

BEFORE THE COMMISSIONER, HR&CE ADMN DEPARTMENT, CHENNAI-34.

Tuesday the 9th day of April, Two thousand and thirteen.

Present : Thiru P. Dhanapal, M.A.,B.L.,
Commissioner.

A.P. 25/2011 to 29 /2011

Between.

- | | |
|---------------------|-------------------------------|
| 1. M.N. Krishnan | ... Appellant in A.P.25/2011. |
| 2. R. Jaganathan. | ... Appellant in A.P. 26/2011 |
| 3. B. Samikannu. | ... Appellant in A.P. 27/2011 |
| 4. K. Raman Kutty. | ... Appellant in A.P. 28/2011 |
| 5. C.J. Vinithomas. | ... Appellant in A.P. 29/2011 |

And

The Executive Officer,
Arulmighu Sivasubramaniaswamy
Temple, Kumarasamypettai,
Dharmapuri.

..Respondent in all Appeals

In the matter of Arulmighu Sivasubramaniaswamy Temple,
Kumarasamipettai, Dharmapuri District.

Appeals filed under Section 34(A) of the Tamil Nadu HR&CE Act,
1959 (Tamil Nadu Act 22 of 1959) against the notice dated 19.01.2011 of
the Executive Officer intimating the fair rent fixed by the Fair Rent
Fixation Committee and the arrears due on such fixation.

Common Order in D.Dis. A.P. 25/2011 to 29 /2011 (D2)
dated 9.04.2013.

The above Appeal Petitions having come on for final hearing before
me on 15.02.2013 in the presence of M/s Bhargavan, Counsel for the

Appellant and Thiru V.R.AnnaGandhi, Counsel for the Respondents and upon hearing their arguments and perusing the connected records and the matter having stood over for consideration till this day, the following common order is made:-

COMMON ORDER.

All the above appeal petitions has been filed under Section 34 (A) of the Act against the notice dated 19.01.2011 issued by the Executive Officer of the temple intimating the fixation of Fair Rent to the tenement building occupied by them each by the fair rent fixation committee and the arrears of rent due thereon.

2. Each appellant is a tenant under the suit temple. The appellant contended that the fixation of fair rent by the Committee is highly arbitrary, unreasonable and lacks jurisdiction. There was no opportunity was given to the appellants to represent while arriving the fair rent as per the Judgment of Hon'ble Division Bench reported in 2009(4) MLJ 1223. Failure to do so vitiates the entire proceedings and the demand is liable to be set aside. The Executive Officer has failed to see that the rent having been fixed by an offer and acceptance, any revision can only be prospective and retrospective revision of rent is contrary to law. The area in question and location are all to be taken into account while considering the prevailing market rental value. The appellant never given any particulars as to how the fair rent is arrived which is a mandatory requirement. Therefore, the impugned demand is unsustainable in law.

3. In the common counter affidavit, the Respondent/Executive Officer has contended that by proceedings in Rc.No.6605/2001 A.3 dated 12.06.2003 fair rent was fixed and as against the fixation of fair rent the tenants moved various forums and this respondent obtained favourable

orders and on and from 2005 the fair rent was implemented and being recorded from tenants. As there was no fair rent fixed, after 2001, as per the guide lines issued by various Government orders, proceedings were initiated and fair rent was fixed by order dated 04.01.2011. Before fixation of fair rent, the properties were properly surveyed and measured by qualified surveyors and the Assistant Executive Engineer of the Department and quantified the rent. The said report was duly served on the tenants calling upon their explanation. Therefore, it cannot be stated that opportunity was not given to the tenants. Fair rent has been fixed after duly considering area of property, location and as per the guidelines contemplated under various Government Orders. The manner and the principles for quantifying the fair rent under the Government Orders have been upheld by Hon'ble High Court and Supreme Court of India. Therefore, as the fair rent has been fixed only pursuant to the said Government Orders and as the validity of the Government orders having been upheld, the appellants cannot challenge the fair rent fixed and appeal has to be dismissed. The property let out are all used as commercial purpose and therefore the fair rent proceedings does not call for any interference and there is no violation of principles of natural justice. The temple is being run with the funds of the rents collected and the administration of the temple were effective if the tenant pays the rent regularly. The validity of demanding enhanced rent from the earlier period is only a compliance of the Government order and therefore, the grievance of the appellants that the fair rent fixed is only prospective is not acceptable. There is no merit in the appeal and is liable to be dismissed and prayed to dismiss the appeal.

4. In the rejoinder affidavit filed by the appellants they dispute the extent of land occupied by them and the fair rent fixed. The averments of the respondent that properties were surveyed and measured are specifically denied as incorrect and misleading. They dispute that terms

of the Government orders and guidelines are not properly put into action and are being short circuited. They contend that Section 34.A of the Act intends to afford opportunity to tenants for placing their grievances and for raising objections in respect of fixation of lease rent. But, the respondent without intimating tenants or allowing them to raise their objections, has passed an order dated 04.01.2011 which is discriminatory and void ab inito. It is mandatory that the Committee has to afford opportunity to concerned tenant to register their objections, if any and the committee has to serve notice on the tenants on revised fair rent. Against the above decision of the Committee, tenant can go for appeal before the Commissioner. On the contrary, no committee was formed and no notice was served on them or opportunity was afforded before revision fair rent.

5. I heard M/s Bhargavan Counsel for the appellant and Thiru V.R.Annagandhi, Counsel for the Respondent and perused the relevant records. The pivot around the issue raised in these appeal is that;

- (1) No opportunity was given to the appellant to put forth their objections before fixing fair rent.
- (2) Fair rent fixed and claimed for the premises is more than that what was actually under occupation of each of the Appellants.

It is not disputed by both the parties that the suit properties have been leased out to each of the appellant for commercial purpose. Fair Rent was fixed by the Committee on 04.01.2011. The Executive Officer of the temple has sent a notice dated 19.01.2011 along with the fair rent calculation statement to each of the appellants herein to file their objection if any. Again another notice dated 14.03.2011 was also issued with calculation statement. The receipt of the notice was duly acknowledged by each of the appellants. But, the appellant neither filed any objections nor raised any protest but paid the old rent continuously even after the expiry of their lease period. Therefore, the fair rent as fixed

by the Committee was approved by the Joint Commissioner Salem in Pro. Rc.No.3778/2011 A3 dated 02.05.2011. Therefore, the contention that no opportunity was given to the appellants relating to the fixation of the fair rent is not acceptable. Even in the judgment relied upon by the petitioners, it is held that "It was clarified that it is not necessary for the lessees to appear in person and that it is sufficient for them to submit their written objections to the temple authorities, who will take note of the objections before fixing the rent and then it will go before the Committee which will pass the order as per sub section 2 of Section 34.A of the Act for fixing the lease rent and intimate the same to the lessee". It is made clear that subsequent to the impugned notice dated 19.01.2011, appellants were given another notice dated 14.03.2011 informing the fair rent to be fixed along with the calculation statement and called upon to file their objections if any. But, even then they failed to make use of the opportunity. Hence, now they cannot contend that no opportunity was given to them before fixing the fair rent. Therefore, the first issue is answered that even though opportunity was given to the appellants to put forth their objections if any before fixing the fair rent by the fair rent fixation Committee, they raised no objections.

6. The next question is that each of the appellant disputes the tenancy premises in their occupation and the one claiming rent for the premises by the respondent herein. It was reported by the respondent that in respect of the 1st and 4th Appellant herein, the area under occupation of the respective appellants was subsequently measured in their presence and fair rent was revised and fixed as per the guidelines issued by the Government Orders. However, In order to settle this dispute, this forum has directed the Executive Officer to re-measure the impugned property under occupation of the each of the appellants on or before 28.01.2013 with a notice to all the parties and in the presence of the respective counsel and submit a report through their counsel.

Liberty is given to the appellants to engage their surveyors or engineers in the above work. But, both the counsels filed separate report along with photographs and sketch with different measurement.

7. Again one more chance was given to the appellant by this forum by deputing the headquarters engineer to inspect the property and measure the premises occupied by the appellant in the presence of both the parties, if they are willing to file a memo accepting the fair rent fixed by the Committee. But, they are not ready to accept the fair rent.

8. The counsel for the appellants argued that the temple authority has fixed the fair rent to pathway connecting to Road. On perusal of the photographs produced by the Executive Officer, the appellant have put up an entrance gate and articles and the said pathway are only in the possession of the appellant and the same is utilized by the appellant. But the appellants produced photographs without such entrance gate. They take out the photographs after removing the gates etc. to misguide this forum. Each of the appellant and their counsel tried to misguide this forum and tried to drag on the matter and to get the orders in their favour.

9. If the contention of each of the appellant is that the properties are in dilapidated condition and unworthy condition, they have to vacate the property and surrender possession to the temple authorities. But, on the contrary, they are still running their business in the impugned property challenging the impugned notice, even after expiry of their period of lease. Thus the appellants being encroachers and defaulters, who are squatting upon temple property by paying meager paltry sum as rent and without paying the fair rent and without raising any objection to the fixation of fair rent, cannot have any indulgent at the hands of this forum.

For the foregoing reasons, I find that there is no any procedural lapse or irregularity or illegality in the fair rent fixed and the appeal petitions deserves no merits. Accordingly the Appeal petition is dismissed as devoid of any merits.

The appellants are directed to remit the entire arrears of rent as on date within 15 days from the receipt of this order. If the appellant fails to remit the entire arrears within the stipulated time, the respondent is at liberty to proceed against them in accordance with law.

/typed to dictation/

Sd. P. Dhanapal,
Commissioner.

/ true copy/ by order/

Superintendent.

To

1. The Appellants through Thiru M/s Barghavan, Advocate, Madras Bar Association, High Court Buildings, Chennai.104. By RPAD.
2. The Executive Officer through Thiru V.R. Annagandhi, Advocate, 255, Law Chambers, High Court, Chennai.104.

Copy to:

3. The Joint Commissioner, HR & CE Admn. Department, Salem.
4. The Assistant Commissioner, HR & CE Admn.Dept., Dharmapuri.
5. Extra.