced by the Department in original would show that what had been approved by the members of the committee was the estimate given by the hereditary trustee for fixing the fair rent. There is no indication that the petitioner or the similarly placed lessees had already been put on notice. This would be in complete violation of Section 34A of the Act as interpreted by the Hon'ble Division Bench of this Court in the writ petition and the circular issued by the Commissioner of HR & CE dated 02.02.2009.

11. In such event, I do not have any other option except to set aside the said fixation of fair rent dated 06.07.2009 with liberty to the respondents to convene a Committee as provided under Section 34A of the Act for reassessing the fair rent after putting the petitioner and other lessees of notice to fix the fair rent, based on the report of the then hereditary trustee for the year 2009 and thereafter revise the same in accordance with law. Since the petitioner had been in enjoyment of the property for nearly 50 years and that there was contractual agreement between the petitioner and the hereditary trustee in the year 2012 fixing the lease rental for the property in possession of the petitioner at Rs.21,000/- for a period of 5 years, I am



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of the view that the petitioner is liable to pay the increased rent of Rs.30,000/- for the period commencing from 01.01.2017 to 31.12.2022 and from 01.01.2023 for a further period of 5 years at the rate of Rs.40,000/- per month. However, such directions shall be subject to the revision of lease rentals by the Committee. The Committee shall adhere to the principles laid down by the Commissioner of HR & CE in circular dated 02.02.2009 before fixing the fair rent in respect of the petitioner's property.

12. In view of the order passed above, the Writ Petitions stand allowed and the orders impugned in all the writ petitions stand set aside. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes / No
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To

- 1.The Commissioner,
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Uthamar Gandhi Road,
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- 2.The Joint Commissioner,
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K.KUMARESH BABU, J.

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