

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

Thursday the 23rd day of August Two thousand and Eighteen.

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

A.P.No.42/2018 D2

Between

S. Padhmanaban

...Appellant

And

1. The Joint Commissioner

H.R&C.E., Admn. Dept., Villupuram

2. The Joint Commissioner/Executive officer

Arulmighu Arunachaleswarar Temple,

...Respondent

Tiruvannamalai Town and District.

In the matter of Arulmighu Arunachaleswarar Temple, Tiruvannamalai Town and District.

The Appeal petition filed under Section 34A(3) of the Tamil Nadu H.R. & C.E. Act, 1959 (Tamil Nadu Act 22 of 1959) against the notice of the Joint Commissioner/Executive officer of the above temple in informing the fair rent.

Order in D.Dis.A.P.42/2018 D2 dated :23.08.2018

The above petition came up for hearing before me on 26.06.2018. I heard Thiru.E.Ganesh, the counsel for the appellant and M/s.A.S.Kailasam&Associates, counsel for the 2nd respondent. After hearing the counsels the following order is passed:-

ORDER

The above appeal petition was filed u/s 34A(3) of the Act against the notice of the Joint Commissioner/Executive Officer of the above temple in informing the fair rent.

2. The appellant has stated that the land measuring 5274 sq.ft. in Plot No.193 in Block No.3, S.No.822A part, Adyar bearing Door No.1, Kabali House, Arunachalapuram 2nd street, Adyar, Chennai-600 020 belongs to the above

temple. Originally, the above land has been leased out to one Seshadri vide Doc.No.167/1937, SRO, Saidapet by the temple management. Thereafter, the said Seshadri has leased out the said property in favour of one Ragunatha Iyer vide Doc.No.969/1939, SRO, Saidapet. Thereafter, the said Ragunath Iyer leased out the property to one T.S.Sankara Iyer, grandfather of the Appellant vide Doc.No.4320/1970,SRO,Saidapet. Subsequent to the conveyance, the same was communicated to the temple and the Appellant's father was recognized as tenant and he was in lawful occupation of the said land till his demise. Thereafter, his son Sambasiva Iyer, father of the Appellant has been in occupation of the property and after his demise, the appellant is in occupation of the above premises. The land rent for the above premises has been determined by the Fair Rent Committee and the same was periodically increased at 15% in the light of GO(MS) No.353 and GO(MS) No.456 and presently, the rent has been fixed at Rs.3,910/-and same was paid promptly by the Appellant. An undated notice of the 2nd Respondent served on the Appellant on 10.03.2018 whereby it is stated that from 01.07.2016 onwards, the Fair rent for the premises under the occupation of the Appellant has been revised at Rs.79,200/- per month in terms of Section 34(A) of the Tamil Nadu Hindu Religious & Charitable Endowments Act, 1959. It is also stated that the difference in amount between the original rent paid and the revised rent for the period between 01.07.2016 and 28.02.2018 is at Rs.15,87,910/-. Neither the fair rent fixation made by the Fair Rent Committee has been enclosed with the impugned notice nor any reference relating to it has been made in the said

impugned communication. No opportunity has been given to the Appellant prior to the fair rent determination. The alleged fixation by the fair rent committee is unilateral in nature and violated the principles of Natural Justice and Rule of Audi Alterem Partem. Before fixing the fair rent committee has not followed the circular instructions issued by the Commissioner in RC.No.40651/2008 M3 dated 20.02.2009 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.

3. I heard Thiru.E.Ganesh, Counsel for the appellant and M/s.A.S.Kailasam&Associates, Counsel for the 2nd respondent.

4. The appellant is in possession of 5274 sq.ft of land to the 2nd respondent temple. The fair rent was fixed at Rs.3910/- as per the GO'S. Subsequently, the fair rent has been refixed at Rs.79,200/- with the effect from 01.07.2016 as per Section 34A of the Act taking into account the prevailing market rental value in the said locality and communicated to the appellant vide impugned notice. This was objected to by the appellant on the ground that no opportunity was given to him before fixing the fair rent.

5. As per the circular dated 20.02.2009 issued by the Commissioner in Rc.No.40651/2008 M3, an opportunity shall be provided to the tenant, for filing his objection, but no opportunity was given to the appellant. Further the calculation sheet was also not provided to the appellant. In the impugned notice, it was not mentioned whether the fair rent has been fixed by the Fair

Rent Fixation Committee. Hence, the impugned notice suffers from infirmity as stated above.

6. Therefore, the appeal petition is disposed of with the following directions:-

- 1) The 2nd respondent temple is directed to re-fix the rent through the Fair Rent Fixation Committee under section 34A of the Act and communicate the same to the appellant along with calculation statement within 15 days.
- 2) On receipt of the notice, the appellant may file his objection if any, within 15 days.
- 3) The objection of the appellant, shall be placed before the Fair Rent Fixation Committee for consideration and the decision of the committee shall be communicated to the appellant.
- 4) The entire exercise shall be completed within 2 months from the date of receipt of this order. Till then the appellant shall continue to pay the refixed rent without fail. If the fair rent is revised, the excess rent paid if any shall be adjusted in future rent.

/typed to dictation/

Sd./- R.Jaya
Commissioner

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

Superintendent

To

1. The Appellant through Thiru.E.Ganesh, Advocate, No.61/23, Sakthi Avenue, South Lock Street, Kottur, Near Kotturpuram MRTS Railway Station, Chennai - 85.
2. The 2nd respondent through M/s.A.S.Kailasam&Associates, Advocate, No.86, Law Chambers High Court Building, Chennai-104.

Copy to

3. The Joint Commissioner, HR & CE Admn.Dept., Villupurm.
4. The Assistant Commissioner, HR & CE Admn.Dept., Tiruvannamalai.
5. Extra.