

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

Monday the 7<sup>th</sup> day of August, Two thousand and Seventeen.

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

**A.P.No.13/2017 D2**

**Between**

G.Kasiammal

...Appellant

**And**

Arulmigu Sengazhu Neer Pillayar Thirukoil,

Rep.by its Executive Officer,

No.131, Sengazhu Neer Pillayar Thirukoil,

Chennai-600 001

....Respondent

In the matter of Arulmigu Sengazhu Neer Pillayar Thirukoil,  
Chennai-600 001

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 28.04.2008 of the Executive Officer of the above temple in informing the fair rent.

**Order in D.Dis. A.P.No.13/2017 D2 dated: 07.08.2017**

The above Appeal petition came up for final hearing before me on 25.07.2017 in the presence of Thiru. B.Ullasa Velan, counsel for the appellant, Thiru.N.Kanakavelu, Counsel for the 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 under Section 34(A)(3) of the Act against the notice dated 28.04.2008 of the Executive Officer of the above temple in informing the fair rent.

2. The appellant has stated that she is the owner of the building measuring an extent of 970 sq.ft., constructed in the respondent temple land at No. 9/13, Salai Vinayagar Koil Street, Mannady, Chennai. Originally it was a thatched shed a residing place for cows and buffalo which was originally owned and maintained by late Ponnaiah Nadar. Her husband Gopal was working under late Ponnaiah Nadar and looked after its cows and buffalows. In the year 1970 Ponnaiyah Nadar due to his health condition left to his native place, hence sold the cows and buffalows along with the thatched shed to her husband late Gopal. In the year 1975 her husband obtained an hand loan and

constructed a permanent shed at the cost of Rs.1,50,000/- and they are living in the same shed along with the cows and buffalows. In the year 2005 her husband sold all the cows and buffalows and they alone living in the premises. Her husband died on 22.06.2015. Now she is living in the premises. The late. Ponnaiyah Nadar was paying land rent of Rs.80/- then it was increased to Rs.100/- and subsequently Rs.140/- and again increased to Rs.185/-, subsequently Rs.241/- as monthly rent. Suddenly on 08.11.2012 they received a communication from the respondent Executive Officer that land rent was increased to Rs.5,225/- per month and also asked them to pay revised fair rent arrears of Rs.7,93,526/- in that communication the respondent also mentioned that land rent is again increased to Rs.7,946/- per month from 01.07.2012. When they received the above communication her husband was bedridden hence they could not able to take any further action. She met the respondent Executive Officer and explained her difficulties and requested him to help us but he did not respond again on 10.06.2013 we received another communication to pay monthly rent of Rs.9,138/- per month from 01.07.2013 and the communication further stated that we have to pay Rs.8,65,040/- towards arrears of fair rent since both are uneducated they did not know how to proceed further meanwhile her husband died on 22.06.2014, now she is living alone with a help of the amount receiving from the Government (Old age pension) and her married daughters used to help her financially. On 19.02.2016 she received a communication from Joint Commissioner, Hindu Religious and Charitable Endowment Department, Nungambakkam, Chennai

to appear before him on 10.03.2016. Only during the Joint Commissioner Enquiry she came to know that rented premises was classified as commercial and hence they are increasing the land rent at the rate of 33%. For the past 10 years they are not keeping any cows and buffalows due to strong warning given by Chennai Corporation Officials against keeping cows and buffalows in the residential areas, hence they sold the cows and buffalows and for the past 10 years herself and her husband alone living in the shed. As per G.O. (Ms.) No. 298, Hindu Religious and Charitable Endowment Department dated 20.07.2010 and the Commissioner, Hindu Religious and Charitable Endowment Circular dated 03.08.2010 to his subordinates to strictly follow G.O. (Ms.) No. 298. As per the above G.O. she has to pay fair rent only from 01.07.2007. Whereas

the respondent Executive Officer claiming arrears of fair rent of Rs.11,00,000/- upto February 2016 based on commercial classification of the respondent temple land and based on G.O. Ms. No. 353 dated 04.06.1999 and G.O. Ms. No. 456 dated 09.11.2007. She filed writ petition in W.P. No. 19589 of 2006 before the Hon'ble High Court of Madras, the Hon'ble High Court was pleased to pass an order dated 10.06.2016 directing the appellant to file a Revision under Section 34(A)(3) of the Hindu Religious and Charitable Endowment Act to the Commissioner, Hindu Religious and Charitable Endowment within a period of three weeks from the date of receipt of copy of the order by making a deposit of sum of Rs.3,05,000/-.

3. In the counter affidavit the respondent has stated that the appeal petition has been filed without any compliance to the provision made under section 34-A(5), which states that " Provided that no appeal or revision shall be entertained under sub-section(3) or sub-section(5) as the case may be unless it is accompanied by satisfactory proof of deposit of the lease rent so fixed or re-fixed, in the account of the religious institution concerned and such amount shall be adjusted towards the lease amount payable by the lessee as per the order passed in the appeal or the revision, as the case may be". So, it is crystal clear that the petitioner did not possess the eligibility criteria to prefer this present Appeal. Besides the petitioner did not adhered to the conditions stipulated by the Hon'ble High Court, Madras dated 10.06.2016 made in W.P.No.19589 of 2016 and W.M.P.No.16929 of 2016. While the writ petition was disposed giving liberty to the petitioner to file a Revision under Section 34-A(3) of the TN HR&CE Act within a period of 3 weeks from the date of receipt of copy of this order, by making a pre-deposit of a sum of Rs.3,05,000/- and on such pre-deposit, the 1<sup>st</sup> respondent shall entertain the revision, if the papers are otherwise in order and give a disposal on merits and in accordance with law, within a further period of six weeks thereafter. The petitioner pending disposal of the revision, without prejudice to her rights and contentions, shall pay a sum of Rs.6,000/- per month by way of rent as against the claim of Rs.9,800/- per month fixed by way of fair rent. Till the culmination of revisional proceedings, the 2nd respondent shall defer the proceedings initiated u/s.78 of the act. It is also made clear that the petitioner shall extend her maximum co-operation to the revisional authority for disposal of the revision petition within the stipulated time. But,

the petitioner did not paid the amount Rs.3,05,000/- within the stipulated time limit and only an amount of Rs.2,54,000/- was paid. Hence it was submitted that the petitioner had not complied by the conditions stipulated by the Hon'ble High court, Madras and there is a deficit of payment of Rs.51,000/- which remains unpaid till date and the monthly rental of Rs.6,000/-ordered to be paid is also not paid consecutively for several months in a row. As per the temple records the fair rent for the temple property is fixed as Rs.9,138/-as on 30.06.2016 and accordingly the petitioner is in arrears of Rs.8,95,604/- as on 30.06.2016, so there are absolutely no reasons or merits to entertain this appeal petition since the petitioner exhibits her default mindset even after filing this appeal petition. The Joint Commissioner, HR&CE Department, Chennai by his order made in Na.da.Ka.No.13989/2013/A2 dated 22.07.2016, had identified the petitioner as an encroacher and was also directed to vacate the property and handover vacant possession. The order remains un-agitated and ripe for execution by steps as described in the Relevant Act. The petitioner is not an authenticated tenant of the temple property and she took no steps to get the tenancy transferred in her name after the demise of her husband Gopal. So, the petitioner cannot claim any privileges available to an authenticated tenant.

4. I heard Thiru.B.Ullasavelan, counsel for the appellant, Thiru.N.Kanakavelu, Counsel for the respondent and perused the relevant records. The appellant claims that the suit property is used for residential purpose but the fair rent was fixed on commercial basis.

5. The appellant's husband Thiru.Gopal was tenant of the suit property measuring about 970 sq.ft. The said premises has been utilized commercially for milk vending business by rearing cows and buffalos and hence the fair rent was fixed on commercial basis. Thus, it is an admitted fact that the property was let out for commercial purpose and exploited commercially by the appellant's husband. Now the appellant claims that the suit property has been used for residential purpose for the past 10 years. She cannot change the nature of the property to suit her convenience.

6. The temple has fixed the fair rent to the property as per the guidelines issued in the various Government Orders and sent several notices to the appellant's

husband from the year 2008 onwards demanding to pay the rent along with the arrears. Both the appellant and her husband remained silent without responding to the said notices. Hence, Joint Commissioner, Chennai has issued notice u/s.78 of the Act to evict the appellant. After receiving the said notice the appellant had filed W.P.No.19589/2016 before the Hon'ble High Court challenging the notice dated 28.04.2008 issued by the Executive Officer of the temple. The said Writ petition was disposed by order dated 10.06.2016 with the following direction. ***“In the result, the writ petition is disposed of and the petitioner is at liberty to file a revision under section 34-A(3) of the Act to the 1<sup>st</sup> respondent within a period of three weeks from the date of receipt of a copy of this order, by making a pre-deposit of a sum of Rs.3,05,000/- (Rupees three lakhs and five thousand only) and on such pre-deposit , the 1<sup>st</sup> respondent shall entertain the revision, if the papers are otherwise in order and give a disposal on merits and in accordance with law, within a further period of six weeks thereafter. The petitioner, pending disposal of the revision, without prejudice to her rights and contentions shall pay a sum of Rs.6000/- per month by way of rent as against the claim of Rs.9,800/- per month fixed by way of fair rent. Till the culmination of revisional proceedings, the 2<sup>nd</sup> respondent shall defer the proceedings initiated u/s.78 of the Act. It is also made clear that the petitioner shall extend her maximum co-operation to the revisional authority for disposal of the revision petition within the stipulated time”.***

7. The order passed by the Hon'ble High Court was not fully complied by the appellant and she had paid Rs.2,54,000/- instead of Rs.3,05,000/- as directed by the Hon'ble High Court. Further, the respondent has stated that the appellant is also irregular in payment of monthly rent of Rs.6,000/- fixed by the Hon'ble High Court. As the property has been given for the commercial purpose, the fair rent was fixed on commercial basis. Hence, I find no reason to interfere with the said notice. Accordingly, it is hereby confirmed.

8. The suit property is endowed for the maintenance of the minor idol. The temple is totally depending on the income derived from the suit property to meet out the daily pooja expenses, performance of festivals, payment of salary to the employees and other expenses. Due to the cost escalation, the expenditure on the said items is also

increased. Further, the cost of the land also increased over the years. Considering the above facts, the lease rent shall be refixed periodically on par with the prevailing market value in the said locality. Further as per Sec 34A of the Act, the lease rent shall be refixed once in 3 years taking into account the amount of rent paid for similar types of property situated in the said locality. The object of letting out the property is to collect more revenue for the temple which is meant to be used for the maintenance of the temple and providing basic amenities and facilities to the devotees. But by refusing to pay the lease rent fixed by the temple in accordance with the guidelines issued by the Government and as per Sec 34A of the act, the appellant is denying the temple to get its legitimate share of income from the suit property.

9. The temple never compelled the appellant to occupy the property. The property has potential to generate more income. The temple can exploit the property in most advantageous way to get more income by letting out the same in public auction. But the appellant is preventing the temple from getting maximum income from the said property. If the rent fixed by the temple is not affordable, then the appellant should quit the property to make way to the temple to let out the property in public auction to get maximum income from the property.

10. The lease rent fixed with effect from 2001 is very low compared to the market rental value prevailing in the said locality. But the appellant is not even ready to pay the said lesser rent. Further, she is also irregular in payment of the rent fixed by the Hon'ble High Court. If the rent is refixed as per Sec 34A of the Act with effect from 01.07.2016, the rent will be more than the present rent. Considering the fact that the appellant not even paid the present rent, she shall vacate the property. As the arrears had accumulated to more than Rs.9 lakhs, the appellant is given 3 months time to settle the arrears and to pay rent at revised rate. The appeal petition is hereby disposed with above directions.

/typed to dictation/

Sd./- M.Veera Shanmugha Moni  
Commissioner

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

Superintendent

**To**

1. The Appellant through Thiru.B.Ullasa Velan, Advocate, No.324 New Additional Law chambers, High Court Buildings, Chennai 600 104.
2. The Executive Officer through Thiru.N.Kanakavelu, Advocate, No.43/14, Adam Sahib Street, (1<sup>st</sup> Floor) Royapuram, Chennai -13.

**Copy to**

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