



W.A.(MD)No.1457 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.03.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

W.A(MD)No.1457 of 2022

and

C.M.P(MD)No.11740 of 2022

S.D.Ponseelan

... Appellant /
Petitioner

Vs.

1.The Executive Engineer,
Arulmighu Vaikundapathi Thirukoil,
Thoothukudi – 628 002.

2.The Joint Commissioner,
HR & CE Board,
Thoothukudi – 628 008.

... Respondents /
Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 29.09.2022 in W.P(MD)No.4098 of 2022.

For Appellant : Mr.G.Prabhu Rajadurai

For Respondents : Mr.S.Manohar for R.1



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Mr.K.S.Selvaganesan
Additional Government Pleader
for R.2

JUDGMENT

(Judgment of the Court was made by G.R.Swaminathan J.)

Heard both sides.

2.The appellant was inducted as tenant under the first respondent temple in the year 2009. It is not in dispute that it is a public temple and that it is under the supervision of the Second Respondent Board. The rent payable by the appellant was revised and enhanced under Section 34-A of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. Questioning the demand notice dated 14.12.2021 issued by the first respondent, the petitioner filed W.P(MD)No.4098 of 2022. The learned single Judge vide order dated 29.09.2022 dismissed the writ petition on the ground that the petitioner can avail the alternative remedy by approaching the Commissioner, HR&CE Department as against the order dated 09.12.2020 passed under Section 34A of the Act . Challenging the same, this writ appeal has been filed by the tenant. It is stated that during the pendency of the writ petition, the tenant has already vacated the premises.



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WEB COPY 3.The learned counsel appearing for the appellant states that the only question which he presses for determination is whether the fixation of fair rent made vide proceedings dated 09.12.2020 by the Joint Commissioner of HR&CE, Tirunelveli can be retrospectively applied with effect from 01.07.2016.

4.The learned Additional Government Pleader submitted that as per Section 34-A of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 the lease rent has to be periodically revised once in three years. In this case, notice was actually issued in January 2018 itself proposing revision with effect from 01.07.2016. The tenant offered his objections. Finally the order came to be passed. He submitted that the stand of the respondents is that since the tenant had adequate notice and since the respondents are only effectuating the statutory object, this Court may hold that the authorities are entitled to revise the rent retrospectively.

5.We carefully considered the rival contentions and went through the evidence on record.



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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 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 relationship between the temple and the appellant is one of landlord and tenant. It is a contractual relationship. Under the Transfer of Property Act, 1882, the rent is agreed between the parties. If the tenant is not willing to pay the rent as fixed by the temple in accordance with law, the tenant has to vacate. But the tenant has an indefeasible right to vacate the property, in case he is incapable of paying rent. The tenant



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cannot be mulcted by fixing rent arbitrarily with retrospective effect.

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(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.

This point can be illustrated in the following manner:- Vide proceedings

dated 09.12.2020, the tenant had been called upon to make a certain

payment towards monthly rent. The tenant had found it to be onerous

and that is why he had eventually vacated the premises. If this demand

had been put to the tenant in 2018 itself, he would have taken a decision

then and there. Retrospective application of the proceedings would

undoubtedly result in iniquitous and unfair consequences.

8.We therefore dispose of this writ appeal by holding that the proceedings dated 09.12.2020 can only be prospectively applied and not retrospectively applied. The amount of Rs.10,00,000/- deposited by the appellant towards bank guarantee and the rent already paid shall be adjusted towards the amount payable by the Appellant with effect from 09.12.2020. If post adjustment, a refund is due to the tenant, it shall be paid. If on the other hand, the tenant has to pay further amounts, it is open to the temple to recover the same. The order impugned in the writ



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petition is modified accordingly. The order of the learned Single Judge

impugned in this writ appeal is set aside.

9.This writ appeal is allowed accordingly. No costs. Consequently,
connected miscellaneous petition is closed.

[G.R.S., J.] [M.J.R., J.]
05.03.2025

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

To

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