

W.A(MD) No.423 to 430 of 2022 etc., batch

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 14.03.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

W.A(MD) Nos.423 to 430 of 2022

and

C.M.P.(MD)No.4170 of 2022

and

C.R.P.(MD)Nos.447 to 454 of 2021

In W.A.(MD)No.423 of 2022

P.Palanisamy

... Appellant / Petitioner

Vs

1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai-34.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Tirunelveli.

3.The Executive Officer,
Mandai Vinayagar Temple,
Vasudevanallur, Sivagiri Taluk,
Tirunelveli District-627 758.

... Respondents / Respondents



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PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 30.03.2022 in W.P.(MD)No.5080 of 2022.

For Appellant : Mr.V.Kathirvelu
Senior Counsel
for Mr.K.Jeyamohan

For Respondents : Mr.K.S.Selvaganesan
Additional Government Pleader
for R1 & R2
: Mr.C.Guhaseela Rupan
(in all W.As) for R3

In C.R.P.(MD)No.447 of 2021

P.Mariappan ... Petitioner / Appellant / Notice

Vs.

1.The Commissioner,
Hindu Religious and Charitable Endowments Department,
Chennai-34.

2.The Joint Commissioner,
Hindu Religious and Charitable Endowments Department,
Tirunelveli.

3.The Executive Officer,
Mandai Vinayagar Temple,
Vasudevanallur, Sivagiri Taluk,
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... Respondents / Respondents /
Respondents



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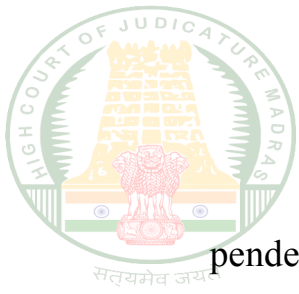
Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, praying this Court to call for the records and set aside the order dated 05.09.2020 in A.P.No.33 of 2020 on the file of the second respondent in confirming the order dated 14.02.2019 on the file of the third respondent and allow this civil revision.

COMMON ORDER

(Order of the Court was made by **G.R.SWAMINATHAN, J.**)

Heard both sides.

2. The appellants / revision petitioners are tenants under the third respondent temple. Each of them are in occupation of 123 sq. ft. of shop premises. Each of them were paying a sum of Rs.610/- towards monthly rent. On 23.09.2017, notice under Section 34(A) of Tamil Nadu HR & CE Act, 1959 was issued proposing to fix the lease rent. The tenants offered their explanation. Finally, on 14.02.2019, the lease rent for each of the shop was fixed at Rs.4,700/- per month. Aggrieved by the same, the tenants filed A.P.Nos.27 to 34 of 2020 before the Commissioner, HR & CE Department under Section 34-A(3) of the Act. During the



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pendency of the appeals, there was a revision of the lease rent vide order dated 29.02.2020. Questioning the appellate order passed by the Commissioner, the tenants filed C.R.P.(MD)Nos.447 to 454 of 2021. The tenants could not obtain any interim relief at the hands of this Court. The executive officer of the temple took the view that the tenants are liable to pay the enhanced rent and that since they did not make the said payment, they should be treated as encroachers. Hence, their leases were terminated under Section 34B(2) of the Act on 24.02.2022. Challenging the termination orders, the tenants filed W.P.(MD)No.5080 to 5087 of 2022. The learned single Judge disposed of the writ petitions vide order dated 30.03.2022 in the following terms:-

“10.The petitioners are required to pay the fair rent that has been fixed on 14.02.2019 and 29.02.2020 for the ensuing period. The petitioners have not challenged the subsequent revision of the fair rent either before this Court or before any authority. As long as there is no challenge to the subsequent revision of fair rent on 29.02.2020, the 3rd respondent would be justified in demanding the amount as arrears and failure on the part of the petitioners to pay would justify the petitioners to be treated as encroachers and to take further steps under the provisions of the Act. The challenge to the earlier revision made on 14.02.2019 has also been rejected, but the order has been stayed by this Court by its order dated 03.03.2022. However, the subsequent revision made on 29.02.2020 for the



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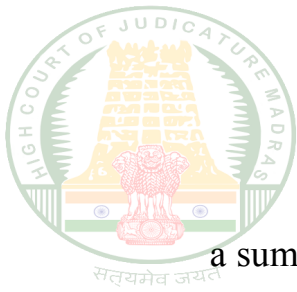
period commencing from 01.07.2019 to 30.06.2022 has not been challenged. Therefore, to that extent the 3rd respondent is justified in demanding arrears of rent even if the amount demanded is to be ultimately held to be excessive.

11. Under these circumstances, I am inclined to dispose of these writ petitions by permitting the petitioners to challenge the subsequent enhancement dated 29.02.2020 within a period of 30 days from the date of receipt of a copy of this order subject to the petitioners paying the arrears of rent for the period between 01.07.2019 to 30.06.2022 before the 3rd respondent. It is needless to state that the aforesaid amount shall be treated as deposit and will be subject to final appropriation in the appeals to be filed by the petitioners.

12. This common order quashing the impugned order as far as the period from 01.07.2019 to 30.06.2022 is concerned shall stand automatically vacated, if the petitioners fail to file appeals within such time and on account of failure of the petitioners to clear the arrears as on date as mentioned in the impugned order. As far as the demand for the period between 01.07.2016 to 30.06.2019 is concerned, it will be subject to the final outcome of the orders to be passed by this Court in CRP.(MD) Nos.447 to 454 of 2021.”

Challenging the said common orders, the tenants have filed W.A. (MD) Nos.423 to 430 of 2022.

3. The learned counsel on either side reiterated the stand reflected in their respective pleadings. It is true that the tenants were paying only



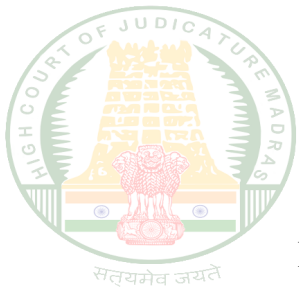
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a sum of Rs.610/- per month. This lease rent was sought to be enhanced.

It is true that notice was issued in the year 2017. But then, the actual enhancement was made only by the order dated 14.02.2019. The Commissioner of HR & CE Department took the view that while the tenants cannot be called upon to make the enhanced payment with effect from 01.07.2016, they have to necessarily pay the enhanced rent with effect from the date of notice ie., 23.09.2017.

4. As rightly argued by the learned counsel appearing for the tenants, the order dated 14.02.2019 cannot be retrospectively applied. In fact, we have taken the very same view vide order dated 05.03.2025 in W.A.(MD) No. 1457 of 2022. The relevant portion reads as follows:

“6.We are not persuaded by the stand of the respondents that the authorities are entitled to revise the rent retrospectively. The Hon-ble Division Bench vide order dated 08.08.2022 in W.A(MD) Nos 503 and 509 of 2022 (vide **J.A.C. Raj vs The Commissioner, HR&CE Department**), expressed its concern and questioned the propriety of fixing the fair rent with retrospective effect. A learned Single Judge vide order dated 25.09.2023 made in W.P.(MD) No. 12742 of 2023 (vide **M.M.Vishal vs The Commissioner, HR&CE**



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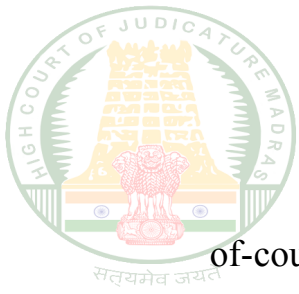
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Department) relied on J.A.C. Raj case and categorically held that enhanced fair rent cannot be fixed retrospectively. The same position was taken by another learned Judge in ***O.B.Maheswari vs The Commissioner, HR&CE Department*** made in W.P(MD)No.12664 of 2023 vide order dated 02.09.2024.

7...The tenant cannot be mulcted by fixing rent arbitrarily with retrospective effect. (**vide M.Gurusamy Nadar vs The Commissioner made in C.R.P.(NPD)(MD)No.982 of 2016 dated 27.06.2018**). We are of the firm view that in the very nature of things, the fixation has to operate only prospectively.”

5. The learned counsel appearing for the appellants / revision petitioners after taking instructions from them accepted that a sum of Rs.4,700/- can be taken as monthly lease rent for each of the shop as on 14.02.2019. Thus, there is a consensus as regards the quantum of monthly lease rent as on 14.02.2019.

6. We have already held that this figure cannot be retrospectively applied. In other words, the liability of the tenants to pay the enhanced rent of Rs.4,700/- per month will commence only from 14.02.2019. It is

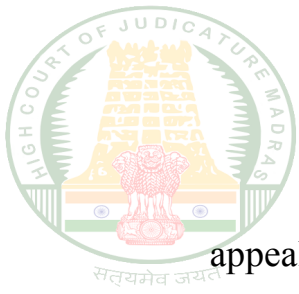


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of-course open to the temple to revise this monthly rent with effect from 14.02.2022. As and when the said exercise is taken and the figure is arrived at, the tenant cannot make any complaint regarding its retrospective application. Such an exercise shall be completed by the concerned committee within a period of four months from the date of receipt of a copy of this order. It is stated that even if Rs.4,700/- per month is taken as base rate, each of the tenants may have to crop up more than Rs.3,00,000 to Rs.4,00,000/-. The tenants are small time shopkeepers. Therefore, they seek reasonable time to clear the arrears.

7. Considering the special facts and circumstances of the case, the tenants are permitted to clear the arrears in 12 monthly installments. If the tenants commit default in paying two successive installments, they will be treated as encroachers and the earlier termination notice will immediately be brought back to life and it can be immediately enforced.

8. In this view of the matter, the order dated 05.09.2020 made in A.P.No.27 to 34 of 2020 is accordingly modified. The civil revision petitions are partly allowed. The termination notice is set aside. The writ



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appeals are allowed. It is seen that the tenants have already made some payments. They will be given due credit. The temple management through its executive officer will issue fresh communication to each of the tenants quantifying their liability. The liability of the tenants to clear the arrears will commence from 01.05.2025 onwards. After the committee completes its exercise, the tenants will have to pay the differential amount also. No costs. Consequently, connected miscellaneous petitions are closed.

(G.R.S., J.) (M.J.R., J.)
14.03.2025

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