

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

Tuesday the 19<sup>th</sup> day of September, Two thousand and Seventeen.

Present: R.Jaya, I.A.S.,  
Commissioner.

**A.P.No.35/2017 D2**

**Between**

1.C.Ramalingam  
2.C.Sampath

...Appellants

**And**

The Joint Commissioner/Executive Officer,  
Arulmigu Kapaleeswarar Temple,  
Mylapore, Chennai

....Respondent

In the matter of Arulmigu Kapaleeswarar Temple, Mylapore, Chennai -4.

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 20.06.2012 and 30.01.2013 of the Joint Commissioner/Executive officer of the above temple in informing the Fair rent and terminating the tenancy right.

**Order in R.Dis.A.P.No.35/2017 D2 dated: 19.09.2017**

The above appeal petition came up for final hearing before me on 19.09.2017 in the presence of Thiru.E.Ganesh, counsel for the petitioner, M/s.A.S.Kailasam @ Associates, counsel for the respondent. Upon hearing their 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 was filed under Section 34(A)(3) of the Act against the order dated 20.06.2012 of the Joint Commissioner/Executive Officer of the above temple in informing the fair rent.

2. The Appellant has stated that they are preferring this Appeal against the impugned order dated 30.01.2013 in Ref.No.257/2012/m4 dated 23.01.2013 passed by the Assistant Commissioner/Executive Officer, Arulmigu Kapaleeswarar Thirukoil, Mylapore, Chennai , in respect of the Appellants land tenancy premises bearing old door No. 17, New No. 41, Luz Church Road, Mylapore, Chennai as per the directions of the Hon'ble Madras High Court .

The Appellants are the statutory tenants and they are in lawful possession and enjoyment of the land for several decades as lessee of the land tenancy by constructing the building at their cost. The proposed revision of rent is not in accordance with the section 34A of the HR & CE Act and nor in compliance with the directions given by the Government of Tamil Nadu in its proceedings Dated 02/02/2009. The Respondent/ Executive Officer through his letter dated 20.6.2012 had only suggested and proposed to fix the fair rent for the demised land but actually he did not fix the fair rent as seen from his letter dated 20.6.2012. Further through his letter dated 20.06.2012 the Executive Officer had simply intimated to the Appellants that the fair rent for the land may fetch the fair rent as mentioned in his said letter if he would proceed to follow the guidelines provided in G.O.Ms.No.456 dated 09.11.2017. The Executive Officer has not noted that he has no individual authority to fix the fair rent but it is only the committee comprised of Joint Commissioner the Executive Officer or the Trustee or the Chairman of the Board of Trustees as per Sec 34A(1) of the Act alone have the authority to fix the fair rent. As per the above guidelines dated 02.02.2009 which are mandatory in nature, the Executive Officer neither sent the fair rent fixed by the committee with its worksheet to the Appellants nor demanded the Appellants to file their objections within the stipulated time nor the committee finally fixed fair rent and intimated the same to the Appellants. The act of the Executive Officer without passing an order fixing the fair rent and without intimating the same to the Appellants specifying a time within which such fair rent shall be paid which is under Sec. 34-A(2) of the act, is illegal and against the principles of natural justice. As on date to the above subject land, there is no fair rent fixation determined as contemplated under the Act. While this being so, on the basis of non compliance of direction issued in letter dated 20.6.2012, the termination order dated 23.1.2013 in Na.Ka.No. 257/2012/A4 issued by the Respondent is not valid and nonest in the eyes of law. As stated supra, the above termination order is utter violation to the provisions emanated under the Act and procedures established under Section 346 of the Act. Ironically, when

the Act guaranteed the person in occupation can render objections for the proposed fixation by the fair rent committee, the mere objection given by the Appellants to the communication of the Respondent who himself/herself does not constitute a Fair rent Committee, shall not be a ground for termination. As such, the termination order is nonest in the eyes of Law and ultra vires the provisions of the Act. In spite of the repeated representations made to the Executive Officer by the Appellants to act according to Law and principles of natural justice he is unjustly and unlawfully demanding the consent from the Appellants for his unreasonable and unjust demand for acceptance. The Executive Officer cannot invoke Sec 34B of the Act in issuing the impugned order dated 30.01.2013 without complying Sec34A of the Act for fixing the fair rent. The impugned order dated 30.01.2013 issued by the Executive officer determining the appellants lease without hearing the appellants after giving reasonable opportunity to the Appellants as provided under Sec 34B of the Act is illegal and liable to be set aside. As per the directions of the Hon'ble High Court made in W.P.No.4294/2013, the Appellants have filed the above appeal invoking the powers of this Hon'ble Court u/s.34(A)(3) read with Section 21 of the Act to set aside the order dated 23.01.2013 in Na.Ka.No.257/2012/A4 and notice dated 20.06.2012 in Na.Ka.No.257/2012/A4 issued by the Respondent.

3. I heard Thiru.E.Ganesh, counsel for the appellant and M/s.A.S.Kailasam & Associates, counsel for the respondent and perused the relevant records.

4. The counsel for the appellants has argued that in response to the notice issued by the respondent temple in informing the fair rent, the appellants had filed their objection and requested the temple to give opportunity before fixing the rent. But without considering the objections of the appellants, the respondent temple had terminated their lease.

5. The suit property was leased out to one Soundaraja Iyyangar under a lease deed dated 06.01.1898 for a period of 99 years and the lease expired on 05.01.1997. The appellant's grand father Thiru.S.R.Duraisamy Chettiar had purchased the super structure along with the lease hold right from the said

Soundaraja Iyyangar. The appellants have sublet the property to the 3rd parties. Hence the temple has issued notice dated 26.04.2012 to the sub-tenants to furnish the particulars to show under what authority they were in the possession of the property. But instead of the sub-tenants the appellants had sent reply to the notice. Thereafter, the respondent temple has fixed the fair rent in accordance with the guidelines prescribed under various Government Orders and sent a notice dated 20.06.2012 to the appellants requesting them to give their consent for the fair rent. Again the temple has sent a remainder notice on 26.09.2012. In response to the said notices, the appellants had filed their objection vide letter dated 08.10.2012. The temple had sent another notice on 12.11.2012. In the said notice, the temple had referred the letters sent by the appellants. But it has failed to consider the objections raised by the appellants. As per the circular dated 02.02.2009 issued by the Commissioner, the written objections of the tenants should be considered by the fair rent fixation committee before fixing the fair rent.

6. In the judgment reported in 2009(6) CTC 512, the Hon'ble High Court has held that "***The Government also noted that if guidelines are not followed, then the lease rent fixed by the Committee is quashed either in Appellate proceedings or by proceedings before the High Court wherein deficiency are pointed out. It was also noted that this only leads to the delay and loss to the lease rent for the temple and therefore, three strict guidelines were issued and it was also indicated that if they were not followed, stringent action would be initiated. Following this, further proceedings dated 02.02.2009 as per which, additional and clarificatory guidelines were issued and therefore, it is found that opportunity of raising objections is given to the lessee. The proceedings dated 02.02.2009 reads as follows:-***

1. வாடகை நிர்ணயக் குழுவால் நிர்ணயம் செய்யப்படும் வாடகையினை கணக்கீட்டுத்தாளூடல் வாடகைதாரர்களுக்கு அனுப்புதல் வேண்டும்.

2. கணக்கீட்டுத்தாளில் நிர்ணயிக்கப்பட்டுள்ள வாடகை, இடத்தின் பரப்பளவு, கட்டடத்தின் பரப்பளவு, நிலமதிப்பு, குடியிருப்பு/வணிகத்தன்மை, வாடகை சதவீதம், புதிய வாடகை ஆகியவை குறித்து ஆட்சேபணைகள் எதுமிருப்பின், அதனை மெய்ப்பிக்கும் ஆவணங்களுடன், ஒரு வார காலத்திற்குள் மனுதாரர்கள் பதிவை அனுப்புதல் வேண்டுமென வாடகைதாரர்களுக்கு அறிவிப்பு அனுப்பப்படல் வேண்டும்.

3. மேலே குறிப்பிட்ட விசாரணைக்கு வாடகைதாரர்கள் நேரடியாக வரவேண்டுமென வலியுறுத்த தேவையில்லை. அவர்களிடமிருந்து பதிவைப் பெற்று பரிசீலித்தாலே போதுமானது.

4. மேற்குறிப்பட்டபடி வாடகைதாரர்களிடமிருந்து பெறப்படும் பதில், வாடகை நிர்ணயக்குழுவால் பரிசீலிக்கப்பட வேண்டும்.

5. உரிய காலத்திற்குள் பதில் ஏதும் வரவில்லையெனில் இருக்கும் ஆவணங்களின் அடிப்படையில் நியாய வாடகை நிர்ணயம் செய்திட பரிசீலிக்கப்பட வேண்டும்.

6. பரிசீலனையின் அடிப்படையில் உரிய விவரங்களை பதிவு செய்து, இறுதியான வாடகை நிர்ணய உத்தரவினை வாடகைதாரர்களுக்கு வழங்கி ஒப்புதல் பெற வேண்டும் மேற்காணும் அறிவுரையின் படி, வாடகைதாரர்களுக்கு, வாடகை உயர்வு குறித்து அறிவிப்பு அனுப்பி ஆட்சேபணைகள் பெற்று இறுதியாக வாடகை நிர்ணயம் செய்வதன் மூலம் , வாடகைதாரர்கள் நீதிமன்றத்தை அணுகி வழக்குகள் தொடுப்பதை தவிர்க்கலாம் எனவும் தெரிவிக்கப்படுகிறது. இச்சுற்றறிக்கையினை பெற்றுக் கொண்டமைக்கான ஒப்புதலை இவ்வலுவலகத்திற்கு அனுப்ப அனைத்து சார்நிலை அலுவலர்களும் கேட்டுக் கொள்ளப்படுகிறார்கள்”.

**“It was clarified that it is not necessary for the lessees to appear in person and that it is sufficient for them to submit their written objections to the temple authorities, who will take note of the objection before fixing the final rent and then it will go before the committee which will pass the order as per sub-section (2) of Section 34-A of the Act for fixing the lease rent and intimate the same to the lessee. Therefore, the committee consisting of the Joint Commissioner and the Executive officer or trustee or Chairman of the Board of Trustees as the case may have to take note of the prevailing market value and the guidelines and then they will fix the lease rent or re-fix the lease rent as the case may be once in three years. The explanation to sub section (1) of Section 34-A of the Act also makes it clear that what is meant by ‘prevailing market**

***value' . The Executive Officer, thereafter, shall fix the lease rent. He is given the discretionary power to take note of what the Committee had recommended and then he shall fix the lease rent and intimate the same to the lessee. By virtue of the circular extracted above, the evidence submitted by the lessee will form part of the material for determining the lease rent. Therefore, we are of the opinion that lessees have been given sufficient opportunity to place before the committee the materials regarding fair rental value and it only thereafter, that the lease rent would be fixed. Therefore, the Complaint that Principle of Natural Justice is violated, has been answered by the proceedings dated 02.02.2009. The direction contained therein shall be compulsorily followed”.***

But in this case, the respondent temple had failed to consider the objections of the appellants before fixing the fair rent. But, their tenancy was terminated for the reasons that they had failed to give their consent for the fair rent. It is totally against the circular instructions issued by the Commissioner and the order of the Hon'ble High court.

7. Therefore the impugned notices issued by respondent temple suffer from infirmity as stated above and liable to be set aside. Accordingly, the notices dated 20.06.2012 and 30.01.2013 of the respondent temple are hereby set aside and the matter is remanded to the respondent temple for fresh consideration. The appellants are directed to file their objections along with supporting documents within 15 days from the date of receipt of this order. The respondent temple should place the same before the fair rent committee to take a decision in accordance with law within 15 days thereafter. The decision of the fair rent fixation committee supported with reasons shall be communicated to the appellants within 7 days from the date of meeting of the fair rent committee. If the appellants failed to submit their objection with supporting documents within the stipulated time, the fair rent committee shall take a decision in accordance with the provisions of the Act and the guidelines

issued in various Government Orders. The appeal petition is hereby disposed of with the above directions.

/typed to dictation/

Sd./- R.Jaya  
Commissioner

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

Superintendent

**To**

1. The Petitioner through Thiru.E.Ganesh, Advocate, No.61/23, Sakthi Avenue, South Lock Street, Kottur, Chennai-85.
2. The respondents through M/s.A.S.Kailasam & Associates, No.86, Law Chamber, High Court, Chennai.

**Copy to**

3. The Joint Commissioner, H.R. & C.E. Admn.Department, Chennai.
4. The Assistant Commissioner, H.R. & C.E. Admn.Department, Chennai.
- 5-6) Extra.