

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

Thursday the 18th day of May, Two thousand and Seventeen.

Present: Dr.M.Veera Shanmugha Moni,
Commissioner.

A.P.No.1/2017 D2

Between

M.Muthuraja

.... Appellant

And

Executive Officer,

Arulmigu Dhandayuthapaniswamy Temple,

Birla Visram, Annakuzhi Mandapam, Madurai 1.

...Respondent

In the matter of Arulmigu Dhandayuthapaniswamy Temple, Birla Visram, Annakuzhi Mandapam, Madurai 1.

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 23.9.2015 of the Executive Officer of the temple informing the fair rent.

Order in D.Dis. A.P.No.1/2017 D2 dated: 18.05.2017

The above Revision petition came up for final hearing before me on 28.03.2017 in the presence of Thiru.E.Ganesh, Counsel for the appellant, Thiru.P.Gopalan, counsel for the respondent and perused the relevant records. 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 u/s.34(A)(3) of the Act against the notice dated 23.09.2015 of the Executive Officer of the temple in informing the fair rent.

2. The appellant has stated that Prior to fixation, the Fair Rent Committee did not call for any objections pertaining to the fixation by giving notice for enquiry to the Appellant, as *such* the fixation itself is invalid and liable to be set aside. Before fixing the fair rent, the fair rent committee has not followed the Circular instructions issued by the Hon'ble Forum 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 Appellant was served with the communication of the fair rent derived by the Executive Officer of the Temple alone but however so far the fixation by the fair rent committee has not been communicated to the Appellant. The respondent has not stated how the market value has been determined by the respondent. Though the respondent has mentioned the market value as Rs.5,175/- he has not provided the details about the same or sought any objection pertaining to the alleged fixation. The respondent has not provided any reasons more so valid reasons in his impugned order dated 23.9.2015 vis-a-vis fixing the rent as Rs.5,200/- from 1.4.2012 onwards. The fixation has been made without considering the fact that the Hon'ble High Court in the judgment in A.S. No. 548/2002, 549/2002, 623/2002, 203/2003 and S.A. No. 233/2007 dated 02.009.2010 has specifically directed the Respondent to fix the nominal rent from 1.4.2011 onwards. The Respondent has miserably failed to consider the fact that the nominal rent cannot be stretched at any level to the present fixation which is fictitiously fixed as Rs.5,200/- from 01.04.2012. The fixation date as per the judgment of the Hon'ble High Court ought to be 01.04.2011 whereas the fixation made by taking 01.04.2012-as relevant date which is erroneous and against the directions of the Hon'ble High Court. The Respondent has failed to consider the fact that the fair rent as per the guideline value as on 01.04.2011 would be Rs.1,445/- alone instead the respondent has fixed a fictitious amount Rs.5,200/- as rent by taking the alleged market value as on 01.04.2012. The fair rent has been fixed disproportionate and excessive to the actual market rental value prevailing in the said area and also against the PWD norms. The respondent has failed to consider the fact that as per the directions of the Hon'ble High court, the nominal rent has to be fixed from 01.04.2011 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 years at 15% as per G.O.353 and 456 as applicable to other tenants. While so, without taking into considerations of the directions of

the Hon'ble High Court, the entire fixation has been made which is impermissible in law and liable to be set aside.

3. In the Counter Affidavit the respondent has stated that in respect of the subject matter of the lands and other lands comprised in old Survey No. 260/5 and T.S. No.715/11-A situated adjacent to the Respondent-Temple in Netaji Road, Madurai belongs to the Temple in which third parties were in occupation of the Temple lands. When the Respondent Temple sought possession of the lands from the persons who are in occupation of the temple lands, they denied the claim of the Temple. Hence, suit O.S. No.534 of 1984 on the file of Principle Sub-Judge, Madurai was filed by the Respondent-Temple against the Appellant and others for possession of the Temple lands and for such other reliefs as prayed for therein. The aforesaid suit has been decreed on merits on 31.07.2001 in favour of the Respondent- Temple. The Defendants who have suffered a Decree, filed First Appeals before the Hon'ble High Court, Madras which has later been transferred to Madurai Bench of the Madras High Court and in the batch of First Appeals filed in A.S. Nos.548, 549, 623 of 2002, 203 of 2003 and also a Second Appeal filed in S.A. No.233 of 2007, by way of common Judgment dated 02.09.2010 confirmed the Decree in favour of the Respondent-Temple which culminated in the Special Leave Petition filed against A.S.No. 549 of 2002 before the Hon'ble Supreme Court of India in Special cave to Appeal (Civil) No.12381 of 2011 and on 19.07.2013, the above SLP was dismissed. While dismissing the batch of first appeals by the Madurai Bench of the Madras High Court observed that since the Defendants/Appellants who are in possession can be permitted to continue their possession provided they shall execute an attornment of tenancy in favour of the plaintiff – Temple within six months from the date of receipt of a copy of the judgment and initially, nominal rent has to be fixed by the plaintiff-Temple from 01.04.2011 and accordingly, all the defendants are permitted to continue in possession of the properties like other tenants of the temple. It was also observed that thereafter, H.R&CE Department can enhance the rent

like other tenants as per the custom. The Appellant herein is in possession of 64.69 Sq.ft. in a prime area in Madurai City and the area commanded a higher rent and for the adjacent premises, rent has already been fixed at Rs.5,715/-. In fact, in another premises having a similar portion in the front side commanded a rent at Rs.9,000/- per month. Considering all the above factors, in the year 2015, the Fair Rent Committee fixed the Fair Rent for the occupation of the Petitioner at Rs.5,200/- payable from 01.04.2012 and accordingly, the Respondent-Temple issued the notice calling upon the Appellant to pay the Fair Rent at Rs.5,200/- on and from 01.04.2012. From 1.4.2015, as per GO, after enhancement at 15%, fair rent was fixed at Rs.6,000/- and accordingly, notice of demand was served on the Appellant on 24.9.2015. It is further submitted that in case of non-payment, it was clearly mentioned that the Appellant would be treated as an Encroacher and the E.P. already filed in furtherance of the Decree for possession obtained against him by this Respondent-Tempe would be prosecuted for taking possession of the Temple lands. Hence, there is no infirmity in fixing the Fair Rent at Rs.5,200/- for the occupation of the tenanted premises by the Appellant and the consequent enhancement from 1.4.2015 as contemplated under the G.O. is quite in order. Appellant cannot take cover under the order of the Hon'ble High Court, Madras and interpret the order in such a manner as though High Court has directed only payment of nominal rent. The term used therein is only for the purpose of disposal of the Appeal and considering the case of the Appellant herein in relation to his possession, the High Court had directed payment of rent. It is further submitted that the High Court held in the last para as follows: "Further, it is for the H.R. & C.E. Department to enhance the rent alike other tenants as per the custom. Hence, it is submitted that the HR & CE Department has been given the liberty to fix the fair rent as per the provisions of the relevant statute and the Temple is well within its right to fix the Fair Rent for the tenants for the occupation of the Temple properties. The tenants in the Temple should not be allowed to dictate terms to the Temple and should not be allowed to

contend that the Temple should receive only the rent which is paid by them. The tenor of language used by the Appellant-tenant above-named suggests that he will pay only Rs.1,000/- towards rent and nothing more can and should be demanded from him. It is the duty of every tenant to pay the Fair Rent fixed in accordance with statute. Non- payment of the Fair Rent will lead to eviction of the tenant as contemplated under the statute. The Fair Rent that has been fixed is in consonance with the order of the High Court and as per the statute. The tenant should be directed to clear the arrears immediately and pay the fair rent without further default, failing which, the Temple will be well within its rights to initiate appropriate action for possession, as the Decree for possession has become final and conclusive and it is binding on him and also for recovery of the rental arrears.

4. I heard Thiru.E.Ganesh, Counsel for the appellant, Thiru.P.Gopalan, counsel for the respondent and perused the relevant records.

5. It is the case of the appellant that as per the High Court order only nominal rent has to be fixed from 01.04.2011, but the temple has fixed the rent from 01.04.2012 based on the market rental value. The objection filed by the appellant was duly considered by the temple and he was directed to pay Rs.1000/- from 01.04.2011 to 31.03.2012 and Rs.5200/- as fixed u/s.34A of the Act from 01.04.2012. This appeal petition was filed challenging the fixation of the fair rent. As per Sec 34(A)(5) no appeal shall be entertained unless it is accompanied by satisfactory proof of deposit of the lease rent so fixed or refixed. As the appeal petition was filed without pre-deposit of the lease rent fixed, the same was posted for maintainability. After hearing both the counsels, the appeal petition was numbered as a special case in view of the order passed by the Hon'ble High Court in the appeal suits.

6. The counsel for the appellant argued totally relying upon the order dated 02.09.2010 of the Hon'ble High Court made in A.S.No.548/2002, 549/2002, 623/2002, 203/2003 and S.A.No.233/2007. In the said judgment

it was held that ***“with these observations, A.S.No.548/2002, 549/2002, 623/2002, 203/2003 are dismissed with costs, holding that the parties concerned who are all in possession, can be permitted to continue their possession provided they shall execute an attornment of tenancy in favour of the plaintiff within six months from the date of receipt of a copy of the judgment and nominal rent has to be fixed by the plaintiff considering the fact that as if they have been in possession of the properties at lease from 01.09.1981 onwards. Further, nominal rent can be fixed from 01.04.2011 and the same parties (all the defendants) are permitted to continue in possession of the properties like other tenants of the temple. Further, it is for the HR&CE Department to enhance the rent like other tenants as per the custom. consequently, the connected Miscellaneous Petitions are dismissed. S.A.No.233 of 2017 is allowed with costs ”.***

The counsel for the appellant argued that the rent ought to be fixed as per the guideline value as on 01.04.2011 and thereafter enhancement of the rent can be done as per the custom as like other tenants.

7. The temple is fighting against the appellant and other persons for several decades to get possession of the property. The appellant and other persons had unsuccessfully contested cases against the temple up to the Hon'ble Supreme Court. The appellant is enjoying the property for several decades without paying any rent to the temple. Considering the long possession, the Hon'ble High Court had ordered to fix nominal rent. The intention of the court was not to fix lower rent, but reasonable rent to be fixed. The lands were endowed for the maintenance of the Religious Institution. The temple totally depends upon the income derived from the said property for its maintenance. The appellant has denied the temple to get its legitimate share of income from the said property for several decades but he has been earning money by exploiting the property commercially. The property is situated in prime area, if it is leased out in public auction it will fetch more income to the temple. However, in view of the order passed by the Hon'ble High court, the

temple has fixed the fair rent with effect from 01.04.2012 as per Sec 34(A) of the Act.

8. In the oxford dictionary the meaning of the word “nominal” has been given as “ very small and much less than the normal cost or change” 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. However considering the order passed by the Hon’ble High Court, if the rent is fixed based on the guideline value without going into the market trend, then it will amount to nominal rent as directed by the Hon’ble High Court. The counsel for the appellant has also argued that the rent shall be fixed with effect from 01.04.2011 based on the guideline value as on 01.04.2011 and thereafter enhanced as per the procedures followed by the Department. Considering the above facts, the respondent temple is directed to fix the fair rent from 01.04.2011 taking into account the guideline value as on 01.04.2011 and refix the lease rent from 01.04.2014 as per Sec 34A of the Act. The appeal petition is hereby disposed of with the above directions.

/typed to dictation/

Sd./- M.Veera Shanmugha Moni
Commissioner

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

Superintendent

To

1. The Petitioners through Thiru.E.Ganesh, Advocate , No.61/23, Sakthi Avenue, South Lock Street, Kottur, Chennai-600 085.
- 2.The 3rd respondent through Thiru.P.Gopalan, Advocate, No.55, Law Chambers, High Court, Chennai-104.

Copy to

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