

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

Thursday the 24th day of August, Two thousand and Seventeen.

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

A.P.No.19/2017 D2

Between

N.K.Ram Vishnu Raja

...Appellant

And

1.The Joint Commissioner
HR&CE Department, Sivagangai.

2. The Executive officer,
Aulmighu Mayuranathasamy Temple, Pethvanallur,
Rajapalayam taluk,
Virudunagar District.

... Respondents

In the matter of Mayuranathasamy Temple, Pethvanallur, Rajapalayam taluk,
Virudunagar District.

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 17.03.2017 of Executive Officer of the above temple in informing the fair rent.

Order in D.Dis. A.P.No.19/2017 D2 D2 dated: 24.08.2017

The above Appeal petition came up for final hearing before me on 25.07.2017 in the presence of Thiru. K.Sakthivel, counsel for the appellant, M/s.A.S.Kailsam & Associates, 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 against the notice dated 17.03.2017 issued by the Executive Officer of the above temple in informing the revised fair rent.

2. The appellant has stated that the he is a tenant of a site belonging to the temple, having an extent of 2425 sq.meter with four buildings to the extent of 111.33 sq. meter, in survey No.276 A1 in Pethavanallur village, Rajapalayam taluk. The appellant is running a petrol Bunk at the demised premises. Four buildings are situated in the site and two buildings alone are having permanent roof and two others are asbestos and tin sheet respectively. From the year 2009, fair rent was fixed as per the GO.No.353 dated 04.06.1999 and G.O.No.456 dated 09.11.2007. While the rent is being fixed as per the

Government Orders at the rate of 15% increase in the fair rent in every three years to his surprise and shock, the fair rent fixation committee has unilaterally fixed the rent at Rs.1,74,659/- per month and directed to remit the enhanced fair rent from 01.02.2017. The property is situated in Pethavanallur village which is the out skirts of Rajapalayam town. The guideline value of Rajapalayam town cannot be taken into consideration for a property which is situated totally outside of the Rajapalayam town. Here the authorities mechanically adopted the Guideline value for a stretch of 1.5 kilo meter. However without considering any basic reasons, the rent was hiked from Rs.35,557/- to 1,74,659/- which is five times higher-than the earlier rent. This enhanced rent is neither fair rent nor reasonable rent. As contemplated u/s.34A of the HR&CE Act the lease rent can be fixed for the immovable property belonging to the temple by a committee. Before passing an order u/s.34A(2) of the HR&CE Act, the second respondent ought to have communicated the proposed rent with relevant materials and the reply of the appellant should be obtained and considered before issuing the demand notice and the respondents have apparently violated the principles of natural justice and ignored the orders of Hon'ble High Court. The respondents have failed to note that as per the Judgment of a Full Bench of Hon'ble High Court of Madras reported in 2006(2) CTC 433 (Sakthi & Co Vs. Shree Desigachary). determination of market value of the property for the purpose of fixing the fair rent based on guideline value is illegal. Since the fair rent was fixed from Rs.35,557/- to Rs.1,74,660/- based on the guideline value arrayed by the Registration department, the enhanced fair rent is also illegal. The respondents have failed to consider that the enhancement of fair rent must be reasonable and viable within the four frameworks of Section 34A of the Act and the guidelines made by Government Orders and the excessive increase in rent should not ruin the commercial activity of the appellant. The respondents have failed to adhere the dictum made by the Hon'ble Court of India. In corporation of Calcutta Vs. Smt.Padma Debi, AIR 1962 SC 151, interpreting the Calcutta Municipalities Act, it was held that the rental value cannot be fixed higher than the standard rent under the Rent Control Act. It was held that a contract for rent at a rate higher than the standard rent is not only unenforceable but also that the landlord would be committing an offence if he collects a rent above the standard rent". Though the owner of the property is a religious institution , no unfair rent

can be collected in the guise of fair rent.

3. I heard Thiru. K.Sakthivel, counsel for the appellant, M/s.A.S.Kailsam & Associates, Counsel for the 2nd respondent and perused the relevant records.

4. The suit property measuring about 60 cents belonging to the above temple is given on lease to the appellant and he is running a petrol bunk in the said property. The suit property is located in Madurai- Tenkasi Main Road. The present rent is Rs.40,890/-. The temple has refixed the lease rent at Rs.1,74,660/- with effect from 01.02.2017. The appellant is challenging the said rent on the ground that it is exorbitant and fixed in violation of guidelines issued in various Government Orders and without providing an opportunity to the appellant. On the other hand, the counsel for the 2nd respondent has argued that the guideline value or market value may be taken up for fixation of fair rent and the appellant has not given any evidence to show that the rent fixed is more than the market value in that area.

5. It is not disputed by the appellant that he is exploiting the property commercially by running a petrol bunk. The object of letting out the property is to collect more revenue for the respondent temple. The appellant being a tenant cannot insist that the rent, which as he thinks just and proper alone is liable to be fixed. As per Section 34A of the TN HR&CE Act, the lease rent of property belonging to the religious institution shall be refixed once in 3 years. Initially the fair rent for the suit property was fixed based on the guideline value that prevailed on 01.11.2001. Thereafter the same has been enhanced at the rate of 15% for every 3 years, which is repugnant to the Sec 34A of the Act. If the rent is refixed once in 3 years as per Sec 34A of the Act the rent will be higher than the present rent. Further, the property was endowed for the maintenance of the temple. The temple is totally depending on the income derived from the said property for the performance of poojas, festivals, payment of salary to the employees and other expenses. The expenditure on the above said items have increased. Further, it is evident from the guideline value furnished by the Sub Registrar the value of the land also has increased over the years. Considering the above facts, the lease rent shall be revised taking into account the amount of rent levied for similar type of properties situated in the locality. But, fixation of reasonable rent to the property is the prerogative of the landlord and the tenant cannot dictate terms to the landlord.

6. The appellant has produced a rental receipt issued by "Kammalar Madam Public fund", in which Rs.4000/- was collected as monthly rent for the property measuring about 10 cents. The suit property is located adjoining the Madurai-Tenkasi Road, but the above said property is located in the interior area. Further, for fixation of lease rent, the rent paid for similar type of property in the area shall be taken into account. Hence the rent cannot be fixed based on the rent paid to the said property. Moreover the rent paid at present cannot also be the basis for revision of rent. However the appellant is insisting on reduction of rent as the guide line value has been reduced by the Government. Thus there is a case for consideration.

7. As per the Sec 34A of the Act "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 institution is situated". But in this case, the fair rent was fixed only based on the guideline value and other relevant issues were not examined. Now, because of reduction in guide line value, as a policy, the appellant is approaching for modification. The fair rent shall be fixed once in 3 years taking into account the prevailing market rental value. The respondent temple has failed to fix the fair rent as per Sec 34A of the Act. Hence the case is remitted to fair rent fixation committee for reconsideration. The fair rent committee shall reconsider the issue under the provisions of Sec 34A of the Act, revision of Guide Line value and the Government Orders for fixation of rent . Such exercise shall be completed within a period of 3 months from the date of receipt of this order. Till then the appellant shall pay the revised rent and excess payment if any made will be refunded after the rent is refixed. Even after reconsideration, if there is no change in fair rent value, then the appellant will be bound by the decision. 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 Appellant through Thiru.K.Sakthivel, Advocate, No.396, 3rd floor, New Additional Law Chambers, High Court Buildings, Chennai-104.
2. The 2nd respondent through M/s.A.S.Kailsam & Associates, No.86, Law Chambers, High Court Buildings, Chennai 600 104.

Copy to

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