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

**Wednesday the 20th day of January, Two thousand and Sixteen.**

**Present: Dr.M.Veera Shanmugha Moni, I.A.S., Commissioner.**

**A.P. 13/2015 D2**

**Between**
**S.Ramesh ...Appellant**
**And**
**1. The Joint Commissioner**
**HR&CE Department,**
**Coimbatore.**
**2. The Executive Officer,**
**Arulmigu Ranoji Rao Arakattalai,Kottai,**
**Coimbatore having office at Arulmigu**
**Sangameswarar Temple, Kottai, Coimbatore. .... Respondents.**

**In the matter of Arulmigu Ranoji Rao Arakattalai,Kottai, Coimbatore.**

**The Appeal Petition filed under Section 34(A)(3) of the Tamil Nadu H.R. & C.E. Act, 1959 (Tamil Nadu Act 22 of 1959) against the notice dated 26.5.2015 notice of the Executive Officer informing the fair rent.**

**Order in R.Dis.A.P.13 /2015 D2 dated: 20.01.2016**

**The above Appeal petition came up for final hearing before me on 3.11.2015 in the presence of Thiru.E.Ganesh Counsel for the appellant and Thiru.C.Dharmaraj Counsel for the 2nd respondent. Upon hearing his arguments and having perused the connected records and the matter having stood over for consideration till this day, the following order is passed.**

**ORDER**

**The above Appeal Petition filed under Section 34(A)(3) of the Act against the notice dated 26.5.2015 of the Executive Officer of the temple.**

**2. The appellant contended that the appellant he is in occupation of 2336 sq.ft of land belonging to the said Arakkattalai wherein he has put up building comprising of ground and 3 floors along with underground 1st**

**floor and underground 2nd floor. The said land measuring 2336 sq.ft has been leased out to the appellant as per the Sanction order of the Commissioner made in Se.Mu.Na.Ka.No.78237/2007 dated 4.2.2008. As per the sanction order the following payments have been made in order to secure the lease from the 2nd respondent Arakkatalai. (i) The entire unpaid arrears by the earlier tenant amounting to Rs.6,59,376/- has been paid. (ii) The advance of Rs.4,61,196/- has been paid. (iii) The donation of Rs.3,07,464/- has been paid. (iv) The litigation expenses Rs.28,940/-. Subsequently estimation for building construction prepared and the same was approved by the Commissioner vide Na.Ka.No.14232/2009/Y3 dated 29.4.2009 and permission was granted for construction. Thereafter, the construction has been commenced and after completion from 1.2.2011 onwards, the building has been in occupation of the appellant for his business purposes. Though the building was available for utilization of the appellant only from 1.2.2011, but however the appellant was paying the rent without any default from the date of Sanction order i.e.from 4.2.2008 onwards. Thereafter on 13.1.2012 the 1st respondent has re-fixed the fair rent as Rs.1,45,950/- vide its order made in Na.Ka.No.132/2012/A4 dated 13.1.2012 based on G.O.No.456 dated 9.11.2007 and the report of the 2nd respondent dated 29.12.2011. Subsequent to that, the Lease Agreement dated 10.2.2012 has been entered between the appellant and 2nd respondent in terms of order of the 1st respondent made in Na.Ka.No.132/2012/A4 for a period of 3 years i.e.from 4.2.2011 to 3.2.2014 and the same was registered as Doc.No.726/2012, DRO, Coimbatore. When the matter stood thus, the 1st respondent issued a notice dated 12.5.2014 in Na.Ka.No.10034/2013/2.A4 whereby he instructed the appellant to appear before the fair rent committee on 19.5.2014 and further stated in the notice that the fair rent has to be revised from 1.2.2011 on the basis of G.O.No.456 dated 9.11.2007. It was also contended in the Notice that the earlier fixation made by the 1st respondent vide Na.Ka.No.132/2012 A4 is without the signature of the one of the Committee member viz., the District Registrar as such it is void**

**ab initio. Further, along with the said notice, the rent revaluation statement has been annexed wherein rent has been arrived as Rs.2,09,605/- per month for the said subject building. The 2nd respondent has revised the rent for the period from 1.7.1998 on the ground that the earlier rent has been wrongly fixed by taking 0.30% to the value of the property but however as per G.O.353 dated 4.6.1999-0.60% has to be taken to assess the fair rent and as such on such basis the rent has been revised. The donation collected from the appellant was for 8 months alone and the 2nd respondent instructed the appellant to pay for 15 months citing G.O.277 dated 2.12.2005. The fair rent fixed by the fair rent committee is against the norms contemplated in G.O.No.353 and G.O.No.456. Before fixing the fair rent, the fair rent committee has not followed the circular instructions issued by the Commissioner in Rc.No.40651/2008/M3 dated 20.2.2009 in pursuance to the direction of the Hon'ble High Court, Chennai made in W.P.No.1611/2008 and W.A.No.8/2008. The fair rent committee has fixed the fair rent without providing the opportunity to the appellant to put forth his defence vis-à-vis revision of rent. The fair rent committee failed to consider the fact that, in the 4th floor of the subject building, the removable fixtures viz., water tank along with recycling water plant, Solar AC machineries and tin sheet shed alone have been installed to meet out the basic amenities for the subject building and no permanent construction has been made in the 4th floor and as such calculating the fair rent for the said floor that too on the basis of RCC building is untenable and such fixation has been made without considering the physical features of the said building. The fair rent committee has failed to consider the fact that the tenant has been in occupation of the subject premises from 4.2.2008 onwards. As such the fair rent has to be fixed to the said building on the basis of the guideline value prevailing on the said date alone. The fair rent committee has errouneously taken the market rental value of a small tea shop situated at Door No.536 Openakara Street and fixed the fair rent on the basis of market rental value as Rs.20.43 per sq.ft for the subject building. The fair**

**rent committee failed to consider the fact that as per Section 34A of the Act, in order to estimate the prevailing market rental value, the rent paid for similar types of properties situated in the same locality alone has to be taken into consideration. The fair rent committee failed to consider the fact that, in commercial zone, the rent for the building vary from place to place based on various considerations viz., prominence of the place, locality, mode of business, transport facility etc. The fair rent committee failed to consider the fact that as per the sanction order of this Hon'ble forum dated 4.2.2008, the appellant has to pay the rent fixed by the Executive Officer from 1.7.2007 alone. The fair rent committee failed to consider the fact that, since the rent has to be fixed from 1.7.2007 alone, it is appropriate either to take the guideline value on 1.7.2007 to fix the fair rent as per G.O.353 and 456, the fair rent has to be fixed form 1.11.2001 on the basis of the guideline value prevailing on the said date and accordingly 15% has to be increased every 3 years once and on such basis rent has to arrived from 1.7.2007 onwards. The fair rent committee failed to consider the fact that, the earlier order of the 1st respondent in Rc.No.132/2012/A4 dated 13.1.2012 has been acted upon by the 2nd respondent and as well as by the appellant and the Lease agreement to the effect has been entered between the parties and the rent also paid as fixed by the 1st respondent. Since the fair rent committee has not give an opportunity to the appellant to put forth the above contention so as to enlightening the fair rent committee is this regard prior to the erroneous fixation made by them. The 2nd respondent vide his impugned order dated 26.5.2015 has claimed rent from 1.7.1998 onwards without considering the fact that the appellant has occupied the premises on the basis of the Commissioner sanction order in Rc.No.78238/2007 M2 dated 4.2.2008 and the calculating of the rent for the period from 1.7.1998 onwards is not only erroneous in Law and it is outcome of sheer non application of mind on the part of the 2nd respondent. The 2nd respondent failed to consider the fact that as per the sanction order, the appellant has paid the arrears for the period from 1.7.1995 to 30.6.2007. The claim of arrears and**

**revision of rent is against the principle of promissory estopple and legitimate expectation. The impugned orders are the outcome of colourable exercise of power on the part of the respondents.**

**3. The 2nd respondent has contended that for entertaining any appeal under this section, the appellant ought to have file a satisfactory proof for having deposited the entire lease rent so fixed or refixed. The requirement of pre-deposit of the lease rent was also challenged before the Hon'ble Madras High Court and a division Bench of the Hon'ble Madras High Court has upheld the said provision in Angala Parameswari and Kasiviswanathaswamy Temple adimanai House owners Association Vs State of Tamil Nadu. The appellant who has preferred this appeal under sub section (3) of section 34A of TNHR&CE Act has not produced any iota of evidence that he has deposited the lease rent amount in the account of the religious institution i.e., the said temple. Under such circumstances, the appeal is not maintainable.**

**4. In the objection filed by the appellant he has contended that as per procedures contemplated under Law, where the whole or any part of any fee prescribed for any suit or appeal or document by the law for the time being in force has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such court fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance. It, therefore, any amount of lapse of time does not fetter the authority of the Court to direct the payment of such deficit court fee. As a logical corollary, even the appellant cannot be said to be barred from paying the deficit court fee because of the lapse. It is well laid dictum of the Courts that justice is a virtue which transcends all barriers. Even the Law bends before Justice and the order of the Court should not prejudice any one. The intention of the law is to provide justice and not to evade justice on pure technical and procedural issues. It is emphasized by the Hon'ble Apex Court in Rupa Ashok Hurra Vs. Asho Hurra 2002 (4) SCC 388 as**

**follows: "In my view,it is now time that procedural justice system should give way to the conceptual justice system and efforts of the law courts ought to be so directed. Gone are the days when implementation of the draconian system of law or interpretation thereof were insisted upon flexibility of the law Courts presently are its greatest vitue and such justice oriented approach is the need of the day to strive and forge ahead in the 21st century". The procedural justice system should give way to the conceptual justice system and effect of the law.**

**5. In the clarification filed on behalf of 2nd respondent it has been stated that Section 149 CPC is only relates to the deficiency of Court Fee and not related to the Conditional statutory Deposit and therefore not relevant here. If the contention of the appellant to deposit only one month rent to be deposited is allowed, it will be a bad precedent and it will not only affect the interest of institution besides being inconsistent to the statute, but also would certainly defeat the very purpose of the TNHR&CE Act. In practical, the appellant having with huge arrears may move even up to Apex Court and capable of prolonging the matter successfully to avoid the payment of rent due to the institution leaving the respondent without any income. The rent fixed if deposited, the statute clearly gives an opportunity to the appellant to adjust the same in future to the rent, if he succeeds in the appeal and therefore the depositing of rent will not in any way affect the interest of any one much less this appellant herein.**

**6. In the reply statement appellant has stated that the contention of the 2nd respondent that the condition precedent of pre-deposit of entire arrears, in dispute, is ab initio void for entertaining an appeal (which effectively is the first available opportunity to approach the adjudicating authority). Such contention is unreasonable, oppressive and violative of and ultra vires Article 14 of the Constitution of India. Lack of any provision in the statute and lack of any power in the hands of the statutory authority for relieving the Lessee of the burdensome and onerous provision of pre-deposit, renders such contention of pre-deposit of arrears unreasonable and hit by and ultra vires Article 14 of the**

**Constitution of India. Such a provision especially in present case of unsustainable demands makes the provision unreasonable, illegal and ultra vires Articles 14,19&21 of the Constitution of India. The workability of the statute and the entire appeal provision is rendered illusory and nugatory as the opposite party artificially and on filmsy grounds inflate the arrears amount and thereby burden the Lessee through the provision of predeposit in appeal. Such situation circumvents and defeats the very spirit and legislative intent of introducing Section 34 of the Act. Such condition would thwarts, defeats obliterates and eclipses a substantive right of appeal by imposing such an unreasonable and oppressive condition. The concept of pre-deposit and artificially inflated demand in cases like the present militates against and defeats the litigants right. Such deposit of such a heavy amount on the basis of one-sided claim alone is cannot be said to be a reasonable condition at the first instance itself before start of adjudication of the dispute, as such, the contention of the 2nd respondent is untenable. Moreover such demand works as a deterrent or as a disabling provision impeding access to a forum which is meant for redressal of the grievance of a Lessee. The condition of deposit impossibility which renders the remedy made available before this Hon'ble forum as nugatory and illusory.**

**7. I heard Thiru.E.Ganesh Counsel for the appellant, Thiru.C.Dharmaraj Counsel for the 2nd respondent and perused the relevant records.**

**8. The 2nd respondent contended that the appeal petition is not maintainable without a satisfactory proof for having deposited the entire lease rent so fixed or re-fixed. The counsel for the appellant argued that the deposit of such a heavy amount on the basis of one sided claim cannot be said to be a reasonable condition before start of adjudication of the dispute. Both the counsels have produced various decisions of the Hon'ble High Court in support of their case. I perused all the decisions produced by the respective counsels. There is no uniformity in the decisions rendered by the Hon'ble High Court in the cases related to deposit of**

**arrears is a precondition for filing appeal under Section 34(A)(3) of the Act. If the appeal petition is dismissed as not maintainable as contended by the respondent, it will not put an end to the litigation. Before making any adjudication by this forum the interest of the institution ought to be taken into consideration. Due to the pendency of this appeal petition, the institution is not getting income from the said property. Further, if the matter is not decided on merits, aggrieved party will go for appeal thus the matter will be prolonged. Further, the appellant has also filed an undertaking affidavit to pay the revised rent from the date of communication of the notice. Hence it is decided to adjudicate the matter on merits.**

**9. The appellant attacking the impugned notice on the following grounds:**

**(i) The fair rent fixed by the fair rent committee is against the norms issued in various Government Orders.**

**(ii) In the said building there is no 4th floor but fair rent has been fixed for the 4th floor also.**

**(iii)The respondent claiming the rent retrospectively from 1.7.1998.**

**(iv) As per the Government Orders rent has to be revised at the rate of 15% for every three years but the respondent revised the rent at the rate of 33%.**

**10. The appellant got the lease right by way of name transfer vide order dated 4.2.2008 of the Commissioner. Originally the suit property was given lease to one S.Fakrudin. He failed to pay the fair rent. Hence the temple administration had filed an eviction suit against him for nonpayment of fair rent. The same was decreed as prayed for. The appellant herein claiming himself as a business partner of said Fakrudin had approached the temple administration for effecting name transfer of tenancy. He agreed to pay the arrears due from the previous tenant and also to pay the fair rent fixed by the fair rent committee. The name transfer of tenancy right was permitted subject to payment of arrears and fair rent. Accordingly the appellant had settled the entire arrears and**

**paying the fair rent fixed regularly. Since in the year 2008 fair rent was fixed at the rate of 0.3% for the site which is used commercially instead of 0.6% as per the Government Orders, the same has been rectified in accordance with the Government Orders in the impugned notice. Hence it cannot be construed as a revision of fair rent. But it is only a rectification of mistake occurred in the calculation of the fair rent.**

**11. Further the appellant himself admits that he was a business partner of previous tenant and agreed to pay the entire arrears, hence he is bound to pay the difference of amount due to rectification of the calculation of fair rent. Hence there is no infirmity in the notice issued by the respondent temple requesting the appellant to pay the arrears from 1.7.1998 as the appellant paid the accrued arrears with effect from 1.7.1998.**

**12. Further the appellant admits that in the 4th floor of the subject building, water tank along with recycling water plant, solar AC machineries and tin sheet shed have been installed to meet out the basic amenities for the subject building. He has himself stated that there is a tin sheet shed in the fourth floor and the space is not open to sky. The appellant is now using a part of this covered space and he can at any occupy the entire space, as the area is under his control. So it is clear that the said floor is not kept vacant but utilized by the appellant hence he ought to pay the rent to the said floor also. The fair rent has been fixed as per the PWD norms and guidelines issued by the department in various Government Orders. Further, as per Section 34(A) of the Act the fair rent has to be calculated taking into account the prevailing market rental value. Prevailing market rental value means the amount of rent paid for similar types of properties situated in the locality where the immovable property of the religious institution is situated. Rental value of the Commercial properties in the locality has been taken into account while fixing the fair rent. Further, the potential of the property to generate income is also to be considered. In this case, the property is situated in the junction of Big Bazaar and Oppanakkara Street which is a prime**

**commercial Hub of the Coimbatore City. Hence I find no infirmity in the fixation of rent considering all the above parameters.**

**13. In the impugned notice, the fair rent has been revised at the rate of 33.3% for every 3 years as per the order of the Commissioner dated 4.2.2008 made in Rc.No.78237/2007. In the said order name transfer of tenancy right has been effected in favour of the appellant subject to the condition that the appellant should pay the arrears of Rs.6,50,376/- for the period from 1.7.1995 to 30.6.2007. The said arrears was calculated based on the revision of rent at the rate of 33.3% for every three years and the same was accepted and paid by the appellant. The G.O.(Ms) No.456 was issued on 9.11.2007 but the name transfer order was passed by the Commissioner on 4.2.2008. Therefore it is pertinent to note that while passing the name transfer order by the Commissioner, the G.O.(Ms)No.456 dated 9.11.2007 was in force. But the appellant accepted the revision of rent at the rate of 33.3% without any objection. Hence he is liable to pay the arrears due to the rectification of the fair rent calculation.**

**Therefore I find no infirmity in the impugned notice and it does not warrant any interference. Accordingly the notice dated 26.5.2015 of the Executive Officer of the above Trust is hereby confirmed and the Appeal Petition is dismissed as devoid of merits.**

**/typed to dictation/**

**Sd./- M.Veera Shanmugha Moni**
**Commissioner**

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

**Superintendent.**

**To**
**1. The Appellant through Thiru.E.Ganesh, Advocate, No.61/23, South Lock Street, Kottur, Chennai.**
**2. Executive Officer through Thiru.C.Dharmaraj, Advocate, M-188, 9th Cross Street, Thiruvalluvar Nagar, Thiruvanmiyur, Chennai 41.**
**Copy to**
**3. The Joint Commissioner, H.R. & C.E. Admn.Dept., Coimbatore.**
**4. The Assistant Commissioner, HR & CE Admn.Dept., Coimbatore.**
**5. M Section at Head Office (through numbering)**
**6. Extra.**