



W.A(MD)Nos.569 to 583 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.04.2024

CORAM :

**THE HONOURABLE MR.JUSTICE R.SURESHKUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

**W.A(MD)Nos.569 to 583 of 2024
and
Connected Miscellaneous Petitions**

W.A(MD)No.569 of 2024

A.Farooq Ali

... Appellant

vs.

1. The Joint Commissioner / Executive Officer,
Arulmigu Ramanathaswamy Thirukovil,
Rameshwaram,
Ramanathapuram District.

2. The Commissioner,
Hindu Religious and Charitable Endowment Department,
Chennai-600 034.

... Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent, against the common order dated 11.09.2023 made in W.P(MD)No.20960 of 2023.

For Appellant	: Mr.S.Srinivasa Raghavan for Mr.R.L.Dilipan Pandian
For R1	: Mr.H.Lakshmi Shankar for Mr.S.Ramesh
For R2	: Mr.P.T.Thiraviam Government Advocate



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COMMON JUDGMENT

(Judgment of the Court was made by **R.SURESHKUMAR, J.**)

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Since this batch of writ appeals arise out of the common order passed by the Writ Court dated 11.09.2023 in W.P(MD)No.20960 of 2023 etc., batch, with the consent of the learned counsel appearing for both sides, all these writ appeals were heard together and are disposed of by this common judgment.

2. That the appellants are the writ petitioners before the Writ Court. They challenged a communication issued by the respondent/Temple authorities dated 10.07.2023, under which, the monthly rent for the shops, which they are holding as lessees, has been enhanced to Rs.15,000/- per month with electricity charge of Rs.300/- per month. In this regard, it is their grievance that, hitherto they have been paying a sum of Rs.860/- as a monthly rent, which has been enhanced multifold to Rs.15,000/-, that too, according to them, without putting them under notice.

3. Though with such a prayer, the writ petitions had been filed which were grouped together and decided by the Writ Court, through the impugned common order dated 11.09.2023, where the learned Judge after hearing both sides, has taken a view that insofar as these appellants/petitioners are



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concerned, they are not the original lessees, in whose favour, lease has been extended by the temple authorities and they claimed to be the sub-lessees by way of sub-letting given by the original lessees and in that context, they have no locus even to challenge the said order of enhancement of the monthly rent.

4. The learned Judge also has taken note of the submission made on behalf of the temple authorities that these shops are located in the Third Pragam of Arulmigu Ramanathaswamy Thirukovil, Rameshwaram, which is one of the famous architectural marvel of the world. Therefore, in order to preserve and protect the architectural marvel of the Third Pragam of Arulmigu Ramanathaswamy Thirukovil, the HR & CE department and the temple authorities wanted to take a policy decision to vacate or evict all those lessees who are having such shops, like the appellants/petitioners and that was also one of the reasons they have given such a notice or order or proceedings enhancing the rent to multifold.

5. These reasons having been taken note of by the learned Judge, the Writ Court has dismissed all those writ petitions by making an observation that first of all, they are the sub-lessees. Therefore, they do not have any locus to challenge the order of enhancement of the rent which has been meant only for



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the original lessees. Secondly, if any policy decision is taken by the HR & CE Department or the temple authorities, to preserve the architectural marvel of Arulmigu Ramanathaswamy Thirukovil, especially, the Third Pragaram, the Court did not want to interfere with the same. These are all the two reasons mainly given by the learned Judge for dismissing the writ petitions through the impugned common order, against which only, this batch of appeals have been directed.

6. Heard Mr.S.Srinivasa Raghavan, learned counsel appearing for Mr.R.L.Dilipan Pandian, learned counsel on record for the appellants, Mr.H.Lakshmi Shankar, learned counsel appearing for Mr.S.Ramesh, learned counsel on record for the 1st respondent/Temple and Mr.P.T.Thiraviam, learned Government Advocate appearing for the 2nd respondent/HR & CE Department.

7. Learned counsel appearing for the 1st respondent/Temple has submitted that as against the order of enhancement of rent, if at all any one is aggrieved, they can prefer appeal under Section 34A of the The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, [hereinafter referred to as "HR & CE Act" for brevity], before the Commissioner of HR & CE. When there has been an effective statutory appeal remedy available, it is a settled



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proposition that by-passing the same, normally, writ petition if it is filed invoking Article 226 of the Constitution, would not be entertained by the High Court.

8. When that being the position, they should have gone before the appellate authority.

9. Secondly, learned counsel appearing for the 1st respondent/Temple authorities would submit that they wanted to take a policy decision to evict all those lessees from the third Pragaram of the temple, however, there has been huge arrears of rent payable by most of the lessees. Therefore, in order to recover such arrears amount, it became inevitable for the temple authorities to issue the said proceedings enhancing the rent or fixing the higher rent, so that, the lease can be continued for sometime, within which, the arrears payable by those lessess can also be recovered and that was the main intention, under which, those orders were passed, he contended.

10. He has also submitted that out of 44 such writ petitioners who had approached this Court and filed the said batch of writ petitions, the learned Judge though dismissed all those writ petitions, was pleased to allow four such



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writ petitions, because, those four writ petitioners are the original lessees, but others, according to the learned counsel for the temple authorities, are sub lessees.

11. We have considered the said submissions made by the learned counsel appearing for both sides and perused the materials placed before this Court.

12. Admittedly, there has been an alternative efficacious appeal remedy available under the Act especially, under Section 34A of the HR & CE Act, where sub-section (3) has made it very clear that, 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.

13. Therefore, it is not only the lessee or otherwise, any person aggrieved over the order passed under Section 34A(2), can prefer such appeal under sub-section(3) to the Commissioner.



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14. Therefore, whether these appellants/petitioners are lessees or sub-lessees is also a controversy which can be gone into and decided by the appellate authority i.e., the Commissioner.

15. Insofar as the proposed policy decision to be taken by the temple authorities or the HR & CE Department to evict all those commercial activities, like these kind of shops been located in the Third Pragaram of Arulmigu Ramanathaswamy Thirukovil, is concerned, it is open to the HR & CE Department and the temple authorities to take such a policy decision in order to protect and preserve the glorious nature of Arulmigu Ramanathaswamy Thirukovil and the architectural marvel of the said temple, especially, the Third Pragaram, which is world famous. If such a policy decision is taken, it is for the HR & CE authorities to defend it and at this juncture, since no such policy decision has been taken and only enhancement or fixation of a new rent has been made through the order impugned before the Writ Court, the issue raised before the Writ Court was only with regard to the quantum of the rent fixed by the temple authorities. Therefore, these appeals also have to be confined only with the said aspect.



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16. Though it is submitted by the learned counsel appearing for the writ appellants that Section 34A(1) also has not been followed, we feel that whether the appellants/petitioners are lessees or sub-lessees and in this context, whether they have locus to challenge the order passed by the temple authorities and the temple authorities before issuing such orders, whether have followed Section 34A(1) or not, are all the matters to be gone into by the Commissioner in the appeal to be preferred by the appellants/petitioners.

17. In order to prefer such appeals, the learned counsel for the appellants has readily agreed, provided, the 30 days limitation has to be saved.

18. In view of the said stand taken by the learned counsel appearing for the appellants as well as the learned standing counsel for the temple and having regard to the legal position, especially, in the context of Section 34A of the HR & CE Act, we do feel that the order impugned can be interfered with for the purpose of remitting the matter or relegating the parties to go before the appellate authority.

19. In the result, these Writ Appeals are disposed of with the following order:-



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(i) That the impugned common order passed by the Writ Court dated 11.09.2023 in W.P(MD)Nos.20960 to 20966, 20968 to 20970, 20973, 20974, 20980, 20978 and 20981 of 2023 etc., batch, is hereby set aside.

(ii) As a sequel, it is open to the appellants to prefer an appeal by each of them against the order of fixing the rent dated 10.07.2023 before the appellate authority namely, The Commissioner, HR & CE, under Section 34A(3) of the HR & CE Act.

(iii) Though 30 days limitation has been prescribed under the said provision to prefer an appeal, in view of the pendency of the writ petitions and subsequently, these writ appeals, as the litigation has been lingering in this Court for all these time, we feel that 30 days time can be given from today to these appellants to prefer such appeals. It is made clear that within the said 30 days, if no appeals are filed, no further extension of time of limitation under Section 34A(3) here under any circumstances be given.

(iv) Till such a decision is taken by the appellate authority i.e., The Commissioner, HR & CE, in the appeals to be filed by



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these appellants, the appellants are permitted to pay the present rent to the temple authorities without prejudice to the rights and contentions of both the parties.

(v) It is made clear that the permission given by this Court to pay the current rent would not confer any right on these appellants to claim the right of lesseeship from the temple authorities, as that issue has to be completely gone into on merits only by the appellate authority.

(vi) The permission given by this Court to pay the current rent i.e., before enhancement, by these appellants would not preclude the right of claiming more rent by the temple authorities, if the same is volunteered by the appellants by the written consent individually to be given or had been given in this regard.

20. With all these directions, all the Writ Appeals are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

(R.S.K., J.) (G.A.M., J.)
03.04.2024

Index : Yes / No
Neutral Citation : Yes / No
Note to Registry : Issue order copy on 04.04.2024



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To

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