

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

Tuesdays the 7th day of August, Two thousand and Eighteen.

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

A.P.36 to 42/2017 D2

Between

- | | |
|-----------------------------|--------------------------------|
| 1. R.Venkatachalam | ...Appellant in A.P.No.36/2017 |
| 2. K.Vaiyapuri | ...Appellant in A.P.No.37/2017 |
| 3. G.Thangaraj | ...Appellant in A.P.No.38/2017 |
| 4. V.V.Ramasamy Chettiar | ...Appellant in A.P.No.39/2017 |
| 5. R.Venkatachalam Chettiar | ...Appellant in A.P.No.40/2017 |
| 6. P.Muthusamy Chettiar | ...Appellant in A.P.No.41/2017 |
| 7. S.Muthusamy Chettiar | ...Appellant in A.P.No.42/2017 |

And

The Assistant Commissioner/
Executive Officer,
Arulmigu Narasimma Swamy Temple,
Namakkal.

...Respondent

In the matter of Arulmigu Narasimma Swamy Temple, Namakkal.

The Appeal petitions filed under Section 34A(3) of the Tamil Nadu H.R. & C.E. Act, 1959 (Tamil Nadu Act 22 of 1959) against the order dated 21.06.2017 of the Assistant Commissioner/ Executive Officer, Namakkal in informing the fair rent.

Order in R.Dis. A.P.No.36 to 42/2017 D2 dated:07.08.2018

The above appeal petitions came up for hearing before me on 13.02.2018 in the presence of M/s.S.Kala, counsel for the appellants, Thiru.E.Ganesh, counsel for the respondent and perused the relevant records. 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 Petitions were filed u/s.34(A)(3) of the Act against the order dated 21.06.2017 of the Assistant Commissioner/Executive officer of the above temple in informing the fair rent.

2. The appellants have stated that they took on lease of the vacant land belonging to the respondent temple as early as in the year 1973. The lease was only for the land and they constructed the superstructure and applied for electricity supply and water connection. The ground rent was revised from time to time. Originally the lands are Natham Poramboke and in the year 2010 the entire area is notified by the Archeological Department, including the temple. The respondent temple decided to revise the ground rent and informed the tenants. The fair rent committee constituted conducted an enquiry. The appellant also accepted for any reasonable revision and fixation of a fair rent. But the respondent unilaterally fixed the fair rent by including the superstructure and calculating the area occupied by him in excess of the actual area occupied by him. The respondent miscalculated the fair rent which is unfair and unreasonable. The state government revised the guideline value for the lands in the state about 33% with effect from 07.06.2017. Similarly due to demonetization during November 2016, the market value of the land and building has gone down substantially. But without taking into note of the subsequent events and developments, the impugned order of fixation of the rent was passed on 21.06.2017. The fair rent has to be revised in accordance with the Government Orders and on the basis of the Judgment in W.P.No.1611 of 2008. Prior to fixation, the Fair Rent Committee did not call for any objections by giving notice to them. As such the fixation itself is invalid and liable to be set aside. The respondent has not stated how the market value has been determined and has not provided the details about the same or sought

any objection pertaining to the alleged fixation. The nominal rent cannot be stretched at any level to the present fixation which is fictitiously fixed from 01.07.2016. The fair rent as per the present guideline value as on 01.07.2017 would be less; instead the respondent has fixed a fictitious amount by taking the alleged market value as on 01.07.2016. As per the directions of the Hon'ble High Court in a similar cases, the nominal rent has to be fixed from the relevant date and thereafter enhancement of the rent can be done as per the custom as like the other tenants which transpires that the subsequent to the fixation of nominal rent, it can be enhanced once in 3 year at 5% as per G.O.353 and 456 as applicable to other tenants. As per Sec 34A of the Act the fair rent has to be fixed taking into account the amount of rent paid for similar types of properties situated in the locality. The temple has fixed the fair rent based on the rent collected by the adjacent temple property belonging to the temple. The respondent ought not to have fixed any fair rent to the superstructure but ought to have determined the fair rent only for the temple land and for the actual extent of the land. Before fixing the fair rent, the fair rent committee has not followed the circular instructions issued by the Hon'ble forum in R.C.No.40651/2008/M3 dated 20.02.2009. The fair rent fixed was disproportionate and excessive to the actual market ground rental value prevailing in the said area and also against the PWD norms.

3. In the Counter Affidavit, the respondent temple has stated that the Section 34(A)(1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 (TN ACT 22 of 1959) contemplates to determine the fair

rent to the immovable property belonging to the religious institution by taking into account the prevailing market rental value. The fair rent has been determined on the basis of taking into account the prevailing market rental value. It is relevant to point out here that, the lease rent paid by the other tenant who are in occupation of the similar types of property situated in the locality is higher than the fair rent which is fixed to the appellant. Considering the Jural relationship and the nature of the building, less than half of the market rental value alone has been fixed as the fair rent to the premises occupied by the appellant. Prior to the fixation of fair rent by the Fair Rent Committee, the persons who are in occupation of the religious institution in the said locality has been called upon for a meeting which was held on 23.2.2017. The appellants and other tenants have attended the said meeting. During the course of the meeting, the proposed fair rent has been informed to them and has also sought their opinion and objections over the same. The tenants including the Appellants have shared their views and objections. During the said meeting, the concerns of the tenants as well as the institution have been discussed. The prevailing market rental value in the surrounding is core issue on the discussion among the parties. After taking into the consideration of the apprehension, suggestion and objections of all the tenant which was the focal point of the meeting scheduled on 23.2.2017, the fair rent has been fixed. There was no procedural laxity in fixing the fair rent as alleged by the Appellant. The contention of the Appellants that the nominal rent has to be fixed and the same has to be enhanced as per the custom is ill-conceived and misleading one.

As far as the fair rent fixation is concerned, the Section 34 A of the Act alone would be applicable. The procedures mandated under the Act are to fix the fair rent by taking into account the prevailing market rental value alone. The earlier rent fixation has been done to the subject premises taking into account the land and building lying therein. The earlier fair rent fixation has been accepted and submitted to validity and acted upon by the Appellant and other tenants. The fair rent has been fixed meeting out the both ends. The interest of the Minor Idol, the quantum of reasonable rent can be fetched from the said premises as well as the burden of payment of rent by the tenant have been weighed equally and the fair rent has been fixed

. 4. I heard M/s.S.Kala, counsel for the appellants, Thiru.E.Ganesh, counsel for the respondent and perused the relevant records.

5. The appellants have challenged the impugned fair rent fixation mainly on the following grounds:-

(i) The superstructure belongs to them but the fair rent was fixed to the land and superstructure.

(ii) The fair rent is excessive to the actual market rental value and against the PWD norms.

(iii) The fair rent was fixed without considering the proper guideline value. The rent to be fixed based on the guideline value without taking into account the market value as directed by the Hon'ble High Court in similar case.

(iv) The Fair Rent Committee did not call for any objections by giving notice to them.

6. As per Sec 34A of the TN HR&CE Act 1959, the lease rent payable for the immovable property belonging to any religious institution shall be fixed by a committee taking into account the prevailing market rental value and the guidelines prescribed by the authority. The “prevailing market rental value” means the amount of rent paid for similar type of properties situated in the locality where the immovable property of the religious institutions is situated. In this case, the Fair Rent Fixation Committee has fixed the fair rent taking into account the amount of rent collected from the adjacent temple properties. The appellants did not produce any document to prove that the market rental value taken by the fair rent fixation committee is very high compared to the rent paid by the similar type of private properties in the said locality. Further they neither furnished the guideline value of the property nor prevailing market rental value to prove that the rent fixed is against the provisions of the Sec 34A of the Act.

7. Further, prior to the fixation of fair rent, the fair rent committee held a meeting with tenants of the temple property on 23.02.2017. In the said meeting, the proposed fair rent was informed to them and has also sought their opinion and objection. After considering their objections, the fair rent has been fixed. Hence, the fair rent was fixed by the committee by following due procedures.

8. From the counter filed by the temple, it is inferred that, the earlier fair rent was fixed taking into account the land and building. The same was accepted and paid by the appellants. The same was not denied by the appellants. Hence, the contention of the appellants that the fair rent fixed to the superstructure belonging to him is unacceptable.

9. There is no procedural laxity or violation of provision of the Act or denial of natural justice in fixing the fair rent. The temple being the owner of the property, has right to fix the rent. The fair rent has been fixed as per Sec 34A of the Act. The tenant cannot expect to fix the rent as per his whims. If the rent fixed by the Committee is not affordable by the tenant, he shall quit the property to enable the temple to get maximum revenue from the said property. The appellants are exploiting the property commercially. They are occupying the property from the year 1973, without getting any sanction from the Commissioner u/s. 34 of the Act.

Therefore for the foregoing reasons stated supra, I find no reason to interfere with the impugned order and it is liable to be confirmed. Accordingly, the order dated 21.06.2017 of the Assistant Commissioner/Executive Officer is hereby confirmed. The appeal petitions are hereby dismissed as devoid of merit.

/typed to dictation/

Sd./- R.Jaya
Commissioner

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

Superintendent

To

1. The appellants through M/s.S.Kala, Advocate, No.31, Valliammai Illam, F-3, I-Floor, Viswananathapuram Main Road, Opp.Raghavendra Kalyana Mandapam, Kodambakkam, Chennai-600 024.
2. The respondent through Thiru.E.Ganesh, Advocate, No.61/23, Sakthi Avenue, South Lock Street, Kottur, (Near Kotturpuram MRTS Railway Station), Chennai-600 085.

Copy To

3. The Joint Commissioner, HR & CE Admn.Department, Salem.
4. The Assistant Commissioner, HR & CE Admn.Department, Namakkal
5-6) Extra.