

**BEFORE THE COMMISSIONER, H.R. & C.E.ADMN.DEPARTMENT,
CHENNAI-34.**

Thursday the 8th day of November, Two thousand and Eighteen.

Present: Thiru.T.K.Ramachandran, I.A.S.,

Principal Secretary /Commissioner

A.P.No.50 of 2017 D2

Between

M.Thirunavukarasu

...Appellant

And

1. The Joint Commissioner
H.R&C.E.Admn.,Department,
Madurai.

2. The Executive Officer,
Arulmigu Madana Gopalaswamy Temple,
West Masi Street, Madurai-1.

... Respondents

In the matter of Arulmigu Madana Gopalaswamy Temple, West Masi Street, Madurai-1.

The Appeal petition filed under Section 34A (3) of the Tamil Nadu H.R. & C.E. Act, 1959 (Tamil Nadu Act 22 of 1959) against the notice dated 22.02.2017 of the Executive Officer of the above temple in informing the fair rent.

Order in D.Dis.A.P.50/2017 D2 dated : 08.11.2018

The above appeal petition came up for final hearing before me on 29.10.2018 in the presence of Thiru.P.Anbarasan, the counsel for the appellant and Thiru.E.Ganesh, counsel for the 2nd respondent. Upon hearing their arguments and having perused the connected records the matter having stood over for consideration till this day, the following order is passed:-

Order

The above appeal petition was filed u/s.34 (A) (3) of the Act against the notice dated.22.02.2017 of the Executive Officer of the above temple informing the fair rent.

2. The appellant has stated that he was inducted as tenant of the property measuring 420.50 sq.ft at Door No.359, East Masi street, Madurai, in the Public auction held in the year 1983. The Fair Rent Fixation Committee has fixed the fair rent at Rs.3651/-w.e.f.01.11.2001. The said rent has been increased by 15% for every three years. Lastly rent was re-fixed at Rs.6390/-w.e.f.01.07.2013. So the rent should have been fixed at Rs.7350/-w.e.f.01.07.2016 by increasing 15%. But the temple has re-fixed the rent at Rs.22, 000/- w.e.f.01.07.2016 vide notice dated.22.02.2017 based on the order passed by the Joint Commissioner, Madurai in K.Dis.No.6259/2016-3/A4/dated.06.02.2017. Neither the order of the Joint Commissioner nor the working sheet for the fixation of fair rent was furnished to him. The temple has no Jurisdiction to re-fix the rent fixed by the Fair Rent Committee. The rent has been enhanced from Rs.6390 to 22,000/- violating the guidelines issued in G.O's. The Prevailing market rent for the building of 60 years old measuring 420 Sq.ft.is only Rs.7, 000/- in the said locality.

3. I heard Thiru.P.Anbarasan, Counsel for the appellant, Thiru.E.Ganesh, Counsel for the 2nd respondent and perused the relevant records.

4. The fixation of fair rent has been objected to by the appellant on the following grounds:-

- (i). No opportunity was given to him before fixing the fair rent
- (ii). land alone was given on lease to him. The building was built by him, but fair rent has been fixed for the building

- (iii). the other temple properties are situated in prime locality (near bus stand) but the appellant's property is not situated in prime locality. But the fair rent was fixed taking into account the rent paid by the said properties
- (iv). guideline Value has been reduced by the Government. The rent collected for other properties in the said locality is very low.

5. The said objections are rebutted by the respondent as detailed below:-

- (i). in the index to typed set of paper filed by the appellant, it is mentioned that "fixation of rent to the appellant's building". In the fair rent fixed in the year 2008, it was clearly mentioned that "building". The same was accepted and paid by him.
- (ii). the property is situated in Prime locality.
- (iii). the tenants occupying the adjacent properties have accepted the fair rent fixed under sec.34A of the Act. The fair rent has to be refixed taking into account the prevailing Market rental value or guidelines prescribed. Hence the fair rent has been fixed taking into account the rent paid by the other tenants in the locality.
- (iv). in the documents relied upon by the appellant to prove the rent paid by the properties in the said locality, extent of the land is not mentioned.

6. The objections of the appellant's are considered as below:-

Objection (ii): In the typed set, appellant has filed the copy of the fair rent fixation proceedings dated.05.05.2008. In Sl.no.5, of the said proceedings, it was stated that “ வாடகைக்கு விடப்பட்டிருக்கும் விதம் - கட்டிடம்” and in Sl.no.8, it was stated that “ கட்டிடம் கட்டப்பட்ட வருடம் மற்றும் கட்டிட வயது-60 வருடங்கள்” - So the age of the building was 60 years, in the year 2008 itself. It is not denied by the appellant. In the Ground “E” - of the appeal petition, the appellant has stated that “the prevalent market rent for 420.50 sq.ft. Of building of 60 years old is only around by Rs.7000/-” So the appellant has admitted that the age of the building is more than 60 years. Further, the appellant has admitted that he was inducted as tenant in the suit property in the year 1983. If the age of the property is more than 60 years, the building would have been constructed even before the year 1983. So, the objection of the appellant that the land alone was let out to him is not correct and unsustainable.

Objection No. (iii): The 2nd respondent has produced the Photograph of the appellant's shop. The property is situated in East Masi street, which is one of the Prime Commercial localities in the Madurai City. The fair rent has been refixed to the similar type of adjacent properties and the tenants of the said properties have executed lease agreement accepting the refixed rent. So, the contention of the appellant that his property is not situated in the Prime locality is unsustainable.

Objection No. (iv): Sec.34A of the Act read as follows:-

“34-A. Fixation of lease rent.—The lease rent payable for the lease of immovable property belonging to, or given or endowed for the purpose of, any religious institution, shall be fixed by a Committee consisting of the Joint Commissioner, the Executive Officer or the Trustee or the Chairman of the Board of Trustees, as the case may be, of the religious institution and the District Registrar of the Registration Department in the district concerned taking into account the prevailing market rental value and the guidelines, as may be prescribed and such lease rent shall be refixed in the like manner once in three years by the said Committee.”

As per Sec 34A of the Act, the lease rent should be fixed by a Committee taking into account the Prevailing Market rental Value and the guidelines, as may be prescribed. “Prevailing Market Rental Value”-means the amount of rent paid for similar type of property situated in the locality where the immovable property of the religious institutions is situated. The fair rent fixation Committee has fixed the fair rent taking into account the rent paid by the similar type of temple properties situated in the said locality. Further, the appellant has filed documents to prove the rent paid to other properties in the said locality. But as argued by the respondent’s counsel, the extents of land, description of Superstructure are not mentioned in the said documents. Further, it is not disputed that the Government has reduced the guideline value w.e.f.09.06.2017, but the fair rent has been fixed w.e.f.01.07.2016. As per Sec 34(A) of the Act, the Fair Rent has to be fixed taking in account the

prevailing Market Rental Value of the similar type of property situated in the said locality, not on the basis of the guideline value of the property. So, the objection raised by the appellant is unsustainable.

Objection No (i) : It is not in dispute that an opportunity must be given to the appellant to make objections if any, before fixing the fair rent. The objections raised by the appellant have been suitably rebutted by the 2nd respondent with supporting documents. The objections raised by the appellants are also considered and discussed by this forum as detailed above and the same were rejected as unsustainable. When the objections are legally unsustainable, if the matter is remanded for the reason to provide an opportunity to the appellant, it will not alter the quantum of rent fixed by the Committee, as the objections are already rebutted by the respondent temple in this appeal petition. Further the arguments and documents put forth by the respondent are not denied by the appellant.

Therefore, for the foregoing reasons stated supra, I find no infirmity in the impugned Fair Rent Fixation and it does not warrant any modification. Accordingly the impugned notice is hereby confirmed and the appeal petition is hereby dismissed as devoid of merit.

/typed to dictation/

Sd./- T.K.Ramachandran
Principal Secretary /Commissioner

/t.c.f.b.o./

Superintendent

To

1. The appellant through Thiru.P.Anbarasan, Advocate, No.317, Additional Law Chambers, Phase III Annexe Buildings, High Court Buildings, Chennai-600 104.
2. The 2nd Respondent Through M/s.E.Ganesh, Advocate, No.61/23, South Lock Street, Kottur, Chennai 85.

Copy to

3. The Joint Commissioner, HR & CE Admn.Dept., Madurai.
4. The Assistant Commissioner, HR & CE Admn.Dept., Madurai.
5. Extra.